ATTACHMENT 3

RESOLUTION NO. 16-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, CALLING AND GIVING NOTICE FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2016, FOR THE SUBMISSION TO THE VOTERS OF A PROPOSED ORDINANCE

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, pursuant to authority provided by statute a petition has been filed with the legislative body of the City of Costa Mesa, California, signed by more than ten percent (10%) of the number of registered voters of the city to submit a proposed ordinance entitled: An Initiative Requiring Changes in Use at Fairview Park be Subject to Voter Approval; and

WHEREAS, the City Clerk has caused to be examined, through the office of the Orange County Registrar, the records of registration and is in receipt of that certain "Certificate as to Verification of Signatures on Petition," from the Orange County Registrar, has examined such certificate and has accepted as true and correct the findings contained therein and, thereby, ascertained that the petition is signed by the requisite number of voters; and

WHEREAS, the City Council has not voted in favor of the adoption of the ordinance; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed ordinance to the voters;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true, correct, and adopted by the City Council as if set forth in full.

SECTION 2. That pursuant to the requirements of the laws of the State of California relating to general law cities there is called and ordered to be held in the City of Costa Mesa, California on November 8, 2016 a General Municipal Election for the purpose of submitting the following proposed ordinance:

Measure __: An Initiative Requiring Changes in Use at Fairview Park be Subject to Voter Approval	**Response**	**Vote**
Shall an ordinance requiring voter approval for 1) construction of playgrounds, athletic fields, platforms/retaining walls for vista overlook, stairways to provide access to bluffs, new restrooms, parking lots, museum/multipurpose building, boardwalk and pedestrian bridges; 2) extended park hours for community events; 3) installation of parking lot lighting; or 4) other permanent structures at Fairview Park be adopted?	Yes	
	No	

SECTION 3. That the proposed complete text of the ordinance submitted to the voters is attached as Exhibit A.

SECTION 4. That the vote requirement for the measure to pass is a majority (50% +1) of the votes cast.

SECTION 5. That the ballots to be used at the election shall be in the form and content as required by law.

SECTION 6. That the City Clerk is authorized, instructed, and directed to coordinate with the County of Orange Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 7. That the polls for the election shall be open at 7 a.m. of the day of the election and shall remain open continuously from that time until 8 p.m. of the same day when said polls shall be closed, pursuant to Election Code Section 10242, except as provided in Section 14401 of the Elections Code of the State of California.

SECTION 8. That the Orange County Registrar of Voters is authorized to canvass the returns of the General Municipal Election.

SECTION 9. That in all particulars not recited in this resolution, said election shall be held and conducted in accordance with the provisions of law regulating the statewide election.

SECTION 10. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give such further or additional notice of the election, in the time, form, and manner required by law.

SECTION 11. The Costa Mesa City Council hereby requests that the Orange County Registrar of Voters conduct all necessary services related to the Costa Mesa General Municipal Election. Pursuant to Elections Code Section 10002, the Finance Director, or his/her designee, is hereby authorized to reimburse the County for the actual cost incurred in conducting the election upon receipt of a bill stating the amount due as determined by the elections official.

SECTION 12. That the City Clerk shall certify to the passage and adoption of this resolution.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Costa Mesa on this 21st day of June, 2016.

_____

Stephen M. Mensinger, Mayor

ATTEST:

Brenda Green, City Clerk

APPROVED AS TO FORM:

Thomas Duarte, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that foregoing Resolution No. 16-40 was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 21st day of June, 2016, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 22nd day of June, 2016.

BRENDA GREEN, CITY CLERK

Attachment: Exhibit A – Proposed Ordinance

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS.

AN ORDINANCE TO GIVE THE PEOPLE OF COSTA MESA A VOTE TO DETERMINE WHAT SIGNIFICANT CHANGES TO FAIRVIEW PARK MAY BE MADE.

RECEIVED
CITY CLERK
15 NOV -9 AM 11:05
CITY OF COSTA MESA
BY

The proposed ordinance reads as follows:

The people of Costa Mesa declare the following:

1. Parks, wildlife habitat, and open-space lands are vital to maintaining the quality of life in Costa Mesa. As the City's population increases, it is of growing importance to provide parks and recreational opportunities to the residents of Costa Mesa.

2. Preservation of Costa Mesa's unique natural heritage is in the interest of all Costa Mesa residents and visitors.

3. Fairview Park is a unique recreational resource and should be preserved and restored as such, in perpetuity, for the public to enjoy.

4. The intent of the City of Costa Mesa in its purchase of Fairview Park as documented in the 1986 purchase agreement and grant deed, and demonstrated by the development and implementation of the Fairview Park Master Plan was to preserve and protect the last of Costa Mesa's natural open space.

5. There is a need to protect Fairview Park from alterations that reduce the tangible and intangible benefits to the public while visiting and exploring this natural, open space.

6. Fairview Park is a passive use park, developed to promote activities such as walking, hiking, jogging, running, bicycling, glider flying, kite flying, dog walking, picnicking, small group physical activities and similar uses.

7. Fairview Park, historically, has not been a site for organized sports activities that require amenities to be developed or built to meet the general need of those sports activities.

8. Currently, Fairview Park provides essential habitat for species of special significance, some of which are federally protected species which are in danger of extinction. The Park contains plants and animals, archeologically sensitive sites, and extremely rare vernal pools which need to be protected for future generations.

9. Once a change is instituted, and the natural land is unnaturally altered, it will be lost for future generations.

10. The registered voters of Costa Mesa should have the right to decide whether a change in Fairview Park as previously or currently proposed, but not constructed, should be allowed.

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

Sec.___1. Code Amendment. This Ordinance is added to and amends the Costa Mesa Municipal Code as follows and supersedes any provisions that are inconsistent with this ordinance.

Sec.___2. Purpose. The purpose of this ordinance is to:

A. Keep Fairview Park as a natural and open space as documented in the Fairview Park Master Plan as defined below.

B. Give the citizens of Costa Mesa a voice in determining whether the development of a project beyond the As Built condition of Fairview Park shall be allowed or not.

C. Ensure that the Costa Mesa officials provide timely, accurate and unbiased review of any such proposed development or change to Fairview Park.

D. Ensure that the Citizens of Costa Mesa receive all necessary and accurate environmental and relevant information needed to cast an informed vote on any such proposed development or change.

Sec.___3. Definitions. The definitions set forth in this section apply to the provisions of this ordinance only and do not affect any other provisions of law.

A. **"Significant Change"** means:

1. any of the following activities within Fairview Park:
   i. expansion or intensification of uses, or
   ii. expansion of current amenities, or
   iii. addition of new amenities, or
   iv. expansion of park hours, or
   v. grading, or
   vi. expansion of any parking lot's footprint, or
   vii. laying of foundations, or
   viii. building of permanent Structures, or,
   ix. installation of water, electric, gas, or sewer lines or delivery systems, or
   x. installation of additional lighting, or,
   xi. alterations that use geotechnical or structural analyses.

2. The following shall not be considered a "Significant Change" under this ordinance:
   i. installation of trash cans, park benches, picnic tables, or,
   ii. installation of a concrete pad applied to any such trash cans, park benches, or picnic tables, used to provide

stability and/ or theft deterrence, so long as the upper surface area of such pad does not substantially exceed the outer footprint dimensions of said trash can, park bench or picnic table, or

iii. installation of ADA compliant rest areas along existing trails and any level concrete pads needed for those rest area as long as the coverage area of those concrete pads are not in excess of the minimum required dimensions for ADA compliance and are spaced from other such pads a minimum of one hundred (100) linear feet or per ADA required spacing intervals.

B. **"As-Built Condition"** means the amenities and alterations that have been built in Fairview Park as of the effective date of this ordinance.

C. **"Fairview Park"** means that area as defined by the City of Costa Mesa in the November 2008 Fairview Park Master Plan, encompassing all parts of the park area designated as "Fairview Park" and any lands currently included in Talbert Park (also known as Talbert Regional Park and Talbert Nature Preserve) if ever acquired by the City of Costa Mesa.

D. **"Fairview Park Master Plan"** means the document and its amendments approved by the City of Costa Mesa to guide the continuing and future alterations to Fairview Park that have been in effect since November 2008.

E. **"Preservation" or "Preservation efforts"** means any activity whose purpose is to protect the natural state of Fairview Park. Those activities could include, but are not limited to, improved signage of an educational or warning nature, educational activities, and activities intended to protect vernal pools, archaeological sites, habitat or biological resources, including installation of protective fencing.

F. **"Restoration"** means any act or activity whose purpose is to restore any part of Fairview Park to its natural non-developed state. Those activities could include: the removal of non-native or invasive plants, replanting of native habitat areas utilizing the on site collection of seeds and native plant materials, and improvement of the watersheds to enhance the proper flow of water in support of endangered species of plants or animals and the habitat that supports their survival.

G. **"Maintenance"** means any activity whose purpose is to keep the park amenities in a neat, clean, serviceable and safe condition for the public's use. Those activities would include, but are not limited to: mowing of turf areas, painting, replacement of broken lights and bulbs, repair of restroom facilities, rehabilitation and restriping of existing

roads and parking lots, repair of any existing Structures, and maintenance of existing paths or trails to allow safe access and use by emergency response vehicles.

H. **"Natural Lands"** means an area of relatively undeveloped land which:

1. has substantially retained its characteristics as provided by nature or has been substantially restored, or which can be restored, to a near-natural condition, and which has valuable wildlife, scenic, open-space, or park resources, or a combination thereof, or
2. meets the definition of open-space land in Section 65560 of the California State Government Code.

I. **"Park"** means a tract of land with outstanding scenic, natural, open-space, or recreational aspects, set apart to conserve natural, scenic, cultural, or ecological resources for present and future generations, and to be used by the public as a place for rest, recreation, education, exercise, inspiration, or enjoyment.

J. **"Structure"** means something constructed for occupancy or use, whether installed on, above or below ground and any connected fixtures. Examples of structures include, but are not limited to:

1. buildings and any above ground or below ground electrical, water, gas, or sewage facilities or delivery systems needed or used by those buildings, or
2. roads paved with concrete or asphalt, or
3. curbs constructed of concrete or asphalt, or
4. lamp stands or poles, or
5. pergolas, or gazebos, or
6. parking lots,
7. retaining walls, or
8. microwave or communication towers.

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 alterations to Fairview Park after 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 any alteration to Fairview Park.

A. Any Significant Change, except those listed in Sec. 6 below, to Fairview Park shall be put to a vote of the Costa Mesa Electorate, provided, however, that no such Significant Change shall be submitted to the Costa Mesa electorate unless it has first been approved by the appropriate governing body. A Significant Change to Fairview Park shall become effective only after approval by the appropriate governing body and a majority of the Costa Mesa electorate who are participating in an election proposing such Significant Change, 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 Significant Change to Fairview Park in a manner that clearly discloses both the scope and main features of the entire proposal (including any development or construction phases) that the Significant Change to Fairview Park includes, consists of or depends on, and the location and the acreage that will be affected by the Significant Change. The description shall clearly compare the proposal to the As-Built condition. Easily readable maps shall be provided to assist the voters in understanding the description of the proposed Significant Change. All of the information called for by this subdivision shall be posted on Costa Mesa's website no later than thirty (30) days prior to an electorate election to approve or deny said change.

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

Sec.___6. Exceptions.

A. This ordinance shall not apply to any Significant Changes to Fairview Park that are made for:

1. restoration purposes, or;
2. preservation purposes, or;
3. maintenance purposes, or;
4. public safety, or;
5. to expand the size of Fairview Park, such as by City acquisition of lands currently contained in Talbert Park; or
6. Significant Changes as directed in the Fairview Park Master Plan, that is in effect as of January 1, 2015, as long as that direction does not require the construction of any permanent structure.

B. This ordinance shall not apply to any Significant Change to Fairview Park that is legally approved and completed prior to the effective date of this ordinance.

Sec.___7. **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.___8. **Amendments.** No provision of this ordinance may be amended or repealed except by a vote of the People of Costa Mesa.

Sec.___9. **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.___10. **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 the Fairview Park Master Plan and City land use and zoning regulations in force before the effective date of this ordinance, or to prohibit any activities required by State or Federal Law.

Sec.___11. **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.___12. **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.

Sec.___13. **Acts Beyond Control.** Nothing in this ordinance shall be construed to bring action against the City for any injury to or change resulting from any natural cause beyond the control of the City, including without limitation, fire, flood, storm and earth movement.

Sec.___14. **Prohibited Uses:** Any activity or use of Fairview Park inconsistent with the purpose of this ordinance is prohibited.