

via electronic mail

June 17, 2024

City Council  
City of Eureka  
531 K Street  
Eureka, CA 95501

**Re: City Council June 18, 2024 Regular Meeting Agenda Item H.1  
Housing For All and Downtown Vitality Initiative**

Dear Councilmembers:

This letter is submitted on behalf of the proponents of the Housing For All and Downtown Vitality Initiative (“**Initiative**”).

The agenda materials published for the above-referenced agenda item to be heard at the Council’s June 18, 2024 regular meeting indicate that the Council intends to present the Initiative to City voters through the following ballot statement (“**Ballot Statement**”):

Shall the voters approve an initiative that would amend the City of Eureka’s adopted General Plan, creating overlay designations for 21 City-owned parcels and the former Jacob’s Middle School Site; and deleting six City-owned parcels from the City of Eureka’s certified Housing Element, which would require re-certification by the California Housing and Community Development Department?	<b>YES</b>
	<b>NO</b>

This Ballot Statement, as worded, violates state law because it is not worded correctly, and is untrue, partial, and would likely create prejudice against the Initiative.

To avoid violating state law, we recommend that the City adopt the following ballot statement in the alternative:

Shall the measure amending Eureka’s General Plan creating an overlay designation for 21 City lots that, with exceptions, limits those lots to public parking, housing where the number of public parking spaces is preserved, and bike parking, and creating a designation for the former Jacobs Middle School Site allowing housing, public, and commercial uses, with at least 40% dedicated to high-density housing exclusive of public facility uses be adopted?	<b>YES</b>
	<b>NO</b>

A detailed explanation of why the proposed Ballot Statement is incorrect, untrue and prejudicial follows below.

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## 1. Election Code Requirements

Elections Code section 13100 sets out the substantive and format requirements for ballots, including local ballots. (Elec. Code § 13100 [“All ballots used in all elections shall be governed by this chapter unless otherwise specifically provided”].) Section 13119 sets out the format and substantive requirements for local ballot measures submitted to voters as an initiative or referendum. This section reads as follows:

(a) The ballots used when voting upon a measure proposed by a local governing body or submitted to the voters as an initiative or referendum measure pursuant to Division 9 (commencing with Section 9000), including a measure authorizing the issuance of bonds or the incurrence of debt, **shall have printed on them the words “Shall the measure (stating the nature thereof) be adopted?”** To the right or below the statement of the measure to be voted on, the words “Yes” and “No” shall be printed on separate lines, with voting targets. If a voter marks the voting target next to the printed word “Yes,” the voter’s vote shall be counted in favor of the adoption of the measure. If the voter marks the voting target next to the printed word “No,” the voter’s vote shall be counted against its adoption.

(b) If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.

(c) **The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.**

(d) For purposes of this section, the following terms have the following meanings:

(1) “Local governing body” means the governing body of a city, county, city and county, including a charter city or charter county, or district, including a school district.

(2) “Target” means an object designated as the aim for a voter to make a vote selection.

(Elec. Code, § 13119 [emphasis added].)

We have highlighted two provisions for the City’s attention. First, subdivision (a) requires a ballot statement to begin with the words “Shall the measure” and conclude with the words “be adopted?”, with the true and impartial synopsis of the measure articulated in between.

Second, subdivision (c) requires the description of the measure to be:

- True and impartial;
- A description of the purpose of the measure;
- Not argumentative; and
- Not likely to create prejudice for or against the measure.

## 2. Legal Analysis

### **A. The Proposed Ballot Statement Does Not Contain Required Wording.**

Elections Code section 13119(a), as discussed above, requires that a city present a ballot measure to voters as follows: “Shall the measure (stating the nature thereof) be adopted?”. This is a mandatory, not advisory requirement.



June 17, 2024

The proposed Ballot Statement does not contain these required words, and therefore does not comply with section 13119(a). The City must revise the Ballot Statement to include the words required by section 13119(a).

**B. The Proposed Ballot Statement Is Not True and Impartial, Is Argumentative, and Is Likely to Create Prejudice Against the Measure.**

Elections Code section 13119(c) requires a ballot statement to be (1) true and impartial; (2) a synopsis of the purpose of the proposed measure; and (3) neither argumentative nor likely to create prejudice for or against the measure.

The Proposed Ballot Statement Is Untrue. The proposed Ballot Statement asserts, in relevant part, that the Initiative would “delet[e] six City-owned parcels from the City of Eureka’s certified Housing Element”. This is untrue.

The Initiative would create a new General Plan overlay called the Off-Street Public Parking Overlay Designation (the “**OSPP Overlay**”). Properties subject to the OSPP Overlay would be limited to the following uses:

1. Public parking for passenger and light commercial vehicles;
2. High-density residential above ground-floor public parking or garaged public parking, where two conditions are met:
  - a. The number of public parking spaces is at least equal to the number of spaces currently available at the parking lot proposed for residential development; and
  - b. If any parking spaces are required for the occupants of the residential development, such parking spaces must be in addition to the public parking spaces; and
3. Bike parking, with space for permanently-anchored bicycle racks that can accommodate a number of bicycles equal to 5% of the number of vehicular parking spaces available in each respective parking lot.

The OSPP Overlay would apply only to the 21 City-owned off-street parking lots identified below:

1. **City Parking Lot – 8th and G (APN 001155005)**
2. **City Parking Lot – 6th and M (APN 001233013)**
3. **City Parking Lot – 5th and D (APN 001103003)**
4. **City Parking Lot – 6th and L (APN 001192004)**
5. City Parking Lot – 3rd and D (APN 001061017)
6. City Parking Lot – 3rd and E (APN 001096003)
7. **City Parking Lot – 3rd and G (APN 001136001)**
8. City Parking Lot – 3rd and G (APN 001094002)
9. **City Parking Lot – 3rd and H (APN 001136002)**
10. City Parking Lot – 3rd and I (APN 001132004)
11. City Parking Lot – 104 C Street (APN 001013004)
12. City Parking Lot – 222 1st Street (APN 001053011)
13. City Parking Lot – 314 1st Street (APN 001052001)
14. City Parking Lot – 1st and E (APN 001051013)
15. City Parking Lot – Opera Alley and E (APN 001092014)
16. City Parking Lot – 312 3rd Street (APN 00109002)
17. City Parking Lot – 2nd and H (APN 001132001)
18. City Parking Lot – Waterfront Dr. and L (APN 001161009)
19. City Parking Lot – 1111 2nd Street (APN 001214002)
20. City Parking Lot – 1103 3rd Street (APN 001213005)
21. City Parking Lot – 1103 3rd Street (APN 001213006)



June 17, 2024

Of these 21 parking lots, six, which are bolded above, have been identified by the City as sites proposed for redevelopment in the City’s Housing Element (hereafter, the “**Housing Element Lots**”). (See General Plan Housing Element, pp. 70-71.)

The OSPP Overlay, further, would not apply to two of the Housing Element Lots (5th and D and 6th and L) so long as those lots are developed by the Wiyot Tribe Dishgamu Humboldt Community Land Trust (the “**Wiyot**”), to which the City awarded development rights on July 18, 2023. Both of these lots are identified as redevelopment sites in the Housing Element. (General Plan Housing Element, p. 71.)

Neither the OSPP Overlay nor any other provision of the Initiative “deletes” the six Housing Element Lots from the Housing Element, for the following reasons:

First, the text of the OSPP Overlay clearly allows “high-density residential” uses on each of the 21 specified lots, including the Housing Element Lots, so long as existing public parking is retained. On its face, the OSPP Overlay does not prohibit construction of affordable housing on the six Housing Element Lots.

Second, the OSPP Overlay does not apply at all to two of the Housing Element Lots (5th and D and 6th and L) so long as those lots are developed by the Wiyot as determined by the City on July 18, 2023. The OSPP Overlay use limitations would only apply if those lots were developed by a party other than the Wiyot.

Third, all six of the Housing Element Lots are still identified in Housing Element IMP H-34, as amended by the Initiative, as City-owned properties identified and available for redevelopment with affordable housing. The text changes made to IMP H-34 clarify that those six lots are subject to the OSPP Overlay, which means that while they may still be redeveloped into affordable housing (or housing for any other income level), the existing number of parking spaces must be preserved, and no other uses are permitted.

The source of the City’s confusion may be the strikeouts of the six Housing Element Lots from Figure 12 and Table 65 of the Housing Element Technical Appendix (the “**Technical Appendix**”). The Initiative proposes these changes because the six Housing Element Lots are not eligible for all uses contemplated in Housing Element IMP H-34. Specifically, the OSPP Overlay would prohibit development of corner stores, bars and restaurants and other commercial uses. IMP H-34 expressly allows and encourages such mixed uses on the City-owned lots proposed for redevelopment. (See General Plan Housing Element, p. 67.) The accompanying descriptions of potential development scenarios for at least three of the Housing Element Lots (8th and G, 3rd and G and 3rd and H) in the Technical Appendix state or suggest that the sites would be developed with other uses in addition to affordable housing.

In any event, even if the deletion of the Housing Element Lots from Figure 12 and Table 65 could be interpreted to mean that those properties are not available for affordable housing development, the actual text of the Initiative still controls. (See, e.g., *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571 [“When we interpret an initiative, we apply the same principles governing statutory construction. We first consider the initiative’s language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole”].) The actual text of the OSPP Overlay expressly allows residential development on all of the 21 lots that would be subject to the OSPP Overlay, including the six Housing Element Lots. Further, because the City has awarded development rights to two of the lots (5th and D and 6th and L) to the Wiyot, those lots are not subject to the OSPP Overlay at all. Lastly, in the most literal sense, the Initiative does not “delete” the Housing Element Lots from the Housing Element at all – each of the lots are still referenced in the Housing Element.

For these reasons, the City’s proposed Ballot Statement assertion that the Initiative would “delet[e] six City-owned parcels from the City of Eureka’s certified Housing Element” is untrue and must be revised.



June 17, 2024

The Proposed Ballot Statement Is Argumentative and Likely to Create Prejudice Against the Measure.

Following on the above discussion, even if the City believes that the Initiative could be interpreted to prohibit affordable housing development on the six Housing Element Lots, the City is required by the Elections Code to refrain from making an argument in that regard or from characterizing the Initiative in a way that is likely to create prejudice.

We refer again to the problematic text in the proposed Ballot Statement: the Initiative would “delet[e] six City-owned parcels from the City of Eureka’s certified Housing Element, which would require re-certification by the California Housing and Community Development Department”.

In both a literal sense and in effect, the Initiative does not “delete” the Housing Element Lots from the Housing Element. As a matter of fact, if the Initiative were approved by voters, all six lots would still appear in the Housing Element, and all six lots would still be eligible for residential development, including development of affordable housing.

Given these facts, the proposed Ballot Statement seems to intentionally focus not on the plain text of the Initiative, but instead on the strikeouts in Table 65 and Figure 12 of the Technical Appendix. On the basis of these strikeouts, the City’s proposed Ballot Statement implies that the Initiative would prohibit affordable housing development on those lots, and as a result, that the Housing Element would require “recertification” by the California Housing and Community Development Department (“**HCD**”).

At the risk of repetition, the OSPP Overlay expressly allows residential development, including affordable housing, on all 21 of the subject City-owned lots. There is no language at all in the Initiative that prohibits development of housing on those lots.

Similarly, there is no language in the Initiative relating to “recertification” by HCD. For background, the process by which HCD reviews, certifies, and when needed, recertifies a local jurisdiction’s housing element is set out in Government Code section 65580 *et seq.* At best, the proposed Ballot Statement includes an argument regarding the City’s perceived legal effect of the Initiative’s proposed changes to the Housing Element, based on the relevant Government Code provisions. It is also possible that City staff have obtained an HCD opinion on this matter, based on the City’s interpretation or representation of the Initiative’s effect. However, neither the City nor HCD can offer an authoritative determination of the Initiative, and thus any determination based on a conclusion that the Initiative “deletes” the six Housing Element Lots from eligibility for affordable housing development is erroneous.

The proposed Ballot Statement regarding HCD recertification, moreover, is a far departure from the Election Code’s requirement that a ballot statement be a “true and impartial synopsis of the purpose of the proposed measure”. (Elec. Code § 13119(c).) The purpose of the Initiative is stated in the Initiative itself, as follows:

The purpose of this Initiative is to accommodate the City’s need for more housing for residents at all income levels and to protect the accessibility, safety, and economic vitality of the City downtown area. This Initiative would serve this purpose by (1) rezoning a large vacant property within City limits known as the former Jacobs Middle School site (“Jacobs Site”), which is owned by the Eureka City Unified School District (“School District”), to allow for the development of low, medium and market rate housing; and (2) requiring the City to maintain current levels of public parking on specified downtown City-owned off-street public parking lots. Important decisions about how to accommodate the City’s housing needs without jeopardizing the accessibility, safety, and economic vitality of the City downtown area should rest with the residents of the City of Eureka.



June 17, 2024

(Initiative, Section 2.) Clearly, the purpose of the Initiative does not entail prohibition of affordable housing development on City-owned lots nor does it entail causing or requiring recertification of the Housing Element by HCD.

Lastly, the proposed Ballot Statement is argumentative and biased because it fails to take into account that the Initiative would, through the Housing For All Overlay (“**HFA Overlay**”) applicable to the Jacobs site create a new location for housing serving all income levels. The Initiative in this way would, in fact, increase the potential for housing development in the City. The proposed Ballot Statement ignores this fact, however, and instead focuses on the false claim that the Initiative would only “delete” parcels from the Housing Element.

The City’s objective in crafting the proposed Ballot Statement are only too clear: the City wants voters to believe that voting in favor of the Initiative will invoke the state’s enforcement mechanisms for jurisdictions that refuse to adopt a housing element that substantially complies with the state housing element laws. For example, just last week City Manager Miles Slattery asserted the following on a podcast:

- If the Initiative is passed, the City would be in violation of state law because the Initiative removes “all the lots” from the Housing Element; and
- The City may face the state “taking over” since the City will not be able to meet a 2027 deadline, and “Eureka will have no say in where housing is built”;<sup>1</sup> and
- The Initiative essentially stops downtown development because if parking is required, no developer will want to build them.

The proposed Ballot Statement plays into these statements by implying that passage of the Initiative would decertify the City’s Housing Element such that recertification would be required. This is unquestionably argumentative, biased, and likely to prejudice voters against the Initiative.

It is no mystery that the City opposes the Initiative, and the City is entitled under state law to make its position clear to voters. However, the City is not entitled to do so through the Ballot Statement. The Elections Code requires a ballot statement to be true and impartial, not argumentative, and not likely to prejudice voters for or against the measure. (Elec. Code, § 13119(c).) The proposed Ballot Measure does not meet this standard and must be revised. For comparison, we refer the City to its own official “Title and Summary of Proposed Measure Per Elections Code Section 9203”, which was prepared by the City Attorney following the initial submittal of the Initiative last year. That document, which is attached to this letter, is an example of a true and impartial, non-argumentative, non-prejudicial summary of the Initiative.

We urge the City Council to adopt the alternative ballot statement presented in this letter. The alternative is objectively correct, unbiased, not argumentative, and not likely to prejudice voters for or against the Initiative.

Sincerely,



Bradley B. Johnson, Esq.  
**Everview Ltd.**

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<sup>1</sup> Although somewhat outside the scope of this letter, we note that Mr. Slattery’s representation of the state housing element enforcement process is false. Even in cases of willful noncompliance with state law, HCD’s enforcement process is multi-layered and provides many opportunities for a local government to cure the problem. There is no circumstance under which a change to a certified housing element by ballot initiative would or could result in the state “taking over” as Mr. Slattery claims. For a correct understanding of HCD’s enforcement process, please refer to the attached to this letter is HCD’s enforcement narrative and illustrative flowchart. (<https://www.hcd.ca.gov/planning-and-community-development/accountability-and-enforcement>.)



**TO:** Pamela J. Powell, Eureka City Clerk

**FROM:** Autumn E. Luna, Eureka City Attorney

**RE:** Title and Summary of Proposed Measure Per Elections Code Section 9203

**DATE:** August 2, 2023

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**Title.**

An Initiative to Amend the City of Eureka's General Plan as the Plan Affects City-owned Parking Lots and Eureka City Schools-owned Jacobs Site.

**Summary.**

The proposed amendments to the General Plan would impact two categories of property in the City of Eureka: I) 21 City-owned public parking lots; and II) the former Jacobs Middle School Site owned by Eureka City Schools.

I. 21 City-owned public parking lots.

The proposed General Plan Amendment would create the "Off-Street Public Parking (OSPP) Overlay Designation." The OSPP overlay would apply to City-owned parking lots at 8<sup>th</sup> and G, 6<sup>th</sup> and M, 5<sup>th</sup> and D, 6<sup>th</sup> and L, 3<sup>rd</sup> and D, 3<sup>rd</sup> and E, 3<sup>rd</sup> and G (two lots), 3<sup>rd</sup> and H, 3<sup>rd</sup> and I, 104 C Street, 222 1<sup>st</sup> Street, 314 1<sup>st</sup> Street, 1<sup>st</sup> and E, Opera Alley and E, 312 3<sup>rd</sup> Street, 2<sup>nd</sup> and H, Waterfront Drive and L, 1111 2<sup>nd</sup> Street, and 1103 3<sup>rd</sup> Street (two lots).

The OSPP Overlay would limit the use of these parking lots to:

1. Public parking for passenger and light commercial vehicles;
2. High-density residential above ground-floor parking or garaged public parking, where two conditions are met:
  - a. The number of public parking spaces is at least equal to the number of spaces currently available at the parking lot; and
  - b. If parking spaces are required for the occupants of the residential development, those parking spaces must be in addition to the public parking spaces; and
3. Bike parking, with space for permanently-anchored bicycle racks that can accommodate a number of bicycles equal to 5% of the number of vehicular parking spaces available in each respective parking lot.

4. The project proposed by the Wiyot Tribe Dishgamu Humboldt Community Land Trust on the City-owned parking lots at 5<sup>th</sup> & D and 6<sup>th</sup> & L.

II. The Jacobs Site.

The proposed General Plan Amendment would create the “Housing for All (HFA) Overlay Designation” that would apply to the Jacobs Site located at 674 Allard Avenue.

The HFA Overlay would authorize the following uses on the Jacobs Site “by right”:

1. High density residential (R3) as to at least 40% of the ground area;
2. Medium density residential (R2);
3. Low density residential (R1);
4. Public and quasi-public uses compatible with a residential setting;
5. All principally permitted neighborhood-serving commercial uses allowed under the Neighborhood Commercial (NC) zone and Neighborhood Market (NMO) overlay zone;
6. All principally permitted uses allowed under the Downtown (DT) zone; and
7. All principally permitted uses allowed under the Public Facilities (PF) zone.

III. The initiative’s proposed changes to the City of Eureka’s General Plan could only be amended or removed by a further vote of the people.



## Enforcement Process



HCD may initiate review of an issue based on information contained within a housing element, annual progress report, stakeholder comment letter, phone call, email, news article, or additional source. During its review, HCD may consult with any local government, agency, group, or person.

HCD evaluates each issue on a case-by-case basis. Generally, the first step involves conversations with the local government to define the circumstances surrounding the issue and gain understanding of the local government's perspective. Based upon information received, HCD may choose to monitor a situation prior to taking additional action.

If the circumstances warrant additional action, HCD may issue a letter of inquiry, a letter of technical assistance, or a letter requesting corrective action. Local governments are generally provided 30 days to respond before HCD takes further action. However, this timeframe may be adjusted on a case-by-case basis.

Based upon the response received, HCD may issue a letter acknowledging the local government's response or corrective action taken. HCD may also issue a notice of decertification of housing element compliance and/or provide notice to the local government that the California Office of the Attorney General has been notified of a violation.

Each issue is unique; therefore, the process is not necessarily linear and may include multiple instances of correspondence between HCD and local governments. Local governments have the opportunity to respond to HCD each time a letter of inquiry, technical assistance, or correction is issued. However, the image below shows HCD's general approach to enforcement.

