



NOTICE IS HEREBY GIVEN, that the undersigned Mayor Debbie Stone of the City of Upland, pursuant to legal requirements, does hereby call a special meeting of the Upland City Council.

**Wednesday, August 26, 2020**

**7:30 p.m.**

**City Council Chamber**

A handwritten signature in cursive script that reads "Debbie Stone".

---

Debbie Stone, Mayor

**AGENDA ATTACHED**



## Special Meeting

August 26, 2020

7:30 PM

City Council Chamber

\*\*\*\*\*

CITY COUNCIL

- 
1. CALL TO ORDER AND ROLL CALL
  2. ORAL COMMUNICATIONS

Pursuant to Government Code Section 54954.2, any member of the public may address any item listed on the agenda. Anyone wishing to address the legislative body should submit a speaker card to the City Clerk at or prior to speaking. Speakers shall keep their comments to no more than three (3) minutes.

3. ORDINANCE REGARDING THE BALLOT LABEL FOR CITY OF UPLAND PARK MEASURE

Consider adopting an ordinance regarding the ballot label for the City of Upland Park Measure, which the City Council previously placed on the ballot for the November 3, 2020 election and has since been designated as Measure Q. (Staff Person: Steven Flower)

4. ADJOURNMENT - The next regularly scheduled City Council meeting is Monday, September 14, 2020 at 7 p.m.

**NOTE:** All Agenda items and back-up materials are available for public review at the Upland Public Library, downstairs reference desk at 450 North Euclid Avenue, the City Clerk's Office at 460 North Euclid Avenue and the City website at [www.uplandca.gov](http://www.uplandca.gov).

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 909.931.4120. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADA Title II]

**POSTING STATEMENT:** On August 25, 2020 a true and correct copy of this agenda was posted at 450 N. Euclid Avenue (Upland Public Library) and 460 N. Euclid Avenue (Upland City Hall) and the City Website at [www.uplandca.gov](http://www.uplandca.gov)



## STAFF REPORT

**ITEM NO. 3.**

---

**DATE:** August 26, 2020  
**TO:** MAYOR AND CITY COUNCIL MEMBERS  
**FROM:** ROSEMARY HOERNING, CITY MANAGER  
**PREPARED BY:** ROSEMARY HOERNING, CITY MANAGER  
STEVEN L. FLOWER, INTERIM CITY ATTORNEY  
**SUBJECT:** ORDINANCE REGARDING THE BALLOT LABEL FOR CITY OF UPLAND PARK MEASURE

---

### RECOMMENDED ACTION

It is recommended that the City Council consider adopting an ordinance regarding the ballot label for the City of Upland Park Measure, which the City Council previously placed on the ballot for the November 3, 2020 election and has since been designated as Measure Q.

### GOAL STATEMENT

The proposed action would promote community engagement by ensuring the voters are able to vote on Measure Q.

### BACKGROUND

On August 18, 2020, the City was served with a petition for writ of mandate and injunctive relief in the matter of *Marjorie Benesh v. City of Upland et al.*, San Bernardino Sup. Ct. Case No. CIV DS 2016635 (the "Lawsuit"), which alleged certain defects in the language of the ballot label for Measure Q and the City Attorney's Impartial Analysis of the measure.

On August 24, 2020, the City Council adopted Ordinance No. 1946 to moot the petitioner's challenge as to the form of the ballot question.

On August 25, 2020, the Court held a hearing on the Lawsuit, ultimately ruling in the City's favor on virtually every issue. As the ruling from the Court explained: "the ballot statement needs minor revision, but the impartial analysis is appropriate."

The Court agreed with the City that:

- There is no need for the ballot measure to reference the Surplus Land Act because that statute doesn't apply.
- There is no need for the ballot measure to reference the Planning & Zoning Law and the general plan consistency requirement because it is an auxiliary issue and otherwise subsumed within the zoning change discussed in the Impartial Analysis.
- The Council's action on Monday to amend the ballot question so that it follows the format of "Shall the measure ... be adopted?" mooted that part of the petitioner's challenge.
- The ballot question properly stated the purpose of the measure is so the property may be sold to San Antonio Regional Hospital.
- The Impartial Analysis of the measure was neither false or misleading. The Court said it was "appropriately neutral," and that "It explains in straightforward terms the consequences of voter approval and of voter disapproval."

The Court agreed with the Petitioner only with regard to the reference to improvements that might be made with the proceeds of the sale should it ultimately occur. The Court therefore revised the ballot question to read:

"Shall the measure allowing the City of Upland to discontinue using approximately 4.63 acres of Memorial Park, thereby allowing the property potentially to be sold to San Antonio Regional Hospital for not less than \$4,300,000, which, if the sale occurs, would be used solely for public improvements to other portions of Memorial Park be adopted?"

This is very similar to the language the Council approved Monday:

"Shall the measure allowing the City of Upland to abandon and discontinue using for park purposes approximately 4.63 acres of Memorial Park so it can be sold to San Antonio Regional Hospital, in order to add facilities and increase capacity for medical services, for a price not less than \$4,300,000 that would be used solely for public improvements to Memorial Park, which may include a new baseball field, additional public parking, landscaping, walking trails, and other new public amenities, be adopted?."

## **ISSUES/ANALYSIS**

The Court's ruling leaves some uncertainty regarding its implementation; specifically, whether the City Council is required to act to approve the Court's revision to the Measure Q ballot statement. Unfortunately, there is not enough time to wait for the Court to resolve the issue because the County Registrar has set a deadline of August 27 for any final changes to ballot materials.

In order to avoid potential issues, and to ensure that the City's voters are given the chance to decide Measure Q, it is recommended that the City Council adopt an ordinance approving the Court's revised ballot language. This can be done by adopting the proposed ordinance.

It is therefore recommended that the City Council adopt an ordinance to adopt the ballot label for the City of Upland Park Measure (Measure Q) as revised by the Superior Court's ruling of August 25, 2020 in the matter of *Marjorie Benesh v. City of Upland et al.*, San Bernardino Sup. Ct. Case No. CIV DS 2016635 (the "Lawsuit").

**FISCAL IMPACTS**

None. San Antonio Regional Hospital will continue to bear all costs related to the election pursuant to the terms of its reimbursement agreement with the City, including the cost of the Lawsuit.

**ALTERNATIVES**

Provide alternative direction..

**ATTACHMENTS:**

**Ordinance Amending Park Ballot Question**

AN ORDINANCE OF THE CITY OF UPLAND APPROVING THE  
BALLOT LABEL FOR THE CITY OF UPLAND PARK MEASURE  
ON THE NOVEMBER 3, 2020 ELECTION BALLOT

A. RECITALS.

(i) On July 27, 2020, the City Council adopted Ordinance No. 1943 calling a special election on November 3, 2020 to submit to the City electors the question of abandoning and discontinuing use of an approximately 4.63-acre portion of Memorial Park (the "Park Parcel") so it may be sold to the San Antonio Regional Hospital. The "City of Upland Park Measure" has since been designated as Measure Q.

(ii) On August 18, 2020, the City was served with a petition for writ of mandate and injunctive relief in the matter of *Marjorie Benesh v. City of Upland et al.*, San Bernardino Sup. Ct. Case No. CIV DS 2016635 (the "Lawsuit"), in which the petitioner alleged, among other things, certain defects in the language of the ballot label for Measure Q as specified in Ordinance 1943.

(iii) On August 24, 2020, the City adopted Ordinance 1946 amending the Measure Q ballot label out of an abundance of caution and to ensure that the voters of the City have an opportunity to decide this question of public importance.

(iv) On August 25, 2020, the San Bernardino Superior Court, issued a ruling in the Lawsuit in which the Court said the ballot label still needed a "minor revision" and further revised it to read as stated in Section 2 of this Ordinance.

(v) All legal prerequisites to the adoption of this Ordinance have occurred.

B. ORDINANCE.

THE CITY COUNCIL OF THE CITY OF UPLAND ORDAINS AS FOLLOWS:

Section 1. Recitals. All facts set forth in the recitals above are correct.

Section 2. Revised Ballot Label. The City Council hereby approves the ballot label for the City of Upland Park Measure, also known as Measure Q, as revised by the Court to read as follows:

Shall the measure allowing the City of Upland to discontinue using approximately 4.63 acres of Memorial Park, thereby allowing the property potentially to be sold to San Antonio Regional Hospital for not less than \$4,300,000, which, if the sale occurs, would be used solely for public improvements to other portions of Memorial Park be adopted?	Yes
	No

Section 3. Effective Date. This Ordinance shall become effective immediately upon adoption pursuant to California Government Code Section 36937(a).

Section 4. Certification & Election Coordination. The City Clerk shall certify the adoption of this Ordinance and cause it to be published in the manner required by law. The City Clerk is further authorized, instructed and directed to take such actions as are necessary or appropriate to ensure that the revised ballot label for Measure Q set forth in Section 2 of this Ordinance is incorporated into all official ballots and in any other manner necessary in order to properly and lawfully conduct the election.

PASSED, APPROVED and ADOPTED this 26th day of August, 2020.

---

Debbie Stone  
Mayor

I, Keri Johnson, City Clerk of the City of Upland, do hereby certify that the foregoing Ordinance was introduced and adopted at a meeting of the City Council held on the 26th day of August, 2020, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

ATTEST:

---

Keri Johnson  
City Clerk