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July 10, 2019

Via Electronic Mail astuffler@SantaBarbaraCA.gov

Andrew Stuffer
City of Santa Barbara
Building and Fire Code Board of Appeals
PO Box 1990
Santa Barbara, CA 93102-1990

RE: Item 1 - 414 E. Haley – Re-Hearing of Appeal of a Decision -

Dear Members of the Board:

My office represents The Haley Hideout, LLC (Haley Hideout), the owner and operator of the business located at 414 Haley Street. On April 4th, 2019 certain members of the Building and Fire Code Appeals Board (Board) participated in an appeal regarding the accessible entrance at 414 Haley Street. The Board upheld the appeal with four (4) votes in favor and one (1) opposed. Subsequent to this decision, Haley Hideout relied upon the decision of the Board and gained the necessary approvals required to complete work and opened for business.

Following business opening Haley Hideout was informed that the City of Santa Barbara (City) received a complaint that one member of the Board (Mr. Maloney) may have violated the "Fair Political Practices Act" (i.e. Political Reform Act) (hereinafter Act), had investigated such claim and determined that, in the City's opinion, such violation had occurred. The City was of the opinion that Mr. Maloney should have recused himself from the meeting after disclosing his financial interest. In fact, other than Mr. Maloney's financial disclosure at the beginning of the meeting and attempt to not vote at the end of the meeting there was little participation by Mr. Maloney at all. The City informed Haley Hideout that it would take action in an attempt to remedy Mr. Maloney's violation. The City proposed it would inquire with the Board members (minus Mr. Maloney) whether Mr. Maloney influenced their prior decision and if so the appeal would be reheard.

Haley Hideout objects to the City's proposed solution and asks that such objection be made part of the record. The City's Municipal Code (Section 22.04.020(G)) clearly states "[t]he decision of the Building and Fire Code Board of Appeals shall be final on all matters of appeals..." and nothing within the City's Municipal Code grants the City or the Board to modify the final decision. Further, we have repeatedly asked the City for evidence of its authority to rehear the appeal and have received nothing relevant to the alleged violation at issue.

While other provisions of the Government Code (e.g. the Brown Act) dictates instances in which a municipality shall "self-remedy" violations, the Political Reform Act does not. Violation of the Act can result disciplinary action against the offending Board member by the Fair Political Practices Commission (e.g. a warning, a fine, etc). The Act also provides third party rights to sue in Court pursuant to Government Code 91003 which *may* result in the Court choosing to void or set aside an action taken in violation of the Act. In so deciding, however, the Court must accord due weight to any injury that may be suffered by innocent persons relying on the action.

Government Code Section 91003 states in full:

(a) Any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. The court may in its discretion require any plaintiff other than the commission to file a complaint with the commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees.

(b) Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 (commencing with Section 87100), Article 4 (commencing with Section 87400), or Article 4.5 (commencing with Section 87450) of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set the official action aside as void. The official actions covered by this subsection include, but are not limited to orders, permits, resolutions and contracts, but do not include the enactment of any state legislation. In considering the granting of preliminary or permanent relief under this subsection, the court shall accord due weight to any injury that may be suffered by innocent persons relying on the official action.

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Again, the City has provided no authority for its ability to void and rehear a final action. If the action could be reheard without causing harm to a specific innocent applicant then perhaps rehearing would be a prudent course of action for the City with little risk. Here, however, Haley Hideout is an innocent party undergoing additional expense, risk and damage particularly in the event the matter is reheard.

We respectfully request the Board let the final decision of April 4, 2019 stand rather than rehear the matter without the legal right to do so.

Sincerely,

BUYNAK FAUVER ARCHBALD & SPRAY, LLP

A handwritten signature in black ink, appearing to read 'OKM', with a long horizontal flourish extending to the right.

Olivia K. Marr, Partner

OKM/hjs

cc: John Doimas, City Attorney (via email)