

5-7-24 National City Agenda Item 12.4: Discussion and Consideration of the Status of Port Commissioner Sandy Naranjo Pursuant to City Council Policy 107 [STATEMENT BY COMMISSIONER SANDY NARANJO IN OPEN PUBLIC LEGISLATIVE SESSION].

Greetings, Mayor, City Council Staff, and residents, both here and joining via Zoom.

For the record, I am Sandy Naranjo, your proud Port Commissioner, dedicated to maintaining and preserving our 34 miles of public tidelands.

I want to emphasize my gratitude for having the opportunity to serve the public good.

Clarifying My Position: I want to make it very clear from the inception, when I was sworn into my role as Port Commissioner, that I am not just a representative of National City's interests at the Port. My primary role is to be a regulator. My job is not to rubberstamp or figure out more ways to personally make more money; my job is to engage in regulatory oversight of a \$300 million agency. The Port Commissioner's job is to be quasi-judicial—to ethically and reliably vote to address all concerns. We cannot let the Port devolve into petty interests or self-regulate.

I want to point out that, at all times, Port Commissioners must be empowered to ask questions. There's a reason why referees should not be outright attacked and why they wear black and white striped shirts—it's an ancient tradition meant to prevent the judge from being victimized. When the judge is victimized, when referees are not treated respectfully, the system breaks. They have to be protected from attack. Make no mistake, what is happening here today is that an impartial referee is being attacked and removed for political gain and to avoid regulatory oversight. Attacking a referee never won a game.

I would like to take this opportunity to take you on a journey through my start at the port, what I experienced, and the actions that led to today:

2021: I joined the port as a commissioner open to forming productive work relationships with port staff and fellow commissioners and devoted my focus to environmental justice. My clear agenda was to work on environmental justice, equity, and land use compatibility in disadvantaged portside communities like National City and Barrio Logan.

But very quickly I was attacked and falsely accused of alleged conflicts of interest: that was the first political hit job, and it was false because the consultancy business I created never did a single project involving port interests, and in fact, it actually never did any business at all. It never collected a single dollar. So this was the first false political attack, and I believe it was politically motivated. Of course, since the consulting never even happened, I was completely

cleared of that accusation—I have an attorney letter in the public record as proof that I did not engage in or violate any conflict of interests. Also I want to add that Tom Lemmon former head of the San Diego Building Trades Council who made the call to accuse me of “pay to play” apologized for his action in July 2022.

Even if the allegation was false, I am glad it was investigated and cleared for public record. But the intent to politically attack me remained alive and well.

May 2022: As a sitting Commissioner when the Port issued an RFP for the Bonnet to CAEM, an environmental mitigation business owned by former LA port commission chair Nick Tonsich, I relied on Port staff—noticeably the Port’s OGC and other staff—to perform due diligence on CAEM and Mr. Tonsich, to identify who we do business with, and to ensure it was valid and would serve the public good with integrity. I voted along with my colleagues to approve the CAEM project as it was endorsed by the OGC and was recommended by staff. I was never given any information that there was anything wrong with CAEM or Mr. Tonsich. I trusted port staff.

Former California Transportation Commissioner and Current Executive Director of the Coalition For Clean Air Joe Lyou afterwards reached out to me about concerns over a lack of response to PRAs on the bids for the emission capture control system, also known as the bonnet. This system was purchased by the California Transportation Commission Trade Corridor Enhancement Program, which comes from SB1—the gas tax. I told Joe Lyou I would help, as at that point I did not think anything was wrong with how the CAEM/Tonsich contract was awarded. At this point, there is nothing to retaliate against: my false claim was totally cleared and I voted with staff/OGC recommendations for the multi-million dollar CAEM/Tonsich deal.

Mr. Lyou connected then me with Jodene Isaacs from the Rose Foundation, who had been waiting for the PRA on the bids and was surprised that her port PRA was ultimately denied. She made it clear she was not looking for confidential information but for basic information that is usually available to the public. Why was the port reluctant to share CAEM/Tonsich bid and competitive bid information? There is a theme here: they act guilty when questioned.

Then, while I was at the Los Angeles Environmental Justice conference, I was approached by someone who knew about the CAEM/Tonsich/port deal, and then asked me if I knew anything about Nick Tonsich’s reputation and his relationship with Tom Russell, and asked if I was aware of a Pasha lawsuit filed against Tonsich/CAEM at the same time the port was accepting RFPs and electing to proceed with CAEM. In that public record lawsuit, CAEM/Tonsich was accused of fraud, bribery, embezzlement, and of using technology that didn’t work. I didn’t know ANY of that when I voted for the CAEM/Tonsich port deal. Even if those litigation claims were untrue, and I always assume there are two sides to every story, the mere fact those allegations were made constituted important information for port commissioners and the port to weigh before engaging in a multi-million dollar port deal that involved state funds.

I felt that the most professional way to handle these surprise questions was to raise these questions at a closed confidential job Tom Russell job review/pay raise session noticed for December 13, 2022. I didn’t pre-discuss these issues with my colleagues because this could violate the Brown Act. I asked former Chair Malcolm if it was OK for me to bring up some questions I had about Mr. Russell, and he said yes, you can bring up anything you want. I then

asked Mr. Russell some very basic questions about all this in a non-aggressive and respectful manner, such as:

Did you have a prior professional relationship with Mr. Tonsich?

Did that relationship require you to notify the port in writing, and, did you need us to waive any possible or actual conflicts of interest in writing?

Were you aware of the Pasha/Tonsich/CAEM lawsuit?

Was there a history with Mr. Tonsich's ethical issues or business dealings with the Port of LA or any reports of how he was prohibited from engaging in certain business activities that we should have discussed first?

If Mr. Tonsich allegedly cheats the port in the same way Pasha felt cheated, can you (Mr. Russell) ethically represent the port's interests in a lawsuit against Mr. Tonsich and CAEM?

Mr. Russell calmly answered all of my questions, and assured me and other commissioners that everything was in order. He admitted he had heard about the Pasha/Tonsich/CAEM lawsuit. He stated that if Mr. Tonsich defrauds the port, he will have no problem suing Mr. Tonsich. I relied on Mr. Russell's assurances, and the apparent comfort level of other commissioners (including licensed attorneys who are commissioners) and fully accepted those assurances.

I now believe that if the port commissioners received a full accounting of what Mr. Russell knew about Mr. Tonsich, there's a good chance that Mr. Tonsich would never have been awarded the CAEM contract—but I have no idea if port staff knew all about those issues, or not.

When Mr. Russell answered my questions to assure me everything was appropriate, my commissioner colleagues did not indicate that any of this was problematic and specially commissioners who are attorney became agitated that I asked the questions but made assurances that everything was in order. I stopped asking questions and later joined my fellow commissioners on that basis in voting to renew Mr. Russell's contract and voted for his pay raise. For me, that was the end of the issue. Apparently for others, it was not: the mere asking of those questions was a problem. Why? Again, the ongoing theme: when questioned, acting guilty. On December 13, 2022, I was openly thanked for asking the questions and assured that it would all be checked out and confirmed. So what changed? If the assurances were true and accurate, why wasn't that the end of the matter?

After the Closed Session: Immediately after that closed session, we had our Open Session Election of Officers on December 13, 2022. It then became clear to me that there would be negative consequences for asking questions regarding Mr. Russell and Mr. Tonsich and CAEM, with Michael Zucchet making the recommendation to nominate Rafael, me, and Danielle for Officer Roles without a second, and I made the motion with Michael Zucchet seconding it with Rafael abstaining. My commissioners and the port were perhaps less than candid when they thanked me to asking those questions—apparently there was a problem.

I then reached out to Rafael Castellanos, then the port commission chair, and finally on December 19, he told me that there would be consequences for my actions, and immediately after that, it became known that Rafael was speaking to City staff and said that Sandy WILL NEVER BECOME CHAIR, so that began the process of discussing my removal and the immense lobbying for my removal. Why? Why are they acting guilty? Of what?

On January 31, 2023, Tom Russell hired Janice Brown as the attorney to investigate his claim against me (if there was such a claim). In the contract—under conflicts of interest—it said one conflict of interest is identified and is waived by Tom—is Tom the port, or are the commissioners the port? Wouldn't commissioners waive the conflict? Tom doesn't disclose what the conflict was, and it is questionable that HE can waive it and not the board of port commissioners. This highlights the Port's refusal to adhere to oversight and regulatory guidance and its desire to act on its own. On the other hand, if Tom believes he can waive conflicts on his own, why the negative over-reaction to my conflicts questions? Can't he also waive them himself as the port? Why are they acting guilty?

On Friday, March 3, I received an email from Janice Brown that I was subject to an "impartial" investigation based on third parties on incidents that occurred during the December 13, 2022, session and into legal and ethics advice provided to me on a District Project in 2021. I was in disbelief that the port was engaging in this conduct, but, it was also sadly consistent with how I was initially mistreated.

When I received the notification from Janice Brown, I was immediately reluctant to respond without representation because Janice Brown served on the San Diego Regional Economic Development Corporation (EDC) board with Rafael and has a relationship with Danielle Moore. I wanted to be interviewed by an independent third party. Conflicts of interest are a real problem and lead to a lack of sound independent judgment. This entire misadventure is proof of that thesis.

On Tuesday, July 11, there was a Closed Session in regards to the CEO. Immediately after the meeting, I called the Port's Outside Counsel, Ellen Gross, to file a complaint against Rafael Castellanos and Tom Russell for retaliations against me for asking questions in the December 13, 2022, hearing. It was becoming clear that the regulator was going to be regulated, that the referee was going to get attacked. The Port's outside counsel attorney, Ellen Gross, assured me that my story will be heard only if I participate in the investigation that Tom Russell initiated. I agreed only if they hire an attorney who is non-conflicted, and she agreed to find an attorney outside the San Diego/Los Angeles region. I did not understand how Mr. Russell could be a claimant, and simultaneously represent the port on his claim. I did not understand why the port would expend public resources defending questions that were already answered with retention and a pay raise. What was the retaliation? And what were the "allegations"—are questions also allegations?

At this time, the Port's Assistant General Counsel, Rebecca Harrington, and Ellen Gross, the Outside Attorney, are in charge of selecting the new outside attorney, Jane Kow. They help arrange the dates, and let me make this clear—here is the following order of the interviews:

General Counsel (August 9 and September 7, 2023)

Commissioner (August 9, 2023)

Commissioner (August 9, 2023)

Commissioner (August 10, 2023)

Commissioner (August 11, 2023)

Commissioner (August 11, 2023)

Commissioner (August 22, 2023)

Commissioner and Vice Chair of the Board, Sandy Naranjo (August 24 and September 1, 2023)

I was the LAST Commissioner to be interviewed. In hindsight, the investigation was neither neutral nor open—investigation started and ended with a specific outcome intended, another political attack to undermine my ability to call balls and strikes, to undermine my regulatory role. All my colleagues and Tom Russell were interviewed first because this was their process, that bought and paid for with more public funds, to engage in a political hit job lacking legal or factual merit. This investigator, hired and paid by the Port, reached the conclusion of Tom's desire before she spoke to me, as nothing I disclosed in those interviews indicated anything other than my raising issues a third party asked of me, to clear the questions raised. Why were they still acting guilty? Why were they deciding to make a public spectacle that would inadvertently broadcast my questions, without actually sound answers? It's like they grabbed the whistle from me, and blew it themselves—they are calling attention to their own misconduct.

During this process, Rebecca Harrington, the Port Assistant General Counsel to Tom Russell, goes to a vacation home in Grass Valley owned by my ex-husband's brother. At this vacation home, Rebecca Harrington brought me up to my ex-husband, his fiancée, and others non-Port related and violated the confidentiality of this investigation by disclosing that "...she hated me, the Port Commission hated me, that Port staff hate me, and that I am going down." This was hardly professional or objective, and it's actually untrue that many of the Port staff respect me. This is a breach of confidentiality and shows bias and animus. And, apparently there was no confidentiality provided to me. And, they apparently disinterested in my assurances or explanations—the hit job had only one inevitable conclusion that I can only assume was pre-discussed among the other commissioners and agreed upon with Mr. Russell and his inside and outside legal team.

I wrapped up my interview with Jane Kow, and I knew that this interview was NOT impartial and that this was going to twist my words. I had made a decision on my own to write my story so she could understand what I was saying and for her to investigate the issues I raised. I therefore submitted in writing a clear summary of my perceptions and recollections. It remains in the public record. I'm not sure anyone wants to actually read it, and certainly it wasn't even considered by the port.

It was important for me to submit in writing to help figure out what's going on? Why is Mr. Tom Russell and the port acting so defensive and guilty? Especially after I submitted my discovery that Mr. Russell signed a verified statement he is the sole inventor of maritime propeller technology—these are highly technical, which is surprising for a full-time general counsel to have that scientific expertise and the time to invent on his own time. It also seems like a potential another conflict issue, since he is fully engaged as the port's attorney and a maritime propeller's income would in theory come from a maritime business or enterprise. I also discovered he formed a Wyoming LLC under his name and assigned his maritime propeller patent rights to that LLC. Why Wyoming, especially when the business address seems to be his Newport Beach home? My statement to the port asked that these issues be checked and cleared. If the port is going to have a melt-down over my non-operational consulting business that never did business, aren't they even remotely curious about a maritime propeller side-business? Apparently these questions are "baseless allegations" that don't warrant answers. But they continue to act very guilty of something. I found it interesting that Mr. Russell's pattern

of patent ownership matches Mr. Tonsich's pattern (and Mr. Tonsich was a plaintiff attorney, and I don't know if he has a technology or scientific background, either). Why do these attorneys have maritime tech patents? I find this curious. Are they really the sole inventors, as their patent applications claim under penalty of perjury?

Jane Kow wraps up her one-sided report, and Rebecca Harrington arranges the Closed Session to discuss the report with my colleagues—she calls me and tells me that I can't participate because I have a conflict. I asked her if I can have a copy of the report, and she said no. So, I get no due process. The opportunity to confidentially discuss and clear my questions to Mr. Russell is not equally provided to me. Instead, I am barred from the discussion or disclosure of that discussion.

On Wednesday, October 4, a special closed session was held to discuss the report. I don't participate based on legal analysis and recommendations to me by Ms. Harrington—she stated I would face legal risks if I attended. Clearly, the strategy was to scare me from participating so they could bake up the false censure without me as a witness or to oppose it.

At the Closed Session (mind you, no minutes have been shared of what action was taken—that is still not been approved—why are they acting guilty?), the commission had MADE a decision that they were going to censure me.

Why is this important? Because on Tuesday, October 10th, we had our regularly scheduled board meeting. This means that Port staff had the opportunity to docket this on the regular packet on Thursday, October 5th. But again, because no one regulates the Port, the Port works in secrecy. They held onto this until they directed their outside counselor, Sonia Carvalho of BBK, to call me on Monday morning to notify me that there would be a "special" meeting (which, by the way, only requires 24-hour notice) to censure me. This was originally supposed to be held on Tuesday, October 10th at 8 am—when this got out, many stakeholders and residents were angry because it didn't align with the Brown Act. They pushed it to 3 pm so that it was more than 24 hours—again, the bare minimum. Why the theatrics? Why the circus?

October 10th comes around, and there was a huge turnout demanding transparency—no public voice in favor of censure. Not one single member of the public spoke in favor of censure. And, many argued the censure was illegal, lacked due process, and was heavy-handed against National City interests. Because of the vigorous pressure from the community, questions about the legality of the censure, and claims of violation of the Brown Act, the commission—while voting to censure, then decided to waive confidentiality and released their report. The commissioners acted and spoke as if this report would reveal terrible misconduct. Of course, it did not.

The report, which by the way totaled about \$150,000, was labelled a nothingburger report that claimed without any actual basis that I have been retaliatory or noncooperative. There are no facts to support either allegation—the exhibits actually prove I cooperated, and that I didn't retaliate. Why are facts and law being twisted in this weird hall of mirrors approach to governance, in a way that actually far more broadly published my concerns than my own confidential closed session questions? Who is advising the port on all this? And, by the way, Mr. Russell made some open comments at that censure hearing—he explained that the maritime propeller patents was a side "hobby" and that he hired an engineer to do that work for him. I'm not sure that cleared up the potential issues. He also admitted to a side maritime law practice,

but, claimed it didn't do much work. His form 700 indicates it has a positive value, so, his maritime law practice is billing someone. Are those issues investigated and checked? Of course not. Mr. Russell and not the port commissioners are in charge of making those decisions, and conveniently he apparently clears himself.

After National City decided not to take the heat from the Port, the City made it clear that they were going to stand with their Commissioner. But, the response was pretty muted.

The City to my knowledge never weighed: making a legal demand to reverse the censure, or filing a mandamus action to challenge censure as non-lawful and lacking any reasonable basis in law or fact. Why? Could part of the answer lie in the fact that one of the port commissioners who voted for my censure has her daughter placed in our National City general counsel's office? Can National City confidentially weigh legal action of any kind against the port? Again, there are themes to this story: conflicts of interest erode sound judgment, and cause mistakes for lack of independent neutral evaluation. The censure was a mistake, on every level. This situation is a mistake. The port and now this city is grabbing and blowing the whistle—on themselves. Agencies are acting guilty, and engaged in very poorly guided/advised conduct with severe negative repercussions to those agencies because they lack independent wise guidance. The legal guidance appears self-interested.

In November, the community came out again and demanded that the Port rescind their censure and answer questions about the process of the CAEM contract. The port refused and downplayed it. Again, not a single member of the public spoke in favor of the obviously bad faith censure.

Later that week, The San Diego Reader published an article revealing that port commission chair Rafael sought an advice letter dated September 25 about getting the port CEO role—a week before the special closed session to discuss their response to a report that they didn't allow me to see. Again, this is acting guilty, this is poor judgment. Any action toward the CEO role by Rafael while a port commissioner bars him from seeking that office, particularly with the use of public funds to help guide that process. Poor judgment. Acting guilty.

In December, Assemblymember Alvarez, who was the Chair of the Audit Committee at the state, requested an external audit—again with no posted discussion from the Port Commission. The Port lobbied using public money to kill the audit request. Why kill the audit, wouldn't it answer questions and make the port look better? Or is there something that has to be hidden? Again, poor judgement, and acting guilty.

In January, Rafael resigns from the Port, and the Union Tribune Editorial Board demands transparency. Rafael claims he is not seeking the port CEO job, and is focused on his legal career. I'm not sure anyone actually believes that assurance—why is he attending a port conference to Portugal afterwards?

In February, my attorney, Cory Briggs, receives notice from the Port that he is under investigation for reading a sworn statement by my ex-husband—accusing him of retaliation for reading my ex-husband's letter in a legislative hearing—prompting Cory to file a federal court lawsuit alleging that the Port was trying to bully and intimidate Cory based on the First Amendment. Why would the port's legal time recommend investigating an outside attorney? Poor and conflicted judgment, mired with self-interests.

Also in February, the Office of General Counsel requested \$450,000 for unspecified legal fees. When I asked questions about the money and where it was going, Tom Russell publicly attacked me and accused me of being biased against the Office of General Counsel. Why not disclose what that's about? Poor judgment, self-interested, and looks guilty.

Alvarez unveils AB2783, the Port of San Diego Reform Act Bill, and in March, LAFCO unanimously votes on oversight of the Port. Why? Because the port is blowing the whistle long and hard, based on poor conflicted guidance, causing risk to the agency and commissioners.

In March, we agendize the zero-emission truck stop, and staff had made a strong recommendation to go with Skycharger, which I agreed and made the early motion. Commissioner Danielle Moore became super antagonistic mainly because I made the motion. After a long debate that was dragged out by her antagonistic behavior, Frank Urtasun asks me to make the motion, which I did again, but it fails for lack of a second, and Danielle Moore changes her subsequent motion to the motion I just made, which gets a second. I asked the question on the dais if that was the same motion, and Frank says yes. Surely, that was pre-discussed as a strategy.

I asked Frank what that was about, and he said that it was intended to publicly embarrass me for AB2783 and LAFCO. He said that he had proof I was lobbying AB2783 because I held meetings with labor—I laughed because I said, which union? Are you referring to my conversation I had with Brigitte Browning when I ran into her at a party to celebrate the newly elected Chula Vista City Attorney, Marco Verdugo? I just asked her a question about her thoughts on the bill. That was not a meeting. Also, I asked him why I would lobby specifically labor leaders who have been antagonistic to me and were orchestrating my removal based on a "pay to play" scheme? Immediately after that, it became known that Browning called Mayor Morrison and demanded my removal. The same Brigitte Browning, the head of the Labor Council, who is under scrutiny for insulting the first Latina Chair of the Board of Supervisors, is calling for my removal. All this backroom strategizing and organizing by appointed and elected officials raises Brown Act issues. And the lack of port commissioner independent governance looks like a Port Act violation. And the allocations of public monies to advance the personal interests of some agency members looks like a misuse of public funds.

Later in the month of March, The Port was contacted by the Union Tribune about doing an Op-Ed as they mentioned a community member was going to do one about transparency, oversight as it relates to the Alvarez Bill. The Port staff drafted an op-ed signed by Moore and Urtasun (after two weeks of drafting from various staff again using public resources) that attacked me without naming me. Because, clearly, when there are legitimate questions raised about the port, the most effective answer is to attack the National City commissioner and not answer the questions. That looks guilty, and is probably still based on self-interested guidance.

In April, AB2783 passes committee—what is public knowledge is that the Port has an ad hoc committee of Zucchet, Malcolm, and Urtasun to discuss the Alvarez Bill but sends Danielle Moore to oppose the bill at the committee. It is known that the Port HAD NOT docketed discussion of the bill (although my colleagues discussed the bill back in January in the van at the swearing-in ceremony, and by the way, Alvarez had introduced a Port bill the year before). After the call-outs, the Port decided to host a special meeting (again not at the regularly scheduled meeting) to discuss the bill. It was painful to hear how my colleagues downplayed the abuse of public resources without having a full-discoursed noticed meeting that the resources

will be used to oppose a bill that desperately needs it. So, who exactly decided to investigate me instead of Mr. Russell? Who decided to strategically deploy a censure approach to my questions? Who decided to oppose the Alvarez bill? Who decided to oppose LAFCO? If there are no docketed commissioner sessions, let's reach the obvious conclusion: port commissioners don't regulate or guide or supervise the port. The port supervises and guides and if necessary punishes commissioners. How is that consistent with the Port Act and the Brown Act? Those are questions that need independent legal analysis not infected with personal motives.

I proudly said on the record I support the Alvarez bill because the Port desperately needs an independent ethics commission and that commissioners should be disclosing lobbying reports. Especially what is insulting is that the Port staff, including in their amendments, wants the Port's Attorney to run the Ethics Commission. That is the fox watching the henhouse. Who exactly decided to mark-up the Alvarez bill to restrict ethical oversight to just commissioners, with the port general counsel solely in charge of that oversight? Well, if we look for commissioner hearing notices, it wasn't the commissioners. So who exactly runs the port? How can a public agency with over \$300 million in annual revenue not have a discernible and accountable person in charge? How is that protecting the public funds? How is ethical agency conduct a "job killer"—Is the port commission chair inferring we need back-room deals to keep jobs? I don't think that's how this works.

Now, within a week after this, I am asked to resign on the basis that National City doesn't have "representation," meaning the Port is refusing to listen to National City because they want to determine who their commissioner is. My job was never representation, it was regulation. But apparently, in the hall of mirrors approach to proper government conduct: questions are false allegations, regulation kills jobs and dreams, legal work can and should involve personal interest and gain, and my departure will fix everything. Good luck with that in the real world. National City has been controlled and mistreated longer than I have been alive. And installing a new commissioner does not answer the questions raised by the port's and now this city's conduct.

Here we are, at a vote to remove a commissioner for actually doing the hard work of asking questions and ensuring transparency. You can blame the ref, attack the ref, or you can instead ask if YOU are doing your elected jobs to effectively represent National City with the port tidelands. If you think handing the bully your lunch money will stop 60 years of unfair bullying, go ahead, hand over your lunch money. I'm choosing to fight for the public good, with no obvious personal benefit, with no maritime side-business or hobby. And I'll let the voters eventually decide whether we deserve good and fair governance, or backroom side deals that look guilty, and appear infected with self-interested poor judgment.

Respectfully,

San Diego Port Commissioner Sandy Naranjo/5.7.24/National City Open Public Legislative Session