IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

MEL RADER, Petitioner, v. JAMES H. VAN DYKE, in his official capacity as City Attorney for the City of Portland, Respondent.	1209-11646 No. _____ PETITION FOR REVIEW OF BALLOT TITLE ("Petition ID PDX 1") Expedited consideration requested per ORS 250.296(3)

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NATURE OF ACTION

1.

This is a petition for review of the ballot title prepared by Respondent James H. Van Dyke in his official capacity as City Attorney for the City of Portland ("City") for prospective City Initiative Petition "Petition ID PDX 1," a proposed initiative petition which would amend the City Charter to add the "City of Portland Clean Drinking Water Measure" ("Petition ID PDX 1"). This petition for review ("Petition") is brought pursuant to ORS 250.296 and Section 2.04.070 of the Portland City Code and is supported by a memorandum of law filed concurrently herewith.

PARTIES

2.

Petitioner Mel Rader ("Petitioner") is an Oregon elector who is registered to vote in Multnomah County and who resides within the city limits of the City of Portland. Petitioner is dissatisfied with the ballot title for Petition ID PDX 1 and seeks a different ballot title.

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3.

Respondent James H. Van Dyke ("Respondent") is the City Attorney for the City of Portland. Respondent prepared the ballot title for Petition ID PDX 1.

FACTS

4.

On August 22, 2012, pursuant to ORS 250.265 and Section 2.04.050 of the Portland City Code, Chief Petitioners Kimberly Kaminski and Roger Burt ("Initiative Petitioners") filed a prospective initiative petition with the City of Portland entitled "City of Portland Clean Drinking Water Measure." The City assigned that prospective initiative petition the number Petition ID PDX 1. A correct copy of Petition ID PDX 1 as filed with the City is attached as Exhibit 1 to this Petition and is incorporated by reference herein.

5.

On August 30, 2012, pursuant to ORS 250.270 and Section 2.04.055 of the Portland City Code, LaVonne Griffin-Valade, the City Auditor for the City of Portland ("City Auditor") and the city elections officer, determined that Petition ID PDX1 met the requirements of Article IV, Section 1(2)(D), of the Oregon Constitution, and forwarded Petition ID PDX1 to the City Attorney for preparation of the ballot title.

6.

On September 6, 2012, pursuant to ORS 250.275 and Section 2.04.060 of the Portland City Code, Respondent prepared the proposed ballot title for Petition ID PDX1 and transmitted it to the City Auditor, who inscribed a date of receipt on the ballot title. A correct copy of that ballot title indicating the notice and date of receipt, as published on the website maintained the City, is attached as Exhibit 2 to this Petition and is incorporated by reference herein.

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7.

Because this Petition is filed no later than seven business days after the ballot title for Petition ID PDX1 was filed with the City Attorney, it is timely pursuant to ORS 250.296(1) and Section 2.04.070 of the Portland City Code.

8.

The Caption prepared by Respondent for the ballot title for Petition ID PDX1 does not comply with the requirements of ORS 250.035(1)(a) because it does not reasonably identify the subject of the measure. The subject of Petition ID PDX1 is the amendment of the City Charter to prohibit the addition of certain substances, *including* chemicals, to City drinking water. Respondent's caption incorrectly indicates that the subject of Petition ID PDX1 is to prohibit the occurrence of certain substances in City drinking water. Respondent's caption further incorrectly identifies the subject by treating chemicals and substances as separate things.

9.

The Question prepared by Respondent for the ballot title for Petition ID PDX1 does not comply with the requirements of ORS 250.035(1)(b) because it does not plainly phrase the chief purpose of the measure. The chief purpose of Petition ID PDX1 is to amend the City Charter to prohibit the addition of certain substances to drinking water when those substances are not intended to make water potable, not (as stated by Respondent's caption), to prohibit "Portland * * * from adding certain chemicals" and "other substances" to drinking water which are not intended to make water potable.

10.

For the reasons stated in Paragraphs 8-9 above, the ballot title for Petition ID PDX1 filed with the City Auditor also does not comply with ORS 250.296(1) because it is insufficient, not concise, and/or unfair.

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11.

Petitioner proposes the following ballot title, which will meet the requirements of ORS 250.035(1):

> **CAPTION:** Amends Charter: Prohibits addition of certain substances to drinking water (10 words)
>
> **QUESTION:** Shall Charter be amended to prohibit City from adding to drinking water certain substances not intended to make water potable? (20 words)
>
> **SUMMARY:** The quality of City drinking water is currently subject to state and federal standards. These standards do not expressly prohibit addition of industrial or manufacturing by-products. This measure adds a provision to the City Charter prohibiting the City or its agents from adding by-products of any industrial or manufacturing process to the City's drinking water. The measure would prohibit addition of fluoride that is an industrial or manufacturing by-product.
>
> The measure also prohibits the City or its agents from adding any chemical or other substance that could cause the City's drinking water to exceed the United States Environmental Protection Agency's Maximum Containment Level Goals. The EPA's Goals are more restrictive than current state and federal standards the City must meet.
>
> The measure would not prohibit the addition of substances intended to make water potable.
>
> This measure forbids the City to exercise any prior grant of authority under the City Charter to the extent such authority would permit the City to add chemicals or substances in any way the measure prohibits. (170 words)

12.

As required by ORS 250.296(2), not later than 5:00 p.m. on Tuesday, September 18, Petitioner will give written notice to the City Auditor and the city elections officer that this petition has been filed.

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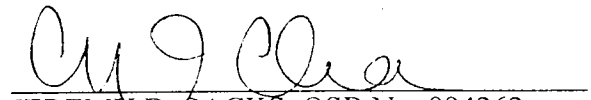
13.

WHEREFORE, Petitioner prays for a judgment certifying to the City Auditor of the City of Portland a ballot title for Petition ID PDX1 in the form set out in Paragraph 11 of this Petition.

DATED: September 17, 2012.

STOEL RIVES LLP



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City of Portland Clean Drinking Water Measure

The Clean Drinking Water Measure shall be added as Article 4 to Chapter 12 of the City of Portland's City Charter and read:

Portland Clean Drinking Water Measure

(1) To protect the purity and quality of the City of Portland's drinking water, the City or any agent of the City, shall not add any chemical or other substance to the City's drinking water that is a by-product of any industrial or manufacturing process, or that could cause the City's drinking water to exceed the United States Environmental Protection Agency's Maximum Contaminant Level Goals.

(2) This prohibition does not apply to the addition of substances intended to make drinking water potable.

(3) To the extent this measure removes or affects any prior grant of authority under the City Charter, that permitted the addition of chemicals or substances described in Section 1, the City is specifically forbidden from exercising such authority in a manner contrary to Section 1.

(4) If any provision of this measure is found to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of any of the remaining prohibitions.

AUDITOR 08/22/12 PM 4:42

NOTICE OF RECEIPT OF BALLOT TITLE

Notice is hereby given that a ballot title for an initiative petition has been filed with the Elections Office of the City of Portland on September 6, 2012.

The ballot title is as follows:

CAPTION:

Amends Charter: Prohibits certain chemicals and substances in drinking water. (10)

QUESTION:

Shall Portland be prohibited from adding certain chemicals, other substances to drinking water except when intended to make water potable? (20)

SUMMARY:

The quality of City drinking water is currently subject to state and federal standards. These standards do not expressly prohibit addition of industrial or manufacturing by-products. This measure adds a provision to the City Charter prohibiting the City or its agents from adding by-products of any industrial or manufacturing process to the City's drinking water. The measure would prohibit addition of fluoride that is an industrial or manufacturing by-product.

The measure also prohibits the City or its agents from adding any chemical or other substance that could cause the City's drinking water to exceed the United States Environmental Protection Agency's Maximum Contaminant Level Goals. The EPA's Goals are more restrictive than current state and federal standards the City must meet.

The measure would not prohibit the addition of substances intended to make water potable.

This measure forbids the City to exercise any prior grant of authority under the City Charter to the extent such authority would permit the City to add chemicals or substances in any way the measure prohibits. (170)

The City Auditor has determined this measure meets the single-subject requirements of Article IV, Sect 1 of the Oregon Constitution. An elector may file a petition for review of this ballot title in the Multnomah County Circuit Court no later than 5:00 P.M. on Monday, September 17, 2012.

LAVONNE GRIFFIN-VALADE
Portland City Auditor

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **PETITION FOR REVIEW OF BALLOT TITLE ("Petition ID PDX 1")** on the following named person(s) on the date indicated below by

- ☒ mailing with postage prepaid
- ☒ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Mr. James H. Van Dyke
City Attorney
City of Portland, Oregon
1221 SW Fourth Avenue
Suite 430
Portland, OR 97204

DATED: September 17, 2012.

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