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County of Alameda

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Nathan Mizell

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

BERKELEY PEOPLE'S ALLIANCE; and
NATHAN MIZELL,

Plaintiffs,

v.

CITY OF BERKELEY; and CITY OF
BERKELEY CITY COUNCIL,

Defendants.

Case No. 24CV064980

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Unlimited Civil Case

1 **INTRODUCTION**

2 1. The California Legislature, through the Ralph M. Brown Act (Gov. Code §54950,
3 *et seq.*), has established how legislative bodies are to conduct the people’s business.

4 2. Among the provisions the Legislature adopted is a section that addresses how to
5 proceed when people interrupt a meeting. Government Code §54957.9 provides that if “any
6 meeting is willfully interrupted by a group or groups of persons so as to render the orderly
7 conduct of such meeting unfeasible and order cannot be restored by the removal of individuals
8 who are willfully interrupting the meeting, the members of the legislative body conducting the
9 meeting may order the meeting room cleared and continue in session.”

10 3. This language provides a two-step process for continuing a meeting where
11 interruptions make “orderly conduct of such meeting unfeasible.” First, an attempt is to be made
12 to restore order “by the removal of individuals who are willfully interrupting the meeting.” That
13 is, there is to be an attempt to determine who is interrupting the meeting and remove only those
14 people. Second, “the members of the legislative body conducting the meeting may order the
15 meeting room cleared and continue in session.” That is, if removal of certain individuals is not
16 sufficient, the room may be entirely cleared as a last resort. The meeting would then continue in
17 the cleared meeting room. Another provision of Government Code §54957.9 allows for
18 readmitting those not responsible for the interruption.

19 4. Government Code §54957.9 is straightforward and unambiguous. The City of
20 Berkeley, however, has shown that it does not like the policy the Legislature has enacted and has
21 repeatedly violated the statute. In particular, on at least three occasions in recent months, the
22 City has simply moved Council meetings to another room without the public present in person
23 rather than remove disruptive individuals or, if necessary, clear the original meeting room.
24 There is no provision of the Brown Act that permits what the City is doing no matter how much
25 the City prefers its solution over the Legislature’s. The City is bound to follow Government
26 Code §54957.9 and cannot substitute another procedure. This lawsuit seeks to compel
27 compliance with the Brown Act and thereby protect the right of the public to be present in person
28 when important legislative decisions are made.

1 **PARTIES**

2 5. Plaintiff Berkeley People’s Alliance is a California non-profit corporation that
3 works in the City of Berkeley for open, transparent, and fair governance; social and economic
4 justice; and an inclusive, diverse city. Members of the Berkeley People’s Alliance live in
5 Berkeley and frequently attend Berkeley City Council meetings.

6 6. Plaintiff Nathan Mizell is a resident of the City of Berkeley. He is a Board
7 Member of Berkeley People’s Alliance and has attended Berkeley City Council meetings. He
8 has paid within the last year and continues to pay sales taxes to the City of Berkeley and has an
9 interest in ensuring that City expenditures are legal and not wasteful.

10 7. Defendant City of Berkeley is a political subdivision of the State of California and
11 a local agency under Government Code §54951 and therefore subject to the Brown Act.

12 8. Defendant City of Berkeley City Council is the legislative body of the City of
13 Berkeley. As a “legislative body” under Government Code §54952, the City Council is subject
14 to the Brown Act.

15 **JURISDICTION AND VENUE**

16 9. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, §10, because jurisdiction is not given to other courts.

18 10. Venue is proper in this Court under Code of Civil Procedure §§394 (actions
19 against a city, county, or local agency) and 395 (actions generally) because Defendants include a
20 city and local agency based in the County of Alameda and because the cause of action alleged in
21 this Complaint arose in the County of Alameda.

22 **FACTUAL ALLEGATIONS**

23 11. The Berkeley City Council is comprised of eight City Councilmembers from
24 geographic districts and a citywide Mayor. The Mayor presides over City Council Meetings.

25 12. On November 21, 2023, the Berkeley City Council held a Special Meeting. At a
26 certain point during the meeting, the Mayor determined that the City Council was unable to
27 conduct business due to disruption from people attending the meeting in person. The Mayor then
28 recessed the meeting, which reconvened in a different room. Members of the press were

1 permitted to attend the reconvened meeting in person, but members of the public were only
2 permitted to attend by video. The City Council did not return to the original meeting room for
3 the remainder of the Special Meeting.

4 13. On November 28, 2023, the Berkeley City Council held a Regular Meeting. At a
5 certain point during the meeting, the Mayor determined that the City Council was unable to
6 conduct business due to disruption from people attending the meeting in person. The Mayor also
7 stated that the level of the disruption and number of people meant the City was unable to restore
8 order by removing the disruptive people. The Mayor then recessed the meeting, which
9 reconvened in a different room. Members of the press were permitted to attend the reconvened
10 meeting in person, but members of the public were only permitted to attend by video. The City
11 Council did not return to the original meeting room for the remainder of the Regular Meeting.

12 14. On January 16, 2024, the Berkeley City Council held a Regular Meeting. At a
13 certain point during the meeting, the Mayor determined that the City Council was unable to
14 conduct business due to disruption from people attending the meeting in person. The Mayor also
15 stated that the level of the disruption and number of people meant the City was unable to safely
16 restore order by removing the disruptive people. The Mayor then recessed the meeting, which
17 reconvened in a different room. Members of the press were permitted to attend the reconvened
18 meeting in person, but members of the public were only permitted to attend by video. The City
19 Council did not return to the original meeting room for the remainder of the Regular Meeting.

20 15. At none of the three meetings identified in the prior three paragraphs was there an
21 attempt to restore order by removing the people who were interrupting the meeting; nor was the
22 meeting room ordered cleared.

23 **LEGAL BACKGROUND**

24 16. Government Code §54957.9 provides as follows:

25 In the event that any meeting is willfully interrupted by a group or groups of
26 persons so as to render the orderly conduct of such meeting unfeasible and order cannot
27 be restored by the removal of individuals who are willfully interrupting the meeting, the
28 members of the legislative body conducting the meeting may order the meeting room

1 cleared and continue in session. Only matters appearing on the agenda may be
2 considered in such a session. Representatives of the press or other news media, except
3 those participating in the disturbance, shall be allowed to attend any session held pursuant
4 to this section. Nothing in this section shall prohibit the legislative body from
5 establishing a procedure for readmitting an individual or individuals not responsible for
6 willfully disturbing the orderly conduct of the meeting.

7 17. Under the plain language of Government Code §54957.9, where interruptions
8 make orderly conduct of a meeting infeasible, the first step is to attempt to restore order by
9 removing only those individuals who are interrupting. If that does not work, “the members of
10 the legislative body conducting the meeting may order the meeting room cleared and continue in
11 session.”

12 18. Government Code §54957.9 provides no other means of resuming a meeting that
13 is interrupted such that its orderly conduct is infeasible than by first attempting to remove the
14 interrupting individuals and then clearing the room and continuing in session. The Legislature
15 has not given legislative bodies the option of simply moving to a different meeting room and
16 avoiding the two steps set forth in Government Code §54957.9. Nor has the Legislature
17 provided that video meetings are an adequate alternative to attending in-person, where members
18 of the public may, among other things, strategize and coordinate, more readily yield time, and
19 make their presence felt.

20 19. Government Code §54960(a) allows “any interested person” to bring a lawsuit
21 over violations of the Brown Act.

22 20. Government Code §54960.2(a)(1) requires that prior to bringing a lawsuit under
23 Government Code §54960(a), the interested person must send a “cease and desist letter”
24 describing the violation of the Brown Act. That letter must be sent within nine months of the
25 violation. Gov. Code §54960.2(a)(2). The legislative body has 30 days to respond to the letter
26 with a commitment to cease and desist. Gov. Code §54960.2(b)-(c). If the legislative body does
27 not make such a commitment, the interested person has 60 days to file a lawsuit. Gov. Code
28 §54960.2(a)(4).

1 **CAUSE OF ACTION**

2 **(Violation of Government Code §54957.9)**

3 21. Plaintiffs reallege and incorporate by reference the allegations contained in the
4 above paragraphs.

5 22. Plaintiffs Berkeley People’s Alliance and Nathan Mizell are each an “interested
6 person” under Government Code §§54960 and 54960.2 and are therefore entitled to enforce the
7 Brown Act through this action.

8 23. Plaintiffs have complied with the requirements of Government Code §§54960 and
9 54960.2 prior to bringing this action. Plaintiffs, through counsel, sent a “cease and desist letter”
10 to the Berkeley City Council care of the City Clerk on January 11, 2024. It has been more than
11 30 days since the receipt of that letter, and there has been no commitment to cease and desist
12 under Government Code §54960.2(b)-(c) – or any response to the letter. Plaintiffs bring this
13 action within 60 days of the expiration of the 30-day time to respond and have therefore
14 complied with Government Code §54960.2(a)(4).

15 24. The Berkeley City Council has violated and will continue to violate Government
16 Code §54957.9. In particular, when meetings have been willfully interrupted so as to make their
17 orderly conduct infeasible, the Berkeley City Council has not first attempted to remove the
18 individuals who are interrupting the meeting and, if that does not work, ordered the meeting
19 room cleared and continue in session. Instead, the Berkeley City Council has been moving to a
20 different meeting room and conducting business without members of the public present.

21 25. The Berkeley City Council’s violations of Government Code §54957.9 cause
22 irreparable harm.

23 26. A controversy exists between the parties that warrants declaratory relief in that
24 Plaintiffs contend that Defendants have violated Government Code §54957.9 and Defendants
25 contend they are following the law.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for the following relief:

28 1. An injunction prohibiting Defendants from violating Government Code §54957.9.

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2. A declaration that Defendants have violated Government Code §54957.9.

3. Attorneys' fees pursuant to Code of Civil Procedure §1021.5 and any other applicable statute or doctrine that entitles Plaintiffs to an award of fees.

4. Costs of suit.

5. Such other and further relief as this Court may deem just and proper.

Dated: February 22, 2024

Jonathan Weissglass
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By: /s/ Jonathan Weissglass
Jonathan Weissglass

Attorney for Plaintiffs