



Memorandum

TO: CITY COUNCIL
FROM: Mayor Sam Liccardo
SUBJECT: SEE BELOW
DATE: August 6, 2018

Approved  Date 8-6-18

SUBJECT: CHARTER AMENDMENTS REGARDING COUNCIL SALARIES AND COUNCIL-SPONSORED BALLET INITIATIVES

RECOMMENDATIONS

- A. Adopt a resolution of the City Council calling and giving notice for a Special Municipal Election to be held on November 6, 2018, and to submit to the voters of the City of San José a measure to amend the City Charter with the statement of the measure as described in paragraph (b) of the City Manager’s July 27, 2018, Memorandum regarding item 3.5.
- B. To save \$89,000 in City costs on this measure, approve a Resolution directing the City Clerk to, pursuant to Elections Code Section 12111, cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the San José Mercury News, a newspaper of general circulation within the City of San José, instead of printing the full text of the measure in the Sample Ballot;
- C. Allow rebuttal arguments, pursuant to Elections Code Section 9285;
- D. Authorize the Mayor to submit a ballot argument in support of the measure, pursuant to Elections Code Section 9282;
- E. Direct the City Attorney to prepare an Impartial Analysis of the measures, where, as authorized under Elections Code Section 9280, the following statement will be printed in the Impartial Analysis to be prepared by the City Attorney: “If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/index.aspx?nid=5694> or call 408-535-1260 and a copy will be sent at no cost to you.”; and
- F. Direct the City Clerk to perform all other actions necessary to place the measure on the November 6, 2018 ballot.

DISCUSSION

All of California’s 361 general law cities and likely all of the other 120 charter cities have the authority pursuant to California statutory and constitutional law to place an alternative ordinance

on the ballot should they need to. And as we have learned—at great expense and risk to the future of our City—not every initiative sponsored by a San José voter is 1) good policy, 2) honestly presented to voters, or 3) carefully drafted, even when the underlying idea is righteous.

The City has faced a number of ill-advised efforts to dictate City policy by well-funded interest groups who use the petition and voter signature process, such as the 2012 card club effort to boost the number of card tables, and the 2018 initiative by developers who tried to circumvent the City's General Plan and create a sprawling development in Evergreen. Those initiatives weren't merely harmless efforts that are easily countered. In the case of Evergreen, the community (and I personally) was forced to raise three quarters of a million dollars, and hundreds of community members invested thousands of hours knocking on doors to educate voters to defeat that dangerous and misleading initiative. Monied groups will inevitably attempt again to shape San José's policies through the initiative process; California's initiative process has long been hijacked by billionaires. (See <https://www.nytimes.com/2012/10/17/us/politics/california-ballot-initiatives-dominated-by-the-very-rich.html>.) Not only was that effort a giant distraction to City leadership and a colossal waste of resources, but, given the effort involved, it was not a foregone conclusion that Councilmembers and the community would have succeeded—or, that we could repeat that success if necessary.

Unfortunately, with an initiative sponsored by a San José voter, there is no opportunity to “edit” or “revise,” even when there's a drafting problem that everyone might even agree needs to be fixed. Measure D's minimum wage ordinance erroneously failed to establish an escalator that provided for an increase in every subsequent year. In contrast, the City Council passed a minimum wage increase in 2015 that not only addressed the shortcomings of the 2012 ballot measure, but allowed for future Councils to correct any of the 2015 Council's mistakes.

Lastly, with due respect to Councilmember Jimenez, I'm mystified by the argument that putting a competing ordinance in front of the electorate at the same time as an initiative placed by signatures is counter-democratic. To the contrary, such a process reflects California's own hyper-democratic initiative system where dueling ballot initiatives are common. And the fact that a measure was placed on the ballot by a voter who has gained enough signatures doesn't mean it's the people's will—at least not until the votes are counted. Moreover, the idea that voters will be confused by a competing idea is somewhat insulting to California voters who are accustomed to direct democracy; the Mountain View experience cited by Councilmember Jimenez is actually indicative of how voters can wade through competing ordinances and make a sensible choice. I trust San Jose voters to discern between two competing ballot initiatives, and, frankly, I also trust them to hold their elected councilmembers accountable if we were ever to place an unwise or disingenuous competing ballot initiative in front of them.