



MEMORANDUM

Agenda Item #: 11
Meeting Date: January 13, 2016

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ANTON DAHLERBRUCH, CITY MANAGER
VICKIE KRONEBERGER, CITY CLERK *[Signature]*

SUBJECT: CONSIDERATION OF PURSUING BALLOT MEASURE FOR
SPECIAL TAX TO CONTINUE FUNDING OF FIRE & PARAMEDIC
SERVICES IN NOVEMBER 2016 OR MARCH 2017

DATE: JANUARY 13, 2016

ISSUE/PURPOSE

Shall City staff proceed on a schedule that places a measure on the November 2016 General Election ballot for renewal of the fire and paramedic special parcel tax (covering all routine and emergency fire and paramedic services), or plan for it to be on the General Municipal Election ballot in March 2017? Should the City Council or City Manager establish a resident committee to develop the ballot measure and educate the public?

BACKGROUND

Fire and paramedic services for City residents, inclusive of brush inspection, emergency response, rescue, building construction-related services, and all personnel and equipment, are provided by Los Angeles County as a contract service. The public safety services provided by the County cost the City approximately \$5.4 million a year and it is paid by an assessment collected with property taxes (a special parcel tax). The parcel tax was last approved by 87.3% of City voters in 2007 for a term of 10 years, which sunsets on June 30, 2017. (Note: 2/3 voter approval is necessary for a successful special tax measure.) Renewal of the tax must be placed on a ballot for voters no later than March 2017 for continuing the funding and services of the Fire Department; other City revenues, primarily consisting of property tax, are not sufficient for meeting the funding obligations of fire and paramedic services.

Prior to the City's General Municipal Election in March 2017, there will be a Presidential (General) election on November 8, 2016. With it anticipated that voter turnout in November 2016 election would possibly be higher than the City's stand-alone election in March 2017, the City has an opportunity to schedule the Fire and Paramedic parcel tax election at that time. If this is in the City Council's interest, a citizen committee would be formed sooner than later to develop the parcel tax measure. Ten years ago, the citizen committee began working approximately eight months before the measure appeared on the ballot.

Having the Fire and Paramedic parcel tax on the ballot in November 2016 does not necessarily mean the City will not have an election in March 2017. The current terms of two City Council members and the City Treasurer conclude in March 2017.

DISCUSSION

Consistent with the last two successful parcel tax measures for fire and paramedic services and if nothing changes, renewal of the parcel tax will be scheduled onto the March 2017 municipal election ballot. Around September 2016, the City will in turn assemble and convene a citizen committee to develop and prepare for the ballot measure. Please see the attached memorandum regarding the political activity as it will relate to the Committee, as well as City officials and staff.

In April 2015, the City Council was introduced to a respected consultant who assists cities throughout the State on ballot revenue measures. She surmised that it would be in the City's interest to schedule the Fire and Paramedic parcel tax on the November 2016 ballot because the projected higher voter turnout would presumably result in more support and more likely passage of the parcel tax. This opinion may be shared by many, as there may be several measures on the November 2016 ballot. Moreover, if the City's parcel tax failed in November 2016, the City would have a second opportunity in March 2017 for it to be considered by voters (before there would be a significant fiscal crisis from the failed measure for the City to address). In addition, a successful parcel tax measure in November 2016 provides the City with the subsequent opportunity to schedule a ballot measure for funding community-wide infrastructure improvements (for storm water, street and traffic improvements, tree management, and facility improvements) in March 2017. The next alternative for an infrastructure revenue measure, if not on the March 2017 ballot, would be March 2019. If the City desires to have the parcel tax on the November 2016 ballot, a citizen committee would be assembled and convened beginning in January 2016. City staff will begin the process to submit a resolution to request consolidation with the Los Angeles Board of Supervisors and Los Angeles County Registrar-Recorder/County Clerk no later than June 2016.

The question before the City Council is whether it is interested in pursuing renewal of the fire and paramedic parcel tax on the November 2016 General Election ballot. For the election, the City Council is also requested to determine if the citizen committee would be appointed by the City Council or assembled by the City Manager. For City Council appointed committees, the City Council typically utilizes an interview process for selecting committee members that staff would schedule in January. Other methodologies also exist for appointments including, for example, each Council Member directly appointing two individuals. City Council established committees are subject to the Ralph M. Brown Act.

FISCAL IMPACT

The cost to the City to hold a regular election is approximately \$45,000. It is presumed that the City will have an election in March 2017 because there will be two City Council member and the City Treasurer terms concluding. If the City desires to request and is accepted to consolidate in the November 2016 General Election for the fire and paramedic parcel tax ballot measure, it will be a projected cost of approximately \$30,000. Funds for the election(s) will be included in the proposed 2016-2018 fiscal year budget. Then, if the fire and paramedic parcel tax passes in November 2016, and the City Council desires to have an infrastructure revenue measure on its March 2017 ballot along with the regularly scheduled Council and Treasurer positions, consultant and election costs combined would be in the range of \$80,000.

NOTIFICATION

This item is included on the City Council agenda, noticed in accordance with standard practices and procedures.

ALTERNATIVES

The alternatives available to the City Council include:

1. Plan for the fire and paramedic parcel tax renewal to be on the March 2017 General Municipal Election ballot.
2. Plan for the fire and paramedic parcel tax renewal to be on the November 2016 General Election ballot.
3. Direct that the City Council determine the members the citizen committee and advise staff how it desires to proceed with the appointment process.
4. Direct that the City Manager assemble the members of the citizen committee.
5. Request further information.

CONCLUSION/RECOMMENDATION

Renewal of the fire and paramedic parcel tax results in providing Palos Verdes Estates with the necessary fiscal resources for the public safety and the administrative services of the Los Angeles County Fire Department. Without the parcel tax, the City would need to make up approximately \$5.4 million dollars annually causing a fiscal crisis. The election is important for voters to exercise their will in deciding the fate of this critical City service. Thus, it is important to consider the alternatives for when the measure should be on the ballot. It is recommended the City Council consider whether to pursue the ballot measure in November 2016 or March 2017. Accordingly, staff will proceed with the associated planning and preparation and as such, forward the necessary Resolution(s) at the appropriate time for including the special parcel tax renewal ballot measure.

ATTACHMENTS:

- A - Campaign Restrictions applicable to City officials and employees
- B - Fire and Paramedic Special Parcel Tax – Staff report of April 11, 2015

JENKINS & HOGIN, LLP

A LAW PARTNERSHIP

MEMORANDUM

TO: MAYOR GOODHART AND HONORABLE MEMBERS OF THE CITY COUNCIL

FROM: JOHN C. COTTI, ASSISTANT CITY ATTORNEY

DATE: JANUARY 7, 2016

RE: CAMPAIGN RESTRICTIONS APPLICABLE TO CITY OFFICIALS AND EMPLOYEES

Palos Verdes Estates voters approved a parcel tax to fund fire, paramedic and related services in 2007. Unless renewed by the voters, the parcel tax will expire at the end of June, 2017.

On January 13, 2016, the Council will decide whether to renew the parcel tax by placing an initiative measure on either the November 2016 or March 2017 ballot. Since a ballot measure of this type involves issues connected with City business, our office thought it prudent to briefly outline the “dos” and “don’ts” for campaigning on the ballot measure. Many are commonsensical and probably old news to most of you – the general rule being that you cannot use City resources to support or oppose the parcel tax measure.

A. City’s Position on Ballot Measures

1. *Prohibitions*

California law prohibits expenditure of public resources to support or oppose ballot measures.¹ “Public resources” includes more than simply money,² it also includes employees’ time³ and any use of publicly-owned property.⁴

¹ Government Code (“GC”) § 54964(a); *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, *reh’g. den.*; *Stanson v. Mott* (1976) 17 Cal.3d 206, 213; *League of Women Voters v. Countywide Criminal Justice Coordinating Committee* (1988) 203 Cal.App.3d 529, *rev. den.*

² *League of Women Voters*, 203 Cal.App.3d at 556.

³ *People v. Battin* (1978) 77 Cal. App.3d 635, *cert. den.* *Battin v. California* (1978) 439 U.S. 862.

⁴ *League of Women Voters*, 203 Cal.App.3d at 555-56; *Bagley v. Washington Township Hospital District* (1966) 65 Cal.2d 499.

Along with these restrictions, the Government Code lists several additional prohibitions:

- It is unlawful to use one's government office for improper influence;⁵
- It is unlawful for an officer or employee to knowingly solicit political funds or contributions from other public officers or employees;⁶ and
- It is unlawful for employees to wear a city uniform when engaging in political activities, even during off-duty hours.⁷

2. *Permissible actions*

Cities may use public resources to educate the electorate.⁸ Under such circumstances “the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the [activity]; no hard and fast rule governs every case.”⁹ Accordingly, the activity must: (1) present facts and not advocate a position; (2) present both sides of an issue; (3) be informational or analytical in style and tenor; and (4) be timed to educate, not persuade, the electorate.¹⁰

Government may also use public resources to objectively evaluate how a ballot measure will affect the agency.¹¹ Employees may, therefore, provide information regarding a ballot measure based the city's fair and objective factual analysis of that measure.¹² Thus, information provided by the City may (a) present objective facts (e.g., historical information); (b) must avoid argumentative or inflammatory rhetoric; (c) must avoid urging voters to vote in a particular manner or take other actions in support or in opposition to a measure; (d) distribute such information in a manner consistent with the City's established practices (e.g., posting on the City's webpage and the City's regular newsletter sent to residents).¹³

⁵ GC § 3204.

⁶ GC § 3205.

⁷ GC § 3206.

⁸ *Vargas, supra; Stanson, supra; Choice-in-Education League v. LA Unified School Dist.* (1993) 17 Cal.App.4th 415.

⁹ *Vargas*, 46 Cal.4th at 34; *Stanson*, 17 Cal.3d at 222.

¹⁰ *Vargas*, 46 Cal.4th at 34; *Stanson*, 17 Cal.3d at 220-22; GC § 54964(c).

¹¹ See *Lehane v. City and County of San Francisco* (1972) 30 Cal.App3d 1051.

¹² See *Stanson*, 17 Cal.3d at 221.

¹³ *Vargas*, 46 Cal.4th at 40.

Finally, the City may express its own viewpoint regarding a particular ballot measure. Typically, the only permissible means of presenting such a viewpoint is during a public session at which dissenters may respond.¹⁴

Nothing prevents individual councilmembers or public employees from advocating a particular position regarding a ballot measure *on their own time*.¹⁵ They simply cannot use public resources when doing so.¹⁶

B. Campaigning at City Council Meetings

It is important to remember that City Council meetings are government proceedings that are necessary to conduct City business.¹⁷ While the City Council may regulate the activities of persons attending a City meeting to facilitate the orderly progression of the meeting,¹⁸ it must not generally restrict the content of that person's speech.¹⁹ The City Council cannot, therefore, prohibit public criticism of the City's policies, procedures, programs, or services or the acts or omissions of the Council itself.²⁰

The City Council may, however, prevent members of the public from commenting on matters that are not within the City Council's subject matter jurisdiction.²¹ This generally means that public discussion is limited "to such matters that serve the purposes of the [City Council] in holding meetings."²²

Generally, campaigning for candidates or ballot measures is an inappropriate topic for public comment since elections are unaffected by City Council meetings. Accordingly, if the City Council has not taken a position regarding a ballot measure, the City Council may ordinarily prevent discussion regarding ballot measures during public comment. Such action is further justified by the significant public resources expended during a City Council meeting, e.g., staff time, publicly funded television, and the City Council Chambers. Under these circumstances, the City has

¹⁴ *Choice-in-Education League*, 17 Cal.App.4th at 429-30; *League of Women Voters*, 203 Cal.App.3d at 545, 560.

¹⁵ *League of Women Voters*, 203 Cal.App.3d at 560-61.

¹⁶ *Id.* at 556.

¹⁷ *White v. City of Norwalk* (9th Cir., 1990) 900 F.2d 1421, 1425.

¹⁸ GC §§ 36813, 54954.3(b).

¹⁹ GC § 54954.3(c); *In re Kay et al.* (1970) 1 Cal.3d 930, 942.

²⁰ GC § 54954.3(c).

²¹ GC § 54954.3(a); 78 Op. Cal. Att'y. Gen. 224 (1995).

²² 78 Op. Cal. Att'y. Gen. at 226.

significant interest in preventing campaigning in order to avoid the impermissible use of public resources.

However, if the City Council takes a position regarding ballot measures at a public meeting, it invites public criticism and comment regarding such action.²³ Those activities can blur the line between commenting on City Council actions and outright campaigning. Regrettably, the law does not resolve this potential conflict between First Amendment protections, the Brown Act, and the prohibitions on expenditure of public resources. Accordingly, the City Council may be required to give greater leeway for public comment when the City Council takes a position regarding a ballot measure than when it does not; each situation will require an independent determination for what is permissible.

C. The Rules are Applicable to a Committee Appointed by the Council

The rules set forth above apply equally to any committee established by the Council to promote the ballot measure. While the Council can establish a committee to assist in the development of the ballot measure, it cannot use City resources to thereafter support the parcel tax measure.

The appointed committee can, however, use City resources to provide a fair and objective factual analysis of the ballot measure. In doing so, the committee should present facts and not urge a position or action, and present both sides of the ballot measure in an attempt to educate, not persuade, the electorate.²⁴

D. Conclusion.

It is well established that public funds may not be expended to advocate passage or defeat of a local ballot measure. Councilmembers can endorse and advocate for the passage of the ballot measure. They cannot, however, spend public money to further that end.

Let me know if you have any questions regarding these matters.

cc: Anton Dahlerbruch, City Manager
All Employees


²³ GC § 54954.3(c).

²⁴ See *Stanson*, 17 Cal.3d at 220-222.



MEMORANDUM

Agenda Item #: 4
Meeting Date: April 11, 2015

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ANTON DAHLERBRUCH, CITY MANAGER 
SUBJECT: RENEWAL OF THE FIRE/PARAMEDIC SERVICES SPECIAL TAX
DATE: APRIL 11, 2015

ISSUE/PURPOSE

The purpose of this report is to provide an overview of the 2006/2007 process that placed the Fire and Paramedic Services Special Tax measure on the March 2007 ballot. Based on a discussion of options for proceeding with the ballot measure, staff will proceed accordingly.

BACKGROUND

Attached are a variety of documents that provide detailed history and background about fire and paramedic services in the community and the voter approved ballot measures to pay the cost of services. In summary, the Special Tax approved in 2007 expires on June 30, 2017. As such, a new tax measure must be on a ballot no later than the City's March 7, 2017 General Municipal Election (concurrent with Council candidates) to insure the continuity of service and that the assessment is included on property tax bills. For including the Special Tax on the December 2017 and April 2018 property tax bills, the City must submit data to the County Assessor by August 2017. If a tax measure is considered on a ballot before the City's March 2017 municipal election, it may be an election consolidated with Los Angeles County in November 2016. Of note, it is unknown at this time if any other regional agency such as Los Angeles County, the County Metropolitan Transportation Authority (MTA) or Palos Verdes Peninsula Unified School District (PVPUSD) will have a tax on the ballot in the upcoming years but it is possible. Los Angeles County may pursue a parcel tax for storm water, the MTA may pursue a sales tax for transportation improvements, and PVPUSD may potentially consider a new tax measure for facilities improvements.

Fire and paramedic services currently account for 25% of the City's budget and nearly 50% of the current General Fund budget at an annual cost of \$4.5 million. The Los Angeles County Fire Department (County), based on labor agreements and other costs, projects a 3% annual increase in the contract costs to the City. The agreement with the County for fire and paramedic services will not expire and does not require renewal. The current structure of the agreement with the County has an escalator of no more than a 1% increase over the average increase of the preceding 5 fiscal years' annual fee percentage increases. At this time, it is not known if the County feels it is necessary to modify the agreement. Ordinance 677, establishing the Special Tax, caps (limits) tax rate increases to no more than 6.2% annually. Of note, the Special Tax is based on the size of a home, not its assessed value. It consists of a base rate combined with formula based on the square footage of each residence.

For the Special Tax measure, City records indicate that the City or the independent citizen's committee utilized the services of a firm to obtain mailing labels and/or demographic data. It does not appear that the services of a public relations or polling firm were utilized; however, such firms have been used for ballot tax measures on the Peninsula. Specifically, the PVPUSD utilizes such services routinely, and the City of Rolling Hills Estates retained both the Lew Edwards Group and FM3 for consideration of a tax measure. Many other cities routinely utilize such services as well, and recognizing both the importance of the Fire/Paramedic Services Special Tax and that it has been almost 10 years since the City's last ballot measure, use of the firms is recommended.

The Special Tax for fire and paramedic services, designated as Measure A, was approved by voters in 2007 with 87.5% in favor and 12.5% opposed. The measure requires a 2/3 approval of those who cast ballots.

DISCUSSION

The process for renewing the Special Tax will involve a variety of City personnel and fiscal resources. It is anticipated that the City Attorney's Office (for legal counsel), NBS (existing consultant who calculates the tax formula and allocation), Finance Department (for the evaluation of financial and fiscal information), City Clerk (for administering the election and ballot measure process), L.A. County Fire Department (for providing statistics and information), and City Manager's Office (for administrative support) will have a role in the process, notwithstanding the potential involvement of a City Council established citizen's committee and the services of The Lew Edwards Group and FM3, as staff's recommendation for market research and public relations. While it is not legally required, the City could also retain an external auditor to verify the City's accounting records pertaining to fire and paramedic services.

For the tax measure on the 2007 ballot, the City initiated citizen committee based fact finding process for the measure began approximately 8 months before the election. Attached is a summary timeline. The process began with the formulation of a City Council appointed Committee comprised as follows.

Member	Sector of the City
Karen Bird	Montemalaga
Ron Buss	Lunada Bay
Mark Costa	Lunada Bay
David Cox	Malaga Cove
Jim Flanigan	Malaga Cove
Ron Jones	Montemalaga
Fred Mackenbach	Malaga Cove
Ruth Shaffer	Lunada Bay
Janice Tecimer	Montemalaga

A variety of materials were prepared for the Committee that provided factual and historical information. With the material, the Committee developed educational documents and recommended the ballot measure that was ultimately approved by voters. Attached, for reference, are several of the documents. Outside the City process, an independent citizen committee also convened for fundraising and promoting the tax measure.

Following past practice, the City would establish a blue ribbon committee and update prior year information and materials. Mindful of the value added by market research and public relations as well as other future funding needs for the City, it is recommended that the City partner with The Lew Edwards Group and FM3. As a departure from past practice, the consultants recommend the ballot measure on the November 2016 ballot.

FISCAL IMPACT

There is no fiscal impact associated with this report. However, professional consultants would be an investment of approximately \$100,000. For the ballot measure, there will also be in-kind costs associated with staff and administrative resources in support of a citizens' committee and developing information. However, if the Special Tax is not renewed, there will be a devastating fiscal impact on City services. The City's total General Fund revenues for operations, without the revenue from the Special Tax for fire and paramedic services is \$11.7 million. With fire and paramedic services of approximately \$4.5 million per year, and Police services comprising \$6.4 million of General Fund annual expenditures, should the Fire Parcel Tax not be renewed nearly 50% of services provided through the General Fund would be without a revenue source.

NOTIFICATION

This topic on the agenda has been noticed according to the City's regular, routine requirements and process.

ALTERNATIVES

At this time, there are no specific alternatives identified because this is a topic for discussion rather than action. Direction may be provided to:

1. Schedule this topic for further discussion.
2. Initiate a process for the formation of a citizen's committee.
3. Conduct more research and return with more information.
4. Return to the City Council with an agreement with The Lew Edwards Group and FM3 or pursue alternative options for consulting services.
5. Proceed on a path/schedule for a November 2016 or March 2017 ballot measure.

CONCLUSION/RECOMMENDATION

It is recommended that the City Council consider how and when to proceed with the Special Tax as a ballot measure. Specifically, the questions to address are whether retain professional consulting services, have the measure on the November 2016 or March 2017 ballot, if a citizen's committee should be formed, and who would be on the citizen's committee. Based on the responses, schedules and tasks will be refined. Following the City Council's discussion and the consideration of options, staff requests direction.

ATTACHMENTS:

- A - 2007 Measure "A" Publicity Materials
- B - Various 2006-2007 Staff Reports
- C - Special Citizens' Committee Agendas
- D - 2006-2007 Timeline
- E - Fire and Paramedic Services Agreement and Amendments