REPORT TO COUNCIL
City of Sacramento

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Staff Report
September 7, 2010

Honorable Mayor and
Members of the City Council

Continued to 9-14-10

Title: Report Back on Resolution Designating Argument Authors for 2010 Ballot Measures

Location/Council District: Citywide

Recommendation: Information and direction to staff.

Contact: Patti Bisharat, Interim Assistant City Manager, (916) 808-8197; Stephanie Mizuno, Deputy City Clerk, (916) 808-8093; Matthew Ruyak, Supervising Deputy City Attorney, (916) 808-5346;

Presenters; Patti Bisharat, Interim Assistant City Manger, (916) 808-8197; Stephanie Mizuno, Deputy City Clerk, (916) 808-8093; Matthew Ruyak, Supervising Deputy City Attorney, (916) 808-5346

Department: Office of the Manager

Division: n/a

Organization No: 09200

Description/Analysis

Issue: At the August 5, 2010 Council meeting, Council member Fong asked for a report back regarding the resolution approved by the City Council on July 27, 2010 authorizing Council representative argument authors for the two ballot measures placed on the November 2010 ballot – Utilities Rate Hike Rollback Hike Act of 2010 and the Marijuana Business Tax.

Committee/Commission Action: None

Policy Considerations:

The process followed in adopting a resolution designating Council argument representative authors for two ballot measures placed on the November 2010 ballot was consistent with the requirements of the California Elections Code.

Environmental Considerations: None

Rationale for Recommendation:

Council may wish to discuss that future resolution language be clarified to 'require' as opposed to 'authorize' signatures of the elected body and would name those selected to do so with language also requiring that any deemed necessary modifications to the resolution be brought back to council for further consideration.

Financial Considerations: None.

Emerging Small Business Development (ESBD): None.

Respectfully Submitted by: Patti Bisharat
Patti Bisharat, Interim Assistant City Manager

Recommendation Approved:

for Patti Bisharat
GUS VINA
Interim City Manager

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Background

Process/Actions by City Clerk re 2010 Ballot Measure Arguments

Councilmember Fong's report back request asked for an explanation of the process used for the submittal of ballot measure arguments as required by Resolution No. 2010-433.

As has been the practice for the City of Sacramento, ballot measure authors are selected by the City Council as Elections Code section 9287 allows. This section allows for the Council's authorized ballot argument to be given selection priority over all other arguments submitted to the City Clerk.

Resolution No. 2010-433 authorized Mayor Johnson, on behalf of the City Council, to file a written argument against the Utilities Rate Hike Rollback Act of 2010 and Councilmember Steve Cohn, on behalf of the City Council, to file a written argument in support of the Marijuana Business Tax. Argument submittals were due to the City Clerk on July 20, 2010.

The City Clerk received only one ballot argument against the Utilities Rate Hike Rollback Act of 2010 without the signature of the Mayor and only one ballot argument in support of the Marijuana Business Tax without the signature of the Councilmember Cohn. However, per E.C. 9287 the submittals were sufficient for submittal to the County for printing in the official sample ballot and as such were submitted to the County.

Had there been multiple submittals for either of the ballot measures, the City Clerk would have been required to select according to the priorities established in E.C. section 9287 and the 'city's submittal' would not have been guaranteed priority selection as the authorized elected official's signature was not on the submitted argument. In this instance the City Clerk did not receive competing ballot arguments and accepted the one submittal for each of the arguments.

City Attorney's Report Back on the Legal Effect of Resolution Adoption

Councilmember Fong's report back request included direction that the City Attorney advise the Council as to the legal effect of the City Council's adoption of resolutions in general and of Resolution No. 2010-433 specifically.

The City Charter provides that the City Council may act only by ordinance, resolution or motion. When the City Council adopts a resolution it is formal expression of the Council's will and policy, but a resolution is of lesser dignity than an ordinance because it is adopted with less formality. A resolution is "an expression of opinion or mind or policy concerning some particular item of business coming within the legislative body's official cognizance . . . and relating to the administrative business of the municipality."1 While a resolution is not enforceable against the public in general, it is directory to those within the resolution's purview.

The relevant sections of Resolution No. 2010-433, unanimously adopted by the Council, provided:

> Section 1. The City Council hereby authorizes the following members, on behalf of the City Council, to file a written argument **against** the Utilities Rate Hike Rollback Act of 2010: Mayor, Kevin Johnson.
>
> Section 2. The City Council hereby authorizes the following members, on behalf of the City Council, to file a written argument **in support of** the Marijuana Business Tax: Councilmember Steve Cohn.
>
> Section 3. The arguments shall be prepared in accordance with the California Elections Code and the Election Official's printing guidelines available from the City Clerk.

Resolution No. 2010-433 did not expressly "require" or "direct" the authorized members to draft the ballot arguments, but "authorized" the members to draft the ballot arguments on the Council's behalf so the Council could avail itself of the statutory priority given to ballot arguments submitted by "[t]he legislative body, or member or members of the legislative body *authorized* by that body." (Calif. Elections Code Sec. 9287(a), emphasis added.)

By "authorizing" members to submit ballot arguments the Council assures that the Council's position on various measures will be drafted and published in ballot materials. In the event the City Clerk receives competing ballot arguments, the City Clerk would be obligated to accept and submit for ballot publication the ballot arguments authored by the Council "authorized" members to the exclusion of others. If multiple ballot arguments are submitted to the City Clerk by other persons, but not by the "authorized" members, the City Clerk must select amongst the multiple ballot arguments according to the priorities established in Elections Code.2 In this instance the City Clerk did not receive competing ballot arguments and accepted those that were submitted.

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1 McQuillin, Municipal Corporations, § 15.02; see also *City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 565-566.

2 Subsections (b), (c) and (d) of the California Elections Code express the remaining priorities given to ballot arguments in support of or opposition to measures: "(b) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
(c) Bona fide associations of citizens.
(d) Individual voters who are eligible to vote on the measure."

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RESOLUTION NO. 2010-433

Adopted by the Sacramento City Council

July 20, 2010

AUTHORIZING THE CITY COUNCIL OR MEMBERS OF THE CITY COUNCIL TO SUBMIT WRITTEN ARGUMENT(S) FOR MEASURES APPROVED BY JULY 20, 2010, TO BE SUBMITTED TO THE VOTERS AT THE CONSOLIDATED ELECTION ON TUESDAY, NOVEMBER 2, 2010

BACKGROUND

A. On June 22, 2010, the City Council accepted the County Registrar of Voters "certificate of petition" certifying the initiative petition as sufficient, and approved the placement of the Utilities Rate Hike Rollback Act of 2010, initiative ordinance on the November 2, 2010 ballot.

B. On July 13, 2010, the City Council approved for placement on the November 2, 2010, ballot a measure to increase the business operations tax rates for marijuana businesses (the "Marijuana Business Tax").

C. The City Council desires to submit argument(s) for the measure(s).

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council hereby authorizes the following members, on behalf of the City Council, to file a written argument **against** the Utilities Rate Hike Rollback Act of 2010: Mayor, Kevin Johnson

Section 2. The City Council hereby authorizes the following members, on behalf of the City Council, to file a written argument **in support of** the Marijuana Business Tax: Councilmember Steve Cohn

Section 3. The arguments shall be prepared in accordance with the California Elections Code and the Election Official's printing guidelines available from the City Clerk.

Section 4. The City Council hereby directs the City Clerk to certify the passage and adoption of this resolution and enter it into the book of original resolutions.

Adopted by the City of Sacramento City Council on July 20, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.

Mayor Kevin Johnson

Attest:

Shirley Concolino, City Clerk