

RESPONSE(S) TO COUNCIL QUESTION(S)

RE: 10/4/2016 AGENDA

Agenda Item #: 1J

Title: Adopt a Pledge of Revenues Resolution and a Resolution Approving an Installment Sale Agreement in Support of the State Revolving Fund Financing for the Sunnyvale Clean Water Program

Question(s): The pledge of revenues resolution says "The City hereby dedicates and pledges the net revenues of the City's Wastewater Management Fund, and the Wastewater Management Fund to the payment of ..." (at the top of page 2 of the resolution). So the Wastewater Management Fund is mentioned twice in a row. I'm not sure if a second fund was intended or if this is a typo.

Staff Response(s): Staff agrees the wording is awkward, but as it was requested by the State, it was added verbatim. The two pledges do have two slightly different meanings, although as a practical matter, there is no distinction for how the City operates financially. First we are pledging Wastewater Fund "Net Revenues." These are the wastewater system revenues (from user fees) received and pledged to pay debt service after certain operating costs are paid. The State also requested that we pledge the Wastewater Enterprise Fund. This is designed to make sure that we maintain an Enterprise Fund for Wastewater Management, which is a long standing practice in Sunnyvale, as well as following best practices in municipal budgeting and accounting. It is also consistent with the pledges that were made upon issuing the 2010 Wastewater Revenue Bonds.

Agenda Item #: 2 & 3

Title: Single-Story Ordinance: Vanderbilt Drive, etc. (28 parcels)

Single-Story Ordinance: West Remington Drive, etc. (37 parcels)

Question(s): 1) I get the concern about whether or not the process impartially determines the intent of the petition signers, and I appreciate staff taking that concern seriously. But doesn't the collection of the application fee indicate the sincerity of the applicants? It seems reasonable that a homeowner won't spend a couple hundred dollars to participate in an application without understanding the ramifications. Is there information for both applications as to how the fees were paid - how many of the affected residents contributed to pay the fee? It seems like the risk of an uninformed set of petitioners is greater if, say, a single person pays the application fee, as compared to all petitioners equally.

2) Let's assume we approve a SSCD application (these or others). And an owner or a group of owners finds the SSCD limits to be burdensome. What is their recourse to undo an SSCD designation? Must that "undoing" action involve the exact same coverage area as the original SSCD set of properties, or could a subset or overlapping set of property owners "undo" a designation?

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Staff Response(s):

1) While the fee is set based on the number of properties, it is a single fee (total) that is required for an application. The collection and management of the fees is not always known. There have been a variety of models for payment of the rezoning application fees. Payment is typically by check or credit card can be single or multiple payees. For example, in some neighborhoods each signatory pays the per lot fee with a few owners making up the difference, in other neighborhoods the signatories agree to split the total fee equally amongst themselves or a few owners agree to make up the difference. In yet other neighborhoods it appears that some residents are not opposed to the rezoning being considered, but do not want to participate financially. The City cannot dictate who pays the application fees.

2) If a neighborhood is interested in rezoning their area to remove the Single-story Combining District, the process is the similar to the original application. There would not be a minimum of 20 lots required to remove the single-story zoning, however it could not leave an area with fewer than 20 lots—and the area could include portions of more than one original rezoning area. At least 55% of the property owners must agree to the application. If the boundaries are the same as the original rezoning it could simplify the staff review. If the boundaries are different (nothing in the regulations prevents this situation), staff would need to examine for: logical boundaries, integrity of the remaining area/s in terms of percent of existing two-story homes, relationship with other single-story properties, etc.

Agenda Item #: 4, Proposition 54 – California Transparency Act of 2016

Title: Adopt Positions on State and Local Ballot Measures for the November 8, 2016 Election

Question(s): Regarding Proposition 54, haven't there been cases in the past few years where last-minute changes to bills were made which weren't necessarily in Sunnyvale's interest? Isn't it in the City's interest to have more warning about legislation that may affect us, and more time to respond to it? I can't conceive of a reason why additional noticing would harm Sunnyvale, and it seems to benefit us. The Cities Association took a Support position on this, I believe.

Staff Response(s): The City has long standing policy supporting transparency of its own practices. The City has not engaged in lobbying the State on how it does business' however, the Council has previously taken positions to support/oppose efforts to change operations at the State level.

Agenda Item #: 4, Proposition 57 – Public Safety and Rehabilitation Act of 2016

Title: Adopt Positions on State and Local Ballot Measures for the November 8, 2016 Election

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Question(s): I believe the Cities Association took an Oppose position on this bill, because of opposition by law enforcement groups, and because of a perceived similarity to Proposition 47, which had significant effects on crime rates in cities. It seems odd that this would be deemed to not be city business.

Staff Response(s): In comparison to Proposition 63 and Proposition 64, which are related to local ordinances, staff did not find a Sunnyvale ordinance related to this measure. However, staff does agree with the League of California Cities and the California Police Chief's Association opposition to this initiative.

Agenda Item #: 4, Proposition 63 – Safety for All Act of 2016

Title: Adopt Positions on State and Local Ballot Measures for the November 8, 2016 Election

Question(s): Wouldn't this proposition effectively make some/all of Sunnyvale's regulations apply statewide, and therefore ease some of the legal risks that Sunnyvale is currently assuming on its own? It seems like the same staff argument in favor of Proposition 67 should apply regarding Proposition 63 - we've already got much the same, and making it statewide is better for us.

Staff Response(s): There are existing state laws, enacted earlier this year, that support Sunnyvale's regulations. These laws were crafted with sufficient input from law enforcement and other stakeholders so as to make them practicable throughout the state. Senate Bill 1235 was signed into law, enacting effective and efficient policy to perform background checks on ammunition sales and providing for a database that would track ammunition sales and alert vendors of persons prohibited from purchasing ammunition. AB 1695 was enacted to reduce the flow of firearms into the black market, making *false* reporting of loss of theft of firearms a misdemeanor and prohibiting anyone convicted of this offense from purchasing or owning firearms for ten years. Prop 63 contains some provisions that may be in conflict with these laws. For example, it removes the exemption for law enforcement to purchase ammunition freely for on-duty purposes. It creates a fine of \$5,000 for *failure* to report the loss or theft of a firearm, a concept that the Legislature rejected because statistics show that similar ordinances have actually deterred individuals to report for fear of penalty. For these conflicts to be corrected, legislative action would be required, with a two-thirds majority vote, which might be difficult to achieve on an issue as sensitive as gun control. Because of the potential for conflicts, and the difficulty required to take corrective action, staff recommends "Take No Position" on this measure.

Agenda Item #: 4, Measure M – Public Lands for Public Use Act

Title: Adopt Positions on State and Local Ballot Measures for the November 8, 2016 Election

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Question(s):

1) The wording of the proposed ordinance doesn't seem to actually require that the City be involved in an affected transaction - it doesn't say that the City must be the purchaser, the seller, the lessor, the lessee, etc. Am I correct that an affected property could be one of "public use" as defined by the ordinance, but not necessarily with actual City involvement in the transaction?

Example: the Santa Clara Unified School District decides to lease some of the unused open space at Peterson Middle School - maybe to Full Circle Farms as an expansion. That property would appear to fall under the initiative, since its current use is pretty clearly recreational, open space, or educational in nature, and as public school space, it is currently for public use. If SCUSD decided to lease that property to someone other than the City of Sunnyvale, it would still appear to fall under the language of the ordinance.

I'm not asking for a legal ruling on my example. I'm providing that as an example as to how a transaction may conceivably fall under the ordinance without actual City involvement. I'm asking if the ordinance unambiguously requires the City to actually be a party in an affected transaction, or if transactions strictly involving other public or private parties are potentially covered by the wording of the ordinance.

2) The 9212 report repeatedly refers to the language of the ordinance being legally ambiguous, and therefore creating significant litigation risk for the city. But the report also makes it clear that it does not represent a legal analysis of the measure. Does the City Attorney's office concur that the ordinance as written contains significant legal ambiguities that would ultimately need to be resolved by the courts?

Staff Response(s): Measure M proposes to amend Sunnyvale Municipal Code Section 2.07.030 and reads in relevant part as follows: *...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...* The proposed language would not apply to Santa Clara Unified School District property and clearly applies to property that is owned, leased or used by the City as a public park or community service amenity. How the voter approval requirement will apply to the types of transactions subject to Measure M may be subject to interpretation due to ambiguities in the Measure and whenever ambiguities exists in any ordinance the likelihood of litigation regarding the ambiguities increases.
