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REPORT NO: 06-146

ATTENTION: Rules, Open Government and Intergovernmental Relations Committee
Agenda of October 11, 2006

REPORT TO THE CITY COUNCIL

SUBJECT: Impacts on the City from the November 2006 Statewide Ballot Measures
– INFORMATIONAL REPORT

SUMMARY:

THIS IS AN INFORMATIONAL ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COMMITTEE OR THE CITY COUNCIL.

BACKGROUND:

On the November 2006 Statewide ballot thirteen propositions will be before the citizens of California. This represents five measures placed on the ballot by the Legislature, commonly referred to as the “Infrastructure Bond Package”, while the remaining eight were circulated and qualified via the signature gathering process.

This report identifies eight of the thirteen statewide initiatives that will have either beneficial or negative impacts on the operations or functions of the City of San Diego. They are:

Proposition 1A – Increased Protection of Proposition 42 Funds

Proposition 1B – Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act

Proposition 1C – Housing and Emergency Shelter Trust Fund Act

Proposition 1D – Kindergarten-University Public Education Facilities Bond Act

Proposition 1E – Disaster Preparedness and Flood Prevention Bond Act

Proposition 83 – The Sexual Predator Punishment and Control Act: Jessica’s Law

Proposition 84 – Water Quality, Safety and Supply. Flood Control. Natural

Resource

Protection. Park Improvements. Bonds.

Proposition 90 – Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment.

The five remaining measures do not have an effect on City operations or functions are:

Proposition 85 - Waiting Period and Parental Notification before Termination of Minor's Pregnancy. Initiative Constitutional Amendment.

Proposition 86 - Tax on Cigarettes. Initiative Constitutional Amendment and Statute.

Proposition 87 - Alternative Energy. Research, Production, Incentives. Tax on California Oil. Initiative Constitutional Amendment and Statute.

Proposition 88 - Education Funding. Real Property Parcel Tax. Initiative Constitutional Amendment and Statute.

Proposition 89 - Political Campaigns. Public Financing. Corporate Tax Increase. Contributions and Expenditure Limits. Initiative Statute.

DISCUSSION:

PROPOSITION 1A – Increased Protection of Proposition 42 Funds

Proposition 42, passed by the voters in March 2002, provided that the sales tax paid on motor fuels be used for transportation purposes. Proposition 42 also provided means by which state government could suspend the program, loaning money to the general fund. Since passage, the State legislature has exercised this option three out of four years in has been in place.

Proposition 1A would make it more difficult for the State to borrow Proposition 42 funds. The State could do so only if 1) The Governor issues a proclamation that declares that, due to severe state fiscal hardship, suspension of the Proposition 42 provisions is necessary; 2) The legislature concurs on a 2/3rd vote; and 3) the legislature enacts a separate statute committing to repaying the Proposition 42 account within three fiscal years. Moreover, if Proposition 1A is passed, the State could only suspend Proposition 42 twice during any 10 year period.

Impact on the City: Providing greater security to Proposition 42 funding will enable the City of San Diego to better plan its budget and provide greater efficiencies in making transportation investments.

PROPOSITION 1B – Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act

This measure authorizes the state to sell \$19.925 billion of general obligation bonds to fund transportation projects to relieve congestion, improve the movement of goods, improve air quality, and enhance the safety and security of the transportation system.

The bond money would be available for expenditure by various state agencies and for grants to local agencies and transit operators upon appropriation by the Legislature:

- Local Streets and Roads Improvement, Congestion Relief and Traffic Safety Account -- \$2 billion. Based on the formula contained within this measure, the City of San Diego will be eligible for approximately *\$42 million for improvements to local roadways.*
- Corridor Mobility Improvement Account -- \$4.5 billion
Funds projects to improve:
 - Mobility in high-congestion corridors.
 - Access to jobs, housing, markets, and commerce.
- California Ports Infrastructure, Security, and Air Quality Improvement Account -- \$3.1 billion
 - Trade Corridors Improvement Fund – Improve highway capacity, freight rail lines, port efficiency, dedicated truck lanes, border access, and airports.

- Homeland Security for California’s port and harbor security improvements
- State Transportation Improvement Program (STIP) -- \$2 billion
 - Majority of the funding will be allocated to local jurisdictions.
- Public Transportation Modernization, Improvement, and Service Enhancement Account -- \$4 billion.
 - Providing funding for regional transit service and intercity rail operations.
- State-Local Partnership Program -- \$1 billion
 - Provides funding opportunities for local jurisdictions, such as San Diego, which has adopted local tax measures to provide for transportation needs.
- Transit System Safety, Security, and Disaster Response Account -- \$1 billion
 - Capital projects that provide increased security or development of disaster response transportation systems.

Impact on the City: There are many funding opportunities for the City and the region from the various categories. The only category where the actual amount for the City has been decided is the Local Streets and Roads which is based on an existing formula. The City expects to receive \$42 million.

PROPOSITION 1C – Housing and Emergency Shelter Trust Fund Act

This measure authorizes the state to sell \$2.85 billion of general obligation bonds to fund new and existing housing and development programs.

About one-half of the funds would go to existing state housing programs. The development programs, however, are new—with details to be established by the Legislature. The major allocations of the bond proceeds are as follows:

- **Development Programs (\$1.35 Billion).** The measure would fund three new programs aimed at increasing development. Most of the funds would be targeted for development projects in existing urban areas and near public transportation. The programs would provide loans and grants for a wide variety of projects, such as parks, water, sewage, transportation, and housing.
- **Homeownership Programs (\$625 Million).** A number of the programs funded by this measure would encourage homeownership for low- and moderate-income homebuyers. The funds would be used to provide down payment assistance to homebuyers through low-interest loans or grants. Typically, eligibility for this assistance would be based on the household’s income, the cost of the home being purchased, and whether it is the household’s first home purchase.
- **Multifamily Housing Programs (\$590 Million).** The measure also would fund programs aimed at the construction or renovation of rental housing projects, such as apartment buildings. These programs generally provide local governments, nonprofit organizations, and private developers with low-interest (3 percent) loans to fund part of the construction cost. In exchange, a project must reserve a portion of its units for low-

income households for a period of 55 years. This measure gives funding priority to projects in already developed areas and near existing public services (such as public transportation).

- **Other Housing Programs (\$285 Million).** These funds would be used to provide loans and grants to the developers of homeless shelters and housing for farmworkers. In addition, funds would be allocated to pilot projects aimed at reducing the costs of affordable housing.

Impact on the City: If the San Diego region is as successful in competing for grants as we were under Proposition 46 and if the still-to-be-written rules for the remaining funds are fair then public and non-profit builders of affordable housing and urban infrastructure could receive up to \$250 million in additional funds.

Though the funding will be competitively awarded there are no obvious provisions that work to San Diego's significant detriment.

PROPOSITION 1D – Kindergarten-University Public Education Facilities Bond Act

This \$10.416 billion bond proposal is separated into two major funding categories, K – 12 education facilities and higher education.

If approved by the voters, Proposition 1D will provide \$7.329 billion for kindergarten - grade 12 (K-12) projects as follows:

- A. \$1.9 billion for new construction projects.
- B. \$500 million for charter school facilities.
- C. \$3.3 billion for modernization of school facilities.
- D. \$500 million for career technical education facilities.
- E. \$29 million for joint use projects.
- F. \$1 billion for new construction on extremely severely overcrowded school sites.
- G. \$100 million for high performance "green" school incentives.

Higher education facilities are proposed to be allocated \$3.087 billion:

- A. \$890 million for the University of California (of the UC total, \$200 million is reserved for "telemedicine").
- B. \$690 million for California State University.
- C. \$1.507 billion for California Community Colleges.

Impact on the City: No direct impact, however, indirect benefits include: new schools for increased population and to reduce overcrowding in existing schools; new charter schools; rehabilitation funding for older schools to improve facilities; as well as funding for joint use projects which benefit both students and the surrounding communities.

PROPOSITION 1E – Disaster Preparedness and Flood Prevention Bond Act

The Flood Protection Bond Act of 2006 is a \$4.09 billion measure to fund flood protection activities for the following purposes:

- A. \$3 billion to evaluate, repair, and restore existing levees in the state’s Central Valley flood control system; to improve or add facilities in order to increase flood protection for urban areas in the state’s Central Valley flood control system; and to reduce the risk of levee failure in the Delta region through grants to local agencies and direct spending by the state.
- B. \$500 million to fund local governments for the state’s share of costs for locally sponsored, federally authorized flood control projects outside the Central Valley system.
- C. \$290 million for two purposes:
 - a. \$200 million for the state flood corridor program to establish floodplain corridors and set back levees in areas where annual flooding takes place, but where corridors will help better management high water flows.
 - b. \$90 million for floodplain mapping to ensure that state investments in flood control and protection are properly sized and located to ensure maximum protection of populations from flood.
- D. \$300 million for grants to local agencies outside of the Central Valley system for projects to manage storm water.

Impact on the City: The City may be eligible to compete for funding in the lower funding level categories for flood control projects, floodplain mapping and storm water management. The primary benefit to the City, and the region, is the improvements to the Central Valley flood control system, as a significant amount of southern California’s water supply is imported from the Central Valley.

PROPOSITION 83 – The Sexual Predator Punishment and Control Act: Jessica’s Law

This law, if adopted by the voters, will impose much stricter mandatory sentences for sex crimes, impose a new sexual predator-free zone requirement when releasing parolees in the community and require registered sex offenders to wear a Global Positioning Satellite (GPS) tracking device for life.

If passed, it will be the most comprehensive and toughest sex offender punishment and control law in the nation. Key provisions of Jessica’s Law are:

Mandatory Minimum Sentences – 15 to 25 years to life

- Ensures California has a mandatory minimum of 15 years to life for any offender that rapes a child under the age of 14.
- For every convicted forcible sex act, the offender will receive consecutive, full-term sentences. (For example, if an offender molests the same child three times, in the span of several hours, the offender will receive 45 years to life or 3 consecutive sentences).
- Ensures all egregious sex offenders serve at least 25 years by closing loophole in California law that allows judges to reduce sentences.
- Adds more crimes like continuous sexual abuse of a child to be charged 15-25 years to life.
- Adds the crime of kidnapping with the intent to commit a forcible sex crime and adds burglary with the intent to commit a forcible sex crime to the mandatory minimum sentencing of life with the possibility of parole.

Ensures Sex Offenders Serve Their Full Sentence

- Eliminates good-time and work-time credits for sex offenders.

Electronically Monitors Sex Offenders for Life - GPS

- Requires registered felony convicted sex offenders to wear a GPS tracking device for life.
- Requires offenders to pay for their own GPS equipment, if they are financially able.

Strengthens Sexually Violent Predator Program

- Creates an indeterminate term of commitment to keep sexually violent predators away from our communities.
- Reduce the number of predicate sexually violent crimes from 2 to 1.
- Requires SVP's parole period to begin discharge from the state hospital.
- Add continuous sexual abuse of a child and the attempt to commit qualifying SVP crimes to the list of offenses that qualify for sexually violent crime designations.

Predator-Free Zones

- Prohibits registered sex offenders from living within 2,000 feet of any school or park.
- Allows local governments to include additional sites they deem appropriate, such as a water park.

Increases Penalties for Possession of Child Pornography

- Allows possession of child pornography to be prosecuted as a felony.

Protects Children from Internet Predators

- Allows law-enforcement to act as decoys in order to engage and capture Internet predators.

Cracks Down on Rapists that Drug Their Victims

- Imposes an additional 5-year prison term for persons who drug their victims in the commission of specified sexual crimes, such as rape.

Increases Parole Terms

- Provides for parole terms of up to 10 years for the most heinous sex offenses (current law provides for parole terms from 3-5 years for various sex offenses).

PROPOSITION 84 – Water Quality, Safety and Supply. Flood Control. Natural Resource Protection. Park Improvements. Bonds.

Proposition 84 proposes the issuance of \$5.388 billion in general obligation bonds. Of this, the initiative bond provides \$2.426 billion (45%) for safe drinking water, water quality, integrated regional water management, flood control, and statewide water planning and design. The rest of the bond -- \$2.962 billion (55%) -- is for other resources such as parks, conservancies, and protection of rivers, lakes, streams, and beaches.

The measure is organized into nine chapters:

- 1. Administrative purposes
- 1. Safe Drinking Water \$1.525 billion

2. Flood Control	\$800 million
3. Statewide Water Management	\$65 million
4. River, Lake & Stream protection	\$928 million
5. Forest & Wildlife Conversation	\$450 million
6. Beaches, Bays, Coastal Waters & watershed protection	\$540 million
7. State Parks & Nature Education	\$500 million
8. Sustainable Communities & Climate Change Reduction	\$580 million

Chapter 1: Administrative provisions

Chapter 2: Allocates \$1.52 billion for safe drinking water programs:

- \$1 billion to 12 regional grants
- \$525 million for five statewide grant programs
 - Emergency/Urgent Programs.
 - Small Community Drinking Water Infrastructure.
 - Federal Match: Drinking Water Revolving Fund.
 - Federal Match: Drinking Water Pollution Prevention Fund.
 - Groundwater protection loans & grants.

Impact on the City: *\$1 billion allocation to 12 regional Grants*

The San Diego region is earmarked for \$91 million – which approximates our share of state population and the measure will utilize Proposition 50 guidelines to steer project investment. The City was an active participant in the development of those guidelines.

Impact on the City: *\$525 million for competitive statewide grants*

The City may have the opportunity to utilize the two programs for which the State match to federal funds is being provided as well as competing for groundwater protection grants.

Chapter 3: Provides \$800 million designated for five Flood Control program areas:

- \$275 million for flood control projects in the Delta
- \$315 million for State flood control projects – evaluation, system improvements, flood corridor program
- \$180 million for local flood control subventions outside the Central Valley
- \$30 million for flood plain mapping/land use planning

Impact on the City: The City would have to compete for funding in the areas of flood mapping, flood plain land acquisition, existing facilities restoration, as well as dredging/creek restoration.

The City and the region will derive benefit from improvements to and protection of the Central Valley/Delta flood control projects as those projects will help to ensure water availability for importation.

Chapter 4: \$65 million for Statewide Water Planning & Design, including:

- Planning/feasibility studies – water supply, conveyance and flood control

- Cal-Fed surface water storage planning & feasibility
- Groundwater storage and reservoir management practices
- Evaluation of climate change impacts on water supply

Impact on the City: These funds are for statewide water management – from which the region would benefit indirectly.

Chapter 5: Allocates \$928 million for Protection of Rivers, Lakes and Streams

\$360 million for programs from which the City is eligible to compete:

- QSA Water Conservation Programs \$36 million
- Salton Sea Restoration fund \$47 million
- Lower Colorado MSCP \$7 million
- Storm Water Matching Grants \$90 million
- California River Parkways \$72 million
- Urban Stream Restoration \$18 million
- California/Local Conservation Corps \$65 million
- Stream/River restoration \$25 million

\$180 million earmarked for the Bay-Delta that provides derived San Diego benefit.

\$379 million for earmarked projects – none of which benefit San Diego:

- San Joaquin River Conservancy \$36 million
- LA/San Gabriel River Projects \$72 million
- Coachella Valley Mountain Conservancy \$36 million
- Santa Ana River Parkway \$45 million
- San Joaquin River Salmon Restoration \$100 million
- Sierra Nevada Conservancy \$54 million
- California Tahoe Conservancy \$36 million

Impact on the City: Project funding would advance significant San Diego interests, including the Quantification Settlement Agreement (QSA), storm water projects, as well as river and stream projects. While not an “earmark”, the QSA program funding specifically benefits the region and will be used for the region’s benefit.

Chapter 6: Provides \$450 million for Forest & Wildlife Conservation

\$225 million for programs from which the City is eligible to compete:

- Habitat Improvement \$135 million
 - Endangered/Threatened Species.
 - Habitat Corridors.
 - Natural landscape and Ecosystem Protection.
- Natural Community Conservation Plans \$90 million

\$180 million for State Forest Conservation & Protection

\$45 million for Ranch/Farm/Oak Woodlands protection

Impact on the City: San Diego is one of only four counties eligible to compete for NCCP funding, which, if successful, would help in land acquisition for the City’s MSCP program.

Chapter 7: \$540 million for Protection of Beaches, Bays & Coastal Waters

\$225 million designated to four specific bays:

- San Francisco Bay Conservancy \$108 million
- Monterey Bay \$45 million
- Santa Monica Bay \$45 million
- San Diego Bay \$27 million

\$315 million in Matching/competitive Grants

- Clean Beaches program \$90 million
(20% Santa Monica bay earmark)
- State Coastal Conservancy
 - California Ocean Protection Fund \$90 million

Impact on the City: San Diego Bay is dedicated to receive \$27 million for projects designed to improve and protect water quality. Additionally, the City could compete for funding for storm water prevention, water quality improvements, creek restoration, etc. under both the Clean Beaches Program and the California Ocean Protection Fund.

Chapter 8: \$500 million for Parks & Nature education Facilities

\$400 million dedicated to improve State Park System Access

\$100 million for competitive grants for nonprofit museum/education

Impact on the City: Local nonprofits would be eligible to compete for the museum education grants.

Chapter 9: Provides \$580 million for Sustainable Communities & Climate Change

- Local/regional parks \$400 million
- Urban water and energy conservation projects \$90 million
- Incentives for conservation in local planning \$90 million

Impact on the City: The City will be eligible to compete for funding in all three categories.

PROPOSITION 90 – Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment.

In *Kelo v. New London* the US Supreme Court ruled that the City of New London was within its rights to use eminent domain to acquire 15 privately held parcels and transfer them to another

private party in pursuit of a redevelopment plan since this advanced a “public purpose”. The dissenting justices strongly disagreed and said that this turned the taking clause and its restrictions of using eminent domain except in instances of the “public’s use” on its head.

This ruling has caused major response throughout the country. In California, one of the main manifestations is in Proposition 90. This Proposition would significantly restrict the use of eminent domain. However, Proposition 90 goes beyond that to impact any government regulation of private property. Specifically, Proposition 90 states:

A) Property taken by eminent domain shall be owned and occupied by the condemnor, or other governmental agency utilizing the property for the state public use by agreement with the condemnor, or may be leased to entities that are regulated by the Public Utilities Commission or any other entity that the government assigns, contract, or arranged with to perform a public use project. All property that is taken by eminent domain shall be used only for the stated public use.

B) Redefines just compensation. According to the State’s Legislative Analyst, currently “just compensation” includes (1) the “fair market value” of the real property and its improvements and (2) any diminution in value of the remaining property when the property taken is part of a larger parcel. California statutes also require public agencies to compensate property owners (including, in some cases, lessees) for the loss of business goodwill and relocation costs associated with eminent domain activities.

If passed, Proposition 90 would introduce 3 new tests. 1) Property would be valued at “its highest and best use without considering any future dedication requirements imposed by government. If the property is taken for any proprietary governmental use, the property shall be valued at the use to which the government intends to put the property, if such uses result in a higher value for the land taken. 2) Just compensation would be defined as the sum of money necessary to place the property owner in the same position monetarily, without any governmental offsets, as if the property had never been taken. 3) Fair market value would be defined as the highest price the property would bring on the open market.

Working in concert these provisions would significantly increase property acquisition costs the city incurs for activities such as road widening and other infrastructure improvements.

C) Requires the government compensate private property holders for “damage”. This is defined as including “government actions that result in substantial economic loss to private property. Examples of substantial economic loss include, but are not limited to, the down zoning of private property, the elimination of any access to private property, and limitations on the use of private air space.” This would have an unknown but substantial negative fiscal impact on the City’s ability to engage in zoning, environmental regulations or other restrictions on the ability of private property owners to use their property.

Impacts on the City: Major negative impacts on the cost of acquiring property. Major negative impacts related to zoning activity and environmental regulations.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

City Council unanimously approved a resolution in support of Proposition 83, “The Sexual Predator Punishment and Control Act: Jessica’s Law” on August 1, 2006.

Originating Department

Deputy Chief/Chief Operating Officer