October 12, 2020

City of Del Mar Attorney and City Staff:

The Winston School works towards campus upgrades with uncooperative City Partner.

On June 2, 2020 (updated on June 11), the City of Del Mar City Council leveraged its [website](#) to publicly attack The Winston School (the School), a small non-profit in its own community. This was done without warning, thereby denying the School time to prepare for the media barrage that followed. As a result, the public was left with the impression that the one-sided statements were based on facts when, in fact, they are full of demonstrable misstatements, omissions and highly biased opinions. The School found the City Council’s actions to be unethical and formally requested, on June 10, 2020, that the City rescind the publication to give the School time to refute the statements made within. The City Council refused.

On June 2, 2020, the City Manager also sent the School an email declaring that ongoing negotiations related to a lease between the School and the City (Lease) were terminated, and redevelopment deadlines therein were reset to October 2, 2020. This declaration was completely unexpected as the School had not been in contact with the City since the State of California shut down all schools on March 13 and negotiations were paused due to the COVID-19 crisis. This unilateral termination is in direct violation of Lease terms that protect tenants during periods where circumstances beyond the tenant’s control (Acts of God, war, epidemics, riots) impede adherence. The Lease very specifically extends redevelopment deadlines during such periods.

These are just two examples of a series of actions taken by the City Council that clearly demonstrate a lack of good faith and fair dealing when working in partnership with the School. Efforts that not only hurt the School but have made it challenging to fulfill the promises made to the community at the time of the Shores Park purchase.

The School delayed written response to work with the City on the fence installation.

The School held off on publishing a rebuttal to the above-described public attack as we tried to work cooperatively with the City staff over the summer to install the perimeter fence critical to Winston students and staff’s safety. While updating and beautifying the campus, the plans we submitted to the City would have the least amount of disruption to the School and its neighbors and would not increase the bulk and mass of the campus. They are in keeping with the concerns expressed by our neighbors during the CPP process and would be an asset to the community of which we have been a part for over 30 years.

On July 23, when preparing for the approved fence installation, the School discovered the property lines described in the Lease were inaccurate and immediately notified the City. The Assistant City Manager promptly visited the School site and the parties have been working together to identify and correct the issues.
Based on discussions with the Assistant City Manager, it was mutually agreed that the boundary lines must be altered. To date, the details have not yet been resolved. Remediation of the boundary line issue will reduce the School's leasehold and impact the fence's location and redevelopment plans for the campus. Due to the incorrect legal description proffered in the Lease and reasonably relied on by the School, the School lost a considerable amount of time and money to redesign and fabricate parts of the fence. The School has since asked the City to assist the School in recouping costs via a Title Insurance claim, but to date, the City has not provided a response.

While the School is Actively Looking for Solutions, the City is Again Creating Unwarranted Obstacles.

A September 24, 2020, letter states that a complete “redevelopment” application was due on October 2, 2020—a mere nine (9) business days later. In addition, the letter attempts to change significant Lease terms regarding access to parking, a revision the City had proposed previously and been rejected as it was core to the initial Lease agreement. This change would require a complete redesign of development plans not possible in the allotted time frame.

On October 8, 2020, the School received a second letter from the City Manager. This letter officially notifies the School that we are in breach of the lease agreement and have 90 days to submit a complete redevelopment package.

The demands made in these letters defy logic. Not only are development deadlines not enforceable during a pandemic, the School has been actively working with the City since July to correct the boundary lines related to the leasehold to accurately reflect the legal description of the City-owned property. The School cannot submit complete and detailed development documents, which are required to identify the development footprint, when the leasehold area has not been adequately defined.

The City is attempting to hold the School in breach of contract for an issue that they control. It is a clear abuse of power and an egregious effort to undermine the School’s efforts to redevelop the campus as required by our 55-year Lease. The Winston School's focus and goals are straightforward:

- Erect a perimeter fence to meet the immediate demands of the COVID-19 crisis.
- Upgrade four of the five significant campus buildings to bring them to current health and safety standards.
- Upgrade the remaining building within five years.
- Conduct this effort in a productive, professional and ethical manner with our City landlord.


To better understand the ongoing issues the School has faced with the City, please review the School’s attached reply to the City Council posting. It is a summary of the most significant errors and misstatements made by Councilmembers Worden and Parks.

For those that would like additional details about any of the items listed, here is a link to a supporting document that includes source documents.
Highlights of issues addressed on the attached document:

**Material Misstatements, Errors and Omissions**

1. The City Council canceled Lease negotiations with the School in direct violation of the Lease terms.
2. A false claim was made that Winston "refused" to share an appraisal with the City without basis.
3. The statement omitted a memorandum of understanding signed by the parties on February 21, 2006 (MOU), a clause that states the Lease will be renegotiated upon completion of redevelopment.
4. The statement omitted the School's alternate $147,000 Lease proposal and facility-sharing benefits in the $1 rent, a rate consistent with other local non-profit leases.
5. The School's Lease rate with the Del Mar Unified School District was misrepresented; the contracts did not have comparable terms.
6. The City proposals for rent reduction were one-sided, economically unfeasible, and the one related to affordable housing was illegal.
7. Councilmembers deny they suggested the School build affordable housing despite written proof to the contrary.
8. The City Council used unsubstantiated legal claims for “Public Gift of Funds” to delay progress and refuse to offer legal support for such claims.
9. The City erroneously claims it had exclusive legal rights to purchase the Shores but had the School sign a noncompete clause.

**Demonstrations of Bias Against the School**

10. Attempt to diminish the School's role in purchasing Shore's Park by claiming it did not “donate” to the project.
11. Placing unjustified blame on the School for delays in the Shore Park redevelopment.

**Conclusion**

The School would encourage Del Mar residents to reread the City's “Statement and Paper” related to the School with an eye towards a bias against the School. Despite the document’s title claiming it represents the facts, Councilmember authors make assumptions regarding the School's motivations, made defamatory allegations against the School without basis, while omitting--perhaps intentionally--information vital to an “objective” statement.
The City Council has repeatedly demonstrated an acute lack of awareness of the circumstances its community faces during this global pandemic. The Councilmembers published their statement on the City’s official website on the very same day the City unilaterally terminated Lease negotiations with the School. This underhanded move was made without any attempt to verify the information and without regard to the timing as the School was focused on ending the school year. The City’s actions were done while the School was attempting to put together a meaningful graduation ceremony and dealing with the ramifications of the death of George Floyd and resultant civil unrest had on its students and families.

**Why Winston Matters**

We realize that not everyone is familiar with the role the School plays in the San Diego special education community. The School provides a safe haven for students who struggle in traditional schools, those with learning, social, emotional or medical needs who require a smaller setting with individualized support. They thrive in the supportive community at the School, where we celebrate their abilities and accept them for who they are. The School provides a positive environment for bullied students or made to feel inadequate because of their learning or other differences.

Winston does not just save students; it saves entire families. The CBS News 8 segment on our June 12, 2020, graduation encapsulates everything the School is about.

The COVID-19 pandemic has had a profound impact on students, especially students with special needs. The School is meeting these challenges head-on with plans focused on providing a solid education in a healthy and safe environment.

The School has been a part of the Del Mar community for more than 30 years. We are one of the oldest Del Mar non-profits and one of its largest employers. We have enjoyed strong support from our neighbors, for which we are grateful. We anticipate the School will continue to be an asset to the Del Mar community for years to come.

You can learn more about the School’s plans and download the full rebuttal at The Winston School. If you would like to discuss any of the information in this letter or clarify any questions, please feel free to contact the School at (858) 259-8155 or at info@thewinstonschool.org.

Regards,

Laura Cunitz
President
The Winston School Board of Directors

Attachments

Copies to:

Dr. Dena Harris, Head of School, The Winston School
City of Del Mar City Council Members
Ms. CJ Johnson, City of Del Mar City Manager
Ms. Kristen Crane, City of Del Mar, Assistant City Manager
The Winston School Board of Directors
Mrs. Laura DeMarco, Mr. Joe Sullivan, Co-Chairs, Shores Campaign; Friends of Del Mar Parks

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