

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: DECEMBER 1, 2015

TO: CITY MANAGER/CITY COUNCIL

**FROM JOHN RAMIREZ, SPECIAL COUNSEL
KATHY M. WARD, CITY CLERK**

**SUBJECT: THE 2015 TOWN CENTER INITIATIVE – EITHER ADOPT THE
INITIATIVE ORDINANCE OR A CALL A SPECIAL ELECTION**

RECOMMENDED ACTION:

That the City Council:

1. Take one of the following two actions pursuant to Elections Code Section 9214:
 - a. Adopt the initiative Ordinance (Action Document A), without alteration, and introduce for first reading an Ordinance entitled:

AN ORDINANCE OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING THE 2015 TOWN CENTER INITIATIVE; or

- b. Adopt Action Document B, a Resolution by which the Council would submit the initiative ordinance, without alteration, to the voters for a special election to be consolidated with the June 7, 2016 regular election, entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ORDERING, CALLING, PROVIDING FOR AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE JUNE 7, 2016 REGULAR ELECTION, FOR THE SUBMISSION TO THE VOTERS OF A QUESTION RELATING TO AMENDING THE TOWN CENTER PLAN; and

If the Council takes action to call for an election, consider taking the following actions (all of which are optional, and at the Council's discretion):

- Adopt a motion directing the City Attorney to prepare an impartial analysis.
- Adopt a motion calling for the City Council to submit an argument in opposition to The 2015 Town Center Initiative, and giving related direction to staff regarding how to proceed.

- Adopt Action Document C, a Resolution adopting the provisions of Elections Code Section 9285(a) by which rebuttal arguments would be permitted, entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING THE PROVISIONS OF ELECTIONS CODE SECTION 9285(a), AND THEREBY PERMITTING THE FILING OF REBUTTAL ARGUMENTS FOR CITY MEASURES; and

If the Council takes action to call for an election, adopt a motion by which to appropriate \$50,000 from General Fund Unassigned Reserve to the City Clerk Professional Services account (31-2230) for election services.

BACKGROUND AND DISCUSSION:

On November 3, 2015, The City Council accepted the City Clerk's report declaring sufficiency of the petition for the 2015 Town Center Initiative and ordered a report on the potential impacts of the initiative (per Elections Code § 9212). This report will be discussed as Item #15 on the agenda. There are a series of decisions the Council must now make all of which depend on the course of action the Council chooses.

Adopt the Initiative Ordinance or Call for an Election.

At this time, the City Council must either adopt the initiative ordinance within ten days, or order a special election pursuant to Elections Code § 1405.

Action Document A is an Ordinance drafted for the purpose of allowing the Council to adopt the initiative ordinance if it so chooses. If the Council acts to adopt the initiative ordinance, it must do so within 10 days of December 1, 2015, and without making any alteration. Notably, there is not a requirement for a second reading. Note also, since the ordinance in question is subject to the Coastal Act, it would not be effective unless and until certified by the Coastal Commission. (See Report presented as Agenda Item 15 for a more detailed discussion of this point.)

Consolidation of the Election or Stand Alone Election

If the City Council chooses to call a special election, it must decide when to schedule the election. The timing of a special election on an initiative measure is governed by Elections Code Section 1405. Once a matter qualifies for a special election pursuant to Election Code 9214 as has occurred here, the election date generally must occur not less than 88 days, nor more than 103 days following the date the election is ordered. Under this provision, the election would occur on either March 1 or March 8, the two Tuesdays falling within the proscribed period. Section 1405(a)(1) goes on to provide that when it is legally possible to hold a special election on an initiative within 180 days of a regular election, the special election may be consolidated with the regular election. Since the dates upon

which it is legally possible to hold the special election (March 1 and 8) both fall within 180 days of the June 7, 2016 regular election, the special election may be consolidated with the June 7th election.

Staff has consulted with the Registrar of Voters and been told that the estimated cost of holding a special election on either March 1 or 7 is \$109,272 - \$120,597. In contrast, if the special election is consolidated with the June 7 regular election, the cost is estimated to be \$40,283 - \$49,363. In light of the substantial cost savings, staff recommends that if the Council calls for an election, that it consolidate the special election with the June 7 regular election as authorized by Section 1405(a)(1).

Notably, there are deadlines associated with a special election that will be very difficult to meet if the election is not consolidated with the June 7, 2016 regular election. In particular, pursuant to Elections Code Section 9286, in the absence of consolidation all arguments in favor or against the initiative would be due 14 days following the call for the election (or December 15, 2015). If consolidation occurs, the Clerk may set a deadline for arguments to be submitted, subject to the requirement by the Registrar of Voters that all arguments in favor or opposed to the initiative be received by its office on or before March 11, 2016. Pursuant to Elections Code Section 9282, if the City Council calls for an election, the proponents of the petition may file an argument in favor of the initiative, and the City Council may file an argument against it. In addition to the financial savings, staff recommends the consolidation of the election with the June 7 regular election due to the practical difficulty that will exist for the proponents of the initiative or the City Council to meet the December 15th deadline that would otherwise exist for ballot arguments. If the Council votes to consolidate the election with the June 7, 2016 regular election, the election official (the City Clerk) intends to order March 7 as the deadline for arguments in favor and in opposition, in order to allow her to provide them to the Registrar of Voters by March 11th as required.

Action Document B is a Resolution calling for a special election, and setting the date for June 7, 2016.

Request an Impartial Analysis

Pursuant to Elections Code Section 9280, the City Council may request that the City Attorney to prepare an impartial analysis. The Council may direct the City Attorney to complete an impartial analysis **by way of a motion**. If the City Council requests the City Attorney to prepare an impartial analysis, it must show the effect of the measure on the existing law and the operation of the measure. It must also indicate if the measure is being placed on the ballot as a result of a petition signed by the requisite number of voters, or by the City Council. The impartial analysis may not exceed 500 words in length.

Determine if the City Council Wishes to Submit a Written Argument in Opposition

As noted above, Elections Code 9282 authorizes the City Council to submit an argument in opposition to the initiative if it chooses. The Council may decide **by way of a motion** how it wishes to proceed on this point. Note that in the event the Council does not submit an argument in opposition to this initiative which is being placed on the ballot due to a petition, there is no provision in the Elections Code allowing a citizen association or individual voters to submit arguments in opposition, as is the case when the Council submits a measure to the voters. (Compare Elections Code Sections 9282(a) and 9282(b).) If the Council chooses to submit an argument in opposition, it must not exceed 300 words, and it must be signed by at least one member of the Council (although it may be signed by up to all five members). If a decision is made to submit an argument in opposition, staff suggests that a subcommittee be appointed to draft the argument, and that once it is completed that staff be directed to bring it back at a later date for approval by the Council. Staff would be available to provide information, data and technical assistance to the subcommittee, but suggests that the Council (not staff) should be charged with drafting any arguments in opposition. These type of issues should be considered as part of any motion, and relevant direction should be provided.

Determine if Rebuttal Arguments are to be permitted

Per Elections Code Section 9285(b), arguments in rebuttal to arguments for or against a measure are only permitted if the Council adopts the provisions of Elections Code Section 9285(a) by majority vote on or before the day upon which it calls for the election (i.e., this must occur on December 1, 2015 or no rebuttal arguments will be permitted.) **Action Document C is a Resolution** adopting the provisions of Elections Code 9285(a). Note that if this Resolution is adopted, rebuttal arguments will be permitted for all subsequent municipal elections unless and until such time as it is repealed.

The provisions of Elections Code Section 9285(a) which would become effective if the Resolution is adopted in essence state that the City Clerk shall send a copy of the argument in favor of the measure to the authors of the argument against, and a copy of the argument against the measure to the authors of the argument in favor. Each may then submit a rebuttal argument, or may authorize another person to do so. Rebuttal arguments may not exceed 250 words, and must be filed with the City Clerk not more than 10 days after the due date for the initial arguments in favor/against.

SUMMARY OF POTENTIAL ACTIONS

Based on the complexity of this issue, the following summary of recommended actions is provided as a guideline for potential Council Action:

1. Adopt Action Document A, an Ordinance approving the initiative ordinance (if this action is taken, no further action is needed on this item.)

or

2. Adopt Action Document B, a Resolution calling for a special election and setting the date thereof. As drafted this results in a consolidated election, but the Council could modify the Resolution the election in March if it prefers; and
3. Consider adopting a motion to direct the City Attorney to prepare an impartial summary. This is at the Council's discretion, it is not a required action if an election is called; and
4. Consider adopting a motion to have the Council submit arguments in opposition to the initiative. This is an optional item, and is not required if the Council calls for an election, although if it does not submit an argument in opposition no argument in opposition will be permitted. If the Council takes this action it will need to agree upon the manner in which the argument will be prepared and give staff direction as to how to proceed; and
5. Consider adopting Action Document C, a Resolution adopting the provisions of Elections Code Section 9285(a) by which rebuttal arguments would be permitted. This is at the Council's discretion, and is not required if an election is called; however, if not adopted as of the date the election is called, then no rebuttal arguments will be permitted; and
6. Adopt a motion appropriating \$50,000 from General Fund Unassigned Reserve to the City Clerk Professional Services account (31-2230) for election services

FISCAL IMPACT:

If a Special Election occurs, the estimated cost of a consolidated election is \$40,283 - \$49,363 (including the cost of the ballot with standard-length text) paid out of 31-2230. Absent consolidation, a standalone election is estimated to cost \$109,272 – \$120,597. These costs do not include those associated with the City Clerk staff time and efforts expended by the City Attorney.

ACTION DOCUMENTS:

Page No.

A. Initiative Ordinance	6
B. Resolution Calling Special Election	8
C. Resolution Permitting Rebuttal Arguments	10

SUPPORTING DOCUMENT:

- D. The 2015 Town Center Initiative (Hard Copies Provided)
 - [Initiative](#)
 - [Exhibit A - Part 1](#)
 - [Exhibit A - Part 2](#)

Action Document A**ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF DANA POINT, CALIFORNIA,
ADOPTING THE INITIATIVE ORDINANCE TITLED "THE 2015 TOWN
CENTER INITIATIVE"

Recitals

- (i) Whereas, on March 13, 2015, Proponent Betty Hill filed in the City Clerk's Office a Notice of Intent to Circulate Petition for the purpose of adopting the initiative measure "The 2015 Town Center Initiative"; and
- (ii) Whereas, on September 15, 2015, the initiative petition was filed in the City Clerk's Office. Thereafter, the total number of signatures verified by the Orange County Registrar of Voters exceeded the number of signatures required for a special election; and
- (iii) Whereas, on November 3, 2015, the City Council accepted the report of the City Clerk declaring sufficiency of the initiative petition for The 2015 Town Center Initiative; and
- (iv) Whereas, on December 1, 2015, after the City Council received a report on the effect of the proposed initiative; and, the City Council, pursuant to Elections Code § 9214, decided to adopt the initiative Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT
DOES ORDAIN AS FOLLOWS:

Section 1: That the initiative ordinance attached hereto as "Exhibit A" is hereby adopted pursuant to Elections Code 9214.

PASSED, APPROVED, AND ADOPTED this 1st day of December, 2015.

CARLOS N. OLVERA, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, KATHY WARD, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. _____ was adopted at a regular meeting of the City Council on the 1st day of December, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

KATHY M. WARD, CITY CLERK

Action Document B**RESOLUTION NO. _____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ORDERING, CALLING, PROVIDING FOR AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE JUNE 7, 2016 REGULAR ELECTION, FOR THE SUBMISSION TO THE VOTERS OF A QUESTION RELATING TO AMENDING THE TOWN CENTER PLAN

WHEREAS, on March 13, 2015, proponent Betty Hill filed in the City Clerk's Office a Notice of Intent to Circulate Petition for the purpose of adopting the initiative measure, "The 2015 Town Center Initiative"; and

WHEREAS, on September 15, 2015, the initiative petition was filed in the Office of the City Clerk;

WHEREAS, on October 19, 2015 the City Clerk received certification from the Orange County Registrar of voters that the minimum number of signatures required to call a special election was met; and

WHEREAS, on November 3, 2015, the City Council accepted the report of the City Clerk declaring sufficiency of the initiative petition for The 2015 Town Center Initiative and.

WHEREAS, on December 1, 2015, the City Council received a report on the effect of the proposed initiative and ordered a special election to be consolidated with the June 7, 2016 primary election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true, correct, and adopted by the City Council as if set forth in full.

SECTION 2. Pursuant to Election Code Section 9214, the City Council hereby orders a special election, to be held pursuant to Elections Code Section 1405(a), at which the ordinance proposed by The 2015 Town Center Initiative, without alteration, be submitted to a vote of the voters of the City of Dana Point.

SECTION 3. Pursuant to Elections Code Section 1405(a)(1), the City Council orders the special election called for by this Resolution to be consolidated with the next regular election, to occur on June 7, 2016, in as much as it is otherwise legally possible to hold such special election within 180 days of that date.

SECTION 4. The City Clerk is authorized, instructed and directed to coordinate with the Registrar of Voters for the County of Orange to procure and furnish any and all

official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 5. The City Clerk is authorized to set deadlines for ballot arguments, and take such other actions as are required of the election official pursuant to the Elections Code.

SECTION 6. The City Council hereby requests that the Orange County Registrar of Voters conduct all necessary services related to the special election; and, pursuant to Elections Code Section 10002, the Assistant City Manager, or his/her designee, is hereby authorized to reimburse the County for the actual cost incurred in conducting the election upon receipt of a bill stating the amount due as determined by the elections official.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED this 1st day of December, 2015.

CARLOS N. OLVERA, MAYOR

ATTEST:

KATHY M. WARD, CITY CLERK

I, Kathy M. Ward, City Clerk of the City of Dana Point, California, hereby certify that the foregoing resolution is a true and correct copy of Resolution No. _____ was adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 1st day of December, 2015.

AYES:

NOES:

ABSENT:

KATHY M. WARD, CITY CLERK

Action Document C

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING THE PROVISIONS OF ELECTIONS CODE SECTION 9285(a), AND THEREBY PERMITTING THE FILING OF REBUTTAL ARGUMENTS FOR CITY MEASURES

WHEREAS, Section 9285(a) of the Elections Code of the State of California authorizes the filing of arguments to rebut arguments in favor of or against City Measures; and

WHEREAS Elections Code Section 9285(b) provides that the City Council has the discretion to decide if rebuttal arguments are to be permitted to be filed, and must adopt the provisions of Elections Code 9285(a) by majority vote, on or before the date a special election is called, in order to permit the filing of rebuttal arguments for city measures; and

WHEREAS, the City Council has decided it wishes to permit the filing of rebuttal arguments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Pursuant to Section 9285(b) of the Elections Code of the State of California, the City Council hereby adopts the provisions of Elections Code Section 9285(a), and thereby declares its intent to allow the submittal of rebuttal arguments to City measures in the manner proscribed by law until such time as this Resolution is repealed.

SECTION 2. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED this 1st day of December, 2015 by the following called vote:

Carlos N. Olvera, Mayor

ATTEST:

Kathy M. Ward, City Clerk

I, Kathy M. Ward, City Clerk of the City of Dana Point, California, hereby certify that the foregoing resolution is a true and correct copy of Resolution No. _____ was adopted by the City Council of the City of Dana Point, California, at a regular meeting thereof held on the 1st day of December, 2015.

AYES:

NOES:

ABSENT:

Kathy M. Ward, City Clerk