



Office of the City Attorney

Memorandum

TO: Honorable Mayor and
City Council

FROM: John A. Nagel
City Attorney

SUBJECT: Agenda Item #5
Public Lands for Public Use Act

DATE: July 12, 2016

I have attached a copy of a letter received from Jay Kim, attorney for the proponents of the ballot measure, regarding the ballot question that the City Council will be considering this evening. I received this letter after having met with the proponents' representative to listen to their comments regarding the ballot question. After considering the points raised in this letter, it is still my opinion that the staff recommended language contained in Option No. 2 should remain unchanged.

Encs.

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July 6, 2016

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Via email

Re: Ballot Label for Sunnyvale Public Lands for Public Use Act

Dear John and Melissa:

Thank you for meeting with us yesterday to discuss the Public Lands for Public Use Act (the "Initiative"). This letter summarizes the topics discussed during our meeting regarding the ballot label.

The ballot label proposed at the June 14, 2016 city council meeting includes three elements that we believe are misleading and does not accurately reflect the true language of the measure.

1. Amended ordinance instead of new ordinance

First, the proposed label mischaracterizes the Initiative as a new ordinance as opposed to an amendment to the existing Sunnyvale Municipal Code. You told us that the revised ballot label will include the word "amend."

2. Special or general election

Second, the proposed label incorrectly implies that the City must conduct an election every time it decides to sell, lease, swap or transfer covered property. While it is possible that the City could call a special election, the Initiative does not require a special election for any and all covered transactions. A measure can be added to a pre-planned general election. Requiring the City to "conduct" a citywide election implies that but for the Initiative, there would be no election (which does not take general elections into account).

We propose changing "... require the City to conduct a citywide election requesting approval from a majority of voters for any sale..." to "... require approval from a majority of voters in a citywide election for any sale..."

3. Defined terms

Finally, the proposed ballot label confuses the description of covered property. The Initiative applies to "public parks" or "community service amenities."

Community service amenities are specifically defined as facilities and land “whose primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment.” Yet the proposed ballot label uses the definition “for government administration, recreation, public park, or similar community purposes.” The proposed language appears to subsume public parks in the definition of community service amenity, which is itself incomplete.

You told us that the revised ballot label will call out public parks separately from community service amenities. We further propose using the language from the Initiative and changing “... or transfer of any property, facility, or land that the City owns, leases, or uses for government administration, recreation, public park, or similar community purposes?” to “...or transfer of property owned, leased, or used by the City as a public park or community service amenity (facilities and land whose primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment)?”

In addition to the three points above, we understand you are proposing to revise the ballot label to elaborate that the term “lease” refers to both leases “to” and “from” the City. We do not believe that further clarification on this point is needed. The current version of Sunnyvale Municipal Code does not differentiate between which side of a lease transaction the City sits (i.e., lessor versus lessee). Other Elections Codes or Government Codes, including California Government Code Section 37380 which is referenced in the existing Sunnyvale Municipal Code Section 2.07.040 (long-term lease of City property), do not make such distinctions either. We believe that attempting to clarify this point could mislead and create additional confusion among voters and compromise the required impartiality of the ballot label. However, if you elaborate that the Initiative would apply to leases to and from the City, we see no reason why one would not also state that all land transactions could be bi-lateral (i.e., sale to and sale by).

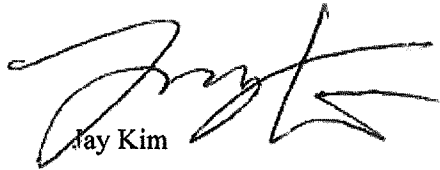
In sum, we believe the following language would be an impartial representation of the Initiative (72 words):

“Shall an amendment to an ordinance be adopted that would require approval from a majority of voters in a citywide election 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 (facilities and land whose primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment)?”

Finally, in addition to the ballot label, we discussed issues with authoring and assigning the arguments for and against the Initiative. We understand you are confirming whether a city council member is permitted to author and sign an argument against the Initiative and assign other willing council members to the other four signature slots. Similarly, we

understand you will confirm whether a proponent of the Initiative may author and sign the argument in favor of the Initiative and assign other willing parties to the other four signature slots. We look forward to hearing from you in this regard.

Best regards,

A handwritten signature in black ink, appearing to read "Jay Kim", with a stylized, flowing script.

cc: Steve Scandalis, Sunnyvale Public Lands Act
Tim Dietrich, Sunnyvale Public Lands Act
Victoria Kovanis, Baker & McKenzie LLP