

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: August 4, 2016
TO: Honorable Mayor and City Councilmembers
FROM: City Attorney
SUBJECT: Publication of the Full Text of a City Initiative

QUESTION

Must the full text of a citizens' initiative that qualifies for placement on a ballot for a City of San Diego (City) election be printed in full in the voter pamphlet?¹

SHORT ANSWER

No. The City's election code does not always require the inclusion of the full text of a measure within the ballot materials,² but neither does the law designate the circumstances in which the full text should and should not be published.

San Diego Municipal Code (Municipal Code) section 27.0505 allows the City to provide a copy of the full text of the measure by making it available through the City Clerk's Office or publishing it on the internet. State law is in accord. California Elections Code (Elections Code) section 9280 mirrors the Municipal Code and allows alternative forms of publication.

If the City Council (Council) chooses to consider the option to not publish the full text of the measure, the Council should do so keeping in mind the complexities of the measure and the Council's duty to be fair and impartial and to fully inform the electorate.

¹ The analysis in this memorandum applies only to citizens' initiatives. Charter amendments, which are considered state measures, and City ordinances are not analyzed herein.

² Ballot materials are those items printed on the ballot or in the voter pamphlet. SDMC § 27.0103.

INTRODUCTION

Two citizens' initiatives qualified for placement on the November 2016 ballot, the "Citizens' Plan for the Responsible Management of Major Tourism and Entertainment Resources" (Briggs/Frye Initiative) and the "San Diego Integrated Convention Center Expansion/Stadium and Tourism Initiative" (Chargers' Initiative).

The text of both of these initiatives are quite lengthy. The Briggs/Frye Initiative is 77 pages long. The Chargers' Initiative is 119 pages long. Due to the length of each of these initiatives, printing the entirety of each measure in the voter pamphlet increases the financial cost to the City and increases the time needed for printing, creating a logistics issue for the Registrar of Voters. While printing the full text of the measures in the voters' pamphlet is the preferred method of publication, to save the City money which can be used for other municipal purposes benefiting the citizens of San Diego and to ensure the Registrar of Voters can print all election related materials timely, the law specifically contemplates an alternative method of providing the full text of these measures to the electorate.

LEGAL ANALYSIS

The City of San Diego is a charter city with its own election laws, as provided by the California Constitution and the San Diego Charter. Thus, the City does not follow the California Elections Code (Elections Code). Instead, the City's election laws are in the Election Code Ordinance in the San Diego Municipal Code. To the extent that the City does not have a law on point, the City may look to state elections law for guidance.

In 1994, the Legislature adopted Elections Code section 9280. That section applies specifically to city measures and allows a general law city to provide the full text of a city measure by making it available through the city's election official. Elections Code section 9280 states in pertinent part:

Whenever a city measure qualifies for a place on the ballot, the governing body may direct the city elections official to transmit a copy of the measure to the city attorney, unless the organization or salaries of the office of the city attorney are affected. The city attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city. If the measure affects the organization or salaries of the office of the city attorney, the governing board may direct the city elections official to prepare the impartial analysis. The analysis shall be printed preceding the

arguments for and against the measure. The analysis shall not exceed 500 words in length.

In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows:

“The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the elections official’s office at (insert telephone number) and a copy will be mailed at no cost to you.”

Five years after the state adopted Elections Code section 9280, in 1999, the City amended its own elections code, in part, to update the City’s Election Code to incorporate changes made to the state Elections Code, including Elections Code section 9280.³ In consideration of changes made to Elections Code section 9280, the City adopted Municipal Code section 27.0505. Municipal Code section 27.0505(f) mirrors Elections Code section 9280, and states:

In the event the entire text of the *measure* is not printed on the ballot, nor in the *voter pamphlet*, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows:

“The above statement is an impartial analysis of Proposition _____. If you desire a copy of the ordinance or *measure*, please contact the Office of the City Clerk (533-4000).”

A copy will be provided to the requestor at no cost. This requirement may be met by the *Clerk’s* placement of an exact copy of the ordinance or *measure* on the Internet.

SDMC § 27.0505(f).

³ The City of San Diego, Minutes for Regular Council Meeting of Monday, July 26, 1999, Item 201, Proposed Amendments to the San Diego Municipal Code relating to City Elections, “the City Clerk has recognized the need for a review and update to address the following: changes in state law which impact local law; processes that are not articulated in the code, or that are not clearly articulated; and problems in administration of the code.”

Although Municipal Code section 27.0103(a) defines “ballot materials” for ballot measures to include the ordinance placing the measure on the ballot, Municipal Code section 27.0505(f) specifically allows the non-publication of the full text of a City measure. Municipal Code section 27.0505(f) is a more specific statute covering the same subject matter as Municipal Code section 27.0103(a). *See* Cal. Code of Civil Proc. §1859 (“when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.”).

By including the phrase, “[i]n the event the entire text of the measure is not printed on the ballot,” both state law and the Municipal Code anticipate situations where the full text of a City measure would not be included with ballot materials. Cal. Elec. Code § 9280; SDMC § 27.0505(f). While neither the Election Code nor the Municipal Code specify what constitutes a valid event for purposes of Elections Code section 9280 and Municipal Code section 27.0505(f), neither does either code section restrict alternative means of publication to only certain specified events.

The decision to publish or not publish the full text of the Briggs/Frye Initiative and the Chargers’ Initiative in the voter pamphlet affects the amount of information included in the ballot materials and delivered directly to a voter for consideration before voting. *See Patterson v. Board of Supervisors*, 202 Cal. App. 3d 22, 30 (1988) (“[T]he voter’s pamphlet can have a substantial impact on the equality and fairness of the electoral process.”).

For example, if the full text of a measure is not included in the voter pamphlet, the voter must go online or to a public place to review the language of each measure. A voter who does not make the effort to look up the language, or who reviews the ballot information at the polls, will be limited to the information contained in the ballot in making the decision to cast a vote for or against a measure. However, making the information available online and at various public locations should make the information reasonably available to voters.

Because the City has never previously utilized any alternative means of publishing the full text of a measure, and because the Municipal Code is silent as to who makes and how the decision to provide the full text of a measure by alternative means is made, we recommend that in this specific instance the Council, as the legislative body, make the decision. In making a decision, the Council must insure the impartiality of the election process is maintained. The Council’s decision must be guided by the principle that the electorate must be provided with accurate information in the voter pamphlets. *See Patterson*, 202 Cal. App. 3d at 30; *Chase v. Brooks*, 187 Cal. App. 3d 657, 663 (1986) (the law is “designed to protect the elector from confusing or misleading information.”).

Therefore, if the Council decides to use alternative means to publish the full measure of one citizens' initiative, it should also use the same means of publication for the other citizens' measure.

If the Council decides to not publish the full text of either measure in the ballot materials, we recommend that the Council include specific recitals in a resolution supporting its decision and clearly stating the manner in which the information will be made reasonably available to the public. We also recommend that the Council include an explanation on each of the ballot measures referencing the legal authority and explaining where the full text of the measure can be found. Because the Clerk can fulfill her duty under the Municipal Code of providing the full text of an initiative by placing the full text on the internet, the language in the voter pamphlet should include the internet address that points to a copy of the full text of the measure. Additionally, the City may also make copies of the full text of each measure available at each branch of the San Diego Public Library, and other public places.

If the Council decides not to publish the full text of either the Briggs/Frye Initiative or the Chargers' Initiative in the voter pamphlet, the City Attorney will include language in the voter pamphlet directing the electorate to a full copy of each measure that is consistent with Municipal Code section 27.0505(f); additionally, if so directed, we will add the information directing the electorate to the internet, the libraries, etc..

Finally, to avoid similar situations in the future, we recommend that the Council amend the Municipal Code to clarify the circumstances when the full text of a measure can be made available by means other than publishing the full text of the measure in the voters' pamphlet. This Office also recommends that any amendment to the Municipal Code on this subject also allow the City Clerk, as the City's election official, to make all future determinations regarding the decision to publish or not publish the full text of a measure.

CONCLUSION

Printing both pending citizens' initiatives in the voter pamphlet is the preferred method of distributing the full text of the citizens' initiatives to the electorate. However, the law contemplates situations in which the full text of a measure cannot be fully reproduced in the ballot materials. In those situations, Elections Code section 9280 and Municipal Code section 27.0505(f) allow the full text of the measure to be made available through alternative means so long as the electorate is informed of where they can obtain a full copy of the measure at no cost.

If the Council chooses to not publish the full text of the matter, the Council's discretion should be exercised keeping in mind the complexities of the citizens' initiatives and its obligations of fairness and to fully inform the electorate.

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Lastly, the Council should consider amending the Municipal Code to provide for explicit authority and standards for when to use alternative publication for a proposed measure.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ *Walter C. Chung*

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Deputy City Attorney

WC:ccm:jdf

MS 2016-24

cc: Liz Maland, City Clerk

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