

## Communication from Public

**Name:** Daniel F. Freedman  
**Date Submitted:** 08/31/2021 05:31 PM  
**Council File No:** 21-0808  
**Comments for Public Posting:** NOTICE OF VIOLATION OF BROWN ACT, CALIFORNIA GOVERNMENT CODE § 54950, ET SEQ.; DEMAND TO CURE OR CORRECT VIOLATION REGARDING 5353 Del Moreno Drive

Daniel Freedman  
dff@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 77889-0002

August 31, 2021

**VIA E-MAIL (holly.wolcott@lacity.org)**

Honorable Members of the Los Angeles City Council  
Attention: Holly L. Wolcott, City Clerk  
200 North Spring Street, Room 395  
Los Angeles, CA 90012

Re: **NOTICE OF VIOLATION OF BROWN ACT, CALIFORNIA  
GOVERNMENT CODE § 54950, ET SEQ.; DEMAND TO CURE OR  
CORRECT VIOLATION**

Property Address: 5353 Del Moreno Drive

Council File 21-0808

Hearing Date: August 31, 2021, Agenda Item 8

Honorable Members of the Los Angeles City Council:

Our office represents the owner of 5353 Del Moreno Drive, Los Angeles, 90232 (the "Property"), and the appellant challenging the Department of City Planning refusal to process the proposed 67 unit density bonus development, including 7 units designated for very-low income households. We write pursuant to the Notice and Cure provisions of California's Brown Act, California Government Code § 54950, et seq.

**NOTICE OF VIOLATION OF SECTIONS 54942.2(a)(1) AND 54942.2(a)(2) OF THE  
BROWN ACT**

Government Code § 54960.1 provides that interested parties may commence an action by mandamus or injunction under the Brown Act for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of, inter alia, Government Code § 54954.2 is null and void. Prior to such action, the party must make a demand of the legislative body to cure or correct the action taken in violation of Section 54954.2. This is that demand and the factual bases of the violation are as follows:

During the Planning and Land Use Management Committee's August 31, 2021 meeting on our client's above referenced appeal, the Department of City Planning presented a PowerPoint presentation with visual exhibits, photographs, written statements, and other visual aids ("Appeal Presentation"). This Appeal Presentation was not made accessible to the appellant or the public

before or during the hearing via the City's youtube stream or any other means, making it impossible for the appellant to know what was being presented to the City Council or to address the points during the appeal presentation.

California Government Code Section 54957.5(c) requires that, when an agency distributes material prepared by it during a meeting, copies of the material must be available for public inspection at the meeting. By failing to provide appellant and the public access to the Appeal Presentation, which formed the foundation of the Department of City Planning's rebuttal to our client's appeal, the City violated this Brown Act rule and denied our client the ability to meaningfully address the Appeal Presentation and any substantive statements or visual conclusions included therein. As this error occurred in the context of a quasi-judicial administrative hearing on an appeal – *an appeal of a determination made by the presenter of the undisclosed Appeal Presentation* – this error was especially prejudicial. As you know, a quasi-judicial hearing must be fair and provide an appellant with a meaningful opportunity to prepare and be heard, and to allow one party to an appeal the ability to provide an undisclosed presentation with materials that are undisclosed to the appellant, does not comport with basic standards of fairness. It is therefore inconsistent with the Brown Act and requirements of a quasi-judicial proceeding to allow one party to an appeal to make a secret presentation to the decision making body without disclosing that presentation to the public or the appellant.

**DEMAND TO CURE OR CORRECT VIOLATIONS**

As provided in Government Code § 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action, or inform us of your decision not to do so. If you fail to cure or correct as demanded, we will seek judicial invalidation of the action pursuant to Government Code § 54960.1, including an award of court costs and reasonable attorneys' fees pursuant to Section 54960.5

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Freedman', with a stylized, cursive script.

DANIEL FREEDMAN of  
Jeffer Mangels Butler & Mitchell LLP

CC: Terry Kaufmann-Macias, Office of the City Attorney  
Maya Zaitzevsky, Principal City Planner, Department of City Planning  
Sarah Molina Pearson, Senior City Planner, Department of City Planning

## Communication from Public

**Name:** Akhilesh Jha

**Date Submitted:** 08/31/2021 06:10 PM

**Council File No:** 21-0808

**Comments for Public Posting:** I sign on to the comments submitted by YIMBY, YIMBY Law, and Sonja Trauss.