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May 17, 2016

ORIGINAL VIA US MAIL

VIA EMAIL councilmember.wesson@lacity.org

The Honorable Herb J. Wesson, Jr. - President
Los Angeles City Council
200 N. Spring Street
Los Angeles, CA 90012

Re: Council File No. 14-1479
City Council Hearing Date: May 13, 2016 - Agenda Item Nos. 10 and 11
Vacant Parcels off of Cahuenga Boulevard [Parcel Nos. 5577-016-001 and 5577-016-002]
Violation of Brown Act: Demand to Cure and Correct

Dear President Wesson:

This office represents Ben Forat, owner of the above-referenced property, with respect to the matter referenced above. On April 1, 2016, the City Council approved a motion on a vote of 10 to 2 to rescind “the Council Action of March 18, 2015 relative to the rezoning of two vacant parcels off of Cahuenga Boulevard adjacent to Lake Hollywood [Parcel Nos. 5577-016-001 and 5577-016-002, (CF 14-1479)]. . . .” (the “April 1 Action”). However, the April 1 Action was made with a substantial violation of a central provision of the Ralph M. Brown Act. We wrote to you on April 19, 2016, demanding that the City Council cure and correct this violation. On May 10, 2016, Deputy City Attorney Strefan Fauble wrote to us stating that the City denied that a Brown Act violation had occurred, but that the City would rescind its April 1 Action and then address a second motion, essentially repeating its April 1 Action.

On May 13, 2016, the City Council did just that. It approved a motion to rescind its April 1 Action. Then, with minimal public comment and Council discussion, it took the exact same action it had taken on April 1, 2016. These May 13, 2016 actions by the City Council neither cured nor corrected the original Brown Act violation, but merely exacerbated it.

The April 1 Action was not in compliance with the Brown Act because it occurred as the culmination of a discussion in closed session of a matter which the Act does not permit to be discussed in closed session. The agenda item was called, the Council entertained eight minutes of public comment, closed public comment and then adjourned to closed session, ostensibly to meet with the City Attorney to discuss possible litigation related to this matter, and no other topic. Per the agenda, the

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closed session was called pursuant to Government Code § 54956.9 (d)(2) and (e)(5), in order to confer with legal counsel in relation to significant exposure to, and threat of, litigation.

The closed session lasted for just under one and a half hours, during which time we are informed and believe that the discussion strayed far from “exposure to and threat of litigation,” and that the merits of the Motion were discussed by, and commitments or agreements regarding voting on the Motion were made by, the Councilmembers present in the closed session. When the public hearing on the Motion resumed, there was nearly no discussion by Councilmembers, and the vote was taken.

The Brown Act, at Government Code § 54960.1 provides in pertinent part that, “(a) ...[A]ny interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953 ... is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.”

As used in the statute, “action taken” means “*a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision*, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.” (Gov. Code, § 54952.6; emphasis added.) As such, the action taken in the closed session by the City Council was the collective decision, or the making of commitments or agreements, to approve the Motion, which decision was then carried out without significant further public discussion by the Council.

Therefore, pursuant to Government Code § 54960.1, we demanded on April 19, 2016 that the City Council cure and correct the illegally taken action by formally and explicitly withdrawing its April 1, 2016 Motion *and conducting a new hearing on the Motion at which all Council discussion on the matter is made in public and all prior communications among the Councilmembers, and between Councilmembers and the public, are fully disclosed, and a full opportunity for informed comment by members of the public at the same meeting is afforded.*

While not admitting that there was a Brown Act violation, the City through its City Attorney did state that it would rescind its April 1 Action and “in an effort to comply with . . . [the] demand to cure and correct,” address Councilman Ryu’s new motion to rescind the prior Council action of March 18, 2015.

The actions taken by the Council on May 13, 2016 did not cure and correct the Brown Act violation, but merely exacerbated it. Once again, the Council limited public comment, including by the property owner and his counsel, to just two minutes per speaker, effectively eliminating meaningful public comment. A few questions were asked by Councilman Ryu of City staff, and another

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Councilman stated his concerns with the motion, but stated that his desire was to vote in accordance with the Councilman in whose district the property lay. That was the full extent of the Council's public consideration of this issue. The Council then voted 11-0 to approve the new motion.

The City Council did not attempt to comply with our April 19 demand to cure and correct. Doing so would have required that the Council conduct a new hearing at which all Council discussion on the matter is made in public and all prior communications among the Councilmembers, and between Councilmembers and the public, are fully disclosed, and a full opportunity for informed comment by members of the public at the same meeting is afforded. It is ludicrous to believe that the votes on the May 13, 2016 motion which was identical to the April 1 Action were not based on the same improper and secret "collective decision" or "collective commitment or promise by a majority of the members" of the Council to vote for Councilman Ryu's motion that took place during the April 1, 2016 closed session.

Once again, pursuant to § 54960.1(c)(1), the City Council has 30 days from the receipt of this demand to either cure or correct the challenged action or to inform us in writing of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave our client with no recourse but to seek a judicial invalidation of the challenged action pursuant to § 54960.1, in which case we will also seek our client's reasonably incurred attorneys' fees and costs, pursuant to § 54960.5.

Further, we restate our demand that any and all notes, minutes and recordings of the April 1, 2016 closed session meeting be preserved for use in possible litigation, so that there is no spoliation of this important evidence.

As always, please do not hesitate to contact me at any time with any questions or comments that you may have.

Sincerely,

GAINES & STACEY LLP

By

A handwritten signature in blue ink, appearing to read "Fred Gaines", with a long horizontal stroke extending to the right.

FRED GAINES

cc: All City Council Members (via email)
Terry Kaufmann-Macias, Supervising City Attorney (via email)
Sharon Gin, Legislative Assistant (via email)