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April 5, 2023

Mr. Prasanna W. Rasiah  
San Mateo City Attorney  
330 West 20<sup>th</sup> Avenue  
San Mateo, California 94403

RE: Allegations of Brown Act Violations, Vote Trading

Dear Mr. Rasiah,

In your letter of December 13, 2022, you asked our office to conduct a review of claims made by Mayor Amourence Lee related to votes occurring in December on the San Mateo City Council to select a mayor and fill an empty council seat. You indicated that Mayor Lee said she received three different proposals telling her that if she chose a certain candidate for the fifth council seat, she could then become mayor. You wrote that Mayor Lee believed these acts could be violations of the Brown Act. You indicated concern that an exchange of votes, a *quid pro quo*, may have been proposed.

We have completed our review and find no basis to conclude there was any violation of the Brown Act nor evidence of an illegal attempt to corrupt the voting process. During our review, all parties who were mentioned as being involved in the December discussions regarding voting for a mayor and fifth council member were contacted and asked to participate in an interview. Mayor Lee, former Councilman Joseph Goethals, David Burruto and Clifford Robbins agreed to an interview and were cooperative in answering questions. Nicole Fernandez was contacted and informed of the subject matter to be discussed with our investigator and she then declined to provide a statement.

Our review determined that after the impasse on the Council on December 5, 2022, Mr. Goethals called Mayor Lee on December 7 to discuss what had happened. According to Mayor Lee, Mr. Goethals told her, “Cliff Robbins is really the only viable candidate. You could do a lot worse. He is tested. He can do the job. He is well suited to it. He really is the best choice.” Mayor Lee said she responded to Mr. Goethals that since the process had not yet closed, it was premature to make any decision and the Council would evaluate all the candidates. Mayor Lee said Mr. Goethals told her, “You want to be mayor and we don’t want to spiral into chaos. If we can get this done, everyone can get what they want if you like Cliff. We can get it done before the 12th. If you like Cliff, everyone can get what they want.”

Mayor Lee said that during the conversation, Mr. Goethals told her he was asked to deliver that message for another person, later identified as David Burruto.

In an interview, Mr. Goethals said he had a conversation with Mayor Lee on December 7, but indicated he spoke to her about all of the candidates who had applied at that point, including Mr. Robbins. He also denied telling her anything similar to, “If you like Cliff Robbins, you could be mayor before the 12<sup>th</sup>.” He also denied telling Mayor Lee that David Burruto asked him to call the Mayor and urge her in any particular direction regarding the fifth council seat. Mr. Goethals said he discussed the impasse with Mr. Burruto and the various political implications surrounding the two candidates both he and Mr. Burruto believed stood out from the rest, Mr. Robbins and Rich Hedges.

Mr. Burruto said that he and Mr. Goethals did have a conversation about whom they would prefer to see as the fifth council member and Mr. Burruto said he believed Cliff Robbins to be the best candidate who could diffuse the turmoil the council was experiencing. In the interview, Mr. Burruto said he told Mr. Goethals that if he, Mr. Goethals, agreed with the support of Mr. Robbins as a possible solution to the crisis, that Mr. Goethals could discuss that with Mayor Lee.

The second person who contacted Mayor Lee after the December 5, 2022, impasse was Nicole Fernandez. On December 7, 2022, hours after the phone call from Mr. Goethals, Ms. Fernandez called Mayor Lee and told her she was calling to support Mr. Robbins, noting her belief he was the most qualified for the position, that she trusted his judgment, and that he was a good middle-ground candidate who could work effectively on the council.

Mayor Lee said that on December 10, Ms. Fernandez sent her a text message stating, “...letting you know that I’ve confirmed with Cliff that he will vote for you for mayor and will not vote in favor of removing the 3 planning commissioners, if chosen.” We contacted Ms. Fernandez to obtain her recollection but she declined to answer questions or provide a statement.

Finally, Mr. Robbins said that while he knows all of the parties mentioned through his involvement in San Mateo City politics, and spoke to all of them about whether he should submit an application to be on the council, he reiterated what he said publicly at the City Council meeting on December 12, that he did not participate in any attempt to exchange or barter votes in exchange for supporting his candidacy and did not ask anyone

to do so on his behalf. He further clarified that several people had asked him whether he supported then-Councilmember Lee's desire to be mayor and he said that he would support her. He said he told Ms. Fernandez that he supported Councilmember Lee's desire to be mayor since she was next in line, but he denied ever speaking with Ms. Fernandez about what he would or would not do regarding planning commissioners, saying they did not speak about that.

In conclusion, our review did not reveal evidence that a majority of the then four-person City Council discussed a matter that would come before it. Thus, we find there is no violation of the Brown Act. Further, we do not believe there is evidence to establish a *quid pro quo* where there were explicit statements made by an officeholder, or someone in consideration for office, which promised a certain vote in exchange for a perceived benefit. While this review revealed inconsistent statements regarding what was said by the involved parties related to the impasse on the Council, they all involved discussion of potential political outcomes should one course or another be taken, and we do not find that to be a violation of any criminal statute.

Please let us know should you have any questions.

Very truly yours,

STEPHEN M. WAGSTAFFE, DISTRICT ATTORNEY

By  \_\_\_\_\_  
Sean F. Gallagher, Chief Deputy