



City of Chula Vista

Staff Report

File#: 14-0079, **Item#:** 4.

RESOLUTION NO. 2014-046 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING A CITY COUNCIL POLICY FOR PUBLIC REVIEW OF CITY COUNCIL AND CITIZEN-SPONSORED INITIATIVES, INCLUDING FISCAL ANALYSIS, AND CHARTER REVIEW COMMISSION REVIEW FOR CHARTER-RELATED PROPOSALS

RECOMMENDED ACTION

Council adopt the resolution.

SUMMARY

In June 2012, the City Council requested that staff draft a policy for the initiation of ballot measures, with the policy to include procedures for conducting a fiscal analysis and a review by the Charter Review Commission. Staff has drafted a proposed policy. That policy is now being presented for Council consideration.

ENVIRONMENTAL REVIEW

The Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378(b)(5) of the State CEQA Guidelines because it involves only adoption of a City Council policy regarding initiation of ballot measures and therefore is an organizational or administrative activity of government that will not result in a direct or indirect physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

Environmental review is not necessary for this policy, but a separate CEQA analysis would be required if the City Council initiates a ballot measure, prior to Council decision regarding placing the measure on the ballot.

BOARD/COMMISSION RECOMMENDATION

The Charter Review Commission was presented with the draft policy on December 11, 2013. The Commission voted 6-0 (with one member absent) to approve the draft policy, with the following modifications: (i) expand the policy to include citizens' initiatives; and (ii) revise the policy to provide that the fiscal analysis be conducted prior to the Commission's review of the initiative. The draft policy being presented to the City Council reflects those modifications.

DISCUSSION

I. Introduction

This draft "Policy on Processing Initiatives" is presented in response to a City Council request that the City Attorney prepare a policy governing the procedures for the initiation of ballot measures. In response to input from the Charter Review Commission, the draft Policy also includes procedures

for processing citizens' initiatives. The Policy sets forth the process that should be followed for initiation, review and analysis of initiatives. The process includes a fiscal analysis of each initiative by the City's Finance staff, and review by the Charter Review Commission of those initiatives that relate to the City Charter.

II. Background

The current City practice for general matters presented for City Council consideration is to include analysis of the fiscal impacts of the action, both for the fiscal year in which the matter is considered, and for subsequent fiscal years. Initiatives proposing to amend the City Charter must be submitted to the voters for approval, whether the initiated by the City Council or by citizens' petition. With respect to qualifying citizens' initiatives that do not propose to amend the Charter, the City Council has discretion to adopt the proposed ordinance, or submit it to the voters. There are costs associated with placing an initiative on a ballot and significant additional costs for calling an election, if necessary, to consider the initiative. In addition, there may be costs associated with implementing the initiative. The Policy is intended to implement a process which will inform the City Council of the potential fiscal impacts and, when appropriate, the Charter implications, prior to acting on a proposed initiative.

The City's Charter Review Commission is an advisory body which serves as a resource to advise and make recommendations to the City Council and the City Manager on issues affecting the provisions of the City Charter. The Commission's responsibilities include, identifying language to amend the City Charter to clarify or improve the workings of the City government, and recommending changes sufficiently in advance of elections to allow thoughtful City Council review and determination of whether to place the matter on the ballot. In addition, the Commission's functions and duties include:

- A. Constitute a forum for City-wide discussions, research and analysis of matters relating to current or proposed provisions of the City Charter, and amendments thereto.
- B. Help coordinate citizen and staff ideas with regard to potential Charter changes.
- C. Prepare and submit proposed ballot arguments in favor of or against proposed Charter changes.

In accordance with the above, the proposed Policy would implement a process by which the Charter Review Commission would consider and make recommendations to the City Council on proposed initiatives impacting or relating to the Charter, prior to City Council action on the proposed initiative.

III. City Council Initiatives

The California Elections Code authorizes the City Council to submit a proposition to the voters for approval on its own initiative. A City Council initiative does not require a citizens' petition. City Council initiatives that propose to amend the Charter must be submitted to voters at either an established statewide general election, or a regularly scheduled general municipal election, depending on the nature of the proposed amendment. City Council initiatives to enact, amend or repeal an ordinance can be submitted to the voters at a special or general election. In each case, there must be at least 88 days between the date the City Council orders the measure to be placed on the ballot, and the election.

IV. Citizens' Initiatives

Citizens may propose an ordinance by submission of an initiative petition to the City Council. Before circulating an initiative petition, the proponents must file with the City Clerk, a notice of intention to do so, accompanied by the written text of the initiative. The City Council may refer the proposed initiative measure for a report on various enumerated matters, including its fiscal impact, and "[a]ny other matters the legislative body requests to be in the report." If the City Council refers it for a report, the report must be presented to the City Council no later than 30 days after the City Clerk certifies the sufficiency of the petition to the City Council. The City Council then must either adopt the measure without change, or submit it to the voters.

Qualifying citizens' initiatives that propose to amend the Charter, must be submitted to the voters at the next regularly scheduled general municipal election, or at any established statewide general or statewide primary election, occurring not less than 88 days after the date of the order of election. Accordingly, unlike other citizens' initiatives, the City Council does not have the discretion to adopt the initiative, rather than submit it to the voters.

V. The Policy

The draft Policy is provided as Attachment 1 to this Agenda Statement. To summarize, the Policy sets forth procedures by which the City Council will refer initiatives to the City Manager and City Attorney for preparation of a fiscal analysis and for the recommendation of the Charter Review Commission, when the proposed measure relates to the Charter. The procedures allow 45 days for preparation of the fiscal analysis and consideration by the Charter Review Commission, and vary slightly between City Council initiatives, citizens' initiatives, and citizens' initiatives to amend the City charter, in order to ensure compliance with the applicable statutory scheme. The specific procedures are set forth below, they are identical to those contained in the policy, but are provided here as well, for the Council's convenience:

A. City Council Initiatives

California Elections Code section 9222 authorizes the City Council to submit a proposition to the voters for approval, on its own initiative, without a citizens' petition. City Council initiatives that propose to amend the Charter must be submitted to voters at an established statewide general election, primary, or regularly scheduled general municipal election, depending on the nature of the proposed amendment. There must be at least 88 days after the date the City Council orders the election on the initiative.

If the City Council, or any of its members, desires to propose an initiative for potential ballot placement, the City shall comply with the following procedures:

1. One or more members of the City Council shall, during a City Council meeting, introduce and describe the proposed initiative.
2. During the meeting at which the initiative is introduced, the City Council shall refer the proposed initiative to the City Manager for preparation of a fiscal analysis of the measure. If the proposed initiative proposes to amend, or otherwise relates to, the Charter, the City Council shall also refer the proposed initiative to the City Attorney for presentation to, and recommendation of, the Charter Review Commission.

- a. Fiscal Analysis.
 - i. The City Manager shall be responsible for ensuring that the City's Finance Director reviews the proposed initiative for fiscal impacts. The Finance Director shall prepare a written analysis, detailing the potential fiscal impacts of the measure.
 - ii. The Finance Director shall utilize the information and resources available to conduct the fiscal analysis, within fourteen days of the date the initiative is referred to the City Manager. In addition to reporting back to the City Council, the Finance Director shall provide the fiscal analysis to the City Manager and City Attorney.
 - b. Charter Review Commission Recommendation
 - i. If the initiative was referred for the recommendation of the Charter Review Commission, the City Attorney shall ensure that the proposed initiative, along with the fiscal analysis, is reviewed by the Charter Review Commission. The City Attorney shall present the proposed initiative to the Charter Review Commission within ten days of receiving the Finance Director's fiscal analysis.
 - ii. After consideration of the proposed initiative and fiscal analysis, the Charter Review Commission shall provide a report to the City Council, detailing its recommendations as to how the City Council should proceed with respect to the initiative. The report may be provided to the City Council in writing, orally during a City Council meeting, or via the City Attorney, along with the minutes of the Charter Review Commission meeting. The Commission's report shall be advisory only, and shall not be binding on the City Council.
3. The fiscal analysis and the Charter Review Commission's recommendation shall be presented to the City Council within forty-five days of the date the proposed initiative was referred to the City Manager and City Attorney.
 4. If the fiscal analysis or report is not presented within forty-five days, the City Manager and City Attorney shall report back to the City Council regarding the status of the fiscal analysis or the recommendation, and the reasons it has not been presented to the City Council. The City Council shall then determine how it will proceed with respect to the proposed initiative.
 5. In order to comply with the above procedures, an initiative proposed by the City Council, or any City Council member, should be presented for Council consideration no later than 180 days prior to the election for which it is proposed to be placed on the ballot.

B. Citizens' Initiatives - Non- Charter Amendments

If an initiative petition is submitted, the City shall comply with the following procedures:

1. If the City Clerk determines that a proposed citizens' initiative has met the publication and/or posting requirements of California Elections Code section 9205, the City Clerk shall notify the City Council of the proposed measure at the next City Council meeting at which the item can be sufficiently noticed.
2. The City Council shall then refer the proposed initiative to the City Manager and the City Attorney, pursuant to section A.2.-4., above. The City Council may expand the scope of the report and/or the time allotted, in accordance with applicable law.
3. Notwithstanding the above, the City shall comply with applicable law, including California Elections Code sections 9200, *et seq.*, in processing citizens' initiatives.

C. Citizens' Initiatives - Charter Amendments

An initiative petition that proposes to amend or repeal a charter and is proposed by a petition signed by 15 percent of the registered voters of a city, must be submitted to the voters at the next regularly scheduled general municipal election, or at any established statewide general or statewide primary election, occurring not less than 88 days after the date of the order of election. Accordingly, unlike other initiatives, the City Council does not have the discretion to adopt the initiative, rather than submit it to the voters.

Notwithstanding the above, if an initiative petition proposing to amend the City's charter is submitted, the City shall comply with the following procedures:

1. If the City Clerk determines that a proposed citizens' initiative to amend the City's charter has met the requirements of California Elections Code sections 9256, *et seq.*, the City Clerk shall notify the City Council of the proposed measure at the next City Council meeting at which the item can be sufficiently noticed.
2. If time permits, the City Council shall then refer the proposed initiative to the City Manager and the City Attorney for preparation of a report, pursuant to section A.2.-4., above.
3. Notwithstanding the above, the City shall comply in all respects with California law, including Elections Code sections 1415, and 9255, *et seq.*, in processing initiative petitions to amend or repeal the Charter.

The proposed Policy is intended to provide a mechanism to ensure that a fiscal analysis is completed for each proposed ballot measure and that Charter Review Commission review is conducted for each initiative that proposes to amend, or otherwise relates to, the City's charter. This process is intended to allow for public vetting of proposed ballot measures, whether initiated by the City Council or by citizens' initiative, and to allow the City Council to consider this information prior to making any decision on the measure.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site specific and consequently, the 500-foot rule found in California Code of Regulations section 18704.2

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(a)(1), is not applicable to this decision. Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. Adoption of this policy would support the Operational Excellence goal by bolstering the City's commitment to fiscal health by requiring fiscal analysis of each ballot initiative. It would also support the Connected Community goal by involving the community, through the Charter Review Commission's review and analysis of proposed initiatives.

CURRENT YEAR FISCAL IMPACT

The fiscal impact of adoption of this policy cannot be determined at this time. The fiscal impact will vary depending on the complexity of the proposed initiative. For example, if the proposed initiative is fairly routine, staff should be able to complete review and fiscal analysis within the prescribed time with no additional resources. However, for more complex initiatives, consultant services may be required to determine the fiscal impact of the proposed initiative.

ONGOING FISCAL IMPACT

The fiscal impact of adoption of this policy cannot be determined at this time. The fiscal impact will vary depending on the complexity of the proposed initiative. For example, if the proposed initiative is fairly routine, staff should be able to complete review and fiscal analysis within the prescribed time with no additional resources. However, for more complex initiatives, consultant services may be required to determine the fiscal impact of the proposed initiative.