



Supplemental Sales Tax Oversight Commission Staff Report

Agenda Item: G.1
Date: November 9, 2022
Supplemental Sales
Tax Oversight
Commission
Department: _____

AGENDA TITLE: Review of Origins and Background of Measure R (Orinda Essential Services Measure) Approved by the Voters November 2020

RECOMMENDATION:
Receive and Discuss Report

BACKGROUND:
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November 2022, marks two years since the voters in Orinda approved Measure R, the local 1% sales tax override measure intended to fund additional wildfire prevention, emergency preparedness, road maintenance, storm drain repair, and essential city services. The measure was approved in an election with over 90% voter turnout, with 58.7% voting yes, and 41.3% voting no. The Supplemental Sales Tax Oversight Commission was appointed by the City Council in February 2021, and the Commission had its first meeting in March 2021. Revenue from Measure R began to flow in April 2021, and the Commission produced its first annual report as of the end of the 2020/21 fiscal year which served as the close-out report on the predecessor Measure L, and the partial first year of Measure R in early 2022. The Commission will soon begin work on its second annual Measure R report which will cover a full fiscal year from July 1, 2021, to June 30, 2022.

DISCUSSION:

This is an opportune time to review the origins and background of Measure R as the Commission begins its next annual review. Various future funding decisions regarding the use of Measure R funds have to be made by the Council as the 2023/24 and 2024/25 Two-Year City Budget will be developed and considered in the second quarter of 2023. In addition, some in the community make an argument that "Measure R was meant for wildfire risk reduction, not infrastructure, particularly in the first few years." Unfortunately, this misunderstanding complicates the dialogue on how to make the best and most effective use of the funds being generated by Measure R, and is in fact, as will be illustrated in this report, revisionist history.

The Measure R Ordinance (attachment 1), and the actual ballot question wording below, clearly identified that a variety of services and activities would be supported by Measure R, and that it is a general tax:

ORINDA ESSENTIAL SERVICES MEASURE To help maintain and enhance essential City services, including wildfire risk reduction throughout Orinda, preparation for emergencies and disasters, repair of public storm drains, continued public street maintenance, and other city services, shall the City of Orinda increase its existing one-half cent sales tax to one cent, which would generate approximately \$2.4 million annually for a period of twenty years, with financial audits, public review of all expenditures, and a citizens' oversight committee?	YES
	NO

The City Attorney's Impartial Analysis which also appeared in the ballot pamphlet (Attachment 2) confirms this as well. These same points were also clearly made in the Measure R Information Sheet (attachment 3) which was the City staff's informational summary of Measure R as proposed to and considered by the voters. Note that page 2 of the Measure R Information Sheet projected spending about \$3 Million on Wildfire and Emergency Preparedness over the first 4 - 5 years, and \$10 Million on Storm Drains in that same time frame. The Resolution/Ordinance, Ballot Question wording, City Attorney Analysis, and Measure R Information Sheet represent the only official City "speech" on the matter presented to the voters.

In addition, the voters had arguments pro and con, and rebuttals, to also consider in making their decisions (included in Attachment 2) as submitted by the proponents and opponents. State Election Code (Sections 9120, 9162, 9501) provides for how those arguments for and against are selected. The City was not involved in any of those ballot arguments. Many of the arguments being made now are just a continuation of the arguments against, which the voters took into consideration before approving Measure R. So it must be assumed that they duly considered the competing positions.

Some in the community like to cite the materials and advertisements prepared and utilized by the Yes on Measure R Committee as an additional indicator as to intent on use of the funds. First, it is important to note none of those materials were communication from the City or considered City "speech," even though some elected officials were active participants in the Yes campaign. To be sure, the Yes on Measure R committee made the strong point that Orinda needed new funds to support efforts to reduce wildfire risk in Orinda. However, the record shows that all Yes on Measure R publications and meetings emphasized that infrastructure needs, particularly storm drains, would also require significant funding, even in the first few years.

It is also important to note again that Measure R is a general tax and can be used for any legal municipal purpose. However, the ballot measure did identify likely areas for use of this funding and those areas have been reflected in how the funding has been allocated to date.

In fact, the initial Measure R five-year expenditure plan approved by the City Council in 2021, after the Measure passed, budgeted significant amounts of funds for storm water

and roads, while still allocating and reserving additional funding for wildfire prevention and emergency preparedness. Early in 2022, the City Manager recommended, with subsequent Council approval, substituting budgeted Measure R funds for storm drains with Federal Stimulus funds, thereby also freeing up funding for other Measure R purposes including wildfire prevention. After that action, the 2022 paving project bids came in higher than anticipated, and staff recommended that Measure R funds be used to fill the gap, to fulfill commitments and promises to voters in regard to road maintenance. At the end of the day, more funds remain available for wildfire prevention-related expenditures, than prior to the two budget adjustments (storm water projects funds by ARPA funds and 2022 Paving Project). The availability of funds is further buoyed by higher than initially projected revenues.

As noted in the attached materials, decisions about the use of Measure R funds are made by the Council at public meetings based on the City's current and projected needs (e.g., through the 2-year City Budget, 5-year Capital Improvement Plan, periodic budget adjustments, and ongoing appropriations). This is the hallmark of a general tax: current and future Councils are responsible for making policy decisions about the use of revenue. As such, the current Council should avoid setting policy that would unduly restrict the actions of future Councils. In addition, it is important that what is a General Tax not be re-characterized in any way as a Special Tax.

The role of the Commission as the oversight body is set forth in the Measure R Ordinance, which states that its duty is: "...to review the expenditures of tax revenues under the authority of the Ordinance." This would include ensuring that the funds are being utilized as a General Tax and for general governmental purposes, including the purposes listed in the Measure submitted to the voters (wildfire prevention, emergency preparedness, roads, and storm drains). In addition, the Commission provides recommendations to the City Council in regard to Measure R, and serves as a body with which staff engage and consult as they work to implement Measure R funded activities and programs.

Since inception, the Commission's focus has primarily been on wildfire prevention. Its first annual report summarized the many actions and activities that have taken place to make Orinda more fire safe by the City, the Moraga-Orinda Fire District, and others. The Commission's first annual report highlighted those and also identified accomplishments that occurred after the end of the reporting period. It is anticipated that the second annual report will further document progress. It will also highlight, a number of additional actions that have taken place since July 1, 2022, including the recent approval of a fire fuels reduction incentive program, and the addition of an Education and Outreach Coordinator to greatly expand efforts related to wildfire prevention.

While it has taken some time to gear up wildfire prevention-related programs and activities funded by Measure R, the City with the Commission's input and guidance is on track to expend the \$3 Million on Wildfire and Emergency Preparedness over the first 4 - 5 years as indicated in the Measure R Information Sheet first prepared when Measure R was being considered by the voters. It is anticipated that in early 2023, the

Commission's attention will turn towards the roads and storm drain elements of their responsibilities while still retaining a considerable focus on wildfire prevention and emergency preparedness. To this end, the Commission had requested recently that staff bring forward additional background information on these infrastructure areas.

NEXT STEPS: None directly as a result of this item.

FISCAL IMPACT: None directly, though information contained herein may be of assistance as future expenditure plans are developed and recommendations made.

Respectfully Submitted by:
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Approved by:

David Biggs
David Biggs, City Manager 10/27/2022