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## 419TH DISTRICT COURT

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At 3:35 P. M.  
Velva L. Price, District Clerk

July 16, 2018

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**RE: Cause No. D-1-GN-18-002688; *Linder, et al. v. The City of Austin, et al.*, in the 201<sup>st</sup> Judicial District Court of Travis County, Texas**

Dear Counsel,

I wanted to thank the parties for a well-briefed and argued case, especially given the time-sensitive nature of the dispute. After consideration of the parties' briefs, arguments, and evidence, attached please find the file-stamped order granting the writ of mandamus. Though not required, the Court would like to give some of the Court's reasoning for its ruling.

Courts are prohibited from rendering advisory opinions. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993) (finding that the separation of powers doctrine prohibits "courts from issuing advisory opinions because such is the function of the executive rather than the judicial department"); see *Robinson v. Parker*, 353 S.W.3d 753, 755 (Tex. 2011) ("[T]he essence of the ripeness doctrine is to avoid premature adjudication . . . [and] to hold otherwise would be the essence of an advisory opinion . . . ." (quoting *Patterson v. Planned Parenthood of Hous. & Se. Tex.*, 971 S.W.439, 442 (Tex. 1998))). When an order addresses only a hypothetical injury, an opinion is advisory. *Tex. Ass'n of Bus.*, 852 S.W.2d at 444. The facts must be sufficiently developed and not contingent or remote. *Robinson*, 353 S.W.3d at 755.

In this case, Realtor's petition for writ of mandamus should issue absent a showing by Respondents that placing the initiative on the ballot is not a ministerial act—*i.e.* the proposed initiative is a subject matter withdrawn from the initiative process. However, Respondents'

arguments necessarily depend on the status and subject matter of CodeNEXT. At this point, CodeNEXT is not an ordinance; it is draft of a proposed ordinance. Neither the parties nor the Court know the exact substance of the final version of CodeNEXT. It is subject to revisions, or it may never be passed by the City Council. Nevertheless, Respondents ask the Court to find that CodeNEXT is a zoning ordinance or that zoning is not severable from the remainder of CodeNEXT. Indeed, the cases cited for the proposition of withdrawing zoning from the initiative process all involved substantive ordinances that had either already been passed or were proposed by initiative in its final, concrete form.<sup>1</sup> The facts underlying Respondents' challenges are contingent and hypothetical, including whether CodeNEXT is ever passed by the City Council and, if it is, what form it will eventually take. Because Respondent's challenges to their ministerial duty rely on these contingent facts, it would require an advisory opinion for this Court to address or rule on the merits of these challenges at this time.

Therefore, Respondents' challenges to their ministerial duty to place the initiative on the ballot are not ripe, and the writ of mandamus should conditionally issue.

Sincerely,



Judge Linda L. Naranjo  
419<sup>th</sup> District Court

cc: Ms. Velva Price, District Clerk  
Scott N. Houston, Counsel for Texas Municipal League (via email: [shouston@tml.org](mailto:shouston@tml.org))

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<sup>1</sup> *Glass v. Smith*, 244 S.W.2d 645 (Tex. 1952) (initiative for ordinance to classify fireman and policeman and providing for overtime, setting holidays, etc.); *Dallas Ry. Co. v. Geller*, 271 S.W. 1106 (Tex. 1925) (substantive referendum on passed ordinance fixing and regulating of the schedule of rates for a public service company); *City of Cleveland v. Keep Cleveland Safe*, 500 S.W.3d 438 (Tex. App.—Beaumont 2016, no pet.) (initiative for charter amendment to prohibit red light cameras); *In re Arnold*, 443 S.W.3d 269 (Tex. App.—Corpus Christi 2014, orig. proceeding) (referendum to repeal four passed individual zoning ordinances); *In re Bouse*, 324 S.W.3d 240 (Tex. App.—Waco 2010, orig. proceeding) (initiative for ordinance granting consent from College Station for City of Wellborn to incorporate); *City of Canyon v. Fehr*, 121 S.W.3d 899 (Tex. App.—Amarillo 2003, no pet.) (initiative and referendum to negate or repeal passed ordinance that re-zoning two tracts of land); *San Pedro v. City of San Antonio*, 562 S.W.2d 260 (Tex. Civ. App.—San Antonio 1978, writ ref'd n.r.e) (proposed ordinance to repeal substantive zoning ordinance), *cert. denied*, 439 U.S. 1004 (1978); *Hitchcock v. Longmire*, 572 S.W.2d 122 (Tex. Civ. App.—Houston [1st Dist.] 1978, writ ref'd n.r.e.), (referendum to repeal substantive annexation ordinance); *Hancock v. Rouse*, 437 S.W.2d 1 (Tex. Civ. App.—Houston [1<sup>st</sup> Dist.] 1969, writ ref'd n.r.e.) (initiative to pass substantive zoning ordinance and referendum to repeal four passed zoning ordinances); *Denman v. Quin*, 116 S.W.2d 783 (Tex. Civ. App.—San Antonio 1938, writ ref'd) (referendum to veto passed ad valorem tax ordinance).