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VIA ELECTRONIC MAIL

Meaghan Hassel-Shearer, City Clerk [mhasselshearer@burlingame.org]
City of Burlingame
501 Primrose Road
Burlingame, CA 94010

RE: Initiative proposing the “Burlingame Community Protection Ordinance”
Fatally Defective – Failure to Comply with Elections Code “Full Text” Requirement

Dear Ms. Hassel-Shearer:

My law firm is legal counsel to the California Apartment Association, and has over two decades of experience advising clients on compliance with the ballot measure provisions of the Elections Code. We reviewed the initiative proposing the “Burlingame Community Protection Ordinance,” filed with your office on March 31, 2016 requesting preparation of a title and summary. We believe the proponents will file the petition containing signatures within days. When the petition is presented for examination, you should reject it for failure to comply with the Elections Code. This letter is an effort to resolve this matter administratively.

Upon presentation of any voter-initiated petition, as the elections official for the City of Burlingame, the Elections Code charges your office with the mandatory ministerial duty of examining the petition (1) for compliance with the technical statutory process of proposing and qualifying a measure, and (2) to confirm that it contains, *prima facie*, a sufficient number of signatures to qualify the measure for adoption by the City Council or presentation to the voters. (*Billig v. Voges* (1990) 223 Cal.App.3d 962, 968-69.) The relevant statutory provisions are found in Article 1 of Chapter 3 of Division 9 of the Elections Code (commencing with section 9200). Importantly, your duty is not discretionary and does not include the authority to determine that the format of the petition is “close enough” or that the initiative proponent “substantially complied” with the requirements of the Elections Code. *Those determinations must be made by a court.* Indeed, only a court may determine whether “substantial” compliance is adequate, or whether “actual” compliance is the standard under the circumstances: “Where the purpose of the statutory requirement is to give information to the public to assist the voters in deciding whether to sign or oppose the petition, the substantial compliance argument is often rejected and strict compliance held essential.” (*Ibarra v. City of Carson* (1989) 214 Cal.App.3d 90, 99.)

Only if the petition passes review as to both of these elements (compliance with Elections Code and *prima facie* sufficient number of signatures presented), may the signatures on the petition be examined (either by random sample or in full) to ascertain whether the petition contains a sufficient number of valid signatures from verified registered voters within the City of Burlingame.

NON-COMPLIANCE WITH FULL TEXT DOCTRINE

The petition that the proponents of the “Burlingame Community Protection Ordinance” are about to file with your office does not comply with the Elections Code, and must be rejected when presented. The proposed initiative does not contain the full text of the “law” (the text of the ordinance proposed, in addition to any text that would be repealed in existing law) that the proponents are asking the voters of the City of Burlingame to adopt.

Section 9202 of the Elections Code requires that to commence the initiative process, the proponents must “file with the elections official a notice of intention to do so, which shall be accompanied by the written text of the initiative...” Section 9203 directs initiative proponents to design the initiative petition such that the text of the measure is printed below the Title and Summary prepared by the City Attorney. (See also Elec. Code § 9201: “The petition may be in separate sections, providing that the petition complies with this article. The first page of each section shall contain the title of the petition and the text of the measure.”) These provisions describe what is known as the *full text requirement*.¹ “The purpose of the full text requirement is to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion.” (*Mervyn’s v. Reyes* (1998) 69 Cal.App.4th 93, 99.) “It is imperative that persons evaluating whether to sign a petition be advised which laws are being challenged and which will remain the same.” (*Id.* at p. 104.) Where a petition “utterly fail[s] to apprise prospective signers of the substantive provisions” of text that will be repealed from city law by a proposed ballot measure, such petition is properly rejected by the elections official. (*Creighton v. Reviczky* (1985) 171 Cal.App.3d 1225, 1233; see also Elec. Code § 9258: “[E]ach section shall contain a correct copy of the text of the proposed amendment;” and see Elec. Code § 9267: “Petitions that do not substantially conform to the form requirements of this article shall not be accepted for filing by the elections official.”)

The “Burlingame Community Protection Ordinance” proposes to repeal certain provisions of existing law, originally enacted by the voters in 1987, in addition to adding new provisions to the Municipal Code. However, the provisions of the existing law the proposal would repeal are not set forth in the initiative, as several sections of the Elections Code require. Voters asked to sign the petition and vote on the measure at an election will have no idea what text would be deleted from City law, should the initiative be approved. This is a fatal omission.

¹ Courts have held that the “full text” doctrine is the same for initiative and referendum petitions. (See *Billig v. Voges* (1990) 223 Cal.App.3d 962, 967.)

The proposed initiative would add a new Title to the Municipal Code, containing 20 sections. Section 20.04.180 purports to repeal “Measure T.” Section 20.04.180 reads:

This Ordinance shall supersede and invalidate any limitations imposed by prior City ordinances that relate to or concern the subject matter addressed herein. This includes, but is not limited to, Burlingame City Ordinance 1356, also known as “Measure T,” which was passed by the voters in 1987. It is the intent of the voters of the City of Burlingame to hereby repeal in its entirety said Measure T. By repealing and superseding any prior limitations on the City’s authority to regulate the subject matter addressed herein, the People of the City of Burlingame specifically intend for the City to retain authority to promote and preserve affordable housing to the maximum extent permitted by state law, including but not limited to the authority to enact rent stabilization, just cause for eviction, relocation assistance, inclusionary housing policies, and all other regulatory and land use policies that relate to affordable housing.

While using a lot of words to declare intentions with respect to Measure T, the initiative fatally fails to set forth the actual text of Measure T, the existing City law, that it would have the voters delete from the City’s books. A proponent’s summary of existing city law “does not constitute the text of the ordinance because it does not contain the measure’s actual words,” and therefore is not a substitute for actual compliance with the Elections Code’s full text requirement. (*Billig, supra*, 223 Cal.App.3d at p. 967.) The following is the full text of Measure T, which *should* be part of the initiative text filed with the City Clerk and reproduced on the petition in a manner such that it appraises prospective signers that the text would be repealed if the measure were approved by voters (this is typically accomplished by printing the text in strike-through type):

ORDINANCE 1356

Section _ Burlingame Fair Property Rights Ordinance.

- a. The purpose of this section is to promote the statewide goal of accomodating [sic] the housing needs of all Californians by protecting the right of real property owners to establish the price tor which their property is sold, leased, rented, transferred or exchanged. Government restrictions on real property prices result in economic and social harm to the public as a whole by creating and perpetuating housing shortages and by inhibiting new investment in housing. By assuring property owners a favorable climate for continued investment, this section will promote and encourage orderly, sustained and reasonable growth in the Housing supply of the City of Burlingame.
- b. An owner of real property has the exclusive right to establish the price for which that property may be sold, leased, rented, transferred or exchanged.
- c. The City of Burlingame shall enact no law which imposes direct restrictions on the price for which real property may be sold, leased, rented, transferred or exchanged, and any law which imposes such direct restrictions is hereby repealed.
- d. This section shall not: 1. restrict the power of the City of Burlingame to zone or the power to implement state low and moderate income housing policies by methods

which may indirectly affect the price for which real property may be sold, leased, rented, transferred or exchanged; 2. restrict the eminent domain powers of the City of Burlingame; 3. apply to the sale, lease, rental, transfer or exchange of property owned by the City of Burlingame or any other governmental agency.

e. If any portion of this section or its application to any person or circumstance is declared unconstitutional or otherwise invalid, then the remainder of this section or its application to other persons or circumstances shall not be affected and shall continue in full force and effect.

Of course, the omission of *all of the text* of Measure T from the proposed “Burlingame Community Protection Ordinance” blatantly violates the Elections Code “full text” requirement, and invalidates the initiative.

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The Elections Code in fact operates such that “the offices of city clerks throughout the state are mandated by the constitution to implement and enforce the [Elections Code’s] procedural requirements.” Accordingly, under facts such as those present with this particular petition, you have the “clear and present ministerial duty to refuse to process [the proponents’] petition because it [does] not comply with the procedural requirements” of the Elections Code, and in particular, the full text requirement, which has consistently been literally and strictly enforced by the courts in this state. (*Billig, supra*, 223 Cal.App.3d at p. 969.)

For the reasons stated herein, I respectfully request that you reject the initiative petition in accordance with your ministerial duty to administer the Elections Code on behalf of the City. By omitting the *full text* of the proposal as the Elections Code mandates, voters were deprived of essential information necessary to evaluate one’s decision to sign or not sign the initiative petition. The petition is not entitled to further advancement through the initiative process.

Please contact me if your intention is to certify the petition for consideration by the City Council despite the petition defect. Thank you for your thoughtful consideration of this serious matter.

Respectfully submitted,



Ashlee Titus