



# *CITY COUNCIL AGENDA REPORT*

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**MEETING DATE:** July 5, 2016

**ITEM NUMBER: OB-3**

**SUBJECT:** PROPOSED CITY COUNCIL SPONSORED MEASURE ADDRESSING FUTURE DEVELOPMENT AND DEVELOPMENT-FUNDED OPEN SPACE AND RECREATION

**DATE:** JUNE 29, 2016

**FROM:** PATRICK MUÑOZ, SPECIAL COUNSEL

**PRESENTATION BY:** PATRICK MUÑOZ, SPECIAL COUNSEL

**FOR FURTHER INFORMATION CONTACT:** BRENDA GREEN, CITY CLERK, 714-754-5221

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## **RECOMMENDED ACTION:**

Staff recommends that the City Council:

1. Consider the proposed Council initiated ballot measure (the "Measure") (Attachment 1) that would directly compete with the Initiative for Voter Approval on Certain Development Projects (the "Initiative"); and
2. Provide direction on whether to place the proposed Measure on the November 8, 2016 ballot by adoption of the following resolutions:
  - a. Adopt Resolution 2016-55: 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 City Council sponsored proposition for the enactment of an ordinance, which will be referred to as the "Measure for Sensible Community Development and Development-Funded Open Space and Recreation," entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, ORDERING, AND GIVING NOTICE OF THE SUBMISSION TO THE VOTERS OF A PROPOSITION FOR THE ENACTMENT OF AN ORDINANCE RELATING TO FUTURE DEVELOPMENT AND DEVELOPMENT-FUNDED OPEN SPACE AND RECREATION AT THE NOVEMBER 8, 2016 CONSOLIDATED REGULAR ELECTION; (Attachment 2) and

- b. Adopt Resolution 2016-56: 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 referred to as the “Measure for Sensible Community Development and Development-Funded Open Space and Recreation,” (Attachment 3); and
- c. Adopt Resolution 2016-57: Authorizing written arguments for or against the proposed ordinance referred to as the “Measure for Sensible Community Development and Development-Funded Open Space and Recreation, setting priorities for filing written arguments, determining the authors of the written arguments, and directing the City Attorney to prepare an impartial analysis (Attachment 4).

3. Provide direction on informational mailers.

**BACKGROUND:**

On June 29, 2015, the City Clerk received a voter initiative petition entitled “Initiative to Require Voter Approval on Certain Development Projects” (the “Initiative”). On March 15, 2016, the City Council accepted the City Clerk’s report declaring sufficiency of the petition for the Initiative and ordered a report on the potential impacts of the Initiative per Elections Code § 9212, which was presented to the City Council at its April 5, 2016 meeting. As stated in that report, the Initiative would require that proposed amendments, changes, or replacements of the General Plan, Zoning Code, Specific Plan(s), or Overlay Plan(s) be submitted to the voters after the “City Council has first approved the change pursuant to all state and local laws applicable to the approval of land use changes by the legislative body” if the proposed change(s) also included (a) a “significant increase in traffic, density or intensity of use above the As Built Conditions”; or (b) “change a public use to a private use.” The Initiative, if approved, would only amend the text of the City’s Municipal Code, and would not alter the General Plan.

At its April 5, 2016 City Council meeting, the City Council declined to adopt the Initiative, and instead ordered the Initiative to be placed on the ballot for the general election on November 8, 2016 to be considered by the City’s voters.

At the April 5, 2016 meeting, the City Council also directed staff to present the City Council with a Council-sponsored ballot measure as a counter to the Initiative for its consideration pursuant to Election’s Code 9222. Section 9222 authorizes the Council to submit to the voters a proposition to enact any ordinance. Council requested a draft of a measure that would essentially allow the public to vote “yes” or “no” on either (i) the City’s current development standards (i.e., its General Plan, Specific Plans, Overlay Plans, and Zoning Code) with the addition of a development-funded open space and recreation mitigation impact fee, or (ii) the Initiative and the changes it would implement on existing development standards. Attached for the Council’s consideration is the proposed Council-sponsored measure, which is referred to as the “Measure for Sensible Community

Development and Development-Funded Open Space and Recreation.” If the City Council chooses to adopt the resolution and place the Measure on the ballot, it would directly compete with the Initiative on the November 8, 2016 ballot.

### **ANALYSIS:**

If the Measure is adopted, the voters will by ordinance adopt the City’s existing zoning and related land use provisions. This would include the City Council’s recently approved 2015-2035 General Plan, adopted on June 21, 2016. It would also include the following (including any subsequent amendments): the Baker Street and Paularino Avenue Specific Plan (SP-78-02); the Placentia/Hamilton/Pomona/19<sup>th</sup> Specific Plan (SP-79-01); the Bristol Street Specific Plan (SP-82-01); the East 17<sup>th</sup> Street Specific Plan (SP-84-01); the Harbor/Bernard/Parsons/Ford Specific Plan (SP-84-02); the North Costa Mesa Specific Plan (SP-94-01); the Avocado Street Specific Plan (SP 86-01); the Newport Boulevard Specific Plan (SP-96-01); the Costa Mesa Theater & Arts District Plan (SP-03-01); the SoBECA Urban Plan (SP-05-06); the 19 West Urban Plan (SP-05-07); the Mesa West Bluffs Urban Plan (SP-05-08); the Mesa West Residential Ownership Urban Plan (SP-05-09); and Title 13 of the Costa Mesa Municipal Code (Planning, Zoning and Development).

If adopted, the Measure would also amend the City’s Municipal Code to add a development impact fee known as the Open Space and Public Park Impact Fee which would be applicable to all new development north of the 405 freeway and west of Fairview Drive. The Fee is intended to offset the impact that new development has upon recreational opportunities (both the creation of new users and the elimination of opportunities to create new recreational opportunities). It is to be used by the City for the purpose of increasing active recreation, open space and public park facilities within the City. While not specifically tied to the development of Fairview Developmental Center upon its anticipated closure, the Fee would be available to fund open space and recreational activities at that site. The Measure sets the Fee at the maximum amount permissible pursuant to the Mitigation Fee Act, and requires compliance with the requirements of that Act (i.e., a nexus study); but caps the Fee at \$1.50/square foot of new development.

The Measure would also result in the creation of an Open Space & Recreation Advisory Committee to advise the City Council on expenditures of the new Open Space and Public Park Impact Fee. The Committee would be comprised of seven (7) members of the public who are appointed by the City Council as follows: (1) the Mayor, (2) one City Councilmember chosen by the City Council, (3) one representative of a Costa Mesa youth football organization chosen by the City Council, (4) one representative of a Costa Mesa youth baseball organization chosen by the City Council, (5) one representative of a Costa Mesa youth soccer organization chosen by the City Council; (6) one representative of the Newport Mesa Unified School District (“NMUSD”) chosen by the NMUSD trustees, and (7) one member from and environmental group chosen by the City Council.

## CEQA

The adoption of the Measure, which merely ratifies previously approved planning and zoning regulations and thus maintains the status quo, is not a “project” under the California Environmental Quality Act (“CEQA”) (Pub. Res. Code §§ 21000 et seq.; 14 Cal. Code Regs. § 15378(a)(2)) because it does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even in the event that the adoption of the Measure was considered a “project” as that term is defined by CEQA, it can be seen with certainty that there is no possibility that the adoption of the Measure could have a significant effect on the environment because the Measure is merely the continuation of existing general plan, specific plan and zoning code provisions in the City. Hence, approval of the Measure (i) is exempt from CEQA because it is not a “project” under CEQA, and (ii) it is exempt under the “common-sense” exemption set forth in section 15061(b)(3) of the CEQA Guidelines

## INFORMATIONAL MAILERS

Staff is requesting direction from Council on whether informational mailers on the proposed measure should be prepared and how many. Each mailer would cost approximately \$8,400.00.

## FISCAL REVIEW:

The estimated cost of adding the proposed measure to the November 8, 2016 consolidated general election is \$10,000. The cost for citywide mailings would be approximately \$8,400 per mailing. The cost to the law firm of Rutan and Tucker LLP, for preparation of the measure, is not to exceed \$20,000.

## LEGAL REVIEW:

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

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TARQUIN PREZIOSI  
Deputy City Attorney

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BRENDA GREEN  
City Clerk

**A full copy of the ordinance including attachments, is available for review on-line and in the City Clerk’s office.**

ATTACHMENTS: [1. Proposed Initiative Ordinance](#)  
[2. Resolution 2016-55 \(excluding General Plan, Zoning Code, Overlay Plans and Specific Plans](#)  
[3. Resolution 2016-56](#)  
[4. Resolution 2016-57](#)