

1 LATHAM & WATKINS LLP
2 Benjamin J. Hanelin (S.B. No. 237595)
3 Email: benjamin.hanelin@lw.com
4 355 South Grand Avenue
5 Los Angeles, CA 90071-1560
6 Telephone: (213) 485-1234
7 Facsimile: (213) 891-8763

8 Richard P. Bress (D.C. Bar No. 457504)
9 (application for *pro hac vice* pending)
10 Email: richard.bress@lw.com
11 Andrew D. Prins (D.C. Bar No. 998490)
12 (application for *pro hac vice* pending)
13 Email: andrew.prins@lw.com
14 555 Eleventh Street NW, Suite 1000
15 Washington, DC 20004-1304
16 Telephone: (202) 637-3317
17 Facsimile: (202) 637-2201

18 Additional Counsel on Signature Page

19 Attorneys for Plaintiff Residents for The
20 Beverly Hills Garden & Open Space
21 Initiative

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

24 Residents for The Beverly Hills Garden &
25 Open Space Initiative,

26 *Plaintiff,*

27 vs.

28 The City of Beverly Hills,

Defendant.

) Case No. 16-5532

)
)
) APPLICATION FOR
) TEMPORARY RESTRAINING
) ORDER AND ORDER TO SHOW
) CAUSE

1 Communications with voters regarding ballot initiatives are “core political
2 speech” under the First Amendment. *McIntyre v. Ohio Elections Comm’n*, 514
3 U.S. 334, 347 (1995). “No form of speech is entitled to greater constitutional
4 protection.” *Id.* Plaintiff needs that protection immediately, because Defendant
5 the City of Beverly Hills is demanding, through a local ordinance, that Plaintiff
6 set aside a huge portion of its campaign communications regarding a pending
7 ballot initiative to carry a lengthy government-prescribed message that both
8 completely overwhelms Plaintiff’s own message to voters and taints that message
9 with the City’s subjective characterization of the initiative. Indeed, the
10 government-prescribed message is so lengthy that Plaintiff is actually *foreclosed*
11 from using typical forms of advertising media, like 30-second radio ads. The
12 City’s ordinance violates the First Amendment, both as applied to Plaintiff and on
13 its face.

14 Immediate equitable relief is warranted here. The initiative at issue will
15 appear on the November 2016 ballot. Every day that Plaintiff’s political speech is
16 chilled diminishes the likelihood that Plaintiff will be able to successfully
17 persuade enough voters to support the initiative. Plaintiff will therefore suffer
18 substantial and irreparable harm without immediate injunctive relief. *Farris v.*
19 *Seabrook*, 677 F.3d 858, 868 (9th Cir. 2012) (“[T]he loss of First Amendment
20 freedoms, for even minimal periods of time, unquestionably constitutes
21 irreparable injury’ and that ‘harm is particularly irreparable where, as here, a
22 plaintiff seeks to engage in political speech, as timing is of the essence in politics
23 and a delay of even a day or two may be intolerable.’” (alteration and citations
24 omitted)).

25 As set forth in the accompanying memorandum and points of authorities,
26 Plaintiff respectfully requests that the Court enter a temporary restraining order
27 and a preliminary injunction to protect its First Amendment rights by preventing
28 the City of Beverly Hills, its agents, representatives, employees, and all persons

1 aiding the City or acting pursuant to its direction and control, from enforcing the
2 ordinance.

3 Plaintiff also respectfully requests that this Court exercise its discretion to
4 waive the requirement for a bond under Fed. R. Civ. P. 65. It is well established
5 that the Court “may dispense with the filing of a bond when it concludes there is
6 no realistic likelihood of harm to the defendant from enjoining [its] conduct.”
7 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003); *Halo Mgmt., LLC v.*
8 *Interland, Inc.*, 308 F. Supp. 2d 1019, 1027 n.11 (N.D. Cal. 2003) (“the bond
9 amount may be zero where there is no evidence that a party will suffer damages
10 from the issuance of an injunction”). Here, Defendant will suffer no legitimate
11 injury from the issuance of a restraining order and injunction preventing
12 enforcement of an unconstitutional ordinance. *See, e.g., Baca v. Moreno Valley*
13 *Unified School Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996) (waiving bond
14 requirement in First Amendment case); *United Food & Commercial Workers*
15 *Local 99 v. Brewer*, 817 F. Supp. 2d 1118, 1128 (D. Ariz. 2011) (same); *Reed v.*
16 *Purcell*, CV 10–2324–PHX–JAT, 2010 WL 4394289 at *6 (D. Ariz. Nov. 1,
17 2010) (same).

18
19
20
21
22
23
24
25
26
27
28

Dated: July 25, 2016

Respectfully submitted,

/s/ Benjamin Hanelin

LATHAM & WATKINS LLP
Benjamin Hanelin (S.B. No. 237595)
Email: benjamin.hanelin@lw.com
355 South Grand Avenue
Los Angeles, CA 90071-1560
Telephone: (213) 485-1234
Email: benjamin.hanelin@lw.com

Richard P. Bress (D.C. Bar No. 457504)
(application for *pro hac vice* pending)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Email: richard.bress@lw.com
Andrew D. Prins (D.C. Bar No. 998490)
(application for *pro hac vice* pending)
Email: andrew.prins@lw.com
555 11th Street NW, Suite 1000
Washington, DC 20004
Telephone: (202) 637-3317
Facsimile: (202) 637-2201

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP
Christopher E. Skinnell (S.B. No. 227093)
Email: cskinnell@nmgovlaw.com
Sean P. Welch (S.B. No. 227101)
Email: swelch@nmgovlaw.com
2350 Kerner Boulevard, Suite 250
San Rafael, California 94901
Telephone: (415) 389-6800
Facsimile: (415) 388-6874

Attorneys for Plaintiff