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(408) 882-5070
gary.wesley@yahoo.com

Petitioner In Pro Per

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

GARY WESLEY,

Petitioner,

Case No. 16CV299369

vs.

LORRIE BREWER,
CITY CLERK,
CITY OF MOUNTAIN VIEW,

Respondent.

EX PARTE APPLICATION TO
SET DEADLINES AND HEARING
ON PETITION FOR WRIT
OF MANDATE; POINTS AND
AUTHORITIES; DECLARATION
OF GARY B. WESLEY

PATRICIA SHOWALTER,
MICHAEL KASPERZAK,
CHRIS CLARK . JOHN INKS,
JOHN MCALISTER and
KEN ROSENBERG,

Date: September 2, 2016
Time: 8:30 a.m.
Dept: 3 or as otherwise assigned

LENNY SIEGEL, BOB MORAN,
MICHAEL R. FRECHETTI,
DANIEL DEBOLT and
MEYGAN FRALEY.

Real Parties in Interest.

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Petitioner In Pro Per

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

GARY WESLEY,

Petitioner,

Case No. 16CV299369

vs.

LORRIE BREWER,
CITY CLERK,
CITY OF MOUNTAIN VIEW,

Respondent.

ORDER ON EX PARTE
APPLICATION TO SET
DEADLINES AND HEARING
ON PETITION FOR WRIT
OF MANDATE

PATRICIA SHOWALTER,
MICHAEL KASPERZAK,
CHRIS CLARK . JOHN INKS,
JOHN MCALISTER and
KEN ROSENBERG,

Date: September 2, 2016
Time: 8:30 a.m.
Dept: 3 or as otherwise assigned

LENNY SIEGEL, BOB MORAN,
MICHAEL R. FRECHETTI,
DANIEL DEBOLT and
MEYGAN FRALEY.

Real Parties in Interest.

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The ex parte application for deadlines and to set the hearing date on the petition for writ of mandate filed August 30, 2016 is granted as follows:

(1) Each Real Party in Interest not already served by email with the Petition. Initial Memorandum of Points and Authorities filed August 30, 2016, and Petitioner's Supplemental Points and Authorities dated September 1, 2016 shall be served therewith by _____ or no action will be taken as to that party's ballot argument(s) without the party's written non-opposition.

(2) Petitioner shall cause this order to be served upon each other party (or party's attorney) by _____.

(3) Respondent City Clerk shall serve and file a response to the Petition and any memorandum of points and authorities by _____.

(4) Any Real Party in Interest may serve and file a response by _____.

(5) Petitioner may serve and file any reply memorandum by _____.

(6) Service of papers may be accomplished by email.

(7) The hearing on the Petition is set for: _____.

Date: _____

SUPERIOR COURT JUDGE

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Petitioner In Pro Per

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

GARY WESLEY,

Petitioner,

Case No. 16CV299369

vs.

LORRIE BREWER,
CITY CLERK,
CITY OF MOUNTAIN VIEW,

Respondent.

SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE APPLICATION
(AND PETITION FOR WRIT OF MANDATE)

PATRICIA SHOWALTER,
MICHAEL KASPERZAK,
CHRIS CLARK . JOHN INKS,
JOHN MCALISTER and
KEN ROSENBERG,

Date of Ex Parte: September 2, 2016
Time: 8:30 a,m,
Dept: 3 or as assigned

LENNY SIEGEL, BOB MORAN,
MICHAEL R. FRECHETTI,
DANIEL DEBOLT and
MEYGAN FRALEY.

Real Parties in Interest.

_____)

1 **1. SECTION 9222 OF THE STATE ELECTIONS CODE DOES NOT APPLY**
2

3 In the Petition for Writ of Mandate, it is noted in paragraph 28 (pages 9-10)
4 that **California Elections Code Section 9247** provides that two articles of
5 the Code (Sections 9200-9226 and Sections 9235-9247) “do not apply to
6 cities having a charter adopted under **Section (3) of Article XI of the**
7 **California Constitution** ...and having in their charters any provision for the
8 direct initiation of ordinances by voters...”

9 Mountain View is a city with a charter that does make “any” provision for
10 the initiation of ordinances by voters (in **Charter Section 1303**):

11 ***Except as otherwise provided by ordinances hereinafter enacted, the***
12 ***provisions of the Elections Code of the State of California, as the same***
13 ***now exists or may hereafter be amended, governing the initiative and the***
14 ***referendum shall apply to the use thereof in the city insofar as the same is***
15 ***not in conflict with this Charter.***

16 While the Mountain View City Charter adopts the state Elections Code
17 provisions for the exercise of the powers of initiative and referendum, the
18 adoption does not extend to state **Elections Code Section 9222** which
19 provides for neither an initiative nor a referendum.

20 As the Petition for Writ of Mandate explains (in paragraph 12), the City
21 Attorney added, as an afterthought, that perhaps **Section 1302** of the
22 Mountain View City Charter somehow adopts **Section 9222**; however,
23 **Section 1302 of the Mountain View City Charter** is entitled “**Procedure for**
24 **holding elections**” and refers to only those “**provisions**” in the Elections
25 Code “**for holding elections**” and not for enacting ordinances. The Charter
26 provides that an ordinance may only be enacted by the City Council
27 (**Section 516**) or through the real initiative process (**Section 1303**).

28 Date: September 1, 2016.


GARY B. WESLEY
Petitioner In Pro Per