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Meredith Riede
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VIA EMAIL AND US MAIL

**CONFIDENTIAL ATTORNEY-
CLIENT COMMUNICATION**

Re: Legal Analysis on Miller Referendum Petition

Dear Meredith:

This opinion letter is intended to address certain salient questions regarding the document entitled "Referendum Petition," which was circulated for signatures by Diana Miller and submitted to the City on September 23, 2015. The Referendum Petition requests the City "to repeal Ordinance No. 2014, entitled 'AN ORDINANCE OF THE CITY OF SUGAR LAND, TEXAS, ADOPTING THE SUGAR LAND DEVELOPMENT CODE UPDATE, PHASE I; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE' as adopted by the City Council of the City of Sugar Land, Texas, with an effective date of July 21, 2015."

The targeted legislation, Ordinance No. 2014, updated the City's Development Code, repealing and replacing the prior version of that code. The current Development Code, which the City is being asked to repeal, contains, among other matters, provisions on street system improvements; vested rights; the City's general zoning regulations; sign regulations; subdivision regulations and design standards; building regulations; flood prevention regulations; the City's regional airport zoning regulations (adopted under Texas Local Government Code Chapter 241); and storm water quality management and discharge control regulations.

Based on my review of a representative sample of the Referendum Petition, Ordinance No. 2014 and the City's Home Rule Charter, as well as my discussions with your office and other City officials, I offer the following questions and answers in this matter.

1. Does the City's Charter and/or state law authorize the City to call an election to repeal Ordinance No. 2014 in response to the Referendum Petition?

No. The right of referendum (to repeal all or part of an existing ordinance) is not found in state law, but is rather created by the City's Charter. *See Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex. 1980); *Glass v. Smith*, 244 S.W.2d 645, 649 (Tex. 1951); *Taxpayer's Ass'n of Harris Cnty. v. City of Houston*, 105 S.W.2d 655, 657 (Tex. 1937); *City of Canyon v. Fehr*, 121 S.W.3d 899, 903 (Tex.App.-Amarillo 2003, no pet.). The City's Charter expressly removes from

the right of referendum “[m]atters which are not legislative in character or which have been withdrawn or excluded by general law from the operative field of initiative or referendum.” City Charter, §3.01(b)(3). General zoning matters, such as those contained in Ordinance No. 2014, are not subject to repeal by referendum under the common law; accordingly, they are “withdrawn or excluded by general law from the operative field of initiative or referendum.” See *Quick v. City of Austin*, 7 S.W.3d 109, 124 (Tex.1998); *Glass*, 244 S.W.2d at 648–49. See also *San Pedro North, Ltd. v. City of San Antonio*, 562 S.W.2d 260, 262–63 (Tex.Civ.App.-San Antonio 1978, writ ref’d n.r.e.); *Hancock v. Rouse*, 437 S.W.2d 1, 3–4 (Tex.Civ.App.-Houston [1st Dist.] 1969, writ ref’d n.r.e.).

Additionally, state law provides that petitioners in a home rule city may repeal through referendum, in the zoning context, only the “initial” adoption of zoning regulations by a city, not amended or subsequent zoning regulations such as are found in Ordinance No. 2014. See Tex. Loc. Gov’t Code §211.015(a)(2) (emphasis added). Zoning regulations that are not “initial zoning” may only be repealed in their entirety and may only be repealed through a charter election brought about by a legally sufficient voter petition. See Tex. Loc. Gov’t Code §211.015(a)(1). “Initial zoning” means just what it says – the first zoning ever adopted by a city. See, e.g., *Fehr*, 121 S.W.3d at 905 (“Given that the plain or common meaning of the word “initial” encompasses the idea of the first or the beginning, it is clear that the legislature intends for § 211.015 to be utilized only when the municipality attempts to create and impose, for the first time, upon its citizenry a body of zoning ordinances when or where none previously existed”). A referendum process is not available to repeal zoning that is not the initial zoning adopted in a city.

Moreover, airport zoning regulations adopted under Texas Local Government Code Chapter 241, such as those found in Ordinance No. 2014, cannot be repealed through either referendum or a charter amendment election. See Tex. Loc. Gov’t Code §211.015(f)(2). Because Ordinance No. 2014 contains the entirety of the City’s general zoning regulations, as well as the City’s airport zoning regulations, the Referendum Petition cannot lawfully be used to require a City election to repeal Ordinance No. 2014.

2. In the event that the City Secretary determines that the Referendum Petition is sufficient under the Charter in terms of receiving the required number of registered voters’ signatures and containing all other required information, how should the City proceed?

The City Council, upon receipt of the City Secretary’s certification that the Referendum Petition meets the form and signature requirements of Sections 3.02, 3.03 and 3.04 of the Charter, has 60 days to decide whether to grant the relief requested in the Referendum Petition (*i.e.*, to repeal Ordinance No. 2014). See Charter §3.09(a). Should the City Council decline to repeal Ordinance No. 2014, the Charter mandates that the “council must call an election for the earliest date allowed by law.” See Charter §3.09(b). Such a directive, however, would result in the ordering of an election in direct conflict with state law in this instance because a referendum election may not be used to repeal non-initial general zoning regulations (such as are contained in Ordinance No. 2014) and may not, in any event, be used to repeal airport zoning regulations (which are contained in Ordinance No. 2014). Consequently, the election cannot be lawfully called and the City should decline to call such an election.

3. If the City decided to ignore the legal prohibition against calling the repeal election and the electorate cast sufficient votes to repeal Ordinance No. 2014, what would be the practical result?

Under Charter Section 3.10, a successful referendum election would result in Ordinance No. 2014 being “deemed repealed on the date the council approves the ordinance declaring the result of the election.” The repeal of Ordinance No. 2014, however, would not resurrect the prior development code or any other ordinances repealed by the enactment of Ordinance No. 2014.

In summary, when viewed under the bright light of well-established common law, Section 211.015’s statutory limitations, and the City’s own Charter language, it appears very clear to me that the Referendum Petition requests that which the law does not allow – the repeal of Ordinance No. 2014 in its entirety. For the reasons discussed in this letter opinion, I recommend that the City Council decline to call an election to repeal Ordinance No. 2014. To do otherwise would result in the City violating both state law and its own Charter.

Please do not hesitate to let me know if you need further or more detailed analysis on any aspect of this matter.

Sincerely,



Robert F. Brown