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Open Government  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO CENTRAL DIVISION

10  
11 \_\_\_\_\_ ) CASE NO. \_\_\_\_\_  
SAN DIEGANS FOR OPEN GOVERNMENT, )  
12 Plaintiff and Petitioner, )  
13 vs. ) **VERIFIED COMPLAINT FOR**  
14 CITY OF SAN DIEGO; and DOES 1 through 100, ) **DECLARATORY AND INJUNCTIVE**  
15 Defendants and Respondents. ) **RELIEF AND PETITION FOR WRIT OF**  
**MANDATE UNDER THE CALIFORNIA**  
**PUBLIC RECORDS ACT AND OTHER**  
**LAWS**  
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18 Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT ("SDOG") alleges as  
19 follows:

20 **Introductory Statement**

21 1. SDOG brings this lawsuit under the California Public Records Act ("CPRA"), as well  
22 as the California Constitution, the common law, and other applicable legal authorities. SDOG made  
23 lawful CPRA requests to Defendants/Respondents, but they have illegally failed to disclose the  
24 responsive public records.

25 **Parties**

26 2. SDOG is a non-profit organization formed and operating under the laws of the State of  
27 California. One of its primary roles as a government "watchdog" is ensuring that public agencies  
28 comply with all applicable laws aimed at promoting transparency and accountability in government.

1 3. Defendant and Respondent CITY OF SAN DIEGO (“CITY”) is a “local agency” within  
2 the meaning of Government Code Section 6252.

3 4. The true names and capacities of the Defendants/Respondents identified as DOES 1  
4 through 100 are unknown to SDOG, who will seek the Court’s permission to amend this pleading in  
5 order to allege the true names and capacities as soon as they are ascertained. SDOG is informed and  
6 believes and on that basis alleges that each of the fictitiously named Defendants/Respondents 1 through  
7 100 has jurisdiction by law over one or more aspects of the public records that are the subject of this  
8 lawsuit or has some other cognizable interest in the public records.

9 5. SDOG is informed and believes and on that basis alleges that, at all times stated in this  
10 pleading, each Defendant/Respondent was the agent, servant, or employee of every other  
11 Defendant/Respondent and was, in doing the things alleged in this pleading, acting within the scope of  
12 said agency, servitude, or employment and with the full knowledge or subsequent ratification of his  
13 principals, masters, and employers. Alternatively, in doing the things alleged in this pleading, each  
14 Defendant/Respondent was acting alone and solely to further his own interests.

15 **Jurisdiction and Venue**

16 6. The Court has jurisdiction over this lawsuit pursuant to Government Code Sections 6258  
17 and 6259; Code of Civil Procedure Sections 526a, 1060 *et seq.*, and 1084 *et seq.*; the California  
18 Constitution, and the common law, among other provisions of law.

19 7. Venue in this Court is proper because the obligations, liabilities, and violations of law  
20 alleged in this pleading occurred in the County of San Diego in the State of California.

21 **FIRST CAUSE OF ACTION:**  
22 **Violation of Open-Government Laws**  
(Against All Defendants/Respondents)

23 8. The preceding allegations in this pleading are fully incorporated into this paragraph.

24 9. On or about June 27, 2017, SDOG caused to be submitted to CITY (via the office of  
25 Councilmember David Alvarez) a request for that certain “June 15, 2017 City Attorney Report” cited  
26 in a June 25, 2017 letter written by attorney Christopher Garrett of Latham & Watkins to Nick Stone  
27 of FS Investors concerning what is formally known as the San Diego River Park and Soccer City  
28 Initiative. A true and correct copy of the letter is attached to this pleading as Exhibit “A.”



1 respective rights and duties under the CPRA, the California Constitution, the common law, and other  
2 applicable legal authorities. As alleged in this pleading, SDOG contends that at least public record  
3 responsive to SDOG’s request exists and that Defendants/Respondents are required by law to produce  
4 each and every responsive record; whereas Defendants/Respondents dispute SDOG’s contention.

5 15. SDOG desires a judicial determination and declaration as to whether disclosable public  
6 records were unlawfully withheld by Defendants/Respondents and whether they were required by law  
7 to produce such records in a timely manner.

8 **Prayer**

9 FOR ALL THESE REASONS, SDOG respectfully prays for the following relief against all  
10 Defendants/Respondents (and any and all other parties who may oppose SDOG in this lawsuit) jointly  
11 and severally:

12 A. *On the First Cause of Action:*

13 1. A judgment determining or declaring that Defendants/Respondents have not  
14 promptly and fully complied with the CPRA, the California Constitution, the common law, and/or other  
15 applicable laws with regard to SDOG’s request;

16 2. A writ of mandate ordering Defendants/Respondents to promptly and fully  
17 comply with the CPRA, the California Constitution, the common law, and all other applicable laws with  
18 regard to SDOG’s request; and

19 3. Preliminary and permanent injunctive relief directing Defendants/Respondents  
20 to fully respond to SDOG’s request and to permit SDOG to inspect and obtain copies of all responsive  
21 public records.

22 B. *On the Second Cause of Action:*

23 1. An order determining and declaring that the failure of Defendants/Respondents  
24 to disclose all public records responsive to SDOG’s request and to permit SDOG to inspect and obtain  
25 copies of the responsive public records does not comply with the CPRA, the California Constitution,  
26 the common law, and/or other applicable laws; and

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1           2.       Preliminary and permanent injunctive relief directing Defendants/Respondents  
2 to respond to and disclose all public records responsive to SDOG's request and to permit SDOG to  
3 inspect and obtain copies of the responsive public records.

4           C.       *On All Causes of Action:*

5           1.       An order providing for the Court's continuing jurisdiction over this lawsuit in  
6 order to ensure that Defendants/Respondents fully comply with the CPRA, the California Constitution,  
7 the common law, and/or other applicable laws;

8           2.       All attorney fees and other legal expenses incurred by SDOG in connection with  
9 this lawsuit; and

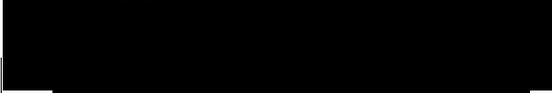
10          3.       Any further relief that this Court may deem appropriate.

11          Date: June 28, 2017.

Respectfully submitted,

BRIGGS LAW CORPORATION

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14          By

  
Cory J. Briggs

Attorneys for Plaintiff and Petitioner San Diegans for  
Open Government

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION  
FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND  
OTHER LAWS**

Exhibit "A"

FIRM / AFFILIATE OFFICES

Barcelona	Moscow
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	Rome
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

June 25 2017

**VIA EMAIL**

Nick Stone  
FS Investors  
1250 Prospect Street, Suite 200  
La Jolla, CA 92037

Re: Potential New Actions By City Councilmembers To Take Steps To Sell Qualcomm Stadium Site Or Declare It Surplus

Dear Mr. Stone:

This letter is written at your request to provide additional information for those members of the public interested in the potential disposition of the Qualcomm Stadium Site (“Stadium Site”) and how this might affect the San Diego River Park and Soccer City Initiative (“Initiative”) that has qualified for the ballot in the City of San Diego. Information has been provided to you that some members of the City Council are seeking to have the City Council consider a resolution or ordinance to declare the Stadium Site as “surplus land” that the City may dispose of by sale to a qualifying public agency or other entity.

There are several legal problems with any proposed scheme by one or more individual City Councilmembers to seek to declare the Stadium Site to be surplus or otherwise direct that the Stadium Site property be sold by the City of San Diego prior to the date of the public vote on the Initiative.

**First**, such an action would violate Council Policy 700-10 and the City Charter which grant the authority for the determination of properties that might be considered excess or eligible to be sold to the Mayor and the Real Estate Assets Department, not the City Council. Individual City Councilmembers do not have authority to take such an action, nor does the City Council have this authority as a collective body.

**Second**, such an action would appear to be an improper and perhaps illegal use of City and public resources to campaign against the Initiative by taking steps to frustrate the implementation of the Initiative. It might also be an improper use of public resources to support competing proposals for use of the Stadium Site by San Diego State and/or developers interested in acquiring the Stadium Site. Because individual City Councilmembers do not have the legal authority to dispose of City property, any actions by them using city resources to exhort the City to dispose of City property that is the subject of the Initiative would appear to be campaigning

against the Initiative, rather than a legitimate exercise of their existing legal authority. As the March 21, 2017 Memorandum of the San Diego City Attorney stated on page 3: “It would be considered campaigning for City staff to provide input intended to make a voter initiative more or less appealing to voters or to use City resources to the advantage of the proponent.” Likewise, it would be considered campaigning for City officials, such as City Councilmembers, to take actions to make a voter initiative, already qualified for the ballot, “less appealing to voters.” *Id.* Additionally, it would be considered campaigning to use City resources “to the advantage” of Initiative *opponents*. *Id.* Certainly individual City Councilmembers have the right as individuals to speak out and campaign against the Initiative, including making personal statements that the City should dispose of the Stadium Site outside of the Initiative process. However, they cannot use City staff or City resources to make these personal campaign statements. Use of city resources for campaign-related activities is prohibited by San Diego Municipal Code Section 27.3564(b). Such actions do not fall within the exemption set forth in San Diego Municipal Code Section 27.3564(f) for use of City resources to provide “a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.”

**Third**, the combination of the exercise of the City Council’s discretion to postpone the vote on the Initiative for seventeen months, until November of 2018, and any almost simultaneous action by the City Council, (or its individual members), to attempt to dispose of the property which is the subject of the Initiative, would appear to be an illegal frustration of the people’s power of initiative established by the California Constitution, the City Charter, and the City’s Municipal Code. While the City Council has limited discretion as to setting the date of the election for any qualifying initiative, such discretion cannot be exercised in a manner designed to be a de facto veto by a hostile city council of the citizens’ initiative rights. See, e.g., *Jeffrey v. Superior Court*, 102 Cal. App. 4<sup>th</sup> 1 (2002) (Court considers whether City Council can postpone an charter amendment initiative election to frustrate purpose of initiative, but ultimately determines that in the facts of the case before it “there is no risk of a de facto veto by a hostile city council” by the postponement of the election date by the City Council).

**Fourth**, such an action that attempts to authorize the sale of the Stadium Site would violate Section 221 of the City Charter because any sale of City land of 80 acres or more must be “first” “authorized by ordinance of the Council and ratified by the electors of the City of San Diego,” before it can be determined to be surplus or otherwise eligible for disposition by the City as no longer needed for City use. See City Charter § 221.

**Fifth**, any discretionary action taken by the Council as part of a plan to dispose of the Stadium Site, such as an attempt to declare the site to be “surplus,” would trigger the requirements of the California Environmental Quality Act (“CEQA”). Before taking any step in a plan to dispose of the Stadium Site, the City is also required to comply with CEQA and prepare an environmental impact report (“EIR”) on the reasonably foreseeable development plans of any purchaser or lessor of the Stadium Site. See e.g., *The Flanders Foundation v. City of Carmel-By-The-Sea*, 202 Cal.App.4th 603 (2012) (City EIR for potential sale of City property required to consider development plans of potential purchasers who might acquire the property under the Surplus Land Act, including all reasonably foreseeable uses, before the City property can be sold). The only environmental analysis that the City has conducted in recent years for the

Stadium Site was the environmental report for the potential reconstruction of Qualcomm Stadium, which was never certified and did not consider potential residential or other non-stadium uses for the remainder of the Stadium Site. Accordingly, a new environmental impact report must be prepared before implementing any City Council sponsored plan to dispose of the Stadium Site.

*Sixth*, any such action by the Council would appear to conflict with the June 15, 2017 Opinion of the San Diego City Attorney, which stated:

Because the Initiative requires that the City provide an option to sell up to 79.9 acres of property, some have stated that the Surplus Land Act requires the land to be offered to entities designated in Government Code sections 54220 through 54233 (e.g., for affordable housing) before it can be sold. This argument would likely fail because the City did not determine that the subject land was not necessary for the City's use. Also, Government Code section 54226 states that the Surplus Land Act shall not be interpreted to limit the power to sell property at fair market value, and no provision of the Surplus Land Act shall be applied if it conflicts with other statutory law (e.g., the citizens' initiative rights).

June 15, 2017 City Attorney Report, p. 12.

As the City Attorney stated above, the neither the City Council nor any other entity has have the authority to apply the Surplus Land Act in a manner that would conflict with "citizens' initiative rights." Additionally, the City Council could not rationally make the determination that the "subject land [is] not necessary for the City's use," a required finding before disposing of property, when there is a pending initiative already on the ballot that would in fact use the same "subject land." See June 15, 2017 City Attorney Report. p. 12.

Should you wish to provide to the interested parties any further information on these legal issues, please do not hesitate to contact me.

Best regards,

*Christopher W. Garrett*

Christopher W. Garrett  
of LATHAM & WATKINS LLP