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May 29, 2020

Mayor Terry Tornek
Vice Mayor Tyron Hampton
Members of the Pasadena City Council
Pasadena, CA
(Submitted to publiccomment@cityofpasadena.net)

Re: Pasadena City Council Meeting 6/1/2020, Agenda Item #21A – COVID-19 Update on Health Order. Report and Related Documents Addressing Pasadena’s COVID-19 Response in Its Long-term Care Facilities.

Dear Mayor Tornek, Vice Mayor Hampton, and Councilmembers:

I originally emailed this letter to each Councilmember and to City Attorney Michele Bagneris on May 24, 2020, but I am unsure whether any of you received it. Out of an abundance of caution, I am submitting the letter to publiccomment@cityofpasadena.net, to be included in the public file for agenda item #21A: COVID-19 Update on Health Order. I also include an additional paragraph below, in italics, in light of a relevant article appearing today in *Pasadena Star News*, written by reporter Bradley Bermont.

I am a longtime resident of Pasadena, an advocate for homeless neighbors in our community, a retired attorney after 31 years of state service, and a registered nurse (inactive). This letter addresses the following documents the City made public late last week related to Pasadena’s COVID-19 response for patients/residents and staff members residing or working in Pasadena’s long-term care facilities: May 21, 2020 Letter from Brenda Klutz to City Manager Steve Mermell; Ms. Klutz’ chronology entitled “ Onset of COVID-19 and the City of Pasadena’s Public Health Response” (“Chronology”); and City Attorney Michele Beal Bagneris’ “Summary of Health Officer’s Authority Relating to Skilled Nursing Facilities

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First, I want to thank you for authorizing the engagement of a consultant to consider Pasadena's response to the COVID-19 pandemic as related to Pasadena's long-term care facilities. According to the City's COVID-19 dashboard (on May 24, 2020), the numbers of COVID-19 cases and deaths related to long-term care facilities in Pasadena are very high: 71% of the total cases and 88.6% of the total deaths citywide. In contrast, Los Angeles County and Orange County report on May 24, 2020, that COVID-19 deaths related to skilled nursing facilities are 52% and 38% of total COVID-19 deaths countywide, respectively.

The California Department of Veterans Affairs (CalVets) reports that, as of May 11, 2020, only two veterans (total) have died from COVID-19 in its eight CalVet Veterans Homes. Of significance, on March 15, 2020, CalVets began restricting all visitation to the homes except to those in hospice care. Prior to that, group events both on and off the campuses were postponed, communal dining for most residents was halted, every employee was screened before entering the home, and the department increased the cleaning and sanitizing of all spaces.¹
(www.calvet.ca.gov/COVID19.)

The article appearing in the Pasadena Star News today entitled "Pasadena's Coronavirus Death Rate May be Inflated, Officials Say," notes as follows: "According to the city's epidemiologist, Dr. Matthew Feaster, the city's push to capture and quickly report every single coronavirus-related death in Pasadena has meant nonresidents living in the city's elder care facilities are getting caught in the city's reported deaths, which are supposed to be limited to residents." Respectfully, it is our city's responsibility to protect individuals in long-term care facilities located in Pasadena from COVID-19 regardless of where they permanently reside. Accordingly, if they die from COVID-19 in our City, they should be included in our number of COVID-19 deaths. Further, as Mr. Bermont notes, "[e]ven so, the methods used by the Pasadena Public Health Department follow procedures laid out by state law, and it's what every other health agency in the state uses, including Los Angeles County and its neighbors."

Given the substantial jurisdictional differences in outcomes discussed above, I previously requested the City Council to thoroughly examine the imminent report to determine how this City might have better outcomes for our most vulnerable residents on a going forward basis. I urged the PPHD to reach out to other jurisdictions that have had better outcomes and to the California Public Health Department to determine

¹ As discussed in the Addendum to this letter, it is unclear when the Pasadena Public Health Department ("PPHD") banned all visitors to long-term care facilities or whether, as of March 15, 2020, it had ordered those facilities to take the additional measures CalVets ordered.

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whether additional measures needed to be adopted. Further, if state regulatory gaps were identified, I urged that those be addressed.

I have reviewed the three documents referenced above. Preliminarily, the Chronology raises a number of questions suggesting that further inquiry is warranted. Since I will be unable to ask those questions, I respectfully include those questions for your consideration in the Addendum attached to this letter, not to play “Monday morning quarterback,” but to, hopefully, elicit critical information that is missing or unclear that may be useful in protecting the patients/residents and staff in our long-term care facilities from the next wave of COVID-19 and beyond.

Ms. Klutz’s one-page report notes that she was asked “to review the City of Pasadena Public Health Department’s (PPHD) actions, orders, public health nurse logs of onsite visits and calls, emails and other documents or assistance related to the COVID-19 pandemic. This review included the information sent to the administrators, directors of nursing and infection control preventionists providing care to the residents of the City of Pasadena’s long-term care facilities.” Ms. Klutz concludes as follows: “As a result of my review, I found the PPHD to have responded in a timely and thorough manner to provide orders and technical assistance to prevent, detect and/or mitigate the spread of COVID-19 in long-term care facilities.”

I am unaware of Ms. Klutz’s expertise in epidemiology, infection control, pandemics, or public health. Assuming she is qualified to render the conclusions expressed in her report, the apparent scope of her assignment raises substantial concerns as Vice Mayor Hampton and Councilmember Gordo have already stated. Was she simply asked to review what PPHD did or, was she asked to evaluate why Pasadena’s numbers are so high as compared with other jurisdictions, whether there were possible measures that could have produced better outcomes, and whether there are gaps in regulations covering education, training, inspection and the like? The report itself does not suggest that she was tasked with providing guidance on how Pasadena may have better outcomes in the future by instituting additional protective measures in its long-term care facilities.

I am certain that Dr. Goh and her staff are working very hard during this crisis and I am grateful for that. But our COVID-19 case and death rates in our long-term care facilities should receive our City’s highest attention and most resources. Patients and residents in our long-term care facilities are among our most vulnerable residents and they have borne the brunt of COVID-19. While I agree

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with Dr. Goh’s statement “[t]here needs to be discussions at a national level on how these facilities are funded, staffed and regulated,” what is our City going to do in the meantime? Is the PPHD going to follow the same measures it did in “the first wave” of COVID-19 (since no shortcomings are identified) and yet expect better results?

Attorney Bagneris states in her memorandum as follows: “The City of Pasadena Public Health Department is a local health department with specific responsibilities and authorities for the protection of public health under the California Health and Safety Code. A city health department is independent of a county health department unless the city has elected to be included within the jurisdiction of the county health department.” (5/21/2020 Bagneris Memo. to City Council, citing Health & Safety Code section 101185.) It is unclear whether the city has elected to be included within the jurisdiction of the Los Angeles County Health Department. My review of this memorandum leads me to believe that is not the case, but I may be wrong. Attorney Bagneris also notes that “the California Department of Public Health may, in its discretion, opt to ‘control and regulate’ local health authorities, but has not elected to exercise that control at this time.” (Bagneris Memo., p. 1.) The statutory authority cited in the memorandum suggests that PPHD *has a huge responsibility* in protecting patients/residents and staff in our long-term care facilities.²

On May 26, 2020, the Los Angeles County Board of Supervisors approved a motion that provides for the appointment of an Inspector General to provide a report by August 1, 2020, “on the Oversight and Operations of Skilled Nursing Facilities in Los Angeles County (Report), with the Report to include an evaluation of SNFs within the County, and recommendations on operational and programmatic changes necessary to improve the County’s monitoring and oversight of these facilities, including legislative and regulatory recommendations aimed at improving operations within these facilities, given the role of State and Federal regulations impacting the operation of these facilities.” Since Pasadena has its own public health department, it is unclear how the motion applies to this City. I have reached out to Supervisor Barger’s Office for clarification. If the motion would not cover Pasadena’s long-term care facilities, I urge this Council to consider how Pasadena can adopt

² The Klutz report and Chronology lack transparency on the scope of PPHD’s authority over Pasadena’s long-term care facilities *in a pandemic situation*, not a licensing situation. For example, what agency had the *authority* to conduct in-person, unannounced inspections of Pasadena’s long-term care facilities and were such inspections conducted? The Chronology uses the term “on-site visits,” but the word “inspection” does not appear in the document.

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measures similar to those in the motion in order to provide accountability and best practices for the care and protection of our vulnerable patients/residents and staff members in our long-term care facilities in the future. I urge the Council to also examine the extent of PPHD's regulatory authority over all of its long-term care facilities. If there are gaps in that authority, the Council should determine how to bridge those gaps.

Thank you for your consideration.³

Sincerely,

/s/

Sonja K. Berndt, R.N. (inactive), J.D.

Cc: Michele Beal Bagneris, City Attorney

³ None of the information in this letter should be construed as legal advice as my California State Bar status is "inactive" in my retirement.

ADDENDUM

Suggested Further Inquiry Re: Brenda Kurtz Chronology

“ Onset of COVID-19 and the City of Pasadena’s Public Health Response”

(Dates are Taken from Ms. Kurtz’ Chronology)

2017, 2018, 2019

The Chronology mentions education and training of staff in skilled nursing facilities (“SNFs”), including proper use of personal protective equipment (“PPE”), proper hand hygiene, “how to cohort patients and staff to prevent the spread of disease,” training of new staff, etc., but it is unclear what education and training, if any, Pasadena Public Health Department (“PPHD”) provided to staff in Pasadena’s residential care facilities for the elderly or assisted living facilities (hereafter also collectively referred to as “non-SNF long-term care facilities”).

January 23, 2020 – Did staff members of Pasadena’s residential care facilities for the elderly and assisted living facilities receive the infection prevention education that PPHD is noted to have provided to nurses at SNFs and did the education include nurse aides and other staff members?

March 5, 2020 – Were PPHD’s in-person visits and training only for staff members of SNFs or did the visits and training also occur in Pasadena’s residential care facilities for the elderly and assisted living facilities?

March 6, 2020 – The entry states that there were two question-and-answer sessions that were “*open* to all community physicians, including medical directors of long-term care facilities, and physicians with patients at long-term care facilities,” emphasis added. Did PPHD conduct any outreach to Pasadena’s residential care facilities for the elderly and assisted living facilities, including to their medical directors and doctors with patients in those facilities, to ensure that they knew about, and could plan to attend, these sessions?

March 11, 2020 – It is unclear what information PPHD provided or whether PPHD’s in-person outreach to congregate living settings included all types of long-term care facilities. Did that outreach include a discussion of the importance of postponing group events and halting communal dining?

March 16, 2020 – It is unclear what directives and guidance Pasadena’s long-term care facilities were given concerning “restrictions of visitors and non-essential personnel.” The summary at the end of the Chronology states “soon afterward enforced a ban on visitors,” but does not say when. On March 15, 2020, CalVets began restricting *all visitation to its veterans’ homes except those in hospice care*. Prior to that, group

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events both on and off the campuses were postponed, communal dining for most residents was halted, every employee was screened before entering the homes, and CalVets increased the cleaning and sanitizing of all spaces.
(www.calvet.ca.gov/COVID19.)

March 17, 2020 – Was the allocation of N95 respirators PPHD offered sufficient to meet the needs of the SNFs as of that date and was any personal protective equipment provided to staff at non-SNF long-term care facilities? Aside from N95 respirators, was any other type of personal protective equipment needed as of that date and, if so, was it provided at that time?

March 18, 2020 – It is unclear what guidance PPHD provided to staff at assisted living facilities and adult/senior care facilities.

March 27, 2020 – What procedures were in place for isolating and quarantining patients/residents at all types of long-term care facilities who were likely to have COVID-19 or exposed to a person diagnosed with, or likely to have, COVID-19?

April 2020 – It is unclear which facilities PPHD visited or communicated with, whether the visits included inspections of the facilities and if so, how PPHD conducted those inspections. It is unclear what “coordination” PPHD conducted with other regulatory agencies and partners. Who was relying on whom and to do what? What were the delineations of responsibility? It is unclear what testing was done in April, where and when it started, or what follow-up was conducted. The Chronology notes that it was not until May 6, 2020, that the City of Pasadena Public Health Officer issued an order requiring licensed long-term care facilities to conduct COVID-19 diagnostic testing as directed by PPHD.

April 2, 2020 – It is unclear what updated strategies PPHD gave to staff members of SNFs and whether PPHD offered those updated strategies to staff members at non-SNF long-term care facilities.

April 9, 2020 – It is unclear what assistance PPHD provided to staff members at non-SNF long-term care facilities other than a list of resources and instructions to sign up for letters issued by other regulators. Was there any assistance PPHD could have provided to non-SNF long-term care facilities related to testing of their staff and residents?

April 15: “Long Beach Health Officer Issued Licensed Congregate Healthcare Facilities Order modeled after Pasadena’s April 12 Order.” The reason for citing to one order of Long Beach is unclear. Did Ms. Kurtz review the orders and actions taken by Long Beach given its better outcomes for COVID-19 in its long-term care facilities?

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April 24: “Los Angeles County Health Officer Issued Licensed Congregate Healthcare Facilities Order modeled after Pasadena’s April 12 Order.” The reason for citing to one order of Los Angeles County is unclear. Did Ms. Kurtz review the orders and actions taken by the County of Los Angeles given its better outcomes for COVID-19 in its long-term care facilities?

May 2020 – The entry states that PPHD staff continued on-site visits and daily communication with facilities. Does this include all facilities both SNFs and non-SNF long-term care facilities? Were the on-site visits inspections and, if so, how did PPHD conduct the inspections? With regard to the statement “continued daily communication and coordination with agencies with regulatory authority of long-term care facilities, and partners,” it is unclear what “coordination” PPHD conducted with other regulatory agencies and partners. Who was relying on whom and to do what? What were the delineations of responsibility for PPHD and the other agencies and partners with whom PPHD communicated?