



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

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October 13, 2004

Mark Egerman, Mayor
Linda Briskman, Council Member
Thomas Levyn, Council Member
Stephen Webb, Council Member
Jimmy Delshad, Council Member
City of Beverly Hills
455 N. Rexford Dr.
Beverly Hills, CA 90210

Subject: Complaint of Brown Act Violations by the Beverly Hills City Council
PID Case No. 04-0682

Dear Mayor and Council Members,

This office received a complaint that the City of Beverly Hills Council (the "Council") violated the *Brown Act* during its meeting on August 3, 2004. Specifically, it was alleged that the Council failed to permit public comment during the latter part of the meeting on August 3, 2004. Based on our review of the matter, we have determined that the Council did, in fact, violate the *Brown Act* in this regard.

Government Code Section 54954.3 states:

a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been

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substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

The posted agenda indicates two opportunities for public comment: one at the beginning of the meeting, and one at the end.

Item C. Oral Communications

1. Telephone Call-In

(Members of the public are invited to place telephone calls to comment on issues not on the evening's agenda. The City Council will take up to three telephone calls per meeting. Comments on the evening's agenda must be made in person as the item comes before the City Council.)

2. Audience Comments

Additional time will be provided at the conclusion of the meeting under Agenda Section H ("Other Business").

H. Other Business

1. Audience Comments (Continued from Agenda Section C-"Oral Communications")

Comment cards were filled out by six individuals seeking to address the Council at the meeting. Three of the six spoke at the Public Comment portion of the meeting (Agenda Item C.2.) near the beginning of the meeting. The other three, Robert Silverstein, Arthur Stone, and Jim Simon, filled out their comment cards seeking to address the Council after the meeting commenced, but before the meeting was adjourned. They report that the forms were handed to the City Clerk, who sits in full view of the entire council, while the Council was still in session and prior to the adjournment of the meeting.

The subject matter of the comments, "Montage Blockers" relates to the signature gathering process for a referendum petition to qualify a referendum opposing the Montage Development project, a joint venture by the Athens Group and the Beverly Hills City Council situated within the city limits involving property owned at least in part by the City. Comments on the "Montage Blockers" are within the subject matter jurisdiction of the Council. (see, *Government Code Section 54954.3*, italicized above). As such, the matter sought to be addressed by Mr. Silverstein and Mr. Simon was permissible under the Brown Act. No subject matter is listed on the third card, although the name of the group on whose behalf Mr. Simon sought to speak is "BHSHA" (Beverly Hills South Homeowner's Association). Comment from a representative of a group of Beverly Hills residents also falls within the subject matter jurisdiction of the Council.

A review of the posted synopsis from the meeting and videotape of the proceedings corroborates the complaint that no public comment was permitted at the conclusion of the meeting because the mayor adjourned the meeting without permitting the individuals to speak. Copies of the comment cards obtained from the City Clerk confirm these observations. The cards from the three persons who were not permitted to speak bear the handwritten notation "did not speak".

The video tape confirms that the council was on notice that there were members of the public who sought to exercise their right to address the council at the conclusion of the meeting, as set forth in Item H.1. Following the conclusion of "Continued and New Business", the camera focused upon Councilman Webb, who made comments regarding the Farmers' Market and the Chili Cook-off. As Councilman Webb spoke, persons can be seen walking behind the councilman's chair, from right, consistent with the location of the City Clerk's desk, to left, with an item that looks substantially similar in size, color and shape to the form required to be filled out by persons wishing to address the council. Once the councilman concluded his remarks, the mayor abruptly adjourned the meeting. Almost immediately thereafter, three men are seen approaching the lectern from which members of the audience made their comments earlier in the meeting. The men appear to attempt to speak to the council, and there appears to be some recognition of their presence by council members whose progress off the dais is interrupted. The actual conversation cannot be discerned because the audio portion of the tape includes only background music.

The actions depicted on the tape, along with the comment cards and notations thereon, and minutes pertaining to the meeting demonstrate that the Council violated the *Brown Act* by failing to permit public comment at a time set forth on the published agenda for the meeting on August 3, 2004.

The public has a statutory right to be heard and be present. These are not mere privileges granted by the Mayor or the Council that can be withdrawn at will. The purpose of the *Brown Act* is to assist the people, "so that they may retain control over the instruments they have created." *Government Code Section 54940*. The failure of the Council to adhere to the letter and the spirit of the *Brown Act*, as reflected in the

action of the Mayor in preemptively adjourning the meeting to prevent public comment is an intolerable intrusion upon the rights of the citizens for whom the Council works.

The District Attorney requires strict compliance with all provisions of the *Brown Act* and takes seriously this office's enforcement duties. This office has determined that a civil action for declaratory relief is not yet appropriate since this violation has only recently been brought to the Council's attention. Nonetheless, we question the City's commitment to following the *Brown Act* in light of what appears to be a flagrant failure to permit public comment. Should we become aware of further violations, we will seek judicial remedies.

Very truly yours,

STEVE COOLEY
District Attorney

By 

JENNIFER LENTZ SNYDER
Deputy District Attorney
Public Integrity Division