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Ray Ellis for Council 2016
7185 Navajo Road Suite P
San Diego CA 92119

Via E-Mail Only

Re: Citizens' Plan for the Responsible Management of Major Tourism and Entertainment Resources ("Citizens' Plan")

Dear Mr. Ellis:

Last week representatives of your campaign made false statements about the Citizens' Plan, which I authored last year. In particular, one of your representatives stated that the Citizens' Plan will raise taxes to build a new downtown football stadium. To eliminate any potential confusion, let me be absolutely clear: the Citizens' Plan does not use or authorize even one penny of public funds to subsidize a stadium. In fact, the Citizens' Plan contains multiple prohibitions on the use of public money to subsidize a stadium.

The Citizens' Plan asks the voters to approve a competitive Transient Occupancy Tax rate of 15.5% for larger lodging businesses and 14% for smaller ones; other major tourism destinations in California have TOT rates at 15.5% or higher. Pursuant to Section 35.0109(d):

All revenues collected pursuant to the taxes imposed by the City under this section shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance. To this end, the tax imposed under this section is intended to be and shall be a general tax and not a special tax.

Thus, all revenues received by the City under the Citizens' Plan will be used for general government purposes, without any earmarks for a stadium or anything else.

At the same time, the Citizens' Plan prohibits the use of any public resources – new or existing, and not just money – to subsidize a new downtown football stadium. The Citizens' Plan authorizes a downtown stadium as a land use on its own or in conjunction with an expanded convention-center facility at Tailgate Park, but it does not require that the stadium be built and in fact provides no money for the stadium under either scenario. If the



Citizens' Plan is approved by the voters, all stakeholders will still have to come together to work out whether to build a joint-use facility or a stand-alone facility of either type. However that works out, the Citizens' Plan prohibits public subsidies for the stadium.

The prohibition comes in two forms. First there is a prohibition on Tourism Financed Infrastructure Districts – authorized by the Citizens' Plan to enable and encourage the hotel industry to take responsibility for certain major tourism-infrastructure projects, such as a convention-center expansion – using any of their financial resources to pay for any portion of a downtown stadium. You can find this prohibition in Section 61.2802(h):

None of the improvements financed by such a district may include any portion of the acquisition (by purchase, lease, or otherwise), development, design, entitlement, construction, operation, or maintenance of ***an entertainment or professional sports facility***. If the improvements financed by a district consist of any convention center, exhibition, and meeting facilities described in Section 61.2804(b)(1) and are combined with any entertainment or professional sports facility, all incremental costs of acquisition, development, design, entitlement, construction, operation, and maintenance exclusively attributable to the added facility shall be paid from sources other than district assessments or any proceeds from bonds issued by the district.

Next, the Citizens' Plan imposes a prohibition on the ***City*** as a governmental entity and as a whole from giving money or anything else of value to the San Diego Chargers or anyone else to build a downtown convention-center expansion or football stadium, with the limited exception of financial incentives given to the hotel industry for the purpose of the convention-center expansion and tourism marketing, unless there is a payment of fair-market value in exchange. You can find this in Section 61.2807(a):

Except as expressly authorized in sub-sections (b)-(d) of this section [these are the incentives to the hotel industry], the City shall not directly or indirectly provide any form or manner of financial support, lend its credit, pledge anything of value, allow any public asset to be used ***for less than fair-market value as determined by an independent fee appraiser,***^[1] or otherwise

¹ This qualification is important because of the “fair-market value” component and the “independent fee appraiser” component. The former has been defined by *Black's Law Dictionary* (10th ed. 2014) as “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect.” Consequently, under the Citizens' Plan the City must get the same value from the user of a public asset for a stadium that the City would get on the open market for the same asset's use by someone else, meaning that there would be no stadium subsidy. The latter is defined in Section 61.2809(d) of the Citizens' Plan to mean an



make any kind of expenditure or commitment for a future expenditure that would in any way facilitate either of the following:

- (1) The development, design, entitlement, construction, operation, or maintenance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1)-(3) [these are the land-use authorizations for the expansion, stadium, or both]; or
- (2) Any activity or service in furtherance of any structure, facility, infrastructure, or use described in Section 61.2804(b)(1)-(3) other than public activities and services generally made available throughout the City to the public at large, such as police, fire protection, water, and sewer service.

So while it is true that the Citizens' Plan authorizes the City to cooperate with stakeholders in order to facilitate a downtown stadium, either on its own or in conjunction with an expanded convention center, the City is prohibited from doing so except in exchange for fair-market value as determined by someone who's beholden only to the City.

In sum, the Citizens' Plan does not provide any tax revenue for a new stadium, contains no earmarks, and prohibits any form of subsidy for a stadium. The Citizens' Plan remains a good opportunity for the Chargers – and thus does not have the effect of running them out of town – because the synergy resulting from a joint-use facility would lower the team's costs of building and operating the stadium component. My research indicates that under this scenario the costs would be reduced to the point that the team could afford to pay its own way and stay in San Diego. This compromise is entirely consistent with the public's attitude as reflected in the polling and other surveys I conducted before drafting the Citizens' Plan: if the Chargers pay their own way, the public very much wants to keep them right here in America's Finest City.

I am glad people are vigorously debating the merits of the Citizens' Plan and the other opportunities for addressing its subject matter. However, I believe – and I'm confident you too believe – that the debate should be factual and not misinformed or misrepresented. There is lots to like about the Citizens' Plan – not only for the Chargers and their fans, but even more so for the City and its roughly 1.4 million residents – which is why such a diverse and

appraiser selected solely by the City who certifies under penalty of perjury that he or she had no financial relationship with any party to the transaction other than the City within a one-year period prior to the transaction. So even if someone were worried about, for example, the Chargers presenting a biased and deflated appraisal of fair-market value, the Citizens' Plan puts the selection entirely in the City's hands and requires compelling evidence of independence.



unprecedented coalition of environmentalists, good-government advocates, taxpayer advocates, community groups, educators, urban planners, business interests, politicians and candidates for public office, and others is supporting it. I would be more than happy to meet with you and your campaign team to walk you through the particulars so that you can knowledgeably participate in those debates.

Please let me know if you have any questions or would like to get together. You can also find more information, including answers to frequently asked questions, at www.CitizensPlan.org.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

cc: Matt Adams (via e-mail)
Aimee Faucett (via e-mail)
Michael Smolens (via e-mail)
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