



**CITY OF**

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# **NEWPORT BEACH**

## **City Council Staff Report**

February 14, 2017  
Agenda Item No. 21

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Leilani I. Brown, City Clerk - 949-644-3005,  
lbrown@newportbeachca.gov

**PREPARED BY:** Leilani I. Brown, City Clerk

**TITLE:** Certification of Petition for Referendum of Resolution No. 2016-127  
Relating to the Museum House Residential Project

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**ABSTRACT:**

On December 21, 2016, the community group Line in the Sand filed a referendum petition with the City of Newport Beach (City) relating to City Council Resolution No. 2016-127. Resolution No. 2016-127 approved a General Plan Amendment and certain California Environmental Quality Act (CEQA) documents for the Museum House Residential Project. My office, with the assistance of the Orange County Registrar of Voters, has certified the adequacy of the signatures on the petition.

**RECOMMENDATION:**

- a) Determine this action is exempt from the CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
- b) Receive and file the Orange County Registrar of Voters *Certificate as to Verification of Signatures on Petition*.

**FUNDING REQUIREMENTS:**

The current adopted election budget has sufficient funding to cover the cost of verifying the signatures in the petition referendum.

**DISCUSSION:**

On November 29, 2016, the City Council approved Resolution No. 2016-127, which approved General Plan Amendment No. GP2015-001 which changed the land use designation for property located at 850 San Clemente Drive from Private Institutional (PI) to Multi-Unit Residential (RM-100) and adopted CEQA facts and findings and a statement of overriding considerations for the Museum House Residential Project.

Following the approval of Resolution No. 2016-127, the community group Line in the Sand circulated a referendum petition challenging the resolution. On December 21, 2016, the referendum petition was submitted to the City. In accordance with the City Charter and California Elections Code, the City Clerk received and examined the referendum petition.

Following a *prima facie* examination of the petition as required by law, the City Clerk determined the petition contained the requisite number of signatures of electors of the City and forwarded the petitions to the Orange County Registrar of Voters for signature verification. On January 25, 2017, the Orange County Registrar of Voters confirmed that the petition contained the requisite number of valid signatures of electors of the City of Newport Beach to qualify the petition for an election and has certified the results (Attachment A).

The effect of the certification is that the effective date of Resolution No. 2016-127 (General Plan Amendment No. GP2015-001) is suspended.

Recently, the Orange County Museum of Art (OCMA) initiated litigation against the City alleging defects in the referendum petition. At the time of the writing of this staff report, the City has not been served with OCMA's lawsuit nor has a hearing been scheduled by the court. Based upon this recent court filing, outside counsel advises to temporarily refrain from any decisions involving Resolution No. 2016-127 at this time. This temporary delay will allow outside counsel an opportunity to review the allegations in the lawsuit and provide timely legal advice. The City Council may be required in the near future to make a decision regarding Resolution No. 2016-127, which decision may involve either:

1. Repealing Resolution No. 2016-127 and other related approvals and actions; or
2. Submitting Resolution No. 2016-127 to a vote of the electorate either at (a) the next General Municipal Election (November 6, 2018), or (b) a Special Election ordered for such purpose and held at least 88 days after the date of such order (Elections Code Section 9241).

#### **ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the CEQA pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

#### **NOTICING:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

**ATTACHMENT:**

Attachment A - Certificate as to Verification of Signatures on Petition