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STEAMBOAT SPRINGS, COLORADO 80477

Monday, October 5, 2009

Memo to: City Council
            City Management Team

From: Anthony B. Lettunich, City Attorney

Re: Referendum Procedure - Steamboat 700 Annexation

You have asked me to summarize the referendum process for your benefit and for the benefit of the public, since there is some uncertainty as to exactly what the referendum process is and is not. The referendum process is described in Article 8 of the City's Home Rule Charter and is reorganized and restated below in an attempt to make the rules and requirements easier to understand.

1.   The City Council must first pass an ordinance to trigger the referendum process.

An ordinance is adopted at a second reading when there are at least four affirmative votes for the passage of the ordinance.

2.   Once the ordinance is adopted at second reading, registered electors in the City have thirty days to form a petitioners' committee, gather the necessary number of signatures, and file the petitions with the office of the City Clerk.

The thirty days begins to run the day after the City Council adopts the ordinance at second reading. The thirty days does NOT begin to run upon the effective date of the ordinance, which is usually ten days after the adoption date. Assuming an ordinance were passed on October 13, 2009, the thirty days would begin to run on Wednesday, October 14th, and the thirtieth day would be Thursday, November 12, 2009.

3.   **Petitioners' Committee.**

Any five registered electors of the City may commence a referendum process by filing an affidavit with the City Clerk stating that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form. They state their names and **street** addresses and specify the address to which all notices to the committee are to be sent. They are required to set out in full the ordinance sought to be reconsidered.

4.   **Necessary number of signatures.**

Referendum petitions must be signed by registered electors of the City equal in number to at least ten (10) per cent of the total number of electors registered to vote at the last regular municipal election. Although the City's Home Rule Charter states that twenty (20) per cent is the number of signatures that must be obtained, the Colorado constitution states that in no event shall more than ten (10) per cent be required. The Annexation Agreement between the City and Steamboat 700 states that the ten (10) per cent number shall be used and that Steamboat 700 shall not object to using the constitutionally mandated ten (10) per cent number.

The County Clerk and Recorder's office has confirmed that at the time of the 2007 municipal election, which is the "last regular municipal election", there were 8,285 registered electors in the City. Therefore, a petitioners' committee would have to obtain at least 829 signatures on a referendum petition to have the ordinance referred back to City Council.

5.   **Form and Content of the Petition**

Each signature must be in "ink or indelible pencil" and shall be followed by the **street** address of the person signing. A signature with a post office box will be disqualified. The City will require that the name of the person signing the petition also be printed next to the signature. Petitions shall contain or have attached thereto throughout their circulation the **full text** of the ordinance sought to be reconsidered.

6.   **Affidavit of Circulator**.

Each page of signatures collected shall have attached to it when filed an affidavit of the circulator stating that he/she personally circulated the petition, the number of signatures on that page, that all signatures were affixed in his/her presence, that he/she believes them to be the genuine signatures of the persons whose names they purport to be and that each

signer had an opportunity before signing to read the full text of the ordinance sought to be reconsidered.

7.   Procedure After Filing - Insufficient Petition

Within ten (10) days after a petition is filed, the City Clerk shall complete a certificate as to its sufficiency. The City would, during this period, permit those opposing the referendum to view the petitions in the presence of the City Clerk and object to the sufficiency of any of the signatures. If the petition is deemed sufficient the City Clerk shall forward it on to the City Council. If it is insufficient, the clerk shall specify the insufficiencies and shall promptly send a copy of the certificate of insufficiency to the petitioners' committee by registered mail.

A petition certified insufficient for lack of the required number of valid signatures may be **amended once**, if the petitioners' committee files a notice of intention to amend the petition with the City Clerk within two days after receiving the copy of the City Clerk's certificate **AND** files a supplementary petition upon additional forms within ten (10) days after receiving a copy of the certificate.

If a supplementary petition is timely filed, the City Clerk shall, within five (5) days after its filing, complete a certificate as to the sufficiency of the petition as supplemented and promptly send a copy of the certificate to the petitioners' committee by registered mail as in the case of the original petition. If the petition, as supplemented, is deemed sufficient, the City Clerk shall forward it on to the City Council.

 If the petition, as supplemented is deemed insufficient by the City Clerk, the City Clerk shall forward the same to the City Council as a final determination, **UNLESS,** within two (2) days after receiving the copy of the certificate of insufficiency, the petitioners' committee files a request that the petition be reviewed by the City Council. If so requested, the City Council shall review the petition for sufficiency at its next meeting following the filing of the request by the petitioners' committee and shall approve or disapprove the petition at that meeting.

8.   Court Review

A final determination as to the insufficiency of the petition shall be subject to court review.

9.   **Ordinance Suspended Upon Filing of a Petition.**

Once a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

   a.   There is a final determination that the petition is insufficient, or
   b.   The petitioners' committee withdraws the petition, or
   c.   The City Council repeals the ordinance, or
   d.   Certification that a referendum election has been defeated and the original ordinance is upheld.

10.   **City Council Action on Sufficient Petition**

If a referendum petition certified as sufficient is delivered to the City Council, the City Council shall either:

   a.   Repeal the ordinance that is the subject of the referendum petition, or
   b.   Submit the referendum to the voters to decide if the ordinance should be repealed.

11.   **Submission to Voters.**

The vote on the referendum shall be held not less than thirty (30) days and not later than ninety (90) days from the date the City Council decides to either repeal the ordinance or submit the referendum to the voters. If the regular municipal election were to fall within the time frame, the referendum question would be part of the regular municipal election. Since it is clear that the November 3, 2009 regular municipal election will have occurred prior to the time frame for a referendum election, the City would have to hold a special election. By agreement with Steamboat 700 any special election on a referendum regarding the Steamboat 700 annexation would be an all mail ballot, just as the November 3, 2009 regular municipal election will be an all mail ballot, with no polling places.

Given the time frame set forth for circulating and confirming the sufficiency of a petition and any supplemental petitions and City Council meeting dates, it would appear that a special referendum election would occur in January or February 2010.

<center>End of Memo</center>