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10 March 2021

San Diego County Unified Disaster Council
c/o Jeff Toney, Office of Emergency Services
County of San Diego
jeff.toney@sdcounty.ca.gov

Re: Request for Amendment to Working Group's Charter; Notice of Intent to Sue

Dear Council:

On behalf of my client, Arturo Castañares, I am writing to request that the Council amend the San Diego Urban Area Working Group's charter to ensure compliance with applicable laws pertaining to open government. The charter's amendment is already the subject of Item 5 on your agenda for the special meeting on March 11, 2021. In this regard, my client requests that you remove Section 1 of Article VII of the current charter, "Restriction on disclosure and use of data provided during meetings." This provision is plainly illegal, and my client intends to sue to have it declared null and void if the Council does not make the change itself at tomorrow's meeting or at a meeting in the very near future (to avoid the continuation of the illegal policy and procedure codified by the provision).

The provision violates both the California Public Records Act (Gov't Code § 6250 *et seq*.; "CPRA") and the Ralph M. Brown Act (Gov't Code § 54950 *et seq*.; "Brown Act") in both its breadth and its timing. On the one hand, the provision purports to make secret "[d]ocumentation provided for or prepared as a result of the UAWG meetings" immune from disclosure to the public. That statement clearly includes meeting agendas, meeting minutes, and any other public record for which a specific exemption does not apply and with no limitation on who provided or prepared the document. For example, unless a particular document is in fact exempt under an enumerated provision of the CPRA, the provision could not lawfully prevent its disclosure when shared with a majority of the UAWG members in connection with a public meeting. Gov't Code § 54957.5(a)-(c).

On the other hand, the provision effectively imposes a prior restraint on access to public records by deeming in advance all documentation provided for or prepared as a result of a UAWG meeting to be exempt from disclosure under the CPRA – without your agency making a case-by-case determination based on the records actually requested by a member of the public. That's contrary to the letter and spirit of the CPRA, which requires your agency to promptly "determine whether the request, in whole or in part, seeks copies of disclosable public records" in your agency's possession after it receives a request; and further requires your agency to justify any decision to withhold responsive records in response to the request. Gov't Code § 6253(c), § 6255(a). And while your agency is authorized to adopt its own policies and procedures for complying with the CPRA, it may do so only to "allow for faster, more efficient, or greater access to records. . . ." *Id.*, § 6253(e). The provision does just the opposite.

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In addition, the provision purports to cloak the described documentation with the exemptions set forth in Government Code Sections 6254(aa) and (ab), even though those sections are facially inapplicable to most everything that the UAWG does. The first exemption applies only to documentation "for distribution or consideration in a closed session." Gov't Code § 6254(aa). Yet the UAWG's meetings, as you now surely know from the lawsuit my client filed against your agency last December, must be conducted in open session. The second exemption applies only to critical-infrastructure information[1] submitted to California's Office of Emergency Services when that office has no legal authority to compel access to or submission of the information. *Id.*, § 6254(ab). Meanwhile, the nature of the information that the UAWG reviews and generates rarely (if ever) is submitted to OES on a voluntary basis.

In short, neither the CPRA nor the Brown Act allows your agency to wall off disclosable public records in advance of a request from the public. The documents reviewed by the UAWG outside of a lawful closed-session meeting or that exist for any reason other than voluntary submission to OES are subject to disclosure.

For these reasons, my client urges the Council to amend the charter provision so that it in no way creates a barrier to the public's access to information about what business the UAWG is conducting on the public's behalf. Please notify me in writing no later than the close of business on March 12, 2021, that the legal violations described in this letter have been remedied or will soon be remedied.

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

cc: Timothy White (timothy.white@sdcounty.ca.gov)
Shaylynn Olivo (shaylynn.olivo1@sdcounty.ca.gov)

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[1] "Critical infrastructure" refers to "systems and assets, whether physical or virtual, ***so vital*** to the United States that the incapacity or destruction of such systems and assets would have a ***debilitating impact*** on security, national economic security, national public health or safety, or any combination of those matters." 42 U.S.C. § 5195c(e) (emphasis added); 6 C.F.R. § 29.2(a).

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