



Staff Reports

File #: 2125-2019, **Version:** 1

To: Honorable Mayor and Members of City Council

From: Steve Potter, City Manager

Prepared By: Michael Barrett, City Attorney; and Tiffany Carranza, City Clerk

TITLE:

Potential Advisory Ballot Measure for March 3, 2020 Election

RECOMMENDED ACTION:

Provide direction to staff on a potential advisory ballot measure related to the regulation of small cell telecommunication facilities.

DISCUSSION:

In response to direction from City Council at the meeting of November 5, 2019, this item is an opportunity for Council to provide direction to staff regarding a potential advisory ballot measure for the election on March 3, 2020, related to the regulation of small cell telecommunication facilities.

There are two sets of considerations regarding a potential ballot measure for the election on March 3, 2020: (1) the substance of the ballot measure, and (2) the procedural requirements for the ballot measure.

Substance of Potential Ballot Measure:

The potential ballot measure would be an “advisory vote” under California Elections Code Section 9603. For an advisory ballot measure, there are three significant legal constraints for the question to be posed to the voters: (1) the question must seek information that is relevant to a potential future action to be taken by the City Council; (2) the question is only advisory (with a mandated ballot heading of “Advisory Vote Only”), and it does not legally bind the City Council to actually take the potential future action; and (3) the question must not suggest an illegal or preempted action to be taken by the City Council.

With the above in mind, as an example, the City does not have the authority to ask the voters “should the City Council prohibit all small cell telecommunication equipment in City rights of way,” because the City Council is prohibited by preemptive federal law from enacting that legislation.

Examples of advisory ballot measures by local agencies include:

- Should the Town of Atherton supplement private donations with available non-dedicated General Funds to meet the funding shortfall, where one exists, for construction of the new Town Center? (June 2017)
- Do you approve of the Coachella Valley Association of Governments (CVAG) spending One Hundred Million Dollars (\$100,000,000) or more to construct the CV Link, plus, according to

the March 2015 Master Plan, an additional \$1.6 million annually to operate and maintain the CV Link pathway, which CVAG proposes to extend through Rancho Mirage business and residential districts? (April 2016)

- Should the El Dorado County Board of Supervisors re-zone the approximately 100 acres of the former executive golf course in El Dorado Hills from its current land use designation as "open space recreation" to a designation that allows residential housing and commercial development on the property? (November 2015)

Procedures to Follow for a Potential City-Sponsored Ballot Measure:

From a procedural perspective, in order to place an advisory question on the ballot for the election on March 3, 2020, the City Council would need to take action no later than December 6, 2019 (88 days prior to the election) to: (1) approve the advisory question language to be placed on the ballot; (2) call the special election for March 3; (3) request the County Board of Supervisors to consolidate the City's special election with the Presidential Primary election, and authorize the County Registrar of Voters to render election services to the City; (4) authorize the City Attorney to prepare an impartial analysis of the advisory question; and (5) authorize the preparation of ballot arguments.

The County Registrar of Voters has estimated that the City's cost of placing an advisory question on the ballot for the election on March 3, 2020, will be approximately \$75,000 to \$100,000.

FINANCIAL IMPACTS:

There are no financial impacts from the recommended action. As noted in the body of the report, if Council directs staff to prepare an advisory question for a future election, the cost of services provided by the County would be approximately \$75,000 to \$100,000.

CEQA:

The City Manager has determined that the recommended actions described in this agenda report are not subject to CEQA, pursuant to CEQA Guidelines Section 15060(c).

DOCUMENTS ATTACHED:

None

NOTIFICATION:

An email notice was sent to community members who have expressed an interest in small cell facilities.