CITY OF BEVERLY HILLS
STAFF REPORT

Meeting Date:	**April 21, 2011**
To:	Honorable Mayor & City Council
From:	Chad Lynn, Director of Parking Operations
Subject:	Discussion and Update of Implementation of Measure 2P
Attachments:	Attachment 1 – Staff Report From April 5, 2011

INTRODUCTION

The Ad-Hoc Committee reviewing the options for the implementation of Measure 2P met on Thursday, April 14, 2011.

DISCUSSION

An oral report will be presented for the implementation options for Measure 2P.

RECOMMENDATION

It is recommended the City Council direct staff to bring back specific rates for execution or to request further options, analysis or review by the Ad-Hoc Committee.

David Gustavson
Approved By

Attachment 1

CITY OF BEVERLY HILLS
STAFF REPORT

Meeting Date:	**April 5, 2011**
To:	Honorable Mayor & City Council
From:	Chad Lynn, Director of Parking Operations
Subject:	**Implementation Options for Measure 2P**
Attachments:	1. January 4, 2010 Superior Court Ruling by Judge Ann I. Jones

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INTRODUCTION

The Parking Enterprise Fund was established to be a self-sustaining fund to finance the construction, operations, maintenance, repairs, and improvements of the City's off-street parking facilities and to plan and provide for the future development of additional parking resources for underserviced areas of the City. There are currently 13 multi-level parking garages, five (5) two-level parking decks (SM5), and one (1) facility under construction, for a total of 19 facilities citywide. Funding sources for parking operations include the lease of tenant spaces within the City owned parking facilities, interest earned from fund balances, and parking fees charged to customers both off-street at parking facilities and on-street at parking meters. As of December 2008, revenues also include subsidies from the General Fund, which may be suspended in fiscal year 2011/2012.

At present, unrelated to the potential impacts of Measure 2P, the Parking Enterprise Fund is experiencing an ongoing deficit of approximately $2.6 million a year. To be clear, the Parking Enterprise generates operating income each year, which is a measurement of operating revenues less operating expenses, to fund current operations; however, it does not generate enough revenue to adequately cover the necessary non-operating expenses. Non-operating expenses include such items as capital maintenance, debt service related to internal loans and various bond issues. This deficit has been masked over the past several years by several different factors such as:

- Retained earnings that the Parking Enterprise had accumulated from prior periods
- Proceeds from debt issues for major construction projects ($59.3 million)
- Proceeds from internal loans for major construction projects ($40.5 million)
- Contributions in aid of construction from external sources ($6 million)
- Transfers of cash from other City funds ($10.6 million)
- Cash expenditures for major capital projects ($116.8 million.)

- Principal and interest on interfund loans ($14.1 million)
- Principal and interest on debt issues ($26.8 million)
- Deferral of current and necessary capital maintenance (approximately $3 million)
- Deferral of allocations for operating maintenance such as rehabilitation or replacement of ventilation system, elevator, concrete, water sealing and repainting of facilities (approximately $3 million and accruing at $750,000 annually)

While these various financing and construction activities have masked the deficit in the fund for the past several years, by the end of fiscal year ending June 30, 2013 all available fund resources will have been exhausted and the fund will experience a true cash deficit of about $1.4 million and a structural deficit of $6 million ($4.6 of reserved funds should be available at this time for the items described in the last bullet point above).

An initiative petition was filed with the City on September 14, 2010 affirming the intent to provide free parking for two hours at particular City-owned parking facilities and limiting the amount of monthly parking at those facilities. A certificate of sufficiency was presented to the City Council at its October 18, 2010 meeting, certifying that the petition was signed by more than ten percent of the registered voters of the City and was approved at the meeting of November 16, 2010, to be placed on the March 8, 2011 ballot. Measure 2P was declared adopted at the City Council Installation/Reorganization Meeting held on March 22, 2011 based on a majority of voters voting during this election with 3452 votes (62.04% of the votes cast related to this measure) in favor of this measure.

Brief Summary of Initiative

Measure 2P affirms the intent that the City provides the first 2-hours of parking without charge at parking facilities in operation before June 30, 2008:

- 11 city parking facilities affected
  - 438 N. Beverly Dr. (Crate & Barrel) – Currently 2 Hrs Free
  - 345 N. Beverly Dr. (William Sonoma) – Currently 2 Hrs Free
  - 216 S. Beverly Dr. (SoBev) – Currently 2 Hrs Free
  - 9510 Brighton Way (Rodeo Dr.) – Currently 2 Hrs Free
  - 321 S. La Cienega Dr. – (Tennis Center) – Currently 2 Hrs Free
  - 450 N. Rexford Dr. (Civic Center) – Currently 2 Hrs Free
  - 440 N. Camden Dr. – Currently 1 Hr Free (Since 2006)
  - 461 N. Bedford Dr. – Currently 1 Hr Free (Since 1999)
  - 221 N. Crescent Dr. – Currently 1 Hr Free (Since 1986)
  - 9361 Dayton Way – Currently 1 Hr Free (Since 1986)
  - 333 N. Crescent Dr. – Currently 1 Hr Free (Since 1986)

- Limits the amount of monthly parking permitted at affected facilities to the number of monthly parking permits sold on April 30, 2010

This initiative affirms the intent for specific exceptions:

- Parking facilities that were **not** in operation prior to June 30, 2008
  - 240 North Beverly/241 North Canon Drive (Public Gardens/Montage) – Currently 2 Hrs Free

- 9333 Third St (located west of Third St and Foothill Rd) – Currently $1 Per Hour for First 2 Hours
- 455 North Crescent Drive (located adjacent to the Annenberg Center) – Currently under construction
- Parking facilities constructed in the future

- Special parking rates:
  - Rates after the 2-hours free period
  - Three-Hour Metered parking
  - Monthly Parking Permits
  - Daily Parking Passes
  - Special Event Parking
  - Commercial Valet Storage
  - Early Bird Parking
  - Other special parking rates offered by the City

City Staff undertook an analysis of the initiative at the time of petition[1]. A summary is provided below, and as described in the report, impacts of the proposed initiative were presented as both direct financial and consequential impacts.

Brief Summary of Impacts

- Direct financial impacts represent immediate financial losses that were quantified through analysis of available parking and financial data.

- Consequential impacts represent indirect financial losses and/or impacts which may have operational consequences that may not result in financial losses.
  - Indirect financial losses represent losses to potential future revenues such as opportunity costs or revenues which the City may not realize due to constraints or circumstances which may be created or exacerbated by the measure. Other than the specific limitation on monthly parking, most of the indirect losses were difficult to accurately quantify, so no estimated financial loss was provided.
  - Operational impacts generally represent the City's ability to manage the parking system, but may also include financial impacts associated with the City's ability to maximize the use of the parking resources.

Direct Financial Impacts:

The data analysis considered the combination of a 2-hour free parking policy and the elimination of the flat-rate fee at all facilities and resulted in the following:

- Revenue reduced by an average: ($98,627) per month or 26%
- Annualized: ($1,183,527)

Subsequent to the months that were analyzed and calibrated as detailed in the Impact Report, the 461 North Bedford Drive parking facility experienced a rate change. Based on revenues realized in October 2010, the total estimated losses based on the Bedford rate change would be:

- Revenue reduced by an average: ($116,627) per month
- Annualized: ($1,399,524)[2]

[1] A copy of the report as presented November 18, 2010 is available upon request.

Consequential Impacts:

Aside from direct financial impacts based on historical transactions, consideration needs to be given to the consequential and indirect impacts of implementation. This represents potential and future circumstances that may create management obstacles and/or prevent or reduce the ability to realize future revenues. These impacts usually result from the behavioral choices and potential changes in how users interact with the parking system.

Based on the City's current rate structure, approximately 70% of the users in the affected facilities are provided with free parking. With implementation of the Initiative as financially analyzed, this number would increase to a little over 80%, leaving less than 20% of the total users within the system paying rates. This significantly affects the City's ability to manage the parking system and may contribute to the following:

- As the number of users paying any rate diminishes, the City's ability to influence those users, such as long-term vs short-term users, also diminishes, creating greater competition for the most valuable and convenient parking resources irrespective of the use the City wishes to promote.
- Limits the City's ability to influence desired behaviors which include:
    - Prioritized user locations (customers and visitors in retail corridors and long-term users in perimeter parking facilities)
    - Reduced circulation and congestion
    - Promotion of "green" vehicles and vehicle usage
    - "Park-Once" philosophy
    - Potential reduction in pedestrian volume
- Reduces the number of users paying rates, creating additional burden on the remaining rate payers to maintain the same proportion of revenues necessary to maintain the parking system
    - As the dollar burden increases on a reduced number of users , there is a greater chance that the remaining users will change their behavior related to the comparative value of the increased burden
- Limits the City's ability to exercise management control of its assets, including:
    - Generating enough revenues to sustain long-term operations, potentially creating greater impacts to the General Fund
    - Potentially creating an environment that promotes reparking
    - Limited ability to respond to long-term parking needs of the business community, even when space is available
    - An increased perception of a lack of available parking, even if available parking exists in adjacent parking facilities
    - Unintended impacts to facilities that were not directly referenced in the Initiative or specifically exempted
    - Potentially promotes additional circulation and congestion, both internally (in facilities) and externally (on streets)
- Loss of potential future monthly parking revenue
    - Based on peak monthly parking sales of May 2007 compared to the baseline established by the initiative of April 2010, a historically low period of monthly sales due to the current economic conditions
        - Revenue reduced by: ($34,555)

[2] This estimate was not derived using the same methodology as described herein, as multiple months were not available for averaging and calibration. Losses are derived from the addition of the $18,000 estimated monthly loss.

        - Annualized: ($412,260)
    - Additional potential losses represent those currently on waiting lists in areas where the City is not selling monthly parking
        - Additional Waiting List Losses ($6,905)
        - Annualized: ($82,860)
    - Total Annualized Estimated Losses: ($495,120)

Legal Update

On January 4, 2011, Superior Court Judge Ann I. Jones found in favor of the City in the following conclusion, "The City has met his burden of showing that the Parking Initiative is clearly constitutionally proscribed. There is no value of putting before the people a measure which they have no power to enact. American Federation, *supra*, 36 Cal. 3d at 1984."

The ruling by Judge Jones outlines the difficulties and several choices the City Council is going to face while attempting to move forward with the implementation of this measure as written. Quotes from Judge Jones' ruling:

- "The Parking Initiative does not enact a law stating that the first two hours of parking shall be free. Nor does it dictate the rates to be charged for parking at any individual facility. Rather, it affirm the voters' intent that providing two hours of free parking would be appropriate and desirable, and directs the City Council to take unidentified actions in this direction.* Such an initiative is impermissibly vague and clearly invalid."
    - * (as footnoted) " For example, as part of any implementation of the Parking Initiative, the City Council would need to examine each City-owned parking facilities, and decide whether to offer two hours free parking, or whether, when and at what price to offer 3-hour Metered parking, daily parking, early bird parking, or any other "special rate" adopted by the City Council that exempts or excludes the facility from the concept expressed in the initiative."
- "The initiative clearly fails to specify a particular scheme by which its "vague conceptual measure" of standardized parking could be accomplished."
- "The Court has looked at the substance of the Parking Initiative. It finds that there is no mechanism provided for accomplishing its purpose of ensuring standardized parking rates throughout the City of Beverly Hills. Rather, it merely exhorts the City Council to adopt undefined resolutions regarding taxes, fees and charges."
- "Had the Real Party in Interest wanted to "enact a two hour parking requirement" in the City of Beverly Hills, as she now contends, she certainly could have done so. The Parking Initiative she has sponsored, however, does not."
- "The Parking Initiative also fails to enact legislation, Rather it expressly contains statements of intent and, thereafter, directs City Council to incorporate these intentions without further explanation."
- "Like the Parking Initiative here, the initiative in Marblehead[3] left the actual amendment of the general plan to the City Council. And, as in this case, the

[3] References the precedent that the California Constitution expressly reserves the initiative power to the electors "to propose statutes and amendments to the Constitution and to adopt or reject them." Id., *supra*, 36 Cal. 3d at 697. When an initiative seeks to do something other than enact a statute (or municipal ordinance), it is invalid. Id. at 714. Initiatives that "seek to render an administrative decision, adjudicate a dispute, or declare by resolution the views of the resolving body," do not pass Constitution muster. Marblehead v. City of San Clemente, 226 Cal. App. 3d 1504, 1508-09 (1991).

initiative failed to explain how the City Council in Marblehead was to incorporate the goals and aspirations of the initiative into an existing legislative scheme."

On January 6, 2011 an application for a writ was filed with the Court of Appeal. The Court of Appeal issued a temporary stay that resulted in Measure 2P being put back on the ballot, but has not overturned or made contradictory findings related to the initial ruling of Judge Jones; it simply stayed the order, allowing the measure to be placed on the ballot and to count the ballots cast while additional legal process and arguments are brought before the court.

DISCUSSION

Although the trial Court clearly found Measure 2P invalid, the temporary stay preventing this ruling from being implemented is still in place. In order to make a good faith effort toward interpreting this initiative and putting the interpretation of the initiative into practice, staff is seeking direction from the City Council.

As described above, the language of the initiative does not clearly direct or describe the method and manner in which the City Council is to implement this measure's intent. Therefore, as described by Judge Jones, the City Council must consider the choices and decide what to offer, where to offer it and may or may not establish or change rates associated with each offering. Since there are an almost innumerable number of combinations to consider in order to interpret and attempt to implement the intent expressed by this measure, staff has provided three broad categories for the City Council to consider:

- Implementation as Fiscally Analyzed
  - 2 Hour Free Parking System Wide With an After 6pm Flat-Rate
  - 2 Hour Free Parking System Wide Without an After 6pm Flat-Rate

- Consideration of Specific Exceptions:
  - Rates after the 2-hours free period
  - Three-Hour Metered parking
  - Monthly Parking Permits
  - Daily Parking Passes
  - Special Event Parking
  - Commercial Valet Storage
  - Early Bird Parking
  - Other special parking rates offered by the City

- Consideration of Additional Rate/Expense Reduction Programs
  - The lists below represent new programs and programs previously discussed with the City Council, including some which have been implemented, related to the mitigation of the ongoing Parking Enterprise Fund shortfall, which may also be used to mitigate the potential impacts of implementing this measure.

    - List of Programs that have already been Implemented to address Parking Enterprise Fund budget issues: (Items may be further adjusted)

- Adjusted the contract or "monthly" parking fees while maintaining below market rates to encourage proper usage
- Adjusted the current flat fee for parking after 6pm to $5
- Adjusted after 2 hour free parking rate to $3.00 per ½ hour
- Adjusted the daily maximum fee to $22
- Highest on-street meter rate is now $2.00 per hour
- Utilities savings available by upgrading HVAC fans and the installation of power regulators
- Converted SM5 to Pay Stations and $2.00 per hour rate

- Programs Pending Implementation: (Items may be further adjusted)
  - Parking Meter hours of operation from 8am – 6pm Mon-Sat to 8am – 9pm Mon-Sat and Sunday operations from 12p – 6p
  - Energy efficient lighting retrofits in parking facilities through grants and subsidies (Expense Reduction)

- New and Previously Considered Programs:
  - Non-standard 3rd Hour Rates
  - Change of Incremental Rate from ½ Hour to Full-Hour increment
  - Flat Fee after Free Parking Increment
  - Interior Facility Advertising Sales
  - Meter General Loading and Customer Convenience Loading Zones
  - Reduce/Discontinue evening staffing at Civic Center and/or La Cienega Parking Facilities – Automated Exiting Only
  - Eliminate entry and internal "traffic control" staff at impacted facilities
  - Reduced Staff for Cashless Operations – Credit Card Only
  - Private Operator Parking Tax (requires voter approval)
  - Formation of a Business Improvement District/Parking Improvement District (requires voter approval)
  - General Fund Subsidization of Parking Enterprise Fund

All of the programs presented and discussed, including those already implemented or pending implementation, may be altered further as directed to address the current considerations. Furthermore, most of the choices brought before you may be combined with one another, which may alter the potential impacts and outcomes.

If a rate increase is requested to any portion of the schedule of fees and charges, pursuant to legal requirements, a public hearing is required, for which the City would need to provide at least 10 days prior notice. If the City Council wishes to study specific choices, combinations, and the associated impacts and mitigations, an additional study session may be prudent before a formal public hearing is conducted.

FISCAL IMPACT

General Condition of the Parking Enterprise Fund – Without Impacts Related to Implementation of the Measure:

- Without substantial actions to increase revenues, provide cash infusions from other sources or substantially reduce expenditures the fund will have a structural deficit of $25.6 million (an actual cash deficit of $14.8 million) by fiscal year ending Jun4e 30, 2021.

Implementation of the measure with 2 Hours Free Parking System Wide Without an After 6pm Flat-Rate creates a direct financial impact of $1,183,572 annually and creates the following impacts to the Parking Enterprise Fund:

- Total structural deficit at June 30, 2012 approximately $3.8 million a year
- Total structural deficit at June 30, 2021 would be $38.5 million with a cash deficit of $27.5 million

Since parking rates at the Bedford parking facility were adjusted in September 2010, a period after the analysis related to the Initiative Impact Report, staff estimates actual losses related to the implementation of this measure to be approximately $215,952 greater than anticipated, for a total annual loss of $1,399,524. If implemented, staff recommends using $1.4 million as the estimated revenue reduction. Additionally, although not considered losses, as the demand for monthly parking increase with economic stabilization, the City would be forgoing potential future revenue of up to approximately $495,120 annually related to the limitation on monthly parking.

Estimates previously presented to the City Council related to the Programs Pending Implementation and the New and Previously Considered Programs for those proposals which have been evaluated are as follows:

Description	
Parking Meter hours of operation from 8am – 9pm Mon-Sat and Sunday operations from 12p – 6p	$345,000
Energy efficient lighting retrofits in parking facilities through grants and subsidies (Expense Reduction)	$50,000
Interior Facility Advertising Sales	$50,000
Meter Yellow Loading Zones	$10,000
Private Operator Parking Tax as previously proposed	$2-$4 Million
Business/Parking Improvement District	$0 to $4 Million
General Fund Subsidy	$0 to $4 Million

It is important to note that a voter approved measure would be required for the tax or an assessment district, such as a Business/Parking Improvement District. Historically the City has not been able to gain enough voter support to pass previous parking related tax measures, and based on community meetings, there is very little support for a Business/Parking Improvement District that would assess the properties or businesses in proximity to the City's parking facilities.

The General Fund has experienced several reductions over the past few years. General Fund subsidies to the Parking Enterprise Fund would further impact the General Fund, which may require additional cuts to services, layoffs, furloughs, program elimination or other decisions related to reduction of the City's baseline services.

Meeting Date: April 5, 2011

RECOMMENDATION

It is recommended the City Council direct staff to bring back specific rates for execution or to request further analysis and/or recommendations of specific categories, rates, exceptions, and/or any combination thereof.

David Gustavson
Approved By

Attachment 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/04/11	DEPT. 86
HONORABLE ANN I. JUDGE JONES	N. DIGIAMBATTISTA DEPUTY CLERK B. JAUREGUI, COURTROOM ASST.
HONORABLE #7 JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR
NONE Deputy Sheriff	C. CRUZ, CSR# 9095 Reporter

9:30 am	BS129249 CITY OF BEVERLY HILLS VS BYRON POPE 170.6 O'BRIEN BY PETITIONER	Plaintiff Counsel Defendant Counsel	MITCHELL E. ABBOTT (X) DAVID G. ALDERSON (X) J. MICHAEL ECHEVARRIA (X) STEPHEN J. KAUFMAN (X) STEVEN J. REYES (X) FREDRIC D. WOOCHER (X)

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued. The court takes the matter under submission.

LATER: The court grants the petition for the reasons set forth in the document entitled COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON JANUARY 4, 2011, filed this date.

Accordingly, in light the court's ruling this date, the hearing set for January 10, 2011, is advanced to this date and ordered off calendar.

The court's Ruling filed this date date is deemed to be the court's Statement of Decision.

DATED: JANUARY 4, 2011

ANN I. JONES

ANN I. JONES, JUDGE OF THE SUPERIOR COURT

A copy of this minute order as well as the court's Ruling are faxed to counsel of record this date as listed below.

MITCHELL E. ABBOTT OF RICHARD, WATSON & GERSHON: 213-626-0078

MINUTES ENTERED
01/04/11
COUNTY CLERK

Jan 04 2011 1:36PM Los Angeles Superior Court 213-633-5009 p.2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/04/11	DEPT. 86
HONORABLE ANN I. JONES JUDGE	N. DIGIAMBATTISTA DEPUTY CLERK B. JAUREGUI, COURTROOM ASST.
HONORABLE #7 JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR
NONE Deputy Sheriff	C. CRUZ, CSR# 9095 Reporter

9:30 am	BS129249 CITY OF BEVERLY HILLS VS BYRON POPE 170.6 O'BRIEN BY PETITIONER	Plaintiff Counsel Defendant Counsel	MITCHELL E. ABBOTT (X) DAVID G. ALDERSON (X) J. MICHAEL ECHEVARRIA (X) STEPHEN J. KAUFMAN (X) STEVEN J. REYES (X) FREDRIC D. WOOCHER (X)

NATURE OF PROCEEDINGS:

STEPHEN J. KAUFMAN OF THE KAUFMAN LEGAL GROUP:
213-452-6575

J. MICHAEL ECHEVARRIA OF THOMAS & THOMAS, LLP:
213-228-0256

FREDRIC D. WOOCHER OF STRUMWASSER & WOOCHER LLP:
310-319-0156

MINUTES ENTERED
01/04/11
COUNTY CLERK

Jan 04 2011 1:36PM Los Angeles Superior Court 213-633-5009 p.3

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ORIGINAL FILED

JAN - 4 2011

LOS ANGELES
SUPERIOR COURT

CITY OF BEVERLY HILLS **Petitioner**	)	
vs	)	**CASE NO. BS129249**
BYRON POPE, ET AL **Respondents**	)	

COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON JANUARY 4, 2011

Petitioner City of Beverly Hills ("City") seeks an order requiring Respondent to remove from the ballot for the municipal election scheduled for March 8, 2011, an initiative measure entitled: "An Initiative Measure Requiring the City to Provide Free Parking for Two Hours at Particular City Owned Parking Facilities and Limiting the Amount of Monthly Parking at those Facilities" ("the Parking Initiative").

The City contends that the initiative is unlawful and should be removed for three separate reasons: (1) the Parking Initiative does not enact any legislation; it just expresses the wishes of the proponents; (2) the Parking Initiative impermissibly interferes with the fiscal management of the City; and (3) the Parking Initiative purports to fix prices for parking at certain (but not all) parking facilities and fixes the amount of permits for monthly parking that can be issued at these facilities – which are administrative actions, not legislative ones. Real Party in Interest, Marcia Caden, disagrees.

As part of this dispute, the City contends that Respondent acted legally in extending the deadline by which ballot statements on this matter (in the event that the measure were to be placed on the ballot) could be submitted. Again, Real Party in Interest, Marcia Caden, disagrees with that contention.

On December 2, 2010, the court met with counsel and thereafter set an expedited briefing schedule for a trial on January 4, 2011. The two issues identified by the parties at that time were: (1) should the Clerk be ordered to remove the Parking Initiative from the ballot, and if not, (2) was the Clerk's decision to extend the filing deadline for ballot arguments permissible?

Thereafter, Real Party in Interest Marcia Caden, filed a Cross-Petition and First Amended Cross-Petition for Writ of Mandate. In that pleading, Caden perfected her secondary argument identified at the December 2, 2010 hearing, i.e., whether any ballot arguments submitted after the December 1, 2010 filing deadline are untimely and should not be allowed. In addition, in her second cause of action, Caden challenges certain statements made in certain ballot arguments proposed by those persons opposing the Parking Initiative. The first cause of action set forth in the Cross-Petition was ordered to be briefed and argued as part of the City's Writ Petition.

Having read the pleadings, having heard argument and having taken the matter under submission, the court rules as follows:

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Statement of the Case

On July 27, 2010, the City received a letter from Real Party in Interest, Marcia Caden, including a copy of the Parking Initiative and a Notice of Intent to Circulate Petition. (Sy-Rodriguez Declaration ("Sy Decl.") at Exhibits A & B).

The Notice of Intent to Circulate Petition stated that the purpose of the Parking Initiative was to "standardize parking rates at all city-owned parking lots." (Id., Exh. A). In furthering that purpose, the Parking Initiative requires that city-owned parking facilities, which were in operation prior to June 30, 2008, and that are not otherwise exempted or excepted in Section 2, shall provide the first two hours of parking free to all users of these facilities.[1] (Id.) The Parking Initiative also allows the City Council to "set the parking fee after the initial two hours of free parking on a parking-lot-by-parking-lot basis." (Id.)

On September 14, 2010, Caden submitted the Parking Initiative to the City with signatures, and on October 18, 2010, the City Clerk certified the Initiative as having the requisite number of signatures to qualify for the ballot. (Id., at ¶ 5-6, Exh. C). On October 18, 2010, the City Council requested a financial study of the initiative. (Id., at ¶ 6). The City Council received that report on November 16, 2010. (Id., at ¶ 7, Exh. D).

On November 16, 2010, the City approved Resolution No. 10-R-12782, placing the Parking Initiative on the ballot at the municipal election set for March 8, 2011. (Id., at ¶ 8).

Standard of Review and Relevant Authority

Petitioner seeks a writ of mandate from this Court pursuant to California Code of Civil Procedure § 1085.

That section provides:

> A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.

Cal. Code Civ. Proc. § 1085.

The trial court has discretion whether to entertain pre-election review of a qualified initiative. Save Stanislaus Area Farm Economy v. Board of Supervisors, 13 Cal. App. 3d 141, 150 (1993)(*citing* Brosnahan v. Eu , 31 Cal. 3d 1, 4 (1982); Mulkey v. Reitman, 64 Cal. 2d 529 (1966)).

However, pre-election reviews are disfavored for at least two reasons.

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[1] Although purportedly seeking to standardize parking practices at the 18 City-owned parking facilities, the Parking Initiative excepts three of the City's off-street facilities as they were not operating prior to June 20, 2008. It then exempts five more facilities by exempting those with 3-hour metered parking. Of the remaining eleven facilities, six currently provide two-hour free parking before 6 p.m. Thus, the Parking Initiative addresses the second hour of parking at five parking structures. (Lynn Decl. at ¶ 8). Of these five parking facilities, two of them are located in the immediate vicinity of medical offices owned and operated by G & L Realty, the self-proclaimed authors of the initiative. (Id.).

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First, as exemplified by the briefing and hearing schedule in this case, pre-election review occurs in a hurried environment immediately prior to a deadline and is not conducive to thoughtful reflection of complex issues. See Citizens for Responsible Behavior v. Superior Court, 1 Cal. 4th 1013, 1022 (1991). Where a court is faced with deciding a difficult issue of validity within a few days, it may be prudent to resolve doubtful cases in favor of submitting an initiative to the electorate but we have already expressed our discomfort with the attempt to insist that complex constitutional issues be resolved post-haste. See also Independent Energy Producers Assn. v. McPherson, 38 Cal. 4th 1020, 1030 n.3 (2006)("[D]eferring judicial resolution after the election – when there will be more time for full briefing and deliberation – often will be the wiser course.")

Second, defeat of a measure by the electorate generally makes judicial review unnecessary. As noted by the Supreme Court, "it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity." Brosnahan v. Eu , *supra,* 31 Cal. 3d at 4.

What standard, then, is to govern the trial court's exercise of discretion in pre-election review of a qualified initiative?

The standard is one of great deference to the electorate's constitutional right to enact laws through the initiative process; a court will remove an initiative from the ballot only "on a compelling showing that a proper case has been established for interfering." Save Stanislaus Area Farm Economy, *supra*, 13 Cal. App. 4th at 148 (*citing* Farley v. Healey, 67 Cal. 2d 325, 327 (1967)). The standard is one that is cognizant of the injury to the public that would result from an erroneous determination to keep an initiative off the ballot; "[i]f doubts can reasonably be resolved in favor of the use of this [initiative] power, courts will preserve it." Id. at 150 (*citing* Mervynne v. Acker, 189 Cal. App. 2d 558, 563-564 (1961)). Even grave doubts as to the constitutionality of an initiative measure do not compel a court to determine its validity prior to its submission to the electorate." Gayle v. Hamm, 25 Cal. App. 3d 250, 256 (1972).

That does not mean, however, that there are not circumstances in which pre-election review is appropriate. For example, a measure may be kept off the ballot if it represents an effort to exercise a power that the electorate does not possess. See Brosnahan v. Eu , *supra,* 31 Cal. 3d at 4. And, courts have allowed pre-election challenges if it convinced that the measure is fatally flawed. Citizens for Responsible Behavior, *supra*, 1 Cal. App. 4th 1013, 1022 (1991).

> "The presence of an invalid initiative measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure."

American Federation of Labor v. Eu, 36 Cal. 3d 687, 697, 715-16 (1984). See also Widders v. Furchtenicht, 167 Cal. App. 4th 769, 781 (Cal. App. 2d Dist. 2008) ("The presentation of invalid ballot measures . . . may also serve to undermine public confidence in the process.")

Hence, if the court concludes that the Parking Initiative here is clearly illegal or invalid, the Respondent should be ordered to take the measure off the ballot.

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Analysis

1. The Initiative Is Not Legislative In Nature

The California Constitution expressly reserves the initiative power to the electors "to propose statutes and amendments to the Constitution and to adopt or reject them." Id., *supra*, 36 Cal. 3d at 697. When an initiative seeks to do something other than enact a statute (or municipal ordinance), it is invalid. Id. at 714. Initiatives that "seek to render an administrative decision, adjudicate a dispute, or declare by resolution the views of the resolving body," do not pass Constitution muster. Marblehead v. City of San Clemente, 226 Cal. App. 3d 1504, 1508-09 (1991).

In Marblehead, the court of appeals disapproved an initiative that proposed to "revise the text of the general plan and other ordinances to specifically reflect the provisions of this [initiative]." Id, at 1507. In effect, the court reasoned, an initiative that is nothing more than a resolution by the voters directing the City Council to take legislative action consistent with the "concepts" expressed in the measure is impermissible. Id. at 1510. Like the Parking Initiative here, the proposition in Marblehead did not directly amend an ordinance. Like the Parking Initiative here, the initiative in Marblehead left the actual amendment of the general plan to the City Council. And, as in this case, the initiative failed to explain how the City Council in Marblehead was to incorporate the goals and aspirations of the initiative into an existing legislative scheme. See also Widders v. Furchtenicht, 167 Cal. App. 4th 769-784-85 (2008).("Instead of proposing actual legislation to be enacted, the measures merely state policies and direct the city council to enact unspecified laws pursuant to those policies.")

The Parking Initiative also fails to enact legislation. Rather, it expressly contains statements of intent and, thereafter, directs City Council to incorporate these intentions without further explanation.[2]

The Parking Initiative states:

> We . . . affirm our intent to encourage parking within the City that is convenient, available and reasonably priced in support of the local retail and restaurant community and other non-merchant uses . . .
>
> We seek to ensure . . . that City-owned parking structures also provide revenues that assist the City . . .
>
> Accordingly, we hereby *affirm our intent to amend* the Comprehensive Schedule of Taxes, Fees and Charges as it applies to hourly parking rates in City-owned parking facilities . . . to provide that the first two hours shall be free to all users of these facilities. At the conclusion of the first two hours of use, the City may establish hourly parking rates for succeeding hours or portions of hours on a lot-by-lot basis." (emphasis added).
>
> A revised *sample* parking rate Information Sheet for City-owned facilities in included as Attachment A. (emphasis added).

[2] The Court does not find the opinion of the City Attorney regarding the directory nature of the Parking Initiative to be binding on Petitioner. Nor do observations made by the Mayor affect this Court's reading of the clear language of the proposed initiative.

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> We find the establishment of a two hours free parking requirement at City-owned parking facilities . . . by this initiative is appropriate and desirable and benefits both residents of the City and visitors thereto.

As a review of its express terms discloses, the Parking Initiative simply directs the City Council to perform acts consistent with the views expressed in the initiative, rather than enacting legislation itself. The Parking Initiative does not enact a law stating that the first two hours of parking shall be free. Nor does it dictate the rates to be charged for parking at any individual facility. Rather, it affirms the voters' intent that providing two hours of free parking would be appropriate and desirable, and directs the City Council to take unidentified actions in this direction.[3] Such an initiative is impermissibly vague and clearly invalid.

Arguments asserted by Real Party in Interest Marcia Caden to the contrary are not persuasive. There is nothing ambiguous in the language of the proposed initiative that would need to be construed in favor of allowing the Parking Initiative to go forward. The initiative clearly fails to specify a particular scheme by which its "vague conceptual measure" of standardized parking fees could be accomplished. It matters not whether the symbolic initiative addresses large federal issues (e.g., the balancing of the budget in American Federation of Labor), or small parochial ones – such as the initiative at issue here. The key issue is whether voters are able to discern what the proposed initiative will accomplish.

Nor is Court's reading of the plain words used in the Parking Initiative "myopic" or an impermissible "focus" on isolated provisions. The terms set forth below constitute the entire content of the Parking Initiative's Introduction. Its other provisions track the directives stated in the Introduction. The Court has looked at the substance of the Parking Initiative. It finds that there is no mechanism provided for accomplishing its purpose of ensuring standardized parking rates throughout the City of Beverly Hills. Rather, it merely exhorts the City Council to adopt undefined resolutions regarding taxes, fees and charges. And, rather than asking the voters to impose a revised schedule, the proponents attach a "sample" revised Parking Rate Information Sheet. Had the Real Party in Interest wanted to "enact a two hour parking requirement" in the City of Beverly Hills, as she now contends, she certainly could have done so. The Parking Initiative she has sponsored, however, does not.

The initiative at issue here is distinguishable from the scheme considered in Pala Band of Mission Indians v. Board of Supervisors, 54 Cal. App. 4th 565 (1977). In the Pala Band case, the purpose of the proposition required an amendment to the general plan and a zoning ordinance to permit a solid waste facility to be constructed at the Gregory Canyon site. Id. at 573. Section 7A of that proposition actually amended the General Plan; it did not rely on future legislative action. Id. at 576. And, the proposition amended the General Plan by "directing that the land use element of the General Plan be changed to permit a previously impermissible land use (waste disposal) in a particular area (Gregory Canyon)." A voter deciding whether to approve of this measure understood precisely what specific changes to the General Plan were being proposed. Id. (Section 7a's text to allow "semi-public lands" to contain a "Solid Waste Facility Designator" was a word of art and sufficient to designate a waste disposal unit on that land.) And, in light of this explicit text, if the proposition were passed, the voter knew exactly how the General Plan would be changed.

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[3] For example, as part of any implementation of the Parking Initiative, the City Council would need to examine each City-owned parking facilities, and decide whether to offer two hour free parking, or whether, when and at what price to offer 3-hour Metered parking, daily parking, early bird parking, or any other "special rate" adopted by the City Council that exempts or excludes the facility from the concept expressed in the initiative.

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Because the Court concludes that the Parking Initiative clearly fails as an invalid exercise of the electorate's initiative power, it does not reach Petitioner's other arguments in support of its petition for pre-election review. Nor is it necessary to decide whether the ballot statements associated with the Parking Initiative were timely.

And, as the Court grants the petition, it advances and vacates the January 10, 2011 hearing on the Cross-Petition as moot.

Conclusion

The City has met his burden of showing that the Parking Initiative is clearly constitutionally proscribed. There is no value of putting before the people a measure which they have no power to enact. American Federation, *supra*, 36 Cal. 3d at 1984.

Petitioner is to submit a proposed judgment and proposed writ to this department within 2 days, with a proof of service showing that copies of those documents have been served on opposing counsel by hand delivery or facsimile.

The Court will hold the documents for 2 days before signing and filing the judgment and causing the clerk to issue the writ.

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