



DATE: March 5, 2018

TO: Mayor and Members of the City Council

VIA: Kevin M. Miller, City Manager

FROM: Edmund Suen, Finance Director  
Jeff Moneda, Public Works Director/District Engineer  
Priscilla Tam, Communications Director/City Clerk  
Jean Savaree, City Attorney

SUBJECT: APPROVAL OF AN ORDINANCE CALLING A GENERAL OBLIGATION BOND ELECTION TO PROVIDE FUNDING FOR A LEVEE IMPROVEMENT AND PROTECTION PROJECT; APPROVAL OF A RESOLUTION REQUESTING CONSOLIDATION OF THE ELECTION AND SETTING FORTH THE FORM OF THE BOND PROPOSITION TO BE VOTED ON AND PROVIDING OTHER MATTERS; APPROVAL OF A TAX RATE STATEMENT, WRITTEN ARGUMENTS BY COUNCIL MEMBERS IN FAVOR OF THE BOND PROPOSITION, WRITTEN REBUTTAL ARGUMENTS FOR THE BOND PROPOSITION, AND DIRECTING PREPARATION OF AN IMPARTIAL ANALYSIS OF THE BOND MEASURE

---

## RECOMMENDATION

It is recommended that the City Council of the City of Foster City:

1. Adopt an Ordinance calling for a municipal bond election on a measure providing for the issuance of not more than \$90 million of general obligation bonds;
2. Adopt a resolution requesting that the County consolidate the bond measure election with the statewide June 5, 2018 election, setting forth the form of the bond measure to be voted upon, and providing other matters; and
3. Adopt a resolution approving a tax rate statement, authorizing a written statement in favor of the bond measure and a written statement offering rebuttal arguments for the bond measure, and directing preparation of an impartial

analysis by the City Attorney of the bond measure.

## EXECUTIVE SUMMARY

On February 20, 2018, the City Council held a public hearing and introduced and passed to second reading the ordinance, “An Ordinance of the City of Foster City Calling an All Mail-Ballot Municipal Bond Election for the Purpose of Submitting to the Electors of the City a Measure Providing for the Issuance of General Obligation Bonds of the City for the Acquisition, Construction, Repair and Replacement of Public Levee System; Declaring the Estimated Cost of the Municipal Improvements, the Amount of the Principal of the Indebtedness to Be Incurred Therefor, and the Maximum Rate of Interest to Be Paid Thereon; Making Provision for the Levy and Collection of Taxes; Fixing the Date of the Election as June 5, 2018 and the Manner of Holding the Same; and Providing for Notice Thereof” (Election Ordinance) and adopted a resolution determining that the public interest and necessity demand the construction of certain municipal improvements and their financing through the issuance of general obligation bonds. Tonight’s action with regard to the Election Ordinance constitutes the second reading and adoption of the Election Ordinance and approves the calling for a general obligation bond election to be placed on the June 5, 2018 ballot. Its adoption requires a two-thirds affirmative vote of the City Council.

In order to proceed with an election, the City Council must also adopt a resolution requesting that the County consolidate the general obligation bond election with the statewide election to be held on June 5, 2018, and provide the exact wording of the bond measure to be voted on. Additionally, the City Council must adopt a resolution approving a tax rate statement to be mailed to Foster City voters, which also authorizes written arguments in favor of or against the measure, written rebuttals for the measure, and directs the City Attorney to prepare an impartial analysis of the measure.

## BACKGROUND

The February 20, 2018 staff report for the introduction of this ordinance is attached and provides background.

## ANALYSIS

The adoption of the recommended Election Ordinance is required to place a bond measure on the June 5, 2018 ballot that would authorize the issuance of not more than \$90 million in general obligation bonds. These funds would be used to improve the City’s existing levee system to provide flood protection in accordance with updated Federal Emergency Management Agency (FEMA) guidelines, allow the City to retain FEMA accreditation for the levee, and protect against future sea level rise (Levee Protection Improvements Project).

## **Election Ordinance**

The attached Election Ordinance calls for a bond election to be held on June 5, 2018, and specifies the 75-word measure that will appear on the ballot. Its adoption requires a two-thirds affirmative vote of the City Council. The Election Ordinance expressly states that the bond proceeds may only be spent on the Levee Improvement and Protection Project and the costs incurred to sell the bonds. It also specifies the maximum principal amount of the bonds (\$90 million) and the maximum interest rate on the bonds (12%). All expenditures will be subject to oversight by a committee, composed of citizens appointed by the City Council. No funds will go toward administrators' salaries or be taken by the State of California. The committee will meet twice a year and provide a report to the City Council on expenditures and management of funds.

## **General Obligation Bonds**

The bonds will be secured by a tax on all taxable property in the City. Based on fiscal year 2017-2018 City-wide taxable assessed values and an estimated interest cost on the bonds of 3.62%, and allowing for a two percent annual increase in assessed values, the tax rate necessary to pay annual debt service on these bonds over a 30-year term is expected to be approximately \$.0366/\$100 assessed value. A maximum tax rate of \$.0401/\$100 assessed value would take place in the final year, 2047-2048. These amounts are estimates only. The actual rate at which the tax is levied will depend on the actual interest rates on the bonds and actual, future year city-wide assessed values.

## **Primary Arguments**

If the City Council adopts the resolution placing an ordinance before Foster City voters at the June 5, 2018 Election, it also needs to decide tonight if it wants to author and sign primary arguments for or against the measure as a whole body or give up that right as a body and authorize any member or members of the City Council (for or against the measure) to do so. At the March 5, 2018 City Council meeting, the City Council should discuss whether they will author an argument as a whole or designate individuals to author an argument (for or against the measure).

The Elections Code allows any of the following to file a written primary argument (for or against) not to exceed 300 words in length for any city measure:

- The City Council or any member or members of the City Council authorized by it;
- The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure;
- Bona fide associations of citizens; or

- Individual voters who are eligible to vote on the measure.

Only one argument in favor of and one argument against the measure will be placed in the sample ballot. Pursuant to Elections Code § 9287, if more than one argument for or more than one argument against any city measure is submitted to the City Clerk within the time prescribed, the City Clerk shall select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. In selecting the argument, the City Clerk shall give preference and priority, in the order named, to the arguments of the following:

1. The City Council or any member or members of the City Council authorized by it;
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure;
3. Bona fide associations of citizens; or
4. Individual voters who are eligible to vote on the measure.

If the City Council adopts the resolution tonight placing the ordinance before the voters, it must decide how it wants to handle primary arguments as well as rebuttal arguments.

### **Rebuttal Arguments**

If the City Council authorizes rebuttal arguments (and it is traditional to do so), pursuant to Elections Code § 9285, when an argument in favor and an argument against a measure have been selected to be printed, the elections official shall send a copy of the argument in favor of the measure to the authors of the argument against and a copy of the argument against the measure to the authors of the argument in favor. The persons filing the argument in favor of the city measure may prepare and submit a rebuttal argument not exceeding 250 words. A rebuttal argument may not be signed by more than five (5) authors. The City Clerk shall send copies of the argument in favor of the measure to the persons filing the argument against the city measure, who may prepare and submit a rebuttal to the argument in favor of the city measure not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not more than ten days after the final date for filing primary arguments. Rebuttal arguments shall be printed in the same manner as the primary arguments and shall immediately follow the primary argument it seeks to rebut.

The City Council should determine tonight if it will submit primary arguments as a whole body or authorize a member or members to do so. It should also determine if it will allow rebuttal arguments as well.

### **Impartial Analysis**

The Elections Code requires that when any city measure qualifies for the ballot, that the governing body direct the city elections official to transmit a copy of the measure to the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure (EC 9280). The impartial analysis is required to not exceed 500 words. It is recommended that the City Attorney be directed to submit the impartial analysis for the measure in accordance with State law.

### FISCAL IMPACT

If issued, general obligation bonds would be an obligation of the City's General Fund. The City would have unlimited ad valorem taxing power to raise sufficient tax revenues to make annual debt service payments on the bonds. The tax levy associated with general obligation bonds may only be used to pay debt service on such bonds.

If the bonds are approved and subsequently sold, fees will be incurred to prepare documents in connection with the bond sale and to implement the sale. The bulk of such fees will be contingent on the sale of bonds and, in total, are estimated at \$265,000, plus a contingent bond underwriting fee estimated at not more than 1% of the par amount of bonds. These fees would be paid from the proceeds of the bonds.

### NEXT STEPS

After the election is called and the bond measure is added to the June 5, 2018 election, the City will continue to provide information and updates to the public as the Levee Project progresses. The City will also continue to provide factual information regarding the bond measure to residents and businesses. However, the City will not utilize its funds, resources, or staff time to advocate for or against the bond measure.

The City Clerk will transmit the Election Ordinance and associated resolutions to the County by March 9, 2018, as required by the Elections Code for submittal to the voters at the June 5, 2018 Election. The resolution approving a tax rate statement, etc. authorizes members of the City Council to prepare and submit to the County an official argument in favor of the bond measure and an official rebuttal to the official arguments against the bond measure. These written arguments are due to the County by March 16, 2018 and March 26, 2018, respectively.

If the measure is approved, bond documents related to the sale would be brought to the City Council for approval after the successful construction bid is determined and bonds would be subsequently sold in an amount not to exceed \$90 million.

### ALTERNATIVES

If the City Council declines to pass the Election Ordinance, it may direct City staff to evaluate and present to it an alternative method of financing levee improvements or decline to pursue financing for levee improvements.

City staff would require two to three months to develop and present to the City Council an alternative financing strategy, which may require several more months to implement, if approved. This would likely delay construction of levee improvements.

Failure to pursue financing for levee improvements would require either a reduction in the current scope of the project to an amount sufficient to be financed solely with City reserves or abandonment of the project.

If a reduced scope of the project did not meet FEMA's accreditation standard that the levee be able to protect against a "one percent annual chance" flood, then the City would be mapped into a Special Flood Hazard Area, which would require most residents and businesses to obtain flood insurance. Based on information obtained from several local insurance brokers, the current price range for basic flood insurance is estimated to cost between \$2,000 and \$3,000 per year, depending on the amount of the deductible.

Abandonment of the project would result in the City being mapped into a Special Flood Hazard Area. Additionally, amounts advanced by the City's Capital Projects Fund (Fund 301) to date for this project, approximately \$6.1 million, would not be reimbursed.

#### Attachments:

- Attachment 1: Ordinance calling for a municipal bond election on a measure providing for the issuance of not more than \$90 million of general obligation bonds
- Attachment 2: Resolution requesting that the County consolidate the bond measure election with the statewide June 5, 2018 election, setting forth the form of the bond measure to be voted upon, and providing other matters
- Attachment 3: Resolution approving a tax rate statement, authorizing a written statement in favor of the bond measure and a written statement offering rebuttal arguments for the bond measure, and directing preparation of an impartial analysis by the City Attorney of the bond measure
- Attachment 4: February 20, 2018 Staff Report in connection with resolution of necessity and bond election ordinance