

MARK S. ROSEN
ATTORNEY AT LAW
CIVIC CENTER PLAZA TOWERS
600 W. SANTA ANA BOULEVARD
SUITE 814
SANTA ANA, CALIFORNIA 92701
TELEPHONE (714) 285-9838
FAX (714) 285-9840

October 6, 2015

Omar Sandoval
Garden Grove City Attorney
11222 Acacia Parkway
Garden Grove, California 92840

VIA FIRST CLASS MAIL AND E-MAIL
osandoval@wss-law.com
cityclerk@ci.garden-grove.ca.us

Dear Omar:

I am writing on behalf of the Central Garden Grove Neighborhood Association, association acting under the name of Garden Grove Neighborhood Association ("GGNA"). GGNA's membership consists of residents, voters, and taxpayers in Garden Grove.

This letter has two parts. The first is a request for documents under the Public Records Act. I am also sending a copy of this letter to Kathy Bailor, the city clerk. The second is a request that the City of Garden Grove renounce and revoke that portion of the settlement agreement with Rickk Montoya that purports to eliminate the separate election for mayor.

Pursuant to the Public Records Act (Govt. C. §6250 *et. seq.*), I request that you provide the following documents or other things:

1. The ballot materials (the measure, impartial analysis, and arguments) and the certification of election results, and the resolution adopting the results, for the April 1970 election at which the voters of Garden Grove voted to make the mayor's position an elected position. The vote was 8,618 in favor and 3,336 opposed. I also request the same items for a measure on the same ballot where the voters chose to give the mayor a two year term. The city clerk's office has already provided some of this material to GGNA's president, Maureen Blackmun.

2. The ballot materials, certification of election results, and the resolution for the March 1996 election at which the voters of Garden Grove voted to impose term limits on the mayor and councilmembers

Omar Sandoval
October 6, 2015
Page Two

3. The ballot materials, certification of election results, and the resolution for the November 2008 election at which the voters of Garden Grove voted to modify the term limits for councilmembers.

4. All discovery propounded in *Montoya v City of Garden Grove*, Orange County Superior Court Case No. 30-2015-00799522-CU-MC-CJC, and the responses thereto.

5. All demographic studies or ballot analyses done for either side in the *Montoya* case, except for such materials which have not been disclosed to the other side and are privileged.

6. All documents, such as hourly records, billing records, etc. with regard to the amount of attorneys fees sought by the plaintiffs in the *Montoya* case.

GGNA challenges the provision in the settlement agreement, as posted on the city's website, which would purport to abolish the separate election for mayor. That provision is illegal and ultra vires, as beyond the ability of the city council or a court to impose without first submitting the proposal to the voters. The voters of Garden Grove chose in 1970 to have a separate election for mayor. This can only be changed by a vote of the people. Elections Code §9217 provides in part: "No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance."

Any attempt to eliminate this provision without a vote is null and void, whether it be by the city council or through a court settlement. See *Mobilepark W. Homeowners Assn. v. Escondido Mobilepark W.* (1995) 35 Cal. App. 4th 32, 43, 41 Cal. Rptr. 2d 393, 400. See also *Summit Media LLC v. City of Los Angeles* (2012) 211 Cal. App. 4th 921, 929, 150 Cal. Rptr. 3d 574, 581 (a settlement by the city cannot override an initiative measure).

GGNA, as a representative taxpayers organization, would have the right to intervene in the instant lawsuit or to bring a separate action for writ of mandate to prevent the elimination of the right to vote for mayor. See *Summit Media LLC v. City of Los Angeles*, *supra*; *Citizens for Unif. Laws v. County of Contra Costa* (1991) 233 Cal. App. 3d 1468, 1472-73, 285 Cal. Rptr. 456, 458-59.

There is nothing in the California Voting Rights Act that requires that the independent office of mayor be eliminated. Much larger cities, such as Los Angeles, San Jose, San Francisco, and San Diego have elected mayors. When Anaheim settled its CVRA lawsuit in December 2013, it kept the position of mayor as a separate position and put the question of district elections

Omar Sandoval
October 6, 2015
Page Three

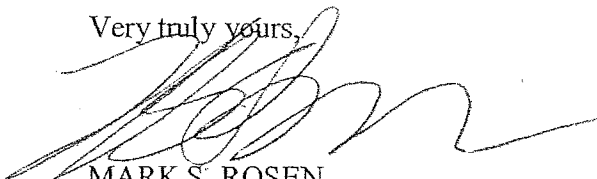
before the voters. Government Code §34870 allows the voters to vote on an ordinance providing for election of members of the city council through districts and allows for an elective mayor.

I am writing this letter to request that the Garden Grove city council take corrective action. GGNA does not want to have to take legal action. Under *Graham v. DaimlerChrysler Corp.* (2005) 34 Cal. 4th 553, disputants are encouraged to resolve these public issues short of litigation where possible. "In *Graham*, the California Supreme Court held 'a plaintiff seeking attorney fees under a catalyst theory must first reasonably attempt to settle the matter short of litigation' (the 'prelitigation notice' requirement). (*Graham, supra*, 34 Cal.4th at p. 575.) The high court stated this requirement serves to assure that the plaintiff has satisfied section 1021.5's statutory requirement that the plaintiff must show the 'necessity ... of private enforcement' of the public interest. (*Graham, supra*, 34 Cal.4th at p. 577.) The court explained: 'Awarding attorney fees for litigation when those rights could have been vindicated by reasonable efforts short of litigation does not advance that objective and encourages lawsuits that are more opportunistic than authentically for the public good. Lengthy prelitigation negotiations are not required, nor is it necessary that the settlement demand be made by counsel, but a plaintiff must at least notify the defendant of its grievances and proposed remedies and give the defendant the opportunity to meet its demands within a reasonable time.'" *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 813, 153 Cal. Rptr. 3d 285, 304.

I would expect the City to cure the defect in the settlement agreement by the time of the scheduled case management conference in the Montoya case, now set for December 14, 2015. Otherwise, GGNA may have to seek the right to intervene at that conference in order to preserve the direct election of mayor.

Of course, if you have authorities that allow the course that the city is proposing, please provide them to me for analysis.

Very truly yours,



MARK S. ROSEN

cc: Kathy Bailor, City Clerk