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PRACTICE DEDICATED  
 TO LITIGATION AND  
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\*\*\*Please send all Mail to the Philadelphia Office\*\*\*

March 13, 2024

***Via Email and First Class Mail***

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**RE: Sunshine Act Violations**

Dear Councilmembers,

I represent Lynn Landes (“Ms. Landes”), a community activist and dedicated citizen of Philadelphia. I write to advise you of numerous illegal practices that City Council is presently engaged in relating to open meetings laws, and to demand that you, and every Member of City Council, **cease and desist** such illegal practices.

City Council’s violations as to Ms. Landes and others are legion; they include violations of the Pennsylvania Sunshine Act (65 Pa.C.S.A. § 701, *et seq.*), Philadelphia Home Rule Charter (“City Charter”), and Philadelphia City Council’s ***own procedural rules*** (Rules for the Government of the Council of the City of Philadelphia, Resolution No. 200001-A).<sup>1</sup> Examples of these violations are outlined below, although I note that these are but a few of the countless

<sup>1</sup> I also note that some of City Council’s own rules are themselves in violation of the Sunshine Act.

improprieties that City Council is currently engaged in.

To start, I note the express findings and declarations codified in the Pennsylvania Sunshine Act:

(a) Findings.--The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies **is vital to the enhancement and proper functioning of the democratic process** and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

(b) Declarations.--The General Assembly hereby declares it to be the public policy of this Commonwealth **to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon** as provided in this chapter.

65 Pa.C.S.A. § 702 (emphasis added).

Likewise, the City Charter provides that “[b]efore a bill shall be considered by the Council it shall be referred to a committee, **considered at a public hearing . . . and made available to the public**” and that “[t]he meetings of the Council shall **at all times be open and accessible to the public.**” City Charter, § 2-201(2) and § 2-204. City Council’s own governing regulations are also no exception, and they mirror the City Charter’s mandate that all legislation be “considered at a public hearing and a public meeting . . . and made available to the public.” Resolution No. 200001-A(VI)(1).

The Sunshine Act also expressly provides for the right to public participation in such open meetings, and even contemplates a circumstance where time constraints prohibit all interested citizens from being able to speak on a certain topic. Specifically, the Sunshine Act states that:

If the board or council determines that **there is not sufficient time** at a meeting for residents of the political subdivision . . . to comment, the board or council **may defer the comment period** to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.

65 Pa.C.S.A. § 710.1(a) (emphasis added).

Likewise, the Sunshine Act does not allow such public comment to be limited to current issues or agenda items, and it expressly requires the opportunity to comment on matters that **may** be before a certain government body in the future, not just ones presently before that body. *See id.* (“ . . . the board or council of a political subdivision . . . shall provide a reasonable opportunity at each advertised regular meeting . . . for residents of the political subdivision . . . to comment on matters of concern, official action or deliberation **which are or may be** before the board or

council . . .”) (emphasis added).

City Council’s governing regulations are also quite clear on this point, and provide “[a]t the public hearings and public meetings of the Council and its committees **the microphones shall remain open at all times so all persons participating may be heard** by the members of the committee, the public, the media and the recording stenographer.” Resolution No. 200001-A(IV)(2) (emphasis added).

It has nevertheless come to my attention that City Council has engaged in numerous violations of the Sunshine Act for many years up to the present time. My client and others have been the victims of City Council illegally limiting public comments to “agenda items only.” My client has sought to comment on matters of public concern and official action at City Council meetings, and at committee meetings generally, only to be halted by City Council’s illegal censorship policy relating to “agenda items only.” By constraining public comment to “agenda items only,” City Council and its committees are literally censoring the topics on which citizens can comment, in total contradiction to the Sunshine Act’s broad mandate that citizens be given an opportunity to speak on “matters of concern” generally. 65 Pa.C.S.A. § 710.1(a).

There have also been occasions where my client, and presumably others, have sought to publicly comment at City Council meetings and at committee meetings, but have been refused permission to speak. For instance, City Council improperly ended public comment on a controversial resolution relating to the ongoing hostilities in Israel in October of last year, despite additional citizens wishing comment on this topic. This resolution ultimately “passed,” although I note it is *prima facie* invalid, as it was enacted in violation of the foregoing open meetings laws.

Moreover, the Sunshine Act requires “regular” meetings, a mandate which many City Council committees do not abide by. *See* 65 Pa.C.S.A. § 709. While the Sunshine Act does not explicitly define the numerical frequency in which such meetings must be conducted, clearly, the rarity of certain City Council committee meetings is violative of this provision. For example, the Public Health Committee only met twice in 2022 and only once in 2023. The irregular frequency with which these meetings are conducted has prevented Philadelphians from observing, commenting, and lobbying the operations of their government, in clear derogation of the Sunshine Act’s stated policy goals.<sup>2</sup>

Certain other City Council procedures are also in violation of the spirit and intent of the Sunshine Act and therefore substantially diminish the access to, distribution, impact, and/or effectiveness of public comments. First, the public has not been notified that they may submit written or printed “public comments” in lieu of, or in addition to, appearing in-person.<sup>3</sup> Second,

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<sup>2</sup> In addition, the Chair of the Public Health Committee has created a superficial requirement (without any basis in law) by refusing to hold a hearing, which my client and her colleague have requested, unless my client could get at least one other councilmember to endorse a resolution calling for such a meeting.

<sup>3</sup> Allowing such written comments in advance would also assist in accommodating individuals with disabilities in their participation in City Council meetings, in furtherance of the goals of federal statutes like the Americans with Disabilities Act. *See, e.g.*, 42 U.S.C. § 12101, *et seq.*

public commenters who timely sign up in person before the Public Comment period begins during City Council meetings are not being asked to give any contact information, making it difficult, if not impossible, for city officials, the press, and the public to contact them, in violation of City Council's own rules.<sup>4</sup>

Further, City Council has selectively enforced its "three minute" rule in regards to public comment at these meetings. While we are not disputing the propriety of a three minute limitation to public comments generally, and the Sunshine Act is silent on this issue, any application of this rule must be consistent. Frequently, at more crowded meetings, the public gets only two minutes for public comment, sometimes less, and in the case of the aforementioned October 19, 2023 City Council meeting, public comments were restricted to ninety seconds. There appears to be no consistent application of this rule at all.<sup>5</sup>

Let me be clear: **you have absolutely no basis** to selectively impose non-uniform time constraints on a citizen's public comment, prematurely end such public comment period due to the volume of potential comments, or limit public comment to "agenda items only." This is **expressly prohibited** by the Sunshine Act, and the proper legal remedy to an excessive volume of comments is to **defer** such comments to a later meeting, **not** to silence these citizens and prohibit them from participating in the democratic process.<sup>6</sup> See 65 Pa.C.S.A. § 710.1(a).

In addition to the substantive violations outlined above relating to the public's right to comment, it is also my understanding City Council has routinely violated the procedural mechanisms through which public notice is to be given on the topics to be discussed at such open meetings. The Sunshine Act, Philadelphia Code, and City Council's own regulations provide stringent requirements for how public notice is to be given in advance of such open meetings. See, e.g., 65 Pa.C.S.A. § 709; Phila. Code § 21-1701; Resolution No. 200001-A(IV)(2).

It is clear that City Council's standard practice of passing a resolution at the beginning of each public meeting that adds to the agenda numerous "***matters that may arise during the course of today's session***" is violative of the above provisions as, in reality, these agenda items generally do not organically "arise during the course of" City Council sessions, but instead are prepared bills and resolutions and therefore should be published on the agenda in the normal manner.

As a result of this practice, the public is not provided with adequate notice of many of the resolutions or topics to be discussed at each meeting. Contrary to the Sunshine Act's exceptions

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<sup>4</sup> See Resolution No. 200001-A(XVI)(3) ("Before providing comment, a resident or taxpayer shall state his or her name, address, and, if not a resident of the City, state that he or she is a Philadelphia taxpayer.").

<sup>5</sup> As discussed, the Sunshine Act expressly states that the remedy for a large volume of public comments is to "defer the comment period to the next regular meeting or to a special meeting[.]" but **not** to silence these speakers prematurely. See 65 Pa.C.S.A. § 710.1(a).

<sup>6</sup> Of course, none of the foregoing expresses any personal opinion on any of the topics or resolutions discussed at these public hearings. This letter is rather intended to address the numerous procedural violations that City Council is engaged in that limit citizens' right to be heard, regardless of the specific positions taken by those citizens.

for emergencies, *de minimis* actions, and matters that may truly arise during a meeting, City Council's "matters" do not qualify as exceptions generally, and may be "substantive" in nature, according to Council Rules. City Council cannot evade the procedural notice requirements cited *supra* in this manner.<sup>7</sup> It should also be emphasized that City Councilmembers have historically and routinely submitted large numbers of recognitions and honorifics, which have been the subject of repeated public criticism for undermining a business-like atmosphere at City Council meetings, taking up valuable time particularly during public comment periods, and unnecessarily lengthening the duration of meetings.<sup>8</sup>

Further, it has been reported that beginning sometime in 2021, City Council began retroactively amending their original published agendas without comment or notice. It is my understanding that this practice continues to this day. For example, the agenda for the aforementioned January 25th City Council meeting contained only one agenda item. However, after that meeting concluded, the "original" agenda was amended. The link to this agenda on City Council's online calendar now includes six additional agenda items, without any indication that such agenda has been retroactively modified. This practice misinforms the public as to the "original" agenda items, and may even be in violation of record retention laws.<sup>9</sup>

I would like to note that the Sunshine Act expressly prohibits administrative bodies from making rules or regulations that "violate the intent" of this statute. 65 Pa.C.S.A. § 710. As the declared legislative intent of § 702 is quite sweeping, it is clear City Council's formal and informal practices have been violating open meetings laws for quite some time.

My client has repeatedly brought violations of the Sunshine Act to City Council's attention, and has protested these violations numerous times and in various ways thereafter. These include, but are not limited to, through her public comments during at least eight separate City Council meeting, through direct communications with various city councilmembers, as well as her communications with Director of Communications Vincent Thompson, and through a December 5, 2023 "letter to the editor" in the Philadelphia Inquirer.<sup>10</sup>

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<sup>7</sup> These violations reached epic proportions at the January 25, 2024 City Council meeting where there was only *one* item on the official agenda, but a reported *sixty-seven* resolutions and/or bills were offered and/or passed, as well as five communications from the Mayor.

<sup>8</sup> City Council could very easily reduce time spent on public comments by scheduling a separate City Council meeting for recognitions and other honorifics, which historically have been controversial. *See, e.g.,* Marin & Blumgart, *Is Philly City Council doing a good job? We analyzed 15k bills to find out, WHY?* (Nov. 21, 2019), available at <https://why.org/articles/philly-city-council-15000-bills-analysis-municipal-legislation/>; *see also* Tricia Nadolny, *Should City Council Resolve to Shelve Resolutions?*, The Philadelphia Inquirer (Nov. 6, 2016), available at [https://www.inquirer.com/philly/news/politics/20161106\\_Should\\_Council\\_resolve\\_to\\_shelve\\_the\\_resolutions.html](https://www.inquirer.com/philly/news/politics/20161106_Should_Council_resolve_to_shelve_the_resolutions.html).

<sup>9</sup> *See e.g.,* City Charter, § 2-106 ("The provisions of this charter on . . . and *the creation, maintenance, retention and disposition of records*, shall apply to the Council . . .).

<sup>10</sup> *See* Letter to the Editors, Philadelphia Inquirer (Dec. 5, 2023), available at <https://www.inquirer.com/opinion/letters/letters-editor-december-5-2023-20231205.html>.

Notably, there are consequences for violations of the Sunshine Act, such as allowing any interested citizen to bring suit to **void** any official action or legislation that takes place in violation of this statute. *See* 65 Pa.C.S.A. § 713. A prevailing party in such suit is also entitled to attorney's fees and costs of litigation. *Id.* at § 714.1. There are also criminal and monetary penalties for any individuals who knowingly violate the Sunshine Act. *See id.* at § 714.

Please be advised, **each of you, in your official capacity as Members of City Council, are now on notice of your violations of the Sunshine Act.** As such, if you engage in continued violations, you are doing so **knowingly and willingly**, and thus exposing yourself to penalties for your intentional efforts to deprive Philadelphians of their civic rights. Any future violations of the Sunshine Act also risk voiding any official actions taken at meetings that were non-compliant pursuant to *Id.* § 713.

If you do not rectify the foregoing violations, we will be forced to institute suit to compel your compliance with the Sunshine Act and other laws.<sup>11</sup> This suit will, in addition to potentially voiding any unlawful official actions, seek attorney's fees and costs as authorized by the foregoing statutes. As this letter provides unambiguous notice of City Council's illegal practices, any future violations will clearly be willful and wanton.

I am available to discuss this matter should you so choose.

Sincerely,

**BOCHETTO & LENTZ, P.C.**

By: /s/ George Bochetto  
George Bochetto, Esquire

Cc: City Council of Philadelphia  
Mayor Cherrille Parker  
Vincent Thompson (*via email only*)  
Client (*via email only*)  
Ryan T. Kirk, Esquire (*via email only*)

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<sup>11</sup> I note that this will not be the first time that City Council's practices will be judicially rebuked for their blatant violations of the Sunshine Act. *See Alekseev v. City Council of City of Phila.*, 8 A.3d 311, 315 (Pa. 2010) (finding that "[c]ontrary to Council's position, there simply is no authorization in the Act, actual or fairly implied, for delegation of the obligation to entertain public comment to some body other than a board or council.").