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To: [Councilmembers](#)
Cc: [McCarthy, Kimbra](#); [Chopra, Krishan](#); [Ramberg, Audrey Seymour](#); [Fazely, Diana](#)
Subject: 8/11/2020 Item 5.1 - Supplemental Information
Date: Tuesday, August 11, 2020 3:55:00 PM

Councilmembers,

Following an inquiry regarding the timeliness of the submittal of the withdrawal letter by the initiative proponents, please see the following additional information for tonight's Item 5.1, provided in coordination with the City Attorney:

On August 7th, the 88th day before Election Day, a representative of the proponents of the initiative measure personally delivered to me their request to withdraw the measure. In consultation with the City Attorney, I accepted the withdrawal letter because it was deemed timely under a reasonable interpretation of Elections Code Section 9266.5, in order to effectuate the clear intent of the Charter amendment proponents, and in light of established practice of other regional jurisdictions.

Elections Code Section 9266.5 provides that the proponent of an initiative measure to amend a charter "may withdraw the charter amendment at any time before the 88th day before the election..." We believe there is some ambiguity in the reference to the 88th day as the Elections Code has numerous other 88 day deadlines, all of which are written to require action 88 days prior to Election Day. In the case of Section 9266.5, the Legislature had the opportunity to require withdrawal 87 days prior to Election Day, if it had clearly intended, but it chose not to. We believe a reasonable interpretation allows for acceptance of the withdrawal on the 88th day prior to the election. This determination is also consistent with the legislative intent of the Elections Code provisions.

The City's interpretation is shared by some other regional jurisdictions, most notably the City and County of San Francisco which explicitly allows for acceptance on the 88th day. The City and County of San Francisco's Guide to Qualifying San Francisco Initiative Measures for the November 3, 2020 election specifically sets forth that a proponent of an initiative may withdraw the measure at any time prior to or 88 days before the election.

In addition to effectuating the proponents' clear intent, we also believe acceptance supports public policy by avoiding the undesirable result of "forcing" a measure onto the ballot at taxpayers' expense. Acceptance on the 88th day also allowed sufficient time for the Council to take action as required by the Elections Code to timely notify the ROV formally of the withdrawal via resolution by the 83rd day prior to Election Day.

This information will be made available to the public online with the agenda materials for the meeting tonight.

Lisa Natusch, CMC
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