TO: Board of Supervisors
FROM: Silva Darbinian for Jeffrey Brax - County Counsel
County Counsel
REPORT BY: Jeffrey Brax, COUNTY COUNSEL - 8628
SUBJECT: Commercial Cannabis Cultivation Initiative; Receipt of 9111 Report

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 Measure "J" ("Napa County Cannabis Regulation Initiative"); and
2. Take one of the following actions:
   a. Adopt the Initiative without alteration at a regular or special meeting of the Board on or before August 30, 2019; or
   b. Adopt a resolution placing the Initiative on the ballot for the March 3, 2020 Presidential Primary election, for the purpose of enabling the people of Napa County to approve or reject the Initiative.

EXECUTIVE SUMMARY
The "Napa County Cannabis Regulation Initiative" petition was circulated for signatures in May, 2019 and has qualified for the ballot. If adopted by the Board of Supervisors or placed on the ballot and passed by the voters, the Initiative would amend the Napa County Code to (1) add commercial cannabis cultivation to the definition of "agriculture," (2) allow commercial cannabis activities in the Agricultural Preserve, Agricultural Watershed and Airport zoning districts under specified conditions, and (3) impose an annual tax on commercial cannabis activities.

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. Motion to receive the 9111 report and order it filed with the Clerk of the Board, second, and vote.
6. If a roll call vote is requested by any member of the Board of Supervisors, the Clerk calls the roll and the Chair announces the result of the vote.
7. Motion to either: (a) direct staff to prepare an ordinance that contains the text of the Initiative without alteration and submit it to the Board of Supervisors for adoption within 10 days, or (b) adopt a resolution placing the Initiative on the March 3, 2020 Presidential Primary election; second and vote on this motion.

**FISCAL IMPACT**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>Is there a Fiscal Impact?</td>
<td>Yes</td>
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<tr>
<td>Is it currently budgeted?</td>
<td>No</td>
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<tr>
<td>What is the revenue source?</td>
<td>General Fund - adding this measure to the March 3, 2010 ballot will result in the Elections Division of the County Clerk's Office incurring approximately $75,000 in costs due to including Measure &quot;J&quot; on the ballot along with related official election materials.</td>
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<td>Is it Mandatory or Discretionary?</td>
<td>Mandatory</td>
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<td>Is the general fund affected?</td>
<td>Yes</td>
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**Future fiscal impact:**

**Consequences if not approved:** The Board of Supervisors will be in violation of its mandatory duty to either adopt the Initiative on August 20, 2019 (or within 10 days of August 20, 2019) or immediately order that an election be held on the Initiative. There are no other options since this is a citizen signature driven initiative.

**Additional Information:**

**ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** Calling an election required to be held as a result of the gathering of sufficient signatures pursuant to Elections Code section 9118 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]. Alternatively, adopting an initiative ordinance in lieu of calling an election is also deemed a ministerial act and 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 "Napa County Cannabis Regulation Initiative" has been certified by the Registrar of Voters ("ROV") as containing sufficient signatures to qualify for placement on the ballot at the March 3, 2020 Presidential Primary election.

Proponents of the Initiative circulated their petition and submitted their signatures within the deadlines set forth in the Elections Code. The signed petitions were submitted on May 28, 2019.
Pursuant to Elections Code Section 9114, the ROV completed its review of the signatures on the Initiative petition and determined that more than the requisite number of registered voters signed the petitions. The ROV certificate showing the sufficiency of signatures was prepared and submitted to the Clerk of the Board of Supervisors on or about July 8, 2019. At its July 23, 2019 meeting, the Board of Supervisors received the ROV's certificate.

Elections Code Section 9118 outlines the steps the Board is required to take if an initiative petition is signed by at least 10 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, without alteration, to the voters 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 addressing the various impacts and effects of the initiative petition pursuant to Elections Code Section 9111.

9111 Reports

At its July 23, 2019 meeting, the Board elected to order reports pursuant to Elections Code Section 9111 addressing the various potential impacts of the passage of Initiative. The Board ordered that this report be returned within 30 days. 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 Initiative without alteration, may address the effect of the 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.

The Board ordered that the 9111 Report address the areas set forth in Elections Code Section 9111 in addition to relevant questions raised by the Board and during public comment. The County Counsel's Office, and the Department of Planning, Building and Environmental Services, in consultation with other County departments including the Sheriff's Office, Agricultural Commissioner, and Public Health Division, worked with consultants HDL Companies and outside counsel Goldfarb & Lipman, to address the questions presented.
Actions to be Taken

At the meeting at which the 9111 Report is presented to the Board, the Board must 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 9111 report was presented; or 2) submit the Initiatives 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 (March 3, 2020 Presidential Primary Election).

SUPPORTING DOCUMENTS

A. Resolution Calling Election
B. 9111 Report

CEO Recommendation: Approve
Reviewed By: Helene Franchi