



DATE: January 27, 2025

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Eric Danly, City Attorney

SUBJECT: Adoption of a Resolution of the City Council Authorizing the City Manager to Sign on Behalf of the City a Funding Agreement with the County of Sonoma for Disbursement of Proceeds from Measure H, "The Improved and Enhanced Local Fire Protection, Paramedic Services and Disaster Response Transactions and Use Tax Ordinance"

RECOMMENDATION

It is recommended that the City Council adopt the attached Resolution authorizing the City Manager to sign a Measure H funding agreement with Sonoma County that either incorporates changes to the proposed County agreement substantially in accordance with the staff recommendations or that includes an agreement that the parties will negotiate and reach agreement on changes substantially in accordance with the staff recommendations to clarify key provisions such as those concerning maintenance of effort.

BACKGROUND

On March 5, 2024, the voters of Sonoma County approved Measure H, "The Improved and Enhanced Local Fire Protection, Paramedic Services and Disaster Response Transactions and Use Tax Ordinance," which added Article VIII, consisting of Sections 12.60 through 12.68 to Chapter 12 of the Sonoma County Code. Measure H is a \$0.005 transactions and use (sales) tax that provides funding that is intended to achieve effective and efficient regional fire response services throughout Sonoma County. Measure H is intended to address growing wildfire risks by generating revenue to improve fire preparedness, response times, and infrastructure, including equipment, training, and personnel. The measure aims to enhance Sonoma County fire services agencies' ability to respond to wildfires and emergencies, helping ensure public safety and the protection of vital resources. Approximately 7.19% of the revenue generated by Measure H is allocated to eligible fire and emergency services costs of the City of Petaluma. Petaluma's share of Measure H proceeds can support Petaluma's 2023 Public Safety Facility Master Plan and provide additional staffing for emergency response and wildfire mitigation efforts. Measure H imposes on Sonoma County a fiduciary duty to administer the tax proceeds. Measure H provides that its implementation is the responsibility of an Oversight Committee that the

Sonoma County Board of Supervisors must establish. The Measure H Oversight Committee is to consist of eleven appointed committee members to provide transparency and ensure fiscal accountability by reviewing the receipt and expenditure of Measure H revenues and an annual report from each agency that receives Measure H funds on that agency's use of the measure proceeds. Oversight Committee members must be Sonoma County residents who are not fire chiefs, fire directors, County employees or the spouses of any such County officials or employees. Six committee members will be chosen by the Board of Supervisors. Of the Board of Supervisor appointees, two will be selected from a list submitted by the Mayors and Councilmembers Association of Sonoma County; and two members will be selected from a list of names submitted by the labor organizations responsible for collective bargaining on behalf of firefighters employed by agencies that receive Measure H funds. Three committee members will be appointed by the Sonoma County Fire Chiefs' Association. One of the committee members appointed by the Fire Chiefs' Association will be selected from a list nominated by the general public. Two committee members will be appointed by the Sonoma County Fire Districts Association, with one of these members selected from a list of names submitted by the Sonoma County Taxpayers' Association.

Section 12-61 of the measure provides: "The Expenditure Plan set forth in section 12-66 is intended as a specific and legally binding and enforceable limitation on how the proceeds of the transactions and use tax imposed by this Ordinance may be spent." As part of the Measure H Expenditure Plan, Section 12-66(D) of the measure specifies allocation percentages for entities receiving funds generated by the measure. Section 12-66(D) sets Petaluma's share of the tax proceeds at 7.19%. Section 12-67(B) of the measure requires recipient agencies to prepare and distribute specified information annually to the Oversight Committee not later than December 31st of each year. As part of the oversight and administration of the measure, Section 12-68(A) requires a funding agreement between Sonoma County and Measure H funding recipients before any tax proceeds are distributed.

Section 12-65 of Measure H requires that tax proceeds shall not be used to supplant recipient agencies' historical general fund contribution originating from taxes and fees to support the operating cost for providing fire related services, excluding non-capital project and limited term expenses. Section 12-65 also establishes a baseline maintenance of effort amount consisting of each recipient's baseline fire-related services operating budget for fiscal year 2021-2022, excluding limited term funds such as those budgeted for capital projects, grants, grant matches, or other one-time revenues. Section 12-68(A) of Measure H further requires that the funding agreements between the County of Sonoma and recipient agencies shall establish existing revenue used to fund existing personnel in order to establish the baseline for measuring compliance with the requirement that sales tax proceeds from the measure shall only be used to pay for the purposes authorized in Section 12-66(B) of the measure (which include recruitment of additional personnel), and also retention of existing personnel.

It is important for Sonoma County and fulfillment of its fiduciary duty to administer and disburse Measure H revenues, as well as for the agencies receiving Measure H funds to operate under uniform agreements. Uniform funding agreements will ensure consistency in distribution, reporting, oversight, and administration of Measure H funds. Nonetheless, as a result of certain ambiguities in Measure H itself and the original draft funding agreements provided for review by

the various Measure H recipient agencies, staff have recommended changes to the proposed Measure H recipient funding agreement. The ambiguous Measure H provisions are those related to recipient agencies' historic general fund allocations to fire related services. The ambiguous provisions and recommended funding agreement provisions for addressing them are addressed further in the Discussion section, below.

DISCUSSION

Section 12-65 of Measure H prohibits recipient agencies from using the tax proceeds to supplant their historical general fund contributions from taxes and fees in support of fire related services operating expenses, and requires recipient agencies to maintain base-line fire related services operating funding consistent with their fiscal year 2021-2022 budgets. Measure H further provides that recipient agencies' whose general fund allocations to fire related services operating costs are materially different than their 2021-2022 allocations, will be deemed to not have upheld their maintenance of effort obligations and to be in violation of the measure. Unfortunately, the provisions of Measure H do not define "materially different." Presumably, it means "materially lower," since a recipient agency that has increased its general fund contribution to fire related services operating costs compared with its 2021-2022 allocation would not be supplanting its historical fire related services operating funding, but rather bolstering it. Nor does Measure H define "supplanting." Presumably, it means use of Measure H proceeds to allow a recipient agency to reduce its fire related services general fund operating costs contribution below its historical levels without necessarily reducing service levels, even though Measure H is intended to increase and not simply to maintain recipient agency fire related service levels.

There also is a seeming inconsistency in the provisions of Measure H. Section 12-64 of the measure expressly provides that the permitted uses of Measure H funds include not only recruitment but also *retention* of local firefighters (which presumably refers to compensation increases for existing firefighters). However, Section 12-68 of the measure, which establishes requirements for baseline existing staffing budget allocations, provides that the tax proceeds may only be used to pay for additional personnel. Finally, Measure H is silent on how the measure's maintenance of effort requirements for fire related services and staffing are to be construed in times of economic downturn, when recipient agencies' general fund revenues available for fire related services and staffing may potentially be reduced to below fiscal year 2021-2022 levels.

Measure H was placed on the 2024 ballot by the Sonoma County voters as a citizens' initiative. Nonetheless, the voters' legislative power when acting by initiative does not exceed the government's legislative power, and the obligations of Sonoma County, and of municipalities and districts providing fire services in Sonoma County that are eligible to receive Measure H tax proceeds to comply with applicable constitutional debt limits, continue in effect notwithstanding Measure H's maintenance of effort requirements. (See, e.g., Article XVI, Section 18 of the California Constitution). Also, budget adoption requirements of charter cities like Petaluma remain in effect. (See, Article IX, Sections 59 and 60 of the Petaluma Charter.) Nothing in Measure H purports to or likely can affect such recipient agency obligations. Therefore, Measure H's maintenance of effort provisions must be interpreted consistent with recipient agencies' existing constitutional and budget obligations.

In view of these considerations, and in discussion with other Measure H recipient agencies, staff have proposed the edits to the Measure H funding agreement draft shown in the redline copy included with this staff report. The resolution attached to this staff report reflects staff's recommendation that the City Council's authorization of the City Manager to sign a Measure H funding agreement with Sonoma County be conditioned to require changes to the funding agreement substantially in accordance with or consistent with the purposes of those in the attached redline draft, or at least, if there is insufficient time for the parties to agree on final changes to the funding agreement in time for disbursement of Measure H proceeds beginning in April, 2025, to require including a provision in the funding agreement whereby the parties agree to negotiate in good faith on changes to the agreement sufficiently clarifying the agreement maintenance of effort provisions and adequate provisions for the impacts of economic downturns that may result in recipient agencies' general fund revenues being reduced below 2021-2022 levels.

PUBLIC OUTREACH

This agenda item was noticed in compliance with the California Brown Act. Measure H was a ballot initiative that had its own public outreach process.

COUNCIL GOAL ALIGNMENT

City Council action to adopt the attached resolution in accordance with the staff recommendation would align with the following two current City Council goals:

"A City That Works for Everyone" by supporting the objective of "ensur[ing] a fiscally and organizationally sustainable City;" and

"A Safe Community That Thrives;" by providing resources to help "create a healthy, resilient, and engaged community that is prepared, safe, and housed."

CLIMATE ACTION/SUSTAINABILITY EFFORTS

Adoption of the attached resolution authorizing entering a Measure H funding agreement with Sonoma County providing for the City's receipt of Measure H tax proceeds, currently estimated at between \$3.9 and \$4.5 million annually, aligns with Section 3, Climate Adaption and Social Resilience in the City's Climate Emergency Framework, adopted by the City Council January 11, 2021. The Framework's climate adaptation and resiliency goals include preparing for the expected impacts of climate change by assessing anticipated climate impacts, and by prioritizing known climate change risks (including wildfire risks) with the greatest anticipated impact on Petaluma residents, environment, and economy via yearly budgets for adaptation and resiliency implementation.

Furthermore, the Natural Systems and Sequestration Action Plan of the Blueprint for Climate Action contains sections which may relate to allowable uses for Measure H, including Urban Forestry, Open Space Management, Climate Smart Working Lands, and City Landscape Management. There may also be a nexus in the Carbon Neutral Asset and Facilities Management Action Plan as funding needs align with future capital improvements for fire facilities.

ENVIRONMENTAL REVIEW

The proposed Council action to adopt a resolution authorizing the City Manager to sign a Measure H funding agreement with Sonoma County is not a "project" subject to review under the California Environmental Quality Act ("CEQA") in accordance with Section 15378 of the CEQA Guidelines, which provides that "projects" for CEQA purposes do not include the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. Subsequent actions or programs of the City utilizing Measure H funds that may result in environmental impacts subject to CEQA review will be separately analyzed in accordance with applicable CEQA requirements.

FINANCIAL IMPACTS

Approximately 7.19% of the tax proceeds from Measure H are allocated to eligible fire protection and emergency services costs of the City of Petaluma. Measure H is currently projected to generate between \$3.9 million and \$4.5 million annually for Petaluma.

ALTERNATIVES

This action is being brought for City Council approval at this time to ensure the required funding agreement between Sonoma County and the City is in effect so that Petaluma will begin receiving its share of Measure H proceeds when they first become available in April, 2025. Delay in this action could result in delaying the City's access to Measure H funds. Accordingly, there is no alternative action recommended by staff in lieu of approving the attached resolution authorizing the City Manager to sign a Measure H funding agreement on behalf of the City.

ATTACHMENTS

1. Resolution of the City Council Authorizing the City Manager to Sign on Behalf of the City a Funding Agreement with the County of Sonoma for Disbursement to Recipient Sonoma County Fire Services Agencies of Proceeds from Measure H
2. Recommended edits to Measure H funding agreement