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Attorneys for Defendant
CITY OF MILPITAS

EXEMPT FROM FILING FEES PER
TO CAL. GOV'T CODE § 6103

(ENDORSED)
FILED
FEB - 1 2017

Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ROBERT S. MEANS,
Plaintiff,

v.

CITY OF MILPITAS,
Defendant.

Case No. 16CV301785

DEFENDANT CITY OF MILPITAS'
ANSWER TO AMENDED COMPLAINT

Action Filed: October 27, 2016
Trial Date: None Set

ANSWER TO AMENDED COMPLAINT

1
2
3 Defendant City of Milpitas (“City”) answers the Amended Complaint, filed October 27,
4 2016 and amended December 9, 2016 (“Amended Complaint”), of Plaintiff Robert S. Means
5 (“Means”).
6

7 1. Answering the allegations on page 1, paragraph 1, City denies the allegations.
8

9 2. Answering the allegations on page 1, paragraph 2, and continuing to page 2, City
10 lacks sufficient information or belief to answer the allegations that Means is an individual and
11 registered voter in the City or a signatory to the petition. City denies the remaining allegations.
12

13 3. Answering the allegations on page 2, paragraph 1, City admits the allegations.
14

15 4. Answering the allegations on page 2, paragraph 2, City admits this Court has
16 jurisdiction. The remaining allegations are conclusions of law for which no response is required.
17

18 5. Answering the allegations on page 2, paragraph 3, City denies the allegations.
19

20 6. Answering the allegations on page 2, paragraph 4, City lacks information or belief
21 to answer the allegations that the community activists drafted and circulated the initiative petition.
22 City admits the remaining allegations.
23

24 7. Answering the allegations on page 2, paragraph 5, City admits the allegations.
25

26 8. Answering the allegations on page 2, paragraph 6, City admits the allegations.
27
28

1 9. Answering the allegations on page 3, paragraph 1, City admits the allegations that
2 City Clerk verified that the Petition contained 2,421 valid signatures and that 13,386 City voters
3 voted for a candidate in the last gubernatorial election. The remaining allegations are legal
4 conclusions for which no response is required.

5
6 10. Answering the allegations on page 3, paragraph 2, City admits the allegations.

7
8 11. Answering the allegations on page 3, paragraph 3, City admits the allegations.

9
10 12. Answering the allegations on page 4, paragraph 1, City admits the allegations.

11
12 13. Answering the allegations on page 4, paragraph 2, City admits the Council ordered
13 staff to prepare a report analyzing the Measure. The alleged statement speaks for itself. Except
14 as admitted or alleged, City denies the remaining allegations.

15
16 14. Answering the allegations on page 4, paragraph 3, City admits the City Attorney
17 prepared the ordinance wording to place the Measure on the ballot. City alleges that the
18 statement speaks for itself. Except as admitted or alleged, City denies the remaining allegations.

19
20 15. Answering the allegations on page 4, paragraph 4, City denies the allegations.

21
22 16. Answering the allegations on page 4, paragraph 5, and continuing to page 5, City
23 alleges that Means statement speaks for itself. Except as alleged, City denies the remaining
24 allegations.

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26 17. Answering the allegations on page 5, paragraph 1, City denies the allegations.

27
28 18. Answering the allegations on page 5, paragraph 2, City denies the allegations.

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AFFIRMATIVE DEFENSES

The City asserts the following affirmative defenses against any and all claims or causes of action alleged by Means.

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim)

19. The Amended Complaint is barred because it fails to state a claim against the City.

SECOND AFFIRMATIVE DEFENSE

(Execution of a Public Statute)

20. The Amended Complaint is barred because an injunction may not be granted to prevent the execution of a public statute by officers of the law for the public benefit. Cal. Civ. Proc. Code § 526(b)(4); Cal. Civ. Code § 3423(d).

THIRD AFFIRMATIVE DEFENSE

(Exercise of Public Office)

21. The Amended Complaint is barred because an injunction may not be granted to prevent the exercise of a public or private office, in a lawful manner, by the person in possession. Cal. Civ. Proc. Code § 526(b)(6); Cal. Civ. Code § 3423(f).

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FOURTH AFFIRMATIVE DEFENSE

(Legislative act by Municipal Corporation)

22. The Amended Complaint is barred because an injunction may not be granted to prevent a legislative act by a municipal corporation. Cal. Civ. Code § 3423(g).

FIFTH AFFIRMATIVE DEFENSE

(Standing)

23. The Amended Complaint is barred because Means lacks standing.

SIXTH AFFIRMATIVE DEFENSE

(Mootness)

24. The Amended Complaint is barred because it is moot.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

25. The Amended Complaint is barred by the statute of limitations in California Government Code Sections 65009(c) and 66022.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Proceedings)

26. The Amended Complaint is barred because Means failed to exhaust administrative remedies under California Proposition 218.

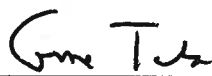
REQUEST FOR RELIEF

WHEREFORE, the City prays for relief as follows:

1. The Court denies the relief sought by the Amended Complaint;
2. Means takes nothing by way of the Amended Complaint;
3. The Amended Complaint be dismissed with prejudice;
4. City be awarded its costs.
5. Such other or further relief as the Court deems just and proper.

Dated: February 1, 2017

BEST BEST & KRIEGER LLP

By: 

GENE TANAKA
SCOTT DITFURTH
ALEXANDRA ANDREEN
Attorneys for Defendant
CITY OF MILPITAS

Deemed Verified Pursuant to Cal. Civ. Proc. Code § 446(A)

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PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 2001 N. Main Street, Suite 390, Walnut Creek, California 94596. On February 1, 2017, I served the following document(s):

DEFENDANT CITY OF MILPITAS' ANSWER TO AMENDED COMPLAINT

- By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):
 - Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Walnut Creek, California.

- By personal service.** At ____ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
- By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.
- By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.


1 **By e-mail or electronic transmission.** Based on a court order or an agreement of
2 the parties to accept service by e-mail or electronic transmission, I caused the
3 documents to be sent to the persons at the e-mail addresses listed below. I did not
4 receive, within a reasonable time after the transmission, any electronic message or
5 other indication that the transmission was unsuccessful.

6 Robert S. Means
7 1421 Yellowstone Avenue
8 Milpitas, CA 95035

9 Email: Rob.Means@electric-bikes.com

10 I declare under penalty of perjury under the laws of the State of California that the
11 above is true and correct.

12 Executed on February 1, 2017, at Walnut Creek, California.

13 
14 _____
15 Irene Islas

LAW OFFICES OF
BEST BEST & KRIEGER LLP
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WALNUT CREEK, CALIFORNIA 94596