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6 Attorneys for Plaintiffs
7 City of Oxnard and Stephen Fischer, in his official capacity

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF VENTURA, HALL OF JUSTICE

11 CITY OF OXNARD; and STEPHEN
12 FISCHER, in his official capacity as Interim
City Attorney of the City of Oxnard,

13 Plaintiffs,

14 v.

15 AARON STARR, an individual; and
16 DOES 1-25,

17 Defendants.

Exempt from Filing Fees
Government Code § 6103

2016 MAR 23 PM 2:36
SUPERIOR COURT

CASE NO.
Unlimited Jurisdiction

COMPLAINT FOR DECLARATORY
RELIEF

1 Plaintiffs City of Oxnard and Stephen Fischer, in his official capacity as Interim City
2 Attorney of the City of Oxnard (collectively, the “City”), hereby allege as follows:

3 **I. INTRODUCTION**

4 1. The City runs a wastewater utility through its Public Works Department. That utility
5 projected a severe revenue shortfall in fiscal year 2015/2016 and was on track to run out of money
6 by fiscal year 2017/2018. With major maintenance needs for deteriorating infrastructure, this fiscal
7 crisis for a vital government service posed a very real threat to public health and safety. Moreover, at
8 the prior rate levels, the utility was unable to honor existing bond covenants because it was unable to
9 produce enough operating income to make payments on its debt. It was therefore in danger of having
10 its credit rating downgraded to the point that its bonds would have “junk” status, potentially
11 triggering costly provisions associated with termination of derivative instruments used to hedge debt
12 interest rate risk. Furthermore, the low level of operating revenue from wastewater rates prevented
13 the City from saving more than \$1 million — perhaps more than \$1.5 million — by refunding
14 eligible existing debt to reduce annual payments. Following the requirements of Proposition 218, the
15 City conducted a duly noticed public hearing on a proposed rate increase. No more than 13 percent
16 of affected City residents opposed the increase. Stated differently, at least 87 percent of affected
17 residents allowed their elected representatives to keep a basic service solvent. The City Council
18 therefore adopted Ordinance No. 2901 in January 2016 to increase wastewater rates.

19 2. However, one City resident, Defendant Aaron Starr (“Defendant”), has proposed an
20 initiative to repeal Ordinance No. 2901 and to reinstate the insufficient wastewater rates in place
21 before that ordinance’s adoption (the “Initiative”). This Initiative is unlawful because its subject
22 matter is not one that properly may be enacted by initiative: It sets rates too low to enable the City to
23 meet its obligation to collect sufficient revenue through its wastewater rates to meet both the
24 wastewater utility’s general financial obligations and its specific contracts, including covenants with
25 bondholders. It also impairs an essential government service and impairs the City’s contracts.

26 3. Accordingly, the City brings this declaratory relief action to seek judicial clarification
27 regarding the Initiative’s lawfulness at the earliest possible time. Indeed, because the City must
28 disclose the Initiative in connection with offering bonds — as its mere existence creates risk for

1 potential bond purchasers — the City urgently needs to resolve this action so it may sell bonds at a
2 reasonable price to achieve savings and so it can implement urgently needed maintenance to its
3 wastewater infrastructure. The City seeks no damages against Defendant. It seeks only judicial
4 guidance on an important and time-sensitive question through declaratory relief.

5 **II. PARTIES**

6 4. Plaintiff City of Oxnard is a general law city organized under the Constitution of the
7 State of California and located in the County of Ventura.

8 5. Plaintiff Stephen Fischer is the Interim City Attorney of the City of Oxnard, and he
9 sues in his official capacity as such because, absent relief from this Court, he will be obliged to draft
10 a title and summary for the unlawful Initiative. This Complaint refers to Plaintiff City of Oxnard and
11 Plaintiff Fischer collectively as the “City.”

12 6. The City is informed and believes and on that basis alleges that Defendant Aaron
13 Starr is an individual who resides in Oxnard, California. He is the proponent of the Initiative.

14 7. The City is unaware of the true names and capacities, whether individual, corporate,
15 or otherwise, of Defendants Does 1 through 25, inclusive, and it therefore sues those parties by
16 fictitious names. The City will seek leave to amend this Complaint to state the true names and
17 capacities of the fictitiously named parties when they have been ascertained. The City is informed
18 and believes, and on that basis alleges, that at all times relevant to this action each of the Defendants
19 fictitiously named as Does 1 through 12 was the agent, servant, employee, or co-venturer of each of
20 the other Defendants, and took part in the acts or omissions alleged in this Complaint while acting
21 within the course and scope of such employment or agency. Defendants fictitiously named as Does
22 13 through 25 are persons whose capacities are unknown to the City.

23 **III. JURISDICTION AND VENUE**

24 8. The Court has jurisdiction over this matter under Code of Civil Procedure section
25 1060 et seq. because the City desires a declaration of its rights and duties with respect to the
26 Initiative.

27 9. Venue is proper in this Court because the Defendant is an individual who, upon
28 information and belief, resides in the City of Oxnard. Defendant’s Initiative purports to rescind a

1 decision of the Oxnard City Council and would affect all wastewater customers in the City. In sum,
2 the parties all reside in, and the events giving rise to this action all occurred in, the City of Oxnard,
3 County of Ventura.

4 **IV. GENERAL ALLEGATIONS**

5 10. The City has a population in excess of 200,000, and its wastewater utility serves more
6 than 40,000 customer accounts at 37,355 parcels. The utility system includes the City’s regional
7 treatment plant, an ocean outfall, and a collection system consisting of 430 miles of sewer pipes and
8 15 pump stations. A recent assessment of the wastewater utility infrastructure revealed that nearly 30
9 percent of the utility’s assets are in poor or very poor condition. The overall system received a grade
10 of “D” based on the visible assets at the treatment plant and lift stations.

11 11. Recently, the revenues coming into the utility have been significantly outpaced by the
12 costs to provide wastewater service. The City therefore engaged a professional consultant to prepare
13 a rate study projecting the wastewater utility’s revenue needs over the coming years, and
14 recommending wastewater rate increases to meet those needs. A true and correct copy of the portion
15 of that rate study dedicated to the City’s wastewater utility is attached to this Complaint as Exhibit A
16 and incorporated herein by this reference. Through this third-party rate study and its own analysis of
17 its finances, the City determined its wastewater utility had a \$4 million shortfall in revenue, and it
18 projected the utility’s operating cash reserves would be depleted (i.e., it would simply run out of
19 money) sometime during Fiscal Year 2016–2017 or 2017–2018.

20 12. The consequences of letting such a scenario unfold are significant and easy to
21 understand. Without funds to maintain or replace vital aging infrastructure, urgently needed
22 maintenance projects would be delayed on facilities that either have failed or are reaching the end of
23 their useful life. Most importantly, much of the City’s wastewater treatment plant was built in the
24 1950s and upgraded in the 1970s. It has deteriorated and, in some areas, is at or near failure. Indeed,
25 equipment failure recently led to the discharge of 80,000 gallons of partially treated wastewater.
26 Unless the City pursues major maintenance at its wastewater plant and other components of its
27 wastewater infrastructure — something it could not do under the wastewater rates in effect in 2015
28 — the City may fail to meet regulatory requirements, which in turn both poses a risk to public health

1 and subjects the City to potential fines.

2 13. Wastewater revenues secure existing bonds and bondholders are entitled to payment
3 from those revenues. Even though bondholders enjoy this entitlement, the City's wastewater utility
4 faced an imminent threat to its credit rating. Under the Government Code, when the City issues
5 bonds for its utility, it must generate sufficient revenues to meet its commitments to the parties who
6 hold those bonds, including commitments to generate sufficient reserves — a margin between
7 revenue coming in and expenses going out. (Gov. Code, § 54515 [revenue “shall be at least
8 sufficient” to cover principal and interest on bonds, as well as any agreement for “the creation of
9 sinking and reserve funds”].)

10 14. As required by the installment purchase agreements in connection with four bond
11 transactions, the City’s wastewater utility has a covenant to fix, prescribe, and collect rates and
12 charges that will be at least sufficient to yield during each fiscal year net system revenue equal to
13 100 percent of annual debt service on outstanding bonds. The projected financial results for fiscal
14 year 2015/2016 indicate a violation of the rate covenant is imminent under the prior wastewater
15 rates, and this in turn would have disastrous results for the City’s credit. Indeed, in November 2015,
16 Standard & Poor’s gave the City’s wastewater utility a BBB credit rating, but it noted this was
17 “highly dependent” on a future increase in the utility’s revenues, and it further warned that this
18 rating would be downgraded if “liquidity continues to deteriorate during the outlook horizon.” In
19 Standard and Poor’s understated technical terms, such a downgrade would leave the utility “regarded
20 as having significant speculative characteristics.” In laymen’s terms, the utility’s bonds would be
21 relegated to “junk” status.

22 15. Under Article XIII D of the California Constitution (“Proposition 218”), the City thus
23 duly mailed notice of a protest hearing on a rate increase it was considering, and it held that protest
24 hearing on January 19, 2016. If a majority of the wastewater utility’s customers submitted written
25 protests opposing the City’s proposed rate increase, the City Council would be unable to adopt that
26 increase. (Cal. Const., art. XIII D, § 6, subd. (a).) As noted above, the City’s wastewater utility
27 serves 37,355 parcels, and thus 18,678 protests were required to defeat the City’s proposed rate
28 increase. However, the City received only 4,839 written protests. This figure represents “raw”

1 protests because it was unnecessary for the City to analyze them to determine if any were duplicative
2 or otherwise invalid: Even assuming every letter the City received was valid, only 13 percent of the
3 City’s wastewater customers, representing just 2 percent of the City’s total population, opposed the
4 badly needed rate increase before their elected City Council.

5 16. The City subsequently approved an increase in wastewater rates by adopting
6 Ordinance No. 2901 on January 26, 2016. A true and correct copy of Ordinance No. 2901 is attached
7 to this Complaint as Exhibit B and incorporated herein by this reference.

8 17. On March 8, 2016, Defendant Aaron Starr submitted his proposed Initiative to the
9 City. A true and correct copy of the Initiative is attached to this Complaint as Exhibit C and
10 incorporated herein by this reference. The Initiative’s stated purpose is “to repeal City of Oxnard
11 Ordinance No. 2901, also known as the Ordinance of the City Council of the City of Oxnard
12 Establishing Wastewater System User Fees and Charges, enacted January 26, 2016, and revert to the
13 lower rate structure in effect prior to its adoption.” (Exh. C [Initiative, § 3(a)].)

14 18. Under Elections Code section 9203, Plaintiff City is obliged through its Interim City
15 Attorney, Plaintiff Stephen Fischer, to prepare a title and summary for the Initiative that Defendant
16 must include in his initiative petition presented to voters. However, case law permits the City to
17 delay this obligation while it seeks declaratory relief from this Court if, as is the case here, the
18 proposed measure is not one that may be properly enacted by initiative.

19 19. Defendant’s proposal to force the City to revert to the wastewater rates in effect prior
20 to Ordinance No. 2901 may not be enacted by initiative for at least three related but ultimately
21 independent reasons. First, Defendant’s Initiative would violate Government Code section 54515 by
22 preventing the City from collecting enough revenue to cover its contracts, including but not limited
23 to bond covenants, and its other costs to operate its wastewater utility.

24 20. Second, the Initiative would impair an essential government service. The rates
25 Defendant would force the City to employ are demonstrably insufficient to keep the City’s
26 wastewater utility solvent over even the next few years. Much less are those rates sufficient to
27 support badly needed maintenance on vital infrastructure that is failing or deteriorating. The City has
28 a duty to provide safe and reliable wastewater service to those who rely on that service, and thus the

1 inadequate rates Defendant proposes are impermissible whether set by the City Council or the
2 voters.

3 21. Third, the Initiative would unconstitutionally force the City to violate its contractual
4 obligations, including but not limited to its covenants with bondholders. The wastewater rates in
5 effect before Ordinance No. 2901 provided too little revenue to meet these obligations.

6 22. In short, the City Council could not pass Defendant's Initiative as an ordinance, so the
7 City's voters cannot pass it as an initiative either. (See *Mission Springs Water Dist. v. Verjil* (2013)
8 218 Cal.App.4th 892, 919–921.) Accordingly, the City and its Interim City Attorney bring this
9 Complaint for declaratory relief to seek this Court's guidance on whether the Initiative may properly
10 be enacted by initiative, and thus whether the City and Interim City Attorney must prepare a title and
11 summary under Elections Code section 9203.

12
13 **FIRST CAUSE OF ACTION**

14 **Declaratory Relief**

15 23. The City realleges paragraphs 1 through 22 above as though set forth fully herein.

16 24. An actual and present controversy has arisen and now exists between the City, on the
17 one hand, and Defendant, on the other. The City contends that the Initiative would force the City to
18 set rates too low to meet the requirements of Government Code section 54515, which obliges the
19 City collect sufficient wastewater revenue to pay (a) interest and principal on its bonds, (b) all
20 payments required by its agreements with bondholders, including the creation of sinking and reserve
21 funds, (c) all payments to meet any other obligations that are charges, liens, or encumbrances upon,
22 or payable from, the wastewater utility's revenues, and (d) all current expenses of maintenance and
23 operation of the wastewater utility. The Initiative would also impair an essential government
24 function, threaten the health and safety of a public who depend on the City's wastewater service, and
25 prevent the City from levying wastewater rates sufficient to meet the City's existing bond
26 commitments and other contracts. As a result, the City contends that the measure is not one that
27 properly may be enacted by initiative. Defendant contends the Initiative is one that may properly be
28 adopted by the initiative process.

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25. In the absence of declaratory relief, the Interim City Attorney will be required to prepare a title and summary for the Initiative and, if sufficient signatures are obtained, the City Council may be required to submit it to the voters at the next regular election, thereby incurring fiscal costs of an election on a measure that is not properly the subject of an initiative even if it receives a majority vote. The City's wastewater utility will be unable to issue debt during that time of uncertainty regarding its credit status, and urgent repairs and improvements to this essential government service will be stalled. The City therefore seeks pre-election relief to avoid these unnecessary costs and to protect its tax- and rate-payers.

26. The City desires and is entitled to a judicial declaration that, because the Initiative exceeds the scope of the initiative power, would impair an essential government service and would impair the City's contracts, its Interim City Attorney need not prepare a title and summary.

27. Therefore, the City prays for declaratory relief as specified more fully below.


PRAYER

WHEREFORE, the City prays for relief as follows:

- 1. For a judicial declaration that the Initiative is not one that may properly be enacted by initiative.
- 2. For a judicial declaration that the Interim City Attorney need not prepare a title and summary for the Initiative, and that no other City official need call an election for or otherwise process the Initiative.
- 3. For costs of suit incurred.
- 4. For such other and further relief as the Court deems proper.

DATED: March 23, 2016

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