



OFFICE OF THE CITY ATTORNEY

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3403 www.cupertino.org

TO: Honorable Mayor and Members of the City Council

FROM: Randolph Stevenson Hom, City Attorney

SUBJECT: Options for Placing Initiatives on a Ballot

DATE: March 31, 2016 City Council Meeting

On March 31, 2016, Council will consider whether to adopt the Cupertino Citizens for Sensible Growth Initiative (Initiative) or to put it on the ballot. This Memorandum discussed the City Council's legal options when placing an initiative on a ballot.

I. Background

At its meeting on January 19, 2016, City Council directed staff to prepare a Report on the effects of the Initiative pursuant to Elections Code section 9212 ("9212 Report"). The 9212 Report is complete and will be presented to Council at the March 31, 2016 meeting. The presentation of the 9212 Report triggers Council's obligations to either adopt the Initiative or place it on the ballot; and, if Council places it on the ballot, to authorize what types of arguments and analysis should be provided.

II. Discussion

The Elections Code provides that that the 9212 Report must be "presented to" the City Council within thirty (30) days after the City Clerk's certification that an initiative has qualified for the ballot. At that point in time, the City Council must "either adopt the ordinance within 10 days or order an election" to place the measure on the ballot. Elections Code § 9215(c); *see* Elections Code § 9212(b).

City Council does not need to take any formal action with respect to 9212 Report. The resolution prepared by staff to place the Initiative on the ballot recites that the City Council has received the Report. A proposed resolution to place the Initiative on the

ballot for the November 8, 2016, election, and to request consolidation of that election with the Statewide General Election held by Santa Clara County is attached to the staff report as Attachment B.

If the City Council determines to place the Initiative on the ballot, the Council may also consider the following three issues: (1) whether to direct the City Attorney to prepare an impartial analysis; (2) whether to authorize the preparation of an argument against the Initiative; and (3) whether to authorize rebuttal arguments.

For an impartial analysis, the City Council may direct the City Clerk to transmit a copy of the measure to the City Attorney to prepare an impartial analysis of the measure, not exceeding five hundred (500) words, showing the effect of the measure on the existing law and the operation of the measure. Elections Code § 9280. Impartial analyses are typically prepared for initiative measures. Accordingly, it is recommended that that City Council direct preparation of such an analysis here.

Next, City Council may authorize the Council as a whole, or individual Council Members, to submit ballot arguments against the Initiative. The Elections Code provides that for measures placed on the ballot pursuant to initiative petition, the persons filing the initiative may file a written argument in favor of the ordinance, and the City Council may submit an argument against the ordinance. Elections Code § 9282(a). No argument shall exceed three hundred (300) words in length. Elections Code § 9282(c). If more than one argument is submitted for or against a measure, the City Clerk must select one argument for, and one argument against, based on the priorities set forth in Elections Code section 9287.

Finally, the City Council must decide whether to authorize rebuttal arguments for and against the Measure. Elections Code Elections Code § 9285(b). If it does so, the author or a majority of the authors of an argument for or against the Measure may submit a rebuttal argument not exceeding two hundred fifty (250) words, or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. Rebuttal arguments are typically authorized for initiative measures and, accordingly, it is recommended that they be authorized here.

Arguments and rebuttals to those arguments, as well as the impartial analysis, are distributed with the sample ballot. The sample ballot need not include the entire text of the Initiative, but the City must make the text available upon request at no cost to the requesting party.

III. Conclusion

If Council determines to adopt the Initiative, it can do so at the March 31, 2016 meeting or place the adoption of the Initiative on the Council April 5, 2016 Agenda (which is within 10 days of its receipt of the 9212 Report). However, if the Council wishes to place the Initiative on the ballot it should:

1. Adopt a resolution placing the Initiative on the ballot at the November 8, 2016 election, and requesting consolidation of the election with the Statewide General Election. (Attachment B to Staff Report).
2. Adopt a resolution providing for ballot arguments for and against the Initiative, determining whether to authorize a City Council Member or the Council as a whole to submit ballot arguments against the Initiative (See, Resolution Section 5), and directing the City Attorney to prepare an impartial analysis. (Attachment C to Staff Report); and
3. Adopt a resolution authorizing rebuttal arguments for and against the Measure. (Attachment D to Staff Report)