



Agenda Date: 6/26/2007
Agenda Placement: 9B

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Robert Westmeyer - County Counsel
County Counsel
REPORT BY: Sora O'Doherty, Paralegal, 251-1090
SUBJECT: Initiative Measure to allow Deli and Wine Tasting at Stanly Lane Marketplace: Receive staff report ordered prepared pursuant to Section 9111 of the Elections Code and take related actions.

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 "Initiative Measure to Allow Deli and Wine Tasting At the Stanly Lane Marketplace".
2. Take one of the following actions:
 - a) Adopt the "Initiative Measure to Allow Deli and Wine Tasting At the Stanly Lane Marketplace" without alteration; or
 - b) After entering the appropriate letter designating the initiative measure as "J" or "K", adopt the proposed resolution ordering a special election and placing the "Initiative Measure to Allow Deli and Wine Tasting At the Stanly Lane Marketplace" on the ballot of the next statewide general election to be held on February 5, 2008, for the purpose of enabling the people of Napa County to approve or reject the initiative.

EXECUTIVE SUMMARY

At the meeting of June 5, 2007, the Board accepted the certification of the Registrar of Voters. That certification indicated that the initiative petition submitted by the proponents of that initiative measure entitled "Initiative Measure to Allow Deli and Wine Tasting At the Stanly Lane Marketplace" (hereafter the "Stanly Lane Deli Initiative") was signed by voters not less in number than 20 percent of the entire vote cast within Napa County for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention to circulate the Stanly Lane Deli Initiative.

This certification required the Board to call an election, adopt the Stanly Lane Deli Initiative, or order the preparation of a report pursuant to Elections Code section 9111 to be returned to the Board within 30 days. On June 5, 2007, the Board voted to have staff prepare a report pursuant to Elections Code section 9111. Because there is no Board meeting on July 5, 2007, the due date of the report is June 26, 2007.

Upon receipt of the report, the Board is required to take one of the following actions: (1) adopt the initiative ordinance without alteration on June 26, 2007 or at a special meeting to be called on or before July 6, 2007, or (2) place the matter on the February 2008 ballot, or (3) hold a special election in September or October of 2007 in lieu of waiting until the February 2008 presidential primary.

If placing the matter on the ballot the Board should adopt the attached resolution after receiving input from the Registrar of Voters and entering the appropriate letter designation the Registrar of Voters has determined should be utilized on page 3 of the resolution.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	General Fund. If the Board orders that a special election be held and consolidates it with the Presidential Primary Election on February 5, 2008, the County may be required to pay as much as 85% of the total cost of the election. This 85% cost is estimated to be \$255,000. There is no guarantee, however, that the State will pay for the entire election if there are no local measures. If the Board orders that a special election be held not earlier than 88 days or later than 103 days following the date the Board makes the order, and therefore does not consolidate the special election with the Presidential Primary Election on February 5, 2008, the cost of the election will be approximately \$300,000.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	There will be no future impact since this initiative is not expected to generate a later initiative. The costs of processing applications should this initiative pass are expected to be fully recovered by the application fees imposed.
Consequences if not approved:	The County will be exposed to costly litigation if it fails to comply with the mandatory requirements of Election Code section 9116. The county, more likely than not, will be required to pay the attorney fees of any successful plaintiff as well as conduct the election on a timetable established by the court.
Additional Information:	None.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: None required regardless of the Board's decision. [Ordering that an election be held as a result of the gathering of sufficient signatures pursuant to Elections Code section 9116 is a ministerial act and therefore not subject to CEQA [*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 189]; Adopting an initiative ordinance in lieu of conducting an election is 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

At the meeting of June 5, 2007, the Board accepted the certification of the Registrar of Voters. That certification indicated that the initiative petition submitted by the proponents of that initiative measure entitled "Initiative Measure to Allow Deli and Wine Tasting At the Stanly Lane Marketplace" (hereafter the "Stanly Lane Deli Initiative") was signed by voters not less in number than 20 percent of the entire vote cast within Napa County for all candidates for Governor at the last gubernatorial election preceding the publication of the notice of intention to circulate the Stanly Lane Deli Initiative.

If an initiative petition achieves the 20 percent signature level the requirements found in Section 9116 are applicable. Section 9116 requires that the Board on June 26, 2007 take one of the following actions:

- (1) adopt the initiative ordinance without alteration or within 10 calendar days; or
- (2) order a special election in the manner required by Section 1405 of the Elections Code.

Elections Code Section 1405 provides that a special election must be held not less than 88 days and not more than 103 days following the order of election. However, there is an exception to this requirement which is applicable here. The special election may be consolidated with a previously scheduled regular election if the date on which the special election is required to be held is within 180 calendar days of that previously scheduled regular election. The two possible dates on which the special election would normally have to be held are September 25th or October 2nd. Both of those dates are within 180 calendar days of the Presidential Primary on February 5, 2008. Therefore the exception applies and the Board may either schedule a special election on September 25th or October 2nd or, alternatively, may consolidate the special election with the Presidential Primary if it decides to hold an election rather than adopt the proposed Stanly Lane Deli Initiative.

Alternative Actions One of Which Is Required

Alternative #1: Adopt the initiative ordinance a copy of which is attached. The initiative ordinance may be adopted immediately following its introduction as authorized by Elections Code section 9116 and Government Code sections 25123/25131.

Alternative #2: Order an election by adopting the attached Resolution after inserting an appropriate letter designation to identify the measure. The Registrar of Voters has the responsibility to determine the appropriate letter to be used pursuant to Elections Code section 13116.

The election at which the initiative must appear on the ballot is the February Presidential Primary election, which will be conducted on February 5, 2008, unless the Board orders a special election to be held on Tuesday September 25, 2007 or Tuesday October 2, 2007. During the last election cycle, the Board concluded that the entire text of initiatives should routinely be printed in the ballot materials, and the attached resolution so provides.

SUPPORTING DOCUMENTS

- A . Resolution Calling Election
- B . Stanly Lane Ordinance To Be Voted On
- C . Stanly Lane Deli Initiative 9111 Report
- D . Stanly Lane Pumpkin Patch Summary of Authorized Uses

CEO Recommendation: Approve

Reviewed By: Molly Rattigan