

REPORT TO THE CITY COUNCIL

SUBJECT:

First Reading and Introduction of Ordinance No. 2019-8 Adding Chapter 6.36 to the Municipal Code Regulating Smoking and Tobacco Product Use.

DISCUSSION:

The Council received a presentation from various organizations, including the County Department of Public Health requesting an ordinance that prohibited smoking within City buildings, and City parks, or at public events in the City that are sponsored, in whole or in part, by the City. The proposed ordinance prohibits smoking, in all of its conceivable forms including use of electronic vaping devices and/or cannabis use or use of other products that produce vapor or aerosol, whether or not it contains tobacco or cannabis, at all City parks, and all City buildings, and at public events that are sponsored by the City, in whole or in part. The ordinance provides, and it is recommended that to apprise persons of the prohibition appropriate signs be posted at City buildings and parks, otherwise the prohibition is difficult, if not impossible, to enforce. The ordinance itself sets a penalty for a violation that is well below, for a first offense, the amounts for other violations of the Municipal Code, whether those are infractions or misdemeanors. This form of violation would clearly be an infraction and since the idea is to encourage compliance so that we actually have smoke free parks and facilities those fines increase significantly if there is a second or third violation. The ordinance can be enforced in any manner allowed by law or by the Parlier Municipal Code either by administrative citation or criminal citation sent to the District Attorney's Office for prosecution or a civil action against the offender.

RECOMMENDATION:

Introduce and waive First Reading of Ordinance No. 2019-08.

FISCAL IMPACT:

Negligible, although the City would need to pay for the erection of appropriate signs at City buildings and parks.

Prepared by:

Neal E. Costanzo, City Attorney

AGENDA ITEM: 10

MEETING DATE: October 3, 2019

DEPARTMENT: Administration

REPORT TO THE CITY COUNCIL

SUBJECT:

First Reading and Introduction of Ordinance 2019-09 Amending Chapter 5.05 of the Municipal Code Relating to Licensure of Tobacco Product Retailers.

DISCUSSION:

The City adopted in 2012 an ordinance that requires the licensing of persons or businesses that sell “tobacco products” at retail. Since that ordinance was adopted, the Legislature has changed the definition of the tobacco product and smoking to include such things as vaping, use of e-cigarettes, and the use of cannabis or any other device, whether or not it includes tobacco that involves the inhaling of smoke, vapor, aerosol, or the ingesting of any similar substance. The amendment to the Ordinance is to the definitions section of the Ordinance only. It changes the definition of tobacco products and adds a definition of smoking to conform to what California law defines as a tobacco product or smoking.

RECOMMENDATION:

Introduce and waive First Reading of Ordinance 2019-09

FISCAL IMPACT:

None.

Prepared by:

Neal E. Costanzo, City Attorney

REPORT TO THE CITY COUNCIL

SUBJECT:

Discussion and Direction Relative to Public Outreach for November 5, 2019, Special Election on one-cent sales tax, Measure S.

DISCUSSION:

The City Fresno County Clerk received the resolution and ordinance adopted by this Council on July 18, 2019, at the end of July just in advance of the August 6 deadline. Once filed with the County Clerk, the Resolution and Ordinance – setting a special election for November 5, 2019, to have the voters consider approval of a local one-cent sales tax for general governmental purposes became a “measure” within the meaning of the Political Reform Act and other law that regulates what a City can and cannot do to solicit support for the measure it has placed on the ballot. Once a proposal qualifies for a ballot, as Measure S did in early August, the City is prohibited from spending public funds to campaign for passage of the Measure.

This requirement essentially means, as interpreted most recently in *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, that public funds cannot be used by the City, or City officers or employees, to advocate only one side of an election issue, that is, whether voters should vote “yes” or “no” on Measure S. The City has power to make reasonable expenditures for the purpose of giving voters relevant facts to aid them in reaching an informed judgment when voting on the Measure. This is typically referred to as spending public funds for informational purposes to provide the public with a fair presentation of relevant information relating to the Measure. Numerous problems arise in attempting to distinguish between improper campaign expenditures and proper informational activities. All that is clear is that the governmental entity pursues a proper “informational role” when it simply gives a fair presentation of the facts, although in a number of instances, publicly financed brochures or signs or advertisements which have purported to contain only relevant factual information and have refrained from telling the voters to vote “yes” or “no” have nonetheless been found to be improper campaign literature, which appears to be because brochures and signs are commonly used campaign materials and the “tenor” of a City’s communication is a factor in determining whether it is campaign literature.

The voters have likely already received the ballot packet from the Fresno County Clerk’s Office. It was mailed October 2, 2019. That packet includes the resolution placing the

Measure on the ballot, the adopted ordinance which would impose the one cent sales tax and the impartial analysis and argument in favor of Measure S. The Impartial Analysis and the Argument in Favor of Measure S are both attached. The Argument in Favor of Measure S is only permitted to be made by the City, because there is a statute which specifically authorizes that. The Argument in Favor of Measure S would be improper campaign literature because it expressly asks for a yes vote on the Measure. By contrast, the Impartial Analysis would likely be characterized as exactly that simply an information document. The line between the two is very difficult to draw. An expenditure of public funds includes anything that uses public money to distribute the thing being distributed, whether it be by telephone, videotape, television, flyers or mailers.

Since the difference between permitted informational activities by a city and prohibited campaigning for the measure is such a difficult distinction to make, most cities wishing to see a measure the City Council has placed on the ballot passed will simply form a committee, which can consist of City officers or employees, which can take (and the committee members may make) contributions, so long as the proper filings are made with the Elections Officer which in this case is the City's Clerk. The City cannot contribute public funds to that effort.

A sample one-page mailer that could be included in, for example, water bills or separately mailed which is informational only and does not cross the line into impermissible campaigning is attached. It is unknown the extent to which Parlier voters are receptive to this sort of notice being received from the City, particularly if it is included in a bill but the conventional wisdom is that most informational materials that accompany a bill are rarely read by anyone. Parlier voters, like most, are likely to be more receptive to in-person receipt of flyers and other campaign materials or the viewing of signs posted throughout the community. To generate those types of materials, a committee must be formed and the contributions made to the committee used as the sole source of financing those. Since the special election is on November 5, 2019, basically one month away, if the City wishes to distribute campaign literature it needs to start now to form the committee and start generating signs and flyers. Informational literature such as what is attached to this Staff Report can be distributed by the City at any time up to and including the date of the Special Election.

RECOMMENDATION:

Staff recommends that Council discuss how they wish to promote Measure S, if at all, and whether a committee should be formed so that actual campaign literature may be disseminated to the public.

FISCAL IMPACT:

None.

Prepared by:

Neal E. Costanzo, City Attorney

IMPORTANT FACTS RELATING TO THE CITY OF PARLIER NOVEMBER 5, 2019, SPECIAL ELECTION

- The Special Election set for the City of Parlier for November 5, 2019, is to vote on a measure placed on the ballot by unanimous action of the City Council to have a local one cent sales tax in the City of Parlier.
- Parlier, unlike most cities in Fresno County does not have a local sales tax and the cumulative tax rate on retail sales in Parlier is 7.975%. The percentage is 8.975% in most cities in Fresno County because most cities have a one cent sales tax.
- In its resolution setting the Special Election, the City Council cited its inability to maintain and continue to provide essential City services at current levels without additional revenue to fund those services because the City's expenses are unavoidably increasing and unless additional funds are secured, the community faces the potential for reductions of services and deteriorating facilities that are not repaired.
- If the measure placed on the ballot for the Special Election, Measure, S, the one cent sales tax fails, the City will be faced with ever increasing annual budget deficits that unless abated by enhancement of revenues could result in reduction of service levels including Police service, senior and youth programs and a delay of repair of aging infrastructure and facilities.
- The proposed measure, if approved, results in the addition of a one cent sales tax that will be payable exclusively to the City of Parlier and would add a penny to an item that cost one dollar or one dollar to the price of an item that cost one hundred dollars. The majority of cities in Fresno County, and elsewhere, have, as result of increases in expenditures necessary to maintain service levels have all enacted one cent or slightly lower local sales tax. Approval of Measure S would increase the sales tax in Parlier to 8.975% which is the same rate charged by most cities in Fresno County, including those cities that are geographically the closest to Parlier.

IMPARTIAL ANALYSIS BY CITY ATTORNEY, CITY OF PARLIER

Measure S entitled the "City of Parlier Sales Tax Measure" will appear on a ballot for a Special Municipal Election on November 5, 2019. Citing its inability to maintain and continue to provide essential City services without additional revenue to fund those services at current levels, the City Council of the City of Parlier unanimously voted to place Measure S on the ballot for a Special Election to occur November 5, 2019, asking the voters to approve a one cent or one penny, sales tax within the City. The proposed tax would add a penny to an item that costs a dollar, or one dollar to the price of an item that costs one hundred dollars.

The Sales Tax, that would become effective if Measure S were approved, would apply to most over the counter sales of tangible goods and to restaurant purchases, occurring in the City of Parlier. For vehicles, the tax would only apply if the vehicle is registered to a City address. The Tax does not apply to the purchase of groceries or prescribed medications.

Measure S, if approved, is estimated to generate approximately \$400,000 annually. The City Council has expressed its intent to spend those monies exclusively on critical needs of the City to staff and equip its Police Department. However, the tax is a general purpose tax so the funds would also be available to fund general City services including but not limited to 9-1-1 emergency response services, housing services, street and infrastructure improvements, maintenance of parks, and youth programs.

To become effective, Measure S requires a majority vote of the City of Parlier voters that vote in the election on November 5, 2019.

Currently, the cumulative tax rate on retail sales in Parlier and in the unincorporated areas of Fresno County is 7.975%. The City of Parlier receives only a fraction of this amount. The remainder goes to the State of California with a small percentage allocated to County-wide transportation funding. That would increase the sales tax rate in Parlier to 8.975%, the same rate charged in most cities in Fresno County. The proposed measure, if approved, would result in the added one cent sales tax going exclusively to the City's General Fund and be available to support the full range of local municipal services.

A "yes" vote is a vote to approve the enactment of the one cent sales tax. A "no" vote is a vote against the tax.

The above statement is an Impartial Analysis of Measure S. If you desire a copy of the Measure, please call the City Clerk of the City of Parlier at (559) 646-3545 and a copy will be mailed to you at no cost.

Date: August 6, 2019

PARLIER CITY ATTORNEY

By: _____

Neal E. Costanzo

ARGUMENT FOR MEASURE S

Parlier residents value their City services, especially police protection, maintenance of critical infrastructure and support for programs that enhance the quality of life for everyone.

In spite of managing its finances responsibly through recent years, the City faces a deepening fiscal crisis that threatens to erode these services. Measure S will enable the City to maintain services at current levels. Like most California cities, Parlier is feeling the impact of several trends undermining its long term fiscal viability. Local government budgets are increasingly strained by declining revenues due to changes in consumer spending patterns, increased costs of providing services, steep assessments by the State for its investment shortfalls and declining federal support for core services. There is an on-going need to deal with aging infrastructure in every city, and Parlier is no exception.

If additional funds are not secured our community faces the potential for service cuts and deteriorating facilities. This is not the future the City Council wants for Parlier and is why the Council unanimously voted to place Measure S on a special election ballot. If Measure S fails, the City will likely face ever increasing annual deficits which, unless abated by the enhancement to revenues provided by Measure S, could result in reduction of service levels including:

- Reducing Police presence, crime prevention and intervention.
- Delaying repair of aging infrastructure and facilities.
- Reducing support for programs helping seniors, children and others in need.

Passing Measure S allows the City of Parlier to sustain its current level of funding for public safety, parks and community programs. All funds from Measure S will stay right here in our community.

Protect the services we count on. **Vote Yes** on Measure S.

The undersigned author of the Argument in Favor of Ballot Proposition Measure S of the November 5, 2019, Special Municipal Election of the City of Parlier to be held on November 5, 2019, hereby state that this argument is true and correct to the best of her knowledge and belief.

Date: _____, 2019

By _____
Alma Beltran, Mayor of the
City of Parlier