



COUNTY OF SISKIYOU

Colleen Setzer

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August 12, 2010

Mt. Shasta City Council
305 N. Mt. Shasta Blvd.
Mt. Shasta, CA 96067

Mt. Shasta City Manager
Ted Marconi
305 N. Mt. Shasta Blvd.
Mt. Shasta, CA 96067

Dear Mr. Marconi:

RE: Conformance to Requirement of Elections Code Section 9200 et seq.

The proponents of Measure "A" did not comply with the local initiative filing process set forth in California Elections Code Section 9200 et seq. As a result of petitioners' non compliance, the County Clerk/Elections Official for the City of Mt. Shasta has not properly received all sections of the proponents' petition for filing with my office and for my examination and certification. Nor have I received an unaltered copy of the petition for my examination and certification that has been properly filed under Section 9200 et seq. The requirements of the Elections Code process are mandatory and require filing of the petition with City's Election Official before circulation. See Elections Code Sections 9202 and 9203. Additionally, pursuant to Elections Code Sections 9210 and 9211, the County Clerk, as the Elections Official for the City of Mt. Shasta, may refuse to accept for filing petitions that do not substantially conform to the form requirements of Section 9200 et seq. Accordingly, pursuant to the authority granted under those sections, I, as the County Clerk/City of Mt. Shasta Election Official do not accept the proponent's petition for filing for certification of sufficiency for the reasons set forth below, and hereby void/revoke/rescind/and withdraw any prior certification, as it was never properly filed with the Elections Official in an unaltered form.

I. Factual Background

On or about September and October of 2010, I, Colleen Setzer¹, County Clerk and Elections Official for the City of Mt. Shasta, was contacted by Ami Marcus, proponent for City of Mt. Shasta Ballot Measure "A". At that time Ms. Marcus requested information on the County's initiative process from me and I provided Ms. Marcus with the County's initiative process and procedural requirements pursuant to California Elections Code Section 9200 et seq.

The initiative process, pursuant to Elections Code Section 9201, explains that any proposed ordinance may be submitted to the legislating body by filing a petition with the elections official in a manner prescribed under 9200 et seq. The initiative process further explains that, pursuant to Elections Code Section 9202(a) & (b), that before a proponent can circulate an initiative petition, the proponents shall file a notice of intention accompanied by the written text of the initiative with the elections official and pay a fee of \$200.00 to the elections official. The initiative process also explains that, pursuant to Elections Code Section 9203(a) & (b) that any person interested in a proposed measure shall file a copy of that measure with the elections official with a request that the ballot title and summary be prepared. Section 9203(b) provides that the elections official shall furnish a copy of the ballot title and summary prepared by the City Attorney to the person filing the proposed measure.

This required process was not followed. Instead, on or about September and October of 2010, I was told by the proponents that they had filed their proposed ordinance ("Version One") with the City of Mt. Shasta Clerk's Office, paid the City of Mt. Shasta the \$200.00 fee and had received from the City of Mt. Shasta Deputy City Clerk, the Mt. Shasta City Attorney's ballot title and summary of the proposed measure.

It was not until October 23, 2010, that the County Clerk's Office received from the proponents a copy of the proposed initiative petition, the Affidavits of Publication for the Notice of Intent to Circulate the Initiative Petition and the title and summary prepared by the City Attorney. Elections Code Section 9206 provides that the affidavits of publication together with a copy of the notice of intention and title and summary, shall be filed with the elections official. At that time, I went over the proper time frames for circulating the petition with the proponents.

On October 26, 2010, I received a letter from the Mt. Shasta Deputy City Clerk, notifying me that the Notice to File a Petition prepared by proponents and the summary of the initiative prepared by the City Attorney had been published and that the proponents would file their affidavit of publication with the County Clerk's office.

On March 10, 2010, the proponents filed 149 sections of the proposed petition with 700 signatures for my review and certification. On or about March 10th, a review was done of the petitions submitted on March 10th against the copy of the petition submitted by the proponents on October 23rd.

On April 19, 2010, I provided the City of Mt. Shasta with the Election Official's Certificate to City Initiative Petition as to the sufficiency of the petition submitted to the County

¹ Colleen Setzer has acted as Siskiyou County Clerk and the City of Mt. Shasta Election Official since taking office in 1999. This arrangement has been formalized in writing.

Clerk's Office on March 10, 2010. Based on this Certificate, on June 28th, the City ordered the initiative to be placed on the November 2, 2010 ballot. The measure was subsequently labeled Measure A.

As the Elections Official for City, I then prepared a Notice of Election and call for arguments on July 8, 2010. In addition to that, I requested an impartial analysis of Measure "A" from the City Attorney.

During the week of July 26th, I asked the Deputy City Clerk for an electronic copy of the ordinance that had erroneously been filed with the City Clerk's Office, so that it could be forwarded to the printer to be included in the sample ballot. The Deputy City Clerk told me that she did have an electronic copy of the ordinance filed with the City Clerk's Office (Version One), however, she explained that it was different than the version that the Election Official had on file at the County Clerk's Office (Version Two).

At that same time, I then asked the Deputy City Clerk to forward to me the document that the proponents had erroneously filed with the City Clerk in the fall of 2009. The Deputy City Clerk provided me with an electronic copy of Version One of the ordinance. On July 30th, the Assistant County Clerk and I compared the two documents. I noted that Version One, Section 2, Statement of Law, was different than Version Two, Section 2, Statement of the Law.

I then contacted the Deputy City Clerk and notified her of the discrepancy between Version One and Version Two. I confirmed with the Deputy City Clerk that Version One that was sent to the County Clerk's Office on or about July 26th, 2010 was on file in her office. The Deputy City Clerk said yes. At that same time, the Deputy City Clerk told me that after the proponents erroneously filed the ordinance with the City Clerk's Office, and the title and summary was prepared by the City Attorney, that the proponents then asked the Deputy City Clerk if they could use a different version of the ordinance because they wanted to make changes to the document. The Deputy City Clerk told me that she (the Deputy City Clerk) told the proponents that they could not make changes to the document after the title and summary had been prepared, and that if the proponents wanted to make changes, they would have to start the process over by submitting the \$200 fee and the new version of the petition for the City Attorney to review.

It appears the proponents did not take the Deputy City Clerk's advice because Version One was filed with the City Clerk's Office and Version Two, with changes to Section 2, Statement of Law, was filed with the Election Official/County Clerk's Office without having started the process over correcting the mistakes in the Election Code initiative filing process or making consistent Version One and Version Two.

Even though the proponents were told they could not make changes to the ordinance filed with the Election's Official, they did, in violation of Election Code Section 9210. Section 9210 states in pertinent part that once the petition is filed, no petition section shall be amended except by order of a court of competent jurisdiction. The proponents did not get a court order authorizing the petition changes to Section 2, Statement of Law. According to the Deputy City Clerk, the proponents did not want to pay the filing fee again.

Specifically, Section 2, Statement of Law has been changed. Section 2 of Version One of the ordinance, the version the City Attorney based his Title and Summary on, stated "All rights delineated in this Ordinance, and all provisions, findings and purposes of this

Ordinance, without exception, are self-executing and legally enforceable.” I never received Version One. Instead, I received Version Two of the ordinance, which has a completely different Section 2, Statement of the Law. Version Two Section 2, Statement of the Law states: “The rights of the people and natural communities and the limitations on the privileges of corporations delineated in this Ordinance, beyond the scope of pre-existing law, are specifically enforceable only when the ordinance’s prohibitions on water withdrawal, cloud seeding and weather modifications are violated.”

Version Two was submitted to the County Clerk’s Office and circulated for signatures with the City Attorney’s Title and Summary for Version One posted at the top of Version Two. The City Attorney never reviewed and Summarized Version Two and Version One was never submitted to me, the Election Official, or circulated for signature of the voters. I, as the Election Official, never certified the correct petition version or signatures for such. The voters never reviewed or signed the proper unaltered version of petition.

On July 30th, I emailed the Deputy City Clerk stating Version One filed with the City Clerk’s Office was different then Version Two filed with the County Clerk’s Office. Later that same day, I was notified by the City that they would hold a special council meeting on August 3rd to review the two documents and to consider their options re the ballot measure. At that meeting, dated August 3, 2010, the City Council decided to leave Measure A on the ballot.

II. Violations of the California Elections Code Sections 9200 et seq.

Measure “A” states that it is to be enacted pursuant to initiative petition process set forth in California Elections Code Section 9200 et seq. Section 9200 et seq. is the process by which an ordinance may be enacted by any incorporated city. The process by which Measure “A” has been placed on the City of Mt. Shasta ballot is not in conformance with following Elections Code Sections: 9201, 9202, 9203, 9205, 9208 and 9210. The pertinent language of those Sections is set forth below.

1. **Elections Code Sec. 9201** requires that “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, in the manner hereinafter prescribed, after being signed by not less than the number of voters specified in this article. 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. The petition sections shall be designated in the manner set forth in Section 9020.”

Here, petitioners did not file all the required documents with the Election Official under this article. Specifically, Version One of the petition was never filed with the Election Official. Instead, petitioners filed the required documents with the City Clerk who is not authorized to accept such filings pursuant to Elections Code Section 9200 et seq.

2. **Elections Code Sec. 9202(a)** requires that “before circulating an initiative petition in any city, the proponents of the matter shall file with the elections

official a notice of intention to do so, which shall be accompanied by the written text of the initiative...The notice shall be signed by at least one, but not more than three, proponents and shall be in substantially the..." form set forth in Sec. 9202.

Here, petitioners never filed with the Election Official a notice of intention accompanied by the written text of the initiative. Instead, proponents filed said documents with the City Clerk, who is not authorized to accept such filings.

3. **Elections Code Sec. 9202(b)** requires that "any person filing a notice of intent with the elections official shall pay a fee to be established by the legislative body not to exceed two hundred dollars (\$200) to be refunded to the filer if, within one year of the date of the filing the notice of intent, the election official certifies the sufficiency of the petition."

Here, proponents never paid a \$200.00 fee to the Election Official. Instead, the \$200.00 fee was paid to the City of Mt. Shasta, who is not authorized to accept such fees pursuant to Elections Code Section 9200 et. seq.

4. **Elections Code Sec. 9203(a)** requires "any person who is interested in any proposed measure shall file a copy of the proposed measure with the elections official with a request that a ballot title and summary be prepared. This request shall be accompanied by the address of the person proposing the measure. The elections official shall immediately transmit a copy of the proposed measure to the city attorney. Within 15 days after the proposed measure is filed, the city attorney shall provide and return to the city elections official a ballot title for and summary of the proposed measure. The ballot title may differ from any other title of the proposed measure and shall express in 500 words or less the purpose of the proposed measure. In providing the ballot title, the city attorney shall give a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.

Here, the proponents never filed the required documents with the Election Official. Instead, said documents were filed with the City Clerk, who is not authorized to accept or transmit such filings.

5. **Elections Code Sec. 9208** states that "signatures upon petitions and sections of petitions shall be secured, and the petition, together with all sections of the petition, shall be filed within 180 days from the date of receipt of the title and summary, or after termination of any action for a writ of mandate pursuant to Section 9204, and, if applicable, after receipt of an amended title or summary or both, whichever occurs later. Petitions and sections thereof shall be filed in the office of the elections official during normal office hours as posted. If the petitions

are not filed within the time permitted by this section, the petitions shall be void for all purposes.

Here, the correct version of the petition was never filed with the Election Official.

6. **Elections Code Sec. 9210** states that “The petition shall be filed by the proponents or by any person or persons authorized in writing by the proponents. All sections of the petition shall be filed at one time. Once filed, no petition section shall be amended except by order of a court of competent jurisdiction. When the petition is presented for filing, the elections official shall do all of the following: (a) Ascertain the number of registered voters of the city last reported by the county elections official to the Secretary of State pursuant to Section 2187 effective at the time the notice specified in Section 9202 was published. (b) Determine the total number of signatures affixed to the petition. If, from this examination, the elections official determines that the number of signatures, prima facie, equals or is in excess of the minimum number of signatures required, he or she shall accept the petition for filing. The petition shall be deemed as filed on that date. Any petition not accepted for filing shall be returned to the proponents.

Here, petitioners amended the petition after it was filed without court approval.

7. **Elections Code Sec. 9211** states that “after the petition has been filed, as herein provided, the elections official shall examine the petition in the same manner as are county petitions in accordance with Sections 9114 and 9115, except that for the purposes of this section, references to the board of supervisors shall be treated as references to the legislative body of the city.”

Here, the Election Official never received Version One of petition filed with City Attorney. Version Two Section 2, Statement of the Law submitted to the Elections Official and circulated for signature of the voters is different than Version One Section 2 submitted to the City Attorney for Title and Summary.

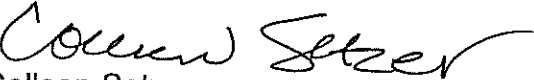
8. **Elections Code Sec. 9114** states that “...within 30 days from the date of the filing of the petition...the elections official shall examine the petition, and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters... the elections official shall notify the proponents of the petition as to the sufficiency or insufficiency of the petition. If the petition is found insufficient no further action shall be taken...If the petition is found to be sufficient, the election official shall certify the results...”

Here, the Election Official never received Version One of the petition filed with the City Attorney. Version Two Section 2, Statement of the Law submitted to the Elections Official and circulated for signature of the voters is different than Version One Section 2 submitted to the City Attorney for Title and Summary.

III. Conclusion

In conclusion, for the reasons set forth above, the proponents of Measure "A" did not conform with the requirements of California Elections Code Section 9200 et seq. The County Clerk/Elections Official for the City of Mt. Shasta has not properly received for filing and certification all unaltered sections of the proponents' petition nor have the proponents properly filed the required documents with the Election Official or paid required fees. As result, I, as the Election Official, have determined that proponents' petition does not substantially conform to the requirements of the Elections Code and the certification of the petition on April 19, 2010, is void, revoked/recinded/ and withdrawn. As a result, the petition has not been accepted for filing by the Elections Official.

Sincerely,


Colleen Setzer
Siskiyou County Clerk

CC: Prudence Kennedy, Mt. Shasta City Clerk
Proponents of Measure "A" c/o Martha Young Brown