

WORKING PARTNERSHIPS USA

August 3, 2018

Honorable Mayor and City Council
City of San José
200 East Santa Clara Street
San Jose, CA 95113

Dear Mayor Liccardo and City Council Members,

I am writing on behalf of Working Partnerships USA to express our strong opposition to the proposed charter amendment that would permit the Mayor and Council to undercut citizen-sponsored ballot initiatives by placing a directly opposing counter-measure on the same ballot.

Despite its potential dramatic impacts in weakening the local democratic process and undermining the will of the voters, this proposal has received virtually no discussion or debate at Council meetings nor consideration at any public forums.

Furthermore, the proposed charter amendment language is misleading and employs an anti-democratic strategy that requires voters to give a single up or down vote on both this critically important issue and an unrelated proposal regarding Mayor and City Council salaries.

I urge you to withdraw the anti-democratic counter-measure provision of the proposed charter amendment until a more complete policy analysis and public engagement and input process has been completed.

It cannot be overstated that the primary reason for providing the San José electorate with the power of the initiative is to allow the people to lead via direct democracy when the Mayor and City Council are unable or unwilling to do so. To be blunt, initiatives usually appear when the people and their representatives disagree, and the power of the initiative was established to ensure that when such disagreements occur, the people still have a means to move public policy proposals. This proposed measure will have the opposite – and undemocratic effect – of allowing the City Council to manipulate the ballot process to block the expression of the public will.

San José's proud history of innovating in public policy would have been far weaker without citizen-sponsored initiatives to lead the way. In 2012, when the San José City Council refused to raise the local minimum wage, it was community members, led by a group of San José State students, who collected signatures for Measure D to raise the wage from \$8 to \$10 per hour. The voters approved Measure D by a wide margin, making San José one of the first cities in the nation to set a local minimum wage. Subsequently, City Council realized the benefits to the entire community of Measure D and voted to raise the minimum wage further still, to reach \$15 per hour, and helped lead a regional movement resulting in many other

cities following San José's example. None of this would have happened without the community taking the lead with a ballot initiative.

The Mayor of San José at the time did place and sign an opposing argument against Measure D on the ballot, which is a power that the Council currently has and can exercise for any future local initiative. However, if the City Council had placed a competing ballot measure before the voters – perhaps one that purported to raise the minimum wage to \$10 per hour but included so many exclusions and exemptions as to leave out most workers – the voice of the voters would have become much less clear. Such a situation – two confusingly similar, yet competing measures, such that if both pass, then only the one with the highest number of votes takes effect, and the other is null and void -- requires voters to engage in gamesmanship rather than cleanly voting their preference.

I understand that this charter amendment is purportedly a response to the June 2016 “Evergreen Senior Homes Initiative”. However, this proposed charter change has implications for policy innovation and the nature of local democracy that reach far beyond that one issue and merit much more careful consideration, rather than being shoehorned into an omnibus charter amendment.

In other cities where city councils have placed counter-measures on their ballots, the results have typically been voter confusion and an undermining of trust in the local democratic process and in local elected officials. In Mountain View, when voters proposed a rent stabilization measure to counteract a crisis of displacement in the city, the City Council revived an ineffective proposal that they themselves had rejected earlier in the year and put it forward as a counter-measure. In Nov. 2016, the citizens' initiative passed, while the Council's counter-measure failed. After the election it was revealed that one City Councilmember (now out of office) who opposed the citizen initiative and led the push for the counter-measure had also sent emails containing legal arguments against the citizens' initiative to the plaintiffs in a lawsuit against the City, with the goal of further undermining the citizens' initiative after it had already been approved by the voters.¹

Furthermore, in cases where the legitimacy of a citizen-sponsored initiative is in question, there are already strong verification requirements that every initiative petition must meet in order to be placed before the voters. For example, in 2013-2014 an unidentified interest group attempted to collect signatures to put a referendum before San José's voters that, if approved, would have overturned the City's ban on Styrofoam takeout containers. The City Council and City Clerk received numerous complaints from both voters and signature gatherers who said they were misled or asked to falsify signatures. As a result, the County Registrar of Voters verified every signature rather than a sample, and found that nearly half of signatures were illegitimate, meaning the petition did not qualify for the ballot.² If the City had been focused on drafting a counter-initiative rather than concentrating its attention on

¹ Mark Noac, “City will defend Measure V in court.” *Mountain View Voice*, Jan 26, 2017. <https://www.mv-voice.com/news/2017/01/26/council-will-defend-measure-v-in-court>

² Mike Rosenberg, “Made-up names doom San Jose ballot measure to overturn Styrofoam ban.” *San Jose Mercury News*, January 6, 2014. <https://www.mercurynews.com/2014/01/06/made-up-names-doom-san-jose-ballot-measure-to-overturn-styrofoam-ban/>

ensuring the integrity of the signatures, voters might have been faced with two conflicting measures, one of which would have been illegitimately placed on the ballot.

Finally, local citizen-sponsored initiatives are limited by the “single subject rule”, which states that a single initiative cannot address multiple subjects. But charter amendments placed on the ballot by the City Council do not have that limitation, making it possible for the City Council to combine two completely separate issues and ask citizens to vote a single “yes” or “no” on both.

If combined with the power to place a counter-measure on the ballot, this would open the door for City Council to undercut a citizen initiative by combining a counter-measure that nullifies the citizen initiative with some other issue that meets a critical city need, like creating a rainy day reserve. Voters who support the citizen-sponsored initiative, but also support the rainy day reserve, would find themselves with no option to vote their true preference.

This is not simply a hypothetical possibility. In fact, this is exactly the nature of the current proposed charter amendment; it combines a change in how the Mayor’s and City Council’s salaries are set with the provision to allow the City Council to create counter-measures opposing citizen-sponsored initiatives, and forces voters to give a single “yes” or “no” on both questions. Do we really want to see this power used as a tactic to undercut direct democracy?

The fact that some other jurisdictions have enacted similar measures is hardly a valid justification for proceeding in an undemocratic manner. Unfortunately, in recent times numerous cities and states are adopting reprehensible measures that restrict the right to vote, block local control, and define categories of residents as second class people. In San Jose, our standard should be “does a proposed policy meet our highest standards for democratic governance”, not “can we find someone else who also seeks to restrict the voice of the people.”

Mayor Liccardo and members of the City Council, I ask that you affirm that local democracy and community participation represent core values of San José, and not move forward with this counter-measure charter change unless it is first subject to robust public input and debate.

Sincerely,

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Derecka Mehrens
Executive Director