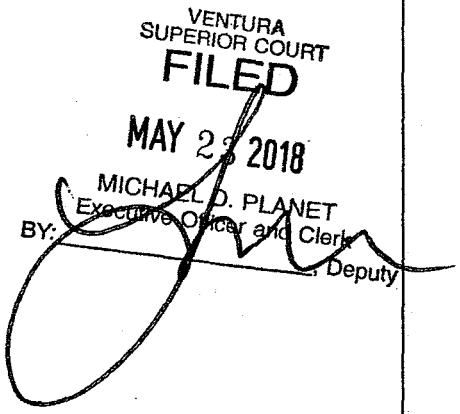

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

CITY OF OXNARD and STEPHEN FISCHER IN HIS OFFICIAL CAPACITY AS INTERIM CITY ATTORNEY OF THE CITY OF OXNARD, Plaintiffs, vs. AARON STARR, Defendant.	Case No.: 56-2016-00479696-CU-MC-VTA **TENTATIVE DECISION AND PROPOSED STATEMENT OF DECISION (CRC Rule 3.1590(c)(1))**

This case came on for court trial in Departments 20 and 46, Judge Rocky J Baio presiding, on December 27, 28 and 29, 2017, January 4 and 5, 2018, and concluding on February 23, 2018, with closing arguments. The plaintiff, the City of Oxnard ("Oxnard"), appeared by its city attorney, Stephen Fischer, and was represented by Holly Whatley. The defendant, Aaron Starr ("Starr"), appeared with his attorney, Chad Morgan.

The operative documents are the Supplemental Complaint for Declaratory Relief filed March 7, 2017, by Oxnard and the Answer to the Supplemental Complaint filed April 7, 2017, by Starr.

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During the course of the trial, the Court received both testimony and documentary evidence. Testimony was received from Thien Ng, James Throop, Robert Richardson, Daniel Rydberg, Alexander Bugbee, and Aaron Starr.

Any statement of fact contained in this ruling constitutes the Court's findings based upon the evidence presented. To the extent any facts stated differ from the testimony presented by one or more witnesses, it is based upon the Court's determination of the facts after weighing the evidence and assessing the credibility of the witnesses.

Having considered the evidence, the relevant legal authorities, and argument of counsel, the Court rules as follows:

Oxnard asks this Court to find "Measure M" to be illegal and not enforceable for two reasons. First, Measure M fails to generate sufficient revenue for Oxnard to maintain and operate its wastewater facilities, and second, Measure M impairs Oxnard's ability to meet its bond and contractual obligations.

The standard to be applied by this Court in determining whether Measure M is invalid is as follows:

"The principles that guide us in evaluating the validity of initiative measures such as Proposition 140 are likewise well settled. Although the legislative power under our state Constitution is vested in the Legislature, 'the people reserve to themselves the powers of initiative and referendum.' (Cal. Const., art. IV, § 1.) Accordingly, the initiative power must be *liberally construed* to promote the democratic process. (*Raven* v. *Deukmejian, supra*, 52 Cal.3d at p. 341.) Indeed, it is our solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise. (*Ibid.*, and cases cited.) As with statutes adopted by the Legislature, all presumptions favor the validity of initiative measures and mere doubts as to validity are insufficient; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. (*Calfarm Ins. Co.* v. *Deukmejian* (1989) 48 Cal.3d 805, 814 [258 Cal.Rptr. 161, 771 P.2d 1247] [evaluating the constitutionality of Prop. 103, an insurance rate initiative measure adopted at the Nov. 1988 Gen. Elec.].)" (*Legislature v. Eu* (1991) 54 Cal.3d 492, 500.)

Based upon this very deferential standard, and for the reasons stated below, Oxnard has not met its burden of proof, and the Court finds Measure M to be a valid exercise of the will of the citizens of Oxnard as expressed through the initiative process.

The People's right to voice their desires through the initiative process was addressed just last year by the California Supreme Court in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924. In that case the Court stated: "The state Constitution was amended to include the initiative power in 1911. The Constitution 'speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them.' (*Associated Home Builders, supra*, 18 Cal.3d at p. 591.) Since then, courts have consistently declared it their duty to "'jealously guard'" and liberally construe the right so that it "'be not improperly annulled.'" (*Ibid.*; see, *e.g.*, *Perry v. Brown* (2011) 52 Cal.4th 1116, 1140 [134 Cal.Rptr 3d 499, 265 P.3d 1002].) Moreover, when weighing the tradeoffs associated with the initiative power, we have acknowledged the obligation to resolve doubts in favor of the exercise of the right whenever possible. (*Associated Home Builders*, at p. 591.) We more recently explained that the enactment of the initiative power was sparked by 'dissatisfaction with the then governing public officials and a widespread belief that the people had lost control of the political process.' (*Perry*, at p. 1140.) Its purpose, in effect, was empowering voters to propose and adopt provisions 'that their elected public officials had refused or declined to adopt.' (*Ibid.*)" (*California Cannabis Coalition* at page 934.)

The Court went on to state: "Against this constitutional and statutory backdrop, we have held that the people's power to propose and adopt initiatives is at least as broad as the legislative power wielded by the Legislature and local governments. (See, *e.g.*, *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 253 [45 Cal.Rptr.2d 207, 902 P.2d 225] (*Guardino*) [discussing statewide right to initiative]; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775 [38 Cal.Rptr.2d 699, 889 P.2d 1019] (*DeVita*) [discussing local right to initiative]; *Rossi, supra*, 9 Cal.4th at p. 696 [noting 'local initiative power may be even broader than the initiative power reserved in the Constitution'].)" (*California Cannabis Coalition* at pages 934-935.)

It is obvious that the ability of elected officials and voters through the initiative process to jointly exercise the same legislative function can lead to discord and conflicting laws. The California Supreme Court acknowledged this problem in *Bighorn-Desert View Water Agency v. Kari Verjil* (2006) 39 Cal.4th 205, 229-230, where it stated: "We have concluded that under section 3 of California Constitution article XIII C, local voters by initiative may reduce a public agency's water rate and other delivery charges, but also that section 3 of article XIII C does not authorize an initiative to impose a requirement of voter preapproval for future rate increases or new charges for water delivery. In other words, by exercising the initiative power voters may decrease a public water agency's fees and charges for water service, but the agency's governing board may then raise other fees or impose new fees without prior voter approval. Although this power-sharing arrangement has the potential for conflict, we must presume that both sides will act reasonably and in good faith, and that the political process will eventually lead to compromises that are mutually acceptable and both financially and legally sound. (See *DeVita v. County of Napa, supra,* 9 Cal.4th at pp. 792–793 ['We should not presume ... that the electorate will fail to do the legally proper thing.'].) We presume local voters will give appropriate consideration and deference to a governing board's judgments about the rate structure needed to ensure a public water agency's fiscal solvency, and we assume the board, whose members are elected (see Stats. 1969, ch. 1175, § 5, p. 2274, 72B West's Ann. Wat.-Appen., *supra,* ch. 112, p. 190), will give appropriate consideration and deference to the voters' expressed wishes for affordable water service."

However, and as argued by Oxnard, the *Bighorn* court went on to state "In holding that section 3 of article XIII C of the state Constitution authorizes initiative measures that reduce public agency water service charges, we are not holding that the authorized initiative power is free of all limitations. In particular, we are not determining whether the electorate's initiative power is subject to the statutory provision requiring that water service charges be set at a level that 'will pay the operating expenses of the agency, ... provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal

of such debt as it may become due.' (Stats. 1969, ch. 1175, § 25, p. 2286, 72B West's Ann. Wat.-Appen., *supra,* ch. 112, p. 203.) That issue is not currently before us." (*Bighorn-Desert View Water Agency v. Kari Verjil* (2006) 39 Cal. 4th 205, 229-230.)

In *Mission Springs Water District v. Kari Verjil* (2013) 218 Cal.App.4th 892 the court expressed the same concerns about an initiative not providing an agency with sufficient revenue to function and to meet its financial obligations. "In sum, then, under Water Code section 31007, the District could not set water rates so low that they are inadequate to pay the costs listed in that section. We conclude that the local electorate does not have the power to do so by initiative, and article XIII C, section 3 was not intended to give it such power. The District has introduced uncontradicted evidence that the initiatives, if enacted, would set water rates so low that they would be inadequate to pay its costs. We therefore conclude that the District has shown the probable validity of its claim that the initiatives are invalid under Water Code section 31007.

In light of this conclusion, we need not decide whether the initiatives are invalid because they would interfere with the provision of an essential governmental service or because they would unconstitutionally impair the obligation of contract." (*Mission Springs* at page 920.)

Applying the above legal principles to Measure M, the evidence at trial showed that as of 2015, Oxnard provided wastewater services to about 200,000 residents and an unknown number of businesses and other commercial enterprises. About 40,000 customer accounts had been established to provide wastewater services to each of these users.

To provide the necessary wastewater service, Oxnard maintained and operated about 430 miles of sewer line, 15 pump stations, and one large treatment facility at Perkins Road. Much of the system was built in the 1950s with the last significant upgrades being done in the 1970s. Evidence showed that the system (particularly the sewer lines and the main processing plant) was in need of upgrades and suffered from occasional failures requiring emergency repairs.

As one might imagine, the expenses associated with maintaining and operating such a system are enormous. Included in those expenses are costs for labor, chemicals, power usage, regulatory compliance fees, and urgent and unplanned repairs. There are also costs for reserves, capital improvements, bond and other debt service, and infrastructure use fees.

Prior to 2015 the wastewater rates charged to users had last been set in 2012. By 2015, Oxnard came to the conclusion that the 2012 rates were insufficient to meet the ongoing costs of maintaining and operating the wastewater system. Following what this Court believes to be evidence based and prudent practices, Oxnard formulated a new rate structure for its wastewater services. In compliance with section 3 of the California Constitution Article Xlll D ("Proposition 218"), on January 26, 2016, Oxnard enacted Ordinance 2901, with an effective date of March 1, 2016. Ordinance 2901 provided for a 35% increase in rates for 2016, a 10% increase in 2017, and an 8% increase for each of the following three years.

One week after the effective date of Ordinance 2901, on March 8, 2016, Starr submitted an initiative ("Measure M") to roll back the wastewater rates to what they had been prior to the implementation of Ordinance 2901. Oxnard sought, and this Court denied, an injunction to keep Measure M off the November 2016 ballot.

During the campaign leading up to the November 2016 election, both sides made their case to the public regarding the merits of Measure M. Oxnard argued that its wastewater system was antiquated, in need of repair, and the recently imposed rate increase was necessary to provide efficient and healthy wastewater service to the public. Oxnard also stressed that its inability to properly fund the wastewater system would have a negative effect on its ability to obtain credit at a reasonable interest rate. Starr acknowledged there were some problems with the wastewater system, but argued most of those problems stemmed from inefficiencies and a budget inflated with extravagant and unrelated charges.

On November 8, 2016, Measure M passed with 73% of the vote. Oxnard sought and was granted an injunction against the enforcement of Measure M until after trial on the legality of Measure M.

While the trial was pending, Oxnard engaged in a second rate study, and again in apparent compliance with Proposition 218, passed Ordinance 2917 with an effective date of July 1, 2017. The new rates were set higher than the rates in place prior to the enactment of Ordinance 2901 but lower than the rates that were set with the enactment of Ordinance 2901.

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Bighorn and *Mission Springs* both suggest that an otherwise valid initiative must generate enough revenue to maintain and operate the wastewater system and to not impair Oxnard's contractual and bond obligations. In deciding whether Measure M runs afoul of either of these precepts, this Court is obligated to "resolve any reasonable doubts in favor" of the People's right to exercise their right to legislate through the initiative process and to uphold the validity of an initiative unless its "unconstitutionality is clearly, positively, and unmistakenly" apparent.

Here, at the time the citizens of Oxnard passed Measure M their wastewater system was functioning. It may not have been functioning as well or efficiently as a "best practices" system, but it was still operational. The Court cannot say that the citizens of Oxnard acted unreasonably in concluding that, at that point in time, and presumably with other pressing issues to address, that they were willing to accept their existing wastewater systems and defer upgrades and improvements to a later date. The court further finds that the revenue generated by Measure M would be sufficient for Oxnard's wastewater system to function at the level the people of Oxnard had chosen to accept.

In respect to the issue that Measure M impairs Oxnard's ability to meet its contractual and bond obligations, the Court finds those arguments to be speculative and premature. See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208.

Based upon these findings, the Court finds Measure M to be a valid exercise of the right of the citizens of Oxnard to decide what type of wastewater system would best serve the overall needs of their community. Oxnard's request to deny Measure M invalidate is denied.

Notwithstanding this Court's findings, the Court is compelled to quote Justice Mosk in his dissenting opinion in one of the many cases addressing the validity of the Political Reform Act of 1990 ("Proposition 140"): "I observe at the outset that the wisdom of Proposition 140 is of no consequence to the analysis. To be sure, the initiative may be judged foolish and impractical. But it may also be viewed otherwise. Certainly, the exercise of governmental authority by 'citizens' as opposed to 'politicians,' including the wielding of legislative power, has long been an ideal within the Western political tradition, and sometimes even a reality. (See Maio, *Politeia and Adjudication in Fourth-Century B.C. Athens* (1983) 28 Am. J. Juris. 16, 17-

23.) Again, however, the desirability of the measure is immaterial." (*Legislature v. Eu* (1991) 54 Cal. 3d 492, 542.)

This ruling shall constitute both the Court's tentative decision and proposed statement of decision. If neither side specifies additional controverted issues or makes proposals for additional findings within the time limit specified in CRC Rule 3.1590, then this ruling shall stand as the statement of decision. In the event neither party seeks additional findings pursuant to CRC Rule 3.1590, counsel for Starr is directed to prepare, serve, and submit a formal judgment consistent with this ruling.

Clerk to give notice.

Dated: May 23, 2018

ROCKY J BAIO
Judge of the Superior Court

Our Court is here
for the People we serve.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

DECLARATION OF MAILING

Case Number: 56-2016-00479696-CU-MC-VTA Matter of: City of Oxnard v. Aaron Starr

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 South Victoria Avenue, Ventura, California 93009. On the date set forth below, I served the within:

TENTATIVE DECISION AND PROPOSED STATEMENT OF DECISION
(CRC Rule 3.1590(c)(1))

On the following named party(ies):

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_____ **BY PERSONAL SERVICE**: I caused a copy of said document(s) to be hand delivered to the interested party in court.

__X___ **BY MAIL**: I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

____ **BY FACSIMILE**: I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on May 23, 2018, at Ventura, California.

MICHAEL D. PLANET, Superior Court
Executive Officer and Clerk

By: _____
C. Nesbitt, Judicial Secretary