

1 MARA W. ELLIOTT, City Attorney [SBN 175466]  
2 SANNA R. SINGER, Asst. City Attorney [SBN 228627]  
3 M. TRAVIS PHELPS, Chief Deputy City Attorney [SBN 258246]  
4 OFFICE OF THE CITY ATTORNEY  
5 1200 Third Avenue, Suite 1620  
6 San Diego, California 92101  
7 Telephone: (619) 236-6220  
8 Facsimile: (619) 236-7215

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**06/15/2018** at 03:22:00 PM  
Clerk of the Superior Court  
By Candace Schaeffer, Deputy Clerk

6 DEBORAH B. CAPLAN [SBN 196606]  
7 LANCE H. OLSON [SBN 077634]  
8 RICHARD C. MIADICH [SBN 224873]  
9 OLSON HAGEL & FISHBURN LLP  
10 555 Capitol Mall, Suite 400  
11 Sacramento, California 95814  
12 Telephone: (916) 442-2952  
13 Facsimile: (916) 442-1280

14 *Attorneys for Petitioners/Plaintiffs*

15  
16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17  
18 COUNTY OF SAN DIEGO

19 CITY OF SAN DIEGO, et al.,  
20  
21 Petitioners/Plaintiffs,  
22  
23 v.  
24 ELIZABETH MALAND and MICHAEL VU,  
25  
26 Respondents/Defendants

27  
28 JACK McGRORY and STEPHEN P. DOYLE,  
  
Real Parties in Interest

CASE NO.: 37-2018-00023290-CU-WM-CTL  
  
**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF PETITION  
FOR WRIT OF MANDATE REGARDING  
SDSU INITIATIVE; COMPLAINT FOR  
JUDICIAL DECLARATION THAT THE  
PROPOSED SDSU WEST INITIATIVE  
CANNOT LAWFULLY BE SUBMITTED TO  
VOTERS; REQUEST FOR INJUNCTIVE  
RELIEF**

(CCP §§ 1085, 1060 and 526)

**ELECTION MATTER**  
**EXPEDITED ACTION REQUESTED**

DATE: July 5, 2018  
TIME: 9:00 a.m.  
JUDGE: Hon. Randa Trapp  
DEPT.: C-70

TABLE OF CONTENTS

**INTRODUCTION**..... 1

**WHY PREELECTION REVIEW IS NECESSARY**..... 2

**FACTUAL BACKGROUND**..... 4

**ARGUMENT**..... 5

    A. The INITIATIVE Unlawfully Seeks to Direct Administrative Acts..... 5

    B. The INITIATIVE Conflicts with the San Diego Charter..... 7

        1. The INITIATIVE Conflicts with Charter Provisions  
           Delegating Administrative Authority to the Mayor..... 8

        2. The INITIATIVE Conflicts with the Charter Requirements  
           for Sales of City Land..... 9

    C. The INITIATIVE Conflicts with State Law..... 11

    D. The INITIATIVE Impermissibly Interferes with Essential Government  
        Functions..... 13

        1. Interference with the City’s Ability to Make Financial and  
           Land Use Decisions..... 13

        2. Interference with the City’s Duties Concerning Water  
           Supply..... 15

        3. Impairment of Existing Contractual Obligations..... 16

    E. The INITIATIVE Fails to Enact an Enforceable Legislative Act  
        and is Unreasonably Vague..... 17

**CONCLUSION**..... 18

**TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGE</u></b>
<i>AFL v. EU</i>	
(1984) 36 Cal.3d 687.....	2, 3, 17
<i>Campan v. Greiner</i>	
(1971) 15 Cal.App.3d 836.....	3, 8
<i>Citizens for Jobs &amp; the Economy v. County of Orange</i>	
(2002) 94 Cal.App.4th 1311.....	5, 7, 18
<i>Citizens for Responsible Behavior v. Superior Ct.</i>	
(1991) 1 Cal.App.4th 1013.....	2, 3 9
<i>City and County of San Francisco v. Patterson</i>	
(1988) 202 Cal.App.3d 95.....	9, 11, 13
<i>City of Atascadero v. Daly</i>	
(1982) 135 Cal.App.3d 466.....	3
<i>City of Burbank v. Burbank-Glendale-Pasadena Airport Authority</i>	
(2003) 113 Cal.App.4th 465.....	11
<i>City of Grass Valley v. Walkinshaw</i>	
(1949) 34 Cal.2d 595.....	7
<i>City of Irvine v. Irvine Citizens Against Overdevelopment</i>	
(1994) 25 Cal.App.4th 868.....	3
<i>City of San Diego v. Dunkl</i>	
(2001) 86 Cal.App.4th 384.....	2, 6
<i>Committee of Seven Thousand v. Superior Court</i>	
(1988) 45 Cal.3d 491.....	6, 11
<i>Currieri v. Roseville</i>	
(1970) 4 Cal.App.3d 1001.....	9
<i>Devita v. County of Napa</i>	
(1995) 9 Cal.4th 763.....	8

1	<i>Fishman v. City of Palo Alto</i>	
2	(1978) 86 Cal.App.3d 506.....	6
3	<i>Housing Authority v. Superior Ct.</i>	
4	(1950) 35 Cal.2d 550.....	13
5	<i>Galvin v. Board of Supervisors</i>	
6	(1925) 195 Cal. 686.....	8, 9
7	<i>Geiger v. Board of Supervisors</i>	
8	(1957) 48 Cal.2d 832.....	13
9	<i>Lincoln Property Co. No. 41, Inc. v. Law</i>	
10	(1975) 45 Cal.App.3d 230.....	13
11	<i>Long Beach Community Redevelopment Agency v. Morgan</i>	
12	(1993) 14 Cal.App.4th 1047.....	10
13	<i>Mission Springs Water Dist. V. Verjil</i>	
14	(2013) 218 Cal.App.4th 892.....	3, 11
15	<i>San Bruno Committee for Economic Justice v. City of San Bruno</i>	
16	(2017) 15 Cal.App.5th 524.....	6
17	<i>Simpson v. Hite</i>	
18	(1950) 36 Cal.2d 124.....	13
19	<i>Sonoma County Org. of Public Employees v. County of Sonoma</i>	
20	(1979) 23 Cal.3d 296.....	16
21	<i>Totten v. Board of Supervisors</i>	
22	(2006) 139 Cal.App.4th 826.....	13
23	<i>United States Trust Co. v. New Jersey</i>	
24	(1977) 431 U.S. 1.....	16
25	<i>Widders v. Furchtenicht</i>	
26	(2008) 167 Cal.App.4th 769.....	17
27	<i>Worthington v. City of Rohnert Park</i>	
28	(2005) 130 Cal.App.4th 1132.....	6, 10, 17

1	<b><u>STATUTES</u></b>	
2	Education Code section 66600.....	11
3	Education Code section 66606.....	11
4	Education Code section 67500 et seq.....	11, 12
5	Education Code section 67504 (c)(2).....	12
6	Election Code section 9255-9269.....	7, 8
7	Government Code section 65451(f).....	12
8	Water Code section 10720 et seq.....	15
9		
10	<b><u>UNITED STATES CONSITUTION</u></b>	
11	U.S. Const. art. I, Section 10.....	16
12		
13	<b><u>CALIFORNIA CONSTITUTION</u></b>	
14	Cal. Const., art. II, Section 11.....	5
15	Cal. Const., art. I, Section 9.....	16
16		
17	<b><u>SAN DIEGO CITY CHARTER ARTICLES</u></b>	
18	Charter Article V, Section 28, .....	8
19	Charter Article XV, Sections 260 and 265.....	8
20	Charter Article V, Section 26.1.....	15
21		
22	<b><u>SAN DIEGO MUNICIPAL CODES</u></b>	
23	San Diego Municipal Code section 22.0908.....	4, 5, 7, 10, 14, 16, 18
24	San Diego Municipal Code section 27.1001.....	6
25	San Diego Municipal Code Chapter 2, article 2.....	7
26	San Diego Municipal Code section 22.0901 et seq.....	7
27		
28		

1 **INTRODUCTION**

2 The City of San Diego brings this action to determine the validity of a recently qualified  
3 initiative measure that proposes to sell approximately 132 acres of the most valuable City-owned real  
4 property (“PROPERTY”) near and including the San Diego Chargers’ former home stadium. The  
5 initiative would require the PROPERTY be sold to San Diego State University (“SDSU”) or an affiliate<sup>1</sup>  
6 even though SDSU’s governing body, the California State University (“CSU”) system, has never  
7 publicly expressed an interest in purchasing the PROPERTY. The “SDSU West Campus Research  
8 Center, Stadium and River Park Initiative” (“INITIATIVE”) not only proposes to authorize that sale, but  
9 would prohibit the City from using or disposing of the PROPERTY in a different way for the next 20  
10 years, and dictates the key terms of the purchase and sale agreement between the City and SDSU.  
11 Among other things, those terms would require the sale price to be based on an October 2017 valuation  
12 of the PROPERTY – even if a sale to SDSU does not occur for another 20 years – and would require the  
13 agreement to “provide for the development of” a joint use sports stadium, recreation space and parks,  
14 athletic fields, and “facilities” that would be used for both university and private purposes. It also  
15 directs that SDSU must comply with certain state laws in planning the development of the PROPERTY,  
16 including state laws that SDSU would not otherwise be required to follow.

17 The City believes the INITIATIVE is an improper use of the local initiative power for at least  
18 five reasons. First, the local initiative power may only be used to control legislative actions and the  
19 INITIATIVE impermissibly directs a broad range of executive and administrative actions. Second, the  
20 INITIATIVE is inconsistent with multiple provisions in the City Charter, including those delegating  
21 administrative power to the Mayor, and the City Council’s power to authorize the sale of large portions  
22 of City-owned land. Third, it conflicts with state laws governing land acquisition by the CSU system.  
23 Fourth, it would impermissibly interfere with the Mayor and City Council’s “essential government  
24 functions” concerning the City’s finances, long standing plans for municipal water supply, land use and  
25 planning, and impair existing contracts. And fifth, the INITIATIVE is invalid because it only provides  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The INITIATIVE defines SDSU to include “any SDSU auxiliary organization, entity, or affiliate.” (INITIATIVE,  
§ 22.0908(x)(1), attached as Exhibit A to the City’s Petition for Writ of Mandate.)

1 for the possibility of future legislative action, does not propose enforceable legislative action, and is  
2 unreasonably vague.

3 California courts have repeatedly held that preelection review of these types of claims is  
4 appropriate to prevent the substantial costs associated with holding an election on an invalid initiative  
5 measure, and to protect the integrity of the electoral process more generally. By this lawsuit, the City is  
6 not asking the Court to resolve a public policy dispute about the future of the stadium area. Rather, the  
7 only issue before the Court is whether the voters can lawfully enact the INITIATIVE. Because the  
8 INITIATIVE seeks to direct actions not permitted by initiative, the City Council has determined that it is  
9 necessary to seek relief from the duty to put the INITIATIVE on the ballot in November. In seeking this  
10 relief, the City asks the Court to decide the fundamental issue of whether an initiative can impose on the  
11 Mayor and City Council a one-sided contract for the use and development of an important City asset.

#### 12 **WHY PREELECTION REVIEW IS NECESSARY**

13 While the right to act by initiative is protected under our constitutional framework, it is not an  
14 unfettered right. When confronted with an attempt to present an invalid initiative measure to voters,  
15 courts can – and should – engage in preelection review and order the measure removed from the ballot.  
16 (*AFL v. Eu* (1984) 36 Cal.3d 687.)

17 Preelection review is appropriate “where the validity of a proposal is in serious question, and  
18 where the matter can be resolved as a matter of law before unnecessary expenditures of time and effort  
19 have been placed into a futile election campaign.” (*City of San Diego v. Dunkl* (2001) 86 Cal.App.4th  
20 384, 389.) “[I]f the court is convinced, at any time, that a measure is fatally flawed, it should not matter  
21 whether that decision is easy or difficult, simple or complicated. Certainly it would be unconscionable  
22 for this court, at this time, to rule in favor of petitioner on the basis that the issue is close – only to be  
23 faced with a postelection challenge should the measure pass.” (*Citizens for Responsible Behavior v.*  
24 *Superior Ct.* (1991) 1 Cal.App.4th 1013, 1022.)

25 The City alleges the INITIATIVE is invalid for several reasons, including that it seeks to  
26 accomplish actions that are beyond the scope of the local initiative power. In *AFL*, the California  
27 Supreme Court explained that legislative overreach is appropriate for preelection review. “If it is  
28 determined that the electorate does not have the power to adopt the proposal in the first instance...the

1 measure must be excluded from the ballot.” (*AFL, supra*, 36 Cal.3d at 695.) One example given by the  
2 Court in *AFL* was an initiative that was not legislative in character. (*Id.* at 697.) Courts have  
3 subsequently expanded this list to include initiatives that: (1) impermissibly interfere with essential  
4 government functions (*City of Atascadero v. Daly* (1982) 135 Cal.App.3d 466, 470); (2) conflict with  
5 the provisions of a city charter (*Campen v. Greiner* (1971) 15 Cal.App.3d 836); (3) conflict with state  
6 law (*Committee of Seven Thousand v. Superior Ct.* (1988) 45 Cal.3d 491 (hereafter “*COST*”); *City of*  
7 *Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868); or (4) that are  
8 unreasonably vague (*Mission Springs Water Dist. v. Verjil* (2013) 218 Cal.App.4th 892). Each of these  
9 legal defects is present in the INITIATIVE and precludes it from being submitted to voters.

10 The California Supreme Court has also explained that preelection review of invalid initiative  
11 measures is important to protect the integrity of the electoral process.

12 The presence of an invalid measure on the ballot steals attention, time and money from  
13 the numerous valid propositions on the same ballot. It will confuse some voters and  
14 frustrate others, and an ultimate decision that the measure is invalid, coming after the  
15 voters have voted in favor of the measure, tends to denigrate the legitimate use of the  
16 initiative procedure. (*AFL, supra*, 36 Cal.3d at 697.)

17 Allowing an election to proceed on an invalid initiative measure also wastes taxpayer monies and  
18 can create irreparable divisions within a community.

19 If an initiative ordinance is invalid, no purpose is served by submitting it to the voters.  
20 The costs of an election – and of preparing the ballot materials necessary for each  
21 measure – are far from insignificant. [ ] Proponents and opponents of a measure may  
22 expend large sums of money during the election campaign. Frequently, the heated  
23 rhetoric of an election campaign may open permanent rifts in a community. That the  
24 people’s right to directly legislate through the initiative process is to be respected and  
25 cherished does not require the useless expenditure of money and creation of emotional  
26 community divisions concerning a measure which is for any reason legally invalid.  
27 (*Citizens for Responsible Behavior, supra*, 1 Cal.App.4th at 1023-24.)

28 Deferring review of the INITIATIVE until after the election would unquestionably waste  
29 taxpayer dollars. The City estimates that it will cost at least several hundred thousand dollars to place the  
30 INITIATIVE on the November 2018 ballot, plus an additional amount in staff time and resources to  
31 comply with all the elections procedures, respond to inquiries from the public, and otherwise prepare for  
32 the election. (Maland Decl., ¶¶ 6 & 7.) The City will begin incurring costs related to this measure for  
33 preparation of ballot materials in early August 2018. (*Id.* at ¶ 7 & 8.)



1 Preelection review is additionally important in this case because the INITIATIVE provides for  
2 immediate action by the City in the event the INITIATIVE is adopted. If the INITIATIVE passes, it will  
3 present immediate and substantial questions about the authority and legal obligations of City officials,  
4 particularly the Mayor, thereby creating a high likelihood of costly and disruptive litigation. The City is  
5 also prohibited as a practical matter from making any decisions regarding the PROPERTY as long as the  
6 potential exists for submitting the INITIATIVE to voters or it is tied up in postelection litigation. In sum,  
7 preelection review is both appropriate and necessary in this case.

8 **FACTUAL BACKGROUND**

9 Petitioner/Plaintiff City of San Diego is a charter city organized under the “home rule”  
10 provisions in Article XI of the California Constitution.

11 Real Parties in Interest are the Proponents of the INITIATIVE, which proposes to authorize the  
12 sale of the PROPERTY, which surrounds and includes the San Diego County Credit Union (“SDCCU”)  
13 Stadium (previously known as Qualcomm Stadium), the former home stadium of the San Diego  
14 Chargers.<sup>2</sup> In January 2017, the Chargers announced that they were relocating to Los Angeles. Since  
15 that time, the City has continued to operate and maintain the SDCCU site. (Thompson Decl., ¶ 5.)

16 The INITIATIVE’s stated purpose is to adopt a “new legislative policy” to authorize, direct and  
17 provide the means for the sale of the PROPERTY to SDSU for “for Bona Fide Public Purposes.”  
18 (INITIATIVE, § 2.A.1.) To the best of the City’s knowledge, however, CSU has never inquired about  
19 purchasing the PROPERTY, and neither SDSU nor CSU are proponents of the INITIATIVE.

20 The INITIATIVE does not propose any zoning changes or any specific plan amendments to  
21 facilitate its purported “legislative policy.” Instead, it requires that the City enter into an agreement with  
22 SDSU for the purchase and future development of the PROPERTY under conditions Real Parties  
23 propose be codified in the Municipal Code. (INITIATIVE, § 3 [Proposed SDMC § 22.0908, hereafter  
24 “INITIATIVE, § 22.0908”].) Among the twenty-six conditions required by the INITIATIVE are: the  
25 sale price must be based on a valuation that occurred in October 2017; the sale agreement “shall provide  
26

---

27 <sup>2</sup> SDCCU Stadium is located immediately northwest of the Interstate 8 and Interstate 15 interchange. The  
28 surrounding neighborhood is known as Mission Valley. The Stadium is served by the Green Line of the San Diego Trolley.

1 for the development of” a new “joint-use” sports stadium, recreation space and parks, athletic fields, and  
2 “facilities,” including academic and administrative buildings, as well as retail, office and hotel space;  
3 SDSU shall be permitted to engage in public-private partnerships as part of the development; and SDSU  
4 or other private entities shall be allowed to lease, sell, or exchange the PROPERTY following purchase  
5 from the City. (*Ibid.*)

6 The INITIATIVE states that development of the “the Existing Stadium Site shall be  
7 comprehensively planned through an SDSU Campus Master Plan revision process.” (INITIATIVE, §  
8 22.0908(f).) It also states that SDSU “shall use the content requirement of a Specific Plan” under state  
9 zoning law, although it acknowledges that is not required by the SDSU Campus Master Plan revision  
10 process. (*Id.* at (g).) The INITIATIVE does not, however, specify how the development described by  
11 Real Parties’ conditions will actually be “provided for.” (*Id.* at (c).) Nor does it provide any remedies  
12 or alternatives if the PROPERTY is not purchased by SDSU. Rather, the City is prohibited under  
13 Section 7 of the INITIATIVE from amending any of its terms for 20 years without voter approval. It is  
14 therefore conceivable the PROPERTY may sit vacant and unused at taxpayer expense for 20 years.

15 In October 2017, Real Parties filed a notice of intent to begin circulating the INITIATIVE for  
16 signatures within the City. On February 15, 2018, the Defendant/Respondent San Diego City Clerk  
17 certified that the petitions contained a sufficient number of signatures to qualify the INITIATIVE for  
18 presentation to City voters. (Maland Decl., ¶ 5.) On March 12, 2018, the City Clerk presented her  
19 certification of the INITIATIVE to the City Council, and the Council voted to submit the proposed  
20 INITIATIVE to the voters on a future ballot. (*Id.*) Municipal Code section 27.1037 requires the  
21 INITIATIVE to be submitted to City voters at a special election consolidated with the next Citywide  
22 General Election in November 2018 unless a court orders otherwise.<sup>3</sup>

## 23 ARGUMENT

### 24 **A. The INITIATIVE Unlawfully Seeks to Direct Administrative Acts**

25 The initiative power extends only to legislative acts and not to administrative or executive acts.

---

27 <sup>3</sup>The San Diego Municipal Code (“Municipal Code” or “SDMC”) provides that upon certification, the Council shall  
28 either adopt an initiative without alteration, or submit it to City voters for their consideration. (SDMC §§ 27.1034, 27.1035.)  
Relevant portions of the Municipal Code cited in the brief are included as Exhibit B to the City’s Request for Judicial Notice.

1 (Cal. Const., art. II, § 11; *Citizens for Jobs & the Economy v. County of Orange* (2002) 94 Cal.App.4th  
2 1311, 1332; *Dunkl, supra*, 86 Cal.App.4th at 399.) The Municipal Code confirms this limitation for City  
3 initiatives: “Any proposed *legislative act* or proposed amendment or repeal of an existing legislative act  
4 may be submitted...by an initiative petition.” (SDMC § 27.1001, emphasis added.)

5 “Legislative acts generally are those which declare a public purpose and make provision for the  
6 ways and means of its accomplishment. Administrative acts, on the other hand, are those which are  
7 necessary to carry out the legislative policies and purposes already declared by the legislative body.”  
8 (*Fishman v. City of Palo Alto* (1978) 86 Cal.App.3d 506, 509.) “The plausible rationale for [the  
9 legislative/administrative dichotomy] espoused in numerous cases is that to allow the referendum or  
10 initiative to be invoked to annul or delay the executive or administrative conduct would destroy the  
11 efficient administration of the business affairs of a city or municipality.” (*San Bruno Committee for*  
12 *Economic Justice v. City of San Bruno* (2017) 15 Cal.App.5th 524, 530.)

13 The INITIATIVE improperly directs both legislative *and* administrative decisions concerning the  
14 sale of City-owned property. It not only asks voters to approve certain policies regarding the use of the  
15 PROPERTY, it also seeks to control numerous administrative decisions necessary to implement that  
16 policy, including by pre-determining many of the key terms of the (potential) future sale and purchase  
17 agreement with SDSU. The process of negotiating the terms of a contract for the sale of real estate is  
18 quintessentially administrative or executive action, not a legislative function. “When an action requires  
19 the consent of the governmental body and another entity, the action is contractual or administrative. The  
20 give-and-take involved when a governmental entity negotiates an agreement...is not legislation, but is a  
21 process requiring the consent of both contracting parties. (*Worthington v. City of Rohnert Park* (2005)  
22 130 Cal.App.4th 1132, 1142; see also *San Bruno Committee for Economic Justice, supra*, 15  
23 Cal.App.5th 524 [contract to sell real estate not a legislative act].)

24 It is important to distinguish between the *approval or disapproval* by the legislative body of an  
25 agreement or a contract (where approval is necessary) – which is a legislative function and the  
26 *negotiation* of the terms of the contract or agreement – which is an executive or administrative function.  
27 The INITIATIVE does not seek voter approval for an agreement already negotiated by those persons  
28 whose responsibility includes such negotiations, *i.e.*, it does not seek to exercise the legislative act of

1 approval or disapproval of a contract negotiated by those with administrative authority to do so. Instead,  
2 it asks voters to step into the role of negotiator and impose certain contract terms on the City which have  
3 been unilaterally supplied by a private party.

4 Pursuant to Charter section 26,<sup>4</sup> the Council has adopted an “Administrative Code”<sup>5</sup> providing  
5 for the powers and duties of the administrative officers of the City. (SDMC Ch. 2 art. 2) Division 9 of  
6 the Administrative Code governs the lease and sale of real property. (*Id.* at § 22.0901 et seq.) The  
7 INITIATIVE would replace and supersede those administrative provisions for this PROPERTY only.  
8 For example, the INITIATIVE requires twenty-six conditions be included in any purchase and sale  
9 agreement for the PROPERTY, including but not limited to: limiting the potential purchasers of the  
10 PROPERTY; the date of valuation to determine the sale price; that development of the PROPERTY  
11 include a joint use stadium, a River Park, athletic fields, and “facilities” including academic and  
12 administrative buildings, retail uses, hotel space, private housing, and transportation uses; that SDSU  
13 may engage in “public-private partnerships” in developing the PROPERTY; and that SDSU may sell,  
14 lease, or exchange any portion of the PROPERTY, including to private entities who, themselves, would  
15 be entitled to sell, lease, or exchange the PROPERTY at their pleasure. (INITIATIVE, § 22.0908.)

16 Although the INITIATIVE states in numerous places that it is directing legislative action or  
17 legislative policy, it is not enough to *declare* that it is a legislative act – it must in fact direct only  
18 legislative action. (See *Citizens for Jobs & the Econ., supra*, 94 Cal.App.4th at 1332-34 [invalidating  
19 local initiative that impermissibly sought to control administrative actions, notwithstanding language  
20 declaring it was legislative in nature].) Despite its declarations to the contrary, the INITIATIVE  
21 improperly seeks to control administrative actions by prescribing the terms and conditions of a purchase  
22 and sale contract for City-owned real estate.

### 23 **B. The INITIATIVE Conflicts With the San Diego City Charter**

24 The City Charter is an instrument of limitation on the exercise of power by the City and its  
25 officers. (*City of Grass Valley v. Walkinshaw* (1949) 34 Cal.2d 595.) It is the governing rule under  
26 which the City must conduct its affairs and has been analogized to a municipal “constitution.” While the

27 \_\_\_\_\_  
28 <sup>4</sup> Cited provisions of the City Charter are included as Exhibit A to the City’s Request for Judicial Notice.

<sup>5</sup> An overview of the Administrative Code is included as Exhibit C of the City’s Request for Judicial Notice.

1 voters of a charter city may use the initiative process to amend their city charter, see Elec. Code, §§  
2 9255-9269, the local initiative process may not be used to enact ordinances that contravene the Charter.  
3 (*Campen, supra*, 15 Cal.App.3d 836 [invalidating local initiative that conflicted with city charter].)

4 The INITIATIVE conflicts with the City Charter in at least two respects. First, it conflicts with  
5 provisions in the Charter that delegate administrative powers to the Mayor. Second, it conflicts with the  
6 City Charter's requirements governing the sale of City-owned lands of 80 acres or more.

7 1. *The INITIATIVE Conflicts with Charter Provisions Delegating Administrative*  
8 *Authority to the Mayor*

9 The administrative/legislative distinction takes on additional importance where, as in San Diego,  
10 the Charter addresses the division of legislative and administrative authority. The Charter provides for a  
11 "Strong Mayor" form of government, in which the Mayor holds *all* of the City's administrative power  
12 and is responsible for day-to-day operations. (Charter, art. V, § 28; XV, §§ 260 & 265.) The Charter  
13 includes the execution of contracts among these administrative functions. (*Id.* at art. V, § 28.)

14 The City Attorney has advised that engaging in contract negotiations is an administrative  
15 function under the Charter and that attempts by the Council to exercise that function would violate the  
16 Charter. In Opinion 86-7, the City Attorney opined that the Charter "makes absolutely no provision for  
17 any role for the City Council in the administrative affairs of the City including, but not limited to, the  
18 negotiation of contracts []." (RJN, Exh. D, p. 1.) While the Council's legislative authority allows it to  
19 veto a contract it does not believe is in the public interest, the Council may not change the terms of the  
20 contract or become directly involved in the negotiations without impermissibly exercising executive  
21 authority in a manner prohibited by the Charter. (*Ibid.*; see also RJN, Exh. F, p. 2-3 [same].)

22 The differing roles of the Mayor and Council under the Charter are also reflected in Council  
23 Policy 700-10. (RJN, Exh. E.) That Policy does not grant the Council any authority to determine which  
24 property can be disposed of, nor does it give the Council authority to initiate or negotiate the sale or  
25 lease of real property; those actions are committed to the Mayor. (*Id.*)

26 An initiative may only propose actions that are within the authority of the legislative body.  
27 (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775 [local initiative power is generally co-extensive  
28 with the legislative power of the governing body]; *Galvin v. Bd. of Supervisors* (1925) 195 Cal. 686, 691

1 [local initiative must be “in the nature of such legislation as the board of supervisors has power to  
2 enact”].) In a charter city, the legislative body may not act in a manner that is inconsistent with or  
3 contrary to the city’s charter, and an initiative is subject to the same constraints. (See *Citizens for*  
4 *Responsible Behavior v. Superior Ct.* (1991) 1 Cal.App.4th 1013, 1034 [discussing charter] and *City and*  
5 *County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95 [same].) A local initiative that seeks to  
6 enact an ordinance that would be contrary to the city charter is essentially an unlawful attempt to amend  
7 the charter without complying with the stricter requirements that apply to charter amendments. (See  
8 *Patterson, supra*, 202 Cal.App.3d at 104.)

9 The INITIATIVE interferes with the Mayor’s administrative authority by, *inter alia*, requiring a  
10 sale of real property with critical terms that are not negotiable. Since the Council could not properly  
11 take such action under the Charter, neither can the INITIATIVE.

12 2. *The INITIATIVE Conflicts with the Charter Requirements for Sales of City Land*

13 City Charter Section 221 governs the sale of City-owned real estate consisting of 80 or more  
14 acres. The first sentence of Section 221 provides that such lands “shall not be sold or exchanged unless  
15 such sale or exchange shall have first been authorized by ordinance of the Council and thereafter ratified  
16 by the electors of the City.” The INITIATIVE conflicts with this provision in two ways.

17 First, by purporting to authorize the sale of the PROPERTY (which comprises 132 acres), the  
18 INITIATIVE usurps the exclusive authority of the City Council to enact ordinances authorizing such  
19 sales. Courts interpret city charter provisions using ordinary principles of statutory construction. City  
20 charter provisions are therefore construed using their plain meaning. (See, e.g., *Currieri v. Roseville*  
21 (1970) 4 Cal.App.3d 997, 1001.)

22 The language in City Charter Section 221 could not be clearer: no sale of City-owned lands  
23 consisting of 80 acres or more may be sold unless it has “first been authorized by ordinance *of the*  
24 *Council.*” If drafters of Section 221 wished to reserve to *City voters* the power to adopt an ordinance  
25 authorizing the sale of such lands by initiative, the language in Section 221 would simply have referred  
26 to authorization “by ordinance,” without the modifier “of the Council.” This Court must give meaning  
27 to each word used in Section 221. Interpreting Section 221 to permit an *initiative* ordinance to authorize  
28 the sale of large segments of City-owned real estate would violate this cannon of statutory construction

1 by rendering the phrase “of the Council” superfluous.

2 Second, the INITIATIVE violates Section 221 because it does not require that the proposed sale  
3 to SDSU be “*thereafter* ratified by the electors.” (Emphasis added.) Section 221 establishes a process  
4 for the sale of City-owned property that tracks the legislative/administrative dichotomy. The law  
5 differentiates between the legislative action of approving or disapproving a previously negotiated  
6 agreement, and the administrative function of negotiating an agreement in the first instance.  
7 (*Worthington, supra*, 130 Cal.App.4th at 1142.) Consistent with this recognized legal distinction,  
8 Section 221 requires voter approval of the “sale” of 80-acres or more of City land *after* the City Council  
9 has enacted an ordinance authorizing that sale. By asking the voters to authorize the sale of the  
10 PROPERTY *and at the same time* dictate the terms of the purchase and sale agreement, the  
11 INITIATIVE violates Section 221.

12 Section 221’s voter ratification requirement applies unless the sale is (1) to a governmental entity  
13 for a “bona fide governmental purpose” or (2) the sale pertains to properties “*previously authorized for*  
14 *disposition*” by City voters. Neither of these exemptions applies here. The “bona fide governmental  
15 purpose” exemption in Section 221 only exempts transactions “between governmental agencies when a  
16 genuine governmental purpose is involved.” (See RJN, Exh. G.) The INITIATIVE, however, declares  
17 the sale is made for a “Bona Fide *Public Purpose*,” and authorizes a sale and use of the PROPERTY for  
18 both governmental and private purposes. The INITIATIVE does this by defining “SDSU” to include  
19 non-governmental entities, and defining “Bona Fide *Public*” purposes to include commercial, retail, and  
20 hotel use. (INITIATIVE, § 22.0908(x)(1).) These uses are not “bona fide governmental purposes”  
21 within the meaning of the Charter.<sup>6</sup>

22 Nor does the sale of the PROPERTY fall within the exemption from Section 221’s voter  
23 ratification requirement for sales of property “*previously authorized*” by the voters. That exemption  
24 appears to refer to sales of property which the voters authorized before Section 221 was added to the  
25

---

26  
27 <sup>6</sup> To the extent the INITIATIVE provisions declaring the sale be for “Bona Fide Public Purpose” is intended to  
28 comply with Section 221, it is improper because the determination of whether a sale is or not a “Bona Fide Governmental  
Purpose” is an administrative decision, not a legislative one, and is therefore beyond the scope of the local initiative power  
for the reasons stated above. (See, e.g., *Long Beach Community Redevelopment Agency v. Morgan* (1993) 14 Cal.App.4th  
1047, 1054 [determination that statutory prerequisite exists for taking particular action is an administrative function].)

1 Charter. Since the City’s voters did not “previously” authorize a sale of the PROPERTY before  
2 enactment of Section 221, that exemption does not apply here. The INITIATIVE thus conflicts with  
3 Section 221 by authorizing a sale and use of the PROPERTY for a broader range of purposes than  
4 “governmental purposes” and without requiring subsequent approval by the voters.

5 **C. The INITIATIVE Conflicts With State Law**

6 “[I]f the State Legislature has restricted the legislative power of the local governing body, that  
7 restriction applies equally to the local electorate’s power of initiative.” (*Verjil, supra*, 218 Cal.App.4th  
8 at 920.) A local initiative may not, for example, control decisions concerning matters of statewide  
9 concern that state law exclusively delegates to state agencies. (*Patterson, supra*, 202 Cal.App.3d 95  
10 [invalidating city initiative measure that sought to regulate the local public school district]; *City of*  
11 *Burbank v. Burbank-Glendale-Pasadena Airport Authority* (2003) 113 Cal.App.4th 465, 474-75; *COST*  
12 (1988) 45 Cal.3d 491.) Here, the INITIATIVE impermissibly seeks to control decisions concerning the  
13 purchase of real estate by SDSU, a campus within the CSU system. Regulation of the CSU is a matter  
14 of statewide concern, the authority over which the Legislature has exclusively vested in the Board of  
15 Trustees (“Trustees”) of CSU. (Ed. Code, § 66600 [the CSU “shall be administered by” the Trustees].)  
16 The CSU Trustees’ exclusive authority over CSU matters includes the power to make decisions  
17 concerning the acquisition and development of land for the CSU. (*Id.* at § 66606 [“the Trustees . . . shall  
18 have full power and responsibility in the construction and development of any state university campus,  
19 and any buildings or other facilities or improvements connected with” CSU].)

20 The purchase and development of real property, or any capital expenditures, by CSU is highly  
21 regulated by state law, and requires the Trustees to consider both the financial costs and impacts on the  
22 educational programs provided by the CSU. (Ed. Code, § 67500 et seq.) Such projects must be  
23 identified and approved through the CSU’s long-range planning and expenditures plan approved by the  
24 Legislature. For example, CSU must submit annual 5-year capital outlay plans to the Legislature that  
25 include, among other things, information concerning all “State and nonstate projects proposed for each  
26 campus in each year of the plan, including the programmatic basis for each project.” (*Id.* at  
27 §67500(a)(1).) CSU must also include “an explanation of how each project contributes to  
28 accommodating needs associated with current or projected enrollments . . . and other needs,” “the



1 estimated costs of each project,” and “an explanation of how the plan addresses the Legislature’s intent  
2 that [CSU] annually consider” how planned CSU facilities may also be used by other segments of public  
3 higher education (e.g., community colleges, the University of California, etc.). (*Id.* at (a)(2)-(4).)

4 The Legislature has identified specific policy considerations that must guide CSU’s decisions in  
5 this area. Each CSU campus must “develop a physical master plan to guide future development of their  
6 facilities, *based on academic goals and projected student enrollment levels*” for an establish time frame.  
7 (Ed. Code, § 67504(c), emphasis added.) The Joint Legislative Budget Committee of the Legislature  
8 then reviews and provides oversight of all CSU land use and capital outlay plans, including the 5-year  
9 capital outlay plan, environmental impact reports, and the physical master plans prepared by each CSU  
10 campus. (*Id.* at § 67504(c)(2).) CSU may only receive state reimbursement for preliminary plans and  
11 drawings for a capital outlay project if certain conditions are met, including that the project is authorized  
12 in the State Budget Act or other statute before the expenditures are incurred, the funds for  
13 reimbursement are appropriated by the Legislature, and the CSU followed “all other applicable  
14 procedures” specified in law for the expenditure of such funds. (*Id.* at § 67500.)

15 The INITIATIVE conflicts with state laws governing CSU’s acquisition and development of  
16 land in several ways. It assumes CSU is – or would be – interested in acquiring the PROPERTY, even  
17 though the Trustees have never publicly espoused such an interest. It requires the Trustees and SDSU to  
18 follow land use planning requirements beyond those set forth in the Education Code. The INITIATIVE  
19 directs that “SDSU shall use the content requirements of a Specific Plan” required under subdivision (f)  
20 of Government Code section 65451 in preparing the “SDSU Master Plan revision” even though the  
21 INITIATIVE itself explicitly acknowledges that state law *does not* require SDSU to comply with that  
22 provision. Finally, the Legislature must authorize and make an appropriation of state funds for SDSU to  
23 purchase land. A local law, such as the INITIATIVE, cannot lawfully compel the appropriation of State  
24 funds. (*Carmel Valley Fire Prot. Dist. v. Cal.* (2001) 25 Cal.4th 287 [“power to collect and appropriate  
25 the revenue of the State is one peculiarly within the discretion of the Legislature.”])

26 By seeking to compel and control SDSU’s purchase of the PROPERTY, the INITIATIVE  
27 unlawfully usurps the Trustees’ exclusive authority to decide, in the first instance, whether there is a  
28 need for SDSU to purchase and develop additional land, including whether such actions would advance

1 the educational programs of SDSU or other aspects of the higher educational system. It also  
2 impermissibly seeks to add to or modify the state laws that govern CSU's purchase and development of  
3 real property. (*Patterson, supra*, 202 Cal.App.3d 95.)

4 **D. The INITIATIVE Impermissibly Interferes With Essential Government Functions**

5 An initiative cannot be used where "the inevitable effect would be to greatly impair or wholly  
6 destroy the efficacy of some other governmental power, the practical application of which is essential."  
7 (*Simpson v. Hite* (1950) 36 Cal.2d 125, 134; see also *Geiger v. Bd. of Supervisors* (1957) 48 Cal.2d 832  
8 [invalidating tax measure]; *Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826 [minimum  
9 annual budget for public safety].) An enactment that interferes with the City's ability to carry out its  
10 day-to-day business is not a proper subject of voter power. (*Lincoln Property Co. No. 41, Inc. v. Law*  
11 (1975) 45 Cal.App.3d 230, 233-234.) Similarly, an enactment that would impose a straitjacket on the  
12 City to make it impossible to carry out the public business should not be allowed. (*Housing Authority v.*  
13 *Superior Ct.* (1950) 35 Cal.2d 550, 559.) Here, the INITIATIVE impairs the City's essential  
14 government functions in the areas of financial and land use planning, and water supply. It also  
15 unlawfully impairs existing contractual obligations of the City.

16 *1. Interference with the City's Ability to Make Financial and Land Use Decisions*

17 The INITIATIVE would impermissibly impair the authority of the Mayor and City Council to  
18 make basic financial and land use decisions for City-owned real estate assets. The City has a duty to  
19 "optimize the sale price or lease rent" from City-owned property. (Thompson Decl., ¶ 3 & Exh. E.) The  
20 INITIATIVE would interfere with this duty by authorizing the disposition of the PROPERTY in a  
21 manner that does not maximize its value.

22 The PROPERTY is one of the City's largest real property holdings and one of its prime real  
23 property assets. (Thompson Decl., ¶ 5.) In the normal course, the CITY would not sell the PROPERTY  
24 outright; instead, the City would maximize the PROPERTY's value by leasing it and creating a revenue  
25 stream for the City that could be used to obtain lease revenue bonds that support other necessary City  
26 infrastructure projects. (*Id.* at ¶ 5.) The INITIATIVE precludes the City from doing this for at least 20  
27 years, however, to allow for a potential sale of the PROPERTY to SDSU.

28 Compounding the financial harm to the City, the INITIATIVE defines the "fair market value" of

1 the PROPERTY as the value as of October 2017 for purposes of the sale to SDSU, regardless of when  
2 the PROPERTY is actually sold. (INITIATIVE, § 22.0908(x)(5).)<sup>7</sup> The INITIATIVE further directs  
3 that the “fair market value” for the PROPERTY be based on its existing condition (i.e., the site of an  
4 under-used professional sports stadium) and that such determination “not consider any later effect on  
5 value caused by adoption” of the INITIATIVE. (*Ibid.*) In other words, the INITIATIVE requires the  
6 City offer to sell the PROPERTY to SDSU at a price that (1) is based on a valuation occurring more  
7 than a year before the INITIATIVE was even presented to voters and potentially as long as 20 years  
8 before any sale to SDSU actually occurs, and (2) does not factor in the effect on the value of the  
9 PROPERTY resulting from the development contemplated by the INITIATIVE.

10 These restrictions on the City’s ability to determine whether and how to best dispose of the  
11 PROPERTY could cause substantial financial harm to the City. (Thompson Decl., ¶¶ 7-8.) If leased, the  
12 PROPERTY could generate more than \$7 million per year in lease revenues and constitute  
13 approximately fifteen percent of the total lease revenues received by the City. (*Id.* at ¶ 7.) To put that  
14 amount in perspective, lease revenues are the fifth largest source of City revenues. (*Ibid.*) The loss of  
15 such a substantial amount of annual revenue will interfere with the City’s ability to finance other  
16 infrastructure needs. (*Ibid.*) In fact, the sale of the PROPERTY as required by the INITIATIVE would  
17 leave the City in a negative cash position because the City’s proceeds from the sale, after being split  
18 with the City’s Public Utilities Department (“PUD”), would be less than the outstanding bond  
19 indebtedness on the stadium, requiring the City to expend General Fund monies to discharge the bond  
20 obligations. (*Id.* at ¶ 8.)

21 Selling the PROPERTY to SDSU would also adversely affect other City revenue. As a public  
22 agency, SDSU would not be responsible for property taxes; since the City typically receives 17-18% of  
23 all county property tax revenues, it would lose these revenues. (Thompson Decl., ¶ 12.) Although this  
24 could be mitigated somewhat if private parties end up leasing the land for non-public purposes, the tax  
25 rate for such use is lower than property tax rate, so there will still be a loss of potentially millions of  
26

---

27 <sup>7</sup> The operative date for determining the “fair market value” under INITIATIVE § 22.0908(x)(5) is the date of the  
28 “Initiative Notice Date,” which is defined as the date Real Parties published their Notice of Intent to Circulate the Initiative.  
(See INITIATIVE § 22.0908(x)(8). Real Parties published their Notice of Intent in October 2017.

1 dollars annually. (*Ibid.*) The mere fact that the INITIATIVE may be presented to voters has already  
2 resulted in lost opportunity costs for the City by delaying the normal process of competitively seeking a  
3 lease for the existing stadium site. (*Id.* at ¶ 10.) Significantly, those lost opportunity costs could  
4 conceivably continue for 20 years if SDSU does not accept the INITIATIVE’s invitation to purchase the  
5 PROPERTY sooner, something that is not likely in SDSU’s interests. Since the purchase price is fixed  
6 at the October 2017 valuation, the longer SDSU waits to purchase the PROPERTY (if it ever does), the  
7 greater the benefit it will likely realize from the purchase. (*Id.* at ¶ 9 & 10.)

8 Finally, the INITIATIVE impairs the City’s essential government functions concerning land use  
9 by compelling the sale to CSU because property held by state entities is largely free from local control.  
10 (See, e.g., *Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130 [local  
11 governments have limited regulatory authority over property owned by State universities].)

12 2. *Interference with the City’s Duties Concerning Water Supply*

13 Water supply is a critical issue in the City and water service is required by the City Charter.  
14 (Charter, art. V, § 26.1.) Consistent with State laws that prioritize and encourage the use of  
15 groundwater, see Water Code, § 10720 *et seq.*, the City has developed two different programs related to  
16 providing long term water solutions to the City of San Diego. One plan relies entirely upon the Mission  
17 Valley aquifer, which lies directly beneath the stadium site. (Adrian Decl., ¶ 5.) The other plan may use  
18 the aquifer in the future. (Dorman Decl., ¶ 9; RJN, Exhs. H & L.)

19 The first plan is the City’s Mission Valley Groundwater Project (“MVGP”), which envisions  
20 capturing, treating and storing surface water in the aquifer through infiltration and/or injection. Water  
21 stored in the aquifer could then be pumped through extraction wells to a treatment facility for municipal  
22 use. (Adrian Decl., ¶ 10; RJN, Exh. I.) In addition, the City has developed the multi-phase Pure Water  
23 San Diego (“PWSD”) project, which will provide one third of the City’s water using water purification  
24 technology. Phase II of this project involves construction and operation of a water purification facility,  
25 currently planned to be located on or near the stadium site. The facility could be used to inject purified  
26 water into the aquifer and later extract it from the wells located near the stadium. (Dorman Decl., ¶ 10.)

27 The INITIATIVE’s contemplated development of the stadium area of the PROPERTY would  
28 interfere with the City’s plan to use the aquifer under the site for groundwater supply and planned

1 injection/extraction facilities. The aquifer cannot be moved and is located directly under the 132-acre  
2 site. (Adrian Decl., ¶ 9.) The wells must be located on-site to adequately inject or extract water from  
3 the aquifer. Infrastructure will need to be constructed to move the water off the 132-acre stadium site to  
4 the municipal water system. Relocating the planned water purification facility or the MVGP treatment  
5 facilities will result in significant loss of time and expense for the City. (*Id.* at ¶ 14.)

6 While the proposed INITIATIVE acknowledges the City's need for the groundwater and  
7 ownership of the water rights under the 132-acre site, it merely provides that SDSU must provide  
8 "compensation" to the City for acquiring that portion of the PROPERTY where the City's planned water  
9 facilities to be used in conjunction with the aquifer are located. (See INITIATIVE, § 22.0908(u).) The  
10 INITIATIVE contains no requirement that SDSU actually permit the City to use the site as part of its  
11 MVGP or PWSD programs.

### 12 3. *Impairment of Existing Contractual Obligations*

13 The federal and state constitutions prohibit laws that impermissibly impair existing contractual  
14 obligations. (U.S. Const. art. I, § 10; Cal. Const., art. I, § 9). These prohibitions encompass impairment  
15 of the contracts that the government itself has authorized or entered into. (See, e.g., *United States Trust*  
16 *Co. v. New Jersey* (1977) 431 U.S. 1 [impairment of statutory covenant]; *Sonoma County Org. of Public*  
17 *Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 306).

18 Here, the INITIATIVE impairs a covenant imposed upon the City, one which also protects  
19 bondholders. To make capital improvements to its water system, the City entered into a contract with  
20 the San Diego Facilities and Equipment Leasing Corporation for the purpose of issuing water bonds. As  
21 protection for bondholders, the City agreed to a covenant prohibiting the sale or lease of property that is  
22 used for water purposes for less than fair market value. Fair market value is defined to mean "the most  
23 probable price that the portion being disposed of should bring in a competitive and open market under  
24 all conditions requisite to a fair sale." (RJN, Exhs. M & N, p. 28.) The covenant also imposes on the  
25 City certain procedural requirements in order to dispose of the property. Because the INITIATIVE  
26 requires the property to be sold for less than "fair market value" and in a manner different than that  
27 imposed by the covenant, it is impermissibly impairing the obligation imposed by this covenant.  
28

1 **E. The INITIATIVE Fails to Enact an Enforceable Legislative Act and Is Unreasonably**  
2 **Vague**

3 To qualify as a proper legislative act, a proposed ordinance cannot merely direct the legislative  
4 body to take action in the future; it must propose concrete action. A proposed ordinance does not  
5 constitute a “legislative act” merely because it may be said to “embody what might be called a policy  
6 decision, in the sense that it represents a general guide in management of city affairs.” (*Worthington v.*  
7 *City of Rohnert Park* (2005) 130 Cal.App.4th 1132, 1142.) “By definition, a legislative act necessarily  
8 involves more than a mere statement of policy. It carries the implication of an ability to compel  
9 compliance. . . [and] must be obeyed and followed by citizens, subject to sanctions or legal  
10 consequences.” (*Id.* at 1142-43.) “[A] city might make a statement describing policy but without the  
11 power to enforce or require compliance it is not an exercise of legislative power. (*Id.*; see also *AFL v.*  
12 *Eu* (1984) 36 Cal.3d 687 [an initiative which seeks to render an administrative decision, adjudicate a  
13 dispute, or declare by resolution the views of the resolving body – is not within the initiative power  
14 reserved by the people.”]; *Widders v. Furchtenicht* (2008) 167 Cal.App.4th 769 [initiative measures that  
15 merely state policies and direct the city council to enact unspecified laws are not valid].)

16 The INITIATIVE violates these rules because, at best, it merely expresses a policy preference to  
17 sell the PROPERTY to SDSU and for SDSU to then develop the PROPERTY in certain ways. It states  
18 that it wishes that preference to be realized only if “such sale is at such price and upon such terms as the  
19 City Council shall deem to be fair and equitable.” (INITIATIVE, § 3.) Similarly, it states that the people  
20 “desire the [PROPERTY] to be comprehensively planned through an SDSU Campus Master Plan  
21 revision process” and that the revision process comply with state law regarding the contents of Specific  
22 Plans, although it does not and cannot require these actions. (*Id.* at § 2.B.3.) In short, nothing in the  
23 INITIATIVE requires or guarantees that such a sale will ever occur or that SDSU will in fact develop  
24 the PROPERTY as provided in the INITIATIVE, nor could it legally do so. The INITIATIVE is  
25 therefore not a valid legislative act because it does not “compel compliance [with its stated intent to sell  
26 the PROPERTY to SDSU and thereafter develop the PROPERTY as provided] . . . subject to sanctions  
27 or legal consequences compel.” (*City of Rohnert Park, supra*, 130 Cal.App.4th at 1142-43.)

28 The INITIATIVE is also invalid in that many of its terms are unreasonably vague and

1 ambiguous. (See *Citizens for Job & the Econ.*, *supra*, 94 Cal.App.4th at 1334-35.) For example, as  
2 discussed previously, the INITIATIVE would require the City to sell the PROPERTY to SDSU at a “fair  
3 market value” based on a valuation as of October 2017. But the PUD owns one-half of the  
4 PROPERTY, and the INITIATIVE requires the PUD be compensated for the sale of its portion of the  
5 PROPERTY “at a price that is fair and equitable, in the public interest, and commensurate with prior  
6 compensation actually received.” (INITIATIVE § 22.0908(u).) These provisions in the INITIATIVE are  
7 inconsistent with each other, and it is unclear how the City could possibly comply with both if the  
8 INITIATIVE were adopted by voters.

9 The INITIATIVE also requires the sale of the PROPERTY to be “at such price and upon such  
10 terms as are fair and equitable,” that the subsequent development of the PROPERTY “facilitate the daily  
11 and efficient use of” a Metropolitan Transit System station, and the City and the SDSU shall “cooperate  
12 to modify or vacate easements” and other rights “so that development [of the PROPERTY] is  
13 facilitated.” (INITIATIVE, § 3.) None of the above-referenced terms, however, are defined in the  
14 INITIATIVE. Nor is it clear what action, precisely, the City is required to take under the INITIATIVE’s  
15 provision directing the City to “promptly take *all appropriate actions needed* to implement” the  
16 INITIATIVE. (INITIATIVE, § 4.) (Emphasis added.) What action, precisely, is “appropriate” or  
17 “needed” to implement the INITIATIVE? Each of these provisions is impermissibly vague. (*Citizens  
18 for Jobs & the Econ.*, *supra*, 94 Cal.App.4th 1311, 1335 [invalidating local initiative that contained  
19 similarly vague provisions, which “clearly circumscribe the discretion of the [legislative body]” but  
20 were unclear “to what extent.”].)

21 **CONCLUSION**

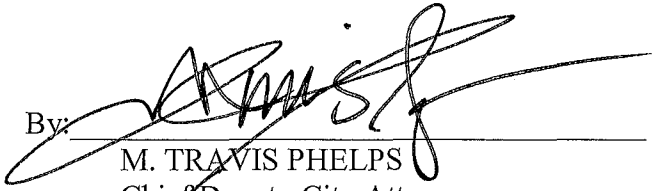
22 The INITIATIVE is an improper use of the local initiative power because it seeks to control  
23 administrative acts, conflicts with the City Charter and state law, impermissibly interferes with the  
24 City’s essential government functions, does not constitute a valid legislative act, and contains terms that  
25 are unreasonably vague. Preelection review of the City’s claims is appropriate to avoid the harm that  
26 results when clearly invalid initiative measures are presented to voters. Accordingly, the City  
27 respectfully requests a judicial order determining that the INITIATIVE is an invalid use of the local  
28 initiative process and directing that the INITIATIVE not be presented to the City’s voters.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: June 15, 2018

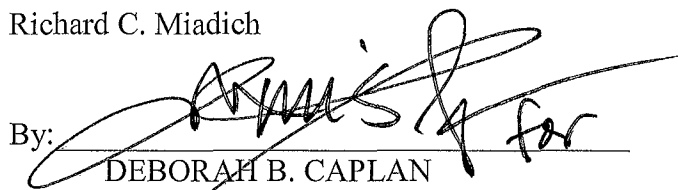
Respectfully submitted,

MARA W. ELLIOTT, City Attorney

By:   
M. TRAVIS PHELPS  
Chief Deputy City Attorney  
Attorneys for Petitioners/Plaintiffs

Respectfully submitted,

OLSON HAGEL & FISHBURN LLP  
Deborah B. Caplan  
Lance H. Olson  
Richard C. Miadich

By:  for  
DEBORAH B. CAPLAN  
Attorneys for Plaintiffs