

**NOTICE AND CALL OF  
SPECIAL MEETING**

NOTICE IS HEREBY GIVEN as provided by Government Code of the State of California Section 54956 that Mayor George Huntington called a Special Meeting of the Town Council of the Town of Yucca Valley, for Thursday, February 12, 2015 at 5:00 p.m. at Yucca Valley Community Center, Joshua Tree Room, 57090 Twentynine Palms Highway, Yucca Valley, California, for the below stated purpose.

**AGENDA**

**OPENING CEREMONIES**

**Welcome/Call to Order**

**DEPARTMENT REPORT**

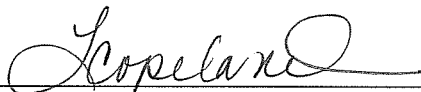
1. Town & Initiative Proponents Tolling Agreement

**Recommendation: Consider entering into a tolling agreement with the proponents of the citizen-sponsored initiative measure (“Citizen Initiative”) permitting medical marijuana dispensaries, in order to permit the proponents and the Town additional time to consider an amended measure to be submitted to the electorate.**

Action: Move \_\_\_\_\_ 2<sup>nd</sup> \_\_\_\_\_ Vote \_\_\_\_\_

**COUNCIL COMMENTS**

**ADJOURNMENT**

  
\_\_\_\_\_  
Lesley R. Copeland, Town Clerk  
Town of Yucca Valley

## TOWN COUNCIL STAFF REPORT

**To:** Honorable Mayor & Council  
**From:** Aleshire & Wynder LLP, Town Attorney  
**Date:** February 10, 2015  
**For Council Meeting:** February 12, 2015

**Subject:** Town & Initiative Proponents Tolling Agreement

**Prior Council Review:** None.

**Summary & Recommendations:** That the Council consider entering into a tolling agreement with the proponents of the citizen-sponsored initiative measure ("Citizen Initiative") permitting medical marijuana dispensaries, in order to permit the proponents and the Town additional time to consider an amended measure to be submitted to the electorate.

Unless a tolling agreement is approved, the Council will be required to take one of the following actions at the next regular Council meeting on February 17, 2015:

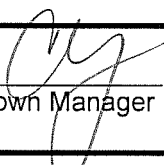
- a) Introduce the Citizen's Initiative as submitted as an ordinance of the Town of Yucca Valley and enact it within 10 days, *or*
- b) Place the Citizen's Initiative as submitted on the ballot at the special election called at least 88 days and not more than 103 days from the date of the Council meeting.

**Order of Procedure:**

Request Staff Report  
Request Public Comment  
Council Discussion / Questions of Staff  
Motion/Second  
Discussion on Motion  
Call the Question

**Historical Background:** At the January 20, 2015, Town Council meeting, the Town Council was presented with the Citizen Initiative proposing to enact an ordinance permitting and regulating medical marijuana sales and use within the Town. The Citizen Initiative has been reviewed by the County Registrar of Voters and signatures have been verified that would require the Town to call a special election for the Citizen

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Reviewed By:

  
Town Manager

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Finance

  
Dept

<input checked="" type="checkbox"/> Department Report	<input type="checkbox"/> Ordinance Action	<input type="checkbox"/> Resolution Action	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Minute Action	<input type="checkbox"/> Receive and File	<input type="checkbox"/> Study Session

Initiative. Upon presentation and certification of the Citizen Initiative by the Town Council, the Town Council had three possible courses of action:

1. Introduce the Citizen Initiative as presented by the proponents for first reading and schedule an adjourned regular meeting at least five days after its introduction and no longer than 10 days after its introduction to adopt the Citizen Initiative;
2. Request that a 30-day impact study be conducted of the possible effects of the Citizen Initiative on Town policies, land uses, economics or other issues of concern to the Council; or
3. Immediately call a special election to be held at on a Tuesday falling least 88 days but not more than 103 days after the date the election is called (i.e., April 28, 2015).

The Council has requested a study to be prepared analyzing the effect of the Citizen's Initiative, which is being presented at the Council meeting on February 17, 2015. The Council also directed that the Town's subcommittee work with the proponents to prepare an amended measure that could be supported by the Town and the proponents to go forward as a ballot measure, and to prepare a tolling agreement suspending the requirement to either adopt or place the Citizen Initiative on the ballot as submitted. If such agreement is reached and a negotiated measure is placed on the ballot in-lieu of the Citizen Initiative, the proponents have agreed to withdraw the Citizen Initiative as submitted.

California Elections Code Section 9604 provides that proponents of local initiative measures have specific authority to withdraw such measures as follows:

(a) Notwithstanding any other law, any person may engage in good faith bargaining between competing interests to secure legislative approval of matters embraced in a statewide or local initiative or referendum measure, and the proponents may, as a result of these negotiations, withdraw the measure at any time before filing the petition with the appropriate elections official.

(d) Withdrawal of a local initiative or referendum measure shall be effective upon receipt by the appropriate local elections official of a written notice of withdrawal, signed by all proponents of the measure.

It bears emphasis that the only action before the Council tonight is that of entering the tolling agreement in order to buy more time for further negotiations between the Town and the Citizen Initiative proponents. The Council is not taking action at this time on any specific measure. The proposed action is consistent with Council direction provided at the January 20, 2015 regular Council meeting. Further, the Initiative Proponents have indicated that they are willing to execute the proposed agreement.

**Fiscal Impact:** None with this item.

**Attachments:** Proposed Tolling Agreement

## TOLLING AGREEMENT

This TOLLING AGREEMENT ("Agreement") is made by and among Daniel Zanercik and Serena M. Elsasser ("Proponents"), and the Town of Yucca Valley ("Town") (referred to herein each individually as a "Party" and collectively as the "Parties").

### RECITALS

WHEREAS, Proponents prepared, circulated and submitted a petition (the "Petition") to place an initiative measure (the "Measure") on the ballot in the Town of Yucca Valley on November 20, 2014 entitled "The Yucca Valley Medical Marijuana Limitation Act," and requested the calling of a special election if signatures equaling 15% or more of the registered voters in the Town were collected and certified; and

WHEREAS, the Town in turn submitted the signed Petition to the San Bernardino County Registrar of Voters (the "Registrar") for review and certification; and

WHEREAS, on December 17, 2014, the Registrar certified the signatures on the Petition and found that more signatures of than 15% of the registered voters in the Town had been collected; and

WHEREAS, on January 20, 2015 at its first regular Town Council meeting following certification of the Petition signatures by the Registrar, the Town Council considered its options under the provisions of Elections Code 9214 to (i) enact the Measure exactly as written by ordinance within 10 days, or (ii) to call a special election and place the Measure on the ballot for consideration by the voters, or (iii) to request a study be prepared and presented to the Town Council within 30 days analyzing the various potential impacts of the Measure on land use and other matters of municipal concern; and

WHEREAS, after due consideration of the various options available, the Town Council voted to request a study be prepared analyzing the various effects on land use and other issues that might result from enactment of the Measure as permitted by Elections Code 9212 to be returned to the Town Council at its regular meeting on February 17, 2015 ; and

WHEREAS, the Town Council has also appointed a, "ad hoc" subcommittee to represent the Town (the "Subcommittee") and directed that the Subcommittee and the Proponents pursue resolution of some amendments to the Measure to be made prior to consideration of enactment of the Measure either directly by the Town Council or by placement of the Measure on the ballot at election as required by law; and

WHEREAS, Proponents are in accord with the request for consideration and negotiation with the Subcommittee of some proposed amendments; and

WHEREAS, in order to allow time for negotiation of proposed amendments to the Measure, the Parties wish to extend the time to toll all statutes of limitations pertaining to any challenge, claim, or cause of action that Proponents may have to compel action by the Town Council under the provisions of Elections Code Section 9214 so that if agreement is reached with regard to amendments to be included the Measure may be withdrawn and an "Amended Measure" may be submitted to the electorate for consideration. The Parties anticipate that the Amended Measure will be substantially similar to the draft, competing Town-sponsored measure presented to the Town Council at its regular meeting on January 20, 2015, as agenda item number 14, with the following exception: the Amended Measure would retain certain "preferential" application provisions from the original Measure for the benefit of Medical Marijuana Dispensaries that have either established (i) Articles of Incorporation file stamped by the

California Secretary of State on or before the date of July 1, 2014, a valid California State Board of Equalization Seller's Permit issued on or before the date of July 1, 2014 for operation at a location within the Town of Yucca valley, and a State of California, Department of Food and Agriculture application for a license to sell nursery stock within the Town of Yucca Valley and proof said application was submitted to and received by the California Department of Food and Agriculture on or before the date of July 1, 2014, or (ii) actual operational status, in the Town of Yucca Valley within the last three (3) years pursuant to an agreement with the Town. With this exception in-place, at the January 20, 2015, regular Town Council meeting, the Proponents represented on the record that all other regulations proposed by the Town were acceptable to them.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and based upon the facts stated in the above Recitals, which Recitals are incorporated into the terms of this Agreement by this reference, the Parties agree as follows:

### **AGREEMENT**

1. Tolling Term: This Agreement shall be effective upon the date the Agreement is last signed by both Parties hereto, but in no event later than February 17, 2015 (the "Tolling Date").

2. Tolling: The Town and Proponents hereby agree that the running of any and all statutes of limitation and any other defenses based on the passage of time on any and all claims or causes of action that Proponents may have against the Town shall be tolled from the Tolling Date through March 17, 2015 (the "Tolling Period"). Proponents agree to withhold from, and suspend enforcement of, any and all California Elections Code deadlines pending which are, or may, be pending on the Petition as of the Tolling Date. Should the Tolling Period either expire or be terminated due to an

impasse or failure to act as further described in the Sections 4 or 5 below, then all Elections Code deadlines shall be deemed as recommencing upon the next regular Town Council meeting following at least seven (7) business days following the expiration or termination of this Agreement. For example, if the Proponents provide written notice on February 25, 2015, that the Parties are at an impasse, all Elections Code deadlines shall recommence on the Town Council regular meeting date of March 17, 2015. All parties acknowledge that this “gap” time period between the expiration or termination of this Agreement and the recommencement of tolled statutory deadlines is necessary for the Town to meet agenda preparation deadlines, including but not limited to deadlines imposed by the Ralph M. Brown Act, Government Code §§54950 *et seq.*

The Tolling Period may be extended in 30 day increments by written agreement of the Subcommittee and the Proponents prior to expiration of the Tolling Period or any agreed upon 30 day extension.

3. Good Faith Negotiations: During the Tolling Period and any extension thereof, the Parties agree to negotiate in good faith as to the various amendments that may be proposed. Proponents understand and acknowledge that if negotiations culminate in an Amended Measure agreeable to them, the Amended Measure shall be effective only after, and if, the Amended Measure has been considered by the Town Council, placed upon a ballot before the electorate, and adopted by said electorate.

4. Notification to Town Council: Proponents agree to promptly give written notice to the Town Council upon reaching agreement with the Subcommittee in regard to the form and substance of the Amended Measure, or upon a determination by Proponents that impasse has been reached and that Proponents elect to abandon



negotiations. Such notice of impasse shall terminate the Tolling Period and this Agreement.

If the Proponents submit a written notice of acceptance of the terms of the proposed Amended Measure, Town staff shall schedule the Amended Measure for consideration before the Town Council at the next reasonably-available regular Town Council meeting (the "Public Meeting"), subject to agenda planning and agenda preparation deadlines, including but not limited to those deadlines imposed by the Ralph M. Brown Act, Government Code §§54950 *et seq.*

5. Action on Measure or Amended Measure: At the Public Meeting where consideration of the Measure and Amended Measure is scheduled, the Town Council may exercise its discretion under the provisions of Elections Code 9214 to call an election and place on the ballot as required by law either the Measure, the agreed-upon Amended Measure, or some other competing version of the Measure. In the event that the Town Council elects to place the agreed-upon Amended Measure upon the ballot, then the Proponents shall withdraw their Petition/Measure in accordance with Section 6 below. Failure by the Town Council to call an election on the agreed-upon Amended Measure at the Public Meeting shall constitute a termination of this Agreement.

With the exception of applicable California Elections Code provisions not otherwise tolled or waived herein, Proponents acknowledge that Town is under no obligation to adopt or call an election on the Amended Measure, the Measure, or any other iteration thereof; subject to Town's obligations to negotiate in this Agreement, and that any actions taken or investments made by Proponents in anticipation of an election on the Measure or Amended Measure are, and were, undertaken at Proponent's sole

risk and expense. The Parties understand that Town is required by law to reserve the right to exercise its discretion as to all matters which Town is, by law, entitled or required to exercise, at their discretion; nothing in this Agreement shall be construed as having the effect of waiving or limiting Town's police powers and/or exercise of discretion.

6. Withdrawal of Pending Measure: Proponents agree that if the Town Council takes action to place the Amended Measure on the ballot, they will at the regular Town Council meeting where that action is taken immediately and publicly withdraw the original Measure and endorse passage of the Amended Measure, as well as immediately memorialize such withdrawal of the original Measure by written communication to the Town.

7. Lapsed Claims: This Agreement has no effect on Proponent's claims or causes of action that, prior to the Tolling Date, were already barred by the statute of limitations or otherwise barred by the passage of time, and this Agreement shall not be construed to revive any such time-barred claims or causes of action.

8. No Admission of Liability: This Agreement is not an admission by either of the Parties of the existence of any claim, cause of action or defense, and this Agreement shall not be used or referred to in any proceeding for any purpose other than to establish the Tolling Date.

9. Applicable Law: This Agreement is deemed to have been executed and delivered within the State of California and the rights and obligations of the Parties shall be construed and enforced in accordance with and governed by the laws of the State of California.

10. Complete Agreement: This Agreement represents the complete agreement between the Parties with respect to the subject matter hereof, and may only be modified by a writing signed by all of the Parties hereto.

11. Construction: The Parties agree that the general rule of construction, which allows any ambiguities in this Agreement to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

12. Signatures: This Agreement may be signed in counterparts. This Agreement is binding on the Parties when signed in the spaces provided below and signature pages are exchanged by the Parties by electronic transmission.

IN WITNESS WHEREOF, the Parties have executed this Agreement:

Date: \_\_\_\_\_

\_\_\_\_\_  
Daniel Zanercik

Date: \_\_\_\_\_

\_\_\_\_\_  
Serena M. Elsasser

Date: February \_\_, 2015

TOWN OF YUCCA VALLEY

\_\_\_\_\_  
George Huntington, Mayor

ATTEST:

\_\_\_\_\_  
Lesley Copeland, CMC  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Lona Laymon,  
Town Attorney