

AUG 18 2020

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BY *Justin Manassee*
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4 Attorneys for Plaintiff and Petitioner Inland
5 Oversight Committee

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN BERNARDINO – CENTRAL DIVISION
9

10
11 INLAND OVERSIGHT COMMITTEE; and DOES
1 through 10,

12 Plaintiffs and Petitioners,

13 vs.

14 CITY OF UPLAND; and DOES 11 through 100,

15 Defendants and Respondents;

16 SAN ANTONIO REGIONAL HOSPITAL; and
17 DOES 101 through 1,000,

18 Defendants and Real Parties in Interest.
19
20

CASE NO. CIV DS 2017593

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF AND
PETITION FOR WRIT OF MANDATE
UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT AND
OTHER LAWS**

21 Plaintiff and Petitioner INLAND OVERSIGHT COMMITTEE ("Petitioner") alleges as follows:

22 **Parties**

23 1. Petitioner is a non-profit taxpayer and voter organization formed and operating under
24 the laws of the State of California. At least one of Petitioner's members resides in and is registered to
25 vote in the City of Upland, California, and has an interest in, among other things, ensuring the
26 government's compliance with all applicable laws.

27 2. Defendant and Respondent CITY OF UPLAND ("CITY") is a general-law municipality
28 formed and operating under the laws of the State of California. CITY is also a "public agency" under

1 Section 21063 of the Public Resources Code and a "local government" under Section 30109 of the
2 Public Resources Code. As a "public agency," CITY is required to comply with California
3 Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.*

4 3. Defendant and Real Party in Interest SAN ANTONIO COMMUNITY HOSPITAL
5 ("SARH") is a corporation formed and operating under the laws of the State of California.

6 4. The true names and capacities of the Defendants/Respondents/Real Parties in Interest
7 identified as DOES 11 through 1,000 are unknown to Petitioner, who will seek the Court's permission
8 to amend this pleading in order to allege the true names and capacities as soon as they are ascertained.
9 Petitioner is informed and believes and on that basis alleges that each of the fictitiously named DOES
10 11 through 100 has jurisdiction by law over one or more aspects of the proposed project that is the
11 subject of this proceeding and DOES 101 through 1,000 has some other cognizable interest in the
12 subject matter of this lawsuit.

13 **Background Information**

14 5. On or about July 27, 2020, CITY's city council introduced and adopted ordinance no.
15 1943, "AN ORDINANCE OF THE CITY OF UPLAND CALLING A SPECIAL ELECTION ON
16 NOVEMBER 3, 2020 TO SUBMIT TO THE CITY ELECTORS THE QUESTION OF
17 ABANDONMENT AND DISCONTINUANCE OF USE AS A PUBLIC PARK AN
18 APPROXIMATELY 4.63-ACRE PORTION OF MEMORIAL PARK; AND OVERRULING ALL
19 PUBLIC PROTESTS REGARDING THE SAME" (the "Ordinance"). The Ordinance was put on the
20 city council's agenda at SARH's request.

21 6. According to the Ordinance's recitals:

22 "(i) Memorial Park is an approximately 38.5-acre parcel owned by
23 the City and operated as the City's largest public park. The
24 City's acquisition of the park was not funded by any special
25 assessment, bond, or any federal or state grant, nor was the
26 land acquired via dedication pursuant to the Subdivision Map
27 Act.

28 "(ii) In 2017, San Antonio Regional Hospital ("SARH")
approached the City about the possibility of selling
approximately 4.63 acres in the southwest corner of Memorial
Park, consisting of a baseball field, bleachers, scoreboard,
lights, parking lot, vacant land and a snack bar/restrooms,
more particularly described in the legal description found
Exhibit A to this Ordinance (the "Park Parcel"). Since that

1 time, SARH has completed a new 4-story patient tower,
2 emergency room, and 60,000 square foot medical office
3 building, all of which have created a demand for additional
4 land for parking and future expansion opportunities. SARH
intends to purchase the Park Parcel for no less than
\$4,300,000.00, to add new facilities and increase capacity for
critically-needed medical services.

5 “(iii) If the City were to sell the Park Parcel, SARH would grant the
6 City an easement for public parking on the Park Parcel, and
7 the City would use the sale proceeds solely for making public
8 improvements to the other parts of Memorial Park, which
improvements may include a new baseball field, additional
public parking and other new public amenities, landscaping,
structures, and walking trails.

9 “(iv) SARH has requested that the City Council submit the
10 question of discontinuing use of the Park Parcel to the City's
11 electors at the November 3, 2020 general election pursuant to
12 Government Code Section 38440 *et seq.*, which establishes a
procedure for the City Council to submit the question to the
City's electors following notice and an opportunity for public
protest and hearing.

13 “(v) On June 22, 2020, the City Council adopted Resolution No.
14 6551, declaring that public interest or convenience requires the
15 discontinuance of the use of the Park Parcel as a public park
16 and the City Council's intention to call a special election to
17 submit the question of discontinuance to the city electors so
the Park Parcel may be sold to SARH, and setting a public
hearing to hear and consider any protests from the public or
persons particularly interested in the matter for July 27, 2020.

18 “(vi) On July 27, 2020, the City Council held a duly noticed public
19 hearing to hear and pass upon all written protests and to hear
all persons wishing to speak on the matter.

20 “(vii) The City Council has received all protests against the proposed
21 abandonment and discontinuance of the Park Parcel or to the
22 extent thereof provided to the City before adoption of this
Ordinance.

23 “(viii) All legal prerequisites to the adoption of this Ordinance have
24 occurred.”

25 Notice Requirements and Time Limitations

26 7. This lawsuit is being commenced not more than 35 days after the notice described in
27 Public Resources Code Section 21167(d) was filed with the county clerk (if such a notice was filed).
28

1 8. Petitioner has caused a Notice of Commencement of Action to be served on
2 Defendants/Respondents, as required by Public Resources Code Section 21167.5. A true and correct
3 copy of the Notice of Commencement of Action is attached to this pleading as Exhibit "A."

4 9. Petitioner will have caused a copy of this pleading to be served on the Attorney General
5 not more than 10 days after the commencement of this lawsuit, as required by Public Resources Code
6 Section 21167.7 and Code of Civil Procedure Section 388.

7 **Jurisdiction and Exhaustion of Administrative Remedies**

8 10. Petitioner seeks review by and relief from this Court under Government Code Section
9 36931 *et seq.*, Public Resources Code Sections 21168 and/or 21168.5, as applicable, and Code of Civil
10 Procedure Sections 526a, 1060 *et seq.*, and 1084 *et seq.*, among other provisions of law.

11 11. The violations of law alleged in this lawsuit occurred in San Bernardino County.

12 12. Defendants'/Respondents' conduct in approving the Ordinance with complying with all
13 applicable laws constitutes a prejudicial abuse of discretion because, as alleged in this pleading, they
14 failed to proceed in a manner required by law.

15 13. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, since
16 its members and other members of the public will suffer irreparable harm as a result of
17 Defendants'/Respondents' violations of at least one applicable law. Defendants'/Respondents' approval
18 of the Ordinance also rests on their failure to satisfy a clear, present, ministerial duty to act in
19 accordance with all applicable laws. Even when Defendants/Respondents are permitted or required by
20 law to exercise their discretion in taking action under those laws, they remain under a clear, present,
21 ministerial duty to exercise their discretion within the limits of and in a manner consistent with those
22 laws. Defendants/Respondents have had and continue to have the capacity and ability to approve the
23 Ordinance within the time limits of and in a manner consistent with those laws, but
24 Defendants/Respondents have failed and refused to do so and have exercised their discretion beyond
25 the limits of and in a manner that is not consistent with those laws.

26 14. Petitioner has a beneficial right and interest in Defendants'/Respondents' fulfillment of
27 all their legal duties, as alleged in this pleading.
28

1 15. Petitioner exhausted administrative remedies to the extent required by law. Alternatively
2 and additionally, neither Public Resources Code Section 21177(a)-(b) nor any other exhaustion-of-
3 remedies requirement may be applied to Petitioner.
4

5
6 **FIRST CAUSE OF ACTION:**
7 **Illegal Approval of Ordinance**
8 **(Against All Defendants/Respondents/Real Parties in Interest)**

9 16. Paragraphs 1 through 15 are fully incorporated into this paragraph.

10 17. The Ordinance's approval was illegal. By way of example and not limitation:

11 A. The Ordinance violates the Government Code for the following reasons:

12 1. At all times relevant to this lawsuit, Government Code Section 36934 has
13 provided as follows: "Ordinances shall not be passed within five days of their introduction, nor at other
14 than a regular meeting or at an adjourned regular meeting. However, an urgency ordinance may be
15 passed immediately upon introduction and either at a regular or special meeting. Except when, after
16 reading the title, further reading is waived by regular motion adopted by majority vote all ordinances
17 shall be read in full either at the time of introduction or passage. When ordinances, other than urgency
18 ordinances, are altered after introduction, they shall be passed only at a regular or at an adjourned
19 regular meeting held at least five days after alteration. Corrections of typographical or clerical errors
20 are not alterations within the meaning of this section."

21 2. At all times relevant to this lawsuit, Government Code Section 36937 has
22 provided as follows: "Ordinances take effect 30 days after their final passage. An ordinance takes effect
23 immediately, if it is an ordinance: (a) Relating to an election. (b) For the immediate preservation of the
24 public peace, health or safety, containing a declaration of the facts constituting the urgency, and is
25 passed by a four-fifths vote of the city council. (c) Relating to street improvement proceedings. (d)
26 Relating to taxes for the usual and current expenses of the city. (e) Covered by particular provisions of
27 law prescribing the manner of its passage and adoption."

28 3. The Ordinance is not an urgency ordinance but was passed immediately
upon introduction; its title was not read before CITY's mayor made a motion to waive a full reading

1 of the Ordinance and another member of the city council seconded the motion; and/or it was not read
2 in full prior to introduction or adoption.

3 B. The Ordinance violates CEQA for the following reasons:

- 4 1. Introduction and passage of the Ordinance constitute discretionary acts.
- 5 2. CITY did not subject the Ordinance to environmental review under
6 CEQA prior to introducing or passing the Ordinance.
- 7 3. The Ordinance has the potential to cause significant environmental
8 impacts.
- 9 4. The Ordinance is not exempt from environmental review under CEQA.

10
11 18. There is currently a dispute between Petitioner and Defendants/Respondents over the
12 Ordinance's legal force and effect. Petitioner contends that the Ordinance has no legal force or effect
13 because it violates the Government Code, CEQA, and/or one or more other applicable laws.
14 Defendants/Respondents dispute Petitioner's contention. The parties therefore require a judicial
15 determination of the Project's legal force and effect (if any).

16 **Prayer**

17 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against
18 Defendants/Respondents (and any and all other parties who may oppose Petitioner in this lawsuit):

19 A. A judgment or other appropriate order determining or declaring that
20 Defendants/Respondents failed to fully comply with the Government Code, CEQA, and/or one or more
21 other applicable laws as they relate to the Ordinance and that there must be full compliance therewith
22 before final passage of the Ordinance may occur;

23 B. A judgment or other appropriate order determining or declaring that
24 Defendants/Respondents failed to comply with the Government Code, CEQA, and/or one or more other
25 applicable laws as they relate to the Ordinance and that its passage and any results thereof were illegal
26 in at least some respect, rendering the Ordinance and results null and void;

27 C. Injunctive relief prohibiting Defendants/Respondents (and any and all persons acting at
28 the request of, in concert with, or for the benefit of one or more of them) from taking any action on any

1 aspect of, in furtherance of, or otherwise based on the Ordinance unless and until
2 Defendants/Respondents comply with the Government Code, CEQA, and all other applicable laws, as
3 determined by the Court;

4 D. Any and all other relief that may be authorized by the Government Code, CEQA, or other
5 applicable laws, or any combination of them, but is not explicitly or specifically requested elsewhere
6 in this Prayer;

7 E. Any and all legal fees and other expenses incurred by Petitioner in connection with this
8 proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil
9 Procedure; and

10 F. Any and all further relief that this Court may deem appropriate.

11 Date: August 18, 2020.

Respectfully submitted,

12 BRIGGS LAW CORPORATION

13
14 By:

Cory J. Briggs
Cory J. Briggs

15 Attorneys for Plaintiff and Petitioner Inland Oversight
16 Committee
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT AND OTHER LAWS**

Exhibit "A"

BRIGGS LAW CORPORATION

San Diego Office:
4891 Pacific Highway, Suite 104
San Diego, CA 92110

Telephone: 619-497-0021

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1708.38

17 August 2020

City Clerk Keri Johnson
City of Upland
460 North Euclid Avenue
Upland, CA 91786

Re: Notice of Commencement of Action

Dear City Clerk:

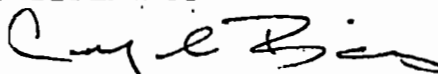
I represent Inland Oversight Committee *et al.* and am sending this Notice of Commencement of Action on my clients' behalf.

Please be advised that an action is to be commenced by my clients in San Bernardino County Superior Court against your agency. The action will challenge your agency's adoption of Ordinance no. 1943 on the grounds that its passage violated the California Environmental Quality Act (PUB. RES. CODE § 21000 *et seq.*). The action may also challenge your agency's passage of the Ordinance based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW CORPORATION



Cory J. Briggs



Ruth Flores

From: Microsoft Outlook
To: 'Upland CityClerk'; kjohnson@ci.upland.ca.us
Sent: Monday, August 17, 2020 3:27 PM
Subject: Relayed: Notice of Commencement of Action

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

'Upland CityClerk' (UplandCityClerk@ci.upland.ca.us)

kjohnson@ci.upland.ca.us (kjohnson@ci.upland.ca.us)

Subject: Notice of Commencement of Action

Ruth Flores

From: Keri Johnson <kjohnson@ci.upland.ca.us>
Sent: Monday, August 17, 2020 3:37 PM
To: Ruth Flores
Subject: RE: Notice of Commencement of Action

Received.

Keri Johnson, CMC, CPMC
City Clerk
Office of the City Clerk
909.931.4124
www.uplandca.gov/city-clerk

From: Ruth Flores [mailto:Ruth@briggslawcorp.com]
Sent: Monday, August 17, 2020 3:27 PM
To: Upland CityClerk <UplandCityClerk@ci.upland.ca.us>; Keri Johnson <kjohnson@ci.upland.ca.us>
Subject: Notice of Commencement of Action

WARNING: External email. Please verify sender before opening attachments or clicking on links.

City Clerk:

Please see the attached Notice of Commencement of Action on behalf of Inland Oversight Committee.

Thank you.

Ruth Flores
Email: ruth@briggslawcorp.com

Briggs Law Corporation
Inland Empire Office: 99 East "C" Street, Suite 111, Upland, CA 91786
Telephone: 909-949-7115 Fax: 909-949-7121

San Diego Office: 4891 Pacific Highway, Suite 104, San Diego, CA 92110
Telephone: 619-497-0021

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Bernardino

I have read the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of Inland Oversight Committee

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on August 17, 2020, at Upland, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Steven D. Fraker

Type or Print Name

[Handwritten Signature]

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California. I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list: by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL I deposited such envelope in the mail at, California. The envelope was mailed with postage thereon fully prepaid.

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at, California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)