



Agenda Report

18-388

Agenda Date: 5/29/2018

REPORT TO COUNCIL

SUBJECT

Discussion and Review of Potential General Fund Revenue Opportunities and Budget Amendment

EXECUTIVE SUMMARY

The purpose of this presentation on revenue options is to keep the City Council focused on the fact that **the number one priority must be to stabilize our fiscal outlook** to preserve service and staffing levels, generate more revenue to meet expenditure growth demands, and develop strategies for unfunded needs/projects. Combined, both revenue and expenditure strategies are needed to balance future deficits.

The following information serves as the master report for revenue opportunities for the City Council Study Session that can be considered for the 2018 November Ballot. During the January 2018 Council Goal Setting Session and the May 22nd Fiscal Year 2018/19 Proposed Budget Study Session, the City Manager presented the City's 10 Year Fiscal Outlook which forecasts structural deficits over the next ten years. During the January session, the Council authorized staff to return with an analysis of revenue options and, by consensus, expressed support to commit to solve annual deficits with sustainable budget solutions such as on-going expenditure reductions, increases to current revenue sources, and/or identifying new revenue sources to stabilize the City's future fiscal condition.

Additionally, the City has a number of unfunded capital infrastructure needs and the City Council held Study Sessions in 2017 and 2018 to discuss infrastructure. These unfunded needs include major projects that affect City services such as the Civic Center Campus, City maintenance yard, and fire stations and also quality of life improvements including parks and recreation, and community services facilities. One of the major projects from a need and cost perspective is the International Swim Center (ISC) and Community Recreation Center (CRC).

Over the course of the last few months, staff has worked on revenue options for Council consideration. This report serves as the transmittal memo for the following revenue opportunities:

1. Increase in the Transient Occupancy Tax (TOT) rate,
2. Increase in the Documentary Transfer Tax,
3. Establishment of a Utility User Tax (UUT),
4. Establishment of a Cannabis Tax, and/or
5. Establishment of an Infrastructure Parcel Tax.

The first three items are discussed within the body of this report while the last two items are sub reports within the overall information being provided on revenue opportunities. Recommendations included in this report are required to assess ballot initiatives and the Infrastructure Parcel Tax and

Cannabis Tax reports have additional recommendations specific to those revenue items.

To accomplish the work related to understanding the viability of the measures above, staff will be working with consultants to complete the following efforts:

- Statistically Valid and Scientific Community Research and Focus Groups
- Community Engagement & Stakeholder Outreach
- Information and Education Efforts
- Revenue Analysis and Engineering Scoping

At the end of staff's presentations on all three reports, the Council is asked to provide input regarding all five revenue opportunities and determining which two measures should move forward for further analysis and research for the November 2018 General Election. While all items are viable, it is understood that each require community and stakeholder engagement which, for some, may take more time.

Based on ballot initiative consultants that are experts in the area of ballot initiative strategy, placement of more than one revenue measure on the upcoming November ballot is not advised, due to the anticipated qualification and potential passage of the statewide California Business Roundtable Initiative. This initiative would increase the threshold for passing a new general tax to two-thirds of voters from the current simple majority (50% plus 1). The initiative also creates additional requirements for ballot language when a tax measure is put to the voters. If qualified and enacted by statewide voters in November 2018, this Initiative potentially nullifies any general purpose measure adopted by local voters retroactive to January of this year.

Further, the City's consultants have informed staff that when there is more than one revenue measure on the ballot simultaneously, voters tend to pick and choose between them or become concerned about a "tax over-reach" on the ballot, often with significant differences in passage rates as large as 10 points or more, even when both measures are passed. Given the uncertainty of the California Business Roundtable Initiative, and the significant impact to initiatives with less than two-thirds voter approval, the City Council must weigh heavily the risk of placing more than one initiative on the ballot and, likewise, determine which initiative is most advantageous to meet the revenue goals of the City.

Last, the results of the community research will be presented to the Council on July 5th with final Council action on a recommended ballot measure on July 17th to place the measure on the November 2018 ballot.

BACKGROUND

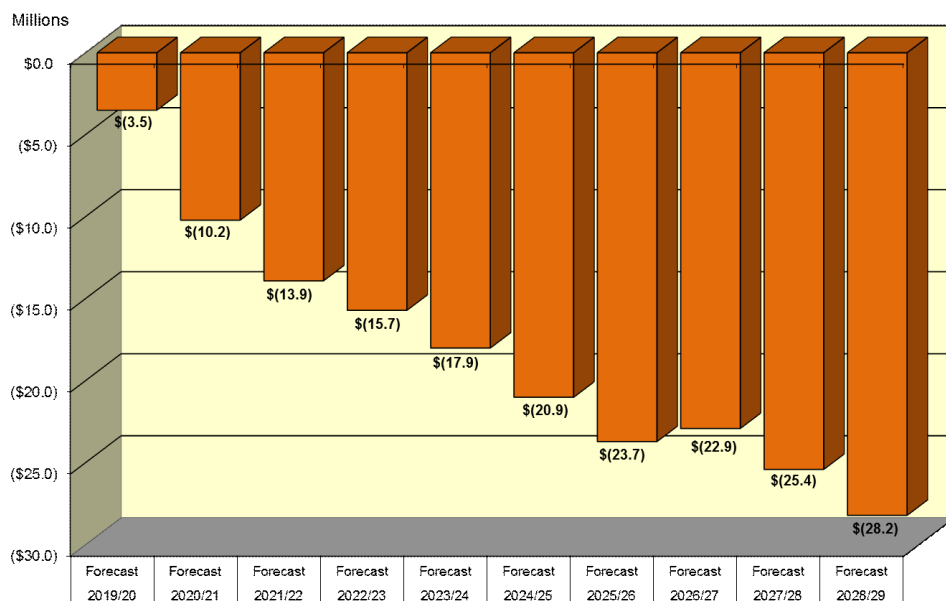
The City's 2018/19 Annual Operating Budget includes the transition from a Five-Year Financial Plan to the development of a Ten-Year Financial Plan for the City's General Fund. Moving to a ten-year outlook allows the City Council and staff to work proactively, strategically, and collaboratively on solutions for addressing year-over-year deficits. Further, it allows for a better understanding of today's fiscal actions over the long-term instead of budgeting year-to-year on a short-term basis.

As noted previously, on May 22nd, the City Manager presented that the City forecasts structural deficits over the next ten years and that committing to solve annual deficits with sustainable budget

solutions such as on-going expenditure reductions, increases to current revenue sources, and/or identifying new revenue sources would be required in order to stabilize the City's future fiscal condition.

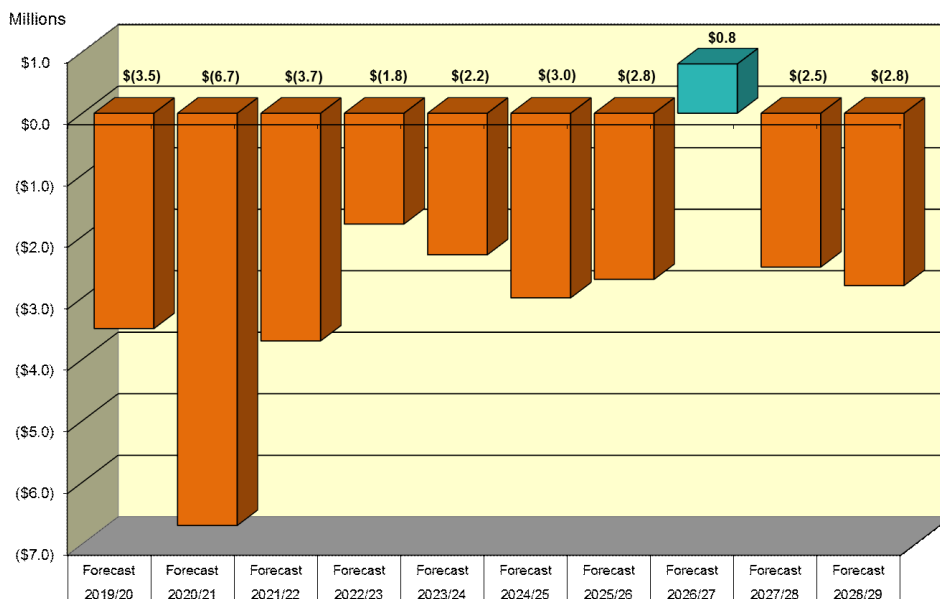
As mentioned, the Ten-Year Forecast reflects ongoing annual structural deficits in the City's General Fund beginning with a \$3.5 million deficit in 2019/20 and increasing to an estimated cumulative \$28.2 million deficit through 2028/29.

Table 1 Ten-Year Forecast Reflecting Cumulative Deficits



However, by committing to fiscal discipline and addressing the annual deficits with cost reductions, alternative service delivery options, or increasing revenues, the year-over-year deficits range between a projected/estimated low of \$1.8 million to a high of \$6.7 million over the ten-year period. To the extent that the problems are not solved year-to-year with ongoing solutions, then the value of non-on-going fiscal solutions would carry forward into the next fiscal year requiring steeper budget balancing solutions. If they are not solved with revenue, then expenditure reductions are required.

Table 2 - Ten-Year Forecast Reflecting Ongoing Deficits



The biggest cost driver is the rising pension costs, for both retired and active employees, which are relatively beyond the City's control. For example, on December 21, 2016, the CalPERS Board of Administration approved lowering the CalPERS discount rate assumption, the long-term rate of return, from 7.5% to 7.0% over the next three years. This will increase the City's contribution costs beginning in 2018/19. Lowering the discount rate means that the City will see increases in both the normal cost (the cost of pension benefits accruing in one year for active members) and the accrued liability.

The City's fiscal outlook is like many other local municipalities, whereby revenue growth occurs more slowly than expenditures resulting in a structural deficit. Particularly of note is that the General Fund relies partially on volatile revenue sources (e.g., Sales Tax and Transient Occupancy Tax make up 31% of General Fund revenue), which creates a vulnerability for providing continuously excellent services to our community. With these volatile revenue sources, and the predictable increases to pension costs and other post-employment benefits (OPEB) liabilities, what quickly becomes apparent is a need for a strategic work plan to identify new revenue opportunities and manage expenditure increases.

DISCUSSION

As shown in the ten-year financial forecast, the City has less than one year to focus on stabilizing the future years of the fiscal outlook (years 2-10, specifically). This affords the City Council and staff time to work strategically, holistically and collaboratively on budget solutions with minimal impact to service levels: if not, in the next fiscal year, with all things remaining equal relative to revenue, the City must begin to eliminate \$3.5 million of expenditures in the General Fund. The goal is to align expenditures with ongoing revenue growth.

As mentioned at the City Council Priority Setting Session held in January 2018, there has been an unprecedented volume of new initiatives and the pace of the organization has increased disproportionately to its increase in capacity and human resources. Doing more with less has

impacted quality of service and delays in Council's desire to achieve other directives, heightened the risk in our administrative processes, and reduced management "grip" on key initiatives-it is also not sustainable in the long-term. In order to address some of these capacity issues, the Proposed 2018/19 Operating Budget included the City Manager guideline of "streamlining administrative processes with a focus on lowering costs". For example, the proposed budget includes funding for a dedicated risk management function, contract management, and a public records request system which represent areas of costly delivery of service, cost exposure, and/or significant drain on resources for lack of appropriate systems and dedicated resources. Streamlining these efforts will increase citywide efficiencies and will free up staff to pursue other process improvements and other tasks.

As part of the City's budget stabilizing strategies and addressing the City's infrastructure needs, staff has identified five possible new revenue opportunities, which are:

1. Increase in the Transient Occupancy Tax (TOT) rate,
2. Increase in the Documentary Transfer Tax,
3. Establishment of a Utility User Tax (UUT),
4. Establishment of a Cannabis Tax, and/or
5. Establishment of an Infrastructure Parcel Tax.

Both the Cannabis Tax and Infrastructure Parcel Tax will be discussed in separate reports to Council. Certain taxes would require the City to draft regulatory ordinances and licensing procedures which would then be submitted as a measure to the voters for approval. The three revenue sources discussed in this report are considered a general tax and would have to be approved at a General election by a simple majority (50% plus 1) of voters.

Revenue from the taxes discussed in this report (if approved by the voters) would be used to offset future General Fund deficits and address other service needs such as deferred projects, staffing shortages, etc. It is important to note that these options are revenue opportunities that can be presented to the voters at the appropriate time, with some requiring community/stakeholder engagement to test feasibility and others more readily available.

The purpose of this presentation on revenue options is to keep the City Council focused on the fact that **the number one priority must be to stabilize our fiscal outlook** to preserve service and staffing levels, generate more revenue to meet expenditure growth demands, and develop strategies for unfunded needs/projects. Combined, both revenue and expenditure strategies are needed to balance future deficits.

Below is a discussion of three revenue opportunities:

I. Transient Occupancy Tax (TOT)

A Transient Occupancy Tax (TOT) commonly known as a "hotel tax", is charged by the City to guests of hotels and short-term rentals within the City. Currently, TOT revenue accounts for 8% or approximately \$21 million of the City's General Fund revenue. This revenue is used for general local governmental purposes such as Police, Fire, Public Works, Parks and Recreation, and Libraries. The City of Santa Clara's current TOT rate is 9.5% which is one of the lowest in the County (see Table 3).

Table 3 – TOT by Cities located in Santa Clara County

Transient Occupancy Tax by City	
City	Rate
Gilroy	9.0%
Santa Clara	9.5%
Morgan Hill	10.0%
Saratoga	10.0%
Fremont	10.0%
Milpitas	10.0%
Mountain View	10.0%
San Jose	10.0%
Sunnyvale	10.5%
Los Altos	11.0%
Campbell	12.0%
Cupertino	12.0%
Los Gatos	12.0%
Palo Alto	14.0%

Note: Sunnyvale is considering a 2% rate increase.

In addition to the current TOT rate, in May 2010 the City Council approved the formation of a Community Facilities District (CFD) as part of the Levi's Stadium project. The CFD includes hotel properties in the vicinity of Levi's Stadium. These hotel property owners voted unanimously to place a special tax on hotel room nights equivalent to a 2% TOT rate. This special tax is pledged to finance portions of the publicly owned infrastructure for the stadium project. The Forty Niners SC Stadium Company, LLC (StadCo) agreed to loan the Santa Clara Stadium Authority (SCSA) a not to exceed amount of \$35 million to fund CFD infrastructure with a maximum principal amount of \$38 million including capitalized interest. This loan bears interest at a fixed rate of 5.73% and the loan is payable solely from amounts actually received by the SCSA from the CFD. This debt is secured by and payable solely from the special taxes levied on the hotel properties within the CFD and does not represent an obligation or debt of the City or the City's General Fund. *Section 10.3 - TOT Credit* in the Disposition and Development Agreement (DDA) states in part that the City may increase the TOT rate from time to time. However, if the City increases the TOT by 1%, the funding amount that would go to the Stadium Authority, once the debt has been fully paid, would be reduced proportionately. With the addition of the CFD, hotel guests currently pay 11.5% at the nine hotels located around the Stadium and Convention Center.

The City currently has 37 businesses that pay TOT, including online rentals. The majority of these businesses charge hotel guests the 9.5% TOT rate. However, the nine hotels located in the CFD area provide 75% of the City's overall TOT revenue.

If the City's TOT rate was increased by 1% to 10.5% it could generate an estimated \$2 million annually in additional revenue for the City's General Fund. However, it is important to note that TOT is a volatile revenue source because it is strongly correlated with the state of the economy. For example, in the last recession this revenue source decreased by 28% or \$3.2 million in 2009/10 when compared to the peak of \$11.3 million in 2007/08. In 2016/17 (the most current fiscal year) this revenue rose to \$20.1 million. While increasing the TOT rate is a

viable option, a recession in the future years could substantially reduce this anticipated revenue.

Given that this is a user tax, it is likely to have 50% +1 voter approval since it impacts those using services that generate TOT, which is more likely to be a tourist or visitor not a resident.

II. Documentary Transfer Tax

A Documentary Transfer Tax (Transfer Tax) is a tax imposed by states, counties, and cities on the transfer of the title of real property from one person (or entity) to another within the jurisdiction. It is based on the property's sale price and is usually paid by the party transferring or conveying title to the property. As with TOT, this is also a very volatile revenue source that is impacted by the state of the economy. For example, in the last recession this revenue source decreased by over 50% or \$0.7 million in 2009/10 when compared to the peak of \$1.2 million in 2007/08. In 2016/17 (the most current fiscal year) this revenue rose to \$1.7 million.

The Santa Clara County Transfer Tax is \$1.10 for each \$1,000 sale amount (for example a property that is sold for \$500,000 would require payment of a \$550 transfer tax). Of the \$1.10, the City of Santa Clara receives \$0.55 and the County receives the remaining \$0.55. Charter cities may adopt, with voter approval, an additional transfer tax (which would stay with the City) plus the Documentary Transfer Tax of \$1.10 per thousand (which would stay with the County).

The City is projected to receive approximately \$2.0 million in the proposed 2018/19 Operating Budget in Transfer Tax revenue. An increase of an additional \$1.10 for a total Transfer Tax of \$2.20 for each \$1,000 sale amount would result in an estimated increase in revenue of \$1.9 million. For the average residential home sold currently with a median sale price of \$1,450,000 the tax increase to the buyer would increase by \$1,595 from \$1,595 to \$3,190.

While this too is a user tax, it does require community and stakeholder engagement to better understand areas that may have unintended consequences of the goal of generating more revenue for the General Fund. This user tax would impact individuals involved in real estate transactions and, therefore, would require input from real estate stakeholders. This is likely a strategy that is best postponed once a comprehensive engagement process is completed with input received and a proposal reflected of that input that accomplishes the goal of revenue generation for the City.

III. Utility User Tax

The City currently does not collect a Utility User Tax (UUT), which is imposed by a city on the consumption of utility services, including (but not limited to) electric, gas, water, sewer, cable television, telephone (including cell phone and other telecommunication services), and sanitation. The rate of the tax and the use of the revenues are determined by the City. The tax would be levied by the City on the customer of the utility services, collected by the utility as part of its regular billing procedure, and then remitted to the City.

City UUT rates in the region range from 1% to 11%. The particular utilities to which the tax applies can vary and different rates can be applied to residential versus commercial users. The average UUT rate for Cities located in Santa Clara County is 3.7%. Most large cities have UUTs and roughly half of California residents and businesses pay a UUT.

The City of Santa Clara does not currently have a UUT. The Water and Sewer Department discontinued charging its excise tax in 2009. Based on an analysis of the Fiscal Year 2016/2017 charges for electricity, water, and sewer as well as estimates for telecommunication services and natural gas charges, staff believes that the City could generate close to \$7 million in tax revenue for each 1% of UUT tax. The estimated UUT on telecommunication and gas charges is based on estimates from nearby cities.

For a \$200 million infrastructure improvement measure, the accompanying infrastructure improvement needs report states that a parcel tax of \$20-\$25 for every \$100,000 of assessed value would be needed. Such a tax requires 2/3 voter approval. The property assessment would be sufficient to pay off a 32.5 years General Obligation Bond with an annual debt service between \$12.5 million and \$14.1 million (depending on the interest rate environment at the time of debt issuance). Alternatively to issuing bonds, the Council could also dedicate some of the UUT revenue stream to issue Certificates of Participation, a debt service instrument, in order to fund the \$200 million infrastructure needs.

In order to address the City service and infrastructure improvement needs, voter approval of a broad utility user tax of 3% with a 50% +1 vote would be required. A 3% tax increase is estimated to generate approximately \$20.6 million. This would generate between \$6.5 million to \$8.1 million additional revenue available to the General Fund to preserve City services once the annual debt service payment for the infrastructure improvements is made.

Since the UUT impacts residential and commercial customers, this revenue option would require robust community engagement to determine an approach that is responsive to input and the goal of generating more revenue to the General Fund.

IV. Cannabis Tax

See attached report.

V. Infrastructure Parcel Tax

See attached report. Given that this revenue option is the most studied of all presented, absent approval of other revenue opportunities, the Council will need to weigh heavily the viability of staff's ability to implement a significant capital program of this magnitude while concurrently reducing expenditures and staffing to balance the budget. Meaning that, the voters may approve a Parcel Tax for investment in projects important to the City; however, given the 10 Year Fiscal Outlook, during the same time, the ability to deliver in the context of reduced staffing levels throughout the City will impact the ability to successfully deliver the projects.

Other Actions

If Council would like to continue with the Ballot Measure process, staff requests that the Council focus on the top two ballot initiatives and grant staff the authority to enter into contracts to conduct the required community research, outreach, and testing to determine which option would be most successful when tested against other potential revenue generating ballot initiatives that the City Council will consider concurrent with this report.

As time is of the essence, and a standard procurement process would cause for delay with obtaining necessary information to initiate ballot language by the July 17th City Council meeting, staff requires

Council approval to authorize the City Manager to waive the procurement process and proceed to execute contracts for these services to expeditiously complete this work and return on July 5th with an update to the City Council and planned action on July 17th:

- **For study of any potential revenue ballot initiatives**, a contract for up to \$250,000 with a consultant/consultants to complete statistically valid community opinion research, additional analysis, and development of draft ballot language. This work includes the Infrastructure Ballot Measure, but also other revenue opportunities (Transient Occupancy, Documentary Transfer Tax, and Utility User Tax).
- **If the City Council selects the Infrastructure Parcel Tax as a viable option to study further, in addition to the above contract**, a contract amendment up to \$300,000 with a consultant to complete additional financial analysis to inform the decision process as outlined in the accompanying infrastructure improvement needs report. The additional work will help determine the financing capacity of the new tax measures to support Council priority projects, review the capital cost estimates and analyze project financing, review construction costs for the ISC/CRC, additional outreach and review tax revenue collection

Next Steps

Next steps, depending on which revenue opportunities the Council would like to pursue, include positioning ourselves for the upcoming election by beginning:

- Public outreach/engagement, community research, drafting regulatory ordinances if required, and preparing any licensing procedures which would then be submitted as a measure to the voters for approval. The goal would be to test with the community the combination, or balance, of initiatives that could be supported by voters toward successful passage and implementation
- Present to Council on July 5, 2018 regarding results from the community research
- Present to Council on July 17, 2018 regarding ballot language and moving forward with the process.

FISCAL IMPACT

Staff is requesting a budget amendment in the amount of \$250,000 from General Fund Budget Stabilization Reserve (BSR) for community outreach/engagement.

BUDGET AMENDMENT

	2017-18 Current	Increase/Decrease	2017-18 Revised
<u>Revenues</u>			
<u>Fund 001 – General Fund</u>			
Budget Stabilization (BSR)	\$55,085,895	(\$250,000)	\$54,835,895
<u>Expenditures</u>			
<u>Fund 001 – General Fund</u>			
City Clerk – Elections (001-2313-87870)	\$319,115	\$250,000	\$569,115

COORDINATION

This report has been coordinated with the City Attorney's Office and City Manager's Office.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

1. Review and Provide direction on the Potential General Fund Revenue Opportunities
2. Authorize the City Manager to enter into contracts to conduct the required community research and outreach.
3. Approve the appropriation of \$250,000 from the General Fund Budget Stabilization Reserve to the City's Clerk's operating budget

Reviewed by: Angela Kraetsch, Director of Finance

Approved by: Deanna J. Santana, City Manager



Agenda Report

18-778

Agenda Date: 5/29/2018

SUBJECT

Supplemental Information: Summary of Legislation Related to Tax Ballot Measures

BACKGROUND

As the Council considers revenue opportunities, it is important to note that there are legislative issues that must be taken into account when considering the viability of successful ballot measures for the November 2018 election. Staff continues to monitor and analyze the potential impacts and will continue to transmit information as it becomes available. The following information is being transmitted to the Council for consideration in the context of considering revenue opportunities:

The Tax Fairness, Transparency, and Accountability Act of 2018

In January 2018, the California Business Roundtable crafted a potential measure for the November 2018 state ballot entitled, "The Tax Fairness, Transparency, and Accountability Act of 2018" (attached). This potential measure has a circulation deadline of July 25, 2018. If the necessary signatures are collected by this date, those signatures will be verified, and if so verified, the measure will qualify for the statewide November 2018 ballot.

Key elements of this measure include:

- **Requiring a two-thirds voter approval to raise any and all new local taxes.** Currently, local taxes for general purposes may pass by a majority vote, while only taxes for a special purpose require a supermajority vote.
- **Expanding the definition of a tax to include some charges that local governments currently treat as nontax levies, such as regulatory and service fees.** Consequently, this measure increases the number of revenue proposals subject to higher vote requirements.
- **Retroactively voiding any voter-approved local taxes imposed in 2018**, unless those taxes meet the criteria adopted by this measure.
- **Mandating a two-thirds vote of the City Council to approve all fees** and allowing a referenda process for voters to overturn fees.
- Requiring that tax ballot measures include a statement of how revenues can be spent, including for measures that increase local taxes. A statement of **allowable uses must be included in the ballot question presented to voters; any change to the statement must be passed by a two-thirds vote of the City Council and a two thirds vote of residents.**
- **Increasing a city's legal burden from "preponderance of the evidence" to "clear and convincing evidence" to establish that a fee is not a tax**, and mandating that a city prove that the amount is reasonable and only covers actual costs, that an exempt charge is used

solely for its stated purpose, and that it was enacted in compliance with the requirements of this measure.

Assembly Bill 195

Local agencies must comply with new election ballot requirements for initiative measures under AB195 (attached), which was signed by the Governor on July 24, 2017. **AB195 requires that any ballot measure that imposes a tax or raises a tax to include in the ballot statement the amount of money to be raised annually and the rate and duration of the tax to be levied.** It also requires that the ballot statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in the language that is neither argumentative nor likely to create prejudice for or against the measure. With AB195, Elections Code Section 13119 specifically outlines how the ballot measure question must be written.

APPLICATION OF LEGISLATION

Infrastructure Parcel Tax: Concern rests with prior community research that was conducted on the Infrastructure Parcel Tax and the data provided to assess viability of the measure. For instance, the ballot questions posed in community research was:

“Shall the City of Santa Clara protect, maintain and repair local parks and playgrounds; perform essential maintenance; keep park restrooms clean, improve access to open space; improve the City creek trails; use more recycled water for irrigation; build an energy efficient community recreation and swim center that accommodates early childhood education and afterschool programs, funded by raising up to \$400 million in bonds and private contributions and requiring citizen oversight, annual audits and no money spent on administrator salaries?”

However, compliant with AB 195, the ballot questions posed in community research should have been:

*“Shall Santa Clara maintain and repair local parks and playgrounds; improve access to open space; build an energy-efficient community recreation and swim center, funded by raising **\$400 million in bonds, for which \$202 million will be used for principal financing capacity, at \$12.1 million/year over 33 years, by imposing a parcel tax of \$25 for each \$100,000 in assessed land value, requiring citizen oversight and audits without money spent on administrator salaries?**”*

The reliability of the data is of serious concern and it is likely not reliable. The data originates from June and September 2017 and it may be no longer be representative of the voters' opinion. In addition, the original ballot question may be non-compliant based on methodology for word count, as prescribed by California Election Code.

Cannabis Tax: I continue to be extremely concerned about staff workload and the realities of our ability to absorb a new regulatory program. Taxation methodology on cannabis may be approached in several ways including: gross receipts; square footage; and/or inventory weight. Based on the legislative schedule and the Registrar of Voters deadline, the Council would need to make the regulatory decisions on or before July 17 in order to have a measure placed on the November ballot.

Given that the range of revenue is estimated at \$1.2 - \$1.4 million per year, the Council should heavily weigh the burden of absorbing a new program, significant impact to all City departments (Community Development, Police, Fire, Attorney, Manager's Office, Finance, etc.), and required ramp up time to be knowledgeable in supporting these services with significant policy decisions outstanding on the part of Council (land use, public health and safety, etc.). In short, the revenue opportunity value, measured against the short time to establish regulatory policy and for staff to operationalize it within an already heavy workload, does not appear to be a productive foundation for the results that the Council and public seek for a regulatory program for which support has been expressed. Additional time for the City Council to establish policy in a thoughtful manner and, in turn, for staff to determine how to absorb the workload until more staff can be hired, should surface as part of the deliberations. It should be noted that San Jose and Oakland have dedicated staff to manage these regulations.

Staff

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. The Tax Fairness, Transparency, and Accountability Act of 2018
2. Assembly Bill 195

December 22, 2017**VIA PERSONAL DELIVERY**

Hon. Xavier Becerra
Attorney General of California
1300 I Street, 17th Floor, P.O. Box 944255
Sacramento, CA 95814

RECEIVED**DEC 22 2017**

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ashley Johansson, Initiative Coordinator

Re: Request for Title and Summary for Initiative Constitutional
Amendment (A.G. No. 17-0050) - Amended Language

Dear Ms. Johansson:

Pursuant to Section 9002(b) of the California Elections Code, please find attached hereto amendments to the above-captioned initiative measure. I hereby request that a title and summary be prepared for the initiative measure using the amended language. My address as a registered voter, the required proponent affidavits pursuant to Sections 9001 and 9608 of the California Elections Code, and a check for \$2,000.00 were included with the original submission.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Kurt Oneto (telephone: 916/446-6752).

Thank you for your assistance.

Sincerely,



Robert Lapsley, Proponent

Enclosure: Proposed Initiative Constitutional Amendment

[Deleted codified text is denoted in ~~strikeout~~. Added codified text is denoted by *italics and underline*.]

Section 1. Title.

This Act shall be known, and may be cited as, the Tax Fairness, Transparency and Accountability Act of 2018.

Section 2. Findings & Declarations.

(a) State and local governments' appetite for new revenue adds to the rapidly rising costs of living that Californians face for housing, childcare, gasoline, food, energy, healthcare, and education. Compared to 2009, state revenues from taxes and other sources are set to grow by 68 percent— \$72 billion, or the equivalent of more than an additional \$7,200 annually for a family of four. Comparable growth in local government charges such as employee pensions adds considerably more to this total. This growing burden of taxes and other charges is hurting hardworking Californians who find themselves living paycheck to paycheck, and being forced to make tough choices between paying for housing, food, or healthcare.

(b) Californians are already among the highest taxed people in the country and already pay among the highest tax rates in the nation for the state personal income tax, sales taxes, and gasoline tax. From the most recent data from the US Census Bureau, California state and local government general revenues collected in 2015 from taxes, fees, charges, and other non-utility local sources were the highest in the nation at \$419 billion, making them the 9th highest on a per capita basis at \$8,385 per person. With 12 percent of the national population, US Census Bureau data shows that Californians in 2016 paid 17 percent of all taxes collected by the states including 13 percent of all general sales taxes, 15 percent of all vehicle license fees, 16 percent of all property taxes, 22 percent of all corporation taxes, 23 percent of all personal income taxes, and 29 percent of all occupation and business license fees.

(c) Californians have tried repeatedly to force greater accountability upon government before revenues can be increased. Voter-approved ballot measures such as Proposition 13 (1978), Proposition 62 (1986), Proposition 218 (1996), and Proposition 26 (2010) required state and local governments to make their case to the voters on the need for increased government revenues.

(d) Through these measures, voters also tried to keep government honest and transparent about why new revenues and charges are needed and how they will be used. For too long, politicians, state and local governments, and special interests have promised that taxpayer money will be spent for a specific purpose, only to divert its use once the money starts coming in. Revenues that were supposed to improve education instead have been diverted to general salary and benefit increases. Revenues that were promised to improve and expand government services were instead diverted to pay down debts created by past government decisions. Recent major transportation improvements have seen cost overruns more than double their original estimate. Polling by the nonpartisan Public Policy Institute of California showed 88 percent of Californians believe state government wastes a lot or some of the money we pay in taxes and charges.

(e) Contrary to the voters' intent, voter approval of government revenue increases and spending accountability measures have been weakened by the Legislature, the courts, and special interests, making it easier to raise government revenues in a myriad of ways by only a simple majority of the Legislature or with no vote by the public who is expected to pay the costs.

(f) Worse, court-created loopholes have enabled governments and their surrogates to become less transparent about how the funds taken from taxpayers are raised and spent. Loopholes have been created which are used by the Legislature, local governments and even special interest groups to: (1) pass vaguely-worded statutes allowing unelected bureaucrats to impose new fees and other charges on their own that increase the costs of goods and services in the state; (2) impose new taxes and other charges by hiding them and simply calling them by another name or even using the term "something else;" (3) shelter the revenues from voter approval by running the revenues through a nonprofit organization or another third party; and (4) encourage "divide and tax" by making it easier to raise taxes or charges on only a part of the population through simple majority votes in low turnout elections.

Section 3. Statement of Purpose.

(a) In enacting this measure, the voters reassert their right to require a two-thirds vote of the Legislature at the state level, and two-thirds of voters at the local level, for increases in state and local taxes, no matter how they are labeled nor how or by whom they are proposed. The

voters also intend that government remain accountable to the voters for how the taxes, fees, charges, and other government revenues extracted from Californians are spent.

(b) Furthermore, the purpose and intent of the voters in enacting this measure is to clarify that any new or increased form of state revenue, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a two-thirds vote of the Legislature to ensure that the purposes for such tax, fee, or other charge are broadly supported and transparently debated.

(c) Furthermore, the purpose and intent of the voters in enacting this measure is also to ensure that taxpayers have the right and ability to effectively balance new or increased taxes, fees, charges, or other government revenues with the rapidly increasing costs Californians are already paying for housing, food, gasoline, energy, healthcare, education, and other basic costs of living.

(d) Furthermore, the purpose and intent of the voters in enacting this measure is to force transparency and accountability on how state and local revenues are utilized, so that revenues are used for their promised purposes, and not diverted to other uses.

(e) Furthermore, the purpose and intent of the voters in enacting this measure is to require that the public be allowed to vote on any and all local taxes that were created or increased by regulation or other bureaucratic action.

(f) In enacting this measure, the voters also additionally intend to reverse loopholes in the legislative two-thirds vote and voter approval requirements for government revenue increases created by the courts including, but not limited to, *Cannabis Coalition v. City of Upland*, *Chamber of Commerce v. Air Resources Board*, and *Schmeer v. Los Angeles County*.

Section 4. Section 3 of Article XIII A of the California Constitution is amended, to read:

SECTION 3.

(a) Every levy, charge, or exaction of any kind imposed, adopted, created, or established by state law is either a tax or an exempt charge.

(b) (a) Any change in state statute law which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property, may be imposed.

~~(c) (b)~~ As used in this section, "tax" means every ~~any~~ levy, charge, or exaction of any kind imposed, adopted, created, or established by the State state law that is not an exempt charge. ~~except the following:~~

(d) As used in this section, "exempt charge" means only the following:

~~(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.~~

~~(1) (2)~~ A reasonable charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the State of providing the service or product to the payor.

~~(2) (3)~~ A reasonable charge imposed for the reasonable not to exceed the actual regulatory costs to the State ~~incident to~~ for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, imposing assessments on a business by a tourism marketing district, and the administrative enforcement and adjudication thereof.

~~(3) (4)~~ A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

~~(4) (5)~~ A fine, or penalty, ~~or other monetary charge~~ including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or the State, as a result of a state administrative enforcement agency pursuant to adjudicatory due process, to punish a violation of law.

~~(e)~~ Any tax adopted after January 1, 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.

(e) As used in this section, "state law" includes, but is not limited to, any state statute, state regulation, state executive order, state resolution, state ruling, state opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by the legislative or executive branches of state government. Because subdivision (f) of Section 9 of Article IX of this Constitution requires that the University of California shall be entirely

independent of all political or sectarian influence, "state law" does not include acts of the Regents of the University of California.

(f)(1) A levy, charge, or exaction of any kind imposed, adopted, created, or established by state law and which is retained by or payable to a non-government entity remains subject to this section if a state law also limits in any way how the non-government entity can use the levy, charge, or exaction.

(2) The characterization of a levy, charge, or exaction of any kind imposed, adopted, created, or established by state law as being voluntary, or paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be a factor in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(g) No new, increased, or extended tax shall be valid or given any effect unless:

(1) The state law creating, increasing, or extending the tax contains a specific and legally binding and enforceable limitation on how the revenue from the tax can be spent. If the revenue from the tax can be spent for unrestricted general revenue purposes, then a statement that the tax revenue can be spent for "unrestricted general revenue purposes" shall be included in the separate, stand-alone section required by paragraph (2).

(2) A true and impartial statement of facts explicitly and affirmatively identifying each tax and the specific limitation on how the revenue therefrom can be spent is set forth in the state law as a separate, stand-alone section containing no other information.

(3) The revenue from the tax is not used for any purpose other than those identified pursuant to this subdivision.

(h) The specific and legally binding and enforceable limitation on how the revenue from a tax can be spent shall only be changed by a state law which is adopted by a separate act that is passed by not less than two-thirds of all members elected to each of the two houses of the Legislature.

(i) ~~(d)~~ The State bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction of any kind is an exempt charge and is not a tax, that the amount is reasonable and no more than necessary to cover the reasonable actual costs of the governmental activity service or product or regulatory task, that an exempt charge is not used for any purpose other than its stated purpose, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens

on, or benefits received from, the governmental activity is proportional based on the service or product provided to the payor as described in paragraph (1) of subdivision (d), or is proportional to the costs to the State created by the payor for performing the regulatory tasks described in paragraph (2) of subdivision (d).

Section 5. Section 3.1 is added to Article XIII A of the California Constitution, to read:

SECTION 3.1.

(a) No new, increased, or extended levy, charge, or exaction of any kind that is contained in, or authorized by, a new or amended regulation shall be given any force or effect unless and until the Legislature by statute approves the levy, charge, or exaction as provided in this section.

(b) If the levy, charge, or exaction is a tax as defined in Section 3 of this article, then it must be approved by not less than two-thirds of all members elected to each of the two houses of the Legislature. If the levy, charge, or exaction is an exempt charge as defined in Section 3 of this article, then it must be approved by not less than a majority of all members elected to each of the two houses of the Legislature.

(c) The Legislature shall not vote to approve any levy, charge, or exaction of any kind subject to this section until after the regulation containing the levy, charge, or exaction is approved in its final form by the Office of Administrative Law or any alternative or successor agency. No regulation containing or authorizing a levy, charge, or exaction subject to this section shall be filed with the Secretary of State or published in the California Code of Regulations, or any alternative or successor publication, until the levy, charge, or exaction is approved by the Legislature in compliance with this section.

(d) An emergency regulation, including any readoption thereof, that contains or authorizes any new, increased, or extended levy, charge, or exaction of any kind shall not remain in effect longer than 120 days without approval of the levy, charge, or exaction by the Legislature pursuant to this section.

(e) This section shall not apply to any new, increased, or extended levy, charge, or exaction of any kind that is contained in, or authorized by, a new or amended regulation promulgated pursuant to a state tax that was adopted in compliance with Section 3.

(f) For purposes of this section, "regulation" has the same meaning as found in Section 11342.600 of the Government Code, and "emergency" has the same meaning as found in Section 11342.545 of the Government Code, as those sections read on January 1, 2017.

(g) Nothing in this section shall be interpreted as a grant of authority to tax to any executive branch agency or department.

Section 6. Section 1 of Article XIII C of the California Constitution is amended, to read:

SECTION 1.

Definitions. As used in this article:

(a) "Article XIII D assessment, fee, or charge" means an assessment, fee, or charge subject to Article XIII D. ~~"General tax" means any tax imposed for general governmental purposes.~~

(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, ~~or~~ any other local or regional governmental entity, or the electorate of any of the preceding entities when exercising the initiative power.

(c) "Special district" means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

~~(d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.~~

(d) (e) As used in this article, "tax" means every any levy, charge, or exaction of any kind imposed, adopted, created, or established by a local government law that is not an exempt charge or Article XIII D assessment, fee, or charge., except the following:

(e) "Exempt charge" means only the following:

~~(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.~~

(1) (2) A reasonable charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the local government of providing the service or product.

(2) (3) A reasonable charge imposed for the reasonable not to exceed the actual regulatory costs to the a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(3) (4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(4) (5) A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or a local government administrative enforcement agency pursuant to adjudicatory due process, as a result of to punish a violation of law.

(5) (6) A charge imposed as a condition of property development, or an assessment imposed upon a business by a tourism marketing district.

(6) (7) An Article XIII D assessment, fee, or charge Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

(f) "Local law" includes, but is not limited to, any ordinance, resolution, regulation, ruling, opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by a local government.

(g) "Extend" includes, but is not limited to, doing any of the following with respect to a tax, exempt charge, or Article XIII D assessment, fee, or charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

(h)(1) A levy, charge, or exaction of any kind imposed, adopted, created, or established by a local law and which is retained by or payable to a non-government entity remains subject to this section and Section 2 if a local law also limits in any way how the non-government entity can use the levy, charge, or exaction.

(2) The characterization of a levy, charge, or exaction of any kind imposed, adopted, created, or established by a local law as being voluntary, or paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be factors in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(i) The local government bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction of any kind is an exempt charge and

not a tax, that the amount is reasonable and no more than necessary to cover the reasonable actual costs of the governmental activity service or product or regulatory task, that an exempt charge is not used for any purpose other than its stated purpose, and that the manner in which those costs are allocated to a payor is proportional based on the service or product provided to the payor as described in paragraph (1) of subdivision (e), or is proportional to the costs to the local government created by the payor for performing the regulatory tasks described in paragraph (2) of subdivision (e) bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Section 7. Section 2 of Article XIII C of the California Constitution is amended, to read:

SECTION 2.

Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

~~(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.~~

~~(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.~~

~~(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).~~

(a) Every levy, charge, or exaction of any kind imposed, adopted, created, or established by local law is either a tax, an exempt charge, or an Article XIII D assessment, fee, or charge.

(b) ~~(d)~~ No local government may impose, extend, or increase any ~~special~~ tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A ~~special~~ tax shall

not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

(c) The governing body of a local government shall only submit a tax to the electorate of the local government by an act passed by not less than two-thirds of all members elected to the governing body. Any tax so submitted shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(d) The governing body of a local government shall not impose, extend, or increase any exempt charge unless and until the act containing the exempt charge is passed by not less than two-thirds of all members elected to the governing body. An exempt charge imposed, extended, or increased by a governing body shall be subject to referendum pursuant to the same signature requirement applicable to statewide referendum measures.

(e) No initiative in any local government may impose, extend, or increase any exempt charge unless and until the exempt charge is submitted to the electorate and approved by a two-thirds vote.

(f) No new, increased, or extended tax shall be valid or given any effect unless:

(1) The act creating, increasing, or extending the tax contains a specific and legally binding and enforceable limitation on how the revenue from the tax can be spent. If the revenue from a tax can be spent for unrestricted general revenue purposes, then a statement that the tax revenue can be spent for "unrestricted general revenue purposes" shall be included in the separate, stand-alone section required by paragraph (2), and included in the ballot question presented to voters.

(2) A true and impartial statement of facts explicitly and affirmatively identifying each tax and the specific limitation on how the revenue therefrom can be spent is set forth in the act as a separate, stand-alone section containing no other information.

(3) The revenue from the tax is not used for any purpose other than those specifically identified pursuant this subdivision.

(g) A change in how the revenue from a tax can be spent shall be treated as a new tax and shall be approved in accordance with the requirements of this section.

(h) An Article XIII D assessment, fee, or charge can be extended, imposed, or created pursuant to Article XIII D.

(i) In order to preserve the right of voters to vote on all local taxes as provided for in this section, all of the following shall apply:

(1) Any imposition, increase, or extension of a local government tax that was voted on by the electorate of the local government after January 1, 2018, but prior to the effective date of this subdivision, and which does not satisfy all of the requirements of paragraph (2), shall cease to be imposed, extended, increased, or collected unless and until the tax is approved in strict compliance with all the requirements of paragraph (2).

(2)(A) The tax imposition, increase, or extension was approved by two-thirds of the local government's electorate.

(B) The act imposing, increasing, or extending the tax strictly complies with subdivision (f).

(C) The ballot question presented to voters for the tax imposition, increase, or extension strictly complies with subdivision (f).

Section 8. Section 5 is added to Article XIII C of the California Constitution, to read:

SECTION 5.

(a) This article and Section 4 of Article XIII A shall apply to all local lawmaking power, whether exercised by a governing body or by the electorate acting through the initiative power.

(b) Nothing in this article or Section 3 of Article XIII A shall be interpreted as altering the voter approval requirements for bonded indebtedness described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A.

Section 9. Section 3 of Article XIII D of the California Constitution is amended, to read:

SECTION 3.

Property Taxes, Assessments, Fees and Charges Limited.

(a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any ~~special~~ non-ad valorem tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Section 10. Liberal Construction.

This Act shall be liberally construed in order to effectuate its purposes.

Section 11. Conflicting Measures.

(a)(1) In the event that this initiative measure and another initiative measure or measures relating to state or local vote requirements for the imposition, adoption, creation, or establishment of taxes, charges, and other revenue measures shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(2) Notwithstanding paragraph (1), this initiative measure shall not be deemed to be in conflict with any other initiative measure that requires statewide voter approval of the creation, increase, extension, or continued imposition of any tax.

(b) If this initiative measure is approved by the voters but superseded in whole or in part by any other conflicting initiative measure approved by the voters at the same election, and such conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

Section 12. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

Section 13. Legal Defense.

If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of state or federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(c) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

Section 14. Effective Date.

Notwithstanding any other provision of the California Constitution, this act shall take effect the day after its approval by the voters.

Assembly Bill No. 195

CHAPTER 105

An act to amend Section 13119 of the Elections Code, relating to elections.

[Approved by Governor July 24, 2017. Filed with
Secretary of State July 24, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 195, Obernolte. Local initiative measures: ballot printing specifications.

Existing law requires that the ballots used when voting upon a proposed county, city, or district ordinance submitted to the voters as an initiative measure have printed on them a specified statement describing the nature of the proposed ordinance.

This bill would extend these ballot requirements to any measure submitted to the voters that is proposed by a local governing body or submitted to the voters as an initiative or referendum measure. The bill would require the statement describing the measure to be a true and impartial synopsis of the proposed measure, as specified. By expanding the local measures to which the ballot requirements apply, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 13119 of the Elections Code is amended to read:

13119. (a) The ballots used when voting upon a measure proposed by a local governing body or submitted to the voters as an initiative or referendum measure pursuant to Division 9 (commencing with Section 9000), including a measure authorizing the issuance of bonds or the incurrence of debt, shall have printed on them the words "Shall the measure (stating the nature thereof) be adopted?" Opposite the statement of the measure to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his or her vote shall be counted in favor of the adoption of the measure. If he or she stamps a cross

(+) in the voting square after the printed word “No,” his or her vote shall be counted against its adoption.

(b) If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.

(c) The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.

(d) For purposes of this section, “local governing body” means the governing body of a city, county, city and county, including a charter city or charter county, or district, including a school district.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



Agenda Report

18-418

Agenda Date: 5/29/2018

REPORT TO COUNCIL

SUBJECT

Report on Work Effort Related to New City Cannabis Regulations: Health & Safety Ordinance; Regulatory Fee and Tax Proposal; and Land Use Ordinance

BACKGROUND

The passage of Proposition 64, the Adult Use of Marijuana Act (AUMA), on November 8, 2016, legalized personal recreational use by persons 21 and over, and regulated commercial activities related to cannabis. Subsequently, the State legislature passed Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), unifying regulations on medical and non-medical commercial cannabis activities and the personal use of cannabis. As of January 2018, California State ("State") licensing of commercial activity, depending on license type, will be overseen by the Bureau of Cannabis Control, the Department of Public Health, and the Department of Food and Agriculture. State regulations allow for six general license types for commercial cannabis enterprises: retail (including delivery); cultivation; manufacturing; transportation; distribution; and testing. Prior to the issuance of a State license, the State requires, among other items, a local license if local regulations have been enacted.

In the interest of expanding revenue opportunities for the City, on September 26, 2017, Council directed staff to: 1) prepare cannabis regulations for future Council consideration; and 2) prepare a corresponding fee and tax strategy for commercial cannabis activity. On December 19, 2017, Council approved a contract with SCI Consulting Group ("SCI") to assist the City with the development of commercial cannabis regulations together with a cost-recovery fee and tax strategy.

On January 19-20, 2018, the City held a City Council Operational and Strategic Priority Setting Session to create a shared understanding and assessment about the state of the organization and the City Council's policy priorities. At that session the Council discussed the need to increase current revenue sources and/or identifying new revenue sources to stabilize the City's fiscal condition. Following January 19-20 session, on January 23, 2018, the Council held a study session on commercial cannabis which in turn launched a work plan to create a policy framework to allow certain cannabis activity in Santa Clara and to create a new tax structure for future Council consideration.

In February 2018, SCI engaged in education and community outreach efforts holding two community meetings and two stakeholder meetings. Presentations to the public included information about the history of cannabis; the cannabis industry; State of California cannabis licensing; work effort to create policy framework for potential City of Santa Clara cannabis regulations. In addition to these outreach meetings, staff from several City Departments including Police, Fire, City Attorney's Office, and City Manager's Office visited two established cannabis businesses in San Jose. Cannabis activities in these businesses included: retail, indoor cultivation, distribution and delivery. During these site visits,

information was exchanged about retail activity; security protocols; surveillance systems; tracking of product and delivery vehicles; hiring and staffing procedures; hours of operation; cash management; compliance with local regulations and nuisance issues (i.e., noise; parking; odor; etc.).

DISCUSSION

Over the past several months, SCI and staff have been working to prepare cannabis regulations for Council discussion and consideration. The City's proposed commercial cannabis regulatory framework has three main components: 1) health and safety regulations; 2) land use regulations; and 3) regulatory fee and taxing regulations. The framework or regulations would include ordinances which would set the broad policy of the City's commercial cannabis program and following, corresponding resolutions which would provide for a more detailed level of regulations on implementation and operation of the program.

Health and Safety

Council adoption of health and safety regulations would set policy on matters such as designating allowable categories of cannabis business enterprises that could operate in Santa Clara and specifying certain conditions upon which the business could license and operate. In addition, the health and safety regulations could specify the number of Santa Clara licenses allowed; the process and requirements by which a business may apply and be selected to secure a Santa Clara license; requirements to maintain a license; and the operating requirements of the license holder.

After reviewing the cannabis licensing structures in other cities and viewing the operation of the Santa Clara businesses, the following proposal is reflective of an implementation model that allows for the City, and the multiple departments involved, to adjust to implementing a new regulatory program that requires learning and training on new service areas. Additionally, it is clear that the sustainment of this new regulatory area will require dedicated staff which is a common practice in other municipalities that regulate cannabis. As such, staff's initial recommendation on several key points include:

- **Uses:** Provide for the possibility of all six general license types to operate in the City: retail (including delivery); cultivation; manufacturing; transportation; distribution; and testing. Staff recommends that outdoor cultivation and volatile processing be banned and allow only for indoor cultivation and non-volatile processing.
- **Number of locations:** Initially allow a maximum of three commercial cannabis ***locations*** within certain zoning designations in the City, with multiple license types allowed at each location until a full cannabis program is established. After the City has a better understanding of operational issues such as the staffing and resource requirements associated with a City cannabis licensing program, the City Council may consider increasing the number of allowable locations.
- **Operation:** As observed in facilities located in San Jose, each approved location could request and secure multiple license types depending on the nature of the business operation. The City's cannabis regulations will include areas such as security requirements; minimum hours of operation; background investigation and, requirements of staff employed.

Staff anticipates that a health and safety ordinance, together with necessary resolutions would be scheduled for Council review and consideration in June 2018. At that time the Council could decide whether to allow these uses if the cannabis tax measure does not pass.

Zoning

While in general health and safety regulations speak to the manner in which commercial cannabis may operate (who, when, how), zoning regulations would set policy on where commercial cannabis activity is allowed. State law restricts cannabis business from locating within a 600 foot radius of an existing school or youth center and requires any commercial cannabis business to operate in compliance with the City's zoning ordinance.

Council consideration and adoption of an ordinance amending Title 18 Zoning Code could designate particular zones in which a cannabis use might be allowable. Several maps have been prepared for discussion on zones to consider allowing commercial cannabis activity and will be presented to the Council and community for feedback.

In preparation for Council consideration of an amendment to the Zoning Code, SCI and Placeworks are also preparing the associated environmental analysis required under the California Environmental Quality Act (CEQA). It is anticipated that zoning regulations and corresponding environmental analysis would be scheduled for Planning Commission and Council review and consideration in August 2018 and September 2018, respectively. At that time the Council could decide whether to allow these uses if the cannabis tax measure does not pass.

Fee and Taxing Regulations

The third major work effort is the development of policies associated with regulatory fees and the establishment of new taxing regulations. Regulatory fees may be charged to businesses seeking a license to operate in the City. The calculation of the cannabis license fee would include full cost recovery of all City staffing costs associated with the licensing activity such as, but not limited to processing, background check, review, monitoring, inspection, etc. The calculation of the fee cannot include costs associated with general deterrence or enforcement activity for activities not directly associated with the license.

Many municipalities in California have been or are in the process of pursuing an overall cannabis policy and taxing structure in order to generate taxes to enhance revenue. Santa Clara, Redwood City, Mountain View, Santa Jose, and Oakland all have already or are in the process of formulating cannabis policies to allow for taxation. Taxation methodology on cannabis may be approached in several ways including: gross receipts; square footage; and/or inventory weight. SCI's presentation will provide more information on these different types of cannabis tax structures for Council feedback and consideration. A final report on the regulatory fee structure with a companion cash management policy will be brought forward for Council consideration in September.

A general tax measure, such as one Santa Clara may be interested in pursuing, must be considered at a general election and requires a 50%+1 majority vote to pass. Funds generated by a general tax on cannabis activity would be unrestricted and flow directly to the City's General Fund to offset general deterrence or enforcement activity costs. As discussed in the earlier revenue opportunities presentations, Council discussion of potential revenue enhancement opportunities will be scheduled in June with consideration of potential tax measure(s) to be forwarded to the Registrar of Voters in July for placement on the November ballot.

It should be noted that while California's cannabis program is still new, the amount of revenue generated for the State has been less than projected. As a general rule of thumb, municipalities may expect to generate \$10 to \$20 per capita on an annual basis. Applying this factor to Santa Clara, a local cannabis tax measure may generate \$1.2 to \$2.4 million annually.

Following the Council meeting a community outreach meeting will be held on Wednesday, May 30 at 7:00 pm at the Northside Library with a second meeting to be held on June 14 at 6:00 pm in the City Council Chambers. Feedback from these meetings will be reported back to City Council at its meeting on July 5.

FISCAL IMPACT

There is no fiscal impact to the City with this report; however, there could be an increase in revenue if the Council decides to put a tax measure on the ballot and the voters approve the tax.

COORDINATION

This report has been coordinated with the Finance Department and the City Attorney's Office.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any report to council may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Review and provide feedback on the framework for the establishment of a commercial cannabis policy and a corresponding fee and tax structure.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager



Agenda Report

18-287

Agenda Date: 5/29/2018

REPORT TO COUNCIL

SUBJECT

Review of Various Infrastructure Improvement Needs and Funding Levels for Consideration as Part of a Potential November 2018 Infrastructure Ballot Measure and Approval of a Related Budget Amendment

BACKGROUND

The City has a number of unfunded capital infrastructure needs and in 2017 and 2018 the City Council held Study Sessions to discuss infrastructure. These unfunded needs include major projects that affect City services such as the Civic Center Campus, City maintenance yard, and fire stations and also quality of life improvements including parks and recreation, and community services facilities. One of the major projects from a need and cost perspective is the International Swim Center (ISC) and Community Recreation Center (CRC). Since 2007 the City has analyzed various options related to building a new ISC and CRC to replace the existing aging facilities. A full schematic design was developed, and an Environmental Impact Report (EIR) was certified by City Council on September 20, 2016.

On April 4, 2017, Council approved an Agreement with Project Finance Advisory, Limited (PFAL) to conduct a financial feasibility analysis of the project as envisioned. The current cost of the project as schematically designed is \$250-\$300 million, which raised financial feasibility concerns. PFAL's work included evaluating public and private funding sources, analyzing operations and lifecycle costs, conducting community opinion research, and assessing project delivery options. Study Sessions were held with Council on July 18, 2017, February 22, 2018 and April 24, 2018.

February 22 Study Session

On February 22, 2018, staff and PFAL representatives presented the ISC/CRC project findings to the City Council. The presentation provided the project background, financial feasibility, funding options, and preliminary community opinion research results for a sales tax or property tax measure. In addition, the presentation provided an overview on the overall City infrastructure needs.

In summary the key findings of the Study Session were as follows:

- There are limited funding options to construct, operate, and maintain a new ISC/CRC.
- The current 171,000 SF schematic design is not affordable.
- New funding was needed to fund a "right-size" project.
- A new tax measure was identified as the only feasible funding alternative.

PFAL completed preliminary community opinion research to determine support for a new tax measure. The key findings were presented at the Study Session and are summarized below:

- There was not enough support for a sales tax measure, but there was preliminary support for a property tax bond measure.
- There was not enough support for an ISC/CRC only measure. However, there was support for 2/3 voter approval for a more comprehensive measure that also included citywide park improvements, trails, and library expansion.
- PFAL also completed a revenue and financing capacity analysis based on a property tax of \$20-\$25 for every \$100,000 of assessed value. The revenue summary is provided in the table below:

Tax Measure Revenue and Financing Capacity

Growth Rate of Assessed Value	Total Property Tax Revenue (Life)	Total Property Tax Revenue (2018 \$)	Principal Financing Capacity
4%	\$495M	\$303M	\$202M

The Council discussed a number of elements in the presentation. In summary, the Council expressed interest in further exploring a more comprehensive measure and “right-sizing” the ISC/CRC project. Staff committed to return to Council at a future date with additional information.

April 24 Study Session

In an effort to further define what projects might be included in a comprehensive measure, the City Council held a second Study Session on April 24, 2018. At the Study Session, staff presented an infrastructure needs and funding overview (excluding Silicon Valley Power) for the City. The Departments of Public Works, Water and Sewer, and Parks and Recreation all provided overall infrastructure summaries, key funded projects, unfunded needs, and funding opportunities. Staff requested specific feedback regarding Council infrastructure priorities to help inform a project priority list.

In summary, the Council expressed support and interest in continuing the discussion of including a Measure on the November 2018 ballot. Council discussed proceeding with possible project options and next steps for consideration.

DISCUSSION

Based on Council input as part of the Study Sessions, staff recommends conducting additional community opinion research to determine the viability of a November 2018 Measure when tested against other revenue generating opportunities that stabilize the City’s fiscal outlook. Given that this revenue option is the most studied of all presented, absent approval of other revenue opportunities, the Council will need to weigh heavily the viability of staff’s ability to implement a significant capital program of this magnitude while concurrently reducing expenditures, and staffing, to balance the budget. Meaning that, the voters may approve a Property Tax for investment in projects important to the City; however, given the 10 Year Fiscal Outlook, the ability to deliver in the context of reduced staffing throughout the City will impact the ability to successfully deliver the projects.

Staff has developed two project options for consideration based on existing needs and priorities. The project lists are based on \$200 million of available funding, given the previously presented financing capacity, and on existing 2018 engineering and construction costs with no escalation (further refinement of costs and financing will be necessary). Although there are many City infrastructure priorities, staff’s goal was to develop project options that provide significant community benefit, could

have community support, and don't have other near-term funding options.

The intent of the project list is not to finalize the projects and funding levels, but to provide perspective on what type and number of projects could be included as part of a Measure and inform the community opinion research process. As an example, if the Council would like to dedicate more funding to a particular project category, staff would want to understand what project category would be decreased to balance the available funding. This will assure that the community opinion research can be as accurate as possible and reflects what projects could be included as part of a Measure with the available funding.

Staff developed two project categories for consideration, Parks and Recreation Projects and Safety Projects. Two different funding level options were developed (Attachments 1 and 2), and Council can modify or add projects based on City priorities.

Parks and Recreation Projects

- *International Swim Center and Community Recreation Center* - The ISC, per the schematic plan and EIR, is assumed to be relocated to Kiely Boulevard to address access and parking concerns, and provide operational benefits. Relocating to Kiely Blvd. allows the CRC and ISC to share building facilities and be more operationally efficient. It is important to note that the schematic plan assumed demolition of the CRC, however, the Kitchell Report has shown the building to be in good condition and demolition is not required.
- *Park Improvements* - The Kitchell Report (<http://santaclaraca.gov/home/showdocument?id=56812>) analyzed that improving City Parks would require a minimum of \$150 million. With the proposed funding levels under both options, staff would prioritize park facilities in critical or poor condition. Actual project priorities and packages would need to be determined.
- *Trails* - The City has a number of trail needs which are significantly expensive and will require additional funding beyond current funding sources.
- *CityPlace Park* - Ultimate buildout of the park would require approximately \$35 million, and currently only \$5 million are identified (developer contribution). This funding would be used to activate part of the 30 acres. There are no other funding options for a park of this size.
- *Library Expansion* - Although a full need analysis has not been completed, the Council has expressed interest in a library expansion. At a conceptual stage, the cost for additional building space is approximately \$1000 per S.F. As an example, a \$10 million expansion project would add approximately 10,000 S.F. of library.

Safety Projects:

- *Fire Station Upgrades* - Reconstruction of Fire Station 5, which would allow for additional fire equipment, better operations, and improvements to Fire Stations 1, 7, and 9. With the reconstruction of fire station 5, the City will be able to relocate a ladder truck from its current location at Fire Station 2, to provide optimal fire response coverage to the southwest portion of the city. This is consistent with recommendations from the 2016 Staffing and Deployment Study performed by Citygate and Associates. LLC.
- *Storm System Improvements/Flood Protection* - The City's Storm System Study has shown approximately \$300 million worth of needs for upgrades to the storm system, but as discussed at the Study Session, \$20-\$30 million are needed for priority projects.

The two options provide funding for all project categories, but at different funding levels. The key

decision point is related to how much funding would be dedicated to ISC/CRC project. Option 1 provides \$80 million for the CRC/ISC project and with that level of funding there are two key assumptions:

- The ISC will likely provide similar service levels as it does today. Additional improvements would have to be included as part of the project only if additional donations (or other funding sources) are identified.
- The CRC would be maintained. Aesthetic improvements would be included and some additional work would be required to incorporate into the ISC.

Under Option 2 the CRC/ISC project is increased to \$100 million, and this is achieved by reducing funding levels from every other category. In general, the additional \$20 million allows for:

- The ISC design would include additional program elements above current service levels.
- The additional funds would provide some flexibility for expansion of the existing CRC, however a full demolition/replacement is still unlikely. Demolishing the current 30,000 S.F. building and replacing it in-kind would cost approximately \$30 million.

At this time Council does not need to finalize the exact amount for each project, however staff would like to understand if there are specific projects that should be deleted or added to help inform the community opinion research.

If Council would like to proceed with pursuing an Infrastructure Ballot Measure, a contract amendment with PFAL will be required to complete additional work to inform the decision process. The additional work with PFAL will help determine the financing capacity of the new tax measure to support Council priority projects, review the capital cost estimates and analyze project financing, review construction costs for the ISC/CRC, and possible additional outreach

FISCAL IMPACT

Allocate \$300,000 from Unallocated Developer Contributions to International Swim Center capital improvement project to for additional work as outlined in the attached Amendment No. 1 with PFAL.

BUDGET AMENDMENT

	2017-18 Current	Increase/ (Decrease)	2017-18 Revised
Revenues			
<u>Fund 532 - Parks and Recreation</u>			
Unallocated Developer Contributions (532-3000-80019)	\$528,495	(\$300,000)	\$228,495
Expenditures			
<u>Fund 532 - Parks and Recreation</u>			
International Swim Center, IRC, ISHOF (5323172-80100)	\$738,235	\$300,000	\$1,038,235

COORDINATION

This report has been coordinated with the Parks & Recreation Department, Finance Department, and City Attorney's Office.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment. .

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Select a conceptual project option (Option 1, Option 2, or a different Council option) and continue the process of developing a November 2018 Ballot Measure.
2. Approve the appropriation of \$300,000 in the Budget Amendment to the International Swim Center, CRC, ISHOF (CIP 3172), and authorize the City Manager to execute Amendment No. 1 in substantially the same form with PFAL in the amount of up to \$300,000.
3. Do not select a conceptual project option and do not continue the process for a November 2018 Measure.
4. Do not authorize the City Manager to execute Amendment No. 1 with PFAL in the amount of up to \$300,000.

RECOMMENDATION

Alternatives 1, 2, & 3:

1. Select a conceptual project option (Option 1, Option 2, or a different Council option) and continue the process of developing a November 2018 Ballot Measure.
2. Approve the appropriation of \$300,000 in the Budget Amendment to the International Swim Center, CRC, ISHOF (CIP 3172), and authorize the City Manager to execute Amendment No. 1 in substantially the same form with PFAL in the amount of up to \$300,000.

Reviewed by: Manuel Pineda, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Project Option 1
2. Project Option 2
3. Amendment No. 1 with Project Finance Advisory Limited

Option 1

Projects		
Parks and Recreation	Cost (in millions)	Notes
ISC/CRC	\$80	Construct new ISC. Upgrade existing CRC with aesthetic improvements. Incorporate new ISC buildings into CRC to maximize space and operations. Any additional funds (such as donations) would be added to project budget for additional amenities.
Parks and Trails	\$50	Develop projects based on sites that are currently considered critical or poor
CityPlace Park	\$10	Develop a \$15 million project (\$5.0 million in development funds). Leave certain areas of the 30 acres "as-is" until additional funds are identified
Library	\$16	Explore addition to the back area and expand Central library or expand Northside Library - (up to 16,000 SF Addition)
Safety		
Fire Station	\$22	Reconstruct Fire Station 5 (\$10 million) and upgrade (HVAC, roof, plumbing, bathrooms, etc.) fire station 7, 9, and 1 (\$4 million each)
Flood protection	\$22	Reconstruct 2 year flood pipes and pump stations
	\$200	

Option 2

Projects		
Parks and Recreation	Cost (millions)	Notes
ISC/CRC	\$100	Construct new ISC. Upgrade existing CRC with aesthetic improvements and addition. Incorporate new ISC buildings into CRC to maximize space and operations. Any additional funds (such as donations) would be added to project budget for additional amenities.
Parks and Trails	\$45	Develop projects based on sites that are currently considered critical or poor
CityPlace Park	\$5	Develop a \$10 million project (\$5.0 million in development funds). Leave certain areas of the 30 acres "as-is" until additional funds are identified
Library	\$10	Explore addition to the back area and expand Central library or expand Northside Library - (up to 10,000 SF Addition)
Safety		
Fire Station	\$20	Reconstruct Fire Station 5 (\$10 million) and upgrade (HVAC, roof, plumbing, bathrooms) fire station 7, 9, and 1 (\$3 million each)
Flood protection	\$20	Reconstruct 2 year flood pipes and pump stations
	\$200	

**AMENDMENT NO. 1
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
PROJECT FINANCE ADVISORY, LIMITED**

PREAMBLE

This agreement (“Amendment No. 1”) is by and between Project Finance Advisory, Limited (“PFAL”), a Delaware Corporation, with its principal place of business located at 16A Funston Avenue, The Presidio, San Francisco, CA 94129 (“Contractor”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). City and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Amendment No. 1.”

RECITALS

- A. The Parties previously entered into an agreement entitled “Agreement for Professional Services By and Between the City of Santa Clara”, dated April 4, 2017 (the “Original Agreement”); and
- B. The Parties entered into the Original Agreement for the purpose of having Contractor: a) develop and evaluate potential financial strategies, public and private funding capacities and options; b) conduct public opinion research on options developed; c) form a capital campaign team to assist in raising private/corporate funds; d) provide community outreach and information services; and, e) develop potential public private partnership agreements for the delivery (design, financing, construction, maintenance and operation) of a new 171,000 square foot International Swim Center (ISC), Community Recreation Center (CRC) and International Swimming Hall of Fame (ISHOF) and related parking in Santa Clara’s Central Park, and
- C. The Parties now wish to amend the Original Agreement of the Contractor to provide additional project analysis to determine financing capacity of a potential ballot measure to support Council priority infrastructure projects; review the capital cost estimates and analyze project financing, timelines, tax revenue collection; develop functional program options of a "right sized" CRC-ISC and high level operational estimates; review project options in the context of the Central Park masterplan update; provide strategic guidance; community and stakeholder outreach and provide updates to CMO and City Council.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

That Exhibit A of the Original Agreement, entitled “Scope of Services” is hereby amended to include the additional “Exhibit A-1 Additional Scope of Services - Phase II Work Streams” (See Exhibit A-1 Scope of Services).

2. AMENDMENT PROVISIONS

That Exhibit B of the Original Agreement, entitled “Fee Schedule” is hereby amended to include the additional “Exhibit B-1: Additional Fee Schedule – Phase II Work Streams” (see Exhibit B-1 Fee Schedule).

3. AMENDMENT PROVISIONS

That Exhibit F of the Original Agreement, entitled “Milestone Schedule” is hereby amended to include the additional “Exhibit F-1: Milestone Schedule – Phase II Work Streams” (see Exhibit F-1 Milestone Schedule).

4. TERMS

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

5. COUNTERPART/FACSIMILE SIGNATURE

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

ATTEST:

JENNIFER YAMAGUMA
Acting City Clerk

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

Project Finance Advisory, Limited
a Delaware corporation

Dated: _____

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Name: Victoria Taylor

Title: President & CEO

Local Address: 16 A Funston Avenue
San Francisco, CA 94129

Email Address: Victoria.Taylor@PFALimited.com

Telephone: (415)580-5202

Fax: (866) 647 0864

“CONTRACTOR”

I:\Parks\Agreements\Public Financial Advisory (PFAL)\PFAL Amendment No. 1 - 06-12-18.docx

AMENDMENT NO. 1
TO THE AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
PROJECT FINANCE ADVISORY, LIMITED

EXHIBIT A-1

ADDITIONAL SCOPE OF SERVICES

PHASE II WORK STREAMS

The ADDITIONAL Services to be performed for the City by the Contractor under this AMENDMENT No 1 are listed below.

1. Financial analysis to determine what level of new tax revenue would be supported by the community based on public opinion results and the financial affordability limit of different taxing scenarios. Refine existing property and/or sales tax revenue projections to reflect additional feedback from City and/or public opinion expert analysis. Work with the public opinion expert to craft specific questions and test certain language;
 - Deliverable: Tax revenue forecast summary (MS Excel) and review and provide input to public opinion surveys.
2. Determine the financing capacity of the new tax measure to identify the priority projects that would be supported by the community;
 - Deliverable: Financial capacity and revenue collection analysis of tax revenue (MS Excel)
3. Review the capital cost estimates at a high level for the priority projects (identified in item 2 above) for reasonableness on what the tax measure can fund;
 - Deliverable: Capital project review memo and two workshops
4. Determine which projects could be financed and which projects could be delivered through tax revenue collection to identify the timeline of infrastructure needs that the new tax measure would provide;
 - Deliverable: Timeline of infrastructure project delivery
5. Determine at a high level the functional program (i.e. define building space and use needs) and concept design options of a "right sized" CRC-ISC and the high level revenue estimates the project could generate from previous analysis. Provide visual representation of the "right sized" CRC-ISC concepts and review this project in the context of the Central Park Master Plan Update;
 - Deliverable: Functional programming and high level concept study with visual representations

6. Engage with the resident ISC and CRC user groups and programs including potential new groups such as ISHOF to determine at a high level the potential new user arrangements (i.e. partnerships, revenue levels, and funding capacity to be anticipated for the ISC-CRC project). This will not include negotiations with potential user groups;
 - Deliverable: Summary memo of user group findings and recommendations
7. Provide updates to CMO and City Council and a summary memorandum of the findings from above.
 - Deliverable: Summary presentation to City Council and CMO/Department Directors
8. Provide strategic support and community outreach per City direction.

AMENDMENT NO. 1

TO THE AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
PROJECT FINANCE ADVISORY, LIMITED

EXHIBIT B-1

ADDITIONAL FEE SCHEDULE
FOR PHASE II WORK STREAMS

1. Original Agreement Amount. In no event shall the amount billed to City by Contractor for services under the ORIGINAL AGREEMENT SCOPE OF SERVICES exceed Six Hundred and Forty Nine Thousand Seven Hundred and Thirty-Five Dollars (\$649,735.00).

2. Amendment No. 1 Not to Exceed Amount. In no event shall the amount billed to City by Contractor for AMENDMENT No. 1 SCOPE OF SERVICES exceed Two Hundred and Sixty Thousand Dollars (\$300,000.00), subject to budget appropriations. The Amendment No. 1 “not to exceed” total amount contains a contingency of twenty five thousand dollars (\$25,000.00) for potential additional services, materials, and/or supplies that may be required or requested by the City, and five thousand dollars (\$5,000.00) in reimbursable expenses. Additional services, materials, supplies and reimbursable expenditures over \$999.00 must be itemized, proposed by Contractor to the City in writing, in advance, and reviewed and authorized by a notice to proceed at the City’s sole discretion. If approved, item shall be billed for the pre-authorized items and amounts only.

Firm/Sub consultants	Role	Amt
PFAL	Engagement lead, City Council/CMO reporting, tax revenue & financial analysis, financing capacity analysis, infrastructure project timing analysis,	\$107,000
TSE & PROS	ISC-CRC user group engagement, aquatic & recreation programming & project revenue analysis	\$20,000
Consulting	Property tax analysis	\$10,000
Strategic Economics	Project capital cost, scope and schedule analysis	\$18,000
Currie & Brown	CRC-ISC functional programming, facility conceptual design options analysis	\$45,000
Perkins + Will	Strategic support and outreach – on a task order basis	\$70,000
Various		
	Subtotal	<u>\$270,000</u>
	Reimbursable expenses	\$5,000
	Contingency	<u>\$25,000</u>
	Total	<u><u>\$300,000</u></u>

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
PROJECT FINANCE ADVISORY, LIMITED**

EXHIBIT F-1

MILESTONE SCHEDULE FOR PHASE II WORK STREAMS

The NEW Milestone Schedule for Phase II Project Work streams to be performed for the City by the Contractor under this AMENDMENT No 1 is below.

- **Scope of Work Timeline: June 2018 to August 2018**