



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: June 28, 2022

TO: Honorable Mayor and Members of the City Council

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

SUBJECT: Conduct a Study Session Regarding Proposed City Charter and Commercial Real Property Transfer Tax

BACKGROUND: As part of the City Council's strategic planning sessions, the San Bruno 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.

On June 7, 2022 the City Council held the first of two required public hearings on the City's proposed charter. At that hearing, the City Council requested additional public meetings and asked for more information about the powers of a charter city.

In response to the City Council's request for additional public communication and another meeting/study session on the proposed City Charter and Transfer Tax, staff has taken the following steps:

1. Calendared an additional City Council Study Session (June 28) on the potential Commercial property Transfer Tax and related City Charter.
2. Developed a community mailer that was sent to each postal address in the City. Residents and businesses began receiving the mailer on Friday, June 17.
3. Created a City webpage to convey information on the proposed City Charter and Transfer Tax that includes prior staff reports, presentations and the Zoom links for all upcoming meetings on the topics. The webpage can be found at www.sanbruno.ca.gov/CharterCity
4. Developed a series of social media posts as well as a City Manager eNewsletter article in the lead up to the Council's discussions on the topics to enhance public communication and knowledge of the topics.

This staff report summarizes the progress to date, 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.

Comprehensive Fiscal Sustainability Project

In 2019, 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.

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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
 - Federal Spyglass Stormwater Improvement Grant, *project actively underway*
 - County Measure K Grant for Posy Plaza Improvements, *funding secured / scheduled to begin next fiscal year*
 - Giants Community Foundation Renovation of Greenberg Field, *completed*
 - Federal & State Grants for Regional Stormwater Capture Project @ I-280 and I-380, *project under design*
 - 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

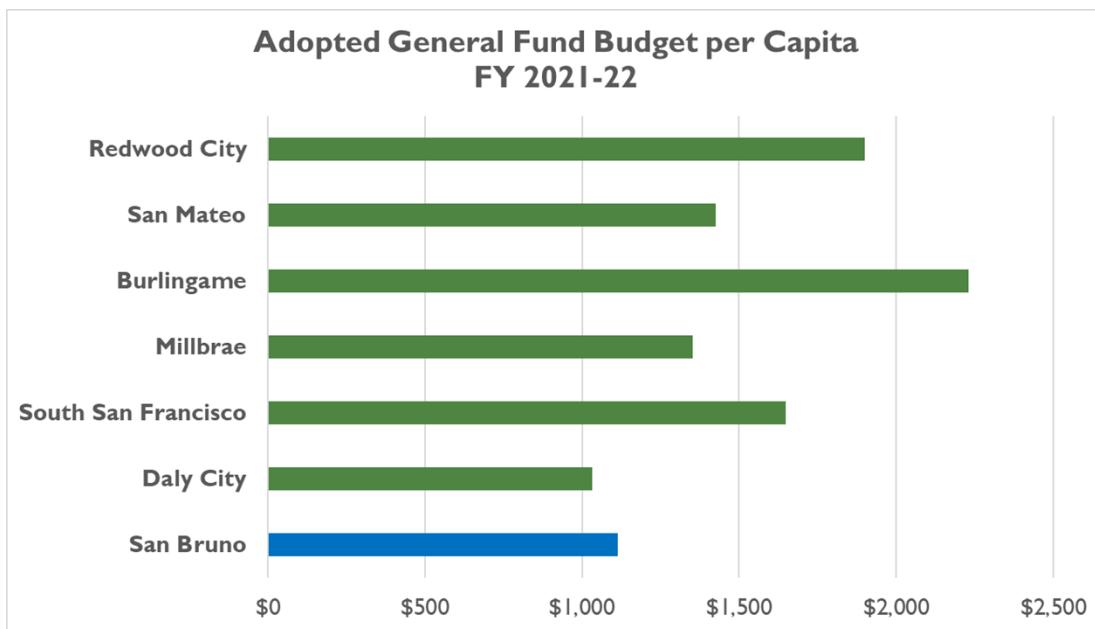
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invest in staffing, on June 14, 2022, the City Council received a presentation from the San Bruno Police Chief demonstrating that San Bruno has fewer police officers per capita than neighboring jurisdictions, despite having higher ratios of violent 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.

Process to Become a Charter City

To become a charter city, a city must adopt a charter. The California Constitution authorizes

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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 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 § 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.)

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.

DISCUSSION: The staff report for the June 7, 2022 public hearing (which is attached to this document) provides a detailed discussion about what it means to be a charter city, a chart comparing charter and general law cities' powers and the process for adopting a charter. Conversely, this staff report and the majority of staff presentation on June 28, 2022 will focus on the powers of a charter city in response to questions from the City Council.

Exercising Charter City Powers

A charter city has the power to regulate all "municipal affairs" subject to the limitations in: (i) the City's charter, (ii) the California Constitution, and (iii) the United States Constitution. A city charter, once adopted by the voters, is a limitation on a City Council's power over municipal affairs and the City Council may adopt ordinances, resolutions or otherwise regulate municipal affairs within those limits. In other words, if a City's charter limits the city's power over a

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municipal affair, then the City Council cannot adopt an ordinance or resolution to exercise that power without first getting voter approval to amend the charter. An example of this is the draft charter provision that requires the City to pay prevailing wages. Under the current draft charter, the City Council could not, on its own, remove the requirement to pay prevailing wages, without first getting voter approval to amend the charter to remove this limitation. Similarly, if the California Constitution limits a city's power over a municipal affair, then the city council must exercise its powers within those constitutional limits. An example of this is Proposition 218, which requires a city to get voter approval to impose, extend or increase taxes. A charter city's powers over municipal affairs, which include taxes, is discussed in more detail below.

Taxes

Charter cities and general law cities have the same powers to impose taxes, with one notable exception. A charter city may impose a real estate transfer tax and a general law city may not. Even so, the California Constitution places strict limits on the taxing powers of any local government. Any action to impose, extend, or increase any tax requires voter approval. So, the voters may approve a charter that allows for a real estate transfer tax, but a charter city cannot impose the tax without voter approval for the tax. ***Further, once voters approve the tax, the City Council cannot extend or increase the tax without voter approval. This means that a charter city must get voter approval to subsequently increase any applicable rate used to calculate the tax, to subsequently revise the methodology by which the tax is calculated or applied, if that revision results in an increased amount being levied on any person or parcel, or to extend the sunset date on a tax.***

Other Powers

The California Constitution does not define the term "municipal affair." For this reason, whether a particular subject is a "municipal affair" over which a charter city has authority or is a matter of "statewide concern" over which the Legislature has authority is a matter for the courts to decide on a case-by-case basis. This staff report does not discuss every area in which a charter city would be able to regulate; however, the following is a sample list of areas that the courts have clearly established are a municipal affair: municipal election procedures, procedures for the adoption of ordinances, some aspects of planning, compensation for city officers and employees, public contracts and public financing. A few of those areas are discussed below.
City Elections. A charter city may establish unique criteria for city office so long as the criteria are not discriminatory. Also, a charter city is free to establish election rules if those rules do not actually conflict with general law. For example, a number of charter cities provide for a redistricting commission to establish city council districts in accordance with the census. If there is a conflict with general law, the charter city provisions prevail, unless the Legislature has found a need for paramount state control over the issue and the general law is both reasonably related to the area of statewide concern and narrowly tailored to resolve the problem being addressed as a statewide concern.

Compensation. A charter city may set salaries, expense reimbursement and benefits for its council members. However, Government Code section 53208.5 provides as a matter of statewide concern that the health and welfare benefits of any member of a legislative body of any city, including a charter city, shall be no greater than that received by non-safety employees of that public agency. Furthermore, pursuant to Government Code sections 53234 and 53235, if a charter city provides any type of compensation to members of its legislative body, then these officials must receive at least two hours of ethics training, just like their general law city counterparts.

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Public Contracts and Prevailing Wages. A charter city is subject to the Public Contracts Code unless the charter city expressly provides that the Code does not apply. This allows a charter city to have different noticing requirements, use different claims resolution procedures and generally structure their public works bidding process as they see fit, if they even require public bidding.

As for prevailing wages, a charter city is not subject to the prevailing wage laws unless the city elects to be subject to such laws, the project involves work out of the city limits, or the project is otherwise of significant state interest. Although a charter city may opt not to require the payment of prevailing wages, state law imposes consequences for doing so.

Bonds. Bond issues for municipal purposes are municipal affairs. This means that a charter city can adopt its own procedural rules for issuing bonds.

Assessments. A charter city may establish its own procedural rules for imposing assessments. This power is significantly constrained by the limitations in the California Constitution established by Proposition 218, which requires a majority protest balloting procedure and generally prohibits assessments to pay for general benefits.

School Funding. A charter city may render financial assistance to schools.

At the June 7, 2022 public hearing, members of the City Council expressed concerns with providing additional powers to the San Bruno City Council through the transition to a charter city. As noted above, a city charter must be approved by voters and following approval, the City Council has the power to regulate all “municipal affairs” subject to the limitations in: (i) the City’s charter, (ii) the California Constitution, and (iii) the United States Constitution. Even with a charter, any tax that is authorized by voters cannot be increased or extended by the City Council without voter approval. Should the City Council want to limit its powers as a charter city to include only those powers that the City currently may exercise as a general law city, it can direct staff to amend the draft city charter to include a provision similar to the following “*...this Charter shall restrict the City to exercising only those rights, powers and authority granted under the general laws of the State of California, with the exception of the power of a to impose a tax on the conveyance of real property as provided in Article III.*” Such language will clarify that the draft Charter will provide the City Council with only the existing powers it has as a General Law City, with the exception of the ability to impose a commercial property transfer tax, as outline in the charter.

Matters of Statewide Concern

Although not exhaustive, the following is a list of matters determined by the courts to be matters of “statewide concern” and therefore a charter city must comply with the general laws of the state regarding:

- 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 Public Records Act

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- Annexations
- The exercise of the eminent domain power
- Licensing of members of a trade or profession

Next Steps

As noted above, on June 7, 2022, the City Council held is the first of two required public hearings regarding the contents of the proposed charter, with the second public hearing scheduled for July 12. Because 21 days must elapse between the second public hearing and the City Council's decision to place the charter on the ballot, the City Council will need to schedule a special meeting on August 3 to take this action. The deadline for submitting ballot measures to the County for the November 8 election is August 12.

On July 12, 2022, at the second required public hearing regarding the contents of the proposed charter, staff will request that the City Council provide direction to the staff about submitting a charter measure to the voters. At least four members of the City Council will need to vote in the affirmative to propose a charter measure to the voters at the November 2022 election, which would include an integral commercial real property transfer tax.

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.

RECOMMENDATION: Conduct a Study Session Regarding Proposed City Charter and Commercial Real Property Transfer Tax

ALTERNATIVES:

1. Propose changes to the timing or recommended focus of the draft charter.
2. Do not move forward with a draft charter.

ATTACHMENTS:

1. June 7, 2022 Staff Report: Conduct First Public Hearing Regarding Proposed City Charter and Commercial Real Property Transfer Tax (including attachments 1) League of California Cities Charter Analysis, and 2) Draft City Charter)