



Council Agenda Report

From: Ty Lewis, City Manager
Elizabeth Hull, City Attorney

Subject: Discussion Regarding Downtown Parking and Potential Next Steps Regarding the Implementation or Continued Suspension/Repeal of Ordinance Number 1135

CEQA Determination: The City finds that this action is not a project under the California Environmental Quality Act pursuant to State Guidelines Section State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3), 15378.

Date: May 7, 2024

Facts

1. In late 2023, early 2024, the City Attorney's office conducted a review the City's Parking Management Ordinance and actions taken by the City to implement the Parking Management Program (hereinafter referred to as the "Program").
2. Following that review, the City paused the Program, effective February 7, 2024.
3. On February 20, 2024, the City introduced for first reading, Ordinance No. 1135, which modified the Parking Management Ordinance to establish the boundaries of the paid parking area in the Downtown and other clarifying changes to that ordinance.
4. On March 5, 2024, the Council held the second reading and adopted Ord No. 1135 modifying PRMC Chapter 12.42.
5. On March 17, 2024, the City was emailed a copy of a referendum petition being circulated to "Require Voter Approval of Paid Parking Zones Ordinance."
6. On March 19, 2024, City Manager Ty Lewis reached out to the proponents of the referendum to alert them that the City had received a copy of the referendum and had concerns about the validity of the form being used.
7. The proponents of the referendum were not available to meet with the City Manager to discuss the form of the referendum. The proponents indicated they had legal counsel and were confident the referendum complied with state law.
8. On April 2, 2024, the proponents provided the referendum with 2281 signatures to the City Clerk. The City Clerk conducted a prima facie examination of the petition. There is no requirement to verify the validity of the referendum at this stage. In essence this is simply a raw count of the number signatures affixed to the paper. If the number of signatures is equal to or exceeds the signature threshold the City Clerk shall accept the referendum.
9. Following receipt of the referendum, the City Clerk has 30 business days to determine whether the petition is valid. Based upon the April 2, 2024, submittal, the City Clerk has until May 14, 2024 to make a determination.
10. On April 16, 2024, Councilmember Gregory requested that the issue of the Parking Management Ordinance be returned to Council for further discussion.
11. Following receipt of the referendum petition, the City reviewed it and has found that it fails to comply with state law.

12. The City Clerk anticipates issuing a Notice of Rejection pursuant to Sections 9240 and 9114 of the Elections Code on Wednesday, May 8, 2024.

Options

1. Take no action (if the Council takes no action and the City Clerk rejects the Petition on May 8, 2024, Ordinance No. 1135 would become effective);
2. Direct the City Manager to continue the suspension of the Paid Parking Program;
3. Take no action on this item and consider an ordinance repealing Ord No. 1135 which is Agenda Item ___ on this agenda;
4. Provide alternative direction to staff.

Analysis and Conclusions

Initiatives and Referendums

Both the initiative and referendum process allow citizens to collect signatures to place legislation on the ballot; however, they serve very different purposes. An initiative allows the electorate to place a new statute or law on the ballot for consideration by the voters. A referendum is a process for the voters to approve or reject ordinances/legislative acts which have been adopted by the legislative body, in this case the City Council. A referendum is limited to the specific action/ordinance that is being challenged and does not create future law or set future process for adoption of law.

A referendum may only be placed on the ballot after the proponents have successfully met a series of requirements set forth in the California Elections Code. To be placed on the ballot a referendum petition must satisfy all of the requirements of the Elections Code.

If the referendum petition submitted to the Clerk regarding the parking ordinance had satisfied the requirements of the Election Code and received more than 50% of the votes cast in the November election it would have repealed the identified portions of Ordinance No. 1135. It would not have repealed PRMC 12.42 in its entirety or the Parking Program set forth therein. Also, it would not require a vote for future actions by the Council on parking issues.

Defects in the Referendum Petition

There are a number of defects in the referendum petition submitted to the City Clerk on April 2, 2024, that prohibit the Clerk from proceeding with the review of the signatures and certifying it to be placed on a future ballot. Among others, the referendum petition as presented omits the notices required by Election Code Section 101(a)(1) and (2) and omits the ordinance number and title, required by Elections Code Section 9238(a).

Although it has been asserted that the Clerk or the Council should waive these deficiencies or that the Petition “substantially complies” with the law, the case law does not support this position and “substantial compliance” is not a determination the City Clerk or the Council can make. The City Clerk is limited to a determination of whether or not there is full, technical compliance, and with respect to the provisions of law referenced herein and others identified by the City there has not been compliance. As such the Clerk cannot allow the referendum petition to proceed.

For example, the omission of the notices prescribed by Section 101(a)(1) and (3) prohibit the Petition from being certified.

Elections Code § 101 provides:

(a) Notwithstanding any other law, a state or local initiative, referendum, or recall petition required to be signed by voters shall contain in 11-point type, before that portion of the petition for voters' signatures, printed names, and residence addresses, the following language, in order:

(1) "NOTICE TO THE PUBLIC:". This text shall be in a boldface type.

(2) If the petition includes the disclosure statement described by subdivision (b) of Section 107, the text "SIGN ONLY IF IT IS THE SAME MONTH SHOWN IN THE OFFICIAL TOP FUNDERS OR YOU SAW an "Official top funders" SHEET FOR THIS MONTH." This text shall be in a boldface type.

(3) "THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK." This text shall be in a non-boldface type.

(b) A state initiative petition shall contain, in the same location and type size described in subdivision (a), the following language in a non-boldface type: "THE PROPONENTS OF THIS PROPOSED INITIATIVE MEASURE HAVE THE RIGHT TO WITHDRAW THIS PETITION AT ANY TIME BEFORE THE MEASURE QUALIFIES FOR THE BALLOT."

None of this language was included on the Petition.

Whether or not the Petition was required to include the language prescribed in subdivisions (a)(2) and (b) is discussed further below, but there is no question that the Petition should have included the language contained in sections 101(a)(1) and (3), to read:

NOTICE TO THE PUBLIC
THIS PETITION MAY BE CIRCULATED BY A
PAID SIGNATURE GATHERER OR A
VOLUNTEER. YOU HAVE THE RIGHT TO
ASK.

This language is entirely missing from the Petition and therefore substantial compliance could not be found. "Substantial compliance 'means *actual* compliance in respect to the substance essential to every reasonable objective of the statute.'" *Myers v. Patterson*, 196 Cal. App. 3d 130, 138 (1987) (quoting *Deukmejian*, 30 Cal. 3d at 649) (emphasis in original; some internal quotation marks omitted). In other words, "[a] paramount concern in determining whether a petition is valid despite an alleged defect is whether the purpose of the technical requirement is frustrated by the defective form of the petition." *Nelson v. Carlson*, 17 Cal. App. 4th 732, 737 (1993) (quoting *Deukmejian*, *supra*, 30 Cal. 3d at 652-53). As the Myers court recognized, this means that if a "notice-inclusion requirement serves some informational purpose for prospective signers of a petition, then there clearly [is] no substantial compliance [when the]

petition sections... *fail[] altogether to include the notice.*" *Myers*, 196 Cal. App. 3d at 138 (emphasis added). Applying this standard, the *Myers* court invalidated an initiative petition that failed to include a copy of the Notice of Intention to Circulate, which is required by the Elections Code.

Additionally, the Petition failed to include the ordinance number and title as required by Elections Code Section 9238(b)(1) which provides that "[e]ach section of the referendum petition shall contain . . . [t]he identifying number or title of the ordinance." The petition contains no reference to Ordinance Number 1135 and it does not contain the official title either, "An Ordinance of the City Council of the City of El Paso de Robles Amendment Paso Robles Municipal Code Chapter 12.42, Parking Management, to Clarify the Process for Setting Parking Rates, Reestablishing the Downtown Parking Zone and other Clean Up Measures." The failure to include the reference to the code section or the title makes the petition ambiguous and, potentially, misleading to members of the public as to what the actual effect of the referendum will be if successful. In *Hebard v. Bybee*, (1998), 65 Cal.App.4th 1331, the Court of Appeal invalidated a referendum petition that included both the ordinance number and the official title, but which mistakenly omitted three words from the official title, making the title inaccurate, or at least ambiguous.

As a result of these and other deficiencies in the petition, the City Clerk anticipates rejecting the petition.

As was reported out following the April 16, 2024 City Council meeting, the Council considered and rejected pursuing litigation related to the referendum petition. The Council considered requesting a Court to determine whether the petition could be found "substantially compliant" with the Elections Code and order the referendum be placed on the ballot.

Following that closed session meeting, Councilmember Gregory requested the parking issue come back to Council on May 7, 2024 for further discussion.

Next Steps

At this time the Council may discuss the status of parking in the downtown area and provide direction to staff on any further actions related to the ordinance.

The paid parking program had been suspended by the City Manager since February 7, 2024, while the City reevaluated the implementation process of the existing program and waited for Ordinance No. 1135 to become effective. When the City Clerk rejects the petition on May 8, 2024, Ordinance 1135 will no longer be held in abeyance and will go into effect.

At this time, the Council could direct the City Manager to continue the suspension of the paid parking until such time in the future that the City Council believes circumstances warrant reconsideration of the issue. Additionally, the City Council could consider an ordinance to repeal Ordinance No. 1135 or take such other action as the City Council decides upon.

Fiscal Impact

If the City Council takes no action, the paid parking program could restart in the near future. If the program is restarted, the \$1 per hour rate will apply. This is projected to generate sufficient revenues to offset expenditures of the parking program. However, if the Council directs that the paid parking program continue to be suspended, or the ordinance is repealed, there would be no additional revenue or cost associated with it.

As of March 31, 2024, the loan balance on the General Fund loan which was used to establish the program originally is approximately \$527,700. If City Council were to not reestablish the downtown parking program, the program would be dissolved, and the General Fund loan written off.

CEQA

The City finds that this action is not a project under the California Environmental Quality Act pursuant to State Guidelines Section State CEQA Guidelines, §§ 15060, subd. (c)(2)-(3), 15378.

Recommendation

Staff has no recommendation.

Attachments

1. Blank Referendum Petition
2. Ordinance 1135