CITY COUNCIL AGENDA REPORT

MEETING DATE: June 21, 2016 **ITEM NUMBER: NB-3**

SUBJECT: INITIATIVE PETITION ENTITLED, "AN INITIATIVE REQUIRING CHANGES IN USE AT FAIRVIEW PARK BE SUBJECT TO VOTER APPROVAL" QUALIFYING FOR THE BALLOT; CONSIDERATION OF ADOPTING NEW ORDINANCE, OR ORDERING REPORT

DATE: JUNE 10, 2016

FROM: CITY CLERK'S OFFICE; CITY ATTORNEY'S OFFICE;

PRESENTATION BY: BRENDA GREEN, CITY CLERK
BART MEJIA, CITY ENGINEER
YOLANDA SUMMERHILL, DEPUTY CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: BRENDA GREEN, CITY CLERK, 714-754-5225

RECOMMENDATION:

A. Staff recommends that the City Council:

1. Accept the Certificate of Sufficiency issued by the County of Orange Registrar of Voters regarding, "An Initiative Requiring Changes in use at Fairview Park be Subject to Voter Approval" (Attachment 1).

B. Further, it is recommended that the City Council approve one of the following options:

1. Adopt the ordinance immediately, without alteration, or within 10 days after it is presented (Attachment 2); or

2. Order placement of the measure on the November 8, 2016 consolidated municipal election by adopting the following resolutions:

   a. Resolution 2016-40: 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 entitled, "An Initiative Requiring Changes in use at Fairview Park Be Subject to Voter Approval" (Attachment 3); and

   b. Adopt Resolution 2016-41: Requesting the Orange County Board of Supervisors to Consolidate a General Municipal election to be held on November 8, 2016, for the purpose of submitting to the voters of the City of Costa Mesa a question relating to the adoption of a proposed ordinance

entitled, An Initiative Requiring Changes in use at Fairview Park Be Subject to Voter Approval" (Attachment 4); and

c. Adopt Resolution 2016-42: Authorizing written arguments for or against the proposed ordinance "An Initiative Requiring Changes in use at Fairview Park Be Subject to Voter Approval", setting priorities for filing written arguments, determining the authors of the written arguments, and directing the City Attorney to prepare an impartial analysis (Attachment 5); or

3. Order a report pursuant to Election Code § 9212 at the regular meeting at which the certification of the petition is presented; or

4. Consider providing Staff with direction as to the preparation of an alternative measure.

BACKGROUND:

The procedures for placing an initiative to enact an ordinance on the ballot are set forth in California Election Code §§ 9200-9226.

On November 9, 2015, the City Clerk's office received an initiative measure entitled "An Ordinance To Give The People Of Costa Mesa A Vote To Determine What Significant Changes To Fairview Park May Be Made." In accordance with Elections Code Section 9203 the City Attorney prepared a ballot title and summary of the Initiative. The Proponents of the initiative published the Notice of Intent to Circulate and were legally permitted to circulate the petition November 29, 2015 to May 21, 2016. The petition required 4,995 valid signatures to qualify for the 2016 General Election ballot. At the time the Notice of Intention was filed, the voter registration report on file with the California Secretary of State revealed 49,959 registered voters within Costa Mesa. California Election Code § 9215 required that an initiative petition be signed by at least 10% of the total number of eligible registered voters to qualify for the next General Municipal Election.

On May 2, 2016, the Proponents of the initiative petition filed the signed petitions. The City Clerk conducted a prima facie review and determined there was a sufficient number of signatures to proceed: 7135 total tally. On May 2, 2016, the petition was delivered to the County of Orange Registrar of Voters Office for signature verification. The Orange County Registrar of Voters has examined the records of voter registration for the City of Costa Mesa and has determined that the initiative petition has been signed by no less than 10% of City of Costa Mesa registered voters. Therefore the initiative petition is sufficient to be certified to the City Council. The Election Code requires the City Clerk to certify to the City Council any initiative petition, which qualifies for an election. (Elections Code §§ 9211 & 9114). Refer to Attachment No. 1 for Certification.

The City Council has the option to either adopt the Initiative or place the measure on the ballot for the November 8, 2016 statewide general election. Alternatively, the City Council may abstain from any decision-making on the ballot measure at this time and, instead,

direct staff to prepare a report to determine the impacts of the measure before deciding whether to adopt the initiative and/or place it on the ballot. Finally, the City Council may, in addition to placing this measure on the ballot, elect to place an alternate measure on the ballot.

ANALYSIS:

In sum, the initiative makes certain changes in land use at Fairview Park subject to voter approval including expansion or intensification of uses, new or expanded amenities, new or expanded parking lots, grading, new foundations or permanent structures, installation of lighting or utility delivery systems and/or extension of park hours.

The Initiative provides exceptions to the voter approval requirement for (1) restoration, (2) preservation, (3) maintenance, (4) public safety, (5) expanding Fairview Park's size, (6) improvements pursuant to the Fairview Park Master Plan which do not require installing permanent structures, and (7) certain changes approved and completed before the initiative's effective date.

In reviewing the Fairview Park Master Plan, Public Services Department determined the following provisions of the Fairview Park Master Plan could not be implemented without voter approval:

Fairview Park, east of Placentia Avenue:

- Platforms/retaining walls for vista overlook area
- Museum/multipurpose building
- Constructing two paved parking lots to accommodate a total of 131 cars
- Playground

Fairview Park, west of Placentia Avenue:

- Covered picnic areas
- Bus turnaround
- Stairs to allow bluff access
- Grading bluffs to prevent erosion
- New restrooms
- Playground
- Boardwalk and pedestrian bridge

Other examples of activities that would be prohibited unless voter approval is obtained include:

- Completing structures that were under construction when the initiative became effective
- Installing concrete curbs
- Expanding existing buildings
- Installing additional lighting
- Expanding park hours
- Installing new trails not listed in the Fairview Park Master Plan

- Installing water, electric, gas or sewer lines
- Expanding parking lots
- Constructing retaining walls
- Increasing the number of community events such as concerts-in-the-park, seasonal festivals or races
- Increasing staffing to facilitate a greater number of park visitors
- Installing pergolas and gazebos
- Providing rest areas along trails that are larger than the minimum required by law, or are within 100 feet of one another

FUNDING IMPACTED BY INITIATIVE

The following grant awarded to the City of Costa Mesa would have to be returned if the Initiative is adopted.

Granting Authority	Amount	Project Description
OCTA, Bicycle Corridor Improvement Program	$835,959	Fairview Park Multipurpose Trail

The City received $200,000 from California State Parks for Habitat Conservation Fund to restore the north bluff trail and habitat restoration. At this time, staff believes that this grant may still be utilized if the Initiative is adopted. However, Public Services will confirm with California State Parks that no permanent structures potentially prohibited under the Initiative would require the City to return those funds.

Election Code Requirements

Pursuant to Elections Code § 9214 if an initiative petition is signed by not less than 10 percent of the registered voters of a city, the legislative body shall do one of the following:

a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or

b) Submit the ordinance, without alteration, to the voters pursuant to subdivision (b) of Section 1405; or

c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b).

Elections Code § 9212 ["Referral of proposed initiative measure to city agency for report"] ("EC 9212 Report") provides that the City Council may refer the proposed initiative measure to any city agency or agencies for a report on any matter the City Council requests to be in the report, including but not limited to:

1. Its fiscal impact; and/or

2. Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code; and/or

3. Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs; and/or

4. Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses; and/or

5. Its impact on the community's ability to attract and retain business and employment; and/or

6. Its impact on the uses of vacant parcels of land; and/or

7. Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization; and or

8. Any other matters that the legislative body wishes to be considered in the report.

Elections Code Section 9212 requires the report to be presented to the City Council no later than 30 days after the elections official certifies to the legislative body the sufficiency of the initiative petitions.

This staff report covers many of the areas that the EC 9212 Report would address. For example, the projects listed at the beginning of the Analysis that would require voter approval essentially cover 3, 4 and 7 above. Additionally, the "Grants Impacted by the Initiative" addresses fiscal impacts as well as costs listed in the Fiscal Review. However, if there are additional areas that City Council would like to consider, staff can provide that information.

FISCAL REVIEW:

The cost for the signature verification of the initiative by the Orange County Registrar of Voters Office is $20,485.00. The estimated election costs to add the initiative to the consolidated general election is $10,000.00.

If adopted, the City would save monies on projects no longer authorized under the initiative. Additionally, grants authorized prior to the adoption of the initiative would have to be rescinded and/or returned to the granting authority. Finally, Election Code Section 9212 report and/or an alternative measure would require approximately 80 hours of staff time and 40 hours of City Attorney time.

At present the estimated costs of implementing the ordinance is indeterminate.

LEGAL REVIEW:

The City Attorney's office has reviewed this report and has approved it as to form and legal content.

YOLANDA SUMMERHILL
Deputy City Attorney

BRENDA GREEN
City Clerk

RICHARD L. FRANCIS
Assistant CEO

ATTACHMENTS:
1. Certificate of Sufficiency
2. Proposed Ordinance & Ballot Title and Summary
3. Resolution 16-40
4. Resolution 16-41
5. Resolution 16-42