

MEASURE M

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE M

This measure was placed on the ballot by a petition signed by the requisite number of voters. It proposes to adopt an ordinance amending the existing provisions of Sunnyvale Municipal Code ("SMC") sections 2.07.030 and 2.07.040 to require prior approval of voters in a citywide special or general election for some types of City real property transactions.

CURRENT REQUIREMENTS. Currently, SMC Chapter 2.07 contains the following approval requirements related to purchases, sales or leases of City property:

- The City Council approves purchases, sales, or leases of real property for the City when the purchase price, sales price, lease cost or lease value is greater \$75,000; the City Manager approves such transactions valued at \$75,000 or less.
- The City Manager approves leases that result in revenue to the City and are for periods less than or equal to 55 years.
- The City Council approves leases of City property that have terms in excess of 55 years, subject to additional procedural requirements including a public hearing, adoption of a resolution, and terms providing for periodic review of the lease provisions.

Under state law (Brown Act), all City Council approvals must occur in noticed, open and public meetings. City Manager approval is administrative.

PROPOSED CHANGES. The measure would change the provisions of SMC Chapter 2.07 in the following key areas:

- Define two new categories of City property:
 - "Community Service Amenity," defined as types of facilities and land "whose primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment."
 - "Public Park," defined as "land set apart for recreation of the public and to maintain open space in the City, including City-owned land shared by agreement with adjacent public schools to augment the public school's outdoor recreation area."
- Require prior approval of a majority of voters in a citywide special or general election for the following types of real property transactions:
 - Any "sale, lease, lease extension, lease renewal, land swap, or transfer," regardless of the amount of the transaction, involving any land "owned, leased, or used" by the City as a Public Park or Community Service Amenity (including land otherwise transferred to the City for such purposes, and the rights to use land for such purposes).
 - Leases in excess of 55 years affecting Public Park or Community Service Amenity land owned, held or controlled by the City.
- The City currently acquires, leases, or uses property, and allows others to use City property, through many different types of transactions. How the voter approval requirement applies to these types of transactions may be subject to interpretation.

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The Measure includes a priority clause stating that the Measure prevails over all conflicting City ordinances, resolutions and administrative policies.

A "yes" vote would amend the SMC to include the proposed changes.

A "no" vote would not amend the SMC and the current approval requirements would continue.

The measure requires approval of a majority of voters to become effective.

/s/ John A. Nagel 7/26/16
City Attorney Date

COMPLETE TEXT OF MEASURE M

PROPOSED AMENDMENT TO THE SUNNYVALE MUNICIPAL CODE

THE PEOPLE OF THE CITY OF SUNNYVALE DO ORDAIN AS FOLLOWS:

SECTION 1. TITLE

This initiative measure shall be known and cited as the "Public Lands for Public Use Act."

SECTION 2. REQUEST FOR IMMEDIATE VOTE

Proponents request that the ordinance be submitted immediately to a vote of the people at a special election.

SECTION 3. SUNNYVALE MUNICIPAL CODE §§ 2.07.030, 2.07.040. AMENDED.

The Municipal Code of the City of Sunnyvale §§ 2.07.030 and 2.07.040 are hereby amended to read as follows:

2.07.030. Awarding authority for purchases, sales or leases of real property.

- (a) The city council shall be the awarding authority for all purchases, sales or leases of real property for the city where the purchase or sales price or total lease cost exceeds seventy-five thousand dollars.
- (b) The city manager shall be the awarding authority for all purchases, sales or leases of real property for the city where the purchase or sales price or total lease cost is seventy-five thousand dollars or less, or where the lease results in revenue to the city and is for a period less than or equal to fifty-five years.
- (c) Notwithstanding the foregoing in subsections (a) and (b), any land, that on the effective date of this subsection (c) or at any later time is owned, leased, or used by the city as a public park or a community service amenity, as defined in subsection (d), land otherwise transferred to the city to be used as a public park or a community service amenity, or the rights to use such land may not be the subject of a sale, lease, lease extension, lease renewal, land swap, or transfer unless the issue of the sale, lease, lease extension, lease renewal, land swap, or transfer is submitted to the qualified voters of the city at an election and is approved by a majority of the votes received at the election.
- (d) For purposes of subsection (c), the following terms shall have the meanings set forth below.
 - (1) "Community service amenity" means libraries, swimming pools, community centers, performing arts venues, gardens, golf courses, zoos, city hall, city administration buildings, and other similar facilities and the land on which the facilities stand, whose primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment.

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- (2) "Public park" means land set apart for the recreation of the public, to promote its health and enjoyment, to maintain open space in the city and also includes city-owned public land which may be shared by agreement with adjacent public schools to augment the public school's outdoors recreation area.

2.07.040. Long-term lease of city property.

- (a) The city council may enter into a lease of city property that is not a public park or a community service amenity, as defined in Section 2.07.030, subsection (d), for a term in excess of fifty-five years pursuant to the procedures set forth in this section. This section is enacted pursuant to California Government Code Section 37380 for the purpose of establishing alternate procedures thereto and exempting the city from the provisions of subsections (b)(2), (b)(3) and (b)(4) thereof. Except with respect to leases in excess of fifty-five years, the provisions of this section shall not be deemed in any way to restrict the city's authority to enter into other forms of leases so long as the underlying land is not a public park or a community service amenity, as defined in Section 2.07.030, subsection (d).
- (b) A lease in excess of fifty-five years of property owned, held or controlled by the city that is not a public park or a community service amenity, as defined in Section 2.07.030, subsection (d), may be authorized by the city council in accordance with the following procedures:
 - (1) Any lease entered into pursuant to this section shall be authorized by resolution of the city council.
 - (2) Prior to adopting a resolution authorizing a lease, the city council shall hold a public hearing. Notice of the time and place of the hearing shall be published once not less than fourteen (14) calendar days prior to the public hearing, in the official newspaper of the city.
 - (3) The city shall not be required to engage in a competitive bid process for the award of such lease; provided, that at the time of adopting the resolution authorizing the lease the city council makes a determination that entering the lease without engaging in a competitive bid process is in the best interests of the city and its residents.
 - (4) Any such lease shall be subject to periodic review by the city and shall take into consideration the then market conditions. Pursuant to California Government Code Section 37380(b)(1), the city council hereby establishes that the lease provisions which will periodically be reviewed, at a minimum, shall be those provisions specifying the rent to be paid pursuant to the lease, and such other provisions as may be indicated by the city council at the time of authorizing the lease. The periodic reviews shall occur in accordance with a schedule to be contained in the lease. The periodic review may be in the form of either an express review of the terms by the city council or its designee, or in the form of a procedure contained in the lease for automatic adjustments of the terms in response to market conditions. It is the intent of this provision that inclusion of inflationary

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adjustments, cost of living adjustments, reappraisals or other similar forms of automatic adjustments shall satisfy the requirements of California Government Code Section 37380(b)(1), without the necessity of a discretionary review by a city officer. (Ord. 2628-99 § 2).

- (c) A lease in excess of fifty-five years of property that as of the effective date of this subsection (c) or at any later date is owned, held or controlled by the city and is a public park or a community service amenity, as defined in Section 2.07.030, subsection (d), must first be submitted to the qualified voters of the City of Sunnyvale at an election and approved by a majority of the votes received at the election pursuant to Section 2.07.030, subsection (c). Any such lease that is so approved may be authorized by the city council in accordance with the procedures set forth in subsection (b).

SECTION 4. PRIORITY.

Once this measure becomes effective, its provisions shall prevail over and supersede all provisions of the municipal code, ordinances, resolutions, and administrative policies of the City of Sunnyvale which conflict with any provisions of this measure.

SECTION 5. SEVERABILITY.

In the event a final judgment of a court of competent jurisdiction determines that any section, subsection, sentence, clause, or phrase of this initiative measure is invalid or unenforceable for any reason, the invalid or unenforceable section, subsection, sentence, clause, or phrase shall be severed from the remainder of this measure, and the remaining portions of this measure shall remain in full force and effect without the invalid or unenforceable section, subsection, sentence, clause, or phrase.

ARGUMENT IN FAVOR OF MEASURE M

Vote YES on Measure M. Keep Public Lands Public!

As Sunnyvale continues to grow, public lands (parks, golf courses, libraries, civic and community centers, orchards, gardens, playing fields and open spaces) become more important than ever. Sunnyvale's existing public lands are up for sale and are being lost to private interests. Once public land is lost, it is almost impossible to replace.

- A YES vote on Measure M protects our public lands and community amenities from being sold, swapped, leased or transferred without a public vote.
- A NO vote on Measure M leads to uncontrolled loss of public lands to corporate and private interests.

Sunnyvale residents have a vested interest in the outcome of any decision that limits their ability to use public parks and community service amenities. This includes any facilities and land whose primary purpose is to provide the public a place of city government administration, recreation, education, exercise, or enjoyment.

Measure M amends the Sunnyvale Municipal Code and protects property owned, leased or used by the City as public parks and community amenities. This measure ensures that Sunnyvale's residents have a say on the sale, lease, swap or transfer of these particular lands between the City and another party, and to require a vote on their disposal.

This measure retains the ability for the City to modify city utilities, commercial properties, infrastructure and non-community service amenities without waiting for a public vote. The purpose is to protect parks and other public amenities!

Keep Sunnyvale's public lands public. Vote YES on M!

To learn more about saving public lands and parkland visit <http://SunnyvalePublicLandsAct.com>

/s/ Demetrios K. Triantafyllou
Co-Founder, Save Sunnyvale Parks and Schools

/s/ Richard D. Hayden
Former Mayor City of Sunnyvale and State Assemblyman

/s/ Charles J. Olson
Sunnyvale Orchardist

/s/ Henry Alexander, III
Chair, Sunnyvale Parks and Recreation Commission

/s/ Andy Frazer
Former Commissioner, Sunnyvale Sustainability Commission

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE M

In just the past four years, Sunnyvale acquired almost 7 acres of new land (like our new fire station) through purchases, swaps, and developer requirements. Sunnyvale ADDED 6.6 acres of new park space, including our new Seven Seas and Swegles Parks. Sunnyvale is INCREASING our public land.

Sunnyvale's open spaces are NOT "up for sale" and have NOT been "lost".

What Measure M WILL do is force Sunnyvale to put every routine lease of space with community groups on an expensive ballot measure. Sunnyvale was just legally required to spend \$767,000 on an August special election. Now, the Measure M proponents want a new law that requires even more special elections and expensive ballot measures.

An independent consultant concluded that virtually all city leases, no matter how tiny, would require separate ballot measures if Measure M passes. And all disagreements end up in court at taxpayer expense.

Under Measure M, everything the City provides, from public safety to public works, from senior services to youth services, would have to be cut back so that your tax dollars can be spent on legal fees, lawsuits, and dozens of trivial ballot measures—TWELVE just in 2018.

Sunnyvale is a great city, and we must control our own destiny. But Measure M would make it HARDER for Sunnyvale to control our growth, acquire new park land, and provide us with vital services. This is why the League of Conservation Voters and civic leaders OPPOSE Measure M.

We don't need and can't afford Measure M. Vote NO.

Please visit www.SaveOurSunnyvale.com.

/s/ Gustav Larsson
Sunnyvale Vice Mayor

/s/ Lawrence E. Stone
County Assessor, Former Sunnyvale Mayor

/s/ Michael Klein
Sunnyvale Resident and Business Owner

/s/ Mary J. Bradley
Former Sunnyvale Finance Director

ARGUMENT AGAINST MEASURE M

Measure M would force a public vote virtually every time Sunnyvale undertakes a land use transaction. The City averages one such transaction per month, most being routine leases. If a small business or the Girl Scouts want to lease a vacant City office, that decision would be delayed until the next general election and cost \$41,000 or, worse, require a special election at a cost of \$767,000. An independent consultant estimated that Measure M would create at least 12 ballot measures in our next election alone. Do you really want to read, research, and vote on every individual lease that Sunnyvale issues or renews?

This is an insane waste of time and money.

The many unintended consequences of this poorly written measure also include blocking beneficial opportunities such as the recent land swap that gave Sunnyvale a new fire station at zero expense to taxpayers.

Proponents incorrectly claim that this measure is necessary to protect city parks. Sunnyvale has never sold a park in its history; in fact, Sunnyvale just opened two new parks and expanded another. Further, Measure M would delay the extension of Sunnyvale's leases of the golf course (from NASA) and Baylands Park (from the county) for costly public votes, jeopardizing our continued access to the two biggest parcels of green space in the city.

Measure M would threaten an estimated \$600,000 in annual lease revenue, create significant election costs, and subject Sunnyvale to uncontrolled legal fees whenever someone challenges whether a transaction is covered by the measure's vague language. This would require cuts to public safety, street repairs, park maintenance, and other city services. It makes no sense to risk millions of tax dollars and reduce vital services for Sunnyvale residents, all to resolve a problem that does not exist.

Vote NO on Measure M.

Please visit SaveOurSunnyvale.com.

/s/ Glenn K. Hendricks
Mayor, City of Sunnyvale

/s/ Dianne McKenna
Former Sunnyvale Mayor

/s/ Benjamin H. Picard
Superintendent of Schools, Sunnyvale School District

/s/ Donald Eagleston
President/CEO, Sunnyvale Chamber of Commerce

/s/ Nancy S. Tivol
Former Executive Director, Sunnyvale Community Services

REBUTTAL TO ARGUMENT AGAINST MEASURE M

Our parks and community service amenities are disappearing and are at risk. You might hear that isn't true or that Sunnyvale has never "sold" a public park. Don't believe it!

The City:

- Sold lands intended for Murphy Park expansion.
- Gave away, *for free*, 5,000sf of Raynor Park to a private business.
- Proposed transferring half the Civic Center land in a "99-year lease" to a developer.

This is just the beginning. Your neighborhood park or community amenities could be next.

A few other proposals discussed by the City:

- Redevelopment of the Community Center pond
- Selling Sunken Gardens
- Selling a portion of Sunnyvale Golf Course for Hotel development

Public lands are extremely valuable; replacement costs are extraordinary. This measure would require voter approval of the above transactions.

Measure M is the common sense solution. It does NOT affect city services or prevent the City from making land sale, lease, swap or transfer decisions over commercial properties, fire stations, storage yards, roadways, flood control, utilities and other infrastructure. The City CAN and will be able to issue office rentals to businesses (e.g. Girl Scouts), as well as Use Permits like park reservations.

Raise your voice at the ballot box, let voters decide whether to sell, lease, swap, or transfer our city parks, libraries, golf courses, civic-community centers, including facilities and lands set aside for public recreation and education.

Together, we can stop the loss of public lands to special interests.

Vote YES on Measure M. Keep Public Lands Public!

Visit <http://SunnyvalePublicLandsAct.com>

/s/ Henry Alexander, III
Chair, Sunnyvale Parks and Recreation Commission

/s/ Frederik M. Fowler
Former Mayor of Sunnyvale

/s/ Holly Lofgren
Founder, Friends of the Fremont Pool

/s/ Wendy Hales
Co-Founder Save Sunnyvale Parks and Schools

/s/ Ruizhong Wang
Resident in Washington Park