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Barrio plan faces court hearing

Enough signatures confirmed to force a vote on new community plan

By **Roger Showley (/staff/roger-showley/)** 3:46 P.M. NOV. 21, 2013

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Barrio Logan resident Maria Martinez holds a sign as she and Livia Borak, an attorney, support the Barrio Logan community plan update being discussed during a San Diego City Council meeting in September. Hayne Palmour IV

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f (http://www.facebook.com/sharer.php?u=http://www.utsandiego.com/news/2013/nov/21/new-barrio-logan-community-plan-just-as-petitions-have-been-confirmed) A challenge will be heard in court Tuesday to the referendum on the new Barrio Logan community plan, just as petitions have been confirmed by the county registrar of voters.

t (https://twitter.com/share?url=http://www.utsandiego.com/news/2013/nov/21/barrio-logan-community-plan-just-as-petitions-have-been-confirmed) The plan, approved by the City Council nearly two months ago, seeks to separate the community's 4,300 residents from the shipyards and their maritime suppliers. The industry is seeking to overturn the plan, saying it could eventually lead to the industry's demise.



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COMMENTS

The hearing before Superior Court Judge Jeffrey Barton at the Hall of Justice, 330 W. Broadway in downtown San Diego, will focus on a temporary restraining order sought by the Environmental Health Coalition against the petitions submitted by the Protect Our Jobs Committee, launched by shipyard repair companies.

The coalition says the referendum is invalid because some gatherers misled some of the 52,000 voters who signed the petitions.

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City Attorney Jan Goldsmith's office responded that the allegations are not strong enough to stop the referendum process and the shipyards' attorney said the campaign did not mislead voters.

"(Plan supporters) could have, and should have, dispatched representatives to stand near circulators and plead their case or otherwise campaigned against the referendum qualification effort," said Bradley W. Hertz, representing the shipyards.

He said the Environmental Health Coalition also could have complained to the district attorney or city attorney and sued individual petition circulators if they detected fraud.

The coalition submitted affidavits from witnesses who claimed the petition gatherers were misstating the community plan's details. But it did not challenge the gatherers legally.

Livia Borak the coalition's attorney, said the group wants to halt the referendum process, because once the petitions are submitted to the City Council, the community plan will be suspended.

"The city can't do anything to send it to the coastal commission or additional things," she said.

The registrar notified City Clerk Elizabeth Maland on Tuesday that 74.2 percent of a sample of the 52,000-plus signatures submitted last month were valid, so that at least 39,563 valid signatures were submitted - about 6,000 more than needed.

Maland said she plans to report the referendum results to the council Dec. 9 or 10 and then ask the council within 10 days, probably Dec. 16 or 17, whether it will rescind the plan or place it on the June 3 ballot. A similar action is likely when a followup referendum petition is submitted soon to challenge two implementing ordinances.

If the council repeals the plan, it could not be reconsidered for at least a year, although state law allows it to come back earlier if there are substantial changes included.

Borak said her side has proposed a compromise to the shipyards, but no settlement has come forth.

"We have said we are open to talking with them and figuring out a compromise," Borak said. "It can't be an all-or-nothing approach that we've heard from the association thus far."

Campaign spokesman Chris Wahl responded, "The shipyards and suppliers have always been willing to discuss any potential compromise, so as long as it protects the long-term interests of the shipyards, suppliers and the Navy."

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David Lundin · Top Commenter · President/Creative Director at Son Appareil Photography

"He [Bradley W. Hertz, attorney for the shipyards] said the Environmental Health Coalition also could have complained to the district attorney or city attorney and sued individual petition circulators if they detected fraud."

I am not affiliated w ith the EHC in any way, but as a voter I sent an E Mail to the City Attorney complaining of the fraud I observed by paid signature gatherers. I never received any reply from Mr.Goldsmith's office. He of course is a very high-profile Republican, allied w ith the shipyards and opponents of the Barrio Logan Community Plan.

Again, I think Mr. Hertz' argument is disingenuous at best.

His suggested "remedy" of individual suits against individual signature gatherers is also absurd. The ones I confronted had no name tags, refused to identify themselves, and strongly objected w hen I tried to photograph them. Hundreds of individual suits against unnamed signature gatherers w ould impose an unreasonable burden on those trying to prevent fraud against the voting public.

Reply · 4 · Like · 11 hours ago



David Lundin · Top Commenter · President/Creative Director at Son Appareil Photography

""(Plan supporters) could have, and should have, dispatched representatives to stand near circulators and plead their case or otherwise campaigned against the referendum qualification effort," said Bradley W. Hertz, representing the shipyards."

Interesting argument. I personally tried to engage paid signature gatherers in a fact-based dialogue at the Trader Joe's in Hillcrest on University on 2 days. One of them repeatedly yelled at me, used foul language and gestures, and finally chased after me. Another said I had no legal right to talk to her, and she said she w ould call the police. I offered her my Mobile phone to make that call. She declined, but again raised her voice and physically threatened me.

It is neither legally required nor remotely reasonable to require those w ho oppose fraud by paid and coached signature gatherers to engage in public debate w ith those perpetrating the fraud against the public at the risk of physical injury to themselves or others.

Mr. Hertz argument is absurd on its face.

Reply · 5 · Like · 11 hours ago



Livia Borak · San Diego, California

Thanks for the story, Roger. To clarify, Councilman Alvarez's "last-minute change" w as actually a concession to the industry: removal of all residential in the buffer zone. The buffer zone w as always part of the alternative approved. The industry w as not upset w ith the change, but the fact that they didn't get an additional concession: industrial by right in the buffer zone. I think the purpose of a buffer zone is clear...and it's not accomplished by having industrial in that zone. Moreover, residential is prohibited unequivocally in that zone. Industrial, on the other hand, can locate there, but must prove it doesn't negatively impact nearby residents first.

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