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MAY 04 2026

FRESNO SUPERIOR COURT
By _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, A NONPROFIT
CORPORATION, AND FIRST AMENDMENT
COALITION, A NONPROFIT CORPORATION,
PETITIONERS,
V.
THE CITY OF FRESNO, AND THE FRESNO
CITY COUNCIL,
RESPONDENTS.

CASE No.: 23CECG04744

DEPT. 97D

DECISION GRANTING JUDGMENT AND
DECLARATORY RELIEF FOR PETITIONER

The Petitioner has requested the court make a judgment on the record before it. The Petition was brought under Cal Code of Civil Procedure § 1085.

Undisputed Facts based on the Petition and the Answer.

On June 21st, 2018 the Fresno City Council approved a motion to “to create a sub-committee with Council President Soria, and Councilmembers Chavez and Caprioglio to discuss the \$3.5 million and \$9.9 million [referencing sales tax revenue and the General Fund Reserve Revenue] and to come back at the next budget hearing for discussion and vote.” This was the seminal moment in which a Council Committee, later to be identified as the Council Budget Subcommittee was formed. Every subsequent year which include 2019, 2020, 2021, 2022 & 2023 the Council Budget Subcommittee would be identified as a committee which would require the appointment of Councilmembers. Through the years

1 there would be changes to the Councilmembers who make up that Committee – which is also true of the
2 other committees which would require appointments of Councilmembers.¹

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4 The Council minutes would periodically reflect the role of the Council Budget Subcommittee.

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6 During the Council Meeting of April 23, 2020, the topic of allocating COVID-19 Emergency Response
7 Funds via a Consumer Grant Program was discussed. A councilmember twice suggested the proposal
8 should be placed in front of the “Council Budget Subcommittee” to “work with the Administration and
9 come up with a plan before bringing it back to Council for approval.” Two other councilmembers also
10 wanted the Council Budget Subcommittee to weigh in on how the funds should be distributed.

11
12 After three years of the Council Budget Subcommittee being one of the Council subcommittees,
13 consisting of three councilmembers each year, some councilmembers were concerned about the
14 transparency of this and other council subcommittees. They put forward a Public Transparency Act
15 which read “all committees that include one or more Councilmembers shall be subject to the Ralph M.
16 Brown Act....” The record is unclear as to what happened to this proposal, yet both parties agree the
17 proposal was discussed at the April 28, 2021, Council meeting.

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19 On May 27th, 2021, the Council Agenda records the Council Budget Subcommittee did meet on May 6,
20 2021, to hear a presentation related to \$600,000 being allocated for a Homeless Housing Project. The
21 minutes from the same meeting read the resolution allocating those funds was approved without
22 discussion.

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24 On January 19, 2023, the Councilmembers approved the list of committees on their consent calendar. Of
25 significance to this court, this Council item had a Supplement Packet. This packet gave the Council two
26 recommendations as it relates to the Budget Subcommittee: 1) the Committee be made a “standing

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¹ See exhibits B thru G and P of the Petition.

1 committee”, and 2) the three Councilmembers who would serve on the Budget Subcommittee.² The
2 item was approved with those recommendations. The court concludes the approval caused the Budget
3 Subcommittee to become a standing committee. Even without this action by the Council, the several
4 years the Budget Subcommittee remained in existence as well as the tasks it would perform make the
5 Council’s Budget Subcommittee a standing committee for purposes of the Brown Act. Indeed
6 subsequent actions of the Budget Subcommittee show it operated as a standing committee. During the
7 June 5, 2023, Council meeting a request was made by a councilmember “that property taxes and
8 cannabis revenue be shared quarterly with the Budget subcommittee.” On June 14th, 2023, a
9 councilmember requested “that the Administration meet quarterly with the Council Budget
10 Subcommittee to provide and review quarterly reports on revenue” – this appears to indicate that even
11 after the Budget had been approved the Committee would meet quarterly to keep track of whether the
12 revenue was meeting the approved budget estimates. There is nothing in the record which reflects the
13 Budget Subcommittee ever posted its agenda or opened their meetings to the public.

14
15 On September 5, 2023, within 9 months of the identification of the Budget Subcommittee being
16 designated by the Council as a standing committee, a letter was sent to the Fresno City Council by the
17 Petitioner demanding the “Council ensure that the budget committee ceases and desists from conducting
18 its deliberations in secret and in violation of the Brown Act”. It further went on to demand “[t]he
19 Council must acknowledge the Brown Act violation set forth in this letter by making an unconditional
20 commitment to refrain from keeping its budget committee closed to the public and to conduct all future
21 budget committee meetings in accordance with the Act’s requirement set for legislative bodies.”

22
23 On September 18, 2023 the City Attorney responded by declining to accept the invitation to make such
24 an “unconditional commitment” and identifies the committee not as a standing committee (despite the
25 approval of the recommendation the Budget Subcommittee become a standing committee on the January
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2² Exhibit K of the Petition.

1 19, 2023, consent agenda) but as an ad hoc committee. It further read, “there is no legal basis for
2 requiring any further action be taken by the Fresno City Council concerning this matter”.³

3 The parties agree the city of Fresno is a public agency subject to the Brown Act.⁴ The City is governed
4 by a Charter and the Council serves as its legislative body⁵ and they agree this court has jurisdiction and
5 the venue is proper.⁶

6
7 The Brown Act

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9 “Meetings of public bodies ... shall be open to public scrutiny,” and mandates that any law or rule “shall
10 be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the
11 right of access.” Cal. Const. art. I, § 3(b)(1), (2).

12
13 The Ralph M. Brown Act (Brown Act) is codified in California Government Code § § 54950 thru
14 54963. The Brown Act identifies a legislative body as:

15 ...

16 “(b) A *commission, committee, board, or other body of a local agency*, whether permanent or temporary,
17 *decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative*
18 *body*. However, advisory committees, composed solely of the members of the legislative body that are
19 *less than a quorum of the legislative body are not legislative bodies, except that standing committees of a*
20 *legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction,*
21 *or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are*
22 *legislative bodies for purposes of this chapter.” Cal. Gov’t Code § 54952 (emphasis added)*

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³ The full letter is identified as Exhibit U of Petition in ¶ 16.

26 ⁴ Petition and Answer ¶¶ 8 & 20.

27 ⁵ ¶ 21,

28 ⁶ ¶¶ 23 & 24

1 The Brown Act requires:
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3 “(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall
4 be permitted to attend any meeting of the legislative body of a local agency, except as otherwise
5 provided in this chapter.” Cal. Gov’t Code § 54953(a) and, “(C) The legislative body shall give notice of
6 the meeting and post agendas as otherwise required by this chapter, (D) The legislative body shall allow
7 members of the public to access the meeting and the agenda shall provide an opportunity for members of
8 the public to address the legislative body directly pursuant to Section 54954.3.” Cal. Gov’t Code §
9 54953(b)(2).
10

11 Since the Council Budget Subcommittee by its actions and by designation of the Fresno City Council is
12 a standing committee which has a clear subject matter jurisdiction⁷, it is subject to the Brown Act and
13 must post its agenda, be open to the public and prepare minutes of its meeting. The Council met none of
14 these requirements.
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16 Conclusion 17

18 The City of Fresno was in violation of the Brown Act by not posting any agenda or opening the Budget
19 Subcommittee to the public since January 19, 2023. The Petitioner did comply with the requirements
20 within the Brown Act by sending a cease and desist letter to the Council before the 9 month statute of
21 limitations had run.
22

23 Because there has been no Budget Subcommittee formed since the cease and desist letter has gone out,
24 the court, at this point, finds it unnecessary to mandate the City of Fresno provide an unconditional
25 commitment they will not violate the Brown Act in the future.
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27 ⁷ The court recognizes the Mayor originates the budget, but it must be approved by the Council. Therefore, the Council does
28 have subject matter jurisdiction over the budget.

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Any motion for attorney's fees is to be brought separately.

May 4, 2026



HON. ROBERT MICHAEL WHALEN, JR.
Judge of the Superior Court