

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: August 12, 2022
TO: Elizabeth Maland, City Clerk
FROM: City Attorney
SUBJECT: Title, Summary, and City Attorney Impartial Analysis for Ballot Measure –
Excluding the Midway-Pacific Highway Community Plan Area from the 30-Foot
Height Limit on Buildings in the Coastal Zone

The City Council has directed the City Attorney to prepare a ballot title, summary, and impartial analysis of a measure that would amend the San Diego Municipal Code (People’s Ordinance No. O-10960) related to Coastal Zone height limits in the Midway-Pacific Highway Community Plan area, which the City Council voted to place on the November 2022 ballot. (See Resolution R-314247, adopted July 25, 2022.)

The measure seeks approval to amend the San Diego Municipal Code (People’s Ordinance No. O-10960) by amending Article 2, Division 5, Section 132.0505.

The City Council adopted ordinance O-21508 on July 25, 2022, to submit the measure to the voters on the November 8, 2022, Municipal Special Election ballot.

BALLOT TITLE

Amending the San Diego Municipal Code to Exclude the Midway-Pacific Highway
Community Plan Area from the 30-Foot Height Limit on Buildings in the Coastal Zone.

BALLOT SUMMARY

This measure would amend the San Diego Municipal Code (Municipal Code) to exclude the Midway-Pacific Highway Community Plan area (Community Plan area) from the existing 30-foot height limit on buildings.

This measure does not approve any specific development. Any proposed future development must comply with all governing laws at the time a development project application is submitted to the City of San Diego (City). Zoning laws in the Municipal Code would still regulate building height.

In 1972, voters in the City approved a citizens' initiative measure that limited the height of buildings to 30 feet in the Coastal Zone (Height Limit Ordinance). Voters adopted the original language of the Height Limit Ordinance and are asked in this measure to consider an amendment to that law.

As defined in the Height Limit Ordinance, the geographic boundaries of the Coastal Zone include the City's land and water area from the northern City limits, south to the border of Mexico, extending seaward to the outer limit of the City's jurisdiction and inland to Interstate 5.

The Community Plan area contains approximately 1,324 acres of land. The approximate boundaries of the Community Plan area are Interstate 8 on the north, the San Diego International Airport on the south, Interstate 5 on the east, and Lytton Drive on the west. The Community Plan area includes the land surrounding Midway Drive and Sports Arena Boulevard, including the Pechanga Sports Arena. A map is included in the voter pamphlet and as part of this measure.

On November 3, 2020, the Height Limit Ordinance was amended by a majority of the City's voters, as Measure E, for the Midway-Pacific Highway Community Plan area (Measure E) and codified as Municipal Code section 132.0505(b)(4). A court entered a judgment granting a writ of mandate in Case No. 37-2020-00030308-CU-TT-CTL invalidating all of the City's approvals to place Measure E on the November 3, 2020 ballot (Superior Court Decision). The City has appealed the Superior Court Decision and does not expect to receive a decision before the election on November 8, 2022. The City Council has approved to place the measure again before the voters.

If approved by a majority vote of qualified voters who vote on the measure, this measure would amend the Municipal Code to change the height limit in the Midway-Pacific Highway Community Plan area. The amendments would take effect after the City Council certifies the results of the election. The measure includes language making the measure ineffective if a court reverses the Superior Court Decision on the previous Measure E and there are no further appeals related to Measure E.

CITY ATTORNEY'S IMPARTIAL ANALYSIS

In 1972, City of San Diego (City) voters passed Proposition D. Proposition D was a citizens' initiative that amended the San Diego Municipal Code (Municipal Code) to impose a 30-foot limit on the height of buildings constructed in the City's Coastal Zone.

The Coastal Zone, as defined by Proposition D and included in the Municipal Code, includes the City's land and water area from the northern City limits, south to the border of Mexico, extending seaward to the outer limit of the City's jurisdiction and inland to Interstate 5. The Coastal Zone excludes the land bounded by National City on the south, San Diego Bay on the west, and Laurel Street or the southwesterly projection of Laurel Street on the north.

This measure would amend the language placed in the Municipal Code by Proposition D in one community plan area only. Because voters approved the original language, voters are now asked to consider an amendment to the language through this measure.

The amendment would allow buildings, or additions to buildings, that exceed the 30-foot height limit to be built in the Midway-Pacific Highway Community Plan area (Community Plan area). The Community Plan area contains approximately 1,324 acres of land surrounding Midway Drive and Sports Arena Boulevard, including the Pechanga Sports Arena. The Community Plan area is shown on a map in the voter pamphlet that is incorporated into this ballot measure.

The measure is similar to the amendment approved by a majority of the City's voters in November 2020 (Measure E), which was invalidated by a Superior Court decision. The City has appealed the Superior Court decision and does not expect to receive a decision before the election on November 8, 2022. The City Council has approved to place the measure again before the voters.

This measure does not approve any specific development. Any new development must comply with all governing laws at the time a development project application is submitted to the City.

Zoning laws in the Municipal Code will continue to apply to regulate building heights. Any proposed development within the portions of the Community Plan area subject to Coastal Commission jurisdiction under the California Coastal Act would continue to require Coastal Commission approval.

This measure was proposed by members of the City Council, which voted to place it on the ballot. If approved by a majority of the qualified voters voting on the measure, the Municipal Code would be amended after City Council certifies the election results. The measure includes language making this measure ineffective if a court reverses the Superior Court decision on the previous Measure E and there are no further appeals. If a court reverses the Superior Court decision, Measure E will be in effect instead.