

**NOTICE AND CALL OF SPECIAL MEETING OF THE  
CITY COUNCIL OF THE CITY OF MORENO VALLEY  
MORENO VALLEY COMMUNITY SERVICES DISTRICT  
CITY AS SUCCESSOR AGENCY FOR THE  
COMMUNITY REDEVELOPMENT AGENCY OF THE  
CITY OF MORENO VALLEY  
MORENO VALLEY HOUSING AUTHORITY**

**\*THE CITY COUNCIL RECEIVES A SEPARATE STIPEND  
FOR CSD MEETINGS\***

**October 10, 2013 - 7:30 PM**

**NOTICE IS HEREBY GIVEN** that a Special Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley and Moreno Valley Housing Authority will be held on October 10, 2013 commencing at 7:30 PM, in the City Council Chamber, City Hall, located at 14177 Frederick Street, Moreno Valley, California.

Said Special Meeting shall be for the purpose of:

**AGENDA**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**ROLL CALL**

**INTRODUCTIONS**

## **PUBLIC COMMENTS ON MATTERS ON THE SPECIAL MEETING AGENDA**

Those wishing to speak should complete and submit a LAVENDER speaker slip to the Bailiff. There is a three-minute time limit per person. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

### **G. REPORTS**

#### **G.1 CITY COUNCIL CONSIDERATION OF RESPONSE TO FREDRIC WOOCHEER AND RAY JOHNSON'S ALLEGATIONS OF BROWN ACT VIOLATION STEMMING FROM THE CITY COUNCIL'S APPOINTMENT OF DR. YXSTIAN GUTIERREZ TO FILL THE VACANT COUNCIL SEAT FOR DISTRICT 4**

**CITY COUNCIL CONSIDERATION OF RATIFICATION OF ACTIONS TAKEN ON SEPTEMBER 24, 2013 TO APPOINT DR. YXSTIAN GUTIERREZ TO FILL THE VACANT COUNCIL SEAT FOR DISTRICT 4 IN ORDER TO CURE OR CORRECT THE ALLEGED BROWN ACT VIOLATIONS**

#### **Recommendations That the City Council:**

1. Pursuant to Government Code section 54960.1(c)(2), take action to cure or correct the alleged Brown Act violations by fully discussing the above entitled matter once again in this public meeting and following that discussion, entertain a motion to ratify the action taken on September 24, 2013 that appointed Dr. Yxstian Gutierrez to fill the vacancy in District 4.

### **ADJOURNMENT**

\* Materials related to an item on this Agenda submitted to the City Council/Community Services District, City as Successor Agency for the Community Redevelopment Agency or Housing Authority after distribution of the agenda packet are available for public inspection in the City Clerk's office at 14177 Frederick Street during normal business hours.

### **CERTIFICATION**

I, Jane Halstead, City Clerk of the City of Moreno Valley, California, certify that the City Council Agenda was posted in the following places pursuant to City of Moreno Valley Resolution No. 2007-40:

City Hall, City of Moreno Valley  
14177 Frederick Street

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Moreno Valley Library  
25480 Alessandro Boulevard

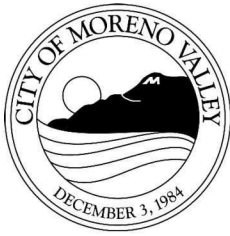
Moreno Valley Senior/Community Center  
25075 Fir Avenue

Jane Halstead, CMC,  
City Clerk

Date Posted: 10/09/2013

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APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	<i>SMB</i>
CITY MANAGER	<i>D</i>

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## Report to City Council

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**TO:** Mayor and City Council

**FROM:** Suzanne Bryant, City Attorney

**AGENDA DATE:** October 10, 2013

**TITLE:** **CITY COUNCIL CONSIDERATION OF RESPONSE TO FREDRIC WOOCHEER AND RAY JOHNSON'S ALLEGATIONS OF BROWN ACT VIOLATION STEMMING FROM THE CITY COUNCIL'S APPOINTMENT OF DR. YXSTIAN GUTIERREZ TO FILL THE VACANT COUNCIL SEAT FOR DISTRICT 4**

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### **RECOMMENDED ACTION**

Recommendations:

1. That the City Council, pursuant to Government Code section 54960.1(c)(2), take action to cure or correct the alleged Brown Act violations by fully discussing the above entitled matter once again in this public meeting and following that discussion, entertain a motion to ratify the action taken on September 24, 2013 that appointed Dr. Yxstian Gutierrez to fill the vacancy in District 4.

### **SUMMARY**

Following the resignation of Councilmember Co, the City Council, on September 24, 2013, appointed Dr. Yxstian Gutierrez to fill the vacancy. On October 4, 2013, two letters were e-mailed to the City Council pursuant to Government Code section 54960.1 demanding that the Council cure or correct the action alleged violation(s) of the Brown Act.

## **DISCUSSION**

Councilmember Co's resignation created a vacancy in the District 4 Council seat. There was an item on the September 24, 2013 City Council agenda to consider the various procedural options to fill the vacant Council seat and to take possible action to fill the vacancy by appointment or by calling for an election. The City Council's Agenda listed the item as "G.1: CONSIDER THE PROCEDURAL OPTIONS TO FILL THE VACANCY ON THE COUNCIL IN DISTRICT 4 AND TAKE POSSIBLE ACTION TO FILL THE VACANCY (Report of: City Attorney Department)." Acting pursuant to this agenda title and under the authority of Government Code section 36512, the City Council appointed Dr. Yxstian Gutierrez to fill the unexpired term of Councilmember Co. He was sworn in that same night.

On October 4, 2013 two letters were sent to the City Council by Fredric Woocher and Ray Johnson making, among other things, Brown Act violation allegations. These demand letters were sent pursuant to Government Code section 54960.1(b). These requests have both asked that the City Council rescind its action to appoint Dr. Gutierrez to the Council.

Government Code section 54960.1(c)(2) provides in part that within 30 days of receipt of the demand letters, the legislative body shall cure or correct the challenged action.

Government Code section 54960.1(f) states that "The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter."

A vote to rescind the action of September 24, 2013 would result in the City Council voting to remove a councilmember who has taken the oath of office. Absent the occurrence of an event that would create a vacancy (see Government Code section 1770), the City Council does not have the power to remove Dr. Gutierrez from office (the proper way to challenge a person from holding office is a quo warranto action). So, in certain situations the City Council does not have the power to rescind its prior action.

## **RECOMMENDATION**

Because Government Code section 54960.1(c)(2) provides a legislative body the opportunity to cure or correct alleged Brown Action violations and the City Attorney recommends, in an abundance of caution to protect the City and in an effort to satisfy the demand letters, that the City Council avail itself of this opportunity to cure or correct any alleged Brown Act violations by fully discussing the matter once again in this public meeting and following that discussion, taken the only legal course of action available and *entertain a motion to ratify its action taken on September 24, 2013.*