

THOUSAND OAKS CITY COUNCIL



Supplemental Information Packet

M. Rodriguez

Agenda Related Items - Meeting of May 24, 2016
Supplemental Packet Date: May 24, 2016
2:30 P.M.

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed, typically a minimum of two—one available on the Thursday preceding the City Council meeting and the second on Tuesday at the meeting. The Thursday Supplemental Packet is available for public inspection in the City Clerk Department, 2100 E. Thousand Oaks Boulevard, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2) Both the Thursday and Tuesday Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2100 E. Thousand Oaks Boulevard.

Americans with Disabilities Act (ADA):

In compliance with the ADA, if you need special assistance to participate in this meeting or other services in conjunction with this meeting, please contact the City Clerk Department at (805) 449-2151. Assisted listening devices are available at this meeting. Ask City Clerk staff if you desire to use this device. Upon request, the agenda and documents in this agenda packet, can be made available in appropriate alternative formats to persons with a disability. Notification at least 48 hours prior to the meeting or time when services are needed will assist City staff in assuring reasonable arrangements can be made to provide accessibility to the meeting or service.

**CityClerk - Tonite TO City Council Meeting Agenda Signature Homes & SOAR Initiative
155 pm Tes May 24 16**

From: Iqbal Quidwai <i.quidwai@gmail.com>
To: Ccto Quidwai <AmericaMyHome@yahoogroups.com>
Date: 5/24/2016 1:52 PM
Subject: Tonite TO City Council Meeting Agenda Signature Homes & SOAR Initiative 155 pm
Tes May 24 16
Bc: CityClerk

http://www.toaks.org/government/agendas_minutes/agendas/city_council.asp
<https://draft.blogger.com/home>
<https://www.youtube.com/channel/UCcAIfSOXqgatxMPwjmbNzUg>
watch SD 27 @ Temple Adat & Carden massacre @ CVUSD!!

CITY CLERK DEPARTMENT
CITY OF THOUSAND OAKS
MAY 24 PM 1:55

Friends!

It is interesting that Mr. /Mrs. Ochs raise the issue of the liability for their homes to the new construction.

This after ADMITTING that their home were built sub standard and that they have issues.

Pray tell me why some one building next door following ALL the onerous codes has to be liable for your problem?

It is great that they have listened and are willing to go the extra mile to take mitigating steps, but I would like Catty to rule why they could be held liable.

These are things that are ADDING to the HIGH cost of housing!

=====

SOAR Initiative: I am glad that City Clerk found the error which is MORE than a mere typo. Please read the staff report. It is pretty clear + makes it transparent to the voters what they are signing.

Any judge would throw out the challenge.

Having the city draft the ordinance has already been done BEFORE & would have the same effect except there will be no glory to the re-election campaign of Al Adam!

Also the address given for CM. Claudia is plain wrong & 388 Brookview does not exist! Fatal flaw in initiative?

C Atty to rule please?

Iqbal Quidwai

Newbury Park CA 91320-1821 USA I.quidwai at gmail.com

TO COUNCIL 5-24-16
AGENDA ITEM NO. 8.A.+9.C.
MEETING DATE 5-24-16



Public Works Department
STAFF REPORT

2100 Thousand Oaks Boulevard • Thousand Oaks, CA 91362
Phone 805/449.2400 • Fax 805/449.2475 • www.toaks.org

TO: Scott Mitnick, City Manager
FROM: Jay T. Spurgin, Public Works Director
DATE: May 24, 2016
SUBJECT: Agenda Item No. 9B. – Ventura County Transportation Commission Countywide Sales Tax Ballot Measure

The recommendation in the May 24, 2016 staff report has been revised to clarify the City’s role in the process of placing the measure on the November ballot, as follows:

RECOMMENDATION:

Adopt Resolution approving the Ventura County Transportation Commission (VCTC) transportation investment and expenditure plan.

Attachment #3 - Resolution, has been revised to include CEQA exemption findings (see attached).

DPW: 940-50\jts\jds\Council\2016\052416 VCTC Tax Measure Supplemental Memo.doc

2016 MAY 24 PM 2:13
CITY CLERK DEPARTMENT
CITY OF THOUSAND OAKS

TO COUNCIL 5-24-16
AGENDA ITEM NO. 9.B.
MEETING DATE 5-24-16

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
THOUSAND OAKS APPROVING THE VENTURA COUNTY
TRANSPORTATION INVESTMENT/EXPENDITURE PLAN

WHEREAS, the City of Thousand Oaks is in receipt of the Ventura County Investment/Expenditure Plan approved for distribution to cities and the County of Ventura by the Ventura County Transportation Commission (VCTC) acting as the Ventura County Local Transportation Authority on April 22, 2016 by a 14-0 vote. The Ventura County Investment/Expenditure Plan was prepared pursuant to Public Utilities Code Section 180206 and is required as part of consideration of the potential placement of a retail transactions and use tax (1/2 cent sales tax) revenue measure on the ballot for the November 8, 2016 general election. The revenue measure, if placed on the ballot and approved by the voters, is estimated to generate \$70,000,000 annually to repair, preserve, and improve the transportation system of Ventura County; and

WHEREAS, the lack of a “self-help” transportation revenue measure has placed Ventura County at a competitive disadvantage when competing for federal and state transportation funds with other California counties; and

WHEREAS, 50 percent of the revenue received from a voter-approved revenue measure and allocated pursuant to the proposed Ventura County Transportation Investment/Expenditure Plan will go back to each of the ten cities and the County of Ventura for local transportation needs. This represents an estimated \$1,650,000,000 of funding over thirty years; and

WHEREAS, the City of Thousand Oaks has significant transportation needs, including local street and road repair, pedestrian improvements, and active transportation needs. Moreover, the cost in recent years of deferred street maintenance and other local transportation needs have grown, while traditional sources of funding have diminished; and

WHEREAS, VCTC, as lead agency, has determined that the Ventura County Investment/Expenditure Plan is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(4), in that the CEQA definition of a “Project” does not include the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

NOW, THEREFORE, the City Council of the City of Thousand Oaks does hereby RESOLVE as follows:

SECTION 1. ENVIRONMENTAL DETERMINATION: The City Council concurs with the determination of VCTC that the Ventura County Investment/Expenditure Plan is exempt from CEQA pursuant to Section 15378(b)(4), in that the CEQA definition of a "Project" does not include the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

SECTION 2. The City of Thousand Oaks approves the Ventura County Investment/Expenditure Plan dated April 22, 2016.

PASSED AND ADOPTED THIS

Joel R. Price, Mayor

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO FORM:



Felicia Liberman, Assistant City Attorney

APPROVED AS TO ADMINISTRATION:

Scott Mitnick, City Manager

From: Samuel Olmstead
Westlake Village, CA 91361
Email: SEJOPI@AOL.COM
Ph: 805-497-7488

Date: 5/23/2016

**RECEIVED BY ALL
COUNCILMEMBERS**

Subject: Please oppose both the VCTC Tax Initiative and the Marijuana distribution and cultivation regulations.

To: Councilman Joel Price

I want to let you know that as a retired police officer, I have seen enough people who have ruined their lives with drugs. This "Medical Marihuana" push is the first step to legalizing Marijuana altogether. We have seen enough cities go that way and it is very obvlous that it is a smoke screen to allow legal sales of marijuana to anyone basically who wants it. We don't need more intoxicated people driving our highways.

And on the VCTC Initiative, when we get around to spending the tax money we already pay, the way and for the things it was meant for, I would consider paying more for the right causes.

PLEASE OPPOSE BOTH OF THESE ISSUES.

Thank you.

Samuel Olmstead

2016 MAY 23 AM 10:10
CITY CLERK DEPARTMENT
CITY OF THOUSAND OAKS

CITY OF THOUSAND OAKS
2016 MAY 23 A 10:09
CITY MANAGER'S OFFICE

TO COUNCIL 5-24-16
AGENDA ITEM NO. 9.B.
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SHUTE, MIHALY
& WEINBERGER LLP

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CATHERINE C. ENGBERG
Attorney
engberg@smwlaw.com

May 20, 2016

Via E-Mail and U.S. Mail

Tracy Noonan, City Attorney
City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, CA 91362

Re: City of Thousand Oaks SOAR Initiative

Dear Ms. Noonan:

This firm has been retained by Save Open Space and Agricultural Resources (“SOAR”) to advise it on matters relating to the City of Thousand Oaks Measure Save Open-Space and Agricultural Resources (SOAR) and Parks Initiative (“Initiative”). We understand that you have preliminarily concluded that the Initiative, which was submitted for filing on April 29, 2016, does not comply with the California Elections Code and that the City Clerk therefore has a ministerial duty to reject the Initiative. We disagree. In our view, and as a matter of clearly established law, the City Clerk has a ministerial duty to accept the Initiative and to certify the results of the County Registrar of Voters’ signature verification process to the City Council.

The right of initiative is enshrined in the California Constitution and is reserved to the people as part of their inherent political power. The Supreme Court has instructed that this right must be “jealously guard[ed]” and “construed liberally so as to promote the democratic process established by inclusion of the initiative and referendum in the Constitution.” *Rossi v. Brown* (1995) 9 Cal.4th 688, 695, 711.

Because of the initiative power’s constitutional importance, “an elections official’s role is confined to the ministerial task of examining the four corners of the petition for compliance with submission requirements.” *See Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 127. As you correctly note, this means the City Clerk has a mandatory duty to refuse to process initiative petitions that clearly violate the procedural requirements set forth in the Elections Code. *See, e.g., Billig v. Voges* (1990) 223 Cal.App.3d 962, 969.

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CITY OF THOUSAND OAKS

TO COUNCIL 5.24.16
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However, it is equally true that if an initiative petition appears on its face to meet the plain terms of the statutory language, the clerk has a mandatory ministerial duty to process the petition regardless of any doubts she has about the initiative's validity. *Alliance for a Better Downtown Millbrae*, 108 Cal.App.4th at 136. "Given compliance with the formal requirements for submitting an initiative, the registrar must place it on the ballot unless [s]he is directed to do otherwise by a court on a compelling showing that a proper case has been established for interfering with the initiative power." *Farley v. Healey* (1967) 67 Cal.2d 325, 327. As discussed below, the Initiative petition meets the formal requirements set forth in the Elections Code on its face. Therefore, the City Clerk has no authority or discretion to reject it.

I. The Initiative Petition Satisfies the Requirements of Elections Code Section 9201 On Its Face.

You contend that the Initiative fails to comply with the Elections Code section 9201¹, which provides that a the title of the petition and the text of the initiative measure must appear on the first page of each section of the initiative petition. Because the title and text of the Initiative were printed on the reverse side of the first page of the initiative petition sections, you have determined that the sections fail to comply with the "first page" requirement. However, this approach is wrong as a matter of clearly established decisional law, which defines "page" for purposes of the Elections Code as a single sheet of paper, including both the front and the reverse sides of that sheet.

Section 9201 reads, in relevant part:

The petition may be in separate sections, providing that the petition complies with this article. *The first page of each section shall contain the title of the petition and the text of the measure.* The petition sections shall be designated in the manner set forth in Section 9020. (emphasis supplied).

The Initiative petition sections submitted to the City Clerk for filing are printed on double-sided paper. The face of the first page of each petition section is occupied by the ballot title and summary and notice of intent to circulate initiative petition, which must appear on each section pursuant to Elections Code sections 9203(b) and 9207. The text of the Initiative begins on the reverse side of the first page and continues on the following pages. The issue is whether the Legislature's use of the term "page" in Elections Code section 9201 refers to the first sheet of paper on an initiative petition section, or whether it refers only to the face of that sheet and excludes the reverse side, as the City contends.

¹ All further unspecified citations to statutory sections refer to the Elections Code.

The California Court of Appeal conclusively resolved this issue in *Alliance for a Better Downtown Millbrae*, 108 Cal.App.4th 123. There, the City Clerk rejected for filing an initiative petition for its alleged failure to comply with Elections Code section 9203(b), which requires that the ballot title and summary be printed “across the top of each page of the petition on which signatures are to appear.” (emphasis added). The initiative petitions in that case contained the ballot title and summary on the front, but not the back, of the signature sheet. *Alliance for a Better Downtown Millbrae*, 108 Cal.App.4th at 130. The Court explained, “What the statute does not specify, and what we must decide, is whether “each page” means “each side of a sheet of paper” or “each sheet of paper.” *Id.*

Upon careful review, the Court held that the Elections Code “requires only that the title and summary of a proposed measure be reprinted on every *sheet of paper* on which signatures in support of the measure appear.” *Id.* at 131. The Court accordingly determined that “[b]ecause on its face the Petition complied with applicable Elections Code requirements, the city clerk had a ministerial duty to accept it.” *Id.* at 136. Thus, the petition was in *actual* compliance with the facial requirements of the Elections Code. The Court further bolstered this holding by observing, in a footnote, that “even if ‘page’ were interpreted to mean a single side of a sheet of paper,” the petition would “substantially comply” with the Elections Code. *Id.* at 131 fn. 2.

Alliance for a Better Downtown Millbrae is directly on point and provides unambiguously that the Legislature intended “page” to mean a single sheet of paper, not just a single side of a sheet of paper. Because the Initiative’s text appears on the reverse side of the first page of each section, it is in full compliance with Elections Code section 9201. The City Clerk’s contrary interpretation of Elections Code section 9201 cannot be squared with existing law as stated in *Alliance for a Better Downtown Millbrae*.

We are aware of no published opinion of a California court limiting *Alliance for a Better Downtown Millbrae*’s holding on this issue. In *Costa v. Superior Court*, the California Supreme Court briefly addressed *Alliance for a Better Downtown Millbrae* in a footnote along with other cases finding that proponents had substantially complied with statutory and constitutional requirements applicable to initiative and referendum measures. (2006) 37 Cal.4th 986, 1019, fn. 26 (citing fn. 2 in *Alliance for a Better Downtown Millbrae* as “noting that even if the initiative petition did not fully comply with section 9203 . . . there was substantial compliance with the statute”). Although it alluded to *Alliance for a Better Downtown Millbrae* as one of many cases illustrating the doctrine of substantial compliance, *Costa* did not disturb—or even refer to—*Alliance for a Better Downtown Millbrae*’s primary holding that the petitioners in

that case had *actually* complied with the facial requirements of the Elections Code, and that holding remains good law.

II. The City Clerk is Not Free to Substitute Her Own Judgment for That of the California Court of Appeal.

The City Clerk is without the discretion to interpret section 9201 in a manner that departs from a published opinion of the California Court of Appeal, based on her own judgment or interpretation. The City's staff report for the City Council's May 24, 2016 meeting discloses that the City relied on Martin & Chapman Co., a publisher and supplier of election supplies and services to cities and counties in California and Nevada, for advice on whether or not to certify the Initiative. Evidently, Martin & Chapman's President and CEO opined that the petition did not meet the requirements of Elections Code section 9201. While we applaud the City's thoroughness in seeking outside advice on this matter, compliance with the facial requirements of the Elections Code is a matter of law and Martin & Chapman's advice is neither authoritative nor persuasive.

Because there has been complete and full compliance with Elections Code section 9201, the City Clerk has no discretion to refuse to certify the petition on the basis that it fails to include the text of the Initiative on the first page of the petition sections. *Alliance for a Better Downtown*, 108 Cal.App.4th at 130-31; *see also, e.g., Lin v. City of Pleasanton* (2009) 176 Cal.App.4th 408, 423 (error for trial court to command city clerk to invalidate petition where petition met literal requirements of Election Code).

As you are surely aware, California Code of Civil Procedure section 1085 empowers courts, upon petition, to issue a writ "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office. . . ." Furthermore, California's "private attorney general" statute, Code of Civil Procedure section 1021.5, provides that a successful litigant can recover attorneys' fees where the case enforces an important right affecting the public interest and results in a significant benefit to the general public. Accordingly, courts routinely award fees to private parties who enforce the initiative and referendum power. *See, e.g., Wal-Mart Real Estate Business Trust v. City of San Marcos* (2005) 132 Cal.App.4th 614, 622-24 (awarding fees to ballot measure proponent intervenor who "protected the rights of thousands of registered voters"); *Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 873 (upholding \$313,000 award of attorneys' fees for action challenging City's refusal to place measure on ballot, including 0.25 multiplier). Should the Initiative proponents be forced to seek a writ in the Superior Court to compel the City Council to place the

Tracy Noonan
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measure on the ballot, we are confident that the trial court will issue the writ and award attorneys' fees.

In conclusion, the Initiative petition suffers from no defects. Because the Initiative complies with the formal requirements of the Elections Code, the City Council must adopt it or place it on the ballot either immediately or following the completion of an Elections Code section 9212 report.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Handwritten signatures of Catherine C. Engberg and Peter J. Broderick. The signature of Peter J. Broderick is written in a cursive style and extends across the right side of the page.

Catherine C. Engberg
Peter J. Broderick

cc: Richard Francis

785995.2

SHUTE, MIHALY
& WEINBERGER LLP