



# City of Sunnyvale

## Agenda Item

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15-0362

Agenda Date: 4/21/2015

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### REPORT TO COUNCIL

#### SUBJECT

Consideration of Potential Elections Code Section 9212 Report from City Agencies on the Effect of the Proposed Initiative Ordinance to Amend the City of Sunnyvale's Municipal Code to Require Voter Approval for any Sale, Lease, Lease Extension, Lease Renewal, Land Swap, or Transfer of Property Owned, Leased, or Used by the City as a Public Park or Community Service Amenity

#### BACKGROUND

On December 2, 2014, proponents of an initiative entitled "Public Lands for Public Use Act" filed a Notice of Intent to Circulate Petition and a Request for Ballot Initiative Title and Summary with the City Clerk. The City Attorney prepared the ballot title and summary for inclusion in the petition form pursuant to Elections Code Section 9203, and the City Clerk furnished a copy to the proponents on December 17, 2014. A copy of both the ballot title and summary prepared by the City Attorney, as well as the full text of the proposed measure is attached for the Council's consideration (Attachment 1). The ballot title is as follows:

"An Initiative Ordinance Amending the City of Sunnyvale's Municipal Code to Require Voter Approval for any Sale, Lease, Lease Extension, Lease Renewal, Land Swap, or Transfer of Property Owned, Leased, or Used by the City as a Public Park or Community Service Amenity."

Circulation of the petition for signatures has commenced. Pursuant to Elections Code Section 9208, the proponents have 180 days from the date of receipt of the title and summary to secure signatures and file the petition with the City Clerk. If the proponents obtain the requisite signatures, and they are verified by the County Registrar, the Council will have to consider whether to adopt the proposed ordinance as drafted, or refer it to a vote of the electorate. The timing for these actions is governed by the date on which the petitions are filed with the Clerk, and the number of signatures gathered.

#### DISCUSSION

Elections Code Section 9212 allows the Council to direct preparation of an "impact report" on proposed initiatives. One purpose of this law is to allow the Council to generate information to inform the public about the positive or negative effects of a proposed initiative. The earliest the report may be requested is after circulation of the petition has commenced. Most typically, so-called "9212 reports" are requested after the petitions have been shown to contain the requisite number of signatures to qualify for the ballot. If the report is requested after the petitions have qualified, the 9212 report must be completed in 30 days. If it is requested during circulation of the petition, the 9212 report must be "presented to the legislative body within the time prescribed by the legislative body."

Specifically, Elections Code Section 9212 provides that:

(a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 9214, or Section 9215, the legislative body may refer the proposed initiative measure to any city agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.

(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(5) Its impact on the community's ability to attract and retain business and employment.

(6) Its impact on the uses of vacant parcels of land.

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(8) Any other matters the legislative body requests to be in the report.

(b) The report shall be presented to the legislative body within the time prescribed by the legislative body, but no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition.

As Council can see from the above-quoted full text of Section 9212, the 9212 report can be quite comprehensive and time consuming to prepare. Some of the subjects Council may wish to consider are:

- Scope of the property and types of transactions covered by the proposed ordinance;
- Fiscal and financial impacts on the City and community, including but not limited to implementation costs and benefits;
- Impacts on operation and utilization of affected property;
- Any other matters the Council would like to consider.

In terms of timing, staff estimates that at least six weeks will be needed to complete the 9212 report. Additionally, this effort would compete with other priorities but may be implemented through the use of consultants.

### **FISCAL IMPACT**

While dependent on the specific subject matter areas Council would want investigated, staff believes existing resources could be utilized to conduct the analysis and prepare the 9212 report.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

**STAFF RECOMMENDATION**

Pursuant to Elections Code Section 9212, consider directing preparation of a report from City agencies on the effect of the proposed initiative to amend the City of Sunnyvale's Municipal Code to require voter approval for any sale, lease, lease extension, lease renewal, land swap, or transfer of property owned, leased, or used by the City as a public park or community service amenity. If direction is given to prepare a 9212 report, Council must also specify which subject matter areas it wants City staff to investigate, and an appropriate deadline for the report's completion.

Prepared by: Joan A. Borger, City Attorney  
Reviewed by: Kathleen Franco Simmons, City Clerk  
Reviewed by: Grace K. Leung, Finance Director  
Reviewed by: Robert A. Walker, Assistant City Manager  
Reviewed by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Ballot Title and Summary and Proposed Initiative Measure

## **Initiative Measure to be Submitted Directly to the Voters**

The City Attorney of the City of Sunnyvale has prepared the following title and summary of the chief purpose and points of the proposed measure:

**Title: An Initiative Ordinance Amending the City of Sunnyvale's Municipal Code to Require Voter Approval for any Sale, Lease, Lease Extension, Lease Renewal, Land Swap, or Transfer of Property Owned, Leased, or Used by the City as a Public Park or Community Service Amenity**

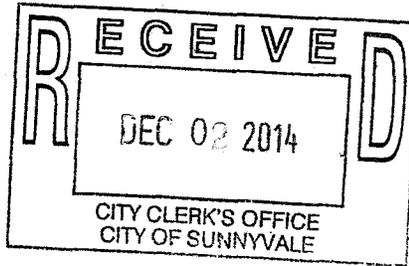
**Summary:** This initiative states that it shall be known as the “Public Lands for Public Use Act” and proposes to amend the Sunnyvale Municipal Code (SMC) to require voter approval before the sale or lease of some types of City property.

Currently, SMC Chapter 2.07 requires city council approval for all purchases, sales, or leases of real property for the City when the purchase, sales price, or lease cost exceeds \$75,000, and city manager approval when the purchase, sales price, or lease cost is \$75,000 or less, or when the lease results in revenue to the City and is for a period less than or equal to 55 years. It further requires city council approval for leases of City property for a term in excess of 55 years, subject to additional procedures set forth in Chapter 2.07.

The proposed initiative would amend these provisions by:

- Defining two categories of City property: “Community Service Amenity,” which generally includes facilities and land whose primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment; and “Public Park,” which generally means land set apart for recreation of the public and to maintain open space in the City, including City-owned land shared by agreement with adjacent public schools to augment the public school’s outdoor recreation area.
- Requiring that any land “owned, leased, or used” by the City as a Public Park or Community Service Amenity (including land otherwise transferred to the City for such purposes, and the rights to use land for such purposes), may not be the subject of a “sale, lease, lease extension, lease renewal, land swap, or transfer,” regardless of the amount of the transaction, without the prior approval of a majority of voters in a citywide election.
- Requiring that leases of Public Park or Community Service Amenity land owned, held or controlled by the City, that are in excess of 55 years, also be subject to voter approval.

The initiative ordinance also proposes to take precedence over all other provisions of the City’s Municipal Code, ordinances, resolutions, and administrative policies that conflict with any part of the initiative.



Save Sunnyvale Parks & Schools, Inc.

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December 01, 2014

Kathleen Franco Simmons  
City Clerk  
City of Sunnyvale  
P.O. Box 3707  
Sunnyvale, CA 94088

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

Ms. Franco Simmons,

Pursuant to Section 9202(a) of the California Elections Code, notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Sunnyvale for the purpose of obtaining a vote of the Sunnyvale electorate on the proposed measure attached to this notice.

The proponents of this petition request that the ordinance be submitted immediately to a vote of the people at a special election.

A statement of the reasons of the proposed action as contemplated in the petition is as follows:

This petition proposes changes to the Sunnyvale Municipal Code to ensure that the public land the City of Sunnyvale holds in trust for all its residents continues to serve the interests of Sunnyvale residents.

Sunnyvale residents benefit from the public libraries, community swimming pools, community centers, public parks, public golf courses, and numerous other community service amenities that are placed on land the City of Sunnyvale owns for the benefit of its residents. These public parks and community service amenities help children, adults, and families alike to socialize, exercise, and learn as a community.

As Sunnyvale's population grows, the demand for public parks and community service amenities will grow with it. There is a critical and increasing need for more, not less, places for residents to conduct city and community business, enjoy open spaces, study, improve their health, play with their grandchildren, watch or participate in sports, hold neighborhood meetings, walk dogs, or meet with friends.

Sunnyvale residents have a vested interest in the outcome of any decision that limits their ability to use these public parks and community service amenities. Therefore, there is a need for the Sunnyvale residents to carefully review and specifically approve significant decisions involving the disposition or use of such community service amenities and public parks. Acquiring new land for public use has become increasingly difficult and expensive. Once public land is lost, it is almost impossible to replace. Furthermore, the City Council and the Sunnyvale residents' views involving the disposition of public lands do not always align.

The clarifications and revisions to the Sunnyvale Municipal Code contained in this proposed measure will ensure that Sunnyvale public lands are not used to facilitate private development or provide a source of funding for capital improvements through any sale, lease, trade, land-swap, or other transfer of community service amenities or public parks without very carefully considered community discussion and voter approval.

In accordance with Section 9202(b) of the California Elections Code and the City of Sunnyvale's Fee Schedule, a payment of \$200.00 has been attached to this statement.

  
\_\_\_\_\_  
Timothy Dietrich  
1061 Firth Ct.  
Sunnyvale, CA 94087

12/1/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Wendy Hales  
1473 Norman Dr.  
Sunnyvale, CA 94087

12/1/2014  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Demetrios Triantafyllou  
1490 Navarro Dr.  
Sunnyvale, CA 94087

Dec. 1, 2014  
\_\_\_\_\_  
Date

THE PEOPLE OF THE CITY OF SUNNYVALE DO ORDAIN AS FOLLOWS:

**SECTION 1. TITLE**

This initiative measure shall be known and cited as the "Public Lands for Public Use Act."

**SECTION 2. REQUEST FOR IMMEDIATE VOTE**

Proponents request that the ordinance be submitted immediately to a vote of the people at a special election.

**SECTION 3. SUNNYVALE MUNICIPAL CODE §§ 2.07.030, 2.07.040. AMENDED.**

The Municipal Code of the City of Sunnyvale §§ 2.07.030 and 2.07.040 are hereby amended to read as follows:

**2.07.030. Awarding authority for purchases, sales or leases of real property.**

- (a) The city council shall be the awarding authority for all purchases, sales or leases of real property for the city where the purchase or sales price or total lease cost exceeds seventy-five thousand dollars.
- (b) The city manager shall be the awarding authority for all purchases, sales or leases of real property for the city where the purchase or sales price or total lease cost is seventy-five thousand dollars or less, or where the lease results in revenue to the city and is for a period less than or equal to fifty-five years.
- (c) Notwithstanding the foregoing in subsections (a) and (b), any land, that on the effective date of this subsection (c) or at any later time is owned, leased, or used by the city as a public park or a community service amenity, as defined in subsection (d), land otherwise transferred to the city to be used as a public park or a community service amenity, or the rights to use such land may not be the subject of a sale, lease, lease extension, lease renewal, land swap, or transfer unless the issue of the sale, lease, lease extension, lease renewal, land swap, or transfer is submitted to the qualified voters of the city at an election and is approved by a majority of the votes received at the election.
- (d) For purposes of subsection (c), the following terms shall have the meanings set forth below.
  - (1) "Community service amenity" means libraries, swimming pools, community centers, performing arts venues, gardens, golf courses, zoos, city hall, city administration buildings, and other similar facilities and the land on which the facilities stand, whose primary

purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment.

- (2) "Public park" means land set apart for the recreation of the public, to promote its health and enjoyment, to maintain open space in the city and also includes city-owned public land which may be shared by agreement with adjacent public schools to augment the public school's outdoors recreation area.

**2.07.040. Long-term lease of city property.**

- (a) The city council may enter into a lease of city property that is not a public park or a community service amenity, as defined in Section 2.07.030, subsection (d), for a term in excess of fifty-five years pursuant to the procedures set forth in this section. This section is enacted pursuant to California Government Code Section 37380 for the purpose of establishing alternate procedures thereto and exempting the city from the provisions of subsections (b)(2), (b)(3) and (b)(4) thereof. Except with respect to leases in excess of fifty-five years, the provisions of this section shall not be deemed in any way to restrict the city's authority to enter into other forms of leases so long as the underlying land is not a public park or a community service amenity, as defined in Section 2.07.030, subsection (d).
- (b) A lease in excess of fifty-five years of property owned, held or controlled by the city that is not a public park or a community service amenity, as defined in Section 2.07.030, subsection (d), may be authorized by the city council in accordance with the following procedures:
  - (1) Any lease entered into pursuant to this section shall be authorized by resolution of the city council.
  - (2) Prior to adopting a resolution authorizing a lease, the city council shall hold a public hearing. Notice of the time and place of the hearing shall be published once not less than fourteen (14) calendar days prior to the public hearing, in the official newspaper of the city.
  - (3) The city shall not be required to engage in a competitive bid process for the award of such lease; provided, that at the time of adopting the resolution authorizing the lease the city council makes a determination that entering the lease without engaging in a competitive bid process is in the best interests of the city and its residents.
  - (4) Any such lease shall be subject to periodic review by the city and shall take into consideration the then market conditions. Pursuant to California Government Code Section 37380(b)(1), the city council hereby establishes that the lease provisions which will

periodically be reviewed, at a minimum, shall be those provisions specifying the rent to be paid pursuant to the lease, and such other provisions as may be indicated by the city council at the time of authorizing the lease. The periodic reviews shall occur in accordance with a schedule to be contained in the lease. The periodic review may be in the form of either an express review of the terms by the city council or its designee, or in the form of a procedure contained in the lease for automatic adjustments of the terms in response to market conditions. It is the intent of this provision that inclusion of inflationary adjustments, cost of living adjustments, reappraisals or other similar forms of automatic adjustments shall satisfy the requirements of California Government Code Section 37380(b)(1), without the necessity of a discretionary review by a city officer. (Ord. 2628-99 § 2).

- (c) A lease in excess of fifty-five years of property that as of the effective date of this subsection (c) or at any later date is owned, held or controlled by the city and is a public park or a community service amenity, as defined in Section 2.07.030, subsection (d), must first be submitted to the qualified voters of the City of Sunnyvale at an election and approved by a majority of the votes received at the election pursuant to Section 2.07.030, subsection (c). Any such lease that is so approved may be authorized by the city council in accordance with the procedures set forth in subsection (b).

#### **SECTION 4. PRIORITY.**

Once this measure becomes effective, its provisions shall prevail over and supersede all provisions of the municipal code, ordinances, resolutions, and administrative policies of the City of Sunnyvale which conflict with any provisions of this measure.

#### **SECTION 5. SEVERABILITY.**

In the event a final judgment of a court of competent jurisdiction determines that any section, subsection, sentence, clause, or phrase of this initiative measure is invalid or unenforceable for any reason, the invalid or unenforceable section, subsection, sentence, clause, or phrase shall be severed from the remainder of this measure, and the remaining portions of this measure shall remain in full force and effect without the invalid or unenforceable section, subsection, sentence, clause, or phrase.