



Agenda Report

24-672

Agenda Date: 7/16/2024

REPORT TO COUNCIL

SUBJECT

Action on the following:

- A. Resolution Adopting an Expenditure Plan for the Proposed Bond Measure
- B. Waive Second Reading and Adopt an Ordinance Ordering the Submission of a Measure Incurring Bond Indebtedness to the Qualified Voters of the City of Santa Clara
- C. Resolution Calling for a Municipal Election and Ordering Consolidation with the Santa Clara County Presidential General Election on November 5, 2024 for the Purpose of Submitting to the Voters a Measure to Approve the Issuance of General Obligation Bonds to Finance Municipal Improvements Constituting Public Infrastructure in an Amount of \$400,000,000; Requesting Consolidation with the Presidential General Election and Election Services from Santa Clara County; Providing the City Attorney to Prepare an Impartial Analysis; Setting Priorities for Ballot Arguments

BACKGROUND

Over the last several years, the need for critical capital infrastructure investment has been identified and discussed as part of the budget and priority setting processes. As part of the development of the FY 2024/25 and FY 2025/26 Biennial Capital Budget, over \$600 million in City infrastructure needs were identified in which the General Fund would be the primary funding source. This amount addresses the most immediate needs over the next five years but does not fully account for all unfunded needs in the City.

On July 18, 2023, the City Council approved funding for outreach, engagement, and policy analysis to support activities related to potential November 2024 ballot measures (Attachment 1). On October 24, 2023, a study session was presented on the City's unfunded needs, including revenue options and a workplan for a November 2024 ballot measure. In addition, during the two-day 2024 Council Priority Setting Session on March 25 and April 3, 2024, the City Manager presented on the City's unfunded capital needs and the potential for the City to explore a general obligation (GO) bond measure. Staff have worked with consultants to explore the feasibility of such a bond.

At the April 23 and June 4, 2024 City Council meetings, consultants from Tulchin Research presented on two rounds of scientific polling surveys. Both surveys were conducted among likely November 2024 general election voters, including newly registered voters and those who have voted in at least one of the past four elections. The initial benchmarking survey took place from April 1 through April 4, and the second survey from May 18 through May 22. Both surveys were offered in English, Chinese, Spanish, and Vietnamese and were conducted by phone to reach a total of 800 likely voters. A majority of voters indicated that Santa Clara could benefit from additional investment in public infrastructure and that they generally support measures that provide local funding to address infrastructure or service needs.

In addition to the two likely-voter surveys, the consultant team released a Community Mailer Survey to gather additional thoughts from the community using a broad approach. This mailer went out to over 30,000 households and was made available at City facilities. Responses to this community mailer were submitted online via a QR code or as a tear-off survey to be mailed back to the City. This community feedback method received nearly 875 responses, both online and by mail.

On July 9, 2024, City Staff presented the City Council with potential actions related to the proposed November 2024 Ballot Measure (Attachment 2). The presentation included proposed ballot language, a Transparency and Accountability Plan, an Expenditure Plan, and the structure of a Community Oversight Committee. After extensive discussions City Council took action to approve a legally required Resolution of Necessity for a proposed bond issue stating that the public interest demands the acquisition, construction, or completion of the municipal improvements and the costs of the improvements will require an expenditure by the City greater than allowed for by the City's annual tax levy.

Concurrently, the City Council also approved the introduction of an ordinance calling for the issuance of infrastructure bonds that includes information about the object and purpose of the bonds, establishes a maximum bond issuance/infrastructure improvement cost amount of \$400,000,000, a maximum interest rate, and an extensive transparency and accountability plan (Attachment 3). This plan contemplates Council approval of an Expenditure Plan for the use of bond proceeds. Council also acted to give staff direction on the contents of this Expenditure Plan to be brought back to the Council for its final consideration and action at the July 16 meeting.

The purpose of this report is to provide the City Council with information related to the next steps of the process and the necessary final actions to be taken should the City Council wish to move forward with voter consideration of the bond measure at the upcoming election in November 2024.

DISCUSSION

Updated Expenditure Plan

At the July 9 City Council meeting, staff was provided directive to develop a revised Expenditure Plan for a \$400 million bond with some modifications to the proposed Expenditure Plan categories and projects. The Expenditure Plan includes cost estimates assigned to specific category areas. Within these category areas, specific projects were identified, for which staff developed detailed cost estimates included in the attached Expenditure Plan (Attachment 4). A resolution to approve the updated Expenditure Plan will be presented at the July 16 City Council meeting for review and approval (Attachment 5).

Revised Category areas include:

- Streets and Transportation
- Fire Stations and Emergency Response
- Police Facilities
- Parks, Libraries, Senior Center, and Aquatics Facilities
- Stormdrain System Improvements

- Historic Buildings and Beautification

The Expenditure Plan now also includes sections that provide additional detail on how infrastructure projects within the plan will be implemented in phases, how project phases will be developed and approved by the City Council consistent with Council priorities, and the process for amending the plan consistent with the transparency and accountability requirements set forth in the bond ordinance. The updated plan also makes it clear that, per state bond law and federal tax law, project costs paid from bond proceeds shall consist of capital costs of the acquisition and improvement of real property within the meaning of California law. Any project costs consisting of furnishings, furniture, equipment, software, ordinary maintenance (such as repairs, painting, resurfacing, striping or slurry seals), or other non-capital costs will need to be paid by the City from other funds.

Transparency and Accountability Plan

The Transparency and Accountability Plan presented at the July 9th meeting, as modified consistent with Council direction, is set forth in primarily Section 13 of the bond ordinance. Key provisions of the plan, including some additional state law requirements not previously presented, include the following:

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| 1. Council approval of an Expenditure Plan including project category areas and related spending amounts concurrent with adoption of the bond Ordinance to be attached the Ordinance and presented as part of the ballot materials [Ordinance Section 6, Section 13(b)(i) and Exhibit A) |
| 2. Process for substantive amendments to the Expenditure Plan to require a staff recommendation, input from the Community Oversight Committee and unanimous approval of the City Council [Ordinance Section 13(b)(ii)] |
| 3. Formation of a Community Oversight Committee to ensure compliance with bond requirements and provided input on any proposed Expenditure Plan amendment [Ordinance Section 13(a)(viii) and 13(b)(iv)] |
| 4. Bond expenditures subject to an independent annual audits with public presentations of the audits to the Community Oversight Committee and Council Audit Committee [Ordinance Sections 13(a)(v)-(vii) and 13(b)(v)] |
| 5. Strict prohibitions on the use of bond proceeds for (a) Levi’s Stadium Improvements; (b) any projects for the sole benefit of Levi’s Stadium; (c) any improvements within .5 miles of the Stadium, except for improvements in residential neighborhoods of direct benefit to those areas and not Levi’s Stadium; and (d) the direct or indirect benefit of any professional sports team [Ordinance Section 13(b)(iii)] |
| 6. Funds only to be used for public infrastructure projects serving the City of Santa Clara [Ordinance Section 13(a)(ii)] |
| 7. All bond proceeds are to be deposited into a separate account(s) and tracked on a project by project basis [Ordinance Section 13(a)(x)] |
| 8. No bond proceeds are to be used for employee salaries or benefits with the exception of normal and customary personnel charges for project management and delivery services not to exceed 5% of bond proceeds [Ordinance Section 13(a)(i)] |

9. Annual public presentations on the Expenditure Plan and project status to the Community Oversight Committee and the City Council [Ordinance Section 13(b)(v)]
10. For projects requiring mail notice, noticing to all properties within 1,000 feet of the project [Ordinance Section 13(b)(v)]
11. Enhanced communications program on bond funded projects including on the City’s webpage with public signage providing further information at project sites [Ordinance Section 13(b)(v)]

Adoption of Ordinance to Incur Bond Indebtedness

As discussed above, the City introduced an ordinance describing the object and purpose of the bonds as required by California Government Code §43610. This includes the object and purpose of bonds, a description of the improvements to be financed with the proceeds of the bonds, the estimated costs of the improvements of \$400 million, and the manner of holding the election. The Ordinance establishes the maximum principal amount of the bonds, estimates the total costs of the improvements, establishes a maximum interest rate, and establishes the Transparency and Accountability Plan measures the City Council directed at the July 9th meeting. The Council will need to approve the adoption of the ordinance on second reading, along with a resolution calling for a municipal election (described below).

Proposed Ballot Language

California Elections Code Section 9051 requires that a ballot question not exceed 75 words and shall be a condensed version of the ballot title and summary. California Elections Code Section 13119 (c) also requires that 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.”

Based on the results of polling analysis and feedback from the City Council at its July 9, 2024 City Council meeting, the following ballot questions are presented for the City Council’s consideration.

Proposed Bond Measure Language

To improve 911 emergency rapid response; fix potholes, repair and improve streets throughout Santa Clara; fix underground stormdrains/pipes to prevent sinkholes; provide safer roads and routes to school for drivers, pedestrians; and repair/maintain safe public facilities; shall the City of Santa Clara’s measure authorizing \$400,000,000 in bonds, funded by levying an estimated \$19/\$100,000 of assessed value while bonds are outstanding, generating approximately \$21,674,000 annually, with annual audits and citizen oversight of spending, be adopted?	Yes
	No

Calling of an Election

With respect to calling for an election in November 2024, it is important to note the following:

1. The City Council must adopt a resolution calling for a municipal election, requesting consolidation with the Santa Clara County Presidential General Election and requesting that the Santa Clara County Registrar of Voters provide election services.
2. The City's resolution must be received by the Registrar of Voters no later than 5 p.m. on August 9, 2024; with arguments due by 5 p.m. on August 13, 2024; and rebuttal arguments and impartial analysis due by 5 p.m. on August 20, 2024.
3. In accordance with Elections Code Section 9285(a), the City Clerk as the local Elections Official, has set the following deadlines:

Resolution Adoption: July 16, 2024

Ballot Arguments (for and against): July 30, 2024 by 5:00 p.m.

Ballot Rebuttals (for and against): August 9, 2024 by 5:00 p.m.

City Attorney's Impartial Analysis: August 9, 2024 by 5:00 p.m.

All documents are due to the Office of the City Clerk by the deadlines set forth above.

4. The City Council must take action at the scheduled July 16th meeting to allow sufficient time for the City Clerk to prepare and submit the election materials to the County Registrar of Voters by August 9, 2024.

Enclosed as Attachment 6 is a draft resolution should the City Council wish to proceed with the bond measure.

Ballot Argument Process

State Elections Code Section 9282(b) provides for the filing of ballot measure arguments by the following: City Council or any member(s) of the Council authorized by the Council, any individual voter eligible to vote on the measure, bona fide association of citizens or any combination of voters and associations.

The City Council determines whether the Council or members of the Council authorized by the Council will draft the argument supporting the ballot measure or whether it will, instead, allow a third party to do so.

The City Charter and the California Elections Code authorize, but do not require, the City Council to write the argument in support of the ballot measure. If the City Council chooses to write the ballot argument, it should designate a maximum of three Council members to draft the argument. These designees would prepare and sign the argument and submit it to the City Clerk.

Alternatively, the Council may designate the Mayor to sign on behalf of the entire Council. A total of five individuals and/or organizations may sign the ballot argument and the Council may designate which individuals or organization fill any available signature slots.

If the City Council decides not to draft the argument itself, any registered voter or bona fide association of citizens may submit a proposed argument to the City Clerk. If the City Clerk receives multiple proposed arguments, the City Clerk shall select one of the arguments in adherence to

Elections Code Section 9287. The City Clerk is required to give preference and priority to the arguments of the following:

1. The legislative body, or member or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

In accordance with Elections Code Section 9285, the City Clerk will send a copy of the argument in favor of the measure to the authors of the argument against the measure and a copy of an argument against the measure to the authors of the argument in favor of the measure. The author or a majority of the authors of an argument relating to a city measure may prepare and submit a rebuttal argument or may authorize in writing another person or persons to prepare, submit, or sign the rebuttal argument.

Impartial Analysis by the City Attorney

The State Elections Code Section 9280 authorizes the Council to direct the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney is then required to prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. The authorization is included in the attached resolution(s).

Use of Public Funds for Ballot Measures

Although the City has broad discretion to make public expenditures, as a governmental agency, the City is prohibited from spending public funds for communications that promote a partisan position in an election campaign unless the expenditure is explicitly permitted by law. A public agency may not make expenditures that mount a campaign on behalf of the passage or defeat of a ballot measure. Communications that expressly advocate for or against a ballot measure are explicitly prohibited. This applies even when the Council has placed a measure on the ballot. California Government Code Section 54964(a) provides that "an officer, employee, or consultant of a local agency may not expend or authorize the expenditure of any of the funds of the local agency to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters." "Expenditure" is defined in Section 54964(b) as the use of local agency funds for "communications that expressly advocate the approval or rejection of a clearly, identified ballot measure, or the election or defeat of a clearly identified candidate, by the voters.

The City may only use public funds on communications that provide impartial information about the subject matter of a ballot measure, and only if the communication provides a "fair presentation of facts" that is informational rather than promotional.

Conclusion

Should the City Council wish to place the ballot measure on the November 5, 2024 Municipal Election ballot, appropriate documentation supporting formal action by the City Council must be received by the Santa Clara County Registrar of Voters no later than August 9, 2024.

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.

FISCAL IMPACT

The proposed bonds, if the bond measure is approved by voters, would be payable solely from a property tax levy on all taxable property within the City, which will be based on assessed property value. The bonds will not be an obligation of the General Fund or any other City funds.

For the November 2024 election, the cost to place a measure on the ballot is estimated at \$118,000 each. Based on the FY 2024/25 elections budget of \$420,000 and the estimated cost for the regularly scheduled items to go forward, additional funding of \$82,000 would be needed for one measure and \$200,000 would be needed for two measures. If the City Council decides to place measure(s) on the ballot, a budget amendment will be brought forward to add funding from the General Fund Budget Stabilization Reserve.

COORDINATION

This report has been coordinated with the City Manager’s office, the City Clerk’s office, the Finance Department, and the City Attorney.

PUBLIC CONTACT

A summary of proposed Ordinance No. 2069 was published to the Santa Clara Weekly on July 10, 2024, and copies were posted in three public places and made available for public inspection at the City Clerk’s Office.

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. Approve a Resolution adopting the expenditure plan for the bond measure.
2. Waive second reading and adopt Ordinance No. 2069 to order the submission of a measure incurring bond indebtedness to the qualified voters of the City of Santa Clara at the General Municipal Election to be held on November 5, 2024 for the purpose of financing the costs of the acquisition, construction and improvement of certain municipal improvement projects constituting public infrastructure of the City, subject to the accountability measures and compliance with an adopted expenditure plan. (2/3rds Vote)
3. Adopt a resolution ordering submission of a ballot measure to the qualified electors of the City; calling for a Special Municipal Election to be held in the City of Santa Clara on Tuesday, November 5, 2024 for the purpose of submitting a measure to approve the issuance of general obligation bonds to finance municipal improvements constituting public infrastructure in an

amount of \$400,000,000; requesting consolidation with the Presidential General Election and election services from Santa Clara County; authorizing the City Attorney to prepare an impartial analysis; setting priorities for ballot arguments. (Majority Vote)

Reviewed by: Michelle Templeton, Acting Assistant City Manager

Approved by: Jovan D. Grogan, City Manager

ATTACHMENTS

1. RTC 23-913
2. RTC 24-180
3. Ordinance No. 2069 (Second Reading and Adoption)
4. Expenditure Plan
5. Resolution Adopting Expenditure Plan
6. Resolution Calling for an Election