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By: Hannah Garcia, Deputy

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF FRESNO**

17 AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, a nonprofit
18 corporation, and FIRST AMENDMENT
COALITION, a nonprofit corporation,
19

20 Petitioners,

21 v.

22 THE CITY OF FRESNO, and THE HONORABLE
MEMBERS OF THE FRESNO CITY COUNCIL,
23

24 Respondents.

CASE NO. 23CECG04744

**NOTICE OF MOTION AND
MOTION FOR JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR JUDGMENT**

Date: August 28, 2024

Time: 1:30 p.m.

Dept.: 404

Judge: Hon. Robert Whalen

Petition Filed: November 15, 2023

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NOTICE OF MOTION AND MOTION

TO THE COURT, RESPONDENTS, AND ALL COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on August 28, 2024, at 1:30 p.m., or as soon thereafter as the matter can be heard, in Department 404 of the above-captioned court, located at 1130 O Street, Fresno, California, 93721, before the Honorable Robert Whalen, Petitioners American Civil Liberties Union of Northern California and First Amendment Coalition will move and hereby do move, pursuant to California Government Code sections 54960 and 54960.2, Code of Civil Procedure section 1060, and Code of Civil Procedure section 1085 *et seq.*, for an order and judgment granting their Verified Petition for Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief (“Petition”). In particular, Petitioners move the Court for:

1. A declaration that the Budget Committee of the Fresno City Council (“Budget Committee”) held meetings in violation of the Ralph M. Brown Act in or about June 2023, within nine months before Petitioners sent a cease-and-desist letter to Respondents regarding said violations; and

2. A writ of mandate compelling Respondents to conduct all future meetings of the Budget Committee in accordance with the Brown Act, including but not limited to the provisions requiring advance notice of meetings, a publicly posted agenda, and opportunity for public comment.

Petitioners will also move and hereby do move for an order awarding them their attorney fees and costs, in an amount to be established by a subsequent motion.

This motion is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities filed herewith; the supporting declarations of Ann Cappetta and Sonya Ledanski Hyde filed herewith and all exhibits attached thereto; the Petition; all other pleadings and papers on file in this action, and such other authority, argument, and evidence as may be presented to the Court at the hearing on or in connection with this motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 For years, the City of Fresno has formulated its final budget proposal in secret. From 2018
4 to 2023, the City Council’s Budget Committee met behind closed doors to produce a final budget
5 proposal reconciling the mayor’s draft with the Council’s wishes. Although the City Council
6 formally approved the final budget in open session, the meetings that produced the final budget
7 proposal took place in secret. In effect, the Budget Committee often had the near-final word on
8 annual budgets allocating billions of dollars of public funds. Unlike other large cities, Fresno
9 deprived the public of any meaningful opportunity to participate in meetings discussing the budget
10 until final approval, in violation of the Brown Act, California’s cornerstone of local democracy.
11 The Brown Act guarantees more than the mere right to observe the final vote to approve a budget.
12 It grants the people the right to see how the political sausage is made, not just how it is served.

13 The Brown Act is construed liberally to protect open government, and courts must “follow
14 function over form in carrying out the Legislature’s purposes” of ensuring access and
15 transparency. 79 Ops. Cal. Atty. Gen. 69, 73 (1996). On the undisputed facts, the Budget
16 Committee has met repeatedly to produce a final budget proposal year after year. As a result, it is a
17 legislative body governed by the Brown Act because it is a standing committee with continuing
18 subject matter jurisdiction over Fresno’s budgeting process.

19 The Budget Committee has routinely violated the Brown Act. It has never held meetings
20 open to the public, posted agendas for its meetings, or provided any opportunity for public
21 comment during its deliberations. The City cannot “thwart the purposes and requirements of the
22 Act” by merely labeling the recurring Budget Committee as ad hoc. *Id.* at 73. Otherwise, agencies
23 could routinely subvert California’s mandate of government transparency by conveniently labeling
24 all standing committees as “ad hoc” and dissolving and reforming them at will. In declaring that
25 the government may not “decide what is good for the people to know and what is not good for
26 them to know,” the Legislature could not have intended to allow the City to evade the Brown Act
27 with such an obvious ruse. Gov. Code § 54950. This Court should therefore enter judgment
28 against the City declaring that it violated the Brown Act and enjoining it from continuing to do so.

1 II. FACTS

2 A. The Budget Committee Reconciles the Proposed Budget and Council’s Budget
3 Motions.

4 Under Fresno’s charter, the Mayor prepares “the proposed annual City budget” and
5 submits it to the “Council for its deliberation and approval.” Fresno, Cal., Charter § 400(d) (2007).
6 The Council makes and votes on motions to change the proposed budget. Hyde Decl. ¶¶ 9 & Ex.
7 EE, at 3.¹ If the cost of the approved motions creates a deficit, the Budget Committee then
8 reconciles the mayor’s proposed budget with the Council’s motions, recommending to fund some
9 programs and de-fund others, to present a balanced budget for Council approval. *Id.* at 3–4.

10 The Budget Committee also discusses how to allocate any unexpected revenue and costs,
11 and in June 2023, Council directed the City Manager to review quarterly revenue reports with the
12 Budget Committee on a standing basis. Hyde Decl. ¶¶ 6, 9–10 & Exs. BB, at 3 (City Manager
13 stating in November 2018 “So, that is a contractual obligation that should have been included in
14 the current budget, And I know that we have been working with the budget subcommittee,
15 but our recommendation would be to pay off the contractual obligations we have for the
16 \$420,000”); Ex. EE, at 17 (“We can make it a standing item to go over the quarterly projections
17 [with the Budget Committee] when we get that analysis”); Ex. FF, at 4 (“I made . . . Council
18 Direction 24, which was about quarterly reports and properly tax revenues. I’d like it to include all
19 revenues. So just basically revenue reports quarterly to the Council Budget Subcommittee,
20 please.”); Cappetta Decl. ¶¶ 10, 13 & Exs. P; T, at 2.²

21 _____
22 ¹ Exhibits to the Declaration of Sonya Ledanski Hyde are transcriptions of City Council Meetings
23 and were not attached as exhibits to the Petition. They are lettered uniquely herein as Exhibits AA
24 to FF.

25 Exhibits A to Z, attached to the Declaration of undersigned counsel, are lettered consistently with
26 the exhibits to the Petition in this case for clarity. However, not every exhibit to the Petition is
27 cited herein or attached as an exhibit to the undersigned’s declaration. Thus, the Court should be
28 advised that while some letters appear to have been “skipped” in the ordering of exhibits attached
to the undersigned’s declaration, this is only for consistency with the lettering of exhibits to the
Petition and all relevant exhibits are included.

Because documents produced in discovery were not attached as exhibits to the Petition, they are
assigned unique titles herein, with the designation “FC-” preceding the lettering.

² Respondents sometimes refer to the Budget Committee as a subcommittee, but it is in fact a
committee of the City Council, not a subcommittee of another committee.

1 On a regular and recurring basis, the Budget Committee does the critical work of
2 recommending tradeoffs necessary to present a balanced budget for the City Council’s approval.
3 As explained by City Manager Georgeanne White in June 2022:

4 Just because all the budget motions passed today, that does not mean those projects
5 and funded items will move forward. . . . We will probably be overbudget by 8
6 figures. The Administration and Budget Subcommittee will meet early next week
7 and pare down all the items to reconcile so that Council can pass a balanced
8 budget. A reconciliation sheet will be presented to Council that will bring the
9 budget into balance. So many of the motions that “passed” today will not actually
10 be funded. We simply don’t have enough money!

11 Cappetta Decl. ¶ 22 & Ex. FC-A.

12 The Budget Committee is composed of three members of the City Council, which has
13 seven members and a quorum of four. Fresno, Cal., Charter §§ 300, 503. In 2023, then-Council
14 President Maxwell and Councilmembers Karbassi and Perea served on the Budget Committee.
15 Cappetta Decl. ¶ 9 & Ex. K. Respondents have never held open and public Budget Committee
16 meetings, nor have they published agendas for the meetings or provided an opportunity for public
17 comment.³ Compl. ¶¶ 10, 35, 39, 61; Answer ¶¶ 10, 35, 39, 61. In holding secret budget meetings,
18 Fresno stands alone among the ten largest California cities. Each of the others—Los Angeles, San
19 Diego, San Jose, San Francisco, Sacramento, Long Beach, Oakland, Bakersfield, and Anaheim—
20 opens its entire budget process to the public once a draft budget is proposed. Cappetta Decl. ¶ 23.

21 **B. The City Council Created the Budget Committee in 2018 by Approving a Motion that**
22 **Directed Three Councilmembers to Meet to Reconcile the Budget.**

23 The Council voted to create the Budget Committee on June 21, 2018. Cappetta Decl. ¶ 2 &
24 Ex. A. At the time, the Council was making and deliberating on motions to change the Mayor’s
25 proposed budget. *Id.* In discussing a motion that would allocate a specific pool of revenue, then-
26 Council President Soria stated, “I wanted to take a little bit more time to figure out and have that
27 discussion about the 3.5 million, so I’d like to amend your motion to create a subcommittee.”
28 Hyde Decl. ¶ 5 & Ex. AA, at 2. President Soria proposed that “the subcommittee can include

³ By asserting insufficient information to admit or deny these allegations, which are well within their knowledge, or by contesting only legal conclusions without disputing underlying facts, Respondents effectively admitted these facts. *Dobbins v. Hardister*, 242 Cal. App. 2d 787, 791–92 (1966); *Taylor v. Newton*, 117 Cal. App. 2d 752, 760 (1955); Cal. Civ. Proc. Code § 431.30 note 18 (Denial of conclusions of law admission of certain facts).

1 yourself [Councilmember Chavez], myself [Soria] and Councilmember Caprioglio [] to meet with
2 the administration, the City Manager and the staff to kind of sort those things out before coming
3 back with a final vote of the budget.” *Id.* at 2–3. The Council voted on this motion as amended,
4 and it passed four to three, thus creating the Budget Committee and directing it to hold meetings.
5 Cappetta Decl. ¶ 2 & Ex. A. Those meetings continued in the years to come.

6 **C. The Budget Committee Hears Budgetary Matters on an Ongoing Basis.**

7 As the City’s Budget Director explained in a June 2023 City Council meeting, the Budget
8 Committee has regularly met for years to discuss how to balance the City’s annual budget before
9 final approval by the City Council:

10 One thing I want to point out though is *as observed in prior years*, if the approved
11 costing creates a deficit in the general fund, then Council’s Budget Subcommittee
12 with the Administration will then need to meet, work through a budget worksheet
13 reconciliation so then we can then realign the general fund budget back in balance
14 and then a follow-up motion will be needed to then be approved so we can then
15 balance the budget

14 Hyde Decl. ¶ 9 & Ex. EE, at 4 (emphasis added). The City Attorney acknowledged in July 2023
15 that the Budget Committee has been involved in the “budget process . . . going back to at least
16 2019.” Cappetta Decl. ¶ 22 & Ex. FC-B.

17 The Budget Committee has met regularly during this budget process in May–June. *Id.*;
18 Cappetta Decl. ¶¶ 2, 11, 22 & Exs. A (creation in June 2018); R (May 2021 meeting); FC-C (June
19 2020 meeting), FC-D (June 2022 meeting), FC-E (June 2023 meeting). The Budget Committee
20 has also advised the Council on budgetary matters throughout the year as needed. *See, e.g.*, Hyde
21 Decl. ¶ 6 & Ex. BB, at 3, 10; Cappetta Decl. ¶¶ 10, 22 & Exs. P (Council directing that an item to
22 appropriate COVID-19 Emergency Response funds go before the Budget Committee in April
23 2020); FC-F (requesting a Budget Committee meeting in March 2021), FC-G (“A budget
24 committee consisting of (Arias, Soria, Chavez, Quan, Schaad, Orman) had side meeting(s)
25 sometime between [March] 22nd and 29th.”), FC-H (City staff stating in February 2022 “Council
26 Budget committee move[d] the request down to \$1 million the other day”), FC-I (City staff
27 “reaching out on behalf of the Budget Committee members who are requesting Council Offices
28 please send an updated infrastructure project list for their review” in February 2022), FC-J (emails

1 requesting to schedule a budget committee meeting in March 2022), FC-K (Karbassi stating “I met
2 this morning with my fellow Budget Committee members” on April 17, 2023). None of these
3 Budget Committee meetings have been open to the public. Cappetta Decl. ¶ 24; *see supra* n.2.

4 The City Council Has Never Dissolved the Budget Committee Since Its Creation and Has
5 Acknowledged It as a Standing Committee.

6 At least once per year, the Council hears the following agenda item: “Council Boards and
7 Commissions Communications, Reports, Assignments and/or Appointments, Reappointments,
8 Removals to/from City and non-City Boards and Commissions.” *See, e.g.*, Cappetta Decl. ¶¶ 3–8
9 & Exs. B–G. Deliberations on this item include determining which councilmembers should be
10 appointed to which committees and whether any City committees should be dissolved. *See, e.g.*,
11 Cappetta Decl. ¶ 4 & Ex. C; Hyde Decl. ¶ 7 & Ex. CC, at 3 (“[A]s you know, on our agenda, we
12 go through those committees and this year we spent that time to appoint new members, and I think
13 we went through them at that time, and I don’t think there’s any that were voluntarily eliminated
14 this year.”). Every time the Council hears this item, it concludes by taking a vote to approve the
15 list of committees and the assignment of councilmembers to them (the “Committee Roster”).
16 Cappetta Decl. ¶¶ 3–8 & Exs. B–G.

17 The Council heard this agenda item and voted to approve Committee Rosters that included
18 the “Budget Sub-Committee” on or about May 2, 2019, September 19, 2019, January 30, 2020,
19 February 4, 2021, February 10, 2022, and January 19, 2023. Cappetta Decl. ¶¶ 3–8 & Exs. B–G.
20 Since the Committee’s creation in 2018, there is no record of the City or Council taking any action
21 to dissolve the Committee; thus, the Committee has remained in existence since its creation.
22 Cappetta Decl. ¶ 25. After the passage of each year’s budget, the Budget Committee continued to
23 meet throughout the year. *E.g.*, Hyde Decl. ¶ 6 & Ex. BB, at 3, 10; Cappetta Decl. ¶¶ 10, 22 &
24 Exs. P, FC-F, FC-H, FC-J, FC-L. Budget Committee members maintain their membership unless
25 the Council makes new appointments during the next Committee Roster deliberation. *See* Hyde
26 Decl. ¶ 8 & Ex. DD, at 3 (Councilmember Bredfeld expressing disagreement with being removed
27 from the Budget Committee as of the February 10, 2022 Committee Roster); Cappetta Decl. ¶ 22
28 & Ex. FC-M (“[Arias] served as chair of the committee last year 2022 during his Council

1 presidency and was appointed again this year”).

2 The Committee Roster in 2023 included a note next to the Budget Committee entry that
3 stated, “Recommend this be a standing committee, with members Maxwell, Perea, Karbassi.”
4 Cappetta Decl. ¶ 9 & Ex. K. The Council approved this Roster. Cappetta Decl. ¶ 8 & Ex. G.

5 **D. The Budget Committee Secretly Negotiated a Record-Breaking Budget Proposal in**
6 **2023.**

7 During the 2023 budget process, councilmembers made more than 100 motions to amend
8 the Mayor’s proposed budget to fund or alter funding for various City projects. Cappetta Decl. ¶¶
9 12–13, 16–17 & Exs. S, T, W, X. The Budget Committee’s secret deliberations began on or about
10 June 16, 2023, during which the Committee made recommendations on which of the Council’s
11 budget motions should receive funding. Cappetta Decl. ¶ 22 & Ex. FC-E (“[B]udget committee
12 discussions have just started. . . . As the committee prioritizes projects it will take some more
13 analysis to match up the motions to potential funding sources”). The Budget Committee
14 recommended funding more than 75 amendments to the Mayor’s proposed budget, totaling almost
15 \$30 million. Cappetta Decl. ¶ 18 & Ex. Y, at 2–3. The public has no idea how this sausage was
16 made—it had no say or sight into the Budget Committee’s deliberations on which programs
17 should receive funding. Cappetta Decl. ¶ 24; *see supra* n.2. In the words of the Mayor as reported
18 in the press, “A lot of sausage was being made in the back room.” Omar Shaikh Rashad, *Fresno’s*
19 *budget subcommittee doesn’t meet in public. Legal experts say it’s a ‘major problem’*, FresnoLand
20 (Aug. 16, 2023). Following the Budget Committee’s secret discussions, the Council adopted a
21 record-breaking \$1.87 billion budget on June 22, 2023. Cappetta Decl. ¶ 19 & Ex. Z.

22 **E. Petitioners Sent a Cease-and-Desist Letter to Respondents, Respondents Declined to**
23 **Cease and Desist, and Petitioners Filed Suit.**

24 On September 5, 2023, well within nine months of the Budget Committee’s most recent
25 secret meetings, Petitioners demanded that Fresno cease and desist from holding Budget
26 Committee meetings in secret and make an unconditional commitment to conduct all future
27 Committee meetings in accordance with the Brown Act. Cappetta Decl. ¶ 14 & Ex. U.

28 Respondents refused. In a letter dated September 18, 2023, they did not dispute the

1 underlying facts but argued that the issue was “moot” because the committee was “ad hoc” and
2 allegedly “dissolved” after the most recent budget was approved. Cappetta Decl. ¶ 15 & Ex. V.
3 Respondents asserted their right to continue treating the Committee as “ad hoc” and holding its
4 meetings in secret. *Id.* at 3.

5 As interested persons, Petitioners subsequently filed this suit seeking both a declaration
6 that Respondents previously violated the Brown Act by holding secret meetings of the Budget
7 Committee in June 2023 and prospective relief to ensure Respondents do not repeat the same
8 violation. Gov. Code § 54960(a); *McKee v. Orange Cnty. Unified Sch. Dist.*, 110 Cal. App. 4th
9 1310, 1320 (2003).⁴

10 III. ARGUMENT

11 A. The Brown Act Protects the People’s Right to Open Government.

12 As the California Supreme Court has consistently affirmed, “Openness in government is
13 essential to the functioning of a democracy.” *Int’l Fed’n of Pro. & Tech. Eng’rs, Local 21 v.*
14 *Superior Ct.*, 42 Cal. 4th 319, 328 (2007). As the Act declares, “The people of this State do not
15 yield their sovereignty to the agencies which serve them. The people, in delegating authority, do
16 not give their public servants the right to decide what is good for the people to know and what is
17 not good for them to know. The people insist on remaining informed so that they may retain
18 control over the instruments they have created.” Gov. Code § 54950.

19 This right of access is now a constitutional mandate. The California Constitution declares
20 that the “people have the right of access to information concerning the conduct of the people’s
21 business,” requires that “the meetings of public bodies . . . shall be open to public scrutiny,” and
22 mandates that a law such as the Brown Act “shall be broadly construed if it furthers the people’s
23 right of access, and narrowly construed if it limits the right of access.” Cal. Const., Art. I, §
24 3(b)(1), (2). Therefore, the Brown Act must be “construed liberally in favor of openness so as to
25 accomplish its purpose and suppress the mischief at which it is directed.” *Int’l Longshoremen’s &*
26 *Warehousemen’s Union v. L.A. Exp. Terminal*, 69 Cal. App. 4th 287, 294 (1999).

27 To ensure transparency, the Brown Act mandates that “[a]ll meetings of the legislative
28

⁴ Further undesignated statutory citations are to the Government Code.

1 body of a local agency shall be open and public, and all persons shall be permitted to attend any
2 meeting of the legislative body of a local agency,” except for limited provisions authorizing closed
3 sessions. Gov. Code §§ 54953(a), 54956.7–54957.10. The Act also requires that all meetings
4 conducted by legislative bodies of local agencies must—absent an emergency—be publicized in
5 advance, follow a noticed agenda, be accessible, and provide an opportunity for the public to
6 comment. Gov. Code §§ 54952.2(a), 54954–54954.3, 54954.5–54956.5, 54962.

7 The City is a local agency under the Brown Act. § 54951. As explained below, Fresno’s
8 Budget Committee is a legislative body that has consistently violated the Brown Act by holding
9 meetings in secret without any opportunity for public involvement.

10 **B. The Budget Committee Is a Legislative Body Subject to the Brown Act Because It Is**
11 **in Fact a Standing Committee with Continuing Subject Matter Jurisdiction.**

12 The Brown Act “defines ‘legislative body’ broadly in order to avoid its circumvention.”
13 *Taxpayers for Livable Cmty. v. City of Malibu*, 126 Cal. App. 4th 1123, 1127 (2005).
14 A “legislative body” includes not only the “governing body of a local agency,” such as a city
15 council, but also any “standing committees of a legislative body, irrespective of their composition,
16 which have a continuing subject matter jurisdiction” and were “created by charter, ordinance,
17 resolution, or formal action of a legislative body,” regardless of whether they are “decisionmaking
18 or advisory.” Gov. Code § 54952(a)–(b). By its plain terms, the Brown Act applies to “advisory
19 bodies” as well as those with supervisory or decision-making power.⁵ *Dep’t of Fin. v. Comm’n on*
20 *State Mandates*, 30 Cal. 4th 727, 732 (2003); *see also Frazer v. Dixon Unified Sch. Dist.*, 18 Cal.
21 App. 4th 781, 792 (1993) (noting “Brown Act applies” to “advisory committees”); *Stockton*
22 *Newspapers, Inc. v. Redevelopment Agency*, 171 Cal. App. 3d 95, 102 (1985) (holding “the Brown
23 Act is applicable to collective investigation and consideration short of official action”).

24 In approving a motion to establish it in 2018, the City Council took formal action to create
25 the Budget Committee. *See Frazer*, 18 Cal. App. 4th at 792–93; *Joiner v. City of Sebastopol*, 125
26 Cal. App. 3d 799, 801 (1981). Because it has regularly met to accomplish the same task for several

27 _____
28 ⁵ It is therefore irrelevant whether, as the City contends, the Budget Committee does not “direct
the preparation of the budget” or “control how City staff prepares the City budget.” Cappetta Decl.
¶ 15 & Ex. V at 2.

1 years, the Budget Committee is a standing committee with continuing subject matter jurisdiction,
2 and therefore subject to the Brown Act, notwithstanding that it comprises less than a quorum of
3 the Council.

4 Although ad hoc advisory committees “composed solely of the members of the legislative
5 body that are less than a quorum of the legislative body are not legislative bodies,” Gov. Code
6 § 54952(b), this “exception does not apply if the advisory committee is a standing committee.”
7 Cal. Att’y Gen., *The Brown Act: Open Meetings for Local Legislative Bodies*, at 5–6 (2003). As
8 the Attorney General has explained, an exempt “limited term ad hoc committee” “is charged with
9 accomplishing a specific task in a short period of time,” while a “standing committee is a
10 committee which has continuing jurisdiction over a particular subject matter (*e.g., budget, finance,*
11 *legislation*).” *Id.* at 5 (emphasis added).

12 On remarkably similar facts, the Attorney General determined that an advisory committee
13 like Fresno’s Budget Committee was a legislative body subject to the Brown Act because it was a
14 standing committee. As in this case, that committee was composed of three members of a seven-
15 person governing board and had existed for several years. 79 Ops. Cal. Atty. Gen. at 70. It had
16 “the responsibility of providing advice concerning budgets,” among other matters, and generally
17 met monthly but did not have a fixed meeting schedule. *Id.* at 73.

18 In those circumstances, the Attorney General determined that the committee was subject to
19 the Brown Act because it was in fact a standing committee with continuing jurisdiction over the
20 budget and other matters. Despite the board’s formal disclaimer that “[*t*]his committee shall not
21 exercise continuing subject matter jurisdiction,” *id.* (emphasis in original), the Attorney General
22 recognized that the committee was “not an ad hoc committee charged with accomplishing a
23 specific task in a short period of time,” *id.* at 70. The board’s disclaimer could not be
24 “determinative” because “[*t*]he language of the local rule . . . may not be used to thwart the
25 purposes and requirements of the Act.” *Id.* at 73. Consistent with the principles of the Brown Act,
26 the Attorney General determined that one must “follow function over form in carrying out the
27 Legislature’s purposes” of ensuring access and transparency in local government. *Id.*

28 Although they are not binding, Attorney General opinions are entitled to great weight,

1 especially in Brown Act matters. *Californians Aware v. Joint Lab./Mgmt. Benefits Comm.*, 200
2 Cal. App. 4th 972, 980 (2011). The Attorney General’s analysis is entirely sound and applies
3 directly to this case. Under that analysis, the undisputed facts show that the Budget Committee is a
4 standing committee with continuing jurisdiction over ongoing matters, not an “ad hoc” committee
5 charged with accomplishing a one-off task. It has met repeatedly over several years to perform the
6 recurring tasks of reconciling the Council’s budget priorities with the priorities of the mayor and
7 proposing a final budget for Council approval. *See, e.g.*, Hyde Decl. ¶ 9 & Ex. EE, at 4
8 (description of Budget Committee’s purpose); Cappetta Decl. ¶¶ 2, 11, 22 & Exs. A (June 2018
9 creation); R (May 2021 meeting); FC-C (June 2020 meeting), FC-D (June 2022 meeting), FC-E
10 (June 2023 meeting).

11 Since its inception, the Committee has met every year, multiple times per year—at least
12 once in May and June for the budget process and at least once earlier in the fiscal year, whenever
13 mid-year budget matters have arisen. *See, e.g.*, Hyde Decl. ¶ 6 & Ex. BB, at 3, 10 (discussing
14 budget committee meetings occurring after budget process ended in 2018); Cappetta Decl. ¶¶ 2,
15 10, 22 & Exs. A (June 2018 creation); R (May 2021 meeting); P (Karbassi suggesting item should
16 have gone before Budget Committee before presentation to Council in April 2020); FC-C (June
17 2020 meeting); FC-F (City Manager stating “we want to work with Budget Committee” regarding
18 March 2021 meetings); FC-H (City staff stating in February 2022 “Council Budget committee
19 move[d] the request down to \$1 million the other day”); FC-J (discussing scheduling a Budget
20 Committee meeting in late March or early April 2022); FC-D (June 2022 meeting); FC-L (April
21 2023 meeting); FC-E (City Manager stating “budget committee discussions have just started” on
22 June 16, 2023).

23 The Budget Committee’s tasks are regular and recurring because the Mayor proposes a
24 new budget every year that requires reconciliation, and in 2023, the Council directed the
25 administration to review quarterly revenue reports with the Budget Committee on a standing
26 basis.. *See* Hyde Decl. ¶¶ 10–11 & Exs. EE, at 17 (“We can make it a standing item to go over the
27 quarterly projections [with the Budget Committee] when we get that analysis”); FF, at 4 (“I made .
28 . . Council Direction 24, which was about quarterly reports and properly tax revenues. I’d like it to

1 include all revenues. So just basically revenue reports quarterly to the Council Budget
2 Subcommittee, please.”); Cappetta Decl. ¶ 13 & Ex. T, at 2. Whenever the budget yields an
3 unexpected surplus or deficit after the Council passes the budget, the Budget Committee
4 reconvenes to discuss how to allocate it. *See, e.g.*, Cappetta Decl. ¶¶ 10, 12–13, 22 & Exs. P; S, at
5 4; T, at 2; FC-H. Over the years, the City Council never voted to dissolve the Budget Committee,
6 but instead treated it in effect as a standing committee, regardless of any assertions to the contrary.
7 Cappetta Decl. ¶ 25.

8 Additionally, members of the Budget Committee maintain their positions until the Council
9 approves new appointments, a process that typically occurs months after the budget passes. *See*
10 Hyde Decl. ¶ 8 & Exs. DD, at 3 (Bredefeld expressing disagreement with being removed from the
11 Budget Committee); Cappetta Decl. ¶ 22 & FC-M (“[Arias] served as chair of the committee last
12 year 2022 during his Council presidency and was appointed again this year”). Although the
13 Council’s agreement is not necessary to the Brown Act analysis, the Council itself belatedly
14 acknowledged that the Budget Committee is a standing committee when it voted to approve the
15 January 2023 Committee Roster that “recommend[ed] [it] be a standing committee.” Cappetta
16 Decl. ¶¶ 8–9 & Exs. K, G.

17 On these undisputed facts, the Budget Committee is subject to the Brown Act because it is
18 a standing committee with continuing subject matter jurisdiction over annual budgetary matters,
19 regardless of the City’s self-serving contention that it is “ad hoc.” Like the committee addressed
20 by the Attorney General, the Budget Committee in reality “does not have a limited term, and it is
21 not an ad hoc committee charged with accomplishing a specific task in a short period of time.” 79
22 Ops. Cal. Atty. Gen. at 73. Instead, it routinely addresses recurring issues such as reviewing and
23 reconciling the mayor’s proposed budget for approval by the City Council and discussing and
24 proposing mid-budget adjustments. Therefore, the Budget Committee is a legislative body that
25 must follow the Brown Act.

26 To hold otherwise would allow local governments to subvert the Brown Act at will by
27 labeling standing committees as “ad hoc” and purporting to dissolve and reform them, as the City
28 contends it has done here. That result would violate the Act’s core purpose. The Brown Act was

1 adopted precisely because of “local government’s dismissive attitude to open meeting
2 requirements and the tactics adopted to avoid them,” such as “simply labelling” meetings with
3 other names. Cal. Att’y Gen., Opinion No. 22-402, slip. op. at 6–7 (Feb. 29, 2024) (citation
4 omitted). The Brown Act cannot be read to “offer opportunities to structure deliberative bodies for
5 the purpose of circumventing the public’s right of participation.” *Id.* at 9. Likewise, courts have
6 long recognized that the Brown Act cannot permit the use of “evasive techniques” to permit
7 “crystallization of secret decisions to a point just short of ceremonial acceptance.” *Sacramento*
8 *Newspaper Guild v. Sacramento Cnty. Bd. of Supervisors*, 263 Cal. App. 2d 41, 50 (1968); *see*
9 *also Roberts v. City of Palmdale*, 5 Cal. 4th 363, 376 (1993) (“Of course the intent of the Brown
10 Act cannot be avoided by subterfuge[.]”).

11 The City cannot rely on *Taxpayers for Livable Communities v. City of Malibu* (“*Malibu*”).
12 In that case, two of the five members of a city council “held a number of private meetings with
13 various individuals, constituents, and city staff” to accomplish the one-off task of responding to a
14 draft land use plan released by the Coastal Commission. *Malibu*, 126 Cal. App. 4th at 1125–26.
15 Although the two members in question “were the sole members of the city council’s standing
16 committee for land use and planning,” they were not acting as such in addressing the Coastal
17 Commission’s plan, because the “land use and planning committee had jurisdiction over planning
18 and zoning code enforcement,” not “*Malibu*’s response to the Coastal Commission’s” draft plan.
19 *Id.* at 1127. Therefore, when they were dealing with the Coastal Commission’s draft plan, the
20 council members were functioning not as a standing committee but as “a ‘limited term ad hoc
21 committee’ charged with accomplishing a specific task in a short period of time.” *Id.* at 1129. That
22 result may be correct on that facts of that case, but the facts of this case are materially different.

23 Here, the Budget Committee members were dealing with budgetary matters at the core of
24 the Committee’s mission, and the Committee did not perform a specific one-off task for a limited
25 time period. Instead, it has performed the same recurring task for years—the fundamental and
26 ongoing governing task of preparing a final budget for City Council approval and proposing mid-
27 budget adjustments. That is the essence of a standing committee with continuing jurisdiction.
28 Because “the Brown Act applies to standing committees,” *id.* at 1127, Respondents have

1 consistently violated the Act by holding Budget Committee meetings in secret.

2 **C. There is a Live Controversy Because Respondents Neither Took Official Action to**
3 **Cease the Challenged Practice Nor Conceded That the Practice Violates the Brown**
4 **Act.**

4 In rejecting Petitioners’ cease-and-desist letter, the City proffered the meritless justification
5 that this case is moot. Cappetta Decl. ¶ 15 & Ex. V, at 1. This case is not “moot.” It presents a live
6 controversy, even if the City purportedly “dissolved” the Budget Committee when it approved the
7 FY24 budget, *see id.* As an initial matter, regardless of whether the City in fact dissolved the
8 Budget Committee, which is not conceded, Petitioners seek a judgment “to determine the
9 applicability” of the Brown Act “to past actions” of the Budget Committee that occurred within
10 nine months of the cease-and-desist letter. Gov. Code §§ 54960(a), 54960.2(a). That request alone
11 is sufficient to present a live dispute. *See Cal. All. for Util. Safety & Educ. v. City of San Diego*, 56
12 Cal. App. 4th 1024, 1030 (1997) (holding “a controversy between the parties exists over city’s
13 past compliance with the Brown Act and the charter. On that basis alone plaintiffs are entitled to
14 declaratory relief resolving the controversy.”).

15 In any event, the City contends only that the Budget Committee “was only in existence
16 between January 19, 2023 until June 23, 2023” and was somehow “dissolved . . . when the Fiscal
17 Year 2023/24 City budget was approved by the City Council.” Cappetta Decl. ¶ 15 & Ex. V at 1.
18 In effect, the City has merely restated its unfounded position on the merits that the Budget
19 Committee is not a legislative body because it is an “ad hoc” committee that can be formed and
20 dissolved at will, regardless of the undisputed fact that it has consistently met year after year to
21 perform the same task. By taking that position, the City confirms this case presents a live dispute
22 over the legality of the Budget Committee’s secret meetings.

23 Given the undisputed history of secret Budget Committee meetings and the City’s
24 contention that it can evade the Brown Act at will by the subterfuge of creating and dissolving
25 new “ad hoc” committees, this case presents a live controversy. *Shapiro v. San Diego City*
26 *Council*, 96 Cal. App. 4th 904, 916 (2002) (noting “courts may presume that municipality will
27 continue similar practices in light of city attorney's refusal to admit violation” and when past
28 actions reflect an “ongoing procedure,” a “court could reasonably infer, in light of the city

1 attorney’s refusal to change that procedure, that there would be continuing or future threatened
2 Brown Act violations” sufficient to justify injunctive relief) (citations omitted); *cf. UFW of Am. v.*
3 *Dutra Farms*, 83 Cal. App. 4th 1146, 1164 (2000) (rejecting argument that case was moot on
4 ground that committee “has been dissolved,” because “a ‘new’ committee . . . could easily
5 appear”).

6 Even if the City purported to discontinue the Budget Committee, “the voluntary
7 discontinuance of alleged illegal practices does not remove the pending charges of illegality from
8 the sphere of judicial power or relieve the court of the duty of determining the validity of such
9 charges where by the mere volition of a party the challenged practices may be resumed.” *Marin*
10 *Cnty. Bd. of Realtors, Inc. v. Palsson*, 16 Cal. 3d 920, 929 (1976). That principle applies here.
11 Even if the City in fact discontinued the Budget Committee, which is not conceded, it could easily
12 re-form such a committee at any time and continue its meetings in secret.

13 Indeed, even when a city adopts a new ordinance to end a challenged practice, which
14 Respondents have not done, that does not moot a Brown Act case where the ordinance “did not
15 equate to a change in the City’s legal position” and the city “has not conceded its former practice
16 . . . violated the Brown Act.” *Ctr. for Local Gov’t Accountability v. City of San Diego*, 247 Cal.
17 App. 4th 1146, 1157 (2016). (holding Brown Act challenge to city council’s public comment
18 policy was not mooted by adoption of ordinance changing policy). Respondents have both
19 doubled down on their legal position and failed to adopt an ordinance or resolution ending the
20 challenged practice. As a result, this case is far from moot.

21 IV. CONCLUSION

22 For the foregoing reasons, Petitioners respectfully request that the Court grant this motion,
23 enter declaratory judgment that Respondents violated the Brown Act by holding secret meetings of
24 the Budget Committee within nine months of the cease-and-desist letter and issue a writ of
25 mandate compelling Respondents to conduct all future meetings of the Budget Committee in
26 accordance with the Brown Act.

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1 Dated: June 10, 2024

Respectfully submitted,

2 FIRST AMENDMENT COALITION

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4 By



DAVID LOY

ANN CAPPETTA

Attorneys for Petitioner

FIRST AMENDMENT COALITION

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8 Dated: June 10, 2024

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.

9
10 By



ANGÉLICA SALCEDA

SHAYLA HARRIS

Attorneys for Petitioner

AMERICAN CIVIL LIBERTIES
UNION OF NORTHERN CALIFORNIA

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF MARIN**

3 At the time of service, I was over 18 years of age and not a party to this action. I am
4 employed in the County of Marin, State of California. My business address is 534 4th Street,
5 Suite B, San Rafael, CA 94901-3334.

6 On June 10, 2024, I served true copies of the following document(s) described as
7 **NOTICE OF MOTION AND MOTION FOR JUDGMENT; MEMORANDUM OF POINTS**
8 **AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT** on the interested
9 parties in this action as follows:

10 Anthony R. Taylor
11 Michael R. Linden
12 3880 Lemon Street, Suite 520
13 Riverside, CA 92501
14 Email: ataylor@awattorneys.com; mlinden@awattorneys.com

15 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on an agreement of the
16 parties to accept service by e-mail or electronic transmission I caused a copy of the document(s) to
17 be sent from e-mail address rregnier@firstamendmentcoalition.org to the persons at the e-mail
18 addresses listed in the Service List. I did not receive, within a reasonable time after the
19 transmission, any electronic message or other indication that the transmission was unsuccessful.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on June 10, 2024, at East Palo Alto, California.

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Robin P. Regnier