



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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**AGENDA TITLE:** Call for a Special Election on June 5, 2012 on the Annexation of the City of Sausalito into the Southern Marin Fire Protection District for the Provision of Fire Protection Services.

**RECOMMENDED MOTION:** Adopt a Resolution of the City Council of the City of Sausalito Calling and Giving Notice of a Special Municipal Election to be Held on Tuesday, June 5, 2012, Requesting Consolidation of that Election with the State Primary Election, and Requesting Services from the Marin County Registrar of Voters with Respect to that Election

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### SUMMARY

The Southern Marin Fire Protection District (SMFPD) has been providing fire services to the residents, business community, and visitors of Sausalito since 2004 pursuant to a contract for service. The City and SMFPD have worked together since that time to determine the most efficient and cost effective mechanism to provide Sausalito with high quality fire protection and emergency services. The City and SMFPD hired CityGate an outside, professional, and highly respected expert in the field to study and analyze the options available to both parties for the provision of fire protection and emergency services.

Years of study, public input, and analysis resulted in the conclusion that the best way to allow for the continuation and enhancement of the exceptional fire protection and emergency services provided by SMFPD to Sausalito was to formally annex the territory of the City into the boundaries of SMFPD. This conclusion was bolstered by the fact that annexation results in a significant cost savings for the provision of these same services - \$184,000.00. In September 2011 a majority of the City Council voted to approve the submittal of an application to the Marin County Local Agency Formation Commission (LAFCO) for the annexation of the City into SMFPD.

On November 10, 2011 LAFCO approved the annexation of the territory of the City of Sausalito into the SMFPD for the provision of fire protection services by a vote of 7-0. On December 10, 2011 a request for reconsideration was submitted to LAFCO by Councilmember Linda Pfeifer and resident John Flavin. LAFCO held a hearing on February 9, 2012 on the request for reconsideration of the Commission's approval of the annexation of the territory of the City of Sausalito into the SMFPD for the provision of fire protection services. The Commission denied the request for reconsideration by a

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vote of 5-2. On February 13, 2012 LAFCO held an administrative hearing to receive protests to the proposed annexation.

On February 24, 2012, the Marin County Registrar of Voters, Elaine Ginnold, certified that on February 23, 2012 the verification of all signatures on the LAFCO Sausalito Fire Department Consolidation Protest Petition was completed. The Registrar reported that as of February 23, 2012, there are 5,103 registered voters in the City and made the following determinations:

Signatures required	1,276
Raw Count	1,970
Sample size	1,970
No. valid signatures in sample	1,370
No. duplicates in sample	139
No. invalid signatures in sample	461

Pursuant to California Government Code Section 57075 because more than 25% (1,276) and less than 50% of the registered voters in Sausalito submitted validated protests LAFCO is required to cause the question of annexation to be submitted to the voters of Sausalito for approval.

## BACKGROUND

The decision for Fire Annexation was the result of a transparent and participatory public process that included an independent review by highly qualified experts, resulting in an informed, non-political, rational, and economic conclusion, by democratically elected representatives, that is in the best interest of the citizens of Sausalito.

Opponents to Fire Annexation are trying to disguise the Fire Annexation issue by making it appear more complicated than it is. Specifically, opponents to Fire Annexation have alleged that the process wasn't independent, and that the process didn't consider certain pension assumptions. The campaign to impugn the Fire Annexation's report used populist rhetoric such as: double-dipping; unfunded accrued actuarial pension liabilities; and proposed future changes in generally accepted accounting principles.

City staff successfully rebutted the claims of opponents:

### ***The process was indeed Independent, Transparent, and Accountable***

The City and the District formed a dual Two-by-Two Committee. The Committee was comprised of two elected officials from each governing body and their appointed staff – City Manager and Fire Chief. The elected officials represented the interests of their respective citizen constituents. The appointed officials represented the operational and

financial interests of their respective organizations. The Committee held public meetings and encouraged participation from the public and labor groups.

The Committee's charter was to study all of the options that would lead to providing the most cost-effective delivery of Fire Safety services to their citizens.

The City of Sausalito and SMFPD, through the Two-by-Two Committee requested assistance from an independent consultant to conduct a feasibility study that fully analyzes the options. The Two-by-Two Committee selected a consultant through a competitive public procurement process that included developing a RFP, reviewing proposals, and formally executing contracts with prominent industry experts – CityGate, at their respective regular Council/Board meetings.

There was no pre-determined outcome. Rather, for the past 3 years, CityGate reviewed all possibilities, including full consolidation of the City's fire services with various possible governance arrangements such as: District boundary modification; creation of a new Fire District or a JPA; a modification of the present contract for service(s); or if significant impediments were found, no change at all in the present fire service contract arrangement. The feasibility study examined more completely merging some or all of the City and District's Fire Service operations in order to gain greater economies of scale, avoid fiscal, governance and operational duplication and where needed, improve service.

***The Process Employed Actuarial Experts and Analyzed all Pension Assumptions***

The City retained the firm of Bartel Associates, LLC. Bartel Associates is one of the most renowned actuaries in the State of California. John Bartel is one of the seven members of the State of California Actuarial Advisory Panel providing recommendations to Governor Jerry Brown.

The purpose of Bartel Associates engagement with the City was to estimate the difference between the City's CalPERS contributions before and after a merger with SMFPD. Bartel Associates prepared a comparison and incorporated the most recent CalPERS valuation available to the City. The City relied on the actuarially determined appropriate amounts included in the Bartel Associates report to determine the amount of expenses and revenues to be transferred in conjunction with the Annexation Application to LAFCO. i.e., all pension actuarial assumptions were analyzed including any impacts from alleged double-dipping, and unfunded liabilities.

Recognition of yet to be determined and future Governmental Accounting Standards Board (GASB) generally accepted accounting principles were not analyzed because they are unknown; yet to be determined; and whatever they are, whether actuated or not, they will have an equal impact on the pension liabilities regardless if Fire Annexation will occur or not. Additionally, GASB accounting principles regarding financial statement presentations of pension liabilities and pension costs are completely separate from pension funding. i.e., the actual calculations for funding and contributing

to pension plans will continue to be a function of generally accepted actuarial principles, not generally accepted accounting principles. And, these costs were fully analyzed by the Expert actuaries.

In the final test of the independence of the process, and the financial validation of the pension liabilities, the final application was submitted to LAFCO. LAFCO is required by State of California law to provide an independent review (representing the taxpayers of both the City and the District) of the financial viability of the proposal.

**LAFCO, by a unanimous vote, independently confirmed all of the financial facts in the application, including the pension liabilities.**

And then, Independence was further assured through a second review by LAFCO after a Request for Reconsideration was filed. The Request for Reconsideration claimed that financial facts existed that were not known at the time of the application to LAFCO, and that those facts were material and dilatory to the financial representations in the City's application. This second-round, and again independent review, by LAFCO and all of its independent attorneys and actuaries, with confirmation from the City's independent actuarial expert (Bartel Associates) and independent attorney expert on districting and LAFCO procedures (Michael Colantuono, Esq.), for a second-time, confirmed that all of the financial information was included in the City's original application and that the plan was financially viable as submitted.

Plainly speaking, Fire Annexation saves the City, and the City's residents and taxpayers, money, while providing excellent Fire Services to Sausalito and its community.

## **DISCUSSION**

Following the certification of the written protests by the Registrar of voters, LAFCO has to take action to adopt: (1) findings regarding the number of written protests it received; and (2) a resolution forwarding the annexation for confirmation by the voters.<sup>1</sup> LAFCO must also inform the City Council and the City's elections official that they must conduct an election and request the City Council "to direct the elections official to conduct the necessary election."<sup>2</sup> LAFCO is scheduled to take these actions at its next regularly scheduled meeting on March 8, 2012. The LAFCO staff report is attached hereto as **Attachment No. 2.**

Once informed, the City Council has to "direct the elections official to conduct the necessary election."<sup>3</sup>

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<sup>1</sup> Gov. Code, §§ 57075(a)(2), 57115.

<sup>2</sup> Gov. Code, § 57000(d).

<sup>3</sup> Gov. Code, § 57000(e)(1).

The election takes place within the City and its registered voters determine the matter.<sup>4</sup> Voters residing outside the City, but within the Southern Marin Fire Protection District, are not eligible to vote on the annexation proposal.<sup>5</sup> Each ballot cast by the registered voters in the City is entitled to one vote.<sup>6</sup>

The LAFCO statute provides that the election on the annexation proposal is governed by “the general election provisions and the local election provisions of the Elections Code, so far as they may be applicable, relating to the qualifications of voters, the manner of voting, the form of the ballot, the duties of precinct and election officers, the canvassing of returns, and all other particulars.”<sup>7</sup>

Pursuant to the applicable statutes the available dates to hold the election on annexation are:

- June 5, 2012
- August 28, 2012 (mail ballot)
- November 6, 2012

The election must be held on the next established election date under Elections Code § 1000 that occurs “at least 88 days after the date upon which the resolution calling the election was adopted.”<sup>8</sup> If the City Council calls the election by March 9, 2012, then the election must be held on June 5, 2012.

The resolution being considered by LAFCO on March 8<sup>th</sup> includes the statutory language of the ballot measure. Which reads as follows:

“Shall the order adopted on November 10, 2011 and reaffirmed on February 8, 2012 by the Marin Local Agency Formation Commission, ordering the annexation of the territory of the City of Sausalito to the Southern Marin Fire Protection District be confirmed subject to the terms and conditions specified in the order?”<sup>9</sup>

Within five days after the City Council calls the election, LAFCO Executive Officer Peter Banning must submit an impartial analysis of the proposed annexation not to exceed 500 words to the LAFCO commission for its approval or modification.<sup>10</sup> The impartial analysis was included in the staff report that is going to LAFCO for consideration and action on March 8<sup>th</sup>. (**See Attachment No. 2**)

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<sup>4</sup> Gov. Code, § 57118(d).

<sup>5</sup> *Id.*

<sup>6</sup> Gov. Code, § 57140(a).

<sup>7</sup> Gov. Code, § 57125(a)..

<sup>8</sup> Gov. Code, § 57132.

<sup>9</sup> Gov. Code, § 57133.

<sup>10</sup> Gov. Code, § 57144.

If the Council acts to call the election for June 5, 2012 this special election should be consolidated with the statewide elections to be conducted by the Marin County Registrar of Voters. Upon consolidation the County Registrar of Voters determines the deadlines for submitting arguments for or against the proposed annexation. The City Council, or any members of the City Council it authorizes, may file a written argument in favor of (or against) the proposed annexation. The argument must not exceed 300 words in length.<sup>11</sup> It may also submit a rebuttal argument by the date designated by the elections official.<sup>12</sup> Attached as **Attachment No. 3** is the Marin County Registrar of Voters "Basic Deadlines for Measures to be Placed on the Ballot June 5, 2012" which sets forth the applicable dates.

Attached are the City's regulations regarding campaign financing. These requirements are set forth in Chapter 4 of the City's Municipal Code and were adopted pursuant to Ordinance No. 1136 (Campaign Finance Reform) adopted in March, 1999 (**Attachment No. 4**) and Ordinance No. 1202 (Independent Expenditures) adopted in October, 2010 (**Attachment No. 5**).

With respect to the measure being submitted to the voters the following provision of Chapter 4.04 applies:

"Limitations applicable to ballot measure committees controlled by candidate. In the event a candidate for elective City office forms or controls a committee which supports or opposes a ballot measure relating to City law, the candidate and committee shall cumulatively be subject to the contribution limitations set forth in subsections 1, 2 and 5, above. Ballot measure committees organized to support or oppose a matter relating to City law which are not controlled by a candidate for elective City office shall not be subject to the contribution limitations set forth in this Chapter."

## FISCAL IMPACT

The County Registrar of Voters estimates the costs of the June 5<sup>th</sup> election to be between \$7,654.50 - \$12,757.50. The same cost estimate would apply to a November election. The cost of a mail in election in August is estimated to range between \$30,618.00 - \$40,824.00.

## STAFF RECOMMENDATIONS

Adopt a Resolution of the City Council of the City of Sausalito Calling and Giving Notice of a Special Municipal Election to be Held on Tuesday, June 5, 2012,

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<sup>11</sup> Gov. Code, § 57145(a).

<sup>12</sup> Gov. Code, § 57147; Elec. Code, § 9167(a).

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Requesting Consolidation of that Election with the State Primary Election, and  
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that Election

## ATTACHMENTS

1. Resolution of the City Council of the City of Sausalito Calling and Giving Notice of a Special Municipal Election to be Held on Tuesday, June 5, 2012, Requesting Consolidation of that Election with the State Primary Election, and Requesting Services from the Marin County Registrar of Voters with Respect to that Election
2. LAFCO March 8, 2012 Staff Report
3. Marin County Registrar of Voters "Basic Deadlines for Measures to be Placed on the Ballot June 5, 2012
4. Ordinance No. 1136
5. Ordinance No. 1202

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