



2007-2008 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

COUNTY PARK CHARTER IMPACTS COUNTY BUDGET FLEXIBILITY

Introduction

The 2007-2008 Santa Clara County Civil Grand Jury (Grand Jury) reviewed a 2007 audit of the Santa Clara County Department of Parks and Recreation (County Parks Department) prepared by the Board of Supervisors Management Audit Division. The audit, among other things, discussed a provision of the Santa Clara County Charter that sets aside a portion of County tax revenue exclusively for the acquisition, development, maintenance and operation of parks. This is the only provision in the County Charter that guarantees a portion of County funds must go to a particular purpose, agency or department. This provision has a fiscal impact on the County. In the June 2006 election, the voters were not provided with a fiscal analysis of the ballot measure that renewed this provision of the County Charter.

Background

The County Parks Department is responsible for a county-wide park system that encompasses 28 parks and about 45,000 acres. The County Parks Department benefits from a unique provision in the Santa Clara County Charter stating that a fixed percentage of the assessed valuation of property within the county must be spent on the acquisition, development, maintenance and operation of parks. This provision is commonly referred to as the "Park Charter." In effect, the Park Charter sets aside and restricts a portion of the County's property tax revenues solely for parks. The funds provided in the Park Charter cannot be re-allocated to any other purpose.

A copy of the Park Charter, as modified and extended in the June 2006 election, is attached as the Appendix to this report. The Park Charter had been set to expire in 2009, but in June 2006 it was extended to 2021. The Grand Jury notes that the Appendix contains the language from the ballot measure as it appeared in the June 2006 Sample Ballot and Voter Information Pamphlet. As of the writing of this report, copies of the County Charter provided to the Grand Jury had not yet been updated to include changes that the measure was to make to the charter. The Grand Jury also notes that although the purpose of the measure apparently was to replace Section 604 of the County Charter with new language, the measure actually did not specifically state that it would amend or replace Section 604 or any other specific portion of the County Charter. The Grand Jury did not investigate what legal effect this may or may not have had on the validity of the measure.

Discussion

The June 2006 Park Charter Ballot Measure

The Grand Jury reviewed election materials for Measure B, the June 6, 2006 ballot measure that modified and extended the Park Charter to 2021.

When going to the polls to vote on a county ballot measure, voters are asked to vote for or against the measure as summarized in an abbreviated measure question. In June 2006, the measure question for Measure B read as follows:

Without increasing taxes, shall the Santa Clara County Charter be extended to provide for the acquisition, development, maintenance, and operation of parks, by continuing the annual transfer from the general fund of an amount estimated to equal \$0.01425 per one hundred dollars of assessed valuation of all real and personal property commencing on July 1, 2009 for twelve years?

While the summary mentions “transfer from the general fund,” the phrase “without increasing taxes” may have implied to some voters that the measure would have no fiscal impact on the County. The Grand Jury reviewed the abbreviated measure questions on sample ballots for the measures that created, modified and extended the Park Charter from 1972 through 2006. The June 2006 measure question was the first one that contained the phrase “without increasing taxes.”

The Sample Ballot & Voter Information Pamphlet for the June 2006 election did not include any fiscal analysis of the potential effect of Measure B. With respect to statewide ballot measures, as opposed to county measures such as Measure B, voters are provided a fiscal analysis by the Legislative Analyst. Section 9087 of the California Elections Code specifically requires a fiscal analysis for all statewide measures.

For county ballot measures, however, the California Elections Code permits, but does not require, a fiscal analysis. Section 9160(c) provides that the Board of Supervisors “may direct the county auditor to review the measure and determine whether the substance thereof, if adopted, would affect the revenues or expenditures of the county.” In the June 2006 election, there was no such fiscal analysis for Measure B. As required by Section 9160(b) of the Elections Code, there was an analysis by County Counsel showing the effect of the measure on the existing law and the operation of the measure. This, however, was not a fiscal analysis by the county auditor as authorized by Section 9160(c) of the Elections Code.

Fiscal Impact of the Park Charter

In 2007, the Board of Supervisors Management Audit Division completed an audit of the County Parks Department. The auditor delivered the results of the audit to the Finance and Government Operations Committee of the Board in a report dated September 14, 2007.

In the audit report, the auditor explained in detail how the Park Charter works and its effects on the County's tax revenue available for general purposes other than for parks. As stated in Section 6 of the audit report, the amount of the Park Charter fund has increased over the years in relation to the County's total overall tax proceeds. Various state laws require the County to send a portion of its property tax proceeds to the State. The Park Charter requires funds to be set aside for parks based on a percentage of assessed property valuation without regard to taxes that the County must send to the State. This means the County has less property tax revenue than it would otherwise have; however, the formula in the Park Charter does not take this into account. The auditor wrote that if, hypothetically, the Park Charter funds had been proportionally reduced in FY 2006-2007 to account for the net impact of state law on county tax revenue, Park Charter funds would have been reduced by \$7.3 million, which would have then been available to the County for general purposes instead of restricted to use for parks.

The auditor also examined the financial status of the County Parks Department. As noted in Section 8 of the audit report, the County Parks Department had accumulated approximately \$74.4 million in cash as of June 30, 2006, of which approximately \$41,500,000 was "entirely uncommitted, undesignated, unallocated and not encumbered." In a September 6, 2007 response to the audit report, the County Parks Department wrote that the department had since allocated most of the \$41,500,000 to a variety of purposes, including \$20 million for the development of Martial Cottle Park, a \$5 million "Reserve for Deferred Maintenance," a \$2.5 million "reserve for vehicles," and \$13 million "contingency reserve." The department designated approximately another \$600,000 for various one-time and ongoing costs, and left about another \$400,000 undesignated. The \$13 million contingency reserve equals six months of County Parks Department operating expenses while the auditor had recommended that the Department maintain a reserve equal to three months.

The terms of the Park Charter do not state that any taxes or fees must be increased for the benefit of county parks. Nevertheless, by setting aside tax revenue that cannot be used for any other purpose, the indirect effect may require the county to increase taxes or fees in order to maintain levels of service in departments other than the County Parks Department. In addition, because the Park Charter funds are based on a percentage of assessed property value rather than a percentage of total tax revenue available to the County, the existence of the Park Charter means that the County has less tax revenue available to it than it would otherwise have for general purposes beyond parks.

The Park Charter funds may only be used for the acquisition, development, maintenance and operation of parks. Because the Board of Supervisors cannot allocate any of the Park Charter funds for other purposes, the existence of the Park Charter means that in a time of budget constraints, the County must either (a) cut services provided by agencies other than the County Parks Department, or (b) raise taxes or fees from other sources in order to keep other services at current levels.

Conclusions

The Park Charter has a fiscal impact on the County. There was no fiscal analysis provided to the voter when the Park Charter was modified and extended in the June 2006 election. The summary of the Park Charter measure in 2006 may have implied to some voters that its passage would have no fiscal impact. In the future, voters may benefit from a fiscal analysis of all county ballot measures.

Findings and Recommendations

The findings were reviewed with the subject agencies.

Finding 1

The Park Charter has a fiscal impact on the County; however, no analysis of fiscal impact by the county auditor appeared in the June 2006 ballot or Sample Ballot and Voter Information Pamphlet when the Park Charter was extended to the year 2021.

Recommendation 1

The Board of Supervisors should establish a policy by which the Board will request a fiscal analysis from the county auditor with respect to each and every county measure placed on the ballot in the future. This analysis should include direct and indirect potential effects of every county measure, even where the text of a measure does not directly affect county revenues or expenditures. This recommendation is intended to apply to all county measures and is not limited to future modifications and extensions of the Park Charter.

Finding 2

The Park Charter funds are based on a percentage of assessed property value rather than a percentage of total property tax revenue available to the County, therefore the existence of the Park Charter means that the County has less tax revenue available to it than it would otherwise have for general purposes.

Recommendation 2

The Board of Supervisors should place a measure on the ballot proposing that the Park Charter be modified so that the Park Charter funds are calculated based on a percentage of total property tax revenue available to the County for general purposes.

Appendix

Complete Text of Charter Amendment

(1) Beginning on July 1, 2009, through and including the 2021 fiscal year, the Board of Supervisors shall transfer from the general fund to the County Park fund an amount of money which shall not be less than an amount estimated by the Auditor-Controller to equal the amount that would be raised for that year by a tax of \$0.01425 per One Hundred Dollars (\$100.00) of assessed valuation of all real and personal property situated within the County of Santa Clara. In addition, the Board of Supervisors shall transfer into such fund all fees and revenues generated by the operation of county parks and all other monies received from the United States Government, State of California, or any other public agency or any person for county park purposes. Any interest earned on the investment of money in the county park fund shall be credited to the fund.

(2) The Board of Supervisors shall appropriate the money in the county park fund for the acquisition, development, or acquisition and development of real property for county park purposes and for the maintenance and operation of county parks. At least 15% of the funds transferred from the general fund shall be set aside and used for the acquisition of real property for county park purposes and at least 5% used for park development for county park purposes, and the remaining funds shall be used for county park operations.

(3) The county shall not acquire real property for any park purpose until the Board of Supervisors has determined that the acquisition is in conformity with the adopted county parks and recreation element of the general plan.

(4) This section shall be operative commencing with the 2009-2010 fiscal year (July 1, 2009) and shall be repealed at the end of the 2021 fiscal year; provided, however, any unobligated monies remaining in the fund on June 30, 2021, shall be used only for the purposes set forth in subsection (2) of this section.

(5) The intent of this section is to ensure that a minimum amount of money will be placed into the county park fund for acquisition, development, operation and maintenance purposes. Nothing in this section shall be construed as a limitation on the amount of money the Board of Supervisors may transfer into the county park fund for county park purposes or otherwise appropriate for county park purposes.

Key References

Documents

California Elections Code, Section 312.

California Elections Code, Section 9160.

California Elections Code, Section 9087.

County of Santa Clara, Sample Ballot, June 6, 1972.

County of Santa Clara, Sample Ballot, November 7, 1978.

County of Santa Clara, Voter's Pamphlet, November 7, 1978.

County of Santa Clara, Sample Ballot & Voter Information Pamphlet, November 4, 1986.

County of Santa Clara, Sample Ballot & Voter Information Pamphlet, November 8, 1988.

County of Santa Clara, Official Sample Ballot & Voter Information Pamphlet, June 2, 1992.

County of Santa Clara, Sample Ballot & Voter Information Pamphlet, March 26, 1996.

County of Santa Clara, Sample Ballot & Voter Information Pamphlet, June 6, 2006.

County of Santa Clara, Board of Supervisors Management Audit Division. Management Audit of the Parks and Recreation Department, September 14, 2007.

County of Santa Clara, Budget Director, Memo. December 10, 2007.

County of Santa Clara, County Counsel, Memorandum. December 17, 2007.

County of Santa Clara, County Executive, Memo. December 21, 2007.

County of Santa Clara, Director, Parks and Recreation Department, Memo to Board of Supervisors, December 6, 2005.

County of Santa Clara, Director, Parks and Recreation Department, Email to Civil Grand Jury, April 25, 2008.

Documents - continued

County of Santa Clara, Director, Parks and Recreation Department, Email to Civil Grand Jury, April 28, 2008.

County of Santa Clara, Director, Parks and Recreation Department, Email to Civil Grand Jury, April 30, 2008.

County of Santa Clara, Director, Parks and Recreation Department. Letter to Management Audit Division Manager, September 6, 2007.

County of Santa Clara, Finance and Government Operations Committee. Extract of January 9, 2008 FGOC Meeting Minutes.

County of Santa Clara, Finance and Government Operations Committee. *Finance and Government Operations Committee on Parks and Recreation Department Management Audit*, February 26, 2008.

County of Santa Clara, Finance and Government Operations Committee. *FGOC Audit Matrix*, January 3, 2008.

County of Santa Clara. Santa Clara County Charter, Revised March 2, 2004, Reprinted January, 2007.

County of Santa Clara, Member, Board of Supervisors, Memorandum. January 9, 2008.

County of Santa Clara, Board of Supervisors, Ordinance No. NS-8.27.

County of Santa Clara, Board of Supervisors, Minutes, December 6, 2005.

County of Santa Clara, Board of Supervisors, Minutes, December 13, 2005.

Interviews

February 7, 2008	Management Audit Division Manager, Santa Clara County
February 27, 2008	County Counsel, Santa Clara County
March 7, 2008	County Executive, Santa Clara County
March 14, 2008	Member, Board of Supervisors, Santa Clara County
March 14, 2008	Chief of Staff to Member, Board of Supervisors, Santa Clara County
April 8, 2008	Registrar of Voters, Santa Clara County
April 8, 2008	Election Division Coordinator, Ballot Layout Division, Registrar of Voters, Santa Clara County
April 8, 2008	Elections Service Coordinator, Registrar of Voters, Santa Clara County
April 23, 2008	Member, Board of Supervisors, Santa Clara County
April 23, 2008	Chief of Staff to Member, Board of Supervisors, Santa Clara County
April 25, 2008	Director, Department of Parks and Recreation, Santa Clara County
April 25, 2008	Deputy Director of Administration, Department of Parks and Recreation, Santa Clara County
April 25, 2008	Deputy Director of Park Operations, Department of Parks and Recreation, Santa Clara County

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 1st day of May, 2008.

Raymond A. Blockie, Jr.
Foreperson

Tim Cuneo
Foreperson pro tem

Kathryn C. Philp
Secretary