



Ballot Box Land Use Planning

November 2019

Background

Over the last few years, land use initiatives and referenda have been more predominant at the San Diego ballot box. A trend is emerging in which project applicants are sponsoring initiatives that seek not only to approve traditionally legislative “framework” instruments such as general plan amendments, but also to approve the underlying land use project itself. Referenda are being placed on ballots to overturn land use decisions made at the local level. Well funded applicants are using the initiative and referenda power to achieve their own version of manifest destiny.¹

Proposal

Though SDCTA historically does not take up specific land use decisions as issues unless there are transformative, high magnitude fiscal implications (e.g., Soccer City versus San Diego State University West initiatives) or specific revenue proposals tied with land use decisions (e.g., Chargers initiative in 2016), SDCTA should have a definition and policy on “ballot box land use planning” akin to our definition and policy on “ballot box budgeting.” The staff recommends the following:

- a. **Define “land use ballot box planning” as such:**
“Ballot box land use planning” is any measure voted on by the people, whether put on the ballot by the people or an elected governmental body, that would limit a government body or elected officials’ ability to set zoning priorities by taking their given authority.

This definition would not apply under the following conditions if the measure is a broad-based set of guiding principles without specific restrictions placed on specific parcels.

1. There are high magnitude fiscal implications
2. Specific revenue proposals are tied to the decision

- b. Our policy should be to oppose ballot box land use planning

Fiscal Impact

While there are obvious costs to the legislative processes and the placement of an initiative or referendum on the ballot, consideration needs to be taken as to the length of the measure and the associated potential printing of election materials sent to voters. While materials can be

¹ [Brown, Peter \(2011\) The New Universe of Land Use Initiatives](#)

presented electronically, there are still costs involved in putting the information together. Each item on the ballot has its own costs for materials and it varies depending on the length and complexity of the item.

Governance Impact

To our knowledge, there is no peer-reviewed empirical work evaluating the impact of land use initiatives and referenda on the quality of governance and efficiencies of public good delivery in the San Diego region.

That said, there is research that shows empirically that land use referenda, regardless of whether it is accepting or rejecting proposals, creates a “growth penalty” for cities. That has serious implications for us in San Diego, as we are already at a deficit in building housing per the Regional Housing Needs Assessment.

Furthermore, there is no peer-reviewed empirical work determining two important questions to consider with land use initiatives and referenda:

1. Given the expense of placing initiatives and referenda on the ballot, are wealthier communities and industries in San Diego advantaged over those communities and industries with comparatively fewer monetary resources? For example, does it encourage residents in higher socio-economic areas to fund ballot referenda to prevent multi-unit housing or affordable housing projects that have been approved to be built in their neighborhoods?
2. Has the initiative system and its contemporary uses exacerbated economic disparity in San Diego County?
 - a. Given the possibility that policy making at the ballot box via initiative or referenda is relatively easy to do, are we interrupting the current public process altogether? Are we setting precedent for *all* land use decisions in the future and creating unequal playing fields for developers in different parts of the county?
3. That said, there is academic work that lays out and categorizes the debates on this matter.
 - a. According to Daniel Selmi in the *UCLA Journal of Environmental and Law Policy*,² “By skirting procedural devices, such as public hearings and planning commission review of proposals, direct democracy does sacrifice

² [Selmi, Daniel \(2002\) UCLA Journal of Environmental and Law Policy](#)

information and process values inherent in the means by which plans are adopted and land use decisions made.” As mentioned, land use projects and plan amendment changes go through lengthy, public processes to gain approval.

- b. Research done by Karin Mika from Cleveland State University, addresses the fact even though a mandatory referendum is supposed to provide a “check” on the powers of a governmental entity, that check loses its effectiveness due to elections with poor voter turnout or confusing ballot language. Mika argues that confusing voters, campaigns that do not give full information and low voter turnout could sway the outcome that is different than the desire of the electorate at large.³
 - c. California Supreme Court Justice Tobriner concluded that there are difficulties in the referendum process with respect to zoning. He says that trying to differentiate between administrative actions, legislative actions and judicial actions all cause bureaucratic problems, but mandating zoning or rezoning actions go to a referenda does not solve those problems. He notes that state zoning acts already include adherence to constitutionality and mandate that an ordinance be passed “in accordance with a comprehensive plan.” He adds the general electorate tends not to have any comprehensive plan in mind when voting on a particular issue.”⁴
4. While we do not have firm data on the risks of ballot box land use specifically in San Diego, we need to look at the risk assessment and refer to established land use policies. Current policies allow public input on land use decisions without going to the ballot box. Research backs the argument that ballot box land use is not effective and is risky. SDCTA’s position should be based on a collective risk assessment of establishing precedent and whether voters are more or less likely to have the knowledge and incentive to make efficient determinations of policy. It should also be noted that legislators who are selected by the electorate have been chosen by voters to make informed land use decisions and already must adhere to local and state statutes in determining land use zoning decisions.
 5. It is also important to note that the ultimate position on ballot box land use planning should be consistent in principle with our perspective on bal

³ [Mika, Karin \(1997\) Democratic Excess in the Use of Zoning Referenda](#)

⁴ Ibid