



City of Palm Springs

Office of the City Attorney

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**Settlement Privilege
Evid. Code, § 1152/1154**

October 19, 2023

Via Electronic Mail

amartin@martin-martin.com

Areva Martin, Esq.
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3530 Wilshire Blvd. Suite 670
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Re: Considerations for Resolving Section 14 Claims

Ms. Martin,

We are writing in follow up to our meeting on August 8, and my letter of October 2, 2023. In that letter, I indicated that the City Council was not, at that time, prepared to accept the monetary and/or non-monetary aspects your settlement proposal. Following that letter, you requested that I speak with the City Council in closed session, and more specifically with regard to whether, and to what extent, the City Council would be agreeable to some or all of the non-monetary (i.e., “programmatically”) aspects of your proposal.

At the outset, I must point out that any “bifurcated” resolution of this matter is complicated by the fact that your clients have pending claims filed against the City. I would imagine that your clients would have a hard time resolving this matter amicably without some sort of admission of responsibility by the City, even if that resolution included all of the programmatic aspects of your proposal. At the same time, because your clients have pending claims filed against the City, I (and most city attorneys in my position) would be hard-pressed to recommend to the City that it settle any portion of your claim, since doing so would almost inevitably be used by you and your clients to try to establish liability on the part of the City for monetary damages.

Moreover, it bears noting that some of the programmatic aspects of your proposal are, from a legal perspective, simply not feasible. For instance, I do not believe that a city charter could lawfully be amended to *designate* a Section 14 survivor or descendant as a member of the City Council with full voting rights. Likewise, while the City of Palm Springs could develop a curriculum for elementary and high schools, the City could not *mandate* the use of that curriculum, since the elementary and high schools are separate, legal entities, governed by their own independently elected school boards. As such, I believe that your clients’ expectations may need some tempering. I would be happy to go over my thoughts on your proposals with you in more detail, at least from a legal perspective.

That said, and with a full reservation of the City’s rights to assert any applicable defenses and without any admission of fault on the part of the City, I believe that the City Council would be agreeable to certain programmatic aspects of your proposal, including the following:

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- Designate a Palm Springs official holiday of remembrance and reconciliation; and
- Establish a curriculum to be made available to Palm Springs and neighboring elementary and high schools reflecting the history of Palm Springs, including the Section 14 history and its racial implications and generational impact. As discussed above, the City does not have the legal authority to mandate the use of any particular curriculum in local elementary or high schools. However, the City Council could commit to collaborating with those local elementary and high schools, in order to best ensure that the curriculum is used in those schools.

Please note, the City Council is not ruling out consideration of the other programmatic aspects of your proposal. However, as I have mentioned to you previously, even if permitted by the State's open meeting laws, the nature of these programmatic proposals does not lend itself to resolution through the closed session process that is normally afforded more routine claims/litigation against the City. For example, in August of 2020, the City Council ordered the renaming of a portion of Golf Club Drive, to honor Lawrence Crossley, a prominent African-American businessman and developer. That was done at a public City Council meeting, where members of the public were able to, and did, provide input, both for and against the proposal. Indeed, before you became involved in these discussions, the City Council previously assured the public that the City Council intends to involve all community stakeholders in a public process to address the Section 14 Reparations discussion.

In addition to the items listed above, the City Council is very interested in other programmatic efforts to alleviate the impacts of the Section 14 history. For instance, as recently as at the October 12, 2023 City Council meeting, direction was given by the City Council in open session for City staff bring back a Specific Plan for the north part of Palm Springs. The goal of the Specific Plan would be to provide affordable housing, commercial and recreational amenities, and additional economic development opportunities to the residents of the north part of Palm Springs. And, over the past three years, the City has taken other actions as well, including the following:

July 18, 2020– The Palm Springs City Council hosted a listening session on Policing, Racism, Discrimination, and other related issues. The virtual meeting was attended by more than 100 participants.

August 6, 2020 - The Palm Springs City Council adopted a resolution, “Declaring that systemic racism is a human rights and public health crisis that results in disparities in family stability, health and mental wellness, education, employment, environmental justice, economic development, transportation, public safety, incarceration, and housing, and reaffirming the Council’s commitment to advancing justice, equity, diversity and inclusion in the City of Palm Springs.” The Council declared its intent to end racial and social disparities, strengthen the way it engages and convenes to protect and expand community voice and power, and work with others to close the gap of racial injustice and better serve the City’s communities of color.

March 8, 2021 – The Palm Springs Human Rights Commission discussed the history of Section 14 at its meeting, and approved a draft resolution entitled, “City of Palm Springs Apology for its Role in the Destruction of Section 14,” for City Council’s consideration.

April 12, 2021 – The Palm Springs Human Rights Commission discussed the statue of former mayor Frank Bogert, who served as Mayor of Palm Springs during the time of removal of families from Section 14. The Commission further discussed the City’s actions associated with Section 14 and reviewed a draft resolution, which recommended the statue’s removal.

May 5, 2021 – The Palm Springs Human Rights Commission approved a resolution recommending the removal of the statue of former Mayor Frank Bogert from the front of City Hall. The resolution was forwarded to the City Council for consideration.

September 29, 2021 – The Palm Springs City Council adopted a resolution formally apologizing for the

City's role in the evictions from Section 14; at the same meeting, the Council directed staff to begin the legal process of removing the statue of former Mayor Frank Bogert from the front of City Hall. Staff was also asked to bring back recommendations on how the City could address the financial impact of those affected by their removal from Section 14.

November 18, 2021 – The City Council discussed a reparations program related to Section 14 evictions. Monetary allocations and programs designed to close the attainment gap in education, income, healthcare, and housing were among the programs Council could consider.

February 24, 2022 – The City Council voted to approve the removal of the Frank Bogert statue from City Hall. The City was subsequently sued by a group of local residents, who challenged the City Council's action. The City successfully defended that lawsuit and, based on the City's defense of that lawsuit, the lawsuit was dismissed.

April 11, 2022 – A discussion on Section 14 reparations was attended by members of the Desert Highland Gateway Community Action Association, Section 14 Survivors, including the chair of the organization, Pearl Devers, Black History Committee, and Where is My Land, an organization that Section 14 Survivors were working with and is dedicated to helping Black Americans reclaim stolen land and secure restitution.

July 13, 2022 – The City removed the statue of former Mayor Frank Bogert from the front lawn of Palm Springs City Hall.

November 21, 2022 – The City of Palm Springs posted a request for proposals for reparations program consultant services. The scope of work consists of reviewing and verifying the historical context of residents displaced from Section 14 and helping the City develop a reparations program to enhance the quality of life for those affected by the displacement.

August 31, 2023 - The City put out a request for proposal for the redevelopment of three City-owned vacant lots in the north part of Palm Springs, which is expected to provide affordable housing.

Therefore, it is not accurate to say that the City has done nothing regarding the displacements that occurred in the 1960's on Section 14.

In addition to these steps already taken by the City, the Mayor of Palm Springs intends to bring forward to the full Council several additional proposals, which will benefit the residents of the north part of Palm Springs, many of whom are former Section 14 residents or their descendants. These include the following, all of which will involve participation by the community:

- provide economic support for BIPOC residents to develop or expand their businesses in Palm Springs;
- engage with College of the Desert (COD) regarding the former COD campus land to develop housing for sale and rent at different price points;
- create leadership opportunities for local students to learn about and participate in City and local government; and
- work, as a City, with Desert Healthcare District to assist in the establishment of a free-standing clinic in the Desert Highland Gateway Estates neighborhood.

Therefore, the City Council has shown a commitment to undertake steps that are aimed at addressing the impacts of the Section 14 history.

Moreover, it is not fair to say that these measures should be discounted because they are all things that many

would say the City should be doing anyhow. The fact is, every community has choices to make, in terms of what efforts they wish to devote their resources to, and Palm Springs has shown by its actions that it wishes to direct a substantial amount of its efforts toward alleviating the impacts of the Section 14 history. There are many communities that are not undertaking these efforts.

With a more fully developed factual background, as the Council has been prepared to develop, the City Council would be in a much better position to move forward with a resolution of this matter, as other communities have done. However, the current status – with legal claims pending against the City – makes it extremely difficult to resolve the matter. I cannot recall of a single community from last year’s First Repair Symposium, where a community obtained a Reparations program as a result of litigation. As such, the City would urge you and your clients to come to the table in a spirit of collaboration, rather than litigation, and help the City reach a resolution of this long-simmering state of affairs.

Finally, you have requested that the City Council appoint one of its members, and City staff, as a negotiating team, in order to avoid having to bring these discussions back to the full City Council in closed session. As you can imagine, given the current litigation-oriented position of this matter, the City Council is not currently interested in putting one (or more) of its members in a situation where their words can later be used against them or the City. As such, at this time, the City Council prefers to continue directing communications through the attorneys, at least while claims are outstanding and litigation is being threatened by you and your clients.

Once again, I would again urge you and your clients to avoid pursuing a judicial process and instead engage the City in a stakeholder-based legislative approach, as other communities throughout the country have been doing quite successfully.

Sincerely,



Jeffrey S. Ballinger
City Attorney
City of Palm Springs

cc: Mayor and City Council
Scott Stiles, City Manager
Teresa Gallavan, Asst. City Manager
Jeremy Hammond, Dep. City Manager
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