



Summary of FOLA's Analysis of Measure C

Friends of Los Altos (FOLA) has published a lengthy position paper on Measure C which provides a detailed analysis of the various arguments against the Measure. The summary below is intended to be a brief recap of the analysis that can be found in the original position paper.

Why now? For the first time in the City's 60-year history, the City Council, led by Mayor Jean Mordo, is intent on funding an extremely expensive Civic Center and to develop eight of the City's ten downtown parking plazas. Frustrated with the 71% of vote against Measure A in 2015 for a bond approval, which was intended to fund a new Civic Center, the Council has come up with an alternate way to generate significant money without voter approval – "monetize" the City's 9 acres of downtown parking plazas and 18 acres of the Civic Center, Library, Community Center, and soccer and baseball fields on Hillview (collectively valued at \$300 million to \$525 million). Unless Measure C is passed, this can be done by a simple "yes" vote by 3 out of the 5 members on the City Council, with no input from Los Altos voters.

Eleven former City mayors claim Measure C will create administrative chaos, is that likely?

No. These individuals are essentially the same former mayors who strongly supported Measure A in November of 2015 that was soundly rejected by 71% of Los Altos voters. The group who supported Measure A in 2015 and now in 2018 opposes Measure C, along with certain politically active downtown property owners, want the Council's powers unrestrained so that they can impact City decisions by needing to influence only three votes out of the five Council members. They certainly want to avoid any requirement to have to submit irreversible land use decisions to the voters. In any event, former mayors Lou Becker, David Casas and Ron Packard, who served for many years on the Council, have stated that if Measure C had been in place during the time they served on the Council, there was no sale of land or lease that would have been subject to Measure C, and that the claims of administrative chaos are nothing more than a false alarm.

Representative democracy? In local representative democracies, there are a few significant and irreversible decisions that the elected officials should not make on their own, but in fairness to the community should first obtain voter approval. Issuing bonds is one of those decisions. In the 2015 attempt to fund a new Civic Center, Council was required to submit the

Measure A bond approval to the voters, who soundly rejected it. The issue in 2018 is the loss of City land for City use without submitting the decision to approve commercial use of City land for voter approval. Proponents of Measure C believe that any irreversible decision such as a complete change in the use of City property should first be approved by the voters.

Confusion resulting in administrative chaos? The language of Measure C was prepared by a premier San Francisco law firm dedicated to legal issues surrounding land use and government, a firm that currently serves as the city attorney for three Bay Area cities, and has represented the State of California and numerous cities and interest groups, both for and against initiatives. The final draft of Measure C was reviewed by a panel of their senior partners to make certain it was free from the ambiguities or the unintended consequences now claimed by Measure C opponents.

If concern about confusion over Measure C is sincere, can confusion be cured if Measure C is passed? Yes. The simple language of Measure C states that it “Applies Only to Actions that Would Significantly Impact the Public Character of the Land Owned by the City of Los Altos.” Renewing the leases for fire stations, libraries, and other current leases does not “significantly impact the public character” of the City’s lands, since the use before and after is the same. If Measure C passes and if City officials continue in their concerns, then a conforming Policy of the General Plan can be passed by the Council that makes the clarification, and any opponent to the new Policy would have only 90-days to challenge the clarification. Any further litigation would be barred.

Leases? Measure C will not require voter approval on leases regarding the fire stations, library, Los Altos School District (LASD), Bus Barn, Neutra Cottage, and all of the other current 13 leases or authorization agreements, since all such agreements do not “significantly impact the public character” of the City’s lands. The public character of the land is the same both before and after the agreement is signed, and there is no “privatization” or loss of City ownership.

Public works contractors? Measure C will not impact contractors for public workers who need access over public land since such temporary access does not “change the public character of the land.”

Church property? Measure C does not involve voter approval if a church wanted to sell its property to a developer who then wanted to rezone the property. Measure C is limited to “land owned by the City of Los Altos,” and since the City does not own any church land, it is not subject to Measure C.

Costly and numerous required public votes costing up to \$500,000 each? If the City needs to get voter approval, it would typically have that ballot measure timed to an existing election, which would likely cost around \$50,000. It would only be under extenuating circumstance where the City had to hold a separate, special election, which would likely cost up to \$500,000. Given the lead time on projects we believe that essentially all votes on projects requiring voter approval would be held during a regularly scheduled election.

Any vote required by Measure C would be rare. It has been well over a decade since the City has sold any public land with zoning that would have been affected under Measure C. There are only 13 leases of land with zoning under Measure C, and for the last decade all of them would have been exempt under the terms of Measure C, since these leases did not change the character or use of the public land. The opponents' arguments to the contrary are premised on ignoring all of Section 1, the Goal in Section 2, and restricting the reading of Measure C to the three Policy statements in Section 2, a practice that was determined to be in conflict of the law by the California Supreme Court (this is explained in more detail below).

Steady stream of lawsuits? If Measure C passes and the City is genuinely concerned about a possible steady stream of lawsuits, there is a simple cure – it can adopt a conforming and clarifying additional policy in the General Plan, that then requires any lawsuit to be filed within 90 days, and that decision would be final. All further lawsuits would be barred.

Signature collection? All signature collections were done by volunteer Los Altos residents. They used a prepared printed sheet to explain the initiative. The title of this sheet, in bold typeface, states: “Protect our Parks & Public Lands.” There was no intent to say it was limited to parks, particularly since many of our sports fields that appear to be parks are not so zoned. It is possible that some who signed the petition may remember only the mention of parks, but that does not mean that public lands were not also mentioned. There was no need to hide that fact.

Negative impact on property taxes? The City does not pay property taxes on the land it owns, so selling any City land to a private developer would therefore increase property taxes. If the City Council wanted to sell to a private developer (or enter into a public-private partnership) and approve an 8-story office building on a parking plaza, for example, it could currently do so without voter approval and property taxes would therefore increase. If Measure C passes, the sale of City property to a developer would require voter approval. If the voters rejected the proposed development, then there would be a loss of the hypothetical *increase* in tax revenue, but there would be no effect on current revenue. Measure C will have no negative impact on current property taxes.

Destroy the Downtown Vision Plan? Certain aspects of the Downtown Vision Plan, such as the replacement of eight of the ten parking plazas with developments for offices, a food court, another boutique hotel (3 or more stories high), low-cost housing, etc., would likely require voter approval if it involved the sale or private-public partnership resulting in a significant change to the character of the public land. As such, Measure C does not destroy the Downtown Vision Plan, but ensures that certain significant and permanent changes will require voter approval. After all, we the voters are the “true owners” of the public land.

In interpreting Measure C, is the City required to apply the Policy statement only, without reference to the other statements within Measure C? *Note to the reader: the following is a specific legal analysis intended to document the legal basis for the inclusion and interpretation of the broader meanings of the Goal, Findings, and Ballot Statements associated with a*

Measure, especially in the case where the Policy Statements do not contain the same language as the Goal, Findings, and Ballot Statements.

The three Policy Statements of Measure C do not contain the same “significant change” language as in the Measure’s Findings, Goal, and Ballot Statements. Opponents of Measure C claim that only the Policy Statements are of importance *and that all other elements such as the Findings, the Goal, and the Ballot Statements must be ignored*. Rulings of the Supreme Court of the State of California state that in interpreting a voter initiative, a court’s role is to “give effect to the voters’ formally expressed intent.” This decision was stated in the case of *Ross v. RagingWire Telecommunications, Inc.* (2008) [42 Cal. 4th 920, 930]. It does so by “consider[ing] the measure as presented to the voters with any uncodified findings and statements of intent” recorded in the initiative’s preamble. *People v. Canty* (2004) [32 Cal. 4th 1266, 1280]; *see also Prof. Eng’rs in Cal. Gov. v. Kempton* (2007) [40 Cal. 4th 1016, 1037] (interpreting initiative’s language “in light of the initiative as a whole, including uncodified statements of purpose and intent”). While these statements do not in themselves confer power or determine rights, “they properly may be utilized as an aid in construing [an initiative].” *Canty*, [32 Cal. 4th at 1280]. Thus, in *People v. Valencia* (2017) [3 Cal. 5th 347, 362], the California Supreme Court construed a ballot measure’s ambiguous language to make it “consistent with the express purpose and intended scope” of the measure as expressed in its uncodified “Findings and Declarations” and its statement of “Purpose and Intent.” Likewise, in *Westly v. Board of Administration* (2003) [105 Cal. App. 4th 1095, 1110-11], the Court of Appeal interpreted statutory language enacted by a voter initiative in light of the “statement of purposes and intent and findings which are part of its enactment.” **Furthermore, [w]here there is ambiguity in the language of the measure, [b]allot summaries and arguments are considered when determining the voters’ intent and understanding of a ballot measure.”** *Prof. Eng’rs in Cal. Gov. v. Kempton*, [40 Cal. 4th 1016, 1037].

Conclusion.

While Measure C is not perfect, it seems clear that the arguments advanced by its opponents do not hold up under scrutiny. If Measure C had been in force for the last decade, there would have been little to no impact on the City, neither costly nor confusing, and no negative impact on tax revenues. If Measure C were now adopted, it would have no impact on the renewal of the City’s various leases (or their replacements as long as the use remains public) and would have no negative impact on tax revenues. If the opponents’ concerns are genuine, then there is a simple remedy to pass a conforming and clarifying Policy statement. Anyone opposed to that new Policy statement would be required to file a lawsuit within the requisite 90 days. All other litigation would be barred.

The primary effect of Measure C, should it pass, is that it will require voter approval in the very rare instance when the City Council wants to sell or transfer ownership of City land, whether that City land be parks, the parking plazas, or other properties at the Civic Center and Hillview. For each such occasion, Measure C ensures that the City Council has the duty to convince the

voters that their proposed transaction is sound, but we, the voters, the rightful “owners” of City property, would have the final say.

Measure C is an important issue in Los Altos. It is critical that residents be as informed as possible on the meaning of the measure, the legal ramifications, and the potential effects of either passing the Measure, or allowing it to fail. Hopefully, the analysis presented in this article will assist voters in deciding how to vote on Measure C.

Friends of Los Altos, Inc. (FOLA) is a non-profit, non-partisan, volunteer-run organization comprised of City of Los Altos residents. Founded in 2013, FOLA was created to ensure that issues of critical importance and decisions with long-lasting impact reflect the values of the broader community of Los Altos. In 2014, Friends of Los Altos (FOLA) consolidated with Los Altos Neighborhood Network (LANN). FOLA’s current board of directors consists of Jon Baer, Lou Becker, David Casas, Ron Packard, and Ken Lorell.

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