



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

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**DATE:** August 3, 2022

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jovan D. Grogan, City Manager  
Trisha Ortiz, Interim City Attorney

**SUBJECT:** Consideration of Resolution of the City Council of the City of San Bruno Submitting to the Voters at the November 8, 2022 General Municipal Election a Measure That Proposes a City Charter Be Adopted to Change the City of San Bruno From a General Law City to a Charter City and to Authorize a Real Property Transfer Tax and That Proposes Adoption of an Ordinance Authorizing a Commercial Real Property Transfer Tax, Requesting That Such Election Be Consolidated With the Statewide General Election Held on That Date, Making a Determination of Exemption Under CEQA, and Taking Certain Other Actions

**RECOMMENDATION:** Adopt a resolution submitting to the voters at the November 8, 2022 general municipal election a measure that proposes a city charter be adopted to change the City of San Bruno from a general law city to a charter city and to authorize a real property transfer tax and that proposes adoption of an ordinance authorizing a commercial real property transfer tax, requesting that such election be consolidated with the statewide general election held on that date and taking certain other actions.

**BACKGROUND:** On June 7 and July 12, 2022, the City Council held two public hearings on the proposal to become a charter city to allow the City to establish a commercial real property transfer tax. In addition, on March 29, 2022 and June 28, 2022, the City Council held study sessions on the topic. Following the second public hearing, the City Council provided direction to City staff to present the City Council with a resolution that would submit to the voters at the November 8, 2022 election, a ballot measure that changes the City from a general law city to a charter city for the purposes of authorizing a commercial real property transfer tax in the amount of one percent.

This process began in 2019 when the City launched a Comprehensive Fiscal Sustainability Project. The Project, which remains active, seeks to improve the City's fiscal condition so that there is sufficient annual and long-term funds to provide high quality City services as well as maintain and replace infrastructure.

During the course of the project, the City has implemented numerous expenditure controls, revenue enhancements, and cost shifts from the General Fund to new or more stable funding sources. Below is a list of some, but not all of these efforts.

Expenditure Controls:

- Budgetary and personnel cost containment strategies, *implemented*
- Renegotiation of CityNet Vendor Contracts, *implemented*
- Various Budget Reductions, *implemented*
  - Operational budget reductions
  - Retirement incentives
  - Freezing of vacant positions
  - Defunding of Capital Projects

Revenue Enhancements:

- Measure G ½ Sales Tax Increase, *implemented*
- TOT / Hotel Room Tax 2% Increase, *implemented*
- Adoption of Development Impact Fees, *implemented*
- Walmart.com Sales Tax Participation Agreement, *implemented*
- Development Related Community Benefit Agreements
  - YouTube – 1400/1450 Bayhill DA Extension, *adopted / payment received*
  - Bayhill Specific Plan (YouTube), *adopted / payment pending*
  - Reimagining Tanforan, *scheduled to formally launch in Summer 2022*
- Receipt of Various Outside Grants
  - a. Federal Spyglass Stormwater Improvement Grant, *project actively underway*
  - b. County Measure K Grant for Posy Plaza Improvements, *funding secured / scheduled to begin next fiscal year*
  - c. Giants Community Foundation Renovation of Greenberg Field, *completed*
  - d. Federal & State Grants for Regional Stormwater Capture Project @ I-280 and I-380, *project under design*
  - e. Federal Assistance to Firefighter Grant for Fire Equipment, *completed/installed*
- Market/Cost Based Increases in City Fees and User Charges, *implemented*
- Marijuana Business Tax, *implementation scheduled for Fall 2022*
- Short-term Rental Tax, *implementation scheduled for Fall 2022*

Cost Shifts:

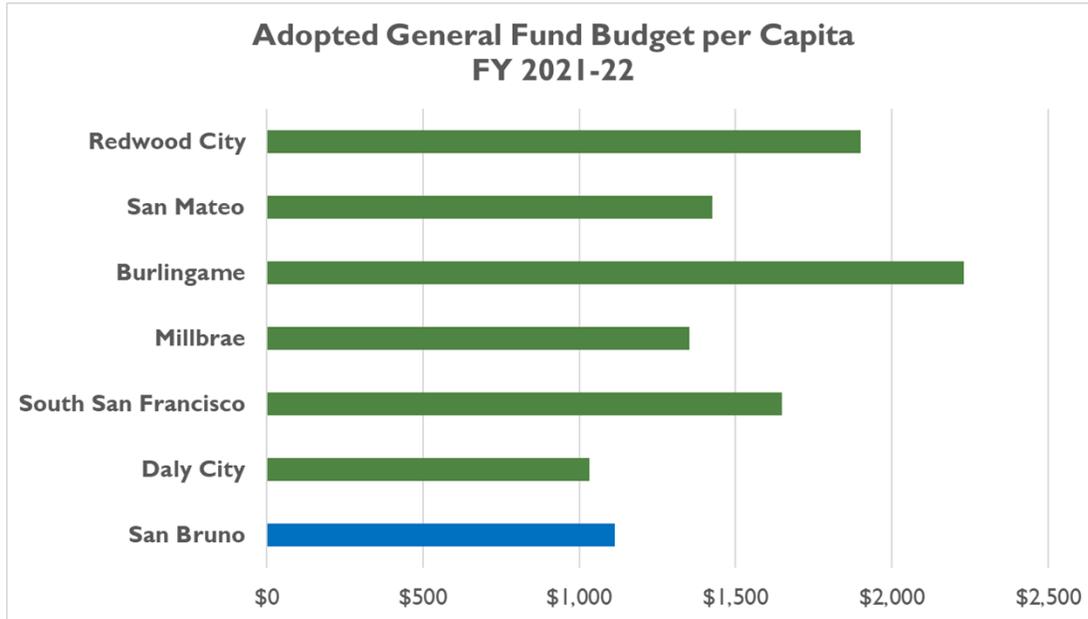
- Crestmoor Canyon Wildfire Mitigation and Fire Fuel Reduction w/ PG&E Funds, *funding secured / ongoing project*
- CityNet Programming and Fee Adjustments, *implemented*
- Transition of Afterschool Programming to the YMCA, *implemented*

Despite the many successful efforts undertaken through of the Comprehensive Fiscal Sustainability Project, the remaining fiscal challenges that face the City of San Bruno are significant. This is true with respect to the annual/on-going financial need for City programs and services as well as money needed to maintain and replace critical public infrastructure.

Several work units have less staff than during the early 2000's and many of the budget and personnel reductions implemented as a result of the recent COVID-19 recession have not been able to be restored. As a further illustration of the fiscal challenges limiting the City's ability to invest in staffing, on June 14, 2022, the City Council received a presentation from the San Bruno Police Chief demonstrating that San Bruno has fewer police officers per capita than neighboring jurisdictions, despite having higher ratios of violent and property crimes. The Chief also provided data that demonstrated that San Bruno employs 19% fewer police officers than in

1975 and is presently below industry standard metrics for police officers in metropolitan cities.

San Bruno has a revenue problem, not an expenditure problem. This is perhaps best demonstrated by the following chart that provides a General Fund budgetary comparison for San Bruno and neighboring cities. The chart shows that San Bruno receives the second lowest per capita revenue for its General Fund among the peer group shown.



Source: City Adopted Budgets, FY2021-22

In regard to the City’s financial need for significant repairs and replacement of City buildings, streets, and other facilities, the monetary value totals more than \$457 million over the next 20 years. Some of this may be funded by new development, but a large portion needs other funding sources.

When the City Council implemented development impact fees in 2019, it conducted a required nexus study to determine the allowable amount that could be charged to new development. The analysis revealed that of the \$457 million needed for infrastructure investments over the next 20 years, only \$147 million could be charged to new development. The remaining \$310 million will need to come from other (non-development impact fee) sources.

As the City continues to address its fiscal challenges, one of the strategies that the City Council has requested staff examine is a tax on the transfer of commercial property, which requires the City to become a Charter City.

On April 12, 2022, the City Council appointed a subcommittee consisting of Vice-Mayor Mason and Councilmember Marty Medina to discuss conducting a survey of likely voters regarding the contents of a proposed charter, and specifically a commercial real property transfer tax. The survey results revealed support for such a measure from likely voters in the November 2022 election. The City Council received a presentation on the survey results on June 7, 2022 from the public opinion research firm, Godbe Research, that conducted the survey. A copy of that presentation is on the City Council’s agenda site as well as the recent webpage that was

created to convey additional information on the proposed City Charter and Transfer Tax, [www.sanbruno.ca.gov/CharterCity](http://www.sanbruno.ca.gov/CharterCity).

As part of the City Council's strategic planning sessions, the City Council has discussed becoming a charter city to assure on-going fiscal stability by implementing a commercial real property transfer tax, which only charter cities are authorized to levy. This staff report summarizes the progress to date, including the results of the March 29, 2022 City Council Study Session, outlines the general characteristics of a charter city, and the process that the City Council may use to present a charter to the voters, as required by state law, which contains a commercial real property transfer tax as an integral feature. This meeting also constitutes the first of two public hearings that the City Council is required to conduct before the City Council can place the charter on the ballot.

### **General Law Cities vs. Charter Cities**

In California, there are two types of cities: general law cities and charter cities. General law cities get their corporate powers from the general laws passed by the State legislature. Charter cities, on the other hand, get their corporate powers from the California Constitution's home rule provision, which allows them to preside over all "municipal affairs," limited only by their own charters and State law on "matters of statewide concern."

Unfortunately, the California Constitution does not define "municipal affairs." What constitutes a municipal affair has been interpreted by the courts on a case-by-case basis. The League of California Cities created a detailed chart that is attached, which describes various municipal issues and applicability to general law and charter cities.

Courts have found the following to constitute municipal affairs:

- The form of city government.
- Procedural aspects of resolution and ordinance adoption.
- Local elections, including qualifications for office and public funding of campaigns.
- Some aspects of zoning and land use.
- The process of contracting for public works.
- Scope of authority related to taxes and assessments.

Over time, the differences between general law cities and charter cities have been reduced. For instance, the Legislature has extended to general law cities many of the same powers as charter cities. In addition, the Legislature has characterized many laws affecting cities as matters of statewide concern, and hence, applicable to all cities, both general law and charter.

Generally, a matter is of "statewide concern," as opposed to a "municipal affair," when its impact is "primarily regional," even if its impacts are not truly statewide. The following is a list of matters determined by the courts to be matters of "statewide concern" and hence not amenable to modification by charter:

- Educational school systems
- Traffic and vehicle regulations
- Tort claims against a governmental entity
- The Ralph M. Brown Act open meetings law
- The Meyers-Milias-Brown Act regarding employee organization
- The California Environmental Quality Act

- The exercise of the eminent domain power

One of the primary tangible benefits of becoming a charter city is the ability to implement a real property transfer tax. General law cities are not legally authorized to impose real property transfer taxes.

### **Process to Become a Charter City**

To become a charter city, a city must adopt a charter. The California Constitution authorizes the voters to adopt a city charter. There are two ways to draft a charter: (1) the City Council drafts the charter; or (2) the City's voters elect a charter commission to draft the charter. (Gov. Code, §§ 34451, 34458.) In either case, the charter is not adopted by the City until it is ratified by a majority vote of the City's voters at a statewide regular election. (Gov. Code, §§34457, 34458.) To streamline the process, the City Council has directed staff to propose a charter for consideration and approval by the City Council, which would then be placed before the voters at the November 2022 general election. There is therefore no need to create a charter commission.

After the proposed charter has been drafted by the City Council, it may be sent to the voters for ratification at the next established statewide general election, provided there are at least 88 days remaining before the election. (Gov't Code § 34458.) Before a proposal to adopt a charter is submitted to the voters, the City Council must hold at least two public hearings on the proposal of a charter and the content of the proposed charter. Notice of the public hearings shall be given by publication twice in a newspaper designated by the City Council and circulated throughout the city, and by posting notice in three public places within the city at least 21 calendar days prior to the date of each public hearing. The second public hearing shall be held at least 30 days after the first public hearing. At least one of the public hearings shall be held outside of normal business hours to facilitate public participation. The City Council shall not conduct a vote on whether to approve the submission to the voters of the proposal to adopt a charter until 21 days after the second public hearing. (Gov. Code, § 34458.) If the charter includes a tax, as this charter is proposed to do, then a 2/3 majority of the City Council, or four affirmative votes, are needed to place the charter on the ballot per Government Code section 53734(b). A simple majority of voters must vote in favor of the proposed charter for the charter and tax to be adopted. (Gov. Code, § 34459.)

### **Details About Commercial Real Property Transfer Tax**

A real property transfer tax is a tax on the sale of property that is paid when real property is conveyed, and is based on the value of the property. As noted above, only charter cities are authorized by state law to impose such a tax. This tax is distinguished from the similarly-named documentary transfer tax that the county has adopted, and which all cities thereby became authorized to impose by ordinance. The City's documentary transfer tax is codified in Municipal Code section 3.36, which since at least since 1980, has imposed the tax at the maximum legally authorized rate of \$.55 per \$1,000 of value.

The City Council has previously directed that staff consider a real property transfer tax only on the sale of commercial properties and not on the sale of residential properties. Payment of the tax could be negotiated between buyer and seller. The tax would be owed at the time of sale of

the commercial real property. The tax would be collected by the City. The tax would be in addition to the City's documentary transfer tax.

Charter cities in the Bay Area opt for a wide range of fixed and variable property transfer tax rates.

In response to the City Council's direction to consider a real property transfer tax only on the sale of commercial properties, staff has analyzed the potential revenue scenarios under various options. Given the inherent difficulties with projecting the level of commercial sales activity and sale prices going forward, staff has analyzed the potential revenue that the City would have received in each of the prior 5 years based on actual sale transactions in San Bruno based on the transfer tax rates of 1%. The analysis concluded that the City would have collected annual property transfer taxes of approximately \$1.1 million, if adopting the property transfer tax rates of our neighboring cities over the last 5 years.

It is important to note that property transfer tax revenue is an elastic revenue source in that it is highly influenced by economic shifts that affect the real estate market (e.g. interest rates, inflation, recessions, economic growth cycles, consumer confidence, local construction activity, etc.).

#### **DISCUSSION:**

On June 14, 2022 the City Council adopted a Resolution calling a General Municipal Election for elective offices to be held on Tuesday, November 8, 2022. The proposed resolution submits to a measure to appear on the ballot for the November 8, 2022 election. The resolution specifies the question that will appear on the ballot and provides for the full text of the measure to be included in the ballot materials. The full text of the measure includes both (i) the proposed city charter and (ii) the proposed ordinance establishing the commercial real property transfer tax.

#### *Contents of Proposed Charter*

At the June 7, 2022 public hearing, the City Council provided direction to prepare a draft charter that limits its powers as a charter city to include only those powers that the City currently may exercise as a general law city, except for the power to impose a real property transfer tax.

#### *Contents of Commercial Real Property Transfer Tax Ordinance*

The proposed ordinance adds Chapter 3.40 to the San Bruno Municipal Code to authorize a tax on the transfer of real property. The ordinance defines "real property" to exclude property developed with a residential structure that contains less than five dwelling units. The ordinance defines a "transfer of real property" to be a sale, grant, assignment, transfer, or other conveyance of any lands, tenements, or other real property by deed, instrument, or other writing from a transferor to a transferee, or to a third person at or by the direction of transferee. "Transfer of real property" includes a change in control and ownership of a legal entity that results in a transfer of real property.

The ordinance imposes on each transfer of real property located in the City of San Bruno, when the value of the consideration exceeds one hundred dollars (\$100.00). The tax would be in addition to the existing real property documentary stamp tax imposed by the City pursuant to Chapter 3.36 of the San Bruno Municipal Code. The tax rate is one dollar (\$1.00) for each one hundred dollars (\$100.00) of the value of consideration paid for a transfer of real property, or fractional part of each one hundred dollars (\$100.00) of the value of consideration. The tax is

due at the time that the instrument effecting the transfer is delivered. The ordinance exempts certain transfers, including: (i) transfers to or from government agencies, (ii) any instrument in writing given to secure a debt, (iii) transfers to effectuate a plan of reorganization related to bankruptcy or receivership, (iv) conveyances to make effective any order of the Securities and Exchange Commission, (v) transfers of certain partnership property, (vi) a deed taken in lieu of foreclosure, (vii) transfers that confirm or correct a deed.

**FISCAL IMPACT:** On March 9, 2022, the County elections office provided staff with an estimated range of \$93,000-\$112,000 for the upcoming municipal election plus one ballot measure. The County estimated that each additional ballot measure would add approximately \$10,000 to the cost of the election.

**ENVIRONMENTAL IMPACT:** There is no environmental impact. The action is not a project subject to CEQA. City Council's action is not considered a "Project" per CEQA Guidelines and therefore no further environmental analysis is required.

**ALTERNATIVES:**

Do not approve the resolution to submit the measure to the voters.

**ATTACHMENTS:** .

1. Resolution submitting to the voters at the November 8, 2022 general municipal election a measure that proposes a city charter be adopted to change the City of San Bruno from a general law city to a charter city and to authorize a real property transfer tax and that proposes adoption of an ordinance authorizing a commercial real property transfer tax, requesting that such election be consolidated with the statewide general election held on that date, making a determination of exemption under CEQA, and taking certain other actions.