

MEMORANDUM OF LAW

DATE: March 6, 1987

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Council Action Relative to Belmont Park
Development

By a memorandum dated March 5, 1987 (received by this office at 10:30 a.m., March 6, 1987), a copy of which is attached as Enclosure (1), you ask for our views with respect to the action taken by the City Council on March 3, 1987 regarding the Belmont Park Development.

In view of your request for a response prior to close of business today, March 6, 1987, this analysis will be concise and conclusionary but, we believe, adequate to your needs and, in our view, accurate.

With respect to your factual recitation, we are in general agreement except with respect to two elements. First, in the penultimate sentence of the second paragraph of your memorandum, you write: "The City Manager stated he would not execute the lease prior to the scheduled public hearing unless directed, without requesting direction." Emphasis supplied.

It is our recollection (and that of the City Manager, with whom we have just conferred) that the City Manager did indicate his intention as you have written, but prefaced that remark with the statement that those were his intentions, unless otherwise directed. Thus, for you to indicate as you have in your memorandum that he was not requesting direction does, to some degree in our view, misstate the case.

Second, the closed session in question was duly noticed and convened pursuant to the Brown Act for the specific purpose of reviewing the City's potential courses of action with respect to the Belmont Park Associates option agreement, because, in our view, litigation arising out of whatever decision the Council might make was extremely likely. The current lawsuit, filed

after the meeting as *Havlat v. City*, is ample testimony of the accuracy of our judgment. Discussion of the matter did not "digress" to anything outside the scope of the lawyer-client privilege.

Be that as it may, we are satisfied the action the City Council took by the 7 to 2 vote to which you allude, did not violate any law, including the Charter constraints upon the legislative role of the Council.

Here there was clearly a policy determination to be made in terms of the timing of the Manager's actions. Although, he was entitled, as you indicate, to take ten (10) days to review the submittals by the developer to determine if they complied with the optional lease, he was advised by his staff member that those submittals were in order. On that basis he indicated his intention and indirectly sought the view (collectively) of the legislative body.

On this basis, we see the Council's action as falling within the legislative body's collective role and, as we have pointed out in Opinion No. 86-7 (third paragraph, page 4), a suggestion by the majority of the Council to the Manager in the timing by which he exercise his administrative role.

You ask for our views on related elements of this issue and where distinctions are to be made. Due to the press of time we cannot respond more fully at this point on these other points.

Be assured, however, that we are satisfied that on this point, the Charter restriction on the legislative role were not violated.

John W. Witt
City Attorney

JWW:CMF:js(x043.2)

Enclosure

ML-87-26