

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT

Docket No.: 16CV00172

\_\_\_\_\_)  
 BROCKTON CITY COUNCIL, )  
 and )  
 TIMOTHY CRUISE, THOMAS MONAHAN, )  
 DENNIS EANIRI, PAUL STUDENSKI, )  
 ANNE BEAUREGARD, JOHN LALLY, )  
 SHIRLEY ASACK, WINTHROP FARWELL JR., )  
 ROBERT SULLIVAN, SHAYNAH BARNES, )  
 & MOISES RODRIGUES, )  
 in their representative capacities, )  
 Plaintiffs, )

vs. )

BILL CARPENTER, in his representative )  
 capacity as the Mayor for the City of Brockton )  
 Defendant, )  
 \_\_\_\_\_)

FILED  
 COMMONWEALTH OF MASSACHUSETTS  
 SUPERIOR COURT DEPARTMENT OF TRIAL COURT  
 PLYMOUTH COUNTY  
 FEB 22 2016  
*Richard A. ...*  
 Clerk of Courts

**COMPLAINT FOR DECLARATORY JUDGMENT**

**I. PARTIES**

1. The Plaintiff, Brockton City Council ("City Council"), is a duly constituted board of the City of Brockton, Massachusetts with its principal office at Brockton City Hall, 45 School Street, Brockton, Massachusetts 02301.
2. The Plaintiffs, Timothy Cruise, Thomas Monahan, Dennis Eaniri, Paul Studenski, Anne Beauregard, John Lally, Shirley Asack, Winthrop Farwell Jr., Robert Sullivan, Shaynah Barnes, and Moises Rodrigues, are duly elected individuals of the City Council and are named for the purposes of this complaint solely in their representative capacities.
3. The Defendant, Bill Carpenter, is the duly elected Mayor of the City of Brockton, and is named for the purposes of this complaint solely in his representative capacity as Mayor, with the Mayor's office having its principal office located at Brockton City Hall, 45 School Street, Brockton, Massachusetts 02301.

## II. JURISDICTION

4. The Court has jurisdiction over the matter set forth herein pursuant to G.L. c. 231A, § 1, which provides that the superior courts of the Commonwealth may make binding declarations of rights, duties, status, and other legal relations, either before or after a breach of violation, in any case in which an actual controversy has arisen.

## III. STATEMENT OF FACTS

5. In November 2007, the City Council for the City of Brockton adopted an amendment to the City Ordinances which stated that the sale of effluent discharge from the Waste Water Treatment Plant required a two-third (2/3) vote of the City Council (hereinafter referred to as the "Effluent Ordinance"). The then-Mayor James Harrington signed the amendment to the ordinance, making it effective. A copy of the ordinance is attached with this Complaint. See Attached Exhibit 1.
6. The Effluent Ordinance specifically states:

### SALE OR USE OF INFLUENT OR EFFLUENT FROM THE WASTE WATER TREATMENT FACILITY

Any sale, use or agreement to provide or transfer the influent and/or effluent discharge from the Waste Water Treatment Facility owned by the City of Brockton shall require approval of the City Council by a two-third (2/3) vote of the entire Council. If any provision or clause of this section or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

7. A United States District Court for the District of Massachusetts action entitled Brockton Power LLC, and Brockton Power Company LLC v. City of Brockton, et al., C.A. NO. 1:12-cv-11047-JLT involved an action by plaintiffs Brockton Power, LLC and Brockton Power Company, LLC (hereinafter referred to collectively as "Brockton Power") relating to their proposed project to construct and operate an electric generation facility in the City of Brockton (hereinafter referred to as the "Project").
8. As part of the Project, Brockton Power will require approximately two million (2,000,000) gallons of cooling water per day for operations ("Effluent Water"). Through the Mayor, Brockton Power sought to purchase the necessary Effluent Water from the City of Brockton. As of this date, Brockton Power has not received approval from the City Council for the sale of Effluent Water required for the Project.
9. On February 26, 2015, Brockton Power and the City of Brockton, through Mayor Bill Carpenter, entered into a Settlement Agreement and an Agreement for the Sale of Effluent Water. As a condition of the Settlement Agreement, Mayor Carpenter agreed

that the City would sell to Brockton Power treated effluent in the amount of two million (2,000,000) gallons per day for the term of the agreement, payable at \$100,000 per year.

10. Brockton Power and Mayor Carpenter reached an agreement regarding the "sale," "use," "agreement to provide," or "transfer" of Effluent Water within the meaning of the Effluent Ordinance, but without a vote of the City Council. See attached Exhibit 2 and Exhibit 3 to Plaintiffs' Complaint.
11. To date, the Mayor has not requested, nor received, the requisite City Council approval to enter into a contract for the sale of Effluent Water from the City of Brockton's waste water treatment plant.
12. Through the execution of the Settlement Agreement and Agreement for the Sale of Effluent Water, Mayor Bill Carpenter bypassed a City Ordinance, specifically the Effluent Ordinance, which requires 2/3 approval of the City Council for the sale of Effluent Water discharged from the City of Brockton's waste water treatment plant.
13. Mayor Bill Carpenter affirmed and took oath by way of his election to Mayor for the City of Brockton to "discharge faithfully and impartially the duties of the office...in accordance with...the ordinances of the city." See Attached Exhibit 4 to Plaintiffs' Complaint.
14. By entering into a contract for the sale of Effluent Water, the Mayor seeks to circumvent and ignore a duly adopted City Ordinance.

#### **IV. COUNT I**

##### **(G.L. c. 231A, § 1 – Declaratory Judgment)**

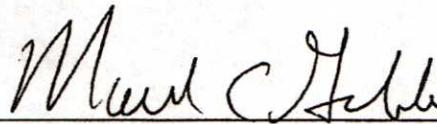
15. Plaintiff repeats, realleges, and re-avers the allegations contained in paragraphs 1 through 14 as if fully set forth herein.
16. An actual dispute exists between the Plaintiffs and the Defendant with respect to the authority of the Mayor for the City of Brockton to bypass a city ordinance through the execution of Agreement for the Sale of Effluent Water.
17. An actual and bona fide controversy exists between Plaintiffs and Defendant as to the legal obligations with respect to the Effluent Ordinance and Agreement for the Sale of Effluent Water. The rights of the parties can only be decided by declaratory judgment.

**WHEREFORE**, Plaintiffs pray that this Court grant the following relief:

1. Enter a declaratory judgment that the Effluent Ordinance, which provides in part that “[a]ny sale, use or agreement to provide or transfer the influent and/or the effluent discharge from the Waste Water Treatment Facility owned by the City of Brockton shall require approval of the City Council by a two-third (2/3) vote of the entire council” is enforceable, absent a Court Order to the contrary;
2. Enter a declaratory judgment that the City of Brockton is not legally bound to enforce or comply with Agreement for the Sale of Effluent Water between Brockton Power and Mayor Carpenter, which circumvents the established required two-third approval of the City Council as stated in the Effluent Ordinance, a prior and enforceable City Ordinance; and
3. Enter a declaratory judgment that Mayor Carpenter’s action in signing the Agreement for the Sale of Effluent Water was unlawful and the resulting executed Agreement for the Sale of Effluent Water is null, void, and without legal effect.

Plaintiffs,  
By their attorney,

Dated: February 22, 2016



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