

## MEMORANDUM

**DATE:** October 15, 2011

**TO:** City Manager  
City Council Members

**FROM:** City Attorney

**RE: Procedures Applicable to Voter Initiative Process**

This memorandum sets forth the basic procedures applicable to the initiative process. Unless the owners of Golden Gate Fields alter their present intentions, a citizen initiative will be filed anywhere from the next three to seven weeks. My impression, from discussions with representative of GGF, is that the initiative will likely contain some of the following:

- a. General Plan and Zoning Amendments;
- b. An overlay district within the Waterfront to accommodate a second LBNL campus;
- c. Restrictions/guidelines addressing height, density, development envelope, dedicated open space, set backs from SF Bay; and
- d. A requirement to memorialize various matters pertaining to the development in a development agreement.
- e. A provision that states that any project approved pursuant to these voter approved modifications would not require another vote of the Albany electorate

An initiative does not require a CEQA review. The voters will be asked to cast their votes without the benefit of environmental data that would otherwise be available if this were a ballot measure proposed by the Council or if various matters that will be addressed in the initiative were being considered as part of the traditional planning process. The Council, however, will have the opportunity pursuant to Election Code Section 9212 to request staff to prepare a report.(See, discussion below.) In order to have this initiative appear on the June, 2012 ballot, the GGF timetable would require the initiative to be submitted by November 7, 2011. If the initiative passed, conformity with CEQA would be required for a project that would be proposed pursuant to the voter approved initiative regulations.

GGF has retained the firm of Nielsen Merksamer Parrinello Gross and Leoni LLP. The Merksamer firm has prepared a time line for the GGF sponsored initiative and is now preparing the ballot language. The above comments about the contents that may be contained in the initiative are, at this point, my best guess as to what may be proposed. The Merksamer

firm has created a time line based so that the initiative could be presented to the voters at the June statewide election. Albany would have to request a special election be held by the County for this to be placed on that ballot. The Election Code requires that an initiative that qualifies for the ballot must be placed on the ballot within a specific time frame.

The basic procedural requirements and time line under the Election Code are set forth below.

### **1. Notice of Intent to Circulate Petition**

The proponents of the initiative must file a notice of intention with the City Clerk, accompanied by the written text of the initiative and a written statement not to exceed 500 words setting forth the reasons for the proposal. The City may impose a fee, if adopted by the Council, of not more than \$200; the fee must be refunded if the measure qualifies for the ballot.<sup>1</sup>

### **2. Preparation of Impartial Summary and Title by City Attorney—15 days**

The City Clerk, upon receipt of the petition, forwards it to the City Attorney to prepare an impartial, non-argumentative ballot title and summary. Within fifteen days of the Clerk's receipt, the title and summary must be returned to the initiative's proponents ("proponents").<sup>2</sup>

<sup>1</sup> Cal. Elec. Code §9202. (All references hereinafter to Elections Code, unless otherwise noted.)

<sup>2</sup> § 9203. The ballot title and summary cannot exceed 500 words. The purpose of the ballot title and summary requirement are (1) to reduce the risk that voters were misled when signing the petition; (2) to allow verification that the signers had a neutral explanation of the proposed ordinance available to them when they signed; and (3) to prevent signatures from being submitted in support of a different measure than that for which they were procured. *MHC Financing Limited Partnership v. City of Santee* (2005) 125 Cal. App. 4<sup>th</sup> 1372, 1389

### **3. Publishing Notice and Gathering Signatures by Proponents—180 days**

Upon receipt of the ballot title and summary, the proponents have 180 days to 1) publish the title and summary of the proposed measure,<sup>3</sup> 2) collect the requisite number of signatures and 3) file the petition with signatures with the City Clerk.

The proponents may circulate the petition among the registered voters of the City<sup>4</sup> only *after* the proponents comply with the publishing requirements.

Within ten (10) days after the date of publication, the proponents must file with the City Clerk a copy of the notice and title and summary as published, with an affidavit made by a representative of the newspaper certifying that publication was made.<sup>5</sup>

### **4. Clerk's Verification of Signatures—30-60 days**

When the proponents believe they have sufficient signatures, they then submit the petition with signatures to the City Clerk. The Clerk, in turn, has thirty days, excluding Saturdays, Sundays, and holidays<sup>6</sup>, to determine whether the petition is signed by the requisite number of voters.<sup>7</sup> A random sampling can be used to verify the signatures. If the random sampling shows that the number of valid signatures is within 95 to 110 percent of the number of qualified voters needed to declare the petition sufficient, the election official has an additional thirty days, excluding Saturdays, Sundays, and holidays, to examine and verify each signature filed.<sup>8</sup> The City Clerk shall attach the results to the petition, and notify the proponents of either the sufficiency or insufficiency of the petition. The Clerk may request the County to verify the signatures.

The number of signatures necessary is determined by the number of registered voters in the City last reported by the county elections official to the Secretary of State at the time the proponents published the notice specified above, and is discussed below.

<sup>3</sup> § 9205. A newspaper of general circulation is a newspaper published and printed in the City of Albany. (Govt. Code 6000). Inasmuch as there is no newspaper of general circulation in the City, the proponents shall 1) print the notice, title and summary in a newspaper circulated in the City and adjudicated as being of general circulation in Alameda County; and 2) post the notice, title and summary in three (3) public places within the City, which are those places generally used for the posting of ordinances. (§9205(b).)

<sup>4</sup> § 9207. Any signatures collected prior to the publication of the title and summary are invalid.

<sup>5</sup> § 9206. If notice of the title and summary are both published and posted, in addition to the affidavit from the newspaper regarding publication, the proponents shall file an affidavit by a voter of the City certifying to the fact that the notice was posted.

<sup>6</sup> Except as specified, all time periods are for calendar days, *including* holidays and weekends.

<sup>7</sup> §§ 9114, 9115.

<sup>8</sup> §§ 9115

## 5. Council Action

If there are sufficient signatures, the City Clerk shall certify the results to the City Council at the next regular meeting of the Council. Upon certification of the petition, Council has three choices:

- adopt the ordinance without alteration, at the meeting where certification of the petition is presented, or within 10 days after it is presented;<sup>9</sup> or
- submit the initiative to the voters at either a special or general election,<sup>10</sup> depending on the number of signatures and timing; or
- refer the initiative measure to any City agency for a report on fiscal matters; general and specific plan consistency; land use issues, including impact on availability and location of housing and the City's ability to meet regional housing needs; the initiative's impact on funding for infrastructure funding and maintenance; its impact on the City's ability to attract and retain businesses; its impact on agricultural lands, open space, traffic and business districts; and "any other matters the council requests to be in the report."<sup>11</sup>

If a report is ordered, the report shall be presented to Council no later than 30 days after the elections official certifies to the City Council the sufficiency of the petition. However, after receiving the report, Council's choices are still to adopt the ordinance or submit the initiative to the voters.

## 6. Timing of Election

The timing of the election depends on the number of valid signatures on the petition. A petition containing signatures of at least fifteen percent (15%) of the registered voters qualifies for a special election, if the proponents request a special election. The special election shall be held within 103 days of the order of elections, but no sooner than 88 days.<sup>12</sup>

<sup>9</sup>It is clear that the City must first comply with CEQA if the Council places a measure on the ballot. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4<sup>th</sup> 165.) However, the CEQA Guidelines say that the submittal of a proposal to a vote of the people that does not involve a "public agency sponsored initiative" is not a "project" under CEQA. (Guidelines, §15378.) It appears from the Guidelines that the Council can, thus, adopt the measure without complying with CEQA because it is not sponsored by the Council, but there are no cases that address this issue.

<sup>10</sup> In order to be considered a general election, a representative of the U.S. Congress must be elected. (§§ 324, 1000.)

<sup>11</sup> § 9212. This report can also be ordered during circulation of the petition initiative but that would not extend the time for the Council to take action on the initiative if sufficient signatures are gathered.

<sup>12</sup> §§ 1405, 9214.

If the petition contains signatures of at least ten percent (10%) of the registered voters the measure is placed on the ballot at the next regular election, assuming at least 88 days exist before the general election.<sup>13</sup>

If the Council orders a report, the time provided by the Elections Code for preparation may affect the date of the election. The Council would be required to call a special election.

The City pays for the cost of the election.

## **7. Effect of Measure**

If the measure receives more than 50% of the vote, it is considered adopted on the date the vote is declared by the Council and goes into effect ten days later.<sup>14</sup>

<sup>13</sup> §§ 1405, 9215. If an initiative qualifies within 180 days prior to a general election, the election on the initiative measure may be held on the same date as, and be consolidated with, the regular election. § 1405(a)(1).

<sup>14</sup> §9217.