

Citizens' Oversight Projects (COPs)

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March 10, 2014

City of El Cajon
c/o Doug Williford, City Manager
200 Civic Center Way
El Cajon, CA 92020

Sent to City Clerk Belinda Hawley <bhawley@cityofelcajon.us>

Greetings:

This letter is to formally object to the violation of state law exhibited by the City of El Cajon in the March 25, 2014 city council meeting. At that meeting, the city met with representatives of the Rock Church regarding a "lease" of the ECPAC theater in closed session (Item 15.2).

According to California Government Code Section 54956.8:

54956.8. Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or **lease of real property** by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

We note that no "open and public session" was held where the city "identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate." Providing this information in the agenda does not amount to an "open session."

In all recent cases, the agenda has included an item disclosing that negotiations would be occurring, and the City Council voted to allow the negotiations to occur. For example, when the city proposed negotiations with the organization that was proposing to demolish the ECPAC theater and build a hotel, and the proposal to negotiate with the Grossmont High School District to operate the theater, these were both brought before the council in an open session prior to any negotiations in private.

Furthermore, this state law was also violated because renting the public facility, the East County Performing Arts Center (ECPAC) is not a "lease of real property" but instead the rental of space inside a public facility which must also be made available to other renters without subleasing from The Rock Church.

If it was the intention of the city to fully lease the ECPAC theater as real property to The Rock Church, and then allow them to manage the facility by renting the facility to other users, then this is contrary to the statements of the City that the intention was not to have The Rock Church to manage the facility. Allowing The Rock Church to operate this facility would be in stark violation of the First Amendment of the United States Constitution regarding the separation of church and state, as this amounts to an endorsement of a particular religion. The theater operator (The Rock Church) could then discriminate against other users, and some users may not wish to subsidize that particular (or any) religion and church organization, and therefore management of this public theater by a religious organization violates these provisions of our Constitution.

However, if the City did not intend to fully lease the theater to The Rock Church, then this does not amount to a "real estate lease" and it does not qualify to be held in closed session. Instead, these discussions with any renter of the theater must be held in open session. Historically, proposals to operate the theater were not considered "real property leases" but instead were proposals to manage the property, and all these were held in open session. The proposal by the Christian Community Theater (CCT) to manage the theater was an example of an open and transparent process.

For these two reasons, the city violated this state law.

Citizens Oversight therefore demands that the city admit that this action was incorrect, and hold the proper open and public session prior to holding any closed session, and immediately disclose any and all negotiations performed with The Rock Church in the closed session of March 25, 2014.

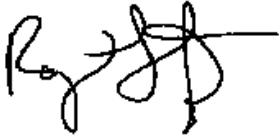
In addition, the notion that The Rock Church could lock up all Sundays for five to ten years, such that no other renter could use those important entertainment days, is a violation of the First Amendment of the Constitution regarding the separation of church and state, and amounts to endorsement of a specific religion by the City. Citizens Oversight supports the reopening of this public facility for the enjoyment of all on an equal basis. Regular worship services at the ECPAC theater, adjacent to City Hall, City Council Chambers, Police Station, and County Administration Building, is an improper underwriting of a specific religion, and therefore illegal. Negotiations with The Rock Church to hold regular worship services at this site must cease.

It is extremely important that the City comply with normal and traditional methods regarding contracting with the city, particularly in terms of requests for proposals to operate the theater if that is the direction the city wants to go. If the City wishes to lease the theater to an operator (such as a user that could then sublease to other users) then the City should publicly disclose the desire for such services to be provided to the City. Staff members are well schooled in these traditions of fair and

appropriate selection processes to secure contractors with the city that can provide the services desired.

Meeting in closed session to discuss special arrangements that may be possible with a particular religious organization is a disgusting display of "back room dealing" that we as citizens must not allow to continue.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Lutz", with a long horizontal line extending to the right.

Raymond Lutz
National Coordinator, Citizens' Oversight Projects