STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No: Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES ☐ NO ☑

1. CHARGING PARTY: EMPLOYEE ☐ EMPLOYEE ORGANIZATION ☑ EMPLOYER ☐ PUBLIC[1] ☐

a. Full name: Deputy City Attorneys Association of San Diego

b. Mailing address: 615 C Street, Box 149, San Diego, California 92101

c. Telephone number: (619) 272-4235

d. Name, title and telephone number of person filing charge: Mike Hudson, President, (619) 272-4235

e. Bargaining unit(s) involved: Deputy City Attorneys employed in the San Diego City Attorney's Office

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION ☐ EMPLOYER ☑

a. Full name: City of San Diego

b. Mailing address: 1200 Third Avenue, Suite 1316, San Diego, California 92101

c. Telephone number: (619) 236-6313

d. Name, title and telephone number of agent to contact Scott Chadwick, Human Resources Director, (619) 236-6313

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:

b. Mailing address:

c. Agent:

[1] An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

SEE REVERSE SIDE

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes ☐ No ☑

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

☐ Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)

☐ Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)

☐ Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)

☑ Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)

☐ Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)

☐ Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)

☐ Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:
PERB Regulation 32604

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (***a copy of the applicable local rule(s) MUST be attached to the charge***):
MMBA 3502, 3503, 3504, and 3505

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law.* A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)
See attachment

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on February 15, 2012 (Date)

at San Diego, California (City and State).

Mike Hudson (Type or Print Name)  (Signature)

Title, if any: President, Deputy City Attorneys Association of San Diego

Mailing address: 615 C Street, Box 149, San Diego, California 92101

Telephone Number: (619) 272-4235

6.d. Attachment to Unfair Practice Charge

I. General Overview of Charge.

As one of six recognized employee associations in the City of San Diego ("City"), Charging Party Deputy City Attorneys Association of San Diego ("DCAA") is the recognized employee organization for certain classes of San Diego Deputy City Attorneys. In this status, DCAA and the employees it represents have all of the rights afforded by the Meyers-Milias Brown Act ("MMBA"). These rights include the opportunity for a good faith meet and confer process under Government Code § 3505 on all matters within the scope of representation defined in § 3504, including, but not limited to, wages, hours, and other terms and conditions of employment.

This Charge addresses an MMBA issue of critical importance to DCAA and its members. The City has refused to meet and confer with DCAA over its Comprehensive Ballot Reform ("CPR") initiative headed to the June 2012 ballot. As set forth herein, this so-called citizen's initiative is merely a sham device which the City's "Strong Mayor" has used for the express purpose of avoiding the City's obligation to meet and confer under the MMBA. The CPR Initiative was sponsored by Mayor Jerry Sanders ("Mayor"). Such sponsorship is legally considered as acting with apparent governmental authority and required the Mayor to meet and confer with employee organizations. [1]

In addition, the CPR Initiative is not a valid exercise of the initiative power. The CPR Initiative is preempted by the MMBA. The California Supreme Court has concluded that the initiative power cannot be used in areas in which the local legislative body's discretion is preempted by statutory mandate. (*DeVita v. County of Napa*, 9 Cal.4th 763, 777 (1995).) The CPR Initiative interferes with a matter of statewide concern- the employee organization's right to meet and confer over wages, hours, and other terms and conditions of employment. Further, if the CPR Initiative is approved by the voters, it will take away the employee organization's right to meet and confer in perpetuity.

II. The City's Meet and Confer Requirement.

The MMBA recognizes the existence and legitimacy of employee organizations. (Government Code §§ 3501- 3503.) Section 3504 states that the:

> "scope of representation [by such employee organizations] shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order."

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[1] A charge was filed by San Diego Municipal Employee Association ("MEA") on or about January 19, 2012, unfair practice charge number LA-CE-746-M. PERB thereafter issued a complaint on or about February 10, 2012. DCAA incorporates MEA's charge herein in its entirety along with all evidence submitted by MEA to PERB. DCAA will provide a copy of the evidence submitted by MEA upon request.

Section 3505 requires Cities to:

> "meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of ... recognized employee organizations,... and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.... The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent."

III. The CPR Initiative Directly and Substantially Affects the Pension Benefits, Wages, and Voting rights of Current DCAA-Represented Employees.

On or about April 4, 2011, "San Diegans for Comprehensive Pension Reform" filed a notice with the San Diego City Clerk of their intent to circulate a petition with the City for the purpose of amending the City's Charter. The proposed Charter amendment is entitled "Proposition-Charter Amendment/Comprehensive Pension Reform for San Diego."

If approved, the amendment would add multiple new provisions to the current City Charter and amend others. The proponents expressly stated that the purpose and intent of the amendments was to affect employee compensation and benefits. The CPR Initiative proposes to change retirement from a defined benefit plan to a defined contribution plan for all new hires except for police; to change what is pensionable compensation; to freeze salaries for 5 years, on top of the existing 3 year freeze; to eliminate pensions even if vested for individuals convicted of certain felonies; eliminate voting rights of city employees as retirement system members; and to set a pre-determined limitation on any initial bargaining proposals being presented to DCAA and other recognized employee organizations.

IV. The City Violated the MMBA by Refusing to Meet And Confer Regarding CPR Initiative.

At a meeting on September 15, 2011, with City Human Resources Director (Scott Chadwick), then-DCAA President George Schaefer demanded on behalf of DCAA to meet and confer regarding the CPR Initiative. Mr. Schaefer advised Mr. Chadwick that DCAA fully agreed, concurred, and adopted MEA's position on the issue. However, Mr. Chadwick stated that the City would not meet and confer based on the advice of the City Attorney.

The CPR Initiative was sponsored by the Mayor. Such sponsorship is legally considered as acting with apparent governmental authority and required the Mayor to meet and confer with employee organizations.

The Mayor formed a fund-raising committee and used funds raised to hire attorneys to research and write an initiative to meet his specifications and objectives in furtherance of the City's interests. The Mayor and City Council member Kevin Faulconer thereafter negotiated with City Council Member Carl DeMaio, with the assistance of others who filed the Mayor's Initiative for him. The CPR Initiative has been consistently promoted and publicized by references to Mayor Sanders, not private citizen Sanders. Such sponsorship is legally considered as acting with apparent governmental authority and required the Mayor to meet and confer with employee organizations.

The California Supreme Court has held that a City Council is required to meet and confer with employee organizations over a proposed charter amendment affecting wages, hours, or other terms and conditions of employment. (*Seal Beach Police Officers Association v. City of Seal Beach*, 36 Cal.3d 591 (1984).) Further, future retirement benefits of current employees are mandatory subjects of bargaining under the MMBA. (*County of Sacramento*, PERB Dec. No. 2045-M (2009).) The CPR Initiative would be a change in the current City policy on pensions.

In addition, in *Inglewood Teachers Association v. Public Employment Relations Board*, 227 Cal.App.3d 767 (1991), the Court of Appeal approved the Public Employment Relations Board ("PERB") decision to apply a case by case approach as to whether agency employees could reasonably believe that an individual had apparent authority to act on behalf of the public agency. The Court noted that under Civil Code § 2317, ostensible or apparent authority is that which "a principal, intentionally or by want or ordinary care, causes or allows a third person to believe the agent possess." (*Id.* at 781.)

The City is well aware that the Mayor's actions in initiating or sponsoring a voter petition drive to place a ballot measure to amend the City Charter provisions related to pensions invoke the MMBA's meet and confer requirements. In a Memorandum dated June 19, 2008, the Office of the City Attorney for the City of San Diego, confirmed the same. The Memorandum states in pertinent part:

> "The City Charter itself under the Strong Mayor provisions, grants the Mayor the authority to represent the City regarding labor issues and labor negotiations, including employee pensions. In addition, as noted above, the Council has confirmed the authority in Council Policy 300-6, providing for the Mayor to present and negotiate his proposals on behalf of the City with labor unions. Since the Strong Mayor Amendment was added, the City Council has repeatedly acknowledged the Mayor's authority as the City's spokesperson on labor negotiations by enforcing Council Policy 300-6. In some instances, this included his authority to negotiate on behalf of the City over his ballot proposals to amend the Charter. The Mayor has ostensible or apparent authority to negotiate with the employee labor organizations over any ballot measure he sponsors or initiates, including a voter initiative. The City, therefore, would have the same meet-and-confer obligations with its unions over a voter-initiative sponsored by the Mayor as with any City proposal implicating wages, hours, or other terms and conditions of employment."

As such, the City failed to comply with the meet and confer requirements of the MMBA.

V. The CPR Initiative Is Not A Valid Exercise Of The Initiative Power.

The CPR Initiative interferes with the bargaining process, and as such, the CPR Initiative is preempted by the MMBA. The California Supreme Court has concluded that the initiative power cannot be used in areas in which the local legislative body's discretion is preempted by statutory mandate. (*DeVita v. County of Napa*, 9 Cal.4th 763, 777 (1995).) The Supreme Court noted that: "The presumption in favor of the right of initiative is rebuttable upon a definite indication that the Legislature, as part of the exercise of its power to preempt all local legislation in matters of statewide concern, has intended to restrict that right." (*Id.*)

Likewise, in matters of statewide concern, the State may, if it chooses, preempt the entire field to the exclusion of all local control. If the State chooses instead to grant some measure of local control and autonomy, it has authority to impose procedural restrictions on the exercise of the power granted, including the authority to bar the exercise of the initiative and referendum. (*Jahr v. Casebeer*, 70 Cal.App.4th 1250, 1258 (1999).) The State's plenary power over matters of statewide concern is sufficient authorization for legislation barring local exercise of initiative and referendum as to matters which have been specifically and exclusively delegated to a local legislative body. (*Voters for Responsible Retirement v. Board of Supervisors*, 8 Cal.4th 765, 779 (1994).)

These cases support a conclusion that the State Legislature can restrict the power of an initiative and a referendum in matters of statewide concern. The employee organization's right to meet and confer is a matter of statewide concern. In *City of Fresno v. Fresno Firefighters, IAFF Local 753*, 71 Cal.App.4th 82, 100 (1999), the Court stated: "The duty to bargain in good faith established in MMBA is a matter of statewide concern and of overriding legislative policy, and nothing that is or is not in a city's charter can supersede that duty."

In the instant matter, the CPR Initiative interferes with a matter of statewide concern- the employee organization's right to meet and confer over wages, hours, and other terms and conditions of employment. Further, if the CPR Initiative is approved by the voters, it will take away the employee organization's right to meet and confer in perpetuity.

Voters for Responsible Retirement v. Board of Supervisors, 8 Cal.4th 765 (1994) ("*Voters*"), supports a conclusion that an initiative which conflicts with the MMBA is preempted. In *Voters*, the California Supreme Court was called upon to decide whether a County's decision to enter into an agreement with the California Public Employees' Retirement System ("PERS"), to enable its employees to join PERS's retirement plan, was subject to approval or rejection by the local electorate via referendum. The County advanced several constitutional and statutory arguments designed to establish that decisions of a county board of supervisors regarding employee compensation generally, and decisions regarding the adoption or implementation of memoranda of understanding (sometimes referred to hereafter as "MOU's") between public employers and employees in particular, were not subject to referendum. Appellant Voters for Responsible

Retirement ("VFRR") contended, on the contrary, that a referendum was constitutionally compelled.

The California Supreme Court concluded that Government Code § 25123(e), when read in conjunction with the MMBA, did restrict the people's right of referendum in that case, in which the ordinance that would be the subject of referendum specifically related to the implementation of a memorandum of understanding between the County and its employee associations. In support of its conclusion, the Court stated: "It is indisputable that the procedures set forth in the MMBA are a matter of statewide concern, and are preemptive of contradictory local labor-management procedures." (*Id.* at 781.) The clear import of *Voters* is that initiative and referendum power that interferes with the bargaining process is unlawful and preempted.

Other cases have also held that to the extent that a resolution or charter comes into conflict with the Government Code, the Government Code prevails. In *Huntington Beach Police Officers' Assn. v. City of Huntington Beach*, 58 Cal.App.3d 492 (1976), in an action by a city police officers' association, the trial court ordered issuance of a peremptory writ of mandate directing a charter city to reinstate a four-day, ten-hour-day work week schedule previously placed in effect for all police personnel by the chief of police. The schedule had been authorized in an agreement between plaintiff and the City and later rescinded by him except as to patrolmen, and to meet and confer in good faith with respect to any proposed changes in the schedule.

The Court of Appeal affirmed, holding that the matter was controlled by that portion of the MMBA, which imposes on public agencies an obligation "to meet and confer in good faith regarding wages, hours and other terms and conditions of employment," and that provisions of the city's employer-employee relations resolution purporting to exclude work hour schedules from the scope of the meet and confer process were therefore invalid. The court further held that language of the memorandum of understanding between the city and the union that the plan should be placed into effect for employees designated by the chief of police could not be construed, in view of the MMBA, as permitting the chief to unilaterally terminate the plan except as to patrolmen without meeting and conferring with the employee organization. In reaching its conclusion, the Court noted:

> "With respect to matters of statewide concern, charter cities are subject to and controlled by applicable general state law if the Legislature has manifested an intent to occupy the field to the exclusion of local regulation... Labor relations in the public sector are matters of statewide concern subject to state legislation in contravention of local regulation by chartered cities... .
>
> In the case at bench the provisions of the EER Resolution purporting to exclude the subject of working hours from the meet and confer process are in direct conflict with provisions of the MMB Act imposing upon governing bodies of public agencies an obligation to meet and confer in good faith regarding wages, hours and other terms and conditions of employment. (§ 3505. 5) Thus the question is whether the Legislature intended to reserve to local agencies the power to adopt labor relations

> regulations inconsistent with otherwise applicable provisions of the MMB Act. Although the Legislature did not intend to preempt all aspects of labor relations in the public sector, we cannot attribute to it an intention to permit local entities to adopt regulations which would frustrate the declared policies and purposes of the MMB Act. Were we to uphold the city's regulation in question, local entities would, as Professor Grodin observed, be "free to adopt rules prohibiting employees from joining unions, to decline recognition to any organization, and to refuse to meet or confer with recognized organizations on matters pertaining to employment relations -- in short, to undercut the very purposes which the act purports to serve. Such an interpretation is inconsistent with the general objectives of the statute as declared in the preamble and with the mandatory language which appears in many of the sections." (Grodin, Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts (1972) 23 Hastings L.J. 719, 724-725.) In the words of Professor Grodin, the power reserved to local agencies to adopt rules and regulations was intended to permit supplementary local regulations which are "consistent with, and effectuate the declared purposes of, the statute as a whole."

Similarly, in *District Election Etc. Committee v. O'Connor*, 78 Cal.App.3d 261 (1978), Plaintiffs filed an action for declaratory and injunctive relief seeking to place an initiative measure on the general election ballot to amend a city charter to provide for election of its board of supervisors by district. Plaintiffs alleged that the initiative proposal qualified in obtaining the number of validated signatures set forth in the charter, (5 percent of the votes cast at the last mayoral election), while defendants, the city attorney and registrar of voters, contended that the charter amendment process was governed by Gov. Code, § 34459 and related sections requiring signatures equal to 10 percent of the total vote cast at the gubernatorial election. The trial court entered judgment in favor of plaintiffs. The Court of Appeal reversed. The court held that the regulation of the charter amendment process was a matter of statewide concern governed exclusively by general laws which supersede conflicting provisions in a city and county charter, and that the provisions of the charter authorizing and establishing different procedures regulating charter amendments by the initiative process were invalid.

It is expected that the City will rely on *United Public Employees v. City ("United")*, 190 Cal. App. 3d 419 (1987) in an attempt to support its position. In *United*, in a mandamus proceeding initiated by several labor organizations representing public employees against a City, the trial court declined to issue a writ of mandate directing the city to enter into a binding agreement with the organizations, regarding fringe benefits. The City had met and conferred with labor representatives concerning the benefits, pursuant to the MMBA, but had declared its intent to submit any prospective agreements to the voters, as required by the City Charter. The Court of Appeal affirmed. It held that, in the absence of a conflicting preemptory provision of State law, the City Charter provision was controlling. It held that, though the MMBA required the City's representatives to meet and confer with the City employees' representatives, nothing in the Act specified the manner by which any agreement reached was to become binding; thus, the

City Charter provision was not in conflict, and the fringe benefits issue could properly be submitted to the voters.

United is distinguishable from the facts in the instant matter. First, in *United*, the employee organizations contacted the City demanding that it meet and confer over proposals for the establishment of dental insurance and other fringe benefits for city employees, and the City agreed to meet and confer. In the instant matter, the City refused to meet and confer with DCAA regarding the CPR Initiative. Second, *United* did not involve a voter initiative which would have the impact of bypassing the MMBA's meet and confer requirement, unlike the instant case. Third, the California Supreme Court in *Voters* recognized that the decision in *United* was flawed and stated that:

> While we do not determine whether the result in *United Public Employees* was correct, we observe that the decision understated the problematic nature of the relationship between the MMBA and the local referendum power. As we have noted, the purpose of the MMBA is more than promoting communication between employees and employers. Its aim is also to resolve "disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations" (§ 3500) through the negotiation of binding agreements. If the bargaining process and ultimate ratification of the fruits of this dispute resolution procedure by the governing agency is to have its purpose fulfilled, then the decision of the governing body to approve the MOU must be binding and not subject to the uncertainty of referendum. The question posed by Justice Tobriner in *Glendale City Employees' Assn., Inc. v. City of Glendale*, *supra*, 15 Cal.3d 328, 336, is equally relevant to whether a MOU to which a governing body has agreed may be subjected to referendum: "Why negotiate an agreement if either party can disregard its provisions? ... Why submit the agreement to the governing body for determination, if its approval were without significance? ... The procedure established by the [MMBA] would be meaningless if the end-product, a labor-management agreement ratified by the governing body of the agency, were a document that was itself meaningless."

(Id. at 782; footnotes omitted.)

In the instant matter, because the CPR Initiative is preempted by the MMBA, the City was required to refuse to place it on the June 2012 ballot. The City's placement of the CPR Initiative on the June 2012 ballot constitutes a violation of the MMBA, and hence, an unfair practice.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Olins Riviere Coates & Bagula, 2214 Second Avenue, San Diego, California 92101.

On 2/15/12 (Date), I served the UNFAIR PRACTICE CHARGE (describe document(s)) NOTICE OF APPEARANCE on the parties listed below (include name, address and, where applicable, fax number) by (check the applicable method or methods):

☑ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

☐ personal delivery;

☐ facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Scott Chadwick
Human Resources Director
City of San Diego
1200 Third Avenue, Suite 1316
San Diego, California 92101

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 15, 2012, at San Diego, California.

Marla Romano
(Type or print name)

(Signature)

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

NOTICE OF APPEARANCE FORM

CASE NAME: Deputy City Attorneys Association of San Diego

V.

City of San Diego

CASE NUMBER: _____

NAME OF PARTY: Deputy City Attorneys Association of San Diego

DATE FILED: February 15, 2012

I, the undersigned party, hereby designate as my representative the person whose name and address appear below, and authorize such representative to appear on my behalf in this proceeding. This designation shall remain valid until I file a written revocation of it with the Public Employment Relations Board.

(Signature)

Mike Hudson
(Printed Name)

President, Deputy City Attorneys Association of SD
(Title)

February 15, 2012
(Date)

Adam Chaikin, Olins Riviere Coates & Bagula
(Name of Representative)

Attorney
(Title)

2214 Second Avenue
(Mailing Address)

San Diego 92101
(City) (Zip)

(619) 272-4235
(Telephone Number) (Ext)

(Board Agent: _____)

PERB 920 (3/99)

VIA OVERNIGHT MAIL

February 15, 2012

Suzanne Murphy, General Counsel
Public Employment Relations Board
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124

Re: Deputy City Attorneys Association of San Diego v. City of San Diego Request For Injunctive Relief And Unfair Practice Charge

Dear Ms. Murphy:

Please find enclosed an original plus six copies of the request made by the Deputy City Attorneys Association of San Diego ("DCAA") for injunctive relief against the City of San Diego ("City"). DCAA seeks an order enjoining the City from putting out to a vote the so-called Comprehensive Pension Reform ballot initiative ("CPR Initiative"). The CPR Initiative is on the June 2012 ballot. DCAA also requests to join in the request for injunctive relief made by San Diego Municipal Employee Association ("MEA"), unfair practice charge number LA-CE-746-M, injunctive relief request number 615.

As detailed in the attached Charge, on or about April 4, 2011, "San Diegans for Comprehensive Pension Reform" filed a notice with the San Diego City Clerk of their intent to circulate a petition with the City for the purpose of amending the City's Charter. The proposed Charter amendment is entitled "Proposition- Charter Amendment/Comprehensive Pension Reform for San Diego." If approved, the amendment would add multiple new provisions to the current City Charter and amend others. The proponents expressly state that the purpose and intent of the amendments is to affect employee compensation and benefits. The CPR Initiative proposes to change retirement from a defined benefit plan to a defined contribution plan for all new hires except for police; to change what is pensionable compensation; to freeze salaries for 5 years, on top of the existing 3 year freeze; to eliminate pensions even if vested for individuals convicted of certain felonies; eliminate voting rights of city employees as retirement system members; and to set a pre-determined limitation on any initial bargaining proposals being presented to DCAA and other recognized employee organizations.

The City has refused to meet and confer with DCAA over the CPR initiative. As set forth in the Charge, this so-called citizen's initiative is merely a sham device which the City's "Strong Mayor" has used for the express purpose of avoiding the City's obligation to meet and confer under the MMBA. The CPR Initiative was sponsored by Mayor Jerry Sanders ("Mayor"). Such sponsorship is legally considered as acting with apparent governmental authority and required the

Mayor to meet and confer with employee organizations.1

In addition, the CPR Initiative is not a valid exercise of the initiative power. The CPR Initiative is preempted by the MMBA. The California Supreme Court has concluded that the initiative power cannot be used in areas in which the local legislative body's discretion is preempted by statutory mandate. (*DeVita v. County of Napa*, 9 Cal.4th 763, 777 (1995).) The CPR Initiative interferes with a matter of statewide concern- the employee organization's right to meet and confer over wages, hours, and other terms and conditions of employment. Further, if the CPR Initiative is approved by the voters, it will take away the employee organization's right to meet and confer in perpetuity.

As set forth in the accompanying affidavit, notice of the request for injunctive relief was provided to you on February 14, 2012, at approximately 10:00 am. In addition, notice was provided to the City on February 15, 2012, at approximately 8:48 am.

Please contact me with any questions.

Sincerely,

Adam Chaikin, Esq.
OLINS RIVIERE COATES AND BAGULA

1 A charge was filed by San Diego Municipal Employee Association ("MEA") on or about January 19, 2012, unfair practice charge number LA-CE-746-M. PERB thereafter issued a complaint on or about February 10, 2012. MEA also filed a request for injunctive relief. DCAA incorporates MEA's charge and request for injunctive relief herein in their entirety along with all evidence submitted by MEA to PERB. DCAA will provide a copy of the evidence submitted by MEA upon request.

ADAM CHAIKIN, ESQ. [SBN 199458]
OLINS RIVIERE COATES AND BAGULA
2214 Second Avenue
San Diego, CA 92101
(619) 272-4235
(619) 272-4309 [Facsimile]

Attorney for Charging Party DEPUTY CITY ATTORNEYS ASSOCIATION OF SAN DIEGO

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

DEPUTY CITY ATTORNEYS ASSOCIATION OF SAN DIEGO, Charging Party, vs. CITY OF SAN DIEGO, Respondent.	**CHARGE NO.:** **INJUNCTIVE RELIEF REQUEST NO.:** **AFFIDAVIT OF NOTICE** Charge Filed: February 15, 2012

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

I, Adam Chaikin, declare:

1. I am an attorney with Olins Riviere Coates and Bagula, counsel for Charging Party in the above-captioned matter. I have personal knowledge of the facts set forth herein, and if called as a witness I could competently testify thereto.
2. On February 14, 2012, at approximately 10:00 a.m., I provided notice to PERB General Counsel Suzanne Murphy by telephone of the request for injunctive relief. I told Ms. Murphy that the Deputy City Attorneys Association of San Diego ("DCAA") would seek an order enjoining the City from putting out to a vote the so-called Comprehensive Pension Reform ballot initiative ("CPR Initiative").

3. On February 15, 2012, at approximately 8:48 a.m., I provided Scott Chadwick, Human Resources Director for the City of San Diego, notice by telephone, by way of leaving a message with Pam Holmberg (Mr. Chadwick's secretary) of the request for injunctive relief. I told Ms. Holmberg that DCAA would seek an order enjoining the City from putting out to a vote the so-called CPR Initiative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Diego, California on February 15, 2012.

_____

Adam Chaikin, Esq.