



**OFFICE OF THE CITY ATTORNEY**

20410 TOWN CENTER LANE, STE 210 • CUPERTINO, CA 95014  
TELEPHONE: (408) 777-3403 • FAX: (408) 777-3401

**Date:** June 29, 2016

**To:** The Honorable Mayor and Members of the City Council

**From:** Randolph Hom, City Attorney

**Subject:** Options for Placing Initiatives on the Ballot

On July 5, 2016, the City Council ("Council") will consider whether to adopt the Vallco Town Center Specific Plan Initiative ("Initiative") or to place it on the ballot. This Memorandum addresses the Council's legal options when placing an initiative on the ballot.

**I. Background.**

At its March 31, 2016, meeting, the Council ordered staff to prepare a Report on the effects of the above Initiative pursuant to Elections Code section 9212 ("9212 Report"). The 9212 Report is complete and will be presented to the Council at the July 5, 2016 meeting. The presentation of the 9212 Report triggers the Council's obligation to either adopt the Initiative or place it on the ballot. If the Council places it on the ballot, the Council should authorize the types of arguments that will be provided in the ballot.

**II. Discussion.**

The Elections Code provides 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 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).

According to the 9212 Report, the Initiative would adopt a Specific Plan to govern redevelopment of the Vallco Shopping District Special Area and provide for the following,

among other things: enumerated community benefits; initial entitlements, and a new process for City review of subsequent development approvals in the area. If the Council decides not to adopt the Initiative, it must place the Initiative on the ballot for the November 8, 2016 election.

The Council does not need to take any formal action with respect to the 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.

If the Council determines to place the Initiative on the ballot, the Council may also consider the following issues: (1) whether to direct the City Attorney to prepare an impartial analysis; and (2) whether to authorize the preparation of an argument against the Initiative. It should be noted that at its meeting of March 31, 2016, Council authorized rebuttal arguments for City measures submitted at City Municipal Elections.

For an impartial analysis, the 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. In this regard, Council authorized an impartial analysis for the Cupertino Citizens' Sensible Growth Initiative ("CCSGI"). Accordingly, staff recommends that the Council direct preparation of such an analysis here.

Next, the 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. It should be noted the Council did not authorize the Council, or any of its members, to submit arguments with respect to the CCSGI Initiative. 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 July 5, 2016, meeting or within ten (10) days. However, if Council wishes to place the Initiative on the ballot, it should adopt a resolution:

1. Placing the Initiative on the ballot at the November 8, 2016 election, and requesting consolidation of the election with the Statewide General Election; and
2. Providing for ballot arguments for and against the Initiative; determining whether to authorize Council as a whole or an individual Council Member to submit ballot arguments against the Initiative, and directing the City Attorney to prepare and impartial analysis.