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## LEGAL MEMORANDUM

TO: Tigard City Council

FROM: Shelby Rihala

DATE: July 6, 2015

RE: Community Center Ballot Measure  
File No. 50014-36799

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The City has requested an opinion as to whether the City may, or should, name the YMCA as the operator of the community center in the ballot title from an elections law perspective. It is our opinion that the City should not.

The ballot title consists of a 10-word caption, a 20-word question that plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure, and a 175-word summary setting forth its major effect. The ballot title must be concise and impartial. Courts have further interpreted the state's election laws to strike down misleading content in ballot titles and are "critical of using wording drawn from a proposed measure in a caption if that wording 'is not neutral and might mislead voters into supporting the proposal without understanding its true effects.'" *Rasmussen v. Kroger*, 350 Or 271, 278 (2011), citing *Caruthers v. Kroger*, 347 Or 660, 668 (2010).

Because the YMCA is the presumptive operator of the proposed community center, the question has been posed whether the ballot title can identify that possibility. For example, the ballot title could include a statement that "the community center would be operated by a nonprofit entity, such as the YMCA." The reference to the YMCA may be seen by some as providing clarity, but there is also the potential that it could be viewed as misleading because the City does not yet have an agreement with the YMCA naming it as the operator. If a voter bases his or her support of the measure on the fact that the YMCA would be the operator and an agreement is not reached, the ballot title misled the voter.<sup>1</sup> Additionally, if the ballot title states that the community center will be operated by a non-profit, that may preclude the City from being considered as an operator.

A more significant risk to the City is that a person would challenge the City's ballot title as misleading. While Oregon elections laws provide a statutory process for filing ballot title

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<sup>1</sup> This does not include any bond consequences, which are being separately addressed by City bond counsel.

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challenges, the City has adopted its own process pursuant to its home rule authority. TMC 1.12.030 allows a person to petition to City Council seeking a different ballot title and “stating the reasons the title filed is insufficient, not concise, or unfair.” The Code says City Council’s review is final and it does not provide for an additional appeal option.

The risk of a ballot title challenge is significant in that it could potentially delay the City’s ability to place the measure on the November election pending the resolution of the appeal and the City’s redrafting of the ballot title. Though there is no guarantee that the City’s ballot title will not be appealed, careful drafting can significantly reduce that risk. The recommendation of the city attorney is to avoid referencing the YMCA in the ballot title for the reasons discussed above.

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