



B R E W E R
S T O R E F R O N T

January 20, 2016

VIA EMAIL AND FACSIMILE

Ms. Paige Mims
City Attorney
City of Plano
1520 Avenue K, Suite 340
Plano, Texas 75074

Re: Plano Tomorrow Plan

Dear Ms. Mims:

On October 12, 2015, the City Council of the City of Plano (“City”) adopted Ordinance No. 2015-10-9 adopting the “Plano Tomorrow Comprehensive Plan” (“Ordinance”). On November 10, 2015, a petition requesting a public referendum vote on the Ordinance containing over 4,000 signatures (“Petition”) was submitted to the City Secretary. We have been retained as counsel by a number of the petitioners, who believe the City Council has a legal obligation to give full consideration to the Petition and to allow for greater public participation in the process surrounding the Ordinance.

We are writing to request that the City Secretary present the Petition to the City Council, the City Council reconsider the Ordinance at the next open meeting and, if the Ordinance is not repealed, the City move forward with a referendum vote on the Ordinance. Because the Ordinance pertains to a comprehensive plan and is *not* a zoning regulation relating to specific properties, the City’s conclusion that a referendum is prohibited by state law is incorrect.

Section 7.03 of the Home Rule Charter of the City of Plano (“Charter”) provides:

Qualified voters of the City of Plano may require that any ordinance or resolution, with the exception of ordinances or resolutions levying taxes, passed by the city council be submitted to the voters of the city for approval or disapproval by submitting a petition for this purpose within thirty (30) days after final passage of said ordinance or resolution, or within thirty (30) days after its publication. Said petition shall be addressed, prepared, signed and verified as required for petitions initiating legislation as provided in section 7.02 of this charter and shall be submitted to the person performing the duties of city secretary. Immediately upon the filing of such petition, the person performing the duties of city secretary shall present said petition to the city council. Thereupon the city council shall immediately reconsider such ordinance or resolution and if it does not entirely repeal the same, shall submit it to popular vote as provided in section 7.02 of this charter. Pending the holding of such election such ordinance or resolution shall be suspended from taking effect and shall not later take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof.

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This section of the Charter imposes several non-discretionary ministerial obligations on the City Secretary, City Council, and City of Plano. In particular, immediately upon the submission of the Petition, the City Secretary has an obligation to “present said petition to the city council.” The City Council then has an obligation to “immediately reconsider” the Ordinance. In the event that the City Council should decide not to repeal the Ordinance, then the Ordinance must be submitted to a popular vote.

Based on our review of official records, none of these non-discretionary, ministerial acts has occurred. Please advise us in writing by Monday, January 25, 2016, if the City contends that any of the three obligations set forth above have been completed. However, assuming our understanding is correct, the Ordinance has been suspended and is without force and effect.

Based on our review of your correspondence with various petitioners and the testimony of Mr. Andy Taylor, we understand the City’s position to be that the City Council is prohibited by state general law from putting the Ordinance to a referendum vote. That position is incorrect.

As an initial matter, there is no state law that prohibits the City Secretary from presenting the Petition to the City Council or prohibiting the City Council from reconsidering the Ordinance. Indeed, the City Council is free to reconsider and repeal the Ordinance at any time, with or without the Petition being presented. Given that the City Secretary and City Council do not have any legitimate legal argument for refusing to comply with the Charter’s presentment and reconsideration requirements, please advise us by Monday, January 25, 2016 if the City Secretary will present the Petition to the City Council and whether the City Council will reconsider the Ordinance at its next scheduled open meeting.

The City’s position that a referendum vote on the Ordinance is prohibited by the general laws governing zoning regulations is also wrong. Section 211.015(d) of the Texas Local Government Code expressly permits the City Council to condition the effectiveness of a zoning regulation on the approval of the voters.¹ Accordingly, the City’s position that the City Council is *prohibited* from scheduling a referendum is without merit.

Although courts have been reluctant to allow citizen-initiated referenda on zoning regulations governing specific properties, there is no authority for the proposition that the citizens cannot obtain a referendum on a comprehensive plan. Comprehensive plans set forth city-wide aspirations and expectations, and a decision to transform the nature of the community should be subject to a vote of the people. Indeed, the general laws of Texas recognize the

¹ See TEX. LOCAL GOV’T CODE § 211.015(d) (“Notwithstanding any charter provision to the contrary, a governing body of a municipality may adopt a zoning ordinance and condition its taking effect upon the ordinance receiving the approval of the electors at an election held for that purpose.”).

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distinction between “zoning regulations” and “comprehensive plans.”² Although zoning regulations must be adopted by the governing body or a zoning commission,³ the Texas Legislature explicitly provided that provisions of city charters may alter the manner of adopting comprehensive plans.⁴ Thus, a charter provision requiring a referendum vote on a comprehensive plan is not superseded by general law.

In light of the foregoing, the failure of the City Council to either repeal the Ordinance or place the Ordinance on the ballot for a popular vote constitutes a violation of a non-discretionary, ministerial duty.

We have been retained to seek judicial relief on behalf of our clients for the failures of the City Secretary, City Council and City of Plano to abide by their obligations under the Charter. Nonetheless, our clients hope that the City will comply with the obligation to present the Petition to the City Council and hold a public meeting reconsidering the Ordinance. We urge the City Council to make the correct decision based on its legal duties and the key principles upon which its members were elected, including the commitment to give the community a voice in the political process.

Please advise us by the close of business on Monday, January 25, 2016, if it is the intent of your clients to comply with any of their obligations under the Charter.

Sincerely,



Jack G. B. Ternan

cc: Hon. Harry LaRosiliere,
Hon. Angela Miner,
Hon. Ben Harris,
Hon. Rick Grady,
Hon. Lissa Smith,
Hon. Ron Kelley,
Hon. Tom Harrison,
Hon. David Downs,
Ms. Lisa Henderson

² See, e.g., TEX. LOCAL GOV'T CODE § 213.005 (“A map of a comprehensive plan illustrating future land use shall contain the following clearly visible statement: ‘A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries.’”).

³ See, e.g., TEX. LOCAL GOV'T CODE § 211.006.

⁴ See TEX. LOCAL GOV'T CODE § 213.003(b) (“A municipality may establish, in its charter or by ordinance, procedures for adopting and amending a comprehensive plan.”).