

## INTRODUCTION

Before I get started, let me thank our new chairwoman Cohen for this meeting to present a defense of the Airport Commission's action of April 11<sup>th</sup>. Also, let me say that I understand the Airport Commission is a subordinate body to the City Council. The municipal code makes that clear.

But we are here tonight because of three questions asked by a member of the public and the Airport Commission's attempt to get answers to them:

1. Why was this not completed during the summer of 2023 (as stated in the bid), when it was DRY?
2. Why was the work postponed until the rainy season?
3. Who caused the NINE MONTH DELAY?

**Please note:** These questions were initially asked of the City Council on Agenda Item 8e. They were never answered to my knowledge.

**From:** Jim Gates <[red.lanclair@gmail.com](mailto:red.lanclair@gmail.com)>

**Date:** April 3, 2024 at 8:23:49 AM PDT

**To:** City Council <[CityCouncil@torranceca.gov](mailto:CityCouncil@torranceca.gov)>, [citycouncilmeetingpubliccomment@torranceca.gov](mailto:citycouncilmeetingpubliccomment@torranceca.gov)

**Subject:** Public comment Item 8B 4/9/2024: Airport taxiway light and wire repair/replacement

And we are here tonight because we have received a Cure and Correct letter signed by the General Services Director who is responsible for Airport Operations, Mr. Mergerdichian. I quote from his letter:

*I am writing this letter at the direction of the City Council based upon their action taken during Agenda Item 9E at the City Council meeting of May 7, 2024. This letter is to call your attention to what the City Council believes was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Airport Commission. Additionally, the motion was an ultra vires act (beyond the powers) by the Airport Commission. The Airport Commission is an advisory body to the City Council. The Airport Commission does not have investigatory powers or have the power to demand meetings to question the City Manager or Mayor. The powers of the Airport Commission are limited to those found in the Torrance Municipal Code.*

*In its meeting of April 11, 2024, the Airport Commission took action to make a motion and vote on a motion that was not on the agenda. The motion was made to empower the Chair of the Airport Commission to set up a meeting with the City Manager, the Mayor, and community member Jim Gates to answer questions from Mr. Gates relating to the taxiway lighting project and to return with a report to the Airport Commission.*

*The action violated the Brown Act because:*

- *It was taken on a matter that was not properly described in the agenda for the open meeting at which the discussion was taken on an item not appearing on the posted agenda in violation of Government Code § 54954.3(a) and action was taken in violation of Government Code § 54954.2(a)(3), and none of the exceptions specified in Government Code § 54954.2(b) was satisfied.*

*The motion was approved by a vote of 5-0 with Commissioner De Rago absent. In so doing, the Airport Commission took action as defined in Government Code § 54952.6 because:*

- *A majority of the members made a collective decision*
- *A majority of the members took an actual vote when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.*

*Pursuant to that provision (Government Code Section 54960.1), the City Council has demanded that the Airport Commission cure and correct the illegally taken action*

*As provided by Government Code § 54960.1 (c)(2), you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave the City Council with no recourse but to seek a judicial invalidation of the challenged action pursuant to Government Code § 54960.1, in which case the City Council would also ask the court to order you to pay my court costs and reasonable attorney fees in this matter, pursuant to Government Code § 54960.5.*

#### CLARIFICATION

First, let me correct description in the cure and correct letter of the “offending motion”. The motion did not request a meeting with the Mayor or that the Mayor be present at the requested meeting. Second, the motion did not include Mr. Gates as being part of the meeting. Certainly, his questions were part of the motion because they were now our questions. Third, while the letter states the Airport Commission

#### AT ISSUE

**MOTION:** Commissioner Marshall moved to empower Chair Minder to request an audience with the City Manager to get answers to the (3) questions posed on the April 2, 2024, memo produced by Mr. Gates, to get a response in writing, and to return to the Commission with a report. Commissioner Seferian seconded the motion; a roll call reflected a 5-0 approval (*Commissioner De Rago absent*).

The agenda item at issue is:

#### **7A. ACCEPT AND FILE MONTHLY UPDATE OF AERONAUTICAL OPERATIONAL INFORMATION UNDER THE PURVIEW OF THE GENERAL SERVICES DEPARTMENT**

#### ACCUSATION

What the Airport Commission is being accused of is taking action during public comment in violation of Government Code Section 54954.3 (a).

#### DEFENSE

The Airport Commission did take action as defined in Government Code Section 54952.6. No Brown violation occurred. Agenda Item 7a provided authorization to take action. The cure and correct letter also alleges the motion was an *ultra vires act*, not within the power of the Airport Commission. If the Airport Commission does not have the power, how can the Commission take action in violation of the Brown Act? What follows is the authorization for the Airport Commission to take the action it did.

### APPLICABLE RULE

The rules that bring the accusation and guide our actions here tonight are as follows:

**54954.2.** (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

**54954.2.** (a)(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on their own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

### APPLICATION

During our April 11th Airport Commission meeting on an agenda item listed as "7A. Accept and File Monthly Update of Aeronautical Operational Information Under the Purview of the General Services Department". The Taxiway Lighting Project appeared as part of the operational information in Report #2.

1. The Brown Act does not separate discussion from action. Both are illegal if not agendized. Somehow the Airport Commission's action to understand why the taxiway lighting project was so delayed was not on the agenda, but we could discuss the project in general, just not why it was delayed. My position is you cannot have one without the other.
2. The Brown Act only requires a brief description, "it need not exceed 20 words". Item 7a has 17 words. There were many matters in Agenda Item 7A, they were lumped together. The agenda item satisfied the brief description of the Brown Act.

3. The Airport Commission is permitted to use "other resources for factual information". We chose to entrust our chairwoman to gather the facts. At a future meeting, our intention was to take action to have the chairwoman report her findings.

During discussion and public comment on the item, that the Airport Commission discovered the Airport had been closed at night for at least three months (at that time). This was in response to my direct question of a member of the public. It was not disputed by staff. In fact, as of last night, there were no taxiway lights and no runway lights on the south runway.

I considered this a safety issue that we needed to take immediate action and had come to our attention after the agenda had been posted. I think other Commissioners did to. Government Section 54954.2 (b)(2) allows for our action to comply with the Brown Act. I do not agree with the General Services Director that "none of the exceptions specified in Government Code [Section] 54954.2(b) was satisfied."

Let me read the applicable government code:

**54954.2.** (b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

Given that Torrance Municipal Code Section 13.4.7 Powers and Duties of the Commission (a)(3), the Commission is allowed to make recommendations to the City Council on the operation and administration of the airport, this problem was within our purview. If we were going to make recommendations on the safety of our Airport at night, we needed to probe deeper and find out why this project behind schedule to the point of shutting down our Airport at night. The staff responded with weather delays were the cause, but didn't respond to the delay.

Please note that the determination of the need to take immediate action is solely a determination of the airport commission and we complied with the Brown Act. We do not take this exception lightly.

I offered two motions, the first of which did not get a second, to refer these questions to staff to bring back to us the answers. After more discussion, the motion was reworded and made specific to convey the seriousness of the matter:

Finally, the standard of Government Code Section 54959 is a conjunction, the action must be taken AND there must be intent to deprive the public of information. The motion was the exact opposite of the intent to deprive. It was adopted with the intent to obtain information for the public.

**54959.** Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

*(Amended by Stats. 1994, Ch. 32, Sec. 18. Effective March 30, 1994. Operative April 1, 1994, by Sec. 23 of Ch. 32.)*

**CONCLUSION:**

While the Airport Commission did take action as defined in Government Code Section 54952.6, no Brown violation occurred. The action took place during an agenda item. The action was taken within the confines of the Brown Act, as demonstrated. The Airport Commission acted within its powers per the Torrance Municipal Code to address a safety issue that came up after the agenda was published. The Airport Commission acted properly.

I will not be voting to cure and correct because there is nothing to cure and correct.

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City of Torrance Airport Commission  
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