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May 29, 2012

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

Dear Mr. MacNaughton:

This letter will respond to your letter dated May 24, 2012, sent to me via e-mail.

Your letter starts off by asking whether my May 21st letter's reference to the "Community Care Ordinance" was inadvertent. Yes, it was inadvertent—the reference was intended to be to the Hollywood Community Plan.

The primary issue that your letter raises relates to PLUM's[1] April 17, 2012 meeting on the Hollywood Community Plan (agenda item no. 3). Your letter's primary argument can be summarized as followed. Chairman Reyes allowed additional public comment on the plan for 15 minutes after which he said that the meeting was being "continued for two weeks". You argue that at that point "[m]ost speakers understood that to mean that when the meeting resumed in two weeks, they would have their chance to speak." You then assert that "[w]hen 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."

[1] Planning and Land Use Management Committee

In response to this argument, I would make several points. First, as explained in my May 21st letter, the Brown Act does not require a legislative body to hold a public hearing at every session of a single agenda item that is continued over several meetings. *Chaffee v. San Francisco Library Com'n*, 115 Cal. App. 4th 461 (2004)(where single agenda was continued from a first session to a second session of a library committee, the Brown Act did not require the committee to hold a general public comment period during each of those two sessions). *See also Jenkel v. City and County of San Francisco*, 2006 U.S. Dist. LEXIS 49923 (2006)(Brown Act did not require Board of Supervisors of City and County of San Francisco to hold a second public hearing on a matter that had already received a public hearing at a prior Committee meeting). Because the item dealing with the Hollywood Community Plan had received a full public hearing at the PLUM Committee's March 27th meeting (for what appears to be at least a 2 hour period as you describe in your May 24 letter), the Brown Act did not thus require that there be a public hearing during any of the subsequent sessions of the item.

Next, there was no legal obligation for the PLUM Committee to hold the 15 minute public comment period at the Committee's April 17th meeting. Prior to the commencement of that 15 minute public comment period, Chairman Reyes clearly stated that the public hearing had already taken place at the prior meeting on the item (March 27th meeting) and that he was allowing the 15 minute public comment period simply as a "courtesy" to those persons who had taken the time to travel to the current meeting. He then explained that the public comment would take place for 15 minutes, with each speaker given 1 minute to speak. He noted that more time could be given if his colleagues felt this was appropriate.

Chairman Reyes then began the 15 minute comment period, which concluded with the testimony given by Mr. Dick Gee. At that point, a woman shouted out from the audience and said that "I submitted a card." Chairman Reyes responded by explaining that the 15 minute public comment was now closed and no more speakers would be taken. (The other Committee members remained silent, which showed their tacit agreement to concluding the 15 minute comment period.) Before continuing the item, Chairman Reyes noted that at that subsequent meeting the Committee could at that time reopen public testimony if the Committee chose to do so.

Chairman Reye's imposition of a 15 minute limit on public comment at the April 17 meeting, with a minute given to each individual speaker, was imminently reasonable in light of the fact that the full public hearing had already taken place at a prior meeting and this 15 minute comment period was being given simply as a courtesy to the audience in attendance at the April 17 meeting. The Brown Act specifically authorizes a legislative body to adopt "regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker." Gov't Code § 54954.3(b).

Your letter also argues that Chairman Reyes made a promise that any speakers not heard during the 15 minute comment period on April 17 would have an opportunity to make their comments at the next meeting on the Hollywood Community Plan. This is not an accurate characterization of what Chairman Reyes said at the April 17 meeting. As explained above, what Chairman Reyes actually said at the April 17 meeting was that he was going to hold a 15 minute public comment period as a "courtesy" to the audience. After the 15 minutes had elapsed, he then closed the public comment period. He then indicated that the item would again be continued and that at the subsequent meeting the PLUM Committee could at that time reopen public testimony if it *chose* to do so. Obviously, the Committee did not choose to reopen public testimony at the subsequent meeting which took place on May 8th.

Nor did Chairman Reyes engage in viewpoint discrimination in calling the names of the speakers during the 15 minute public comment period on April 17. Before he began calling the names, he explained that he would be taking comments from persons for, against, or neutral to the plan during the same 15 minute public comment period. The reasonable inference from his statement was that he was simply going to call speakers from the pile of cards in front of him, which was not arranged in any particular order, and that he was going to stop after 15 minutes had elapsed. The fact that the number of speakers in favor of the plan turned out to be two more than the number of speakers opposed to the plan simply reflects the fact that Chairman Reyes called the speaker cards at random. There is no evidence in the record other than this extrapolation of statistics that shows that Chairman Reyes, or the PLUM Committee, engaged in any viewpoint discrimination during the 15 minute public comment period on April 17. *See White v. Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990)("While a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing, . . . it may certainly stop him if his speech becomes irrelevant or repetitious.")

You conclude your letter by stating that litigation over what you perceive to be a Brown Act violation can be avoided if the full City Council will allow a further round of public testimony on the Hollywood Community Plan during the City Council's consideration of the item. When this item comes before the City Council, the Council will of course have the same option of reopening public testimony that PLUM had at its May 8th meeting.

Very truly yours,

Kenneth Fong
Deputy City Attorney

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

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Second Letter to Richard MacNaughton (Brown Act Letter).doc