



AGENDA

**CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY
MORENO VALLEY PUBLIC FINANCING AUTHORITY
BOARD OF LIBRARY TRUSTEES**

November 18, 2021

SPECIAL MEETING – 4:00 PM

City Council Study Sessions

Second Tuesday of each month – 6:00 p.m.

City Council Meetings

Special Presentations – 5:30 P.M.

First & Third Tuesday of each month – 6:00 p.m.

City Council Closed Sessions

Will be scheduled as needed at 4:30 p.m.

City Hall Council Chamber – 14177 Frederick Street

Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, in compliance with the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the ADA Coordinator, at 951.413.3120 at least 72 hours before the meeting. The 72-hour notification will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Dr. Yxstian A. Gutierrez, Mayor

Ulises Cabrera, Council Member
D. LaDonna Jempson, Council Member

David Marquez, Council Member

**AGENDA
JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY
MORENO VALLEY PUBLIC FINANCING AUTHORITY
AND THE BOARD OF LIBRARY TRUSTEES**

***THE CITY COUNCIL RECEIVES A SEPARATE STIPEND FOR CSD
MEETINGS***

**SPECIAL MEETING – 4:00 PM
NOVEMBER 18, 2021**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

INTRODUCTIONS

PUBLIC COMMENTS ON MATTERS ON THE SPECIAL AGENDA ONLY

There is a three-minute time limit per person. Please complete and submit a PURPLE speaker slip to the City Clerk. All remarks and questions shall be addressed to the presiding officer or to the City Council.

A. BUSINESS

- A.1. CERTIFICATION OF ELECTION RESULTS - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CERTIFYING PURSUANT TO SECTION 10262 (B) OF THE CALIFORNIA ELECTIONS CODE, THE RESULTS OF THE NOVEMBER 2, 2021, SPECIAL ELECTION FOR FILLING THE VACANCY OF THE DISTRICT 2 CITY COUNCIL SEAT, AS DULY PRESENTED TO THE CITY CLERK BY THE RIVERSIDE COUNTY REGISTRAR OF VOTERS.

Recommendation: That the City Council:

1. Adopt a Resolution of the City Council of the City of Moreno Valley, California, reciting the fact of the Special Municipal Election held on November 2, 2021, declaring the results and such other matters as provided by law.

- A.2. RESCISSION OF BROWN ACT COMMITMENT - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CURING AND CORRECTING, PURSUANT TO SECTIONS 54960, 54960.1 AND 54960.2 OF THE CALIFORNIA GOVERNMENT CODE, THE ALLEGED BROWN ACT VIOLATIONS DESCRIBED IN THE LETTER, DATED OCTOBER 22, 2021, RECEIVED FROM CALIFORNIANS AWARE.

Recommendation: That the City Council:

1. Approve and Adopt A Resolution Of The City Council Of The City Of Moreno Valley, California, Curing And Correcting, Pursuant To Sections 54960, 54960.1 And 54960.2 Of The California Government Code, The Alleged Brown Act Violations Described In The Letter, Dated October 22, 2021, Received From Californians Aware.

- A.3. RESCISSION OF BROWN ACT COMMITMENT - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CURING AND CORRECTING, PURSUANT TO SECTIONS 54960, 54960.1 AND 54960.2 OF THE CALIFORNIA GOVERNMENT CODE, THE ALLEGED BROWN ACT VIOLATIONS DESCRIBED IN THE LETTER, DATED OCTOBER 22, 2021, RECEIVED FROM ROBERT PALOMAREZ.

Recommendation: That the City Council:

1. Approve and Adopt A Resolution Of The City Council Of The City Of Moreno Valley, California, Curing And Correcting, Pursuant To Sections 54960, 54960.1 And 54960.2 Of The California Government Code, The Alleged Brown Act Violations Described In The Letter, Dated October 22, 2021, Received From Robert Palomarez.

(ITEMS MAY BE DEFERRED BY COUNCIL IF TIME DOES NOT PERMIT FULL REVIEW.)

ADJOURNMENT

PUBLIC INSPECTION

The contents of the agenda packet are available for public inspection on the City's website at www.moval.org and in the City Clerk's office at 14177 Frederick Street during normal business hours.

Any written information related to an open session agenda item that is known by the City to have been distributed to all or a majority of the City Council less than 72 hours prior to this meeting will be made available for public inspection on the City's website at www.moval.org and in the City Clerk's office at 14177 Frederick Street during normal business hours.

CERTIFICATION

I, Pat Jacquez-Nares, City Clerk of the City of Moreno Valley, California, certify that 24 hours prior to this Special Meeting, the City Council Agenda was posted on the City's website at: www.moval.org and in the following three public places pursuant to City of Moreno Valley Resolution No. 2007-40:

City Hall, City of Moreno Valley
14177 Frederick Street

Moreno Valley Library
25480 Alessandro Boulevard

Moreno Valley Senior/Community Center
25075 Fir Avenue

Pat Jacquez-Nares, CMC & CERA
City Clerk

Date Posted: November 17, 2021



Report to City Council

TO: Mayor and City Council

FROM: Pat Jacquez-Nares, City Clerk
Steve Quintanilla, Interim City Attorney

AGENDA DATE: November 18, 2021

TITLE: CERTIFICATION OF ELECTION RESULTS - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CERTIFYING PURSUANT TO SECTION 10262 (B) OF THE CALIFORNIA ELECTIONS CODE, THE RESULTS OF THE NOVEMBER 2, 2021, SPECIAL ELECTION FOR FILLING THE VACANCY OF THE DISTRICT 2 CITY COUNCIL SEAT, AS DULY PRESENTED TO THE CITY CLERK BY THE RIVERSIDE COUNTY REGISTRAR OF VOTERS

RECOMMENDED ACTION

Recommendations: That the City Council:

1. Adopt a Resolution of the City Council of the City of Moreno Valley, California, reciting the fact of the General Municipal Election held on November 2, 2021, declaring the results and such other matters as provided by law.

SUMMARY

The attached Resolution certifies the results of the November 2, 2021, election as canvased by the Riverside County Registrar of Voters Office. The adoption of the Resolution simply recites the facts of the election and is deemed to be a ministerial act based on California Case law and the mandatory language in the Elections Code provisions governing the duties for the City's Elections Official (City Clerk) and the City Council with respect to implementing the official results of the Special Election once the final results have been sent by the Riverside County Registrar's Office to the City's Elections Official (City Clerk).

DISCUSSION

On March 16, 2021, at a regularly scheduled meeting of the Moreno Valley City Council, the City Council, instead of appointing an individual to fill the District 2 City Council Member vacancy, called for a Special Election to allow the eligible voters of District 2 to choose who they preferred to fill out the remainder of the District 2 City Council Member vacancy resulting from the death of the late Dr. Carla Thornton. As such, on March 16, 2021, the City Council of the City of Moreno Valley approved Resolution No. 2021-19, which called for a Special Election to be consolidated with the November 2, 2021, Statewide General Election that would be administered by Riverside County Registrar of Voters.

It is expected that the Riverside County Registrar of Voters will canvass the returns of the November 2, 2021, Special Election on November 18, 2021, at approximately 2:00 p.m., and the City Clerk, serving as the City's Elections Official, will attach the official results to the attached Resolution certifying the election results.

The California Elections Code sets forth certain mandatory duties for the City's Elections Official (City Clerk) and the City Council with respect to implementing the official results of the Special Election once the final results have been sent by the Riverside County Registrar's Office to the City's Elections Official (City Clerk). For instance, Section 10262 (b) of the California Elections Code provides that for a consolidated election, the City's Elections Official (City Clerk), upon receipt of the results of the election from the elections official conducting the election (Riverside County Registrar of Voters), shall certify the results to the governing body (City Council) which shall, no later than the next regularly scheduled city council meeting following presentation of the 28-day canvass of the returns, **or at a special meeting called for this purpose**, comply with the applicable provisions of **Section 10263** of the California Elections Code. Section 10263 of the California Elections Code provides that upon the completion of the canvass and before installing the new officers, **the governing body (City Council) shall adopt a resolution reciting the fact of the election** and the other matters that are enumerated in **Section 10264** of the California Elections Code and the governing body (City Council) **shall declare elected the persons for whom the highest number of votes were cast for each office**, which in this case is Ed Delgado.

Section 10264 of the California Elections Code also provides that as soon as the result of the election is declared, **the elections official of the governing body (City Clerk) shall enter on its records a statement of the result** which shall include: (a) the whole number of votes cast in the city; (b) the names of the persons voted for; (c) for what office each person was voted for; (d) the number of votes given at each precinct to each person; and (e) the number of votes given in the city to each person. Section 10263 (b) of the California Elections Code provides that for a consolidated election, the governing body (City Council) shall meet at its usual place of meeting (Council Chamber) no later than the next regularly scheduled City Council meeting following presentation of the 28-day canvass of the returns, **or at a special meeting called for this purpose, to declare the results and to install the newly elected officers.**

Finally, Section 10265 of the California Elections Code provides that the City's elections official (City Clerk) shall immediately sign and deliver to each person elected a

“Certificate of Election” and **the City Clerk shall also administer to each person elected the “Oath of Office” prescribed in the California Constitution.** Incidentally, the City’s Elections Official (City Clerk) may administer a written Oath of Office for signature by each elected official in the form required by the California Constitution and if an elected official is sworn in properly by the City’s elections official (City Clerk), a ceremonial swearing-in that deviates from the required form of oath will not be subject to challenge.

As permitted under Section 10262 (b) of the California Elections Code, on November 17, 2021, the Mayor, pursuant to Section 1.5.2 (Notice) of the “City of Moreno Valley City Council Rules of Procedure for Council Meetings and Related Functions and Activities” and Section 54956 of the California Government Code, called a Special Meeting of the City Council for November 18, 2021, at 4:00 p.m., that included an agenda item entitled **“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CERTIFYING PURSUANT TO SECTION 10262 (B) OF THE CALIFORNIA ELECTIONS CODE, THE RESULTS OF THE NOVEMBER 2, 2021, SPECIAL ELECTION FOR FILLING THE VACANCY OF THE DISTRICT 2 CITY COUNCIL SEAT, AS DULY PRESENTED TO THE CITY CLERK BY THE RIVERSIDE COUNTY REGISTRAR OF VOTERS.”**

It is very important to note that in light of the facts that: 1) Section 10263 of the California Elections Code provides that the governing body (City Council) **shall** meet at its usual place of meeting (Council Chamber) to declare the results and to install the newly elected officers; 2) Section 10262 of the California Elections Code provides that the City’s Elections Official (City Clerk), upon receipt of the results of the election from the elections official conducting the election **shall** certify the results to the governing body (City Council) which **shall** comply with the applicable provisions of **Section 10263** of the California Elections Code; 3) Section 10263 of the California Elections Code provides that upon the completion of the canvass and before installing the new officers, the governing body (City Council) **shall** adopt a resolution reciting the fact of the election and the governing body (City Council) **shall** declare elected the persons for whom the highest number of votes were cast for each office; 4) Section 10264 of the California Elections Code provides that as soon as the result of the election is declared, the elections official of the governing body (City Clerk) **shall** enter on its records a statement of the results of the election; and Section 10265 of the California Elections Code provides that the City’s elections official (City Clerk) **shall** immediately sign and deliver to each person elected a “Certificate of Election” and the City Clerk **shall** also administer to each person elected the “Oath of Office” prescribed in the California Constitution, indicate in all respects that the duties imposed on the City Council and the City Clerk as the City’s Election Official under the above-referenced California Elections Code provisions are ministerial in nature in light of the case law set forth below.

For example, the California Supreme Court has held in *Kevelin v. Jordan* (1964) 62 Cal.2d 82, 83 that the State's Constitution and statutes impose on the Secretary of State the clear ministerial duty to certify an initiative enacted by the voters. The California Court of Appeal has also held in *Martinez v. Board of Supervisors* (1972) 23 Cal. App. 3d 679, 684 that it is well settled that mandamus will not be issued to prevent the official

recording of the vote of the people under their reserved legislative power even if there is any apparent unconstitutionality of a measure that the voters approved. Moreover, the California Court of Appeal has also held in *International Assn. of Fire Fighters v. City of Oakland* (1985) 174 Cal. App. 3d 687, 690–691, & fn. 3 “it would be an intolerable interference with the people’s reserved legislative power to prevent the official recording of their vote”.

CITY COUNCIL GOALS

None

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

ATTACHMENTS

- 1. RESOLUTION Special Municipal Election.doc

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>
City Attorney Approval	<u>✓ Approved</u>
City Manager Approval	<u>✓ Approved</u>

RESOLUTION NO. 2021-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CERTIFYING PURSUANT TO SECTION 10262 (B) OF THE CALIFORNIA ELECTIONS CODE, THE RESULTS OF THE NOVEMBER 2, 2021, SPECIAL ELECTION FOR FILLING THE VACANCY OF THE DISTRICT 2 CITY COUNCIL SEAT, AS DULY PRESENTED TO THE CITY CLERK BY THE RIVERSIDE COUNTY REGISTRAR OF VOTERS

WHEREAS, on March 16, 2021, at a regularly scheduled meeting of the Moreno Valley City Council, the City Council, instead of appointing an individual to fill the District 2 City Council Member vacancy, called for a Special Election to allow the eligible voters of District 2 to choose who they preferred to fill out the remainder of the District 2 City Council Member vacancy resulting from the death of the late Dr. Carla Thornton; and

WHEREAS, on March 16, 2021, the City Council of the City of Moreno Valley approved Resolution No. 2021-19, which called for a Special Election to be consolidated with the November 2, 2021, Statewide General Election that would be administered by Riverside County Registrar of Voters; and

WHEREAS, the Riverside County Registrar of Voters canvassed the returns of the November 2, 2021, Special Election on November 18, 2021, at approximately [REDACTED] p.m. and the City Clerk, serving as the City's Elections Official, has received the official results which are attached to this Resolution, as Exhibit A, which is hereby incorporated herein by this reference; and

WHEREAS, the California Elections Code sets forth certain mandatory duties for the City's Elections Official (City Clerk) and the City Council with respect to implementing the official results of the Special Election once the final results have been sent by the Riverside County Registrar's Office to the City's Elections Official (City Clerk); and

WHEREAS, Section 10262 (b) of the California Elections Code provides that for a consolidated election, the City's Elections Official (City Clerk), upon receipt of the results of the election from the elections official conducting the election (Riverside County Registrar of Voters), shall certify the results to the governing body (City Council) which shall, no later than the next regularly scheduled city council meeting following presentation of the 28-day canvass of the returns, or at a special meeting called for this purpose, comply with the applicable provisions of Section 10263 of the California Elections Code; and

WHEREAS, Section 10263 of the California Elections Code provides that upon the completion of the canvass and before installing the new officers, the governing body (City Council) shall adopt a resolution reciting the fact of the election and the other matters that are enumerated in Section 10264 of the California Elections Code and the governing body (City Council) shall declare elected the persons for whom the highest number of votes were cast for each office, which in this case is Ed Delgado; and

WHEREAS, Section 10264 of the California Elections Code provides that as soon as the result of the election is declared, the elections official of the governing body (City Clerk) shall enter on its records a statement of the result which shall include: (a) the whole number of votes cast in the city; (b) the names of the persons voted for; (c) for what office each person was voted for; (d) the number of votes given at each precinct to each person; and (e) the number of votes given in the city to each person; and

WHEREAS, Section 10263 (b) of the California Elections Code provides that for a consolidated election, the governing body (City Council) shall meet at its usual place of meeting (Council Chamber) no later than the next regularly scheduled City Council meeting following presentation of the 28-day canvass of the returns, or at a special meeting called for this purpose, to declare the results and to install the newly elected officers; and

WHEREAS, Section 10265 of the California Elections Code provides that the City's elections official (City Clerk) shall immediately sign and deliver to each person elected a "Certificate of Election" and the City Clerk shall also administer to each person elected the "Oath of Office" prescribed in the California Constitution; and

WHEREAS, the City's Elections Official (City Clerk) may administer a written Oath of Office for signature by each elected official in the form required by the California Constitution and if an elected official is sworn in properly by the City's elections official (City Clerk), a ceremonial swearing-in that deviates from the required form of oath will not be subject to challenge; and

WHEREAS, as permitted under Section 10262 (b) of the California Elections Code, on November 17, 2021, at approximately 12:00 p.m., the directly elected Mayor of the City of Moreno Valley, pursuant to Section 1.5.2 (Notice) of the "City of Moreno Valley City Council Rules of Procedure for Council Meetings and Related Functions and Activities" and Section 54956 of the California Government Code, called a Special Meeting of the City Council for November 18, 2021, at 4:00 p.m., that included an agenda item entitled "**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CERTIFYING PURSUANT TO SECTION 10262 (B) OF THE CALIFORNIA ELECTIONS CODE, THE RESULTS OF THE NOVEMBER 2, 2021, SPECIAL ELECTION FOR FILLING THE VACANCY OF THE DISTRICT 2 CITY COUNCIL SEAT, AS DULY PRESENTED TO THE CITY CLERK BY THE RIVERSIDE COUNTY REGISTRAR OF VOTERS**"; and

WHEREAS, in light of the facts that: 1) Section 10263 of the California Elections Code provides that the governing body (City Council) ***shall*** meet at its usual place of meeting (Council Chamber) to declare the results and to install the newly elected officers; 2) Section 10262 of the California Elections Code provides that the City's Elections Official (City Clerk), upon receipt of the results of the election from the elections official conducting the election ***shall*** certify the results to the governing body (City Council) which ***shall*** comply with the applicable provisions of Section 10263 of the California Elections Code; 3) Section 10263 of the California Elections Code provides that upon the completion of the canvass and before installing the new officers, the governing body (City Council) ***shall*** adopt a resolution reciting the fact of the election and the governing body (City Council) ***shall*** declare elected the persons for whom the highest number of votes were cast for each office; 4) Section 10264 of the California Elections Code provides that as soon as the result of the election is declared, the elections official of the governing body (City Clerk) ***shall*** enter on its records a statement of the results of the election; and Section 10265 of the California Elections Code provides that the City's elections official (City Clerk) ***shall*** immediately sign and deliver to each person elected a "Certificate of Election" and the City Clerk ***shall*** also administer to each person elected the "Oath of Office" prescribed in the California Constitution, indicate in all respects that the duties imposed on the City Council and the City Clerk as the City's Election Official under the above-referenced California Elections Code provisions are ministerial in nature in light of the case law set forth below; and

WHEREAS, the California Supreme Court has held in *Kevelin v. Jordan* (1964) 62 Cal.2d 82, 83 that the State's Constitution and statutes impose on the Secretary of State the clear ministerial duty to certify an initiative enacted by the voters; and

WHEREAS, the California Court of Appeal has held in *Martinez v. Board of Supervisors* (1972) 23 Cal. App. 3d 679, 684 that it is well settled that mandamus will not be issued to prevent the official recordation of the vote of the people under their reserved legislative power even if there is any apparent unconstitutionality of a measure that the voters approved; and

WHEREAS, the California Court of Appeal has also held in *International Assn. of Fire Fighters v. City of Oakland* (1985) 174 Cal. App. 3d 687, 690–691, & fn. 3 "it would be an intolerable interference with the people's reserved legislative power to prevent the official recordation of their vote".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. RECITALS.

That the Recitals set forth above are true and correct and are hereby incorporated herein by this reference.

Section 2. CERTIFICATION OF THE NOVEMBER 2, 2021 ELECTION RESULTS AS REPORTED BY THE RIVERSIDE COUNTY REGISTRAR'S OFFICE

That the City Council hereby recites the facts of the November 2, 2021, Election results as reported by the Riverside County Registrar's Office, attached hereto, as follows:

(a) The whole number of votes cast in the City of Moreno Valley is [to be inserted] votes;

(b) The names of the persons voted for include Ed Delgado, Keri A. Then, Angel Lopez-Ramirez, Patsy D. Brown, Matthew Chen and Angela Fox.

(c) The office each person was voted for was for the vacant District 2 City Council seat;

(e) The number of votes given at each precinct to each person was as follows:

PRECINCT 1

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____
Total Votes	_____

PRECINCT 2

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____
Total Votes	_____

PRECINCT 3

Attachment: RESOLUTION Special Municipal Election.doc (5607 : CERTIFICATION OF ELECTION)

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____
Total Votes	_____

PRECINCT 4

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____
Total Votes	_____

PRECINCT 5

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____
Total Votes	_____

PRECINCT 6

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____

Attachment: RESOLUTION Special Municipal Election.doc (5607 : CERTIFICATION OF ELECTION)

Angela Fox	_____
Total Votes	_____

PRECINCT 7

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____
Total Votes	_____

PRECINCT 8

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____
Total Votes	_____

PRECINCT 9

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____
Total Votes	_____ ; and

Attachment: RESOLUTION Special Municipal Election.doc (5607 : CERTIFICATION OF ELECTION)

(d) The number of votes given in the City (District 2) to each person are as follows

Candidate	Number of Votes
Ed Delgado	_____
Keri A. Then	_____
Angel Lopez-Ramirez	_____
Patsy D. Brown	_____
Matthew Chen	_____
Angela Fox	_____

Section 3. DECLARATION OF PERSON WITH THE HIGHEST NUMBER OF VOTES CAST FOR THE DISTRICT 2 CITY COUNCIL VACANCY

That the person with the highest number of votes cast during the November 2, 2021 election to fill the District 2 City Council seat is Ed Delgado.

Section 4. CERTIFICATE OF ELECTION AND OATH OF OFFICE

That pursuant to Section 10265 of the California Elections Code, the City Clerk shall immediately sign and deliver to Ed Delgado a "Certificate of Election" and the City Clerk shall administer to Ed Delgado the "Oath of Office" prescribed in the California Constitution.

Section 5. STATEMENT OF THE RESULT

That pursuant to Section 10264 of the California Elections Code the City Clerk shall enter on into the records a Statement of the result which shall include: (a) the whole number of votes cast in the city; (b) the names of the persons voted for; (c) for what office each person was voted for; (d) the number of votes given at each precinct to each person; and (e) the number of votes given in the city to each person.

Section 6. SEVERABILITY.

That should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

Section 7. REPEAL OF CONFLICTING PROVISIONS.

That all the provisions heretofore adopted by the City Council that are in conflict with the provisions of this Resolution are hereby repealed.

Section 8. EFFECTIVE DATE.

That this Resolution shall take effect immediately upon the adoption and approval by the City Council by at least a majority vote of a quorum of the City Council.

Section 9. CERTIFICATION.

That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 18th day of November 2021.

Dr. Yxstian A. Gutierrez
Mayor
City of Moreno Valley

ATTEST:

APPROVED AS TO FORM:

Pat Jacquez-Nares, City Clerk

Steven B. Quintanilla, Interim City
Attorney

Attachment: RESOLUTION Special Municipal Election.doc (5607 : CERTIFICATION OF ELECTION)

RESOLUTION JURAT

STATE OF CALIFORNIA)

COUNTY OF RIVERSIDE)ss.

CITY OF MORENO VALLEY)

I, Pat Jacquez Nares, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. 2021-XX was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the November 18, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PAT JACQUEZ-NARES, CITY CLERK

(SEAL)

Attachment: RESOLUTION Special Municipal Election.doc (5607 : CERTIFICATION OF ELECTION)

ATTACH ROV CERTIFICATE

Attachment: RESOLUTION Special Municipal Election.doc (5607 : CERTIFICATION OF ELECTION)



Report to City Council

TO: Mayor and City Council

FROM: Steve Quintanilla, Interim City Attorney

AGENDA DATE: November 18, 2021

TITLE: RESCISSION OF BROWN ACT COMMITMENT - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CURING AND CORRECTING, PURSUANT TO SECTIONS 54960, 54960.1 AND 54960.2 OF THE CALIFORNIA GOVERNMENT CODE, THE ALLEGED BROWN ACT VIOLATIONS DESCRIBED IN THE LETTER, DATED OCTOBER 22, 2021, RECEIVED FROM CALIFORNIANS AWARE.

RECOMMENDED ACTION

Recommendations: That the City Council:

Approve and Adopt a Resolution of the City Council of the City of Moreno Valley, California, Curing and Correcting, pursuant to Sections 54960, 54960.1 and 54960.2 of the California Government Code, the alleged Brown Act violations described in the letter, dated October 22, 2021, received from Californians Aware.

DISCUSSION

On October 22, 2021, Assistant General Counsel Shaila Nathu of Californians Aware sent an email to the Mayor at mayor@moval.org, David Marquez at davidma@moval.org, and Ulises Cabrera at ulises@moval.org, with the "Subject" line reading "*Brown Act Demand & CPRA Request – Appointment of LaDonna Jempson,*" containing the following message:

"Moreno Valley City Councilmembers:

Please see attached for a Brown Act demand and a California Public Records Act request regarding the appointment of LaDonna Jempson at the October 19, 2021 City Council

meeting. We look forward to hearing from you.”

Attached to the email was a letter, dated October 22, 2021, addressed to the City Council, City of Moreno Valley, regarding the following:

“Brown Act Demand for Cure and Correction (Gov’t. Code §§ 54960, 54960.1 & 54960.2) AND Public Records Act Request (Gov’t. Code § 6250, et seq.)”; and

The October 22nd letter stated, in part, as follows:

“Dear City Council:

This demand is made on behalf of Californians Aware and a group of concerned citizens alarmed by the sudden appointment of LaDonna Jempson to the District 1 seat on Moreno Valley City Council, in violation of the Ralph M. Brown Act, Government Code section 54950, et seq. (“Brown Act”). The action must be rescinded to ensure that the public has a meaningful opportunity to participate in the decision-making process.”

The October 22nd letter also included the following “Demand”:

“In order to ensure that the public has the ability to meaningfully participate in the appointment of Councilmember Jempson, Californians Aware hereby demands that, pursuant to Government Code sections 54960 and 54960.1, the Board cure and correct its illegal actions by rescinding the appointment and swearing in of Councilmember Jempson.

Additionally, pursuant to Government Code sections 54960 and 54960.2, the City Council must agree to refrain from taking action on items not listed on the posted agenda in the future, unless one of the stated exceptions as listed in the Brown Act applies.

The City Council must notify this office of its decision to cure and correct as described, or of its refusal to do so, within 30 days. If the City Council fails or refuses to cure and correct or respond as demanded, we intend to seek judicial invalidation of the challenged actions pursuant to § 54960.1, as well as other relief set out in § 54960.”

Section 54960.1(c)(3) of the California Government Code provides, in relevant part, as follows:

“If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.”

Section 54960.1(a) of the *California Government Code* provides as follows:

“The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.”

Basically, Section 54960.1 of the *California Government Code* provides that if the City Council does not “cure or correct” the alleged Brown Act violation, within the requisite 30-day period, the person/entity which sent the demand to cure or correct, has 15 days to file a Brown Act violation lawsuit against the City.

Section 54960 of the *California Government Code* provides in relevant part as follows:

“(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.”

In light of the foregoing, the City Council has until November 21, 2021, which is the 30th day following the October 22, 2021 “*Brown Act Demand for Cure and Correction*” letter received from Californians Aware.

In light of the demands set forth in the October 22 letter from Californians Aware, the proposed Cure and Correct Resolution provides that pursuant to California Government Code sections 54960 and 54960.1, the City Council hereby rescinds the

October 19, 2021 “appointment” and “swearing in” of Dolores Jempson as the District 1 City Council Member of the Moreno Valley City Council, effective immediately, as demanded in a letter dated October 22, 2021, received from Californians Aware. In addition, the Cure and Correct Resolution provides that pursuant to California Government Code sections 54960 and 54960.1, the City Council hereby confirms its commitment to refrain from taking action on items not listed on the posted agenda in the future, unless one of the stated exceptions as listed in the Brown Act applies.

Conclusion

If the City Council fails to adopt the attached Cure and Correct Resolution, then Californians Aware will be entitled to commence legal action against the City for the alleged Brown Act violations referenced in their October 22, 2021 letter.

ALTERNATIVES

1. Adopt the proposed Cure and Correct Resolution which should preclude Californians Aware from filing a legal action against the City regarding the alleged Brown Act violations referenced in their October 22, 2021 letter; or
2. Do not adopt the proposed Cure and Correct Resolution which will expose the City to a legal action filed against the City by Californians Aware related to the alleged Brown Act violation referenced in their October 22, 2021 letter.

FISCAL IMPACT

There could be a significant fiscal impact to the City of Moreno Valley if the proposed Cure and Correct Resolution is not adopted as-is, since it would expose the City to payment of its own attorneys’ fees, payment of Californians Aware’s attorneys’ fees (if they are deemed to be the prevailing party in the litigation), court costs and other costs associated with defending a lawsuit filed against the City’s for the alleged Board Act violations.

PREPARATION OF STAFF REPORT

Prepared By:
Name: Steven B. Quintanilla
Title: Interim City Attorney

CITY COUNCIL GOALS

None

CITY COUNCIL GOALS

None

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

ATTACHMENTS

- 1. RESOLUTION - CURE CORRECT - CALIFORNIANS AWARE_

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>
City Attorney Approval	<u>✓ Approved</u>
City Manager Approval	<u>✓ Approved</u>

RESOLUTION NO. 2021- RESCISSION OF BROWN ACT COMMITMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CURING AND CORRECTING, PURSUANT TO SECTIONS 54960, 54960.1 AND 54960.2 OF THE CALIFORNIA GOVERNMENT CODE, THE ALLEGED BROWN ACT VIOLATIONS DESCRIBED IN THE LETTER, DATED OCTOBER 22, 2021, RECEIVED FROM CALIFORNIANS AWARE

WHEREAS, On October 22, 2021, Assistant General Counsel Shaila Nathu of Californians Aware sent an email to the Mayor at mayor@moval.org, David Marquez at davidma@moval.org, and Ulises Cabrera at ulisesc@moval.org, with the “Subject” line reading “*Brown Act Demand & CPRA Request – Appointment of LaDonna Jempson*,” containing the following message:

“Moreno Valley City Councilmembers:

Please see attached for a Brown Act demand and a California Public Records Act request regarding the appointment of LaDonna Jempson at the October 19, 2021 City Council meeting. We look forward to hearing from you.”; and

WHEREAS, attached to the email was a letter, dated October 22, 2021, attached hereto, addressed to the City Council, City of Moreno Valley, regarding the following:

“Brown Act Demand for Cure and Correction (Gov’t. Code §§ 54960, 54960.1 & 54960.2) AND Public Records Act Request (Gov’t. Code § 6250, et seq.)”; and

WHEREAS, The October 22nd letter stated, in part, as follows:

“Dear City Council:

This demand is made on behalf of Californians Aware and a group of concerned citizens alarmed by the sudden appointment of LaDonna Jempson to the District 1 seat on Moreno Valley City Council, in violation of the Ralph M. Brown Act, Government Code section 54950, et seq. (“Brown Act”). The action must be rescinded to ensure that the public has a meaningful opportunity to participate in the decision-making process.”; and

WHEREAS, the October 22nd letter also included the following “Demand”:

“In order to ensure that the public has the ability to meaningfully

participate in the appointment of Councilmember Jempson, Californians Aware hereby demands that, pursuant to Government Code sections 54960 and 54960.1, the Board cure and correct its illegal actions by rescinding the appointment and swearing in of Councilmember Jempson.

Additionally, pursuant to Government Code sections 54960 and 54960.2, the City Council must agree to refrain from taking action on items not listed on the posted agenda in the future, unless one of the stated exceptions as listed in the Brown Act applies.

The City Council must notify this office of its decision to cure and correct as described, or of its refusal to do so, within 30 days. If the City Council fails or refuses to cure and correct or respond as demanded, we intend to seek judicial invalidation of the challenged actions pursuant to § 54960.1, as well as other relief set out in § 54960.”; and

WHEREAS, Section 54960.1(c)(3) of the *California Government Code* provides, in relevant part, as follows:

“If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.”; and

WHEREAS, Section 54960.1(a) of the *California Government Code* provides as follows:

“The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.”; and

WHEREAS, basically, Section 54960.1 of the *California Government Code* provides that if the City Council does not “cure or correct” the alleged Brown Act violation, within the requisite 30-day period, the person/entity which sent the demand to cure or correct, has 15 days to file a Brown Act violation lawsuit against the City; and

WHEREAS, Section 54960 of the *California Government Code*, attached hereto, provides in relevant part as follows:

“(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.”; and

WHEREAS, in light of the foregoing, the City Council has until November 21, 2021, which is the 30th day following the October 22, 2021 “*Brown Act Demand for Cure and Correction*” letter received from *Californians Aware*.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, HEREBY FINDS, DETERMINES, CONCLUDES AND RESOLVES AS FOLLOWS:

Section 1. RECITALS AND EXHIBITS

That the foregoing Recitals are true and correct and are hereby incorporated by this reference.

Section 2. RECISSION OF APPOINTMENT AND SWEARING IN OF COUNCIL MEMBER DOLORES JEMPSON

That pursuant to California Government Code sections 54960 and 54960.1, the City Council hereby rescinds the October 19, 2021 “appointment” and “swearing in” of Dolores Jempson as the District 1 City Council Member of the Moreno Valley City Council, effective immediately, as demanded in a letter dated October 22, 2021, received from Californians Aware, attached hereto.

Section 3. COMMITMENT TO REFRAIN FROM TAKING ACTIONS OF ITEMS NOT LISTED ON THE POSTED AGENDA, UNLESS OTHERWISE PERMITTED BY THE BROWN ACT

That pursuant to California Government Code sections 54960 and 54960.1, the City Council hereby confirms its commitment to refrain from taking action on items not

listed on the posted agenda in the future, unless one of the stated exceptions as listed in the Brown Act applies.

Section 4. REPEAL OF CONFLICTING PROVISIONS.

That all the provisions heretofore adopted by the City Council that are in conflict with the provisions of this Resolution are hereby repealed.

Section 5. SEVERABILITY

That if any provision, section, paragraph, sentence or word of Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words as hereby adopted shall remain in full force and effect.

Section 6. EFFECTIVE DATE

That this Resolution shall take effect immediately upon its adoption.

Section 7. CERTIFICATION

That the City Clerk shall certify to the passage of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 18th day of November 2021.

Dr. Yxstian A. Gutierrez
Mayor
City of Moreno Valley

ATTEST:

APPROVED AS TO FORM:

Pat Jacquez-Nares, City Clerk

Steven B. Quintanilla, Interim City

Attachment: RESOLUTION - CURE CORRECT - CALIFORNIANS AWARE_ (5609 : CURE & CORRECT - CALIFORNIANS AWARE)

Attorney

Attachment: RESOLUTION - CURE CORRECT - CALIFORNIANS AWARE_ (5609 : CURE & CORRECT - CALIFORNIANS AWARE)

RESOLUTION JURAT

STATE OF CALIFORNIA)

COUNTY OF)
RIVERSIDE)ss.

CITY OF MORENO)
VALLEY)

I, Pat Jacquez Nares, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. **NEXT** was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the November 18, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PAT JACQUEZ-NARES, CITY CLERK

(SEAL)

Attachment: RESOLUTION - CURE CORRECT - CALIFORNIANS AWARE_ (5609 : CURE & CORRECT - CALIFORNIANS AWARE)

ATTACHMENT

**Brown Act Demand for Cure and Correction
Dated October 22, 2021
Received from Californians Aware**

Attachment: RESOLUTION - CURE CORRECT - CALIFORNIANS AWARE_ (5609 : CURE & CORRECT - CALIFORNIANS AWARE)



Report to City Council

TO: Mayor and City Council

FROM: Steve Quintanilla, Interim City Attorney

AGENDA DATE: November 18, 2021

TITLE: RESCISSION OF BROWN ACT COMMITMENT - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CURING AND CORRECTING, PURSUANT TO SECTIONS 54960, 54960.1 AND 54960.2 OF THE CALIFORNIA GOVERNMENT CODE, THE ALLEGED BROWN ACT VIOLATIONS DESCRIBED IN THE LETTER, DATED OCTOBER 22, 2021, RECEIVED FROM ROBERT PALOMAREZ.

RECOMMENDED ACTION

Recommendations: That the City Council:

Approve and Adopt a Resolution of the City Council of the City of Moreno Valley, California, Curing and Correcting, pursuant to Sections 54960, 54960.1 and 54960.2 of the California Government Code, the alleged Brown Act violations described in the letter, dated October 22, 2021, received from Robert Palomarez.

DISCUSSION

The City of Moreno Valley is in receipt of a letter, dated October 22, 2021, attached hereto, which was sent by the law offices of Stone Busailah, LLP, on behalf of Robert Palomarez. The stated purpose of the October 22, 2021, letter was to provide the City Council with “*an opportunity to avoid litigation over the ill-timed and ill-advised appointment of LaDonna Jempson to the Moreno Valley City Council seat which was held by Victoria Baca . . .*” The October 22, 2021, letter purports that the appointment of LaDonna Jempson to the Moreno Valley City Council was “*a violation of several provisions of the Brown Act, which involves meetings of legislative public bodies at local levels of government.*” The October 22, 2021, letter further states as follows:

“First and foremost, among the derelictions of duty committed by City Council members in this matter, was to make the appointment when such decision- making and action were not items on the October 19, 2021 agenda. The item on the agenda regarding the open seat involved directing the City Clerk in preparing applications for potential appointees to the vacancy. I Moreno Valley City Council Re: Moreno Valley City Council Seat October 22, 2021. Appointing a new member and filling the vacancy immediately was not on the agenda. Such action violated the Brown Act' s requirements for a city council to provide: notice of each item of business to be voted on at a council meeting; a brief, general description of each item of business to be transacted or discussed; and description of each distinct action to be taken by the council. As you must be aware, such requirements enable informed decision- making by the public whether to attend a council meeting or participate in a discussion on an issue. See Govt Code § 54954. 2(a)(1), (a)(3).) In essence, the Brown Act proscribes an act taken or discussion about any item not appearing on the posted agenda. As the immediate appointment to fill the open seat was not an act appearing on the posted agenda, the City Council' s appointment of Ms. Jempson was a proscribed act. Furthermore, no public comments were permitted prior to the appointment, which is a further Brown Act violation. Unless the Council complies with State and City law and revokes the appointment of Ms. Jempson to the City Council, litigation will ensue. Pursuant to the remedy found in the - Brown Act, Mr. Palomarez intends to seek a preliminary injunction from the Superior Court and an order to vacate the appointment of Ms. Jempson as a City Council member; an order that the City Council only take action on items put on the agenda, consistent with City and State law; and an order that the Council desists from further violating such Brown Act and municipal provisions. In other words, the Council must immediately act to invalidate its illegal action.”

Section 54960.1(c)(3) of the California Government Code provides, in relevant part, as follows:

“If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.”; and

Section 54960.1(a) of the California Government Code provides as follows:

“The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a

judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.”

Basically, Section 54960.1 of the *California Government Code* provides that if the City Council does not “cure or correct” the alleged Brown Act violation, within the requisite 30-day period, the person/entity which sent the demand to cure or correct, has 15 days to file a Brown Act violation lawsuit against the City.

Section 54960 of the *California Government Code* provides in relevant part as follows:

“(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.”

In light of the foregoing, the City Council has until November 21, 2021, which is the 30th day following the October 22, 2021 “*Brown Act Demand for Cure and Correction*” letter received from Robert Palomarez.

In light of the demands set forth in the October 22 letter from Robert Palomarez, the proposed Cure and Correct Resolution provides that pursuant to California Government Code sections 54960 and 54960.1, the City Council hereby revokes the October 19, 2021 “appointment” of Dolores Jempson as the District 1 City Council Member of the Moreno Valley City Council, effective immediately, as demanded in a letter dated October 22, 2021, received from Robert Palomarez. In addition, the Cure and Correct Resolution provides that pursuant to California Government Code sections 54960 and 54960.1, the City Council hereby confirms its commitment to refrain from taking action on items not listed on the posted agenda in the future, unless one of the stated exceptions as listed in the Brown Act applies.

CONCLUSION

If the City Council fails to adopt the attached Cure and Correct Resolution, then Robert

Palomarez will be entitled to either commence legal action or continue with his pending legal action against the City for the alleged Brown Act violations referenced in his October 22, 2021 letter.

ALTERNATIVES

1. Adopt the proposed Cure and Correct Resolution which should preclude Robert Palomarez from filing a legal action against the City regarding the alleged Brown Act violations referenced in their October 22, 20201 letter; or
2. Do not adopt the proposed Cure and Correct Resolution which will entitled Robert Palomarez to either commence legal action or continue with his pending legal action against the City for the alleged Brown Act violations referenced in his October 22, 2021 letter.

FISCAL IMPACT

There could be a significant fiscal impact to the City of Moreno Valley if the proposed Cure and Correct Resolution is not adopted as-is, since it would expose the City to payment of its own attorneys’ fees, payment of Mr. Palomarez’s attorneys’ fees (if the is deemed to be the prevailing party in the litigation), court costs and other costs associated with defending a lawsuit filed against the City’s for the alleged Brown Act violations.

PREPARATION OF STAFF REPORT

Prepared By:
Name: Steven B. Quintanilla
Title: Interim City Attorney

CITY COUNCIL GOALS

None

ATTACHMENTS

A Resolution Of The City Council Of The City Of Moreno Valley, California, Curing And Correcting, Pursuant To Sections 54960, 54960.1 And 54960.2 Of The California Government Code, The Alleged Brown Act Violations Described In The Letter, Dated October 22, 2021, Received From Robert Palomarez

APPROVALS

City Attorney Approval ✓ Approved

CITY COUNCIL GOALS

None

CITY COUNCIL STRATEGIC PRIORITIES

- 1. Economic Development
- 2. Public Safety
- 3. Library
- 4. Infrastructure
- 5. Beautification, Community Engagement, and Quality of Life
- 6. Youth Programs

ATTACHMENTS

- 1. RESOLUTION - CURE CORRECT - ROBERT PALOMAREZ

APPROVALS

Budget Officer Approval	<u>✓ Approved</u>	
City Attorney Approval	<u>✓ Approved</u>	11/17/21 5:29 PM
City Manager Approval	<u>✓ Approved</u>	

RESOLUTION NO. 2021-

RESCISSION OF BROWN ACT COMMITMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, CURING AND CORRECTING, PURSUANT TO SECTIONS 54960, 54960.1 AND 54960.2 OF THE CALIFORNIA GOVERNMENT CODE, THE ALLEGED BROWN ACT VIOLATIONS DESCRIBED IN THE LETTER, DATED OCTOBER 22, 2021, RECEIVED ON BEHALF OF ROBERT PALOMAREZ

WHEREAS, the City of Moreno Valley is in receipt of a letter, dated October 22, 2021, attached hereto, which was sent by the law offices of Stone Busailah, LLP, on behalf of Robert Palomarez; and

WHEREAS, the stated purpose of the October 22, 2021, letter was to provide the City Council with *“an opportunity to avoid litigation over the ill-timed and ill-advised appointment of LaDonna Jempson to the Moreno Valley City Council seat which was held by Victoria Baca”* and

WHEREAS, the October 22, 2021, letter purports that the appointment of LaDonna Jempson to the Moreno Valley City Council was *“a violation of several provisions of the Brown Act, which involves meetings of legislative public bodies at local levels of government.”* and

WHEREAS, the October 22, 2021, letter further states as follows:

“First and foremost, among the derelictions of duty committed by City Council members in this matter, was to make the appointment when such decision- making and action were not items on the October 19, 2021 agenda. The item on the agenda regarding the open seat involved directing the City Clerk in preparing applications for potential appointees to the vacancy. I Moreno Valley City Council Re: Moreno Valley City Council Seat October 22, 2021. Appointing a new member and filling the vacancy immediately was not on the agenda. Such action violated the Brown Act' s requirements for a city council to provide: notice of each item of business to be voted on at a council meeting; a brief, general description of each item of business to be transacted or discussed; and description of each distinct action to be taken by the council. As you must be aware, such requirements enable informed decision- making by the public whether to attend a council meeting or participate in a discussion on an issue. See Govt Code § 54954. 2(a)(1), (a)(3).) In essence, the Brown Act proscribes an act taken or discussion about any item not appearing on the posted agenda. As the immediate appointment to fill the open seat was not an act appearing on the posted agenda, the City Council' s

Attachment: RESOLUTION - CURE CORRECT - ROBERT PALOMAREZ (5608 : CURE AND CORRECT ROBERT PALOMAREZ)

appointment of Ms. Jempson was a proscribed act. Furthermore, no public comments were permitted prior to the appointment, which is a further Brown Act violation. Unless the Council complies with State and City law and revokes the appointment of Ms. Jempson to the City Council, litigation will ensue. Pursuant to the remedy found in the - Brown Act, Mr. Palomarez intends to seek a preliminary injunction from the Superior Court and an order to vacate the appointment of Ms. Jempson as a City Council member; an order that the City Council only take action on items put on the agenda, consistent with City and State law; and an order that the Council desists from further violating such Brown Act and municipal provisions. In other words, the Council must immediately act to invalidate its illegal action.” And

WHEREAS, Section 54960.1(c)(3) of the *California Government Code* provides, in relevant part, as follows:

“If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.”; and

WHEREAS, Section 54960.1(a) of the *California Government Code* provides as follows:

“The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.”; and

WHEREAS, basically, Section 54960.1 of the *California Government Code* provides that if the City Council does not “cure or correct” the alleged Brown Act violation, within the requisite 30-day period, the person/entity which sent the demand to cure or correct, has 15 days to file a Brown Act violation lawsuit against the City; and

WHEREAS, Section 54960 of the *California Government Code*, attached hereto, provides in relevant part as follows:

“(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this

chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.”; and

WHEREAS, in light of the foregoing, the City Council has until November 21, 2021, which is the 30th day following the October 22, 2021 “Brown Act Demand for Cure and Correction” letter received from Robert Palomarez.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, HEREBY FINDS, DETERMINES, CONCLUDES AND RESOLVES AS FOLLOWS:

Section 1. RECITALS AND EXHIBITS

That the foregoing Recitals are true and correct and are hereby incorporated by this reference.

Section 2. RECISSION OF APPOINTMENT AND SWEARING IN OF COUNCIL MEMBER DOLORES JEMPSON

That pursuant to California Government Code sections 54960 and 54960.1, the City Council hereby rescinds the October 19, 2021 “appointment” of Dolores Jempson as the District 1 City Council Member of the Moreno Valley City Council, effective immediately, as demanded in a letter dated October 22, 2021, received on behalf of Robert Palomarez, attached hereto.

Section 3. COMMITMENT TO REFRAIN FROM TAKING ACTIONS OF ITEMS NOT LISTED ON THE POSTED AGENDA, UNLESS OTHERWISE PERMITTED BY THE BROWN ACT

That pursuant to California Government Code sections 54960 and 54960.1, the City Council hereby confirms its commitment to refrain from taking action on items not listed on the posted agenda in the future, unless one of the stated exceptions as listed in the Brown Act applies.

Section 4. REPEAL OF CONFLICTING PROVISIONS.

That all the provisions heretofore adopted by the City Council that are in conflict with the provisions of this Resolution are hereby repealed.

Attachment: RESOLUTION - CURE CORRECT - ROBERT PALOMAREZ (5608 : CURE AND CORRECT ROBERT PALOMAREZ)

Section 5. SEVERABILITY

That if any provision, section, paragraph, sentence or word of Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words as hereby adopted shall remain in full force and effect.

Section 6. EFFECTIVE DATE

That this Resolution shall take effect immediately upon its adoption.

Section 7. CERTIFICATION

That the City Clerk shall certify to the passage of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 18th day of November 2021.

Dr. Yxstian A. Gutierrez
Mayor
City of Moreno Valley

ATTEST:

APPROVED AS TO FORM:

Pat Jacquez-Nares, City Clerk

Steven B. Quintanilla
Interim City Attorney

RESOLUTION JURAT

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)ss.
CITY OF MORENO VALLEY)

I, Pat Jacquez Nares, City Clerk of the City of Moreno Valley, California, do hereby certify that Resolution No. 2021-XX was duly and regularly adopted by the City Council of the City of Moreno Valley at a regular meeting thereof held on the November 18, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PAT JACQUEZ-NARES, CITY CLERK

(SEAL)

Attachment: RESOLUTION - CURE CORRECT - ROBERT PALOMAREZ (5608 : CURE AND CORRECT ROBERT PALOMAREZ)

ATTACHMENT

**Brown Act Demand for Cure and Correction
Dated October 19, 2021
Received from Robert Palomarez**

Attachment: RESOLUTION - CURE CORRECT - ROBERT PALOMAREZ (5608 : CURE AND CORRECT ROBERT PALOMAREZ)