

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: July 26, 2011 Time: 2:00 pm Length: 45 minutes

Presentation Title: Local Option Levy continued consideration

Department: County Administration

Presenters: Steve Wheeler, County Administrator
Nancy Newton, Deputy County Administrator, Stephen Madkour, County Counsel

POLICY QUESTION

The policy issue for this study session is the Board of County Commissioner's continuation and completion of the discussion that began in the July 12, 2011 study session.

The issues remaining for consideration by the Board are the nature, timing, scope and amount of a public safety levy.

ISSUE & BACKGROUND

On July 12, 2011 the Board considered continuation of the current \$0.248/\$1,000 of assessed value Local Option Levy for public safety. Clackamas County Sheriff Craig Roberts requested that the public safety Local Option Levy be placed on the November 8, 2011 ballot exactly as presented to voters in 2006. The Board also heard from Tonia Hunt, Executive Director of the Children's Center and Melissa Erlbaum, Executive Director of Clackamas Women's Services.

Based on discussion during the July 12, 2011 study session, the Board directed staff to research the legal requirements of a Local Option Levy renewal and a newly created ballot measure. Simply stated, what was the scope/nature of a Local Option Levy that would maintain legal requirements for a renewal status and what changes to the original Local Option Levy language would then cause the levy to be considered a new levy?

A summary of the original Local Option Levy presented as Ballot Measure 3-246 during the November 7, 2006 election is included as "Attachment A" with these study session materials.

As per the Board's direction, staff has researched the legal requirements and framework relating to the Board's discussion during the July 12, 2011 study session:

Local Option Levy Renewal: ORS 280.070(4)(b) allows for the renewal of local option taxes. The statute does not provide any additional guidance on the renewal. The only controlling provision is a Department of Revenue Administrative Rule (“OAR”). OAR 150-280-075(4)(b) states: “To qualify as a renewing measure, a measure must ask for the same tax rate or annual dollar amount as the current local option tax, or a lower rate or amount, and be for substantially the same purpose as the current local option tax.”

Local Option Levy Redrafting: Editing or redrafting of the existing public safety Local Option Levy is possible; however, care must be undertaken to ascertain whether or not the intended purposes of the levy would be *substantially the same* (emphasis added) as the original language. If the proposed purposes of the levy are not substantially the same, the ballot measure could potentially be considered a new Local Option Levy rather than a renewal of an existing levy.

An example of language redrafting is expanding upon the original language. For instance, the Local Option Levy could exchange the manner for funding so long as the levy amount is for the same amount, the purpose clearly defined and the services substantially the same. Expanding the levy’s scope of services comes with it the attendant risk of not qualifying as a renewal if the “substantially the same” requirement is not met.

New Local Option Levy: A Local Option Levy that is presented for the first time during an election must contain the following wording: “this measure may cause property taxes to increase more than 3%.” Consequently, language that is not substantially the same as the existing Local Option Levy would cause such a levy to fall under the legal restrictions and of a new Local Option Levy.

Once the Board approves the levy, it prepares a ballot title. Both are then filed with the Clerk as per ORS 250.185(1). The Clerk then reviews for accuracy and statutory compliance and publishes notices (ORS 250.168-.175).

Process: The process for a Local Option Levy renewal would be as follows:

- Staff drafts renewal language pursuant to Board direction
- County Counsel refines and formats language of measure and prepares a resolution to be approved by Board
- Board approves resolution and files the measure with the County Clerk
- County Clerk reviews for accuracy and statutory compliance
- Disputes over the proposed levy could occur via a petition to the circuit court seeking a different title because it is unfair, insufficient or not concise. ORS 250.195(1). The court’s review is limited to the certification of the title and measure. The review by the circuit court shall be first and final review ORS 250.195(3). Accordingly, the court reviews merely the language of the title and measure and will not review the substantive merits of the proposed measure.
- If the renewed levy passes, it remains subject to review. If the purpose of the renewal is amended to the extent that it is no longer for “substantially the same purpose,” the levy could be declared void by the Department of Revenue. ORS

310.070. The levy renewal could also be subject to claims for declaratory and injunctive relief.

Timeline: Should the Board determine to place a Local Option Levy on the November 8, 2011 ballot, timing is of the essence. The ballot title needs to be created and reviewed in order to be deemed accurate and in compliance with statute by the Clerk. In previous years the Board had taken a brief recess in August; therefore, staff had created a timeline based on that premise. This timeline requested a decision by the Board in early August in order to accommodate a recess, complete the required materials for filing and place the Local Option Levy on the Business Meeting agenda.

This year, the Board has greater flexibility and will hold Business Meetings on August 4th, 11th, 18th and 25th. Therefore the Board has additional opportunities to place this issue on a Business Meeting Agenda. In spite of this revised timeline, it is prudent to arrive at a decision at the Board's earliest discretion as this would allow for public testimony as well as time for staff to prepare filing materials. **The deadline for filing notice of a measure with the County Elections filing officer is on or before September 8, 2011.** According to the Clerk's office most measures are filed well in advance of this deadline.

QUESTION(S) PRESENTED FOR CONSIDERATION

1. Does the Board approve placing a public safety Local Option Levy on the November 8, 2011 ballot?
2. What should be the nature of such a levy?
 - a. Renewing of existing Local Option Levy (language precisely the same).
 - b. Redrafting the existing Local Option Levy (language substantially the same).
 - c. Creating a new levy (content or purpose of levy changed).

OPTIONS AVAILABLE

1. The Board may renew the existing Public Safety Local Option Levy for the November 8, 2011 election.
2. The Board may renew a redrafted Public Safety Local Option Levy.
3. The Board may draft a new levy.
4. The Board may postpone renewing the existing Public Safety Local Option Levy for the May 15, 2012 election.
5. The Board may take no action at this time.

RECOMMENDATIONS

Staff respectfully requests approval of Option One, renewal of the existing Public Safety Local Option Levy for the November 8, 2011 election.

SCHEDULE FOR STUDY SESSION

Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Nancy Newton @ 503- 742-5918

*5/2007 Version