

City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012



(213) 978-8100 Tel
(213) 978-8312 Fax
CTrutanich@lacity.org
www.lacity.org/atty

DIRECT DIAL: (213) 978-8235
FAX: (213) 978-8214

CARMEN A. TRUTANICH
City Attorney

May 21, 2012

Richard MacNaughton, Esq.
Attorney at Law
9107 Wilshire Boulevard
Suite 700
Beverly Hills, California 90210

Re: Hollywood Community Plan, Council File 12-0303
May 8, 2012 Planning and Land Use Management Committee
Meeting

Dear Mr. MacNaughton:

We have reviewed your letter dated May 9, 2012, that was sent to various City officials in regards to the above subject. In your letter, you allege that the City Council's Planning Land Use Management ("PLUM") Committee violated the Brown Act because it did not allow public testimony at its May 8, 2012 meeting concerning the Hollywood Community Plan.

The PLUM Committee did not violate the Brown Act at its May 8 meeting. The Brown Act allows a legislative body to hold multiple and successive sessions on the same agenda topic without having to open a public hearing at each of those sessions. In *Chaffee v. San Francisco Library Com'n*, 115 Cal. App. 4th 461 (2004), a court of appeal was faced with a situation where a library board had held a meeting where they completed hearings on some, but not all, of the items on their agenda for that meeting. Then the board lost their quorum and could no longer conduct business. So they continued the remaining items to a second session, which was five days later. At that second session, they considered each of the remaining agenda items and concluded by allowing general public comments.

The plaintiff, a Mr. Chaffee, complained of a Brown Act violation because he had not been allowed to make a general public comment at the first session and had only been allowed to make such a comment at the second session. The court of appeal explained that the Legislature's intent behind this part of the Brown Act was to allow legislative bodies the flexibility to continue meetings without becoming obligated to hold multiple public comment periods: "When the Brown Act and the Sunshine Ordinance are read in their entirety, we conclude that the lawmaking bodies clearly contemplated circumstances in which continuances and multiple sessions of meetings to consider a published agenda would be required, and thus they mandated that a single general public comment period be provided per agenda, in addition to public comment on each agenda item as it is taken up by the body." *Id.* at 469.

This concept applies with equal force to individual agenda items that have been continued, which was the case with the agenda item for the Hollywood Community Plan Ordinance. The PLUM Committee held a several hour long public hearing on that item at its regular meeting of March 27, 2012. The item was then continued to April 17, 2012, where Chairman Reyes allowed a further opportunity for public testimony. At the April 17 meeting, Chairman Reyes explained that the Committee was not required to hold an additional public hearing because the public hearing had already taken place at the earlier meeting (March 7). But he then stated that he would be setting aside an additional fifteen minute period (in addition to the public hearing which had already taken place) for those in the audience to voice their views on the plan. Later, the item was then continued to May 1, 2012, at which time it was not taken up but merely continued once again, this time to May 8, 2012. At the May 8 session, Chairman Reyes asked Planning staff to explain that over one hundred public meetings had been held at various locations on this item and he noted that the Committee itself had held a long public hearing on the item at a prior session.

Such continuance of an individual agenda item is analogous to the situation in *Chaffee*. In *Chaffee*, the court of appeal concluded that a legislative body was not obligated by the Brown Act to hold multiple public comment periods when the body decided to break what could have been one long meeting into shorter sessions. In *Chaffee*, the body simply adjourned the first session of its meeting and continued the remaining items to a second session. Likewise, here the PLUM Committee simply continued the Community Care Ordinance item through the several meetings mentioned above. The Brown Act expressly allows legislative bodies to continue items to subsequent meetings. But nowhere does the Act state that a legislative body will be required to hold a new and separate public hearing at each "session" of such a continued item.

This similarity to *Chaffee* is bolstered by the fact that the provision of the Brown Act--Government Code Section 54954.3(a)--before the *Chaffee* court is presumably the same authority on which you are relying to support your assertions:

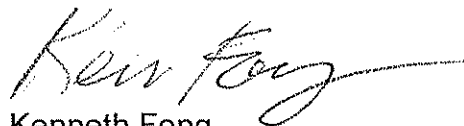
Here, the words of both public meeting statutes are clear: "[e]very agenda for regular meetings shall provide an opportunity for members of the public to directly address a legislative body on any item of interest to the public ... that is within the subject matter jurisdiction of the legislative body" (§ 54954.3, subd. (a), italics added; see S.F. Admin. Code, § 67.15, subd. (a).) The Library Commission provided for general public comment during the second day of its two-day meeting held to consider a single agenda. Thus, the commission fully complied with the plain meaning requirements of both section 54954.3 and San Francisco Administrative Code section 67.15.

Chaffee, 115 Cal. App. 4th at 468.

For all these reasons, the PLUM Committee did not violate the Brown Act at its May 8, 2012 meeting as you so allege.

Finally, please take note that if your notice of intent to sue based on these facts does result in litigation against the City, we will consider such litigation to be "clearly frivolous and totally lacking in merit" as described in Government Code Section 54960.5.

Very truly yours,



Kenneth Fong
Deputy City Attorney

KTF:zra

cc: Councilmember Ed Reyes
Councilmember Jose Huizar
Councilmember Mitch Englander
Director of City Planning Michael Lo Grande
Deputy Director of City Planning Alan Bell
Deputy City Attorney Dion O'Connell
Sharon Gin, City Clerk's Office ✓