

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/10/2013 at 10:38:12 AM

Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

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6 for Open Government

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO--CENTRAL DIVISION
11

12 SAN DIEGANS FOR OPEN GOVERNMENT; and)
DOES 1 through 10,)

13 Plaintiffs and Petitioners,)

14 vs.)

15 CITY OF SAN DIEGO; and DOES 11 through)
16 100,)

17 Defendants and Respondents;)

18 SUNROAD ENTERPRISES; SUNROAD)
CENTRUM PARTNERS, L.P.; and DOES 101)
19 through 1,000,)

20 Defendants and Real Parties in)
21 Interest.)

CASE NO. 37-2013-00056749-CU-TT-CTL

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT OF
MANDATE UNDER THE SAN DIEGO
CITY CHARTER, THE SAN DIEGO
MUNICIPAL CODE, THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT, AND
OTHER LAWS**

22 Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT ("Plaintiff") alleges as
23 follows:

24 **Introductory Statement**

25 1. This lawsuit challenges certain actions taken by Defendant and Respondent CITY OF
26 SAN DIEGO ("CITY") as part of a pay-to-play scheme in which politicians agree to give away public
27 property and/or grant development approvals in exchange for a developer's donation to the politicians'
28 pet projects--without any nexus between the amount paid and the value of property given away or the

1 community impact that the affected neighborhood's residents will suffer. At a minimum, the scheme
2 violates the San Diego City Charter, the San Diego Municipal Code ("SDMC"), and the California
3 Environmental Quality Act ("CEQA").

4 **Parties**

5 2. Plaintiff is a non-profit organization formed and operating under the laws of the State
6 of California. At least one of Plaintiff's members resides in and pays real-property taxes within the
7 geographical jurisdiction of CITY and has an interest in, among other things, ensuring CITY's
8 compliance with all applicable laws and maintaining open, transparent government decision-making.
9 Plaintiff is suing on its own behalf and for its own benefit, and on behalf of and for the benefit of its
10 members, all persons similarly situated, all taxpayers within the geographical jurisdiction of CITY, and
11 CITY.¹

12 3. CITY is a public agency under Section 21063 of the Public Resources Code. CITY is
13 authorized and required by law to determine the adequacy of and certify environmental documents
14 prepared pursuant to CEQA. CITY is the local agency responsible for issuing development and
15 construction permits for the project that is the subject of this lawsuit and for enforcing violations of the
16 City Charter and the SDMC.

17 4. Defendants and Real Parties in Interest SUNROAD ENTERPRISES and SUNROAD
18 CENTRUM PARTNERS, L.P. (collectively, "SUNROAD"), are the owners, applicants, and/or
19 developers of the project that is the subject of this proceeding or have some other cognizable interest
20 in it.

21 5. The true names and capacities of the parties identified as DOES 1 through 100 and 101
22 through 1,000 are unknown to Plaintiff, who will seek the Court's permission to amend this pleading
23 in order to allege the true names and capacities as soon as they are ascertained. Plaintiff is informed
24

25 ¹ No matter how any portion of this pleading's allegations or prayer is construed, in no way does
26 Plaintiff intend to assert a claim or seek relief that is inconsistent with the following parameters: (1)
27 Plaintiff does not seek any relief greater than or different from the relief sought for the general public
28 or for a class of which Plaintiff's members residing within the geographical jurisdiction of CITY are
the themselves members. (2) This lawsuit seeks to enforce at least one important right affecting the
public interest and to confer at least one significant benefit, whether pecuniary or non-pecuniary, on the
general public or a large class of persons. (3) Private enforcement is necessary and places a
disproportionate financial burden on Plaintiff in relation to its stake in the matter.

1 and believes and on that basis alleges that each of the fictitiously named parties 1 through 100 and 101
2 through 1,000 has jurisdiction by law over one or more aspects of the property that is the subject of this
3 proceeding or has some other cognizable interest in the property or its development.

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

10 **Jurisdiction, Venue, and Exhaustion of Remedies**

11 7. The Court has jurisdiction over this action pursuant to, as applicable and among other
12 provisions of law, Code of Civil Procedure Sections 1060 *et seq.* and 1084 *et seq.*; and Public Resources
13 Code Sections 21168 and 21168.5.

14 8. Venue in this Court is proper because the obligations, liabilities, and violations of law
15 alleged in this pleading occurred in the City of San Diego in the State of California.

16 9. Plaintiff was not required to exhaust administrative remedies prior to filing this action.
17 Alternatively, Plaintiff exhausted all applicable administrative remedies prior to filing this action.

18 10. Petitioner has caused a Notice of Commencement of Action to be served on
19 Respondents, as required by Public Resources Code Section 21167.5. A true and correct copy of the
20 Notice of Commencement of Action is attached to this pleading as Exhibit "A."

21 11. Plaintiff will have caused a copy of this pleading to be served on the Attorney General
22 not more than ten days after the commencement of this proceeding, as required by Public Resources
23 Code Section 21167.7 and Code of Civil Procedure Section 388.

24 **Procedural Background**

25 12. This action challenges CITY's waiver of the policy established by City Council Policy
26 700-06 pertaining to encroachments on a portion of CITY's park property and the associated approval
27 of a building-restricted easement over that property ("Project") on or about April 30, 2013, in order to
28 facilitate a residential development in the Kearny Mesa community approved by CITY more than 10

1 years earlier (“Residential Development”). The Residential Development originally required, among
2 other things, a 2.0-acre park to serve nearby residents, as mitigation under CEQA and/or as a condition
3 of approval for the development under the City Charter and the SDMC. As a result of the Project,
4 however, neither CITY nor the residents will receive the full benefit of the 2.0-acre park that was
5 originally promised as part of the Residential Development. CITY’s mayor vetoed the Project’s
6 approval on or about May 15, 2013. CITY’s city council overrode the mayor’s veto of the Project’s
7 approval on or about June 11, 2013, based upon the mayor’s request that his veto be overridden. A true
8 and correct copy of City Council Policy 700-06 is attached to this pleading as Exhibit “B.”

9 13. At the time the Project was approved, CITY had failed to make any “environmental
10 determination” for the Project as required by the SDMC and thus failed to subject the Project to any
11 environmental review under CEQA.

12 14. The Project results in a substantial change to the mitigation and/or conditions of approval
13 for the Residential Development.

14 15. The Project’s change to the Residential Development could not have been discovered
15 by Plaintiff--even with the exercise of reasonable diligence--until June 11, 2013, at the earliest.

16 16. CITY did not hold a public hearing pertaining to the Project on April 30, 2013.

17 17. CITY did not hold a public hearing pertaining to the Project on June 11, 2013.

18 18. CITY has given incomplete and conflicting information about whether it owned the park
19 property that is the subject of the Project at the time the Project was approved. For example, City
20 Council Policy 700-06 applies to “City Property” and defines that term to mean “land which is owned
21 in fee title by the City excluding such land which is public right-of-way.” CITY’s waiver of the Policy
22 thus implies that the park property was “owned in fee title” by CITY at the time the Project was
23 approved. Meanwhile, City Councilmember Scott Sherman stated on *U-T San Diego*’s website after
24 voting for the Project that “[t]his is not city owned property yet.”² A true and correct copy of his
25 Facebook statement is attached to this pleading as Exhibit “C.”

26
27 ² Allegations in this pleading might therefore be inconsistent. In this regard, Plaintiff admits that it is
28 taking advantage of its right to make allegations in the alternative because it believes that there has been
some illegal conduct in connection with the Project’s approval and that a reasonable opportunity to
conduct discovery is likely to yield evidence of the full extent of such conduct.

1 19. Plaintiff is informed and believes and on that basis alleges:

2 A. The real property that is the subject of the Project falls within the definition of
3 “dedicated or designated parkland and open space” as used in City Council Policy 700-06.

4 B. Alternatively and additionally, the real property that is the subject of the Project
5 falls outside the definition of “dedicated or designated parkland and open space” as used in City Council
6 Policy 700-06.

7 C. Alternatively and additionally, the real property that is the subject of the Project
8 falls under the definition of “City property” as used in City Council Policy 700-06.

9 20. Plaintiff is informed and believes and on that basis alleges:

10 A. CITY’s mayor demanded a *quid pro quo* payment from SUNROAD in the
11 amount of \$100,000.00 in exchange for his agreement to ask CITY’s city council to override his veto
12 of the Project’s approval, and SUNROAD complied with the demand. The payment had no legally
13 sufficient nexus with the loss of the park property and would not be used to fund any program or service
14 that would benefit the Kearny Mesa community where the park is located.

15 B. Alternatively and additionally, SUNROAD offered CITY’s mayor a *quid pro quo*
16 payment in the amount of \$100,000.00 in exchange for his agreement to ask CITY’s city council to
17 override his veto of the Project’s approval, and the mayor accepted the offer. Again, the payment had
18 no legally sufficient nexus with the loss of the park property and would not be used to fund any program
19 or service that would benefit the Kearny Mesa community where the park is located.

20 C. At least one CITY official had an illegal conflict of interest relating to the
21 Project’s approval in violation of the City Charter, the SDMC, or one or more other applicable laws.

22 D. Even if there were no *quid pro quo* payment in any way made in connection with
23 the Project’s approval, CITY failed to follow the procedures prescribed by law in approving the Project.

24 **FIRST CAUSE OF ACTION:**
25 **Authorization of Reduced Public Park Space without Further Environmental Review**
(Against All Defendants/Respondents/Real Parties in Interest)

26 21. Paragraphs 1 through 20 are fully incorporated into this paragraph.

27 22. The Supreme Court has determined that there is an exception to the usual rule that
28 CEQA applies only to discretionary projects, which is that an action challenging the agency’s non-

1 compliance with CEQA may be filed within 180 days of the time the plaintiff knew or reasonably
2 should have known that the project under way differs substantially from the one described in the
3 environmental document.

4 23. Plaintiff discovered that the Project will result in a substantial change to the mitigation
5 and/or conditions of approval for the Residential Development no earlier than June 11, 2013, and could
6 not have discover this earlier even with the exercise of reasonable diligence.

7 24. The Project has not been subjected to any environmental review under CEQA.

8 25. CITY officials purposefully misinformed Plaintiff and other members of the public about
9 the nature of the Project and the reasons why the mayor was urging the city council to override his prior
10 veto.

11 26. There was no Notice of Determination or Notice of Exemption filed or posted following
12 the Project's approval. Alternatively and additionally, if CITY did make an environmental
13 determination under the SDMC, CITY failed to give notice of the right to administratively appeal that
14 determination.

15 27. Plaintiff, its members, and other members of the public have been harmed as a result of
16 Defendants'/Respondents' violation of CEQA because they have been denied the benefits and
17 protections provided by compliance with CEQA. By way of example and without limitation, Plaintiff,
18 its members, the public, and the decision-makers who approved the Project were not fully informed
19 about the potential impacts of, mitigation measures for, and alternatives to the Project prior to its
20 approval.

21 **SECOND CAUSE OF ACTION:**
22 **Violation of San Diego Municipal Code**

(Against All Defendants/Respondents/Real Parties in Interest)

23 28. Paragraphs 1 through 27 are fully incorporated into this paragraph.

24 29. The Project involves a sale of CITY's real property and is therefore subject to SDMC
25 Section 22.0902. Section 22.0902 states: "Except as otherwise provided in the City Charter, the
26 Council shall sell the real property of the City in compliance with the requirements herein established.
27 No real property belonging to the City shall be sold except in pursuance of a resolution passed by an
28 affirmative vote of five members of the Council, which shall contain the following: (a) The reason for

1 selling such real property; (b) A description of the real property to be sold; (c) A statement of the value
2 of such property as disclosed by an appraisal made by a qualified real estate appraiser, who may be a
3 professional appraiser or a qualified employee of the City of San Diego, together with the minimum
4 amount the Council will consider for the sale of each parcel of property; (d) A statement that the City
5 may at its discretion pay a real estate broker's commission under the provisions of Section 22.0905 for
6 the sale of such real property; (e) A statement that the property will be sold by negotiation or by public
7 auction, or by sealed bids, or by a combination of public auction, and sealed bids; providing, however,
8 that in the event that such property is to be sold by negotiation, then the reasons therefore shall be
9 included in the resolution.”

10 30. CITY did not comply with the requirements of SDMC Section 22.0902 when it approved
11 the Project, rendering the approval legal or otherwise void.

12 31. There is a good-faith dispute between Plaintiff, on the one hand, and the opposing
13 parties, on the other hand, as to whether the Project in some manner violates SDMC Section 22.0902
14 or is otherwise void. Plaintiff contends that the Project is in some manner illegal and therefore void,
15 while the opposing parties disagree. The parties therefore require a judicial determination of the issue.

16 32. CITY's approval of the Project violated a mandatory, ministerial duty.

17 33. Plaintiff, its members, and other members of the public have been harmed as a result of
18 Defendants'/Respondents' violation of the SDMC because they have been denied the benefits and
19 protections provided by compliance with the SDMC. By way of example and without limitation, CITY
20 did not obtain proper value in exchange for the real-property rights it gave up when it approved the
21 Project.

22 **THIRD CAUSE OF ACTION:**
23 **Violation of San Diego City Charter**

(Against All Defendants/Respondents/Real Parties in Interest)

24 34. Paragraphs 1 through 33 are fully incorporated into this paragraph.

25 35. The Project involves real property set aside for use as a public park and therefore subject
26 to City Charter Section 55. Section 55 states (in part): “All real property owned in fee by the City
27 heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the
28 State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation

1 or cemetery purposes without such changed use or purpose having been first authorized or later ratified
2 by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose.
3 However, real property which has been heretofore or which may hereafter be set aside without the
4 formality of an ordinance or statute dedicating such lands for park, recreation or cemetery purposes may
5 be used for any public purpose deemed necessary by the Council.”

6 36. CITY did not comply with the requirements of City Charter Section 55 when it approved
7 the Project, rendering the approval legal or otherwise void.

8 37. There is a good-faith dispute between Plaintiff, on the one hand, and the opposing
9 parties, on the other hand, as to whether the Project in some manner violates City Charter Section 55
10 or is otherwise void. Plaintiff contends that the Project is in some manner illegal and therefore void,
11 while the opposing parties disagree. The parties therefore require a judicial determination of the issue.

12 38. CITY’s approval of the Project violated a mandatory, ministerial duty.

13 39. Plaintiff, its members, and other members of the public have been harmed as a result of
14 Defendants’/Respondents’ violation of the City Charter because they have been denied the benefits and
15 protections provided by compliance with the City Charter. By way of example and without limitation,
16 CITY authorized a use of park property that involves no “public purpose” as that term is used in the
17 City Charter.

18 **PRAYER**

19 FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against all
20 Defendants/Respondents and Defendants/Real Parties in Interest (and any and all other parties who may
21 oppose Plaintiff in this proceeding) jointly and severally:

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

23 1. A judgment determining or declaring that Defendants/Respondents failed to
24 comply fully with CEQA with respect to the Project and the Project’s approval is illegal in at least some
25 respect, thereby rendering the approval void.

26 2. A judgment determining or declaring that Defendants/Respondents must comply
27 fully with CEQA with respect to the Project before the Project may lawfully be approved.

28

1 3. Injunctive relief prohibiting Defendants/Respondents and Real Parties in Interest
2 (and any and all persons acting at the request of, in concert with, or for the benefit of one or more of
3 them) from taking any action on any aspect of, in furtherance of, or otherwise based on the Project's
4 approval unless and until Defendants/Respondents have complied with all applicable provisions of
5 CEQA, as determined by the Court.

6 4. A writ of mandate ordering Defendants/Respondents to comply fully with CEQA
7 with respect to the Project before any action on any aspect of, in furtherance of, or otherwise based on
8 the Project's approval may commence or continue.

9 5. Any and all other relief that may be authorized by CEQA but is not explicitly or
10 specifically requested elsewhere in this Prayer.

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

12 1. A judgment determining or declaring that Defendants/Respondents failed to
13 comply fully with the SDMC with respect to the Project and that the Project's approval is illegal in at
14 least some respect, thereby rendering the approval void.

15 2. A judgment determining or declaring that Defendants/Respondents must comply
16 fully with the SDMC with respect to the Project before the Project may lawfully be approved.

17 3. Injunctive relief prohibiting Defendants/Respondents and Real Parties in Interest
18 (and any and all persons acting at the request of, in concert with, or for the benefit of one or more of
19 them) from taking any action on any aspect of, in furtherance of, or otherwise based on the Project's
20 approval unless and until Defendants/Respondents have complied with all applicable provisions of the
21 SDMC, as determined by the Court.

22 4. A writ of mandate ordering Defendants/Respondents to comply fully with the
23 SDMC with respect to the Project before any action on any aspect of, in furtherance of, or otherwise
24 based on the Project's approval may commence or continue.

25 5. Any and all other relief that may be authorized by the SDMC but is not explicitly
26 or specifically requested elsewhere in this Prayer.

27

28

1 C. *On the Third Cause of Action:*

2 1. A judgment determining or declaring that Defendants/Respondents failed to
3 comply fully with the City Charter with respect to the Project and that the Project's approval is illegal
4 in at least some respect, thereby rendering the approval void.

5 2. A judgment determining or declaring that Defendants/Respondents must comply
6 fully with the City Charter with respect to the Project before the Project may lawfully be approved.

7 3. Injunctive relief prohibiting Defendants/Respondents and Real Parties in Interest
8 (and any and all persons acting at the request of, in concert with, or for the benefit of one or more of
9 them) from taking any action on any aspect of, in furtherance of, or otherwise based on the Project's
10 approval unless and until Defendants/Respondents have complied with all applicable provisions of the
11 City Charter, as determined by the Court.

12 4. A writ of mandate ordering Defendants/Respondents to comply fully with the
13 City Charter with respect to the Project before any action on any aspect of, in furtherance of, or
14 otherwise based on the Project's approval may commence or continue.

15 5. Any and all other relief that may be authorized by the City Charter but is not
16 explicitly or specifically requested elsewhere in this Prayer.

17 D. An order providing for the Court's continuing jurisdiction over this proceeding in order
18 to ensure that Defendants/Respondents and Defendants/Real Parties in Interest comply with all
19 applicable laws.

20 E. All attorney fees and other legal expenses incurred by Plaintiff in connection with this
21 proceeding.

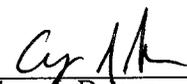
22 F. Any further relief that this Court may deem appropriate.

23 Date: July 9, 2013.

Respectfully submitted,

24 BRIGGS LAW CORPORATION

25 By:


Cory J. Briggs

26
27 Attorneys for Plaintiff and Petitioner San Diegans for
28 Open Government

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE SAN DIEGO CITY CHARTER, THE SAN
DIEGO MUNICIPAL CODE, THE CALIFORNIA ENVIRONMENTAL QUALITY ACT,
AND OTHER LAWS**

Exhibit "A"

BRIGGS LAW CORPORATION

San Diego Office:
814 Morena Boulevard, Suite 107
San Diego, CA 92110

Telephone: 619-497-0021
Facsimile: 619-515-6410

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

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

Please respond to: Inland Empire Office

BLC File(s): 1593.21

9 July 2013

City Clerk Elizabeth Maland
City of San Diego
202 "C" Street, 2nd Floor
San Diego, CA 92101

Via Facsimile to 619-533-4045

Re: Notice of Commencement of Action

Dear City Clerk:

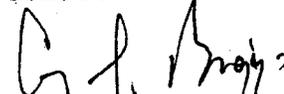
I represent San Diegans for Open Government and am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Diego County Superior Court against your agency. The action will challenge your agency's approval of Item-332 on the city council's agenda for June 11, 2013 (override of mayor's veto on Sunroad Centrum Park), on the grounds that the approval violated the California Environmental Quality Act (PUB. RES. CODE § 21000 *et seq.*). The action may also challenge your agency's approval of the project 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



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Telephone: 909-949-7115
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FACSIMILE COVER SHEET

Recipient: Elizabeth Maland

Recipient's fax number: 619-533-4045

Date: 07-09-13 BLC File: 1593.21

Total Pages (including cover sheet): 3

Sender: Alison Greenlee

Sender's fax number: 619-515-6410 909-949-7121

Message: Please see the attached.

Original Document to Follow? Yes No

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Message: Please see the attached.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE SAN DIEGO CITY CHARTER, THE SAN
DIEGO MUNICIPAL CODE, THE CALIFORNIA ENVIRONMENTAL QUALITY ACT,
AND OTHER LAWS**

Exhibit "B"

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: ENCROACHMENTS ON CITY PROPERTY
POLICY NO.: 700-06
EFFECTIVE DATE: May 24, 1999

BACKGROUND:

Many instances of unauthorized encroachments on City property are reported or discovered each year. Responsibility for the protection of City property from unauthorized encroachments and the mechanisms by which the City can enforce its property rights have not been clear. Additionally, there are currently no guidelines for City staff to use in evaluating proposed encroachments which could benefit the public and generate revenue for the City.

PURPOSE:

To establish policies related to the protection of City property from unauthorized encroachment by private parties; to establish guidelines by which requests for encroachments may be considered; to establish the responsibilities of City departments regarding the protection of City property from unauthorized encroachments; to establish policies specifically related to erosion and drainage control measures on City property; and to establish policies regarding the disposition of existing unauthorized encroachments; and to establish guidelines and an evaluation process for encroachment authorization of telecommunication facilities on parkland and open space.

DEFINITIONS:

Encroachment - development, construction on or use of City property.

City Property - land which is owned in fee title by the City excluding such land which is public right-of-way.

Detrimental - causing any of the following: significant adverse impact on sensitive resources or historic sites; impediments to access or use; a hazardous or potentially hazardous condition, a potential public liability (including economic); causing any other situation or condition which is not in the City's best interest.

Permit Issuing Authority - that department designated as responsible for determining whether or not an encroachment can be allowed - see Section 1(F) of this Policy.

Permittee - Person or entity seeking encroachment authorization pursuant to this Policy.

I. POLICIES- GENERAL

- A. Unauthorized Encroachments. It is the City's policy to protect its property from unauthorized encroachment and to seek remedy, e.g., removal, repair, restoration, etc. when such activity occurs, to recover its costs related to such action to the greatest extent possible, and to pursue administrative and legal actions, fines and damages when necessary and/or prudent.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

- B. Guidelines for Encroachment Authorization. It is the City's policy that requests for authorization to encroach on City property be considered as follows:
1. General City Property: The City may grant authorization for encroachment on its property if it is determined by the responsible department that the requested action would not violate any deed restrictions related to the City property, map requirements or other land use regulations; would not be detrimental to the City's property interests; would not preclude other appropriate use; would be consistent with the City's General Plan; and would otherwise be prudent and reasonable.
 2. Dedicated or Designated Parkland and Open Space: The City may grant authorization for encroachment on dedicated or designated parkland and open space if it is determined by the responsible department that the requested action would not only meet criteria for General City property as stated above, but would also be consistent with City Charter Section 55; i.e., that it would not change or interfere with the use or purpose of the parkland or open space. Permission for encroachment on dedicated or designated parkland and open space that would benefit only a private party shall not be granted.
 - a. In addition to complying with the above criteria, proposed telecommunications facilities must be disguised such that they do not detract from the recreational or natural character of the parkland or open space. Further, proposed telecommunication facilities must be integrated with existing park facilities, and must not disturb the environmental integrity of the parkland or open space.
 - b. Prior to encroachment authorization, the proposed telecommunication facility must be reviewed by the Park and Recreation Department to determine whether the facility complies with the criteria of Section B. If the Park and Recreation Department determines that the proposed facility complies with Section B, the Community Planning Committee for the potentially affected parkland or open space must be notified. The proposed facility must then be reviewed by the following advisory bodies for a recommendation:
 - i) Community Recreation Council for park or open space where encroachment is proposed;
 - ii) Area Committee, a subcommittee of the Park and Recreation Board, or Citizens' Advisory Committee for open space area where encroachment is proposed, as appropriate;
 - iii) Design Review Committee, subcommittee of the Park and Recreation Board, as appropriate; and
 - iv) Park and Recreation Board, or governing open space Task Force for those areas where they exist.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

c. The recommendation of the Community Recreation Council, the Area Committee or Citizen's Advisory Committee, and the Design Review Committee, as applicable, shall be submitted to the Park and Recreation Board or governing open space Task Force. The Park and Recreation Board, or governing open space Task Force, shall submit its recommendation as follows:

- i) For minor telecommunication facilities, to the Park and Recreation Director, who shall determine whether the facility should be authorized.
- ii) For major telecommunication facilities, to the City Council, who shall determine whether the facility should be authorized.

If the facility is authorized, the Real Estate Assets Department shall negotiate and prepare the necessary encroachment authorization.

C. Written Encroachment Authorization Required. It is the City's policy that permission to encroach on City property may be granted only by written encroachment authorization and shall be contingent upon such stipulations and conditions deemed appropriate by the City to protect its property and interests. Such stipulations shall include, but not be limited to:

- 1) The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Permittee;
- 2) The Permittee shall agree to at all times indemnify and save the City free and harmless from and pay in full any and all claims, demands, losses, damages or expenses that the City may sustain or incur in any manner resulting from the construction, maintenance, use, repair or presence of the encroaching structure or development installed hereunder, including any loss, damage or expense arising out of (a) loss of or damage to property, (b) injury to or death of a person, excepting any loss, damage, or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees;
- 3) When the encroachment authorization is in the form of an Encroachment Permit, the Permittee must agree to remove the encroachment within thirty (30) days after notice by the Permit Issuing Authority to do so;
- 4) The City shall have the authority to remove any encroachment or cause its removal if the Permittee does not comply with the thirty (30) day notice required by Section I.C.3., and all costs related to such action shall be chargeable to the Permittee;

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

- 5) The Permittee shall be required to maintain a policy of liability insurance in an amount satisfactory to the City in order to protect the City from any potential claims which may arise from the encroachment;
- 6) When the encroachment authorization is in the form of an Encroachment Permit, the Encroachment Permit shall be recorded in the office of the County Recorder and shall relate to the property directly adjacent to the encroachment and shall run with that property. Therefore, only an adjacent property owner can receive an Encroachment Permit; and
- 7) Acknowledgement that authorization by the Permit Issuing Authority and receipt of all appropriate development permits must be obtained prior to any future improvements or modifications to the encroachment.

In addition to the above stipulations, the Permittee must obtain all other relevant permits and approvals including, but not limited to, Coastal Development Permits, Sensitive Coastal Resource Permits, Hillside Review Permits, Resource Protection Permits, etc., prior to the construction of the authorized encroachment. Normal noticing requirements and community review for such discretionary permits apply.

D. Fees and Costs.

1. It is the City's policy that the Permittee shall pay an encroachment authorization fee established to recover costs associated with processing the request for encroachment authorization, and with monitoring, inspection or installation of the encroachment where appropriate. In addition, the City shall require payment of an annual encroachment fee which will include a reasonable charge for use of City property and recovery of annual inspection cost.
2. All monies received for placement of minor telecommunication facilities on parkland and open space areas shall be deposited into the Park and Recreation Department General Fund budget. All monies received for placement of major telecommunication facilities shall be deposited into an appropriate account for use within the parkland or open space area where the facility is located.
3. Telecommunication facilities receiving encroachment authorization for parkland or open space may be subject to additional costs, including but not limited to, costs associated with mitigation of visual or physical impacts to the specific park or open space site, and costs associated with complying with applicable local, state or federal law.

E. Development Permits. It is the City's policy that departments which issue development permits shall be aware of City property interests and may not issue permits for development which encroaches on City property without proof from the Permittee that written authorization has been obtained from the Permit Issuing Authority.

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F. Permit Issuing Authority/Responsibilities.

1. City Council - Responsible for approving the placement of major telecommunication facilities on dedicated or designated parkland or open space.
2. Neighborhood Code Compliance Department - Responsible for the protection of City property from unauthorized encroachments and enforcement related thereto.
3. Real Estate Assets Department - Responsible for the issuance of encroachment authorization on general City property and leaseholds, and, for negotiation and preparation of encroachment authorizations for previously approved telecommunication facilities to be located on dedicated or designated parkland or open space. It is also responsible for providing the other departments with information regarding property lines, ownership and title, as necessary.
4. Park and Recreation Department - Responsible for the issuance of encroachment authorizations, and for approval by the Park and Recreation Director of the placement of minor telecommunication facilities, on dedicated and designated parkland and open space. It is also responsible, in consultation with the Planning and Development Review Department for certain coastal rights-of-way which are not used as streets.
5. Engineering and Capital Projects Department - Responsible for issuance of encroachment authorization on land owned by the Water and Sewer Funds.
6. Planning and Development Review Department - Responsible for the review and issuance of discretionary permits associated with all applications for telecommunication facilities.

II. POLICIES - EROSION CONTROL MEASURES

- A. Erosion Control By City. It is the City's policy to provide erosion control measures on City property to the extent that funding is available and public improvements or public safety are jeopardized. It is the City's policy to not assume responsibility for erosion control measures on its property to protect private property.
- B. Erosion Control By Private Parties.
 1. It is the City's policy to consider giving authorization to private parties for erosion control measures on City property in as reasonable a manner as possible pursuant to the other policies stated herein.
 2. For purposes of determining whether or not erosion control measures by private parties will be allowed on dedicated or designated parkland or open space, an action will be considered beneficial to the parkland or open space if it

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contributes to the stabilization of bluff or cliffs that are steeper than the angle at which the soil is naturally stable.

- C. Mitigation. It is the City's policy that any authorization to provide erosion control measures on City property shall include provisions for visual impact mitigation and enhancement.

III. POLICIES - DRAINAGE CONTROL MEASURES

- A. Drainage Control By Private Parties. For purposes of determining whether or not drainage control measures by private parties will be allowed on dedicated or designated parkland or open space, and existing encroachment will be considered beneficial if it is and remains the only reasonable method of preventing surface erosion of parkland or open space due to uncontrolled drainage; a proposed encroachment will be considered beneficial if it meets the above criteria and qualifies for all regulatory permits.
- B. Mitigation. It is the City's policy that any authorization to provide drainage control measures on City property shall include provisions for visual impact mitigation and enhancement.

IV. POLICIES - EXISTING ENCROACHMENTS

- A. Type of Encroachment: Erosion and Drainage Control Measures. If consistent with other sections of this policy, it is the City's policy to offer an encroachment authorization for erosion and drainage control measures. The authorization shall contain all the stipulations and requirements set forth in Section I of this Policy, including a permit fee and annual charge. In addition, a requirement to improve or bring the encroachment up to safe and acceptable standards, including aesthetic standards, as determined necessary by the City Manager may be imposed. In the coastal areas, coastal permits will be required for those encroachments placed after October of 1988.
- B. Type of Encroachment: Private Use and Enjoyment. It is the City's policy that encroachments for private use and enjoyment are not appropriate on City property and may not be authorized. Such encroachments are generally construed to be detrimental to the City's interest because of the singularly private benefit that is gained from them by a private party. Examples are stairways, walls, fences, decks, antennas, and landscaping which is not necessary for erosion control and which have the appearance of private property. It is the City's policy to pursue removal or other corrective action, provided however, that if the encroachment is minor in nature; i.e., is unobtrusive and does not impede access or use of the City property, the City Manager may waive enforcement action. However, it is understood that such encroachments may be subject to a recordation of official notice of the encroachment with the County Recorder and that lack of enforcement action does not constitute authorization to encroach or surrender City property rights. This policy also does not impact requirements to obtain building or other development permits.

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- C. Unauthorized Encroachments. In the event that the City evaluation indicates that a particular unauthorized encroachment cannot be authorized or allowed to remain because it is hazardous or a potential liability to the City or because it is either detrimental or non-beneficial per this Policy, or in the event that the private property cannot or will not obtain the required authorization, the City shall pursue administrative and legal remedies to protect its interests and shall, to the greatest extent possible, collect damages and costs related to the enforcement of this Policy.
- D. Ocean Front Walk. It is not the intent of this Policy to modify or supersede in any way the requirements of San Diego Municipal Code Section 103.0538 which apply to the Ocean Front Walk area.

HISTORY:

“Horton Plaza - Billboards”

Adopted by Resolution R-169963 03/15/1962

Repealed by Resolution R-254869 08/24/1981

(Incorp. into Council Policy 700-05 “Horton Plaza - Use Of”)

“Encroachments on City Property”

Adopted by Resolution R-282396 07/26/1993

Amended by Resolution R-291658 05/24/1999

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDATE UNDER THE SAN DIEGO CITY CHARTER, THE SAN
DIEGO MUNICIPAL CODE, THE CALIFORNIA ENVIRONMENTAL QUALITY ACT,
AND OTHER LAWS**

Exhibit "C"

JULY 4TH 2013

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WATCHDOG (NEWS/WATCHDOG)

(1)

Feds ask about \$100K payment

Developer checks were for Filner pet causes

By Trent Seibert (/staff/trent-seibert/) 2:29 P.M. JULY 3, 2013 Updated 6:03 P.M.

PRINT
 (HTTP://WWW.UTSANDIEGO.COM/NEWS/2013/JUL/03/FBI-INQUIRY-SUNROAD-100K-BOB-FILNER-SAN-DIEGO/ALL/?PRINT)

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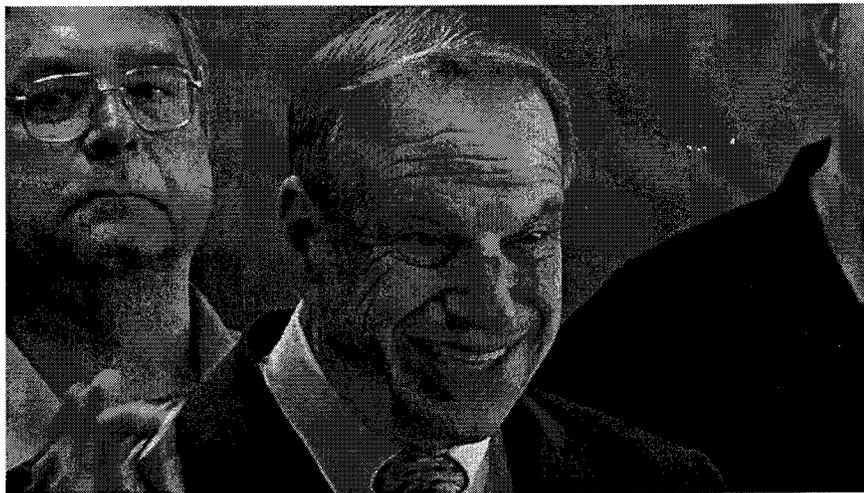
- Filner returns developer's \$100K (/news/2...)
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- Developer: 'We have paid him the money' ...

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Bob Filner — Peggy Peattie

Federal agents are asking questions about a \$100,000 donation to the city made by a developer seeking San Diego Mayor Bob Filner's approval for revisions to a project in Kearny Mesa.

FBI officials visited more than one city official this week inquiring about the



\$100,000 in checks, which Filner said last week he returned to the developer, Sunroad Centrum Partners.

The money was to go to two Filner pet projects, a veterans memorial in Ocean Beach and a daylong bicycling event. According to a voice mail obtained by U-T Watchdog last week, the developer made a connection between the donations and Filner's support of an easement for the project at Kearny Villa Road and Lightwave Avenue.

A spokeswoman for Filner said she was out of the office Wednesday at lunchtime and would "check as soon as I get back." She did not call back later.

FBI spokesman Special Agent Darrell Foxworth said the bureau does not confirm or deny the existence of investigations. He also said he was not able to discuss who agents interview or what they discuss.

On Friday, Filner told reporters he was unaware that a top-level administrator in his office had accepted the contribution as a consideration for the mayor's support of the project changes. Filner said he thought it was just a good-faith gesture.

"I thought they were offering a voluntary donation," Filner told reporters.

The official, deputy chief of staff Allen Jones, is no longer with the city, over unrelated disagreements over Filner's policies and management style.

Jones told the Watchdog after Filner's news conference that the mayor knew full well that the payment was given in consideration for approval of changes to a Kearny Mesa project. Jones said he had recommended the money go to parks in Kearny Mesa and did not know how or why the money changed purposes.

A direct connection between a project and a community benefit can be a key factor in determining its legitimacy.

Filner said he only found out on June 27 about the connection between the donation and the project changes, after seeing a memo signed by Jones establishing the trade-off.

Filner on Friday made public the memo, dated May 23 (<http://web.utsandiego.com/documents/2013/jun/28/memo-linking-100000-sunroad-project/>), in which Jones and Tom Story of Sunroad sign off on an agreement over the money. The memo does not address how the money will be spent, saying only that the checks are "payable to the City of San Diego."

Contacted Wednesday, Jones said no federal agents have approached him. Story did not return a message.

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**For More Information
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The federal Hobbs Act bars officials from inducing someone to give up property for fear of economic harm, such as a lost development right, even if the public official is not the recipient of the benefit.

According to the [Department of Justice \(http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm02404.htm\)](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm02404.htm), the act defines extortion in terms of “the obtaining of property from another, with his consent . . . under color of official right.”

Also according to the department, the act applies even when “the corrupt payment inures to the benefit of a person or entity other than the public official.”

PAGE:

- 1 (</news/2013/Jul/03/fbi-inquiry-sunroad-100K-bob-filner-san-diego/?#article-copy>)
- 2 (</news/2013/Jul/03/fbi-inquiry-sunroad-100K-bob-filner-san-diego/2/?#article-copy>)
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COMMENTS

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52 comments



Add a comment...

Comment

**Ron Williams** · Top Commenter · Twentynine Palms High

People let's not carried away with his demise. This is Chicago type politics and Mr. Obama is in the White House. Even if their was something wrong here President Obama will wipe it clean.

Reply · 1 · Like · 4 hours ago

**Darren G. Sarvis** · Top Commenter · Grossmont

Why is it when bad things make a bump in San Diego's night life, it is always Sunroad Enterprises?

Reply · 1 · Like · 7 hours ago

**Darren G. Sarvis** · Top Commenter · Grossmont

This is Mike Aguirre's long awaited and final chance to slip in as our mayor- with an indefinite term.

Reply · Like · 7 hours ago

**David Love** · Top Commenter

Filner = Incompetent.
Democrats = Corrupt.
The Voters who voted this clown in = Ignorant.

There, I hope you all learned something today, have a nice 4th of July!

Reply · 2 · Like · 9 hours ago

**Thomas Tenhunen** · Top Commenter · Naval Postgraduate School

Watched a clip on 10 News of Filner acting like he never even heard of Sunroad. C'MON MAN! Who in their right mind, regardless of political affiliation, can continue to support this bum? Filner is bad for San Diego and I fear his antics are just the tip of the Iceberg. Time to cut bait, get the recall going and get a new Mayor. Better yet, hope the DOJ sticks Filner in a jail cell.

Reply · 2 · Like · 9 hours ago

**Marsha Butler** · Top Commenter

What would you expect from someone elected by the abysmally corrupt labor unions and someone who is abusive to the general public, his staff, even workers at airports.

Reply · 3 · Like · 10 hours ago

**Oliver Wellington** · Top Commenter · Works at Nautel

This is old news.

Reply · Like · 11 hours ago

**Chris Petersen** · Works at Genomics Institute of the Novartis Research Foundation

Train Wreck!

Reply · Like · 11 hours ago

**John Jones** · Top Commenter

This reminds me of when Pauline Foster and her son in law Jeff Silberman who happened to be her business manager secretly contributed to mayor Sanders campaign through their printing business and were rewarded with \$150,000 a year spot on San Diego county regional airport authority for none other than Alan Bersin her other son in law, husband of the honorable Lisa Foster and the controversial former Sand Diego unified superintendent. He knew nothing about the job. More here:

<http://www.freerepublic.com/focus/news/2514148/replies?c=42>

Nothing has changed, it is business as usual in America's finest.

Reply · 2 · Like · 11 hours ago

**Bruce Coons** · Top Commenter · Executive Director at SAVE OUR HERITAGE ORGANISATION, SOHO

This one, of course had a legitimate nexus as the developer was asking the city not to build on city land so the developer could make more money and skirt the fire ordinance. Ironically depriving the public of their development rights, which should be worth something or do you suggest that the public should just eat it so the developer can make money at our expense.

Reply · 5 · Like · 12 hours ago

**Scott Sherman** · President at 5th Avenue Insurance

This is not city owned land yet. The park has to be built then Sunroad will donate the land to the city. The public is not "eating it" because dedicated park land has zero commercial value. Sunroad paid 5 million in Development Impact Fees and is donating the city a two acre park. I don't see how the city is "eating it".

Reply · Like · about an hour ago

**Andrew Esposito** · Top Commenter

Crooked democrat? I don't believe it... He should've hid the money in his freezer like the others do.

Reply · 3 · Like · 12 hours ago



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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 _____

_____ 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 San Diegans for Open Government 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 July 9, 20 13, at Upland, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Cory J. Briggs
Type or Print Name


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 _____

_____ on _____ in this action
 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:

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 * 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)
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