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Friends of Mayor Frank Bogert

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF RIVERSIDE**

10 FRIENDS OF MAYOR FRANK BOGERT,  
11 Petitioner,  
12 vs.  
13 CITY OF PALM SPRINGS,  
14 Respondent.

Case No.:

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT**

1 Friends of Mayor Frank Bogert (“Petitioner”), for its verified petition, states as  
2 follows:

3 **INTRODUCTION**

4 1. Petitioner seeks to halt the removal of a statue of former (and now deceased)  
5 mayor of the City of Palm Springs (the “City”), Frank Bogert.

6 2. The statue was created and placed at City Hall in 1991 with significant  
7 fanfare in recognition of the long and successful tenure of Mr. Bogert as the City’s mayor.  
8 The statue was built by a world-renowned artist, Raymundo Cobo Reyes, whose sculptures  
9 grace the renowned Heroic Figures Paseo de la Reforma, and a monumental sculpture,  
10 “Plaza de Toros” in Mexico City, as well as a statue of Pope John Paul II in the Vatican.

11 3. However, on February 24, 2022, the City’s Council issued its Resolution  
12 24991, which requires the removal/relocation of the statue from its current location on the  
13 City Hall parcel located between El Cielo Road, Civic Drive and Tahquitz Canyon Way.

14 4. While the Council’s decision to issue Resolution 24991 purports to be based  
15 upon adherence to the architecture of City Hall before the statute’s placement, the events  
16 preceding the decision make clear that the driver of the decision is political correctness and  
17 cancel culture, neither of which is a proper legal basis for issuance of Resolution 24991.  
18 Indeed, Resolution 24991 conveniently leaves out the fact that the City Council has left in  
19 place numerous other items that do not “adhere” to the envisioned architecture.

20 5. As might be expected when politicians seek to appease the whims of  
21 members of the public obsessed with the latest political fad, the City Council and its  
22 Historic Site Preservation Board violated several provisions of law in ultimately issuing  
23 Resolution 24991. Notably, and as described further below, the City violated provisions of  
24 its own Municipal Code, the California Environmental Quality Act (“CEQA”), and  
25 California Code of Civil Procedure Section 987(c)(1) as it relates to the artistic nature of  
26 the statue.

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1 the Mayor was an appointed member of the City Council by the City Council. In 1982,  
2 Bogert became the City’s first directly elected Mayor after residents voted a year earlier to  
3 directly elect their Mayor. He served until 1988.

4 13. A previous mayor of the City stated, “Frank Bogert was a remarkable and  
5 truly iconic Mayor who gave his life to Palm Springs.” That Mayor also noted that Bogert  
6 “worked tirelessly and unselfishly to support many local philanthropies, to cheerlead  
7 countless community events and to promote the town he loved and helped create. His  
8 public service, quick wit and candid rhetoric will be greatly missed by everyone in Palm  
9 Springs and the Coachella Valley. He was a one-of-a-kind... and a true pioneer whose  
10 name was synonymous with Palm Springs.”

11 14. The City further discussed Bogert’s accomplishments, noting that he sat on  
12 the first Tramway Authority and was responsible for the creation of the fountain at Palm  
13 Springs International Airport.

14 Placement and Dedication of Bogert Statue in 1990

15 15. Based on Mayer Bogert’s great contributions to the City, a group of citizens  
16 sought placement of a statute in his honor. In March 1990, a beautiful bronze statue  
17 depicting former Mayor Frank Bogert astride a horse was placed and dedicated at City  
18 Hall. Designed and cast by Mexico City artist Raymundo Cobo Reyes, it was privately  
19 funded by the Committee for Art in Public Places, a local non-profit group founded in  
20 1988 to fund and promote public art.

21 1996 Resolution

22 16. On October 8, 1996, the City’s Council issued Resolution No. 18907 (“Res.  
23 18907”). In it, the Council acknowledged that “Palm Springs City Hall,” among other  
24 sites, “ha[s] contributed substantially to the historic architectural diversity of the City of  
25 Palm Springs; . . . “[and] ha[s] long been [a] landmark[] of the City of Palm Springs for  
26 residents, architectural students and visitors.” Based on a recommendation from the City’s  
27 Historic Site Preservation Board (“HSPB”), the City Council resolved that, among other  
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1 sites, Palm Springs City Hall “shall be designated as a Class I Historic Site pursuant to  
2 Chapter 8.05 of the Palm Springs Municipal Code.” Of course, at that time the Bogert  
3 statue had been in place for over six years and certainly was part of the “historic site” that  
4 existed at City Hall.

5 2012 Resolution

6 17. In March 2012, following a recommendation from the City’s HSPB, the City  
7 Council considered whether the Palm Springs City Hall’s Class 1 designation should be  
8 amended to clarify what aspects or parts of City Hall were included within the historic site.  
9 After discussion, the City Council approved and adopted Resolution No. 23106 (“Res.  
10 23106”), which amended the designation “to include the structures, features, and land of  
11 that portion of APN No. 502-150-005 bounded by the north edge of the north parking lot  
12 and the curb edges along Civic Drive, Tahquitz Canyon Way, and El Cielo Road,  
13 ***excepting the landscape plant materials therein.***”

14 18. In addition, Res. 23106 stated: “All existing or previously approved or  
15 installed alterations or improvements shall be considered acceptable and consistent with  
16 the requirements of Chapter 8.05 of the Palm Springs Municipal Code.” Chapter 8.05 of  
17 the Palm Springs Municipal Code governs the manner in which sites, objects or other  
18 items are designated as historic sites within the City of Palm Springs. Thus, the Council  
19 held that any “...previously installed alterations or improvements shall be considered...”  
20 as a historic site or resource consistent with the municipal code on such items.

21 19. At the time of this resolution, the Bogert statue was both a feature, structure  
22 and improvement by definition, and it sits exactly in the middle of the defined area  
23 designated as a historic resource/site. This is the last time the City Council defined the  
24 land, features and structures and therefore has finality. Importantly, the current City  
25 Council has not attempted to pass a resolution altering or amending the existing and  
26 definitive legal holding by the Council in its 2012 Resolution.

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1           20.     Further, with Res. 23106, the City Council demonstrated its discernment of  
2 the individual structures, features and improvements by specifically *excluding* certain  
3 items from the designation, *but not the Bogert statue*. Consequently, it was included as a  
4 part of the historic site or resource.

5                     *Besmirching of Frank Bogert and Call for Removal of his Statute Begin*

6           21.     In approximately June 2020, a lone Palm Springs citizen began seeking  
7 signatures on a petition for removal of the Bogert statue. The petition was based on the  
8 unsupported notion that Mayor Bogert was responsible for the removal of tenants from a  
9 one-square-mile block of property in downtown Palm Springs referred to as “Section 14.”  
10 The petition never gathered much support, but it was enough to inject into the members of  
11 the City Council and staff the beginning of a course of action to remove the statue.

12           22.     The HSPB approved, on February 1, 2022, the issuance of a Certificate of  
13 Appropriateness for Alterations to The Palm Springs City Hall, A Class 1 (Landmark)  
14 Historic Site Located at 3200 Tahquitz Canyon Way, specifically the removal/relocation of  
15 the Mayor Bogert statue.

16                     *Appeal and City Council Resolution 24991*

17           23.     Petitioner appealed the HSPB approval to the City Council, which was heard  
18 on February 24, 2022. Following presentations of argument, the City Council adopted and  
19 approved Resolution No. 24991 (“Res. 24991”), which denied the appeal. Res. 24991,  
20 directly contradicting previous resolutions in 1996 and 2012, stated: “In this case, the  
21 Bogert statue, while potentially capable of being designated as a historic resource, has not  
22 been granted Class 1 or Class 2 designation and has not been identified as a contributing  
23 resource in a Council-designated historic site or district.”

24           24.     Res. 24991 also provided that “City staff is authorized to remove and dispose  
25 of the Bogert statue in a manner determined by the City Manager to be in the best interest  
26 of the City.” The decision was clearly based on emotion, not law. As Councilmember  
27 Christy Gilbert freely admitted, it was a “policy decision” and that she had heard from  
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1 community members sharing “pain” regarding what happened at Section 14. Clearly based  
2 on the Council member’s admission, the real reason for removal of the statue had nothing  
3 to do with aesthetic appeal, and everything to do with political correctness and cancel  
4 culture.

5         25. While Councilmember Gilbert was clear in the Council’s political  
6 motivations, the statement of Ron DeHarte, Chairman of the Palm Springs Human Rights  
7 Commission (HRC) was crystal clear of the driving, and solitary, motivation of the City:  
8 “Some may feel that the recommendation to move the monument [Bogert statue] is a  
9 political effort made to appease one other group. *Well, they are indeed correct.*” (Emphasis  
10 added.)

11         26. It was DeHarte, acting as a City Commissioner and Chairman of one of its  
12 City Commissions, that started the City’s attempt to remove the statue. He did so by  
13 pushing and selling the HRC report debasing the legacy of Mayor Bogert and it was  
14 DeHarte who drove the HRC to recommend to the Council that the Mayor Bogert statue be  
15 removed from City Hall grounds. From DeHarte the Council acted by referring the matter  
16 to the HSPB for a Certificate of Appropriateness, the final step in any effort to remove the  
17 statue. And it was the decision of the HSPB to issue the certificate which Petitioner  
18 appealed to the Council, an appeal denied.

19         27. In connection with denying the appeal, the City Council agreed that the City  
20 Manager would have 60 days to determine a new location for the statue. If no location  
21 could be determined, it would then be moved to storage. The council also agreed to extend  
22 the time to file a lawsuit by 30 days in addition to the 60 days.

23         CEQA Appeal

24         28. On March 23, 2022, Petitioner timely submitted to County of Riverside  
25 Clerk an appeal of the City Council’s denial of Petitioner’s objection to removal of the  
26 Bogert Statue based on violation of CEQA. Consequently, all local administrative  
27 remedies have been exhausted.

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1           **THE REMOVAL OF THE BOGERT STATUE VIOLATES THE LAW**

2           29.     As Petitioner presented in its appeal, the decision to remove the Bogert  
3 Statue violates the law in several respects. Specifically, the decision fails to adhere to: (A)  
4 the Palm Springs Municipal Code (“PSMC”) Relating to Historic Site Preservation; (B)  
5 CEQA, as there is no exemption under law for the City’s proposed action; but instead, an  
6 exception that bars it; and (C) Federal and state law regarding visual art on public display  
7 bars the proposed City action. Based on these violations of law, the City Council’s  
8 decision is clearly arbitrary and capricious.

9                     *Removal of the Bogert Statue Violates the Palm Springs Municipal Code*  
10                    *(“PSMC”)*

11           30.     The evaluation and assessment of the relocation/removal of the Bogert statue  
12 in the context of historic resource designation can only be bound by the actions of the City  
13 Council and its successful resolutions. The PSMC dictates a certain treatment and  
14 assessment for historic sites, particularly a Class 1 designation, as here. If there was no  
15 historic designation at issue then there would be no debate and the statue could just be  
16 removed by edict. Consequently, the PSMC relating to historic site preservation governs,  
17 and dictates. Within that code is the authority granted only to the City Council to designate  
18 a historic site and or resource, which it did in 1996 and made even more clear in 2012.

19           31.     Therefore, the assessment of what is or what is not a historic resource is  
20 defined solely by City Council Resolutions, pursuant to the PSMC. In this instance there  
21 were only two such resolutions relating to City Hall, one in 1996 and another superseding  
22 one in 2012. Prior to that time there were no resolutions identifying any part of the City  
23 Hall property, or its features, or its structures, as a historic resource or site. There was no  
24 resolution in 1957 when the first part of the modern design was constructed.

25           32.     There was no resolution designating the second phase of construction in  
26 1965 either. When subsequent additions occurred after 1965, they also were not identified  
27 as historic resources at the time of their construction and placement. Only in 1996 and  
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1 2012 did the City Council exercise its authority to designate relating to City Hall, its  
2 features, structures and land. And the City Council has not changed those historic  
3 designations since, except to transgress them, which is the substance of this writ of  
4 mandate.

5 33. In issuing Res. 24991, the City Council (and before it, the HSPB), side-  
6 stepped these prior resolutions. Misled by their own politically correct intentions and City  
7 staff, the City Council in myopic fashion misleadingly focused on a “period of  
8 significance” that was in 1957 and 1965, and then directed historic experts to focus only on  
9 architectural work at that time period. Unfortunately, this architectural work in 1957 and  
10 1965 is not relevant nor controlling as no City Council resolution has ever defined it as a  
11 historic resource. In other words, the City Council’s approach was a self-fulfilling  
12 prophecy intended to meet a result that appeased certain woke citizens, but ignored the  
13 law.

14 34. What is of particular concern and exemplifies the great extent of machinations  
15 in this matter is that the historic experts hired by the City were specifically instructed *not*  
16 to evaluate the legacy of Mayor Bogert and were further instructed *not* to evaluate the  
17 artistic value of the Mayor Bogert statue. [“As of January 2022, the statue has not been  
18 evaluated for eligibility as a historic resource and the historical significance of the art and  
19 its creator has not been determined. This study does not evaluate the Bogert statue under  
20 any eligibility criteria.” (Historic Resources Report dated January 24, 2022, p.1-2, Section  
21 1.1)]

22 35. But clamping down on the experts was not enough, staff went so far as to  
23 take the reins from the HSPB by dictating to those appointed officials what they could  
24 discuss and evaluate and what they could not regarding the Mayor Bogert statue.  
25 Specifically, staff falsely claimed that the HSPB could not evaluate or review the artistic  
26 value or historical significance of Bogert statue [“The Board’s authority is limited to  
27 evaluating the Certificate of Appropriateness application and making findings relative to  
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1 the proposed alteration of the historic resource that is City Hall. It is not authorized or  
2 requested to evaluate the legacy of Frank Bogert, nor to opine about the artistic status or  
3 value of the statue itself..." (HSPB Staff Report dated February 1, 2022, p. 2)]. Not only  
4 should the HSPB have evaluated the Mayor Bogert statue as it was designated a historic  
5 resource in the 2012 Resolution, but staff knew the statue would satisfy various criteria not  
6 only under PSMC, but also state and federal law.

7         36. The 2012 Res. 23106 specifically identified that the historic designation  
8 included "features" and "structures" found on the City Hall property bordered by Civic  
9 Drive, Tahquitz Canyon Way, and El Cielo Road. In analyzing any legislative act, statute  
10 or resolution the law applies the rules of "Statutory Construction," which guide courts of  
11 law in their interpretation of those legislative acts. "Any question of statutory  
12 interpretation begins with looking at the plain language of the statute to discover its  
13 original intent."

14         37. To discover a statute's original intent, courts first look to the words of the  
15 statute and apply their usual and ordinary meanings... A court may also look at: the  
16 common usage of a word, case law, [or] dictionaries..." Legal Information Institute,  
17 Cornell Law School. (Emphasis added.)

18         38. "Structure" is defined as:  
19                 "Something built." Cambridge Dictionary  
20                 "Something (such as a house, tower, bridge, etc.) that is built by putting parts  
21 together and that usually stands on its own." Merriam-Webster Dictionary  
22                 "Something (such as a building) that is constructed." Merriam-Webster  
23 Dictionary  
24                 "A structure is something that has been built." Collins Dictionary.

25         39. "Feature" is defined as:  
26                 "A prominent or conspicuous part or characteristic." Collins Dictionary  
27                 "Something offered as a special attraction." Collins Dictionary

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1 “A prominent part or characteristic.” Merriam-Webster Dictionary

2 “A special attraction: such as . . . (c) something offered to the public or  
3 advertised as particularly attractive.” Merriam-Webster Dictionary

4 “A prominent or distinctive part, quality, or characteristic: a feature of one’s  
5 personality; a feature of the landscape.” The Free Dictionary by Farlex  
6 (Emphasis added.)

7 “A prominent or distinctive part or aspect, as of a landscape, building, book,  
8 etc.” The Free Dictionary by Farlex (Emphasis added.)

9 40. The “plain language” of Res. 23106 designates all structures and features  
10 within the border of three streets. And there is no question the City Council knew of the  
11 statue’s existence at the time it voted on the Resolution in 2012.

12 41. And by any definition the Mayor Bogert statue is both a feature of the  
13 defined City Hall area located between Civic Drive, Tahquitz Canyon Way, and El Cielo  
14 Road, as it is a prominent and distinctive part of the landscape. And it is also a structure,  
15 something that has been built. In this instance, built by a world-renowned artist. Therefore,  
16 the City Council in its 2012 Resolution by reference included all features and structures  
17 within the parameters of the defined portion of land. That portion included, prominently  
18 and distinctly, the Bogert statue.

19 42. Subsection three of Res. 23106, approved 22 years after the Mayor Bogert  
20 statue was added to the City Hall area, states that “[a]ll existing . . . improvements shall be  
21 considered acceptable and consistent with the requirements of Chapter 8.05 of the Palm  
22 Springs Municipal Code. An improvement is defined as:

23 “The act of adding something to a property such that it increases the  
24 property's value.” The Free Dictionary by Farlex.

25 “An instance of such improvement: something that enhances value or  
26 excellence.” Merriam-Webster

1           “A change or addition to land or real property, as a sewer, fence, etc., to  
2           make it more valuable.” Collins Dictionary.

3           43.     In this instance, the Mayor Bogert statue was built by Raymundo Cobo  
4 Reyes, an artist of international fame. His sculptures grace the renowned Heroic Figures  
5 Paseo de la Reforma, and a monumental sculpture, “Plaza de Toros” in Mexico City, as  
6 well as a statue of Pope John Paul II in the Vatican. Mr. Reyes also had one man art shows  
7 in the Museum of Art in Chicago, and at the Museum of Man in Paris, to name a few. His  
8 statue of Mayor Frank Bogert is unquestionably a piece of fine art and adds tremendous  
9 value and excellence to the defined City Hall area. If a “sewer” or “fence” qualifies as an  
10 improvement, it is impossible that a work of fine art from a world-renowned artist does  
11 not.

12           44.     Consequently, the statue is an “improvement” and it existed at the time of the  
13 2012 Resolution, therefore the Mayor Frank Bogert statue “...shall be considered  
14 acceptable and consistent with the requirements of Chapter 8.05 of the Palm Springs  
15 Municipal Code.” That municipal code section defines historic resource. Use of this  
16 language regarding “all existing improvements” is perfectly consistent with the language  
17 designating all features and structures within the designated area as part of the historic  
18 designation. Again, Statutory Construction reaffirms that the Mayor Bogert statue was  
19 protected as an historic resource. [“Statutes should be internally consistent.” Legal  
20 Information Institute, Cornell Law School.]

21           45.     Further, Res. 23106 was circumspect about what parts to include and what  
22 parts to exclude in its designation. For example, the City Council in 2012 made clear that  
23 the landscaping of City Hall was not part of the historic designation and would not need  
24 approval for alteration in the future. If the City Council wanted to exclude the Mayor  
25 Frank Bogert statue from its designation, as it did with the landscaping, it would have done  
26 so. Rules of statutory construction apply here too. “The legislature is presumed to act  
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1 intentionally and purposely when it includes language in one section but omits it in  
2 another.” Legal Information Institute, Cornell Law School.

3 46. Moreover, an evaluation of the Mayor Bogert statue in comparison to the  
4 criteria under PSMC 8.05.070: Procedures and Criteria for the Designation of Class 1 and  
5 Class 2 Historic Resources—a provision barely mentioned by the City Council—finds that  
6 it qualifies on more than one criterion:

7 “(ii) The resource is associated with the lives of persons who made a  
8 meaningful contribution to national, state or local history; or

9 (iii) The resource reflects or exemplifies a particular period of national, state  
10 or local history; or...

11 (v) The resource presents the work of a master builder, designer, artist, or  
12 architect whose individual genius influenced his or her age, or that possesses  
13 high artistic value;”

14 47. Therefore, the Mayor Bogert statute certainly did qualify for inclusion within  
15 the historic resource designation made in 2012 by the City Council.

16 48. In addition, there is no question that removal of the statue is an “alteration”  
17 under the PSMC definitions:

18 PSMC 8.05.020 Definitions.

19 “Alteration” means any exterior change or modification to a building,  
20 structure or object. For the purposes of this chapter, an “alteration”  
21 shall include, but not be limited to...and the placement or removal of  
22 any exterior objects...”

23 “Object” means a construction primarily artistic in nature or relatively  
24 small in scale, such as a sign or a statue.”

25 Without question the Mayor Bogert statue is an “object” within the  
26 meaning of the PSMC.

27 49. The removal of the statute is also a “Major Alteration”:  
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1 PSMC 8.05.020 Definitions.

2 “Major Alteration” means any alteration that does the following:

3 A. Removes, encloses or modifies (i.e., new window and/or  
4 window relocation) (i) twenty-five (25) percent or more of the lineal  
5 footage of the elevation(s) of the building, structure or object  
6 (including site and garden walls) facing a public street or right-of-way  
7 (or a street-facing elevation if the parcel is a through lot or  
8 landlocked), or (ii) more than fifty (50) percent of the lineal footage of  
9 all exterior elevation(s) of the building or structure.

10 The City Council voted affirmatively to allow the “removal” of the Mayor Bogert  
11 statue, which is an “object” “facing a public street.” Consequently, such act would  
12 entail a Major Alteration.

13 B. Removes fifty (50) percent or more of the cumulative area of  
14 the building, structure or object’s footprint.

15 Given that the intent and decision is to remove all of the statue that would exceed  
16 50% including its footprint. Consequently, such act would entail a Major Alteration.

17 50. The Mayor Bogert statue has been at the center of a very public community  
18 debate surrounding Mayor Bogert and events that occurred literally half a century or more  
19 ago (Section 14). At each meeting when this item has been on a City agenda numerous  
20 citizens have weighed in on the statue and Mayor Bogert’s legacy. In addition, the City  
21 Council members have made numerous public and private comments about the statue and  
22 Mayor Bogert’s legacy and not once was there a cry to conform the existing City Hall area  
23 to the earliest buildings constructed in 1957 and 1965.

24 51. The political correctness attack on Mayor Bogert has been the only reason  
25 offered for the statue’s removal, until the staff and City Council were informed that  
26 political correctness and cancel culture did not qualify for removal of the statue under the  
27 law.

1           52.     Consequently, a new rationale had to be concocted, which is the improper  
2 recitation of PSMC provisions purportedly based on architectural design from 1957 and  
3 1965. If that is the basis, adherence to the early architecture, then why aren't the additional  
4 "non-conforming" items also being removed or corrected? The commissioned Historic  
5 Report identifies many "non-conforming" parts of the City Hall site, all included in the  
6 2012 Resolution. Yet all of these other nonconforming items have been left untouched.

7 They are:

8           "The general site plan configuration and layout of hardscape and landscape  
9 appears as it was during the period of significance, however the parking lot  
10 light fixtures and the specific plant materials that exist today in the  
11 landscape do not reflect the Ekbo design as seen in historic photos and a  
12 1957 rendering. The 2012 designation amendment specified that "landscape  
13 plant materials" are not included in the designation, and this is presumed to  
14 cover any remaining original as well as current vegetation. The flagpole  
15 and Frank Bogert statue located in the lawn area in front of the building are  
16 alterations that occurred well after the period of significance and do not  
17 contribute to the property's significance in terms of architecture or  
18 association with/embodiment of historic patterns of development – the  
19 flagpole was moved here from the main entrance in 1981, and the statue  
20 was added in 1990. In summary, the open space at the front of the building  
21 is a contributing element, while the actual vegetation, flagpole, and statue  
22 are not contributing elements." (Historic Report, p.12-13/ Sect. 6.)

18           53.     The Report goes on to identify the 1972 conference room addition which was  
19 essentially altered by another nonconforming addition in 1985. The report speaks plainly:  
20 "As a result, it does not contribute to the significance of City Hall." (Historic Report, p.13/  
21 Sect. 6.)

22           54.     If the vote was honestly about restoring the grandeur of the City Hall  
23 constructed in two phases in 1957 and 1965 by a celebrated architect, then the resolution  
24 would have included not only the removal of the Mayor Bogert statue but also:

25                   (A) The removal of the flagpole;

26                   (B) The demolition or complete reconstruction of the 1972 addition  
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1 (conference room);

2 (C) The demolition or complete reconstruction of the 1985 addition;

3 (D) Replacement and restoration of original parking lot standards; and

4 (E) Restoration of original landscape design from 1957.

5 55. Yet none of these items were even mentioned, nor have they been the subject  
6 of discussion or debate in the slightest, either by the HSPB or the City Council in any of its  
7 meetings since the issue of Mayor Bogert's legacy arrived. The reason they were not  
8 included in any of the above is because conformity with a 1957 architectural drawing is  
9 not the issue, political correctness and the consequential cancel culture is the issue. But  
10 because political correctness/cancel culture is not found as a basis for altering or removing  
11 a feature/structure/object/improvement of a designated historic site in the PSMC the  
12 elected officials on the City Council have had to find what appears as a lawful reason.

13 56. Unfortunately, the rationale here is not availing and is merely an attempt to  
14 force a "round peg into a square hole." It should not be surprising that some public  
15 officials use obfuscation to achieve goals the law does not allow.

16 *Removal of the Bogert Statue Violates CEQA*

17 57. CEQA is clear that all public projects undertaken by a public agency are  
18 subject to its requirements. There are two types of exemptions from the strictures of  
19 CEQA, one statutory and the others categorical. Statutory exemptions do not apply in this  
20 case, but categorical exemptions do, as the City Council relied upon one, erroneously.

21 58. Categorical exemptions are identified and defined in the CEQA Guidelines  
22 (14 CCR Section 15300-15331). Importantly under the CEQA law, categorical exemptions  
23 cannot be used for projects that may cause a "substantial adverse change" in the  
24 significance of an historic resource. (14 CCR Section 15300.2(f)). The lead agency, in this  
25 instance the City, has to, by law, determine that a categorical exemption, that it may claim,  
26 "...is not barred by one of the exceptions set forth in Section 15300.2." (14 CCR Section  
27 15061(a)(2)).



1           59.    There is an applicable exception here that bars the City’s action identified  
2 herein:

3                               “15300.2. EXCEPTIONS

4                               (f) Historical Resources. A categorical exemption shall not be used for  
5 a project which may cause a substantial adverse change in the  
6 significance of a historical resource.” (14 CCR Section 15300.2(f))

7           60.    CEQA also identifies those resources that qualify as a historic resource:

8                               15064.5. DETERMINING THE SIGNIFICANCE OF IMPACTS TO  
9                               ARCHAEOLOGICAL AND HISTORICAL RESOURCES (a) For  
10                              purposes of this section, the term “historical resources” shall include  
11                              the following: (1) A resource listed in, or determined to be eligible by  
12                              the State Historical Resources Commission, for listing in the  
13                              California Register of Historical Resources (Pub. Res. Code § 5024.1,  
14                              Title 14 CCR, Section 4850 et seq.). (2) *A resource included in a*  
15                              *local register of historical resources, as defined in section 5020.1(k)*  
16                              *of the Public Resources Code or identified as significant in an*  
17                              *historical resource survey meeting the requirements section*  
18                              *5024.1(g) of the Public Resources Code, shall be presumed to be*  
19                              *historically or culturally significant. Public agencies must treat any*  
20                              *such resource as significant unless the preponderance of evidence*  
21                              *demonstrates that it is not historically or culturally significant.*  
22                              (Emphasis added.)

18           61.    The Palm Springs City Council in 2012 identified all features and structures  
19 within a defined area around City Hall as historic resources, which included the Mayor  
20 Bogert statue, as previously discussed. That designation was the inclusion of the features,  
21 structures and land within that defined area into the “local register of historical resources.”  
22 Therefore, pursuant to CEQA, the statue of Mayor Bogert “...shall be presumed to be  
23 historically or culturally significant.”

24           62. And finally, a “substantial adverse change” is defined as:

25                              “A project with an effect that may cause a substantial adverse change in the  
26                              significance of an historical resource is a project that may have a significant  
27                              effect on the environment. (1) Substantial adverse change in the significance  
28

1 of an historical resource means physical demolition, destruction, *relocation*,  
2 or alteration of the resource or its immediate surroundings such that the  
3 significance of an historical resource would be materially impaired.” 14 CCR  
Section 15064.5(b)(1) (Emphasis added.)

4 63. Therefore, any proposed relocation of the Mayor Bogert statue requires an  
5 elaborate CEQA process typically involving an environmental impact report (“EIR”) and  
6 other determinations by the lead agency, the City. California Public Resources Code  
7 §§ 21080(d), 21082.2(d), 21100(a), 21151(a).

8 64. Of course, a full public review of this process is part and parcel of the  
9 requirements. None of these rules have been followed, no EIR has been done, the City has  
10 merely relied on an unqualified, and false claim of exemption.

11 *Removal of the Bogert Statue Violates California Code of Civil Procedure*  
12 *Section 987(c)(1)*

13 65. State law prohibits anyone, including municipalities, of intentionally  
14 committing “...any physical defacement, mutilation, *alteration*, or destruction of fine art.”  
15 California Civil Code § 987(c)(1). (Emphasis added.) Only the artist who created the fine  
16 art may authorize any alteration of their work. *Id.*

17 66. The purpose of the law, embodied in California Civil Code § 987(a),  
18 embraces ideals and principles of which the City Council should have taken note:

19 “The Legislature hereby finds and declares that the physical  
20 alteration or destruction of fine art, which is an expression of the  
21 artist’s personality, is detrimental to the artist’s reputation, and  
22 artists therefore have an interest in protecting their works of fine art  
23 against any alteration or destruction; and that there is also a public  
interest in preserving the integrity of cultural and artistic creations.”

24 67. Failure to abide by California Civil Code § 987(a) subjects the offender to  
25 litigation which can include, injunctive relief, actual damages, attorney’s fees and costs,  
26 and punitive damages. California Civil Code § 987(e).

1           68.     The law requires notification to the artist, which has never been provided by  
2 the City.

3           69.     Accordingly, removal of the Mayor Bogert statue violates California Code of  
4 Civil Procedure Section 987(c) and the City Council has acted arbitrarily and capriciously  
5 in ordering its removal.

6                   **EXHAUSTION OF ADMINISTRATIVE REMEDIES AND INADEOUATE**  
7                                   **REMEDIES AT LAW**

8           70.     As discussed above, Petitioner exhausted its administrative remedies by  
9 seeking an appeal with the City Council and by appealing the decision regarding CEQA to  
10 the Riverside County Clerk.

11           71.     No adequate remedy at law exists here. Petitioner is an association of  
12 concerned citizens of Palm Springs, including the widow of Frank Bogert, Negie Bogert,  
13 who have a genuine and distinct interest in preserving Mayor Bogert’s legacy and  
14 preserving the artistic qualities of the Mayor Bogert statue. Damages cannot provide any  
15 kind of relief in this instance.

16                                   **FIRST CAUSE OF ACTION**  
17                   **(Mandamus under California Code of Civil Procedure Section 1085)**

18           72.     Petitioner incorporates the above-stated facts in Paragraphs 1 through 71 as  
19 though fully set forth herein.

20           73.     California Code of Civil Procedure Sections 1085 provides that “[a] writ of  
21 mandate may be issued by any court to any inferior tribunal, corporation, board, or person,  
22 to compel the performance of an act which the law specially enjoins, as a duty resulting  
23 from an office, trust, or station, or to compel the admission of a party to the use and  
24 enjoyment of a right or office to which the party is entitled, and from which the party is  
25 unlawfully precluded by that inferior tribunal, corporation, board, or person.”

1           74.    The City abused its discretion in issuing Resolution 24991 and acted  
2 arbitrarily and capriciously, in that the Resolution was passed in violation of the City’s  
3 Municipal Code, CEQA, and California Code of Civil Procedure Section 987(c)(1).

4                                   **SECOND CAUSE OF ACTION**  
5                                   **(Violation of CEQA)**

6           75.    Petitioner incorporates by reference herein each and every allegation  
7 contained in Paragraphs 1 through 71.

8           76.    Public Resources Code section 21151, subdivision provides:

9                                   If a nonelected decisionmaking body of a local lead agency certifies  
10 an environmental impact report, approves a negative declaration or  
11 mitigated negative declaration, or determines that a project is not  
12 subject to this division, that certification, approval, or determination  
13 may be appealed to the agency's elected decisionmaking body, if any.

14           77.    CCR, Title 14, Section 15061(e) provides:

15                                   When a non-elected official or decisionmaking body of a local lead  
16 agency decides that a project is exempt from CEQA, and the public  
17 agency approves or determines to carry out the project, the decision  
18 that the project is exempt may be appealed to the local lead agency's  
19 elected decisionmaking body, if one exists. A local lead agency may  
20 establish procedures governing such appeals.

21           78.    Here, the City improperly determined that removal and/or relocation of the  
22 Bogert statue is exempt from CEQA in an arbitrary and capricious manner.

23                                   **THIRD CAUSE OF ACTION**  
24                                   **(Declaratory Relief)**

25           79.    Petitioner incorporates by reference herein each and every allegation  
26 contained in the Paragraphs 1 through 71.

27           80.    An actual controversy exists between Petitioner and the City because the  
28 City has failed to comply with its Municipal Code, CEQA, and the California Code of  
Civil Procedure.



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6. For an award to the Petitioner of any and further relief as the court deems proper.

DATED: April 22, 2022

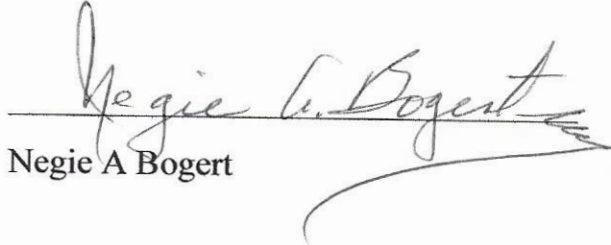
PACHECO & NEACH PC



By: \_\_\_\_\_  
Rod Pacheco  
Brian Neach  
Attorneys for Petitioner Friends of Mayor Frank  
Bogert

## VERIFICATION

I, the undersigned, say: I am a member of Friends of Mayor Frank Bogert, the petitioner in this proceeding. The facts alleged in the above petition are true to the best of my own knowledge. I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on April 15, 2022, at 2:15 PM Palm Springs, California.

  
Negie A Bogert