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EXEMPT FROM FILING FEES  
 PURSUANT TO GOV. CODE § 6103

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE  
 11

12 GEORGE EDWARDS,  
 13 Plaintiff and Petitioner,  
 14 v.  
 15 CITY OF LA HABRA HEIGHTS and  
 16 DOES 1 through 100,  
 17 Defendants and Respondents.

Case No. BC 525436  
 Judge: Hon. Abraham Khan, Dept. 51

(CEQA)

**DECLARATION OF SHAUNA CLARK IN  
 SUPPORT OF RESPONDENT CITY OF  
 LA HABRA HEIGHTS' OPPOSITION TO  
 PETITIONER'S MOTION FOR  
 PROTECTIVE ORDER [SIC]  
 [PRELIMINARY INJUNCTION]**

[Filed concurrently with: Respondent City of La  
 Habra Heights' Opposition to Petitioner's  
 Motion for Preliminary Injunction; Declaration  
 of Betty Kimes; Declaration of David Nichols;  
 Declaration of Alisha M, Winterswyk]

Hearing for Preliminary Injunction:  
 Date: December 27, 2013  
 Time: 1:30 p.m.  
 Dept.: 86

(Complaint filed: 10/23/13)  
 (Trial date: None set)

25 DOES 101 through 1,000,  
 26 Real Parties in Interest,  
 27  
 28

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**DECLARATION OF SHAUNA CLARK**

I, Shauna Clark, declare as follows:

1. I am the City Manager of the City of La Habra Heights ("City"), and have been employed as such since December 2007. I have personal knowledge of the matters set forth herein, and if called upon to do so, could and would testify as follows.

2. The La Habra Heights City Hall ("City Hall") is located at 1245 N. Hacienda Road. City Hall consists of three buildings totaling 8,622 square feet. The buildings were constructed in the 1950s as a public school, but have housed the City's administrative offices since the late 1970s.

3. During my employment I have witnessed leaks in the roof and walls, and have seen water come through City Hall furnaces, HVAC ducts and lighting fixtures. I have witnessed electrical shortages occur throughout City Hall, and also witnessed frequent loses of power within the buildings. When power is lost, City staff is unable to use computers and other office equipment. I have also witnessed asbestos tiles fall from the City Hall buildings' ceilings.

4. Portions of the front parking lot of City Hall are currently unpaved. I have witnessed members of the public park illegally along the periphery of this lot, not within marked parking stalls.

5. In 2011, the City retained a consultant to assess the condition of City Hall. The consultant provided its assessment and recommendations in a Facilities Assessment Report dated October 2011. The Facilities Assessment recommends numerous immediate repairs related to life safety, stabilization, asbestos removal, abatement of lead based paint, and fire hazards.

6. The City has received two "Loss Cap Reports" from our insurance carrier, CalJPIA. The first report was issued in 2005 and the second was issued in 2010. Both reports speak to serious health and safety concerns in the existing City Hall buildings. Those concerns have yet to be rectified.

7. The minor City Hall Renovation Project ("Project") will rectify the current health and safety issues that are present at City Hall. The Project will include patching existing leaks, replacing damaged walls and wall coverings, removing asbestos, removing or abating lead based

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1 paint and upgrading electrical equipment. In addition, the Project will improve the energy  
2 efficiency of City Hall.

3 8. The City Council determined that the Project was exempt from the California  
4 Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines sections 15301, 15302  
5 and 15332. The CEQA process was a multi-step process. First, prior to the City Planning  
6 Commission's consideration, City Staff prepared a commission report describing the Project.  
7 Based on all of the information in the record at that time, City Staff determined that the proposed  
8 Project was exempt from CEQA. The Planning Commission considered the staff report, City  
9 Staff's CEQA recommendation, and all other evidence submitted to the Planning Commission  
10 regarding the Project. At its August 27, 2013 meeting, the Planning Commission adopted  
11 Resolution No. 2013-02, which included the Planning Commission's determination that the  
12 Project was exempt. Upon hearing Mr. Edwards' appeal of the Planning Commission's  
13 determination, on November 19 and 20, 2013, the City Council also considered the Project and  
14 made its own independent determination with regard to the CEQA exemptions. At this special  
15 City Council meeting, the City Council considered a staff report, the advice of staff and counsel,  
16 and all evidence submitted to the City on the Project. The City then affirmed the decision of the  
17 Planning Commission that the Project was exempt from CEQA.

18 9. The City General Plan includes a Noise Element, which establishes guidelines for  
19 controlling noise in the City. "Exhibit A" attached to this Declaration is a true and correct copy  
20 of the General Plan Noise Element. It identifies five "Noise Element Policies", none of which  
21 pertain to construction noise or construction activity. The Noise Element refers to City  
22 ordinances that regulate potential construction noise sources by establishing allowable days and  
23 hours for when construction noise is permitted to occur.

24 10. La Habra Heights Municipal Code (hereinafter referred to as "Municipal Code")  
25 section 4.11.120 contains the City's rules and regulations regarding construction noise. "Exhibit  
26 B" attached to this Declaration is a true and correct copy of Municipal Code section 4.11.120.  
27 This section states in its entirety, "The operation of construction equipment or conducting  
28 construction-related activities (including demolition, grading, site preparation, etc.) is prohibited

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1 weekdays and Saturdays between the hours of 7:00 p.m. and 7: a.m., or at any time on Sundays or  
2 holidays unless such is specifically exempted from this restriction in writing by the City Manager  
3 in response to exigent circumstances.”

4 11. Municipal Code section 7.6.30 is the City code that controls “objectionable noise”.  
5 “Exhibit C” attached to this Declaration is a true and correct copy of section 7.6.30. It states in  
6 its entirety, “No noise source, type, or level sufficient to cause distress to, or be unpleasant to, a  
7 person of reasonable sensitivity shall be allowed at any time.” This code section is within  
8 Chapter 7.6 of the Municipal Code. The purpose of Chapter 7.6. is to establish standards for land  
9 use and development. To my knowledge, section 7.6.30 has never been interpreted to prohibit  
10 construction noise, which is governed instead by Municipal Code section 4.6.30. In my opinion  
11 such an interpretation would prohibit all construction within the City.

12 12. Municipal Code section 7.19.60 is the City code that controls conditional use  
13 permits. “Exhibit D” attached to this Declaration is a true and correct copy of section 7.19.60. It  
14 requires that several findings be made, including a finding relating to the “land use” proposed by  
15 the conditional use permit.

16 13. Municipal Code section 12.2.10 defines terms, including the term “use” as they are  
17 used in the Municipal Code. “Exhibit E” attached to this Declaration is a true and correct copy of  
18 Municipal Code section 12.2.10, which contains the definition of “use”. Municipal Code section  
19 12.2.10 defines “use” as “the purpose for which land or a structure is designed, arranged,  
20 intended, occupied, or maintained or the activity conducted thereon as defined by the applicable  
21 Zone District.”

22 14. On November 20, 2013, at a special meeting of the La Habra Heights City Council  
23 (“City Council”), I recommended to the City Council that the City vacate the current City Hall  
24 building due to the building’s safety issues. I believe the building poses serious risks to City  
25 employees and visitors that require vacating the buildings immediately, regardless of when the  
26 City moves forward with the Project. The current conditions imperil the health and safety of the  
27 City’s employees and visitors.

28 15. The City of La Habra Heights totals approximately 4,090 acres. Pursuant to the  
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1 City's General Plan, of those 4,090 acres only 36 are designated for any use other than residential  
2 or open space. As a result, locations available to temporarily house the City's administrative  
3 offices are limited. I have identified four possible locations for the relocated City offices:  
4 available rooms at the private school adjacent to the existing City Hall, the City Park, the gym at  
5 the City Park, and Hacienda Golf Club. I have determined that moving into the available rooms  
6 at the private school adjacent to the existing City Hall would have the least impact on residents of  
7 the City and the City's general fund. Moving City Hall functions to a City Park would require  
8 locating modular temporary buildings in the Park. Putting up temporary buildings at the Park  
9 would displace many people who use that amenity for outdoor sports. Moving City Hall  
10 functions to the gym at the City Park would render the gym completely unusable by all  
11 community groups. Currently, we have regular requests by community groups and members to  
12 rent the gym for sporting events, weddings, receptions, and other types of events. By my last  
13 estimate, these types of events generate approximately \$64,000 of revenue for the City per year.  
14 This would be a significant loss to the City's general fund. Lastly, Hacienda Golf Club is  
15 membership only and does not have the necessary square footage to accommodate the City's  
16 offices, even for a temporary period of time. For these reasons, I recommended to the City  
17 Council on November 20, 2013 that the City Council lease space from the private school. City  
18 employees have since moved into this leased office space.

19 16. The lease entered into with the adjacent school is for 10 months, at a cost of  
20 \$20,000. Further, moving from City Hall to the leased space is estimated to cost the City  
21 approximately \$29,200 in addition to the lease. These additional costs include the cost of moving  
22 services, necessary technical upgrades to the leased facility, an HVAC inspection, and the transfer  
23 of and necessary upgrades to utilities and utility hook-ups. These taxpayer dollars are already  
24 encumbered.

25 17. The seven public hearings held by the City to consider the Project's conditional  
26 use permit and Petitioner's appeal of the same, are estimated to have cost the City more than  
27 \$60,000. Included in this estimated cost are: legal counsel fees for being present at all hearings,  
28 public noticing of all hearings, recording and broadcasting of all hearings, necessary document

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1 preparation, the hiring of an outside hearing officer, and the cost of an additional engineering  
2 review of the proposed parking plan.

3 18. In addition to the above described costs, the City has spent approximately  
4 \$242,100 on the Project's architectural and engineering design, plans, plan check, and review.  
5 The City has also spent approximately \$1,375 on the preparation and award of a construction bid  
6 for the Project.

7 19. The City might be liable to the contractor for any costs caused by delay and/or  
8 termination of the contract by the City.

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct. Executed December 17, 2013, in the County of Los Angeles.

11 BY: Shauna Clark  
12 SHAUNA CLARK  
13 City Manager  
14 City of La Habra Heights

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