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June 9, 2021

*A Professional Corporation
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VIA EMAIL (kempvaneec4districte@gmail.com)

Jason Kemp Van Ee

Re: Social Media Statements

Dear Mr. Kemp Van Ee:

Statements that you have made online have drawn complaints, and Mayor Ramirez, City Manager Cifuentez, and I requested a meeting with you to discuss the matter. It was our intent to work with you to address the complaints involving inaccurate statements and racial and religious statements.

The City recognizes your First Amendment right to engage in speech and to criticize the City and the City Council. The First Amendment does not, however, protect false statements. Statements that the “city is paying out millions of dollars in lawsuits” and that the City is not requiring developers to “pay to build the parks” are false.

Since 2014, the total paid by the City as a result of tort lawsuits (lawsuits involving an alleged civil wrong, such as personal injury and employee claims) was less than \$1,000,000. Also, in tort cases, the City’s insurance pays the portion of any judgment or settlement that exceeds \$100,000.

With respect to the statement regarding parks, residential developers are required to construct new neighborhood parks or are required to pay park impact fees, which the City utilizes to build new parks or expand existing parks. For example, it is standard for the Planning Commission to impose a condition on new residential subdivision maps that requires a developer to pay park impact fees for every new home built.

Public officials and employees may be subject to discipline for speech that is not protected by the First Amendment. The federal court in *Tindle v. Caudell* (1995) 56 F.3d 966 determined that a police officer who attended a private costume party could be disciplined for his conduct and statements that offended African-American members of his department. The defendant officer claimed that his conduct and statements were protected speech, and the court disagreed. The *Tindle* court identified a two-step process that is utilized to determine whether a public official’s

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or employee's statements are protected: (i) whether the person's speech addresses a matter of public concern; and (ii) if the speech involves a public concern, there is a balancing of the official's or employee's interest in commenting and the interest of the public agency "in promoting efficiency of the public services it performs. . . ."

Some of your online statements are insensitive toward certain racial and religious groups. Assuming that the statements are a matter of public concern (first *Tindle* test), they significantly impact the public services provided by the City. Members of the public are legally entitled to the unbiased consideration of their planning matters (e.g., subdivision maps, conditional use permits, planned unit developments, and variances) by the City. It is important that Planning Commissioners are not biased toward any group, and it is equally critical for the planning and development services performed by the City that members of the Planning Commission not appear biased toward certain racial or religious groups.

It was our intent to work with you discretely to address these matters in a way that respects your speech rights, while also addressing problematic unprotected speech. We remain most willing to meet with you so a reasonable and amicable solution may be reached.

Should you continue to engage in false or offensive unprotected speech, the City Council may consider disciplinary action since Commissioners serve at the will of the Council.

Sincerely,

GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P.

By:


TY N. MIZOTE

TNM/jg

cc: (via email)
Francisco Ramirez, Mayor
Mario Cifuentes, City Manager