



## VIA ELECTRONIC MAIL

November 13, 2023

City Council  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648  
[City.Council@surfcity-hb.org](mailto:City.Council@surfcity-hb.org)

**Re: Resolution No. 2023-41 and the Ralph M. Brown Act**

Dear City Council Members:

The First Amendment Coalition and the ACLU of Southern California are concerned about the Mayor Pro Tem's statement that the Parent/Guardian Review Board ("Review Board") created by [Resolution No. 2023-41](#) ("Resolution") is not subject to the Brown Act. As explained below, any meetings held by the Review Board must comply with the Brown Act.

### **The Creation of the Parent/Guardian Review Board**

The City Council adopted the Resolution on October 17, 2023. In relevant part, the Resolution creates a "community parent/guardian review board" comprising twenty-one (21) adult community members, with "each Council Member appointing three (3) [members] to review all proposed or new children's books and other materials procured by the City Libraries or City Librarians that may contain sexual content before the books or materials are placed in the City Libraries or facilities."

The Resolution states that the Review Board will meet "at least twice a year, and more if necessary, to review children's books recommended to the City Libraries to determine by majority vote if the books and materials meet the community standards of acceptance for the City of Huntington Beach."

Further, the Resolution "[empowered](#)" the Review Board to "reject by vote" any recommended books or materials that do not meet the City's community standards of acceptance. As the *Los Angeles Times* [reported](#), votes will be by simple majority, and there will not be an appeals process for any Review Board decision.

The Review Board may also recommend that books or other materials be subject to the same review process. If the Review Board finds that certain books or materials do not meet the community standards, the books or materials will be moved to an adult section, and the City will not permit minors to access those books or materials without parental consent.

During the City Council's discussion of the Resolution, Councilwoman Natalie Moser questioned Mayor Pro Tem Van Der Mark, the sponsor of the Resolution, about whether the review board would be subject to the Brown Act. As detailed in the *Los Angeles Times* story linked above, Mayor Pro Tem Van Der Mark responded no.

### **The Brown Act**

The California Constitution is clear on the right to open meetings. "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." Cal. Const., Art. I, § 3(b)(1).

The Brown Act was created to ensure that the public has the opportunity to oversee and participate meaningfully in local government:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Gov. Code § 54950.

As a local agency, the City is subject to the Brown Act, which states, "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency." Gov. Code § 54953.

Legislative bodies are defined, in relevant part, as the "governing body of a local agency," such as the city council, or a "commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body." Gov. Code § 54952(a)-(b).

The Review Board is a board or other body of the City, advisory or otherwise, that was created by resolution or formal action of the City Council, regardless of whether its members are to be selected later. *See Frazer v. Dixon Unified School Dist.*, 18 Cal. App. 4th 781, 793 (1993) (holding that school board's "adoption of a formal, written policy calling for appointment of a committee to advise the Superintendent and, in turn, the Board" made the committee subject to the Brown Act, even if superintendent selected the committee's members).

Accordingly, the Review Board is a legislative body subject to the Brown Act and is required to hold its meetings open to the public based on an agenda posted in advance, with opportunity for public comment on its deliberations.

The decisions of the Review Board will impact many persons who use public libraries in Huntington Beach, home to a [population of nearly 200,000](#). As [the Los Angeles Times reported](#), the Huntington Beach Library purchases 9,000 books a month for children and teens, and it is unclear by what process these books will be reviewed or decided on by the Review Board. It is imperative that the public has access to every Review Board meeting so that they may provide public comment and input on any decision the body makes.

Failure to ensure that the Review Board complies with the Brown Act would expose the City and Review Board to litigation and the risk of an attorney fee award. We hope the City will avoid unnecessary litigation and ensure that the Review Board's meetings will comply with all requirements of the Brown Act.

Sincerely,

**s/David Loy**  
Legal Director  
First Amendment Coalition

**s/Peter Eliasberg**  
Chief Counsel/Manheim Family Attorney for First Amendment Rights  
ACLU Foundation of Southern California