

1 MARA W. ELLIOTT, City Attorney
GEORGE F. SCHAEFER, Assistant City Attorney
2 M. TRAVIS PHELPS, Chief Deputy City Attorney
California State Bar No. 258246
3 Office of the City Attorney
1200 Third Avenue, Suite 1100
4 San Diego, California 92101-4100
Telephone: (619) 533-5800
5 Facsimile: (619) 533-5856
mphelps@sandiego.gov

6 Attorneys for Plaintiff,
7 CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9
10 CITY OF SAN DIEGO, a municipal corporation,) Case No.
11 Plaintiff,) **COMPLAINT FOR VALIDATION**
12 v.) **AND DECLARATORY RELIEF**
13 ALL PERSONS INTERESTED IN THE MATTER) [Calendar Preference per C.C.P. § 867]
of Measure C and the validity of the transient)
14 occupancy tax increase and the validity of the)
authorization to issue bonds for homelessness)
15 programs and for modernization improvements at)
the downtown San Diego Convention Center, and)
16 all other matters and proceedings relating thereto,)
17 Defendants.)
18)
19)

20 Plaintiff, City of San Diego, for its complaint to validate certain proceedings against all
21 interested persons pursuant to California Code of Civil Procedure sections 860, *et seq.* (the
22 "Validation Statutes") and Government Code sections 53510, *et seq.*, alleges as follows:

23 **PARTIES**

24 1. Plaintiff City of San Diego (City) is and, at all times relevant herein, was, a
25 municipal corporation and charter city duly organized and existing under a charter pursuant to
26 which the City has the right and power to make and enforce all laws and regulations in respect to
27 municipal affairs and certain other matters in accordance with and as more particularly provided
28 in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter

1 of the City. Plaintiff is a “public agency” authorized to bring this action pursuant to California
2 Code of Civil Procedure section 860 and Government Code section 53511.

3 2. The defendants named herein (Defendants) are all persons interested in the matter
4 of Measure C and the validity of the transient occupancy tax increase and the validity of the
5 authorization to issue bonds for homelessness programs and for modernization improvements at
6 the downtown San Diego Convention Center, and all other matters and proceedings relating
7 thereto. Defendants, and each of them, are named in this Complaint as directed in Sections 861,
8 861.1 and 862 of the California Code of Civil Procedure.

9 **JURISDICTION AND VENUE**

10 3. This Court has jurisdiction over all interested persons pursuant to the Validation
11 Statutes, and to render judicial determinations, and is otherwise authorized to grant the relief
12 prayed for herein.

13 4. Venue is proper in the County of San Diego pursuant to Section 860 of the
14 California Code of Civil Procedure, as the principal office of the Plaintiff is located within the
15 County of San Diego.

16 **MEASURE C, THE MARCH 2020 ELECTION, AND RELATED ACTIONS**

17 5. On March 3, 2020, a Municipal Primary Election and a Municipal Special
18 Election were held in the City of San Diego. One of the measures on the ballot at the Special
19 Election, denominated Measure C, was entitled “Hotel Visitor Tax Increase and Bond
20 Authorization for Convention Center Expansion, Homelessness Programs and Street Repairs”
21 (Measure C).

22 6. Measure C’s proponents qualified Measure C for the ballot by circulating
23 initiative petitions to the electorate of the City of San Diego. These initiative petitions received a
24 sufficient number of valid signatures from registered City voters to qualify Measure C for the
25 ballot under local law as a citizens’ initiative.

26 7. Measure C adds a new Division 2 entitled “Additional, Voter-Approved Transient
27 Occupancy Tax and Related Bonds,” including Sections 35.0201 through 35.0212, to Chapter 3,

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1 Article 5 of the San Diego Municipal Code (Municipal Code), and also contains certain
2 uncodified provisions.

3 8. Municipal Code section 35.0201(a) increases the City's 10.5 percent transient
4 occupancy tax applied to overnight facilities by 1.25 to 3.25 percentage points. The transient
5 occupancy tax will increase to 11.75%, 12.75%, and 13.75% depending on the geographic
6 location, or "tax zone," of the facility. The Additional Tax¹ imposes the highest tax rate increase
7 – 3.25 percentage points – on visitors staying at facilities in the general vicinity of downtown
8 San Diego. Visitors staying at more centrally located facilities outside of downtown San Diego
9 will have a 2.25 percentage point tax increase. And those staying at facilities located in the far
10 northern and southern portions of the City will have their tax rate increase by 1.25 percentage
11 points.

12 9. Municipal Code section 35.0202(a) identifies the Additional Tax as a special tax
13 that must be used for Special Purpose Activities: (1) Homelessness Programs; (2) Street Repairs;
14 and (3) Convention Center Improvements, Operations, Support Activities, and Business
15 Development Programs.

16 10. Municipal Code sections 35.0203(b) and 35.0204(a) generally require the
17 Additional Tax Revenues to be allocated in specified percentages for Convention Center
18 purposes (59%), Homelessness Programs (41% in Years 1 through 5, and 31 percent thereafter),
19 and Street Repairs (10% starting in Year 6). Municipal Code section 35.0203(e)-(g) requires the
20 Additional Tax Revenues for each of the Special Purpose Activities to be deposited into a
21 corresponding revenue account, a Convention Center Revenue Account, a Homelessness
22 Revenue Account, and a Street Repair Revenue Account.

23 11. Municipal Code section 35.0210(a)-(f) authorizes the City to issue and sell Bonds,
24 to be repaid using the applicable allocated component of the Additional Tax Revenues, up to
25 specific caps of maximum bond indebtedness, including financing costs (i.e., necessary costs of
26

27 ¹ All capitalized terms in this Complaint have the same meaning ascribed to them in
28 Municipal Code section 35.0211 or as otherwise defined or used in Measure C, unless otherwise
specified in this Complaint.

1 issuance to conduct a bond offering). The specific bond-related caps include \$850 million for
2 Convention Center Expansion and Modernization Costs (which cap may be lifted in the future by
3 Council resolution after a noticed public hearing), \$750 million for Homelessness Program
4 Costs, and \$400 million for Street Repair Costs, provided in each instance that the allocated
5 revenues from the applicable Additional Tax Component are projected over the life of the
6 pertinent bonds to be sufficient to repay the amount of such bonds.

7 12. Municipal Code section 35.0210(g) states that all bonds issued pursuant to
8 Measure C shall be limited obligations of the City payable solely from the Additional Tax
9 Revenues attributable to the pertinent Additional Tax Component. And, Municipal Code section
10 35.0210(j) states that all bonds authorized by Measure C shall be issued and shall mature at such
11 times not to exceed 40 years, and shall bear interest at such fixed or variable rate or rates
12 approved by the City Council, but not to exceed the maximum rate permitted by law.

13 13. Municipal Code section 35.0201(b) generally states that the Additional Tax is
14 effective for 42 consecutive years from the final calendar day of the month in which the City
15 issues the Convention Center Long-Term Expansion Bonds, which are defined as long-term
16 Bonds for Convention Center Improvements, including the contiguous expansion of the
17 Convention Center as well as any additional capital improvements to modernize the Convention
18 Center.

19 14. Measure C received the affirmative votes of 65.24% of the 366,373 City of San
20 Diego voters who voted on the measure in the March 3, 2020 Municipal Special Election.

21 15. On April 7, 2020, the San Diego City Council adopted Resolution R-312901
22 (April 2020 Resolution), declaring the results of the Municipal Primary and Municipal Special
23 Election held on March 3, 2020. The April 2020 Resolution confirmed that a copy of the
24 certificate of the Registrar of Voters of the San Diego County (Registrar of Voters) canvassing
25 the returns of the Municipal Special Election, as certified by the City Clerk, had been duly
26 received, and that a canvass of the Municipal Special Election had been completed and the City
27 Clerk had certified the results to the Council.

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1 16. The April 2020 Resolution declared that, out of the total number of 366,373 votes
2 cast upon Measure C in the Municipal Special Election, 239,024 (65.24%) were in favor of
3 Measure C and 127,349 (34.76%) were against Measure C. However, instead of declaring in the
4 April 2020 Resolution whether Measure C had been approved or rejected on the basis of the
5 voting results the City Council noted in Section III on page 7 of the April 2020 Resolution
6 (collectively, Council’s Note): (i) a split of authority existed in California as to whether a simple
7 majority vote or a two-thirds supermajority vote is required for the passage of a special tax
8 proposed by a citizens’ initiative; (ii) the ballot and ballot pamphlet stated a two-thirds vote
9 threshold for approval of Measure C (based on the City Attorney’s Office’s determination of the
10 legal precedent and usual practice in California at the time of submittal of Measure C to the
11 voters); and (iii) it was anticipated that the California Supreme Court would issue a final decision
12 in the future resolving the ambiguity as to the vote threshold applicable to a special tax proposed
13 by a citizens’ initiative, and such decision could impact Measure C.

14 17. When the April 2020 Resolution was adopted, the split in California existed
15 because the trial court in San Francisco (in two separate cases) had concluded that a simple
16 majority vote was required for the passage of a special tax proposed by citizens’ initiative and
17 the trial court in Fresno and in Oakland (in two separate cases) had concluded that a two-thirds
18 supermajority vote was required for passage of a special tax proposed by citizens’ initiative.

19 18. Three appellate court decisions have been issued since the City Council’s
20 adoption of the April 2020 Resolution, all concluding that only a simple majority vote is required
21 for the passage of a special tax proposed by citizens’ initiative:² (1) *City and County of San*
22 *Francisco v. All Persons Interested in the Matter of Prop. C*, 51 Cal. App. 5th 703 (2020)
23 (review denied by the California Supreme Court on September 9, 2020); (2) *City of Fresno v.*
24 *Fresno Building Healthy Communities*, 59 Cal. App. 5th 220 (2020) (review denied by the
25 California Supreme Court on March 30, 2021); and (3) *Howard Jarvis Taxpayers Association v.*
26 *///*

27 _____
28 ² The Oakland case, *Jobs & Housing Coalition, et al. v. City of Oakland*, California Court
of Appeal, First Appellate District, Division One, Case No. A158977 is still pending.

1 *City and County of San Francisco*, 60 Cal. App. 5th 227 (2021) (review denied by the California
2 Supreme Court on April 28, 2021).

3 19. On April 6, 2021, in light of the new precedents resolving the ambiguity noted in
4 the April 2020 Resolution, the City Council passed Resolution R-313485, declaring Measure C
5 to have been approved in the Municipal Special Election held on March 3, 2020, based on the
6 Council's declaration of the voting results in the April 2020 Resolution. R-313485 superseded
7 the Council's Note regarding Measure C in Section III on page 7 of the April 2020 Resolution.

8 20. On April 6, 2021, the City Council also passed Resolution R-313486, with a Date
9 of Final Passage of April 20, 2021. Consistent with the intent of the voters in approving
10 Measure C, R-313486 authorizes and approves the issuance and sale of Homelessness Program
11 Bonds with maximum bonded indebtedness, including financing costs, in an amount not to
12 exceed \$750 million, with a maximum maturity of not to exceed 40 years and bearing interest at
13 a rate or rates not to exceed the maximum rate permitted by law. Upon their issuance, the
14 Homelessness Program Bonds shall be valid and binding limited obligations of the City. The
15 City shall repay all principal and interest on the Homelessness Program Bonds solely from the
16 portion of the Additional Tax that is generated by the levy and collection of the Additional Tax
17 and deposited in the Homelessness Revenue Account, and via R-313486 the City Council
18 pledged such portion of Additional Tax Revenues for the repayment of the Homelessness
19 Program Bonds. The City shall issue the Homelessness Program Bonds no earlier than the date
20 on which the City first causes the Additional Tax to be levied on Transients in accordance with
21 Measure C.

22 21. Additionally, the City Council passed Resolution R-313487 on April 6, 2021,
23 with a Date of Final Passage of April 20, 2021. Consistent with the intent of the voters in
24 approving Measure C, R-313487 authorizes and approves the issuance and sale of Convention
25 Center Modernization Bonds with maximum bonded indebtedness, including financing costs, in
26 an amount not to exceed \$200 million, with a maximum maturity of not to exceed 40 years and
27 bearing interest at a rate or rates not to exceed the maximum rate permitted by law. Upon their
28 issuance, the Convention Center Modernization Bonds shall be valid and binding limited

1 obligations of the City. The City shall repay all principal and interest on the Convention Center
2 Modernization Bonds solely from the portion of the Additional Tax that is generated by the levy
3 and collection of the Additional Tax and deposited in the Convention Center Revenue Account,
4 and via R-313487 the City Council pledged such portion of Additional Tax Revenues for the
5 repayment of the Convention Center Modernization Bonds. The City shall issue the Convention
6 Center Modernization Bonds no earlier than the date on which the City first causes the
7 Additional Tax to be levied on Transients in accordance with Measure C.

8 22. Pursuant to R-313485, the City Council committed that, unless and until the City
9 receives a favorable trial court judgment or outcome in this validation lawsuit, it will not impose
10 or collect the increase in the City's Transient Occupancy Tax, issue any Bonds contemplated by
11 Measure C, including those authorized by R-313486 and R-313487, or take other steps to
12 implement Measure C, such as the approval of annual budgets contemplated by Measure C for
13 the expenditure of increased tax revenues for the purposes specified in Measure C.

14 **AUTHORIZATION AND NATURE OF THIS ACTION**

15 23. On April 6, 2021, in Closed Session, the City Council authorized initiation of this
16 lawsuit contingent upon the City Council's discretionary adoption in Open Session of Resolution
17 R-313485 and the related Resolutions authorizing the issuance of Bonds under Measure C,
18 Resolution R-313846 and R-313847. Resolution R-313485's Date of Final Passage was April 6,
19 2021, and the Date of Final Passage of R-313846 and R-313847 was April 20, 2021.

20 24. Section 860 of the California Code of Civil Procedure provides that a public
21 agency may bring an *in rem* action to determine the validity of any matter which under any other
22 law is authorized to be determined pursuant to Sections 860, *et seq.*, in the Superior Court of the
23 county in which the principal office of the agency is located. Plaintiff is a "public agency"
24 authorized to bring this action pursuant to California Code of Civil Procedure section 860 and
25 California Government Code section 53511.

26 25. This is an *in rem* action for the judicial examination, approval and conformation
27 of the validity of the authorization and approval of the issuance and sale of the Homelessness
28 Program Bonds and Convention Center Modernization Bonds and any and all actions that could

1 affect the validity thereof, including the determination that Measure C is an approved ballot
2 measure and validity of the transient occupancy tax increase by which the bonds will be secured
3 and repaid (referred to collectively as the Measure C Actions).

4 26. All Measure C Actions by and for the City were, are, and will be in conformity
5 with the requirements of all applicable provisions of all laws and enactments at any time in force
6 or controlling upon such actions, whether imposed by constitution, statute, charter or ordinance,
7 and whether federal, state or municipal, and were, are and will be fully in conformity with all
8 applicable requirements of all regulatory bodies, agencies or officials having or asserting
9 authority over said actions or any part thereof.

10 **SERVICE BY PUBLICATION**

11 27. The *SAN DIEGO UNION-TRIBUNE* is a newspaper of general circulation published
12 daily in the City of San Diego, California and is the newspaper most likely to give notice to
13 persons interested in these proceedings. Publication of Summons in this newspaper should be
14 ordered by the Court pursuant to Section 861 of the California Code of Civil Procedure and
15 Section 6063 of the Government Code. The City is informed and believes, and thereon alleges,
16 that Measure C and the City Council's Resolution declaring Measure C to have passed and the
17 Resolutions authorizing the issuance of Homelessness Program Bonds and for Convention
18 Center Modernization Bonds, are of general knowledge to the persons affected thereby or
19 interested therein. The only other notice reasonably practicable is (a) by posting a copy of both
20 the Summons and Complaint in two public places within the City; (b) by sending a copy of both
21 the Summons and Complaint, via regular mail and/or email, within five (5) court days of the
22 signing of the Order, to each branch library of the City, with instructions to the librarian/manager
23 in charge of each branch library to post the Summons and Complaint in a conspicuous place at
24 his or her branch library; and (c) by mailing copies of the Summons and Complaint to those
25 persons, if any, or their attorneys of record, who, not later than ten (10) days after publication of
26 Summons is complete, or such other time as the Court may order, either have expressly notified
27 in writing Plaintiff's attorneys of record of their interests in this matter or have filed and served
28 actions against Plaintiff challenging *inter alia* the validity of any matter alleged herein.

1 **FIRST CAUSE OF ACTION**

2 (Judgment of Validity)

3 28. Plaintiff City of San Diego hereby incorporates the foregoing paragraphs 1
4 through 27 as if fully restated herein.

5 29. Based upon the foregoing, the City is entitled to a judgment declaring that:

6 (a) This action is properly brought under Sections 860, *et seq.* of the
7 California Code of Civil Procedure;

8 (b) All conditions, things and acts required by law to exist, to happen or to be
9 performed precedent to and a condition of the valid enactment of Measure C and the Measure C
10 Actions have existed, happened and been performed in an appropriate time, form and manner
11 required by law;

12 (c) Measure C was duly enacted by the voters of the City of San Diego and is
13 legal, valid, and binding;

14 (d) Resolution R-313485 was duly enacted by the City Council, and is legal,
15 valid, and binding;

16 (e) The City has the authority and duty under the California Constitution and
17 laws of the State, the City Charter, and any other applicable laws, to impose and collect the
18 transient occupancy tax authorized by Measure C, and to otherwise implement and enforce
19 Measure C.

20 (f) Resolution R-313486 authorizing and approving the issuance and sale of
21 Homelessness Program Bonds was duly enacted by the City Council, and is legal, valid, and
22 binding; and

23 (g) Resolution R-313487 authorizing and approving the issuance and sale of
24 Convention Center Modernization Bonds was duly enacted by the City Council, and is legal,
25 valid, and binding.

26 30. California Code of Civil Procedure section 870(a) requires that the judgment
27 rendered in an *in rem* validation action brought under California Code of Civil Procedure
28 sections 860 and following shall permanently enjoin the institution by any person of any action

1 or proceeding raising any issue as to which the judgment is binding and conclusive. The
2 provision also states that the judgment shall be forever binding and conclusive as to all matters
3 adjudicated or which at the time could have been adjudicated against the City and against all
4 other persons.

5 **SECOND CAUSE OF ACTION**

6 (Declaratory Relief)

7 31. Plaintiff City of San Diego hereby incorporates the foregoing paragraphs 1
8 through 30 as if fully restated herein.

9 32. An actual and justiciable controversy exists between the City and Defendants
10 regarding whether Measure C was approved by the voters in the Municipal Special Election held
11 on March 3, 2020.

12 33. The City asserts that Measure C needed only a simple majority to be approved by
13 the qualified electors voting on the matter. Since the March 3, 2020 Municipal Special Election,
14 three California Court of Appeal opinions have all concluded that only a simple majority vote is
15 required for the passage of a special tax proposed by citizens' initiative. *See City and County of*
16 *San Francisco v. All Persons Interested in the Matter of Prop. C*, 51 Cal. App. 5th 703 (2020);
17 *City of Fresno v. Fresno Building Healthy Communities*, 59 Cal. App. 5th 220 (2020); *Howard*
18 *Jarvis Taxpayers Association v. City and County of San Francisco*, 60 Cal. App. 5th 227 (2021).

19 34. The City is informed and believes, and thereon alleges, that the Defendants
20 dispute the City's position and assert, at least in part due to a statement made in the ballot
21 materials, that Measure C needed an affirmative vote of two-thirds of the qualified electors
22 voting on the matter in order to be approved.

23 35. A judicial declaration resolving this dispute is therefore necessary and appropriate
24 in order to determine whether Measure C was approved by the voters at the March 3, 2020
25 Municipal Special Election so as to enable the City to ascertain its rights, duties, and obligations
26 with regards to Measure C.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for entry of judgment as follows:

3 1. That the Court order that the jurisdiction over all interested persons has been
4 lawfully obtained (a) by publication of the Summons pursuant to Section 861 of the California
5 Code of Civil Procedure and Section 6063 of the Government Code and the Order of the Court in
6 the *SAN DIEGO UNION-TRIBUNE*; (b) by posting a copy of both the Summons and Complaint in
7 two public places within the City; (c) by sending a copy of both the Summons and Complaint,
8 via regular mail and/or email, within five (5) court days of the signing of the Order, to each
9 branch library of the City, with instructions to the librarian/manager in charge of each branch
10 library to post the Summons and Complaint in a conspicuous place at his or her branch library
11 and (d) by mailing copies of the Summons and Complaint to those persons, if any, or their
12 attorneys of record, who, not later than ten (10) days after publication of Summons is complete,
13 or such other time as the Court may order, either have expressly notified in writing Plaintiff's
14 attorneys of record of their interests in this matter or have filed and served actions against
15 Plaintiff challenging *inter alia* the validity of any matter alleged herein.

16 2. That the Court find that this action is properly brought under California Code of
17 Civil Procedure sections 860, *et seq.* in the Superior Court for the County of San Diego.

18 3. That judgment be entered determining and declaring that:

19 (a) This action is properly brought under Sections 860, *et seq.* of the
20 California Code of Civil Procedure;

21 (b) All conditions, things and acts required by law to exist, to happen or to be
22 performed precedent to and a condition of the valid enactment of Measure C and the
23 Measure C Actions have existed, happened and been performed in an appropriate time,
24 form and manner required by law;

25 (c) Measure C was duly enacted by the voters of the City of San Diego and is
26 legal, valid, and binding;

27 (d) Resolution R-313485 was duly enacted by the City Council, and is legal,
28 valid, and binding;

1 (e) The City has the authority and duty under the California Constitution and
2 laws of the State, the City Charter, and any other applicable laws, to impose and collect
3 the transient occupancy tax authorized by Measure C, and to otherwise implement and
4 enforce Measure C;

5 (f) Resolution R-313486 authorizing and approving the issuance and sale of
6 Homelessness Program Bonds was duly enacted by the City Council, and is legal, valid,
7 and binding; and

8 (g) Resolution R-313487 authorizing and approving the issuance and sale of
9 Convention Center Modernization Bonds was duly enacted by the City Council, and is
10 legal, valid, and binding.

11 4. That judgment be entered ordering that all persons are thereby permanently
12 enjoined and restrained from instituting any legal action or proceeding challenging, *inter alia*,
13 the validity of the Measure C, or the Measure C Actions, which includes the authorization and
14 approval of the issuance and sale of the Homelessness Program Bonds and Convention Center
15 Modernization Bonds and any and all actions that could affect the validity thereof, including the
16 determination that Measure C is an approved ballot measure and validity of the transient
17 occupancy tax increase by which the bonds will be secured and repaid, or any other matters
18 herein adjudicated or which at this time could have been adjudicated against the City or any
19 other persons.

20 5. For a judicial declaration as stated in the Second Cause of Action that Measure C
21 was approved by the voters at the March 3, 2020 Municipal Special Election.

22 6. For costs incurred herein.

23 7. For such other and further relief as the Court may deem just and proper.

24 Dated: June 4, 2021

MARA W. ELLIOTT, City Attorney

25
26 By 
27 M. Travis Phelps
Chief Deputy City Attorney

28 Attorneys for Plaintiff,
CITY OF SAN DIEGO