

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL  
FROM: TERESA STRICKER, INTERIM CITY ATTORNEY  
CITY ATTORNEY'S OFFICE  
SUBJECT: JUNE 2017 ELECTION BALLOT AND REBUTTAL ARGUMENTS  
FOR CANNABIS INDUSTRY TAX

AGENDA ACTION: MOTION(S)

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RECOMMENDATION

Staff recommends that the Council, by motion, determine whether it wishes to submit a ballot argument and rebuttal argument in favor of a proposed measure for the June 6, 2017 ballot to authorize the Council to impose a local business tax on the cannabis industry at rates high enough to cover the costs to the City of allowing this emerging industry to operate in Santa Rosa; and determine the process by which Council will draft the ballot arguments, should it choose to submit arguments for the measure.

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EXECUTIVE SUMMARY

Under the California Elections Code, the City Council has the first priority to submit ballot arguments in favor of the proposed measure, and if any opposition argument is filed against the measure, to submit a rebuttal argument to that opposition argument. Alternatively, under the Elections Code, the Council may authorize one or more of its members to submit the argument. If the City Council chooses not to submit, or have its members submit, an argument in favor of the measure, then under the Elections Code, the arguments may be authored either by a bona fide association of citizens or by individual voters who are eligible to vote on the measure.

BACKGROUND

In 1996, the California voters passed ballot measure Proposition 215, known as the "Compassionate Use Act," authorizing the use of cannabis for medical use. In 2015, the State Legislature enacted a new regulatory framework for the medical cannabis industry.

On November 8, 2016, the California State election passed ballot measure Proposition 64, known as "the Adult Use of Marijuana Act." Proposition 64 legalized adult

recreational use of cannabis and brings businesses that support that use into a regulated market. Proposition 64, like state laws regulating medical cannabis, allows the City of Santa Rosa to enact local regulations on the cannabis industry in addition to the regulations that will be imposed by the state.

With the passage of Proposition 64 and the enactment of new state laws, the City will incur substantial costs to regulate newly-legalized cannabis businesses, including considering, adopting and enforcing regulations, administering associated business permits, providing for business inspections, supporting public safety, protecting the environment, and providing education to the industry and community. Expenditures are estimated to be a total of at least \$900,000 annually. The City's current business tax ordinance, which applies to all businesses operating in Santa Rosa, does not allow the City to impose a high enough tax on cannabis businesses to generate the necessary financial resources to support the unique needs of this emerging industry.

The City cannot recover its full costs of allowing the cannabis industry to operate in Santa Rosa under the City's current general business tax provisions because the general business tax is capped at \$3,000. Accordingly, a cannabis industry specific business tax is needed to ensure that general fund resources used for other critical City services will not be exhausted as a result of allowing this emerging industry to operate in Santa Rosa.

At the December 6, 2016 Council meeting, the Planning and Economic Development and Finance Department staff recommended that Council, by resolution, submit the proposed measure to the voters at the March 7, 2017 election. If adopted by the voters, the proposed ordinance would authorize the Council to impose a cannabis-specific tax, rather than the City's existing general business tax, on cannabis-related businesses -- including commercial cultivators, nurseries, transporters, distributors, testing labs, manufacturers, dispensaries and delivery providers.

At the Council's December 6, 2016 meeting, in light of the imminent financial burdens on the City caused by the cannabis industry and the passage of Proposition 64, staff recommended that all Council members in attendance for this item vote unanimously to declare a fiscal state of emergency based on the passage of Proposition 64. By doing so, the Council would be able to submit the proposed ballot measure to the voters at a special election. Without such a unanimous declaration, the Council would be required to wait until the next City General Election in November 2018 to submit a tax measure requiring approval of only a simple majority of voters.

Staff also recommended that the Council submit an ordinance to the voters that would authorize the Council to impose a local business tax on the cannabis industry at rates high enough to cover the costs to the City of allowing this emerging industry to operate in Santa Rosa. The Council continued this item, with direction to staff to return with the proposed emergency declaration as well as the business tax ordinance for submission to City voters at the June 6, 2017 election.

The Council continued this item until a regular Council meeting in February 2017. The Council directed staff to return with the proposed emergency declaration as well as the business tax ordinance for submission to City voters at the June 6, 2017 election. Staff intends to bring forward the emergency declaration and ordinance on March 7, 2017.

### PRIOR CITY COUNCIL REVIEW

Not Applicable.

### ANALYSIS

California Elections Code sections 9280-9287 govern the process for submitting ballots in favor of, and against, city ballot measures, as well as submitting rebuttal arguments. More specifically, Elections Code sections 9282 and 9287, taken together, grant the City Council the first priority in submitting an argument in favor of referendum measures or measures the Council places on the ballot. Alternatively, under Elections Code section 9287, the Council may authorize one or more of its members to submit the argument.

If the City Council chooses not to submit an argument in favor of the measure, then under Elections Code section 9287, the following priority order would apply to select the author of the argument:

- A bona fide associations of citizens
- Individual voters who are eligible to vote on the measure

If an argument is submitted against the measure, then under Elections Code section 9285, the City Council (or the members it authorizes) could also choose to submit a rebuttal argument to that opposition argument. Alternatively, the Council (or authorized members) could authorize another person to “prepare, submit, or sign the rebuttal argument.”

If the Council chooses to submit the argument in favor of the measure, it needs to determine the process for drafting and approving that argument. Possible approaches would be to delegate to an ad hoc Council committee the authority to draft and submit the argument on behalf of the Council, have such a committee draft the argument, and bring the draft back to the Council for approval, or direct staff to draft a proposed argument for the measure, and bring the draft argument to Council for revision and approval.

Regardless of which approach the Council chooses, it needs to ensure that its process for approving arguments can be completed in a timely manner that meets the deadlines for submitting ballot arguments. Under California Elections Code section 9286, the City Clerk is responsible for establishing the deadlines for the submission of ballot arguments and rebuttal arguments), taking into consideration the time reasonably necessary to prepare and print the arguments and voter information guides, and to

permit the 10-calendar-day public examination of ballot pamphlet materials.

For the June 7, 2017 election, the City Clerk currently anticipates that the deadline for arguments would be on March 20, 2017, and the deadline for rebuttal argument would be on March 30, 2017.

Finally, there are certain requirements that govern the format and submission of ballot arguments:

- The primary argument must be 300 words or fewer. (Cal. Elect. Code§ 9282(c)).
- The rebuttal argument must be 250 words or fewer. (Cal. Elect. Code§ 9285(a)).
- The printed name and signature or printed names and signatures of the author or authors submitting it must accompany the argument. (Cal. Elect. Code §§ 9283).
- No more than five signatures may accompany the argument. (*Id.*)

This last point means that the Council may choose to have additional persons sign its ballot argument, provided the total number of signers (including the Council) does not exceed five.

#### FISCAL IMPACT

There is no direct cost to submit a ballot argument and rebuttal argument in favor of both proposed measures. The cost associated with submitting the matter to the voters have been appropriated.

#### ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guidelines section 15378.

#### BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not Applicable.

#### NOTIFICATION

Not Applicable.

#### ATTACHMENTS

None.

## CONTACT

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