



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** PROPOSED CITY-SPONSORED  
JUNE 5, 2018 BALLOT  
MEASURE

**DATE:** 3/7/2018

### SUPPLEMENTAL

#### REASON FOR SUPPLEMENTAL

The purpose of this memorandum is to respond to several questions received from Councilmember Don Rocha's office regarding the proposed City-sponsored ballot measure entitled "An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas" and to share this information with the Mayor and Council.

#### BACKGROUND

The following discussion lists the questions verbatim from Councilmember Rocha's office with the responses immediately following in italics:

1. There were assertions made at the Council meeting today [3/6/18] that this measure would maintain the current General Plan status quo. It's not clear to me that that's true. Sections 1904 (b), (c), (d), (e) and (f) impose requirements on housing projects that are approved on converted jobs land. Some of the requirements appear to go beyond the City's current ordinances and General Plan policies. For example, the requirement that for sale residential development approved on converted jobs land include 50% deed restricted affordable units appears to go beyond any existing ordinance or policy. Two questions:
  - a. Am I correct in understanding that some of the requirements imposed by the measure go beyond existing City ordinance and policy?

*RESPONSE: The proposed ballot measure maintains the status quo to the extent that it does not change any "employment land" use designation from its current designation in the General Plan and General Plan maps,*

*so the status quo under the current General Plan including current General Plan Major Strategies and Policies is maintained.*

*Unlike the current process where the Council may approve General Plan amendments changing land use designations, Section 1904(a) of the proposed measure requires additional information to be provided to the Council whenever the City receives an application for the conversion of land from employment uses to non-employment uses in the area affected by the Charter Amendment. The City, at the applicant's expense, would be required to prepare an analysis of the fiscal impacts of the change from employment uses, including an analysis of impact on the City's jobs/employed resident ratio, prior to making any determination regarding an application for General Plan amendment. This fiscal analysis requirement is in addition to the appropriate development project-specific CEQA review and clearance required by state law (Section 1904(c)).*

*With regard to changes in existing ordinance or policy, Section 1904(b) of the measure would require a higher percentage of affordable housing for both for-sale (50% moderate) and rental (55% - 35% moderate and 20% very-low income) projects than the current Inclusionary Housing Ordinance (San Jose Municipal Code Chapter 5.08), but all other requirements of the Inclusionary Housing Ordinance would remain the same including the requirements that the affordable units be constructed concurrently with the market rate units and that they be integrated with the market-rate units. As a point of clarification, the memorandum from the Mayor describing the proposed Charter Amendment did not address both the moderate-income requirement (35%) and the very-low income requirement (20%). Please see the response to Question 2 below.*

*Additionally, under Section 1904(f) the Council would, to the maximum extent feasible and subject to federal and state law limitations, require that any conversion for residential development include the "support services" defined in the measure as appropriate to serve the intended resident population. It is likely that the most broadly applicable of the support services to be provided would be shuttle services to reduce transportation impacts of a specific residential development because of the distance of the development project from multi-modal transportation opportunities and other services needed by its residents.*

- b. Of sections 1904 (b), (c), (d), (e) and (f), which sections impose a new requirement that does not currently exist and which merely reinforce an existing requirement?

*RESPONSE: See response above.*



March 7, 2018

Subject: City Ballot Measure – Responses to Council Questions

Page 3

2. Am I correct in understanding that the 35% and 20% requirements outlined in section 1904 (b) (2) are cumulative, resulting in a total deed restricted affordable requirement of 55%?

*RESPONSE: The percentages as stated in the proposed measure stand alone and are in addition to each other. The language in the proposed measure duplicates the provision in the City's Inclusionary Housing Ordinance (San Jose Municipal Code section 5.08.A.2) except that it raises the percentage requirements for for-sale and rental housing projects. The 35% moderate income affordable housing requirement and the 20% very-low income requirement in the proposed measure create a total 55% affordable housing requirement for rental residential projects upon converted employment lands subject to the measure.*

3. I'm having a hard time understanding section 1904(f), in particular what it intends to achieve and what implementation would look like. Do you have any context or explanation you can share on that section?

*RESPONSE: Section 1904(f) is intended to provide a mechanism for developments to provide support services for the needs of their intended residents to the extent feasible and subject to legal requirements. As an example, sites that convert to residential use could be required to provide shuttle services to their residents if the development is not conveniently located near transportation or other services. See also the Response to Question 1 above.*

4. The second paragraph on page 4 reads as follows:

Any initiative measure adopted at the June 5, 2018 primary election that purports to impose, create, or apply a non-employment use designation or an overlay designation on threatened employment lands to allow residential development on those lands shall be void in its entirety, notwithstanding any contrary provision of that initiative measure.

Two questions:

- a. Am I correct in understanding that the intent of this section is to provide that, in the eventuality that both the Evergreen measure and the Mayor's measure were approved by voters, the approval of the Mayor's measure would void the approval of the Evergreen measure?

*RESPONSE: Yes. Additionally, Section 8 of the Evergreen Senior Homes Initiative states that if there is any conflicting measure approved by the voters that receives more votes, the Evergreen Initiative is void and of*



*no force and effect. Section 8 also states that in no event will the Evergreen Initiative be interpreted “in a manner that would permit its operation in conjunction with the non-conflicting provisions of any Conflicting Initiative.”*

- b. Imagine a scenario under which the Evergreen measure was approved with 65% of the vote and the Mayor’s measure was approved with 51% of the vote. Would our intent still be for the Mayor’s measure to void the Evergreen measure even if it received significantly less voter support?

*RESPONSE: There is applicable legal authority that City laws (ordinances, resolution, policies) cannot conflict with the City Charter in the same manner that state laws cannot violate the state Constitution. Because the proposed City initiative is a Charter amendment, it would control over the legislative amendments to ordinance and resolutions and the adoption of legislative acts in the Evergreen Initiative.*

5. My understanding is that the Evergreen measure includes new General Plan policies that identify underutilized employment land as a candidate for designation with the senior housing overlay. Given the concern that this overlay could be applied to land in North Coyote, has your office evaluated the option of re-designating land in North Coyote from Industrial Park to Agriculture, Open Space or a similar designation that would not qualify as employment land eligible for the senior housing overlay? If so, is there a practical difference between effecting such a re-designation through a ballot measure and effecting it through council action?

*RESPONSE: The City has not evaluated any re-designation of land in North Coyote Valley from any of its current General Plan designations because there has been no application to the City for any such change and it has not been a subject of any annual or four-year review of the General Plan. The land use designations remain the same as in the current Envision 2040 General Plan. Such re-designation of any site in North Coyote Valley would require evaluation by the City including appropriate review under the California Environmental Quality Act. The City is required to comply with CEQA when it takes a discretionary action that could result in physical changes to the environment that would apply to any General Plan amendment to change a land use designation*

HONORABLE MAYOR AND CITY COUNCIL

March 7, 2018

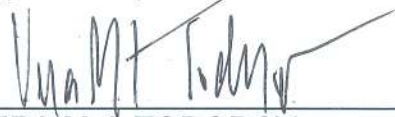
Subject: City Ballot Measure – Responses to Council Questions

Page 5

*whether by Council action or Council-sponsored ballot measure. Unlike actions taken by the City, ballot measures sponsored by private parties or the voters are not required to comply with the state law requirements for environmental review under CEQA.*

RICHARD DOYLE

City Attorney

A handwritten signature in black ink, appearing to read 'VERA M. I. TODOROV', written over a horizontal line.

VERA M. I. TODOROV

Senior Deputy City Attorney

cc: David Sykes  
Rosalynn Hughey

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