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July 26, 2016

The Honorable Mayor Tom Butt and
Members of the Richmond City Council
440 Civic Center Plaza
Richmond, CA 94804

Re: *Considering the "Richmond Kids First Initiative" at the July 26, 2016
City Council Meeting*

Dear Mayor Butt and Members of the Richmond City Council:

This firm represents the proponents of the "Richmond Kids First Initiative: The Richmond Fund for Children and Youth Act." I am writing to explain the legal basis for our request that the City Council approve a resolution placing the Richmond Kids First Initiative on the November 2016 ballot at its regular City Council Meeting on July 26, 2016. Fifteen percent of the registered voters of the City have signed petitions to place this measure on the ballot.

The Ralph M. Brown Act generally requires local agencies to provide at least 72 hours of notice about the matters to be transacted at agency meetings. While the Act generally prohibits any action or discussion of items not on the posted agenda, the Act does specify three situations in which a legislative body can act on an item that is not on the agenda. One of those situations squarely exists here and meets the requirements of subsection (b)(2) below:

Section 54954.2 of the Government Code provides in relevant part:

54954.2. (a)(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. . . .

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken. . . .

(Emphasis added.)

Today, there “is a need to take immediate action” within the meaning of this statute because today’s City Council meeting is the last calendared City Council meeting at which action can be taken to place the Richmond Kids First Initiative on the November 2016 ballot. Furthermore, that “need for action came to the attention of the local agency subsequent to the agenda being posted” on Friday, July 22 because the Registrar of Voters did not finish examining the signatures on the initiative petitions, and did not determine that the measure had qualified for the ballot, until the morning of Monday, July 25. Consequently, the members of the Richmond City Council can readily determine that the conditions described in section 54954.2 (b)(2) exist, which empowers them to “take action on [this] item[] of business not appearing on the posted agenda” as long as it “publicly identif[ies] the item” prior to discussing it. (Gov. Code, § 54954.2(b).)

It is important to note that this item was originally on the City’s public agenda posted on July 21 but was subsequently removed from the amended agenda posted late in the day on July 22. City residents originally did have notice that this item was scheduled to be considered at the July 26 meeting.

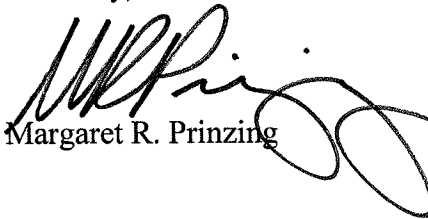
Please note that the circumstances facing the City Council today provide a particularly compelling case for invoking the procedure provided by section 54954.2. The people of Richmond know that the Richmond Kids First Initiative has been circulating in their community for several months, and know that the goal has been to place the measure on the November 2016 ballot. In fact, the measure itself clearly states that a new special fund for children and youth be established in January 2017. It is therefore fully expected that the City Council will take action to place this measure on the ballot once it qualifies for the ballot; that is what the law requires. (*See, e.g.*, Elec. Code, § 9255(c) [declaring that charter amendments proposed by petitions signed by 15% of a city’s registered voters “shall be submitted to the voters . . .”].)

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It is important to note that the California Supreme Court has declared that “the sovereign people’s initiative power [is] one of the most precious rights of our democratic process,” and that the courts are therefore duty-bound “to resolve any reasonable doubts in favor of the exercise of this precious right.” (*Strauss v. Horton* (2009) 46 Cal.4th 364, 453, abrogated on other grounds in *Obergefell v. Hodges* (2015) 135 S.Ct. 2584, quoting *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 341.) We respectfully urge the Council to resolve any doubts that it may have in favor of giving Richmond voters the chance to vote on the Richmond Kids First Initiative in November 2016. Doing so would comply with both the letter and the spirit of the Brown Act, and promote the public’s fundamental right to consider an initiative it has now qualified for the ballot.

Thank you for your time and consideration of this important matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,


Margaret R. Prinzing

MRP:PS
(00282674)