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April 12, 2016

***Via Overnight mail and Electronic mail to holly.wolcott@lacity.org***

The Honorable Herb Wesson, Council President
Members of the Los Angeles City Council
200 North Spring Street
Los Angeles, California 90012

RE: Council File 16-0348, April 13, 2016 Item No. 22
**BROWN ACT CURE AND CORRECT LETTER**

Dear Council President Wesson and the Members of the Los Angeles City Council,

The Los Angeles Neighbors in Action (LANA) writes to call your attention to a violation of the Ralph M. Brown Act that occurred in connection with the April 6, 2016 meeting of the Housing Committee of the Los Angeles City Council, and to raise concerns about the procedural and substantive impropriety of adhering to the Housing Committee's recommendations.

**THE AGENDA FOR THE HOUSING COMMITTEE DID NOT SATISFY THE BROWN ACT**

The Los Angeles City Council's Housing Committee violated the Brown Act on April 6, 2016, by voting to recommend a course of action to the full City Council by formal vote without adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and without any finding of fact by the Housing Committee that urgent action was necessary on a matter unforeseen at the time the agenda was posted. The April 6, 2016 meeting agenda simply stated that the Housing Committee would receive a communication from the City Attorney regarding LANA's Superior Court action against the City, as follows:

"Communication from the City Attorney relative to Los Angeles Neighbors in Action v. City of Los Angeles, Los Angeles Superior Court Case BS150559 Second Dwelling Units and 2716 Krim Drive. This matter arises from a challenge to the City's policy and practice of applying state law's ministerial standards for approving second dwelling units (i.e., granny flats). . . . . (The Housing Committee may recess to Close Session, pursuant to Government Code section 5456.9(d)(1) to confer with its legal counsel relative to the above matter.)"

In contrast, the Housing Committee held extensive discussion with the public regarding what approach the City should follow with respect to its future (and even past) permitting of second dwelling units. The Housing Committee voted in the April 6, 2016 meeting to recommend that

the City Council "repeal the City's Second Unit Ordinance codified at Los Angeles Municipal Code Sections 12.24 W 43 and W 44" and to take a number of other actions including to "declare any building permit for a second unit issued pursuant to the 2003 correspondence issued by the Departments of City Planning and Building and Safety or the 2010 memorandum issued by the Chief Zoning Administrator of the Department of City Planning to be valid and effective if the permit otherwise complies with all State and local laws." These actions taken go far beyond what was included in the description on the agenda, which indicated simply that the City Attorney would inform the Committee about the case. Had the agenda indicated that the Housing Committee would consider recommending the repeal of the ordinance and validating all previously issued permits, LANA and other members of the public would have made their opposition to such approach known to the Housing Committee.

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions — the judicial invalidation of those actions.

Pursuant to Government Code section 54960.1, LANA demands that the Housing Committee cure and correct the illegally taken action by withdrawing the improper report and recommendations to City Council, removing the item from the April 13, 2016 City Council agenda, and holding another hearing of the Housing Committee which properly informs the public of the subjects for discussion at that hearing.

As provided by section 54960.1, you have 30 days from receipt of this demand to either cure or correct the challenged action or to inform LANA of your decision not to do so.

**RESCISION OF THE CITY'S LOCAL STANDARDS FOR SECOND UNITS AND REPLACEMENT WITH STATE DEFAULT STANDARDS IS BAD POLICY**

First, the City Council cannot act on April 13 to repeal Los Angeles Municipal Code section 12.24 W 43 or W 44. The repeal of the second unit provisions is subject to Charter section 558(a), which applies to "the adoption, amendment, *or repeal* of ordinances, order or resolution by the Council concerning . . . the creation or *change of any zones for the purpose of regulating the use of land.*" The Charter requires that the Council adhere to procedures for the repeal of such ordinances, including that the repeal first be referred to the City Planning Commission "for its report and recommendations." Municipal Code section 12.32 A sets forth procedures for the adoption of a proposed land use ordinance. That section makes clear that "initiation and decision-making for amendments to Chapter 1 of [the municipal code] and other zoning regulations shall be the same," as providing for Commission and Council initiated zone changes. The *repeal* of the land use ordinance contemplated in the Housing Committee's recommendation would amend the zoning code, and must first be referred to the City Planning Commission for its report and recommendation. As that has not yet occurred, the City Council cannot simply repeal section 12.24 W 43 and W 44.

Moreover, it would be bad public policy to repeal the City's tailored standards and replace them with the generic state default standards. The City's Re:CodeLA advisory committee's study of

the City's single family zoning rejects the idea that LA's many diverse neighborhoods — both in character and topography — are subject to one-size-fits-all zoning requirements. The City should await the conclusion of the Re:CodeLA process before adopting default standards that would impose the same standards across the City.

There is no reason for the Council to act hastily; there is no emergency situation. The City has been ordered to stop utilizing a 2010 memorandum *going forward*, for the issuance of new permits for second dwelling units. Yet LADBS has been needlessly threatening property owners who have permits issued well before the Court's ruling in this case, causing unwarranted concern among the owners. Anyone with a valid permit that was not specifically challenged in this case (and only *one permit*, 2723 Anchor Avenue, was directly challenged), should be permitted to construct in accordance with their permits.

The Court's order does not stop the City from issuing second unit permits after the judgment went into effect on April 4, 2016. The Court expressly stated that the City can continue to implement its existing standards, which the City successfully did between 2003 and 2010, when, as the Court found, the City Attorney's mistaken legal advice led the City's planning and building officials to erroneously replace the City's adopted standards with the state default standards. The City issued approximately 40 second unit permits a year during this 2003 to 2010 period, approximately the same number the housing element projects would be issued annually.

**CONCLUSION**

The Housing Committee improperly adopted its recommendations for Council because the public was not adequately informed that the Committee would make a recommendation regarding the repeal of Los Angeles Municipal Code 12.24 W 43 and W 44. The proposed course of action is bad policy and inconsistent with the City's approach to planning and zoning which recognizes the unique features of the City's single family neighborhoods.

Cordially,

Beverly Grossman Palmer

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