

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
ARTHUR J. FRIEDMAN, Cal. Bar No. 160867  
3 ALEXANDER L. MERRITT, Cal. Bar No. 277864  
Four Embarcadero Center, 17<sup>th</sup> Floor  
4 San Francisco, California 94111-4109  
Telephone: 415.434.9100  
5 Facsimile: 415.434.3947  
Email: afriedman@sheppardmullin.com  
6 amerritt@sheppardmullin.com

7 Attorneys for Petitioner  
CALIFORNIA CHARTER SCHOOLS  
8 ASSOCIATION

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

12 CALIFORNIA CHARTER SCHOOLS  
13 ASSOCIATION,

14 Petitioner,

15 v.

16 CITY OF HUNTINGTON PARK, CITY  
17 OF HUNTINGTON PARK CITY  
COUNCIL, and DOES 1-5,

18 Respondents.

Case No.

**VERIFIED PETITION FOR  
PEREMPTORY WRIT OF MANDATE**

**[Code of Civil Procedure §§ 1085, 1088,  
1107; Public Resources Code § 21167;  
Government Code § 65858.]**

1 Petitioner California Charter Schools Association (“CCSA”) alleges as follows:

2 **INTRODUCTION**

3 1. CCSA seeks by this Petition a peremptory writ of mandate invalidating the  
4 City of Huntington Park’s (the “City”) unlawful approval on October 18, 2016 of an  
5 extended 10-month and 15 day moratorium (“Moratorium”) on the establishment and  
6 operation of charter public schools in the City.<sup>1</sup>

7 The City’s politically motivated and discriminatory prohibition of public charter  
8 schools, but no other educational institutions, for a full educational year conflicts with  
9 California’s policy of expanded educational choices for students and parents mandated by  
10 state law under the California Charter Schools Act. The Moratorium therefore is void and  
11 unenforceable as a matter of law for this reason.

12 Beyond this fatal legal defect, the City abused its discretion because the  
13 administrative record reveals that there is no substantial evidence supporting any of the  
14 findings the City was required to make under Government Code section 65858,  
15 subdivision (c) before adopting the Moratorium.

16 Finally, the City violated California’s Environmental Quality Act (“CEQA”)  
17 because it conducted no environmental review before adopting the Moratorium, and  
18 instead relied upon CEQA’s “common sense exemption.” The City, however, did not  
19 satisfy its burden of demonstrating to a “certainty” that there is “no possibility” that the  
20 Moratorium may have significant environmental effects within the area affected by the  
21 Moratorium; nor could it satisfy this burden because CCSA submitted unrefuted expert  
22 evidence demonstrating that the Moratorium would displace charter school development,  
23 along with their resulting “vehicle circulation, parking and noise” impacts recited in  
24 support of the Moratorium, to neighboring communities. (*See Muzzy Ranch Co. v. Solano*  
25 *County Airport Land Use Commission*, (2007) 41 Cal. 4th 372, 383 [“a government agency

26 \_\_\_\_\_  
27 <sup>1</sup> CCSA intends to move for a peremptory writ by noticed motion pursuant to Code of  
28 Civil Procedure section 1088.5 and Superior Court of California County of Los Angeles  
Local Rule 3.231, subsection (b).

1 may reasonably anticipate that its placing a ban on development in one area of a  
2 jurisdiction may have the consequence...of displacing development to other areas of the  
3 jurisdiction.”].)

4 CCSA therefore respectfully submits that the Court should grant this Petition.

5 **PARTIES**

6 2. Petitioner CCSA is a nonprofit membership and professional organization  
7 duly organized and existing under the laws of the State of California. CCSA’s specific  
8 purpose includes improving the quality of all public schools in California by promoting a  
9 variety of high performing and accountable charter public schools, and to protect and  
10 advocate for the rights of charter schools and all public school students. CCSA serves the  
11 charter school movement, which is currently comprised of over 1,200 charter public  
12 schools in the State of California serving more than 570,000 public school students.  
13 CCSA represents 791 member charter schools throughout California, including several  
14 schools located in the City. CCSA’s member schools are public schools dedicated to  
15 improving pupil learning for all students, pioneering new teaching methods, and expanding  
16 public school choice for all parents.

17 3. Respondent City is a municipal corporation and a political subdivision of the  
18 State of California. It is a general law city located within the County of Los Angeles. The  
19 City is the lead agency for purposes of environmental review of the Moratorium under  
20 CEQA.

21 4. Respondent Huntington Park City Council is the duly elected legislative  
22 body for the City of Huntington Park responsible for implementing the City’s land use  
23 planning and other local legislation.

24 5. CCSA does not know the true and capacities, whether individual, corporate,  
25 associate or otherwise, of respondents DOE 1 through DOE 5, inclusive, and therefore sue  
26 said respondents under fictitious names. CCSA will amend this Petition to show their true  
27 names and capacities when the same have been ascertained. Each of the respondents is the  
28 agent and/or employee of respondent City, and each have performed acts on which this

1 action is based within the course and scope of such respondent's agency and/or  
2 employment.

3  
4 **JURISDICTION AND VENUE**

5 6. This is a traditional mandamus action alleging that the City's legislative  
6 approval of the Moratorium violated CEQA and other state laws, and therefore this court  
7 has jurisdiction over this action pursuant to Code of Civil Procedure sections 1085 and  
8 1088.5, and Public Resources Code sections 21167, 21168, 21168.5 and 21168.9.

9 7. Venue lies in this court pursuant to Code of Civil Procedure sections 392 and  
10 395(a) because the City is located in Los Angeles County, and the actions that resulted in  
11 this legal dispute occurred in Los Angeles County.

12  
13 **STANDING AND COMPLIANCE WITH ALL CONDITIONS**

14 8. CCSA has standing to pursue this action because it and its member schools  
15 located within the City, and which may seek to operate in the City, have a beneficial  
16 interest in the outcome of these proceedings as they are directly impacted and regulated by  
17 the Moratorium. CCSA and its members schools located within the City and in  
18 neighboring jurisdictions also are directly affected by the City's failure and refusal to  
19 consider the Moratorium's potential environmental impacts. CCSA additionally has public  
20 interest standing because it seeks to enforce fundamental public rights to education and the  
21 City's duties to comply with California law as specified herein.

22 9. CCSA has no plain, speedy, and adequate remedy in the ordinary course of  
23 law. CCSA and its member schools are harmed and will continue to suffer injury unless  
24 and until this Court grants the requested relief.

25 10. CCSA has performed any and all conditions precedent to filing this action  
26 and has exhausted any and all available administrative remedies to the extent required by  
27 law.

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1 11. CCSA has complied with the requirements of Public Resources Code section  
2 21167.5 by serving on the City a written notice of CCSA's intention to commence this  
3 action.

4 12. CCSA is complying with the requirements of Public Resources Code section  
5 21167.6(a) by concurrently filing and serving a notice that CCSA requests that the City  
6 promptly prepare and certify the administrative record.

7 13. CCSA is complying with the requirements of Public Resources Code section  
8 21167.7 by concurrently sending a copy of this Petition to the California Attorney General.

9 **FACTUAL AND PROCEDURAL BACKGROUND**

10 14. Incorporated in 1906, the City is an urbanized and densely developed city  
11 adjacent to the City of Los Angeles. The City also shares borders with the communities of  
12 Vernon, Maywood, Bell, Cudahy, South Gate and unincorporated areas of Los Angeles  
13 County.

14 15. The City is located within the Los Angeles Unified School District's Local  
15 District East. Driven by charter schools' demonstrated strong academic performance,  
16 throughout Local District East, enrollment in traditional public schools has declined by  
17 13.8 percent during the last five years, while charter school enrollment has increased by  
18 27.1 percent during this same time period. An estimated 662 students are presently on  
19 waitlists to enroll in charter schools serving the City. By design under the Charter  
20 Schools Act, charter public schools compete with traditional public schools. Since state  
21 operational funding is allocated to charter and district public schools, respectively, based  
22 on the number of students enrolled. when a student leaves a district school for a charter  
23 school, that is one less dollar allocated to the district school. Competition over students  
24 and funds often fuels anti-charter school sentiment.

25 16. The City Council succumbed to such anti-charter school sentiment and  
26 political pressure in this election year in taking the unlawful actions described herein.  
27 These unlawful actions commenced on September 6, 2016, when the City Council and  
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1 adopted Urgency Ordinance 2016-949, imposing a 45-day moratorium on the  
2 “establishment and operation” of charter schools within the City (“Urgency Ordinance”).

3 17. The City Council purported to justify the urgent need for its hastily adopted  
4 Urgency Ordinance based on its findings that “there is a current and immediate threat to  
5 the public health, safety, and welfare....” necessitating the Urgency Ordinance in part  
6 because “certain locations within the City have already experienced adverse impacts due to  
7 charter schools and “communities within the vicinity of charter schools have experienced  
8 impacts to vehicle circulation, parking and noise.” However, neither the City’s staff report  
9 nor the Urgency Ordinance itself provided any facts or other evidence to support these  
10 findings.

11 18. On September 12, 2016, CCSA submitted written objections to the City’s  
12 Urgency Ordinance and a Public Records Act (“PRA”) request to the City for all  
13 documents relating to the City’s findings supporting the Urgency Ordinance.

14 19. On October 4, 2016, the City Council scheduled for hearing on October 18,  
15 2016 consideration of an extension of the Urgency Ordinance for an additional 10 months  
16 and 15 days (*i.e.*, the Moratorium).

17 20. On October 5, 2016, the City completed its production of documents in  
18 response to CCSA’s PRA request. The City’s response consisted of: (1) a copy of the  
19 September 6, 2016 staff report; (2) a copy of the draft Urgency Ordinance; and (3) three  
20 internal e-mail threads. The City’s response thus revealed that the City had no evidence to  
21 support any of the requisite findings legally justifying the Urgency Ordinance.

22 21. On October 18, 2016, prior to the City Council’s public hearing, CCSA  
23 submitted written objections to the proposed Moratorium. CCSA additionally submitted  
24 an “Analysis of Displaced Development” report prepared by the economic consulting firm,  
25 Grayslake Advisors. Grayslake concluded that because of rising demand for student  
26 enrollment in charter schools and limited existing charter school capacity, the City’s  
27 proposed Moratorium would displace development of charter schools, along with its  
28 resulting vehicle circulation, parking and noise impacts, to neighboring communities.

1 22. The proposed Moratorium came before the City Council during its public  
2 hearing on October 18, 2016. CCSA as well as dozens of parents and other members of  
3 the community appeared and provided testimony in opposition. Nonetheless, with little  
4 deliberation, and no response to CCSA's expert evidence, the City Council adopted the  
5 Moratorium.

6 23. CCSA thereafter timely filed this action.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of California Environmental Quality Act)**

9 24. CCSA incorporates by reference each of the foregoing allegations as if set  
10 forth in their entirety herein.

11 25. The City conducted no environmental review pursuant to CEQA before  
12 approving the Moratorium. Instead, the City relied upon CEQA's "common sense"  
13 exemption. CEQA's common sense exemption provides that a project is exempt from  
14 CEQA "where it can be seen with certainty that there is no possibility that the activity in  
15 question may have a significant effect on the environment..." (CEQA Guideline §  
16 15061(b)(3).)

17 26. By relying on CEQA's common sense exception, the City had the burden of  
18 demonstrating to a certainty that there is no possibility that that the Moratorium may  
19 directly or indirectly have a significant effect on the area affected by the Moratorium.

20 27. The City, however, failed to satisfy this burden. The City provided no  
21 evidence, much less substantial evidence, to justify its reliance on the common sense  
22 exemption. Instead, the City's staff report dated October 18, 2016 merely asserted that the  
23 Moratorium was exempt from CEQA review "due to the fact that no physical construction  
24 is proposed at this time."

25 28. The City's purported justification for the common sense exemption fails as a  
26 matter of law because it does not consider the potential environmental impacts that may  
27 result from displaced development. The Supreme Court *Muzzy Ranch, supra*, 41 Cal. 4th  
28 at 378 thus explained:

1            Depending on the circumstances, a government agency may  
2            reasonably anticipate that its placing a ban on development in  
3            one area of a jurisdiction may have the consequence, notwithstanding existing zoning or land use planning, of displacing development to other areas of the jurisdiction.

4            (*Id.* at 383.) The Supreme Court explained further that CEQA’s concern is not limited to  
5            projects that “will” have a significant effect, but those that “may” have such effect. “Thus,  
6            contrary to the [appellant’s] suggestion, nothing inherent in the notion of displaced  
7            development places such development, when it can reasonably be anticipated,  
8            categorically outside the concern of CEQA.” (*Ibid.*)

9            29.     The City did not, and in this case, could not have satisfied its burden to  
10            justify reliance on the common sense exemption because CCSA submitted unrefuted  
11            expert evidence demonstrating that the Moratorium would displace development of charter  
12            schools (along with their resulting “vehicle circulation, parking and noise” impacts recited  
13            by the City in support of the Moratorium) to neighboring communities. This evidence  
14            alone precluded the City from relying on CEQA’s commons sense exemption. (*See*  
15            *Davidon Homes v. City of San Jose* (1997) 54 Cal. App. 4th 106, 117 [“If legitimate  
16            questions can be raised about whether the project might have a significant impact and there  
17            is any dispute about the possibility of such an impact, an agency cannot find with certainty  
18            that a project is exempt.”].)

19            30.     The City’s reliance on the common sense exemption was improper  
20            additionally because CCSA submitted evidence demonstrating that the Moratorium is  
21            inconsistent with the City’s General Plan and Downtown Specific Plan.

22            a.     The City’s General Plan explains that the City is a family-oriented  
23            community with a large proportion of school-aged children. The General Plan states  
24            further that the City’s district schools are among the most densely populated in the nation  
25            and suffer from severe overcrowding. The General Plan further explains that in an attempt  
26            to relieve overcrowding, schools have been forced to add portable classrooms, to bus  
27            students out of the City to other communities, and to operate on a year-round schedule. To  
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1 minimize the detrimental effects from school overcrowding, the General Plan establishes  
2 goals and policies to “ensure that local schools are available for local students,” and to  
3 eliminate overcrowding “by all feasible means.”

4 b. The City’s Downtown Specific Plan similarly confirms that over-  
5 enrollment remains a serious problem and that the City needs additional schools. The  
6 Specific Plan states that most City schools are still operating at or near capacity, and that at  
7 several schools enrollment still exceeds capacity.

8 31. The Moratorium therefore is inconsistent with the City’s General and  
9 Specific Plans because it will deprive students of educational opportunities and potentially  
10 contribute to overcrowding of local schools. This inconsistency independently triggered  
11 CEQA’s requirement to analyze the Moratorium’s potential land use planning impacts.  
12 (*See Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903 [“if substantial  
13 evidence supports a fair argument that the proposed project conflicts with the [City’s land  
14 use policies], this constitutes grounds for requiring an EIR.”].)

15 32. The City therefore abused its discretion and failed to proceed in the manner  
16 required by law in adopting the Moratorium.

17 **SECOND CAUSE OF ACTION**

18 **(Violation of Government Code Section 65858)**

19 33. CCSA incorporates by reference each of the foregoing allegations as if set  
20 forth in their entirety herein.

21 34. Government Code Section 65858, subdivision (a) authorizes cities to adopt  
22 as an urgency measure an interim zoning ordinance prohibiting any uses that may be in  
23 conflict with a contemplated general plan, specific plan, or zoning proposal. (Gov’t. Code  
24 § 65858(a).) A city may not, however, lawfully adopt or extend any such interim  
25 ordinance “unless the ordinance contains legislative findings that there is a current and  
26 immediate threat to the public health, safety, or welfare . . . .” necessitating the ordinance  
27 (Gov’t. Code § 65858(c).)  
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1           35.    The Moratorium includes legislative findings that: (i) “Certain locations  
2 within the City have already experienced adverse impacts due to charter schools.  
3 Communities within the vicinity of charter schools have experienced impacts to vehicle  
4 circulation, parking, and noise”; (ii) under the City’s existing regulations, the  
5 establishment, construction and development of new charter schools “may undermine  
6 public health, safety, and welfare; and (iii) due to the City’s changed characteristics, the  
7 establishment, construction and development of new charter schools “may threaten the  
8 public health, safety, and welfare.”

9           36.    Courts however, commonly scrutinize the sufficiency of a City’s declared  
10 facts in support of an urgency ordinance because “the mere declaration of the  
11 council...that the ordinance is passed for the immediate preservation of the public health is  
12 neither conclusive nor yet sufficient.” ( *Crown Motors v. City of Redding* (1991) 232 Cal.  
13 App. 3d 173, 179, citing *In re Stratham*, (1920) 45 Cal. App. 436, 439 and *In re Hoffman*,  
14 (1909) 155 Cal. 114, 120.)

15           37.    The City’s production of documents in response to CCSA’s PRA request  
16 revealed that the City has no evidence to support the required findings supporting the  
17 Moratorium. Moreover, the City’s staff report for the Moratorium, dated October 18,  
18 2016, likewise provides no evidence or analysis to support the required legislative  
19 findings.

20           38.    The City therefore acted arbitrarily and capriciously and failed to comply  
21 with California law in adopting the Moratorium.

### **THIRD CAUSE OF ACTION**

#### **(Conflict With State Law Cal. Constitution, Article XI, Section 7)**

22  
23  
24           39.    CCSA incorporates by reference each of the foregoing allegations as if set  
25 forth in their entirety herein.

26           40.    In 1992, the California State Legislature enacted the Charter Schools Act of  
27 1992 to allow concerned citizens, whether teachers, parents or community members, to  
28 circulate a petition to establish and maintain charter public schools that operate

1 independently from the existing school district structure. The Act sought to promote the  
2 development of innovative alternatives to traditional public schools within the single  
3 system of public schools. The original goals of the Act include: (1) improving student  
4 learning, (2) increasing learning opportunities, especially for academically low achieving  
5 students, (3) encouraging use of different and innovative teaching methods, (4) creating  
6 new professional opportunities for teachers, (5) providing parents and students with more  
7 choices in the public school system, and (6) providing accountability for performance.

8         41. By 1998, charter schools had sufficiently proven their worth for the  
9 Legislature to raise the statutory limit of charter schools, with more to be allowed each  
10 year. Additionally, a seventh goal was added to the Act for charter schools to provide  
11 “vigorous competition within the public school system to stimulate continual  
12 improvements in all public schools.” (Education Code § 47601.)

13         42. Charter schools are part of California’s public school system and students  
14 who attend charter schools are public school students. Like traditional public schools,  
15 charter public schools “must admit all pupils who wish to attend the school,” may not  
16 discriminate in their admission of students, cannot charge tuition, and must be entirely  
17 secular. (Education Code § 47605(d)(2).)

18         43. The Act expressly provides “that charter schools are and should become an  
19 integral part of the California educational system and that the establishment of charter  
20 schools should be encouraged.” (Educ. Code § 47605(b).)

21         44. The Moratorium must be voided because it conflicts with state law under the  
22 Act. Conflicts exists where the ordinance contradicts or materially interferes with any  
23 state legislative purpose. (*Cohen v. Board of Supervisors* (1985) 40 Cal. 3d. 40 Cal. 3d.  
24 277, 290–291.) Here, the Moratorium contradicts and materially interferes with each of  
25 the foregoing stated purposes and objectives of the Act.

26         45. Article XI, section 7 of California’s Constitution provides that “[a] county or  
27 city may make and enforce within its limits all local, police, sanitary, and other ordinances  
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1 and regulations not in conflict with general laws." Local legislation in conflict with the  
2 general laws is void.

3 46. The Moratorium therefore is void and unenforceable as a matter of law.

4 **PRAYER FOR RELIEF**

5 Wherefore, CCSA prays for judgment and other relief as follows:

6 A. As to the First Cause of Action, for a peremptory writ of mandate setting  
7 aside the Moratorium and directing the City to comply with CEQA's mandates as specified  
8 by this Court prior to reconsidering any new urgency ordinance regulating charter schools.

9 B. As to the Second Cause of Action, for a peremptory writ of mandate setting  
10 aside the Moratorium and directing the City to comply with the requirements of  
11 Government Code section 65858 prior to reconsidering any new urgency ordinance  
12 regulating charter schools.

13 C. As to the Third Cause of Action, for a writ of mandate voiding and  
14 invalidating the Moratorium and directing the City to consider the legislative intent and  
15 purposes of the Charter School Act prior to reconsidering any new urgency ordinance  
16 regulating charter schools.

17 D. For a stay, preliminary and/or permanent injunction restraining the City from  
18 taking any action to implement or enforce the Moratorium.

19 E. For costs of the suit;

20 F. For recovery of CCSA's attorneys' fees as authorized by Code of Civil  
21 Procedure section 1021.5 and other provisions of law.


22 G. For such other relief as the Court deems just and proper.

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1 Dated: November 3, 2016

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3  
4 By

  
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ARTHUR J. FRIEDMAN

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6 Attorneys for CALIFORNIA CHARTER  
7 SCHOOLS ASSOCIATION

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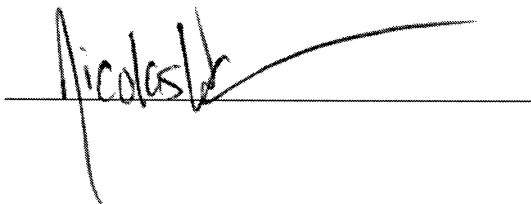
VERIFICATION

I Nicolas Watson am the Senior Advisor for Facilities for the California Charter Schools Association.

I have read the foregoing VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE and I know the contents therein 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 1<sup>st</sup> day of November, 2016 in SAN DIEGO, California.



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