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Emergency Shelter Coalition*

15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF ORANGE**
17

18 EMERGENCY SHELTER
19 COALITION a non-profit organization;

20 Petitioner,

21 v.

22 CITY OF SAN CLEMENTE; CITY
23 COUNCIL OF SAN CLEMENTE, and
24 PLANNING COMMISSION OF CITY
OF SAN CLEMENTE

25 Respondents.
26
27
28

Case No. _____

**VERIFIED PETITION FOR WRIT
OF MANDATE**

**[Pursuant to California
Environmental Quality Act (CEQA),
Public Resources Code §21000 et
seq.; California Coastal Act, Public
Resources Code §30000 et seq.; and
California's Planning and Zoning
Law, Gov. Code § 65000 et seq.]**

1 **INTRODUCTION**

- 2 1. On May 21, 2019 and June 4, 2019, the City of San Clemente approved
3 Ordinance No. 1673 and Ordinance No. 1674 (“Ordinances”), designating
4 City-owned property located at 380 Avenida Pico, San Clemente (“Site”) as
5 the “sole public areas in the city available for camping purposes by those
6 persons experiencing homelessness or otherwise unable to shelter.” On June
7 18, 2019, the City amended the Ordinances to provide a date for expiration.
- 8 2. Petitioner Emergency Shelter Coalition (“ESC”) alleges the City unlawfully
9 approved the Ordinances in direct contravention of its General Plan without
10 proper notice, without obtaining necessary permits, and without doing what is
11 required to ensure the Site is suitable for human habitation and to ensure that
12 the development of and uses of the Site will not harm the environment.
13 Petitioner further alleges that the City has not made a good faith effort to
14 identify and provide an appropriate site for emergency shelter.
- 15 3. For these reasons, and those set forth below, Petitioner respectfully requests
16 the Court: 1) set aside the City’s approval of the Ordinances; and 2) enjoin any
17 further operation or use of the Site for persons experiencing homelessness or
18 otherwise unable to shelter pending compliance with the California Coastal
19 Act, the California Environmental Quality Act (CEQA), and California’s
20 Planning and Zoning Law.

21 **II. PARTIES**

- 22 4. Petitioner Emergency Shelter Coalition is now, and at all times since its
23 incorporation on July 30, 2018 has been, a non-profit organization under the
24 laws of the State of California. Petitioner’s members share a common goal to
25 establish a year-round emergency shelter and resource center in San Clemente
26 to provide people experiencing homelessness with a safe place to sleep,
27 engage in fundamental daily life activities, and obtain counseling and referral
28 services. Petitioner’s members include individuals who are residents of,

1 employed in, or habitually visit the City and who devote their time and
2 resources to assisting persons experiencing homelessness in San Clemente,
3 regardless of the reason. Petitioner’s members enjoy and appreciate the coast
4 and desire to protect its waters and nearby lands from degradation.

5 Furthermore, Petitioner has an interest in procuring the enforcement of the
6 City’s duty to abide by laws including, but not limited to, the Coastal Act,
7 CEQA, the requirements of MS4 permits, and to protect the constitutional
8 rights of its residents. As a result of litigation brought by Petitioner, the City
9 created an Emergency Shelter Overlay Zone that includes locations for
10 providing shelter outside the Coastal Zone. Petitioner continues to work to
11 develop a shelter for homeless persons and persons otherwise unable to find
12 shelter in the Emergency Shelter Overlay Zone.

13 5. Respondent City of San Clemente is a government entity with the capacity to
14 sue and be sued. The City developed, owns, and operates the Site, which is a
15 vacant lot next to a sewage treatment plant. The City of San Clemente is the
16 “lead agency” as the term is defined by CEQA, and is therefore responsible for
17 evaluating the environmental impacts of the project (Cal. Public Resources
18 Code § 21067). The San Clemente City Council is the legislative authority for
19 the City of San Clemente and, as the elected decision-making body in the City
20 of San Clemente, is a public agency under CEQA (Cal. Public Resources
21 Code, § 21063). The Planning Commission of San Clemente advises the City
22 Council on land use policies and laws and to makes final decisions on certain
23 kinds of development and use permits. On May 21, 2019 and June 4, 2019, the
24 City passed the Ordinances, which are the subject of this litigation. The City
25 enforces the prohibitions on camping on public property pursuant to the
26 provisions of Ordinance No. 1671, as amended.

27 **III. VENUE**

28 6. Venue is proper in the Superior Court for the County of Orange pursuant to

1 Code of Civil Procedure § 394, because Respondent City of San Clemente is a
2 city situated within the County of Orange, and this action is filed in the
3 Superior Court for the County of Orange.

4 **IV. RIGHT TO RELIEF**

- 5 7. This petition is brought under Public Resources Code §§ 21168, 21168.5, and
6 30803(a); and Code of Civil Procedure §§ 1094.5 and 1085. Respondents have
7 prejudicially abused their discretion by failing to proceed in a manner required
8 by law and their decisions are not supported by substantial evidence.
- 9 8. Petitioner has a beneficial interest in the outcome of this proceeding, which is
10 brought on behalf of itself and its members. Petitioner also has public interest
11 standing to enforce Respondent's public duty to comply with the law.
- 12 9. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of
13 law. Unless this Court grants the relief requested, Respondents will continue
14 to fail and refuse to perform their legal duties. No money damages or other
15 legal remedy could adequately compensate Petitioner and others for the
16 hardship caused by Respondents' failure to perform their legal duty.
- 17 10. Petitioners contend that Respondents' actions as described in this petition
18 violate their legal duties. Respondents contend otherwise. Declaratory relief
19 is therefore necessary and appropriate to resolve this controversy.
20 Accordingly, Petitioners seek a judicial declaration of the rights and duties of
21 the respective parties.
- 22 11. Petitioner gave the Attorney General notice of intent to file this action.
23 Petitioner served the Attorney General with a copy of this petition, along with
24 a notice of Petitioner's filing, as required by Code of Civil Procedure § 388
25 and Public Resources Code § 21167.7.
- 26 12. This petition is timely. The Notice of Exemption was posted at the Clerk of
27 the County of Orange on May 24, 2019 and again on June 6, 2019.
28

1 **V. FACTUAL BACKGROUND**

2 13. On August 19, 2014, the San Clemente City Council amended Ordinance No.
3 1585 to cap the maximum number of beds in any Emergency Shelter facility at
4 20 in response to public comment.

5 14. The City has received, and continues to receive, information related to the
6 homeless population through the annual Point In Time Count, outreach by its
7 contractor Mercy House, and the publicity of the ongoing Federal Litigation
8 regarding the housing crisis in Orange County.

9 15. The number of unsheltered homeless individuals has been steadily increasing
10 for decades. In the City, that number reached over 90 known unsheltered
11 individuals by the Point in Time Count performed in January 2019. The
12 increase in the homeless population is consistent with that in other cities that
13 do not have any public emergency shelter or clear housing development plan
14 to ensure seniors, people with disabilities, and the working poor can access
15 housing.

16 16. In 2014, during litigation, San Clemente was forced to properly zone areas of
17 the city that could be used for homeless emergency shelter. At that time, the
18 City considered an area comprising the Site at 380 Avenida Pico, San
19 Clemente. That area was once the site of an animal shelter that had to be
20 moved because of potential environmental constraints. The City concluded it
21 would not be an appropriate site for a shelter for homeless persons or animals.

22 17. In 2018, the City of San Clemente passed Ordinance 1671, which prohibits
23 camping on public land in San Clemente.

24 18. On March 5, 2019 the City of San Clemente amended Ordinance 1671 in
25 response to a Ninth Circuit Court of Appeals decision in *Martin v. City of*
26 *Boise* (9th Cir. 2018) 902 F.3d 1031. That case held in part “that the Eighth
27 Amendment prohibits the imposition of criminal penalties for sitting sleeping,
28 or lying outside on public property for homeless individuals who cannot obtain

1 shelter.” *Id.* The City’s amendment stated that no enforcement of Ordinance
2 1671 would happen absent exigent circumstances.

3 19.The City Council held a meeting on May 21, 2019.

4 20.The agenda for that meeting stated the Council would consider the evaluation
5 and feasibility of creating a temporary emergency shelter for homeless persons
6 and ordinances relating to the prohibition of camping on public property.

7 21.The agenda did not state that the Council would consider invoking exemptions
8 to CEQA. The Staff report made no mention of what the temporary shelter
9 would be, where the temporary shelter would be, and did not provide any other
10 indication that would have given notice of the actual plans for the development
11 and use of the Site or its impacts on the environment.

12 22.On information and belief, The City began preparing the Site as a shelter
13 before the ordinance was even reviewed or approved with no notice.

14 23. At the May 21, 2019 meeting, the City Council approved Ordinance No. 1673
15 as an urgency ordinance. The urgency ordinance designates that a selected lot
16 would be the sole public area on which people experiencing homelessness are
17 permitted to camp, and requires enforcement of the City’s anti-camping
18 ordinance against people experiencing homelessness in all other public areas.

19 24.During the public comment period at the May 21, 2019 meeting, resident Brad
20 Malamud pointed out any discussion about shelter were improperly discussed
21 in closed session and needed to be open to the public. Other members of the
22 public expressed concerns about the environmental impacts of people camping
23 on the beaches. Housing is a Human Right Orange County (“HHROC”)
24 expressed concern about the City acting prematurely without an opportunity to
25 investigate the options. Gene James, a resident, expressed concern that the
26 people were not kept informed.

27 25.Also at the May 21, 2019 City Council meeting, Petitioner, through one of its
28 members, proposed an alternative location for shelter outside the Coastal Zone

1 and detailed how it could comply with the zoning regulation. Another speaker
2 insisted that the selected site needed to comply with SB2, the shelter zone
3 under the General Plan.

4 26. Due to the high attendance, the City requested that people leave the room
5 rather than stay standing in the isles after their comment. After the member of
6 ESC presented their proposal and used his opportunity for public comment, he
7 left per the City instructions. Moments later, a member of the public proposed
8 the Site. It was not clear until the vote that the City was voting on that Site.
9 Despite attending the meeting, ESC did not have notice of the site until it was
10 later reported. During the meeting, the City Council announced 380 Avenida
11 Pico as the site selected to “shelter” homeless persons.

12 27. The land use element of the General Plan specifically zones the Site as public
13 use. Similarly, in the Coastal Land Use Plan created in March 2018, the land
14 is designated for public use.

15 28. The Site is in an industrial zone. *See West Pico Corridor Specific Plan*
16 *Chapter 1.*

17 29. The Site was once an animal shelter, which the City then deemed unsafe due to
18 risk of mudslide (among other dangers). The Site was then used as a storage
19 lot for the sewage treatment facility located next to the lot.

20 30. The Site is located within the Coastal Zone.

21 31. The Site is directly next to the Segunda Deshecha Creek. The Creek runs
22 directly into the Pacific Ocean. Both the relevant coastal waters and the Creek
23 are listed as “impaired” bodies of water by the San Diego Regional Water
24 Board. *See State Water Resources Control Board, Final 2014/2016 California*
25 *Integrated Report (Clean Water Act Section 303(d) List / 305(b) Report)*
26 *(2017).*

27 32. The Site is less than two miles from the San Clemente Pier, one of the most
28 impaired bodies of water in the Country.

1 33.City Councilmember Laura Ferguson stated that the City could avoid CEQA
2 by selecting a site less than half an acre.

3 34.Councilmember Ward stated the main reason for the Ordinance is that going
4 into summer people in the North Beach parking lot create a conflict.

5 35.Mayor Pro Tem Bane pointed out that they had been working on this issue for
6 months and he believes they can move forward due to an allegedly amended
7 order from the Ninth Circuit in *Martin*.

8 36.A representative of the City said that “at the rate we are going” the City could
9 expect to be done preparing the Site by that Friday, which was three days from
10 the date of the meeting.

11 37.On or about May 24, 2019, the City of San Clemente began moving
12 individuals who were unsheltered to the selected lot under threat of arrest.

13 38.On or about May 24, 2019 and continuing the City placed two portable toilets
14 and two dumpsters on the lot. The City changed the fencing around the lot and
15 installed electricity to power a camera to watch over the residents. The City
16 placed sand bags around the fenced area. A security guard was hired. At some
17 point, a third portable toilet was added with a lock that is only accessible to the
18 security guard. The fence has one opening on one side and is otherwise
19 enclosed.

20 39.On May 24, 2019, the City of San Clemente filed a Notice of Exemption from
21 CEQA with the Orange County Clerk claiming that the May 21, 2019
22 Ordinance No. 1673 was exempt under Public Resources Code, §§ 15304 and
23 15269. The City alleged exemption from the requirements of CEQA under the
24 “common sense” exemption for projects with no possibility of significant
25 environmental impact; the exemption for minor alterations in the condition of
26 land; and the exemption for actions necessary to prevent or mitigate an
27 emergency.

28 40.Upon information and belief, the City of San Clemente did not obtain, and has

1 not obtained, a permit for development at the Site from the Coastal
2 Commission.

3 41. The City Council held another meeting on June 4, 2019.

4 42. In the publicly posted meeting agenda for the June 4, 2019 meeting, the
5 attachment that purported to show the location of the proposed shelter for
6 homeless persons simply stated it would be discussed at the meeting. The City
7 did not provide adequate notice in the agenda of its intent to vote on Ordinance
8 No 1674 and did not state that the Council would consider invoking
9 exemptions to CEQA in the agenda.

10 43. The City did not follow the required and necessary procedures to investigate
11 potential environmental impact, allow public comment, and obtain permits for
12 development and use of the Site from regulatory agencies prior to the June 4th
13 Meeting.

14 44. At the meeting on June 4, 2019, the City Council approved Ordinance No.
15 1674, which is a standard ordinance identical in substance to Ordinance No.
16 1673.

17 45. At the June 4, 2019 meeting, Maura of HHROC spoke during the public
18 comment period and pointed out that moving so quickly risked opening the
19 City to litigation and asked the City to look at needs including County Mental
20 Health Services, families, toilets.

21 46. The next public speaker pointed out that the lot is next to the trails, the park,
22 and expressed concerns about impacts on those resources.

23 47. Other members of the public expressed concern about impacts of use the Site
24 as a homeless shelter, alleging that it caused a rat infestation, would require
25 cleaning with bleach, and raising concerns about possible impacts on Pico
26 Park and nearby trails, as well as general public health.

27 48. Members of the public discussed the exclusion of the property from the shelter
28 zone, and stated that they had asked questions about possible solutions in April

1 and were told solutions were being considered but that those solutions were
2 not previously disclosed. One speaker said the map at the meeting and the lack
3 of transparency confused residents about the actual location. Another resident
4 detailed how neighbors were not given information or notice or opportunity to
5 investigate. He further suggested that the City ignored its own zoning
6 regulations.

7 49. On June 6, 2019, the City of San Clemente filed a Notice of Exemption from
8 CEQA with the Orange County Clerk claiming that the May 21, 2019
9 Ordinance No. 1674 was exempt under Public Resources Code, §§ 15304 and
10 15269. The City alleged exemption from the requirements of CEQA under the
11 “common sense” exemption for projects with no possibility of significant
12 environmental impact; the exemption for minor alterations in the condition of
13 land; and the exemption for actions necessary to prevent or mitigate an
14 emergency.

15 50. Upon information and belief, approximately 40 persons reside on the Site. By
16 comparison, only approximately 10 people resided at North Beach.

17 51. The portable toilets are regularly full and overflowing. The smell of waste is
18 strong. When the toilets are cleaned, they are washed and the waste residue
19 flows out. On information and belief, the water from cleaning or rain events
20 must flow downhill to the Creek which leads to the Ocean.

21 52. People regularly drive to the Site and yell, throw items at homeless people,
22 inspect the property, attempt to gain access to sleep, or deliver donations. As a
23 result, there is a change in intensity of use of Avenida Pico in the area. The
24 change in use impacts the noise emitted from the property.

25 53. Only a few days after opening the lot the City recognized the change in traffic
26 and began issuing parking tickets to those who pulled over at the Site,
27 including issuing tickets to homeless individuals requesting to stay there.

28 54. Development at and use of the Site has potential to cause significant impacts

1 on the environment.

2 55.The Water Board is investigating the environmental impacts of the Site.

3
4 **VI. LEGAL BACKGROUND AND LEGAL VIOLATIONS**

5 56.CEQA applies to “discretionary projects proposed to be carried out or
6 approved by public agencies” (Cal. Public Resources Code, § 21080). Under
7 CEQA, the term “project” is broadly defined and includes any activities that
8 have a potential for resulting in a physical change in the environment. (Cal.
9 Public Resources Code § 21065; CEQA Guidelines §§ 15002(d), 15378(a).)

10 57.CEQA requires public agencies to consider and document the environmental
11 implications of their discretionary actions in order to “[e]nsure that long term
12 protection of the environment...shall be the guiding criterion in public
13 decisions.” (Cal. Public Resources Code § 21001(d).) In enacting CEQA, the
14 California Legislature declared it to be the policy of California to “[t]ake all
15 action necessary to provide the people of this state with clean air and water.”
16 (*Id.* at § 21001(b).)

17 58.The Coastal Act requires that the City obtain a Coastal Development Permit
18 for developments within the Coastal Zone including a change in the density of
19 use of land.

20 59.The “coastal zone” is land and water specified on maps identified and set forth
21 in Section 17 of Chapter 1330 of the Statutes of 1975-1976 Regular Session
22 enacting Division 20 of the Public Resource code and subsequent
23 amendments. Pub. Res. Code §30103(a).

24 60.The lot at issue, and the rest of the City’s property at 380 Avenida Pico, is
25 located within the coastal zone.

26 61.The Coastal Act requires that “any person... wishing to perform or undertake
27 any development in the coastal zone shall obtain a coastal development
28 permit.” Pub. Res. Code §30600(a).

1 62. The Coastal Act defines “person” as “any individual, organization,
2 partnership, limited liability company, or other business association or
3 corporation, including any utility, and any federal, state, *local government, or*
4 *special district or an agency thereof.*” Pub. Res. Code §30111 (emphasis
5 added).

6 63. A “development” under the Coastal Act, includes but is not limited to:

7
8 the placement or erection of any solid material or structure;
9 discharge or disposal of any dredged material or of any gaseous,
10 liquid, solid, or thermal waste; grading, removing, dredging,
11 mining, or extraction of any materials; change in the density or
12 intensity of use of land, ... and any other division of land,
including lot splits... construction, reconstruction, demolition, or
alteration of the size of any structure....

13 Pub. Res. Code §30106.

14 64. The Coastal Commission issues development permits for local governments
15 that do not exercise their options to establish local coastal programs, like the
16 City of San Clemente. (Pub. Res. Code §30600.)

17 65. The General Plan prohibits the city from creating and operating a campground
18 outside of the designated SB 2 shelter zone and without adequate shelter
19 services contemplated by state law and the City’s own Zoning Code. Camping
20 is not a permitted land use for the Site under the General Plan.

21 66. State law and the city’s own Municipal Code mandate that all decisions
22 affecting land use in San Clemente—including all planning, environmental
23 decisions, and development in the City—must be consistent with the City’s
24 General Plan. However, the Ordinances are decidedly *inconsistent* with the
25 “Public” land uses designated for the Site in the General Plan. As such, the
26 Ordinances are void.

27 67. While the Constitution prohibits the City from enforcement of any criminal
28 prohibitions on camping when there is no appropriate indoor alternative as

1 cruel and unusual, the General Plan also prohibits the city from using public
2 land as a public camp ground with no shelter or social services provided.

3
4
5 **FIRST CAUSE OF ACTION**

6 **(Petition for Writ of Mandate re: Coastal Act)**

7 68. Petitioner realleges paragraphs 1-67, as if fully set forth herein.

8 69. The purpose of the California Coastal Act is to provide “a comprehensive
9 scheme to govern land use planning for the entire Coastal Zone of California.”
10 *Pacific Palisades Bowl Mobile Estates v. City of Los Angeles* (2012) 55 Cal.
11 4th 783, 793. The legislature found that “the California coastal zone is a
12 distinct and valuable natural resource of vital and enduring interest to all the
13 people[;] [t]hat to promote the public safety, health, and welfare... it is
14 necessary to protect the ecological balance of the coastal zone and prevent its
15 deterioration and destruction[;]” and “[t]hat existing developed uses, and
16 future developments that are carefully planned and developed consistent with
17 the policies of this division, are essential to the economic and social well-being
18 of the people of this state...” (Pub. Res. Code § 30001 (a), (c), and (d)).

19 70. The Coastal Act requires that “any person... wishing to perform or undertake
20 any development in the coastal zone shall obtain a coastal development
21 permit.” (Pub. Res. Code §30600(a)).

22 71. The Coastal Act defines “person” as “any individual, organization,
23 partnership, limited liability company, or other business association or
24 corporation, including any utility, and any federal, state, *local government, or*
25 *special district or an agency thereof.*” (Pub. Res. Code §30111 (emphasis
26 added)).

27 72. The City is therefore a person under the Coastal Act.

28 73. A “development” under the Coastal Act, includes but is not limited to:

1
2 the placement or erection of any solid material or structure;
3 discharge or disposal of any dredged material or of any gaseous,
4 liquid, solid, or thermal waste; grading, removing, dredging,
5 mining, or extraction of any materials; change in the density or
6 intensity of use of land, ... and any other division of land,
including lot splits... construction, reconstruction, demolition, or
alteration of the size of any structure....

7 Pub. Res. Code §30106.

8 74.The City’s actions are a “development” under the Coastal Act because they
9 include the “placement or erection” and “construction” of structures, the
10 “discharge or disposal” of waste, and “grading.”

11 75.The City’s actions are a “development” under the Coastal Act because they
12 constitute a “change in the density or intensity of use of land.”

13 76.The City’s actions are a “development” under the Coastal Act because
14 changing half of an unused lot into a camp site constitutes the “division of
15 land.”

16 77.Upon information and belief, the City did not obtain, and does not hold a
17 Coastal Development Permit authorizing the development at issue.

18 78.Any person may request equitable relief to restrain any violation of the Coastal
19 Act. Pub. Res. Code §30803(a).

20 79.Petitioner is entitled to a permanent injunction preventing the City from
21 operating the Site without a Coastal Development Permit.

22 80.Pursuant to Code of Civil Procedure §§ 1085, alternatively § 1094.5, a writ of
23 mandate should be issued directing Respondents to rescind the Ordinances and
24 comply with the requirements of the Coastal Act.

25
26 **SECOND CAUSE OF ACTION**
27 **(Petition for Writ of Mandate re: CEQA)**
28

1 81. Petitioner realleges paragraphs 1-67, as if fully set forth herein.

2 82. The purpose of CEQA is to ensure the long-term protection of the environment
3 and informed decision-making and informed participation in decisions that
4 could have environmental impacts.

5 83. The Ordinances and development and operation of the Site are discretionary
6 actions and constitute projects under CEQA.

7 84. The City of San Clemente is the “lead agency” as the term is defined by
8 CEQA, and is therefore responsible for evaluating the environmental impacts
9 of the project (Cal. Public Resources Code § 21067).

10 85. The City’s adoption of the Ordinances has potential to cause significant
11 impacts on the environment.

12 86. In deciding to proceed with the Ordinances, and in relying on purported
13 exemptions to CEQA, the City of San Clemente violated CEQA because, *inter*
14 *alia*:

15 (a) The City of San Clemente failed to consider the environmental impacts of
16 the Ordinances and development and use of the Site as a homeless shelter;

17 (b) The City of San Clemente failed to proceed in the manner required by law
18 and abused its discretion under CEQA;

19 (c) The City of San Clemente’s claims of exemption under CEQA is contrary
20 to law, because no emergency existed, the development and use of the Site as
21 a homeless shelter would cause more than a minor alteration in land and also
22 has potential to cause significant impact on the environment

23 (d) The City’s decision to approve the Ordinances was arbitrary and
24 capricious because it was not based on research, reasonable investigation, or
25 public hearings and it was not consistent with CEQA, the General Plan, prior
26 site assessments, and the Coastal Act.

27 87. Pursuant to Code of Civil Procedure § 1085 (alternatively § 1094.5), a writ of
28 mandate should be issued directing Respondents to rescind the Ordinances and

1 comply with the requirements of CEQA, including adequate notice,
2 opportunity for public hearing, and consideration of environmental impact.

3 **THIRD CAUSE OF ACTION**

4 **(Against All Parties For A Writ Of Mandate And Ancillary Injunctive Relief**
5 **Based On Violations Of State Law And City’s Municipal Code In Adopting**
6 **Ordinances Not Consistent With General Plan)**

7 88. Petitioner realleges and incorporates herein by reference each and every
8 allegation contained in paragraphs 1-67 inclusive, as set forth above.

9 89. California’s Planning and Zoning Law (Gov. Code, § 65000 et seq.) requires
10 each city and county to “adopt a comprehensive, long-term general plan for the
11 physical development of the county or city, and of any land outside its
12 boundaries which in the planning agency's judgment bears relation to its
13 planning.” (Gov. Code, § 65300.) The general plan has been aptly described
14 by the California courts as the "constitution for all future developments"
15 within a city or county.

16 90. Under California law, including, but not limited to, Government Code §
17 65860((a), the propriety of virtually any local decision affecting land use and
18 development depends upon consistency with the applicable general plan and
19 its elements. The consistency doctrine has been acknowledged by the
20 California courts to be "the linchpin of California's land use and development
21 laws; it is the principle which infuse[s] the concept of planned growth with the
22 force of law."

23 91. Accordingly, all actions taken, and all decisions made, by the City that directly
24 or indirectly affect land uses in San Clemente must be consistent with the
25 City’s General Plan. §17.04.070 of the City’s Municipal Code expressly
26 provides that:

27 “The City of San Clemente General Plan is the foundational
28 planning policy document of the City. It defines and sets forth the

1 basic policy and guidelines by which the community will be
2 permitted to develop in the future. It is intended to guide all
3 planning, environmental decisions, and development in the
4 community. Among other things, the General Plan establishes what
5 kinds of land uses will be permitted and where, how dense the
6 development may be, and the proportional relationship of the built
7 environment.”

8 92.The Land Use Element of San Clemente's General Plan includes a summary
9 table of land use designations. The land use designation describes that parcels
10 designated “public” should be used for “Government offices, utilities, schools,
11 public and private parking.”

12 93.Under the Land Use Element of the City’s General Plan, the Site designated
13 for camping per Ordinances Nos. 1673 and 1774 is designated for “Public
14 (Coastal Zone)” uses only. Likewise, under the West Pico Corridor Specific
15 Plan (the “Specific Plan”), the Site is zoned for “Public” uses only. In
16 addition, under the Coastal Element of the City’s General Plan, which
17 incorporates the Land Use Plan portion (certified by the California Coastal
18 Commission in August 2018) of the City’s Local Coastal Program (“LCP”),
19 the Site is designated for “Public” uses only.

20 94.As stated in the Land Use Element of the City’s General Plan, “[t]raditionally,
21 the Land Use Element is considered the General Plan’s most important policy
22 document because it describes the allowed types and configurations of land
23 uses and where they can be located, including residential, commercial, mixed-
24 use, industrial, open space, recreation and public uses.”

25 95.The uses allowed for the “Public” land use areas designated in the Land Use
26 Element are government offices, hospitals, social services, utilities,
27 recreational and cultural facilities, schools, libraries, and public and private
28 parking. By no stretch of the imagination are homeless camping uses and

1 activities allowed in areas designated for “Public” use.

2 96. A land use designation of “public” does not provide for camping; the City’s
3 action approving the Ordinances is inconsistent with the land use designation
4 in the General Plan. In fact, nowhere in the Land Use Element or the Coastal
5 Element of the General Plan, nor or in any other Element thereof, are any
6 daytime or overnight camping uses, including pitching or occupying camp
7 facilities, permitted on any property in the City that is designated for “Public”
8 use. Under the Land Use Plan that is incorporated as part of the Coastal
9 Element of the General Plan, the only camping or tenting activities that are
10 officially permitted in the Coastal Zone are restricted to San Clemente State
11 Beach, and such activities are not permitted uses at the Site which is located in
12 the Coastal Zone.

13 97. The Housing Element to the City’s General Plan states as a Goal that it
14 will “[e]nsure equal housing opportunity and prevent housing discrimination
15 of protected persons” and that a strategy to achieve that goal is to “[p]rovide
16 housing resources for prevention of homelessness and alternative housing for
17 the homeless and disabled.” Ordinances Nos. 1673 and 1774 are in conflict
18 with that goal.

19 98. The Housing Element further states that the City will consider updates to its
20 emergency shelter overlay zoning when “[s]ignificant changes in the housing
21 market conditions that would impact the City’s homeless shelter needs
22 between the Homeless Censuses. The City will consult homeless service
23 providers to establish the appropriate modifications to the established unmet
24 homeless shelter needs.”

25 99. The City’s unsheltered population has grown steadily since the adoption of the
26 revised Housing Element, but it failed to provide any reasonable public
27 process, let alone consult with providers to establish appropriate modifications
28 to address unmet shelter needs. The City’s rushed emergency ordinance to

1 allow camping on a potentially toxic, public parcel is inconsistent with its
2 Housing Element goals to address the needs of homeless persons.

3 100. However, notwithstanding the inconsistency with the General Plan’s
4 “Public” land use designation for the Site, the City has adopted the Ordinances
5 which now allow new and expanded uses to occur at that property—including,
6 but not limited to, daytime and overnight camping activities by homeless
7 persons (and potentially others) who choose to reside at the site for various
8 periods of time through the end of June 2020.

9 101. Although the City has tried to style the Ordinances as changes to the
10 Health & Safety Chapter of its Municipal Code, they are, in reality, zone
11 changes because they purport to materially alter and expand the allowed uses
12 at the Site. As such, in adopting the *de facto* zone changes for the Site that
13 have been put into effect by the Ordinances, the City has failed to comply with
14 the provisions of §17.16.040 of the City’s Zoning Code that required the City
15 Council to adopt findings prior to approving such changes, including a finding
16 that the proposed ordinances are “consistent with the General Plan.”

17 102. Inexplicably, the Ordinances are devoid of any findings of consistency
18 with the City’s General Plan and this glaring omission is a tacit admission by
19 the City that the following fact is true—i.e., the Ordinances are invalid—and
20 were void from the outset—because they are patently inconsistent and
21 incompatible with the goals, objectives, policies, land uses, and programs
22 specified in the General Plan.

23 103. The Land Use Element of the City’s General Plan does provide for an
24 “Emergency Shelter (ES)” land use designation that “allows emergency
25 shelters to meet State goals and policies for homeless needs, pursuant to
26 limitations in the Zoning Code.” However, the Site has never been designated
27 for “Emergency Shelter” uses in the General Plan.

28 104. Pursuant to §17.56.100 of the City’s Municipal Code, the Emergency

1 Shelter Overlay District (otherwise known as the “SB 2 Overlay Zone”) is
2 strictly confined to the Rancho San Clemente Business Park Sub-Area which
3 is located miles away from the Site. Ironically, in connection with the prior
4 litigation between the City and petitioner ESC—which led to the establishment
5 of the SB 2 Overlay Zone—the City repeatedly rejected ESC’s requests to
6 establish the SB 2 Overlay Zone west of the 5 Freeway in San Clemente,
7 including sites within the West Pico Corridor Specific Plan area where the Site
8 is located. As the administrative record will reflect, the City expressly found
9 that sites west of the 5 Freeway would not be appropriate locations for SB 2
10 shelter sites to serve the homeless population of San Clemente. Now,
11 however—in stark conflict with its earlier position—the City has established a
12 campground for homeless persons at the Site.

13 105. Moreover, as made clear by the SB 2 Guidelines issued by the
14 California Department of Housing and Community Development (“HCD”) the
15 type of “emergency shelter” envisioned by SB 2 (Gov. Code, § 65583) is not
16 an array of tents pitched haphazardly on a dirt lot next to a sewage treatment
17 plant. Instead, the HCD Guidelines contemplate that an emergency shelter
18 would consist of a permanent or temporary structure providing, at a minimum,
19 indoor housing (“beds”) with, at least, minimal supportive services for
20 homeless persons. That, too, is what the City’s General Plan and Zoning Code
21 contemplate for emergency shelters, not scores of homeless individuals
22 sleeping in tents, or on the bare ground, next to a sewage plant.

23 106. As the Site is presently being used pursuant to the Ordinances, the
24 homeless camping uses occurring at that location are grossly inconsistent with
25 the emergency shelter goals and objectives of both SB 2 and the City’s
26 General Plan. At all times relevant to this action, however, Respondents were
27 obligated to comply with the state law consistency doctrine, but it chose not to
28 do so.

1 107. As alleged hereinabove, the Ordinances were *void* at the time they were
2 adopted and they must be rescinded by the City.

3 108. At all times relevant to the action, Respondents had the ability to
4 perform each of the duties and obligations alleged herein, but have failed and
5 refused to perform such legal duties and obligations. Respondents have acted
6 arbitrarily, capriciously, and without evidentiary support in failing and
7 refusing to carry out or discharge their mandatory duties and obligations as
8 alleged herein.

9 109. Unless compelled by this Court to perform the legal duties and
10 obligations alleged above, Respondents will continue to abdicate such duties
11 and obligations and will continue to violate the law. ESC and the public have
12 been, and will continue to be, injured as a result of the City's acts and
13 omissions as alleged above.

14 110. In light of the foregoing, ESC is entitled to a peremptory writ of
15 mandate which, *inter alia* directs Respondents to vacate and set aside the
16 Ordinances and any actions which they have taken, or may hereafter take, in
17 reliance thereon or in connection therewith.

18 111. In addition, ESC is entitled to ancillary injunctive relief in support of
19 and relating to the mandamus relief sought above.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioners/Plaintiffs pray for relief as follows:
23

24 For a writ of mandate:

- 25 1. Directing Respondents to rescind, vacate, and set aside Ordinances No. 1673
26 and 1674, and as amended on June 18, 2019.
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2. For a preliminary and permanent injunction ordering Respondents to refrain from criminalizing the act of camping, immediately close the Site and replace with an appropriate alternative.
3. For a preliminary and permanent injunction ordering Respondents to refrain from further development and operation of the Site without a Coastal Development Permit from the Coastal Commission.
4. For a preliminary and permanent injunction ordering Respondents to refrain from further development and operation of the Site without consideration of the environmental impact and compliance with the General Plan.
5. For a preliminary and permanent injunction ordering Respondents to refrain from further development and operation of the Site without complying with CEQA and CEQA Guidelines, and to take any other action required pursuant to § 21168.9.
6. For a judgment declaring that the Ordinances violate CEQA, the Coastal Act, and Government Code § 65860(a) and cannot be enforced.
7. For an award of attorney’s fees, litigation expenses, and costs as permitted or required by law; and
8. For such other relief as the Court deems just and proper.

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VERIFICATION

I, Edmond M. Connor, declare and say:

1. I am a member of petitioner EMERGENCY SHELTER COALITION, and I am authorized to make this verification on its behalf.

2. I have read the foregoing "Petition for Writ of Mandate" and I hereby verify that the facts alleged therein are true, except as to any matters which are alleged therein on information and belief, and as to such matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28th day of June, 2019, at Irvine, California.

Edmond M. Connor