

September 29, 2021

The Honorable Carol Dutra-Vernaci

via email

Mayor of Union City

Union City – City Hall

34009 Alvarado-Niles Road

Union City, CA 94587

Ms. Joan Malloy

City Manager

Union City – City Hall

34009 Alvarado-Niles Road

Union City, CA 94587

Mr. Mark Evanoff

Deputy City Manager

Union City – City Hall

34009 Alvarado-Niles Road

Union City, CA 94587

Chief Jared Rinetti

Union City Chief of Police

Union City – City Hall

34009 Alvarado-Niles Road

Union City, CA 94587

Deputy Fire Marshal Stan Fernandez

Alameda County Fire Department

6363 Clark Ave

Dublin, CA 94568

Mr. Mark Camfield

Public Works Superintendent

Union City – City Hall

34009 Alvarado-Niles Road

Union City, CA 94587

Ms. Anna Brown

City Clerk

Union City – City Hall

34009 Alvarado-Niles Road

Union City, CA 94587

RE: Our Client: American Promotional Events, Inc. (TNT Fireworks)

SUBJECT: Request for Summaries, Correspondence, Notes, Emails, Text Messages and Other Administrative Records as well as Fireworks-

Related Citations, Arrests and/or Prosecution Records; Fireworks-Related Fire Incident and Injury Reports; and General Law Enforcement and Fire Protection Protocol and Data Pursuant to the California Public Records Act (CPRA) and the Ralph M. Brown Act (Brown Act)

Ladies and Gentlemen:

As I believe most, if not all, of you are aware, since 1989 Revell Communications has served as the public relations/public affairs representative for American Promotional Events, Inc. (TNT Fireworks), the state's leading wholesale distributor of State Fire Marshal-Approved, Safe and Sane Fireworks. We assist TNT Fireworks with its community liaison activities as well as with the development and implementation of both local and statewide Fireworks Safety & Education Programs that it coordinates and/or underwrites in conjunction with local and state fire departments and law enforcement agencies. We also assist our client as well as the State of California and many local communities with the collection, tabulation and analysis of local fire and injury data as it relates to illegal, state-approved and unknown fireworks and act as a resource library for those same entities on emerging enforcement and public education techniques throughout the country as we all battle with the growing, menacing problem of illegal fireworks.

At the August 10, 2021, City Council meeting, Deputy City Manager, Mark Evanoff, presented an 8-page staff report entitled, "Receive Information and Provide Direction Regarding Fireworks Regulations and Potential Options Related to Same" (Please see attached Exhibit A) as well as a 30-page Power Point Presentation entitled, "Fireworks Overview - August 10, 2021" (Please see Exhibit B attached hereto).

On or about September 15, 2021, City Manager, Joan Malloy issued an email addressed to "Dear Union City Community Members" inviting the recipients to watch and participate in a City delivered and sponsored webinar on Thursday, September 23, 2021 at 6:00 pm entitled, "Fireworks Safety in Union City: A Discussion of Potential Policies" (Please see Exhibit C attached hereto). Participants/panelists for this webinar included City Manager Joan Malloy, Deputy City Manager Mark Evanoff, Union City Police Chief Jared Rinetti and Union City Public Works Superintendent Mark Camfield. During the above-mentioned September 23, 2021, City-sponsored webinar, Deputy City Manager Mark Evanoff gave an amended and shortened version of the Power Point Presentation he presented at the August 10, 2021, City Council meeting.

It is our understanding that on or before September 20, 2021, City Manager Malloy, in consultation with Mayor Dutra-Vernaci, commissioned Godbe Research to conduct an opinion poll beginning on Monday, September 20, 2021, reportedly to “provide important information for the Council to consider prior to the Council taking action on amendments to the fireworks ordinance later this fall”. Attached hereto at Exhibit D please find a screen capture of virtually all 12 pages of what we understand to be the survey questionnaire that a projected 500 Union City residents would be requested to respond to.

In the interest of providing the Union City-City Council and the constituents it represents, along with the Union City nonprofit organizations and their members who would like to continue to sell State-Approved Fireworks each 4th of July as a way of funding their critical programs in their community, with as complete and accurate assessment of the situation as possible; the purpose of this correspondence is to respectfully request that all of the departments of and for the City of Union City and their employees and/or agents, and most particularly the individuals to whom this records request is addressed to, pursuant to the California Public Records Act (CPRA) (California Government Code Section 6250, et seq.); the Ralph M. Brown Act (Brown Act) (California Government Code Section 54950, et seq.); and all other relevant local and state statutes and regulations, provide us an opportunity to inspect and/or copy all of the following documents and materials:

Preface: In responding to Request 1 through Request 22 below, inclusive, please be advised that the individuals to whom this Records Request is addressed as well as your department, agency and/or staff members are being requested to produce any and all records, reports, notations, memoranda, internal memos, interoffice memoranda, directives, papers, documents, e-mails, social media, photographs, text messages, electronic messages, instant messages, books, letters, notes, typed materials, memorandum of telephone conversations, multi-media presentations, Power Point Presentations, Zoom or other webinar video footage or audio recordings/transcriptions/notes, raw video footage, reports, records, and any and all other writings, records and/or correspondence relating to the requests listed below. These materials should include, without limitation, unless exempt by an express provision of law, all file copies prepared in connection with such writings, in written, electronic or any other form, whether used or not. For the purposes of the following 22 requests, the term “Records” shall include, but not be limited to, all of the above.

SECTION ONE

- Subject:** As is discussed above, at the August 10, 2021, Union City – City Council meeting, Deputy City Manager, Mark Evanoff, presented a written staff report, Power Point Presentation and oral testimony as well as responded to questions from City Councilmembers on the subject of fireworks. Furthermore, Mayor Dutra-Vernaci commented that she had had conversations with other elected individuals in other cities and expounded upon those conversations to those watching the Zoom Presentation of the City Council meeting as well as to her fellow Councilmembers. The subject matter of this request seeks to identify information contained in, relied upon and/or included or excluded from Mr. Evanoff’s written staff report, Power Point Presentation and/or oral testimony for the fireworks matter on the August 10, 2021, City Council agenda as well as the comments made by Mayor Dutra-Vernaci and Mr. Evanoff as it relates to their conversations with elected representatives and/or staff members in other jurisdictions regarding this matter.
- Request #1:** All “Records” that were collected, gathered, and/or obtained that were reviewed and relied upon and/or used, in whole or in part, in developing the attached staff report at Exhibit A and the Power Point Presentation at Exhibit B.
- Request #2:** All “Records” that were collected, gathered, and/or obtained that were reviewed but not relied upon and were excluded from use or inclusion, in whole or in part, to produce Mark Evanoff’s staff report (Exhibit A), and/or Power Point Presentation (Exhibit B) and/or his oral testimony on the fireworks matter on August 10, 2021.
- Request #3:** All “Records” that support statements made by Mark Evanoff and/or Mayor Dutra-Vernaci regarding their respective purported communications with elected representatives and/or staff personnel in other jurisdictions, both in the Bay Area as well as in the City of Salinas, CA
- Request #4:** Copies of any and all “Records”, particularly, but not limited to, memoranda, emails, directives, correspondence, text messages and/or reports maintained by or

originating from or received by the addressees of this CPRA request and/or any of the Departments of and for the City of Union City and their employees and/or agents with respect to the purpose, content, timeline and community input to be conducted as part of Mark Evanoff's staff report (Exhibit A), Power Point Presentation (Exhibit B) and/or oral testimony on August 10, 2021.

SECTION TWO

Subject: As is discussed above, on or about September 15, 2021, City Manager Joan Malloy issued an email inviting the recipients to watch and participate in a city delivered and sponsored webinar on Thursday, September 23, 2021. The subject matter of this request is to seek and identify information contained in, relied upon and/or included or excluded from Ms. Malloy's written invitation to "Union City Community Members" (Exhibit C).

Request #5: All "Records" that were collected, gathered, and/or obtained that were reviewed and relied upon and/or used, in whole or in part, in developing Exhibit C attached hereto.

Request #6: All "Records" that were collected, gathered, and/or obtained that were reviewed but not relied upon and were excluded from use or inclusion, in whole or in part, to produce Exhibit C attached hereto.

Request #7: Copies of any and all "Records", particularly, but not limited to, memoranda, emails, directives, correspondence, text messages and/or reports maintained by or originating from or received by the addresses of this CPRA request and/or any of the Departments of and for the City of Union City and their employees and/or agents with respect to the purpose, content, timeline and community communication that materialized as Exhibit C and the September 23, 2021 webinar.

SECTION THREE

Subject: As is discussed above, on or about September 23, 2021, City of Union City delivered and sponsored a webinar entitled, “Fireworks Safety in Union City: A Discussion of Potential Policies”. The subject matter of this request seeks to identify information contained in, relied upon and/or included or excluded from City Manager Malloy’s and Mr. Evanoff’s presentations, comments, Power Point Presentation and responses to questions on the fireworks matter during and after the webinar.

Request #8: All “Records” that were collected, gathered, and/or obtained that were reviewed and relied upon and/or used, in whole or in part, in developing the Power Point Presentation made by Mr. Evanoff at the September 23, 2021, City-sponsored webinar.

Request #9: All “Records” that were collected, gathered, and/or obtained that were reviewed but not relied upon and were excluded from use or inclusion, in whole or in part, to produce Mr. Evanoff’s Power Point Presentation and his oral testimony on the fireworks matter during the September 23, 2021, City-sponsored webinar.

Request #10: Copies of any and all “Records”, particularly, but not limited to, memoranda, emails, directives, correspondence, text messages and/or reports maintained by or originating from or received by the addressees of this CPRA request and/or any of the Departments of and for the City of Union City and their employees and/or agents with respect to the purpose, content, and goals of this City-sponsored webinar on September 23, 2021.

SECTION FOUR

Subject: As is discussed above, it is our understanding that on or before September 20, 2021 City Manager Malloy, in consultation with Mayor Dutra-Vernaci, commissioned Godbe Research to conduct an opinion poll beginning on or about Monday, September 20, 2021 and extending for seven to ten days thereafter, reportedly to “provide

important information for the Council to consider prior to the Council taking action on amendments to the fireworks ordinance later this fall”. The subject matter of this request is to seek and identify information to secure a bid from Godbe Research as well as to subsequently aide Godbe Research in the development of its survey questionnaire (Exhibit D). Requests #11 through #13, inclusive, covers “Records” through and including the date of your final response to this “Records” request.

Request #11: Any and all “Records” that were collected, gathered, and/or provided to Godbe Research and/or its authorized representatives or agents to be relied upon and/or used, in the preparation of a bid to develop a community survey as well as the survey questions themselves.

Request #12: All “Records” that were requested by Godbe Research and/or its agents in an effort to prepare its survey bid and ultimately its survey questions. (Exhibit D)

Request #13: Copies of any and all “Records”, particularly, but not limited to, memoranda, emails, directives, correspondence, text messages and/or reports maintained by or originating from or received by the addressees of this CPRA request and/or any of the Departments of and for the City of Union City and their employees and/or agents with respect to the purpose, content, timeline, goals and results of the Godbe Research survey. (Exhibit D)

SECTION FIVE

Subject: **Fireworks-related calls for service, incidents, citations, arrests, responses to or lack thereof for calls for service and/or prosecution records, summaries and other administrative records for the years 2017 through 2021, inclusive.**

Request #14: Copies of any and all of your local agency (both Police and Fire Department) calls for service, incidents, citations, arrests, responses to or lack thereof for calls

for service and/or prosecution “Records”, summaries and other administrative “Records” for the years 2017 through 2021, inclusive, relating to all fireworks-caused complaints, fires and/or injuries within all areas within the City of Union City’s jurisdiction. These reports should include all reports related to dangerous/illegal fireworks, State-Approved Fireworks (Safe and Sane Fireworks) and unknown fireworks.

Request #15: Copies of any and all “Records”, summaries, reports and/or studies prepared on fireworks-related complaints, injuries and/or fires which relied upon materials, records and/or information requested in Request 14 above.

Request #16: Copies of any and all “Records”, summaries, reports, and/or studies prepared on the number of seizures, arrests, citations and/or complaints for the use, sale and/or possession of dangerous/illegal fireworks and/or State-Approved Fireworks (Safe and Sane Fireworks) within the City of Union City for the period of 2017 through 2021, inclusive. While we realize individual criminal arrest complaints or reports may be privileged, we are simply asking for copies of the reports and/or those records that may have summarized this illegal activity in the City of Union City and the Police and/or Fire Departments’ response to it.

Request #17: Copies of any and all summaries, reports, memoranda, emails, correspondence and/or “Records” within the Union City Police and/or Fire Departments that contain or could produce (via computer tabulation) the following information for the City of Union City for each day, and only those days, within the years 2017 through 2021, inclusive, that there was a fireworks-related call for service or fireworks-related incident, fire and/or injury:

1. Total number of calls for service on each day that there was a fireworks-related call for service, incident, fire and/or injury;
2. Total number of calls regarding the use of illegal fireworks on each day that there was a fireworks-related call for service, incident, fire and/or injury;
3. Total number of calls regarding the use of State-Approved Fireworks on each day that there was a fireworks-related call for service, incident, fire and/or injury;

4. Total number of calls regarding the use of M-80's and other federally banned illegal explosives on each day that there was a fireworks-related call for service, incident, fire and/or injury;
5. Total number of police officers and fire department personnel that were on duty and deployed in the field or at a fire station at the time each firework-related call for service was received.

Request #18: Copies of any and all "Records", particularly, but not limited to, memoranda, emails, directives, correspondence, text messages, and/or reports maintained by or originating from the Union City Police and/or Fire Departments which delineate and/or discuss the respective department's efforts to patrol and protect the City of Union City against the discharge of any fireworks in the years 2017 through 2021, inclusive and, more specifically, whether how those areas patrolled and the level of personnel utilized or deployed have increased, decreased or remained the same in the years 2017 through 2021, inclusive.

Request #19: All "Records" that would provide specific guidance and direction to sworn and non-sworn employees and officers of the Union City Fire Department and Union City Police Department for the years 2017 through the date of your final responses to this public records request, inclusive, as to how to handle and respond to calls regarding illegal fireworks and, more particularly, what activities, call volumes, other calls for service would preclude responding, citing, and/or confiscating illegal fireworks and what threat to fire and/or officer safety there would have to be to prevent responding, citing, confiscating and/or arresting an individual(s) for possession and use of illegal fireworks.

Request #20: Copies of any and all summaries, reports, "Records", interoffice memoranda, correspondence, text messages, and/or emails from January 1, 2017 through and including the date of your final response to this public records request, which are maintained by or have originated from the Office of the City Manager, the Union City Fire Department, the Union City Police Department or the Office of the Mayor regarding the possible and/or actual prosecution of any individuals on criminal charges for the sale, possession and/or use of dangerous/illegal fireworks, State-Approved Fireworks (Safe and Sane) and/or unknown fireworks; and/or the levying of any administrative sanctions or fines pursuant to a local ordinance for the sale, possession and/or use of dangerous/illegal fireworks, State-Approved Fireworks (Safe and Sane) and/or unknown fireworks within the City of Union City.

SECTION SIX

Subject: Effective January 1, 2008, Sections 12551, 12552, 12700, 12702, and 12726 of the California Health and Safety Code were amended and Sections 12556, 12557, 12703, 12704, 12706, 12727, and 12728 were added to the California Health and Safety Code Section relating to fireworks. These amendments

and new sections are more commonly referred to as “SB 839”. Among other things, SB 839 codified and authorized a local jurisdiction to develop and adopt a streamlined enforcement and administrative fine procedure related to the possession of 25 pounds or less of dangerous, illegal fireworks, as well as the misuse of State-Approved (Safe and Sane) Fireworks outside the confines of a jurisdiction’s local ordinance.

Request #21: All “Records” that set forth, in detail, how, where and when the Union City Fire and/or Police Departments and/or anyone acting on their behalf, encouraged, requested and/or took any significant action to insure that the enforcement and administrative fine procedures set forth in the Union City Municipal Code should be actively used to try to curtail, suppress and/or impact the use and/or possession of dangerous/illegal fireworks and/or unknown fireworks in the City of Union City for the years 2017 through 2021, inclusive.

Request #22: All “Records” which set forth the numbers of seizures, confiscations, arrests and/or administrative fine citations for the use, sale and/or possession of dangerous illegal fireworks within the City of Union City for the years 2017 through 2021, inclusive, and, with respect to the administrative fines issued, how many were collected, what happened to those uncollected citations, and where these administrative fines funds were deposited and credited within the City budget and finance structure.

The requests enumerated above have been narrowly construed, as much as possible, so as to not impose any undue burden on the City with the exemptions included in the California Public Records Act in mind. Any perceived ambiguities in a request should be construed in favor of being inclusive rather than exclusive.

The terms utilized that are defined by the California Public Records Act should be given their full meaning. Thus, for example, a request for any “writing” includes a request for “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols or combinations thereof, in any records thereby created, regardless of the manner in which the record is stored” (California Government Codes Section 6252)(g). This also includes any “writings” (including any text messages) on personal computers, telephones, cellular phones, social media, etc., in which City of Union City business was conducted and in which “writings” within the definition of this request are stored.

This request reasonably describes identifiable records, or information produced therefrom, and we believe there’s no express provision of law exempting these records from disclosure. Accordingly, pursuant to Government Code Section 6257, we ask that you make these records “promptly available” to us (or our representative) based upon our payment of “fees covering direct costs of duplication or statutory fees, if applicable”.

To the extent that a portion of the information we have requested is exempt by express provision of law, Government Code Section 6257 additionally requires you to segregate and delete that material so that the remainder of the information may be provided to us to satisfy our requests.

In any case, if you determine that an express provision of law exempts from disclosure all or any portion of the materials we have requested, Government Code Section 6256 requires a determination and notification to us of “the reasons therefore” no later than ten (10) days from your receipt of this request. Government Code Section 6256.2 prohibits the use of the ten (10) day period, or any provision of the California Public Records Act, “to delay access for purposes of inspecting public records” and requires that you provide us with “names and titles or positions of each person responsible for the denial”.

The California Public Records Act requires the city to “reveal the general nature of the documents withheld,” and to “set forth the names and titles or positions of each person responsible for the denial.” (California Government Code Section 6253(d)). We respectfully emphasize our request for a specific response and all applicable exemptions to the request (California Government Code Section 6255(a)). A blanket list of exemptions that may or may not apply to the request coupled with the failure to indicate the existence of the documents responsive to the request denies us the ability to evaluate whether the City has justifiably withheld responsive documents. Denying us this opportunity frustrates the Legislature’s primary purpose in enacting the California Public Records Act, which is to “maximize public access to agency records.” (Haynie v. Superior Court, (2001) 26 Cal. 4th 1061,1073).

For each document that is responsive to our request that you claim is not required to be made available for inspection and copying, please state the date of the document; the name, job title, and address of the person who prepared it; the name, job title, and address of the person now in possession of the documents; a description of the subject matter of the document; and the present location and custodian for the document. Further, if the exemption you are claiming applies only to a portion of the records, please redact the portion and provide copies of the remainder of the records. If responsive documents no longer exist but are known to have been in existence, please state the circumstances under which they were either lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they were responsive, and identify each person having knowledge of the content of such documents.

To assist us in determining your collective and individual responsiveness to this request, please segregate the records you provide us according to each of the individual requests enumerated above and, where appropriate, in whose possession those records resided (i.e., the department where the records resided and/or the individual who possessed any records, exclusively).

Under the California Public Records Act, an agency can charge fees covering the direct and actual cost of duplication unless a fee has been established for a specific record by law other than the CPRA. Fees can be charged only when copies of the records are requested and made, not for the time spent in searching, reviewing, locating, redacting and/or deleting documents by the City of Union City (California Government Code 6253(b)).

As you know, state law permits you to reduce or waive copying fees, particularly when the release of the requested information would be “in the public interest”. While we believe that this request plainly fits that category, we are not asking you to waive such fees given the current budgetary problems facing most local governmental agencies. However, if the fee will exceed \$0.15 per page, please inform us of the total charges before you fill our request for copies.

Although we expect that you will agree that the materials requested are covered by, and are not exempt from, the California Public Records Act, we need not remind you that the Act is enforceable by court proceedings. When a lawsuit results in order to compel an agency to disclose information that has been improperly withheld, there is a mandatory award of court costs and reasonable attorney’s fees to the plaintiff (Government Code Section 6258 and 6259).

If you have any questions regarding this request, please call the undersigned at (916) 443-3816. Thank you for your timely attention to our request.

Very Truly Yours,

REVELL

COMMUNICATIONS

Dennis C. Revell
President/CEO
Office 916-443-3816
Cell - 916-952-5351

Cc: Kristopher Kikotavlo, City Attorney