PMM
DRH Meeting 6/17/26
RTC 26-614
Item 4

From: Planning Public Comment
Sent: Wednesday, June 17, 2026 10:50 AM
To: 'Kathryn A. Ramirez' <KRamirez@rmmenvirolaw.com>; Planning Public Comment <PlanningPublicComment@santaclaraca.gov>; Sheldon Ah Sing <sahsing@Santaclaraca.gov>; Meha Patel <mpatel@Santaclaraca.gov>
Cc: Andee Leisy <ALeisy@rmmenvirolaw.com>; michael fisher <mthomasf@hotmail.com>; Clerk <Clerk@santaclaraca.gov>
Subject: RE: 6/17/2023 Development Review Hearing - Agenda Item No. 4 - Comments (PLN24-00533, 860/858 Civic Center Drive and 1526 Alviso Street)

Good Morning,
This is to confirm your email has been received and by way of my reply the appropriate Planning Division staff have been included on this email thread.

Please note, your correspondence will be part of the public record on this item.

Thank you for taking the time to provide your comments.

ELIZABETH ELLIOTT | Staff Aide II
Community Development Department | Planning Division
1500 Warburton Avenue | Santa Clara, CA 95050
O : 408.615.2450 Direct : 408.615.2474

City of Santa Clara
The Center of What's Possible

From: Kathryn A. Ramirez <KRamirez@rmmenvirolaw.com>
Sent: Wednesday, June 17, 2026 10:08 AM
To: Planning Public Comment <PlanningPublicComment@santaclaraca.gov>; Sheldon Ah Sing <sahsing@santaclaraca.gov>
Cc: Andee Leisy <ALeisy@rmmenvirolaw.com>; michael fisher <mthomasf@hotmail.com>; Clerk

<Clerk@santaclaraca.gov>
Subject: 6/17/2023 Development Review Hearing - Agenda Item No. 4 - Comments (PLN24-00533, 860/858 Civic Center Drive and 1526 Alviso Street)

> Some people who received this message don't often get email from kramirez@rmmenvirolaw.com. Learn why this is important

Good Morning,

Attached, please find correspondence, on behalf of our clients Mr. and Mrs. Fisher. We also request notification of all future notices regarding this project, thank you.

Kind regards,

Ryn Ramirez

RMM

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June 17, 2026

Via Email Only
PlanningPublicComment@santaclaraca.gov
sahsing@santaclaraca.gov

Sheldon Ah Sing
Development Review Officer
City of Santa Clara
1500 Warburton Ave
Santa Clara, CA 95050

Re: Development Review Hearing - Agenda Item 4 (June 17, 2026)
(PLN24-00533) 860/858 Civic Center Drive and 1526 Alviso Street

Dear Mr. Ah Sing,

We submit this letter on behalf of our clients, Mr. and Mrs. Fisher, who reside near the above-referenced proposed project and who worked for years with City of Santa Clara (City) staff to restore their existing two story Spanish Colonial Revival home, originally built in 1935, and to develop the adjoining property in a complementary style at the City's request. [1]

Now, ten years later, the City appears poised to approve the above referenced project at 860/858 Civic Center Drive and 1526 Alviso Street (the Project) despite it being devoid of any complementary architectural style or scale with the existing developing neighborhood. Our clients therefore request that, after considering these comments, you decline to approve the Project and instead direct staff and the applicant to work in good faith with our client and neighbors to address their concerns.

I. Pursuant to the Ralph M. Brown Act (Brown Act), the hearing must be postponed and the agenda revised to include the City's proposed CEQA exemption as an "item of business."

In addition to approving the architectural review, the meeting agenda recommends that the Project be found exempt from any environmental review otherwise required under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and pursuant to AB 130. The characterization of AB 130 as the exemption, however, does not notify the public of the specific statutory or categorical

[1] / More about their home may be found at: https://www.svvoice.com/spanish-colonial-revival-featured-home-in-santa-claras-historic-home-tour/

exemption the City proposes to rely on under CEQA for the Project approval. The Meeting Agenda therefore makes it impossible for a layperson to identify whether the proposed CEQA exemption is, in fact, appropriate for the proposed Project to exhaust all administrative remedies that might otherwise be required under CEQA and for the City to comply with the Brown Act. [2]

The Brown Act requires a public agency's posted agenda to include a description of each item of business to be considered at a legislative body's meeting at least 72-hours prior to the meeting. (Gov. Code, § 54954.2, subd. (a)(1).) This requirement applies unless the legislative body makes certain determinations, none of which exist here. (See *Id.*, § 54954.2, subd. (b).) The Brown Act states that "[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda...." (See § 54954.2, subd. (a)(2).) In adopting the Brown Act, the Legislature declared that:

> [T]he public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

(Gov. Code, § 54950.) [3]

The City's Meeting Agenda for June 17th does not meet the Brown Act's requirements. It must be revised to include the specific CEQA exemption the City proposes to rely on in approving the Project and the record must reflect substantial evidence supporting reliance on the exemption prior to considering approval of the Project.

If, for example, the City intends to rely on the statutory exemption provided by Public Resources Code section 21080.66, which the reference to AB 130 presumably refers to, substantial evidence must be provided in the record that all the requirements of

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[2] See Attachment A, Court of Appeal opinion in the matter of *G.I. Industries v. City of Thousand Oaks* finding the city violated the Brown Act by omitting, from the public hearing agenda, the specific CEQA exemptions proposed to be relied on by the city council for a project.

[3] See also *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167 [finding county violated the Brown Act by considering and adopting a mitigated negative declaration (MND) for a project subject to CEQA without first expressly including the item in the posted agenda for the Planning Commission as an individual item of business].

that exemption have been met. This includes ensuring that formal notice has been provided to all California Native American tribes that are traditionally and culturally affiliated with the project site, among other requirements. The materials provided for the meeting on Wednesday fall short of these mandates if, in fact, that is the exemption the City proposes. Again, the Meeting Agenda must be clarified to specify the precise exemption.

For private projects, as here, a public agency must comply with CEQA for the "whole of the action," or Project, at the earliest discretionary approval. The proposed approval of the architectural review and adoption of a proposed Notice of Exemption (NOE), as here, triggers the need for the City to ensure compliance with CEQA for all of the proposed Project entitlements and approvals, including the tentative map, and tree removal permit. (See Pub. Resources Code, §§ 21065, 21159.27; CEQA Guidelines, § 15352.)

II. The Project is inconsistent with the City's zoning code.

A. Substantial evidence supporting waiver of development standards is lacking.

The Project applicant proposes two four story (44' tall) buildings with 14 market rate townhomes and one three story building (Building 3) consisting of 2 affordable units and proposed as accessory dwelling units (ADUs). The Project applicant requests several waivers from applicable development standards set forth in Table 2-12 of the zoning code. The waivers include those needed to reduce the front and rear setbacks of Buildings 1 and 2, to increase the 40-foot height limitation to 44 feet for Buildings 1 and 2, and to reduce the required commercial square footage and commercial floor area ratio (FAR) for Building 3. (See Attachment 2: Project Data/Compliance (Mixed-Use) prepared by staff.)

Although unexplained in a staff report or other document made publicly available for the hearing, it appears the waivers requested by the applicant may be pursuant to Chapter 18.64 (Density Bonus and Affordable Housing) of the zoning code. That section, however, requires substantial evidence that the:

> waiver or reduction *is necessary to make the housing development economically feasible*, and that *without the waiver the development standards would physically preclude the construction* of the development that meets all other legal requirements . . .

(Zoning Code 18.64.120, subds. (A), emphasis added.)

What substantial evidence has been provided by the applicant to support the requested waivers? Where is the explanation of how/why this Project is eligible for the Density Bonus Law, if it is? Our client requests answers to these questions and that a

copy of any substantial evidence supporting the waiver requests be made publicly available.

If there is no such explanation or evidence, our client requests that the Project as proposed be denied. (See § 18.64.040, subd. (A)(1)(a) ["The Council shall grant an incentive or concession request . . . unless the Council . . . finds . . . [t]he incentive or concession *does not result in identifiable and actual cost reductions to provide for affordable housing costs*[]"].)

B. The Project design is inconsistent with the zoning code and adjacent residential uses.

The zoning code requires a minimum step-back of six feet for all structures greater than three stories. (§ 18.14.040, subd. (F); see also, Figures 2-3 and 2-4.) This requirement is to break up the vertical, flat wall of a multi-story building, adding visual texture and separating different levels of a façade. As requested below, the Project design should be revised to reflect this mandatory requirement and to incorporate design features that are to scale and complementary with the existing adjacent residential uses.

III. The Project should be revised.

Our clients request a good-faith meeting with the applicant to discuss the following revisions to the Project and/or project conditions of approval:

(i) Reductions in the height and scale of Buildings 1 and 2 to three stories or, at the very least, requiring six foot step-backs if they remain four stories as required by section 18.14.040, subd. F of the zoning code. (See also, Figures 2-3 and 2-4.) Our clients propose that 2 to 3 stories is sufficient to accommodate the Project and ensure its fiscal viability;

(ii) Revisions to the multi-family building design to reflect the characteristics of the existing neighboring residences and buildings, including the use of wood trim windows and arches, including arched doors and windows rather than the modernistic glass box buildings proposed. The proposed buildings appear more suited for downtown Los Angeles rather than the City of Santa Clara;

(iii) Clarifying the conditions of approval to prohibit balconies that could be directly adjacent to existing residential uses on Civic Center Drive and Alviso Street, including residential uses that would be divided by masonry fences;

(iv) Require all setbacks of the Project to comply with existing MUCC zone requirements in Table 2-12 of the zoning code to buffer existing residential uses, rather than granting waivers; and

(v) Clarify the conditions of approval to restrict use of the commercial space for meetings by the public and HOA only, consistent with the applicant's development plans.

Thank you in advance for your consideration of our clients' comments and concerns. Please provide me with email notice of all future public hearing notices and notices issued for the Project, including any notices of exemption (NOE) or notices of determination (NOD) filed pursuant to CEQA and notices under the Brown Act.

Very truly yours,

Andrea K. Leisy

Encl. Attachment A

Cc: Michael Fisher
City Clerk

ATTACHMENT A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

G.I. INDUSTRIES,

Plaintiff and Appellant,

v.

CITY OF THOUSAND OAKS et al.,

Defendant and Respondent;

ARAKELIAN ENTERPRISES, INC.,

Real Party in Interest.

2d Civ. No. B337103
(Super. Ct. No. 56-2021-00554581-CU-WM-VTA)
(Ventura County)

A city violated the Brown Act (Gov. Code,[1] § 54950 et seq.). It found that a franchise agreement is exempt from the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 et

[1] All statutory references are to the Government Code unless stated otherwise.

seq.). But it did not give adequate public notice. The trial court found that under an exception in the Brown Act, the city's action is not null and void, and that the Brown Act violation was not prejudicial. We reverse on both grounds and conclude the city's action, finding the franchise agreement exempt from CEQA, is null and void.

FACTS

G.I. Industries, doing business as Waste Management (WM), provided solid waste management for the City of Thousand Oaks (City).

The City was considering entering into a new exclusive solid waste franchise agreement with Arakelian Enterprises, Inc., doing business as Athens Services (Athens). The franchise agreement was for a 15-year term beginning January 1, 2022, and ending December 31, 2036 (the franchise agreement).

On March 4, 2021, the City posted an agenda for a regular meeting of the City council to be held on March 9, 2021. An item on the agenda stated that the City would consider awarding the franchise agreement to Athens, along with a note that the City's staff recommended approval. One item that was not listed on the City's agenda was that the City would also consider whether the franchise agreement is exempt from CEQA. Nor did the agenda include the City staff's recommendation that the City find the franchise agreement to be categorically exempt.

On March 5, 2021, WM submitted a comment letter to the City raising WM's concern that the City had not considered potentially adverse environmental impacts if the new franchise agreement were approved.

It was not until 3:30 p.m. on March 9, 2021, the day of the City council meeting, that a supplemental item was posted giving

notice of the staff's recommendation that the City find the franchise agreement to be exempt from CEQA. The posting included a supplemental information packet with the City staff's recommendation for the exemptions. The staff found the franchise award to be categorically exempt pursuant to the Code of Regulations, title 14, section 15000 et seq. under the "existing facilities" and "actions by regulatory agencies for the protection of the environment" exemptions. (*Id.*, §§ 15301, 15308.) The staff also found the franchise agreement exempt under the so-called "common sense" exemption. (*Id.*, § 15061, subd. (b)(3).)

At the March 9, 2021, City council meeting, the City approved the franchise agreement and found it was exempt from CEQA. On April 8, 2021, WM sent the City a "cure or correct" letter pursuant to section 54960.1, subdivision (b), objecting to the CEQA exemption decision without 72 hours' notice as required by section 54954.2 of the Brown Act. The City elected not to cure or correct the challenged action.

Petition for Writ of Mandate

WM petitioned the trial court for a writ of mandate directing the City to vacate both its approval of the franchise agreement and its finding that it is exempt from CEQA. Athens was joined as the real party in interest. The petition alleged that the City violated section 54954.2 of the Brown Act by voting to adopt the CEQA exemptions as an agenda item at least 72 hours prior to the City council meeting.

The City and Athens demurred to the complaint. The trial court sustained the demurrer without leave to amend. The court agreed with WM that the CEQA exemption is an item of business separate from approval of the franchise agreement. The court however, also concluded, that because CEQA does not require a

public hearing for an exemption determination, the Brown Act does not apply.

First Appeal

On WM's first appeal, we reversed the judgment. We held that WM's petition alleged facts sufficient to show the City violated the Brown Act, section 54954.2, subdivision (a)(1) by considering a CEQA exemption without a 72-hour agenda notice. We also held that WM's "cure and correct" letter substantially complied with section 54960.1, subdivision (b), requiring a demand that a legislative body cure and correct an alleged violation, prior to commencing an action. (*G.I. Industries v. City of Thousand Oaks et al.* (Oct. 26, 2022, B317201) opn. ordered nonpub. Feb. 15, 2023.)

Trial Court Ruling on Remand

The trial court again denied WM's petition. The court found that the City violated the Brown Act, but section 54960.1, subdivision (d)(3) provides an exception to nullification for actions that give rise to contracts on which a party detrimentally relied; and WM failed to show prejudice because WM and others were permitted to submit comments about the CEQA exemption and those comments were understood and considered by the City.

DISCUSSION

I. The Brown Act

The Brown Act begins with a declaration of purpose: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the People's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." (§ 54950.)

To effectuate this purpose, section 54954.2, subdivision (a)(1) provides in part: "At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."

The public has the right to address the local agency. Section 54954.3, subdivision (a) provides in part: "Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda. . . ."

Any interested person may petition the trial court for the purpose of obtaining a judicial determination that an act taken in violation of section 54954.2 is null and void. (§ 54960.1, subd. (a).)

The Brown Act is supported by the California Constitution. Article I, section 3, subdivision (b), paragraphs (1) and (2) of the California Constitution provide in part:

"(1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and writing of public officials and agencies shall be open to public scrutiny.

"(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

II. Exception to Null and Void Declaration

The trial court found the City violated section 54954.2, subdivision (a) of the Brown Act by failing to post an agenda item at least 72 hours prior to the meeting at which the CEQA exemption was found.

Ordinarily such a violation would require the trial court to declare the City's action null and void. (§ 54960.1, subd. (a).) But the court cited an exception to the null and void requirement. Section 54960.1, subdivision (d)(3) provides that an action of a local agency shall not be declared null and void if: "The action taken gave rise to a contractual obligation, including a contract let by competitive bid . . . upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied."

The trial court found that the exception applied, stating: "Athens and City were contractually obliged to undertake significant tasks in order to transition waste hauling services performed by WM under the prior contract to the same services to be performed by Athens under the [franchise agreement]. A significant number of these substantial efforts occurred before April 8, 2021 [date of cure or correct letter]."

But at the March 9, 2021, City council meeting at which the CEQA exemption was passed, at least one speaker gave notice of the Brown Act violation, complete with citation to appropriate authority. The speaker said: "The City [council] should not take action to award the [franchise] agreement tonight. The Brown Act requires the City to include in its agenda the City's proposed CEQA action prior to approving the award. [¶] In a 2013 published case entitled *San Joaquin Raptor Rescue Center v. County of Merced*, available at 216 Cal.App.4th 1167

[Merced County] was found to have violated the Brown Act for failing to include consideration of a mitigated, negative declaration as part of its public agenda. [¶] The [council's] poised to make the same unfortunate mistake here tonight if it takes action rather than vote to continue the item."

The City and Athens had ample notice of the precise Brown Act violation at issue here before any work had been performed in reliance on the franchise agreement. The speaker's statement gave "notice of a challenge to the validity of the action." (§ 54960.1, subd. (d)(3).) In fact, the speaker's statement was itself a challenge to the validity of the action.

Moreover, WM points out that section 54960.1, subdivision (c)(1) gives a challenger 30 days in which to make a written cure and correct demand, but the trial court's ruling rendered the statutory period for challenging the City's action meaningless. Athens knew or should have known a challenge could have been made at any time during the 30-day period. Athens cannot reasonably rely on any work performed prior to the expiration of that period. Accordingly, the exception under section 54960.1 does not apply.

III. Prejudice

WM contends the trial court erred in finding the City's Brown Act violation was not prejudicial.

Here the City placed the CEQA exemption on its meeting agenda two and one-half hours before the meeting. For all practical purposes, that is no notice. The trial court acknowledged that one speaker requested the CEQA matter be continued. The obvious purpose for the continuance was to give speakers an opportunity to respond to the staff's CEQA exemption recommendation. WM was also denied the

opportunity to speak at the meeting. WM claims it has additional information relevant to the CEQA exemption that it was prevented from presenting because of lack of notice. WM is likely the party most knowledgeable about solid waste operations within the City. What information other potential speakers might have presented had they been given notice is unknown. The problem with basing an analysis of prejudice on information the City had is that it is impossible to tell what opposing information the City might have had if notice had been given.

The Brown Act is intended to promote the important policies of transparency in government and public participation. Lack of prejudice should not be easily found.

In *Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360 (*Fowler*), property owners applied to the city for a permit to construct what they described as a "tennis cabaña" on their property. (*Id*. at p. 364.) Neighbors objected. The city's planning commission considered the matter at four meetings prior to approving the project. The neighbors appealed to the city council. The city council considered the matter at four additional meetings. While the appeal was pending before the city council the applicants' attorney threatened the city with litigation if it did not approve the project. The city considered the threat of litigation in closed sessions without proper agenda notice. The neighbors were unaware of the closed session meetings until after the project was approved. The neighbors brought an action to nullify the approval on the ground that the closed sessions were not on the city council's agenda. The Court of Appeal held the Brown Act violations harmless. The court pointed out that the action the neighbors sought to nullify was the approval, not the closed sessions. The project application was considered at four

open meetings at which it was extensively discussed. The court concluded there was no reasonable argument that the neighbors lacked a fair opportunity to present their case. (*Id*. at p. 372.)

Fowler states the proper standard for determining prejudice: whether members of the public had a fair opportunity to present their case. (*Fowler*, *supra*, 46 Cal.App.5th at p. 372.) The standard reflects the purposes of the Brown Act. WM and other members of the public did not have an opportunity to present their case due to lack of notice. Unlike *Fowler*, there was no other public meeting at which the CEQA exemption was discussed. In focusing on the information the City had, instead of whether members of the public had a fair opportunity to present their case, the trial court applied the wrong standard.

The trial court placed much emphasis on a letter WM sent to the City council prior to the meeting anticipating that the City would rely on one or more CEQA exemptions. But the Brown Act requires adequate notice and an opportunity to be heard, not only by the City council, but by the public. A letter sent to the City council is not an adequate substitute. The Brown Act requires the opportunity to speak at a public meeting.

The City points out that CEQA does not require a public hearing for a determination that a project is exempt. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist*. (2006) 139 Cal.App.4th 1356, 1385.) But the Brown Act as applied to a CEQA exemption decision does not require a formal public hearing where the findings must be supported by substantial evidence. All the Brown Act requires is, before formal action is taken on it, the exemption be placed on the meeting agenda and an opportunity for the public to comment.

Here the City's violation of the Brown Act is not harmless. Accordingly, the City's action in finding the franchise agreement exempt from CEQA is null and void.

IV. Attorney Fees

WM contends it is entitled to attorney fees as the prevailing party.

Section 54960.5 provides in part: "A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section . . . 54960.1 . . . where it is found that a legislative body of the local agency has violated this chapter."

WM acknowledges that section 54960.5 provides the court "may" award attorney fees. It cites *Los Angeles Times Communications v. Los Angeles County Board of Supervisors* (2003) 112 Cal.App.4th 1313, 1327, for the proposition that attorney fees and costs can be denied "only if the defendant shows that special circumstances exist that would make such an award unjust." Nevertheless, the most appropriate resolution is to remand the matter to the trial court so that it can decide the issue of attorney fees.

DISPOSITION

The Brown Act requires notice and an opportunity for the public to speak on issues before the City council. The City council shall place the CEQA exemption on its agenda with proper notice and allow the public to voice its opinion.

Whatever action the City council takes thereafter, we leave to its discretion. We trust it will not result in further Brown Act issues.

The judgment is reversed and remanded to the trial court to decide whether attorney fees are appropriate.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

BALTODANO, J.

CODY, J.

Matthew P. Guasco, Judge

Superior Court County of Ventura

Remy Moose Manley, James G. Moose, Andrea K. Leisy and Nathan O. George; Law Offices of Joel Franklin, Joel Franklin, for Plaintiff and Appellant.

Colantuono, Highsmith & Whatley, Holly O. Whatley and Carmen A. Brock, for Defendants and Respondents.

Mannatt, Phelps & Phillips, Benjamin G. Shatz, Viral Mehta, Sigrid R. Waggener, and Jennifer Lynch, for Real Party in Interest.