



## NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

**Date/Time:** **Tuesday, April 23, 2024, 4:30 p.m.**  
(or as soon thereafter as possible)

**Location:** **A quorum of City Council will be in attendance at:**  
**Tracy City Hall**  
**333 Civic Center Plaza, Tracy, CA. 95376**  
**And**  
**The Mayor will be attending remotely at the following location:**  
**Omni Atlanta Hotel at Centennial Park**  
**190 Marietta St NW, Atlanta, GA 30303**  
**And**  
**A Council Member will be attending remotely at the following location:**  
**Hyatt House Tempe/Phoenix/University**  
**601 E. 6<sup>th</sup> Street**  
**Tempe, AZ 85281**

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

***This meeting will be open to the public for in-person and remote participation pursuant to Government Code Section 54953(e)***

### **For Remote Public Comment:**

*During the Items from the Audience, public comment will be accepted via the options listed below. If you would like to comment remotely, please follow the protocols below:*

- *Comments via:*
  - **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number: 2556 344 9847** and **Event Password: TracyCC**
  - ***If you would like to participate in the public comment anonymously***, you may submit your comment via phone or in WebEx by typing "Anonymous" when prompted to provide a First and Last Name and inserting [Anonymous@example.com](mailto:Anonymous@example.com) when prompted to provide an email address.
  - **Join by phone by dialing +1-408-418-9388**, enter 25563449847#8722922# Press \*3 to raise the hand icon to speak on an item.

- *Protocols for commenting via WebEx:*
  - *If you wish to comment under “Items from the Audience/Public Comment” portion of the agenda:*
    - *Listen for the Mayor to open “Items from the Audience/Public Comment”, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
    - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
  - *Comments for the “Items from the Audience/Public Comment” will be accepted until the public comment period is closed.*

1. Call to Order
2. Actions, by Motion, of City Council pursuant to AB 2449, if any
3. Roll Call and Declaration of Conflicts
4. Items from the audience - *In accordance with Council Meeting Protocols and Rules of Procedure, adopted by Resolution No. 2019-240, and last amended by Resolution No. 2021-049, a five-minute maximum time limit per speaker will apply to all individuals speaking during “Items from the Audience/Public Comment”. For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council.*
5. DISCUSSION ITEMS
  - 5.A. Consider and Determine, by Motion, Response to Formal Notice of Brown Act Violation/Cease and Desist from Alice English dated March 29, 2024
6. Council Items and Comments
7. Adjournment

**Posting Date: April 18, 2024**

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled to participate in employment, programs and facilities. Persons requiring assistance or auxiliary aids in order to participate, should contact the City Manager’s Office at (209) 831-6000 at least 24 hours prior to the meeting.

April 23, 2024

Agenda Item 5.A

RECOMMENDATION

**Consider and Determine, by Motion, Response to Formal Notice of Brown Act Violation/Cease and Desist from Alice English dated March 29, 2024**

EXECUTIVE SUMMARY

On March 29, 2024, the City received an email from Alice English communicating a "Formal Notice of Brown Act violation/Cease and Desist" (Attachment A, Demand Letter). The Demand Letter alleges that Mayor Nancy Young violated the Ralph M. Brown Act ("Brown Act") by (1) stopping her public comment during Item 3.A of the March 19, 2024 meeting, and (2) ordering her removal from the Council Chambers during that same meeting. Under the Brown Act, the City has 30 days from receipt of the Demand Letter to provide a written response informing Ms. English of its decision to cease and desist from the alleged action. No response taken within 30 days is deemed a decision not to cease and desist.

This special meeting is being held for the City Council to consider and determine its response to Ms. English, including a proposed unconditional commitment to cease and desist pursuant to Government Code section 54960.2 attached as Attachment B, by the deadline of April 28, 2024.

BACKGROUND AND LEGISLATIVE HISTORY

Ms. English's specific allegations relevant to this item are the following:

- 1) During the public comment portion of Item 3.A on the March 19, 2024 City Council meeting agenda, Mayor Young, as the chair of the meeting, stopped Ms. English from speaking, had her microphone cut off, and directed an armed police officer to escort her out of Council chambers, in violation of Government Code sections 54954.3(a)-(c)
- 2) Mayor Young demanded that Ms. English leave the Council chambers for the entire remainder of the meeting in violation of Government Code section 54957.95.

Ms. English's requested cures for the above allegations are that:

- 1) The City Council provide an unconditional commitment to cease, desist from, and not repeat this action; and
- 2) Mayor Young publicly apologize to Ms. English for violating her rights and the Brown Act.

ANALYSIS

Scope of Item

Ms. English has made allegations in her demand letter which do not relate to the Brown Act and therefore are not addressed in the proposed response. For example, Ms. English's allegation regarding First Amendment violations is a federal law issue and is not evaluated

here.

Accordingly, this item is focused on the allegations relating to the events that occurred at the March 19, 2024 City Council meeting only.

Government Code sections 54954.3(a)-(c)

Government Code section 54954.3 governs public comment and requires providing an opportunity for members of the public to directly address the legislative body on any item of interest. It allows for the adoption of reasonable regulations on public comments. Further, it prohibits public criticism of the policies, procedures, programs, or services of the agency, or the acts or omission of the legislative body. Ms. English alleges that during the public comment portion of Item 3A on the March 19, 2024 City Council meeting agenda, Mayor Young, as the chair of the meeting, stopped Ms. English from speaking, had her microphone cut off, and directed an armed police officer to escort her out of Council chambers, in violation of Government Code sections 54954.3(a)-(c). Item 3A was a deliberation regarding proposed amendments to the City Council's policy of appointing advisory bodies.

Government Code section 54957.95

Ms. English alleges that Mayor Young demanded and had removed Ms. English from the Council chambers for the remainder of the meeting in violation of the Brown Act. The specific section of the Brown Act that is applicable to this allegation is Government Code section 54957.95, which provides when an individual may be removed for disrupting the meeting. "Disrupting" means behavior that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of meeting (Gov. Code section 54957.95(b)(1)).

Unconditional Commitment to Cease and Desist

The Brown Act affords a legislative body a procedural protection from litigation (and costly attorney's fees) by agreeing to an unconditional commitment to cease and desist pursuant to Government Code section 54960.2(c)(1). This commitment is done without admitting to any liability or wrongdoing. Such a commitment must be approved in an open session by the City Council. Once adopted, the City Council would be committing to cease from the noted violations in the future. A proposed letter response documenting the above is attached as Attachment B for the City Council's consideration and action.

The recommendation is that the City Council adopt the letter and authorize the City Attorney to transmit it to Ms. English.

Prepared by: Bijal Patel, City Attorney

Reviewed by: John Natalizio, Best, Best & Krieger

ATTACHMENTS:

Attachment A: Demand Letter

Attachment B: Proposed Unconditional Commitment

From: Alice English <[REDACTED]>  
Sent: Friday, March 29, 2024 5:05 PM  
To: Bijal Patel <[Bijal.Patel@cityoftracy.org](mailto:Bijal.Patel@cityoftracy.org)>; Midori Lichtwardt <[Midori.Lichtwardt@cityoftracy.org](mailto:Midori.Lichtwardt@cityoftracy.org)>  
Cc: Eleassia Davis <[eleassia.davis@cityoftracy.org](mailto:eleassia.davis@cityoftracy.org)>; Dan Evans <[dan.evans@cityoftracy.com](mailto:dan.evans@cityoftracy.com)>; Mateo Bedolla <[mateo.bedolla@cityoftracy.org](mailto:mateo.bedolla@cityoftracy.org)>; Dan Arriola <[Dan.Arriola@cityoftracy.org](mailto:Dan.Arriola@cityoftracy.org)>  
Subject: violation of my 1st Amendment rights. March 19, 2024.

You don't often get email from [REDACTED]. [Learn why this is important](#).

Caution: This is an external email. Please take care when clicking links or opening attachments.

3/29/2024

City Attorney, Ms. Bijal Patel

City Manager, Ms. Midori Lichtwardt

**Re: Formal Notice of Brown Act Violation/Cease and Desist**

Ms. Patel, Ms. Lichtwardt- This letter is to serve as a formal complaint against Mayor Nancy Young. During the regular City Council meeting on March 19<sup>th</sup>, 2024, She committed multiple violations of the Ralph M. Brown Act (Brown Act), as well as the 1<sup>st</sup> Amendment of the US Constitution.

Historically, I and others have been targeted by Mayor Young. Actions have included interruptions and, In no case were threats, outbursts, yelling or any disruptive behavior occurring from the public speakers. It should also be noted that Mayor Young does **not apply** the speaking rules consistently.

The specific instance which is the basis of this letter occurred on March 19<sup>th</sup>. An agenda item during public comments, I was stopped from speaking by the Mayor and had my microphone cut as I was making a criticism about how she was running the meeting. She subsequently directed an **armed** police officer to escort me out of the public chambers. Under Government Code Sections 54954.3(a)-(c) of the Brown Act, a legislative body cannot prohibit public criticism of the body, including individual members of that body. Additionally, I was stopped by the Mayor from practicing my freedom of speech, which is a **violation of my 1<sup>st</sup> Amendment rights.**

She then further violated the Brown Act and my rights by demanding that I leave the chambers for the entire remainder of the meeting. Other than criticizing the Mayor for her behavior and handling of the meeting, I was not a disruptive speaker, nor threaten anyone and did not run over my time. Yet, Young refused to continue the meeting until I left the Council chambers. I felt violated by her actions.

The actions above establish clear violations by the Mayor of the Brown Act, code of conduct and its requirements. The City must take corrective actions within thirty days, to both comply with the Brown Act and restore public trust.

As required in Government Code section 54960.2, you have 30 days from receipt of this demand to provide an unconditional commitment to cease, desist from, and not repeat this action. Further, I demand, as a cure, that the Mayor publicly apologize to me for violating my rights and the Brown Act, At this time, I am left with no recourse, but to pursue judicial action.

Thank you,

Alice English, Tracy Resident

CC: California Attorney General- Rob Bonta

P.O. Box 944255

Sacramento, CA 94244-2550

San Juaquin County District Attorney

P.O. Box 990,

Stockton, CA 95201-0990

American Civil Liberties Union (ACLU)

[CITY LETTERHEAD]

**Via E-Mail**

Alice English

Email: [REDACTED]

**Re: City of Tracy Response to Formal Notice of Brown Act Violation/Cease and Desist, Dated March 29, 2024**

Dear Ms. English:

This letter is on behalf of the City Council of the City of Tracy (“City Council” or “Council”) in response to your correspondence entitled “Formal Notice of Brown Act Violation/Cease and Desist,” dated March 29, 2024. Your correspondence alleges that Mayor Nancy Young violated the Ralph M. Brown Act (“Brown Act”) by (1) stopping your public comment during Item 3.A of the March 19, 2024 meeting, and (2) ordering your removal from the Council Chambers during that same meeting. Specifically, you allege that the Mayor Young violated Government Code section 54954.3 by prohibiting public criticism. While not specifically identified, your allegations against Mayor Young regarding removal from the Council Chambers relate to Government Code section 54957.95. You allege that your conduct did not qualify as disrupting the meeting, as defined under the Brown Act.

Your correspondence is brought pursuant to Government Code section 54960.2 and requests that the City Council cease, desist from, and not repeat the alleged actions.

The City Council takes the Brown Act seriously and has given substantial consideration to your concerns. The City Council’s goal is to ensure that the public is given a full opportunity to participate and is committed to transparency, good governance, and compliance with the Brown Act. In furtherance of adhering to and promoting the intent and substance of the Brown Act, the City Council responds accordingly.

In order to avoid unnecessary litigation and without admitting any violation of the Brown Act, the City Council hereby unconditionally commits that it will cease, desist from, and not repeat the following:

Members of the City Council of the City of Tracy will not prevent a member of the public from providing public comment which results in a violation of Government Code section 54954.3. Members of the City Council of the City of Tracy will not remove an individual from a City Council meeting which results in a violation of Government Code section 54957.95.

The City Council may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as “Rescission of Brown Act Commitment.” You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by

the same means as this commitment or may be mailed to an address that you have designated in writing.

Please reach out with any questions.

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Bijal Patel, City Attorney  
City of Tracy