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April 19, 2016

**ORIGINAL VIA US MAIL**

**VIA EMAIL councilmember.wesson@lacity.org**

The Honorable Herb J. Wesson, Jr. - President  
Los Angeles City Council  
200 N. Spring Street  
Los Angeles, CA 90012

Re: Council File No. 14-1479  
City Council Hearing Date: April 1, 2016 - Continuation Agenda Item No. 3  
Vacant Parcels off of Cahuenga Boulevard  
**Violation of Brown Act: Demand to Cure and Correct**

Dear President Wesson:

This office represents the owner of the property located at 2864 N. Cahuenga Boulevard with respect to the matter referenced above. On April 1, 2016, there was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the City Council.

The nature of the violation is as follows: In its meeting of April 1, 2016, the City Council approved a motion on a vote of 10 to 2 to rescind "the Council Action of March 18, 2015 relative to the rezoning of two vacant parcels off of Cahuenga Boulevard adjacent to Lake Hollywood [Parcel Nos. 5577-016-001 and 5577-016-002, (CF 14-1479)]. . . ." (the "Motion")

The action taken was not in compliance with the Brown Act because it occurred as the culmination of a discussion in closed session of a matter which the Act does not permit to be discussed in closed session. The agenda item was called, the Council entertained eight minutes of public comment, closed public comment and then adjourned to closed session, ostensibly to meet with the City Attorney to discuss possible litigation related to this matter, and no other topic. Per the agenda, the closed session was called pursuant to Government Code § 54956.9 (d)(2) and (e)(5), in order to confer with legal counsel in relation to significant exposure to, and threat of, litigation.

***The closed session lasted for just under one and a half hours***, during which time we are informed and believe that the discussion strayed far from "exposure to and threat of litigation," and that the merits of the Motion were discussed by, and commitments or agreements regarding voting on the

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Motion were made by, the Councilmembers present in the closed session. When the public hearing on the Motion resumed, there was nearly no discussion by Councilmembers, and the vote was taken.

We understand that the closed session meeting was recorded, so that evidence of this violation of the Brown Act exists. We demand that there be no spoliation of this important evidence, and that any and all minutes and recordings of this closed session be preserved for use in possible litigation.

The Brown Act, at Government Code § 54960.1 provides in pertinent part that, “(a) ...[A]ny interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953 ... is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.”

As used in the statute, “action taken” means “*a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision*, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.” (Gov. Code, § 54952.6; emphasis added.) As such, the action taken in the closed session by the City Council was the collective decision, or the making of commitments or agreements, to approve the Motion, which decision was then carried out without significant further public discussion by the Council.

Therefore, pursuant to Government Code § 54960.1, we demand that the City Council cure and correct the illegally taken action by formally and explicitly withdrawing its April 1, 2016 Motion and conducting a new hearing on the Motion at which all Council discussion on the matter is made in public and all prior communications among the Councilmembers, and between Councilmembers and the public, are fully disclosed, and a full opportunity for informed comment by members of the public at the same meeting is afforded.

Pursuant to § 54960.1(c)(1), the City Council has 30 days from the receipt of this demand to either cure or correct the challenged action or to inform us in writing of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave our client with no recourse but to seek a judicial invalidation of the challenged action pursuant to § 54960.1, in which case we will also seek our client’s reasonably incurred attorneys’ fees and costs, pursuant to § 54960.5.

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As always, please do not hesitate to contact me at any time with any questions or comments that you may have.

Sincerely,

GAINES & STACEY LLP

By

  
FRED GAINES

cc: All City Council Members (Via Email)  
Terry Kaufmann-Macias, Supervising City Attorney (Via Email)  
Sharon Gin, Legislative Assistant (Via Email)