



To preserve and enhance the unique village character of Laguna Beach

City Council  
505 Forest Avenue  
Laguna Beach, CA 92651

May 10, 2022

We request that the City Council provide an unconditional commitment to cease and desist violating the Brown Act's closed-session provisions for noticing real estate negotiations. In addition to the noticing violations, we believe that it is likely that other violations of Brown Act closed-session provisions have occurred at recent closed-session meetings conducted under the real estate negotiation exception. To the extent that those additional closed-session violations have occurred, we urge the Council to make an unconditional commitment to cease and desist from further violations.

The agenda report Item No. 14 in the May 10, 2022, City Council meeting states that:

*"In 2019, City Council directed the City Manager to negotiate the terms of a shared use agreement with the Laguna Presbyterian Church (Church) for a future parking structure at 355, 359, 361, and 363 Third Street, as depicted on Attachment 1 and designated Councilmember Blake to work with staff on the matter."*

Following the release of the agenda item, we were informed that City Council gave direction to the City Manager regarding the parking-lot project at a closed-session meeting conducted by the Council on May 21, 2019.

The notice for the May 21, 2019, closed session agenda states, however:

*"Conference with Real Property Negotiators (pursuant to Government Code section 54956.8): one item – price and terms of payment for possible acquisition of property at 355 Third Street; property owner representative is Robert J. McDonnell; City negotiator is John Pietig, City Manager."*

The Brown Act's closed session exception for real estate negotiations provides that a local public agency relying on this exception must identify its negotiators, the real property or real properties which the negotiation may concern, and the person or persons with whom its negotiators may negotiate. Gov't Code sec. 54956.8. In addition, the closed-session notice must describe the specific transaction that will be discussed in closed session. Gov't Code 54954.5; *Shapiro v. San Diego City Council* (Cal.App.4th 2002) 96 Cal.App.4th, 904 921. Finally, "in the closed session, the legislative body may consider on those matters covered in its [agenda] statement." *Id.*, at 54957.7(a).

The notice for the May 21, 2019, closed session does not adequately describe the actions in the agenda report for Item No. 14. No one reviewing that closed-session notice would be on notice that the City's closed-session discussion would include construction of a parking garage on four separate parcels of land, most of which was owned by the Presbyterian Church, or a shared-use agreement. The notice is inadequate for purposes of the Brown Act. We therefore urge the Council to make an unconditional commitment to cease and desist from providing closed-session notices failing to include an accurate and complete description of the properties and the activities actually to be discussed in closed session.

We are also concerned that topics involved in the parking-garage project that should have been discussed at an open-session meeting with the public were actually discussed in closed session. As we discussed in another letter to the Council on Item No. 14, there have been no public hearings on the proposed parking-lot project. It appears that all the project details and even the decision to pursue the parking-lot project

were worked out in closed session, without any public involvement. The agenda report for Item No. 14 has a detailed MOU for the parking garage project that includes a shared-use arrangement; design characteristics; construction provisions, including identification of a staging area; assignment of responsibility for maintenance and repair; financing for the project; alterations to the parking garage; payment of taxes, utilities, and insurance; and amendment of the Church's conditional use permit. The agenda report for Item No. 14 states that development of the MOU was "[b]ased on directions provided in closed session over the last few months."

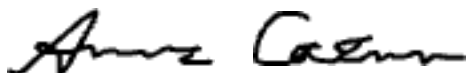
None of these MOU topics, however, is a proper topic for closed session discussion. The purpose of the real-estate negotiation exception is to provide the agency's real estate negotiator with instructions regarding price and payment terms. The exception limits closed-session discussions to: (1) the amount of consideration that the local agency is willing to pay or accept; (2) the form, manner, and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms, such that their public disclosure would be tantamount to revealing the information that the exception permits to be kept confidential. Opinion of the California Attorney No. 10-206, p. 2, (December 27, 2011). Expanding on these basic rules, the Attorney General has explained that a public agency's closed-session discussions may include the range of possibilities for the payment that the agency might be willing to accept, including how low or how high to start the negotiations; the sequencing and strategy of offers or counteroffers, as well as payment alternatives; and information designed to assist the agency in determining the value of property in question, such as the sales or rental figures for comparable properties. *Id.*, pp. 9-10.

Any closed-session discussion of topics in addition to price and payment terms, however, is disallowed. The Courts and the Attorney General have specifically disapproved of a closed-session briefing on land acquisition matters; design work of architects and engineers; infrastructure and parking developments; capping interim expenses; environmental impact report considerations; issues of alternative sites, expert consultants, and staff; and policy considerations. *Id.*, pp. 8-9.

Also specifically forbidden is any closed session discussion of the wisdom of undertaking the project. *Id.*, p. 10. Any discussion concerning the project's merits or whether to pursue it must take place in open session.

The agenda report indicates that the Council gave direction to the staff in recent closed sessions that the staff used as the basis for developing a proposed MOU with the Presbyterian Church. Most of the topics in the MOU, however, cannot be discussed in closed session. The wisdom of undertaking the project and the decision to pursue it cannot take place in closed session. Discussion of alternate sites cannot occur in closed session. Discussions of a shared-use arrangement with the Church; design characteristics; construction provisions; assignment of responsibility for maintenance and repair; financing for the project; alterations to the parking garage; payment of taxes, utilities, and insurance; and amendment of the Church's conditional use permit must all occur in open session. To the extent that there have been closed-session discussions of these topics, we request that the Council provide an unconditional statement that it will cease and desist from similar violations in the future.

Sincerely,



Anne Caenn, President