

September 26, 2017

VIA GOLDEN STATE OVERNIGHT

Mayor Radecki and
Members of the City Council
City of Industry
15625 E. Stafford Street
City of Industry, CA 91744

Re: Demand to Correct Brown Act Violation

Dear Mayor Radecki and Members of the City Council:

Pursuant to Government Code section 54960.1 the City of Diamond Bar ("Diamond Bar") submits this demand to the Industry City Council to correct violations of the Brown Act that occurred in a closed session of the Industry City Council on a date or dates that are unknown. Government Code section 54960.1 provides that the district attorney or any interested person may commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency violated the Brown Act's open meeting laws and is null and void. As a pre-requisite to filing such an action, Diamond Bar is required to make a demand of the City Council to correct its action.

Pursuant to a Public Records Act request, Diamond Bar recently received a copy of a "MASTER GROUND LEASE" executed by and between the City of Industry ("Industry") and San Gabriel Valley Water and Power, LLC (the "Lease"). The Lease would permit San Gabriel Valley Water and Power to develop a solar panel facility on property known as Tres Hermanos (the "Property") if and when Industry becomes the owner thereof. Diamond Bar was recently informed that the Lease and now more recently, an amendment or amendments to the Lease, were approved in closed session of the Industry City Council under the description of threat of litigation.

The law does not permit approval of the Lease in closed session under a threat of litigation, if in fact that is what occurred. While Government Code section 54956.9 does permit the City Council to discuss with its counsel settlement of a lawsuit to which Industry is a party and provides a narrow limited exception for approving some settlement agreements in closed session, Diamond Bar is not aware of any evidence that the Lease or any amendment(s)

constitute a settlement of existing or potential litigation. The Lease itself contains no language that it is being entered into to settle any type of dispute, let alone litigation which has been filed or threatened.

The Lease could not have been lawfully approved in closed session under a threat of litigation. Prior to **approving** the acquisition of the Property and because the Property is within Diamond Bar's jurisdiction, Industry was required to obtain a General Plan conformance finding from Diamond Bar's Planning Commission pursuant to Government Code section 65402 and make findings under the California Environmental Quality Act. The City Council is required to consider both findings **before** it approves any purchase of the Property. Likewise, the Lease itself requires the General Plan conformance finding under Section 65402, as well as CEQA findings. CEQA findings cannot be made in closed session. Given that this was apparently a real property negotiation rather than threatened litigation, the absence of the identity of the negotiating parties and the Property on the meeting agenda also violated the Brown Act.

While it is permissible for the City Council to have discussions regarding real property negotiations in closed session, the Lease itself was required to be approved in open session. The Brown Act provides limited and narrow exceptions to the requirement that Industry's City Council make its decisions in a publicly noticed meeting and does not authorize the use of these limited exceptions to circumvent its provisions. . "[A]s 'emphasized in the Attorney General's manual on the Brown Act, 'the purpose of [section 54956.9] is to permit the body to receive legal advice and make litigation decisions only; it is not be used as a subterfuge to reach nonlitigation oriented policy decisions.'"¹

If in fact approval of the Lease and any amendments did occur in open session, please provide documents evidencing that this occurred to the undersigned. Industry has not provided Diamond Bar with any documents evidencing the approval of the Lease in open session, or even in closed session for that matter, despite a request for such records.

Pursuant to Government Code section 54960.1, the City Council has 30 days from receipt of this letter to cure the violations. If no action is taken during the 30-day period or the City Council provides written notice that it does not intend to cure, Diamond Bar will be required to

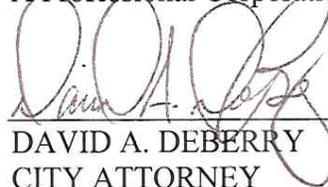
¹ *Trancas Property Owners Association v. City of Malibu*, quoting 2003 Attorney General Manual.

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file a legal action. If the Board determines to cure the violations, please notify me prior to the running of the 30-day period.

Sincerely,

WOODRUFF, SPRADLIN & SMART
A Professional Corporation

A handwritten signature in black ink, appearing to read "David A. DeBerry", is written over a horizontal line.

DAVID A. DEBERRY
CITY ATTORNEY
CITY OF DIAMOND BAR

cc: Jackie Lacey, Los Angeles County District Attorney
City Council, City of Diamond Bar
Mr. Dan Fox, City Manager, City of Diamond Bar
Jack Rubens, Esq.
Jamie Casso, Industry City Attorney