

Section 4. **Public Notice.** Public notice of Meetings of the Water Commission shall be given by the Water Systems Manager, as Clerk of the Commission, in accordance with M.G.L. 39, 23A to 23C. Except in emergencies, the Commission will file a notice with the City Clerk and a copy thereof in the public office of the Commission at least 48 hours (including Saturdays but not Sundays and legal holidays) prior to the Meeting. The notice will include the date, time and place of the Meeting.

Section 5. **Conduct of Meetings.** All Meetings of the Commission shall be open to the public and any person shall be permitted to attend any Meeting except as otherwise provided in accordance with M.G.L. 39, 23A-23C. At each Meeting of the Commission, the Chairman shall act as Presiding Officer, and the Water Systems Manager, as Clerk of the Commission shall cause to be prepared minutes of all business transacted by the Members at such Meeting.

Section 6. **Transaction of Business.** At all Meetings of the Commission the following order of business shall be observed so far as is consistent with the purposes of the Meeting, unless waived by the affirmative vote of at least three Members:

- (a) call to order,
- (b) approval of the minutes,
- (c) report of the DPW Commissioner,
- (d) report of the Superintendent of Utilities,
- (e) report of the Water Systems Manager,
- (f) old business,
- (g) new business,
- (h) adjournment.

However, failure to observe the foregoing order of business shall not affect the validity or any action taken out of such order, unless a Member present at the Meeting shall object to departure therefrom

Section 7. **Quorum.** Three Members of the Commission shall constitute a quorum, and a majority vote of three Members of the Commission shall be necessary for any action taken by the Board. No vacancy in the membership of the Commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the Commission.

## **ARTICLE V. ORGANIZATION OF THE COMMISSION**

Section 1. **Organization and Officers.** The Commission shall have a Board of Water Commissioners as provided in the Enabling Act which shall have final authority to manage all affairs and business of the Commission and to exercise all powers given to it under Section 23-30 of the Enabling Act. The Chairman of the Commission shall be annually elected from one of its 3 appointed members. The Commission shall annually elect one of its Members Vice-Chairman.

The officers of the Commission shall be a Chairman, a Vice-Chairman and a Clerk.

The Water Systems Manager, the DPW Commissioner and the Superintendent of Utilities shall compose a non voting Executive Committee with the powers and delegations provided in this Article and as the Water Commission may from time to time direct. The DPW Commissioner and Superintendent of Utilities are appointed by the Mayor with confirmation by the Council. The Water Systems Manager is elected by the Water Commission.

Section 2. **Water Commission.**

(a) **General.** The Commission shall consist of Members whose appointments, terms and qualifications shall be governed by the provisions of Section 23-30(a) of the Enabling Act.

(b) **Chairman.** In addition to powers and duties expressly provided for elsewhere in these by-laws, the Chairman shall have such powers and perform such duties as may from time to time be voted by the Water Commission.

(c) **Vice-Chairman.** The Vice-Chairman shall have all the powers and discharge all the duties of the Chairman upon the absence, inability or incapacity of the Chairman. The performance by the Vice-Chairman of the duties or the exercise of the power of the Chairman shall be presumptive evidence of the absence, inability or incapacity of the Chairman, and a certificate by three Members of the Commission as to such absence, inability or incapacity, or by the Commission as to such absence for any Regular or Special Meeting, shall be conclusive evidence thereof.

(d) **Clerk of the Commission** The Clerk of the Commission (the Clerk) shall be the appointed Water Systems Manager.

~~(d)~~-e) **Authority.** The Commission shall have full authority to manage the affairs and business, exercise all powers given to it under the Enabling Act and prosecute, amend or repeal by-laws, rules, regulations and procedures concerning the manner in which the business of the Commission may be conducted, and the powers granted to it, so long as consistent with applicable statutes of the City of Brockton. From time to time, subject to the provisions of Article V, Section 3(b) of these by-laws, the Commission may delegate matters relating to the management and operations of the Commission to the Water System Manager or the Executive Committee or to any other officer of the Commission.

Section 3. **Executive Committee and Other Officers.**

(a) **Appointment.** ~~The members of the Executive Committee shall be comprised of the Water Systems Manager, the Commissioner of Public Works, and the Superintendent of Utilities as appointed by the Commission or the Mayor as provided in the Revised Ordinances of the City of Brockton; and in Article V section 1 of these articles.~~

The Commissioner of Public Works shall act as Executive Director of the Executive Committee and the Water Systems Manager shall act as Clerk of the Committee.

(b) **Authority of Executive Committee.** The Executive Committee shall direct the administrative affairs and the general management of the Water Commission. The Executive Committee shall act to make recommendations for action to the Water Commission and may act as the delegate of the Commission in all matters appointed to the Executive Committee by the Commission, provided that no power or duty vested in the Commission by the Enabling Act shall be finally delegated to the Executive Committee without provision for consideration and ratification by the Commission.

Two members of the Executive Committee shall constitute a quorum, and the affirmative vote of two members of the Executive Committee shall be necessary for any action taken by the Committee. No vacancy in the membership of the Executive Committee shall impair the right of a quorum to exercise the powers and duties of the Executive Committee.

The Executive Committee shall attend Meetings of the Water Commission. The Executive Committee shall meet upon call of the Executive Director from time to time as necessary to discharge its duties and shall meet not less often than monthly.

### Section 3. **Other Agents.**

The Commission may from time to time by resolution engage accounting, management, legal, financial, consulting and other professional services necessary in the judgment of the Water Commission to the conduct of the programs of the Commission.

## ARTICLE VI. INDEMNIFICATION

Section 1. **Indemnification.** The Commission, to the extent legally permissible, shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Commission, by reason of the fact that he or she is or was a Member, officer or agent of the Commission against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Commission, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Commission, and with respect to any criminal action or proceeding had a reasonable cause to believe that his or her conduct was unlawful.

The Commission shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Commission to procure a judgment in its favor by reason of the fact that the person is or was a Member, officer or agent of the Commission against expenses, including attorneys' fees, actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Commission, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Commission unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication or liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 2. **Payment.** A person entitled to indemnity under this Section, who has been wholly successful, on the merits or otherwise, in the defense of a proceeding shall be entitled to immediate indemnification for such person's reasonable expenses. Any other indemnification under this Article, unless awarded by a court, shall be made by the Commission unless in the specific case either (i) the Water Commission, acting by a vote of at least three Members, which Members shall include no persons who are at the time parties to the proceeding in question, shall reasonably determine that the conduct of the person to be indemnified has fallen outside the standard of conduct for indemnification as set forth above, or (ii) the City Solicitor shall provide an opinion in writing after reasonable investigation that indemnification is not mandatory in the

circumstances because the conduct of the person to be indemnified has fallen outside the standard of conduct for indemnification as set forth in this Article.

Section 3. **Advance Payment**. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Commission in advance of the final disposition of the action, suit or proceeding as authorized by the Commission and approved by the City Council and the Mayor in the specific case upon receipt of an undertaking by or on behalf of the Member, officer or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Commission as authorized in this Article.

Section 4. **Insurance**. The Commission may purchase and maintain insurance on behalf of any person who is or was a Member, officer or agent of the Commission against any liability asserted against such person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Commission would have the power to indemnify the person against such liability under the provisions of this Article.

Section 5. **Defense**. The indemnification herein shall apply only so long as defense of any proceeding as to which indemnification is claimed is made by an attorney approved by the Commission or by an attorney obligated under the terms of a policy of insurance to defend against such proceeding.

Section 6. **Miscellaneous**. The indemnification provided in this Article shall not be deemed exclusive of or affect any other rights to which any officer or agent of the Commission may be entitled. Any indemnification to which a person is entitled under these provisions shall be provided although such person is no longer a Member, officer or agent of the Commission. As used in this Article, rights of indemnification inure to the benefit of the heirs, executors and administrators, of such person.

## **ARTICLE VII. MISCELLANEOUS**

Section 1. **Execution of Instruments**. Unless some other person or persons shall be so authorized pursuant to a resolution of the Commission, or except as otherwise provided by law or by these by-laws, the Chairman shall sign in the name of and on the behalf of the Water Commission all written instruments to be executed by the Commission. The Water Systems Manager, as Clerk, is authorized, unless a resolution of the Commission otherwise provides, to

attest to the due authorization and execution of any instrument in the name of and on behalf of the Commission.

In the execution on behalf of the Commission of any instrument, document, writing, notice or paper, it shall not be necessary to affix the official seal of the Commission thereon, and any such instrument, document, writing, notice or paper when executed without said seal affixed thereon shall be of the same force and effect and as binding on the Commission as if said official seal had been affixed thereon in each instance.

Section 2. **Annual Reports.** Annually, within seventy-five days after the organization of the city government, the Water Systems Manager, with the advise and consent of the Commission, shall report to the Commission a complete and detailed written report setting forth financial and operational state of the city's water system and water department. This report should include recommend water rates and recommended budget for the upcoming fiscal year.

Section 3. **Records.** Proceedings of the Commission Meetings shall be recorded in the minute books provided for that purpose and, once adopted by the Commission, shall constitute the official record of the Commission. The minutes of each Meeting shall be signed by the Water Systems Manager as Clerk of the Commission.

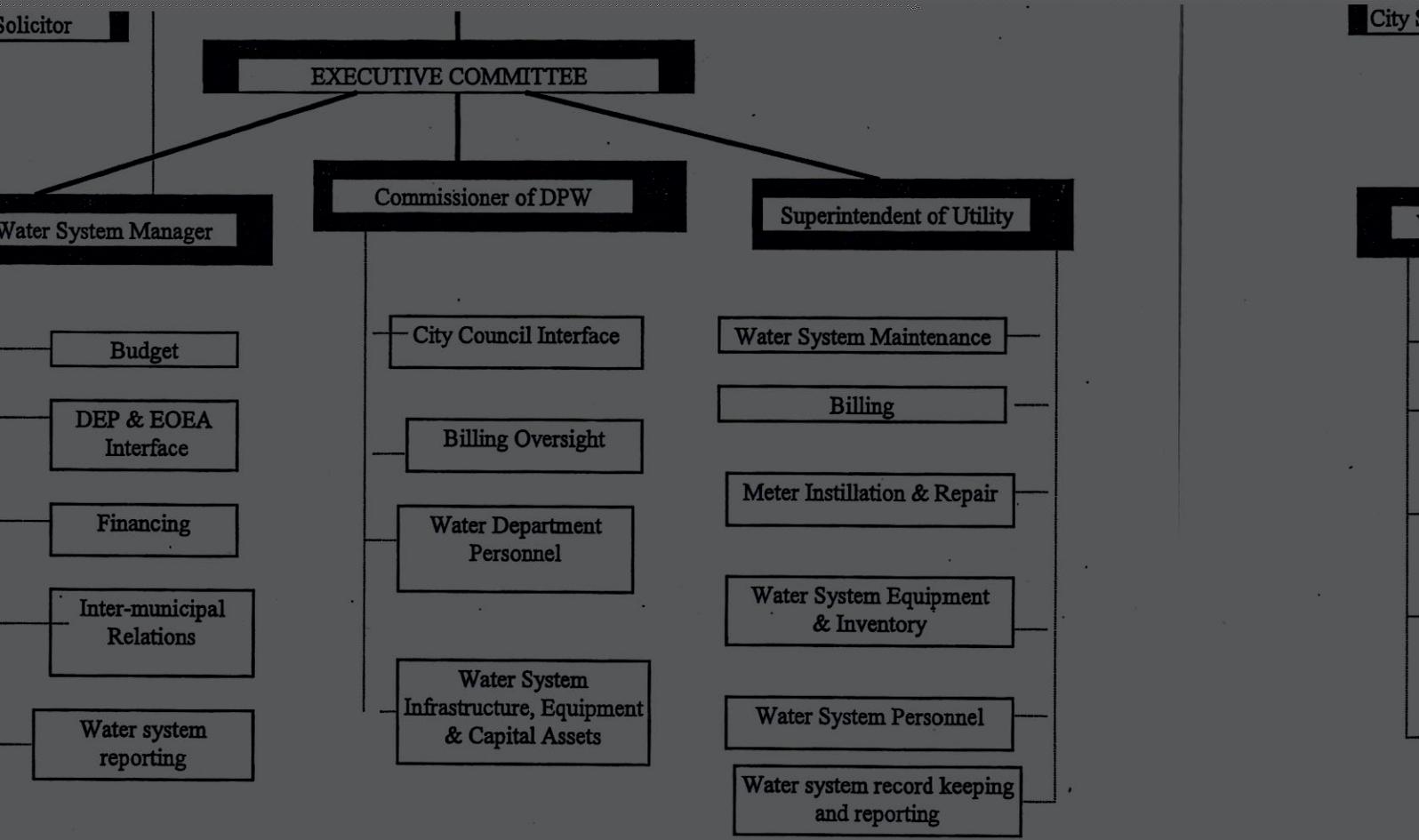
#### **ARTICLE VIII. AMENDMENTS**

These by-laws may be amended, added to, altered or repealed in whole or in part by resolution of the Commission adopted by the affirmative vote of three or more Members of the Commission at any Regular or Special Meeting of the Commission, provided that the notice of such Meeting shall specify the subject matter of the proposed amendment, addition, alteration or repeal of the Article or Articles

CITY OF BROCKTON  
WATER DEPARTMENT

CITY COUNCIL

MAYOR



COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT  
CIVIL ACTION NO. \_\_\_\_\_

\_\_\_\_\_  
)  
**CITY OF BROCKTON, and,** )  
**WILLIAM G. CARPENTER, III,** )  
**in his official capacity as MAYOR** )  
**of the CITY OF BROCKTON,** )  
Plaintiff, )

v. )

)  
**BROCKTON CITY COUNCIL,** )  
**and ROBERT SULLIVAN, in his** )  
**official capacity as CITY** )  
**COUNCIL PRESIDENT,** )  
Defendant. )

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT**  
**OF ITS MOTION FOR A PRELIMINARY AND PERMANENT INJUNCTION**

The Plaintiffs hereby submit the within Memorandum in support of their Motion for a Preliminary Injunction and respectfully request that said Motion be allowed.

**I. STATEMENT OF THE CASE**

The Plaintiffs filed their Verified Complaint with the Court requesting injunctive and declaratory relief based upon Defendant, Robert Sullivan's act of appointing a member of the City of Brockton's Water Commission ("the Commission") and his intent to continue appointing members of the Commission in accordance with his interpretation of the appointment authority granted under the Ordinances of Brockton, §23-30(a) (hereinafter the "Ordinance"). It is Plaintiffs' contention that the Ordinance under which the Defendant claims to have authority is inconsistent with and attempts to override appointing authority expressly granted by state law, specifically the City's Plan B Charter pursuant to M.G.L. c. 43, §60 ("Charter"). Plaintiff submits that the inconsistencies between the Charter and the Ordinance effectively invalidates the Ordinance and renders Defendant's appointments void.

Plaintiffs further contend that, irrespective of the Ordinance's validity, Defendant's appointment of a member to the Commission was in excess of his authority and in violation of the plain meaning of the Ordinance which grants exclusive authority to appoint successor members of the Commission to the Mayor.

## **II. FACTUAL ALLEGATIONS**

On or about 1957, the City adopted a Plan B Charter (G.L. c. 43, §§1-45 & §§53-63) under which the mayor is the chief executive officer. (See Exhibit A) Section 60 of the Charter provides in pertinent part that: "Upon the adoption of Plan B, all heads of departments and members of municipal boards...shall be appointed by the mayor, subject to confirmation by the city council..." The Plan B Charter continues in effect as the form of government for the City. (Exhibit A)

On or about January 1, 1996, the City enacted the Ordinances of the City of Brockton Sections 23-30 (the "Ordinance") establishing a water commission (See Exhibit B) The Ordinance provides in pertinent part that the Mayor shall appoint three residents of the City, subject to confirmation by City Council, as members of the Commission. It further grants the President of the City Council authority to appoint two residents of the City as members. The Ordinance goes on to state:

"Of the members first appointed, one (1) shall serve in office for a term expiring on March 31 in the year following adoption of this section, and one (1) for a term expiring on March 31 in the second year following adoption of this section and one (1) for a term expiring on March 31 in the third year following adoption of this section. *Thereafter, the mayor, subject to confirmation by the city council, shall appoint successors* for a term of

three (3) years or, in the case of an appointment to fill a vacancy, for the unexpired term and until his successor is appointed and qualified.” (emphasis added)

On or about January 6, 2014, the Mayor took office and commenced his administration in the City. Shortly thereafter, on or around February 6, 2014, he received correspondence from the Defendant advising that the Defendant had made an appointment of a member to the Commission pursuant to his perceived authority as granted under the Ordinance. The Defendant further indicated that he intended on making an additional appointment in the “near future.” (See Exhibit D) Defendant reiterated his intentions during a recent City Council Meeting (“Meeting”) stating that he would make the additional appointment to the Commission at the next Meeting scheduled on Monday, February 24, 2014.

### **III. ARGUMENT**

#### **A. PRELIMINARY INJUNCTION STANDARD**

To obtain preliminary injunctive relief, the moving party must show: (1) that it has a reasonable likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is not granted; and (3) that the harm it will suffer if the injunction is denied outweighs the injury. *Callahan & Sons, Inc. v. City of Malden*, 430 Mass. 124, 131 (1999); *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 616-617 (1980).

In evaluating a governmental body's request for injunctive relief when it seeks to enforce a law or policy, as is the case here, the Court must only determine: (1) the moving party has shown a likelihood of success on the merits of the underlying claim; and (2) the moving party's requested relief “promotes the public interest or, alternatively, that the equitable relief will not adversely affect the public.” *LeClair v. Town of Norwell*, 430 Mass. 328, 331-332 (1999). When suit is brought by a governmental entity there is no requirement to prove irreparable harm. *Id.* at 331.

For the reasons set forth below, this Court should enter injunctive relief because: (1) the Plaintiffs' Verified Complaint clearly indicates that the Plaintiffs will be successful on the merits; and (2) the issuance of injunctive relief is in the furtherance of the public interest and will not adversely affect the public.

**B. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

The Plaintiff's Verified Complaint demonstrates that the City of Brockton has a strong likelihood of success on the merits. It is well established in the Commonwealth that an ordinance cannot be legally enacted which overrides the express provisions of a statute to which the city has been made subject. *Flood v. Hodges*, 231 Mass. 252 (1918)

1. Provisions of Ordinance Inconsistent with Plan B Charter

On or about 1957, the City adopted a Plan B Charter pursuant to Massachusetts General Laws, Chapter 43, §§1-45, inclusive and §§53-63, inclusive. Pursuant to Section 60 of the Charter:

“Upon the adoption of Plan B, *all* heads of departments and *members of municipal boards*, except school committee, officials appointed by the governor, and assessors if elected by the people, as their terms of office expire, *shall be appointed by the mayor*, subject to confirmation by the city council...” (emphasis added).

Thereafter, on or about 1996, the City enacted Sections 23-30 of the Ordinances of the City of Brockton establishing a water commission to consist of five members. The Ordinance at Section 23-30(a) provides in pertinent part that:

“There is hereby established a Water Commission which shall consist of three residents of the City to be appointed by the Mayor, subject to confirmation by the City Council... and two residents of the City appointed by the President of the City Council, all members being for a term of three years...Of the members first appointed, one shall serve in office

for a term expiring on March 31 in the year following adoption of this ordinance, and one for a term expiring on March 31 in the year following adoption of this ordinance and one for a term expiring on March 31 in the third year following adoption of this ordinance.

*Thereafter, the Mayor, subject to confirmation by the City Council, shall appoint successors for a term of three years...*" (emphasis added).

While the City's Charter expressly grants to the Mayor exclusive appointing authority with respect to all members of municipal boards, the Ordinance grants additional powers of appointment to the president of the city council in contradiction to those provisions of the Charter.

2. The Water Commission is a Municipal Board Within the Meaning of M.G.L. c. 43, §60

The Commission is a municipal board which was created and empowered to perform duties, not legislative in nature, but rather executive. (See *Mayor of New Bedford v. City Council of New Bedford*, 13 Mass.App.Ct. 251 (1982) finding appointing authority of city council applies only to those committees established exclusively to assist the legislative branch as opposed to those who perform usual municipal functions) Pursuant to the Ordinance and By-Laws, the purposes of the Commission, include, but are not limited to, oversight and assessment of the City's water needs. (See Exhibit D) The Commission is responsible for creating a master plan to deal with the City's short and long term water goals. It is to report its findings and suggestions to the Mayor and City Council and submit to the Mayor a proposed budget for same. It is indisputable that the water systems preserved and improved by the Commission are held and maintained by the City for the benefit of all members of the public. (See *Kaczmariski v. Mayor of Springfield*, 346 Mass. 432 (1963):

Court holds that park commissioners comprise a municipal board for purposes of appointment under G.L. c. 43).

Exceptions to the mayor's power of appointment refer only to officers whose appointment is specifically and directly otherwise provided for by the charter itself. *Ray v. Mayor of Everett*, 328 Mass. 305 (1952) (See G.L. c. 43, §12 providing for election of a city clerk by city council) (See also G.L. c. 43, §44 allowing for election of school committee by voters of the city) Unlike the school committee, a municipal board over which the mayor has no power of appointment due to the express exceptions set forth in the Charter, there are no express exceptions with respect to the Mayor's power to appoint the Commission's members. Furthermore, there are no separate chapters under the laws of the Commonwealth which would strip the Mayor of his appointment authority. (See *Crocker v. Deschenes*, 287 Mass. 202 (1934) & *McDonald v. Justices of Superior Court*, 299 Mass. 321 (1938): Where appointment authority provided in city charters was preempted by conflicting state law which set forth a state wide plan for the supervision or control. The boards involved in those cases were alcoholic liquor licensing boards, and they operated under a State wide statutory scheme with differing provisions for appointment and removal than those contained under the Charters).

As there are no provisions whatsoever in the City's Charter granting city council any authority over appointments of water commission members, all appointments must rest solely with the Mayor, subject to confirmation by council. M.G.L. c. 43, §60

### 3. The City's Charter Preempts the Ordinance

The City's Charter, as expressly provided in G.L. c. 43, §11, supersedes any law related thereto and inconsistent therewith. Legislative intent to supersede local regulations need not be expressly stated where the state law deals with a subject comprehensively and "may

reasonably be inferred as intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated.” *School Committee of Boston v. City of Boston*, 383 Mass. 693 (1981) quoting *Bloom v. Worcester*, 363 Mass. 166, 155 (1973).

The delegation of appointing authority in the Mayor with respect to members of municipal boards pursuant to Section 60 of Massachusetts General Laws Chapter 43 is a clearly articulated legislative policy of the Commonwealth. As a result, Section 23-30(a) of the Ordinances of the City of Brockton granting appointment authority to the president of the city council is an unlawful delegation of authority as it is in sharp conflict with City’s charter pursuant to state law. Accordingly, the Ordinance is preempted by the Charter and must be held invalid.

4. Irrespective of the Ordinance’s Validity, Defendant Still Exercised Action in Excess of His Authority

The Ordinance expressly and clearly provides that successor members of the Commission shall be appointed by the Mayor, subject to confirmation by City Council. The Defendant’s interpretation of the grant of authority under the Ordinance cannot overcome the Ordinance’s clear and unambiguous language. Where the ordinance or bylaw is clear on its face, no further interpretation is required; only where a provision, word or phrase is ambiguous, will the court determine its meaning in accordance with ordinary principles of statutory construction. *Iodice v. Newton*, 397 Mass. 329, 332-33 (1986).

Due to the foregoing reasons, there are no set of facts upon which the Defendant can prevail in the underlying action.

C. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IN THE EVENT THE REQUESTED INJUNCTIVE RELIEF IS DENIED

Because this is an action in which Plaintiffs are seeking to enforce a state law, a showing of irreparable harm is not required. *LeClair v. Town of Norwell*, 430 Mass. 328, 331-332 (1999) However, Plaintiffs submit for purposes of detailing the need for immediate relief that denial of the injunction will undoubtedly result in irreparable harm.

Irreparable harm is a loss of rights that cannot be vindicated, should the party seeking an injunction prevail after a full hearing on the merits. *Planned Parenthood League of Mass., Inc. v. Operation Rescue*, 406 Mass. 701, 710 (1990). Defendant, through his act of appointing a member of the Commission, has effectively denied and impeded the Mayor's authority as explicitly provided in the City's Charter. Defendant's action was taken under his interpretation of an Ordinance which is inconsistent and preempted by state law. Continued application of the unlawful Ordinance will result in ongoing conflict and discord between the legislative and executive branches of government as vacancies in municipal boards arise. As a result, there presently exists a threat of serious and irreparable harm to the orderly conduct of the business of the City that will affect the public's safety and welfare and the general governance of the City.

**D. PLAINTIFFS' REQUESTED RELIEF PROMOTES THE PUBLIC INTEREST AND WILL NOT ADVERSELY AFFECT THE PUBLIC**

In evaluating the appropriateness of a preliminary injunction, the Court must consider how the Defendant's act of appointing members of the water commission, despite the statutory grant of sole authority to the mayor, affects the public interest. *LeClair v. Town of Norwell*, 430 Mass. at 337. Explicit in the City Charter provisions and recognized in G.L. c. 43 is the authority of the Mayor to appoint all members of municipal boards, subject to confirmation by city council. In light of the express authority granted the Mayor under the City's Charter, the Defendant's act of appointing a member to the Commission is likely to be an invalid and unenforceable encroachment on the Mayor's power of appointment.

Therefore, there is no need for a judge to find irreparable injury before issuing a preliminary injunction. Finding a likely statutory violation which adversely affects the public interest is sufficient. *Edwards v. City of Boston*, 408 Mass. 643 (1990)

The public interest overwhelmingly supports the Plaintiffs' entitlement to injunctive relief in this case. Members of the public have a strong interest in ensuring that government officials comply with the laws enacted which clearly define the manner in which the government will conduct itself and the roles of its officials. The City Charter, as adopted, promotes an efficient governmental body and seeks to avoid conflict between officials by expressly providing for the powers and rights of each. Moreover, a permanent injunction will serve the goal of avoiding repeat violations of the City's Charter by public officials in the future and will promote the enactment of Ordinances consistent with the City's Charter. The public only stands to benefit if its Ordinances do not contradict its Charter and the Defendant is compelled to act in compliance with the Charter in future dealings with the Plaintiffs.

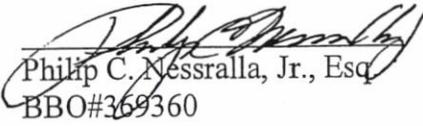
In addition, issuance of Plaintiffs' requested relief will not have any adverse effect on the public. Enjoining the Defendant from making any further appointments to the Commission, and invalidating his recent appointment to same, will only result in the Mayor exercising his right to appoint members as intended by the Charter. City Council, including the Defendant, will still be able to exercise their authority under the Charter by determining whether to confirm the Mayor's appointment. Accordingly, compliance with the Charter will have no negative effect on the public whatsoever.

#### **E. CONCLUSION**

For the foregoing reasons, the Plaintiffs respectfully request that this Honorable Court declare the Ordinance at issue void as it is inconsistent and contradicts the City's Charter. The Plaintiffs further request that this Court issue a preliminary and permanent injunction

against the Defendant enjoining him from making any further appointments to the Water Commission in excess of his authority. Finally, Plaintiffs request that this Court invalidate those appointments already made by the Defendant as they were unlawful and consequently must be deemed void.

Respectfully Submitted,  
The Plaintiffs,  
By Their Attorney,

  
Philip C. Nessralla, Jr., Esq

BBO#369360

City Solicitor

City of Brockton

45 School Street

Brockton, MA 02301

(508) 580-7110

Dated: February 24, 2014

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

\_\_\_\_\_)  
 CITY OF BROCKTON, and, )  
 WILLIAM G. CARPENTER, III, )  
 in his official capacity as MAYOR )  
 of the CITY OF BROCKTON, )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BROCKTON CITY COUNCIL, )  
 and ROBERT SULLIVAN, in his )  
 official capacity as CITY )  
 COUNCIL PRESIDENT, )  
 Defendants. \_\_\_\_\_)

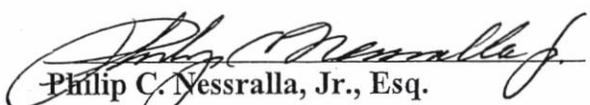
**AFFIDAVIT IN SUPPORT OF  
MOTION FOR SHORT ORDER OF NOTICE**

Now comes the affiant, Philip C. Nessralla, Jr., City Solicitor for the City of Brockton, on oath and states as follows:

1. I am employed as City Solicitor for the City of Brockton;
2. A civil action has been filed to invalidate Section 23-30(a) of the Ordinances of the City of Brockton and to enjoin Defendants from making any further appointments of members of the City of Brockton's Water Commission in violation of state and local laws and seeking to set aside Defendant's recent appointment of a member of the Water Commission.
3. A Short Order of Notice is required in order that this Honorable Court may issue a preliminary injunction against the Defendant who intends on appointing an additional member to the Water Commission in the near future.
4. Because the Defendant's actions present a significant and substantial risk to the public welfare, it is in the best interest of the public and all parties involved that this matter be addressed without delay.

The above information is based upon my personal knowledge.

Signed under the pains and penalties of perjury this 24<sup>th</sup> day of February, 2014.

  
 Philip C. Nessralla, Jr., Esq.  
 City Solicitor  
 City of Brockton  
 BBO#369360

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT  
CIVIL ACTION NO. \_\_\_\_\_

CITY OF BROCKTON, and, )  
WILLIAM G. CARPENTER, III, )  
in his official capacity as MAYOR )  
of the CITY OF BROCKTON, )  
Plaintiff, )

v. )

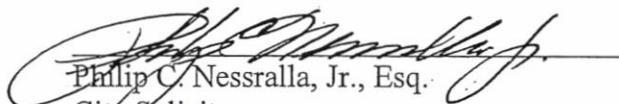
BROCKTON CITY COUNCIL, )  
and ROBERT SULLIVAN, in his )  
official capacity as CITY )  
COUNCIL PRESIDENT, )  
Defendant. )

**MOTION FOR PRELIMINARY AND PERMANENT  
INJUNCTION AND SHORT ORDER OF NOTICE**

Now come the Plaintiffs, City of Brockton and Mayor William G. Carpenter, III, and move this Honorable Court to:

1. Enjoin and restrain Defendant from making any further appointments of members of the City of Brockton's Water Commission in violation of the City's Plan B Charter (M.G.L. c. 43, §60);
2. Declare Section 23-30(a) of the Ordinances of Brockton invalid and unenforceable due to its sharp conflict with state law (M.G.L. c. 43, §60).
3. Enjoin and restrain Defendant from making any further appointments of members of the City of Brockton's Water Commission in violation of the Ordinances of Brockton, Section 23-30(a).
4. Declare the Defendant's recent appointment of a member of the City of Brockton's Water Commission to be invalid and unlawful; and
5. Issue a Short Order of Notice of a hearing on the Motion for a Preliminary and Permanent Injunction.

Respectfully submitted,  
Plaintiffs,  
By Their attorney,



Philip C. Nessralla, Jr., Esq.  
City Solicitor  
BBO#369360  
City Hall- 45 School Street  
Brockton, MA 02301  
(508) 580-7110

Dated: February 24, 2014

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

\_\_\_\_\_)  
 )  
**CITY OF BROCKTON, and,** )  
**WILLIAM G. CARPENTER, III,** )  
**in his official capacity as MAYOR** )  
**of the CITY OF BROCKTON,** )  
 Plaintiff, )  
 )  
 v. )  
 )  
**BROCKTON CITY COUNCIL,** )  
**and ROBERT SULLIVAN, in his** )  
**official capacity as CITY** )  
**COUNCIL PRESIDENT,** )  
 Defendants. )

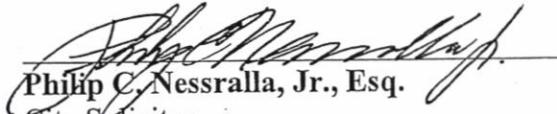
**AFFIDAVIT IN SUPPORT OF  
VERIFIED COMPLAINT**

Now comes the affiant, Philip C. Nessralla, Jr., City Solicitor for the City of Brockton, on oath and states as follows:

1. I am employed as City Solicitor for the City of Brockton;
2. A civil action has been filed to invalidate Section 23-30(a) of the Ordinances of the City of Brockton and to enjoin Defendants from making any further appointments of members of the City of Brockton's Water Commission in violation of state and local laws and seeking to set aside Defendant's recent appointment of a member of the Water Commission.
3. On or about, February 6, 2014, the Mayor received correspondence from Defendant advising him that the Defendant had made an appointment of a member to the Commission pursuant to his perceived authority granted to the president of city council under the Ordinance and that he further intended on making an additional appointment in the "near future." (See Exhibit D)
4. Defendant reiterated his intentions during a recent City Council Meeting ("Meeting") stating that he would make the additional appointment to the Commission at the next Meeting scheduled on Monday, February 24, 2014.
5. Because the Defendant's actions present a significant and substantial risk to the public welfare, it is in the best interest of the public and all parties involved that this matter be addressed without delay.

The above information is based upon my personal knowledge.

Signed under the pains and penalties of perjury this 24<sup>th</sup> day of February, 2014.

A handwritten signature in black ink, appearing to read "Philip C. Nessralla, Jr.", written over a horizontal line.

**Philip C. Nessralla, Jr., Esq.**

City Solicitor

City of Brockton

BBO#369360

VERIFICATION OF COMPLAINT

I, **PHILIP C. NESSRALLA, JR.**, City Solicitor for the City of Brockton, hereby certify under the penalties of perjury that the foregoing is true to the best of my information, knowledge and belief.

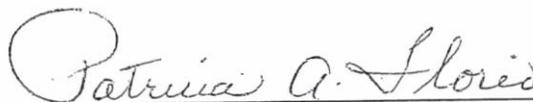
  
**PHILIP C. NESSRALLA, JR.**  
City Solicitor  
City of Brockton

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

February 24, 2014

Then personally appeared the above-named **PHILIP C. NESSRALLA, JR.**, in his official capacity as City Solicitor for the City of Brockton, and proved to me through personal knowledge of his identity, and upon oath and affirmation acknowledged the foregoing instrument to be his free act and deed in his official capacity on behalf of the City of Brockton, before me,



Notary Public:

My commission expires: Feb. 22, 2019

