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M E M O R A N D U M

DATE: August 15, 2022
TO: City Council
FROM: Kelly M. Fernandez, City Attorney
SUBJECT: Citizen Referendum on Land Development Regulations

On August 1, 2022, an initiating petition was filed pursuant to Article IX of the City's Charter seeking the reconsideration of the new Land Development Regulations adopted by Ordinance No. 2022-15. The process for a citizen referendum proceeding is as follows:

1. Any five registered voters file with the City Clerk an affidavit and initiating petition stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and citing the ordinance or resolution sought to be reconsidered. The affidavit and initiating petition must be filed within 30 days after the adoption by the City Council of the ordinance sought to be reconsidered.
2. Within ten business days after filing, the City Clerk must determine whether the petition meets the requirements of Section 9.02, and if so, must issue a petition blank to the petitioners' committee.
3. The final petition with the required number of signatures and affidavits must be filed with

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
236 Pedro Street
Venice, Florida 34285

the city clerk as one instrument. Citizen referendum petitions must be signed by registered voters of the city equal in number to at least ten percent of the total number of registered voters of the City. All signatures on final petitions must be signed within six months of submission to the City Clerk; however, there is no deadline as to when the final petition must be filed.

4. Within 20 days after the final petition is filed purporting to have the required number of signatures, the City Clerk must complete a certificate as to its compliance with provisions of sections 9.03 and 9.04, specifying, if it is insufficient, the particulars wherein it is defective and must promptly send a copy of the certificate to the petitioners' committee by registered mail. A final petition certified insufficient for lack of the required number of valid signatures may be amended once.
5. A final determination as to the sufficiency of a final petition or a final petition as amended shall be subject to court review.
6. The ordinance sought to be reconsidered shall be suspended from taking effect when a final citizen referendum petition, purporting to include the required number of signatures, is filed with the City Clerk. Such suspension terminates when:
 - a. There is a final determination of insufficiency of the petition; or
 - b. The petitioners' committee withdraws the petition; or
 - c. The city council repeals the ordinance or resolution; or
 - d. After a vote of the registered voters on the ordinance or resolution has been certified.
7. Within 30 days after the citizen referendum petition has been finally determined sufficient, the City Council must promptly consider and vote on the reconsideration of the citizen referendum ordinance sought to be repealed. If the City Council fails to repeal the citizen referendum ordinance sought to be repealed, it shall submit the citizen referendum ordinance sought to be repealed to the voters of the City.
8. The vote of the voters of the City on a citizen referendum ordinance shall be held not less than 30 days and not later than one year from the date of the final city council vote thereon. The vote shall be held at the same time as a regular city election, except that the City Council may, in its discretion, provide for a special election at an earlier date within the prescribed period.
9. If a majority of the registered voters voting on a citizen referendum ordinance vote in favor of its repeal, it shall be considered repealed upon certification of the election results.

Per step 6., above, the effectiveness of the City's new Land Development Regulations will be suspended automatically upon the filing of a final citizen referendum petition. This provides great uncertainty to City staff and the public as the City will not necessarily know when, if ever, a final petition will be submitted. Furthermore, the potential ramifications of such a suspension are many and complex as the Land Development Regulations cover everything from land use approvals, to building codes, to historic preservation, to environmental protection.

Section 9.01 of the City Charter prohibits a referendum on any budget or capital program or any emergency ordinance or resolution, or ordinance or resolution relating to appropriation of money, levy of taxes, compensation of city officers or employees or any other matter prohibited by general

law. While nothing in Section 9.01 or general law appears to explicitly prohibit a citizen referendum on an ordinance adopting entirely new Land Development Regulations, initial legal research has indicated there may still be a legal basis for a court to find that such a citizen referendum is prohibited. Therefore, Council has the following primary options:

1. Take no action at this time and wait and see whether a sufficient final petition is filed.
2. Authorize the City Manager and I to immediately retain legal counsel to further review the permissible scope of a citizen referendum and take appropriate legal action to terminate this citizen referendum (if warranted) or the automatic suspension provision. (My recommendation)
3. Direct the Charter Officers to review and prepare for the possibility that the effectiveness of the Land Development Regulations will be suspended, but take no legal action at this time.