Item-332A 4/6/2021
(R-2021-381 REV.)
(COR. COPY2)

RESOLUTION NUMBER R- 313485

DATE OF FINAL PASSAGE APR 06 2021

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DECLARING MEASURE C TO HAVE BEEN APPROVED IN THE MUNICIPAL SPECIAL ELECTION HELD IN THE CITY OF SAN DIEGO ON MARCH 3, 2020.

WHEREAS, both a Municipal Primary Election and a Municipal Special Election were held in the City of San Diego on March 3, 2020; and

WHEREAS, the San Diego City Council (Council) adopted Resolution R-312901 effective April 7, 2020 (April 2020 Resolution), declaring the results of the Municipal Primary Election and the Municipal Special Election held on March 3, 2020; and

WHEREAS, the Municipal Special Election was held for the purpose of submitting two ballot measures, known as Measure C and Measure D, to the qualified voters of the City of San Diego; and

WHEREAS, of relevance to this Resolution, Measure C appeared on the ballot as:

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|---|---|---|
| **MEASURE C. INITIATIVE MEASURE - HOTEL VISITOR TAX INCREASE FOR CONVENTION CENTER EXPANSION, HOMELESSNESS PROGRAMS, STREET REPAIRS.** Shall the measure be adopted to: increase the City of San Diego's 10.5% hotel visitor tax to 11.75, 12.75 and 13.75 percentage points, depending on hotel location, through at least 2061, designated to fund convention center expansion, modernization, promotion and operations, homelessness services and programs, and street repairs; and authorize related bonds; with a citizens' oversight committee and audits by the City Auditor? | **YES** | |
| | **NO** | |

and;

WHEREAS, Measure C resulted from a citizens' initiative proposing a special tax in the form of an increase in the City's existing Transient Occupancy Tax for specified purposes and the City's issuance of related bonds for specified purposes; and

WHEREAS, the April 2020 Resolution confirmed that a copy of the certificate of the Registrar of Voters of San Diego County (Registrar of Voters) canvassing the returns of the Municipal Special Election, as certified to the City Clerk, had been duly received, and that a canvass of the Municipal Special Election had been completed and the City Clerk had certified the results to the Council; and

WHEREAS, in the April 2020 Resolution, the Council declared that, out of the total number of 366,373 votes cast upon Measure C in the Municipal Special Election, 239,024 (65.24 percent) were in favor of Measure C and 127,349 (34.76 percent) were against Measure C; and

WHEREAS, instead of declaring in the April 2020 Resolution whether Measure C had been approved or rejected on the basis of the voting results, the Council noted as follows in Section III on page 7 of the April 2020 Resolution (collectively, Council's Note): (i) a split of authority exists in California as to whether a simple majority vote or a two-thirds supermajority vote is required for the passage of a special tax proposed by citizens' initiative; (ii) the ballot and ballot pamphlet stated a two-thirds vote threshold for approval of Measure C (based on the City Attorney's determination as to the legal precedent and usual practice in California at the time of submittal of Measure C to the voters); and (iii) it is anticipated that the California Supreme Court will issue a final decision in the future resolving the ambiguity as to the vote threshold applicable to a special tax proposed by citizens' initiative, and the California Supreme Court's decision may impact Measure C; and

WHEREAS, when the Council adopted the April 2020 Resolution, the split of authority in California existed because the trial court in San Francisco (in two separate cases) had concluded that a simple majority vote is required for the passage of a special tax proposed by citizens' initiative and the trial court in Fresno and in Oakland (in two separate cases) had concluded that a two-thirds supermajority vote is required for the passage of a special tax proposed by citizens' initiative; and

WHEREAS, while the trial court's ruling in the Oakland case is still pending on appeal, three appellate court decisions have been issued since the Council's adoption of the April 2020 Resolution, all concluding that only a simple majority vote is required for the passage of a special tax proposed by citizens' initiative: (1) *City and County of San Francisco v. All Persons Interested in the Matter of Prop. C*, 51 Cal. App. 5th 703 (2020) [review denied by the California Supreme Court in September 2020]; (2) *City of Fresno v. Fresno Building Healthy Communities*, 59 Cal. App. 5th 220 (2020) [review denied by the California Supreme Court on March 30, 2021]; and (3) *Howard Jarvis Taxpayers Association v. City and County of San Francisco*, 60 Cal. App. 5th 227 (2021); and

WHEREAS, in light of this new legal precedent that resolves the ambiguity noted in the April 2020 Resolution, including the California Supreme Court's most recent indication as of March 30, 2021, that this new legal precedent is valid, the Council believes that sufficient clarity now exists as to the proper vote threshold governing Measure C and wishes to declare that Measure C has been approved; and

WHEREAS, in closed session on April 6, 2021, the Council authorized the Office of the City Attorney to initiate a lawsuit with respect to Measure C, contingent upon the Council's discretionary adoption in open session of this Resolution and any related resolution authorizing the issuance of bonds under Measure C; and

WHEREAS, in its lawsuit, the City will seek a court determination that Measure C is an approved ballot measure and that the City's issuance of certain bonds under Measure C is lawfully authorized and valid; and

WHEREAS, unless and until the City obtains a favorable trial court judgment or outcome in the lawsuit, the City will not impose or collect the increase in the City's Transient Occupancy Tax, issue any bonds contemplated by Measure C, or take other steps to implement Measure C, such as the approval of annual budgets contemplated by Measure C for the expenditure of increased tax revenues for the purposes specified in Measure C; and

WHEREAS, declaring the results of a municipal election as certified by the Registrar of Voters and the City Clerk is a ministerial act required by California Elections Code section 10263 and, therefore, is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. Measure C is declared to have been approved in the Municipal Special Election held on March 3, 2020, based on the Council's declaration of the voting results for Measure C in the April 2020 Resolution.

2. This Resolution supersedes the Council's Note regarding Measure C in Section III on page 7 of the April 2020 Resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Kevin Reisch
Kevin Reisch
Senior Chief Deputy City Attorney

KJR:jdf
03/26/2021
04/01/2021 COR. COPY
04/05/2021 COR.COPY2
04/06/2021 REV.
Or.Dept: City Clerk
Doc. No.: 2502597_5
Comp. R-2021-382 and R-2021-383

Passed by the Council of The City of San Diego on APR 06 2021, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|---|---|---|---|---|
| Joe LaCava | ☑ | ☐ | ☐ | ☐ |
| Jennifer Campbell | ☑ | ☐ | ☐ | ☐ |
| Stephen Whitburn | ☑ | ☐ | ☐ | ☐ |
| Monica Montgomery Steppe | ☐ | ☑ | ☐ | ☐ |
| Marni von Wilpert | ☑ | ☐ | ☐ | ☐ |
| Chris Cate | ☑ | ☐ | ☐ | ☐ |
| Raul A. Campillo | ☑ | ☐ | ☐ | ☐ |
| Vivian Moreno | ☐ | ☑ | ☐ | ☐ |
| Sean Elo-Rivera | ☐ | ☑ | ☐ | ☐ |

Date of final passage APR 06 2021.

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California

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