



# *CITY COUNCIL AGENDA REPORT*

---

MEETING DATE: FEBRUARY 16, 2010

ITEM NUMBER:

**SUBJECT: SUBMISSION TO VOTERS OF PROPOSED BALLOT MEASURE TO AFFIRM THE GENERAL PLAN LAND USE DESIGNATION OF THE ORANGE COUNTY FAIR AND EVENT CENTER IN THE COSTA MESA 2000 GENERAL PLAN AS AMENDED BY GENERAL PLAN AMENDMENT GP-09-01**

**DATE: FEBRUARY 9, 2010**

**FROM: CITY ATTORNEYS OFFICE**

**PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY**

**FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, (714) 754-5399**

---

## **RECOMMENDATION**

1. Adopt resolution to propose a Ballot Measure for submission to the voters of an ordinance affirming the general plan land use designation for the Orange County Fair and Event Center as set forth in General Plan Amendment GP-09-01.
2. Adopt resolution requesting the Board of Supervisors of Orange County to consolidate a special election to be held on June 8, 2010.
3. Adopt resolution calling and giving notice of a special municipal election to be held on June 8, 2010.
4. Adopt resolution setting priorities for filing written arguments regarding the proposed city ballot measure and directing the City Attorney to prepare an impartial analysis.
5. Adopt resolution providing for the Filing of Rebuttal Arguments for the proposed city ballot measure.

## **BACKGROUND:**

**General Plan Amendment GP-09-01** was a City-initiated amendment to amend the Land Use Element of the 2000 General Plan for the 150-acre Orange County Fair and Event Center property at 88 Fair Drive. The site has a Fairgrounds land use designation and is zoned Institutional & Recreational (I&R zone). The General Plan Amendment was adopted by City Council on February 2, 2010 following a public hearing and then adopted again on February 16, 2010, by Resolution Number 10-12. The adopted General Plan Amendment describes the existing land use/traffic context, involves expanded text description for the Fairgrounds land use designation, and provides discussion on permitted and prohibited land uses. There was no change to the maximum allowable floor-area-ratio of .10.

The City Council previously determined that it wished to submit to the voters of Costa Mesa a measure which would confirm the general plan designation for the Fairgrounds and require that any future general plan amendments for the property require voter approval.

## **ANALYSIS**

The Council adopted General Plan Amendment GP-09-01 to more clearly describe both the existing permitted uses for the 150-acre Orange County Fair and Event Center property as well as some of the uses that would not be permitted or compatible with the property's use or the surrounding properties. It is important to note that the General Plan designation does not control the use or development of the property while it continues in State of California ownership. Moreover, while the adopted General Plan Designation controls development of the property by any private owner, it would be subject to change in the future by a majority vote of the City Council. In order to ensure the long term maintenance of the property consistent with the current General Plan designation, the voters of Costa Mesa may adopt an ordinance which would both affirm the adopted General Plan designation consistent with the property's current use and development and require that any future amendment to the General Plan designation for the property likewise require adoption of an ordinance by majority vote of the electorate. Such a measure may be placed on the ballot by the people via initiative or directly by the City Council pursuant to California Elections Code 9222. Any proposal submitted to the voters for action is to be placed on the ballot at a regular or special election which occurs more than 88 days following the date of the order of the election.

Even if the ballot measure is approved, its requirements would not apply until the property is owned by someone other than the State. In addition, while the proposed measure would affirm the adopted General Plan designation and description of permitted and unpermitted uses for the property, it would not guarantee that any currently existing use on the property would not be discontinued in the future. It simply provides the framework for allowable uses and prohibited uses which might be developed or proposed in the future without mandating the continuation of any particular use on the site.

## **ENVIRONMENTAL DETERMINATION**

Submission of a proposed ordinance to the voters regarding a general plan or zoning issues is a Project for purposes of the California Environmental Quality Act. The Project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and the previously-certified General Plan Final EIR. The proposed ordinance will not result in any negative impact to the environment as neither the proposed ordinance nor the voter's action on it will increase or decrease the types of uses or buildable space for the property from what currently exists, and is therefore believed to have no environmental impact. In addition, The General Plan Final Program Environmental Impact Report (Final EIR) was certified by City Council in January 2002. The OCFEC Master Plan Final EIR was certified by the 32<sup>nd</sup> District Agricultural Association in September 2003. These two environmental documents constitute the required environmental documentation for the proposed General Plan amendment. Staff believes that the proposed ballot measure

affirming the General Plan Designation for the Fairgrounds is within the original scope of the General Plan Final EIR and OCFEC Master Plan EIR, and no additional environmental documentation is required. The resolution and proposed ordinance include findings relating to compliance with the California Environmental Quality Act.

### **LEGAL REVIEW**

The City Attorney's office has prepared the attached resolution proposing the ballot measure, the proposed ordinance to be submitted to the voters and the full text of the Measure, which includes both the code amendments and the land use designation language for the property. The City Clerk's Office has prepared the resolutions relating to the call and consolidation of the election and the City Attorney's office has reviewed and approved these resolutions.

### **FISCAL REVIEW**

The City's cost to consolidate a special election with the County's June election would be from \$112,267 up to \$136,794. Funds have already been appropriated by the City Council for the potential costs of the special election. Should additional funds be necessary once the Registrar of Voters calculates the exact costs, staff will return with an appropriate budget adjustment.

Should the Council elect to place the ballot measure on the November 2010 ballot (for which the City will already be requesting a consolidated election), the total cost for the consolidated November election would be in the range of \$86,500 to \$101,500, of which the ballot measure would constitute \$8,500.00 over the otherwise estimated cost of the November election.

### **ALTERNATIVES**

Council may make any modifications to the proposed text of the resolution, ordinance or measure as it deems appropriate.

Council may also determine to place this item on the November 2010 ballot instead of calling a special election in June 2010.

### **ACTIONS PERMITTED RESPECTING CITY MEASURE**

Both the City and its officer and employees are restricted from expending public funds to advocate for a particular vote on a City proposed ballot measure. However, the City Council may lawfully expend City funds to place an item on the ballot for voter approval, direct the City Attorney to prepare the appropriate title and summary of the measure, and act as a legislative body to allow the Council as a whole or any member or members of the Council to file a written argument in support of (or against) any proposed City measure. In addition, the City may expend public funds to educate and inform the public about a

proposed ballot measure, but may *not* use such informational and educational materials to advocate a particular vote for or against the measure.

As a general rule, citizens do not give up their constitutional right to participate in political activities by becoming an employee or elected official of the City of Costa Mesa ("City"). There are, however, a few limited exceptions under state law which limit the political activities of an employee while she or he is working. The state law provisions are found in California Government Code Sections 3201 – 3209. The state statutes include provisions which allow cities to regulate the political activities of its employees during working hours and while on city property. Cal. Gov't Code § 3207.

The following is a brief outline of the state and local rules governing the political activities for City employees:

1. **No Right to Engage in Political Activities During Working Hours.**

As stated above, citizens do not give up their constitutional right to participate in political activities when they become an employee of the City. Under state law, however, cities are authorized to pass regulations which limit the right of City officers and employees during working hours. The City has adopted Costa Mesa Municipal Code - TITLE 2 ADMINISTRATION, CHAPTER VI. PERSONNEL, Sec. 2-227, which reads as follows:

*Political activity. - The political activities of city employees shall conform to pertinent provisions of state law. The violation of any provisions of this law shall be grounds for discharge of any officer or employee. (Code 1960, § 2710; Ord. No. 98-3, § 1, 2-2-98)*

State law references: Political activities of public employees. Cal. Gov't. Code § 3201 et seq.

Under these rules, City employees and officials are prohibited from engaging in any political activities during working hours, when they are supposed to be on duty. The right to engage in political activities at other times is allowed.

2. **No Political Fund Raising Which Specifically Targets Co-Workers.**

Under state law City officers, employees and candidates are expressly prohibited from, directly or indirectly, soliciting political contributions from other employees or officers of the City, or from any person who is identified on an employment list of the City. This prohibition is only violated if the person making the solicitation knows that the person being solicited is an officer or employee of the City. There is also an exception for mass mailings. In other words, solicitations made through the mail (or by other means), which do not involve the use of public resources or expenditure of public funds will be permissible so long as they are made to a "significant segment" of the City's population and are not just targeting the City employees and officers. Cal. Gov't Code § 3205. City employees are free to make voluntary contributions to campaigns for or against a City ballot measure on their own time with their own funds.

**3. No Political Activities While in Uniform**

A City employee is prohibited from participating in political activity of any kind while in uniform. Cal. Gov't Code § 3206. This prohibition includes being in City uniform for any photographs, public appearances, fundraisers, etc. while engaged in political campaigning. Even if your City badge is not apparent from a photograph or an appearance, simply being in uniform can be grounds for both discharge from your office and liability for the City.

**4. Right to Promote or Oppose Ballot Measures Impacting City Workplace**

Like an elected official, a public employee does not give up his or her constitutional rights upon joining a public agency. This fact is reflected in Government Code section 3203, which says that, with certain exceptions, no restrictions may be placed on the political activities of public employees.

However, Public employees should not use public resources (including their time on the job or other resources or materials) to advocate a particular position on a ballot measure. See People v. Battin, 77 Cal. App. 3d 635 (4th Dist. 1978) (successful criminal prosecution of county supervisor for misusing public funds for improper political purposes), superseded on other grounds by People v. Conner, 34 Cal. 3d 141 (July 1983). See also Fair Political Practices Commission v. Suitt, 90 Cal. App. 3d 125, 153 Cal. Rptr. 311 (3d Dist. 1979) (state employees may not participate in campaign activities during work hours or use public resources for campaign activities).

Please contact our office if you have any questions concerning the foregoing restrictions.

**CONCLUSION**

The adoption of the Resolution proposing an ordinance for consideration by Costa Mesa voters affirming the General Plan designation of the Fairgrounds as set out in General Plan Amendment GP-0-01 will meet the Council's objectives of achieving certainty of future land uses at the Orange County Fair and Event Center, while retaining the appropriate degree of flexibility over an undetermined time period.

---

ALLAN ROEDER  
City Manager

---

KIMBERLY HALL BARLOW  
City Attorney

---

COLLEEN O'DONOGUE  
Assistant Finance Manager

---

JULIE FOLCIK  
City Clerk

- Attachments:
1. [Resolution Proposing Measure](#)
  2. [\[Proposed\] Ordinance](#)
  3. [Full Text of Proposed Measure](#)
  4. [Resolution Requesting to Consolidate Special Election](#)
  5. [Resolution Calling and Giving Notice of Special Election](#)
  6. [Resolution Setting Priorities for Arguments and Directing Preparation of Impartial Analysis](#)
  7. [Resolution Providing for Filing of Rebuttal Arguments](#)

cc: City Manager  
Assistant City Manager  
City Clerk  
City Attorney  
Public Services Director  
City Engineer  
Associate Engineer  
Staff (4)  
File (2)

File: OCFEC	Date: 021010	Time: 3:30 p.m.
-------------	--------------	-----------------