

Proposition O: San Marcos Growth Management and Neighborhood Protection Act

Board Recommendation:

OPPOSE

Rationale:

This measure would require voter approval of General Plan amendments, adding an unnecessary and costly step to a process that already allows for extensive community input. Land use planning decisions ought to be made by policymakers, not at the ballot box.

Background:

In April 2007, the San Marcos City Council decided to proceed with an update of the General Plan, projected to be completed within two years. Its update is estimated to cost \$1.5 to \$2 million, including environmental review.¹ In addition to the General Plan, the City of San Marcos adopts “Specific Plans” that guide the development of defined geographic areas. These plans typically include more detailed information than the General Plan about land use, traffic circulation, affordable housing programs, and resource management strategies. The city has adopted over two-dozen Specific Plans since the adoption of the General Plan in 1987.

On June 11, 2008, the San Marcos City Council voted to place the San Marcos Growth Management and Neighborhood Protection Act on the November ballot. Two local activists, Cynthia Skovgard and Susan Wait, submitted 5,300 signatures to the Registrar of Voters to place this measure before voters following the City Council’s approval of the Palomar Station development.

Skovgard attempted twice before to place similar initiatives on the ballot with no success. Last summer, she also attempted to get a referendum targeting Palomar Station on the ballot but failed to meet the 3,042-signature threshold, which represents 10 percent of San Marcos’ 30,414 registered voters.²

Voters in the City of Chula Vista opposed a similar measure during the June 2008 election cycle. The difference between the San Marcos and Chula Vista measure is that the latter was limited to amendments to height limits in the General Plan, whereas the San Marcos measure would require voter-approval for any amendments to the General Plan which would modify or change land use categories or designations.

Proposal:

The question before voters will read:

¹ Elections Code Section 9212 Report. Growth Management and Neighborhood Protection Measure. Seifel Consulting, Inc. June 10, 2008.

² “San Marcos activists submit signatures for anti-growth initiative”. *North County Times*. Andrea Moss. March 10, 2008.

“Shall an ordinance be adopted amending the San Marcos General Plan to require voter approval of certain general plan amendments modifying or changing land use categories or designations?”

Policies

The ordinance states “No General Plan Amendment including Specific Plan adoptions or changes shall be adopted which would change, alter, or increase the General Plan Land Use categories or change any land use designations to any other...until such action is approved by a majority of those voting in a city wide election”.

If the Council approves an amendment to the General Plan, voters must then approve it during the next general election cycle. If a measure is placed on the ballot during a general election, the cost will be born by the city. If the measure is placed on a special election ballot, the full cost must be borne by the developer, with advance payment to the city.

Exceptions

The amendment states that no amendment under this policy “shall be construed to conflict with affordable housing”. It is believed the intent of this language is to prevent delay of construction of affordable housing projects within the city. Language within the amendment will also grant an exception to those projects that seek to reduce the density of a piece of land.

Finally, the initiative states that any General Plan amendments adopted after July 23, 2007, which are inconsistent with the measure, are nullified.

Land and Construction Impact³:

In addition to placing the initiative before voters on the November ballot, the City Council requested a legal opinion from the city attorney as to the potential effect on four projects that are in various stages of planning and processing. Those four projects include the San Marcos Creek project, Palomar Station project, Richmar affordable housing and mixed-use project, and the Autumn Terrace affordable housing project

San Marcos Creek

The San Marcos Creek project is a mixed-use “Smart Growth” plan consisting of 214 acres of land along the San Marcos Creek. Half of the acreage will be available for development, with the remainder devoted to permanent open space and parks.

The City Council has adopted three ordinances/resolutions relating to the San Marcos Creek project following the July 23, 2007 date outlined within the measure. Those entitlements include:

- General Plan designation change from Commercial/Multi-Family Residential to Specific Plan Area

³ The impacts on these projects have been summarized from the city attorney legal opinion dated June 10, 2008.

- Adoption of ordinance pertaining to General Plan Amendment
- Adoption of Specific Plan for development area

Therefore under this measure, the three actions approved by council must appear on a ballot for voter approval.

Palomar Station

The Palomar Station project is a mixed-used project on a 14-acre property with close proximity to Palomar College. The project consists of 333 condos, 48,980 square feet of retail space, 9,800 square feet of offices and 8,280 square feet of restaurants. On July 10, 2007, the Council voted to support the project and moved forward with approving General Plan amendments, the final Environmental Impact Report, etc.

The Specific Plan and rezone to Specific Plan Area took place on July 24, 2007 and became effective 30 days later, on August 23, 2007. Therefore, the provisions within the measure would deem these actions void since the effective date occurred after the July 23, 2007 deadline. This would create an inconsistency between the General Plan and zoning ordinance, which is not permissible under California law, and the City's Charter. The policies outlined within the measure do not call for voter approval for re-zones.

Richmar

The Richmar project is a senior affordable housing/mixed use project with 50 to 80 apartments and retail/office uses on property bounded by Richmar Avenue, Firebird, Mission Avenue and Pico Avenue. The project is still in the planning phase and will require financial assistance from housing funds from the City Redevelopment Agency.

Entitlements for this project, including a General Plan Amendment from commercial to Specific Planning Area is expected to occur at a future date beyond the measure's July 23, 2007 deadline date. If the project is determined an affordable housing project, the development will be consistent with the exceptions outlined within the measure and be exempt from the voter approval requirements.

Autumn Terrace

This project is another potential affordable housing development still in the planning stages. It is anticipated the project will require \$13.5 million in assistance from the City's low and moderate income housing fund, which is derived from the City's state-mandated set aside of redevelopment tax increment.

Similar to the Richmar project, the Autumn Terrace development is anticipated to be exempt from the voter approval requirement outlined within the measure.

Fiscal Impact⁴:

According to the economic impact report conducted by Seifel Consulting, the fiscal impacts of the proposed measure falls into the following four main categories:

⁴ City Council directed Seifel Consulting, Inc. to provide a fiscal impact of the proposed measure. The report is entitled "Growth Management and Neighborhood Protection Measure" and dated June 10, 2008.

Legal Costs

Policy number seven under Section Four of the measure states, “The City Council shall take all steps necessary to defend vigorously any challenges to the validity or constitutionality of this initiative.” The vagueness of certain portions of the measure, as well as the question of its constitutionality, leaves open the possibility of future lawsuits. Future lawsuits may be filed dependent on the City’s interpretation of the language as well. Other jurisdictions spent over \$635,000 to defend the legality of similar measures, while costs to defend questions of interpretation may range from \$150,000 to \$250,000 per complaint.

Costs Related to Ballot Measures

The cost to place one measure on a general election ballot can range from \$12,000 to \$14,000. The City would be required to pay the cost of each General Plan amendment that is subject to voter approval. If a special election were to be held for an amendment, the City would not be liable for the cost if the City were the opponent of the measure. However, if the City is the proponent of the measure, costs incurred by the City for the special election can range from \$250,000 to \$275,000. Those cases in which the City may be the proponent include General Plan update, Housing Element updates, or the San Marcos Creek Specific Plan.

Costs Related to Planning Process

The additional requirement of voter approval for Specific Plans, General Plan amendments and the General Plan update may place an extra burden on staff and consultants. There is difficulty in quantifying these potential increases. Furthermore, there is potential for increase in evaluation hours of all plans to determine if there is a requirement to receive voter approval through a ballot measure.

Costs Related to Delayed or Forgone Development Activity

In the past, development has allowed for generation of revenues that can be used to improve other infrastructure within the City. Sources of revenue include property tax and tax increment, sales tax, impact fees, and charges for service. A delay in development or a refusal by voters to approve a development project may hinder the ability of the City to recover those revenues to be used in other capacities.