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San Diego City Council
District 1

For Immediate Release

August 6, 2020

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Councilmember Bry Statement That No Additional Taxpayer Money Be Spent on 101 Ash Street Building

San Diego — City Council votes 5 to 4 to spend more money over my objections and recommendations for solutions.

It is now clear that this transaction, approved before I joined the City Council, was a product of mismanagement, incompetence, a lack of transparency, and perhaps worse. And it's an affront to the taxpayers to hire still more consultants to come up with yet another plan to pour even more millions of good money after bad.

The recommendation to return to City Council in the Fall, with further refined construction schedules, while continuing to pay \$18,000 a day for a vacant building – is another affront to taxpayers.

It is no secret to any of you that I began to suspect we were not being told the truth a few years ago. But one thing was crystal clear on the day the City Council moved to approve the purchase. Right there, on page one of the contract. The City agrees to fully indemnify the seller.

There are three possibilities: nobody read it, nobody understood it, or nobody cared. As a taxpayer I don't know which one is worse.

Let's be clear. Normal language, state law, and the City's common practice requires the exact opposite: that all potential hazards be identified and disclosed by and at risk to the seller.

As a businesswoman who has been involved in numerous real estate transactions, I can tell you with assurance that business deals are frequently re-negotiated, regardless of the original provisions of the contract.

In fact, public agency leases are particularly perilous for landlords because legislative bodies cannot bind their successors to a continuing appropriation. Every landlord leasing to government knows this. Many such leases contain the language cited by the IBA report. And landlords leasing to public agencies know the language is entirely unenforceable. It is, at best, an expression of good faith.

Before I make a recommendation on how we should proceed, I have some questions for the City Attorney; questions that I request be answered in writing.

1. Did you review and approve the lease/purchase agreement presented to the City Council?
2. Did you advise the City Council on the unusual indemnity language in the lease/purchase agreement that relieves the sellers of all future liability?
3. Did you advise the City Council on the consequences of accepting the blanket indemnity language?
4. Who filled out the Section 225 form that requires disclosure of all individuals and entities who have a financial interest in the transaction?
5. On what date was the 225 filled out, and was it ever provided to the public or the City Council?
6. What names are listed on the 225 form?
7. Do you now accept the conclusion of the independent forensic report that the terms of the lease agreement were, in fact, "disproportionately unfavorable to the City, on the specific issue of the exculpatory provisions in favor of (sellers)."

I look forward to receiving those answers by Monday.

Now, addressing my fellow Councilmembers. The folks making these recommendations today have put us in a hole. That's true. But any businessperson will tell you that when you are in a hole, the first step to getting out of the hole to stop digging.

This won't be easy. But this is fixable.

We need to start by taking the following actions, which I put in the form of a substitute motion that was rejected by Council President Gomez:

1. Exclude from participation any and all of the parties involved in advising the City on the original transaction.
2. Direct that no additional taxpayer money be spent on this building.
3. Request a meeting with the landlord at which we make it clear that, if necessary, the City will begin depositing lease payments into an escrow account until we can arrive at a reasonable lease modification or we make the decision to terminate the agreement.

I voted NO to committing one more tax dollar to 101 Ash Street Building.

Council President Pro Tem Barbara Bry represents San Diego City Council District 1, which includes the communities of Carmel Valley, Del Mar Heights, Del Mar Mesa, La Jolla, Pacific Highlands Ranch, Torrey Hills, Torrey Pines, and University City.

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