

BELL, McANDREWS & HILTACHK, LLP

Attorneys and Counselors at Law

455 CAPITOL MALL, SUITE 600
SACRAMENTO, CA 95814

(916) 442-7757
FAX (916) 442-7759

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VIA EMAIL

Veronica Ramirez
City Attorney
1017 Middlefield Road
Redwood City, CA 94063
cityatty@redwoodcity.org
vramirez@redwoodcity.org

Yessika Castro
City Clerk
1017 Middlefield Road
Redwood City, CA 94063
ycastro@redwoodcity.org

Melissa Stevenson Diaz
City Manager
1017 Middlefield Road
Redwood City, CA 94063
mdiaz@redwoodcity.org

RE: Redwood City Fair and Affordable Housing Initiative

Dear City Attorney, City Clerk, and City Manager of Redwood City,

A “Notice of Intent to Circulate an Initiative” titled by the proponents as “Redwood City Fair and Affordable Housing Initiative” was submitted December 11, 2023. At the same time, the initiative proponents also submitted the text of the proposed ordinance. Upon receipt of the Title and Summary prepared by the City Attorney, the proponents designed and circulated a petition and obtained signatures, which I understand will soon be submitted to the City. **The petition violates the “full text” requirement of the Elections Code. Accordingly, the City Clerk should refuse to process the petition.**

Though Redwood City is a charter city, both the City’s Charter and City Code provide that the provisions in the State general law apply to initiative petitions circulated within the City to amend City law. (See Charter Section 6; City Code Section 2.92.) The State general law provisions for municipal initiatives are presented in Article 1 of Chapter 3 of Division 9 of the Elections Code. When an initiative petition is presented for filing by the proponents, the Elections Code directs the City Clerk to (a) ascertain the number of registered voters of the city last reported by the county elections official to the Secretary of State as of the date the initiative’s notice of intent and title and summary were published and/or posted in accordance with Elections Code Section 9202, and (b) determine if the number of signatures on the petition equals or is in excess of the minimum number required. (Elec. Code § 9210.) In addition to counting the signatures, the City Clerk also has a duty at this time to “examine the four corners of the petition for compliance with submission requirements.” (*Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 127.) The City Clerk may refuse to certify a proposed measure if noncompliance with the procedural requirements of the Elections Code is manifest on the face of the submitted petition. (*Id.* at p. 137.)

Among the “procedural requirements” is that an initiative petition contain the “full text” of the proposed ordinance. Elections Code § 9201 provides in pertinent part: “Any proposed ordinance may be submitted to the legislative body of the city by a petition filed with the elections official of the legislative body... [t]he first page of each section shall contain the title of the petition and the *text of the measure.*”

In *Merryn’s v. Reyes* (2006) 69 Cal.App.4th 93, the Court of Appeal invalidated an initiative petition because it did not contain the full text of all provisions of a city’s general plan that would have been affected by the measure. Although the text of the initiative contained reference to the policies that the measure would enact, the petition omitted the text of those policies which the Court considered the “key element of the initiative.” (*Merryn’s v. Reyes, supra*, 69 Cal.App.4th at 104.) The Court stressed that knowing both “**which laws are being challenged and which will remain the same**” are critical to the electorate’s understanding of a petition proposing an amendment to existing law. (*Ibid.* (emphasis added).) The Court in *Merryn’s* also acknowledged that there is no distinction between referenda cases and initiative cases. (*Ibid.*)

In *Creighton v. Reviczky* (1985) 171 Cal.App.3d 1225, the Court invalidated a municipal referendum petition which identified the ordinance number of a zoning ordinance but did not include the text of the challenged ordinance. The Court concluded that the “petition utterly failed to apprise prospective signers of the substantive provisions...” of the challenged ordinance. (*Id.* at 1233.) Accordingly, the Court emphasized that the petition must contain the full text of the challenged legislation because “designation of the protested legislation by number only...would create and compound confusion as to the measure.” (*Id.* at 1231.)

In *We Care-Santa Paula v. Herrera*, (2006) 139 Cal.App.4th 387 (“*We Care*”), the Court upheld a proposed municipal initiative that sought to amend the city’s General Plan despite not including the relevant portions of the Plan in the petition. However, the Court emphasized that the proposed measure did not change or prohibit any change in land use or density designated in the Plan. (*Id.* at 390.) Instead, it merely required that any future amendments to the Plan be submitted to the voters at a general or special election. (*Id.* at 389.) The Court distinguished the challenged petition from those in *Merryn* and *Creighton*, stating: “*We Care*’s petition does not omit the text of an incorporated exhibit or any other portion of the proposed enactment. Instead, the petition contains the full and complete text of everything that will be enacted if voters approve it.” (*Id.* at 390.)

The proposed “Redwood City Fair and Affordable Housing Ordinance” initiative amends the Redwood City Municipal Code in two distinct ways: first, it seeks to repeal or delete Chapters 42 and 42A from the Code. Second, it lays out a new Chapter 42 in place of the repealed provisions. While the full text of the *new* Chapter appears in the initiative petition, the petition fails to include the text of the Chapters being repealed.

In seeking to repeal two entire chapters of Redwood City’s Municipal Code, the proposed initiative is akin to the measures in *Creighton*, where the Court invalidated the petition because it only included the ordinance number and not the full text of the challenged ordinance. The Court has stressed that knowing both “**which laws are being challenged and which will remain the same**” are critical to the electorate’s understanding of a petition proposing an amendment to existing law.

(*Mervyn's v. Reyes, supra*, 69 Cal.App.4th at 104.) The proposed initiative does not inform prospective petition signers with the text of the portions of the Redwood City Municipal Code that would be repealed. Furthermore, the proposed Redwood City initiative is distinguishable from the petition in *We Care*. Here, the proposed initiative does not simply amend or add an additional provision to an existing code. If enacted, the ordinance would delete two Chapters of Municipal Code **AND** replace it with a new Chapter. Unlike the petition in *We Care*, without the text of the Chapters being repealed, the petition fails to include the full and complete text of everything that will be enacted if voters approve the measure.

By failing to include the text of the challenged provisions of Chapters 42 and 42A of the Redwood City Municipal Code, the proposed initiative fails to satisfy the “full text” requirement of Elections Code § 9201. This determination requires no *discretionary evaluation of extraneous evidence*. A straightforward comparison of the petition with the plain statutory directives in the Elections Code make it apparent the proposed initiative, wholly lacking the text of the two existing Chapters of the Municipal Code that would be repealed if adopted, does not contain the “full text” necessary to be a complete proposal to voters. When presented for filing, the City Clerk has a clear and present ministerial duty to reject the Redwood City Fair and Affordable Housing Initiative petition for violation of the full text requirement. (See *Billig v. Voges* (1990) 223 Cal.App.3d 962, 969.)

Respectfully submitted,



Ashlee Titus