

LAMONT PUBLIC UTILITY DISTRICT SPECIAL MEETING MINUTES

Wednesday, August 9, 2017 6:00 P.M.

Meeting Location:
District Office
8624 Segrue Road
Lamont CA, 93241

1. Call to Order/Roll Call

- a. Board President Cruz called to order the special board meeting at 6:00 pm on Wednesday, August 9, 2017 at the office of the Lamont Public Utility District. All five Board Members were present. Staff present included General Manager/District Secretary Scott Taylor and Special Counsel Karl Berger.

2. Pledge of Allegiance – Led by President Cruz.

3. Board Member announcements –

- a. Director Prado announced that JPIA Attorney Sarah Ornelas contacted her and informed her the District prevailed in the lawsuit filed by Director Sanchez. Director Prado stated we can celebrate for the community. President Cruz asked GM Taylor if he was aware of the results of the suit. GM Taylor stated he was aware and that he received a call from Ms. Ornelas today indicating the Court granted a motion for summary judgement. GM Taylor explained what a Summary Judgement is and that the Court also prohibited the District from disconnecting Director Sanchez's commercial property from District water service. GM Taylor stated he was going to speak on that issue under Staff Comments but that it appears the Board has already been informed.
- b. Director Hernandez read a pre-written prepared statement and requested it be included in the minutes. Director Hernandez stated she is asking Director Gonzalez and Director Sanchez to respect the rights of the board members. We all have the rights to speak and vote. And Director Sanchez stop threatening Director Hernandez and Director Prado. Because they not vote. This is related to last meeting. Director Sanchez asked Hernandez to recite or provide an example of what was said or done that was threatening at the last meeting. President Cruz responded and said these are just the comments from Director Hernandez and that we are not going to go into any arguments about it. Director Sanchez stated she is asking for respect correct? The District translator was late to the meeting and disrupted the conversation. Director Gonzalez stated if you cannot prove it, then please do not bring it to the minutes. Director Sanchez stated he would like to respond. He stated that Director Hernandez and Director Prado

are an embarrassment to the District. President Cruz interrupted and told Director Sanchez he cannot make those statements. President Cruz stated that Director Sanchez cannot say that other board members are an embarrassment. Director Sanchez replied and said that he has a right to speak his mind and make his comments and opinions as a board member just like Director Hernandez did. President Cruz said he doesn't want that and that he will cancel the meeting. President Cruz said he is not going to allow that in his board. He said, I am not going to allow it. President Cruz stated he would stop the meeting. Director Sanchez asked who are you to say I cannot speak. President Cruz said, I am the president. Cruz instructed Sanchez to not say any words that would offend anybody. Sanchez stated he is not offending anyone, he is just telling the truth. President Cruz stated he is offending people by saying they are an embarrassment. President Cruz said he does not want those comments in the minutes. He told Sanchez he will call the meeting off. Director Sanchez said, go ahead call the meeting off. President Cruz stated Director Sanchez does not have the right to make those comments. Director Sanchez stated he does have a right just like the other board members.

President Cruz then asked Special Counsel Karl Berger for a legal opinion and input on the matter. Atty Berger stated that the 1st Amendment to the Constitution allows for anyone to speak freely their opinion. Further, Berger stated that since Director Hernandez read a prepared statement, Director Sanchez should be allowed the same right and courtesy to respond. Berger stated that each board member has a right to speak and comment under the agenda heading of Board Announcements. Atty Berger stated that his recommendation is to allow each board member to say what they wish for the record and then move on to the next agenda item. President Cruz stated he does not want Sanchez to say they are an embarrassment. Atty Berger reiterated the 1st amendment right of free speech and that under Board announcements each member has a right to say what they wish, no different than Hernandez reading her prepared statement. Atty Berger stated that for the Board to attempt to suppress statements of each board member would not only violate the 1st Amendment but that it would not be in the public interest.

President Cruz then allowed Sanchez to continue. Director Sanchez stated the actions of the board members are an embarrassment because they like to accuse without proof. I've always respected the decisions of the board majority, but don't confuse the rights of board minority. For the past year and half, Director Hernandez without any proof complained that I was threatening her. Its been a year and half and she seems well, so I don't understand her complaints of me threatening her. Director Sanchez stated he invites Director Hernandez and Director Prado to educate themselves on their responsibilities as board members, instead of accusing without proof.

President Cruz then continued the meeting to the next agenda item.

4. Public Comment

- a. Dolores Huerta: Ms. Huerta stated she is the President of the Dolores Huerta Foundation and wished to address the Board. Ms. Huerta stated she has been at many meetings where Prado and Hernandez has been attacked. She said that she has witnessed comments about Director Hernandez and Prado's English and that they are not prepared to be on this board. She stated she is happy that Director Hernandez made the statement about respect. Ms. Huerta said knowing English and being intelligent are two different things. She asked that she hopes all of the board members will respect each other. And she is glad the statement is in the minutes. Director Sanchez asked Ms. Huerta how many meetings she has attended. Ms. Huerta said that she has attended many meetings. Director Sanchez corrected Ms. Huerta and stated he has been on the board since 2014 and Ms. Huerta has only attended 3 meetings and 3 meetings only. Ms. Huerta stated attacking other board members 3 times is 3 times too many. Director Sanchez stated that Ms. Huerta needs to attend more meetings and to be fair, she needs to witness the attacks by Director Hernandez and Director Prado against him and his family.
- b. Jose Mireles: I have spent a year coming to the meetings and I am a resident of Lamont. I have lived in Lamont for 34 years. I have a voice because I am from here, not Arvin, but from here. I have been coming to the meetings for a year and all the time Prado and Hernandez have been attacking Sanchez and Gonzalez for a year, but more Sanchez. The community put you there to focus on the community, not to focus on Sanchez and Gonzalez. I stop coming but then I decided to come tonight and everything is still the same. The board needs to focus on their jobs and not one person. Focus on your jobs and what you have to do. Not one person. Director Prado responded and stated this is why we are excited to win this case. The 3 board members are excited because we win the case against Mr. Sanchez. Mr. Mireles stated just do your job and move on.
- c. Another woman commented but did not give her name. She stated she is here with the Dolores Huerta Foundation. She stated the people voted for you. And that what is embarrassing is that a man cannot respect a woman.
- d. Alexis Sanchez: Alexis provided the definition of a threat which is to make a statement to inflict harm or injury. She stated she knows for a fact that has never been done. She said that all board members, not just Sanchez, has a right to voice their opinion. And the fact that Director Sanchez called Director Hernandez and Prado an embarrassment is not justification for his persecution. She said gender has nothing to do with being a board member. Gender is not part of being a board member. Alexis stated the capacity of Hernandez and Prado is relevant in their ability to serve on the board, not their gender. She said Hernandez and Prado's capacity, behavior and knowledge to serve on the board does concern her. She said that Hernandez and Prado do not have the knowledge or capacity to serve on the board and that concerns her very much. Director Hernandez responded and stated that we are learning little by little. But what does the

community need, honesty and transparency. Director Hernandez said who cares if we are not capable of serving or being board members, we are going to keep on going. She said that since I am not capable, then you don't need to watch out for me but I need to watch out for you. Director Gonzalez asked Director Hernandez what transparency she was talking about. Director Hernandez did not respond.

5. Regular Agenda

a. Incapability of Offices.

- i. Special Counsel Berger stated that he prepared a staff report regarding the definition of incapable offices and that it came on the agenda at the request of Director Prado and Director Sanchez. Berger stated this came about as a result of Director Prado sitting on the board of the Lamont Public Utility District and the Vineland School District. Atty Berger directed the attention of the Board to Government Code section 1099 which prohibits incompatibility of offices. Berger stated this report is informational only. Director Prado stated she placed the item on the agenda because the President of the Vineland School District approached her and informed her that Director Sanchez initiated the action. Director Prado advised Director Sanchez that if this is what he wants, he should not be using the money of the District and use his own money to pursue an action. Director Prado stated she is willing to go to court with Sanchez and litigate this matter to take her out of the chairs. Director Sanchez responded and stated he has never used any money from the District and has only used his own personal funds. Director Prado accused Director Sanchez of using money from the District. Director Sanchez queried GM Taylor and asked if he has requested any money or assistance from the District to pursue any action. GM Taylor replied No. Director Prado stated she just wanted to be clear. Director Prado told Director Sanchez to use his own money to take her out of the chairs. Director Sanchez responded and stated that is exactly what he is doing. He is using his own money and his own resources to take Director Prado to court and he said that is exactly what he is going to do.
- ii. President Cruz said it was wrong to the board for this item because Director Sanchez sat on three different boards in the past and that it was not an issue. Director Sanchez stated he only sits on one board now and that the previous boards had nothing to do and no interaction with the Lamont Public Utility District. Director Sanchez stated that anything before now is immaterial. President Cruz stated that previous counsel told him it was ok for board members to sit on different boards that were in conflict with each other. Atty Berger stated he is not familiar with previous counsel and stated this is information and that he provided the relevant supporting laws and case law.

A member of the audience stated she thought the Vineland School District had knowledge of this matter in years past and that the Vineland School District and the County Counsel said there is no conflict. Director Sanchez stated that any one can say there is no conflict but the law and the Attorney General have a final say in the matter.

- iii. Director Hernandez asked Director Sanchez if had been a member of two boards in the past. He stated yes, I was, in the past. Director Sanchez said but I am not now. She is. Ms. Prado is. I am not. I was but I am not now. She is.

b. Amendment to General Manager's Contract.

- i. President Cruz requested to have this item removed from the agenda and brought back at the regular meeting. President Cruz stated he needs more information and knows the position of the other board members. He said he knows the Board is divided on this item. President Cruz stated he needs more time and that he knows his vote is the one that will decide the matter. President Cruz requested the item be tabled until the next meeting.
- ii. Motion to table item 4B General Manager's Contract Amendment to the next meeting. Approved 5-0

c. Enter into Contract with Language Translator, Mario Sanchez (no relation)

- i. GM Taylor related that the board President, at a previous meeting, had directed Taylor to prepare a contract agreement between the District and the translator, Mario Sanchez ("Mario"). This was a result of Mario complaining to the President about his compensation. GM Taylor stated that the contract was prepared and submitted to Mario but that Mario refused to sign it. Mario stated he would not sign the contract because his primary employment with the Kern County Superior Court prohibited him from entering into contracts with other entities.
- ii. GM Taylor explained to the Board that under state law, civil code section requires any services provided to the District lasting longer than 1 year must be in writing. Further, under the Government Code, a contract or written agreement is required with all providers of services to a district, otherwise it would be a gift of public funds. Thus, a problem exists in that the District is violating the law without a written agreement with Mario for translation services. GM Taylor stated that he respects Mario and any decision he makes, but that Taylor is attempting to bring the District into compliance with the law and is seeking direction from the Board on how to proceed.

GM Taylor provided 2 options to the board. The first being to request Mario to sign the contract. If Mario refuses to enter into the contract as required by State Law, then option 2 would be for the Board to give direction to seek other translation services.

- iii. Mario interrupted GM Taylor's presentation and staff report to the Board and stated he wanted to make comments. Mario commented that he feels GM Taylor has been trying to remove him as the translator. Mario said GM Taylor says he can get another translator cheaper. Mario stated he has been translating for many years for the District without a written contract or agreement. GM Taylor responded stating that he has not tried to remove Mario as the translator. GM Taylor stated he has no preference as to who is the translator for the District. It is not relevant to him or this staff report. GM Taylor stated he is simply following the law of the State and that he (GM Taylor) does not decide who the translator is for the District. That is a Board decision. Thus, GM Taylor has no power or authority to remove him. GM Taylor restated it is a Board decision, not his which is why he brought it to the Board, because the law requires a written agreement or contract with a vendor providing services to a public agency. GM Taylor stated he is doing the job the Board hired him to do, to improve the District functions and operation and bring it into compliance and to follow the law. Mario stated its best if he ends his translation services with the District. He stated he will not sign a contract with the District and therefore, will no longer provide services. Mario stated he enjoys working here, but stated he no longer will be providing translation services to the District.
- iv. Director Sanchez requested comment from Special Counsel Karl Berger on the law regarding contract services. Atty Berger stated that state law requires a written agreement between a public agency and a service provider. He stated there are contract rules and specialized rules with regard to water districts in particular. In all of those instances where you have a service that requires payment from a public entity with public funds to a particular vendor, all of those rules and laws requires a written contract to be in place. This is necessary to specifically define the terms of the services and payments to be made, particularly if a dispute occurs. Atty Berger further stated that under Civil Code section 1099, any agreement lasting longer than one year must be in writing. This applies whether we are a corporation or a public entity or an individual, this law applies and requires a written contract.
- v. Atty Berger further stated that the days of an agreement based on a handshake and honor no longer exist especially when a public entity is

involved given the nature of public funds. Atty Berger stated he is the legal counsel for the District and the law requires a written contract for translator services or other services provided to the District. Atty Berger stated “that’s just what the law is.” Atty Berger stated he has been doing public entity law for 24 years and he has never been in a situation where the elected individuals responsible for that particular public entity agreed to have an arrangement with an individual or a corporation without a written agreement in place.

vi. Direction was given by the Board to seek other translation services. Motion was made to secure other translation services for the District. Motion approved 5-0.

d. Overview of Brown Act and What Constitutes Brown Act Violations.

i. Atty Berger presented information regarding an overview of Brown Act criteria and violations. He spoke about what constitutes a meeting in terms of number of board members meeting and talking about District business outside of public meetings. He also referenced serial meetings and board members talking to one then the other and then another outside of a public meeting. Atty Berger further explained the agenda items and that only items on the agenda may be discussed for that particular meeting. Atty Berger spoke regarding the importance of maintaining confidentiality during closed sessions and discussions.

e. Direction Regarding RFQ Process for Legal Counsel.

i. GM Taylor provided an update to the RFQ process for a general counsel. GM Taylor stated that Director Prado and Director Hernandez approached him and was unhappy with the generally accepted practice and method of issuing an RFQ. GM Taylor reported that previously, the Board in a unanimous decision, stated they wanted GM Taylor to look locally for a local general counsel with experience in water law and special districts. GM Taylor recited the process for issuing an RFQ for professional services such as legal counsel. GM informed Director Prado and Director Hernandez that this had been discussed and the Board gave direction at the last board meeting. GM Taylor stated that typically and generally, several firms are identified with the skills, expertise, experience, and staffing commensurate with the needs of the District. GM Taylor stated he did as the Board previously directed him and sought out referrals from other special districts, public agencies and business people in the community relative to various law firms and attorneys to whom the District would send the RFQ.

- ii. However, Director Prado and Director Hernandez stated they felt this approach was not open and transparent to the community and that they wanted the GM to go outside the local area and to place the RFQ on the webpage and various professional journals and recruitment agencies and alike. GM Taylor stated he would be happy to do that, however that conflicts with the previous direction of the Board, as previously voted on, and as such placed the item on the agenda for direction from the Board as a whole. Further, GM Taylor indicated that broadening the reach of the RFQ would add significant costs given that professional publications charge to place recruitment ads.
- iii. GM Taylor stated he identified 8 law locals firms that would potentially be interested in working for the District and with the potential skills and experience to best serve the District's legal needs. GM Taylor stated he sent out the RFQs to those firms as previously directed by the Board.
- iv. GM Taylor state he is now seeking more direction from the Board given the contact from Director Prado and Hernandez that they are not happy with the generally accepted RFQ process and the previous direction from the Board.
- v. President Cruz asked GM if the 8 law firms contacted the District or if the GM contacted the firms. GM Taylor reiterated the process stating that the law firms wouldn't know we are looking for legal counsel and that GM Taylor simply identified potentially qualified firms and mailed the RFQ packets. GM Taylor stated he has no affiliation nor does he know any of the attorneys or employees of the firms to which packets were sent. Upon receipt of the packets, the Board would review them and give direction to the GM to schedule interviews.
- vi. Director Prado stated she wanted an ad placed in the newspaper, on the website and other publications to open and transparent the process. She stated is it important to her for more people to view.
- vii. President Cruz asked GM Taylor if he can distribute the RFQ to more persons and place it in various publications to which GM Taylor stated yes, but there would be a cost and the costs are somewhat high in the range of \$1500-\$2000.
- viii. Director Sanchez disagreed with the suggestion of placing an ad in trade journals because he stated there is no benefit when seeking a legal counsel for the District via an RFQ process. Director Sanchez asked how the \$1000-\$2000 cost of an ad would benefit the community. Director Sanchez stated

that lawyers do not read the papers and want ads for jobs as a District Counsel. He said law firms don't read the papers to get a job.

- ix. Director Prado complained stating the RFQ process is not right because it's not fair for RFQ packets to be sent to particular law firms asking if they are interested in working for the District. GM Taylor stated he would be happy to widen the search, however he voiced his confusion because in the previous Board meeting, the Board directed GM Taylor to seek local firms with local experience and skills and also to keep travel costs low. Yet, now after doing what the Board directed previously, he is being given different direction.
- x. Director Prado stated that GM Taylor explained the process in the previous meeting but that he didn't explain the process. Director Prado stated that when she came to the office to speak to GM Taylor, he explained the process and she doesn't like the RFQ process. She said she doesn't like the process because GM Taylor is offering the position and she wants it transparent for the community. GM Taylor explained that he did not offer the position to anyone. GM Taylor stated that sending out RFQ packets to particular firms based upon the criteria the Board provide to him at a previous board meeting is the RFQ process that has been utilized by public agencies for more than the 22 years GM Taylor has been in public service.
- xi. President Cruz stated he wanted to see a wider search or RFQ process for seeking general counsel for the District. GM Taylor agreed not to exceed \$1500 for the cost of publishing the RFQ packet.
- xii. Motion was made for changing the RFQ process and widening the search to include spending up to \$1500 for publication costs.
- xiii. Director Gonzalez asked Atty Berger how he would look for a job as District Counsel. President Cruz called for a roll call vote.
- xiv. Roll Call Vote:
 - 1. President Cruz: Yes; Director Prado: Yes, Director Hernandez: Yes
 - 2. Director Sanchez: No; Director Gonzalez: No
- xv. Motion approved 3-2.

Adjournment

A motion was made by Director Prado and seconded by Director Hernandez to adjourn the Special Meeting of the Board of Directors of the Lamont Public Utility District, held on Wednesday, August 9, 2017 at 7:16pm. Approved. 5-0.

ATTEST:

X *Jose G. Cruz*
Jose G. Cruz, President of the Board

X *Scott Taylor*
Scott Taylor, Secretary General Manager

