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Michael J. Aguirre, City Attorney
City of San Diego
1200 Third Avenue, Ste. 1100
San Diego, CA 92101-4100

Dear Mr. Aguire:

I write to enquire if it is legal for [individuals and/or departments within] the City of San Diego to knowingly, arbitrarily, and intentionally force the return of [federal] Community Development Block Grant [CDBG] funds when these CDBG monies have been obtained by an individual bona fide Neighborhood Association, working in good faith with that association's appropriate City Council representatives, for the purpose of needed community improvements. In the event such an action—forcing the return of CDBG grant monies obtained properly by a 503[C] group due to mere whimsy by a City individual or department—is as I suspect not legal, I further request your assistance in obtaining appropriate legal remediation.

The Situation:
As of spring, 2002 the area represented by the Fox Canyon Neighborhood Association [FCNA; Jose Lopez, president] had *no* permanent metal street sweeping signs. Of the officially scheduled once/month sweepings, only 30% were actually performed; concerned FCNA volunteers counted them and complained, requesting better compliance. At this time we opened strong communication channels with Streets Department employees, notably Mark Hoskins, later replaced by Pedro Sandoval, and Ms. Joyce Edwards.

By 2003, volunteers had noted that [necessarily] dense on-street parking coupled with the high number of one-way streets in the Fox Canyon neighborhood rendered once-monthly, both-sides together street sweeping could not be effective; vehicles necessarily lined the litter-thick curb areas.

We then requested the street sweeping schedule typical of near-by communities, e.g. Normal Heights: street sweeping twice monthly, one side only—so that the many vehicles which simply had no alternative to on-street sweeping could at least be moved away from the side to be swept in a given cycle.

Later, to increase vehicle compliance with the newly-arranged "alternate sides" sweeping schedule, volunteers living on The [Auburn/Wightman] Loop, a narrow, heavily traveled and littered one-way "loop" eastbound away from Euclid Avenue, then back westbound to Euclid, arranged with Mark Hoskins a special "pilot program" in which FCNA volunteers would set out and collect temporary A-frame NO PARKING…STREET SWEEPING" signs on the appropriate alternating days of the month. [These same volunteers are STILL hand placing and recollecting temporary A-frame signs.]. We also requested

enforcement to accompany our sign-placement project. And here the plot thickens: "You can't have "No Parking enforcement" *until you have permanent metal street sweeping signs installed*, and there is no City money for the signs."

Determined to combat litter blight, FCNA president Jose Lopez began work with City Council Representatives Atkins [CD 3, west side Euclid Avenue] and Madaffer [Cd 7, west side Euclid Avenue and the rest of the Fox Canyon area] to 1]apply for CDBG funds to pay for the signs; 2]obtain signatures from the requisite 90% of property owners on the streets involved, saying they wanted permanent blue metal signs announcing "No Parking…Street Sweeping…twice monthly, alternate sides." WE DID IT. WE DID IT ALL.

WE MET ALL CITY REQUIREMENTS FOR STANDARD STREET SWEEPING SCHEDULES AND SIGNAGE. FCNA volunteers went door-to-door on every street involved, collecting resident owner signatures. FCNA volunteers located names and addresses of absentee landlords in the County Assessor's office, mailed letters and copies of the "petitions" to be signed by them, paying all costs from their own pockets. FCNA leadership, with help and support from our representatives DID get the CDBG monies--$9,000.00—to install the permanent signs which, the City assured us, would *finally* enable our community to have that standard-in-most-areas-but-not-here, tax-financed, basic service: Standard twice/month, alternating sides street sweeping service, with penalty for non-compliance with posted schedules.

By 11/05 everything was set for the City to install the promised signs and begin enforced street sweeping service: 90% of all affected area property owners' signatures were and are on file at the Chollas Operations Center's Joyce Edwards; funds were wherever funds are supposed to be while waiting to be spent; marks already painted on the affected streets showed crews where to put the signs.

BUT: No "No Parking Street Sweeping" signs were ever installed—nor are they likely ever to be installed. Quite simply, the City broke its agreement with the Fox Canyon Neighborhood Association and area residents. In all probability, the FCNA-initiated CDBG funds will merely be returned, unspent within the allotted time frame.

WHY: *After* agreeing to—contracting to?—install specific signs at specific sites bearing a specific and at-the-time-standard street sweeping schedule announcement, and *after* the FCNA had met all City terms for installation of the desired signs, but before the agreed upon—contracted?—installation date of 11/2005, the City decided [I have heard it said but never seen it documented that then-City Manager Lamont Ewell] unilaterally and arbitrarily decided that such neighborhoods as Fox Canyon would have street sweeping, a tax-payer funded basic City service, reduced to *one sweeping, both sides together, once in every two months.* [Six times a year accomplishes anything, especially in an "Empowerment Zone"?] Ergo, the signs would either be installed per schedules initiated *after* agreements were made and all FCNA obligations toward installation of the initially-specified signs had been met…or Fox Canyon would get no signs and/or enforcement at all.

I request, Mr. Aguirre, that you look into the legality of the City's refusal to honor its quite possibly contractual obligation to the FCNA. Certain possibilities occur even to a lay mind:

- Bad faith entry into contract. Although the public did not yet know, City officials themselves already knew that the City was in deep financial kimchy, and that something somewhere would eventually have to go.

- Breach of contract. FCNA president Jose Lopez handled all the paperwork re: funding, et al for these signs and their promised schedule; I have not read them. But it generally appears that since the FCNA did meet in full certain City requirements for provision of a specified set of services, then the City is contractually obliged to meet its contracted obligations.
- Possible mishandling by the City of federal funds. CDGB grants provide federal monies; Fox Canyon is within a federally designated slum [Empowerment Zone]. It may not be legal for the City to fiddle and tamper with federal grants to bona fide neighborhood associations within a federal EZ, as it is currently attempting to do.
- Targeting certain City areas for lower-than-norm provision of basic services, i.e., red-lining. During the approximately three years that FCNA activists were hand placing and hand collecting A-frame temporary signs, tracing area property owners to obtain and properly submit City-required "petition" signatures, and working with two separate City Council representatives in the effort to effect even basic twice-monthly street sweeping, certain areas—Downtown/Gaslamp I am sure about—were receiving *daily* street sweeping service. Is such red-lining, vis-à-vis basic, tax-payer funded services legal? And if it currently is, should it continue to be?
- Failure to provide the almost-routine waivers of conformance to "already in the pipe line" projects by private developers if e.g. zoning, land use, or other potentially applicable ordinances are modified after the project has been approved and begun—but to not similarly grant such a waiver to the Fox Canyon Neighborhood Association. Its much-needed improvement project was not just "already in the pipeline" but approved, funded, and good to go *before* the City started fiddling with new street sweeping schedules.
- It certainly is not *right* to grant these familiar waivers of conformance to private developers but not to grant similar waivers to neighborhood associations; we all know that. But, is it *legal* to treat the two groups differently? And if it is currently legal, should it continue to be so in the future?

I apologize for my inability to tell a 4-year-long saga in fewer words. But please read them all, Mr. Aguirre, for Fox Canyon needs your help…and time is short. We will lose our CDBG funds if they are not used before 1 June 2006. But the use to which the City *now* insists they now be put is *not* the use for which the FCNA originally obtained them.

Although San Diegans are becoming inured to illegal conduct at City Hall, it hits hardest when it hits at home. I hope your office can and will find a way to provide us with the legal assistance we so intensely need.

I look forward to hearing from you at your earliest possible convenience.

Yours truly,

Jill Van Cleve,
Association member and activist,

Cc: Fox Canyon Neighborhood Association, Jose Lopez, president