



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: Councilmember Donald Rocha
SUBJECT: CHARTER AMENDMENT BALLOT MEASURE
DATE: March 7, 2018

Approved

Don Rocha

Date

3-7-18

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RECOMMENDATION

That the City Council approve the following:

1. Decline to approve the Mayor's proposed ballot measure.
2. Direct staff to develop options for a November 2018 ballot measure that would ensure the continued integrity of San Jose's General Plan land use policies in the event that the Evergreen measure passes and also explore options for protecting open space on the edge of the city, such as North Coyote Valley, from urban development. Relevant stakeholders, including the environmental community, should be consulted as part of this process.

ANALYSIS

No principle has been more highly lauded in San Jose over the past decade than open government. We have voluminous ordinances and policies to ensure that Council action receives adequate review, but it is the commitment of those who serve on the City Council that is the true guarantor of an open public process. The proposal we are considering today—placing a charter change on the ballot with just three days of public review—is an abandonment of our commitment to open government and should not be approved.

I support and applaud the Mayor's intent with this measure: ensuring that the City Council retains discretion over whether to approve housing development on the edges of the city. If we want to pursue that goal, however, the right approach is to defer the ballot measure to the November election and conduct a full public process with staff analysis and public input, in accordance with our commitment to open government. Open government isn't just window dressing meant to make us look good—it's an essential ingredient to making good policy. We councilmembers may sit up on top of City Hall and have important titles, but that doesn't mean that every idea we have is a good one and that the work that we do is without flaw. An open process helps us catch our mistakes

and improve our work. It's about having the humility to acknowledge that we are not always right.

I haven't had enough time to review the measure to come up with a list of potential mistakes, but based on my preliminary review I do have some concerns. For example, assertions were made at the council meeting on Tuesday that the intent of the Mayor's measure is to preserve the status quo, yet there are clearly portions of the measure that go beyond the status quo. Section 1904 (b) (1) requires that any for-sale housing project built on converted employment land covered by the measure include 50% affordable units. That requirement and others in the measure establish new standards not found in current ordinance or policy.

I don't disagree that we should have high standards for affordable housing, but it worries me when we try to write highly specific policy position into the Charter. The Charter's purpose is to establish a solid framework for democratic government in San Jose, not to dictate the details of land use approvals. Even if the standards proposed in the measure make sense for some projects some of the time, can we really be certain that we aren't imposing a harmful constraint on City Councils ten or fifteen years in the future, who may have different policy considerations and may be operating under a different General Plan? Again, it's about having the humility to accept that our work may not be perfect, and that we may not know what's best for San Jose decades from now.

I also have concerns about the following passage from the measure, found in the second paragraph of page 4:

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.

It seems like the intent of this passage is to void approval of the Evergreen measure even if it gains support from a majority of San Jose voters. I oppose the Evergreen measure and don't want to see it approved, but I also believe in our democratic form of government, which rests on the voters being able to work their will. I'm not totally comfortable tucking a passage into our measure that voids the will of the voters.

Some may respond that we need to act quickly and use every tool at our disposal because other landowners will inundate us with similar measures if the Evergreen measure passes. I would respond, first, that November is soon enough to protect the Council's discretion—the entire General Plan will not be overturned in the space of a few months.

Second, I would suggest that the only way to safeguard the Council's discretion in the long run is to ensure we have the support of voters to exercise that discretion. If voters support the Evergreen measure, but it is overturned by the above quoted passage from the Mayor's measure, do we really think that will be the end of the story? If developers see that they have public support, but through a clever Charter amendment the Council voided that support, then nothing would stop them from writing their own Charter amendment and putting it before the voters. In a democracy, winning elections is the only true guarantee.

I have some experience with ballot measures that amend the Charter: the drafting of Measure B went into full swing soon after I entered office in 2011. The numerous and very serious errors in that measure resulted from a number of factors. First, we did not show humility and listen to opposing viewpoints. Second, the drive to put that measure on the ballot was guided not just by a desire to solve a problem, but by a political agenda that viewed unions as the supporters of a rival political faction. Third, when critics of the measure raised objections, they were often drowned out by dire predictions of catastrophe backed up by grossly inflated pension cost estimates. Hopefully we can learn from these mistakes.

I'd like to close by acknowledging that the concerns about the Evergreen measure are completely justified. I support and applaud efforts to limit the harm that it can do and am open to supporting a ballot measure. I cannot, however, support extensive changes to the Charter with inadequate review. I think we can best achieve the goal we all want to achieve by pursuing a thoughtful and deliberative process for a November measure.