

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Toni Taber, CMC  
City Clerk

**SUBJECT: COMMUNITY FACILITIES  
DISTRICT NO. 8: SPECIAL  
ELECTION DATES AND COSTS**

**DATE:** December 2, 2019

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**SUPPLEMENTAL**  
**Updated Argument Dates**

This memorandum is a supplement to the Council memorandum submitted by Public Works recommending a special election regarding Alteration No. 1A and Alternation No. 1B of Community Facilities District 8 (Communications Hill) and designated the City Clerk as the official to conduct said special election by all mailed-ballot. This memorandum provides important information to the Council regarding the proposed special election, as well as deadlines and costs should such an election be called.

On November 19, 2019, the Council will open a Public Hearing regarding the proposed Alternation No. 1A and No.1B of CFD 8. A notice for this public hearing was published in the Post Record on November 8, 2019.

Upon closing the Public Hearing, the Council may call a special election, to be conducted among the registered voters of CFD 8, via mailed-ballot. **Since this special election is not being consolidated with a Regular Municipal Election or General Election, the City Charter requires the affirmative vote of ten (10) members of the Council to call the special election and submit the matter to the voters of CFD 8.** That is because Charter Section 1601 states “no Special Municipal Election shall be held at any other time than at the time of a Regular Municipal Election or General Election,” except in certain situations, not applicable here, or “where the holding of Special Municipal Election at another time is authorized by the affirmative vote of ten (10) members of the Council.”

According to State law, a special election on a Resolution of Consideration for a Community Facilities District must be held at least 90 days but not more than 180 days following the adoption of the Resolution of Consideration. (Gov. Code §§53326, 53338.) Council adopted the Resolution of Consideration for CFD 8 on October 29, 2019. Accordingly, the special election may occur between January 27, 2020 and April 26, 2020.

The Clerk recommends that the special election conclude **on March 10, 2019 at 8:00 p.m.**, after which any ballots received after that date and time, either by mail or hand-delivery, will not be counted. This date was selected because it occurs after the Primary Municipal Election on March 3, 2020, when City Clerk Staff will be more available.

After the election is concluded, the City Clerk will canvass the ballots and tabulate the votes received in public view on March 11, 2019 beginning at 10:00 a.m. on the 14th Floor of San José City Hall in Room 1417 and will continue from day to day until all ballots are counted. Upon completion of the canvass the City Clerk will return to Council at the soonest possible time to present the results of the election.

In addition to the ballot, materials to be included with the ballot are any direct argument for or against the alteration of the CFD; rebuttal arguments, if authorized; and an impartial analysis prepared by the City Attorney. These materials are to be prepared and submitted in accordance with the California Elections Code. (Gov. Code §53327.) To allow for the 10-calendar-day public examination period required by Elections Code, the Clerk must fix a date 14 days from the calling of the election as the deadline for the submittal of all arguments. (Elec. Code §§9286, 9295.)

Accordingly, if the Council calls the special election at the December 3, 2019 meeting, the deadline for the submittal of ballot arguments is as follows:

| <b>If Rebuttal Arguments Are Authorized:</b> |                            |
|--|----------------------------|
| Direct Arguments                             | Friday, December 6, 2019   |
| Rebuttal Arguments/Impartial Analysis        | Tuesday, December 17, 2019 |

| <b>If Rebuttal Arguments Are Not Authorized:</b> |                            |
|--|----------------------------|
| Direct Arguments/Impartial Analysis              | Tuesday, December 17, 2019 |

In addition, to the above materials, the Clerk will include the Resolution of Consideration with each ballot. In accordance with Elections Code Section 4101, ballots and accompanying materials will be mailed to all qualified electors at least 29 days before the Special Election and will be completed at least 10 days before the election.

### **COST SUMMARY/IMPLICATIONS**

The City Council has appropriated \$2,742,361 of the General Fund for elections costs in 2019-2020 (Appropriation 3955 – Elections and Ballot Measures). It is important to note that the election costs are estimates only.

Because this is an all-mail ballot of registered voters, the City Clerk Staff will verify the signatures of all voters instead of sending them to the Registrar of Voters for review. This will enable the election to move more quickly and lower election costs. Because it's an election, we would use Secretary of State approved ballot printers and bear the full cost of printing and mailing. The estimated cost for an 8-page booklet, envelopes, and ballot is \$2,473.50. Return postage is expected to be approximately \$875.00.

Additionally, the City Council's decisions pertaining to the inclusion of rebuttal arguments and/or the full measure text in sample ballots can offer significant cost savings.

### **IMPARTIAL ANALYSIS:**

Under Elections Code Section 9280, the City Attorney “shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure.” The Impartial Analysis appears preceding the arguments for and against the measure in the voter’s handbook and is limited to 500 words.

### **BALLOT ARGUMENTS:**

Arguments for and against a ballot measure may be submitted that are 300 words or less (Elections Code Section 9282). Only one argument for and one argument against will be printed in the Sample Ballot. A ballot argument must be accompanied by the printed name and signature or printed names and signatures of the author or authors submitting it, or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. In addition, no more than five signatures will appear with any argument. In case any argument is signed by more than five authors, the signatures of the first five shall be printed. (Elections Code §9283.)

If more than one argument for or against is submitted, the Elections Code establishes a priority order, shown below (Elections Code §§9282 and 9287):

1. The legislative body, or member or members of the legislative body authorized by that body.
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.
4. Individual voters who are eligible to vote on the measure.

### **REBUTTAL ARGUMENTS:**

In addition, the Council has the discretion to permit rebuttals to arguments to be printed in the Sample Ballot. Rebuttal arguments must be 250 words or less. (Elections Code §9285). The Council determined not to allow rebuttal arguments for Measure E—Cardroom Gaming in the November 2012 election, nor did they allow rebuttal arguments for Measure G—Employee Retirement Boards Governance Structure and costs were reduced accordingly. The Council, however, did permit rebuttal arguments for Measure B—tax measure in the June 2016 election, and for Measure C—Marijuana Initiative in the June 2016 election.

If the Council chooses to permit rebuttals to arguments, the City Clerk will send a copy of an argument in favor of the measure to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments. The author or a majority of the authors of an argument relating to a measure may prepare and submit a rebuttal argument or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument, but no more than five persons may sign the rebuttal. (Elections Code §§9285 and 9283.)

HONORABLE MAYOR AND CITY COUNCIL  
December 2, 2019  
**Subject: CFD8**

The memorandum has been coordinated with the City Attorney's office.

A handwritten signature in blue ink, appearing to read "Toni J. Taber", with a stylized flourish at the end.

Toni J. Taber, CMC  
City Clerk

For questions please contact Toni Taber, City Clerk, at (408) 535-1270.