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Via email only

RE: Hollywood Community Plan, Council File #: 12-0303
April 17, 2012 and May 8, 2012 PLUM hearings
Brown Act Cure and Correct Demand

Dear Mr. Fong:

Thank you for your letter of May 21, 2012.

It is best if we operate from the same set of facts. At one point you refer to the "Community Care Ordinance" (5-21-12 letter page 2, ¶ 3). While I believe that reference was by inadvertence, I would like to make certain we are not making any inaccurate factual assumptions.

1. You stated:

> 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.

The PLUM Committee did not hold "a several hour long hearing" on March 27, 2012. The meeting was set for 2:00 p.m. and the Hollywood Community Plan was item #5. The HCP portion probably began before 3:00

and ended shortly after 5:00 p.m. That is not several hours. However, the length of time is not the pertinent fact.

The pertinent fact for the Brown Act is that all the persons who had filled our Speaker Cards for item #5 had an opportunity to be heard.

2. You also stated:

> 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) [sic][1]. 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.

Once Chairman Reyes opened the item to public comment on April 17th, he could not then allow only some members of the public to speak while preventing others from addressing the committee. Government Code, §54954.3

When Chairman Reyes cut off public comment on April 17, 2012, a chorus of complaints arose from the audience that they had not a chance to be heard. Chairman Reyes then said that the meeting was being "continued for two weeks." Most speakers understood that to mean that when the meeting resumed in two weeks, they would have their chance to speak.

3. When the item resumed on May 8, 2012, Chairman Reyes did not allow the speakers who had been denied a chance to speak on April 17, 2012 the opportunity to be heard.

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[1] There was no hearing on March 7th. I believe you meant March 27th.

4. Chairman Reyes Set an Unreasonable Amount of Time

The right to address the committee is an individual right. When Chairman Reyes allowed only 15 minutes for 56 speakers and then gave each speaker 1 minute, that meant he decided a priori that only 15% of the 56 speakers could exercise their First Amendment rights.[2] Divided equally between all speakers, the 15 minutes would permit each speaker 16 seconds.

5. Chairman Reyes Engaged in Viewpoint Discrimination

The Brown Act, however, does recognize that often there are two sides to an item, and if there needs to be a limit on the speakers, it may not be done in a fashion which favors one viewpoint over the other. An analysis of the speakers shows persons who opposed the Plan were disproportionately denied their right to speak.

April 17, 2012 Hearing	#	% of Total Cards	# Who Spoke	% Who Spk For Their side	Difference Should-Did
FOR	23	41%	7	39%	-2%
GENERAL	6	11%	6	100%	+89%
AGAINST	27	48%	5	27%	-21%
Total	56		18		

This chart shows that only 27% of the Against Persons were called to speak although the Against Speakers were 48% of the Speaker cards. 100% of the General Comments spoke although they were 11% of the Speaker cards and 39% of the For Persons spoke and they were 41% of the Speaker cards.

[2] In actuality, Chairman Reyes allowed 18 persons to speak.

This analysis of whom Chairman Reyes allowed to speak shows that a disproportionate share of the Against Persons were denied their opportunity to speak. Thus, we see substantial viewpoint discrimination which is per se unreasonable under Leventhal v. Vista Unified School Dist., 973 F.Supp. 951, 960 (1997)

The Legal Issue:

The legal issue which arises from these facts is whether the Committee may start to take public comment on a particular item at a meeting and then arbitrarily stop the public comment period on that item before everyone who wishes to address the item has the opportunity to speak?

Discussion:

Under these facts, Chairman Reyes acted improperly. Once Chairman Reyes voluntarily allowed public comment on April 17, 2012, he had to follow the Brown Act as to who could speak and for how long. He lacked the power to stop the public comment until all members were heard and he could not engage in viewpoint discrimination in whom he allowed to speak.

Members of the public did not make Cure and Correct Demands about Chairman Reyes' stopping public comment during April 17, 2012 as they were under the impression that when the committee reconvened that the public comment period would then resume also.

You wrote:

> The Brown Act expressly allows legislative bodies to continue items to subsequent meetings. But nowhere does the Act state that a legislative body will required to hold a **new and separate** public hearing at each "session" of such a continued item. [**bold** added]

At the May 8, 2012 meeting, the public did not seek a **new and separate opportunity** to be heard, but instead they wanted the prior public comment time, which had been cut off on April 17th, to continue. Chairman Reyes did not allow the truncated speaker time to resume.

Legally there was no difference in the continuance from April 17th until May 8th than if the committee had taken a lunch break during public comment and then refused to hear the remaining speakers after lunch.

Your citation of Chaffee v. San Francisco Library Com'n, (2004) 115 Cal. App. 4th 461 does not address that issue. That case addressed General Comments and Chairman Reyes allowed General Comment on May 8, 2012, except he cut off any person who spoke during General Comment and mentioned the Hollywood Community Plan. Chairman Reyes asserted that the Hollywood Community Plan was an agendized item and no one could address an agendized item during General Public Comment. Chaffee v. San Francisco Library Com'n, *supra*, 115 Cal. App. 4th 461, 469-470

There were 56 speaker cards for April 17, 2012. Chairman Reyes allowed 15 minutes for all speakers. That is about 16 seconds per Speaker. I am unaware that any case has held that 16 seconds or even 20 seconds per speaker is a reasonable amount of time. Government Code, §54954.3

A committee may **reasonably** limit the time that Speakers may have on an item, but the limitations may not be arbitrary or show favoritism by allowing more time to one side of the issue than to the other side.

However, the set amount of time was not given out equally to all speakers, but instead Chairman Reyes allowed some people to speak for one minute and denied others the opportunity to speak at all. I find no case that holds limiting the time in such a fashion is reasonable.

Summary:

The beginning fact is that on April 17, 2012, Chairman allowed some public comment and prevented other members of the public from speaking. That was a Brown Act violation, except Chairman Brown said the meeting was being continued and not closed.

At the continued hearing on May 8, 2012, Chairman allowed no public speakers because some members of the public had been allowed to speak on April 17, 2012.

The analysis of who Chairman Reyes allowed to speak on April 17, 2012 revealed substantial viewpoint censorship.

When some members of the public tried to use general comment on May 8, 2012 to discuss the adverse impacts of the Plan, Chairman Reyes cut them off and refused to let the address the item.

Conclusion:

Thus, there were two violations of the Brown Act. Allowing only some people to speak on April 17, 2012 and then allowing no one to speak on May 8, 2012. Had Chairman Reyes allowed public comment on May 8, 2012, then the April 17, 2012 violation would have been cured.

These violations of the Brown Act need to be cured. If the City is amenable to curing the violations, there is a way to rectify the problem without expense or trouble for the City and the public.

We believe that litigation may be avoided if the **City Council itself** allows public comment before it deliberates on the Hollywood Community Plan. The

Council has to allow public comment on any item unless "all interested members of the public were afforded an opportunity to address the committee on the item." Government Code, § 54954.3(a) As the facts show, some members were not permitted to address the PLUM Committee.

I trust that the City Council will allow public comment for all interested persons on the day it considers this item. Otherwise, it will have compounded the Brown Act violations.

Very truly yours,

Richard MacNaughton

Richard MacNaughton
RMN:ra
electronically signed

HZC-1055-1