



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/03/2020

ITEM NO: 8

DESK ITEM

DATE: October 28, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve an Amendment to the Employment Agreement Between the Town of Los Gatos and the Town Attorney and Authorize Salary and Benefits Budget Adjustments in the Amount of \$13,528 from Available General Fund Capital/Special Projects Reserve

RECOMMENDATION:

Attachment 3 contains public comments received 11:01 a.m. Monday, November 2, 2020 to 11:00 a.m. Tuesday, November 3, 2020.

Attachments Previously Received with the Staff Report:

1. Amendment to the Employment Agreement – Town Attorney
2. Salary Schedule for Town Council and Management

Attachment Received with this Desk Item:

3. Public Comments Received 11:01 a.m. Monday, November 2, 2020 to 11:00 a.m. Tuesday, November 3, 2020

PREPARED BY: Lisa Velasco
Human Resources Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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From: Phil Koen

Sent: Monday, November 2, 2020 11:05 AM

To: BSpector <BSpector@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Marcia Jensen <MJensen@losgatosca.gov>

Cc: Matthew Hudes; Maria Ristow; Michael Kane; Rob Stephenson; Mary Badame; Heidi Owens; Larry Maggio; Jak Van Nada; Lee Fagot; Catherine Somers; Laurel Prevetti <LPrevetti@losgatosca.gov>; Stephen Conway <sconway@losgatosca.gov>

Subject: Use of General Fund Capital/Special Project fund balance to fund on-going unbudgeted operating expenses (Agenda Items #7, #8, #9 and #10)

Dear Council Members,

At the upcoming Council Meeting you will be discussing various budget actions which will require additional funding. For FY 21, agenda Items #7, #8, #9 and #10 will require \$200,420 in additional sources of funds. It should be pointed out, that the \$200,420 being requested does not represent the total annual cost, but only the impact on the remainder of FY 21. The Staff is recommending that these on-going, unbudgeted operating expenses (the majority are incremental salary and benefits) be funded from the General Fund Capital/Special Project fund balance.

The Capital/Special Project fund balance is an “assigned” (as opposed to unassigned”) fund balance which is to be used for the acquisition and construction of capital facilities. Clearly the proposed use of funds does not fall within the assigned definition. The Council, however, does have the full authority to use the funds as they determine. Council should also be aware that the Staff has repeatedly informed the Council that “establishing a reliable, dedicated source of funding for basic capital improvements beyond the use of accumulated reserves remains a long-term need and important goal”. The use of this assigned fund balance to pay for on-going, unbudgeted operating expenses, such as salary and benefits, will eventually deplete this reserve, leaving no source of funds for future capital projects, unless other sources are identified.

You should also be reminded that in the FY 21 Adopted Budget, the Staff already programed \$769,308 from this assigned general fund balance to “plug” a FY 21 operating budget hole. This action combined with the items being discussed tonight, will result in \$1m of the Capital/Special fund balance being used to fund on-going general fund operating expenses in just FY 21. This is not fiscally prudent since this suggests that FY 21 operating revenues are insufficient to fund current operating expenditures.

Normally, unbudgeted expenditures such as those being proposed by Items #7 - #10, can be covered by the existing adopted budget because Staff has historically taken a “conservative” approach to budgeting general fund revenues. This results in actual revenues exceeding the budget creating funding for unbudgeted expenditures. However, given the current economic impact of COVID 19, it is highly unlikely that the Town’s adopted FY 21 revenue budget will be achieved based on the material declines being reported County wide in Sales Tax and TOT receipts. These two revenue sources account for approximately 25% of the Town’s total general fund revenues.

To date, the Staff has not reported (at least not publicly) the Town’s actual revenues for Q1 FY 21 as compared to the adopted budget. The cities of Los Altos and Campbell have disclosed to the public an analysis of Q1 FY 21 revenue results as well as a revised revenue estimates for FY 21. Both cities are reporting material declines in Sales Tax and TOT receipts. I would recommend the Council ask the Staff to publish as soon as possible an update on the Town’s budget vs actual Q1 revenue and expense results

so the Council has a clear understanding of how tax receipts are tracking and if any FY 21 budget adjustments are required. This could be the subject of a first ever, joint Council/Finance Committee study session.

While it would have been desirable for the Staff to provide an update on Q1 results in conjunction with the requests for funding items #7-#10, the Council may not have the flexibility to wait on making a determination to fund these items. If that is the case, the Council should consider using the \$1.2m Surplus Property Reserve instead of the Capital/Special Project Reserve to provide the required funding for the unbudgeted expenditures outlined in agenda items #7 - #10.

The Surplus Property reserve was authorized by the Council on May 19, 2020 to “be used for alleviating COVID 19 economic impacts including revenue declines (for example Sales Tax, Property Tax, and Transient Occupancy Tax) and/or unanticipated expenditure cost increases in FY 2019/20 and beyond”. The Surplus Property Reserve balance is more appropriate and is consistent with the definition of fund use than the Capital/Special Project Reserve. I would recommend that if funding approval is required now, the Council direct Staff to comply with the May 19, 2020 directive and use the Surplus Property Reserve rather than depleting the Town’s only source of future capital project funding, namely the Capital/Special Project Reserve.

Thank you for your consideration.

Phil Koen

From: Lee Fagot

Sent: Monday, November 2, 2020 3:47 PM

To: Phil Koen

Cc: BSpector <BSpector@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Marcia Jensen <MJensen@losgatosca.gov>; Matthew Hudes; Maria Ristow; Michael Kane; Rob Stephenson; Mary Badame; Heidi Owens; Larry Maggio; Jak Van Nada; Catherine Somers; Laurel Prevetti <LPrevetti@losgatosca.gov>; Stephen Conway <sconway@losgatosca.gov>

Subject: Re: Use of General Fund Capital/Special Project fund balance to fund on-going unbudgeted operating expenses (Agenda Items #7, #8, #9 and #10)

Phil,

Excellent observations, analysis and recommendations. Your proposals are specific to help with this challenge of very probable **declining revenue** for the Town, and the proposed **new spending** on salary and benefits - which is **NOT** the intended use of these ASSIGNED funds for Capital/Special Projects. And, as you also pointed out, and the Council earlier approved, any surplus in our Budget should be kept to alleviate COVID's financial impact on the Town. While we have good, hard working Town employees, we need to be more strategic and financially sound in our decisions and fund allocations, and more transparent in the analysis of financial matters.

There needs to be a more earnest and open discussion of these agenda items (7,8,9 and 10) before a decision on such spending is made. I trust the Council members will pull and discuss earnestly.

Thanks again,
Lee Fagot

From: Lee Fagot

Sent: Monday, November 2, 2020 7:42 PM

To: Marcia Jensen

Cc: Phil Koen; BSpector; Marico Sayoc; Rob Rennie; Matthew Hudes; Maria Ristow; Michael Kane; Rob Stephenson; Mary Badame; Heidi Owens; Larry Maggio; Jak Van Nada; Catherine Somers; Laurel Prevetti; Stephen Conway

Subject: Re: Use of General Fund Capital/Special Project fund balance to fund on-going unbudgeted operating expenses (Agenda Items #7, #8, #9 and #10)

Madam Mayor,

Thank you for your quick response. I also appreciate you clarifying some of the points I was raising.

1) I apologize for having used the term "pulled" for discussion to these items, inferring they too were on "Consent", but intended to have each item, 7 thru 10, to be discussed by the Council as part of the normal open forum/public "Other Business" comment session, to help add clarity to these items for the public to better understand the intent and impact. For example, item 10, establishing independent review of complaints against police, is a good start, but there perhaps should also be discussion of review of police services when there are NOT formally filed complaints, but observations from community members and Town staff, and their analysis of more efficiency or better services to prevent crime, solve crime, and deal with the social/emotional issues that have manifest in our community that are NOT criminal, or at least not yet matured into criminal activity by the folks involved. I also agree the Community discussion referenced was a very healthy session for all involved. Good movement, and the Council should discuss further how to keep both oversight as guidance, and not be left with "hindsight" to remedy a problem, and for all of us to work tougher for solutions.

2) As we are now better grasping some of the financial impact of COVID, it would be good to have a discussion amongst the council members of the results thus far this fiscal year, projections going forward, and determine how any reserves are being managed against these trend lines. That is the intent of my message to have the Council and staff have an open forum to better inform the public of how funds are being allocated and then spent, within or outside the original allocations. What are the priorities?

Again, thank you for providing clarity to some of the points, and look forward to a productive meeting Tuesday.

Regards,
Lee Fagot

On Nov 2, 2020, at 17:23, Marcia Jensen <MJensen@losgatosca.gov> wrote:

Mr. Fagot and Mr. Koen --

Thank you for your emailed comments on Agenda Items 7-10.

A few points:

1. Mr. Fagot asks that they be "pulled." *All* of these agenda items are scheduled for full public hearings, that is, *none* are on the Consent Calendar.
2. Funds for Agenda Item 9 consist of State grant funds which the Town receives on an annual basis. They are normally used for Motorcycle Officers. This year, in light of the Town's attention on Police reform, it was suggested that these funds should be considered for other possible uses within the grant parameters. Options for expenditure of those funds are presented in the Staff Report.
3. Item 10 is a direct product of the Community discussion regarding police reform and the Council's subsequent action directing Staff to provide information - including budgeting - regarding the implementation of a mechanism to provide independent review and oversight of complaints regarding police conduct.

From: Phil Koen

Sent: Tuesday, November 3, 2020 8:42 AM

To: Marcia Jensen <MJensen@losgatosca.gov>; Lee Fagot <leefagot@gmail.com>

Cc: BSpector <BSpector@losgatosca.gov>; Marico Sayoc <MSayoc@losgatosca.gov>; Rob Rennie <RRennie@losgatosca.gov>; Matthew Hudes; Maria Ristow; Michael Kane; Rob Stephenson; Mary Badame; Heidi Owens; Larry Maggio; Jak Van Nada; Catherine Somers; Laurel Prevetti <LPrevetti@losgatosca.gov>; Stephen Conway <sconway@losgatosca.gov>

Subject: RE: Use of General Fund Capital/Special Project fund balance to fund on-going unbudgeted operating expenses (Agenda Items #7, #8, #9 and #10)

Hello Ms. Jensen,

Thank you for your reply. I understood that Agenda items #7 -#10 were not part of the consent calendar and were for general discussion. But thank you for your clarification.

Regarding your two other points, I want to make sure there is no misunderstanding regarding the intent of my first email. For sake of clarity, I was not expressing an opinion regarding the underlying appropriateness of any of the staff recommendations regarding Agenda Items #7 -#10. I am confident that the Council can make those decisions. Rather my comments were financially focused on 1) raising a concern as to whether the Capital/Special Project fund balance VS. the Surplus Property Reserve fund balance should be used to fund any proposed unbudgeted expenditures, 2) pointing out that if all agenda items are approved as recommended by staff, \$200,420 in additional funding will be required for just FY 21 which is in addition to the \$760,308 that has already been used from the Capital/Special Project fund balance to fund on-going FY 21 operating expenses (which are mainly salary and benefit expenditures), 3) recommending the Council direct staff to publish an update of actual revenue and expenditure results for Q1 FY 21 vs the adopted FY 21 budget and 4) recommending the Town Council hold a joint Council/Finance Committee study session to review/discuss the Q1 revenue and expenditure results compared to the adopted budget to determine if any other budget adjustments are required and if there are any other "known" and unbudgeted expenditures which will require funding.

Regarding Agenda Item #9, the Staff Memo does discuss the fiscal impact of the proposed recommendation and states that "a \$100,000 expenditure budget adjustment from available Capital/Special Projects Reserve is needed to maintain the motorcycle unit program at its current staffing level as identified in the adopted FY 21 operating budget". The Staff's recommendation is to shift the Town's \$100,000 portion of the \$200,000 SLESF grant from supplemental funding for the salary of two traffic enforcement motorcycle officers to the purchase of equipment and technology (which is not fully explained). Shifting these SLESF funds to purchase this equipment will create a \$100,000 "budget funding hole" for the motorcycle officer's salaries. Staff is recommending using available funds in the Capital/Special Project Reserve to plug this "budget funding hole". To be clear, I am not expressing any opinion regarding the appropriateness of the staff's recommendation other than to question the use of the Capital/Special Project fund balance to plug the "budget funding hole".

Regarding Agenda Item #10, I fully understand the objective of the agenda item and that it is the product of Community discussion. I was not expressing an opinion regarding the appropriateness of the agenda Item #10 other than pointing out that, if approved, the Staff is recommending that \$68,461 from the Capital/Special Project Reserve to fund the unbudgeted expenditures. Again, I was only pointing out the questionable use of the Capital/Special Project fund balance to provide funding for the unbudgeted expenditures.

Please let me know if you have any additional questions.

Thank you.

Phil Koen