



CITY OF PACIFIC GROVE

AGENDA REPORT

TO: Honorable Mayor and Members of City Council

FROM: David C. Laredo, City Attorney

MEETING DATE: July 21, 2010

SUBJECT: CONSIDER INTRODUCING AND HOLDING A FIRST
READING OF AN ORDINANCE TO ENACT THE CITIZEN'S
RETIREMENT BENEFIT REFORM INITIATIVE

The Citizen Initiative qualified for submission to the electorate; the City Council is required to either place it on the ballot, or instead, the Council may adopt the measure in its entirety, without change.

CEQA: Does Not Constitute a "Project" under the California
Environmental Quality Act (CEQA)

RECOMMENDATION

Consider introducing and holding a first reading on the attached draft ordinance to enact the Citizen Initiative as Chapter 4.30 of the Pacific Grove Municipal Code. This action is in accord with the prior conceptual direction provided by the City Council.

The Council may approve or reject the first reading of the ordinance, and direct that publication of the ordinance may be satisfied by publication of a summary of the measure approved by the City Attorney. If the ordinance is approved, a second reading shall be set at the next Council meeting. If the ordinance is not approved, the Council is required by law to place it on the ballot. The Council does not have the discretion to modify this measure.

DISCUSSION

Charter Article 16 of the Charter of the City of Pacific Grove provides that the right of initiative is "preserved to the citizens of the City to be exercised in accordance with the procedures prescribed by the Constitution and General Laws of this State." The right of initiative is liberally construed in favor of its exercise.

Proponents of the a "Citizen Initiative" completed all necessary pre-requisite steps to place the initiative measure on the ballot. The "Citizen Initiative," known as the "Voter Initiative Limiting the Ability of the City of Pacific Grove to Approve or Modify Agreements That Provide Retirement Benefits to City Employees," was circulated and filed with the Pacific Grove City Clerk.

The Citizen Initiative was reviewed by the Monterey County Registrar of Voters who determined that its 193 sections bore 1,027 verified signatures and 1314 unverified signatures. Of the verified signatures, the Registrar found 93 to be not sufficient. Nonetheless, the Registrar did verify, on July 1, 2010, that the number of verified signatures meet the number of signatures

required by law, or 934, and that the petition therefore qualified an initiative measure for submission to the electorate. Attached to this Agenda Report is the Registrar's Certificate to Sufficiency of Initiative Petition signed by Linda Tullet, Monterey County Registrar of Voters.

The City Council is obligated by law to place the Citizen Initiative on the ballot as it complies with all prerequisites. In the alternative and in accord with California Elections Code sections 9214 and 9215, the Council may choose to adopt the Citizen Initiative measure in its entirety, without change.

If the staff recommendation is adopted by Council, a summary of the ordinance shall be published prior to a second reading of this ordinance. This action is in accord with the prior concept direction provided by the Council.

If the staff recommendation is rejected by Council, a resolution shall be brought back to Council to enable the matter to be presented to the electorate.

Modification of the Municipal Code to enact the Citizen Initiative as Chapter 4.30 of the Pacific Grove Municipal Code does not constitute a "Project" as that term is defined under the California Environmental Quality Act (CEQA), CEQA Guideline Section 15378, and does not have the potential to affect the environment, either directly or indirectly.

FISCAL IMPACT

Enactment of the measure shall avoid the costs of placing the matter on the ballot.

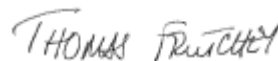
ATTACHMENTS

1. Draft Ordinance
2. Registrar's Certificate

RESPECTFULLY SUBMITTED,

David C. Laredo
CITY ATTORNEY

REVIEWED BY,



Thomas Frutchey
CITY MANAGER

ORDINANCE NO. 2010 -

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
TO ENACT THE CITIZEN INITIATIVE REGARDING
RETIREMENT BENEFIT REFORM**

WHEREAS, Charter Article 16 of the Charter of the City of Pacific Grove provides that the right of initiative is “preserved to the citizens of the City to be exercised in accordance with the procedures prescribed by the Constitution and General Laws of this State”; and

WHEREAS, the right of initiative is liberally construed in favor of its exercise; and

WHEREAS, Citizens of Pacific Grove have circulated an initiative known as the “Voter Initiative Limiting the Ability of the City of Pacific Grove to Approve or Modify Agreements That Provide Retirement Benefits to City Employees” (“Citizen Initiative”) and filed this petition with the Pacific Grove City Clerk; and

WHEREAS, Proponents of the Citizen Initiative completed all necessary prerequisite steps to place the Citizen Initiative on the November 2, 2010 ballot, including properly circulating the petition; and

WHEREAS, the Citizen Initiative has been reviewed by the Monterey County Registrar of Voters, who verified on July 1, 2010 that the Proponents obtained a sufficient number of signatures as required by law to require the measure to be submitted to the electorate; and

WHEREAS, the City Council is obligated by law to place the Citizen Initiative on the ballot as it complies with all prerequisites required of ballot initiatives, or in the alternative and in accord with California Elections Code sections 9214 and 9215, the Council may choose to adopt the Citizen Initiative measure in its entirety, without change; and

WHEREAS, in the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

WHEREAS, enactment of this ordinance does not constitute a “project” as defined by California Environmental Quality Act (“CEQA”) because it is an organizational or administrative activity that shall not result in direct or indirect physical changes in the environment;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. This ordinance shall enact the Citizen Initiative as Chapter 4.30 of the Pacific Grove Municipal Code. Chapter 4.30, in accord with Section 4 of the Citizen Initiative, shall be entitled, "Employee Retirement Benefit –Sustainability."

SECTION 3. The provisions of Section 1 of the Citizen Initiative shall be enacted as section 4.30.001 of the Pacific Grove Municipal Code, as follows:

4.30.001 Title. This measure shall be known and cited as "The Sustainable Retirement Benefit Reform Initiative of the City of Pacific Grove."

SECTION 4. The provisions of Section 2 of the Citizen Initiative shall be enacted as section 4.30.002 of the Pacific Grove Municipal Code, as follows:

4.30.002 Findings and Declarations.

(a) In November, 2008, the Citizens of Pacific Grove approved an advisory initiative that the City end its defined benefit retirement plan for City employees and replace it with a defined contribution plan in an effort to create a sustainable retirement benefit for City employees. Since that time no action has been taken by the City Council to reform the City's retirement plan or develop a sustainable retirement benefit.

(b) In 2006 the City issued a Pension Obligation Bond for \$19 million to pay for an unfunded liability of its retirement plan created by an increase in benefits enacted in 2002 and retirement fund investment losses beginning in 2001. This bond will cost the City approximately \$1.6 million a year over thirty years.

(c) Although the pension bond paid the unfunded liabilities as of 2006, additional retirement fund investment losses have occurred since, and the City now faces additional new liabilities and increases in pension costs. The City's financial health and its ability to provide critical services to its citizens are now in jeopardy. A fair and balanced approach to restoring long-term fiscal responsibility requires that the cost of employee retirement benefits be sustainable and free from unpredictable long term debts and liabilities.

(d) All City employees have legally protected rights to any accrued benefits of employment, including accrued benefits of any current legally enacted contract for retirement benefits. However, the City Charter and Municipal Code of Pacific Grove provide that City employees do not have

vested rights to employment, including any promise of future employment or to any specific plan for retirement benefits.

(e) In order to protect the investments that the City will need to sustain and even restore important City services in future years, limits on the cost to the City of retirement benefits for employees are proposed in this initiative.

(f) The limits on the City's contribution to employee retirement benefits within the initiative do not by themselves restrict the type of retirement benefit or plan that is provided by the City in partnership with employees. It does not specifically require the City to terminate any existing defined benefit retirement plan. It will require that any future employment contract conform to the retirement benefit cost limitations contained in this initiative. The clear intent of these constraints is to ensure the long term sustainability of this important benefit to employees while preserving other City services and the financial health of the City.

SECTION 5. The provisions of Section 3 of the Citizen Initiative shall be enacted as section 4.30.005 of the Pacific Grove Municipal Code, as follows:

4.30.005 Purpose and Intent.

In enacting this measure, the people of Pacific Grove intend to place a maximum limit on the cost to the City of any retirement benefit for City employees as a percentage of salary. The people also intend that, as required by law, any legally enacted retirement benefits that have already accrued to public employees in a City provided retirement plan be honored.

SECTION 5. Provisions of Section 4 of the Citizen Initiative set forth below shall be enacted as section 4.30.010 of the Pacific Grove Municipal Code, as follows:

4.30.010 Purpose and Intent.

The purpose of this chapter is to ensure the sustainability of employee retirement benefits by establishing limitations on the City with respect to the approval or modification of any agreement that provides an employee retirement benefit.

SECTION 6. Provisions of Section 4 of the Citizen Initiative set forth below shall be enacted as section 4.30.020 of the Pacific Grove Municipal Code, as follows:

4.30.020. Definitions,

As used in this Chapter, the following terms shall apply:

(a) "Salary" is the regular compensation received by an employee for performing duties for a given work period, as an hour or week, including any allowances for any additional compensation, such as for bonuses, overtime pay, pay for sick leave, or vacation time.

(b) "Social Security benefit" means a benefit under the United States Social Security Old-Age and Survivors Insurance Program.

SECTION 7. Provisions of Section 4 of the Citizen Initiative set forth below shall be enacted as section 4.30.030 of the Pacific Grove Municipal Code, as follows:

4.30.030. General Provisions.

(a) In accordance with Article 6 of the City Charter it is affirmed that City employees do not possess vested rights to employment, including any promise of future employment, or to any plan, or agreement, or specific terms and conditions, by which employees earn retirement benefits.

(b) The City shall not approve any employee retirement benefit, or plan or agreement that provides such a benefit, if the payment or contribution by the City for the retirement benefit exceeds ten percent (10%) of the employee's salary. However, if the City provides an employee with a Social Security benefit, then the payment or contribution by the City for any other retirement benefit shall not exceed four percent (4%) of the employee's salary.

(c) The City shall not approve, without advisory approval by a vote of the people, any employee retirement benefit, or plan or agreement that provides such a benefit, which could increase or create any long-term debt or financial liability for the City.

SECTION 8. Provisions of Section 4 of the Citizen Initiative set forth below shall be enacted as section 4.30.040 of the Pacific Grove Municipal Code, as follows:

4.30.040. Implementation.

The City is authorized to implement or approve any retirement plan, agreement or benefit for employees or further provisions that meet the requirements and conditions of this Chapter. The City is authorized but not required to provide a Social Security benefit for any employee.

SECTION 8. Section 5 of the Citizen Initiative shall be enacted as section 4.30.050 of the Pacific Grove Municipal Code, as follows:

4.30.050. Severability.

If any of the provisions of this Initiative, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not

be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SECTION 9. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS ____ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

CARMELITA GARCIA, Mayor

ATTEST:

JAMES L. BECKLENBERG, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

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MONTEREY COUNTY ELECTIONS

PO Box 4400
Salinas, CA 93912

1370-B South Main Street
Salinas, CA 93901

831-796-1499 Phone
831-755-5485 Fax

www.MontereyCountyElections.us

elections@co.monterey.ca.us

Linda Tulett
Registrar of Voters

Claudio Valenzuela
Assistant Registrar of Voters



REGISTRAR'S CERTIFICATE TO SUFFICIENCY OF INITIATIVE PETITION

I, LINDA TULETT, REGISTRAR of the County of MONTEREY, State of California, hereby certify; That the Initiative Petition, VOTER INITIATIVE LIMITING THE ABILITY OF THE CITY OF PACIFIC GROVE TO APPROVE OR MODIFY AGREEMENTS THAT PROVIDE RETIREMENT BENEFITS TO CITY EMPLOYEES, was submitted for verification by the City Clerk for the City of Pacific Grove to this office June 4, 2010.

That said petition consists of 193 sections;

That each section contains signatures purporting to be the signatures of qualified Electors of this county;

That attached to each section of this was an affidavit purporting to be the affidavit of the persons who solicited the signatures, and containing the dates between which the purported qualified electors signed the petition;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her knowledge and belief each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponent filed this petition with the City Clerk of the City of Pacific Grove, I caused to be verified the required number of signatures by examining the records of registration of this County, current and in effect at the respected purported dates of such signing, to determine what number of qualified electors signed the petition, and from that examination I have determined the following facts regarding this petition;

1. Number of valid signatures required 934
2. Number of unverified signatures filed 1314
3. Number of signatures verified 1027
 - a. Number of signatures found **SUFFICIENT** 934
 - b. Number of signatures found **NOT SUFFICIENT** 93
 1. **NOT SUFFICIENT** because **DUPLICATE** 24

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal this 1st day of July, 2010

Linda Tulett, Registrar of Voters
County of Monterey

