

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
PUBLIC INTEGRITY DIVISION

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November 21, 2013

The Honorable Members of the Planning Commission
City of La Habra Heights
1245 North Hacienda Road
La Habra Heights, CA 90631

Subject: Complaints of Brown Act Violations
Case No. P13-0351

Dear Honorable Members of the Planning Commission,

We received complaints of possible violations of the Brown Act by the La Habra Heights Planning Commission on various dates. Our review of the complaints revealed that a few violations occurred regarding the public's right to make comments at meetings. We address these violations as follows.

Two of the violations occurred during the Planning Commission's "special" meeting on August 27, 2013. The first involved Stephen Blagden's submission of separate cards to speak regarding agenda items four, five and six. Items four and five were handled by the Commission as part of the consent calendar without allowing Mr. Blagden, or anyone else from the public, to speak. Our review included listening to the recording of this meeting. On the recording one can hear Mr. Blagden speaking up to bring his concern to the Commission's attention just as the Commission voted on the consent calendar items. It is unclear whether anyone from the Commission actually heard Mr. Blagden.

It is also uncertain whether depriving Mr. Blagden of his request to speak was intentional. Regardless, the failure to allow his comments was in violation of the Brown Act which specifies that the public has the right to speak at a "special" meeting about any item listed on the agenda. It might have been the case that the Commission was unaccustomed to receiving requests from the public to speak regarding items on the consent calendar. An indication that the violation might have been unintentional is the fact that Mr. Blagden was permitted to speak regarding consent calendar items at a subsequent meeting on November 12, 2013. Thus, at this time there is no other corrective action necessary as it appears that the Commission has already adjusted its procedures to fully respect the public's right to speak regarding any item on the agenda for a "special" meeting.

The second violation from that same meeting involved public comments provided by Bill Phelps regarding item number seven. Item seven was described in broad terms including, "Recommend that the City Council approve the ordinance amending Article 7 of the Municipal Code establishing procedures for the negotiation of development agreements...." Mr. Phelps began his comments by expressing his view that project review had been a problem in the city. He was cut off by a member of the Commission who stated that the comments were not appropriately tied to the matter at issue. Mr. Phelps countered that his comments were about Planning Commission review as related to Municipal Code section 7.20.30. The commissioner replied that Mr. Phelps's theme was only a part of what was to be discussed by the Commission. The commissioner then declared that the discussion was being limited to the contents of the city manager's presentation earlier in the meeting. Mr. Phelps then gave up and left the podium.

The Brown Act specifies that members of the public of the public have the right to speak at a "special" meeting "concerning any item that has been described in the notice for the meeting." (Gov. Code § 54954.3(b).) The Act permits officials to cut off speakers when their comments are not relevant to a specific agenda item. Exercising this prerogative to judge relevance of comments might involve gray areas. "[T]he point at which speech becomes unduly repetitious or largely irrelevant is not mathematically determinable. The role of a moderator involves a great deal of discretion." (*White v. City of Norwalk* (1990) 900 F.2d 1421, 1426.) However, in interpreting the statute, "We must follow the construction that 'comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute'" (*Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461, 468.) This approach calls for any error to be on the side of caution.

We conclude that Mr. Phelps's comments were quite relevant to the subject matter of item number seven as described in the agenda. That the city manager may have presented the issue more narrowly at the meeting does not set the parameters of relevant public comments. Therefore, it was a violation to interrupt him and the further effect of causing him to give up his comments even though he was not specifically instructed to do so.

Finally, another violation occurred at the "special" meeting on November 12, 2013, during comments by Michelle Kurtz. From the recording, Ms. Kurtz made public comments in which she asserted that city personnel had a vendetta against members of the Morgan family who had previously challenged particular actions taken by the city. A member of the Commission interrupted her to ask if she had any documentation to support her assertion. She answered that she did not but inferred it from information she learned from several of her neighbors. The commissioner then declared, "Ma'am, I will not countenance an accusation or claim that isn't backed by some documentation." Ms. Kurtz then suggested that the commissioner ignore those remarks and she continued her comments by admonishing city personnel to follow the municipal code. She did not again broach the issue of bias against the Morgans.

The commissioner violated the Brown Act by interfering with Ms. Kurtz's right to make public comments. The commissioner implied that he had authority to censor her accusation unless she had documentation to support it. This implication is false. The

public right to address the Commission includes the right to criticize the Commission or other city personnel. (*Leventhal v. Vista Unified School District* (1997) 973 F.Supp. 951.) There is no basis for the commissioner to require Ms. Kurtz to provide proof of her assertion. Due to the commissioner's unlawful interference, Ms. Kurtz ceased her line of criticism regarding bias by city personnel against the Morgans, even though she continued with other comments. This effect of censorship violated a principle right of the public under the Brown Act. It must not be repeated.

We hope that our discussion of these incidents has clarified for you the scope of the public's right to make comments at meetings. At this time we do not feel that further action by our office is necessary but expect that similar conduct by the Commission will not provoke future complaints. Feel free to contact us if you have any questions.

Very truly yours,

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By 

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Deputy District Attorney

cc: Holly O. Whatley, City Attorney