

Commonwealth of Massachusetts
County of Plymouth
The Superior Court

Plymouth, ss

CIVIL DOCKET# **PLCV2014-00199**

Brockton, City of, William G. Carpenter III, as Mayor of the City of Brockton, Plaintiff(s)
vs.

Brockton City Council, Robert Sullivan

, Defendant(s)

SUMMONS AND ORDER OF NOTICE

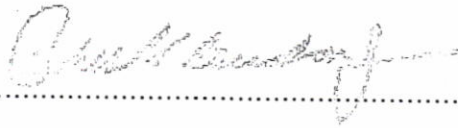
To the above-named:

You are hereby summoned and required to serve upon **Harvey Peters, Esquire**, plaintiff's attorney, whose address is **Peters & Moscardelli 8 Winter Street, 12th floor, Boston, MA 02108**, an answer to the complaint/cross claim/counterclaim which is herewith served upon you. This must be done within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in the complaint/ cross claim/counterclaim. You are also required to file your answer to the complaint/ cross claim/counterclaim in the office of the Clerk of this Court at Brockton either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that application has been made in said action, as appears in the complaint, for a preliminary/ permanent injunction and that a hearing upon such application will be held at the court house at said Plymouth County Superior Court, in Brockton on **03/03/2014, at 02:00 PM in CtRm 5 (72 Belmont Street, Brockton)**, at which time you may appear and show cause why such application should not be granted.

Witness, Barbara J. Rouse, Esquire, Chief Justice of the Superior Court, at Brockton, Massachusetts this 24th day of February, 2014.



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Clerk

(AFFIX RETURN OF SERVICE ON BACK OF SUMMONS)

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.)
 _____)

VERIFIED COMPLAINT AND APPLICATION FOR INJUNCTIVE RELIEF

NATURE OF THE ACTION

In this action, Plaintiffs, City of Brockton (hereinafter "City") and Mayor William G. Carpenter, III (hereinafter "Mayor") (collectively "Plaintiffs"), seek injunctive and declaratory relief due to a city ordinance granting appointing authority that is inconsistent with the city's adopted charter which preempts and invalidates the ordinance.

Irrespective of the finding with respect to the Ordinance's validity, Plaintiffs' seek injunctive and declaratory relief based upon the actions of Defendant, Robert Sullivan, (hereinafter "Defendant") in appointing a member of the City of Brockton's Water Commission ("the Commission") and his intent to continue appointing members of the Commission in excess of his authority and in violation of the plain meaning of Section 23-30(a) of the Ordinances of Brockton.

Plaintiffs seek a preliminary and permanent injunction to prevent the immediate and irreparable harm to the City and the substantial and significant risk to the public welfare that will result from Defendant's continued invalid appointments. Plaintiffs ask this Court to invalidate Section 23-30(a) of the Ordinances of Brockton insofar as it grants appointing authority in express contradiction to the City's Plan B Charter. In the event the Court finds the Ordinance

valid on this point, Plaintiffs ask that Defendant be enjoined and restrained from making any further appointments to the City's Water Commission in violation of the express and clear language of the ordinance granting appointment authority solely to the Mayor. Plaintiffs further request that Defendant's recent appointment of a Water Commission member be invalidated so that the Mayor may exercise his right to appoint a member to the vacancy.

JURISDICTION AND VENUE

1. This is an action seeking equitable and injunctive relief. The jurisdiction of this Court is invoked pursuant to M.G.L. c. 223A.
2. The venue of this Court is proper in that the City of Brockton, where the complained of acts took place, is located in Plymouth County, Massachusetts.

PARTIES

4. The Plaintiff, City of Brockton, (the "City") is a duly organized municipal corporation with a usual place of business at City Hall, 45 School Street, Brockton, MA 02301.
5. The Plaintiff, William G. Carpenter, III, (the "Mayor") is the Mayor of the City of Brockton, Massachusetts and resides at 86 Bates Road, Brockton, Massachusetts.
6. Defendant Brockton City Council (the "City Council") is a duly constituted council of the City of Brockton, with its principal office at Brockton City Hall, 45 School Street, Brockton, Massachusetts.
7. The Defendant, Robert Sullivan (the "Defendant") is the President of the City Council, and resides at 4 Rock Meadow Drive, Brockton, Massachusetts. His actions as alleged in this complaint were taken under the color of law. He is sued in his official capacity as President of the City Council.

GENERAL ALLEGATIONS

8. On or about January 1, 1962, the City adopted a Plan B Charter (G.L. c. 43, §§1-45 & §§53-63) under which the mayor is the chief executive officer with the authority to appoint all members of municipal boards. (See Exhibit A)
9. On or about January 1, 1996, the City enacted Section 23-30 of the Ordinances of the City of Brockton (the "Ordinance") establishing a water commission. (See Exhibit B)
10. Pursuant to §23-30(a) of the Ordinance, the mayor was granted the authority to appoint three members to the Commission, subject to confirmation by city council,