

1 MICHAEL N. FEUER, City Attorney  
2 **GABRIEL S. DERMER**, Deputy City Attorney (SBN 229424)  
3 200 North Main Street, Room 675  
4 Los Angeles, California 90012  
5 Telephone: 213-978-7559  
6 Facsimile: 213-978-7011  
7 [gabriel.dermer@lacity.org](mailto:gabriel.dermer@lacity.org)

8 Attorneys for Respondent CITY OF LOS ANGELES

NO FEE – GOV'T CODE § 6103

**FILED**  
Superior Court of California  
County of Los Angeles

DEC 06 2016

Sherri R. Carter, Executive Officer/Clerk  
By Jenny Chea Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11  
12 SAVEVALLEY VILLAGE, an  
13 unincorporated association,  
14  
15 Petitioner-Plaintiff,

16 v.

17 CITY OF LOS ANGELES, et al.,

18 Respondents-Defendants.  
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21  
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23

**CASE NO. BS 160608**

[Assigned to Hon. Richard Fruin, Dept. 15]

**RESPONDENTS' REPLY IN SUPPORT  
OF DEMURRER**

Date: December 13, 2016

Time: 8:30 a.m.

Dept.: 15

**RES ID: 161021168207**

1 The Respondents respectfully submit this reply in support of their demurrer to the First  
2 Amended Petition filed by Petitioner SaveValleyVillage.

3 **1. The Demurrer To The First Cause of Action Should Be Sustained**

4 As its Opposition makes clear, the Petitioner seeks a writ of mandate to alter the voting  
5 practices of the Los Angeles City Council, plainly something this Court should not order.  
6 Similarly, while the Petition and Opposition criticize the City Council, they do not allege an  
7 actual Brown Act violation; the allegation that Councilmembers vote without disagreement, the  
8 gravamen of Petitioner's complaint, does not support a Brown Act claim. See Gov. Code §§  
9 54950 et seq.

10 Further, the Petitioner continues to assert Penal Code § 86 as the basis for "the public  
11 duty by which the courts may judge the councilmembers actions." (Opp. at 7:20). As has been  
12 explained, that criminal statute does not give rise to *any* private right of action. See, e.g.,  
13 *Farmers Ins. Exch. v. Superior Court*, 137 Cal.App.4th 842, 849 (2006); *Vikco Ins. Services,*  
14 *Inc. v. Ohio Indemnity Co.*, 70 Cal.App.4th 55, 62 (1999).

15 Nevertheless, Petitioner would have this Court believe there is some ephemeral "public  
16 duty," not Penal Code § 86 per se, that it is seeking to enforce here, citing *Fuller v. San*  
17 *Bernardino Valley Municipal Water Dist.*, 242 Cal. App. 2d 52 (1966). But *Fuller* involved a  
18 challenge to a water district's plans to annex lands underlying Big Bear Lake, and nothing to do  
19 with a criminal statute. And while the *Fuller* Court held that the respondents were beneficially  
20 interested in the action, the Court so held because of the "special interest independent of that  
21 which they hold in common with taxpayers generally. In addition to being property owners in  
22 the proposed New District, they were the moving force in fixing its boundaries, securing  
23 boundary commission approval, and circulating and filing the petition for formation with the  
24 board of supervisors." *Id.* at 58.

25 Here, as evidenced by the improper exhibit attached to the Opposition, Petitioner is no  
26 more interested in the votes and voting behaviors of City Council than any other resident or  
27 taxpayer. Further, the exhibit demonstrates the non-justiciability of this case. Petitioner is  
28 recommending an entirely new system of government for the City, plainly not something this

1 Court should consider ordering. There is no analogy between a writ of mandate ordering a  
2 water district to terminate proceedings for the annexation of land to a purported writ of mandate  
3 directing the City of Los Angeles to expand its legislative body from 15 members, as set by the  
4 Charter, to 45.

5 Further, chaos would result if a resident or voter could simply sue an individual  
6 legislator for his or her voting preferences, habits or anything else. "It is not necessary to sue  
7 government officers in their personal capacities to challenge the propriety of a government  
8 action." *City of Montebello v. Vasquez*, 1 Cal. 5th 409, 426 (2016). And to the extent  
9 Petitioner would argue it is not bringing an action against any individual Councilmember, Penal  
10 Code § 86 is plainly inapposite.

11 In short, despite whatever names Petitioner wishes to give the City Council, it cannot  
12 force the changes it – or Mr. Zwartz or any other citizen – desires through this action.  
13 Petitioner simply cannot utilize Penal Code § 86 in any way, and no writ should issue. The first  
14 cause of action should be dismissed.

15 **2. The Demurrer To The Third Cause of Action Should Be Sustained**

16 Petitioner complains that the City Council's "consent calendar" violates CEQA's  
17 "independent judgment" requirement. As this Court has already held in the related case about a  
18 specific project (BS157989), this is not so. While it may be true there is no res judicata impact  
19 here, where no project at all is at issue, it is equally true that CEQA is not violated.

20 The two cases cited by Petitioner are inapposite. In *California Clean Energy Committee*  
21 *v. City of San Jose* (2013) 220 Cal.App.4th 1325 the city's planning commission certified an  
22 EIR for a project over which the planning commission did not have decisionmaking authority.  
23 Thus, the error was with the city council impermissibly delegating the review and certification  
24 of the EIR to a lower non-decisionmaking body when the city council itself was the  
25 decisionmaker. Similarly, in *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, the city's  
26 legislatively adopted environmental guidelines delegated CEQA review and compliance to a  
27 planning board with no provision for the review and consideration of a CEQA analysis by the  
28 city council. Thus the Glendale erred and the court found their council did not conduct

1 independent review because by ordinance it had “delegate[d] its review and consideration  
2 function to another body” contrary to CEQA. 56 Cal.App.3d 770, 779. Nowhere does  
3 *California Clean Energy Committee* or *Kleist* hold that in-meeting Councilmember debate is  
4 required, or that Council approval of a CEQA analysis by a unanimous vote violates  
5 CEQA. Again, the failure of Petitioner to cite law supporting its consent calendar theory  
6 waives its argument. *Atchley a City of Fresno* (1984) 151 Cal. App. 3d 635, 647.

7 Ultimately, as with its first cause of action, Petitioner is seeking a writ compelling  
8 Councilmembers to exercise their discretion in a certain manner. But such a writ cannot issue.  
9 *California Ass’n for Health Serv’s. at Home v. State Dept. of Health Serv’s*, 148 Cal.App.4th  
10 696, 708 (2007). The demurrer to the third cause of action should be sustained.

11 **3. The Demurrer To The Fourth Cause of Action Should Be Sustained**

12 Petitioner’s Opposition does not dispute the fact that City Council may record  
13 abstentions by members present as “aye” votes. See, e.g., *Dry Creek Valley Assoc. v. Board of*  
14 *Supervisors*, 67 Cal.App.3d 839, 845 (1977); *Martin v. Ballinger*, 25 Cal.App.2d 435, 439  
15 (1938). Nor does Petitioner object to the way in which “Council Rule 48a is written.” (Opp. at  
16 13:9). Thus, Petitioner agrees that there is nothing justiciable or improper about Council Rule  
17 48, or about the manner in which Councilmembers vote and those votes are tabulated.

18 And given that Council Rule 48 presents no problem, and Petitioner cannot state any  
19 claim relating to Penal Code § 86, the Brown Act or CEQA, Petitioner has no claim for  
20 declaratory relief whatsoever. *Brownfield v. Daniel Freeman Marina Hosp.*, 208 Cal.App.3d  
21 405, 410 (1989); see also Code Civ. Proc., § 1060. Because Petitioner cannot state facts  
22 supporting a cause of action for declaratory relief, the Court should sustain the demurrer to the  
23 fourth cause of action.

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1           **4. Conclusion**

2           For all of the foregoing reasons, as well as those previously stated, Respondents again  
3 respectfully request that the Court sustain the entirety of the demurrer without leave to amend.  
4

5 DATED: December 6, 2016

MICHAEL N. FEUER, City Attorney  
GABRIEL S. DERMER, Deputy City Attorney

6  
7 By:  \_\_\_\_\_

8 GABRIEL S. DERMER  
9 Deputy City Attorney

10 Attorneys for Respondents  
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PROOF OF SERVICE

I declare that I am and was at all times herein mentioned over the age of eighteen years and not a party to the action in which this service is made; that at all times herein mentioned I have been employed in the County of Los Angeles and that my business address is 200 No. Main Street, Room 675, CHE, Los Angeles, California 90012.

On December 6, 2016, I served the following document(s) described as

**RESPONDENTS' REPLY IN SUPPORT OF DEMURRER**  
**[Reservation ID 161021168207]**

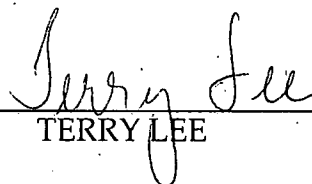
**BY EMAIL** – I caused the above document to be sent to the listed addressee(s) via email:

Richard S. MacNaughton  
Attorney at Law – Hollywood Office  
1916 North Saint Andrews Place  
Hollywood, CA 90068-3602  
MacNaughtonEsq@gmail.com

Edward W. Pilot  
A Professional Corporation  
9107 Wilshire Boulevard, Suite 700  
Beverly Hills, CA 90210-5525  
ed\_pilot@hotmail.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 6, 2016, at Los Angeles, California.

  
\_\_\_\_\_  
TERRY LEE