

CD

1 Michael W. Stamp/SBN 72785
Molly Erickson/SBN 253198
2 Stamp | Erickson
479 Pacific Street, Suite One
3 Monterey, California 93940
Phone: 831.373.1214 Fax: 831.373.0242
4 erickson@stamplaw.us

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CITY ATTORNEY'S OFFICE

5 Susan Brandt-Hawley/SBN 75907
Brandt-Hawley Law Group
6 P.O. Box 1659 Glen Ellen, CA 95442
Phone: 707.938.3900 Fax: 707.938.3200
7 susanbh@preservationlawyers.com

8 Rachel Mansfield-Howlett/SBN 248809
Provencher & Flatt, LLP
9 823 Sonoma Ave. Santa Rosa, CA 95404
Phone: 707.284.2380 Fax: 707.284.2387
10 rhowlettlaw@gmail.com

11 Attorneys for Petitioner
Turn Down the Lights

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF MONTEREY**

15 TURN DOWN THE LIGHTS,
16 Petitioner,
17
18 v.
19 CITY OF MONTEREY,
20 Respondent.

Case No. M116731

**Opposition to Respondent's
Request for Judicial Notice in
Support of Supplemental Brief**

Hon. Lydia M. Villarreal

22 Turn Down the Lights presents this opposition to "Respondent's Request or
23 Judicial Notice in Support of Supplemental Brief" ("RFJN").

24 I.

25 **RESPONDENT MISUNDERSTANDS THE DOCTRINE OF JUDICIAL NOTICE.**

26 Judicial notice is not merely a substitute for introducing or authenticating
27 evidence or a way to eliminate hearsay objections. Instead, it is a manner of
28 establishing a fact as incontrovertible. "The underlying theory of judicial notice is

1 that the matter being judicially noticed is a law or fact that is not reasonably
2 subject to dispute." (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz &*
3 *McCort* (2001) 91 Cal.App.4th 875, 882.)

4 Judicial notice cannot be used to evade other evidentiary problems. If the
5 evidence is not admissible, or is not relevant to a material matter at issue, asking
6 that the Court take judicial notice of it does not make it admissible. Rather,
7 judicial notice may be taken only of evidence that otherwise meets evidentiary
8 requirements. (*Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578 (1977)
9 ["(T)he purpose of judicial notice is to expedite the production and introduction
10 of otherwise admissible evidence"]; *Marocco v. Ford Motor Co.* (1970) 7
11 Cal.App.3d 84, 89; *Love v. Wolf* (1964) 226 Cal.App.2d 378, 403.) Only relevant
12 documents may be judicially noticed. (Evid. Code, § 350; *Mangini v. R. J.*
13 *Reynolds Tobacco Co.* (2004) 7 Cal.4th 1057, 1063 overruled on other grounds in
14 *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1064; *Defend Our Waterfront v.*
15 *State Lands Commission* (2015) 240 Cal.App.4th 570, 590 [only relevant
16 evidence is admissible by judicial notice].)

17 Most importantly here, judicial notice of documents is not judicial notice of
18 the truth of statements contained in those documents. "Taking judicial notice of a
19 document is not the same thing as accepting the truth of its contents or accepting
20 a particular interpretation of its meaning." (*Joslin v. H.A.S. Insurance*
21 *Brokerage* (1986) 184 Cal.App.3d 369, 374; see *StorMedia Inc. v. Superior Court*
22 (1999) 20 Cal.4th 449, 456-57, fn. 9 [when judicial notice is taken of a document,
23 the truthfulness and proper interpretation of the document may be subject to
24 dispute].) The general rule is that "[w]hen judicial notice is taken of a document
25 ... the truthfulness and proper interpretation of the document are disputable."
26 (*StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9.)

27 Thus, if documents are judicially noticeable as official acts of a
28 governmental agency, the court may take judicial notice of only the fact that an

1 agency generated the document or took an action on a particular day. (*Beckley v.*
2 *Reclamation Bd. of the State* (1962) 205 Cal.App.2d 734, 741-42; *Mangini v. R. J.*
3 *Reynolds Tobacco Co.*, supra, 7 Cal.4th 1057, 1063, overruled on other grounds in
4 *In re Tobacco Cases II*, supra, 41 Cal.4th 1257, 1064; *People v. Long* (1970) 7
5 Cal.App.3d 586, 591.) The only time judicial notice may be taken of the truth of
6 the contents of a document is on estoppel grounds (see *Western Mutual Ins. Co.*
7 *v. Yamamoto* (1994) 29 Cal.App.4th 1474, 1485), which do not exist with respect
8 to any of the documents in Respondent's Request for Judicial Notice.

9 II.

10 FURTHER OBJECTIONS TO THE SPECIFIC REQUESTS BY RESPONDENT
11 FOR JUDICIAL NOTICE

12 **OBJECTION NO. 1 TO RESPONDENT'S EXHIBITS A AND B:**

13 Turn Down the Lights objects to Respondent's request for judicial notice of
14 Exhibits A and B. Exhibit A is described as "an agenda report prepared by the
15 City of Monterey for proposed City Council Agenda Modifications, dated
16 September 12, 2001, with the proposed Agenda Structure attached." Exhibit B is
17 described as "meeting minutes for the City of Monterey's September 18, 2001 City
18 Council meeting." Neither document is in the administrative record.

19 **GROUND FOR OBJECTION TO RESPONDENT'S EXHIBITS A AND B:**

20 A. Irrelevant and immaterial. Exhibits A and B are not probative or
21 material on any matter at issue to this Court. (Evid. Code, § 210, 403.)

22 Respondents argue that Exhibits A and B are relevant because they show how the
23 City categorizes and describes items on City Council meeting agendas, and show
24 the City's practice in 2001. The City's past practice is not at issue here, and the
25 Exhibit A discussion focuses on the City's goal to "streamline" agendas; it does
26 not mention "public appearances."

27 The Court has asked the parties to address certain questions regarding
28 notice for the 2011 City action at issue. Turn Down the Lights has argued the

1 notice provided to the public was inadequate to alert the public to the actual
2 proposed City action, and did not provide the essential information about the
3 item to the public.

4 The purpose of the description of the item on the agenda is to inform
5 interested members of the public about the subject matter under consideration so
6 that they can determine whether to monitor or participate in the meeting.
7 (*Defend Our Waterfront v. State Lands Commission* (2015) 240 Cal.App.4th 570,
8 582-586; *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216
9 Cal.App.4th 1167, 1177-1178; see Gov. Code, § 54954.2(a) [Brown Act agenda
10 requirement]; California Attorney General “The Brown Act – Open Meetings for
11 Local Legislative Bodies,” 2003, p. 16.) The description must be sufficient to
12 provide interested persons with an understanding of the subject matter which will
13 be considered.

14 B. Hearsay. The contents of the staff report and minutes are factual
15 claims. Turn Down the Lights disputes the staff report and minutes admissibility
16 as to their hearsay truthfulness and proper interpretation. “Taking judicial notice
17 of a document is not the same as accepting the truth of its contents or accepting a
18 particular interpretation of its meaning.” (*Joslin v. H.A.S. Ins. Brokerage* (1986)
19 184 Cal.App.3d 369, 374; *StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th
20 449, 457, fn. 9; *Love v. Wolf* (1964) 226 Cal.App.2d 378, 403.)

21 **OBJECTION NO. 2 TO RESPONDENT’S EXHIBITS C THROUGH G:**

22 Turn Down the Lights objects to Respondent’s request for judicial notice of
23 Exhibits C through G.

- 24 • Exhibit C is described by Respondent as “a Notice of Exemption filed
25 by the San Diego Port District for its ‘LED Lighting Retrofits –
26 Tidelands Various Locations’ project, dated November 5, 2014.”

- 1 • Exhibit D is described as “a Notice of Exemption filed by the San
2 Diego Port District for its ‘LED Lighting Retrofits FY 15/16’ project,
3 dated September 9, 2015.”
- 4 • Exhibit E is described as “a Notice of Exemption filed by the City of
5 Davis for its ‘Energy Services Performance Contract/LED Lighting
6 Project,’ dated December 17, 2014.”
- 7 • Exhibit F is described as “a Notice of Exemption filed by the City of
8 San Leandro for its ‘Citywide Streetlighting Upgrade Project,’ dated
9 November 21, 2012.”
- 10 • Exhibit G is described as “a Notice of Exemption filed by the City of
11 Burlingame for its ‘LED Steetlight Replacement Project,’ dated
12 August 4, 2011.”

13 None of the documents is in the administrative record.

14 **GROUNDS FOR OBJECTION TO RESPONDENT’S**
15 **EXHIBITS C THROUGH G:**

16 A. Immaterial. Exhibits C through G are not probative or material on
17 any matter at issue to this Court. (Evid. Code, §§ 210, 403.) Respondent argues
18 these documents show that other public agencies approved “similar” streetlight
19 projects in reliance on the Class 2 categorical exemption. This is immaterial
20 because what is at issue is the actions of the City of Monterey, not the actions for
21 any other agency. The procedures used by other cities are not relevant to the
22 procedures used by Monterey to make a CEQA determination without adequate
23 public notice. The conclusions of other cities are likewise irrelevant. In any
24 event, the other cities are not like Monterey. Monterey has repeatedly claimed to
25 be unique due to its history and architecture, as the record shows. It is not
26 appropriate to compare Monterey to cities that do not have such attributes, such
27 as the San Leandro (Respondent’s Ex. F). Monterey has hills which affect the
28

1 impacts of the LED streetlights, as the record shows. It is not appropriate to
2 compare Monterey with flat cities such as Davis (Respondent's Ex. E).

3 B. Insufficient Foundation. Exhibit C and G were obtained from the
4 State Clearinghouse, however Respondent does not explain the foundation for
5 these documents. There is no evidence of the notice and public participation that
6 took place before the filing of any of the Notices of Exemption in Exhibits C
7 through G, and no evidence as to whether any of these actions were challenged
8 and the court made any judicial determination regarding the applicability of the
9 Class 2 categorical exemption or the notice used by any of the agencies.

10 C. Hearsay. The contents of the Notice of Exemptions are factual claims
11 disputed by Turn Down the Lights as to their truthfulness and proper
12 interpretation. Taking judicial notice of a document is not the same as accepting
13 the truth of its contents or accepting a particular interpretation of its meaning.
14 (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.)

15 October 3, 2016

Respectfully submitted,

16 STAMP|ERICKSON

17
18 by 

19 Molly Erickson

20 BRANDT-HAWLEY LAW GROUP
21 PROVENCHER & FLATT, LLP

22 Susan Brandt-Hawley
Rachel Mansfield-Howlett

23 Attorneys for Petitioner Turn Down the Lights
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