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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Westmeyer, Robert - County Counsel
County Counsel
REPORT BY: Sora O'Doherty, Paralegal - 251-1090
SUBJECT: Napa County Responsible Growth Initiative

RECOMMENDATION

County Counsel requests that the Board take the following actions:

1. Receive from staff the report the Board ordered prepared pursuant to Section 9111 of the Elections Code discussing the "Napa County Responsible Growth Initiative"; and
2. Take one of the following actions:
 - a. Adopt the "Napa County Responsible Growth Initiative" without alteration at a special meeting of the Board on or before February 15, 2008;
 - b. Adopt a resolution placing the "Napa County Responsible Growth Initiative" on the ballot of the next statewide general election to be held on June 3, 2008, for the purpose of enabling the people of Napa County to approve or reject the Napa County Responsible Growth Initiative; or
 - c. Take no action should the Board conclude that the Napa County Responsible Growth Initiative clearly and without question violates one or more of the statutory procedural requirements applicable to county initiatives that are set forth in the California Elections Code.

EXECUTIVE SUMMARY

At the meeting of January 8, 2008, the Board accepted the certification of the Registrar of Voters. That certification confirmed that the Napa County Responsible Growth Initiative petition submitted by the proponents was signed by a sufficient number of voters and required the Board to proceed to the next step in the initiative process.

One of the available next steps was to order a report analyzing the effect the initiative might have if approved by the voters or adopted by the Board. The Board elected to order the preparation of such a report prior to deciding whether to adopt the Napa County Responsible Growth Initiative or submit said initiative to the voters for approval or rejection.

The 9111 report has been prepared and is being submitted to the Board on February 5, 2008. As a result the Board now should either:

1. Adopt the Napa County Responsible Growth Initiative in the form of a county ordinance without alteration at a special meeting to be called on or before February 15, 2008, or
2. Adopt the attached resolution which will result in the voters being asked to approve or reject the Napa County Responsible Growth Initiative on the June 2008 ballot; or
3. Take no action should the Board conclude that the Napa County Responsible Growth Initiative proponents have clearly and without question violated one or more of the statutory procedural requirements applicable to county initiatives and found in California Elections Code section 9100 et seq.

If the Board concludes to submit the initiative to the voters and decides that the full text of the initiative should not appear in the sample ballot, the resolution which is attached to this agenda item needs to be amended. To accomplish this the Board should substitute the alternative language which may be found on the page following the attached proposed resolution.

Procedural Requirements:

1. The Chair announces the agenda item.
2. The staff reports on the item.
3. Questions by the Board.
4. The Chair invites public comments.
5. A member of the Board of Supervisors makes a motion to implement one of the three alternative actions.
6. A different member of the Board of Supervisors seconds the motion.
7. Board discussion and debate on the motion.
8. The Chair call for the vote.
9. If roll call vote is requested by any member of the Board of Supervisors, the Clerk calls the roll.
10. The Chair announces the result of the vote.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	The General Fund will be required to absorb the extra cost of sending the materials associated with this measure to all voters as well as the minimal cost of adding one measure to the official ballot itself. The estimate of the total cost is \$1,500.00 to \$2,500.00.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	There will be no foreseeable future impact except for litigation costs which are described below. It is possible the Responsible Growth Initiative (the "RGI"), if successful, might result in additional initiatives being filed in the future to amend the provisions of the RGI or add additional land use requirements to the requirements set forth in the RGI. However the number or timing of such initiatives is not foreseeable and therefore any estimation would be speculative.

Consequences if not approved: The County may be exposed to costly litigation no matter what action it takes. If it fails to adopt the RGI or submit the matter to the voters because the RGI clearly and without question violates one or more of the procedural requirements relating to county initiatives found in the Elections Code the proponents may choose to litigate that decision by the Board.

Additional Information: If the Board adopts the RGI, or submits the RGI to the voters, the opponents of the RGI may litigate whether the County has complied with its ministerial duty to reject initiatives that clearly and without question fail to comply with the procedural requirements relating to county initiatives found in the Elections Code.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: None required regardless of the Board's decision [calling an election required to be held as a result of the gathering of sufficient signatures pursuant to Elections Code section 9118 is ministerial and therefore not subject to CEQA [*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 189]; adopting an ordinance in lieu of calling an election is also deemed ministerial and therefore not subject to CEQA [*Native American Sacred Site and Environmental Protection Association et al. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961, 969]].

BACKGROUND AND DISCUSSION

An initiative has been filed with the Registrar of Voters (hereafter the "ROV") that the proponents have identified as the "Napa County Responsible Growth Initiative" (hereafter the "RGI"). The purpose of the RGI is to do all of the following:

1. Limit the annual number of new housing units permitted in the unincorporated portion of Napa County to accommodate an annual population growth rate that exceeds neither that of the nine San Francisco Bay Area counties nor 1%. If approved by the voters the RGI would limit the annual issuance of building permits authorizing new residential construction to a number equal to 1% times the number of housing units in the unincorporated area (currently approximately 114 building permits per year not counting rollover, exempted or grandfathered units).
2. Prohibit single family residences from exceeding 3 stories or 35 feet in height, whichever is less.
3. With limited exceptions prohibit other types of structures from exceeding 35 feet in height.
4. Require that 15% of new residential developments are sold or rented at a price level that is affordable to persons with income that is equal to or less than the median income in Napa County.

Various changes to the General Plan and Titles 8 (Health and Safety) and 18 (Zoning) of the Napa County Code are proposed by the RGI to accomplish these purposes.

The proponents of the RGI filed their notice of intention to circulate an initiative petition with the ROV on October 4, 2007. The required ballot title and summary was prepared and provided to the ROV on October 19, 2007. The ballot title and summary were provided to the proponents of the RGI on that same day. The proponents of the RGI published their notice of intention to circulate an initiative petition and the ballot title and summary, as required by subparagraph (b) of Elections Code section 9105, on October 21, 2007, and proof of publication was filed with the ROV on October 26, 2007.

The 180 days within which the proponents were required to submit the necessary signatures to the ROV commenced on October 20, 2007. The signed sections of the RGI were filed with the ROV on December 10, 2007, which was well within the 180 day timeframe.

The ROV was required to examine the RGI signatures and certify them as sufficient or insufficient within 30 days of December 10, 2007, excluding Saturdays, Sundays and holidays. After completing his examination of the signatures the ROV concluded that the RGI signatures were sufficient in that there were signatures of registered voters representing at least 10 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election. The ROV also concluded that the signatures did not equal more than 20 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election. Therefore the next steps in the initiative process are found in Elections Code Section 9118.

The ROV's certificate showing the sufficiency of the RGI was prepared and submitted to the Clerk of the Board of Supervisors on December 26, 2007. The Elections Code requires the Clerk of the Board, upon receipt of an initiative certification by the ROV, to place the certification on the agenda of the next regular meeting of the Board of Supervisors. At the next regular meeting of the Board of Supervisors following December 26, 2007 (i.e. January 8, 2008) the Board received and ordered its clerk to file the ROV's certificate.

As noted above, Elections Code Section 9118 outlines the steps the Board is required to take if an initiative petition is signed by at least 10 percent but not more than 20 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intent to circulate an initiative. In such a case the Board is required to take one of the following actions:

1. Adopt the initiative as an ordinance without alteration within 10 calendar days of the date of the meeting at which the certificate of sufficiency is presented, or
2. Submit the ordinance to the voters without alteration at the next statewide election occurring not less than 88 days after the date of the order of the election, or
3. Order a report discussing various impacts the passage of the initiative might have.

On January 8, 2008, the Board elected to order a report discussing various impacts the passage of the RGI might have pursuant to Elections Code section 9111.

The 9111 Report

The statute that controls the content of any report the Board may order is found in Elections Code section 9111 and therefore the report is commonly referred to as a 9111 Report.

Any report that is ordered, in lieu of immediately calling an election or adopting an initiative without alteration, may address the effect of an initiative on any or all of the following matters:

1. Its fiscal impact.
2. Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
3. Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs.
4. Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in

increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

5. Its impact on the community's ability to attract and retain business and employment.
6. Its impact on the uses of vacant parcels of land.
7. Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
8. Any other matters the board of supervisors request to be in the report.

On January 8, 2008, the Board ordered the Conservation, Development and Planning Department, which usually prepares such reports in consultation with other County departments, to prepare a 9111 report addressing the following items:

1. The fiscal impact of the RGI;
2. The effect of the RGI on the internal consistency of the County's general and specific plans, including the housing element;
3. The effect of the RGI on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs;
4. The impact of the RGI on the uses of vacant parcels of land; and
5. The potential cost and risk of litigation.

A 9111 report must be completed and presented to the Board no later than 30 calendar days after it is ordered. Since there is no Board meeting on February 7th, the Board ordered that the 9111 report be returned at the Board's regular meeting of February 5, 2008.

At the meeting at which the 9111 report is presented to the Board, the Board must take one of the following actions, but only if it concludes that the RGI petition has complied with all procedural prerequisites relating to the circulation of a county initiative petition:

1. Adopt the RGI as an ordinance without alteration within 10 calendar days of the date of the meeting at which the 9111 report was presented, or
2. Submit the RGI to the voters without alteration at the next statewide election occurring not less than 88 days after the date of the order of the election.

Fiscal Analysis To Be Included In the Official Ballot Materials

In addition to the "9111 report" described above, subparagraph (c) of Elections Code section 9160 authorizes the Board, but does not require the Board, to order the County Auditor to prepare a fiscal analysis. That fiscal analysis is limited in content and length because is it part of the official ballot materials that will be sent to each voter.

Subparagraph (c) of Elections Code section 9160 provides as follows:

“(c) Not later than 88 days prior to an election that includes a county ballot measure, the board of supervisors may direct the county auditor to review the measure and determine whether the substance thereof, if adopted, would affect the revenues or expenditures of the county. He or she shall prepare a fiscal impact statement which estimates the amount of any increase or decrease in revenues or costs to the county if the proposed measure is adopted. The fiscal impact statement is “official matter” within the meaning of Section 13303, and shall be printed preceding the arguments for and against the measure. The fiscal impact statement may not exceed 500 words in length.”

Historically, the Board has not required the preparation of a fiscal analysis and therefore a requirement to prepare such an analysis is never included in resolutions calling initiative elections. If the Board ultimately determines to order an election, and wishes a fiscal analysis included in the Official Ballot materials each voter will receive, the Board should so indicate and the resolution calling the election will need to include such a requirement. That change can easily be made at the hearing on this matter. See paragraph 5 on page 4 of the attached proposed Resolution.

The Board has ordered a fiscal analysis as part of the Section 9111 report. However neither that fiscal analysis nor the other materials contained in a 9111 report are official ballot materials and therefore cannot be included in the voter information packet that each voter receives prior to an election.

The Board has previously concluded to routinely print the entire text of initiatives in the official ballot materials. As a result of that decision every resolution that is prepared ordering an election provides that the entire text of the initiative will be printed in the official ballot materials. Printing the entire text of initiatives in the official ballot materials is not required, however, and thus the Board still has the option of not doing so in the case of the RGI if it wishes. If the Board decides that the entire text of the RGI should not be printed in the official ballot materials, it should amend the recommended resolution accordingly. The recommended alternate language may be found on the page following the attached proposed Resolution ordering the election for June 3, 2008.

* * *

As noted above, if the Board concludes that the RGI petition has complied with all of the procedural prerequisites relating to the circulation of a county initiative petition, it must either:

1. Order an election; or
2. Direct staff to prepare a county ordinance that tracks exactly the RGI for adoption by the Board on or before February 15, 2008.

A third alternative is present in the case of this particular initiative due to the manner in which it was drafted. The Board could refuse to implement either option described in the previous paragraph on the basis that the proponents of the RGI petition have not complied with all of the procedural prerequisites relating to the circulation of a county initiative petition. In light of this fact, please find below a very brief review of the law describing when a Board of Supervisors or City Council is able to exercise this option.

Standards For Rejecting an Initiative Which Has Sufficient Signatures:

Local governments have a ministerial duty to reject initiative petitions that violate one or more statutory procedural requirements. This ministerial duty exists notwithstanding the fact that the procedural statutes in the Elections Code contain no express authority to enforce its provisions. In exercising its ministerial duty the local government cannot consider evidence beyond the facts of the initiative petition.

The decision of a local government to reject must be absolutely clear because local governments are not empowered to exercise discretion in deciding whether to place a duly certified initiative on the ballot. The courts have uniformly condemned local governments when these legislative bodies, after exercising discretion, have refused to place duly qualified initiatives on the ballot.

Thus given compliance with the formal procedural requirements for submitting an initiative to the voters, a local governmental agency must adopt the initiative or place the initiative on the ballot unless directed to do otherwise by a court on a compelling showing that a proper case has been established for interfering with

the initiative power.

SUPPORTING DOCUMENTS

A . Resolution Ordering June Election (RGI)

CEO Recommendation: Approve

Reviewed By: Maiko Klieman