



CITY COUNCIL AGENDA REPORT

MEETING DATE: July 12, 2016

ITEM NUMBER: NB-1

SUBJECT: PROPOSED CITY COUNCIL SPONSORED MEASURE ADDRESSING FUTURE DEVELOPMENT AT FAIRVIEW PARK

DATE: JULY 12, 2016

FROM: PATRICK MUÑOZ, SPECIAL COUNSEL

PRESENTATION BY: PATRICK MUÑOZ, SPECIAL COUNSEL

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

RECOMMENDED ACTION:

That, should it desire to proceed with a Council initiated ballot measure (the "Measure") which would directly compete with the initiative known as An Initiative Requiring Changes in Use at Fairview Park be Subject to Voter Approval (the "Initiative), the City Council:

1. Adopt Resolution 16-62 (Attachment 2) 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 "Costa Mesa Measure Prohibiting Athletic Fields at Fairview Park"; and
2. Adopt Resolution 16-63: (Attachment 3) 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 "Costa Mesa Measure Prohibiting Athletic Fields at Fairview Park"
3. Adopt Resolution 16-64: (Attachment 4) Authorizing written arguments for or against the proposed ordinance referred to as the "Costa Mesa Measure Prohibiting Athletic Fields at Fairview Park," setting forth priorities for filing written arguments, determining the authors of the written arguments, and directing the City Attorney to prepare an impartial analysis.
4. Provide direction on informational mailers.

BACKGROUND:

On November 9, 2015, the City Clerk received a voter initiative petition 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 City Attorney gave the Initiative a new title called “An Initiative Requiring Changes in Use at Fairview Park be subject to Voter Approval” (the “Initiative”). On June 21, 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 July 5, 2016 meeting. As stated in that Staff Report, the Initiative, if adopted, would require voter approval of all proposed changes in uses or activities allowed at Fairview Park, including but not limited to the construction of new (or remodeling existing) bathrooms, trails, picnic areas, parking lots, and/or changes in the hours of operation or the amount of community events at the Park. Staff believes the Initiative, if approved, might also effectively preclude the City from converting existing facilities into ADA compliant facilities or constructing new ADA improvements to allow compliance with the ADA, and/or establishing new educational or other community events at the Park without a vote of the people. It would only amend the text of the City’s Municipal Code, and would not alter the General Plan.

At its June 21, 2016 City Council meeting, the City Council declined to adopt the Initiative, and instead requested a Report pursuant to Elections Code Section 9212. Thereafter, at its July 5, 2016, Council meeting, the Council adopted a Resolution calling for the Initiative to be placed on the ballot for the general election on November 8, to be considered by the City’s voters. At the same meeting, the City Council 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. In particular, Council requested a draft of a measure that would essentially prohibit athletic fields within Fairview Park without a vote of the people. Attached for the Council’s consideration is the proposed Council-sponsored measure (Attachment 1), which is referred to as the “Measure Prohibiting Athletic Fields at Fairview Park Without Voter Approval.” If the City Council chooses to adopt the resolutions attached 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 amend the City’s Municipal Code to provide that athletic fields are prohibited in Fairview Park without voter approval. Athletic fields are defined as “a piece or part of a piece of property that is developed, constructed, or otherwise improved for the purpose of facilitating organized outdoor team sports, including but not limited to lacrosse fields, baseball fields, soccer fields, football fields, or volleyball courts, but expressly not including pathways or trails which might have multiple purposes including bicycling, walking or running.”

The Measure provides that Passive Recreational Uses are permitted at Fairview Park, without a vote of the people. It defines this term as “uses generally permitted by the City’s Zoning Code in Open Space Zoning Districts, and typically occurring in parks, except Athletic Fields, and shall include but not be limited to pathways, playgrounds, bicycle trails, viewing areas, and other similar improvements related to environmental, scenic, or recreational purposes.” The result of this Measure, if adopted, would be to allow for playgrounds, picnic areas, bike trails, bus access ways, parking lots, viewing areas and other improvements identified in the Fairview Park Master Plan to be installed without voter approval. Moreover, it would enable the City to adjust park hours, add new educational or community events, improve existing facilities or construct new facilities intended to allow compliance with the ADA, and expend the approximate \$800,000 in grant proceeds it received from OCTA for the purpose of improving bicycle pathways at the Park without voter approval.

CEQA

The adoption of the Measure, which merely prohibits the installation of athletic fields without voter approval, 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 simply prohibits certain types of development at Fairview Park. 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. Notably, in the event that the Measure passes, and the voters subsequently approve an Athletic Field at the Park, CEQA review will likely be necessary at that point in time.

INFORMATIONAL MAILERS

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

FISCAL IMPACT

The cost to place the initiative on the November 2016 ballot is estimated at \$10,000.00 and is included in the Fiscal Year 2016-17 budget, Elections Consulting. The cost for citywide mailings would be approximately \$8,400.00 per mailing. The cost for preparation of the measure is not to exceed \$20,000 by the law firm of Rutan and Tucker LLP,.

LEGAL REVIEW:

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



PATRICK MUNOZ
Special Counsel



BRENDA GREEN
City Clerk

- ATTACHMENTS:
1. [Proposed Ordinance](#)
 2. [Resolution 16-62 – Calling Election](#)
 3. [Resolution 16-63 – Consolidating Election](#)
 4. [Resolution 16-64 – Arguments & Impartial Analysis](#)