

# ***THE HOME DEPOT v. CITY OF LOS ANGELES***

## **COMPLAINT SUMMARY**

### **The Problem**

- For nearly two years, Los Angeles City officials have **illegally interfered** with The Home Depot's right to remodel its vacant, former K-mart store in Sunland. After the City's Department of Building and Safety (DBS) properly issued a routine, "over-the-counter" building permit to remodel the store in July 2006, political officials interceded to undo that permit.
- The Home Depot followed the City's well established rules and procedures, rightfully expecting that the City would also abide by them. Unfortunately, at the behest of political officials, the City singled out The Home Depot for **special, unfair treatment**. This action was **illegal, bad public policy**, and set a **dangerous precedent** for the Los Angeles business community.
- That illegal interference creates a dangerous new precedent that will have a **chilling effect** on local business **investments and jobs**. This action will have devastating consequences for Los Angeles, discouraging future business investment, revitalization efforts, and job creation by undermining all certainty in the City's building permit process. The City issues over 140,000 per year, the vast majority of which are over-the-counter, non-discretionary building permits, also known as ministerial permits; all are now at risk of being turned into discretionary actions.
- The City's actions will result in **millions of dollars** of tax revenue and good jobs being **lost** to neighboring cities with more hospitable business climates. Unsightly vacant and deteriorating buildings will continue to plague the City because businesses will be too apprehensive to invest.

### **General Allegations**

#### ***Plans for New Store Dropped, The Home Depot Decides to Remodel***

- The Home Depot initially planned to demolish the old K-Mart and construct a new, modern building in its place. The Home Depot anticipated completing environmental review under the California Environmental Quality Act as part of the process. However, Los Angeles City Council member Wendy Greuel, who represents the district that includes the proposed Home Depot store, made it clear that she would do everything she could to block a new The Home Depot store at the site.
- As a result, The Home Depot had no choice but to move forward with a remodel of the existing K-Mart building. A remodel is handled through the City's ministerial permit process. These permits allow new tenants and owners to make tenant improvements to bring existing, out-of-date buildings up to today's standards and codes.
- The Councilmember's office then interceded to make the City's ministerial permit process a discretionary one.

#### ***Well-Funded Local Opposition Fears Competition***

- A competing hardware store—the Do-it Center—and a small but vocal minority of the Sunland community joined the Councilmember in opposing a The Home Depot store at the site. Do-it Center provided funds to a front group calling itself the "No Home Depot Campaign," which used Do-it Center's funds to protect Do-it Center from fair competition. The No Home Depot Campaign employed lawyers, public relation firms, lobbyists and other consultants at Do-it Center's expense.

- The Do-It-Center has a record of opposing new competition. In 2006, the Do-It-Center funded an initiative campaign which successfully prevented a competing business from locating in Westlake Village, CA.

#### ***Politics Pollute City's Normal Permitting Process***

- During the eight-month period between submission of the Permit application and Permit issuance, The Home Depot met with the staff of the relevant City departments, the Councilmember's staff, and the store's opponents on more than 20 separate occasions to discuss the remodel's elements. The Home Depot submitted four plan revisions to the City for its review and comment.
- Councilmember Greuel's office interfered with the city's departments as they tried to carry out their legally required administrative duties, making repeated efforts to dictate the ministerial actions of the Planning Department and DBS.
- Despite this interference, DBS correctly issued the permit after it and the Planning Department correctly concluded that the scope of work was well within the confines of a remodel permit.

#### ***Opposition Appeals City Decision, Doesn't Follow Rules***

- Two months after the City correctly issued the permit, the No Home Depot Campaign and the Sunland-Tujunga Alliance, at the Councilmember's direction and with her support, requested that the DBS issue a written decision justifying its issuance of the permit. DBS did so; once again affirming the permit was properly issued.
- The opposition appealed DBS' justification, but did not submit the required filing fees. At that point, based on the City's own rules, the City should have rejected the appeal.

#### ***Zoning Administrator Doesn't Follow Legal Requirements***

- The City's Municipal Code required that the Zoning Administrator make a decision within 75 days of the appeal period's expiration (Jan 3, 2007). The City's Zoning Administrator issued his decision granting the opponents' appeal and overturning DBS' issuance of the permit on March 9, 2007, which was more than two months past the City's own deadline.
- The Zoning Administrator's decision clearly departed from legally required standard of review. In addition, the Zoning Administrator's decision ignored the opinions of the City's own engineering experts.

#### ***City Stops Work Eight Months After Granting Permit***

- On March 10, 2007, DBS issued a "Stop Work Order" that prevented Home Depot from proceeding with the permit-authorized work. By early March, Home Depot had already spent more than \$2 million and had completed 90 percent of the remodel work.
- The Stop Work Order irresponsibly rendered the building unsecured, open to the elements, and vulnerable to damage. Despite that, the City denied The Home Depot's requests to secure the building and to complete the necessary fire, life, and safety improvements.
- In May 2007, Home Depot attempted to submit an application to the DBS to secure the building and to undertake various activities solely to keep the building from deteriorating.
  - This work included connecting the fire-suppression sprinkler system, weatherproofing the building, and properly ventilating the building to prevent mold growth. The DBS refused even to accept Home Depot's application.

### **North Valley Area Planning Commission Upholds Permit**

- The Home Depot appealed the Zoning Administrator's decision to the North Valley Area Planning Commission. On July 19, 2007, after a seven-hour public hearing, the Commission granted The Home Depot's appeal, finding that the Zoning Administrator erred and abused his discretion in revoking the permit. The North Valley Area Planning Commission's decision could not be appealed.

### **City Council Gets Involved for Political Reasons**

- According to the City Charter, upon a two-thirds vote, the City Council may assert jurisdiction over a decision by an area planning commission and review that decision. Although the law allows it, this power is rarely invoked.
- However, in July 2007, in response to Councilmember Greuel's motion, the City Council voted to assert jurisdiction over the North Valley Area Planning Commission's decision to reinstate the Permit. Asserting jurisdiction, the City Council itself was to re-hear Home Depot's appeal of the Zoning Administrator's decision to revoke the permit.
- In August 2007, after a brief public hearing on the matter, the City Council voted to revoke Home Depot's permit and to overturn the North Valley Area Planning Commission's decision. The City Council voted to adopt the Zoning Administrator's findings. Councilmember Greuel was the only councilmember to express any serious interest in revoking Home Depot's remodeling permit.

### **Business Leaders Protest City Council Action**

- The Los Angeles Area Chamber of Commerce, Valley Industry and Commerce Association, and the Central City Association protested the City's decision to revoke the permit. They argued that allowing the City's building permit process to be hijacked by opponents creates a dangerous precedent that could block businesses from modernizing outdated buildings. By allowing the ministerial building permit process to become politicized, they explained, the City would discourage future business investment.

### **Causes of Action**

Home Depot's complaint, filed in California Superior Court (County of Los Angeles, Central District), alleges the following causes of action:

- 1) Violation of Municipal Code.
- 2) Violation of Home Depot's Vested Right.
- 3) Violation of Home Depot's Rights of Due Process and Equal Protection under the California and United States Constitutions
- 4) Claim for damages under the Tort Claims Act

The complaint asks for a writ of mandate ordering the City to (1) rescind the revocation of the Permit, (2) rescind the Stop Work Order, and (3) reinstate the Permit. The complaint also asks for declaratory relief and seeks \$10 million in damages and compensation for the temporary taking of its property. Finally, Home Depot seeks reimbursement for reasonable attorneys' fees.

For more information, please visit [www.homedepotsunlandtujunga.com](http://www.homedepotsunlandtujunga.com) or contact Kathryn Gallagher, The Home Depot, (714) 940-3696 or [kathryn\\_gallagher@homedepot.com](mailto:kathryn_gallagher@homedepot.com).

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