



SOLANO COUNTY CIVIL GRAND JURY

2022-2023

OVERSIGHT OF FAIRFIELD'S MEASURE P

May 4, 2023

Oversight of Fairfield's Measure P

Solano County Civil Grand Jury 2022-2023

I. SUMMARY

Measure P is a transactions and use tax (also known as a sales tax) of 1% on purchases in the City of Fairfield. This investigation and report are a follow-up to a 2019-2020 Solano County Civil Grand Jury report concerning oversight of Fairfield's use of Measure P funds. The investigation was undertaken with the knowledge that, in 2022, the voters of the City of Vallejo passed that City's own Measure P, a 7/8 cent transaction and use tax very similar to Fairfield's Measure P.

The 2022-2023 Solano County Civil Grand Jury investigated the value of the oversight committee with respect to Fairfield's Measure P (the Fairfield Taxpayer Committee, hereinafter referred to as the "Oversight Committee"). Among the issues examined was the Oversight Committee's access to information relating to the collection and use of Measure P funds as well as the Committee's ability to have input in Fairfield City Council decisions about the City's use of Measure P funds.

II. INTRODUCTION

Fairfield voters extended Measure P in 2016 for an additional fifteen years, recognizing the importance of the revenue generated by this source. This extension included continuation of the Oversight Committee.

The Oversight Committee is supposed to monitor the revenue collected pursuant to Measure P and to report on the use of those funds. It is designed to "ensure transparency and oversight of the revenue generated by Measure P." Specifically, the Oversight Committee is charged with reviewing the annual independent audit of Measure P as well as other City financial reports "necessary to advise the City Council."

In the fiscal year ending June 30, 2022, Measure P funds collected were \$25,896,770 (approximately 21.21% of Fairfield's total general fund in 2021-22). The Oversight Committee is charged with the responsibility to confirm that the funds collected are spent *in accordance with* the issues outlined in the original ballot presentations.

The purpose of investigations by the Civil Grand Jury is to identify the actions of governing agencies in the County and determine if those agencies are performing in a beneficial manner for the citizens of Solano County. In an investigative report of the 2019-20 Solano County Civil Grand Jury concerning the Measure P tax oversight process, several issues required attention. The 2022-23 Civil Grand Jury determined to do a follow-up examination of the topic.

III. METHODOLOGY

Interviews

- City of Fairfield elected official
- City of Fairfield staff members
- Measure P Fairfield Taxpayers Committee members

Review

- Texts of 2012 and 2016 Measure P ballot measures
- 2019-2020 Solano County Civil Grand Jury Investigative Report entitled “Fairfield Measure P” and Response of the City of Fairfield
- Documents and data provided by City of Fairfield staff
- City of Fairfield Ordinance Nos. 2012-20 and 2016-18 and Resolution Nos. 2013-31 and 2017-235
- Measure P Fairfield Taxpayers Committee annual reports produced in 2019, 2020, 2021, and 2022 (all of these reports, except the report for 2022, were uploaded to the City’s website on September 28, 2022, after the commencement of this investigation)
- Measure P Oversight Committee Brochures for 2019, 2020, 2021, and 2022 (all of these brochures were uploaded to the City’s website on November 17, 2022, after the commencement of this investigation)
- Measure P Oversight Committee Meeting Minutes for 2019, 2020, 2021, and 2022.
- Measure P Oversight Committee Meeting Agendas for 2019-2022
- Eide Bailly Independent Auditor’s Report on Compliance with Ordinance 2012-20 (Measure P Transactions and Use Tax) dated December 15, 2022, December 2, 2021, December 3, 2020, and December 2, 2019
- City of Fairfield Mid-Cycle Budget Updates for FYs 2021-22 and 2022-23, 2019-20 and 2020-21, 2017-18 and 2018-19, and 2015-16 and 2016-17
- City of Fairfield Budgets for FYs 2021-22 and 2022-23, 2019-20 and 2020-21, 2018-19, 2015-16 and 2016-17, and 2014-15
- City of Fairfield Annual Comprehensive Financial Reports for FY 2021-22, 2020-21, 2019-20, 2018-19, 2017-18, 2016-17, 2015-16, and 2014-15
- City of Fairfield Popular Annual Financial Report for FYs 2021-22, 2020-21, 2019-20, 2018-19, 2017-18, 2016-17, 2015-16, and 2014-15
- “Reports show Measure P dollars spread across Fairfield’s police, fire, other categories,” Daily Republic, November 18, 2022
- Ballotpedia.com webpages relating to 2012 and 2016 Measure P ballot measures

Attended

- Measure P Fairfield Taxpayers Committee meeting on August 15, 2022
- Fairfield City Council meeting on November 15, 2022

IV. STATEMENT OF FACTS

Passage of Measure P

On November 6, 2012, the voters of the City of Fairfield passed Measure P, a ballot measure establishing a 1% transactions and use tax for five years. Measure P on the 2012 ballot asked the following question of voters:

“To address the City of Fairfield’s Fiscal Emergency, offset significant budget cuts and state financial takeaways, and maintain City services, including neighborhood police patrols, firefighters, 9-1-1 response times, crime, drug and gang prevention programs, maintenance of streets, medians and street lights, parks and recreation service, and other general services, shall an ordinance be adopted to enact a one cent sales tax for five years, with citizen’s oversight, annual independent audits and all funds spent only in Fairfield?”

The ballot measure expressly stated there would be “citizen’s oversight.” Approximately 67% of voters approved Measure P.

Measure P was placed on the ballot as a “general tax” proposition, meaning that it would pass with a simple majority voting in favor and that, if approved, funds received pursuant to the tax would be placed in the City’s general fund and could be used for any legitimate purpose. Had the measure been placed on the ballot as a “special tax,” it would have required a 2/3 majority vote in favor, and the money could only be spent on a designated specific purpose or purposes. *See* California Constitution, Article XIIC.

The Oversight Committee

The voters passed Measure P in November 2012. The Fairfield City Council subsequently passed the Fairfield Transactions and Use Tax Ordinance, designated City Ordinance No. 2012-20. By that Ordinance, the City Council added Article VII to the Fairfield Municipal Code (the “Code”).

Section 18.84 of the Code provided that the City’s independent auditors “shall [annually] complete a Transactions and Use Tax Ordinance Compliance and Internal Control Audit Report. Such report shall review whether the tax revenues collected pursuant to this ordinance are collected, managed and expended in accordance with the requirements of this ordinance.”

Section 18.85 provided that “the City Council shall establish a Fairfield Taxpayers Committee to review the expenditure of revenues collected pursuant to this ordinance.” That section further provided that the Oversight Committee would consist of five residents and taxpayers of Fairfield.

The Fairfield City Council passed Resolution No. 2013-31 in February 2013 to establish the Oversight Committee. Exhibit A to that Resolution provides that the Oversight Committee is to “monitor the revenue collected by the Measure P transactions and use tax, as well as report on the use of the funds.” The Oversight Committee was also required to “ensure transparency and oversight of revenue generated by Measure P.”

The Oversight Committee’s duties were to “consist of reviewing the annual independent audit (performed by an independent auditor on the Measure P generated revenue and expenses during the previous fiscal year), as well as reviewing any other City financial reports necessary to advise the City Council.”

Exhibit A to that Resolution further provides that the Oversight Committee meet at least once each year. Additional meetings may be scheduled as necessary. The Oversight Committee minutes and reports “are a matter of public record, and may be posted on the City’s website.”

The Fairfield City Council appointed its initial five members of the Oversight Committee in 2013. Additional members of the Committee were subsequently appointed when positions were vacant. Since its inception, the Oversight Committee has sought to meet four times each year. Its members are volunteers and are not compensated for time spent reviewing materials or preparing for or attending meetings. Meetings are held at night at various locations within Fairfield, as determined by the Committee in conjunction with City staff. Very few citizens attend these meetings.

Although the Oversight Committee is not specifically required to prepare annual reports, the Oversight Committee has taken it upon itself to prepare them. The Oversight Committee has been inconsistent in preparing such reports and a related brochure with respect to Measure P. The reports and brochures have not been prepared every year; some have been prepared at various times during the year. For example, the City’s fiscal year runs from July 1 of one year until June 30 of the next year, but annual reports were prepared:

- March 2015
- February 2016
- September 2019
- November 2020
- November 2021
- November 2022

The annual reports to date have addressed the accomplishments of the City in the prior year with respect to **all** revenues received rather than just those received pursuant to Measure P. Also, since the resolution creating the Oversight Committee expressly states that the Committee’s duties “do not include decision-making or advisory responsibilities,” the annual reports have not made suggestions or recommendations as to how Measure P funds should be spent. Moreover, the members of the Oversight Committee do not attend budget meetings or participate in the preparation of budgets for Measure P revenues.

Measure P in Action

Since its adoption, Measure P has resulted in the collection of millions of dollars in tax revenues. Revenues collected by Fairfield each full year have represented between 18% and 22% of the City’s total general fund revenues received (see Chart 1).

Fiscal Year	Measure P Revenues	Total General Fund Revenues	Measure P Revenues as Percentage of Total
2021-2022	\$ 25,896,770	\$ 122,108,407	21.21%
2020-2021	\$ 23,328,607	\$ 115,363,642	20.22%
2019-2020	\$ 19,704,287	\$ 106,858,828	18.43%
2018-2019	\$ 19,602,753	\$ 107,327,231	18.26%
2017-2018	\$ 19,465,133	\$ 100,842,708	19.30%
2016-2017	\$ 18,374,515	\$ 94,668,108	19.41%
2015-2016	\$ 17,489,693	\$ 95,074,353	18.40%
2014-2015	\$ 16,642,078	\$ 86,672,944	19.20%
2013-2014	\$ 16,000,486	\$ 79,712,803	20.07%
2012-2013	\$ 724,233	\$ 67,464,495	1.07%

Chart 1. Annual collections pursuant to Measure P as a Percentage of Total General Fund Revenues

Upon receipt of these funds, they are placed in the City’s general fund.

The City contracts with HdL Companies for that entity to perform analytics on the funds collected pursuant to Measure P. HdL looks at the sources of the Measure P revenues. Thus, it is possible to identify the source of funds received pursuant to Measure P.

Independent auditors conducted an audit each year since its passage. In the audit conducted for FY 2020-21, the auditors cautioned as follows:

“In connection with our audit, nothing came to our attention that caused us to believe that the City failed to comply with the provisions of Ordinance 2012-20 approved by the City Council on November 6, 2012, insofar as they relate to the collection, management and expenditure of Measure P sales taxes in the City general fund. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the City's noncompliance with the above referenced terms, provisions, or conditions of the Ordinance, insofar as they relate to accounting matters.”

Since the passage of Measure P and the establishment of the Oversight Committee, the City of Fairfield has provided financial information to the Oversight Committee. The City has also made various City government officials and staff available to attend meetings held by the Committee and to provide the Committee with requested information. The Oversight Committee has met regularly since its inception to review Measure P collections and how the City has spent its general fund.

However, the City has not tracked exactly how Measure P funds have been used and has not provided information relating to the *specific* uses of Measure P funds to the Oversight Committee. As a result, the Oversight Committee has only been able to address how the City spends **all** of its revenues rather than the specific funds brought to the City pursuant to Measure P.

Technology is now available to the City of Fairfield to track Measure P funds. It is now possible to track the exact funds received pursuant to Measure P and how the City uses those funds.

15-Year Extension of Measure P

With Measure P set to expire in 2018, the City placed another Measure P on the ballot in 2016 to extend the term of the measure for an additional 15 years until 2033. The ballot asked voters whether they desired:

“To renew expiring funding without increasing tax rates, shall the Ordinance be adopted extending the existing 1% sales tax for fifteen years to preserve approximately \$16 million in local annual funding for the City of Fairfield that the state cannot take away to support neighborhood police patrols, firefighting and rapid 9-1-1 emergency response, crime prevention programs, fixing potholes and repairing neighborhood streets, parks and recreation, and other general services, with mandatory audits and independent oversight?”

The ballot measure expressly stated that there would be “independent oversight.” Nearly 69% of voters approved the 15-year extension of Measure P.

Previous Solano County Civil Grand Jury Report on Measure P

The 2019-2020 Solano County Civil Grand Jury conducted an investigation concerning Fairfield’s Measure P and prepared a report relating to that investigation. The report included five recommendations:

1. Develop a system to track Measure P dollars from collection to disbursement so that the public can easily see how and where these funds are applied.
2. Enhance public transparency and consistency by directing the Fairfield Taxpayers Committee to base any reporting on actual year-end data rather than forecast data.
3. Establish a protocol to validate the accuracy of financial data before it is published by the Fairfield Taxpayers Committee.
4. Expand the annual audit scope to include additional procedures directed primarily toward obtaining knowledge of noncompliance relating to accounting matters.
5. Amend Resolution No. 2013-31 to define “taxpayer.”

The City, in its response to that investigative report, stated that it partially agreed with Recommendation 1, but stated, in part, that Measure P approved a General Tax rather than a Special Revenue Tax and, as such, revenues collected pursuant to Measure P could be “used to support any municipal purpose.” In other words, the City expressed that the verbiage in the ballot measures as to how the Measure P funds could or would be used was in no way binding or a limitation on the City’s ability to use those funds. Ultimately, in its response, the City agreed (although without providing a “timeframe for implementation” as required by California Penal Code § 933.05) that it would “implement a tracking system on expenditures (disbursements) that demonstrates Measure P’s contributions to various City services.” Unfortunately, as of the date

this investigation commenced, the City of Fairfield had not implemented such a tracking system or made such information available to the Oversight Committee.

In its response, the City partially agreed with Recommendation 2. In so doing, the City stated that sometimes actual numbers were relied upon, and sometimes budgeted numbers were relied upon. Ultimately, the City agreed that, going forward, it would provide the Committee with actual year end data.

The City, in its response, disagreed with Recommendation 3.

In its response, the City partially agreed with Recommendation 4, contending that the annual audit of the City's financial statements was sufficient. Ultimately, the City agreed "since the City will be implementing a tracking tool for Measure P expenditures, the annual audit will include a review of these expenditures." As detailed above, no such tracking had been implemented as of the commencement of this investigation, so no such expenditure review was done.

In its response, the City did not expressly state that it agreed or disagreed with Recommendation 5, instead opting to state that the recommendation was "not warranted."

A copy of the 2019-2020 Solano County Civil Grand Jury investigative report entitled "Fairfield Measure P" as well as the response of the City of Fairfield to that report, can be found on the website for the Superior Court of California, County of Solano (currently located at <https://solano.courts.ca.gov/divisions/grand-jury/reports/>).

V. FINDINGS AND RECOMMENDATIONS

FINDING 1 – Fairfield did not comply with its own commitment in its Response to the 2019-20 Grand Jury investigative report to track the use of Measure P revenues.

RECOMMENDATION 1 – The City should immediately begin tracking all funds received pursuant to Measure P and begin reporting on the expenditure of those funds. The City should also immediately begin making information available to the Oversight Committee as to how the Measure P funds are being spent.

FINDING 2 – The Oversight Committee is not currently an advisory committee and as such is not allowed to advise, or make recommendations to, the Fairfield City Council on the use of Measure P funds.

RECOMMENDATION 2 – The Oversight Committee should be a real oversight committee and be allowed to make recommendations to the City Council with respect to the use of Measure P funds. Such changes to the process would result in more work and more focused work on the part of the members of the Oversight Committee.

FINDING 3 – The Oversight Committee, whose members are uncompensated, reviews and analyzes a great deal of financial information, meets four times each year, and is required to

report to the Fairfield City Council on the use of Measure P funds. A great deal of time must be devoted to these efforts, and even more time would be required were the City to adopt Recommendation 2, above.

RECOMMENDATION 3A – The number of standard Oversight Committee meetings should be no less than six each year.

RECOMMENDATION 3B – Oversight Committee members should receive an appropriate stipend per meeting attended plus reimbursement of mileage at the legal rate.

FINDING 4 – To date, the Oversight Committee’s only interaction with the City Council has been to sporadically prepare an annual report and present it to the City Council each year before completion of the annual audit related to Measure P. The report has not been prepared every year and has been prepared at different times in different years.

RECOMMENDATION 4A – The Oversight Committee should prepare an annual report following the City’s fiscal year-end and it should be prepared and presented to the City Council before the end of each calendar year.

RECOMMENDATION 4B – The Oversight Committee should prepare an additional report after receipt and review of the annual third-party audit of Measure P funds and any additional reports it deems necessary or advisable.

FINDING 5 – Other than a sporadically issued annual report, the Oversight Committee has no real contact with the City Council or the ability to bring concerns it might have with respect to the use of Measure P funds to the City Council.

RECOMMENDATION 5 – The Oversight Committee should be scheduled on the City Council agenda no less than twice each year and the Committee should be allowed, if not encouraged, to request to be on the City Council agenda additional times as the Committee deems necessary.

FINDING 6 – When the Oversight Committee has prepared an annual report, it has not uniformly been posted on the City’s website. Moreover, historical annual reports have not been consistently made available on the City's website.

RECOMMENDATION 6 – The Oversight Committee annual report should consistently be released publicly and posted on the City of Fairfield’s website shortly after it is presented to the City Council. All such annual reports should remain available indefinitely on the City’s website.

COMMENTS

At one point, one member of the Oversight Committee was a minor. That Commissioner was also a member of the City’s Youth Commission. There is no requirement that a minor hold one of the seats on the Oversight Committee.

In the interest of involving young people in the governance of their community, the City might consider adding a minor to the membership of the Oversight Committee.

REQUIRED RESPONSES

Fairfield Mayor
Fairfield City Council

COURTESY COPIES

Clerk of the Solano County Board of Supervisors
Fairfield Taxpayers Committee
Vallejo City Council