



OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

ERIK NASARENKO

District Attorney

May 15, 2023

Via Electronic Mail to: Ojai City Council

Members of the Ojai City Council
Ojai City Hall
401 S. Ventura Street
Ojai, California 93023

Dear City Council Members:

Demand to Cease and Desist Brown Act Violations

The Ventura County District Attorney (VCDA) has concluded the Ojai City Council violated the Brown Act. The violations are described below.

Please accept this letter as a demand pursuant to Government Code section 54960.2(a)(1) to cease and desist from, and not repeat, the violations described below. Pursuant to Government Code section 54960.2(b), the Council has thirty (30) days to inform our office, in writing, of an unconditional commitment to cease, desist from, and not repeat the Brown Act violations described below. The Council's unconditional commitment to cease, desist from, and not repeat the violations described below must be substantially in the form mandated by Government Code section 54960.2(c)(1).

Furthermore, pursuant to Government Code section 54960.2(c)(2), this unconditional commitment must be approved in open session, at a regular or special meeting, as a separate item of business, not on the consent agenda.

In the event the Council fails to provide this unconditional commitment, there is a basis for commencement of an action pursuant to Government Code sections 54960(a) and 54960(b).

I. NATURE OF THE VIOLATIONS

A. Discussing Matters in Closed Session that Exceeded the Scope of the Claimed Closed-Session Exception on December 13, 2022

On December 13, 2022, the Council met in closed session under the following closed session agenda description:

Conference with Legal Counsel; Existing Litigation

(Gov. Code § 54956.9(d)(1))

The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.

Case Name: Simply Ojai v. City of Ojai, et al.; Ventura County Superior Court Case No. Pending Assignment

After convening in closed session, the Council discussed retaining an outside law firm to review a previously approved development agreement. The discussion of retaining the outside law firm did not involve retaining the firm to defend the city against the *Simply Ojai* lawsuit. Since the development agreement had previously been vetted and approved by the Council in open session, this discussion exceeded the scope of the existing litigation (*Simply Ojai v. City of Ojai*) listed as the closed-session exception.

B. Discussing Matters in Closed Session Exceeding the Scope of the Claimed Closed-Session Exception on January 9, 2023

On January 9, 2023, the Council met in closed session under the following closed session agenda description:

Conference with Legal Counsel; Existing Litigation

(Gov. Code § 54956.9(d)(1))

The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.

Name of Case: Simply Ojai v. City of Ojai; Ojai City Council

Names of Parties or Claimants: Simply Ojai, City of Ojai, Ojai Bungalows, L.P., Green Hawk, LLC, The Becker Group, Inc.

Case No. or Claim No. 56-2022-00572740-CU-WM-VTA

After convening in closed session, the Council met with the outside attorney retained as a result of the December 13, 2022, closed session. The Council and outside attorney reviewed and discussed a legal memorandum titled: *“Pending Litigation Challenging the Becker Development Agreement: Consequences and Opportunities Presented by Rescinding the Development Agreement in Response to a Referendum Petition.”* The outside attorney was not responsible for defending the city against the lawsuit listed as the existing litigation (*Simply Ojai v. City of Ojai*) closed-session exception. The title of the discussed memorandum narrowed the subject matter to rescinding the development agreement in response to a referendum, not in response to the *Simply Ojai* litigation. The memorandum and related discussion exceeded the scope of the “existing litigation” exception listed as the closed-session exception.

C. Discussing Matters in Closed Session Exceeding the Scope of the Claimed Closed-Session Exception on January 10, 2023

On January 10, 2023, the Council met in closed session under the following closed session agenda description:

Conference with Legal Counsel; Existing Litigation
(Gov. Code § 54956.9(d)(1))

The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.

Name of Case: Simply Ojai v. City of Ojai; Ojai City Council

Names of Parties or Claimants: Simply Ojai, City of Ojai, Ojai Bungalows, L.P., Green Hawk, LLC, The Becker Group, Inc.

Case No. or Claim No. 56-2022-00572740-CU-WM-VTA

After convening in closed session, the Council discussed concerns about potential referendum outcomes, and potential conflicts of interests concerning the sourcing of the outside law firm whom the Council met with during closed session on January 9, 2023. These discussions exceeded the scope of the “existing litigation” listed as the closed-session exception.

D. Disclosing Closed Session Information Absent an Exception

On January 24, 2023, the Council met in open session. Councilmember Rule attempted to discuss information that Ojai City Attorney Matthew Summers believed was confidential, closed-session information. Councilmember Rule subsequently released a written, detailed summary of closed-session discussions to a local media outlet. Ms. Rule believed the closed-session discussions exceeded the scope of the closed-session exceptions listed on the applicable agendas.

II. CLOSED-SESSION VIOLATIONS I.A THROUGH I.C

The Ojai City Council is a legislative body subject to the Brown Act. *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App. 4th 1123, 1126-1127; Gov’t Code Section 54952. The conduct described above is subject to the Brown Act and must be conducted in open, noticed meetings, absent an applicable exception.

Government Code section 54952.2(a) defines “meeting” as any quorum of a body to *hear, discuss, deliberate*, or act upon on any item that is within the subject matter jurisdiction of the body.

Government Code section 54953(a) requires all meetings of a body to be open and public, except as otherwise provided. Meetings may be conducted in closed session,

without the attendance of the public, only to the extent authorized by the Brown Act.

Government Code section 54956.9(d)(1) authorizes as an open-meeting exception, a meeting in closed session, to discuss pending litigation, defined as: “Litigation, to which the local agency is a party, has been *initiated formally*. (*Emphasis added.*)

Section 54956.9(d)(1) “creates an exception to the Brown Act's open meeting requirements for meetings with legal counsel regarding pending litigation and allows a legislative body of a local agency to hold a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.” *Page v. MiraCosta Community College Dist.* (2009) 180 Cal.App.4th 471, 498 (*internal quotations omitted.*)

“Litigation exceptions to the Ralph M. Brown Act's open meeting requirements . . . must be ***strictly construed***.” 71 *Ops. Cal. Atty. Gen.* 96, 105 (1988) (*Emphasis added.*) Closed sessions with counsel may occur only as provided in the Brown Act. *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 378.

Statutory “exceptions authorizing closed sessions of legislative bodies are *construed narrowly*, and the Brown Act ‘sunshine law’ is *construed liberally* in favor of openness in conducting public business.” *MiraCosta Community College Dist at 501.* (*Emphasis added.*)

The Council discussions summarized in subsections I.A through I.C above collectively establish the discussions exceeded the closed-session exceptions listed on the agendas, specifically the formally initiated and pending litigation titled *Simply Ojai v. City of Ojai*. Since these discussions exceeded the narrow scope of the claimed exceptions, they violated the Brown Act.

III. CLOSED SESSION VIOLATION I.D

Government Code section 54963(a) prohibits disclosure of confidential information acquired in closed session to a person not entitled to receive it, absent approval of the legislative body. This prohibition is subject to three limited exceptions:

- 1) Disclosure to a district attorney or grand jury concerning a perceived violation of law.
- 2) Expressing an *opinion* concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the *nature* and *extent* of the illegal or potentially illegal action.
- 3) Disclosing information acquired by being present in a closed session under this chapter that is *not* confidential information.

Councilmember Rule’s written, detailed summary of closed-session discussions to a local media outlet falls outside these narrow exceptions. Because Ms. Rule’s initial disclosure

was to a media outlet, exception one is inapplicable to the disclosure. Although exceptions two and three *might have been* potentially applicable, Ms. Rule's factually detailed disclosure exceeded the limited scope offered by either exception. The factual details contained within Ms. Rule's disclosure exceeded an *opinion* concerning the propriety or legality of council actions and exceeded the *nature* and *extent* of such actions. Nor does Ms. Rule's belief that council discussions exceeded the scope of the listed agenda exceptions transmute such discussions into non-confidential information.

Moreover, Councilmember Rule was not entitled to *unilaterally* decide her disclosure of closed-session information qualified under exception two or three above. Otherwise, a member of any legislative body could publicly disclose privileged, closed-session information upon a claimed good-faith belief that the disclosure falls under exceptions two or three above.

Instead, a good-faith belief that the Ojai City Council violated the Brown Act in closed session should have been reported to the Office of the District Attorney, a lawful recipient of closed-session information. Alternatively, because any person may seek enforcement of the Brown Act, Ms. Rule could have sought a judicial determination that Council discussions exceeded the scope of the claimed closed-session exceptions. Lastly, barring a report to the District Attorney or judicial intervention, Ms. Rule should have limited any media statement to conform to the narrow parameters of exceptions two or three above.

Because Councilmember Rule's disclosure of closed-session information to a media outlet was outside any applicable exception authorizing such a disclosure, Councilmember Rule violated the Brown Act.

IV. CONCLUSION

As detailed above in sections I.A through I.C, the Ojai City Council violated the provisions of the Brown Act. As detailed above in section I.D, Councilmember Rule disclosed these violations to a media outlet, rather than the Office of the District Attorney, which formed an additional Brown Act violation.

Thank you for your attention in this matter. We look forward to your written response within 30 days.

Sincerely,



ANTHONY L. WOLD
Senior Deputy District Attorney
Public Integrity Unit