

STAFF REPORT
COUNCIL MEETING DATE:
September 12, 2011

ITEM FOR COUNCIL CONSIDERATION:

Report on Revenue Measure Options.

Department: Administration



City Manager



Administrative Services Director

STAFF RECOMMENDATION:

Action Item X; Non-Action Item ___

Direct staff to initiate community outreach and surveying as part of the consideration of a revenue measure for public vote.

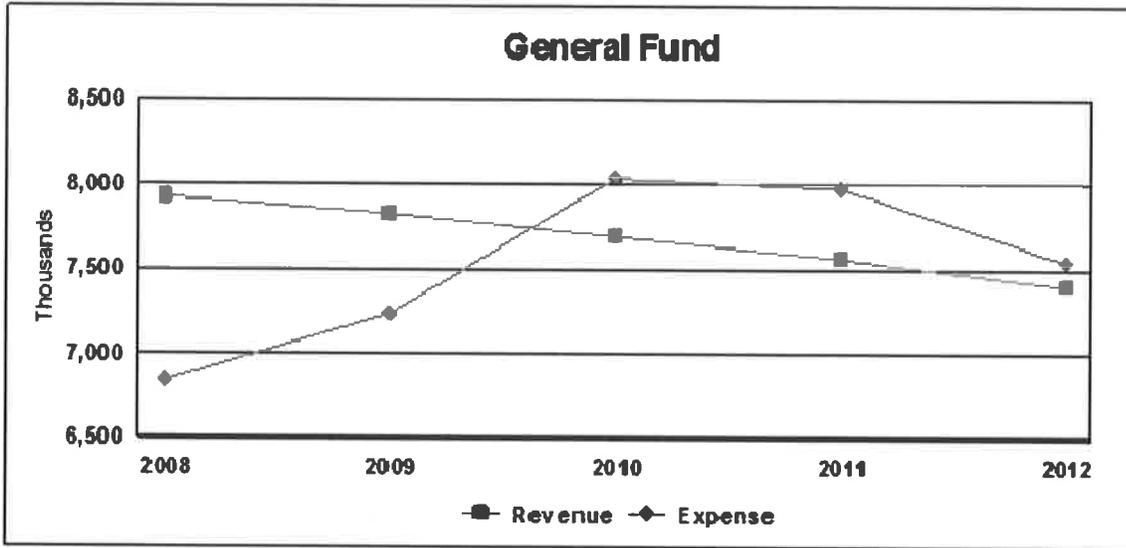
Motion: I move to direct staff to initiate community outreach work concerning a revenue measure as described.

I. BACKGROUND

Budget Expenses Exceed Revenues: Over the last four years, City financial analyses have demonstrated that, overall, growth of existing General Fund revenue sources are not keeping up with growth in existing General Fund expenses. This situation has been caused by inflationary pressure on expenses in conjunction with the negative effect the economic recession has had on the City's major General Fund revenues, i.e., property tax, sales tax and transient occupancy tax. The City has responded to this overall disparity between revenues and expenditures by a

combination of expenditure reductions and fee increases necessary to more closely match revenues with expenditures.¹

The table below, an excerpt from the June 2011 budget presentation, graphically illustrates the disparity between annual revenues and expenditures and the City's response over time. The table reflects the City's projection that from June 30, 2009 through July 1, 2012, it will use over \$900K of General Fund reserves to balance expenses with revenues and that over the past two years the City will have cut expenses by approximately \$600K.



The General Fund is considered the City's primary source of day-to-day operating revenues. General Fund revenues are used to fund Administrative and Public Safety services, as well as provide financial support for Parks & Recreation, Community Development and Public Works programs. The City is projecting in the current fiscal year budget that General Fund revenues will increase from 2010-11 levels by 3.8% or \$249K to \$6.864 million. Expenditures are expected to be less than revenues resulting in an operating surplus of \$228,077; however, because the General Fund will have to subsidize several other funds that will experience an operating deficit, the ending June 2012 Available Fund Balance (AFB) is expected to decline (\$147K) to \$4.782 million.

The funds projected in the budget to require subsidies are:

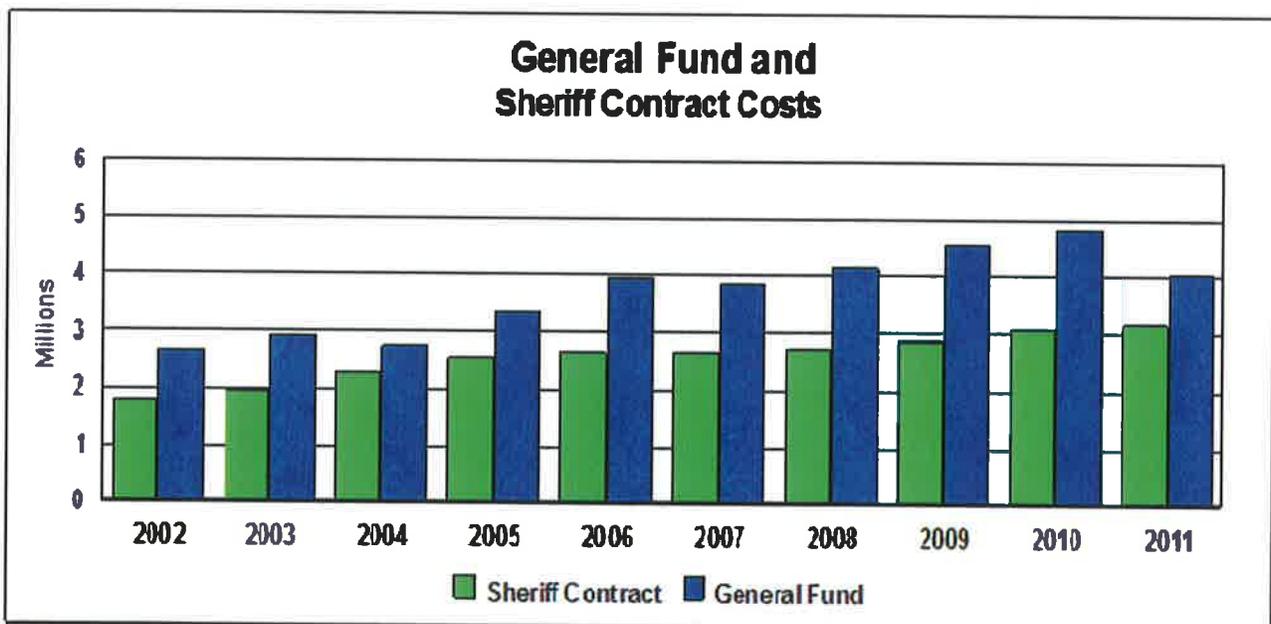
Fund	Subsidy
Traffic Safety	\$17,076
Park Development	32,149
Park Maintenance	114,383
Right of Way	97,105
Recreation Services	114,024

Several of these funds that currently require a subsidy from the General Fund have dedicated revenue sources that were established with the intention that they would fully pay for program

¹ In May of 2011, the City Council approved adjustments to its Waste Hauling franchise fees, Downtown Parking and Business Improvement District annual charges, and all permit processing fees and charges. The 2011-12 Budget reflects expenditure reductions in employee compensation and most contract services including law enforcement, legal services, parks and public landscape maintenance, and janitorial services.

expenses. The largest subsidies are required for Funds that support Parks & Recreation and Street right-of-way programs. The Park Maintenance and Right-of-Way Funds require subsidy from the General Fund because the revenue sources established in the mid-1980's to provide revenue to them have never been increased. A special tax on residential parcels that provides revenue to the Park Maintenance fund was first established in 1985 at a rate of \$36.03/residential parcel annually. A benefit assessment district that funds the Right-of-Way Maintenance fund was also established in 1985 with an average assessment of \$53.43/residential parcel annually. While new residential development, i.e., the creation of new residential parcels, has created some additional revenue to these funds, this growth is not adequate to offset growth in expenses. Finally, the Recreation Services fund receives revenues from user fees; however, operating costs for Recreational Services programs, including the operation of the community pool, exceed revenues and because the City has an interest in ensuring that its Recreational Services programs are affordable to Carpinterians, user fees are not capable of generating revenues sufficient to cover program expenses. User fees currently cover approximately 64% of overall program costs.

Also significantly affecting City General Fund expenses is the City's contract with the County for law enforcement services. Attachment 1 to this report includes charts from the Budget that illustrate General Fund revenues and expenses. Law enforcement costs represent over 40% of the City's General Fund expenses (approximately \$3.2 million of the \$7.5 million budget) and therefore, even small annual increases significantly affect overall expenses. The chart below illustrates law enforcement contract and overall General Fund expenses over the last ten years. These costs are influenced by factors that the City does not control, including but not limited to labor agreements negotiated between the County and various unions.



Level of Service: Each community is unique and determines the levels of service that it finds are necessary and appropriate. The local government services provided by the City of Carpinteria are a function of its history, applicable State and federal laws, and the unique needs and expectations of the community. The City believes that current services being provided are necessary and desirable and are being provided in an efficient and effective way. However, as a part of exploring possible tax or assessment increases, it will be essential to raise the level of voter awareness about City services in Carpinteria, how they are provided, and how they are paid for. This process of education is expected to be a necessary precursor to exploring what type of revenue measure may be supported by the community.

Fiduciary Responsibility: The City of Carpinteria has a history being fiscally conservative and taking its fiduciary responsibility seriously. This financially conservative approach along with healthy local economic conditions, including real estate values, and the passage of the county-wide transportation sales tax, has allowed for the City to build up healthy reserves and limit service cuts related to the current economic recession. Going forward, Staff finds that in order to maintain service levels along with appropriate reserve amounts, additional revenue will be required.

The City has explored alternative means for providing a variety of services over the years, always striving for the most efficient and effective way of delivering the services. Significantly, replacing its Police Department in 1991 with a contract with the Santa Barbara County Sheriff's Department reduced the City's cost of law enforcement services and addressed chronic issues relating to available services and personnel turnover. The City meets other service needs, such as streets, park maintenance, janitorial and animal control services through a combination of City employees and contracting. How local government services are delivered in Carpinteria is routinely reevaluated in order to ensure that required and desirable services are delivered in as efficient and effective a manner as possible.

The City believes that it provides high quality local government services to the citizens of Carpinteria in a cost effective manner. Recently, the State Controller's Office began collecting financial information from California cities that allows for some cost comparison.² Including Carpinteria, there are 52 cities in California that contract for law enforcement services, have fire protection and library services provided by other agencies or by contract, and provide Parks and Recreation services in-house. Although there are many differences remaining between these cities, comparing City spending information to these cities is useful.

Attachment 2 to this report is a series of lists of these 52 cities comparing total expenditures, salary and benefit costs and contract expenditures. Staff also reviewed specific service cost categories of law enforcement, parks & recreation, and planning. The City of Carpinteria's 2008-09 law enforcement expenses (the most recent year Controller information is available), is \$196 per capita while the average per capita cost for all California cities that provide law enforcement services exclusively by contract is \$188, according to the report. California cities with Police Departments spend an average of \$605 per capita. In 2008-09, Carpinteria spent 39% of its General Fund budget on law enforcement; this was less than other cities in Santa Barbara County except for Buellton, 32%, and Solvang, 33%. The City spends \$33 and \$83 per capita for planning and parks & recreation services respectively. The State-wide average for all cities and counties is \$62 per capita for planning services and \$71 per capita for parks & recreation expenses. Overall, the comparisons confirm that the City of Carpinteria is well within normal parameters for municipal spending. Staff believes this demonstrates that the City of Carpinteria has been responsible in overseeing limited public resources.

Dialogue with the Community: Over the last two and a half years the City Council has discussed the City's financial condition through many public meetings including budget hearings, a preliminary budget hearing, and during the consideration of matters affecting City finances such as hearings on changes to various fees and charges, approval of changes to terms of employment, and law enforcement contract changes. The City's deliberations on these important financial matters have also been covered well by both the Coastal View News and the Santa Barbara News Press. But it should not be assumed that prospective voters in Carpinteria are aware of the City's financial situation and, if the City Council determines that a revenue

² State Controller information compiled and published by California Local Government Finance Almanac at www.californiacityfinance.com .

measure is necessary, why such a measure is being proposed. It is expected that any successful revenue measure will require a fully informed voting public.

To state the obvious, a successful revenue measure requires community support. In other words, the City will need help from the community in determining what type of revenue measure has the potential to be approved by Carpinteria voters. For these reasons, staff believes that a community outreach effort is a necessary precursor to any successful revenue measure process. Also, because City staff resources are limited, in order to move this matter forward in a timely way, it is expected that assistance from a consultant will be needed to develop outreach materials and to help analyze input for City Council consideration.

Finally, as is mentioned in the City Attorney's memorandum (Attachment 4), the City Council has the option of placing on the ballot an advisory measure that advises the City on how new general tax revenues should be spent. Provided that this advisory measure is worded so that it does not create a binding obligation on the City, a companion general tax measure would remain subject to a majority vote to be approved.

The City Council has previously authorized staff to work on various measures aimed at reducing costs and increasing revenues. Many of these actions are reflected in the revenue and expense projections of the current year municipal budget. Exploring a voter approved revenue measure through a community process has also been identified by the City as an important part of its financial recovery plan work.

The purpose of this report is to provide the context and assist the City Council with making three related decisions concerning the possibility of bringing a revenue measure to the voters of Carpinteria. Staff believes a framework for addressing this issue can be organized as follows:

- Determine that there is a need for additional revenue to support local services
- Determine that a first step in exploring a revenue measure is through community meetings and similar outreach
- Authorize staff to initiate this work, including pursuing assistance from a consultant, and determining a schedule.

Staff is recommending that the City Council authorize engaging citizens in a participatory process aimed at determining the nature of a possible revenue measure, and sending out a request for proposal related to support services from a consultant.

II. ANALYSIS:

As discussed above, Staff finds that with current and projected revenues, there is a need to raise additional revenue in order to maintain service levels. Although it is possible that future revenues will exceed projections and be adequate to cover City expenses, as was the case over the past decade when property tax revenues rose significantly,³ this appears unlikely and staff does not believe that it would be prudent to count on an unanticipated acceleration in revenue growth.

³ Over the 12 year period preceding the 2008-09 fiscal year, the average annual property tax revenue growth rate was about 6%. Over this same period of time property tax grew from representing 19% of total General Fund revenue to 34%. The current City five year projection is for an annual growth rate of 1.5%.

As mentioned in the Background section of this Report, a three-step decision-making process is appropriate if the City Council is to move forward with Staff's recommendation for engaging the Carpinteria community about a revenue measure.

The first decision is a determination by the City Council that more tax and/or assessment revenue is required. If the City Council believes that more tax/assessment revenue is not required and that a continuation of the current response to City expenses exceeding revenues should continue, (i.e., raising fees and charges where appropriate, cutting service levels and related expenses, and using reserves to the degree necessary, or something similar), then this matter should not be pursued further at this time. In order to assist the City Council with this decision, information has been provided in the background section of this report concerning the City's Budget projections, the key reasons for expenses recently outpacing revenues, and a comparison of expenses with other cities.

The second decision relates to determining what viable options are available for a revenue measure and that a dialogue with the community is needed in order to determine, ultimately, what type of revenue measure, if any, should be put before voters. To help with this decision, information about tax and assessment options that Staff has determined are viable is discussed below. Also, discussion in the Background section of this report and in paragraph B, Process and Procedures, below, is included to support a decision to engage the services of a consultant for either a tax or benefit assessment revenue measure to help with needed staff support and to provide needed expertise on technical matters.

A. Revenue Measure Options

The City has an interest in continuing or improving upon the range and quality of programs and services that it currently delivers to residents, businesses and their employees, and visitors to Carpinteria. City programs and services support safe, healthy living for all Carpinterians, improved property values, and successful local business. In order to continue to provide the level of services available in Carpinteria, the community must address revenue shortfalls. Staff believes that there are generally two approaches available to Carpinterians: (i) raise and/or expand special taxes or benefit assessments that provide revenue to Park Maintenance and Recreation Services funds so that they do not act as a financial burden on the General Fund, or, (ii) increase General Fund revenue so that it has sufficient revenue to address the growing subsidies.

Any tax or assessment increase requires a vote pursuant State law. All taxes are categorized as either General or Special. General Taxes -- those proposed for unrestricted use by a local government -- are subject to one set of rules related to voter approval. Special Taxes -- those designated for a specific purpose -- are subject to a different set of rules. Benefit Assessments are distinct from taxes and are also subject to a separate set of rules regarding how they are created or changed.

The table below provides a simple summary of these rules. The table is taken from a League of California Cities publication, *The California Municipal Revenue Sources Handbook*, 2008, and has been amended to include Assessments.

	General Tax	Special Tax	Benefit Assessment
Use of Revenues	<ul style="list-style-type: none"> ▪ Unrestricted 	<ul style="list-style-type: none"> ▪ Specific purpose 	<ul style="list-style-type: none"> ▪ Specific purpose
Governing Body Approval	<ul style="list-style-type: none"> ▪ General law cities: two-thirds ▪ Charter cities: Majority 	<ul style="list-style-type: none"> ▪ Majority 	<ul style="list-style-type: none"> ▪ city council adopts resolution calling for mailed ballot assessment proceeding
Voter Approval	<ul style="list-style-type: none"> ▪ Majority 	<ul style="list-style-type: none"> ▪ Two-thirds 	<ul style="list-style-type: none"> ▪ Majority
Other Rules	A general tax election must be consolidated with a regularly scheduled general election of city council members, unless an emergency is declared by unanimous vote (among those present) of the city council.	Special tax funds must be deposited in a separate account. The taxing agency must publish an annual report including: 1) the tax rate; 2) the amounts of revenues collected and expended and 3) the status of any project funded by the special tax.	Engineer's report must be prepared identifying proportionate special benefit received by all parcels subject to assessment. Public hearing is held following minimum 45 day notice; assessment ballots are tallied at end of public hearing. Assessment can be ordered if no majority protest.

Taxes or assessments can also be established for a limited period of time, i.e., can have a sunset clause. The recently approved Measure A, a County-wide half cent sales tax for transportation projects, was approved by voters for a 30 year period. Its predecessor, Measure D, was approved for 20 years. It is not uncommon for taxes to be approved for shorter terms where additional revenue is believed to be required for a discrete period of time.

Staff has provided tax and assessment increase options for City Council consideration. The purpose of providing these options is to allow the Council to direct staff on a set of viable options for presentation and discussion during a community workshop process.

1. Transient Occupancy Tax (TOT): The TOT is a tax imposed on occupants for the privilege of occupying room(s) in a hotel, motel, inn, etc.⁴ The TOT is a very common tax established by most cities in California and the nation. Carpinteria collects the tax on occupancies of less than 30 days. Staff believes that a change in this existing City tax can be supported due to the demands placed on City services from visitors to the City: e.g. law enforcement, street and park maintenance, and visitor information. It is estimated that over 200,000 visitors annually pass through Carpinteria hotels, hundreds of thousands of day trip visitors come to the City annually, and approximately a million annual visitors come to the State Beach, in effect adding between approximately 4,000 to 4,500 residents to the City on average on a daily basis. The exact impact of this

⁴ The California Municipal Revenue Sources Handbook, 2008 Edition

transient population on City services cannot be known but a significant impact undoubtedly exists.

- Increase Rate:** A TOT can be imposed as a percentage of a hotel room rate (most common) or as a flat, per night amount. Rates vary from place to place, generally with higher rates in large City tourist destinations such as San Francisco and New York. The rate in Carpinteria is currently 10% of the hotel room rate charged to the person renting the room. The rate in the City of Santa Barbara, the primary tourist destination in the region, is 12%. Attachment 3 to this report is a list of sample TOT rates from beach cities in California. TOT revenue in the last fiscal year is estimated to be \$1,306,032. If the City of Carpinteria rate were 12%, an additional \$261,206 in TOT revenue would have been collected from hotel visitors. Below is a table that illustrates 10 and 12 percent TOT rates on a standardized room rate in Carpinteria.

	Current Transient Occupancy Tax (TOT) rate 10%	12% TOT rate
ROOM RATE	\$100	\$100
TOT	\$10	\$12
TBID ASSESSMENT FEE*	\$1.10	\$1.10
TOTAL	\$111.10	\$113.10

*The TBID assessment fee is added to the room rate; therefore it includes an additional .10 of TOT that is paid to the City.

- Expand Applicability:** Most transient visitors to Carpinteria stay at the State Beach campground, approximately 400,000 campers annually, according to State Parks information. State law precludes cities from charging the TOT on private campgrounds (Revenue and Taxation Code §7280). The City adopted a Uniform Camper's Tax (CMC Chapter 3.36) in 1983, which applies to temporary stays at campgrounds in the City. The only operating campground in the City is the State Beach campground. State law was changed in 1985 specifically to preempt the City of Carpinteria Camper Tax and any others like it in California. The law (AB 1427, codified as Revenue and Tax Code § 7282) states specifically that "no city... may levy a tax on the privilege of occupying a campsite in a unit of the state park system." Should the City wish to expand its taxation of transient occupancy use to include campgrounds via a Camper Tax or similar, a change in State law would be required. City representatives have had discussions with its State legislators in the past on this topic and reinitiating contact with current State representatives would be essential should the Council elect to pursue this option.
- General or Special Tax:** Like all taxes, TOT taxes can be either General or Special. A General Tax would provide the City will full discretion in using the revenue to address its General Fund shortfall. If a Special Tax is pursued, i.e., a tax where the revenue is dedicated to a specific purpose, that purpose would be described as a part of the proposed tax measure to be voted on and use of the revenues would be restricted to the purpose described. Thus, if a TOT increase were pursued as a Special Tax, it would be important to ensure that the Special Tax is for a program(s) that relies on the General Fund for its funding, either directly or through subsidy. As examples, most of the City's law enforcement cost is paid for directly by the General Fund; the City's Park Maintenance and Recreation Services programs are heavily subsidized by the General Fund. If a

Special Tax is desired, dedicating the revenue to either law enforcement or Parks programs would address the City's General Fund revenue shortfall.

2. Assessment District: An assessment on property is a charge levied on real property for a local public improvement or service that specially benefits that property.⁵ The City currently operates two types of Assessment Districts through which assessments are collected: an assessment on property – (i) the Right-of-Way Assessment District and (ii) two assessments on businesses – the Parking, Business Improvement Area District, a Business Improvement District covering the Downtown “T” area, and the Regional Tourism Business Improvement District that applies to hotels. Staff finds that the creation of an assessment district for Parks & Recreation services can be supported due to the shortfall in the Parks Maintenance and Recreation Services Funds discussed in the Background section of this Report. The assessment could be designed to address the specific shortfall in operating revenues for park and recreation facilities maintenance and operations. Staff does not recommend consideration of an amended or new Right-of-Way Maintenance assessment district because the street and parkway maintenance activities associated with the district have little impact on the General Fund. Also, the General Fund's contribution to the Funds that support the street maintenance program is near the minimum required as matching funds for the primary revenues that fund these activities, e.g., Measure A, and Gas Tax.

The current Park Maintenance parcel tax (discussed further below) is approximately \$36 per residential parcel. This parcel tax raised \$195,106 in 2010/11. An Assessment District established to cover the City's residential parcels and to address the current General Fund subsidy of approximately \$230K annually, would require a per residential parcel average assessment of \$42 annually, bringing the total of residential assessments and taxes for parks purposes to \$78 annually. If other non-residential parcels were included, the assessment on residential parcels could be lowered substantially. Staff believes that commercial, industrial and other non-residential parcels benefit from parks and recreation facilities and services and could be included in such an assessment district. Establishment of a benefit assessment district requires the services of an engineer with expertise in creating the methodology for spreading district costs over benefitting properties based on each parcels determined level of benefit. This is extremely important for creating a legally defensible district. Benefitted property owners are the parties who vote, and thus who ultimately decide, regarding the establishment of assessment districts and votes are weighted based on the determined level of benefit. Assessment District polling is done by mail in ballot.

3. Parcel Tax. A parcel tax is a special, non-ad valorem tax on parcels of property, generally based on either a flat per-parcel rate or a variable rate depending on the size, use and/or number of units on the parcel.⁶ The City currently collects a parcel tax of \$36.03 per residential parcel through the Parks Maintenance District. The District, originally funded through a property assessment from 1985, was approved by voters to receive parcel tax revenue in 1997, in conjunction with a commensurate lowering of the property assessment amount. Annual Parks Maintenance District revenues from the parcel tax are estimated at \$146K. There are a total of approximately 5,000 parcels within City limits. A parcel tax of \$50 per parcel would raise approximately \$250K in additional revenue annually. Parcel taxes may be collected for specific purposes, such as the City's parcel tax for parks maintenance, or for general purposes; however, in either case a parcel tax requires two-thirds voter approval.

⁵ Ibid

⁶ Ibid

B. Process and Procedures

A ballot measure process will require the City to take practical steps necessary in the preparation of the desired measure. The City must also follow specific procedures necessary to meet legal requirements related to ballot measures generally and revenue measures specifically; these must be accomplished in order to have a valid matter decided by the voters.

1. Public Outreach and surveying. A revenue measure requires preparation in order to ensure that it reflects community interest and has the best chance for success. Most of the preparation time required is for surveying, workshops, and other public outreach as a necessary contributor to the writing of the ballot measure.
2. Ballot Measure Preparation. Writing of a ballot measure requires expertise to ensure that the measure meets legal requirements and accomplishes what is intended.
3. Community Campaign (non-City). Sufficient community interest in support of raising revenue for city services, generally or specifically, will often include community groups campaigning in support of a revenue measure. Campaigns in support of local revenue measures can demonstrate grassroots support for the municipal services that are proposed to benefit from a revenue measure and are therefore critical to success. Campaigning must be separate from any City functions related to a ballot measure because California cities are precluded from using public funds for advocacy campaigning.
4. Procedure: A memorandum from the City Attorney's Office is attached to this staff report as Attachment 4. As discussed in that memorandum, the City has a formal role to play in any tax or assessment measure. For a benefit assessment, the City Council orders the mailed ballot election and has the option to order the assessment if the election does not produce a majority protest. For a tax measure, the City Council approves the measure prior to submitting it to the voters for the required election. Further technical matters are addressed in the City Attorney's memorandum.

C. Schedule

Scheduling an election on a revenue measure will be affected by the amount of public outreach conducted, the type of revenue measure determined to be placed on a ballot, i.e., General or Special Tax, or Assessment, and the type of voter canvassing conducted, i.e., polling place or mail ballot. Importantly, as described in the table in the Analysis section of this report, a vote on General Taxes and any parcel tax, must be consolidated with a regularly scheduled general election of City Council members. The next City of Carpinteria City Council election is November 2012, which will be consolidated with the Presidential General Election. Attachment 5 to this Report is a generic sample 2011/12 schedule of possible election dates from a consultant. The dates are based largely on the primary and general election dates already scheduled in California but are helpful in giving the City and idea about what a schedule might look like should it choose to move forward with a revenue matter. The timelines for work included in the generic schedule suggests that for a 2012 election, work by the City would need to begin immediately.

III. LEGAL ISSUES:

Voter approved tax measures are subject to State law, Proposition 218, and require that specific procedures be followed in order that measures to be put before voters meet stringent legal requirements. The City has had very little experience with this process, and none since 1997. Attached to this staff report is a memorandum from the City Attorney's Office that discusses a number of technical issues associated with benefit assessment and tax proceedings. The information contained in the memorandum is provided to assist the Council in its deliberations as to what steps to take at this time. Among the issues discussed in the memorandum which may be useful at this stage are the following:

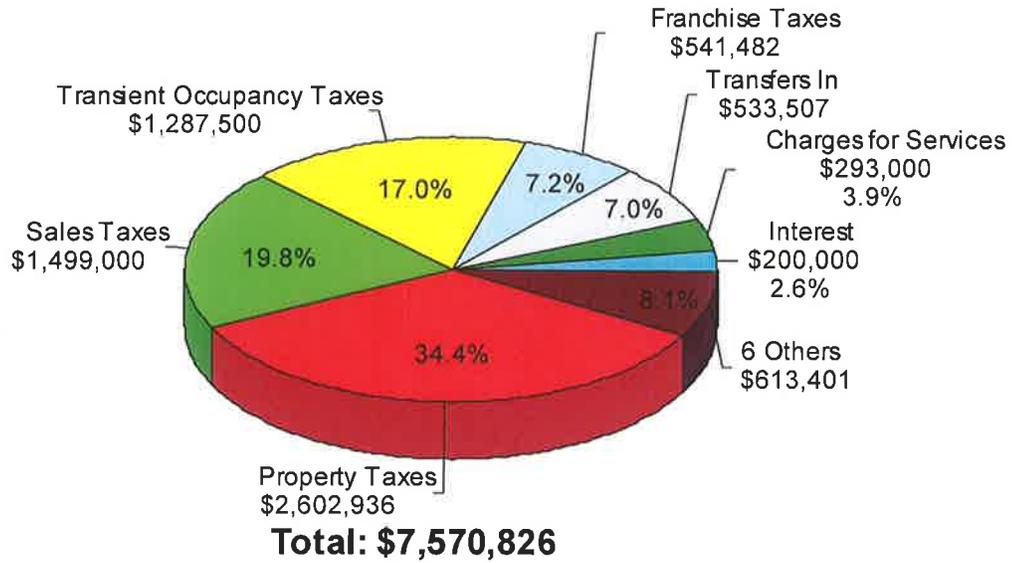
1. In order to proceed with a new or increased benefit assessment, the preparation of a legally defensible engineer's report by a consultant experienced in the preparation of such reports is an absolute necessity.
2. For a benefit assessment proceeding, recent case law raises an important question as to whether new or increased assessment revenues may be used solely for installation of capital facilities (i.e. cannot be used for maintenance or operation).
3. Provisions for annual inflationary adjustments can be included in both assessment and tax measures.
4. A general tax measure may be combined on the ballot with a separate advisory question in which the voters advise the agency how to spend the proceeds of the tax. Provided that the advisory measure does not legally restrict the uses of the tax, the tax measure remains a general tax and does not become a special tax requiring a 2/3 vote."

IV. ATTACHMENTS:

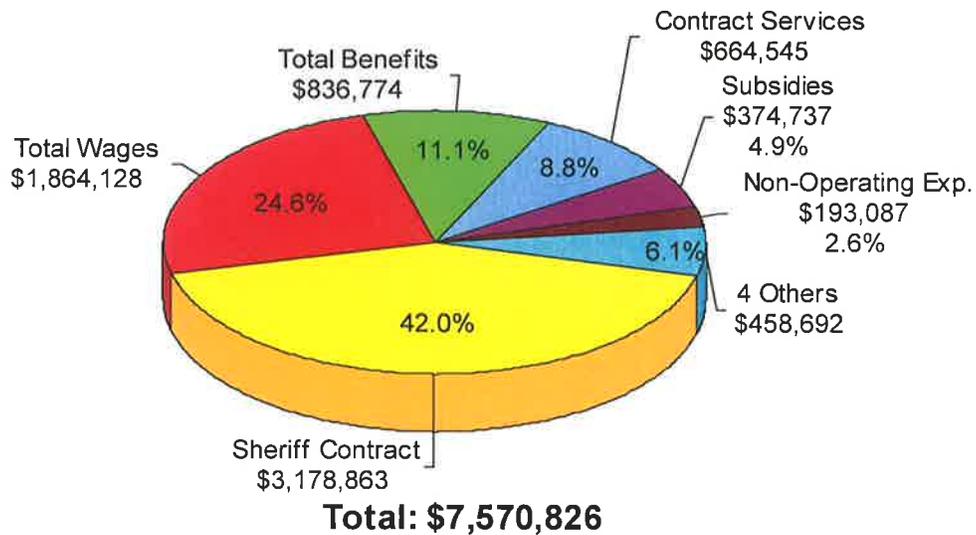
1. General Fund Revenue and Expense pie charts
2. City spending comparisons
3. Various Beach Community TOT Rates
4. City Attorney Memo
5. Sample Elections Schedule chart

ATTACHMENT 1

GENERAL FUND Income



GENERAL FUND EXPENDITURES



ATTACHMENT 2

Total Operating Expenditures

Source: California State Controller, Cities Annual Reports

City	County	2008-09	Population	Per Capita
Rancho Santa Margarita	Orange	14,998,370	47,723	314.2797
Laguna Woods	Orange	5,118,359	16,190	316.1432
Twentynine Palms	San Bernardino	8,467,422	25,745	328.8958
Highland	San Bernardino	17,691,488	52,725	335.5427
Diamond Bar	Los Angeles	21,540,821	55,379	388.9709
Temple City	Los Angeles	13,765,137	35,284	390.1241
Bellflower	Los Angeles	29,806,287	76,220	391.0560
Waterford	Stanislaus	3,327,729	8,428	394.8421
Laguna Niguel	Orange	26,672,578	62,878	424.1957
Lake Forest	Orange	33,809,422	76,817	440.1294
Yucaipa	San Bernardino	22,978,453	51,045	450.1607
Lawndale	Los Angeles	14,816,474	32,684	453.3250
Rosemead	Los Angeles	25,694,152	53,877	476.9039
Mendota	Fresno	5,151,900	10,761	478.7566
Avenal	Kings	7,712,411	15,456	498.9914
Yucca Valley	San Bernardino	10,378,187	20,651	502.5513
Rancho Palos Verdes	Los Angeles	20,877,191	41,537	502.6167
Lafayette	Contra Costa	11,923,735	23,696	503.1961
Lancaster	Los Angeles	77,426,161	153,613	504.0339
Saratoga	Santa Clara	16,110,359	29,815	540.3441
Walnut	Los Angeles	16,144,896	29,285	551.3026
Laguna Hills	Orange	17,293,773	30,494	567.1205
Apple Valley	San Bernardino	40,040,557	68,828	581.7481
Villa Park	Orange	3,390,786	5,824	582.2091
Carpinteria	Santa Barbara	8,586,214	14,409	595.8924
Riverbank	Stanislaus	13,295,440	22,121	601.0325
South El Monte	Los Angeles	12,667,645	20,326	623.2237
Pico Rivera	Los Angeles	39,770,297	63,095	630.3241
Lomita	Los Angeles	12,777,734	20,236	631.4358
San Dimas	Los Angeles	22,251,477	33,596	662.3252
La Mirada	Los Angeles	32,095,727	48,434	662.6693
Orange Cove	Fresno	6,107,988	9,182	665.2132
Paramount	Los Angeles	36,379,078	54,201	671.1883
Lakewood	Los Angeles	54,142,813	80,004	676.7513
La Canada Flintridge	Los Angeles	13,952,705	20,249	689.0565
Cupertino	Santa Clara	41,548,642	57,289	725.2464
Grand Terrace	San Bernardino	8,617,314	11,854	726.9541
Santa Clarita	Los Angeles	128,599,675	175,103	734.4230
Carson	Los Angeles	74,711,467	92,198	810.3372
Dana Point	Orange	27,247,891	33,485	813.7342
Hidden Hills	Los Angeles	1,567,893	1,862	842.0478
Portola Valley	San Mateo	3,887,277	4,341	895.4796
Chino Hills	San Bernardino	80,590,614	74,725	1078.4960
Los Altos Hills	Santa Clara	8,801,066	7,892	1115.1883
Bradbury	Los Angeles	1,138,165	1,017	1119.1396
Point Arena	Mendocino	594,904	454	1310.3612
Lathrop	San Joaquin	29,503,409	17,589	1677.3784
West Hollywood	Los Angeles	83,848,442	34,462	2433.0695
Shasta Lake	Shasta	29,544,201	10,151	2910.4720
Amador	Amador	712,279	189	3768.6720
Big Bear Lake	San Bernardino	22,834,904	5,136	4446.0483

City Salaries & Wages Per Capita City Report

Source: California State Controller, Cities Annual Reports

City	County	2008-09	Population	Per Capita
Highland	San Bernardino	1,875,337	52,725	35.5683
Rancho Santa Margarita	Orange	2,038,428	47,723	42.7137
Villa Park	Orange	325,096	5,824	55.8201
Lake Forest	Orange	4,933,041	76,817	64.2181
Yucaipa	San Bernardino	3,748,534	51,045	73.4359
Twentynine Palms	San Bernardino	1,978,377	25,745	76.8451
Diamond Bar	Los Angeles	4,377,463	55,610	78.7172
Laguna Niguel	Orange	5,041,537	62,878	80.1797
Avenal	Kings	1,239,634	15,456	80.2041
Mendota	Fresno	909,066	10,983	82.7703
Waterford	Stanislaus	711,366	8,428	84.4051
Orange Cove	Fresno	786,222	9,182	85.6264
Rosemead	Los Angeles	5,450,771	53,877	101.1706
Laguna Hills	Orange	3,142,261	30,494	103.0452
Lawndale	Los Angeles	3,599,552	32,684	110.1319
Bellflower	Los Angeles	8,484,333	76,220	111.3137
La Canada Flintridge	Los Angeles	2,293,063	20,249	113.2433
Walnut	Los Angeles	3,353,523	29,285	114.5133
Rancho Palos Verdes	Los Angeles	4,913,855	41,537	118.3007
Lancaster	Los Angeles	19,990,069	153,613	130.1327
Apple Valley	San Bernardino	8,993,029	68,828	130.6595
Lafayette	Contra Costa	3,157,180	23,696	133.2368
Temple City	Los Angeles	4,987,425	35,284	141.3509
Yucca Valley	San Bernardino	3,010,664	20,651	145.7878
Chino Hills	San Bernardino	11,068,120	74,725	148.1180
Riverbank	Stanislaus	3,381,601	22,121	152.8684
Dana Point	Orange	5,290,049	33,616	157.3670
Santa Clarita	Los Angeles	27,624,989	175,103	157.7642
Pico Rivera	Los Angeles	10,096,155	63,095	160.0151
South El Monte	Los Angeles	3,296,127	20,326	162.1631
Saratoga	Santa Clara	4,892,631	29,815	164.0996
Lakewood	Los Angeles	13,185,343	80,004	164.8085
Carpinteria	Santa Barbara	2,506,987	14,409	173.9876
San Dimas	Los Angeles	5,865,069	33,596	174.5764
Grand Terrace	San Bernardino	2,159,148	11,854	182.1451
Lomita	Los Angeles	3,707,663	20,236	183.2211
Paramount	Los Angeles	10,001,836	54,201	184.5323
Bradbury	Los Angeles	191,020	1,017	187.8269
Cupertino	Santa Clara	11,066,662	57,289	193.1725
Hidden Hills	Los Angeles	371,477	1,862	199.5043
Los Altos Hills	Santa Clara	1,649,221	7,892	208.9738
La Mirada	Los Angeles	10,165,706	48,519	209.5201
Portola Valley	San Mateo	1,041,412	4,341	239.9014
Shasta Lake	Shasta	2,604,740	10,151	256.5993
San Juan Capistrano	Orange	8,846,844	34,428	256.9665
Carson	Los Angeles	28,177,208	92,198	305.6163
Lathrop	San Joaquin	5,857,649	17,589	333.0291
Point Arena	Mendocino	190,957	454	420.6101
West Hollywood	Los Angeles	17,846,251	34,462	517.8530
Amador	Amador	224,341	189	1186.9894
Big Bear Lake	San Bernardino	6,102,527	5,136	1188.1867

City	County	2008-09
Walnut	Los Angeles	0.59
Diamond Bar	Los Angeles	0.59
Lomita	Los Angeles	0.59
Lancaster	Los Angeles	0.62
Twentynine Palms	San Bernardino	0.62
Yucaipa	San Bernardino	0.62
Lake Forest	Orange	0.63
Lafayette	Contra Costa	0.64
West Hollywood	Los Angeles	0.66
Highland	San Bernardino	0.72
Villa Park	Orange	0.82

SERVICE RESPONSIBILITY

d-Parks by city, fire & library by others	d
d-Parks by city, fire & library by others	d
d-Parks by city, fire & library by others	d
d-Parks by city, fire & library by others	d
d-Parks by city, fire & library by others	d
d-Parks by city, fire & library by others	d
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d-Parks by city, fire & library by others	d
d-Parks by city, fire & library by others	d
d-Parks by city, fire & library by others	d

ATTACHMENT 3

Various Beach Community TOT Rates

Santa Barbara--TOT rate is 12%. (10% is unrestricted revenue and 2% is restricted to Creeks Restoration and Water Quality Improvement.)

Goleta—City TOT rate is 10%

Ventura—City TOT rate is 10%. Total rate is 11.5% to 11.565%: Occupancy Tax of 10%, Ventura (City/County?) Assessment Tax (Tourism Bureau—new) 1.5%, California Tourism Tax (primarily related to harbor) .065%.

Pismo Beach—Hotel Occupancy rate 10%, 1% for LBID (Lodging Business Improvement District—goes to Conference & Visitors Bureau budget)

Avila Beach—TOT rate is 9%, BID Assessment (Tourism Marketing) 2%.

San Clemente—TOT rate is 10%.

Dana Point—TOT rate is 10% + \$3 Dana Point tax to the City.

Venice Beach—TOT rate is 14%

Hyatt Regency Hotel, San Francisco-TOT rate 13.5%, Tourism Tax Rate 1%, and California Assessment Tax .13¢

Bonaventure Hotel, Los Angeles--TOT rate 14.12%

San Diego Marriott Marquis & Marina--TOT rate 12.50%, California fee .5¢, and \$3.98 City tax

ATTACHMENT 4



Memorandum

OFFICE OF THE CITY ATTORNEY
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Telephone (805) 963-7000
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DATE: September 8, 2011

TO: Honorable City Council
City of Carpinteria

FROM: Peter N. Brown

RE: City Council Meeting of September 12, 2011
Report on Revenue Measure Options

I. BACKGROUND

State law permits cities to impose assessments on property or businesses for various purposes and permits the levy of various types of taxes. Benefit assessments are a charge levied on real property or businesses to pay for specifically identified public improvements or services that provide a benefit that is specific to the properties or businesses subject to the assessment.¹ A tax (the formal term is an "excise tax") is a tax on the privilege of exercising one or more incidents of ownership.² Assessments differ from taxes in that an assessment is levied as a charge for a special benefit for a property or business, whereas a tax is typically imposed for general revenue purposes without regard to the provision of special benefit to particular properties or businesses. A "fee" is typically imposed to recoup the cost of providing a particular service, such as a fee imposed to cover the costs of the City's processing of a land use development application, and is not further discussed in this memorandum

We have provided below a brief discussion of locally-enacted taxes and assessments that are currently collected by the City.

¹ See Cal. Const., art. XIII D, § 2(b) and Gov. Code, § 53750(b) defining the term assessment.

² *City of Huntington Beach v. Superior Court* (1978) 78 Cal.App.3d 333, 341.

A. Carpinteria Lighting, Landscaping and Right-of-Way Improvement District No. 3

Carpinteria Lighting, Landscaping and Right-of-Way Improvement District No. 3 ("District") is a benefit assessment district within the City of Carpinteria ("City"). The District was formed in 1985 under the authority of the Landscaping and Lighting Act of 1972, which is codified at Streets and Highways Code section 22500 *et seq.* The 1972 Act authorizes assessments to install, construct, and maintain landscaping, lighting and parks and recreational facilities, including graffiti removal. Pursuant to that authority, the District provides general maintenance and repairs of curb, gutter and sidewalks, tree planting, tree trimming and tree removal, as well as installation and maintenance of landscaped street tree planters and medians. The District's boundaries are coterminous with the City's onshore boundaries. Public and other exempt properties are not assessed by the District.

As required by the 1972 Act, the City has continued the District's assessment by annually following specified notice and public hearing procedures. The City has not increased the assessment amount since it was originally adopted.

B. Transient Occupancy Tax

In 1978, the City adopted a transient occupancy tax ("TOT") by ordinance, which is codified at Carpinteria Municipal Code, Chapter 3.20. Under the Revenue and Tax Code, municipalities are expressly authorized to impose a local tax on transient occupancies.³ A transient occupancy tax is an excise tax. The City's current TOT ordinance requires the operator of a "hotel," as broadly defined, to collect from any occupant staying less than 30 days a 10% tax on any rent charged.⁴ The operator of the hotel is required to remit the TOT to the City. Carpinteria's TOT revenue supports community services including police, fire, parks, roads and other amenities that help provide a safe and enjoyable experience for the traveling public. Likewise, this tax helps mitigate the impacts of tourism on the City.

³ Rev. & Tax Code, §§ 7280 *et seq.* The statute provides in pertinent part that, "[t]he legislative body of any city, county, or city and county may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days." Rev. & Tax Code, § 7280(a).

⁴ CMC, ch. 3.20 *et seq.* "Hotel" is defined as "any structure, or any portion of any structure which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location (except when located within a mobile home park or when its tenant is the owner or operator of a mobile home park) or other similar structure or portion thereof." CMC 3.20.020(A).

C. Park Maintenance Parcel Tax

This parcel tax was approved by the City's voters in 1997 as a special tax to fund maintenance of parks within the City. Funds are used for a variety of parks maintenance needs, including equipment replacement, provision of water, grounds keeping, and other maintenance activities.

If the City Council wishes to consider revenue enhancement measures, such measures could take one of two approaches. First, the Council could enact amendments to or enhancements of the three existing locally-enacted assessments or taxes that are already in place within the City. Second, the Council could enact new assessments or taxes (new taxes could either general or special taxes). To become effective, any new or increased benefit assessments or taxes must be approved by the citizens who are affected by the new levy. For benefit assessments, this is accomplished through an assessment ballot proceeding; for taxes, through an election.

The remainder of this memorandum is devoted to a description of the procedures that are necessary to approve a new or increased new benefit assessment or tax.

II. ANALYSIS

As stated immediately above, if the City wishes to consider increasing a benefit assessment or a tax, such an increase is subject to constitutional voter approval requirements, referred to as Proposition 218 ("Prop 218") and Proposition 26 ("Prop 26").

In 1996, Proposition 218, the "Right to Vote on Taxes Act," added articles XIII C and XIII D to the California Constitution, which limited local government's authority to impose taxes, assessments and property-related fees. Prop 218 imposes both procedural and substantive requirements on a government agency. Article XIII C imposes restrictions on new and increased general and special taxes. Article XIII D imposes restrictions on new and increased assessments and property related fees and charges.

In November 2010, Prop 26, the "Stop the Hidden Taxes Initiative," added to Article XIII C a definition of "tax," a term which was not directly defined by Prop 218.⁵ (Cal. Const., art. XIII C, § 1(e).) This definition redefines all agency

⁵ Prop 26 also made changes to Article XIII A of the Constitution pertaining to taxes imposed by the State of California. (See Cal. Const., art. XIII A.) That portion of Prop 26 is not relevant for the purpose of the memorandum because it applies to state, not local, government.

levies, charges and exactions of any kind to be a tax, unless it fits within seven enumerated exceptions or is not "imposed" by the government (*i.e.* is a voluntary payment made by contract). One of the exceptions is for assessments and property-related fees imposed in accordance with the provisions of article XIII D. (Cal. Const., art. XIII C, § 1(e)(7).) The result of the new definition was to reclassify some new levies and certain existing levies that are extended or increased by a local government after November 3, 2010 as special taxes requiring approval by a two-thirds vote of local voters.

Proposition 26 contains a number of ambiguities, and no court case has yet interpreted its provisions. However, based on current best analysis regarding the application of Prop 26, no City assessment or tax appears to be affected by Prop 26's redefinitions.

This memorandum now discusses the procedural steps that would be necessary were the City to decide to pursue an increase in any City assessments or taxes.

A. REQUIREMENTS FOR INCREASE OF BENEFIT ASSESSMENT

After Prop 218's enactment, "all existing, new, or increased assessments" on real property were required to comply with the Constitution. (Cal. Const., art. XIII D, § 5.) The City's ROW assessment is a benefit assessment. By definition, a benefit assessment is an assessment within the meaning of Prop 218 as a "levy or charge upon real property by an agency for a special benefit conferred upon the real property." (Cal. Const., art. XIII D, § 2(b).) However, certain assessments that had been levied on or before November 6, 1996 were made exempt from the Prop 218, including "any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control." (Cal. Const., art. XIII D, § 5(a).) Carpinteria's Right-of-Way Improvement District No. 3 is subject to that § 5 exemption. So long as the District does not impose a new or increased assessment, compliance with Prop 218 is not required. (Cal. Const., art. XIII C, § 2 (b) and (d); Gov. Code 53750(h)(1).) However, if the City increases the existing Lighting, landscaping and Right of Way Improvement District #3 assessment, it must comply with the Prop 218 procedures and approval process. Prop 26 has not changed the classification of the ROW assessment because the assessment falls within one of the seven enumerated exceptions.

Prop 218 establishes detailed requirements for the levy of new or increased assessments.⁶ The most notable requirement is that a majority of property owners must approve of an increase by a mail ballot. In other words, an assessment may be defeated if the City receives a majority protest based on ballots weighted according to the proportional financial obligation of the affected property. The law also requires that the increase be justified by an engineer's report prepared by a registered professional engineer, and that the protest be considered at a public hearing process.

1. Steps in the Assessment Process

The City must abide by the following procedure to impose any new or increased special assessment:

- a. Identify the benefit the public improvement will provide.**

The City must identify the benefits that the assessment will provide. In general, the ROW Improvement District provides maintenance and repairs of curb, gutter and sidewalks, tree planting, tree trimming and tree removal, as well as installation and maintenance of landscaped street tree planters and medians.

- b. Identify the parcels to receive special benefit.**

The City must identify all of the parcels, including property owned by federal, state or local governmental agencies, which will have a special benefit conferred upon them and upon which the assessment will be imposed.

- c. Determine whether improvements provide general benefits and identify appropriate source of funding therefore.**

Because assessments are limited to capturing the amount of money that specially benefits property, it is necessary to determine if the costs of the improvements provide any general benefit. If so, funds to provide such general benefits cannot be collected by the assessment, and must be paid for with other agency sources of funding.

⁶ Proposition 218's notice, protest and hearing requirements supersede any statutory provisions affecting new or increased assessments that were in existence on July 1, 1997. Therefore, the local agency need only comply with these requirements, and not with those contained in the specific statutory provisions under which the local agency is levying the assessment.

d. Determine proportionate special benefit.

The assessment on a parcel may not exceed the reasonable cost of the proportionate special benefit conferred on such parcel. Accordingly, once all of the parcels are identified, the City must determine the proportionate special benefit to each property in relationship to the entirety of the cost of acquiring or constructing an improvement, of maintaining and operating such an improvement. The City will make this determination by obtaining an engineer's report that supports the assessment by identifying the benefited parcels, distinguishing general from special benefits, and apportioning the assessment.

e. Adopt a resolution calling a mail assessment ballot proceeding.

The Elections Code permits assessment ballot proceedings to be held wholly by mail. (Elec. Code, § 4000, subd. (c)(8).) In order to conduct the proceedings wholly by mail, the City must have an ordinance in place authorizing the use of mailed ballot elections. If such an ordinance does not exist, the City Council must adopt an ordinance authorizing the use of mailed ballot elections. Next, the City Council must adopt a resolution calling a special mail ballot assessment proceeding among the parcels involved. (Elec. Code, § 4000, subd. (a).) The requirement that the election be held on an established mailed ballot election date pursuant to Elections Code section 1500 does not apply to assessment ballot proceedings because they are not an election for purposes of the Election Code. (See Elec. Code, § 4000, subd. (c)(8); Gov. Code, § 53753, subd. (e)(6); see *also* League of California Cities, Proposition 218 Implementation Guide (2007 ed.), p. 99.)

It is also advisable for the City Council to adopt a resolution setting forth the procedures for handling assessment ballots, because such procedures are not set forth in Prop 218 or its implementing legislation (Gov. Code, § 53753). The resolution should address how the City will handle such matters as (i) ballots cast other than on the official ballots mailed to property owners (ii) lost, spoiled, or duplicate ballots (iii) persons who wish to divide their ballots among multiple owners of a property (iv) treatment of tenants who are obligated by leases to pay the assessment, and (v) other procedural matters of note.

f. Provide adequate notice of the protest hearing on the proposed assessment.

The City must mail written notice of the proposed assessment to the record owner of each parcel at least forty-five (45) days prior to the public hearing on

the proposed assessment. (Gov. Code, § 53753.) Mailed notice is sufficient if it is addressed to the owner whose name and address appears on the last equalized secured property tax roll. This notice may be included in any other mailing, such as a bill. Notice is deemed given when deposited in the U.S. Postal Service, postage prepaid.

The notice must contain the following:

- a. The total amount to be assessed for the entire assessment district;
- b. The amount to be assessed to the owner's particular parcel;
- c. The duration of the payments;
- d. The reason for the assessment;
- e. The basis upon which the amount of the proposed assessment was calculated;
- f. The date, time and location of the public hearing on the proposed assessment;
- g. A summary of the procedures for the completion, return and tabulation of the assessment ballots;
- h. A disclosure statement that the existence of a majority protest will result in the assessment not being imposed; and
- i. A ballot to be completed by the owner whereby the owner may indicate his or her name, reasonable identification of the parcel, his or her support or opposition to the proposed assessment and his or her signature. The ballot must include the entity's address for receipt of the ballot once completed. The ballot should be designed in such a way such that, once sealed, its contents are concealed.
- j. "OFFICIAL BALLOT ENCLOSED" must appear on the envelope containing the notice of public hearing and ballot mailed to the record owner of the property proposed to be assessed.

The information in the mailed notice should be based on the engineer's report. The notice should advise the property owners that they can review the engineer's report and how they can obtain a copy. It should also contain the name and contact information for a staff member who can answer questions regarding the proposed assessment.

g. Hold a Public Hearing

Not less than forty-five (45) days after mailing the notice, the City must conduct a public hearing. However, the legislative body may determine not to proceed with the assessment and terminate proceedings or may order revisions to the assessment.

The agency may apply its customary rules for the presentation of public testimony. A typical order of procedure at a protest hearing is: staff report, presentation of engineer's report, public testimony, including submission of assessment ballots, staff response to public comments, opportunity to submit, withdraw or change assessment ballots, acceptance of reports and written testimony into the record of proceedings, closing of public testimony portion of the hearing, deliberation of legislative body, subject to counting of assessment ballots, counting of assessment ballots, determination of a majority protest, final decision of legislative body.

During the public hearing, the entity must consider all objections to, or protests against, the proposed assessment and tabulate the ballots received before the conclusion of the public hearing.

Assessment ballots must remain sealed until the tabulation commences at the conclusion of the hearing, provided that any assessment ballot may be submitted, changed or withdrawn by the person who submitted the ballot prior to the conclusion of the public hearing. In tabulating the ballots, the ballots are weighted according to the proportional financial obligation of the affected properties.⁷

An impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment must tabulate the ballots. An "impartial person" includes the City Clerk. Under certain circumstances, the ballots must be unsealed and tabulated in public view at the conclusion of the public hearing.

No assessment may be imposed if a majority protest exists. A majority protest does not include a tie. A majority protest exists if, upon the conclusion of the public hearing, ballots submitted in opposition to the proposed assessment exceed the ballots submitted in favor of the assessment. Note that a "majority protest" is based upon the ballots actually cast, not those available to be cast. For example, a proposed assessment district consists of 20 parcels of equal

⁷ In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel must be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the City by documentation provided by those record owners. During and after the tabulation, the assessment ballots are treated as disclosable public records and equally available for inspection by both the proponents and opponents of the proposed assessment. The ballots must be preserved as public records for a minimum of two years.

value. Ten parcels cast ballots. Six parcels vote in favor of the assessment and four do not. Under Prop. 218 the assessment passes even though only 30% of the available ballots were cast in favor. Contrary to prior law, the City Council has no power to override a majority protest.

h. Adopt an Increase by Resolution or Ordinance

If there is no majority protest, the entity may make a determination to increase or impose a new assessment based on the information in the engineer's report and/or as determined at the hearing, and then, by ordinance or resolution, adopt the proposed assessment.

Note that Prop 218's notice, protest and hearing requirements do not apply to annual assessments in subsequent fiscal years when the agency has complied with Prop 218's substantive and procedural requirements in originally adopting the assessment. The Prop 218 requirements will apply when the City increases the assessment beyond the formula or range originally approved in accordance with Prop 218. (Gov. Code, § 53753.5(a).)

2. Other Considerations

a. Assessment of Public Property

Carpinteria's Landscaping, Lighting, and ROW District No. 3 does not currently assess public property. However, for new or increased assessments adopted after 1996, Proposition 218 states that public property "shall not be exempt from assessment unless the agency being assessed can demonstrate by clear and convincing evidence that those publicly owned parcels in fact received no special benefit." The "clear and convincing evidence" standard is higher than usual standard of evidence to establish a fact in an ordinary civil case, but not as high as a criminal case. Thus, when it determines the proportionate special benefit received by each parcel for any assessment that is increased after 1996, the City must include public property among the parcels that are assessed, unless the City determines in the manner stated above that public parcels receives no special benefit. If government property is receiving a special benefit from the increased assessment, the government property owner must pay the assessment.

b. Increase vs. New Assessment

Should the Finance Committee and/or City Engineer determine that an increase in the assessment is appropriate, it may be prudent to leave any

“grandfathered” assessment (such as the existing Right of Way Improvement District #3 assessment) in place and to propose a new assessment on top of that pre-existing assessment. This will protect the existing assessment from challenge and make very clear that rejection of the increase does not endanger the existing assessment.

c. Flat Rate or Adjustable

It should be noted that a proposed assessment may state a range of rates or amounts. If a range of rates is approved, the entity may impose up to the maximum amount approved. A proposed assessment may also provide for inflationary adjustments to the rate or amount, unless the assessment is itself determined by using a percentage calculation.

d. Engineer’s Report

The importance of preparing a proper and thorough engineer’s report in support of the proposed benefit assessment is highlighted by a recent case, *Concerned Citizens For Responsible Government, et al. v. West Point Fire Protection District, et al.* (2011) 196 Cal.App.4th 1427. In *West Point*, the court found flaws in the methodology of the underlying engineer’s report, and found as a result that there were no special benefits properly conferred to the assessed parcels, and therefore that the assessment should have been considered to be a special tax.

This case demonstrates the central role of an engineer’s report in the assessment process, and highlights that the process for justifying new assessments through an engineer’s report is a complex process, both technically and legally.

e. Potential Prohibition on Funding of Maintenance Services through Special Assessments.

A line of cases over the past few years has invalidated special assessments because deficiencies in the way the assessments were prepared had the effect of converting the assessments into special taxes, thus invalidating the assessment proceedings under Prop 218. (*Silicon Valley Taxpayers’ Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431; *Buetz v. County of Riverside* (2010) 184 Cal.App.4th 1516; *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057.) The very recent case of *Concerned Citizens For Responsible Government, et al. v. West Point Fire Protection District*, discussed above, is the most recent of these cases. However, *West Point* raises the unique question of whether new special assessment revenue

can be used to fund the provision of services at all. The *West Point* court states that street and lighting improvements are proper subjects of a special assessment, but that such assessments are only valid for construction of capital facilities, and cannot be used to fund the provision of services, including maintenance and operation of facilities and parks and recreation services. The court suggests that such maintenance and operation services must be funded by a special tax, for which a two-thirds supermajority approval is required. As of August 4, 2011, the League of California Cities, the California Special Districts Association and the Fire Districts Association of California have all filed either joint or separate requests to depublish the *West Point* decision.

The *West Point* decision is relevant for the City because, under its reasoning, ROW assessment revenue could not be used to maintain and repair city streets, landscaping and parks and recreation facilities, including the repair of cracked curb and gutter. To the extent *West Point* remains controlling law, *West Point* may limit the use of a new special assessment for the City's Right-of-Way Improvement District No. 3 to the amount used to fund construction of capital facilities. Under *West Point*, any new funding specifically dedicated to maintenance and operation of landscaping, lighting and parks and recreational facilities, including graffiti removal, would need to be levied pursuant to a special tax, which would require the City to go through the Prop 218 special tax process and obtain two-thirds voter approval.

Pending the results of the request for depublication, the *West Point* case raises a substantial uncertainty as to whether any increase of the ROW assessment could be used for anything other than the installation of capital facilities.

f. Legal Challenges

A challenge to an assessment may be brought by means of a validation (brought by a public agency) or reverse validation (brought by an interested third party) proceeding. (Code Civ. Proc., § 860 *et seq.*) The statute of limitations for challenging a resolution establishing an assessment for public improvements is very short, typically between 30 days and 120 days. (See e.g., Code Civ. Proc., § 329.5.)

Prop 218 provides that in any legal action contesting the validity of an assessment, the public agency has the burden of demonstrating the existence of special benefit and that the assessment is spread among the specially benefited properties in proportion to the special benefit received by each parcel. This could be met if the agency prepares an adequate engineer's report and

there is no evidence presented during the public hearing that rebuts the engineer's report.

In addition or as an alternative to a legal challenge, the public may subject an assessment to repeal or reduction by initiative.

B. REQUIREMENTS FOR INCREASE OF A TAX

The procedure for increase of a tax is less complex than the procedure for an assessment increase. Any proposed tax increase would be subject to the tax provisions of Prop 218 under Article XIII C of the Constitution. As a general law city, the City's proposed increase of a tax must also comply with the provisions of Proposition 62 ("Prop 62"), a voter initiative adopted prior to Prop 218 which imposes voter approval requirements on general and special taxes. (Gov. Code, § 53720 *et seq.*) Much of Prop 62 was rendered redundant by the enactment of Prop 218, but the few provisions that are still relevant are discussed below.

1. Steps in the Tax Process

The City must abide by the following procedure to impose any new or increased tax:

a. Identify the nature of the tax.

The City must identify whether the tax will be a general or special tax. A general tax is imposed for general governmental purposes. A special tax is any tax imposed for a specific purposes, which is placed into a general fund.

b. Adopt a proposed increase by resolution or ordinance.

As a first step and prior to a vote on the proposed tax by the electorate, the City Council must adopt the proposed tax increase by ordinance or resolution. The ordinance or resolution must include the type of tax (general or special), the rate of tax, and the method of collection and, if a special tax, the purpose for which its imposition is sought. For general taxes, the resolution or ordinance proposing the tax increase must be approved by a two-thirds vote of the City Council. (Gov. Code, § 53724(b).)

c. Hold election for proposed tax increase.

The election procedures differ for general and special taxes. If the proposed tax increase is a general tax, it must be put on the ballot of the next regularly

scheduled general election for City Council members. This requirement can only be dispensed with in case of an emergency declared by a unanimous vote of the governing body. (Cal. Const., art. XIII C, § 2(b).) The proposed increase must be passed by a majority vote at the election. (Cal. Const, art. XIII C, §2(b); Gov. Code, § 53723.)

If the proposed tax increase is deemed to be a special tax, it may be approved at any election. In order to take effect, the proposed tax must be approved by two-thirds of the voters. (Cal. Const, art. XIII C, §2(d); Gov. Code, § 53722.)

Significantly, the courts have held that placement on the ballot of the following combination of measures – (i) a general tax (ii) a separate advisory tax measure designed to “advise” the local agency as to how that voters would like to see the new tax revenues spent -- does *not* trigger the supermajority vote requirement for a special tax. (See *e.g.*, *Coleman v. County of Santa Clara* (1998) 64 Cal.App.4th 662.) Therefore, if the City places a general tax on the ballot, it could also include a separate advisory measure designed to elicit voters’ preferences as to the tax revenue should be spent, and the general tax would still be subject to a simple majority approval by voters rather than the supermajority approval required for a special tax.

2. Other Considerations

a. Flat Rate or Adjustable

As with an assessment, a proposed tax may state a range of rates or amounts (*e.g.*, 2% to 4%). If a range of rates is approved, the entity may impose up to the maximum tax approved. A proposed tax may also provide for inflationary adjustments to the rate or amount, unless the tax is itself determined by using a percentage calculation.

b. Reduction or Repeal of Taxes

Prop 218 allows the use of a voter initiative to reduce or repeal a tax. (Cal. Const., art. XIII C, § 3.) The signatures of five percent of the voters of the jurisdiction who cast votes in the most recent gubernatorial election is required for fiscal initiatives to propose or repeal fiscal legislation. (Cal. Const., art. II, § 8(b); Cal. Const., art. XIII C, § 3.) Therefore, the City’s residents may subject a tax increase to repeal or reduction by initiative.

III. CONCLUSION

The process that is required to prepare an assessment or tax increase and then bring it before the voters is a lengthy and intensive one. For tax measures, a higher threshold for approval exists for special tax increases than for general taxes. This report has outlined the substantive and procedural steps the City would be required to follow should the City decide to increase its assessments and/or taxes. The City Attorney's Office is available to assist your Council in its consideration of this matter at your direction.

Respectfully submitted,



Peter N. Brown
City Attorney

END OF MEMORANDUM

ATTACHMENT 5

