



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Sarah Zárate

**SUBJECT: POTENTIAL NOVEMBER 2024
BALLOT MEASURE POLLING**

DATE: June 7, 2024

Approved

Date

6/7/24

RECOMMENDATION

- (a) Review survey results for potential ballot measures for the November 5, 2024 General Election, including two parcel tax measures, a bond measure, and a charter amendment pertaining to long-term leases in City parks.
- (b) Set a City Council Special Meeting entitled “November 5, 2024 General Election Ballot Measure” for Tuesday, August 6, 2024 starting at 1:30 p.m.
- (c) Direct the City Manager and City Attorney to draft ballot language and return to City Council at the August 6, 2024 Special Meeting for consideration of placing on the November 5, 2024 ballot a measure levying a parcel tax for the purpose of funding City services to clean, maintain, and improve San José’s parks, playgrounds, trails, restrooms, and recreation facilities and fund other City services.
- (d) Direct the City Manager to conduct additional polling to refine the tax rate and ballot language.

SUMMARY AND OUTCOME

Pursuant to City Council direction through approval of the Mayor’s March Budget Message for 2024-2025, staff commissioned a survey to explore potential ballot measures for the November 5, 2024 General Election, including revenue measures to fund park maintenance as well as a Charter amendment to lengthen the term for which the City can enter into leases in City parks. This memorandum outlines the results of that survey and, based on those results, proposes to narrow consideration of potential ballot measures to a parcel tax that would fund park maintenance and several other City services. Staff is seeking direction regarding whether the City Council wishes to pursue this option. If so, the next steps would involve scheduling a special meeting of the City Council for August 6, 2024, where the City Council would make a final decision as to whether to place a measure on the ballot, directing staff to bring back revised ballot language for a parcel tax to that meeting, and directing staff to conduct additional polling to inform that revised language.

BACKGROUND

The City Council approved the Mayor's March Budget Message for 2024-2025 at the March 19, 2024 City Council meeting. Through approval of the Budget Message, the City Council provided the City Manager with two separate items of direction to explore ballot measures intended to improve the condition of San José's parks.

First, through a memorandum issued by Councilmembers Ortiz, Candelas, and Jimenez and approved by the City Council along with the March Budget Message, the City Manager was directed to "explore additional funding mechanisms for operations and maintenance to improve our Neighborhood Parks."

Second, the March Budget Message included direction to explore a ballot measure that would amend the City Charter to allow longer-term leases of City parkland, as follows:

The City Manager is directed to explore placing a measure on the upcoming November 2024 ballot to allow the City to enter long-term retail and commercial leases on City parkland and direct the resulting revenues back into our parks.

In response to this direction, staff engaged the City's polling firm, True North Research, to conduct a survey of potential ballot measures as directed by the City Council. This memorandum outlines the results of that survey.

ANALYSIS

Revenue Measure Options

When designing the survey, staff evaluated three potential tax measures: a parcel tax, a bond, and a sales tax. They evaluated the feasibility of each option and their alignment with the City Council's direction to fund the operations and maintenance of City parks.

Parcel Tax

A parcel tax is a type of property tax that, unlike standard property taxes, is not levied based on the property's assessed value. Instead, parcel taxes are based on either a flat rate per nonvacant parcel or a rate that varies depending on use, size, number of units, or both on each parcel. Parcel taxes are special taxes that require two-thirds voter approval. Proceeds may be spent on services, capital improvement, or the operations and maintenance of City facilities. For example, proceeds can be spent on capital maintenance, such as replacing a park irrigation system, as well as on operating costs, such as routine maintenance of City parks or funding parks programs. Given the flexibility to spend on both operations and maintenance costs, staff identified a parcel tax as the best avenue to meet the objectives established by the City Council. The survey tested two versions of ballot language for a parcel tax.

Bond Measure

Staff also considered a bond measure. The State of California Constitution provides that cities may issue general obligation bonds for the acquisition and improvement of real property if authorized by two-thirds of its voters. General obligation bonds are payable only from ad valorem property taxes, which are required to be levied in an amount sufficient to pay interest and principal on the bonds coming due in each year. These property tax revenues are generated from an additional property tax that is distinct from general property tax collections and are dedicated to paying debt service on the bonds and cannot be levied or used for any other purpose. The General obligation bonds are typically issued over a period of years and then repaid over a 20- to 30-year period from the date of issuance. Bond proceeds may only be spent on capital costs - they cannot be spent on operations, such as routine park maintenance. Since a bond measure cannot fund operating costs, it would only partially meet the City Council's objectives. The survey included one question on such a measure.

Sales Tax

San José cannot currently pursue a local sales tax measure. California law provides that the combined rate of local sales taxes may not exceed two percent, and San José is currently at that cap, though it is possible to raise this cap through state legislation. Staff discussed this possibility with the City's delegation in the California Legislature but understands that such legislation could not be enacted in time to allow for a sales tax measure in November 2024. Staff will continue to work with the City's delegation to explore opportunities to raise this cap. Additional information on a general purpose sales and use tax or the potential modernization of the City's General Business Tax was provided in Manager's Budget Addendum #10, published May 21, 2024.¹

Assembly Constitutional Amendment 1

A statewide ballot proposition, Assembly Constitutional Amendment 1 (ACA 1), could potentially affect the passage threshold of some of the above options. Placed on the November 2024 statewide ballot by the legislature, ACA 1 would reduce the threshold to pass a bond measure or special tax (including a parcel tax) from two-thirds to 55%, provided that the bond or special tax is used for the purpose of funding public infrastructure, affordable housing, or permanent supportive housing. If approved by voters, ACA 1 would lower the threshold of passage for any qualifying bond or special tax measure that also appears on the November 2024 ballot. It is important to note that, if passed, it would only lower the passage threshold for special taxes that are limited to capital costs. It would not lower the threshold for a parcel tax that includes operating expenditures.

However, in May 2024, Assemblymember Aguiar-Curry announced that she would try to amend the ACA 1 language to remove the special tax provisions, which would eliminate the possibility of a lower passage threshold for a parcel tax, even if it were limited to capital costs. This revised

¹ <https://www.sanjoseca.gov/home/showpublisheddocument/112014/638518872821730000>

language is not available at this time but will be released in print in June to conform to the June 27, 2024 deadline for qualifying statewide ballot measures. The decision to remove special taxes from the measure is based on concern about a potentially crowded ballot with many statewide measures in November 2024, recent polling results on the current ACA 1 language, and pressure from Bay Area legislators who are attempting to pass a regional housing bond. The City Manager's Office of Administration, Policy, and Intergovernmental Relations continues to monitor this legislation as it develops.

Survey Results

As noted above, the survey tested support for two versions of ballot language for a parcel tax measure. It also included a question on support for a parks bond measure and for a Charter amendment that would allow longer-term leases in City parks.

The survey was conducted between May 9 and May 21, 2024 and was administered to a random sample of 800 voters in the City of José who are likely to participate in the November 2024 election. Respondents were split into two subsamples, of 400 each, who were used to test different versions of ballot language for a parcel tax. The margin of error for the entire sample is plus or minus 3.4%, while the margins for the two subsamples are plus or minus 4.9%. The two parcel tax versions tested in the subsamples are referred to as Measure A and Measure B. In each version, the ballot language specifies the purposes for which revenue generated by the parcel tax may be spent; the City would not be able to spend for a purpose that is not authorized in the ballot language. To accomplish this polling on an expeditious timeline, the questions on the bond and on park leases were not given their own subsamples; they were asked as trailing questions on the samples used for Measure A and Measure B.

Parcel Tax Results

Both versions of the parcel tax language establish a rate of one cent per square foot of residential property and three cents per square foot of non-residential property, generating approximately \$31 million annually. The two versions of the language include a slightly different mix of services. Both versions authorize proceeds to be spent on park maintenance and removing trash, illegal dumping, and graffiti. In addition to these two elements, Measure A includes abatement of homeless encampments and funding park police and park rangers, while Measure B includes protecting nature and wildlife areas and funding certain programs provided by the Parks, Recreation, and Neighborhood Services Department. Note that the removal of trash, illegal dumping, and graffiti, included in both measures, and the abatement of homeless encampments, included in Measure A, could be funded citywide, not just in parks. The full text of the two versions is provided below.

Measure A
<p>In order to:</p> <ul style="list-style-type: none"> • remove homelessness encampments in San José's parks, creeks and neighborhoods; • remove trash, illegal dumping, graffiti; • fund park Police and Rangers to reduce crime and increase safety; • and keep parks, playgrounds, trails, restrooms, and recreation facilities clean and well-maintained; <p>shall City of San José's ordinance be adopted levying an annual parcel tax of 1-cent per square foot of residential property (3 cents for non-residential property), generating approximately 31 million dollars annually until repealed, with annual adjustments and citizen oversight?</p>

Measure B
<p>In order to:</p> <ul style="list-style-type: none"> • keep parks, playgrounds, trails, restrooms, and recreation facilities clean and well-maintained; • protect nature and wildlife areas; • remove trash, illegal dumping, and graffiti; • and provide gang prevention, senior health and nutrition, and children and youth programs, <p>shall City of San José's ordinance be adopted levying an annual parcel tax of 1-cent per square foot of residential property (3 cents for non-residential property), generating approximately 31 million dollars annually until repealed, with annual adjustments and citizen oversight?</p>

Over the course of the survey, respondents were tested multiple times on their support for these measures. At the beginning of the survey respondents were read the ballot language and asked whether they would support it (initial test). Respondents were subsequently given more information about the cost of the measure and were read arguments in favor and against it. Respondents' support was retested at each step (interim tests) and a final time after all the cost information and arguments had been conveyed (final test.) This approach helped to predict how voters would respond to information they received during a campaign. Table 1 below shows the results of the initial and final tests; support and opposition varied in the interim tests.

Table 1: Polling Results for Measure A and Measure B Parcel Tax Ballot Language

	Measure A Initial Test	Measure A Final Test	Measure B Initial Test	Measure B Final Test
Definitely Support	32.4	33.9	29.5	31.7
Probably Support	32.9	29.2	33.6	34.4
Total Support	65.3	63.1	63.1	66.1
Definitely Oppose	16.5	19.8	18.8	21.3
Probably Oppose	11.0	12.0	10.9	8.5
Total Oppose	27.5	31.8	29.7	29.8
Not Sure	7.0	4.2	5.9	3.7

These results suggest that a parcel tax measure in November 2024 may be viable, but there is still significant uncertainty about whether it would prevail. Staff would make three observations for

the City Council's consideration. First, although the final test of Measure B comes very close, none of these results exceed the two-thirds threshold (66.6%) required for passage. With a margin of error of plus or minus 4.9%, both passage and failure of the measure are within the margin.

Second, Assembly Bill 1416, enacted in 2022, may also affect the outcome. For statewide measures, Assembly Bill 1416 requires that a list of supporters and opponents of the measure be listed below the ballot language. The names of supporters and opponents are determined by who signed the supporting and opposing ballot arguments printed in the voter information guide. While this is a requirement for statewide measures, it is not necessarily required for local measures. The law provides that, at least 30 days before the deadline for submitting arguments for or against local measures, a county board of supervisors may elect not to list supporters and opponents for county, city, district, and school measures on the county ballot and future county ballots. The Administration recently was made aware the County of Santa Clara has not chosen to opt out of this requirement, and as such, the City can expect supporters and opponents to be listed along with any measures it places on the ballot.

The City's pollster, True North Research, advised that based on recent experience in other cities, listing supporters and opponents on a ballot tends to reduce support for ballot measures. True North Research indicated that this effect could occur irrespective of who is listed. It is difficult to determine how much support could be reduced, but True North Research indicated that it could be in the three to four percentage points. Staff engaged with the County Executive's Office at the County of Santa Clara to determine whether the County has any plans to opt out of this requirement, as provided in Assembly Bill 1416. If the County does not opt out, inclusion of supporters and opponents may reduce support for a parcel tax.

Finally, it may be possible to increase support for the ballot measure by making refinements to the ballot language. Additional polling is required to test support for the revised language. Consequently, if the City Council wishes to pursue a parcel tax, staff recommends that the City Council direct staff to conduct additional polling over the summer. This additional polling would test language that combines elements of Measures A and B, includes other services not tested in either measure, includes a lower tax rate (for example, a rate of ½ cent per square foot) or changes the mix of rates between property types. Staff will also include language in the poll question on potential supporters and opponents of the measure, consistent with the requirements of Assembly Bill 1416, to test the effect of that element on public support. Staff would then return to the August 6, 2024 Council Meeting with recommended ballot language crafted to maximize potential support for the measure.

Bond Measure Results

The survey tested support for a bond in the amount of \$500 million for the purpose of repairing and improving park facilities. Unlike Measures A and B discussed above, this measure was not tested as part of a separate subsample; it was included as a trailing question on the Measure B subsample. In other words, respondents were asked after they had already been polled on the Measure B parcel tax. While combining this question with the Measure B subsample allowed the survey to be completed on an expeditious timeline, it is possible that combining two measures in

one subsample can depress support for the second measure. The language of the polling question and polling results are below.

Parks Bond Question	
Would you support or oppose a parks bond for the purpose of repairing and improving neighborhood and regional parks, playgrounds, park bathrooms, and community facilities, where the total amount of the bond was \$500 million and the average levy on property owners was 12 cents per \$100 of assessed value?	

Table 2: Polling Results for Park Bond Measure Question

	Parks Bond Measure Results
Definitely Support	13%
Probably Support	29%
Total Support	42%
Definitely Oppose	27%
Probably Oppose	20%
Total Oppose	47%
Not Sure	10%
Prefer Not to Answer	1%

Polling results for a park bond are well below the current passage threshold of two thirds. Even if Assembly Constitutional Amendment 1 was to pass and lower the threshold to 55%, the results are still below the threshold. Staff does not recommend pursuing a bond measure in this cycle. If ACA 1 were to pass, it may be worthwhile in future election cycles to refine the ballot language and conduct a poll to determine whether a revised measure could meet the lower threshold.

Long-Term Park Lease Results

Section 1700.1 of the City Charter provides that the City Council may enter into long-term leases and other agreements with non-City entities for the use of public parks for terms of up to 25 years, provided that the agreement could meet several conditions, including that:

- The agreement would enhance the designated recreational purposes for the public park,
- The park subject to the agreement is more than five acres in size and has at least one community serving amenity,
- The agreement complies with an adopted City Council policy governing long-term agreements in City parks,
- That any funds received by the City from the agreement shall be used for recreational purposes.

This section only allows agreements of up to 25 years—agreements longer than this term must be authorized by the voters at the ballot.

As discussed in the Background section, the March Budget Message included directions to explore a charter amendment that would allow long-term retail and commercial leases on City

parkland. Pursuant to this direction, the survey tested support for a ballot measure that would increase the current 25-year maximum term to a total of 55 years. Like the bond question, this question was not tested with a separate subsample; it was included as a trailing question on the same subsample used to test the Measure A parcel tax language.

Long-Term Park Lease Question
Would you support or oppose amending the City Charter to allow the City Council to lease public parkland in San José to private entities for a period of 55 years, with the requirement that such leases enhance the recreational purposes or maintenance condition of the park, and that all revenues from such leases be spent on park recreation, maintenance, and capital improvements?

Table 3: Polling Results for Park Long Term Park Lease Question

	Parks Bond Measure Results
Definitely Support	17%
Probably Support	29%
Total Support	46%
Definitely Oppose	29%
Probably Oppose	15%
Total Oppose	44%
Not Sure	9%
Prefer Not to Answer	1%

The threshold for passage of this measure is a simple majority. Although the measure does not reach this mark, it may be possible in a future election cycle to improve performance through further refinement of the ballot language and through testing the language with its own subsample and more outreach—ensuring potential voters have a better understanding of the measure.

Next Steps

Based on the survey data presented in this memorandum, the Administration recommends narrowing consideration of ballot measures for the November 5, 2024 General Election to a parcel tax that would fund keeping San José’s parks clean and maintained and also support several other City services. If the City Council wishes to pursue a parcel tax measure, staff recommends that the City Council schedule a special meeting of the City Council for August 6, 2024, where the City Council would make a final decision as to whether to place a measure on the ballot, direct staff to bring back revised ballot language for a parcel tax to that meeting, and direct staff to conduct additional polling to help inform that revised language.

Staff believes additional polling is necessary to determine whether a parcel tax measure is viable for the November 2024 ballot. If directed to conduct additional polling, staff will develop a revised version of the ballot language intended to maximize potential support. Revisions will include selecting City services for inclusion in the measure that will be most appealing to voters (while maintaining the focus on park maintenance) and adjusting the tax rate. Adjustments to the

tax rate will include lowering the rate to increase support and potentially changing the balance of rates between different property types. Finally, if the County does not opt out of the Assembly Bill 1416 requirement, the polling will also include language on potential supporters and opponents of the measure. If a parcel tax measure is viable based on this polling, staff will return with recommended ballot language for the City Council’s consideration at the August 6, 2024 special meeting.

In advance of that meeting, staff will also monitor which other measures qualify for the ballot, whether from the County or the state, and return with this information. Voters’ decision on the City’s measure may be affected by which other measures appear on the ballot alongside it; understanding this context may be useful to the City Council in making a final decision.

Timeline

The Santa Clara County Registrar of Voters established a timeline of important deadlines leading up to the November 5, 2024 election. These deadlines determine the timeframe in which the City Council would need to decide whether to place a measure on the ballot. Table 4 below summarizes relevant deadlines.

Table 4: Registrar of Voters Key Deadlines for the November 5, 2024 General Election

Date	Activity
August 9, 2024	Last day for ballot measures to be submitted to the Registrar.
August 13, 2024	Due date for primary ballot arguments and for the list of measure supporters and opponents.
August 20, 2024	Due date for rebuttal arguments and impartial analyses.
November 5, 2024	Election Day

The City must submit any ballot measures for the November 5, 2024 General Election by August 9, 2024. Given that August 13, 2024, is the proposed first regularly scheduled City Council meeting in August, staff recommends scheduling a special meeting on August 6, 2024. Staff would return to this meeting with a revised draft of the parcel tax ballot language. At that time, the City Council would make a final decision as to whether to place a measure on the ballot.

EVALUATION AND FOLLOW-UP

Should the City Council wish to pursue a parcel tax ballot measure for the November 5, 2024 election and to schedule a special meeting on August 6, 2024 to consider placing such a measure on the ballot, staff will conduct additional polling over the summer, prepare a revised version of the ballot language, and bring it forward at the August 6, 2024 special meeting for a final decision by the City Council.

HONORABLE MAYOR AND CITY COUNCIL

June 7, 2024

Subject: Potential November 2024 Ballot Measure Polling

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COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Finance Department, and the Parks, Recreation, and Neighborhood Services Department.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 18, 2024 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Statutorily Exempt, File No. PP17-001, CEQA Guidelines Section 15262, Feasibility and Planning Studies with no commitment to future actions.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.



SARAH ZÁRATE
Director, Office of Administration, Policy
and Intergovernmental Relations

For questions, please contact Peter Hamilton, Assistant to the City Manager, at peter.hamilton@sanjoseca.gov or (408) 535-7998.