



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Proposed Ordinance Regarding
Expenditure of Construction Tax
and Conveyance Tax Proceeds

DATE: March 23, 2006

RECOMMENDATION

Approval of an ordinance amending Title 4 of the San José Municipal Code to add a new Chapter 4.55 to consolidate and clarify the permitted expenditures of taxes collected pursuant to Chapters 4.54 and 4.58 of Title 4 of the San José Municipal Code and to amend Chapters 4.54 and 4.58 of Title 4 of the San José Municipal Code to add Sections 4.54.105 and 4.58.238 to make conforming changes.

BACKGROUND

Chapters 4.54 and 4.58 of the San José Municipal Code set forth the San José Construction Tax Ordinance (the "Construction Tax") and the San José Real Property Conveyance Tax Ordinance (the "Conveyance Tax"), respectively. Chapters 4.54 and 4.58 each specify the permitted expenditures of the proceeds of these taxes for the same categories of capital purposes. In general terms, these are: libraries, fire protection, park and recreation improvements, maintenance yards for park and recreation improvements; public works maintenance facilities; communication facilities; and other municipal improvements as determined by the City Council. For purposes of the proposed ordinance, the park and recreation improvements are referred to as the "Park Improvements" and the other improvements eligible to be funded with C&C Revenues are referred to as the "General Improvements."

In 1991, the City Council adopted an ordinance that amended both the Construction Tax and the Conveyance Tax to, among other things, phase-out the expenditure of these taxes (the "C&C Revenues") for operating maintenance and overhead costs commencing with fiscal year 1992-93. Following the adoption of the 1991 amendments to the Construction Tax and the Conveyance Tax, the phase-out of operating maintenance costs for the Park Improvements commenced. However, the phase-out of these expenditures for the General Improvements did not occur.

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In 1994, the Administration recommended that, in light of the significant maintenance costs for new park facilities and the reduction of maintenance at the current park facilities, the City Council suspend the phase-out of operating maintenance and overhead costs for Park Improvements for fiscal year 1994-95 and transfer to the General Fund 15% of the C&C Revenues allocated for Park Improvements for park maintenance purposes. The City Council accepted the Administration's recommendation and appropriated 15% of the C&C Revenues allocated to Park Improvements to the General Fund for operating maintenance costs. Each fiscal year since fiscal year 1994-95, the City Council has appropriated 15% of the C&C Revenues allocated for Park Improvements to the General Fund for operating maintenance costs.

Additionally, by Council policy since 1996, up to 5% of the C&C Revenues allocated to each Council District may be expended for maintenance of Park Improvements in the particular district.

The purpose of the proposed ordinance is to codify in the Municipal Code the permitted expenditures of the C&C Revenues consistent with the City's budgeting practices and the previously adopted appropriation ordinances. Additionally, in order to ease administration of the permitted expenditures of C&C Revenues, the provisions related to expenditure of both the Construction Tax and the Conveyance Tax have been consolidated into a single chapter.

The analysis section below describes the expenditure provisions applicable to both of these taxes.

ANALYSIS

The proposed ordinance makes no changes with respect to the imposition of either the Construction Tax or the Conveyance Tax. Those provisions remain the same as currently specified in Chapters 4.54 and 4.58. As set forth in greater detail below, the proposed ordinance retains the basic structure of the expenditure provisions for C&C Revenues. Changes to align the Municipal Code's provisions with the City's budgeting practices are highlighted.

Eligible Improvements

The categories of improvements eligible for the expenditure of C&C Revenues stay the same under the proposed ordinance. Further, the allocation of C&C Revenues between Park Improvements and the General Improvements remains the same:

- At least 64% of the C&C Revenues are allocated for Park Improvements; and
- Not more than 36% of the C&C Revenues are allocated for the General Improvements.

Eligible Costs

The Construction Tax and the Conveyance Tax both specify in general terms the types of costs eligible for expenditure. These include a variety of capital costs, namely: acquisition, construction, reconstruction, replacement, remodeling, modification, alteration, enlargement, renovation, furnishing and refurnishing of the eligible improvements, including preventive maintenance and energy efficient improvements.

Capital projects also include associated preliminary costs, such as the costs of studies and master plans, and support costs for resources employed to acquire or develop the particular project, such as personnel, supplies and equipment. The proposed ordinance clarifies that the preliminary costs and capital support costs associated with C&C eligible projects may be paid from C&C Revenues. It is our understanding from the Budget Office that preliminary costs have been paid from C&C Revenues since the 1970's and that various other support costs, such as staffing costs, have been paid from C&C Revenues since the 1980's.

Currently, the Construction Tax and the Conveyance Tax both specify that Park Improvement projects which result in an expenditure of at least \$500,000 in C&C Revenues are required to set aside two percent for public art projects. Instead of specifying a specific dollar amount threshold for the inclusion of public art, the proposed ordinance cross-references the requirements of the Art in Public Places Ordinance, Chapter 22.08 of the Code.

Allocation of C&C Revenues

As stated above, at least 64% of the C&C Revenues must be allocated to the Park Improvements (the "Parks Allocation") and up to 36% may be allocated for the General Improvements (the "General Allocation"). Consistent with the current Construction Tax and Conveyance Tax, the proposed ordinance does not specify a distribution formula for allocating the C&C Revenues among the particular categories of the General Improvements.

A chart is attached to this memorandum showing the allocation of C&C Revenues between the Park Improvements and the General Improvements. Also depicted on the chart is the distribution of the Parks Allocation, as discussed below.

Distribution of C&C Revenues for Park Improvements

The proposed ordinance codifies the City's budgeting practices with respect to the distribution of the Parks Allocation as described on the chart on the following page. The Parks Allocation is budgeted from a "Central Fund" within the "Construction Tax and Property Conveyance Tax Fund" as follows:

Parks Allocation

- Up to 15% may be transferred to the General Fund for maintenance purposes;
- Then, funds in an amount determined by the City Council may be budgeted within the Central Fund or transferred to the General Fund for Fixed Costs, including capital equipment for maintenance; recreational hardware; preventive capital maintenance costs and Non-Construction Costs. Historically, Fixed Costs have included funding for staff associated with capital projects, such as Parks staff Information Technology staff and Budget Office staff. However, it is our understanding that as of the current fiscal year staffing costs for Information Technology, Budget and the CIP Action Team are calculated as part of the overhead rate for capital projects and charged to the projects.
- Then, up to 34% of the remainder may be transferred to the City-Wide Fund for Park Improvements located in any part of the City, for natural open space area intended to be left in a natural state, or for San Jose Family Camp;
- Then, of the remainder:
 - 20% must be allocated equally to each Council District for its “special needs;”
 - The remaining 80% must be allocated to the Council Districts based on the needs assessment methodology set out in the Code.¹
- Of the amount allocated to each Council District, up to 5% may be budgeted for maintenance of the Park Improvements within the particular Council District.

Maintenance Costs—Park Improvements

In addition to the transfer of up to 15% of the Parks Allocation for maintenance purposes, the proposed ordinance also codifies other City budgeting practices regarding the expenditure of C&C Revenues for maintenance of Park Improvements. These are:

¹The methodology for allocating these funds in the proposed ordinance has not been changed. The language from the proposed ordinance (Section 4.55. 420 E. 2) is as follows: Eighty percent (80%) of such funds is to be appropriated to the Districts, with the amount appropriated to each District as determined by the City Council taking into consideration the following: neighborhood and community serving Undeveloped Park Acres per population of one thousand; neighborhood and community serving Developed Park Acres per population of one thousand; neighborhood and community serving Developed Park Acres in Good Condition per population of one thousand; and square feet of neighborhood and community serving center space per population of one thousand.

- (1) C&C Revenues allocated for the maintenance of Park Improvements may be expended on the costs of routine maintenance of Park Improvements (“Park Maintenance Costs”).
- (2) Up to 15% of the C&C Revenues allocated to parks maintenance yards (one of the eligible General Improvements) may be transferred to the General Fund for Park Maintenance Costs.
- (3) Per the City’s Council policy since 1996, up to 5% may be budgeted within the C&C Revenues allocated to each District for Park Maintenance Costs.

Maintenance Costs—General Improvements

The proposed ordinance also includes provisions related to the expenditure of C&C Revenues for the maintenance of the General Improvements. These provisions, as described below, track those governing Operating Maintenance Costs for C&C funded projects in effect when the 1991 amendments to the Construction Tax and the Conveyance Tax were adopted by the City Council.

Under the proposed ordinance, for each category of the General Improvements, up to 10% of the C&C Revenues budgeted for such category may be expended for Operating Maintenance Costs². There are the additional requirements that: (1) the expenditures of C&C Revenues for Operating Maintenance Costs of a particular General Improvement are limited to a period of not more than five years; and (2) only those General Improvements which were acquired or constructed with C&C Revenues are eligible for the expenditure of C&C Revenues for Operating Maintenance Costs.

CONCLUSION

The proposed ordinance reflects the City’s budgeting practices for C&C Revenues. No revisions have been made to the imposition of either the Construction Tax or the Conveyance Tax.

² Operating Maintenance Costs shall be limited to salary and nonpersonnel expenses including equipment costs associated with building and grounds maintenance necessary to preserve the value of the physical plant.

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COORDINATION

This Office has worked closely with the Budget Office in developing the proposed ordinance. Additionally, departments who manage C&C Revenues also have reviewed the proposed ordinance.

CEQA

Resolution No. 65459.

RICHARD DOYLE
City Attorney

By _____
Danielle Kenealey
Sr. Deputy City Attorney

cc: Les White
Larry Lisenbee

C & C REVENUES

At least 64% to the Central Fund for Park Improvements
(Parks Allocation)

Up to, but not more than 36% for General Improvements
(General Allocation)

Allocated among improvements as determined by City
Council

↓
15% of Parks Allocation to the General Fund for
Parks Maintenance

↓
Up to 15% of amount allocated for parks
maintenance yards to General Fund for Parks
Maintenance

↓
Fixed Costs as determined by City Council

↓
Of the remainder, up to but not more than 34% for
parks located in any part of the City, Family Camp,
natural open space

↓
Of the remainder

↙
20% to each District for
special needs

↘
80% allocated among district as
determined by Council per the criteria
in ordinance

↓
Of the amount allocated to each District up to 5%
for Parks Maintenance