

# WHY THE CITY COUNCIL SHOULD COMMIT TO HOLDING A PUBLIC VOTE ON THE FORM BASED CODE

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Because I will be out of the country for the next two FBC committee meetings and will, as a consequence, miss the discussion about whether or not our committee should recommend that a public vote be held, I will set out my thoughts and recommendation in this memo.

Here are some of the reasons why I believe the council should commit, now, that a public vote will be held to ratify or reject the Form Based Code.

- 1. Del Mar Tradition is to Vote on Major Projects.** Adoption of the Form Based Code calls for major changes in our community. Del Mar has a history of holding public votes on such major changes. It would break a trend not to have a public vote on the FBC.
- 2. A vote will Encourage Community Buy-In.** For the Form Based Code to succeed it needs to be embraced by the entire Del Mar community as a "good thing". Assuring the community now that a public vote will take place will foster goodwill and community buy-in.
- 3. Del Mar's History Reflects Successful Votes for Well Done Projects.** Del Mar should have no reason to fear a public vote on the FBC. Other complex and controversial projects have successfully passed such public votes, including the adoption of the Del Mar Community Plan, the approval of the Del Mar Plaza, the approval of the L'Auberge, and the recent overwhelming voter approval of the Del Mar Garden. The Garden approval is particularly instructive as it shows strong community support for well designed downtown redevelopment.
- 4. The Voters Have Already Indicated They Want a Community Vote.** In adopting Measure B some 20 plus years ago the voters indicated that they want to vote on all large changes to downtown. Until Measure B is amended or repealed, this remains the community's statement on the topic.
- 4. Measure B will Require a Vote.** Measure B will, at a given point in time, likely require a vote or multiple votes, but the City Council can call for a vote outside of Measure B that will better fit the FBC circumstances. (See, discussion below)

## DISCUSSION

In reviewing the provisions of measure B it seems clear to me that it will trigger the requirement for a vote on the FBC, and perhaps a cumbersome series of votes. Such a vote, or series of votes, under measure B would be considerably more expensive, more cumbersome,

and less productive than if the council were to call a vote on the FBC outside of measure B, and as part of that ballot, ask the voters to amend or repeal measure B.

Many things have changed in the 20 plus years since Measure B was adopted. I see no reason why Measure B cannot be amended or repealed in favor of such an alternate vote process that is better adapted to present circumstances. The real choice is whether we will have a vote tailored to the FBC, or a vote or series of votes under Measure B. Here, in short, is why Measure B likely will require a vote.

Measure B applies to the downtown area except for the public facility zone. While it only applies to a very small number of existing lots that exceed its size thresholds, the area proposed for rezoning by the FBC exceeds those thresholds. Measure B calls for preparation of a Specific Plan and a public vote on the Specific Plan for "development projects" proposing 11,500 feet of floor area or proposed on a lot or adjoining lots of 25,000 square feet or more. DMMC 30.54.020. Measure B specifically defines "development projects" as including any "discretionary approval", and then defines "discretionary approval" as specifically including "rezones".<sup>1</sup>

So, rezones that exceed the size thresholds appear subject to Measure B. And, lest anyone think that Measure B votes could be avoided by rezoning the downtown in small increments below the size thresholds, Measure B specifically provides: ***"A 'Development project subject to this measure' may not be divided into parts, parcels or phases to avoid being subject to this measure."***

When a Measure B vote is triggered, a Specific Plan must be prepared and routed through the Planning Commission and City Council, a number of reports and analyses required by Measure B must be completed, and "exceptional public benefits" must be identified to allow any increases over current zoning. If a Specific Plan is voted down under Measure B a

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<sup>1</sup> Here are the relevant sections of Measure B:

**"Development project subject to this measure"** shall mean any proposal for **any discretionary City approval** for development or redevelopment in the Downtown Commercial Area on a parcel or adjacent parcels under the ownership or control of the same applicant where the parcel or parcels taken together contain at least 25,000 square feet. A "development project subject to this measure" shall also mean any project for which a **discretionary City approval** is sought, regardless of the parcel size, which proposes to develop or redevelop in excess of 11,500 square feet of commercial floor area. A "Development project subject to this measure" may not be divided into parts, parcels or phases to avoid being subject to this measure. "

**"Discretionary approval"** shall mean any discretionary land use entitlement or permit of any type whatsoever issued by the City including, but not limited to, tentative and parcel maps, **rezones**, General Plan amendments, use permits, variances, grading permits, land conservation permits, specific or precise plans, design review, view blockage review, conceptual review, coastal permits pursuant to an approved Local Coastal Plan, and building permits when discretionary.

moratorium on development on that property is in place until an alternate Specific Plan is prepared and approved<sup>2</sup>. All this would apply to a Measure B vote or votes on the FBC.

In contrast, the council could call for a public vote on the FBC before a Measure B vote is triggered. The requirements and parameters for such a vote could be determined by the City Council independent of Measure B. And, a companion ballot measure could ask the voters to amend or repeal Measure B in favor of the one-time vote on the FBC. This would result in one meaningful vote on the FBC which, if approved, would free downtown redevelopment from further votes under Measure B.

On considering all this, I recommend that our committee vote to recommend to the council that the council commit now to holding a community vote on the FBC tailored to fit the circumstances of the FBC and that repeal or amendment of measure B be considered as a companion ballot measure.

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<sup>2</sup> **30.54.090 Rejection of Specific Plan. *If the voters reject one or more specific plans required by this measure, the City Council shall immediately declare and impose an interim moratorium on the processing or approval of any discretionary or nondiscretionary approval for the parcel or parcels covered by the rejected specific plan in order to ensure that the planning process necessary to prepare and obtain approval of an alternate specific plan is not preempted. Said moratorium shall remain in effect until the City Council prepares and the voters approve an alternate specific plan for the affected parcel or parcels. The City Council shall ensure that an alternate specific plan is prepared and placed on the ballot in a timely manner.***