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August 21, 2022

Phil Kohn  
City Attorney  
City of Laguna Beach  
505 Forest Avenue  
Laguna Beach, CA 92651

**VIA E-MAIL**

**Re: *False and Misleading Impartial Analysis for Measure Q***

Dear Mr. Kohn:

This firm writes on behalf of Laguna Residents First (LRF), the organizational proponent of the initiative now known as Measure Q in the November 2022 Laguna Beach General Municipal Election. We write to bring your attention to a statement in your Impartial Analysis of the measure that is false, misleading, and potentially biased. It is our hope that you will evaluate these arguments and make the minor revision to the Impartial Analysis that LRF requests herein.

At issue is your inaccurate statement in a parenthetical regarding the term “electorate” that is used in Measure Q’s provisions regarding the need for a vote on Major Development Projects.

Measure Q provides: “A Major Development Project shall be considered to be approved only after approval of the zone change to remove the property from the Beautiful Laguna Overlay Zoning District by both the Laguna Beach City Council and a majority of the Laguna Beach Electorate voting ‘YES’ on a ballot measure asking whether the zone change should be approved at either a regular or special municipal election.”

In the circulating Title and Summary you prepared in July 2021, you state that “[t]he initiative would require every ‘Major Development Project’ within the Overlay District to be submitted to the voters for approval at either a regular or special election after the City Council has first approved a zone change for the purpose of removing the subject property from the requirements of the Overlay District.” This is an accurate statement regarding the election called for by Measure Q.

However, the Impartial Analysis that will be printed in the Voter Information Pamphlet contains a revised description of that election, as follows: “A majority of the ‘Laguna Beach

Electorate’ (commonly defined to mean the total number of registered voters) voting ‘yes’ is required to approve a project.” This statement is followed by some generally negative speculation regarding the potential impact of the delays and uncertainty that would be caused by such an election. The addition of the parenthetical to the description of the election creates the impression of an impossible burden for any project proponent; coupled with the subsequent negative statements, the Impartial Analysis takes on a strong tinge of bias against Measure Q.

This bias is particularly notable because you are likely well-aware that Measure Q would not require a majority vote of all registered voters in Laguna Beach to approve a project, because such an interpretation has *never* been upheld of any similarly phrased measure by the California courts or any interpretative body. In fact, the California Attorney General opined definitively on a similarly-phrased initiative in 1983, construing the 1978 Proposition 13. At 66 Ops. Cal. Atty. Gen. 321 (attached for your convenience), Attorney General John Van de Kamp issued an opinion on the question: “Must the requisite measure or measures submitted to the voters be approved by two-thirds of the registered voters, or by two-thirds of the registered voters who actually vote?” The opinion looked at two different provisions of Proposition 13: Article XVI, section 18, which provided that school district could not incur indebtedness “without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose;” and Article XIII A, section 4, which governs special taxes and requires that approval be “by a two-thirds vote of the qualified electors of such district.” (See attached, p. 5.)

The Attorney General opined that there were three “possible interpretations” of both of these provisions: “1. That the requisite two-thirds majority is to be based upon all the electors in the district, whether registered or not, and whether or not they actually voted (2/3 of all ‘electors’); 2. That the requisite two-thirds majority is to be based upon all registered voters, that is ‘qualified electors’ in the technical sense, whether or not they actually voted (2/3 of all registered voters); or 3. That the requisite two-thirds majority is to be based upon only those registered voters who actually voted.” (Attached, p. 6.)

Noting that that the Legislature had adopted the third interpretation with respect to Article XVI, section 18, the Attorney General explained that this interpretation “is also in accord with the almost universal rule, discussed at great length *In re East Bay Etc. Water Bonds of 1925* (1925) 196 Cal.725, 744-749 that: ‘where the requirement is that the issue be approved by a prescribed majority of the qualified voters of the municipality, or other language of similar import, the decision usually hold that a vote of the majority of all the qualified voters is not required but only the requisite majority of the qualified voters voting at the election.’ (*Id.* at p. 746, quoting Dillon on Municipal Corporations, 5<sup>th</sup> Ed., § 891.) (Attached, p. 7.) The Attorney General also noted that the United States Supreme Court adopted the interpretation in *Carroll County v. Smith* (1884) 111 U.S. 556, when interpreting a provision that required “two-thirds of the qualified voters of such county,” to require only two-thirds of those voting, not two-thirds of the registered voters. (*Ibid.*)

While Proposition XIII did not use the phrase “electorate,” the phrase “qualified electors” is similar, if possibly more ambiguous. It is difficult to imagine that any court would, upon

reviewing the Attorney General’s opinion, adopt an interpretation of Measure Q that requires a majority vote of all registered voters to approve a Major Development Project. *Yet this is precisely what your parenthetical implies.*

Indeed, Proposition 218 (November 1996), which added Article XIII C and D to the California Constitution, included in Article XIII C, section 1 (d), the prohibition that “No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.” This phrasing is similar to that used in Measure Q (“a majority of the Laguna Beach Electorate voting ‘YES’ on a ballot measure”). It does not appear that anyone have ever seriously opined that Proposition 218’s special tax provision requires a two-third vote of the entire electorate.

Indeed, in California Supreme Court decisions and other appellate opinions discussing Proposition 218, the term “electorate” is frequently utilized as a shorthand not for the entire body of registered voters, but for the subset of those voters who actually voted in an election on a given item. (See, e.g., *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, 204 [“In theory, a bare majority of voters in a statewide election may decide that the affirmative votes of even 65 percent of the electorate of a local entity are insufficient for adoption of a tax which substantially affects the taxpayers of the local entity.”]; *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 240 [“[N]o local entity may ‘impose’ a general or special tax ‘unless and until’ the tax is ‘submitted to ... and approved by’ the required proportion of the electorate.]; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1064 [“Proposition 13 and Proposition 218 amended the California Constitution to require that any special tax adopted by a local government entity take effect only if approved by a two-thirds vote of the electorate.”]; *Jobs & Housing Coalition v. City of Oakland* (2021) 73 Cal.App.5th 505, 511 [“Propositions 13 and 218 both expressly permit the approval of a parcel tax as a ‘special tax’ earmarked for a special purpose if approved by two-thirds of the electorate.]; *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 708 [“The Associations rely on provisions placed in the California Constitution by Proposition 13 and Proposition 218, which both require a two-thirds vote of the electorate to approve certain taxes adopted by local governments. (See art. XIII A, § 4 and art. XIII C, § 2, subd. (d).”].) In each of these instances, the courts referred to a vote of the electorate, when what is actually required is a two-thirds vote of those voting in the election, not of the entire body of registered voters. Thus, it is clear that the courts view the term “electorate” as a shorthand for the voting population in a given election.

This interpretation is also consistent with the Elections Code. Under Elections Code section 9217, “if a majority of voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city.” Measure Q expressly refers to a vote on a “ballot measure,” and the questions presented by a Major Development Project election would certainly qualify as a “city measure” under Elections Code section 306. (“City measure” includes any proposed city charter, any proposed amendment to a city charter, any proposition for the issuance of bonds by the city, any advisory question, or any other question or

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proposition submitted to the voters of a city.”) An interpretation of Measure Q as prescribing, without any elaboration, an unprecedented majority approval requirement in this state is simply unsupportable in light of the weight of this legal authority.

My client is aware that it could file litigation to challenge your Impartial Analysis as false, misleading, and biased. However, such challenges are costly, both for my client and for the City as well. In full disclosure, LRF does not have the funds to bring such a challenge *and* mount a robust campaign for Measure Q. However, LRF should not be faced with such a Hobson’s choice between a neutral impartial analysis and a campaign. We thus rely upon your sense of fairness and equity, and request that you simply excise the parenthetical statement “(commonly defined to mean the total number of registered voters)” from your Impartial Analysis.

I am available to discuss this issue at your convenience at (310) 933-5930 or by email to [bpalmer@strumwooch.com](mailto:bpalmer@strumwooch.com).

Very truly yours,

A handwritten signature in black ink, appearing to read "Beverly Grossman Palmer". The signature is fluid and cursive, with the first name being the most prominent.

Beverly Grossman Palmer  
Strumwasser & Woocher LLP

Cc: City Council via email to [CityCouncil@lagunabeachcity.net](mailto:CityCouncil@lagunabeachcity.net)