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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Susan Ingalls for Robert Westmeyer - County Counsel
County Counsel
REPORT BY: Brandi Periera, Paralegal , 251-1090
SUBJECT: Adoption of an ordinance calling a special election and consolidating it with the June 6, 2006 primary election for the purpose of enabling the voters of Napa County to approve or reject Napa Valley Transportation Authority Ordinance No. 06-01.

RECOMMENDATION

County Counsel requests adoption of an ordinance calling a special election and consolidating it with the June 6, 2006 statewide primary election for the purpose of enabling the voters of Napa County to approve or reject Napa Valley Transportation Authority Ordinance No. 06-01.

EXECUTIVE SUMMARY

The Napa Valley Transportation Authority ("Authority") has adopted Ordinance No. 06-01 and the related Transportation Improvement Expenditure Plan (the "Expenditure Plan"). Authority Ordinance No.06-01 imposes a one-half of one percent sales tax for thirty years, commencing January 1, 2007, for purposes of providing supplemental funding for transportation improvements as outlined in the Expenditure Plan.

Public Utilities Code sections 180201 and 180203 require voter approval of Authority Ordinance No. 06-01 before it becomes operative.

On January 25, 2006, the Authority adopted Resolution No. 06-04, requesting that the Board of Supervisors call a special election and consolidate it with the June 6, 2006 primary election for the purpose of obtaining voter approval of Authority Ordinance No. 06-01.

Once the Authority requests that a special election be called, courts have determined that the Board has a mandatory duty to call the election.

Section 180203 requires the Authority to reimburse the county for costs of conducting the special election only if the voters approve the ordinance.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Budget Unit 13600 has appropriations to cover the cost of the June 6, 2006 Statewide Primary election. A negative impact of approximately \$10,500 to the General Fund will result if the measure fails because of the cost of printing additional pages in the voter information pamphlet for the Ordinance and Expenditure Plan. Under Public Utilities Code section 180203, the Authority is required to reimburse the County for the cost of conducting the special election if the Ordinance is approved by the voters. There will be a positive impact of approximately \$85,000 to the General Fund if the Ordinance passes because the Authority will bear its proportionate share of the election.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	None beyond the present year.
Consequences if not approved:	The Board is required to call the special election under Public Utilities Code sections 180201 and 180203. To date, courts have held this to be a ministerial duty. [See <u>San Bernardino Associate Governments v. Superior Court of San Bernardino County</u> (January 23, 2006) 2006 Cal.App. Lexis 59.] If the Board refuses to call the election, litigation may ensue and the County may be ordered by a court to call and conduct the special election.
Additional Information:	None

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Adoption of an ordinance calling an election pursuant to Public Utilities Code sections 180201 and 180203 is a ministerial act exempt from CEQA. [San Bernardino Associate Governments v. Superior Court of San Bernardino County (January 23, 2006) 2006 Cal.App. Lexis 59.]

BACKGROUND AND DISCUSSION

The Authority has adopted Ordinance No. 06-01 and the related Expenditure Plan. Ordinance No. 06-01 imposes a one-half of one percent sales tax for thirty years, commencing January 1, 2007, for purposes of providing supplemental funding for transportation improvements as detailed in the Expenditure Plan.

Public Utilities Code sections 180201 and 180203 require voter approval of Ordinance No. 06-01 before the Ordinance can become operative. Recent case law has concluded that section 180201 requires the Board of Supervisors to call a special election at the request of the Authority to obtain such voter approval. [See San Bernardino Associate Governments v. Superior Court of San Bernardino County (January 23, 2006) 2006 Cal.App. Lexis 59.] Any election that is held must be conducted in the same manner as provided by law for the conduct of a special election by a county.

Public Utilities Code section 180203 requires the Authority to reimburse the County for costs of conducting the special election if the voters approve the Ordinance. The Public Utilities Code does not address who pays for the election costs if the Ordinance fails. However, it is assumed that in such a case the County would be required to absorb the costs of the election unless the Authority, the County, and the various cities involved mutually agreed to share those costs.

On January 25, 2006, the Authority adopted Resolution No. 06-04, requesting that the Board of Supervisors call a special election and consolidate it with the June 6, 2006 primary election for the purpose of obtaining voter approval of Ordinance No. 06-01.

Because the courts have concluded that once the Authority requests a special election under Public Utilities Code sections 180201 and 180203, the Board has a duty to call that election, the call of this election is a ministerial act exempt from CEQA.

The schedule for arguments for/against and the impartial analysis have been established by the Registrar of Voters as follows:

1. Impartial Analysis March 13, 2006
2. Fiscal Analysis (if required) March 13, 2006
3. Arguments March 17, 2006
4. Rebuttal March 27, 2006

County Counsel is required to prepare and file the impartial analysis. The Authority is responsible for determining whether or not it wishes to file an argument supporting the tax measure and whether a fiscal analysis is desired. Unlike the impartial analysis, the fiscal analysis and arguments for/against are not required to be prepared. The Authority staff was advised in early February of the need to determine whether a fiscal analysis should be prepared. To date, there has been no indication that the Authority wishes a fiscal analysis be prepared. Therefore, the ordinance calling the election does not presently require a fiscal analysis. The deadline for amending this order of election to require a fiscal analysis is 83 days prior to the election which in the case of the June election would be March 15, 2006 (Elections Code section 9605).

SUPPORTING DOCUMENTS

A . Ordinance Calling Election

B . Exhibit A to Ordinance Calling Election --Authority Ordinance No. 06-01

CEO Recommendation: Approve

Reviewed By: Britt Ferguson