

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
 DANIEL R. WILDISH / WILDISH & NIALIS 97964  
 500 North State College Boulevard, Suite 1200  
 Orange, CA 92868  
 TELEPHONE NO.: (714) 634-8001 FAX NO.: (714) 634-3869  
 ATTORNEY FOR (Name): COALITION FOR ACCOUNTABLE GOVERNMENT ETHICS (CAGE)  
 SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange  
 STREET ADDRESS: 700 Civic Center Drive West  
 MAILING ADDRESS: P.O. Box 22014  
 CITY AND ZIP CODE: Santa Ana 92701  
 BRANCH NAME: Central Justice Center  
 CASE NAME: CAGE vs. SANTA ANA

FOR COURT USE ONLY  
 CASE NUMBER:  
 JUDGE:  
 DEPT:

**CIVIL CASE COVER SHEET**  
 **Unlimited** (Amount demanded exceeds \$25,000)  
 **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 **Counter**  **Joinder**  
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- |   |  |   |
|---|--|---|
| <p><b>Auto Tort</b></p> <input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46) <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23) <p><b>Non-PI/PD/WD (Other) Tort</b></p> <input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35) <p><b>Employment</b></p> <input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <p><b>Contract</b></p> <input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37) <p><b>Real Property</b></p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26) <p><b>Unlawful Detainer</b></p> <input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38) <p><b>Judicial Review</b></p> <input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input checked="" type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p><b>Enforcement of Judgment</b></p> <input type="checkbox"/> Enforcement of judgment (20) <p><b>Miscellaneous Civil Complaint</b></p> <input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42) <p><b>Miscellaneous Civil Petition</b></p> <input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive  
 4. Number of causes of action (specify): 2  
 5. This case  is  is not a class action suit.  
 6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 12, 2010  
 DANIEL R. WILDISH / WILDISH & NIALIS  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

CITY OF SANTA ANA, a municipal corporation;  
CITY COUNCIL OF THE CITY OF SANTA ANA;  
MARIA D. HUIZAR, Clerk of the Council, City of Santa Ana; and  
DOES 1 through 50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

COALITION FOR ACCOUNTABLE GOVERNMENT ETHICS (CAGE), an  
unincorporated association; and  
JOHN BARNEICH, individually

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: **ORANGE COUNTY SUPERIOR COURT**  
(El nombre y dirección de la corte es): **Central Justice Center**

CASE NUMBER:  
(Número del Caso):

700 Civic Center Drive West  
Santa Ana 92701

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

**DANIEL R. WILDISH / WILDISH & NIALIS** 97964 (714) 634-8001  
500 North State College Boulevard, Suite 1200 Orange, CA 92868

DATE: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):
 

|  |   |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation)         | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |   |
4.  by personal delivery on (date):

[SEAL]

1 DANIEL R. WILDISH, ESQ., SBN 97964  
WILDISH & NIALIS  
2 500 North State College Boulevard, Suite 1200  
Orange, California 92868  
3 Tel: (714) 634-8001 / Fax: (714) 634-3869  
email: [dwildish@wildishandnialis.com](mailto:dwildish@wildishandnialis.com)

4 Attorneys for Petitioners  
5 COALITION FOR ACCOUNTABLE GOVERNMENT  
ETHICS (CAGE) and JOHN BARNEICH  
6

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER  
10

11 COALITION FOR ACCOUNTABLE  
GOVERNMENT ETHICS (CAGE), an  
12 unincorporated association; and  
JOHN BARNEICH, individually,

13 Petitioners/Plaintiffs,  
14

15 vs.

16 CITY OF SANTA ANA, a municipal  
corporation;  
17 CITY COUNCIL OF THE CITY OF SANTA  
ANA;  
18 MARIA D. HUIZAR, Clerk of the Council, City  
of Santa Ana; and  
DOES 1 through 50, Inclusive,

19 Respondents/Defendants.  
20

) Case No.: \_\_\_\_\_  
) [UNLIMITED CIVIL]  
)  
) **PETITION FOR WRIT OF MANDATE**  
) **AND COMPLAINT FOR**  
) **DECLARATORY RELIEF AND**  
) **INJUNCTIVE RELIEF**

21  
22 **SUMMARY OF ACTION BY THE CITY OF SANTA ANA**

23 1. Petitioners/Plaintiffs, COALITION FOR ACCOUNTABLE GOVERNMENT  
24 ETHICS (CAGE) and JOHN BARNEICH, individually (collectively, Petitioners), bring this suit  
25 against Respondents/Defendants, CITY OF SANTA ANA (City), et al (collectively,  
26 Respondents), to enforce a fundamental right of the voters of Santa Ana under the California  
27 Constitution and the California Elections Code.

28 \\\

1           2.       By this Petition for Writ of Mandate, Petitioners seek to compel the CITY OF  
2 SANTA ANA to approve or reject by a vote of the public an amendment to an existing  
3 development agreement (Development Agreement No. 2004-01), which was the subject of voter-  
4 approved initiative.

5           3.       The City of Santa Ana Development Agreement No. 2004-01 (hereinafter the  
6 Development Agreement) allows for the construction of a 37-story office tower located at 1109  
7 North Broadway, Santa Ana, commonly referred to as One Broadway Plaza (OBP).

8           4.       The amendment was passed by the CITY on July 19, 2010, and purports to  
9 eliminate a pre-condition to construction of the OBP which required that the developer pre-lease  
10 at least 50% of the office tower as a condition to going forward with construction.

11          5.       By this Petition and Writ, CAGE, as Petitioners, seek to require the CITY OF  
12 SANTA ANA, its Council Members and City Clerk to abide by the California Constitution and  
13 California Elections Code section 9217 requiring subsequent amendments to voter-approved  
14 initiatives only by a like vote of the public.

15          6.       Petitioners further seek judicial enforcement of additional, important public rights,  
16 including the right of the voters.

17          7.       The procedural and factual background of events culminating in the passage of the  
18 referendum known as "Measure A" (a true and correct copy of which is attached hereto as  
19 Exhibit 1 and incorporated herein by reference as though set forth in full), essentially began with  
20 a citizen group challenge to the development of the 37-story high-rise building. These challenges  
21 included, among other things, challenges to the adequacy of the various environmental reviews  
22 and studies pertaining to the project. On or about August 27, 2004, a Verified Petition for Writ  
23 of Mandate, and Complaint for Declaratory Relief and Injunctive Relief was filed, and named the  
24 City as a Defendant, and the Development Applicant, Mr. Harrah, as the Real Party-in-Interest.  
25 Although this action was ultimately dismissed, a citizen-backed petition challenging the  
26 Development Agreement and project was circulated, and ultimately the requisite number of  
27 signatures were obtained and presented to the City Council. The City then had the legal options  
28 of either disapproving the ordinance approving the Development Agreement, or, submitting the

1 question to the voters. Although the Developer filed a Writ of Mandate challenging the City's  
2 decision to put the project to a vote of the people, this challenge was unsuccessful, and a  
3 referendum on Measure A, which was essential to the Development going forward, was passed.

4 5. The Impartial Analysis from City Attorney accompanying the Measure A voting  
5 materials contains the following statements:

6 "Measure A, placed on the ballot by the Santa Ana City Council as a result  
7 of a Referendum Petition, proposes to approve City of Santa Ana Ordinance No. NS-  
8 2469, re-zoning approximately 4.32 acres..."

9 "This re-zoning would permit the construction of a 545,124 sf., 37-story  
10 office building, an 8-level parking structure, and rehabilitation of four (4) existing  
11 structures into office and commercial uses."

12 "A General Plan Amendment Resolution and an Ordinance approving a  
13 Development Agreement previously adopted by the Santa Ana City Council would  
14 become effective if Ordinance No. NS-2649 is approved."

15 6. Measure A, at Section 5, is quoted as follows:

16 "Section 5. This ordinance shall not be effective unless and until  
17 Resolution No. 2004-021 and Ordinance No. NS-2656 becomes  
18 effective. "

19 As such, Ordinance No. 2656 and Ordinance No. 2649 (Measure A) would only become  
20 effective upon voter approval of Measure A.

21 7. The City Council's decision to submit the Development to a vote of the public  
22 effectively, and by law, suspended the implementation of the Development Agreement. With the  
23 passage of Measure A, the Development Agreement and the ordinance approving same was  
24 reinstated, and the Developer was allowed to go forward with the project. The Development  
25 Agreement itself at Paragraph 4.4 specifically provides that it may be amended from time to time  
26 "but only in the same manner as its adoption by an ordinance as set forth in Government Code  
27 Section 65868." As the Development Agreement and the ordinance approving it could only be  
28 approved by a vote of the public, by its own terms, a like vote would be required pursuant to the

1 express terms of the Development Agreement.<sup>1</sup> Unless an initiative or referendum measure  
2 expressly provides otherwise, it may be amended or repealed only by the electorate. Measure A  
3 (Ordinance No. NS-2649) provided that it “shall not be effective unless and until Resolution No.  
4 2004-021 and Ordinance No. NS-2656 (the Development Agreement) becomes effective.”

5 8. Initiative and referendum measures can be repealed or amended only by a vote of  
6 the people, unless provision is otherwise made in the original ordinance.<sup>2</sup>

7 9. Elec. Code § 9217 provides as follows:

8 **“§ 9217. Majority vote required for ordinance to become valid**  
9 **and binding**

10 If a majority of the voters voting on a proposed ordinance vote in its  
11 favor, the ordinance shall become a valid and binding ordinance of  
12 the city. The ordinance shall be considered as adopted upon the date  
13 that the vote is declared by the legislative body, and shall go into  
14 effect 10 days after that date. No ordinance that is either proposed by  
15 initiative petition and adopted by the vote of the legislative body of  
16 the city without submission to the voters, or adopted by the voters,  
17 shall be repealed or amended except by a vote of the people, unless  
18 provision is otherwise made in the original ordinance.” (Emphasis  
19 added.)

20 10. On June 14, 2010, the Santa Ana Planning Commission held a hearing and  
21 recommended that the City Council adopt an ordinance approving certain amendments to  
22 Development Agreement No. 2004-01.

23 11. On July 19, 2010, the CITY OF SANTA ANA City Council held a regular City  
24 Council meeting to consider, inter alia, the amendment of Development Agreement No. 2004-01

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25  
26 <sup>1</sup> An ordinance protested by a sufficient petition does not become effective until a majority of the  
27 voters voting on it vote in its favor. Elections Code Sections 9145 and 9241.

28 <sup>2</sup> In reviewing the complete text of Measure A (a true and correct copy of which is attached hereto  
as Exhibit 1 and incorporated herein by reference as though set forth in full), there is no provision for amendment by  
the City Council after passage by the voters.

1 for the One Broadway Plaza office tower - 1109 North Broadway - One Broadway Plaza, LLC,  
2 Applicant.

3 12. At the July 19, 2010 City Council Meeting, the CITY heard public comments and  
4 received written correspondence objecting to the proposed amendment by the CITY on the basis  
5 that said amendment was contrary to the vote of the public on the Measure A Referendum, which  
6 was held on April 5, 2005. On July 19, 2010, the CITY OF SANTA ANA approved the  
7 amendment to Development Agreement No. 2004-01 for the One Broadway Plaza office tower  
8 and specifically eliminated the pre-leasing requirement, requiring the developer to have 50% of  
9 the office tower leased prior to commencement of construction.

10 13. On or about July 29, 2010, Petitioners, through their representative counsel,  
11 forwarded their Request for Reconsideration to the CITY OF SANTA ANA, its council members  
12 and Joseph W. Fletcher, Esq., the Santa Ana City Attorney. Notwithstanding Petitioners'  
13 multiple requests for reconsideration of the approved amendment on the basis that it was  
14 approved as an illegal and ultra vires act of the CITY OF SANTA ANA, there has been no  
15 forthcoming response from the CITY.

16  
17 **PARTIES TO THIS ACTION**

18 14. Petitioner/Plaintiff, COALITION FOR ACCOUNTABLE GOVERNMENT  
19 ETHICS (CAGE), is an unincorporated association of concerned citizens, taxpayers and  
20 community organizations residing or located within the boundaries of the City of Santa Ana.  
21 Petitioner, JOHN BARNEICH is a resident of the City of Santa Ana and a taxpayer.

22 15. Respondent/Defendant, CITY OF SANTA ANA, is a municipal corporation  
23 existing as a body politic and corporate in the County of Orange, State of California.

24 16. Respondent/Defendant, CITY COUNCIL OF THE CITY OF SANTA ANA, is  
25 the governing body of the CITY, vested with various legislative, administrative and executive  
26 duties, functions and responsibilities under state and local law, including the City Charter.  
27 Among the CITY COUNCIL OF THE CITY OF SANTA ANA's duties and responsibilities is  
28 the duty to comply with and enforce citizen-sponsored initiative measures approved by a majority

1 of the voters in accordance with the California Constitution, the Elections Code and the City  
2 Charter.

3 17. Respondent/Defendant, MARIA D. HUIZAR, is the City Clerk and is being sued  
4 in her official capacity as City Clerk. In that capacity, MARIA D. HUIZAR serves as the CITY's  
5 elections official, charged with the duty of conducting any local election (Elec. Code, §§307,  
6 320).

7 18. Among the duties of the CITY OF SANTA ANA and its City Clerk, is a  
8 requirement to abide by and enforce California Elections Code section 9217, which provides that  
9 an ordinance approved by a public vote by way of referendum or initiative shall only be amended  
10 by a like public vote unless the ordinance provides for amendment in a contrary manner.

11 19. Petitioners are currently unaware of the true names and capacities of DOES 1  
12 through 50, inclusive, and therefore sue those parties by fictitious names pursuant to Code of  
13 Civil Procedure section 474. Petitioners are informed and believe that each fictitiously-named  
14 DOE is responsible or liable in some manner for the conduct, events or occurrences described in  
15 this pleading. Petitioners will seek leave to amend this pleading to state the true names and  
16 capacities of the fictitiously named parties if necessary and after the same have been ascertained.

17  
18 **JURISDICTION, VENUE AND STANDING**

19 20. This Court has jurisdiction over this action pursuant to California Constitution  
20 article VI, section 10 and Code of Civil Procedure sections 1060, 1085, 1086 and 1094.5.

21 21. Venue is proper in this Court under Code of Civil Procedure section 394,  
22 subdivision (a), which, as a general rule, states that "An action or proceeding against a . . . city  
23 . . . may be tried in the . . . county in which the city . . . is situated . . ." Venue is also proper  
24 under Code of Civil Procedure section 395, subdivision (a), which, as a general rule, provides  
25 that "the superior court in the county where the defendants or some of them reside at the  
26 commencement of the action is the proper court for the trial of the action."

27 22. Petitioners have standing to seek the equitable relief they pray for in this action  
28 under the express provisions of Article XXVII. By Article XXVII, section 27.9, "Any aggrieved

1 person shall have the right to maintain an action for equitable relief to restrain any violation of  
2 this article, or to enforce the duties imposed on the City by this article.” Each petitioner herein is  
3 an “aggrieved person” for purposes of the right to seek writ of mandate and declaratory relief.  
4 Petitioners also have standing to maintain this action under Code of Civil Procedure sections  
5 1060, 1085, 1086 and 1094.5, and Elections Code sections 9217 and 13314. By Code of Civil  
6 Procedure section 1060, “Any person . . . who desires a declaration of his or her rights or duties  
7 with respect to another, . . . may, in cases of actual controversy relating to the legal rights and  
8 duties of the respective parties,” bring an action for a judicial declaration of such rights and  
9 duties. As also shown in this verified pleading, this case presents an actual and present  
10 controversy, ripe for adjudication. The facts and circumstances of this case are not hypothetical;  
11 they have sufficiently congealed to permit a concrete and useful decision, providing effective  
12 judicial relief absent which thousands of registered City voters will suffer injury to their rights  
13 this action seeks to enforce.

14 23. Petitioners also are “beneficially interested” parties seeking the writ of mandate  
15 relief they pray for. (Code Civ. Proc., § § 1086 and 1094.5.) The questions presented in this  
16 action are questions of public right and the object of the writ sought is to procure the enforcement  
17 of a public duty, CAGE, in a purely representative capacity, Petitioner, JOHN BARNEICH,  
18 individually (a voter), and others presented detailed comments on the questions presented at the  
19 July 19, 2010 City hearing, are clearly sufficiently interested as citizens to have the laws that  
20 form the basis for their claims executed and Respondents' public duty enforced. They have  
21 citizen standing to seek the ordinary writ of mandate relief they pray for. (See *Common Cause v.*  
22 *Board of Supervisors* (1989) 49 Cal.1.3d 432,439; *Citizens Assn. for Sensible Development of*  
23 *Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 158.) By Code of Civil Procure  
24 section 1085, “A writ of mandate may be issued . . . to compel performance of an act which the  
25 law specifically enjoins, as a duty resulting from an office, trust, or station, or to compel the  
26 admission of a party to the use and enjoyment of a right . . ., to which the party is entitled, and  
27 from which the party is unlawfully precluded . . .”

28 ∥

1 CLAIMS FOR RELIEF

2  
3 FIRST CAUSE OF ACTION

4 ARBITRARY AND CAPRICIOUS ACTS BY RESPONDENTS, AND FAILURE TO

5 PROCEED AS REQUIRED BY LAW

6 By Petitioners Against Respondents

7 24. Petitioners incorporate by reference paragraphs I through 23 of this pleading, as  
8 though fully set forth.

9 25. The City voters of Santa Ana have the express right under the City Charter to  
10 approve or reject any proposed amendments to the aforesaid Development Agreement  
11 authorizing the development of the One Broadway Plaza office tower.

12 26. By Elections Code section 9217, "If a majority of the voters voting on a proposed  
13 ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city."

14 27. Further, Elections Code section 9217 provides that "The ordinance shall be  
15 considered as adopted upon the date that the vote is declared by the legislative body, and shall go  
16 into effect 10 days after that date. No ordinance that is either proposed by initiative petition and  
17 adopted by the vote of the legislative body of the city without submission to the voters, or  
18 adopted by the voters, shall be repealed or amended except by a vote of the people, unless  
19 provision is otherwise made in the original ordinance."

20 28. Measure A, which was passed by a vote of the public on April 5, 2005, did not  
21 contain a provision for amendment by the City Council without referring the question to a vote of  
22 the public.

23 29. Article I, Section 3, subdivision (a) of the California Constitution further provides  
24 that "The people have the right to instruct their representatives, petition government for redress  
25 of grievances, and assemble freely to consult for the common good."

26 30. Respondents' failure to provide for the public vote on the question of the  
27 amendment of the aforesaid Development Agreement and failure to diligently set or select an  
28 election date is arbitrary and capricious, and failure to proceed as required by law.



1 declaration enforcing the public's rights under the California Constitution and California  
2 Elections Code, Petitioners will be irreparably harmed. A judicial declaration resolving the  
3 dispute in controversy between the parties is, thus, necessary and appropriate.

4  
5 EXHAUSTION OF ADMINISTRATIVE REMEDIES  
6 AND INADEQUATE REMEDIES AT LAW

7 36. Petitioners incorporate by reference Paragraphs 1 through 35 of this pleading, as  
8 though fully set forth.

9 37. Petitioners have exhausted all available administrative remedies they may have  
10 been required to exhaust, both in oral and written comments provided to the City Council and  
11 other City officials. Petitioners incorporate by reference into this pleading their own comments  
12 to the City, as well as comments of other citizens consistent with the claims and grounds for  
13 relief set forth in this pleading.

14 38. Petitioners have no plain, speedy and adequate remedy in the ordinary course of  
15 law that would afford them the redress they pray for below and to which they are entitled. No  
16 damages can compensate them for the harm they and the electors of the CITY suffer as a result of  
17 Respondents' violation of their voting rights. Without the equitable relief prayed for,  
18 Respondents will continue to violate their public duties and the public's rights as described  
19 above.

20 39. This action raises issues of great public interest by seeking to enforce important  
21 rights affecting the public interest and thereby effectuate the intent of the voters under Measure  
22 A. If successful, this action will confer significant community benefits for a large class of  
23 persons and the general public, including use and enjoyment of voting rights.

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1           WHEREFORE, Petitioners pray for relief and final judgment as follows:

2   On the First Cause of Action

3           1.       That the Court issue an alternative writ of mandate commanding Respondents to  
4 make all the orders and take all action as set forth in this pleading or, alternatively, show cause at  
5 a hearing and time to be set by this Court why no writ of mandate should issue against them.

6           2.       That the Court issue a peremptory writ of mandate commanding Respondents:

7                   (a)     To submit the proposed amendment of the Development Agreement for  
8 the One Broadway Place office tower to the voters of the City, for their approval or  
9 rejection;

10                   (b)    To diligently determine the date of a special or regular municipal election,  
11 and perform or order all acts enjoined upon them by law to present the ballot containing  
12 the amendment of the Development Agreement for the One Broadway Place office tower  
13 to the voters of the City;

14                   (c)    To take such other action as is specifically enjoined upon Respondents, as well as  
15 all other applicable state and local laws.

16 On the Second Cause of Action

17           That the Court issue a binding declaration that:

18           1.       The CITY's act of approving an amendment to the Development Agreement was  
19 and ultra vires act, illegal and in violation of California Elections Code section 9217 and is null  
20 and void.

21           2.       That the CITY be required to either rescind the amendment to the Development  
22 Agreement or submit the matter to a vote of the public to either accept or reject the same.

23 On All Causes of Action

24           1.       That the Court award Petitioners' counsel reasonable attorney fees and out-of-  
25 pocket expenses pursuant to Code of Civil Procedure section 1021.5, and award Petitioners costs  
26 of suit.

27    \\\

28    \\\

1           2.       That the Court reserve the right for Petitioners to amend this pleading and prayer  
2 for relief, including for purposes of allowing a change to the election deadline, as may be  
3 warranted by the Court's trial or law and motion calendar, or by other future circumstances out of  
4 Petitioners' control, and grant Petitioners such other and further relief as the Court may deem  
5 proper.

6 Dated: October 12, 2010

WILDISH & NIALIS

7  
8 By: \_\_\_\_\_

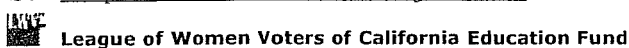
  
DANIEL R. WILDISH  
Attorney for Petitioners  
COALITION FOR ACCOUNTABLE  
GOVERNMENT ETHICS (CAGE) and  
JOHN BARNEICH

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*Exhibit 1*

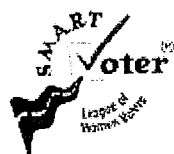
This is an archive of a past election.

See <http://www.smartvoter.org/ca/or/> for current information.



Orange County, CA

April 5, 2005 Election



# Measure A

## Construction of One Broadway Plaza

### City of Santa Ana

Referendum - Majority Approval Required

**See Also: [Index of all Measures](#)**

Information shown below: [Yes/No Meaning](#) | [Impartial Analysis](#) | [Arguments](#) | [Full Text](#)

***Shall the City of Santa Ana enforce Ordinance NS-2649 permitting the development of One Broadway Plaza, a 37 story office building and related retail improvements and parking?***

### Meaning of Voting Yes/No

**A YES vote on this measure means:**

The City of Santa Ana will permit development of One Broadway Plaza per Ordinance NS-2649

**A NO vote on this measure means:**

The City of Santa Ana will be prohibited from enforcing Ordinance NS-2649

### Impartial Analysis from City Attorney

Measure A, placed on the ballot by the Santa Ana City Council as a result of a referendum petition, proposes to approve City of Santa Ana Ordinance No. NS-2469 rezoning approximately 4.32 acres generally bounded by Washington Avenue on the north, Sycamore Street to the east, 10th Street to the south, and Broadway Street to the west from Midtown Specific Plan No. 3 (SP-3) to One Broadway Specific Development District (SD-75). This rezoning would permit the construction of a 545,124 square foot, 37 story office building, an 8-level parking structure and rehabilitation of four existing structures into office and commercial uses.

Development of the project would also require the demolition or relocation of two structures designated as historically significant. An additional historically designated structure would be restored and retained at its present location.

The following traffic changes are also part of the project: a portion of Sycamore Street between 10th Street and Washington Avenue would be vacated; 10th Street between Broadway Street and Main Street would be converted to one-way eastbound; and Washington Avenue between Broadway Street and Main Street would be converted to one-way westbound.

**A general plan amendment resolution and an ordinance approving a development agreement previously adopted by the Santa Ana City Council would become effective if Ordinance No. NS-2649 is approved.**

### Partisan Information

#### Neighbors For a Better Santa Ana/No On Measure A

Measure A represents the worst aspects of city planning. Neighbors For a Better Santa Ana is a growing organization of Santa Ana voters who collected over 14,000 signatures to bring this issue to ballot. Join your neighbors and Vote No on Measure A if you too are fed up with poor city planning, political corruption, and elected officials who favor developer campaign donations over the voices of their constituents.

#### Suggest a link related to Measure A

Links to sources outside of Smart Voter are provided for information only and do not imply endorsement.

**Arguments For Measure A**

Vote YES on Measure A. Let's make Santa Ana the Number One City in Orange County

Santa Ana can once again be the number one city in Orange County. It's up to you. The key to our future is up to you. The key to our future is a clean, safe, prosperous downtown. Your YES vote on Measure A will approve the construction of One Broadway Plaza, a 37-story office building that will be the most prestigious in Orange County. The project includes restaurants, a public plaza, shops and parking, all within walking distance of the Civic Center.

One Broadway Plaza is the Centerpiece of a Master Plan to Rebuild our Downtown.

Downtown Santa Ana is a better place to live and do business because of projects like the artist's village, the Performing Arts and Event Center, and the Orange County High School of the Arts. One Broadway Plaza will continue the improvement of our downtown by creating a major NEW business and financial center.

Your YES vote on Measure A Means Jobs and Opportunities

One Broadway Plaza will bring good paying construction jobs, which will be a big boost to our local economy. One Broadway Plaza will attract major corporations, which will substantially increase employment opportunities for Santa Ana residents. These new employees will also support our local businesses.

Your YES vote on Measure A Means Millions of Dollars for our Schools, Police, Fire Protection and Road Improvements.

As part of the development of One Broadway Plaza, the city will receive 12 million dollars in local road improvements at no cost to the taxpayers. Additional millions in property and sales tax revenues will improve Santa Ana schools, police and fire protection.

Citizens for Economic Growth

**Arguments Against Measure A**

Santa Ana must have the right development to create sustainable growth. One Broadway Plaza (OBP) is an example of development in the wrong place: a skyscraper and parking garage proposed for the Broadway historical corridor. High density development belongs near freeway exits, close to buildings of similar form and function.

This is the wrong place for a tower nearly three times as tall as the Reagan Courthouse. The site is directly across from El Sol Elementary, and adjacent to the Orange County High School of the Arts and a planned elementary arts academy. OCHSA students are endangered because City Council has voted to reopen 10th Street between main and Sycamore for OBP traffic.

The Environmental Report (EIR) says this skyscraper will add more than 6,000 vehicle trips daily to our overcrowded streets, and will degrade traffic "below acceptable service levels." The EIR further states that negative impacts "cannot be mitigated," and that annual revenue taxes generated will be less than \$320,000. Is this worth the huge increase in traffic, draining City services, and endangering children? No amount of developer money or promises will prevent traffic gridlock and other negative impacts if OBP is built at this location.

This project is the same kind of bad planning that in the past has created many of the problems that plague us today. A "No" vote will not kill development at this location, but future development must be consistent with surrounding density and uses.

Don't be fooled by the big-money campaign supporting this project. Signs and statements from developers mean only that they have lots of dollars to invest. It doesn't mean that this building belongs in this location.

OBP is in The Wrong Place. Vote NO on One Broadway Plaza.

**Full Text of Measure A**

**ORDINANCE NO. NS-2649**

AN ORDINANCE OF THE CITY OF SANTA ANA REZONING THE PROPERTY LOCATED AT ONE BROADWAY PLAZA FROM MIDTOWN SPECIFIC PLAN NO. 3 (SP-3) TO ONE BROADWAY SPECIFIC DEVELOPMENT DISTRICT (SD-75) (AA NO. 2004-01); AMENDING THE MIDTOWN SPECIFIC PLAN (ZOA NO. 2004-02) AND ADOPTING THE ONE BROADWAY SPECIFIC DEVELOPMENT DISTRICT (SD-76)

THE PEOPLE OF THE CITY OF SANTA ANA ORDAIN AS FOLLOWS:

Section 1. It is hereby found and determined: A.Applicant is requesting approval of various entitlements in order to construct a thirty-seven (37) story, 493 feet in height, office tower located at One Broadway.

B.On February 23, 2003, the Planning Commission held a duly noticed public hearing, and by a vote of 6:1 (Sinclair opposed) voted to recommend that the City Council:

1.Certify and adopt the Final Environmental Impact Report No. 99-01, the Mitigation Monitoring Program, and the Statement of Overriding Considerations.

2.Adopt an ordinance approving the rezoning the property located at One Broadway Plaza from Midtown Specific Plan No. 3 (SP-3) to One Broadway Specific Development District (SD-75), Amendment Application No. 2004-01.

3.Adopt an ordinance amending to the Midtown Specific Plan (SP-3) (ZOA No. 2004-02).

4.Adopt a resolution amending the General Plan of the City of Santa Ana to increase the Floor Area Ratio to 2.9, to classify streets as Local Commercial Streets, and to modify the Urban Design Element (GPA No. 2004-01).

The City Council of the City of Santa Ana held a duly noticed public hearing on the above said actions for One Broadway on March 15, 2004, and at that time considered all testimony, written and oral. After closing this hearing, the City Council directed that a Development Agreement be negotiated.

D.On June 14, 2004, the Planning Commission, held a duly noticed public hearing, and by a vote of 6:1 (Sinclair opposed) voted to recommend that the City Council:

1 Adopt additional mitigation measures in response to comments from the Santa Ana Unified School District.

2.Adopt an ordinance approving Development Agreement No. 2004-01,

3.Adopt a resolution approving Tentative Parcel Map No. 2004-02 (County Map No. 2003-262) as conditioned.

E.On July 6, 2004, a second City Council meeting was scheduled and was continued by the City Council to July 19, 2004.

F.On July 19, 2004 the aforesaid hearing was held and at that time the City Council considered all testimony, written and oral.

G.Amendment Application No. 2004-01 has been filed with the City of Santa Ana to change the zoning district designation of certain real property located at One Broadway from Midtown Specific Plan No. 3 (SP-j) to the One Broadway Specific Development District (SD-75).

1.SD-75 would allow professional and business offices; banks and similar financial institutions; service and commercial retail uses; restaurants; nightclubs, bars and indoor entertainment (with a Conditional Use Permit); coffee houses (with a Conditional Use Permit); and banquet facilities (with a Conditional Use Permit).

2.Amendment Application No. 2004-01 is consistent with the General Plan, including but not limited to its goals and policies to:

a.Promote the balance of land uses to address basic community needs. Land Use Element Goal No. 1.0.

b.Promote land uses which enhance the City's economic and fiscal viability. Land Use Element Goal No. 2.0.

c.Support developments that create a business environment that is safe and attractive. Land Use Element Policy No. 2.8.

d. Enhance development sites and districts which are unique community assets that enhance the quality of life. Land Use Element Goal No. 4.0.

e. Encourage high intensity office development to attract major tenants that will contribute to cultural and business activities of the central city. Land Use Policy No. 1.3.

f. Support projects that contribute to the redevelopment and revitalization of the central city urban areas. Land Use Policy No. 2.7.

g. Create an opportunity for Class A office space suitable for acquisition of major, high profile tenant in the Downtown Development Area. Land Use Policy No. 2.11.

h. Encourage large-scale office development with ancillary retail in the proximity of the Civic Center Complex, Downtown and Midtown urban areas. Land Use Policy No. 2.12.

3. The City Council has weighed and balanced the general plan's policies and has determined that based upon this balancing that the One Broadway project is consistent with the purpose of the general plan.

4. The Council has examined all of the goals and policies of the general plan, including:

a. Promote the balance of land uses to address basic community needs. Land Use Element Goal 1.0.

b. Promote land uses which enhance the City's economic and fiscal viability. Land Use Element Goal 2.0.

c. Support developments that create a business environment that is safe and attractive. Land Use Element Policy 2.8.

d. Enhance development sites and districts which are unique community assets that enhance the quality of life. Land Use Element goal 4.0.

e. Encourage high intensity office development to attract major tenants that will contribute to cultural and business activities of the central city. Land Use Policy No. 1.3.

f. Support projects that contribute to the redevelopment and revitalization of the central city urban areas. Land Use Policy No. 2.7.

g. Create Class A office space suitable for acquisition of major, high profile tenant in the Downtown Development Area. Land Use Policy No. 2.11.

h. Encourage large-scale office development with ancillary retail in the proximity of the Civic Center Complex, Downtown and Midtown urban areas. Land Use Policy No. 2.12.

5. The City Council also adopts as findings all facts - presented in the Requests for Council Action dated March 15, 2004, July 6, 2004, and July 19, 2004 accompanying this matter.

6. For these reasons, and each of them, Amendment Application No. 2004-01 is hereby found and determined to be consistent with the General Plan of the City of Santa Ana and otherwise justified by the public necessity, convenience, and general welfare.

H. Zoning Ordinance Amendment No. 2004-02 has been filed with the City of Santa Ana to amend the Midtown Specific Plan (SP-3) to eliminate the area of the One Broadway Design District from SP-3.

I. Final Environmental Report No. 99-01, the Mitigation Monitoring Program, and the Statement of Overriding Considerations which came before the City Council on March 15, 2004, and was approved and adopted by resolution at the second duly noticed public meeting held on July 19, 2004.

At the July 19, 2004 meeting, the City Council also introduced an ordinance rezoning the property (AA No. 2004-01), adopted a resolution amending the City's General Plan (GPA No. 2004-01) and a resolution approving Tentative Parcel Map No. 2004-02. This ordinance incorporates by reference, as though fully set forth herein, the resolutions and said Final Environmental impact Report, Mitigation Monitoring Plan, and Statement of Overriding Considerations, and all their respective findings and conclusions in support of this ordinance.

J. On October 4, 2004, a referendum petition against this Ordinance was certified, requiring the ordinance to be either repealed or submitted to the voters for approval. On November 15, 2004 the City Council decided to submit this ordinance to the voters.

Section 2. The real property located at One Broadway is hereby reclassified from Midtown Specific Plan. No. 3 (SP-3) to One Broadway Specific Development District (SD-75). Amended Sectional District Map number 12-5-10, showing the above described change in use district designation, is hereby approved and attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein. (AA No. 2004-01).

Section 3. Midtown Specific Plan No. 3 (SP-3) is hereby amended as set forth in Exhibit "B", attached hereto and incorporated as though fully set forth herein. (ZOA 2004-02).

Section 4. One Broadway Plaza Specific Development District (SD-75) as set forth in Exhibit "C", attached hereto and incorporated as though fully set forth herein, is approved adopted in its entirety.

Section 5. This ordinance shall not be effective unless and until Resolution No. 2004-021 and Ordinance No. NS-2656 becomes effective. If said ordinance or resolution are for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or otherwise do not go into effect for any reason, then this ordinance shall be null and void and have no further force and effect,

Section 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 7. This ordinance shall become effective only upon the approval by a majority of the voters of the City of the Santa Ana at the April 5, 2005 special election.

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1 VERIFICATION

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I, JOHN BARNEICH, declare:

4 I am a member of Petitioner/Plaintiff, COALITION FOR ACCOUNTABLE  
5 GOVERNMENT ETHICS (CAGE) and a resident and registered voter of the City of Santa Ana.  
6 I verify this Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunctive  
7 Relief in my capacity as CAGE's member and in my individual capacity. I have read the  
8 foregoing Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunctive  
9 Relief and know its contents. The facts alleged therein are true of my own personal knowledge,  
10 except any facts alleged on information and belief. Those facts, I verify upon information and  
11 belief.

12 I declare under penalty of perjury, under the laws of the State of California, that the  
13 foregoing is true and correct and that this declaration was executed on October 12, 2010, at Santa  
14 Ana, California.

15   
16 \_\_\_\_\_  
17 JOHN BARNEICH  
18 Declarant