



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Sarah Zárate

SUBJECT: NOVEMBER 2022 BALLOT
MEASURES

DATE: July 18, 2022

Approved:

[Handwritten signature: Professor M. Maguire]

Date:

7/20/2022

RECOMMENDATION

Adopt a resolution taking the following positions on five State ballot measures that are qualified for the California general election on November 8, 2022, and authorizing the City Manager's Office of Administration, Policy and Intergovernmental Relations to issue letters of support or opposition in accordance with Council direction:

- (a) Proposition 1: SCA 10 - Reproductive Freedom – SUPPORT
- (b) Proposition 26: Authorizing New Types of Gambling – OPPOSE
- (c) Proposition 27: Allowing Online and Mobile Sports Wagering – OPPOSE
- (d) Proposition 28: Providing Additional Funding for Arts and Music Education in Public Schools – SUPPORT
- (e) Proposition 31: Referendum Challenging a 2020 Law Prohibiting Retail Sale of Certain Flavored Tobacco – OPPOSE

OUTCOME

The Administration will issue letters of support or opposition in accordance with City Council direction on the above ballot measures.

EXECUTIVE SUMMARY

On June 30, 2022, seven ballot measures qualified in the State of California and will now appear on the November 8, 2022, ballot for voter consideration. Staff is making a recommendation for City Council t positions on the following five of the seven ballot measures. The Administration is not recommending a position on Proposition 29 which would require on-site licensed medical professionals at kidney dialysis clinics as this has been a perennial ballot measure that is unlikely to be resolved through this ballot measure. Moreover, the Administration recommends staying neutral on Proposition 30. While we laud attempts to increase funding for Electric Vehicle (EV) infrastructure, we have considerable concerns about how the funds from Proposition 30 would be

administered. This ballot measure only notes how funds would flow to Investor-Owned Utilities (IOUs) and Publicly-Owned Utilities (POUs) with local governments and Community Choice Aggregators (CCAs) only able to receive funds through IOUs or through a limited competitive grant process.

- ❖ Proposition 1: SCA 10 - Reproductive Freedom
- ❖ Proposition 26: Authorizing New Types of Gambling
- ❖ Proposition 27: Allowing Online and Mobile Sports Wagering
- ❖ Proposition 28: Providing Additional Funding for Arts and Music Education in Public Schools
- ❖ Proposition 31: Referendum Challenging a 2020 Law Prohibiting Retail Sale of Certain Flavored Tobacco

BACKGROUND

In previous election cycles, the City Council has adopted positions on various ballot measures that are important to the City of San José and City residents.

In the State of California, there are two paths to getting a measure on the ballot. The legislature can pass legislation to put constitutional amendments, bond measures, or proposed changes to law on a ballot. Alternatively, any California voter can put a referendum or an initiative on the ballot by following the process outlined by the State of California's Office of the Secretary of State.¹

The City Manager's Intergovernmental Relations (IGR) Team last received direction from City Council on the legislative program on November 17, 2021 ([3.4 21-2482](#)). Elsewhere on the August 9, 2022 City Council Agenda, the City Council will be asked to reaffirm positions summarized in the 2022 Intergovernmental Priority Legislation Log.

ANALYSIS

Proposition 1: SCA 10—Reproductive Freedom

Staff Recommendation: Support

In early May 2022, a draft U.S. Supreme Court opinion was leaked containing information that *Roe v. Wade* would be overturned; on June 24, 2022, a final decision was made to overturn this five-decade precedent. This Supreme Court decision ended the constitutional right to an abortion and left this right up to the discretion of states. Subsequently, top California Democrats championed and passed legislation to give voters the opportunity to enshrine abortion rights into the State of California's constitution. The proposed constitutional amendment was introduced in

¹ [How to Qualify an Initiative :: California Secretary of State](#)

the Legislature in early June and passed with the overwhelming support of both chambers by the end of the month. If approved by the voters, it would bar the state from denying or interfering with a person's right to choose an abortion and contraceptives. It is expected that the number of patients traveling from out of the state to California for abortion services will increase dramatically and as such, millions of dollars to support abortion services was included in the 2022-2023 state budget.² Support for this ballot measure is enumerated in the City Council-approved Legislative Program. Abortion and reproductive healthcare rights are highly visible national issues of importance to San José residents. Recent polls have found overwhelming support for abortion access in California across demographic, regional, and partisan groups.³ Should abortion be further restricted or eliminated in California, this would have significant impacts on healthcare access, and potentially long-term health and economic impact for San José residents. Major supporters of this ballot measure include Governor Gavin Newsom, Senate Pro Tempore Toni Atkins, and Assembly Speaker Anthony Rendon.

Proposition 26: Authorizing New Types of Gambling

Staff Recommendation: Oppose

Proposition 26 would allow retail sportsbooks for in-person wagering at California's tribal casinos and the state's four thoroughbred racetracks. Sportsbooks at racetracks would have their revenues taxed at 10% (sportsbooks currently do not exist in California). The state government would be required to distribute this new revenue as follows: (a) 15 percent to the California Department of Health for researching, developing, and implementing programs for problem gambling prevention and mental health, and providing grants to local governments to address problem gambling and mental health; (b) 15 percent to the Bureau of Gambling Control for enforcing and implementing sports wagering and other forms of gaming within the state; and (c) 70 percent to the General Fund.⁴

The measure also would allow tribal casinos to offer roulette and dice-based table games. The measure would expand the Private Attorneys General Act ("PAGA") to allow tribal casino operators to pursue lawsuits against local, legally operating cardrooms (like Casino M8trix and Bay101), potentially bankrupting local cardrooms. The City Council-approved Legislative Program states that IGR can support legislation and regulations that allows the City to regulate and tax cardroom activities, and to engage with the legislature and regulators on rules that clarify player-dealer rotation practices and preserve the ability of cardrooms to offer California games. Given the serious concerns regarding frivolous lawsuits associated with the expansion of the PAGA provision, opposition to this measure could allow local cardrooms in California to continue operations without costly out-of-pocket expenses to address lawsuits from tribal casinos. Opposition to this measure would also maintain the tens of millions of dollars in revenue that the City of San José receives from local cardrooms to provide essential services to residents.

² <https://ebudget.ca.gov/FullBudgetSummary.pdf>

³ [Where Do Californians Stand on Abortion? - Public Policy Institute of California \(ppic.org\)](https://ppic.org/where-do-californians-stand-on-abortion/)

⁴ [California Proposition 26, Legalize Sports Betting on American Indian Lands Initiative \(2022\) - Ballotpedia](https://ballotpedia.org/California_Proposition_26_Legalize_Sports_Betting_on_American_Indian_Lands_Initiative_(2022))

The coalition supporting this measure is led by several American Indian tribes, including the top donors to the campaign—the Pechanga Band of Luiseno Indians, Yocha Dehe Wintun Nation, Agua Caliente Band of Cahuilla Indians, Federated Indians of Graton Rancheria, and the Barona Band of Mission Indians. The campaign raised \$73.08 million. Taxpayers Against Special Interest Monopolies is leading the campaign against the proposal. The campaign, along with a terminated PAC No on the Gambling Power Grab, raised \$42.24 million. The top donors to the opposition were gambling-related companies, including the California Commerce Club, Hawaiian Gardens Casino, Knighted Ventures LLC, Park West Casinos, The Bicycle Hotel & Casino, and PT Gaming LLC. The California Contract Cities Association is the leading union in opposition. The California Cities Gaming Authority (CCGA), where the City of San Jose is a member, has also taken an oppose position on this ballot measure.

Proposition 27: Allowing Online and Mobile Sports Wagering

Staff Recommendation: Oppose

Proposition 27 would allow sports betting statewide through online sportsbooks and mobile apps. Sportsbook revenues would be taxed at 10%. The proposed law would establish the California Online Sports Betting Trust Fund. The revenue from licensing fees, renewals, and the sports wagering tax would be deposited into the fund. After deducting regulatory costs, licensing fees, prizes, renewal fees, marketing costs, 85% of the fund's revenues would be allocated to California Solutions to Homelessness and Mental Health Support Account for permanent and interim housing and 15% of revenues to the Tribal Economic Development Account, which would be established by the initiative to provide funds to Indian tribes for expanding tribal government, public health, education, infrastructure, and economic development. Given the significant deductions allowed for fees and costs from those that are hosting the online platforms, such as Draft Kings or Fan Duel, some estimate minimal funds being used to address homelessness, if any. It is also difficult to understand how those funds would be funneled to local jurisdictions.

Commercial sportsbooks must meet certain criteria to qualify for licenses that cost \$100 million each. Gaming tribes can also take part in online sports betting for \$10 million, but they will be limited in how they can brand their operations. While Proposition 27 does offer tribes access to online wagering, tribal gaming leaders have come out strongly against the measure. They criticize the online operators as out-of-state interests, and they claim that Californians trust existing tribal operators to manage gaming more than commercial businesses. While the Legislative Program outlines clear direction to support taxation of cardrooms, it does not specifically address online and mobile state wagering. The staff recommendation is to oppose to be consistent with Proposition 26 as it may be easy for both Propositions 26 and 27 to be confusing to voters and opposition to both would support San Jose's cardrooms. Further, an opposition position on both measures protects the tens of millions of dollars in tax revenue that the City of San José receives from local cardrooms for service provision to residents.

Californians for Solutions to Homelessness and Mental Health Support is leading the campaign in support of Proposition 27. As of June 30, the campaign had raised over \$100 million. Its top

three donors include BetMGM LLC, Betfair Interactive US LLC (FanDuel Sportsbook), and Crown Gaming, Inc. (DraftKings). Californians for Tribal Sovereignty and Safe Gaming and Coalition for Safe, Responsible Gaming are leading campaigns in opposition to the initiative. Together the committees have raised \$114.13 million. The top three donors include the San Manuel Band of Mission Indians, the Pechanga Band of Luiseno Indians, and the Yocha Dehe Wintun Nation. Officials supporting this ballot measure include: Fresno Mayor Jerry Dyer, Long Beach Mayor Robert Garcia, Oakland Mayor Libby Schaaf and Sacramento Mayor Darrell Steinberg. Organizations in opposition include: AYPAL: Building API Community Power, American Indian Chamber of Commerce of California, California Asian Pacific Chamber of Commerce, California Black Chamber of Commerce, California Coalition for Rural Housing, California Hawaii State Conference NAACP, California Hispanic Chambers of Commerce, California League of United Latin American Citizens, La Raza Roundtable of California, Los Angeles Urban League and Western Regional Advocacy Project. The California Cities Gaming Authority (CCGA), where the City of San Jose is a member, has also taken an oppose position on this ballot measure.

Proposition 28: Providing Additional Funding for Arts and Music Education in Public Schools

Staff Recommendation: Support

Sponsored by former Los Angeles Unified School District superintendent Austin Beutner, this measure would require the state to set aside \$800 million to \$1 billion in revenue each year to arts and music programming in K-12 schools.⁵ According to the initiative's supporters, only one in five public schools still has a full-time teacher for traditional arts programs. Passage of this measure would establish minimum funding for arts and music education in all K-12 public schools through an annual 1% allocation of required state and local funding for public schools. Distribution and spending of money would be dictated by enrollment and economically disadvantaged students. As educational initiatives do not directly impact the City of San José, this measure is not contained within our legislative program. Staff recommend a support position as this measure stands to increase access and opportunities for all children, particularly low-income children, to participate in arts and music education in alignment with a racial equity lens. There are considerable studies that demonstrate the value and importance of arts and music education in strengthening children's cognitive, physical, and social-emotional development, peer-to-peer and child-to-adult relationships, self-confidence, as well as improving their overall quality of life. This proposition will not negatively impact City operations. Key players in support of this measure include Californians for Arts and Music Education in Public Schools and former U.S. Secretary of Education Arne Duncan.

⁵ <https://lao.ca.gov/ballot/2021/210576.pdf>

Proposition 31: Referendum Challenging a 2020 Law Prohibiting Retail Sale of Certain Flavored Tobacco

Staff Recommendation: Oppose referendum

In 2020, Gov. Gavin Newsom signed SB 793, a bill banning the sale of all flavored tobacco products.⁶ This ban includes all flavored tobacco products except for hookah, premium cigars, and loose-leaf tobacco. The tobacco industry gathered enough signatures to ask voters to overturn this law via referendum. While the referendum is pending, retailers have been able to continue sales of flavored tobacco products. As such, the San José City Council acted unanimously last fall to ban flavored tobacco sales through the Tobacco Retail Ordinance ([Item 7.1, 21-2110](#)). This ordinance change went into effect July 1, 2022. A "yes" vote is to uphold the contested legislation, Senate Bill 793 (SB 793), which would ban the sale of flavored tobacco products. A "no" vote is to repeal the contested legislation, Senate Bill 793 (SB 793), thus keeping the sale of flavored tobacco legal in the state. Opposition to this referendum provides health and safety benefits to San José residents, particularly youth and the African American community who are disproportionately targeted in marketing of flavored tobacco products. Opposition to this referendum is enumerated by the City's legislative program. Key supporters of the referendum include R.J. Reynolds, and the National Association of Tobacco Outlets. Key opposition to this referendum includes Governor Gavin Newsom and the California Teachers Association.

CONCLUSION

There are five qualified ballot measures on the November 8, 2022, ballot that the Administration recommends City Council taking a position on at this time. The Administration is recommending a support position on two measures and an oppose position on three measures in alignment with the legislative program and the interests of the City.

EVALUATION AND FOLLOW-UP

The Administration will issue letters of support or opposition in accordance with City Council direction on the above ballot measures.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

⁶ [Bill Text - SB-793 Flavored tobacco products. \(ca.gov\)](#)

PUBLIC OUTREACH

The Administration will post this memorandum on the City's Council Agenda website for the August 9, 2022 City Council Meeting.

COORDINATION

The Administration coordinated this memorandum with the City's state legislative advocates, the City Attorney's Office, the City Manager's Budget Office, and the Department of Planning, Building and Code Enforcement.

CEQA

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment.



SARAH ZÁRATE
Director, City Manager's Office of
Administration, Policy, and
Intergovernmental Relations

For questions, please contact Zane Barnes, Deputy Director, Intergovernmental Relations, at zane.barnes@sanjoseca.gov.

Attachment A: November 2022 Official Statewide Ballot Measure Text

Attachment A: November 8, 2022, Official Statewide Ballot Measure Text

PROPOSITION 1

Reproductive freedom.

The state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. This section is intended to further the constitutional right to privacy guaranteed by Section 1, and the constitutional right to not be denied equal protection guaranteed by Section 7. Nothing herein narrows or limits the right to privacy or equal protection. [SCA 10 \(Resolution Chapter 97, Statutes of 2022\) \(PDF\)](#)

PROPOSITION 26

Authorizes new types of gambling. Initiative Constitutional and Statutory Amendment.

Allows federally recognized Native American tribes to operate roulette, dice games, and sports wagering on tribal lands, subject to compacts negotiated by the Governor and ratified by the Legislature. Beginning in 2022, allows on-site sports wagering at only privately operated horse-racing tracks in four specified counties for persons 21 years or older. Imposes 10% tax on sports-wagering profits at horse-racing tracks; directs portion of revenues to enforcement and problem-gambling programs. Prohibits marketing of sports wagering to persons under 21. Authorizes private lawsuits to enforce other gambling laws. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Increased state revenues, potentially reaching the tens of millions of dollars annually, from payments made by facilities offering sports wagering and new civil penalties authorized by this measure. Some portion of these revenues would reflect a shift from other existing state and local revenues. **Increased state regulatory costs, potentially reaching the low tens of millions of dollars annually. Some or all of these costs would be offset by the increased revenue or reimbursements to the state. Increased state enforcement costs, not likely to exceed several million dollars annually, related to a new civil enforcement tool for enforcing certain gaming laws.** ([19-0029A1.](#))

PROPOSTION 27

Allows Online and Mobile Sports Wagering. Initiative and Constitutional Amendment and Statute.

Legalizes online and mobile sports wagering, which currently is prohibited, for persons 21 years and older. Such wagering may be offered only by federally recognized Indian tribes and eligible businesses that contract with them. Individuals placing bets must be in California and not located on Indian lands. Imposes 10% tax on sports-wagering revenues and licensing fees. Directs tax and licensing revenues first to regulatory costs, then remainder to: 85% to homelessness programs; 15% to nonparticipating tribes. Specifies licensing, regulatory, consumer-protection, and betting-integrity standards for sports wagering. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **Increased state revenues, potentially reaching the mid-hundreds of millions of dollars annually, from online sports wagering-related taxes, licensing fees, and penalties. Some portion of these revenues would reflect a shift from other existing state and local revenues. Increased state regulatory costs, potentially reaching the mid-tens of millions of dollars annually, that would be fully or partially offset by the increased revenues.** ([21-0017A1.](#))

PROPOSITON 28

Provides Additional Funding for Arts and Music Education in Public Schools. Initiative Statute.

Provides additional funding for arts and music education in all K-12 public schools (including charter schools) by annually allocating from state General Fund an amount equaling 1% of required state and local funding for public schools. Allocates greater proportion of the funds to schools serving more economically disadvantaged students. Schools with 500 or more students must spend at least 80% of funding to employ teachers and remainder on training, supplies, and education partnerships. Requires audits and limits administrative costs to 1% of funding. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **Increased spending likely in the range of \$800 million to \$1 billion annually, beginning in 2023-24, for arts education in schools. ([21-0036A1](#).)**

PROPOSITION 31

Referendum Challenging a 2020 Law Prohibiting Retail Sale of Certain Flavored Tobacco Products.

If the required number of registered voters sign this petition and the petition is timely filed, there will be a referendum challenging a 2020 law on the next statewide ballot after the November 3, 2020 general election. The challenged law prohibits the retail sale of certain flavored tobacco products and tobacco flavor enhancers. The referendum would require a majority of voters to approve the 2020 state law before it can take effect. ([20-0003](#).)