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Council File No: 16-0033

Item No. 3

Deputy: Comm from Public

Tuesday, May 3, 2016

City of Los Angeles
PLUM Committee

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Councilmember Marqueece Harris-Dawson
Councilmember Gilbert A. Cedillo
Councilmember Mitchell Englander
Councilmember Felipe Fuentes

RE: PLUM Hearing, May 3, 2016 2:30 p.m.
Item # 3, Council Number: 16-0033
Case No. CPC-2015-74-GPA-SP-CUB-SPP-SPR
CEQA #: ENV-2008-1421-EIR and Addendum
Conflict of Interest Between Target and City

Dear Honorable Committee Members:

The way this new attempt to legitimize the Target Project has proceeded, some unique issues have arisen.

The City has a new ordinance which requires the developer to pay the City's attorney fees when the City is sued for passing a Project. The Target has objected to the application of this new ordinance and I also find it problematic.

The Target objects to the Child Care component as well as to the attorney fee ordinance. That places Target in opposition to the City's eventual determination. There are legal and perhaps constitutional issues whether the City can require a developer to pay for an outside law firms as then the Target will be paying for attorneys to oppose the Target's position. Whatever outside law firm is retain, it has a conflict of interest between Target's interests and the City's interests.

The public has a right to object to the City's being represented by an outside law firm whose integrity is compromised by its being thrust into the position of having dual loyalties.

The public also has an objection to the ordinance which requires the Target to pay for the outside legal representation while the City Attorney's Office is still litigating the case. For one thing, when the City Attorney's Office joins together with the outside attorneys, who have some degree of loyalty to Target, the City Attorney's Office becomes compromised.¹ In addition, the public may object that the City is wasting money to have the City Attorney continue to expend its resources when allegedly the outside law firm is defending the City. Since the City asserts that it has vetted all the approved law firms, there is a presumption that they are well qualified, and it would be a waste of city assets to have the City Attorney's Office also litigate the case.

Furthermore, the legal underpinning of this case is the City's attempt to change SNAP. It is highly questionable whether the Target can be compelled to pay for the defense of actions which the City undertakes to change its own ordinance. To claim that Target should pay the City's attorney fees is pregnant with the idea that the City Council is not an independent governmental body but rather that it is a subsidiary of the Target Corporation. On what other basis can the City expect a private party to pay the City's attorney fees when the City is sued for improperly amending its own laws?

There have been factual allegations made during this administrative process as well as during the administrative process of the prior Target case (which is pending before the appellate court), that council office 13 used undue pressure on Target to construct a store which the Target did not want to construct. In fact, part of Judge Fruin's decision was based upon Target's admission that it could construct a SNAP compliant store.

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The City Attorney's Office has a reputation for high ethical standards and this argument does not question the ethics of what is one of the finer law firms in the City. The legal issues, however, need to be brought to everyone's attention so that there can be a robust discussion of these complications arising from the new attorney fee ordinance. Both the City Attorney's Office and the outside law firm **might be subject to recusal**. I emphasize "might" as these issues seem to be ones of the first impression and one cannot predict the outcome of a proper analysis.

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The testimony, documents, and allegations have not been investigated, but there are reasonable grounds to believe that the council office's went over the line and intruded into extortion by compelling the Target to construct a store which intentionally transgressed SNAP.

Target still has the option to construct a SNAP compliant store. A complete investigation may show that the Target has not settled the existing lawsuit and it is not presently constructing a SNAP compliant store due to City Hall's placing inappropriate and illicit pressure upon the Target. Again, the possible specter of a conflict of interest arises between the City Attorney and an outside law firm, whose role must be limited to civil aspects of this project. When the scope of the City's conduct may involve inappropriate behavior by the CD 13 councilmembers, it would be inappropriate for the City Attorney to be in a confidential relationship with an outside law firm. The City's sharing of information with the outside law firm about illicit behavior of councilmembers would be improper while withholding any information which could benefit Target would be prejudicial to Target.

Prior to sending this code change and the Target Project to City Council, there are serious legal issues which must be resolved. Ignoring them, however, is not the same as resolving them.

Very truly yours,

Rick Abrams

Rick Abrams
electronically signed
RLA:rsm