

March 27, 2024

**VIA E-MAIL**

City of Del Rey Oaks  
650 Canyon Del Rey Boulevard  
Del Rey Oaks, CA 93940

(p) (831) 394-8511  
(e) kminami@delreyoaks.org  
lfitz@delreyoaks.org  
jguertin@delreyoaks.org  
joe@joegps.com  
sdonaldson@delreyoaks.org  
kshirley@delreyoaks.org  
jhallock@delreyoaks.org  
juy@delreyoaks.org  
bragsdalecronin@delreyoaks.org  
rfucci@delreyoaks.org

**RE: Demand to Preserve Documents for Impending Litigation**

Good afternoon,

Please be advised that my office (along with Mr. Lombardo) represents Mr. Vince Finaldi (“Mr. Finaldi”), Mrs. Melissa Finaldi (“Mrs. Finaldi”) and 121 Calle, LLC (collectively, “Plaintiffs”) in connection with dispute between the Plaintiffs and the City of Del Rey Oaks (the “Dispute”), regarding the property located at 121 Calle Del Oaks (the “Subject Property”), within the City of Del Rey Oaks (“the City” hereinafter.) As you are all aware, litigation is impending (and has been impending for some time) with respect to the refusal of the City to recognize the entirety of the square footage of the Subject Property for purposes of the requested building permit. This letter will serve as a formal demand that all employees, agents, officers, council members, contractors, officials and other affiliates be specifically advised of their duty to preserve relevant evidence to this impending litigation.

California law is express that documents for reasonably anticipated litigation must be preserved, and in effectuating this intent, has granted courts broad authority to punish the spoliation of evidence. *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1.<sup>1</sup> Indeed, in

---

<sup>1</sup> “No one doubts that the intentional destruction of evidence should be condemned. Destroying evidence can destroy fairness and justice, for it increases the risk of an erroneous decision on the merits of the underlying cause of action. Destroying evidence can also increase the costs of litigation as parties attempt to reconstruct the destroyed evidence or to develop other evidence, which may be less accessible, less persuasive, or both.” *Id.* at 8.

California there is a strong presumption that evidence must be preserved when litigation is reasonably anticipated and failure to do so can result in monetary, issue, evidentiary or terminating sanctions imposed by the Court. *See Doppes v. Bentley* (2009) 174 Cal.App.4th 967. While this letter comes after the final hearing on the appeal of the City's decision, litigation was anticipated much earlier by all parties. As such, this letter is merely a memorialization of the ongoing duty that the parties have to preserve evidence.

Below, please find a non-exclusive list of measures to be taken and subject matter to be covered, in ensuring that all relevant evidence is preserved and not destroyed:

**Measures to Be Taken By The City To Ensure Non-Destruction**

The following is a non-exclusive list of measures that are requested to be taken by the City to ensure that no evidence pertaining to this anticipated litigation is destroyed, whether intentionally or incidentally.

1. For any physical documentary evidence, search for and sequester any such evidence from any physical location within the City's control, including but not limited to letters, correspondence, emails, memoranda, reports, lists, diaries, journals, logs, reports, investigation reports, statements, books, catalogues, or other written, physical evidence pertaining to the Dispute, defined further and more broadly *infra*. Once located, we request that those documents be preserved in their current form, without any edits, changes or alterations and sequestered in a safekept location;
2. For any electronic evidence, search all electronic storage devices and sequester all information, metadata, files, or other electronically stored information located on hard drives, data storage devices, USB drives/devices, removable data storage utilized by any of the individuals, computer devices, telephones, mobile phones, tablets, pagers, or other mobile devices (whether personal or issued by the City), or otherwise utilized by the above, and any emails, email accounts, email-storage systems or raw data, metadata, or cloud storage from email usage concerning, utilized by or otherwise referencing the Dispute. Once this electronic evidence is discovered, it is requested to be sequestered, unaltered, and safekept in a location where it can be accessed in its native format.
3. For any automatic deletion processes that are in effect on the personal devices (or City-issued devices to any employees, agents, officers, council members, contractors, officials and other affiliates), computers, servers, data storage devices or cloud storage programs, we request that these processes be halted for storage that includes any place in which relevant documentation (enumerated below) may be found. These automated deletion processes may include periodic purging of documents, automatic deletion of emails or text messages after a defined period of time, or other electronic data purging. All such automated procedures are requested to be halted at this point (and should have been halted as soon as litigation was anticipated.)

### **Types of Evidence Sought To Be Protected.**

Separate from the measures to be instituted by the City in protecting against the intentional or inadvertent destruction of evidence, below, please find a list of the types of evidence that are sought to be preserved concerning the subject matter of the Dispute:

1. All “Communications”, which include but are not limited to: text messages (whether on personal or City-issued electronic devices), emails (whether on personal or City-issued electronic devices), letters, memoranda, telegrams, facsimile, instant messaging, direct messaging, social media messaging, Slack messaging (or other similar platform messaging) or any other written means of communication. These communications are not limited to intra-City correspondence, but also include all communications between City employees, agents, officers, council members, contractors, officials and other affiliates with third-parties, other agencies, or other non-employees, concerning the Dispute.
2. All notes, files, permits, photos, video recordings, audio recordings, reports (whether incomplete, preliminary, ongoing or final; in any form), opinions, journals, diaries, plans, city council minutes and draft minutes, written findings, investigation documentation, or other written or electronic memorialization of any opinion, finding, or determination made by any employees, agents, officers, council members, contractors, officials and other affiliates, concerning the Dispute as defined in the Subject Matter section *infra*;
3. All electronic storage, files and data, including but not limited to: word processing files (including but not limited to Word, Word Perfect or other word processing programs), Excel files, PDF files, email files, files stored on any document clouds, attachments to emails, metadata and raw data for the respective types of electronically stored information, and any electronic data related to the Dispute.

### **Subject Matter**

As the City is well aware, the Dispute concerns the classification and refusal of the City to recognize the square footage on the Mezzanine<sup>2</sup> at the Subject Property. While the core of this matter is related to this dispute, California provides broad discovery into matters, assuming that the request is “reasonably calculated to lead to the discovery of admissible evidence.” *Code of Civil Procedure* §2017.010. Thus, the requested information should not only include materials that directly mention the Subject Property, but also, include (but not be limited to) the preservation of all information, documents and communications referencing Mr. Finaldi, Mrs. Finaldi, 121 Calle LLC, Caraiti Monterey, the Davi family, prior tenants and owners of the subject property, permitting of mezzanine space in Del Rey Oaks previously, and any issue that is related to Mr. Finaldi, the Subject Property, Mr. Finaldi’s business or matters related to those subjects.

///

---

<sup>2</sup> Legally defined term under the City’s own building regulations.

Page 4  
Preservation of Evidence Letter  
March 27, 2024

Thank you for your attention to this matter, and I look forward to a very positive and robust litigation with the City. If there are any ambiguities or uncertainties about the contents of this letter, I am available to discuss at (831) 252-0188 or by email at [alex@cunnvapc.com](mailto:alex@cunnvapc.com).

Very Truly Yours,

*/s/ Alex Cunny*

Alex E. Cunny, Esq.

**CUNNY APC**