



COUNCIL AGENDA: 1/26/10
ITEM: 2.14(c)

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Citizen Oversight
Committee for the Public
Safety Bond Program

SUBJECT: SEE BELOW

DATE: December 9, 2009

**SUBJECT: ANNUAL FINANCIAL REPORT ON THE PUBLIC SAFETY BOND
PROGRAM FOR FISCAL YEAR 2008-2009**

RECOMMENDATION

Acceptance of this report on the Public Safety Bond Program.

OUTCOME

This report to the Mayor and Council provides an update on the status of the Public Safety Bond Projects at the end of its seventh fiscal year (2008-2009).

BACKGROUND

On March 5, 2002, voters approved Measure O, San José 911, Fire, Police, Paramedic, and Neighborhood Security Act, authorizing the City to issue general obligation bonds up to \$159,000,000. Consistent with bond requirements, the City established a Public Safety Bond Citizen Oversight Committee (COC) to conduct an annual public hearing and prepare an annual report informing the Council and the public of the appropriateness of bond expenditures, the progress of the various projects, and the results of the annual audit.

On March 18, May 20, and August 12, of 2009, the COC met with staff to review expenditures of the projects included in the Public Safety Bond Measure and to discuss issues related to the South San José Police Substation. On December 9, 2009, the COC conducted a public hearing to review expenditures for fiscal year 2008-2009. City staff presented information to the COC regarding the appropriateness of bond expenditures and the progress of the various projects. The results of the annual citywide financial audit were also included in the information packet reviewed by the COC.

This report to the Mayor and Council provides an update on the status of the Public Safety Bond project expenditures at the end of fiscal year 2008-2009.

ANALYSIS

During the seventh fiscal year (2008-2009) of the Public Safety Bond Program, City staff and consultants have made significant progress in multiple areas.

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Land Acquisition:

The following are updates to land acquisition projects for the public safety bond program since the last report:

1. **Fire Station No. 21:** negotiations for purchase of a portion of a private parcel along White Road were concluded and CEQA clearance for the property was achieved on April 16, 2009. Council approved the purchase agreement and funding recommendations on June 9, 2009 for which escrow closed on July 7, 2009.
2. **Fire Station No. 36:** On May 1, 2009, the City received an Order of Immediate Possession (OIP) from Santa Clara Superior Court for rights to use portions of PG&E property adjacent to the proposed Fire Station 36 site at the corner of Silver Creek and Yerba Buena Avenue. The City and PG&E are concluding negotiations on final compensation prior to the issuance of the Final Order of Possession for these easements.
3. **Public Safety Driver Training Facility:** Efforts to locate the facility on the Water Pollution Control Plant (Plant) buffer lands were halted as changes in the land use policies and master planning of the Plant came in conflict with the plan to locate the driver training facility at this location. In addition, per the Council action on August 18, 2009, the remaining funding for the project was allocated to the South San José Police Substation to address a funding shortfall. Further progress on the project will be predicated on identification of land and funding.

As of this report, thirteen projects have completed land acquisitions and one has been defunded and is on hold.

Through the end of the fourth quarter of the 2008-2009 fiscal year, the total expenditures and encumbrances related to land acquisition totaled approximately \$15.25 million for all funds.

Project Management & Design:

During the seventh fiscal year, staff continued to work with consultants on the design, bid and award phases of several projects. The following lists project updates and milestones achieved in 2008-2009 as well as a few from the first several months of 2009-2010.

1. **Fire Station No. 36:** During the fiscal year staff worked on completion of the contract documents. More recently, bids from 20 contractors were received on November 3, 2009 most of which were approximately 20% or more below the engineers estimate. After receipt of several bid protests, Staff is reviewing the issues and preparing its recommendations for award to the lowest responsive bidder for Council consideration in January 2010.
2. **Fire Station No. 21:** Staff has begun work on program confirmation and preliminary site design.
3. **Fire Station No. 37:** Staff has begun program confirmation, preliminary site design as well as evaluated options for project delivery.

Through the end of the fourth quarter of the 2008-2009 fiscal year the total expenditures and encumbrances for project delivery totals approximately \$37.85 million for all funds. This total

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includes approximately \$1.94 million in remaining balances on consultant agreements for design and construction support services.

Construction:

During the seventh fiscal year of the Bond program, staff continued to oversee construction of multiple projects. The following lists project updates and milestones achieved in 2008-2009 as well as a few from the first several months of 2009-2010.

1. **Emergency Communications Dispatch Center Remodel:** Construction commenced in January 2009 and was substantially completed in March 2009.
2. **Fire Station Nos. 12 and 17:** As reported last year, Fire Station No. 17 became operational on November 5th, 2008 while Fire Station No. 12 was activated on November 24th, 2008. Staff recently settled all construction claims and closed out the projects in September of 2009.
3. **Fire Station No. 19 – Relocation:** Construction began on September 15, 2008 and the project is approximately 85% complete. Completion of this project is anticipated in spring of 2010.
4. **Fire Station No. 2 – Rebuild:** Construction began on March 17, 2009 and stands at approximately 65% complete. The project is currently on schedule to be completed and operational by September of 2010.
5. **South San José Police Substation** is in the 21st month of its now 27 month construction phase and has reached approximately 80% completion as of this report. Almost all of the exterior windows and enclosures have been installed and all major mechanical, electrical and plumbing systems are in and nearly ready for permanent power and gas. On two separate dates; March 24, 2009 and August 18, 2009, Council increased the project budget for a combined total of \$9.6 million in additional funding to address increased construction change order and administrative costs. Completion is currently anticipated in June 2010.

The total construction costs expended and encumbered up to this reporting period stand at approximately \$100.36 million for all funds. This includes approximately \$24.96 million in remaining balances on construction contracts. This trend of increased construction expenses and encumbrances will continue at a much more moderate pace as one additional fire station is awarded and two more are placed out to bid over a year from now.

Program “Sunk Costs”:

As previously reported, the COC has requested that staff provide and update a special report that explains and analyzes the program’s expenditures to date for projects that are no longer being pursued. Also requested, was an analysis of on-going projects that are considered “at-risk” due to pending major policy decisions, funding availability and/or land acquisition. The COC voted to accept the latest report at the December 9, 2009 annual meeting which communicated the following.

The total sunk costs expended program wide have increased to \$2.34 million on a total of nine different projects. This represents approximately 1.3% of the planned program expenditures. The August 2009 transfer of the remaining funds by Council for the Public Safety Driver Training Center to support the South San José Police Substation project has effectively

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eliminated this project from the program thereby increasing the sunk costs by approximately \$681,000. In terms of the "At-Risk" projects, with the completion of the Fire Station No. 21 land purchase and the funding of the exterior public art at the Police Substation there are no longer any projects that are considered at risk as of June 30, 2009.

Project Budget and Schedule Adjustments:

During Fiscal Year 2008-2009, staff identified an increase in the overall funding need of the Safety Bond program of approximately \$11.0 Million over the prior fiscal year's adopted CIP budget. The causes of these increases were largely attributed to increased construction change orders, revised scopes and increased construction management costs. The largest component of this increase was attributed to the combined \$9.6 funding increase for the South San José Police Substation's construction contingency. Through a combination of project scope reductions, favorable bids on recent construction contracts, bond contingency reserve reductions, savings from completed projects and a modest increase in bond interest revenue Council addressed this increased funding need.

On June 23, 2009 the City Council adopted the 2009-2010 Capital Budget & 2010-2014 Capital Improvement Program (CIP) as amended by the Mayor's June Budget Message.

The Public Safety Bond fund (Fund 475) in the adopted budget was increased slightly due to interest earnings in excess of that projected and refunded arbitrage rebates and now carries approximately \$316,000 in its Contingency Reserve. The value of this reserve represents a budgeted contingency of approximately 1% of the remaining uncommitted program funds authorized under the Act. As individual project or program-wide funding needs and adjustments are identified, staff will forward recommendations to Council regarding use of these funds.

Project Financing and Expenditures:

A total of \$155.68 million in General Obligation (GO) Bonds have been issued to fund Public Safety Bond projects through the fourth quarter of 2008-2009. In addition to bond revenue, interest earned to date as of June 30, 2009 totaled approximately \$14.33 million, for total revenue of \$170.01 million. During fiscal year 2007-2008, \$254,000 was transferred out of the bond project fund and set aside to offset a potential arbitrage liability due to excess interest earnings on the 2005 GO bond proceeds. However, during fiscal year 2008-2009, interest rates substantially dropped and it was determined that the funds previously set aside for the arbitrage liability would no longer be required for that purpose. Those amounts have been returned to the bond project fund and may be used for any eligible purpose.

Approximately \$144.55 million of bond funds have been expended or encumbered to date. The City expects to issue the remaining GO bonds under the Neighborhood Security Act Bond authorization within the next year.

The following table shows the total revenues, expenditures and encumbrances through June 30, 2009 for Public Safety Bond funds (Fund 475).

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Fiscal Year	Bond Proceeds & Interest	Expended & Encumbered ^(b)	Balance
2002-03	40,660,080	2,190,303	
2003-04	660,429	8,952,788	
2004-05	40,418,700	4,527,979	
2005-06	1,976,090	15,856,570	
2006-07	71,062,716	22,305,605	
2007-08	4,454,065	26,389,996	
2008-09 ^(a)	10,870,793	64,322,756	
Totals:	\$170,102,873	\$144,545,997	\$ 25,556,876

(a) As of June 30, 2009

(b) Encumbrances included in 2008-2009 only

Not included in the above table is the additional \$11.16 million from non-bond funding sources that have been authorized by Council as of June 30, 2009 to augment the program. As of June 30, 2009, a total of \$8.91 million of these funds have been expended and encumbered, leaving \$2.25 million remaining.

The independent accounting firm Macias, Gini & O'Connell, LLP (MGO) completed their annual audit of City funds in November for the fiscal year ended June 30, 2009. The audited financial statements, known as the Comprehensive Annual Financial Report (CAFR), included a review of the Neighborhood Security Bond Projects Fund. During the course of an outside auditor's work any significant issues are identified and commented upon. The CAFR was presented by the Finance Department and MGO to the City's Public Safety, Finance & Strategic Support Committee on November 19, 2009 and will be reported to the City Council on December 8, 2009. No significant issues were identified and reported on for the Neighborhood Security Bond Projects Fund. Relevant extracts from the 2008-2009 CAFR are attached. (See Attachment A)

The CAFR is posted on the Finance Department's web site (www.csjfinance.org) where the complete report can be found. Copies can also be obtained from the Finance Department on the 13th floor of City Hall at 200 East Santa Clara Street, San José, California.

Conclusion:

As the Public Safety Capital Bond program completed its seventh fiscal year, expenditures and encumbrances (funds "committed") program-wide are beginning to level off. The \$144.55

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million in total Public Safety Bond funds committed through the fourth quarter of the 2008-2009 fiscal year represents an approximate 13% rise in overall use of bond funds when compared to the prior six fiscal years combined. This modest increase is partially due to the award of Fire Station Nos. 2 & 19 as well as the 911 Remodel construction contracts. As additional design agreements and construction contracts for fire stations are realized there will be a continued and modest expansion of utilization of bond funds.

Of the Public Safety Bond Program projects as of this report, twenty-four have been completed or achieved "Beneficial Occupancy," three are under construction, four are in the various stages of design, and thirteen have acquired real estate for new or temporary facilities. Staff will continue to provide updates to the COC on the status of the projects and their expenditures as they progress.

EVALUATION AND FOLLOW-UP

Staff provides status reports on expenditures of Public Safety Bond projects to the COC on a quarterly basis. Annually, the COC issues its report to Council.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this action does not meet any of the criteria above, this report will be available on the City's website. The public hearing for the review of this item was posted on the City's Brown Act board. A meeting notice and associated reports were also posted on the City's web site. One member of the public attended the hearing. No questions from the public were submitted at the hearing.

FISCAL POLICY AND ALIGNMENT

This report meets the legal commitment and requirement to implement a Citizen's Oversight Committee to review the expenditures of the Public Safety Bond Program and provide the public with opportunities to understand, review and address any significant issues related to program expenditures.

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COORDINATION

This memo has been coordinated with the City Manager's Budget Office, Police Department, Fire Department, Finance Department and the Department of Public Works.

CEQA

Not a project.



PHYLLIS LAZZARINI

Chairperson

Public Safety Bond – Citizen Oversight Committee

For questions, please contact David Sykes, Assistant Director, Department of Public Works
(408) 535-8440

Attachments

City of San José
Combining Statement of Revenues, Expenditures and Changes in Fund Balances
Nonmajor Capital Project Funds
For The Year Ended June 30, 2009

	Neighborhood Security Bond Projects (Fund 475)
REVENUES	
Taxes	-
Intergovernmental	-
Charges for current services	-
Investment income	1,575,558
Other revenues	-
Total revenues	<u>1,575,558</u>
EXPENDITURES	
Current:	
Capital maintenance	506,787
Capital outlay	43,916,714
Total expenditures	<u>44,423,501</u>
Excess (deficiency) of revenues over (under) expenditures	(42,847,943)
OTHER FINANCING SOURCES (USES)	
Bonds issued	9,000,000
Transfers in	-
Transfers out	-
Total other financing sources (uses)	<u>9,000,000</u>
Net change in fund balances	(33,847,943)
Fund balances - beginning	<u>79,304,075</u>
Fund balances - ending	<u><u>45,456,132</u></u>

Source: FY 2008-2009 Comprehensive Annual Financial Report

