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Beverly Hills Garden & Open Space Initiative

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Residents for The Beverly Hills Garden &  
Open Space Initiative,

*Plaintiff,*

vs.

The City of Beverly Hills,

*Defendant.*

) Case No. 16-5532

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) **ORIGINAL COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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**PRELIMINARY STATEMENT**

1. Plaintiff urgently seeks this Court's protection from an unconstitutional ordinance that would severely burden its efforts to communicate with voters regarding a pending ballot initiative. This case is about "core political speech" under the First Amendment. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995). "No form of speech is entitled to greater constitutional protection." *Id.*

2. Plaintiff, Residents for The Beverly Hills Garden & Open Space Initiative, is sponsoring a ballot initiative to amend a city zoning plan for the benefit of both the citizens of Beverly Hills and private investors (the "Initiative"). Plaintiff collected the requisite number of signatures to place the Initiative on the ballot and, on July 19, 2016, the City Council of the City of Beverly Hills voted to submit the Initiative to the voters on the November 2016 ballot.

3. To persuade voters to support the Initiative, Plaintiff is in the midst of preparing to launch a large media campaign involving mailers, radio ads, and television ads about the Initiative's benefits. But, through a local ordinance, the Defendant City of Beverly Hills is now demanding that Plaintiff set aside extraordinarily large and prominent portions of its advertising for a government-prescribed message, including a subjective description of the Initiative set by a local government official. This government message is so large that Plaintiff is now completely foreclosed from using typical forms of advertising media. And what avenues to speak remain are now so burdened that they are essentially worthless for persuading voters.

4. Specifically, the City seeks to compel Plaintiff to include the following lengthy statement in its entirety in *14-point font* on all written advertisements, to read the same full disclaimer aloud in any audio communications (including telephone calls), and to devote a remarkable 50% of

any video to displaying the disclaimer:

**This communication is presented and paid for by Residents for The Beverly Hills Garden & Open Space Initiative, with major funding by Oasis West Realty LLC / The Beverly Hilton. These donors are listed in descending order of contribution amount. More current information regarding the sources of funding for this election campaign is available at [www.beverlyhills.org](http://www.beverlyhills.org). (“An initiative measure to amend the Beverly Hilton Specific Plan to combine the 8 story Wilshire condominium building with the 18 story Santa Monica condominium building resulting in one 26 story building with additional height and to replace the Wilshire building with 1.7 acres of garden open space that is generally open to the public subject to reasonable restrictions determined by the property owner.”)**

5. The government-prescribed message goes far beyond the sort of minimally burdensome disclosures or disclaimers sometimes required by campaign regulations—*i.e.*, a short statement disclosing the origins of funding for an ad. Here, the ordinance mandates that Plaintiff include a city employee’s subjective “title” for the Initiative (the 64-word sentence appearing in quotes at the end of the block quote above), but provides absolutely no standard by which that title must be set. As a result of the subjective title requirement and other text required by law, the required language is so voluminous that political advocacy—the very point of the constitutionally-protected advertisements—becomes entirely ineffective. For example, the government’s mandated message completely prevents Plaintiff from utilizing standard 30-second radio advertisements, because the message itself takes longer than that to say—even when read by a professional. The government’s message also prevents Plaintiff from using standard 4x6 direct mail post cards, because its text consumes *two thirds of the space on the main side of the card*, leaving little room for any other

1 message. The ordinance and its attendant risk of criminal liability are, right now,  
2 significantly chilling Plaintiff's core political speech

3 6. The ordinance cannot be squared with the First Amendment's strong  
4 protections for political speech. The ordinance's requirement to include a  
5 subjective "title" on the face of political communications is facially invalid: it is  
6 subject to strict scrutiny because it is not a limited disclosure of purely factual  
7 information, and it fails that scrutiny because it is not narrowly tailored to achieve  
8 any compelling government interest. And taken as a whole, the government's  
9 compelled message is so burdensome that, as applied to Plaintiff, the ordinance  
10 also fails under the "exacting scrutiny" standard applicable to purely factual  
11 disclosures, because the significant burdens it imposes outweigh the  
12 government's minimal interest in forcing Plaintiff to communicate its message.

13 7. Plaintiff respectfully requests that the Court issue a temporary  
14 restraining order and preliminary injunction barring application of the ordinance  
15 to Plaintiff, and barring any application at all of the ordinance's subjective title  
16 requirement. This interim relief is warranted because of the exigent  
17 circumstances presented by this dispute; each day that Plaintiff is foreclosed from  
18 advocating its position, the likelihood that the voters will approve the Initiative is  
19 diminished.

## 20 **PARTIES**

21 8. Plaintiff, Residents for the Beverly Hills Garden & Open Space  
22 Initiative, is a ballot measure committee organized and registered in accordance  
23 with California's Political Reform Act, Cal. Gov't Code §§ 81000 *et seq.*  
24 Plaintiff is a coalition of businesses and individuals. Its purpose is to educate the  
25 public about the benefits of, and to advocate for, the adoption and  
26 implementation of the Initiative.

27 9. Defendant City of Beverly Hills is a municipal corporation organized  
28 and existing under and by virtue of the laws of the State of California.

**JURISDICTION AND VENUE**

10. This lawsuit alleges violations of Plaintiff’s rights under the First Amendment of the United States Constitution and 42 U.S.C. § 1983. Accordingly, this Court has “federal question” jurisdiction over Plaintiff’s claims by virtue of 28 U.S.C. § 1331.

11. Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391(b) because the events and omissions giving rise to Plaintiff’s claims occurred in Beverly Hills, which is located within the Central District.

12. Plaintiff has standing to bring this pre-enforcement challenge, which is also ripe for judicial resolution. The Supreme Court has long recognized that “[w]hen [a] plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he ‘should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.’” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979) (citation omitted). Such a credible threat is presented by the mere existence of a statute that is “recent and not moribund,” *Doe v. Bolton*, 410 U.S. 179, 188 (1973), and that the government has not “disavowed any intention” of enforcing, *Babbitt*, 442 U.S. at 302.

**GENERAL ALLEGATIONS**

***The Initiative***

13. In 2008, the Beverly Hills City Council approved the Beverly Hilton Specific Plan (the “Specific Plan”), authorizing the construction of a new 170-room hotel and two residential buildings (an 8-story building and an 18-story building, with a total of 110 condominiums) on an approximately 8.97-acre property adjacent to the iconic Beverly Hilton.

14. Several implementing actions—including a General Plan amendment necessary to effectuate the Specific Plan—were approved at the same time. The

1 General Plan amendment was the subject of a referendum, and on November 4,  
 2 2008, the registered voters of the City of Beverly Hills approved the General Plan  
 3 amendment via Measure H, allowing the Specific Plan to be implemented.

4 15. Construction of the new hotel is underway on the property and is  
 5 expected to be completed in 2017. Construction of the residential buildings has  
 6 not yet commenced.

7 16. The primary purpose of the Initiative is to amend the Specific Plan  
 8 to eliminate the approved 8-story residential building and consolidate it with the  
 9 approved 18-story residential building (resulting in a single 26-story residential  
 10 building), and provide for a new garden in place of the eliminated building. The  
 11 Initiative provides that the garden “shall generally be open to the public, hotel  
 12 guests, event guests and residents, subject to reasonable rules, regulations, and  
 13 security, including hours of use, as determined by the owner of the property.”  
 14 The Initiative also discloses that “[t]he garden and open space may be used for  
 15 private events from time to time, as determined by the property owner.”

16 17. Raising public awareness and support is always an import aspect of  
 17 securing passage of a ballot initiative. To that end, Plaintiff was engaged in an  
 18 extensive media campaign to get the Initiative on the ballot, and wants to make  
 19 extensive use of print, radio, and television advertising now to convince voters to  
 20 ultimately approve the Initiative.

21 18. A primary purpose of these advertisements is to inform the public  
 22 about the benefits of the Initiative, in particular the new garden that will be  
 23 generally open to the public.

24 19. Plaintiff obtained the necessary number of signatures from Beverly  
 25 Hills voters to qualify the Initiative for the ballot. On July 19, 2016, the City  
 26 Council voted to submit the Initiative to the voters.

27 ***The Beverly Hills Ordinance***

28 20. California’s Political Reform Act contains certain disclosure and

1 disclaimer requirements that apply to all advertisements sent by a committee  
 2 formed to support or oppose a ballot measure (whether the measure is state or  
 3 local). Cal. Gov't Code §§ 84504, 84507. The law permits local jurisdictions to  
 4 impose their own additional requirements.

5 21. The City of Beverly Hills has enacted its own ordinance which goes  
 6 far beyond state law requirements. Beverly Hills Muni. Code §§ 1-8-1 *et. seq.*  
 7 As relevant here, the ordinance mandates significant additional government-  
 8 prescribed content on each “advertisement” for or against a “City Ballot  
 9 Measure.” *Id.* § 1-8-5.

10 22. The ordinance defines “advertisement” as “[a]ny general or public  
 11 communication, including printed, mailed, telephonic, automated, and electronic  
 12 communications, which is authorized and paid for by a ballot measure committee  
 13 for the purpose of supporting or opposing a city ballot measure. The term  
 14 ‘advertisement’ does not include personal communications between individuals,  
 15 such as personal telephone calls made by an individual to another individual, one  
 16 to one conversations, debates or other informational presentations by an  
 17 individual, but shall include, without limitation, automated telephone calls to  
 18 voters.” *Id.* § 1-8-2. A “City Ballot Measure” is defined as “[a]ny initiative,  
 19 referendum or city council sponsored measure that is submitted solely to the  
 20 voters of the city of Beverly Hills.” *Id.*

21 23. The ordinance compels numerous statements that, when considered  
 22 together with state law requirements, total *120 words*.

23 24. In particular, the ordinance requires that every such advertisement  
 24 disclose, in descending order by contribution amount, the identity of any person  
 25 or entity who contributes, either in cash or in kind, over \$10,000. *Id.* § 1-8-5 (C).

26 25. For print, video, or email advertisements, the following message  
 27 must appear in 14-point font:

28 This communication is presented by [name of committee]



1 with major funding provided by [legal name of donors in  
2 descending order of amount of contribution]. These  
3 donors are listed in descending order of contribution  
4 amount. More current information regarding the sources  
5 of funding for this election campaign is available at  
6 [www.beverlyhills.org](http://www.beverlyhills.org).

7 *Id.* § 1-8-5 (E).

8 26. Importantly, the ordinance also provides that every advertisement  
9 “shall contain the official title of the city ballot measure, as provided by the city  
10 attorney.” *Id.* § 1-8-5 (F). The ordinance does not define “official title,” or  
11 provide any standard for the City Attorney to apply when drafting the “official  
12 title.”

13 27. In effect, this “title” provision gives the City Attorney unfettered  
14 discretion to dictate the content and length of the government’s prescribed  
15 message. There is nothing to stop the City Attorney from, for example, requiring  
16 a title that pejoratively characterizes the initiative, or that is 2,000 words in length.

17 28. Here, the City Attorney set the following lengthy “official title” for  
18 the Initiative: “An initiative measure to amend the Beverly Hilton Specific Plan  
19 to combine the 8 story Wilshire condominium building with the 18 story Santa  
20 Monica condominium building resulting in one 26 story building with additional  
21 height and to replace the Wilshire building with 1.7 acres of garden open space  
22 that is generally open to the public subject to reasonable restrictions determined  
23 by the property owner.”

24 29. When an advertisement is in audio format only (radio, telephonic,  
25 etc.), the government’s entire message must be read aloud “so as to be clearly  
26 audible and understood by the intended public and otherwise appropriately  
27 conveyed for the hearing impaired.” *Id.* § 1-8-5 (E). All video advertisements  
28 (including television) must dedicate 50% of their time to displaying the



1 disclaimer. *Id.*

2 30. The ordinance provides for significant criminal penalties, including  
3 potential jail sentences for responsible individuals. *Id.* § 1-8-7 (B). The  
4 ordinance imposes potential joint and several liability on a committee and its  
5 “treasurer, any principal officers, and any person primarily responsible for the  
6 preparation of any advertisement.” *Id.* § 1-8-7 (A).

7 31. The ordinance also contains a citizen-enforcement provision which  
8 permits any resident of Beverly Hills to enforce the ordinance civilly. *Id.* § 1-8-7  
9 (C).

10 *Severe Burdens Imposed By Disclaimer*

11 32. As a result of the ordinance, Plaintiff’s advertisements must now  
12 contain the following statement:

13 **This communication is presented and paid for by**  
14 **Residents for The Beverly Hills Garden & Open**  
15 **Space Initiative, with major funding by Oasis West**  
16 **Realty LLC / The Beverly Hilton. These donors are**  
17 **listed in descending order of contribution amount.**  
18 **More current information regarding the sources of**  
19 **funding for this election campaign is available at**  
20 **www.beverlyhills.org. (“An initiative measure to**  
21 **amend the Beverly Hilton Specific Plan to combine**  
22 **the 8 story Wilshire condominium building with the**  
23 **18 story Santa Monica condominium building**  
24 **resulting in one 26 story building with additional**  
25 **height and to replace the Wilshire building with 1.7**  
26 **acres of garden open space that is generally open to**  
27 **the public subject to reasonable restrictions**  
28 **determined by the property owner.”)**

1           33. Upon the Beverly Hills City Council's vote on Tuesday, July 19,  
2 2016, the ordinance became applicable to Plaintiff's advertisements. As a result,  
3 the government's massive message must now appear in all of Plaintiff's  
4 advertisements, substantially limiting Plaintiff's ability to engage in advertising  
5 activities and foreclosing it from using some of the most common methods of  
6 campaign advertising all together.

7           34. For example, application of the ordinance in this fashion will  
8 eliminate Plaintiff's ability to run radio ads.

9           35. Radio ads are among the most common forms of political  
10 communication used in municipal politics, and they are typically purchased and  
11 sold as 30-second spots. That duration is particularly effective because it  
12 facilitates cost-effective repetition.

13           36. Plaintiff wants to make use of 30-second ads and had planned to  
14 make them a significant component of its advertising strategy going forward.

15           37. However, reciting the required disclaimer with the clarity that the  
16 ordinance requires is impossible in 30 seconds, even for radio professionals.  
17 Thus, airing its planned 30-second ads would require Plaintiff to purchase ads of  
18 *at least* 60 seconds. This would significantly increase cost. As a result, the  
19 ordinance will allow Plaintiff to use significantly less total radio advertising time  
20 than it intended and achieve far less repetition, greatly inhibiting Plaintiff's ability  
21 to communicate its message.

22           38. Plaintiff's ability to advertise in print is also severely burdened.  
23 Print ads are produced in a variety of sizes, and among the most common is a 4 x  
24 6 inch post card which is sent to voters via direct mail. Such post cards are a  
25 staple of advertising campaigns in municipal elections, and Plaintiff had planned  
26 to make them an essential component of its campaign going forward.

27           39. As with 30-second radio ads, however, the ordinance essentially  
28 renders post cards useless. Printing the full disclaimer in the 14-point font that

1 the ordinance requires would occupy roughly *two thirds* of the space on the main  
2 side of the card. And because addressing information appears on the reverse side,  
3 there would be little, if any, space left to communicate a message—much less to  
4 do so effectively.

5 40. Application of the ordinance also substantially burdens television  
6 ads. Like radio ads, television ads are typically purchased and sold in 30-second  
7 spots. Plaintiff made use of television ads at earlier stages of this campaign, and  
8 wants to continue to do so. Television ads are particularly important in the  
9 context of *this* campaign, as they represent the best way for Plaintiff to  
10 communicate a visual representation of the proposed land use changes to the  
11 voters, which Plaintiff believes will go a long way towards enlisting public  
12 support.

13 41. Complying with the ordinance would force Plaintiff to display the  
14 required disclaimer *over* the visual content of its television advertisements for 15  
15 of the advertisements' 30 total seconds (*i.e.*, half of the airtime purchased by  
16 Plaintiff). To comply with the ordinance's font size requirements, the disclaimer  
17 would have to occupy much of the screen, greatly interfering with the intended  
18 visual message.

19 42. As a result of these burdens, Plaintiff has severely curtailed its  
20 advertising efforts. For example, Plaintiff is currently holding off on producing  
21 and running television and radio ads, and is not sending out any additional  
22 mailers. If the ordinance is enjoined, Plaintiff will immediately begin  
23 implementing its advertising strategy in these mediums.

24 43. The election is on November 8, 2016, just a few months away.  
25 Every day that Plaintiff's political speech is chilled diminishes the likelihood that  
26 Plaintiff will be able to successfully reach enough voters to persuade them to vote  
27 in favor of the Initiative.

28

**FIRST CLAIM FOR RELIEF**

**(As-Applied Violation of the First Amendment of the United States  
Constitution and 42 U.S.C. § 1983: Exacting Scrutiny)**

44. The allegations of paragraphs 1 through 43 above are incorporated by reference as though fully set forth herein.

45. The severely burdensome government-prescribed message mandated by the ordinance constitutes a clear “as applied” violation of the First Amendment to the United States Constitution.

46. There is no valid constitutional justification for the serious burden and encroachment on Plaintiff’s protected political speech. Countless state and local governments across the country require disclosures or disclaimers on political advertising, but do so without such government messages occupying such extensive portions of the advertisements.

**SECOND CLAIM FOR RELIEF**

**(Facial and As-Applied Violation of the First Amendment of the United  
States Constitution and 42 U.S.C. § 1983: Strict Scrutiny)**

47. The allegations of paragraphs 1 through 43 above are incorporated by reference as though fully set forth herein.

48. The ordinance’s “official title” requirement operates as a prior restraint on speech, because ballot measure committees subject to the ordinance cannot engage in political advertising until the City Attorney sets an official ballot title.

49. Because the ordinance sets no objective standard to limit the City Attorney’s discretion in drafting the official title, the ordinance does not compel ballot measure committees to repeat purely factual and non-controversial information. Instead, it compels them to repeat Defendant’s subjective message. The ordinance’s title requirement is therefore subject to strict scrutiny. The ordinance’s title requirement fails strict scrutiny because it is not narrowly

1 tailored to serve any compelling government interest.

2 50. As applied to Plaintiff, the ordinance's title requirement is invalid  
3 under the First Amendment to the U.S. Constitution. And because a substantial  
4 number, if not all, applications of the title requirement would be unconstitutional,  
5 the ordinance's title requirement is overbroad and therefore facially invalid as  
6 well.

### 7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays as follows:

9 1. For immediate issuance of a temporary restraining order prohibiting  
10 the City, and its agents, representatives, employees, and all persons aiding the  
11 City or acting pursuant to its direction and control, from taking any steps to  
12 enforce Beverly Hills Municipal Code §§ 1-8-5 (C)-(F) against Plaintiff  
13 (including its treasurer, principal officers, and persons primarily responsible for  
14 the preparation of its advertisements) with respect to advertisements concerning  
15 the Initiative, and from taking any steps to enforce Beverly Hills Municipal Code  
16 § 1-8-5 (F) against any person or entity;

17 2. For a preliminary injunction prohibiting the City, and its agents,  
18 representatives, employees, and all persons aiding the City or acting pursuant to  
19 its direction and control, from taking any steps to enforce Beverly Hills Municipal  
20 Code §§ 1-8-5 (C)-(F) against Plaintiff (including its treasurer, principal officers,  
21 and persons primarily responsible for the preparation of its advertisements) with  
22 respect to advertisements concerning the Initiative, and from taking any steps to  
23 enforce Beverly Hills Municipal Code § 1-8-5 (F) against any person or entity;

24 3. For a permanent injunction prohibiting the City, and its agents,  
25 representatives, employees, and all persons aiding the City or acting pursuant to  
26 its direction and control, from taking any steps to enforce Beverly Hills Municipal  
27 Code §§ 1-8-5 (C)-(F) against Plaintiff (including its treasurer, principal officers,  
28 and persons primarily responsible for the preparation of its advertisements) with

1 respect to advertisements concerning the Initiative, and from taking any steps to  
2 enforce Beverly Hills Municipal Code § 1-8-5 (F) against any person or entity;

3 4. For a declaration under 28 U.S.C. § 2201(a) that Beverly Hills  
4 Municipal Code §§ 1-8-5 (C)-(F) violates the First Amendment to the United  
5 States Constitution, and 42 U.S.C. § 1983, as-applied to Plaintiff.

6 5. For a declaration under 28 U.S.C. § 2201(a) that Beverly Hills  
7 Municipal Code § 1-8-5 (F) facially violates the First Amendment to the United  
8 States Constitution, and 42 U.S.C. § 1983.

9 6. For costs of suit and reasonable attorneys' fees pursuant to 42 U.S.C.  
10 § 1988(b); and

11 7. For such other relief that the Court deems just and equitable.

12 Dated: July 25, 2016

Respectfully submitted,

13 /s/ Benjamin Hanelin

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