

1 RUTAN & TUCKER, LLP  
Jeffrey T. Melching, City Attorney (State Bar No. 180351)  
2 jmelching@rutan.com  
William M. Marticorena (State Bar No. 77309)  
3 bmarticorena@rutan.com  
611 Anton Boulevard, Suite 1400  
4 Costa Mesa, California 92626-1931  
Telephone: 714-641-5100  
5 Facsimile: 714-546-9035

**Exempt From Filing Fees Pursuant  
to Government Code § 6103**

6 LARSON O'BRIEN LLP  
Stephen G. Larson (State Bar No. 145225)  
7 slarson@larsonobrienlaw.com  
Paul A. Rigali (State Bar No. 262948)  
8 prigali@larsonobrienlaw.com  
Steven A. Haskins (State Bar No. 238865)  
9 shaskins@larsonobrienlaw.com  
555 South Flower Street, Suite 4400  
10 Los Angeles, CA 90071  
Telephone: 213.436.4888  
11 Facsimile: 213.623.2000

12 Attorneys for Plaintiff/Petitioner  
CITY OF IRVINE

13

14

SUPERIOR COURT OF THE STATE OF CALIFORNIA

15

FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

16

CITY OF IRVINE,

Case No.

17

Plaintiff,

18

vs.

**PETITION FOR WRIT OF MANDATE  
(C.C.P. §§ 1085, 1094.5) AND COMPLAINT  
FOR VIOLATIONS OF THE RALPH M.  
BROWN ACT, DECLARATORY RELIEF  
FOR PUBLIC NUISANCE, AND  
INJUNCTIVE RELIEF**

19

COUNTY OF ORANGE, a political  
subdivision of the State of California;  
20 ORANGE COUNTY BOARD OF  
SUPERVISORS; and DOES 1 through 25,  
21 inclusive,

[Code Civ. Proc. §§ 526, 1060, 1085, 1094.5,  
and Pub. Res. Code § 21000 *et seq.*]

22

Respondents.

23

24

**INTRODUCTORY ALLEGATIONS**

25

1. This Petition for Writ of Mandate and Complaint ("Petition") is brought by Plaintiff

26

City of Irvine ("City") pursuant to Code of Civil Procedure sections 1085, 1094.5, 1060 and 526 *et*

27

*seq.*, as well as Public Resources Code sections 21167, 21168 and 21168.5, to challenge the County

28

of Orange ("County") and Orange County Board of Supervisors' ("Board") (collectively,

1 “Respondents”) action at the County’s Special Meeting on March 19, 2018, directing County staff  
2 to develop an operational plan for “tent city” encampments to be located in the cities of Irvine,  
3 Huntington Beach, and Laguna Niguel (“Action”).

4 2. For many years, the County of Orange has disregarded its responsibility to address  
5 the County’s regional homelessness problem. While the number of homeless persons living within  
6 the County has increased, the County has repeatedly failed to provide needed shelter and services  
7 to alleviate the problem. As a result of the County’s failures, hundreds of homeless residents have  
8 taken to camping along the Santa Ana River and at the Santa Ana Civic Center, and the number of  
9 homeless deaths has increased by sixty-four percent between 2013 and 2017.

10 3. In January 2018, the County began removing homeless individuals from a river  
11 encampment without any plan regarding where the displaced residents would find refuge. The  
12 planning failures that plagued the County’s efforts have spurred wide-spread criticism and a federal  
13 lawsuit, demanding the development and implementation of a meaningful plan to relocate displaced  
14 homeless persons and provide services commensurate to their needs.

15 4. The County acknowledges its failures with respect to this crisis. Board Chairman  
16 Andrew Do has publicly conceded that “we [the Board] don’t have a defense. I’m going to be the  
17 first to own up that we have failed.” Chairman Do further explained that “to lead requires we are  
18 proactive and not reactive, and we have failed.”

19 5. The Board’s March 19, 2018 plan to relocate homeless residents to as-yet  
20 unestablished tent cities reveals that the County’s proclaimed willingness to accept responsibility  
21 for its failures to address homelessness is little more than rhetoric. The County’s response to the  
22 legal and political pressure resulting from this crisis has been reactive and disordered. Rather than  
23 develop a responsible and permanent plan to use County resources—including a reported \$250  
24 million in unspent money earmarked for mental health services—to increase the number of  
25 permanent shelter locations and attendant services, the County has cobbled together a patchwork  
26 plan for itinerant “tent cities” in Irvine, Huntington Beach, and Laguna Niguel. The County’s hasty  
27 and unconsidered plan is not a permanent solution to the problem of housing Orange County’s  
28 homeless. It is instead an obvious attempt to foist the County’s responsibilities on Irvine and other

1 cities.

2 6. Based on information and belief, the County is building a tent city in Irvine, located  
3 on approximately 108 acres of land in the City of Irvine's Great Park (the "Irvine Site"), which was  
4 formerly part of the El Toro Marine Corps Air Station (the "Base"). The Irvine Site will be the  
5 primary location for the County's planned tent city, where the County proposes to accommodate  
6 200 individuals. When capacity in Irvine is met, the County intends to relocate homeless residents  
7 to tent cities in Huntington Beach, and thereafter, to Laguna Niguel. The City is informed and  
8 believes that the County intends to commence construction of the Irvine tent city immediately—or  
9 has already done so.

10 7. The County, however, has not provided any specifics to explain how homeless  
11 individuals (a) will be transported to and from the Irvine location, (b) will be able to maintain  
12 proximity to needed County services, none of which are available near the Irvine Site, and (c) will  
13 be provided with necessary sanitary conditions, security, and other incidentals predicate to housing  
14 200 or more individuals in the same area. The County also has not conducted the requisite  
15 environmental impact reports and studies to determine the environmental impacts the planned  
16 temporary tent city may have on surrounding communities, including the Great Park.

17 8. Irvine has heretofore taken the proactive approach the County has generally shunned.  
18 For example, Irvine is a recognized leader in affordable housing, providing millions of dollars in  
19 funding and grants for programs to make housing affordable to low-income citizens. The City of  
20 Irvine recognizes the need for local governments to cooperate on solutions to Orange County's  
21 homeless problem. But Irvine cannot be asked to have the County's responsibilities foisted upon it,  
22 and certainly not under these circumstances.

23 9. The absence of a coherent plan is a glaring indication of the County's true motives  
24 here. The County is undertaking these actions not for the stated purpose of serving its homeless  
25 population, but instead as a stalking horse to force the City to accede to its true plans for the property.  
26 These plans have nothing to do with housing for the homeless and everything to do with the  
27 County's thirst for yet another luxury development. The County and City remain locked in litigation  
28

1 over the County’s true long-term plans for the property—plans that the County no doubt hopes the  
2 City will now reconsider. Such legal entanglements do nothing to assist the homeless.

3 10. The holes in the County’s professed plan are not the only evidence of its motives.  
4 Acting in haste, the Board’s actions were taken in violation of the Ralph M. Brown Act (“Brown  
5 Act,” codified as California Government Code §§ 54950 *et seq.*), at a rushed special meeting without  
6 adequate notice to City officials or residents.

7 11. Likewise, the Action is inconsistent with the City’s General Plan, the County’s  
8 General Plan, and the City and County Codes. The County must house the homeless in safe and  
9 legal conditions. Further, the Action completely disregards the requirements of the California  
10 Environmental Quality Act (“CEQA,” codified as Public Resources Code §§ 21000 *et seq.*), the  
11 State CEQA Guidelines (“CEQA Guidelines,” promulgated as title 14 of the California Code of  
12 Regulations, §§ 15000 *et seq.*), and the County’s own CEQA Procedures Manual. The County’s  
13 deliberate disregard for these laws will create conditions constituting the equivalent of a public  
14 nuisance on the Irvine Site. The County fails to account for hazardous materials already present on  
15 (or near) the intended Irvine Site, and Respondents fail to account for and/or comply with state laws  
16 and regulations for (among other things) water quality, toxics, and air quality.

17 12. Respondents also intend to breach multiple agreements. For example,  
18 implementation of the County’s Action is likely to breach Implementation Agreement No. 2  
19 Between the City of Irvine, Irvine Redevelopment Agency and County of Orange, which was  
20 entered into on August 17, 2010 (“Implementation Agreement”). The Action will also breach the  
21 existing Sublease Between the City of Irvine and County of Orange For Institutional Parcel Within  
22 El Toro LIFOC Parcel 3, which was entered into on August 17, 2010 (“LIFOC Sublease”).

23 13. This Petition seeks a Court Order (a) mandating that Respondents rescind approval  
24 of the Action, (b) enjoining Respondents from approving any action on the Irvine Site or any other  
25 property in the City now under County control without complying with state and local laws,  
26 including CEQA, and (c) enjoining Respondents from approving any action on the Irvine Site or  
27 any other property in the City now under County control that allows uses that are inconsistent with  
28 either the City or County General Plans. This Petition also seeks a Court Order (a) declaring that

1 Respondents' approval of the Action, if implemented, would constitute a public nuisance and (b)  
2 enjoining Respondents from approving any other action that would constitute a public nuisance.

3 **THE PARTIES**

4 14. The City is, and at all times mentioned herein was, a municipal corporation and  
5 charter city, duly organized and existing under the Constitution and laws of the State of California  
6 and the City's Charter, and is governed by its duly elected City Council. The City has been, for  
7 many years, designated as "the safest city in America" for cities with a population over 100,000  
8 residents. The City has the authority and duty to protect the public health, safety and general welfare  
9 of its citizens, residents, employees and visitors within its boundaries, including those who travel  
10 through or are otherwise directly or indirectly affected by the operation and use of the Irvine Site.  
11 By virtue of its police powers, duties and responsibilities, the City is beneficially interested in the  
12 Irvine Site and the outcome of this proceeding. Unlike virtually any other site within the City's  
13 jurisdiction, the City is not the lead agency under CEQA for any projects on the Irvine Site, and the  
14 County has steadfastly refused to allow the City land use (or any) approval authority over prior  
15 projects on the Irvine Site, over the City's objections. As described above, the Action would result  
16 in a non-compliant, sub-standard "tent city" in a manner failing to comply with City or County  
17 Codes and standards, and which would immediately and continuously cause significant public  
18 nuisance, public safety, and code enforcement concerns for the City. As a result, the Action will  
19 result in significant impacts on the City and its residents.

20 15. Further, issuance of the relief requested in this Petition will confer significant  
21 benefits on the general public by requiring Respondents to carry out their duties under CEQA and  
22 other applicable state and local laws prior to proceeding with the Action. Issuance of the relief  
23 requested will also result in the enforcement of important rights affecting the public interest by  
24 compelling the County to engage in a fair, objective, and legally adequate analysis of the Action,  
25 and ensure that the public has a meaningful opportunity to review and comment on the impacts of  
26 the Action or any other action or project on the Irvine Site. All of this will lead to a better, well-  
27 considered, and permanent solution to Orange County's homelessness problem than Respondents  
28 currently contemplate.

1           16.     The City also brings this action as a private attorney general pursuant to Code of  
2 Civil Procedure section 1021.5, and any other applicable legal theory to enforce important rights  
3 affecting the public interest. The necessity and financial burden of enforcement are such as to make  
4 an award of attorneys' fees appropriate in this case. Absent enforcement by the City, the County  
5 will proceed with an action that will cause significant, unmitigated environmental impacts that might  
6 otherwise have been reduced or avoided through legally adequate environmental review and the  
7 adoption of feasible mitigation measures.

8           17.     The County is a political and geographical subdivision of the State of California with  
9 its principal offices located in the City of Santa Ana, California, with the legal ability to be sued.  
10 (*See*, Government Code § 23001 *et. seq.*) The County has previously acted as lead agency for  
11 environmental review of a project on the Irvine Site and has certified a Final Programmatic  
12 Environmental Impact Report ("FPEIR") in that capacity, as indicated in a November 14, 2017  
13 Notice of Determination ("NOD"). The County has a mandatory duty to comply with applicable  
14 local planning documents (*e.g.*, the City and County General Plans), local ordinances, and state law  
15 requirements, including CEQA and the CEQA Guidelines, when considering discretionary activities  
16 and land use regulatory actions, such as the Action. The County also has a mandatory duty to  
17 comply with the LIFOC Sublease and Implementation Agreement.

18           18.     The Board is the legislative body of the County, which voted to approve the Action  
19 on March 19, 2018.

20           19.     The City is ignorant of the true names and capacities of Respondents sued herein as  
21 Does 1 through 50 and therefore sues those Respondents by such fictitious names. The City is  
22 informed and believes and alleges thereon that each of the fictitiously-named Respondents is in  
23 some manner responsible or liable for the events and happenings referred to herein, and that each  
24 such fictitiously named Respondent caused injury and damage to City as alleged in this Petition.  
25 The City will seek leave of Court to amend this Petition to allege the true names and capacities of  
26 such fictitiously-named Respondents when the same are ascertained.

27  
28

1 **JURISDICTION AND VENUE**

2 20. This Court has jurisdiction over this proceeding pursuant to California Code of Civil  
3 Procedure sections 1085, 1094.5, 1060, 526 et seq., and CEQA, including but not limited to Public  
4 Resource Code sections 21167, 21168 and 21168.5.

5 21. Venue in this Court is proper pursuant to, *inter alia*, Code of Civil Procedure section  
6 394, in that the Irvine Site is located within the City of Irvine and the County of Orange and both  
7 the Plaintiff and Respondents are situated in Orange County. Under these facts, jurisdiction and  
8 venue are proper in the Superior Court of the State of California, County of Orange.

9 **GENERAL ALLEGATIONS**

10 **The Irvine Site Was Annexed from the County into the City in 2004**

11 22. In July 1992, the United States Navy decided to close the Base under the Base  
12 Realignment and Closure Act. At that time, the Base was located in an unincorporated area of the  
13 County.

14 23. At the March 5, 2002 election, the County’s voters adopted Measure W, and in so  
15 doing, decided that the Base would be redeveloped as what is now known as the Orange County  
16 General Plan. In particular, Measure W “amends the Orange County General Plan to authorize the  
17 closed [Base] to be used for non-aviation uses, including a multi-purpose central park, open space,  
18 nature preserve, universities and schools, cultural facility, and other interim and long-term uses  
19 described herein.” (Measure W, § A.) The County’s proposed “tent city” does not satisfy any of  
20 these use categories and is therefore inconsistent with the Orange County General Plan, as amended  
21 by Measure W.

22 24. Dating back to November 25, 1997, the City determined that it would pursue  
23 annexation of the Base into the City. Before annexation could be accomplished, the following five  
24 steps, among others, had to be completed: (1) rezoning of the property; (2) formulation of a  
25 Municipal Services Plan; (3) preparation of a Fiscal Impact Report; (4) preparation of environmental  
26 documentation; and (5) entry into a Property Tax Exchange Agreement with the County. Although  
27 the City had substantial control over the first four steps in the process, execution of a Property Tax  
28 Exchange Agreement required the cooperation and consent of the County.

1           25.     The County did not have any viable objections to annexation of the Base into the  
2 City. The County, however, demanded and received several significant concessions from the City  
3 beyond an appropriate division of property tax revenues, notwithstanding the specific limitations of  
4 the property tax exchange agreements in Revenue & Taxation Code (“R&T Code”) §§ 99 and 99.02.  
5 Among other concessions, the County received approximately 108 acres generally located south of  
6 Marine Way, north of the Railroad tracks that run along the southern border of the El Toro property,  
7 and generally east of O Street (*i.e.*, the Irvine Site).

8           26.     The City is informed and believes, and alleges thereon, that the City completed its  
9 annexation of the Base, specifically including the Irvine Site, in January 2004.

10          27.     On or about October 12, 2004, the City entered into a development agreement with  
11 the developers of the remainder of the former Base property, which was amended in December 2010  
12 (the Amended and Restated Development Agreement, or “ARDA”).

13          28.     As set forth in the ARDA and evidenced by the Irvine Site’s General Plan and zoning  
14 designations, as well as other long range planning documents (*e.g.*, the Southern California  
15 Association of Governments’ Regional Transportation Plan/Sustainable Communities Strategy  
16 (“SCAG’s RTP/SCS”)), the Irvine Site has long been planned for approximately 30,000 square feet  
17 of *low impact* governmental/institutional uses resulting in a maximum of 6,916 average daily trips  
18 (“ADTs”).

19                                 **The County Processed and Approved an Environmental**  
20   **Impact Report for the Irvine Site in 2016**

21          29.     On or about January 28, 2014, the Board approved a Disposition and Development  
22 Agreement (“DDA”) with Lowe Enterprises Real Estate Group (“Lowe”), which set up the  
23 framework for developing the Irvine Site and another site in the City with private, for-profit  
24 residential, office, retail and hotel uses. The City is informed and believes, and alleges thereon, that  
25 the DDA included a form master ground lease and replacement ground lease, and set forth three  
26 phases of developing the Irvine Site: (a) Phase 1, entitlements; (b) Phase 2, infrastructure; and (c)  
27 Phase 3, vertical development and leasing.

28          30.     The City is informed and believes, and alleges thereon, that the County and Lowe



1 collectively prepared the Development Plan to begin the so-called entitlement phase, or “Phase 1.”  
2 The City is further informed and believes, and alleges thereon, that nothing in the County’s Zoning  
3 Code authorizes a “development plan” entitlement, which appears to have been created by Lowe  
4 and the County specifically for the Irvine Site (and the development of another parcel in the City).  
5 In substance, the Development Plan is similar to a specific plan.

6 31. On or about November 7, 2014, the County released the Notice of Preparation  
7 (“NOP”) of a Programmatic Environmental Impact Report (“PEIR”) to analyze the impacts of  
8 development of the Irvine Site permitted by the proposed Development Plan. The Development  
9 Plan referenced in the NOP and ultimately analyzed as the “Project” in the FPEIR would have  
10 allowed development of the Irvine Site with 1,876,000 square feet of office uses, 2,103 dwelling  
11 units, 220,000 square feet of retail, and 242 hotel rooms (the “NOP Project”).

12 32. On November 4, 2016, the County released Draft Program EIR No. 620 (“DPEIR”)  
13 (State Clearinghouse No. 2014111019) for public review and comment. The County received many  
14 comments from concerned and interested parties, including the City, pointing out the DPEIR’s many  
15 significant problems. Since this time, the County and the City have engaged in legal and political  
16 disputes regarding the fate of the Irvine Site.

17 33. Among other issue areas, the DPEIR included an analysis of Hazardous Materials.  
18 The DPEIR concluded that the Irvine Site contains Volatile Organic Compound (“VOC”); however,  
19 testing was not conducted because the area was inaccessible to the County. The DPEIR notes that  
20 “there are some data gaps regarding environmental conditions” on the Irvine Site. Moreover, the  
21 DPEIR concluded that levels of hazardous materials on the Site exceeded risk thresholds for  
22 residential uses and specifically stated that “[s]hould the land use at these locations include  
23 residential uses, potential risks may need to be re-evaluated.” It is unclear whether any additional  
24 testing was conducted on the Irvine Site to re-evaluate risks. However, based on the DPEIR,  
25 Respondents’ Action would jeopardize the safety of the 200 homeless residents who may utilize the  
26 Irvine Site.

27 34. During the EIR process and thereafter, the County has taken the position that  
28 regardless of the uses it approves for the Irvine Site, the Project is entirely exempt from the City’s

1 land use authority and all other potentially applicable land use regulations, standards and  
2 requirements. (See, e.g., Section 4.9.1 of the DPEIR [stating that the Project is not subject to the  
3 City's land use jurisdiction, including the City's plans, policies, and regulation].) No provision of  
4 law supports the County's position that the Project, or any other proposed use of the Irvine Site,  
5 including the tent city proposed in the Board's March 19, 2018 Action, is exempt from City  
6 regulation and the City and County General Plans (including Measure W).

7 35. Despite the City's objections, the Board certified the FPEIR and approved  
8 Alternative 3 to the Project, which permitted development of 1,000,000 square feet of office uses,  
9 1,998 dwelling units of residential, 200,000 square feet of retail, and 242 hotel rooms, along with  
10 the associated infrastructure.

11 **Existing Litigation Related to the Irvine Site**

12 36. In December of 2017, the City filed a Petition for Writ of Mandate and Complaint  
13 against the County concerning the County's November 14, 2017 approval of the Project, initiating  
14 the matter *City of Irvine v. County of Orange, et. al.*, Orange County Superior Court Case No. 30-  
15 2017-00961107-CU-WM-CXC ("Existing CEQA Litigation").

16 37. On March 14, 2018, the Honorable Kim G. Dunning granted the City's Motion to  
17 Transfer Venue from Orange County to Sacramento, notwithstanding the County's strident  
18 opposition to the Motion to Transfer. Thus, the Existing CEQA Litigation over the Irvine Site is  
19 currently ongoing. Since the litigation was transferred, the County has repeatedly attempted to  
20 reassert leverage over the City in the ongoing dispute.

21 **The City's General Plan and Zoning Code Do Not Permit the Contemplated Tent City**

22 38. The City's General Plan identifies the Irvine Site as Orange County Great Park  
23 (Planning Area 51). The intent of the Great Park designation is "development of regionally  
24 significant conservation and open space, parks and recreation, educational facilities, and other  
25 public-oriented land uses, integrated with privately developed multi-use, residential, commercial,  
26 and industrial properties, at the former MCAS El Toro site." The City's General Plan envisions the  
27 Great Park as a "countywide asset consistent with the intent of the citizens of Orange County, who  
28 adopted Measure W." General Plan Land Use Element Table A-1, Maximum Intensity Standards

1 by Planning Area, lists permitted development intensities in Planning Area 51 as Multi-Use,  
2 Institutional (Public Facility), Industrial (Research/Industrial and Community Commercial), and  
3 Commercial land uses. As noted in Table A-1 (Footnote 17), the Institutional (Public Facility) use  
4 is limited to 122,500 square feet for Orange County Transit Authority facilities, 300,000 square feet  
5 for County of Orange facilities, 263,000 square feet for warehousing for homeless providers,  
6 468,000 square feet of institutional uses, 26,000 square feet of sports park, and 53,500 square feet  
7 of remote airport terminal. The County’s contemplated tent city does not fall within any of the  
8 categories permitted in the Orange County Great Park land use designation. It does not qualify as  
9 “facilities” or “warehousing.”

10 39. The Irvine Site is identified as Institutional (6.1) on the City’s Zoning Map, the intent  
11 of which is to apply to public and quasi-public facilities such as churches, schools, and utilities.  
12 Permitted uses include emergency shelters; however, “emergency shelter” is defined in the City’s  
13 Zoning Code as “[h]ousing with minimal supportive services for homeless persons that is limited to  
14 occupancy of six months or less by a homeless person.” (City of Irvine Zoning Code § 1-2-1.) The  
15 County’s proposed tent city does not meet the definition of “housing” with supportive services and  
16 there is no indication that the County intends to limit occupancy to six months. Thus, it is not a  
17 permitted use under the City’s Zoning Code.

18 **Measure W Does Not Permit The Proposed Tent City**

19 40. Measure W “amends the Orange County General Plan to authorize the closed [Base]  
20 to be used for non-aviation uses, including a multi-purpose central park, open space, nature preserve,  
21 universities and schools, cultural facility, and other interim and long-term uses described herein.”  
22 (Measure W, § A.) The County’s proposed “tent city” does not qualify under any of these use  
23 categories and is therefore inconsistent with the County’s General Plan, as amended by Measure W.

24 41. The County’s Zoning Code Section 7-9-148.8(d)(3) only permits emergency shelters  
25 for the homeless of up to 50 beds. A maximum of 150 beds may be permitted pursuant to Section  
26 7-9-148.8(d)(3) only if a use permit (a discretionary approval) is approved by the Board. The Action  
27 approved a tent city with 200 beds at the Irvine Site, which is not permitted under the County’s  
28

1 Zoning Code, even if the County had obtained a use permit (which it did not). Thus, the Action is  
2 not permitted by the Orange County Zoning Code.

3 **The County's March 19, 2018 Action**

4 42. The County published an agenda for a Special Meeting on March 19, 2018, which  
5 included a bare statement that the Board would “[p]rovide direction to staff concerning the provision  
6 of additional services and housing alternatives to homeless individuals.” This agenda item failed to  
7 notify the public or the City that the Board would consider a tent city in Irvine (or at any other site).

8 43. At the County's March 19, 2018 Special Meeting, the Board approved the Action,  
9 which directed staff to develop operational plans for a temporary “tent city” shelter for up to 200  
10 individuals at the Irvine Site, as well as secondary sites in Huntington Beach and Laguna Niguel.  
11 The City is informed and believes and thereon alleges that the Board made clear the Irvine Site was  
12 the County's top choice for its planned “tent city,” without meaningful notice or input from the  
13 City's officials or residents. While the Action contemplated a temporary facility, at least one Board  
14 member commented that the three tent cities would need to be “permanently” available.

15 44. The City is also informed and believes and thereon alleges that, after the March 19,  
16 2018 Special Meeting, at least one member of the Board told the public that the County now intends  
17 to shelter up to 400 individuals at the Irvine Site.

18 45. The City is informed and believes that the County approved the Action without  
19 regard for the necessary public utilities and services that will need to be provided to the “tent city,”  
20 including water, hazardous waste clean-up, toilet facilities, security, and public safety protections.  
21 Notwithstanding the haphazard nature of the County's Action, the City is informed and believes that  
22 the County intends to immediately begin constructing the tent city, or has already begun doing so.  
23 This is true though the City is informed and believes that at least one Board member commented on  
24 March 19, 2018 that tent cities are “inhumane.”

25 46. During the March 19, 2018 Special Meeting, Board Chairman Andrew Do referenced  
26 a “CEQA review memo” prepared by the Orange County Public Works Department. However, no  
27 such memorandum was made publically available prior to or following the Special Meeting. Thus,  
28 the public had no meaningful opportunity to review the County's CEQA procedures with regard to

1 the Action.

2 47. The City is informed and believes that based on the County's publicly available  
3 documents and records pertaining to the March 19, 2018 Action, the County undertook no CEQA  
4 analysis with the respect to the Action.

5 48. Following the County's shocking Action, the City held a Special Meeting on March  
6 20, 2018 at 6:00 p.m. At that Special Meeting, one Board member informed the City Council that  
7 the County's Action is the County's retribution for the Existing CEQA Lawsuit. This Board  
8 member further suggested that placing a tent city on the Irvine Site is not a legitimate public welfare  
9 proposal, but is instead intended as leverage to force the City to withdraw the Existing CEQA  
10 Lawsuit.

11 **FIRST CAUSE OF ACTION**

12 **(Writ of Mandate – All Respondents)**

13 49. The City realleges and incorporates by this reference each and every allegation  
14 contained in paragraphs 1 through 48.

15 50. The City seeks a Writ of Mandate on several independent grounds. Each of these  
16 grounds is individually, and collectively, sufficient to warrant the issuance of a Writ of Mandate.

17 **Respondents' Violation of the California Environmental Quality Act**

18 51. Respondents violated CEQA and the CEQA Guidelines by failing to conduct any  
19 environmental analysis of the Action.

20 52. The Action is subject to CEQA because it constitutes a "Project" under CEQA  
21 Guidelines § 21065. CEQA Guidelines § 21065 defines a "Project" as "any activity which may  
22 cause either a direct physical change in the environment, or a reasonably foreseeable indirect  
23 physical change in the environment, and which is any of the following: (a) An activity directly  
24 undertaken by any public agency..." The Action would result in drastic physical changes to the  
25 environment and would cause potentially significant environmental impacts, including but not  
26 limited to the CEQA issue areas of Aesthetics, Air Quality, Water Quality, Public Services, Land  
27 Use/Planning, and Public Utilities.

28 53. While the Board has mentioned a "CEQA review memo," such a memo has never

1 been made publicly available for review and comment. Thus, the City is left to speculate as to why  
2 no CEQA review was conducted. Because the Action qualifies as a “Project” under CEQA, the  
3 only potential avenue for the County to have avoided conducting a detailed environmental analysis  
4 would be a determination that the Project is exempt from CEQA, which would have needed to have  
5 been publically noticed prior to the March 19, 2018 Board meeting.

6 54. The Action does not qualify for any CEQA exemption.

7 55. The Action has potentially significant environmental impacts, including but not  
8 limited to the CEQA issue areas of Aesthetics, Hazards and Hazardous Materials, Air Quality,  
9 Hydrology/Water Quality, Noise, Population/Housing, Transportation/Traffic, Public Services, and  
10 Land Use/Planning, among others. The County has failed to analyze or mitigate the Action’s  
11 potentially significant impacts and has failed to find that impacts associated with the Action would  
12 be less than significant. The County’s failure to prepare any CEQA analysis violates the CEQA  
13 Guidelines and the County’s 2014 Local CEQA Procedures Manual, which require a Mitigated  
14 Negative Declaration or Environmental Impact Report to be prepared if any County action has the  
15 potential to cause significant environmental impacts.

16 56. Because the Action is a “Project” pursuant to the CEQA Guidelines and because  
17 Respondents disregarded their obligation to conduct any environmental review as required by the  
18 CEQA Guidelines and the County’s CEQA Procedures Manual, the Action must be rescinded.

19 57. As a result of the foregoing defects, Respondents prejudicially abused their  
20 discretion. As such, Respondents’ Action must be rescinded and the Court should enjoin  
21 Respondents from taking any further action with respect to the Irvine Site, until a timely writ of  
22 mandate is returned to this Court in compliance with CEQA and in compliance the other applicable  
23 land use regulations violated by Respondents.

24 **Respondents’ Action is Inconsistent with the City’s General Plan and Zoning Code**

25 58. All public agencies, including the County, have a mandatory duty to refuse to  
26 approve any project inconsistent with the General Plan of the City or County in which the project is  
27 located.

28 59. The Irvine Site is located within the City’s jurisdiction and has been since it was

1 annexed into the City in 2004.

2 60. The City's General Plan Land Use Element designates the Irvine Site as Orange  
3 County Great Park (PA 51) and contemplates development on the Irvine Site of Multi-Use,  
4 Institutional (Public Facility), Industrial (Research/Industrial and Community Commercial), and  
5 Commercial land uses. Institutional (Public Facility) uses on the Irvine Site are limited to 122,500  
6 square feet for Orange County Transit Authority facilities, 300,000 square feet for County of Orange  
7 facilities, 263,000 square feet for warehousing for homeless providers, 468,000 square feet of  
8 institutional uses, 26,000 square feet of sports park, and 53,500 square feet of remote airport  
9 terminal. The County's contemplated tent city does not fall within any of the categories permitted  
10 in the Orange County Great Park land use designation and is therefore inconsistent with the City's  
11 General Plan.

12 61. The City's Zoning Map identifies the Project site as 6.1, Institutional. That zoning  
13 designation applies to land for public and quasi-public facilities, including churches, schools, or  
14 utilities.

15 62. The County's proposed tent city is not a permitted use under the City's Zoning Code.

16 63. On information and belief, the County does not contend that the Project is consistent  
17 with the City's General Plan or Zoning. The County has no basis for failing to comply with the  
18 City's General Plan and Zoning Code because the Irvine Site was annexed into the City in 2004 and  
19 thus is not exempt from its regulations.

20 64. Accordingly, because the Project is plainly inconsistent with the City's General Plan  
21 and does not comply with the Irvine Site's Institutional zoning designation (neither of which are  
22 disputed), the County has abused its discretion by approving the Action.

23 **The Action Is Inconsistent with Required Use Provisions of Measure W**

24 65. Respondents have a mandatory duty to comply with the County General Plan and  
25 Zoning Code, and to refuse to approve any project that is inconsistent with its Land Use Element.

26 66. The Action, as approved, authorizes uses of the Irvine Site that are not permitted by,  
27 and are inconsistent with, the County's General Plan, as amended by Measure W, and Zoning Code.

28 67. The County has taken the position that, pursuant to the Property Tax Exchange

1 Agreement, it is permitted to “place any development upon said parcels the County shall determine  
2 to be desirable for County’s needs, as though said property remained unincorporated.” If the Irvine  
3 Site had “remained unincorporated,” then it would be subject to the County’s General Plan and  
4 Zoning Code.

5 68. The County’s General Plan was amended by the voters of Orange County through  
6 the adoption of Measure W in 2002. Measure W amended “the Orange County General Plan to  
7 authorize the closed [Base] to be used for non-aviation uses, including a multi-purpose central park,  
8 open space, nature preserve, universities and schools, cultural facility, and other interim and long-  
9 term uses described herein.” (See, Measure W § A.) A tent city does not fall within Measure W’s  
10 permitted uses. Thus, the Action is inconsistent with the Orange County General Plan, as amended  
11 through the adoption of Measure W.

12 69. The Action is also inconsistent with the County’s Zoning Code Section 7-9-  
13 148.8(d)(3), which does not permit emergency shelters for the homeless larger than 150 beds.

14 70. Because it is inconsistent with Measure W, Respondents’ Action is a flagrant  
15 violation of the will of the voters and unlawful. The Board cannot unilaterally take action  
16 inconsistent with Measure W without a vote approving such an inconsistency.

17 71. Because the Action is inconsistent with Measure W and the County’s Zoning Code,  
18 a writ must issue overturning Respondents’ approval of the Action. The County has abused its  
19 discretion by approving the Action.

20 **SECOND CAUSE OF ACTION**

21 **(Violations of the Ralph M. Brown Act on March 19, 2018 – All Respondents)**

22 72. The City realleges and incorporates by this reference each and every allegation  
23 contained in paragraphs 1 through 71 above.

24 73. Section 54950, the introduction to the Brown Act, states that “the people of this State  
25 do not yield their sovereignty to the agencies which serve them. The people, in delegating authority,  
26 do not give their public servants the right to decide what is good for the people to know and what is  
27 not good for them to know. The people insist on remaining informed so that they may retain control  
28 over the instruments they have created.”



1           74. Pursuant to this philosophy within the Brown Act, Government Code Sections  
2 54953, 54954.2(a)(1) & (b), and 54956 impose on the City the duty to adequately provide notice to  
3 the public of each item of business to be transacted or discussed at the meeting. Legislative bodies  
4 may only take action on items not listed on the posted agenda under a limited set of circumstances  
5 not present in this case.

6           75. At its Special Meeting on March 19, 2018, the City failed to comply with  
7 Government Code Sections 54953, 54954.2(a)(1) & (b), and 54956.

8           76. The agenda for the Special Meeting on March 19, 2018 stated the County Board of  
9 Supervisors would: “Provide direction to staff concerning the provision of additional services and  
10 housing alternatives to homeless individuals.” A true and correct copy of the County’s agenda for  
11 the March 19, 2018 meeting is attached hereto as Exhibit A. This agenda item did not notify the  
12 public (or the City) that the Board would consider a temporary emergency shelter—let alone a tent  
13 city—in Irvine, or anywhere else.

14           77. The City has since discovered that the County purported to approve an action to  
15 develop operational plans for a temporary emergency shelter for up to 200 individuals at the Irvine  
16 Site. The City is also informed and believes that, after the March 19th meeting, at least one Board  
17 member told the public the County now intends to shelter up to 400 individuals at the Irvine Site.

18           78. Based upon a plain read and a reasonable interpretation of the agenda item quoted  
19 above, there was no way the general public would have known the Board was considering action  
20 with respect to the Irvine Site. As such, the City’s officials and residents were shut out of the public  
21 participation and process. The Board, nevertheless, purported to designate the Irvine Site as the  
22 County’s top choice for a 200-400 bed tent shelter.

23           79. On March 22, 2018, City submitted a written cure and correct letter to the County  
24 demanding that the County cure or correct the actions taken in violation of the Brown Act, as  
25 required by Government Code Section 54960.1. A true and copy of that letter is attached hereto as  
26 Exhibit B. Due to the County’s inadequate agenda description, the City (including its officials) were  
27 not on notice of the proposed action by the County, and thus did not speak at the County’s March  
28 19, 2018 Special Meeting.

1           80.     The City is informed and believes that the County intends to begin construction of  
2 the tent city prior to the expiration of the cure period provided by Section 54960.1. Accordingly,  
3 the City cannot wait to bring this action until after the expiration of the cure period, and the City has  
4 no other plain, speedy, or adequate remedy in the ordinary course of law, as it (and other members  
5 of the public) will suffer irreparable harm as a result of the County's violations of the Brown Act.

6           81.     The County's failure to adequately apprise the City and the public of the County's  
7 intended actions related to the Irvine Site is a violation of the Brown Act.

8           82.     The City and other members of the public have been harmed as a result of  
9 Respondents' violation of the Brown Act because they have been denied the benefits and protections  
10 provided by the Act.

11          83.     By way of example, the City and other members of the public did not have ample  
12 opportunity to address the County on Agenda Item 1 at the Board of Supervisors' March 19, 2018  
13 Special Meeting because they lacked adequate notice of the actions to be taken.

14          84.     Absent judicially ordered vacation of the County's Action, significant harm will be  
15 done to the public interest that cannot be undone.

16          85.     Gov. Code § 54960.1(a) provides: "The district attorney or any interested person may  
17 commence an action by mandamus or injunction for the purpose of obtaining a judicial  
18 determination that an action taken by a legislative body of a local agency in violation of Section  
19 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5, is null and void under this section."

20          86.     The City has a beneficial right and interest in the County's fulfillment of all of its  
21 legal duties, as alleged in this pleading.

22          87.     The City has no plain, speedy, or adequate remedy in the ordinary course of law, as  
23 it (and other members of the public) will suffer irreparable harm as a result of the County's violations  
24 of the Brown Act. The County's failure to provide ample opportunity for the public to comment on  
25 the Action constitutes a prejudicial abuse of discretion because the County failed to satisfy a clear,  
26 present, ministerial duty to act in accordance with the law.

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1 **THIRD CAUSE OF ACTION**

2 **(Declaration of Public Nuisance – All Respondents)**

3 88. The City realleges and incorporates by this reference each and every allegation  
4 contained in paragraphs 1 through 87 above.

5 89. Under Civil Code section 3479: “Anything which is injurious to health...or is  
6 indecent or offensive to the senses...so as to interfere with the comfortable enjoyment of life or  
7 property...is a nuisance.” Civil Code section 3480 defines a public nuisance as one which affects  
8 an entire community, neighborhood, or a considerable number of persons.

9 90. The Irvine Municipal Code (“IMC”) declares that, amongst other things,  
10 “[m]aintenance of premises so out of harmony or conformity with the maintenance standards of  
11 adjacent properties as to cause substantial diminution of the enjoyment, use or property values of  
12 such adjacent properties” shall be deemed a nuisance. (IMC § 4-11-101(K).) Violations of Section  
13 4-11-101(K) of the IMC constitute a nuisance *per se* under California law.

14 91. Respondents’ Action—which does not include any plan for providing water,  
15 electricity, and other necessary services and utilities at the Irvine Site—violates state and local laws  
16 and ordinances, including Section 4-11-101(K) of the IMC, and as such constitute a nuisance *per*  
17 *se*.

18 92. Moreover, as referenced elsewhere herein, a substantial portion of the Irvine Site is  
19 subject to a LIFOC, meaning that the Irvine Site contains toxic contaminants that the United States  
20 Government is responsible for remediating before that portion of the Irvine Site is transferred. The  
21 County’s own DPEIR for the Irvine Site concluded that the levels of hazardous materials exceeded  
22 risk thresholds for residential uses and specifically stated that “[s]hould the land use at these  
23 locations include residential uses, potential risks may need to be re-evaluated.” It is unclear whether  
24 any additional testing was conducted on the Site to evaluate the potential impact of the contaminants  
25 on the County’s homeless residents who may be forced to reside there under the County’s plans.

26 93. The City is informed and believes that the tent city will only serve to exacerbate the  
27 existing environmentally unsafe condition of the Irvine Site.

28 94. Accordingly, the Court should declare that the proposed tent city is in violation of

1 California law as well as the Irvine Municipal Code and would therefore constitute a public nuisance  
2 pursuant to Civil Code sections 3479 and 3480.

3 **FOURTH CAUSE OF ACTION**

4 **(Injunctive Relief)**

5 95. The City realleges and incorporates by this reference each and every allegation  
6 contained in paragraphs 1 through 94 above.

7 96. If, and to the extent, it is determined that Respondents' approval of the Action is  
8 violative of law, for whatever reason, the City does, and will, possess no effective legal remedy by  
9 way of damages or otherwise.

10 97. If, and to the extent, the approval of the Action is deemed to violate law, for whatever  
11 reason, the City, as a legal entity, will be irreparably harmed, both in its individual capacity and as  
12 a representative of its residents, for, among other reasons, the reasons set forth below:

13 A. The integrity of the City's General Plan, Zoning Code, Building  
14 Code, and all other police power regulations of the City will be irreparably impaired and  
15 infirmed.

16 B. The Project will interfere with, impair, and otherwise impede the  
17 Irvine Site by way of increased public safety impacts, aesthetic impacts, public services  
18 impacts, traffic, noise, pollution, and other impacts which will not be, and cannot be,  
19 adequately mitigated given the size, scope, nature, and composition of the Action.

20 C. The Project will adversely impact the quality of life in adjacent areas,  
21 if not the entire City, based upon the public safety, public services, traffic, noise, pollution,  
22 aesthetics, and other negative impacts associated with high density residential and  
23 commercial properties.

24 98. The Court should therefore permanently enjoin Respondents from implementing the  
25 Action or any action on the Irvine Site with uses that are in consistent with the City's General Plan  
26 and Zoning Code, the County's General Plan, the LIFOC Agreement, and the Implementation  
27 Agreement.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the entry of judgment as follows:

1. For the entry of judgment against Respondents, and for the City;
2. For the issuance of an alternative and/or peremptory Writ of Mandate directing Respondents to vacate and set aside the Action, on the grounds that adequate CEQA compliance did not precede the Action, the Action did not comply with the City’s General Plan and the Action did not comply with the County’s General Plan;
3. For a declaration that any development of the Irvine Site must comply with the City’s General Plan and the City’s Zoning Code, or in the alternative, a declaration that any development of the Irvine Site must comply with the County’s Zoning Code, General Plan and Measure W;
4. For a judgment determining or declaring that the County failed to comply with the Ralph M. Brown Act in connection with the Action taken at its March 19, 2018 meeting;
5. For the issuance of a Writ of Mandate requiring that the County now comply with the Brown Act;
6. For a declaration that the County’s contemplated tent city constitutes a public nuisance;
7. For the award to the City of its attorneys’ fees incurred in this proceeding pursuant to Code of Civil Procedure section 1021.5, Government Code section 800, and other applicable authority;
8. For an injunctive relief precluding County from taking any action to advance the Action;
9. For the award to the City of its costs of suit incurred in this proceeding; and
10. For such other and further relief as the Court deems just and proper.



# **EXHIBIT A**

# A G E N D A



SPECIAL MEETING OF THE BOARD OF SUPERVISORS  
ORANGE COUNTY, CALIFORNIA

**Monday, March 19, 2018**  
**9:00 A.M.**

BOARD HEARING ROOM, FIRST FLOOR  
333 W. Santa Ana Blvd., 10 Civic Center Plaza  
Santa Ana, California

**ANDREW DO**  
CHAIRMAN  
First District

**SHAWN NELSON**  
VICE CHAIRMAN  
Fourth District

**MICHELLE STEEL**  
SUPERVISOR  
Second District

**TODD SPITZER**  
SUPERVISOR  
Third District

**LISA A. BARTLETT**  
SUPERVISOR  
Fifth District

COUNTY EXECUTIVE OFFICER  
Frank Kim

COUNTY COUNSEL  
Leon J. Page

CLERK OF THE BOARD  
Robin Stieler

This agenda contains a brief description of each item to be considered. Except as provided by law, no action shall be taken on any item not appearing in the agenda. To speak on an item, complete a Speaker Request Form(s) identifying the item(s) and deposit the completed form(s) in the box to the left of the podium. To speak on a matter not appearing in the agenda, but under the jurisdiction of the Board of Supervisors, you may do so during Public Comments at the end of the meeting. Speaker request forms must be deposited prior to the beginning of the consent calendar, the reading of the individual agenda items, the opening of the public hearing and/or the beginning of Public Comments. When addressing the Board, it is requested that you state your name and city of residence for the record. Members of the public desiring to speak should address the Board as a whole through the Chair. Comments to individual Supervisors or staff are not permitted. Speakers may address the Board on up to three occasions, with three minutes allotted to the speaker per occasion. PowerPoint and video presentations must be requested in advance of the meeting through the Clerk.

*Supporting documentation is available for review in the Clerk of the Board of Supervisors office in the Hall of Administration, 333 W. Santa Ana Blvd., Room 465, Santa Ana, 92701 8:00 am - 5:00 pm, Monday-Friday.*

*The Agenda is available online at: <http://ocgov.com/gov/bos/agenda>*

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In compliance with the Americans with Disabilities Act, those requiring accommodations for this meeting should notify the Clerk of the Board's Office 72 hours prior to the meeting at (714) 834-2206

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**I. PRESENTATIONS/INTRODUCTIONS (None Scheduled)**

**II. CONSENT CALENDAR (None Scheduled)**

END OF CONSENT CALENDAR

**III. DISCUSSION ITEMS (Item 1)**

GENERAL ADMINISTRATION

1. **Chairman Do** - Provide direction to staff concerning the provision of additional services and housing alternatives to homeless individuals

**IV. PUBLIC HEARINGS (None Scheduled)**

**V. CLOSED SESSION (Item CS-1)**

GENERAL ADMINISTRATION

- CS- **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to
1. Government Code Section 54956.9(d)(1):  
Name of Case: Orange County Catholic Worker, et al. v. County of Orange, et al., United States District Court Case No. 8:18-cv-00155

**VI. ADJOURNMENT**

ADJOURNED:

# **EXHIBIT B**

March 22, 2018

**VIA E-MAIL AND  
FIRST CLASS MAIL**

County of Orange  
Clerk of the Board  
333 W Santa Ana Blvd,  
Santa Ana, CA 92701

Re: Demand to Cure or Correct Brown Act Violation

Dear Clerk of the Board:

I am the City Attorney of the City of Irvine ("Irvine"). Please consider this letter Irvine's formal demand pursuant to Government Code Section 54960.1 that the Board of Supervisors for the County of Orange ("County") cure or correct the improper actions taken at its Special Meeting on March 19, 2018 in both agendaing and acting upon matters related to the approximately 100-acre parcel located in Irvine at the southern edge of the former Marine Corps Air Station (MCAS) El Toro (the "Irvine Site"). Irvine further demands the County cease and desist from any further proceedings relating to the Irvine Site unless and until the County complies with the Brown Act's open meeting laws.

The agenda for the Special Meeting on March 19, 2018 stated the County Board of Supervisors would: "***Provide direction to staff concerning the provision of additional services and housing alternatives to homeless individuals.***" This agenda item did not notify the public (or Irvine) that the Board would consider a temporary emergency shelter (or a "tent city") at the Irvine Site (or any other site).

Contrary to what the agenda item described, it is my understanding that, at its March 19<sup>th</sup> meeting, the Board purported to approve an action to develop operational plans for a temporary emergency shelter for up to 200 individuals at the Irvine Site. I am also told that, after the March 19<sup>th</sup> meeting, at least one of your Supervisors told the public the County now intends to shelter up to 400 individuals at the Irvine Site.

Based upon a plain read and a reasonable interpretation of the agenda item quoted above, there was no way the general public (or Irvine's officials and residents) would have known the action the Board was considering with respect to the Irvine Site. As such, Irvine's officials and residents were effectively "shut out" of the public participation and process. The Board, nevertheless, purported to designate the Irvine Site as the County's top choice for a 200-400 bed

County of Orange  
March 22, 2018  
Page 2

“tent city”-style emergency shelter with virtually no notice to or input from Irvine’s officials and residents.

At a minimum, the Board’s actions violated the Brown Act. (*See, e.g.*, Gov. Code §§ 54953, 54954.2(b) & 54956.) If the County intends to pursue its proposal to build an emergency shelter on the Irvine Site, Irvine insists that all applicable substantive and procedural laws and ordinances are scrupulously followed. The County’s actions on and after March 19<sup>th</sup> have run afoul of those requirements.

As provided by Section 54960.1, the County has 30 days from the receipt of this request to either cure or correct the challenged action or inform us of its decision not to do so. If the County fails to cure or correct as demanded, such inaction will leave us no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1.

Sincerely,

RUTAN & TUCKER, LLP



Jeffrey T. Melching  
City Attorney for the City of Irvine

JTM:ew

cc: County Board of Supervisors (via email)