

Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

**FROM: RICHARD DOYLE
DENNIS HAWKINS**

**SUBJECT: ACTIONS RELATED TO THE
CARDROOM INITIATIVE**

DATE: July 27, 2012

RECOMMENDATION

1. Accept the Certificate of Sufficiency issued by the County of Santa Clara Registrar of Voters regarding the Cardroom Initiative.
2. Adopt a resolution calling an election to submit the initiative ordinance to the voters at the next General Election on Tuesday, November 6, 2012 consistent with San Jose City Charter, Article 16, Sections 1601 and 1603 (a) (2); San Jose Municipal Code Sections 16.04.010 – 030; and California Elections Code Section 9215.

CARDROOM GAMBLING

Shall gambling be expanded by amending the Municipal Code to (1) allow the maximum number of Card Tables in San José to increase from 98 to 128 on January 1, 2013 and from 128 to 158 on January 1, 2014; (2) allow Cardrooms to offer any form of gambling lawful in California after July 1, 2012, without additional voter approval; and (3) require San José to review rules for additional permissible gambling?

YES	
NO	

3. Council discussion and consideration of whether the full text of the proposed ordinance should be printed in the Sample Ballot pursuant to Elections Code Section 12111.
4. Council discussion and consideration of adopting provisions designating a member or members of the City Council to submit an argument on behalf of the Council against the initiative, pursuant to Elections Code Section 9282(a).

5. Council discussion and consideration of adopting provisions to permit rebuttal arguments, pursuant to Elections Code Section 9285. If rebuttal arguments are permitted, Council discussion and consideration of designating a member or members of the City Council to author and submit a rebuttal, if any.

OUTCOME

The Santa Clara County Registrar of Voters has certified the petitions submitted on behalf of the cardroom initiative to be sufficient and qualified for the ballot (see Attachments 1 and 2). Pursuant to the requirements of the California Elections Code and San Jose Municipal Code, on August 7 the Council must take the following actions: a) accept the Certificate of Sufficiency; and b) adopt a resolution calling an election to submit the initiative to the voters at the next General Municipal Election to be held on Tuesday, November 6, 2012.

The Council previously directed staff to prepare a report on the effects of the proposed ordinance. The report is posted with this Agenda item and includes the elements defined in California Elections Code Section 9212.

BACKGROUND

1. Initiative Process

On May 2, 2012, proponents of an initiative filed a Notice of Intent to circulate a petition which would amend the San Jose Municipal Code, Title 16 to increase the number of authorized tables in each of the City's two Cardrooms from the current forty-nine (49) per club (98 total) to up to 79 tables per club (158 total). Further, the measure would allow any form of gambling lawful in the State of California as of July 1, 2012. The Title and Summary and full Text of the Measure are both included with this memo as Attachments 3 and 4. At the time that the Notice of Intention was filed, the voter registration report on file with the California Secretary of State showed 388,735 registered voters within San Jose. City Charter Section 1603 (b) requires that an initiative petition to enact an ordinance be signed by at least five percent (5%) of the total number of eligible registered voters to qualify the measure for either a Special Municipal Election or the next General Election (which is November 6, 2012). Based on that registration, the initiative requires 19,437 valid signatures of eligible San Jose registered voters to qualify.

On June 13, 2012, the proponents of the initiative petition submitted 33,638 signatures on 1,947 sections. The Office of the City Clerk conducted a prima facie review and raw count of the petition and determined that there appeared to be a sufficient number of signatures to proceed.

On June 14, 2012, the petition was transferred to the County of Santa Clara Registrar of Voters for signature verification. The Registrar of Voters began the process of verifying a three percent sample (3% sample) of the signatures contained on the petitions, which is permissible under and consistent with the Elections Code. Based on this sample, the Registrar determined that of the 1,009 signatures examined, 771 were valid (76.4%) and 238 were invalid (23.4%). The Registrar projected that 25,702 signatures would be valid, or 132% of the required 19,437 signatures necessary for the petition to be valid and qualify for the ballot. Therefore, the Registrar has certified the petition to be sufficient.

Total Number of Signatures Submitted	33,638
Number of Signatures Verified (3% sample)	1,009
Number of Signatures found Sufficient	771
Number Signatures found Not Sufficient	238
Projected Number of Signatures found Sufficient	25,702
Minimum Number of Sufficient signatures required	19,437

2. City Charter Requirements

The procedures for placing an initiative to enact an ordinance on the ballot are established in San Jose City Charter Section 1603 (a) (2). The Charter specifies that to qualify the measure, the petition must be signed by at least five percent (5%) of the number of eligible voters according to the last report of registration filed by the County Registrar of Voters with the Secretary of State which is in effect at the time the notice of intent to circulate the petition is published. If the proposed ordinance is not required to be, or for any reason is not, submitted to the voters at a Special Municipal Election, and is not adopted without alteration by the Council, then the proposed ordinance, without alteration, shall be submitted by the Council to the voters at the next General Election. The Charter further specifies that the Council may not at the same time submit an alternative ordinance to the voters.

3. Other State and Municipal Code Provisions

Gaming in San Jose is regulated under provisions of the State of California Gambling Control Act, Business and Professions Code, Division 8, Chapter 4, and the San Jose Municipal Code, Title 16.

San Jose Municipal Code Section 16.04.010 specifies that there shall be no expansion of cardroom gambling in the City without majority approval of the voters of the City. Further, under the provisions of Municipal Code Section 16.04.020 and Measure K adopted by the voters in June 2010, the maximum number of Cardrooms is set at two

(2) and the total number of authorized card tables is ninety-eight (98), forty-nine (49) per Cardroom. Lastly, under Municipal Code Section 16.04.030, the City Council may not take any action to expand any gambling, including increasing the number of Cardrooms, the number of card tables, the use of slot machines or devices, or gambling devices as defined by state gambling law, any form of gambling which was not allowed under the Municipal Code on or before June 30, 1996, or which is prohibited under state gambling law on or before June 30, 1996 unless authorized by a vote of the people.

4. Election Procedures

Initiatives are subject to conditions specified in the City Charter and the California Elections Code. Under California Elections Code §9215, the Council has four options to consider:

a) Report on the Effect of the Initiative:

As previously directed by the Council, along with this memo, Staff has submitted a report which complies with Elections Code §9212 on the effects of the proposed initiative.

b) 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. However, in this case, due to the restrictions on the Council's authority based upon the Municipal Code sections in Title 16 outlined above, the City Council may not implement this proposed ordinance without submitting it to the ballot for a public vote.

c) Order a Special Municipal Election:

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, may be submitted by the Council to the voters at a Special Municipal Election, no earlier than 88 days before the date of the resolution. However, because of the proximity of the November General Election, submitting the proposed ordinance to the voters at a Special Election is impractical and unnecessary.

d) Order an election on the next General Election Date:

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 November 6, 2012. The deadline for the Council to adopt a resolution to submit the proposed ordinance to the voters is August 10, 2012.

e) Ballot Arguments:

Under Elections Code Section 9282 (a), the persons filing an initiative petition may file a written argument in favor of the ordinance. The City Council may submit an argument against the ordinance. Ballot arguments for or against the measure shall not exceed 300 words in length (EC 9282 (c)) and may include up to five (5) authors (EC 9283).

f) Rebuttal Arguments:

Under Elections Code Section 9285, rebuttal arguments to the arguments for or against the measure may be authorized. If allowed, the rebuttals shall not exceed 250 words in length (EC 9285 (a) (3)) and may include up to five (5) authors. The author or a majority of authors of an argument 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 (EC 9285 (a) (2)).

ANALYSIS

The initiative process in San José is guided by the City Charter and the California Elections Code. Once certified as qualified, under Elections Code Sections 9114 and 9211, the City Clerk has a duty to bring the Certificate of Sufficiency to the City Council at its next regularly scheduled meeting. The City Council must make a determination of how to proceed within ten (10) days of notice of the certification.

In placing this item on the August 7, 2012 City Council Agenda, the City will comply with legal requirements to accept the Certificate of Sufficiency and to submit the initiative to the voters.

COST SUMMARY//IMPLICATIONS

The cost for the signature verification of the initiative by the Santa Clara County Registrar of Voters was \$7,367. Based on the most recent estimates provided by the Registrar of Voters, the cost of the first city-wide ballot measure on the November 6, 2012 ballot will be approximately \$824,000. The second and subsequent measures each will cost approximately \$345,000. The City Council will be considering action on two other citywide ballot measures on August 7, including the Minimum Wage Initiative and a Retail Sales and Use Tax Measure.

PUBLIC OUTREACH/INTEREST

This action does not meet the criteria set below; however the Office of the City Clerk will post the item on the City's Website for the August 7, 2012 City Council Agenda.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council, or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

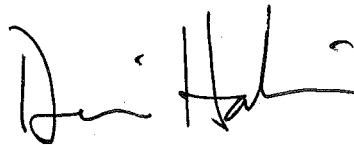
This memorandum has been coordinated with the Office of the City Manager.

CEQA:

Not a project.



RICHARD DOYLE
City Attorney



DENNIS D. HAWKINS, CMC
City Clerk

For questions please contact Dennis Hawkins, City Clerk, at (408) 535-1275 or Lisa Herrick, Senior Deputy City Attorney at (408) 535-1963.