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PROIRITY MAIL – DELIVERY CONFIRMATION

September 7, 2007

Mayor Diane Harkey
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

RE: Demand to mitigate and correct or cure action in
violation of Government Code § 54954.2; The Brown Act

Dear Mayor Harkey:

Please be advised that I represent certain proponents of the effort to recall you from the Dana Point City Council, currently in circulation in Dana Point, who are citizens of the City of Dana Point, and, as such, do hereby make a demand of the City Council to cure or correct actions taken in violation of the California Government Code, namely, the Ralph M. Brown Act, by signing a Resolution dated September 4, 2007 that unequivocally appears to be a resolution of the Dana Point City Council, signed by a majority of the Council, with signature lines for five members, attached.

Pursuant to Gov't. Code § 54954.2(a), the legislative body of a local agency is required to post an agenda containing a brief description of each item of business to be transacted or discussed at the meeting at least 72 hours before the meeting. Said "agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public." Further, "no action or discussion shall be undertaken on any item not appearing on the posted agenda...." [Gov't. Code § 54954.2(a) (emphasis added)].

This demand is brought under both Gov't. Code §§ 54960 and 54960.1. Government Code §54960(a) allows the district attorney or any interested person to commence an action for declaratory relief to determine whether any action by the Dana Point City Council is invalid under the Brown Act. There is no cure or correct predicate to maintain such an action under this subsection. In order to avert our private action under this section of the Government Code, we herein demand that within the next 30 days you admit in open session that the Council violated the Brown Act on September 4, 2007 when a majority of the members of the City Council took action, agreed, and signed a Resolution purporting to be a Resolution of the City Council.

Be advised that this demand also includes a demand for cure or correction under Gov't. Code § 54960.1. Pursuant to Government Code § 54960.1(c)(2), you have thirty (30) days after receipt of this demand to "cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action." Failure to comply with said section will result in swift and appropriate legal action under Gov't. Code § 54960.1.

As stated above, under the Brown Act, a regular meeting agenda must be posted at least 72 hours before a meeting in a location that is freely accessible to the public. Gov't Code Section 54954.2(a); 78 Cal. Op. Atty. Gen. 327 (1995). The agenda must specify the time and place of the meeting and include a brief general description of each item to be discussed. *Id.* The Brown Act intends that agenda descriptions should give enough information to permit a person to make an informed decision about whether they want to attend or participate in the discussion on an issue. *The California Municipal Law Handbook*, p. II-27, Section 2.2.15 (A)(2), "Agenda Requirements and Other Procedural Issues," League of California Cities, 2005. Except for limited questions, requests and responses on matters not appearing on the posted agenda, no action or discussion may occur with respect to any item not appearing on the posted agenda. Gov't Code Section 54954.2(a).

In this case, the action and decision of a majority of the members of the City Council on September 4, 2007 to adopt and sign a Resolution purporting to be a Resolution of the City Council, which mentions the "important work of the City Council," and has signature lines for all five members of the City Council, was never agendized, and the action in adopting and signing the resolution was taken in secret and without public comment as required by the Brown Act. Since no applicable exceptions apply, no action or discussion may occur with respect to the Resolution of September 4, 2007, or any item not appearing on the posted agenda. Gov't Code Section 54954.2(a). As a result, the action by the majority of the City Council adopting the Resolution is null and void under California statutory law.

Mayor Harkey, my clients are very concerned about ensuring that the City Council comply with its obligations to the public under the Brown Act. Thus, given the forgoing, please be further advised that a cure or correction will only be satisfactory to my clients as follows -

The Council must:

- Re-agendize the item for open session, and fully comply with all posting requirements pursuant to Gov. Code. § 54954.2;
- admit in open session that the action of four members of the Council signing the Resolution on September 4, 2007 was improper;
- offer in open session a public apology for violating the

- Brown Act;
and state the Council will make every effort to not to violate the Brown Act in future.

Action short of this cure will result in litigation to enforce the provisions of the Brown Act, to include a Motion for a Declaratory Judgment that you and your colleagues violated the Brown Act. If forced to litigation, we will vigorously pursue all our discovery options and seek to prove that you and your colleagues actually intended to deny information to the public. We will also move for fees and costs of litigation.

Thank you in advance for your anticipated cooperation. I am available to discuss this matter and the above settlement terms with your representative at 949-495-3314.

Sincerely,

James V. Lacy

cc: Members of the Dana Point City Council
City Attorney