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September 19, 2006

OPINION NO. 2006-01

SUBJECT: Validity of Referendum Petition Filed Against the Bayview Hunters Point
Redevelopment Plan, Ordinance No. 113-06

TO: Gloria Young
Clerk of the Board of Supervisors

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Question Presented

Does the referendum petition (the "Petition") filed against Ordinance No. 113-06, Adopting the Redevelopment Plan for the Bayview Hunters Point Redevelopment Project (the "Ordinance"), comply with the California Election Code requirement that the text of an ordinance be included in a referendum petition even when, as here, the Petition does not include documents incorporated by reference in the Ordinance, including the Redevelopment Plan?

Short Answer

The issue here is not the substantive validity of the Petition or the Ordinance itself but whether the Petition satisfies the procedural requirements of California law for the referendum to qualify for the ballot. California law places great importance on the right of the voters to consider legislation, such as the Ordinance, through a referendum. Still, the law requires that a referendum petition substantially comply with the statutory procedural requirements in order to protect the integrity of the democratic process. The California Elections Code requires that a referendum petition include the "text of the ordinance." The courts have clearly held that a petition does not substantially comply with this statutory requirement where the petition does not include critical text in documents that the ordinance incorporates by reference, even if that text is contained in separate documents. This is so regardless of the length of documents.

Here, the Petition contained a copy of the final Ordinance but included none of the documents incorporated by reference in the Ordinance. These documents were part of the public records on file with the Clerk of the Board of Supervisors when the Board adopted the Ordinance and were necessary to understand the underlying findings and effect of the Ordinance. At minimum, the Petition should have included the text of the Bayview Hunters Point

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Redevelopment Plan ("Redevelopment Plan") so that prospective signers could understand the Ordinance. Without inclusion of this key document, prospective signers of the Petition could not make an informed judgment about it. For example, reading only the Petition, prospective signers would not know the following key elements of the Ordinance: the boundaries of the redevelopment project areas, the scope of eminent domain allowed under the Plan, and the land use controls and affordable housing requirements and programs.

Because the Petition did not include critical documents that the Ordinance incorporates by reference, it does not substantially comply with the procedural requirements set out in the California Elections Code. Accordingly, the Clerk of the Board has a ministerial duty to reject the Petition as invalid. The result is that the Ordinance is not suspended and is now effective.

Background/Facts**A. Filing of the Petition**

On May 23, 2006, the Board of Supervisors approved the Ordinance, amending the plan known as the Hunters Point Redevelopment Plan by adding additional territory and allocating a property tax increment to the San Francisco Redevelopment Agency to implement the Plan. The Mayor signed the Ordinance on June 1, 2006. Under California Redevelopment Law, an ordinance adopting or amending a redevelopment plan is subject to referendum if a petition containing valid signatures of at least 10% of the entire vote cast within the boundaries of the city or county for Governor in the last gubernatorial election, are submitted to the clerk of the legislative body within 90 days of adoption of the ordinance. Cal. Health & Safety Code § 33378(b). On Wednesday, August 30, 2006, the deadline for filing a petition against the Ordinance, the proponents of the Petition, identified as the "Defend Bayview Hunters Point Referendum Committee," timely filed the Petition with the Clerk of the Board.

Neither the Clerk of the Board nor the Director of Elections had a duty to review any aspect of the Petition in advance. In contrast to an initiative petition, which under California Elections Code § 9202 requires the City's election official to review the notice of intent to circulate a petition before the proponents gather signatures, there is no such requirement for a referendum petition.

As a matter of practice, the Department of Elections provides a general guide to filing referenda, which is available to the public. The guide prominently states in the introduction: "The Department of Elections strongly recommends that proponents consult with an attorney on the referendum process, including technical requirements about the format of referendum petitions. The Department does not review referendum petitions prior to circulation." The guide also includes information regarding the recommended format, which cites and tracks the language of Section 9238 of the California Elections Code: ". . . each section of the petition must contain the identifying number or title and text of the ordinance, or portion of the ordinance, that is the subject of the referendum." Like Section 9238, the guide does not provide a definition for the "text" of the ordinance.

Any information in the Department's guide on referenda or advice that City officials may have given to proponents before the filing of the Petition would not have barred the City from

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later considering the Petition's procedural validity once it was submitted, *Creighton v. Reviczky*, 171 Cal. App. 3d 1225, 1233 (1985). Even so, we understand that here the circulators did not at any time on or before filing the Petition on August 30, 2006 ask the Clerk of the Board or the Director of Elections to review the sample Petition or to provide advice regarding the required form of the referendum petition against the Ordinance. As a result, the Clerk of the Board's first opportunity to review the Petition for compliance with the formal requirements of the Elections Code occurred upon receiving the Petition on August 30th. Once the proponents filed the signed Petition, the Clerk of the Board accepted the filing without determining its validity and counted the signatures to ensure that the Petition on its face contained at least the requisite number of signatures to qualify it for placed on the ballot. Then the Clerk promptly transmitted the Petition to the Department of Elections to verify the signatures.

On September 6, 2006, before undertaking the verification process, the Department of Elections counted a total of 33,056 signatures on the Petition. On September 12, 2006, the Department of Elections certified that the Petition had sufficient valid signatures. Specifically, the Department conducted a random sampling under the Elections Code and projected that the Petition contained 23,967 valid signatures, which exceeded 10% of the votes cast for Governor in the last gubernatorial election as required by the California Redevelopment Law. Cal. Health & Safety Code § 33378(b). In addition, the Department determined that the number of valid signatures also exceeded the 110% threshold required under Section 9115 of the California Elections Code for certification of a petition based on random sampling. Accordingly, the Department of Elections did not need to verify each individual signature on the Petition. Upon verifying the signatures, the Director of Elections certified that the Petition contained the minimum number of valid signatures required and so notified the proponents of the Petition, the Mayor, the Board of Supervisors, the Clerk of the Board, the City Attorney, and the San Francisco Redevelopment Agency.

B. Governing Law

The procedural requirements that govern the Petition are set forth in the California Redevelopment Law and, where the Redevelopment Law is not specific, the San Francisco Charter and Municipal Elections Code and the California Elections Code. In particular, the Community Redevelopment Law states that "except as otherwise provided in Section 33378, the ordinance [approving an amendment to a redevelopment plan] shall be subject to referendum as prescribed by law for the ordinances of the legislative body." Cal. Health & Safety Code § 33365. Section 33378 specifies the required language of the ballot measure with respect to any ordinance that is subject to referendum, the minimum signature requirement, the manner of submittal and the 90-day time period for filing a referendum petition, and certain requirements to include the ballot pamphlet estimates relating to the redevelopment plan. The Charter sets forth the only City imposed requirements for a legislative referendum. S.F. Ch. § 14.102. Section 14.102 provides for suspension of the effective date of an ordinance subject to referendum, requires that the Board reconsider the ordinance, and if the ordinance is not entirely repealed submit it to the voters. The San Francisco Municipal Elections Code states "except as otherwise provided by the Charter and this Municipal Elections Code, the circulation and qualification of . . .

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. referenda is governed by California Elections Code Section 100 and 101, and Section 9200 et seq." MEC § 310.

The California Elections Code sets forth the law governing the form of the Petition. When filing a referendum petition, proponents must submit all sections of the petition at the same time. Cal. Elections Code § 9242. The petition must also include the "text of the ordinance or the portion of the ordinance that is the subject of the referendum." Cal. Elections Code § 9238(b)(2). We have examined the sample Petition filed with the Clerk of the Board of Supervisors. The Petition includes a copy of the final Ordinance, but it does not include any of the documents incorporated by reference in the Ordinance. The Clerk of the Board has confirmed that no additional documents were filed with or attached to the Petition.

As has been the long-standing practice of the Board of Supervisors in considering ordinances adopting or amending redevelopment plans or approving other land use measures, the Ordinance provides that a number of critical documents that form the basis for the Board's approval are on file with the Clerk of the Board of Supervisors and are incorporated by reference in the Ordinance as though fully set forth. The Ordinance states that the following documents are so incorporated by reference:

- Report on the Redevelopment Plan
- Redevelopment Plan
- Planning Commission Motion No. 17203 (finding that the Redevelopment Plan is consistent with the General Plan and in conformity with the Eight Priority Policies of Section 101.1 of the Planning Code)
- Redevelopment Agency Resolution No. 32-2006 & 33-2006 (approving the Report on the Redevelopment Plan and adopting the Redevelopment Plan approved by the Bayview Hunters Point Project Area Committee ("PAC"))
- Redevelopment Agency Resolution No. 34-2006 (adopting a Relocation Plan)
- Planning Commission Motion No. 17200 and Redevelopment Agency Commission Resolution No. 21-2006 (certifying the completion of the Final Environmental Impact Report for the Bayview Hunters Point Redevelopment Projects and Zoning proposal)
- Planning Commission Motion 17201 (finding that various actions related to the Redevelopment Plan and other aspects of the Project were in compliance with the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code)
- Redevelopment Agency Resolution No. 31-2006 (adopting environmental findings pursuant to CEQA with respect to approval of the Project,

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including a mitigation monitoring and reporting program and a statement of overriding considerations)

- The CEQA findings contained in Planning Commission Motion No. 17201 and Redevelopment Agency Resolution No. 31-2006
- Board of Supervisors Ordinance No. 106-06 (approving amendments to the General Plan).

We now turn to an analysis of whether it was necessary to include any of these documents as part of the Petition against the Ordinance.

Analysis**A. Protecting the Right to Referendum While Promoting an Elector's Ability to Fully Understand What He or She is Signing**

By collecting signatures and filing the Petition, the circulators were exercising a vital right to participate in the democratic process. "[T]he courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process.' '[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." *Associated Home Builders etc., Inc. v. City of Livermore*, 18 Cal. 3d 582, 591 (1976) (internal citations omitted). Where, as here, a petition has been filed with sufficient signatures, a court is likely to impose a heavy burden on one asserting the invalidity of the petition so as not to undermine the right of the full electorate to decide whether to approve the measure. *Costa v. Superior Court*, 37 Cal. 4th 986, 1007-08 (2006) ("Only when a court is confident that the challenge [to a petition] is meritorious and justifies withholding the measure from the ballot, should a court take the dramatic step of ordering the removal of a measure that ostensibly has obtained a sufficient number of qualified signatures.").

But the courts equally emphasize that a referendum petition must substantially comply with the procedural requirements set out in the elections law in order to safeguard the integrity of the democratic process. The courts have said "However, where petition deficiencies threaten the proper operation of the election process, refusal to file the petition has been judicially upheld. Although such statutes should be liberally construed to permit the exercise by the electors of this most important privilege, the statutes designed to protect the elector from confusing or misleading information should be enforced so as to guarantee the integrity of the process." *Chase v. Brooks*, 187 Cal. App. 3d 657, 663 (1986).

The central question regarding the validity of this Petition is whether it meets the requirements of the California Elections Code governing the *form* of a referendum petition; the issue does not involve the substantive validity of the Petition or the Ordinance. California Elections Code Section 9238 (emphasis added) governs the form of the Petition:

- (a) Across the top of each page of the referendum petition there shall be printed the following:

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(b) Each section of the referendum petition shall contain (1) the identifying number or title; and (2) the *text of the ordinance* or the portion of the ordinance that is the subject of the referendum.

The petition sections shall be designed in the same form as specified in Section 9020.

(c) Each section shall have attached thereto the declaration of the person soliciting the signatures. This declaration shall be substantially in the same form as set forth in Section 9022, except that the declaration shall declare that the circulator is a voter or is qualified to register as a voter of the city, and shall state his or her residence address at the time of the execution of the declaration.

The standard a court would apply to review the validity of the Petition is whether the Petition "substantially complies" with these requirements. *Costa*, 37 Cal. 4th 986, 1014 n.20 (2006). "Substantial compliance ... means *actual* compliance in respect to the substance essential to every reasonable objective of the statute." *Assembly v. Deukmejian*, 30 Cal. 3d 638, 649 (1982). The California Supreme Court in *Costa* refined this definition "to mean that each objective or purpose of a statute must be achieved in order to satisfy the substantial compliance standard." *Costa*, 37 Cal. 4th at 1017 n.24. But, the Court said, substantial compliance does not "require 'actual compliance' with every specific statutory requirement." *Id.* Further, the California Supreme Court has made clear that where there is a defect in a circulated petition, the Court should consider whether the defect goes to " 'the very heart' of the purpose of the particular statutory requirement at issue." *Costa*, 37 Cal. 4th at 1017 *citing Deukmejian*, 30 3d at 648.

The "objective or purpose" of Section 9238 is "to reduce confusion as to the contents of the referendum petitions and *to promote the full enlightenment of prospective signers of the substantive provisions of the challenged ordinance.*" *Chase*, 187 Cal. App. 3d at 662 (emphasis added) (referring to the legislative history of § 4052, which was renumbered in 1994 to § 9238 without changing the text); *see also Creighton v. Reviczky*, 171 Cal. App. 3d 1225, 1230-31 (providing a summary of the legislative history of § 4052). Thus, in determining whether this Petition complies with the requirements of the Elections Code, we must consider whether the Petition achieved the core purposes of Section 9238 of ensuring that prospective signers would be able to fully understand the substance of the Ordinance and would not be confused about the meaning or effect of the Petition.

It is appropriate for the Clerk of the Board to consider whether the Petition substantially complies with the formal requirements of the Elections Code before the Board acts to submit the Ordinance to the electorate. The California Supreme Court has made clear that only challenges to the procedural prerequisites of a petition and not challenges to the substantive validity of a petition are appropriate for a court to consider prior to an election. *Costa*, 37 Cal. 4th at 1006. The Court reasoned that: "[u]nlike a challenge to the substantive validity of a proposed measure, it cannot properly be suggested that it would be premature to consider [a procedural prerequisite] claim prior to the election, because the focus of the issue is solely upon whether the measure has qualified for the ballot, and not upon the validity or invalidity of the measure were it to be

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approved by the voters." *Id.* The Court concluded that "if the threshold procedural prerequisites have not been satisfied the measure is not entitled to be submitted to the voters." *Id.* Here, we are considering whether the Petition was valid as to form and not the substantive validity of the Petition and, thus, it is the proper time to consider the question of whether the Petition may be submitted to the voters at the next election.

B. The "Text of the Ordinance" Means the Full Text Including References Incorporated Therein.

"[T]he type of defect that most often has been found fatal is the failure of an initiative or referendum petition to comply with the statutory requirement of setting forth in sufficient detail the text of the proposed initiative measure or legislative act against which the referendum is brought 'so that registered voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion.'" *Costa*, 37 Cal. 4th at 1016 n.22 (citations omitted).

California courts have consistently held that an initiative or referendum petition does not comply with the California Elections Code requirement that the "text of the ordinance" be contained in the petition where the petition does not include important incorporated or attached documents referenced in the ordinance. *See*:

- *Mervyn v. Reyes*, 69 Cal. App. 4th 93 (1998) (initiative petition did not substantially comply where petition contained text of ordinance calling for reenactment of open space land use designation in the City's General Policies Plan, but petition did not include general plan, map or supporting policies referenced in ordinance);
- *Nelson v. Carlson*, 17 Cal. App. 4th 732 (1993) (referendum petition did not substantially comply where petition included text of resolution passed by city council adopting a general plan and a local coastal program land use plan amendment, but failed to include the general plan that was incorporated by reference into the resolution and attached as an exhibit);
- *Billig v. Voges*, 223 Cal. App. 3d 962 (1990) (referendum petition did not substantially comply where petition contained only a summary, two sections, and one exhibit of the comprehensive rezoning ordinance passed by city council, but failed to include one section of text and two exhibits related to the environmental provisions, findings, and conditions of approval);
- *Chase v. Brooks*, 187 Cal. App. 3d 657 (1986) (referendum petition did not substantially comply where petition failed to include an exhibit describing the real property affected by zoning ordinance passed by city council).

Only one reported California case concluded that an initiative petition, which failed to attach a general plan, referenced in the ordinance, substantially complied with the statutory requirement that the text be included in an initiative petition. *We Care-Santa Paula v. Herrera*, 139 Cal. App. 4th 387, 390 (2006). In that case, the ordinance only added language to an existing general plan and made no other changes to the plan. The court distinguished cases involving petitions that omit incorporated documents: "We Care's petition does not omit the text

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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 the voters approve it." *Id.* This decision, decided after the California Supreme Court's *Costa* decision, does not discuss the application of "substantial compliance" review settled in *Costa* and does not dispute the holdings in *Mervyn's*, *Nelson*, *Billig*, and *Chase*.

Under the *Chase* line of cases, the failure of the Petition to include material that the Ordinance incorporates into its text is fatal and invalidates the Petition. *Nelson*, 17 Cal. App. 4th at 739.

C. Because the Referendum Petition Did Not Include the Materials that the Underlying Ordinance Incorporated into its Text the Petition Failed to Ensure That Prospective Signers Would Be Fully Enlightened About What They Were Signing.

Because the Petition failed to include at least the incorporated text of the central document that the Ordinance relies upon and to which it continually refers – the Redevelopment Plan – the Petition against the Ordinance does not substantially comply with the requirement under California Election Code § 9238 that the text of the ordinance be included in the petition. We do not need to reach the issue of whether the Petition should have included other documents incorporated within the Ordinance. The failure to include the Redevelopment Plan is fatal because of the centrality of this document to the Ordinance, but a court may also find that other key documents referenced in the Ordinance should have been included in the Petition, such as the Report on the Redevelopment Plan.

For at least the three reasons discussed below, this omission prevented prospective signers from fully understanding the Ordinance or the referendum seeking to overturn it, which is contrary to the core purposes of Section 9238. *Chase*, 187 Cal. App. 3d at 662.

1. Location of Project

A referendum petition fails to substantially comply with § 9238 in so far as it "fails to apprise prospective signers of the precise location of affected real property to permit them to informatively evaluate whether they should sign the referendum petition challenging the substantive provisions of the ordinance." *Chase*, 187 Cal. App. 3d at 664. Here, the Ordinance refers to "project areas" that will be developed, but a prospective signatory to the petition could only determine the location of the project areas by reviewing the incorporated Redevelopment Plan:

- In the findings section, the Ordinance states: "the Agency has prepared a proposed Redevelopment Plan that would add approximately 1,361 acres to the current Hunters Point Redevelopment Project Area, including an area labeled by the proposed Redevelopment Plan as 'Project Area A' consisting of 137 acres of predominantly urbanized area in the City and containing residential neighborhood located on Hunters Point Hill. The Redevelopment Plan labels the additional 1,361 acres as 'Project Area B,' and [] under the Redevelopment Plan, the Agency would undertake a variety of projects and activities to alleviate blighting

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conditions. . . The Redevelopment Plan will focus public investment in seven activity nodes and will attempt to reinforce and strengthen certain existing neighborhood characteristics within each node." *See* Ordinance No. 113-06 at Section 1(C).

The Ordinance refers to "Project Area A" and "Project Area B" (*id.* at Section 4(B)), but the boundaries of these project areas are set forth in the Redevelopment Plan rather than the Ordinance itself. As a result, by reading the Petition alone, including the attached text of the Ordinance, a prospective signer had no way to ascertain the boundaries of the Plan area or to know whether his or her property was located within that territory.

2. Eminent Domain

One of the issues sparking the most controversy over the Bayview Hunters Point Redevelopment Plan is whether the plan authorizes the use of eminent domain and, if so, to what extent. A central purpose of Section 9238 is to "minimiz[e] the possibility prospective signers may misunderstand the purpose of a petition." *Nelson*, 17 Cal. App. 4th at 740. Section 4(E) of the Ordinance specifically prohibits the use of eminent domain in certain circumstances, but provides only a summary of those restrictions and refers to the Redevelopment Plan for a description of "the limited extent" to which eminent domain is permitted:

The Redevelopment Plan prohibits the Agency from using eminent domain in the following circumstances: to acquire property in a residentially-zoned district (an "R" zone as defined in the Planning Code on the effective date of the Redevelopment Plan), to acquire property that contains legally occupied dwelling units, to acquire property owned by churches and other religious institutions as defined in Planning Code Section 209.3(i), to acquire publicly-owned property, and to acquire other property without following certain procedures and finding certain conditions. Nonetheless, the condemnation of real property, to the limited extent provided for in the Redevelopment Plan may be necessary for the execution of the Redevelopment Plan. Adequate provisions have been made in the Redevelopment Plan for payment to be so acquired as provided by law.

The Redevelopment Plan includes a land use map showing areas designated as residential (Map 5- Area B Generalized Land Use Map). Without the incorporated Redevelopment Plan, a potential signer of the Petition would not necessarily know whether his or her property is in an area zoned for residential use under the Plan. Nor would a potential signer understand whether his or her real property could be open to the "limited exceptions" provided in the Plan for the use of eminent domain. As a result, the potential signer could "misunderstand" or be confused by the eminent domain provisions of the Redevelopment Plan that are incorporated in the Ordinance.

3. The Objectives of the Redevelopment Plan are Not Spelled Out in the Ordinance.

Section 2 of the Ordinance states: "The purposes and intent of the Board of Supervisors with respect to this Ordinance are to adopt the Redevelopment Plan in

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accordance with Redevelopment Law and to achieve the objectives for redevelopment of the Project Area specified in the Redevelopment Plan." To understand the central goals of the Redevelopment Plan one must have access to the Plan itself. Lack of access to the Plan means a prospective signer of the Petition would not know what objectives and programs the Plan covers or whether his or her concerns are addressed by the Ordinance.

Another central area of controversy is concern about gentrification. Two key examples of issues related to concerns about gentrification are land use controls and affordable housing requirements. The Ordinance itself does not spell out either matter. Sections 2.4 and 3.4 of the Redevelopment Plan lay out the plans for affordable housing in Projects Areas A and B in detail. Similarly, the Redevelopment Plan provides detailed information about land use in both Project Areas in Sections 2.2 and 3.2. A prospective signer of the petition who was worried about gentrification or cared about land use control or affordable housing would not know by reading the Petition how these issues were addressed without also reading the incorporated Redevelopment Plan itself.

4. Effect of Failure to Include the Plan in the Petition

Failure to include the incorporated text upon which the Ordinance heavily relies is contrary to the procedural requirements of California Election Code Section 9238 and, as a result, the Petition is invalid. "Considered in and by itself [the ordinance contained in the petition] is unintelligible and meaningless. It cannot be determined from its inspection what is sought to be accomplished." *Myers v. Stringham*, 195 Cal. 672, 675 (1925) (upholding the rejection of a proposed ordinance that attempted to amend an existing ordinance without setting forth the affected section in full as required by the city's charter).

California Election Code § 9238 requires the Petition to include the full text of the Ordinance, including at least the incorporated documents central to it, in order to meet the underlying objectives of that statute – to ensure prospective signers have a full understanding of the substantive provisions of the Ordinance and are not misled or confused by viewing only that portion of the Ordinance provided in the Petition.

D. Impact on the Right to Petition

We are mindful that the right of the electorate to bring referenda is a precious right that we must protect. But the law regarding the procedural requirements for referenda compels a conclusion that a petition is procedurally invalid where it does not include critical documents that the ordinance refers to by reference. Courts have considered and dismissed various arguments in favor of allowing the petition to be submitted to the electorate despite the procedural defect: (1) the documents incorporated by reference are too lengthy and cumbersome to attach to the petition; (2) the documents, even though not attached, are readily available to anyone who wishes to read them; (3) the circulator of a petition may not have known that the statutory requirement to include the "text" of the ordinance requires that all incorporated documents be appended to the petition; and (4) any procedural defect should be resolved in favor of allowing the full electorate to vote on the ordinance especially since the defect can be cured by including in the ballot pamphlet the documents that the ordinance references.

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The court in *Nelson* found that the bulk or volume of the incorporated documents cannot be considered in analyzing whether the documents are part of the full text of the Ordinance:

In the present case, the general plan is several hundred pages long and roughly two and one-half inches thick. Given the size of a general plan, the question arises whether attaching it to a referendum petition would realistically assist someone considering whether to sign the petition. No case has considered a document as voluminous as the plan considered here. We conclude plaintiffs were required to attach the plan to their referendum petition. The conclusion enforces the express requirements of section 4052 [now 9238]. . . . Here, the plan was the resolution's focal point and was expressly made a part of it. Section 4052 delineates no exception to the requirement that the petition contain the text of the challenged legislation. If the Legislature had wanted to allow an exception for bulky ordinances or resolutions it could have provided for that situation. So far the Legislature has not done so.

Nelson, 17 Cal. App. 4th at 739-40. Here, the Redevelopment Plan was not even as long as the general plan in *Nelson*.

Courts have also made clear that in order to meet the guarantee of integrity in the petitioning process, the incorporated text must be included in the petition even if it is readily available elsewhere. *See Nelson*, 17 Cal. App. 4th at 740-41 (holding that even if circulators of the petition had the incorporated documents available on a table nearby, it was not enough to meet the underlying requirements of the statute to include the full text of the Ordinance in the petition). Here, even though the Ordinance stated that the Redevelopment Plan and other documents were on file with the Clerk of the Board and even if circulators had made copies available, the case law is clear that the documents must still be included with the Petition.

Courts have enforced the procedural requirements regardless of whether circulators of a petition actually knew of them. Courts have consistently held that individuals are presumed to know the law and this knowledge is presumed to include knowledge of both the text of, and the court's interpretation of, a statute. "It was established long ago that ignorance of the law does not excuse one from the consequences of the law. . . . It is thus clear that the legal effect of a statute cannot be avoided merely by pleading ignorance of the statute. If it could, the Legislature's efforts to shape public policy and the judiciary's efforts to interpret the statutory law and to shape the common law could easily be frustrated either by deliberate maintenance of ignorance or by false claims of it." *Arthur Anderson v. Superior Court*, 67 Cal. App. 4th 1481, 1506-07 (1998) (internal citations omitted). Here, the case law is clear that statutory requirement relating to the text of an ordinance means including the text of all key incorporated documents.

Finally, as discussed above, courts have determined that it is not only the right to petition that must be protected, but also the rights of individuals signing a petition to fully understand what they are signing. *See Chase*, 187 Cal. App. at 663 ("statutes designed to protect the elector from confusing or misleading information should be enforced so as to guarantee the integrity of the process"). In *Chase*, the court made clear that even where a ballot measure is included on the ballot and the electorate is fully informed of the measure because the full text and accompanying

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exhibits are included in the ballot material provided to voters, any procedural defect in the petition should be resolved prior to the election and the court should ensure that the petition was signed by fully informed prospective signers "so as to justify the expenditure of public funds to include a matter on the election ballot." *Id.* at 662. The courts have not examined whether prospective signers are likely to read the attached documents. Instead, courts have emphasized that adherence to the procedural requirement is necessary to protect the right of signers to have the information they need to make an informed decision. Further, *Nelson* noted that "failure to attach the plan to the petition precluded [the clerk] from discharging her ministerial function of ascertaining whether there was compliance with the [statute's full text] requirements." *Id.*

Conclusion


A referendum petition on an ordinance adopting or amending a redevelopment plan must be filed with the clerk of the legislative body, Cal. Health & Safety Code § 3378(b), which in San Francisco is the Clerk of the Board of Supervisors. The Clerk of the Board has a ministerial duty to ascertain whether the procedural requirements for submitting a referendum petition have been met. *Billig*, 223 Cal. App. 3d at 968-69; *Mervyn*, 69 Cal. App. 4th at 104-05. A "clerk who refuses to accept a petition for noncompliance with the statute is only performing a ministerial function involving no exercise of discretion." *Billig*, 223 Cal. App. 3d at 969.

Because this Petition did not include the full text of the Ordinance, namely at least the Redevelopment Plan, which was incorporated by reference, it is invalid. The Clerk of the Board has a ministerial duty to reject the Petition and the Board may not submit the Petition to the voters for a referendum on the Ordinance. The Ordinance is effective. The Clerk should so advise the sponsors of the Petition.


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Very truly yours,

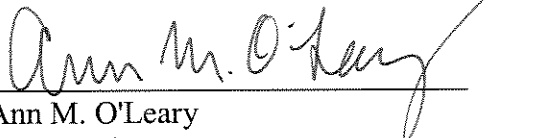
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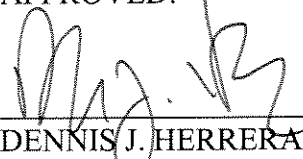


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