ATTACHMENT 1

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

"An Initiative to give the People of Costa Mesa control of their future."

To the City Council of the City of Costa Mesa:

We, the undersigned, registered and qualified voters of the State of California, residents of the City of Costa Mesa, pursuant to Section 3 of Ordinance XI of the California Constitution and Chapter 2 (commencing with Section 34450) of Part 1 of Division 2 of Title 4 of the Government Code, present to the City Council of the City of Costa Mesa this petition and request that the following proposed ordinance be submitted to the registered and qualified voters of the City of Costa Mesa for their adoption or rejection at an election on a date to be determined by the Costa Mesa City Council. We further request the Costa Mesa City Council place this amendment on the ballot pursuant to the California State Election Code 9200-9226.

The proposed amendment reads as follows:

The people of the Costa Mesa find that:

(a) Environmental quality in Costa Mesa, which directly affects the quality of life of its residents, workers and visitors, is significantly and adversely impacted by excessive development, which causes severe traffic congestion and gridlock, degradation of Costa Mesa's infrastructure, as well as air, noise and water pollution;

(b) Costa Mesa's traffic circulation system is already oversaturated. Several intersections are operating at or near failure during peak traffic hours and are inadequate to support existing development;

(c) Furthermore, these existing traffic and traffic circulation system conditions result in adverse effects on public safety, public health and our quality of life;

(d) Increased population density and overall population have stressed Costa Mesa's parks and other public facilities and services resulting in adverse effects on public well-being;

(e) The City of Costa Mesa's existing land use and development review and approval procedures do not carefully or accurately consider, nor adequately weigh, the adverse impacts to the local environment and quality of life caused by increased density and congestion resulting from major changes in allowable land use;

(f) The standards by which the City of Costa Mesa evaluates major changes in allowable land use are ill-defined and inadequate to avoid or effectively mitigate the adverse effects of those changes; and

(g) The People of Costa Mesa, whose quality of life and property rights are at stake, should have the power to decide whether a proposed Major Change in Allowable Land Use, as defined below, is worth the added congestion and density it will cause, after careful, independent evaluation by the City of Costa Mesa of the adverse environmental effects of Major Changes in Allowable Land Use, based on clear and consistently applied standards.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF COSTA MESA DO ORDAIN AS FOLLOWS:

Sec.____1. Code Amendment.

This ordinance amends the Costa Mesa Municipal Code as follows and supersedes any provisions that are inconsistent with this ordinance and shall be known as "Ordinance to give the people of Costa Mesa control of their future".

Sec.____2. Purpose.

It is the purpose of this ordinance to:

(a) Give the voters of Costa Mesa the power to determine whether Costa Mesa should allow Major Changes in Allowable Land Use, as defined below, by requiring voter approval of any such proposed change and thereby ensuring maximum public participation in major land use and zoning changes proposed in Costa Mesa;

(b) Ensure that the voters of Costa Mesa receive all necessary and accurate environmental information on proposals for Major Changes in Allowable Land Use, so that they shall intelligently vote on any such proposal;

(c) Ensure that Costa Mesa officials provide timely, accurate and unbiased environmental review of all proposals for Major Changes in Allowable Land Use, so that they may minimize or mitigate their adverse traffic and land use impacts and maximize neighborhood compatibility before the voters decide on any such change;

(d) Ensure that all elements of the land use change approved by the voters are implemented; and

(e) Protect the public health, safety and welfare, and the quality of life, for all persons living or working or visiting in Costa Mesa.

Sec.____3. Definitions.

The definitions set forth in this section apply to the provisions of this ordinance only and do not

affect any other provision of law.

(a) **"As-Built Condition"** means the dwelling units, office and other nonresidential units, buildings and baseline traffic conditions existing at the time Costa Mesa issues the notice of preparation of an environmental impact report for the Major Change in Allowable Land Use, or, where no such notice is issued, on the date the application for the Major Change in Allowable Land Use is deemed complete. Illegal dwellings and other conditions that exist in violation of Costa Mesa's zoning ordinance and are subject to Costa Mesa's power of abatement, shall not be accounted for in the As-Built Condition for the purpose of determining a "Significant Increase," as defined in subdivision (h) below.

(b) **"Average Daily Trips"** means the number of vehicle trips that a Major Change in Allowable Land Use would generate on a daily basis. Trips generated shall be calculated by using the most recent version of the Trip Generation Manual of the Institute of Transportation Engineers ("ITE") in effect on the date the City of Costa Mesa issues the notice of preparation of an environmental impact report for a Major Change in Allowable Land Use or, where no such notice is issued, on the date the application for the Major Change in Allowable Land Use is deemed complete. Further, a Daily Trip is a motor vehicle either leaving or arriving at said property during a given day. Also, for purposes of counting trips, any vehicle with a Gross Vehicle Weight Rating (GVWR) greater than 6,000 (six thousand) pounds, shall be counted as generating two (2) trips for every trip attributed to this sized vehicle.

(c) **"General Plan"** means the General Plan of the City of Costa Mesa in effect as of the effective date of this ordinance, or as may be amended pursuant to this ordinance.

(d) **"Intersection Capacity Utilization"** or **"ICU"** means a quantitative measure of traffic flow of an intersection that includes critical turning movement volume/capacity (v/c) ratios. ICU is related to Level of Service (below) and augments the determination of LOS. An ICU of "1.00" is indicative of an intersection that is at maximum capacity.

(e) **"Level of Service"** or **"LOS"** means a scale that measures the amount of traffic that a roadway or intersection can accommodate, based on the ICU of the intersection and such factors as maneuverability, driver dissatisfaction, and delay.

(f) **"Major Change in Allowable Land Use"** means any proposed amendment, change, or replacement of the General Plan, or of Costa Mesa's zoning ordinance (as defined and contained in Title 13, of the Costa Mesa Municipal Code) or any Specific Plan or Overlay Plan or adoption of a new Specific Plan or Overlay Plan meeting any one or more of the following conditions:

(1) The proposed change in allowable land use would significantly increase traffic, density or intensity of use above the As-Built condition, as defined in (k), in the neighborhood where the major change is proposed.

(2) The proposed change in allowable land use would change a public use to a private use. A Major Change in Allowable Land Use in this category shall include a change of use on:

(i) land designated for a public use or a public right-of-way; provided, however, that the abandonment of a public right of way that is no longer needed, in conformity to the procedural requirements of the Government Code of the State of California, Section 65402 and the Municipal Code of the City of Costa Mesa, shall not be subject to voter approval.

(3) land designated as utility right-of-way;

(4) land donated, bequeathed or otherwise granted to Costa Mesa;

(5) land used or designated for Costa Mesa school property; or

(6) land owned, controlled or managed by Costa Mesa;

(g) **"Minor Change in Allowable Land Use"** means any change in land use that does not meet or exceed the changes as defined in Major Change in Allowable Land Use, as defined in (f).

(h) **"Municipal Code"** or **"Costa Mesa Municipal Code"** means the Municipal Code of the City of Costa Mesa.

(i) **"Overlay Plan" or "Overlay Zone"** mean the same and refer to any zoning code plan covering a currently zoned area of the city that allows a land owner to change from that zone to another to further develop that owner's property. Said Overlay Zone would include certain restrictions or incentives to increase the likelihood of a property owner's desire to develop their property affected by the Overlay Zone.

(j) **"Proponent"** means any individual, firm, association, syndicate, partnership, limited liability company, limited liability partnership, corporation, trust or any other legal entity applying to Costa Mesa for a change in allowable land use. If Costa Mesa itself initiates the change, it shall be deemed the Proponent for the purposes of this ordinance.

(k) **"Significantly Increase"** or **"Significant Increase"** means any one or more of the following increases over or changes compared to the As-Built Condition:

(1) The traffic generated by the proposal:

(i) would generate more than 200 additional Average Daily Trip ends; or

(ii) would increase the V/C ratio of the intersection operating condition in one of the following ways:

a. would increase the V/C ratio to equal to or greater than 0.040 such that after implementation of the major change the LOS would be C or worse;

b. would increase the V/C ratio increase to equal to or greater than 0.020 such that after implementation of the major change the LOS would be D or worse; or

c. would increase the V/C ratio to equal to or greater than 0.010 such that after implementation of the major change the LOS would be E or F or ICU of 0.9 or higher; or

(iii) any increase in ICU at any Costa Mesa intersection from less than 0.9 to 0.9 or higher; or any change in LOS at any intersection or on any corridor from better than "D" to "D" or worse.

(2) For purposes of determining traffic increases attributable to a Major Change in Allowable Land Use, baseline and projected ICU and LOS conditions shall be determined considering weekday peak hour conditions at such time of the year when local public schools are in session.

(3) The density increase generated by the proposal produces more than forty (40) additional residential dwelling units than As-Built conditions.

(4) The intensity of use generated by the project produces more than ten thousand (10,000) additional square feet of retail, office or other nonresidential floor area than As-Built conditions.

(5) The voters declare that dividing a Major Change in Allowable Land Use, that would otherwise require their approval, into partial changes that would not by themselves require their approval obviates their intent to have control over major changes in allowable land use and is contrary to the purposes of this ordinance. For the purposes of this ordinance, a "significant increase" occurs if the combination of a proposed minor change in allowable land use with one or more other minor or major changes in allowable land use within a half mile which were approved within eight (8) years preceding issuance of the notice of

preparation of an environmental impact report or other environmental review document for the proposed minor change, or, where no such notice is issued, within eight (8) years preceding commencement of the City's environmental analysis for the proposed minor change, meets any increase or change threshold for traffic, density or intensity of use defined in this ordinance.

(l) **"Specific Plan"** means any existing Specific Plan in effect as of January 1, 2015 or any Specific Plans as may be amended pursuant to this ordinance or any new Specific Plans which shall be approved by both the Costa Mesa City Council as well as the voters of Costa Mesa pursuant to this ordinance.

Sec.____4. Effective date; Applicability.

(a) This ordinance shall be binding and effective as of the earliest date allowed by law (the "Effective Date"). At its first public meeting following completion of the canvass of votes, the Costa Mesa City Council shall pass the resolution required by Elections Code Section 9266. The following day, the elections official of Costa Mesa shall cause a copy of the complete text of the adopted measure to be filed with the Secretary of State pursuant to Government Code Sections 34459 and 34460.

(b) Pursuant to Elections Code Section 9205, all Major Changes in Allowable Land Use approved by the Costa Mesa City Council on or after the date of publication of the notice of intention to circulate the initiative petition adding this ordinance to the City Municipal Code, shall be subject to the provisions of this ordinance.

Sec.____5. Vote of the Costa Mesa Electorate on a Major Change in an Allowable Land Use.

(a) Each Major Change in Allowable Land Use shall be put to a vote of the Costa Mesa electorate; provided, however, that no such change shall be submitted to the Costa Mesa electorate unless the Costa Mesa City Council has first approved the change pursuant to all state and local laws applicable to approval of land use changes by the legislative body. A Major Change in Allowable Land Use shall become effective only after approval by the Costa Mesa City Council and a majority of the Costa Mesa Electorate voting "YES" on a ballot measure proposing such change at either a regular or special municipal election. An advisory election does not satisfy the voter approval requirement.

(b) The sample ballot materials mailed to the registered voters of Costa Mesa prior to an election shall describe any Major Change in Allowable Land Use in a manner that clearly discloses both the scope and main features of the proposal (including any and all phases) that the Major Change in Allowable Land Use consists of or depends on, and the location and the acreage of the project site. The description shall include the

text of any proposed amendment to the General Plan, to Costa Mesa's zoning ordinance or of any proposed adoption or repeal of, or amendment to, a Specific Plan. The description shall clearly compare the proposal and its traffic impacts both to the As-Built Condition and to existing applicable land use designations and zoning classifications, providing accurate comparative data concerning existing as well as proposed densities (in units per acre) and intensities of use (in square footage, types of use and traffic impacts). If a site-specific development is proposed in connection with a Major Change in Allowable Land Use, and existing densities or intensities of use in such site-specific development are less than the densities or intensities the Major Change in Allowable Land use proposes, the text of the ballot shall clearly disclose the maximum total residential, commercial, industrial or other nonresidential build-out potential, and traffic impacts under build-out, compared to the As-Built Condition. Easily readable maps shall be used to assist the voters in the proposal description. All of the information called for by this subdivision shall be posted on Costa Mesa's website no later than ten (10) days prior to the Costa Mesa City Council's action on a Major Change in Allowable Land Use, and such information shall be updated no later than two business days following the Costa Mesa City Council's action.

(c) For all Major Changes in Allowable Land Use approved by the Costa Mesa City Council on or after the effective date of this ordinance, the resulting election required by this ordinance shall be set for the first regular municipal election following City Council approval of the Major Change in Allowable Land Use; or, by mutual agreement with the Proponent, the Costa Mesa City Council may call a special municipal election, with the cost of the special election borne solely by the Proponent.

(d) The popular vote required by this ordinance shall be in addition to all other applicable review and approval requirements for such Major Change in Allowable Land Use, including environmental review in compliance with the California Environmental Quality Act ("CEQA").

(e) All subsequent City permits and approvals necessary to implement all or part of a Major Change in Allowable Land Use shall conform to the voter-approved change. Under no circumstances shall any subsequent permit or approval authorize, allow or otherwise accommodate higher densities, intensities of use, or trip generation than the densities, intensities and trip generation approved by the Costa Mesa City Council and the voters.

(f) No certificate of occupancy for any structure built as part of a proposal that depends on a Major Change in Allowable Land Use shall be issued until:

(1) All mitigations of traffic impacts, including control signals, increases in right-of-way capacity via widening roads, or other right-of-way or intersection improvements, as may be required by the Costa Mesa City Council, have been

developed and implemented, and the City Engineer has certified completion and operation of all traffic impact mitigations in full compliance with the Costa Mesa City Council's approval action; or

(2) Costa Mesa has received payment of the then current trip fees and a fully enforceable agreement between Costa Mesa and the Proponent specifying any other considerations to implement the appropriate mitigation measures.

(g) Except as provided in Section 6, Paragraph (b) below, any permits or approvals issued without voter approval, where such voter approval is required under this ordinance, shall be null and void.

Sec.____6. Application for Major Change in Allowable Land Use; City Review.

(a) To carry out the purposes of this ordinance, any application for a Major Change in Allowable Land Use shall contain accurate and up-to-date factual data and information, and the subsequent written City review shall include the following (in addition to all other disclosures required under CEQA and Title 13 of the Costa Mesa Municipal Code):

(1) The information required by Section___5, subdivision (b), above;

(2) A site plan or diagram, drawn to scale for any site specific amendment;

(3) A complete, objective discussion of the potential inconsistencies between the proposal that consists of, or depends on, the Major Change in Allowable Land Use, and:

(i) surrounding uses in the neighborhood;

(ii) the General Plan;

(iii) the City's zoning and subdivision ordinances; and

(iv) any applicable Specific Plan or Overlay Plan.

(4) To the extent the proposal differs from existing uses, a full description of the mitigations necessary or recommended for adoption to minimize neighborhood impacts and incompatibility shall be provided.

(b) A complete, objective analysis of the traffic circulation and traffic safety impacts of the proposal that consists of, or depends on, the Major Change in Allowable Land Use. The traffic analysis shall be prepared directly by, or under direct contract to, the City,

and shall make accurate determinations for the purposes of Section___3, subdivision (b)(1), above. ICU and LOS impact analysis shall be provided for all corridors and intersections subject to any significant impacts due to the Major Change in Allowable Land Use. LOS analyses shall use current best practices described in the current Highway Capacity Manual published by the Transportation Research Board, a division of the National Research Council. The traffic analysis shall adequately disclose the direct, the indirect or secondary, and the cumulative impacts of the proposal accounting for all relevant factors, such as proportion of heavy weight vehicular traffic, bus stops, intersection and corridor oversaturation (downstream traffic queuing impacts), pedestrian traffic, side street and driveway entrances and exits, ingress stacking and overflowing, and turn lane queuing and overflow. The traffic analysis also shall identify the mitigations necessary or recommended to reduce the traffic impacts to an ICU below 0.90 or LOS D or better for the corridors and intersections subject to this analysis. The location, nature and adverse construction-phase impacts of the traffic impact mitigations shall be clearly described.

(c) To reduce delay for Proponents, the City's decision-making bodies may review and conditionally approve discretionary permit applications required for a proposal prior to the Costa Mesa electorate's vote on a Major Change in Allowable Land Use on which such proposal depends; provided, however, that no conditional permit approval will become effective unless the related Major Change in Allowable Land Use is passed by the voters and has itself become effective. If the related Major Change in Allowable Land Use is rejected by the voters, such change and all conditional permits shall have no force and effect.

Sec.____7. Exceptions.

(a) This ordinance shall not apply to any Major Change in Allowable Land Use that is limited to allowing the development of a public school or a hospital.

(b) This ordinance shall not preclude completion of a site-specific development that depends on a Major Change in Allowable Land Use approved before the effective date of this ordinance, if before such date, the holder of any permit or other entitlement for use for such development has lawfully and in-good faith acquired a vested right, under state law, to carry out the development to completion.

(c) The provisions of this ordinance shall not apply to the extent that they would violate state or federal laws.

(d) This ordinance shall not be applied in a manner that would result in an unconstitutional taking of private property.

(e) This ordinance shall not apply to affordable housing proposals required by state or federal law.

(f) This ordinance shall not apply to any Major Change in Allowable Land Use of property with legal non-conforming residential units that were occupied on the date of publication, pursuant to Elections Code Section 9205, of the notice of intention to circulate the initiative petition adding this ordinance to the Municipal Code, so long as the proposed change in allowable land use meets all the following conditions:

(1) the existing residential units are rendered conforming under the proposed change;
(2) the proposed change does not allow an increase in the number of residential units on the property;
(3) the proposed change does not create a Significant Increase in traffic or intensity of use; and
(4) the proposed change does not create a reduction in open space or in any set back.

Sec.____8. Relationship to Municipal Code.

If any provision of this ordinance conflicts with other provisions contained in the Costa Mesa Municipal Code, the provisions of this ordinance shall supersede any other conflicting provision.

Sec.____9. Amendments.

No provision of this ordinance may be amended or repealed except by a vote of the people of Costa Mesa.

Sec.____10. Judicial Enforcement.

Any aggrieved person shall have the right to bring an action to enjoin any violation of this ordinance or to enforce the duties imposed on Costa Mesa by this ordinance.

Sec.____11. Construction.

This ordinance shall be liberally construed to accomplish its purposes. Nothing herein shall be construed to make illegal any lawful use being made of any land in accordance with City land use and zoning regulations in force before the effective date of this ordinance.

Sec.____12. Consistency with Other Ballot Measures.

If another ballot measure is placed on the same ballot as this measure and deals with the same subject matter, and if both measures pass, the voters intend that both measures shall be put into

effect, except to the extent that specific provisions of the measures are in direct conflict. In the event of a direct conflict, the measure which obtained more votes will control as to the directly conflicting provisions only. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure.

Sec.____13. Severability.

If any section, subdivision, clause, sentence, phrase or portion of this ordinance is declared invalid by a court of competent jurisdiction, the remaining sections, subdivisions, clauses, sentences, phrases and portions shall remain valid and enforceable. The voters declare that they would have passed all sections, subdivisions, clauses, sentences, phrases and portions of this ordinance without the section, subdivision, clause, sentence, phrase or portion declared invalid by a court of competent jurisdiction.

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