



Agenda Date: 6/5/2007
Agenda Placement: 9B

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Westmeyer, Robert - County Counsel
County Counsel

REPORT BY: Robert Westmeyer, County Counsel, 259-8245

SUBJECT: Receive certification from Assessor-Recorder-County Clerk of sufficient signatures on "Initiative Measure To Allow Deli and Wine Tasting At the Stanly Lane Marketplace" and take related actions.

RECOMMENDATION

Assessor-Recorder-County Clerk and County Counsel request that the Board take the following actions:

1. Receive the Certification of the Registrar of Voters that the "Initiative Measure To Allow Deli and Wine Tasting At the Stanly Lane Marketplace" petition has been signed by voters not less in number 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 the initiative.
2. As required by Elections Code 9116, take one of the following actions:
 - a. Direct staff to prepare an ordinance tracking the "Initiative Measure To Allow Deli and Wine Tasting At the Stanly Lane Marketplace" without alteration for adoption by the Board on June 12, 2007; or
 - b. 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; or
 - c. Direct staff to prepare and present to the Board a report within 30 calendar days, pursuant to Section 9111 of the Elections Code, and identify what information should be included in the report.

EXECUTIVE SUMMARY

The office of the Registrar of Voters (the "ROV") has examined the initiative petitions that were timely 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"). The examination demonstrated that the initiative petition was signed by at least 20 percent of the entire vote cast in Napa County for all candidates for Governor at the last gubernatorial election. A certificate showing the sufficiency of signatures dated May 16, 2007 is herewith submitted to the Board.

The certification of sufficiency requires the Board to take one of the following actions: (1) adopt the initiative as an ordinance without alteration within 10 calendar days (2) place the matter on the ballot, or (3) order a report discussing the various impacts the passage of the initiative might have. See the Background portion of this agenda item for a listing of the matters that may be addressed in the report should one be ordered.

If a report is ordered, the report must be returned to the Board within 30 calendar days. Following its return the Board is then required to take one of the following actions: (1) adopt the initiative as an ordinance without alteration within 10 calendar days, or (2) place the matter on the ballot.

The election at which the initiative must appear on the ballot, unless the Board orders a special election at an earlier point in time, is the February presidential primary election which will be conducted on February 5, 2008.

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 shall be held and consolidates it with the Presidential Primary Election on February 5, 2008, the County may be required to pay at least 50% of the total cost of the election. This 50% cost is estimated to be \$150,000. The State may 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 Elections 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 [Calling an election required to be held as a result of the gathering of sufficient signatures pursuant to Elections Code section 9116 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 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

The proponents of the "Initiative Measure To Allow Deli and Wine Tasting At the Stanly Lane Marketplace" (hereafter "Stanly Lane Deli Initiative") filed their notice of circulation on September 22, 2006. A Title and Summary was prepared and provided to the Elections Department on October 6, 2006. The Title and Summary was provided to the initiative proponents on October 6, 2006 and they were required to submit the necessary signatures to the Registrar of Voters (the "ROV") within 180 calendar days of that date. The signatures were filed with the ROV on April 4, 2007.

An examination of the signatures has demonstrated that more than the requisite number of registered voters (20% of the persons voting in the last election for Governor) have signed the initiative petition and therefore a special election must be ordered. The ROV's certificate showing the sufficiency of signatures dated May 16, 2007 is herewith submitted to the Board. The ROV has notified the proponents of the Stanly Lane Deli Initiative of the sufficiency of signatures.

Elections Code Section 9116 outlines the steps the Board is required to take if an initiative petition is signed by at least 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 the 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, (2) order a special election and place the initiative on the ballot, or (3) order a report discussing various impacts the passage of the initiative might have.

Section 1405 provides that a special election may be consolidated with a previously scheduled regular or special election, notwithstanding the requirement that the election be held not less than 88 days and not more than 103 days following the order of election, if the date on which the election would normally be held is within 180 calendar days of that previously scheduled regular or special election. The two possible dates on which the special election would normally be held are September 4th or September 11th. Those dates are within 180 calendar days of the Presidential Primary on February 5, 2008. Therefore the exception applies and the Board 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.

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 the Stanly Lane Deli Initiative without alteration, may address the effect of the Stanly Lane Deli 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 [NOTE: the limitations referenced relate to Affordable Housing and discrimination in housing issues];

- (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; or
- (8) Any other matters the board of supervisors request to be in the report.

When a land use initiative has been drafted by members of the public the Board has not usually ordered the preparation of a 9111 report. It has, however, ordered such a report in the case of recent initiatives.

If the Board orders a 9111 report, the report must be completed and presented to the Board no later than 30 calendar days after it is ordered; since the Board will not meet on July 5th, the 9111 report would need to be presented to the Board at its June 26, 2007 meeting. Thus the Conservation, Development and Planning Department, which usually prepares such reports in consultation with other County departments, would only have a period of 21 calendar days to prepare a report on this initiative. If a report is ordered, when the report is presented to the Board, the Board must either adopt the ordinance at the next Board meeting or immediately order a special election.

If the Board does not order a 9111 report or schedule the Stanly Lane Deli Initiative for adoption on June 12th, it should adopt the attached resolution calling the election for February 5, 2008.

In addition to the analysis described above, Elections Code section 9160(c) 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:

“(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 it has not been included in the Resolution calling the special election for February 5, 2008. If the Board wishes a fiscal analysis included in the Official Ballot materials the Resolution calling the Election needs to be changed (see page 4 of the Resolution ordering the election). Appropriate language requiring the Auditor to prepare a fiscal analysis will be provided at the Board meeting if the Board decides to require such an analysis.

If the Board wishes a more extensive fiscal analysis than can be accomplished in 500 words it would need to order same as a part of the Section 9111 report.

Finally, during the last election cycle the Board concluded to routinely print the entire text of initiatives in the ballot materials and the attached resolution so provides.

SUPPORTING DOCUMENTS

A . Resolution Calling PP No. 2 Election

CEO Recommendation: Approve

Reviewed By: Molly Rattigan