

May 18, 2020

Jeffrey Melching, City Attorney
City of Irvine
1 Civic Center Plaza
Irvine, CA 92606

Dear Mr. Melching:

I write to call your attention to substantial violations of a central provision of the Ralph M. Brown Act and Article I, Section 3 of the California Constitution, and of the City of Irvine Municipal Code, which may jeopardize the finality of action taken by Irvine City Council in its May 12, 2020 meeting.

During its meeting of May 12, 2020 Irvine City Council took action to authorize a contract and allocation of up to \$200k to US Health Fairs for the purpose of COVID-19 antigen and antibody testing for Irvine residents. This action was not itemized on the agenda for that meeting, but rather was included only as errata to the supplemental staff report under Agenda Item 5.1., with the only actions posted publicly as “receive and file.”

Since there was no finding of fact by Irvine City Council that urgent action was necessary on a matter unforeseen at the time the agenda was posted, voting on and authorizing the use of City funds on an item that was not publicly noticed violated the state’s open meetings requirements. It is incumbent upon the Irvine City Council to explain to Irvine residents why including authorization of an agreement was listed as “errata” on the agenda instead of as a separate motion.

In addition the information presented in the errata item did not represent the scope of work or the terms and conditions that the Council voted on during the meeting. Consequently residents were not notified in advance of the contract that was being recommended. In fact discussion during the meeting made evident that council members themselves did not know the terms and conditions for the contract, how much money was to be spent on this contract, the number of tests that were to be made available per day, or how resident reimbursement for antibody testing was to be implemented.

Furthermore the US Health Fairs contract violated Irvine Municipal Code Title 2, Division 8, Section 2.8.105, (in accordance with Ord. No. 96-01, § 6, 1-9-96.) While the contract was for more than \$10k, no invitation to bid was posted; there was no competitive process; and no substantiated sole source condition was offered. Irvine residents expect their elected officials to uphold the City’s code

and ordinances. Offering a contract without regard to City code is an abuse of power and irresponsible allocation of funds.

This contract authorizes use of public funds without notice to the affected residents. However there was no information shared to the affected residents justifying the selection of antigen testing, which only gained FDA experimental approval on May 8, 2020, coincidentally the day that the errata for Agenda Item 5.1 was filed. The Centers for Disease Control wrote on May 9, 2020, that the antigen test has a high rate of false negatives and should be used for screening purposes and **not** diagnostic purposes. Irvine residents have a right to know why the City chose this test instead of the more reliable, diagnostic PCR test. City residents also have a right to know if this FDA experimentally-approved screening test is included as a covered cost for COVID-19 testing and treatment; how much this Out of Network Provider will be charging their carriers; whether a diagnostic test is typically covered after screening as the standard of care; and what recourse an uninsured Irvine resident has should their screening test show positive for COVID-19. These are concerns that our Irvine residents have a right to know before they agree to be tested. Yet none of this information was posted with the agenda packet or discussed during the May 12, 2020 meeting. Had Irvine residents been noticed that City Council would be voting on a motion, they might have been able to ask those questions.

Finally, Mayor Shea's recognition of the work that Councilmember Carroll had done on this endeavor calls into question whether Councilmember Carroll reached out to a specific business in lieu of opening a bidding process. This selectivity means that Irvine residents are not assured that the selected contractor is truly the best vendor of services. No information has been shared about the contractor's financial circumstances and outlook, how long they have been in business, or their previous contract experience. Upon further research it appears that US Health Fairs was established as a 501(c)3 less than two years ago. Irvine City Council has a fiduciary obligation to Irvine residents to ensure that the City's contractual partners are solvent and that they are the best suited to deliver the requisitioned services. Absent any evidence of a competitive bidding process, these questions remain unanswered and as a result the public's trust in their elected officials is abused.

These violations of open meetings requirements and of the City's municipal code are stark and shocking and, should there be no correction, present a troubling precedent for future City Council meetings. I therefore demand the following:

1. Withdraw from any formal or informal agreement with US Health Fair.
2. Negotiate a new contract through competitive bid or sole source substantiation.

3. Post a full contract, complete with scope of work and terms and conditions at least 72 hours in advance of the City Council meeting during which the agreement will be discussed.
4. Produce records of all communication from Councilmember Carroll to any businesses, elected officials, or individuals regarding securing testing services for City residents.
5. Produce records of all communication from staff or representatives of US Health Fairs to any and all City of Irvine elected officials and/or staff.
6. Provide evidence of any competitive bidding for this contracting of Irvine resident COVID-19 testing that led to the selection of US Health Fairs.

Pursuant to Government Code Section Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action in accordance with items 1, 2, and 3, above, or inform me of your decision not to do so. Pursuant to Government Code Section 6253(c) you have 10 days from receipt of this demand to identify the public records that exist to satisfy items 4 through 6, above.

Sincerely,

Robin Gurien, Irvine resident