



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Toni Taber, CMC
City Clerk

SUBJECT: Initiative Ordinance Amending
Title 6 and Title 20 of the San Jose
Municipal Code Regarding Medical
Marijuana Collectives

DATE: February 17, 2016

RECOMMENDATION

- (a) Adopt a resolution superseding Council Resolution No. 77207, restating the Council's November 4, 2014 vote to call and give notice, on its own motion, of a Special Municipal Election to be held on June 7, 2016 to submit to the electors of the City of San Jose the Medical Marijuana Initiative, as required by Elections Code Section 9215 and San Jose City Charter, Article 16, Section 1603(a)(2);
- (b) Council discussion and consideration of whether the full text of the proposed ordinance should be printed in the Voter's Sample Ballot, pursuant to Elections Code 12111, to be incorporated in the resolution restating the calling of the election;
- (c) Council discussion and consideration of whether to adopt provisions to permit rebuttal arguments, pursuant to Elections Code Section 9285, and if rebuttal arguments are permitted, then permitting any member or members of the City Council to submit a rebuttal argument, to be incorporated in the resolution restating the calling of the election;
- (d) Council discussion and consideration of whether to authorize the City Council or any member or members of the City Council to submit arguments, pursuant to Elections Code Section 9282, to be incorporated in the resolution restating the calling of the election; and
- (e) Direct the City Clerk to take all other actions necessary to place this measure for a June 7, 2016, Special Municipal Election, if needed, to be incorporated in the resolution restating the calling of the election.

BACKGROUND

In March of 2014, the proponents of an initiative filed a notice of intent to circulate a petition to amend the San Jose Municipal Code Title 6 and Title 20 to include medical marijuana collectives as an allowed land use in agricultural, commercial pedestrian, commercial neighborhood, industrial park, light industrial and heavy industrial zoning districts, and to establish a

registration process and zoning code verification certificate process. At the time that the notice of intention was published, the voter registration report on file with the California Secretary of State confirmed 407,442 registered voters within San Jose. City Charter Section 1603 (a)(2) requires that an initiative petition be signed by at least five percent (5%) of the total number of eligible registered voters (20,372 valid signatures) to qualify the measure for the next General Election; and 8% (32,595 valid signatures) to qualify for a special election.

On August 19, 2014, the proponents of the initiative petition submitted 41,054 signatures, as counted by the Office of the City Clerk during a prima facie review and raw count of the petition. The City Clerk determined there appeared to be a sufficient number of signatures to proceed.

On September 16, 2014, the Santa Clara County Registrar of Voters certified the petition regarding changes to Title 6 and Title 20 of the San José Municipal Code to Include Medical Marijuana Collectives to be sufficient (see attachment A). The initiative petition was found to be sufficient with a total of 25,360 signatures which is 6.2% of the Registered Voters in the City of San Jose in the last report filed by the Registrar of Voters with the Secretary of State in effect at the time the notice of intent to circulate the petition was published. The initiative petition would amend the San Jose Municipal Code, Title 6 and 20 to include medical marijuana collectives as an allowed land use in agricultural, commercial pedestrian, commercial neighborhood, industrial park, light industrial and heavy industrial zoning districts, and to establish a registration process and zoning code verification certificate process (see Attachment B).

Initiatives are subject to conditions specified in the City Charter and the California Elections Code. Once certified as qualified, the City Council must make a determination of how to proceed within ten (10) days of notice of the certification. Consistent with the City Charter and California Elections Code §9215, the Council had the following options to consider:

a. Adopt Ordinance as proposed:

Under City Charter Section 1603 (a) (2) and California Elections Code §9215 (a), the Council may adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or

b. Order a Special Municipal Election:

If the City Council does not adopt the proposed ordinance in its entirety, then under City Charter, Article 16, Section 1601 (e) a vote of ten Council Members can call a special election. The Council would have to adopt a resolution with a vote of at least 10 affirmatives calling an election to submit the initiative to the voters at a Special Municipal Election on a date to be decided but no earlier than 88 days or more than 103 days from the date of the resolution; or

c. Order an election on the next General Election Date:

If the City Council does not adopt the proposed ordinance in its entirety, then under City Charter, Article 16, Section 1603 (a) (2), if the petition is signed by at least five percent (5%) of eligible registered voters in effect at the time the notice of intent to circulate the petition is published, then the proposed ordinance, without alteration, shall be submitted by the Council to the voters at the next General Election, which is June 7, 2016.

On November 4, 2014, the City Council adopted Council Resolution 77207 calling a Special Municipal Election to be consolidated with the General Election on Tuesday, June 7, 2016 to submit the initiative to the voters and directing the City Clerk to return to the City Council at a later date with all the necessary actions related to consolidation of the Special Municipal Election with the General Election.

On December 11, 2015, the Registrar of Voters requested that the resolution calling the Special Municipal Election be revised to include the additional information and direction regarding publication of the ordinance and submittal of arguments.

ANALYSIS

Measure Cost

The Registrar of Voters estimates the City's total cost of the June 7, 2016 elections excluding any measures at \$124,166. This estimate includes elections for the position of Councilmembers in Districts 2, 4, 6, and 8, and 10 and does not include the costs of the candidate statements, which are paid for by the candidates.

In adopting a resolution calling a special election for a ballot measure, the Council may consider certain options which affect the cost of the election. The estimated total cost of the ballot measure will be approximately \$924,478. This includes the costs for the City Attorney's Impartial Analysis, arguments for and against the measure, rebuttal arguments, and the full text of the measure. A breakdown of the costs is detailed below:

Item	Measure
Base Cost	\$732,668
Impartial Analysis (one page)	\$17,440
Arguments (one page per argument)	\$34,880
Rebuttals (one page per argument)--optional	\$34,880
Full Text (6 pages estimate)—optional (\$17,440 if not including full text)	\$104,610
Total Cost Measure	\$924,478

The City Council has appropriated \$2,200,000 of the General Fund for election costs in 2015-2016 (Appropriation 3955 – Elections and Ballot Measures). Assuming the Registrar of Voter's estimated City costs for the June 7, 2016 elections is \$1,048,644 there would be sufficient funding for the marijuana regulation measure. Additionally, the City Council's decisions pertaining to the inclusion of rebuttal arguments and/or the full measure text in sample ballots can offer significant cost savings.

IMPARTIAL ANALYSIS:

Under Elections Code Section 9280, at the direction of the City Council, the City Attorney "shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure." The Impartial Analysis appears preceding the arguments for and against the measure in the voter's handbook and is limited to 500 words. The cost for this one page analysis is estimated at \$17,440 per page. The deadline to submit the Impartial Analysis to the City Clerk is 12:00 Noon, Tuesday, March 22, 2016.

BALLOT ARGUMENTS:

Arguments for and against a ballot measure may be submitted that are 300 words or less (Elections Code Section 9282). The deadline to submit ballot arguments to the City Clerk is 12:00 Noon, Tuesday, March 15, 2016. Only one argument for and one argument against will be printed in the Sample Ballot. A ballot argument must be accompanied by the printed name and signature or printed names and signatures of the author or authors submitting it, or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. In addition, no more than five signatures will appear with any argument. In case any argument is signed by more than five authors, the signatures of the first five shall be printed. (Elections Code Section 9283.)

If more than one argument for or against is submitted, the Elections Code establishes a priority order, shown below (Elections Code Sections 9282 and 9287):

1. The legislative body, or member or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
3. Bona fide associations of citizens
4. Individual voters who are eligible to vote on the measure.

The ballot arguments are generally one page per side, two pages total, and the estimated cost is \$17,440 per page per measure or a total of \$34,880 for two arguments.

REBUTTAL ARGUMENTS:

In addition, the Council has the discretion to permit rebuttals to arguments to be printed in the Sample Ballot. Rebuttal arguments must be 250 words or less. (Elections Code Section 9285). The Council determined not to allow rebuttal arguments for Measure E—Cardroom Gaming in the November 2012 election, nor did they allow rebuttal arguments for Measure G—Employee Retirement Boards Governance Structure and costs were reduced accordingly. The Council, however, did permit rebuttal arguments for Measure B in the June 2012 election, and for Measure D—Minimum Wage Initiative in the November 2012 election.

If the Council chooses to permit rebuttals to arguments, the deadline to submit rebuttal arguments to the City Clerk is 12:00 Noon, Tuesday, March 22, 2016. The City Clerk will send a copy of an argument in favor of the measure to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments. The author or a majority of the authors of an argument relating to a measure may prepare and submit a rebuttal argument or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument, but no more than five persons may sign the rebuttal. (Elections Code Section 9285.)

Rebuttal arguments are generally one page for each side, two pages, at a cost of \$17,440 per page per measure or a total of \$34,880 for two rebuttals.

FULL MEASURE TEXT IN THE SAMPLE BALLOT:

In order to reduce elections costs, over the past few years, the City Council has decided not to include the full text of ballot measures in the sample ballot. Alternatively, the full text of the measure(s) is available on the City's web page in multiple languages or is provided to any person upon request to the City Clerk. The City Attorney's Impartial Analysis would include the following statement:

“If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/index.aspx?NID=446> or call 408-535-1260 and a copy will be sent at no cost to you.” The City Clerk will send, without charge, a copy of the full text of any or all City measures to any person requesting a copy.

The full text of the measure is estimated to take 6 pages, at a cost of \$104,610. The cost would be reduced \$87,200 by not including the full text.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the March 1, 2016 Council Meeting.

HONORABLE MAYOR AND CITY COUNCIL

February 19, 2016

Subject:

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COORDINATION

This memorandum was coordinated with the City Attorney's Office.

CEQA

Not a Project, File No. PP10-069(c), Potential actions under Election Code §9214, in response to voter-sponsored initiative.

A handwritten signature in black ink, appearing to read "Toni J. Taber". The signature is fluid and cursive, with the first name being the most prominent.

Toni J. Taber, CMC
City Clerk

For questions please contact Toni Taber, City Clerk, at (408) 535-1270.