CITY OF COMMERCE
AGENDA REPORT

Item No. <u>12</u>

TO: Honorable Mayor and City Council Members

FROM: Lena Shumway, City Clerk

SUBJECT: CONSIDERATION OF TWO (2) RESOLUTIONS CERTIFYING TWO (2) REFERENDUM PETITIONS SUBMITTED AGAINST CITY OF COMMERCE ORDINANCE NOS. 731 AND 732; PROVIDE DIRECTION TO STAFF TO REPEAL ORDINANCE NOS. 731 AND/OR 732, OR TO SUBMIT THE ORDINANCES TO THE VOTERS AT AN ELECTION

MEETING DATE: September 3, 2019

RECOMMENDATION:

It is recommended that the City Council:

(1)   Consider and Adopt Two (2) Resolutions Certifying the Results of the Two (2) Referendum Petitions Submitted Against City of Commerce Ordinance Nos. 731 and 732, respectively; AND

(2)   Consider and possibly adopt resolution Calling and Giving Notice of the holding of a Special Municipal Election on Tuesday, _____, 20___ for submission to qualified voters measures (occurring not less than 88 days after the City Council's order); or

(3)   Consider and possibly adopt Resolution calling and giving notice of the General Municipal Election to be held on March 3, 2020 for election of two Councilmembers and submitting to the voters an election for referendum; or

(4)   Repeal the Ordinance(s) against which the Referendum Petitions were filed and direct staff to prepare an ordinance and present for first reading at September 20, 2019 City Council meeting.

(5)   Provide Staff with Additional / Alternative Directive(s).

BACKGROUND:

On July 2, 2019, City Council approved the first reading of two (2) ordinances approving two development agreements concerning the expansion of the Citadel Shopping Outlet Center (Ordinance No. 731), and for the development of a ten acre parcel at the corner of Washington Boulevard and Telegraph Road (Ordinance No. 732) in the City (hereinafter also, "Ordinance" or collectively, "Ordinances"). Specifically, Ordinance No. 731 approved Development Agreement No, 18-032 between the City of Commerce and Citadel Holdings Group, LLC for the improvement and expansion of the Citadel Shopping Outlet Center; made findings consistent with and pursuant to Government Code Section 65867.5; and made findings of a CEQA Environmental Impact Report.

Ordinance 732 approved Development Agreement No. 18-033 between the City of Commerce and Citadel Holding Group, LLC and Wash-Tel Commerce, LLC for the development of a ten acre parcel at the Corner of Washington Boulevard and Telegraph Road for commercial, public facility and industrial purposes; made findings consistent with and pursuant to Government Code Section 65867.5; and made findings of a CEQA Environmental Impact Report.

On July 16, 2019, City Council approved the second reading and adoptions of Ordinances Nos. 731 and 732, which would become effective after 30 days from the date of adoption. Two qualified (2) Referendum Petitions challenging Ordinances No. 731 and 732 were timely filed and have been verified, as further discussed herein below. The effective date of said Ordinances are currently suspended due to the filing of said Referendum Petitions.

ANALYSIS:

(1) General Referendum Principles

A referendum is "the power of the electors to approve or reject statutes or parts of statutes, except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State."[1] "[R]eferendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide."[2] Elections Code sections 9235 through 9247 establish the statutory procedures for city referenda. The referendum petition must be in a form prescribed by statute and each section must have a declaration of the circulator attached.[3] Each section of a referendum petition must contain the identifying number or title of the ordinance that is subject of the referendum.[4] The text of any ordinance or resolution against which a referendum is sought must be attached to the petition.[5] The "text" of an ordinance includes the words of the ordinance itself and all documents that are attached to the ordinance or incorporated by reference.[6] If the City Clerk determines by a prima facie count that the petition has sufficient signatures, and it substantially and technically adheres to the applicable Elections Code provisions, then the signatures need to be verified to determine the number of valid signatures.[7] If the petition is deemed sufficient, the results of said examination are required to be certified and presented to City Council at the next regular city council meeting.[8] Thereafter, City Council is required to repeal the ordinance(s) subject of the referendum petitions, or submit the ordinance(s) to the voters at an election.[9]

(2) "Prima Facie" Count of Signatures and Timely Filing of the Referendum Petitions

On August 5, 2019, the City received two (2) citizen-sponsored referendum petitions (hereinafter, collectively the "Referendum Petitions") seeking rescission of two (2) ordinances: Ordinance No. 731 approving a development agreement concerning the expansion of the Citadel Shopping Outlet Center, and Ordinance No. 732, approving a development agreement for the development of a ten acre parcel at the corner of Washington Boulevard and Telegraph Road. On August 5, 2019, the City Clerk undertook a "prima facie" count of the signatures of the Referendum Petitions to ensure each were signed by not less than ten percent (10%) of the registered voters in the City. According to the Los Angeles County Registrar, Recorder and County Clerk (hereinafter, "County Clerk"), as

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[1] Cal Const art II, §9(a).
[2] Cal Const art II, §11(a).
[3] Cal. Elec. Code § § 102, 104, 9238.
[4] Cal. Elec. Code § 9238.
[5] *Id.*
[6] See *Defend Bayview Hunters Point Comm. v City & County of San Francisco* (2008) 167 Cal. App. 4th 846, 858; *Nelson v Carlson* (1993) 17 Cal. App. 4th 732, 739; *Lin v City of Pleasanton* (2009) 176 Cal. App. 4th 408.
[7] Cal. Elec. Code §§ 9210, 9237, 9239.
[8] Cal. Elec. Code § 9240.
[9] Cal. Elec. Code § 9241.

of February 2019, its last official report of registration indicates the number of registered voters in the City is 6,790.

The prima facie count of signatures established that the Referendum Petitions had more than the required minimum number of signatures of 679; specifically, 988 signatures for Ordinance No. 731, and 996 for Ordinance No. 732. Accordingly, the timely filing of the Referendum Petitions was accepted by the City. The City Clerk further examined the Referendum Petitions and confirmed they were in substantial and technical compliance with the Elections Code, including the form of the Referendum Petitions was proper; the text of the Ordinance(s), or the portion of the ordinance that is subject of the referendum, with the inclusion of documents incorporated by Ordinance Nos. 731 and 732 was part of the Referendum Petitions and circulated, and had the required declarations of the petition circulator.[10]

(3) Verification of Signatures by County Clerk

Accordingly, the City Clerk forwarded the Referendum Petitions to the County Clerk on Monday, August 12, 2019 to validate the signatures so as to verify whether or not the Referendum Petitions were signed by the requisite number of voters.[11] The County Clerk verified each signature, as instructed by the City Clerk, to determine the number of valid signatures, as opposed to verifying signatures by using a sampling methodology, which is allowed by the Elections Code. On August 26, 2019, the County Clerk deemed both Referendum Petitions sufficient. Specifically, the County Clerk has determined that the Referendum Petition proponents secured the requisite number of valid signatures to qualify the Referendum Petitions. As to the Referendum Petition seeking the rescission of Ordinance No. 731, 992 signatures were obtained in total, and 934 of the signatures were verified and validated. As to the Referendum Petition seeking the rescission of Ordinance No. 732, 992 signatures were obtained in total, and 916 of the signatures were verified and validated.

(4) Certification of Results

Since the County Clerk deemed the Referendum Petitions sufficient on August 26, 2019, the City Clerk is now required to certify the results of the examination to the City Council at the next regular City Council meeting.[12] Attached are the certificates showing the results of the examination prepared by the County Clerk. Before the City Council today is the adoption of the two (2) attached Resolutions certifying the two (2) Referendum Petitions submitted against City of Commerce Ordinance Nos. 731 and 732, respectively. The City Clerk is recommending that City Council adopt both Resolutions to certify the results of the verification of signatures, as required by the Elections Code.

(5) City Council's Options after Certification of Results

At this juncture since it has been determined that the Referendum Petitions qualify, the City Council has two (2) options as to each subject Ordinance[13]:

> ***Option 1:***
> Repeal the Ordinance(s) against which the Referendum Petitions were filed;
>
> **OR**
>
> ***Option 2:***

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[10] Cal. Elec. Code § 9238.
[11] Cal. Elec. Code § 9240.
[12] *Id.*
[13] Cal. Elec. Code § 9241.

Submit the Ordinance(s) to the voters either at

  a. the next regular municipal election after the City Council's order, occurring not less than 88 days after the City Council's order; **OR**

  b. a special election called for this purpose, not less than 88 days after the City Council's order.[14]

(a) Option 1 – Repeal one or both Ordinances.

If City Council acts to repeal either one or both Ordinances, then staff will prepare the requisite ordinances to repeal same, respectively. Said ordinances will be brought back to City Council, as they will require an introduction and first reading, and second reading and adoption.

(b) Option 2 - Submit to the Voters.

If City Council submits the Ordinance(s) to the voters at the next regular municipal election after the City Council's order, then same would be considered by the voters on Tuesday, March 3, 2020, pursuant to Section 2.13.010 ("Election Dates") of the Commerce Municipal Code.   Should the City Council choose to not wait until the next regular municipal election on March 3, 2020, then the City Council may call a special election to submit the Ordinances to the voters. At minimum, a resolution will need to be prepared and adopted by City Council to call an election for this purpose. The City would establish the date for special election by resolution, and all noticing, and procedures will be followed as required by the Election Code.

(c) Interim Alternative Option: City Council may provide an alternative directive to City staff prior to making a decision.

If City Council needs additional information, documentation, etc., before making a decision on Option 1 or Option 2, the City Council can direct City staff to bring said information at the next regular City Council meeting to assist City Council – including preparing the necessary documentation to effectuate either option.   There does not appear to be direct or explicit statutory requirements or related state provisions on when the City Council is required to repeal the Ordinance(s) or when to issue a "City Council order" to submit the Ordinance(s) to the voters after certification of the results. Notwithstanding, Staff recommends that City Council not cause undue or unnecessary delays. For example, for initiatives, state law indicates that a legislative body may ask an agency to present a report before making a decision no later than thirty (30) days after the city clerk certifies the sufficiency of the petition; and make a decision within ten (10) days after being presented said report.[15]   While City Council is not statutorily required to adhere to said timeframes as said law governs the initiative process and not the referenda process, Staff recommends that City Council follow same as a guideline in the event City Council does require more information before taking action on Option 1 or Option 2.

Please note because the Referendum Petitions have qualified, at this juncture, the Ordinance(s) do not become effective until and unless a majority of the voters voting on the Ordinance(s) vote in favor of them.

FISCAL IMPACT:

There will be no fiscal impact for repealing Ordinances. Should the Council choose option of holding a Special Election, the cost is estimated to be $50,000. The option of consolidating

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[14] *Id.*

[15] See Cal. Elec. Code §§ 9212, 9215.

Referendum matters with the General Municipal election on March 3, 2020, the cost would be minimum for additional ballot printing, and estimated at $2,000.

ATTACHMENTS:

-Two (2) Resolutions –Certification of Results
-Certification of Results by the County Clerk.
Resolution For calling a Special Election
Resolution Requesting services from Board of Supervisors for rendering election services
Resolution of calling election for March 3, 2020.

Respectfully submitted: Lena Shumway, City Clerk
Recommended by: Edgar P. Cisneros, City Manager
                    Lena Shumway, Director of Administrative Services and City Clerk
Prepared by: Lena Shumway, Director of Administrative Services & City Clerk and Norma
                    Copado, Assistant City Attorney
Approved as to Form: Noel Tapia, City Attorney