



550 CALIFORNIA STREET, SUITE 1200
SAN FRANCISCO, CA 94104
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

JOSEPH D. PETTA
Attorney
petta@smwlaw.com

July 15, 2026

Via FedEx, Facsimile, and Electronic Mail

Victoria Popescu
City Clerk
City of Brea
1 Civic Center Circle
Brea, CA 92821
victoriap@cityofbrea.gov
cityclerksgroup@cityofbrea.gov

Re: Cease and Desist Demand Regarding Violations of the Ralph M. Brown Act (Gov. Code §§ 54960, 54960.2) – Costco Wholesale Corporation Warehouse Retail Store (APNs 320-221-24, 320-221-25)

Dear Ms. Popescu:

We write on behalf of our client, Brea4All, pursuant to Government Code sections 54960 and 54960.2, regarding violations of the Ralph M. Brown Act, Government Code section 54950 et seq. (“Brown Act”), arising from the City of Brea’s (“City”) consideration and approval of the Economic Development Agreement (“EDA”) with Dwight Manley, for a proposed Costco Wholesale Corporation warehouse retail store, and from the City’s ongoing and future consideration of the proposed development of the former Beckman Coulter campus site that Mr. Manley has purchased at 200-250 S. Kraemer Boulevard. This letter constitutes the cease-and-desist letter required by Government Code section 54960.2(a)(1) as a precondition to an action for declaratory relief regarding the City’s past violations of the Brown Act described below.

I. Unnoticed Meetings of a Majority of Councilmembers Regarding the Manley Site Development

Records produced by the City in response to a California Public Records Act request include a lengthy text message chain between the City’s Community Development Director and Mr. Manley. Several portions of that chain indicate that a majority of the City Council deliberated on, or reached concurrence, regarding the EDA

and related matters outside of any publicly noticed meeting – including through a series of communications relayed by the Director. Among other things, the produced messages state that “Council gave direction to move forward with the incentives . . . Full support.” (Attachment 1 at 23 & 39), that “Everyone gave the thumbs up to move forward . . . Nobody wants homes on the whole site” (Att. 1 at 49-50),” that the Director had “the verbal support from city council” (Att. 1 at 51-52), and that the Director intended to “see what the attorneys support now that we have council support” (Att. 1 at 53). Other portions of the chain suggest the Director may have used a series of one-on-one meetings with individual councilmembers to develop a collective concurrence among a majority of the Council outside a lawfully noticed meeting (Att. 1 at 73).

The Brown Act flatly prohibits this practice. Government Code section 54952.2(b)(1) provides:

A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

Section 54953(a) further requires that “[a]ll meetings of the legislative body of a local agency shall be open and public.” And section 54950 makes clear that “[t]he people of this State do not yield their sovereignty to the agencies which serve them,” and “insist on remaining informed so that they may retain control over the instruments they have created.”

Brea4All demands that, within 30 days of the date of this letter, the City provide an unconditional written commitment to cease and desist from any further violations of this kind, including from any future use of serial communications, whether directly or through the Community Development Director, other City staff, or any other intermediary, to discuss, deliberate, or reach concurrence among a majority of the City Council outside of a duly noticed public meeting regarding the proposed development of the Manley site, including the proposed Costco warehouse store and any associated entitlements, agreements, or environmental review.

II. Improperly Vague Agenda Descriptions

Government Code section 54954.2(a) requires that a legislative body post, at least 72 hours before a regular meeting, an agenda item with a “brief general description of each item of business to be transacted or discussed,” and provides that such a description

“generally need not exceed 20 words.” Although the standard is elastic, the description must still fairly apprise the public of the essential nature of the matter to be considered.

The agenda item the City posted for the December 16, 2025 hearing on the EDA – Item 4.C – described only that the Council would “[c]onduct a public hearing ... to consider adoption of an Economic Development Agreement between the City of Brea and Dwight Manley... for Costco Wholesale Corporation” and “[a]pprove the Agreement.” The description did not disclose that the EDA would require the City to share, over a fifty-year term, the sales and use tax revenue generated by the project, or any other material financial terms of the agreement – information plainly necessary to apprise the public of the essential nature of the matter under consideration.

Additionally, the Public Hearing Notice published November 25, 2025 was misleading and insufficient. It describes consideration of “an economic development subsidy for establishment and operation of a warehouse retail store.” The vague phrasing appears designed to not attract attention and was a wholly inadequate descriptor for what the City of Brea knew to be a plan for the largest Costco store in the State of California.

Brea4All demands that, within 30 days of the date of this letter, the City provide an unconditional written commitment to cease and desist from posting public notices and agenda item descriptions – for any future matter concerning the Manley site development or associated CEQA review – that fail to adequately disclose the essential nature and material terms of the action under consideration, consistent with Government Code section 54954.2(a).

III. Notice of Intent to Seek Further Relief

Pursuant to Government Code section 54960.2, if the City does not provide the unconditional written commitments demanded above within 30 days of the date of this letter, Brea4All reserves the right to commence an action for declaratory relief to determine the applicability of the Brown Act to the City’s past actions described above, and to pursue all other remedies available under law, including recovery of attorneys’ fees and costs pursuant to Government Code section 54960.5.

We reserve the right to supplement this letter with additional demands and identify further violations.

Victoria Popescu
July 15, 2026
Page 4

Please direct any response to my attention at the address above.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to read "J. Petta", with a stylized flourish at the end.

Joseph "Seph" Petta, Attorney

JDP

2093287.3