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## **City Seeks Legal Review of Two Citizens' Initiatives**

*Asks court for pre-election guidance on competing Mission Valley measures*

The City of San Diego today filed petitions with the Superior Court seeking pre-election legal review of two competing citizens' initiatives that seek control over City property in Mission Valley.

The two initiatives are the San Diego River Park and Soccer City Initiative (commonly known as the Soccer City Initiative) and the SDSU West Campus Research Center, Stadium and River Park Initiative (commonly known as the SDSU West Initiative). Both initiatives have qualified for the ballot and can be placed before voters in November 2018.

The SDSU West Initiative proposes the sale of approximately 132 acres of City-owned real property, which includes the site of SDCCU Stadium, formerly Qualcomm Stadium, to San Diego State University or an SDSU auxiliary organization for development purposes.

The Soccer City Initiative proposes the 99-year lease of approximately 233 acres of City-owned real property, which includes the stadium site as well as noncontiguous property in Murphy Canyon, to a "qualified lessee" for development purposes. (The Initiative defines a "qualified lessee" so narrowly that only one entity currently meets the definition -- the same entity that is a major supporter of the Initiative.)

The right of citizens to act through initiative has long been construed to extend only to legislative acts and not to administrative or executive acts. Essentially, citizens can use the power of initiative to guide policy, but they cannot use it to mandate how policy is enacted. Among other issues, the petitions ask the court to determine whether the initiatives impermissibly exceed the power to act through an initiative, and whether they impermissibly conflict with State law and the San Diego City Charter.

**"By seeking pre-election guidance from the courts, the City hopes to avoid a situation where voters act on measures that are later found to be legally invalid,"** City Attorney Mara W. Elliott said. **"Even if the court finds no problems with the measures, it may narrow post-election issues, which will save taxpayer money and potentially expedite City actions to implement a successful measure."**

While pre-election review is not guaranteed, the City contends this is an instance where it is appropriate. The initiatives interfere with the ability of the Mayor and City Council to manage the finances, land use, planning, water use, and public contracts associated with this City-owned asset, including the critical San Diego River area.

The petitions can be found [Here](#) and [Here](#). The City Attorney's Office plans to make no additional comments at this time, beyond the responses to questions found below.

## Questions and Answers

Q. Why did the City seek the court's guidance on these initiatives now?

A. A pre-election challenge has several advantages. First, voters deserve to know before the election whether an initiative can deliver on its promises. Second, the costs to the City of conducting an election are significant, and might be avoided if a court finds that either measure cannot be legally enacted. Third, either initiative, if it succeeds, may be vulnerable to a post-election challenge from a citizen, an organization, or the proponents of a losing initiative. Post-election challenges can take years to resolve, delaying actions needed to implement a successful measure and, in this instance, idling a key City asset. By addressing these issues early, the court can provide voters with clarity before they go to the polls and provide the City with guidance before it undertakes actions needed to implement a successful measure.

Q. What issues is the court being asked to review?

A. The key issues are whether the initiatives go beyond the voters' power to act through an initiative and whether they impermissibly interfere with the Mayor and City Council's collective responsibility for the City's finances, land use and planning, water use, and public contracts.

The court is being asked to determine whether the Soccer City Initiative:

- Contains administrative provisions that are not permissible for an initiative;
- Conflicts with the City Charter;
- Conflicts with state law governing land use and the California Environmental Quality Act;
- Impermissibly interferes with essential government functions; and
- Fails to enact an ordinance and is unreasonably vague.

The court is being asked to determine whether the SDSU West Initiative:

- Contains administrative provisions that are not permissible for an initiative;
- Conflicts with the City Charter;
- Conflicts with state law governing development of state university property;
- Impermissibly interferes with essential government functions; and
- Fails to enact an ordinance and is unreasonably vague.

Q. What happens if the court finds that an initiative is legally invalid?

A. If a court finds that one or both initiatives are legally invalid, it has the discretion to craft an appropriate

remedy for the City to implement. Such a remedy could include removing an invalid measure from the ballot. This does not necessarily mean that the stadium site could not be used for purposes envisioned by the initiatives' proponents. The City could pursue all legally permissible options for development of the land, including issuance of a competitive Request for Proposals.

Q. When were these lawsuits authorized?

A. The City Council voted in Closed Session on April 24, 2018, to authorize the City Attorney to seek a pre-election review of the two initiatives.

Q. Why was the law firm of Olson Hagel & Fishburn LLC engaged?

A. The law firm of Olson Hagel & Fishburn LLC specializes in state and local election law and has litigated a number of initiatives and referenda on both a pre-election and post-election basis. It was engaged by the City Attorney's Office because this is a specialized area of law. They are assisting the City Attorney's Office in preparing and arguing the City's position.

Q. When is a court likely to act?

A. Under the California Election Code, pre-election petitions are given priority in the court system. We expect an expedited review of the matter and expect the court to make a decision in time for it to be known before the election. However, it is possible that the court will postpone its decision until after the election to determine whether either measure succeeds.

Q. Does this indicate that the City supports the lawsuit filed by Soccer City supporters to invalidate the SDSU West initiative?

A. No. The City is a defendant and has not taken a position on the claims in that lawsuit.

Q. When would the City normally act to place the Mission Valley initiatives on the ballot?

A. The earliest date the City Council can adopt the ordinances placing the two initiatives on the November ballot is July 9, 2018, after calling the November election. The latest date is August 6, 2018. The last date for the City Clerk to file election materials with the Registrar of Voters is August 10, 2018. The City will follow all procedures in their normal course as it awaits a court ruling.

Q. Why is Cybele L. Thompson listed as a plaintiff?

A. Ms. Thompson is the director of the City of San Diego's Real Estate Assets Department. In that capacity, she negotiates land sales and leases on behalf of the Mayor and has a responsibility to maximize the value of, and return on, City assets.

Q. Why are the City Clerk and Registrar of Voters named as defendants?

A. That is the correct procedure for bringing these matters before the court because those individuals, in their official capacities, are responsible for placing the measures on the ballot.

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