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February 3, 2016

Honorable Board of Supervisors
Eric Rood Administrative Center
950 Maidu Avenue
Nevada City, CA 95959

DATE OF MEETING: February 9, 2016

SUBJECT: Consider Resolutions Related to the County-Initiated Ballot Measure Regarding Restrictions on Marijuana Cultivation

1. Resolution Clarifying the Intent of the Board of Supervisors with Respect to the County-Initiated Ballot Measure Regarding Restrictions on Marijuana Cultivation, Providing Direction Regarding the Submission of Written Arguments For and Against the Ballot Measure, and Providing Direction Regarding Preparation of a Fiscal Impact Statement
2. Resolution Amending Resolution No. 16-038 Regarding the Ballot Question for the County-Initiated Ballot Measure Regarding Restrictions on Marijuana Cultivation Scheduled for the June 7, 2016, General Election

RECOMMENDATION: Adopt the proposed Resolutions

FUNDING: N/A

BACKGROUND: On January 12, 2016, the Board of Supervisors adopted Resolution No. 16-038 calling for an election on June 7, 2016, and authorizing that a proposed ordinance regarding marijuana cultivation regulations, including a ban on outdoor cultivation, be submitted to the voters. At the same meeting, the Board of Supervisors adopted Ordinance No. 2405 which also bans outdoor marijuana cultivation and became effective immediately upon adoption. After these actions were taken, there was significant community confusion regarding the post-election processes, what the law would be if the proposed ballot measure is not approved by the voters, and how the Board would respond if the proposed ballot measure is not approved.

Resolution Clarifying the Intent of the Board of Supervisors

The Election Process

Elections Code section 9140 provides that the Board of Supervisors may submit to the voters an ordinance for amendment or enactment of an ordinance. If the ordinance receives a majority of the votes cast, the ordinance will be enacted. The County Elections official has 28 days after the election to certify the election results to the Board of Supervisors, who in turn will accept and certify the results. The new ordinance becomes effective ten (10) days after the date on which the Board takes this action, and would have the same force and effect as an initiative.

If the ballot measure is not approved by a majority of votes cast, then the ordinance will not become effective. The recently adopted urgency ordinance, including the ban on outdoor cultivation, would remain in effect by operation of law.

However, marijuana cultivation in Nevada County has been a very controversial and contentious communitywide issue for many years. In placing this measure on the ballot, it was the intent of the Board of Supervisors to provide the community with a full and fair forum in which to vote and express their opinions regarding marijuana cultivation in Nevada County and whether outdoor marijuana cultivation should be allowed. The attached Resolution confirms and clarifies the Board's intentions with respect to abiding by the will of the voters, including its commitment to repeal the outdoor cultivation ban and consider alternative outdoor regulations should the measure fail to pass in June.

Request for Additional Direction

As part of the Resolution calling the election, staff is also requesting that the Board provide direction regarding the following standard election procedures:

1. **Written Ballot Arguments**

Elections Code section 9162(a) authorizes the Board of Supervisors, or any member or members of the Board, to file a written argument for or against any County measure. The written ballot argument may not exceed 300 words in length and may include up to five (5) authors. The Elections Official will print one argument for and one argument against the proposed Initiative and the impartial analysis to be prepared by the County Counsel with each sample ballot, based on the priority set forth in Elections Code section 9166. A written ballot argument for or against the measure which is submitted by the Board of Supervisors, or a member of the Board, will be given preference and priority over any other written arguments that may be submitted.

The proposed Resolution would authorize Supervisors Miller and Weston to write and file the primary argument in support of the ballot measure on behalf of the Board of Supervisors, and to determine who the signatories to the ballot argument will be. If the

Honorable Board of Supervisors
February 3, 2016
Page 3 of 3

Board of Supervisors chooses not to write and file the primary argument in support of the ballot measure and multiple arguments are submitted, then the California Elections Code contains a hierarchy which allows the Elections officials to determine which argument will be included in the voter information pamphlet.

2. Fiscal Analysis

Elections Code section 9160(c), authorizes the Board of Supervisors to direct the County Auditor-Controller to review a proposed ballot measure, determine whether the substance of the ballot measure, if adopted, would affect the revenues or expenditures of the County, and prepare a fiscal impact statement estimating the amount of any increase or decrease in revenues or costs to the County if the proposed ballot measure is adopted. The County Auditor-Controller's fiscal impact statement may not exceed 500 words in length and would be printed with the Impartial Analysis and the written arguments for and against the measure.

The Board may discuss and consider whether or not the County Auditor-Controller should be directed to prepare a fiscal impact statement for the proposed ballot measure. Because this is not a tax or revenue oriented ballot measure, staff does not recommend that a fiscal impact statement be prepared at this time. The proposed Resolution reflects this recommendation.

Resolution Amending Resolution No. 16-038

In light of the recent community confusion over the proposed ballot measure, staff is recommending that the ballot question be modified to more clearly state what the effect of the proposed ballot measure would be if adopted by the voters. The proposed Resolution amending Resolution 16-038 would revise the wording of the proposed ballot question to be submitted to the voters as set forth in the Resolution. The remaining provisions of Resolution 16-038, including the actual text of the ballot measure, would not be affected by this modification.

Very truly yours,



Alison A. Barratt-Green
County Counsel

ABG/ch

Attachments:

1. Proposed Resolution Clarifying the Intent of the Board of Supervisors
2. Proposed Resolution Amending Resolution No. 16-038
3. Resolution No. 16-038 Calling Election for Ballot Measure, adopted January 12, 2016