

## **MEMORANDUM OF LAW**

**DATE:** October 15, 2002  
**TO:** Tina P. Christiansen, Development Services Director  
**FROM:** City Attorney  
**SUBJECT:** Closed Session Discussion of Development Agreement Negotiations

### **QUESTION**

May the City Council consider a development agreement in closed session under California Government Code section 54956.8?

### **SHORT ANSWER**

Yes, if the development agreement includes the disposition of City-owned property or the acquisition of property on behalf of the City.

### **DISCUSSION**

Whether meetings of a legislative body must be open to the public or may be held in “closed session” is determined by the Brown Act, California Government Code sections 54950-54961, et seq. [the Act]. The Act was adopted in 1953 and amended in relevant part in 1993, “to ensure the public’s right to attend the meetings of public agencies. ( 54950).” *Kleitman v. Superior Court*, 74 Cal. App. 4th 324, 331 (1999).

Under the Act:

[A]ll meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend, except as otherwise provided by the Act. Cal. Gov’t Code 54953.

One such exception provided in the Act is for real property negotiations. The Act provides that “a legislative body of a local agency may hold a closed session with its negotiator prior to *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.” Cal. Gov’t Code 54956.8 (emphasis added).

The purpose of this provision is to protect the City’s ability to negotiate the most favorable terms for the public. *See e.g., Kleitman*, 74 Cal. App. 4th at 331. This same argument could be made in support of allowing closed session discussion of pending negotiations on development agreements. However, the courts have construed the exceptions to the Act narrowly and the Act itself liberally in favor of open meetings. *Shapiro v. San Diego City Council*, 96 Cal. App. 4th 904, 924 (2002).

Development agreements negotiated by the City pursuant to California Government Code sections 65864-65867 are negotiated for the purpose of providing vested development rights to a property owner in exchange for extraordinary benefits provided to the City that the City could not exact through standard development approvals. *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221, 226-28 (2000). As such, it is a negotiated transaction and the City clearly has an interest in protecting the public’s interest in maximizing the public benefit achieved through the negotiations.

However, the courts have construed the Act narrowly and have only allowed exceptions for real property where the agency is providing directions for negotiation of proposed purchase, sale, exchange or lease, of property to or by the agency.

### **CONCLUSION**

The City Council may direct the City Manager in negotiations on a development agreement only if and to the extent the development agreement contemplates the disposition of City-owned property or the acquisition of property on behalf of the City.

CASEY GWINN, City Attorney

By  
Prescilla Dugard  
Deputy City Attorney

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