



Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Christine Wood, Deputy City Attorney

Approved by: Reva Feldman, City Manager

Date prepared: April 13, 2021 Meeting date: April 14, 2021

Subject: City Response to the Santa Monica-Malibu Unified School District's April 9, 2021 letter

RECOMMENDED ACTION: 1) Receive report on the Santa Monica-Malibu Unified School District's (SM-MUSD) April 9, 2021, response to the City of Malibu's Best and Final Offer dated March 12, 2021; and 2) Direct the City Attorney to respond to the SM-MUSD with a settlement offer to include the following provisions: a) both parties agree to separation, b) both parties agree that Los Angeles County Office of Education (LACOE) and/or LACOE-supervised consultants are well-suited to decide the financial terms of separation, c) both parties agree in advance to be bound by the financial terms of the separation as developed by the LACOE-supervised consultant School Services of California, Inc.; and d) both parties agree that they will not engage in any ex-parte communications with any part of the LACOE Committee, their staff, or any consultants regarding the split.

FISCAL IMPACT: There is no fiscal impact to the General Fund with the recommended action. However, there may be some expenses to the City to cover any additional costs to LACOE for School Services of California devising financial terms if the scope of work being provided by School Services of California does not include financial terms of separation.

WORK PLAN: This item was included as item 3.a. in the Adopted Work Plan for Fiscal Year 2020-2021.

DISCUSSION: On October 12, 2020, City Council Ad Hoc Committee on School District Separation (Ad Hoc Committee) reported that the negotiations had stalled, and, in response, the Council voted unanimously to reinstate the City's petition for unification with the LACOE Committee on School District Organization (County Committee). On

October 29, 2020, the City of Malibu sent a letter indicating the City was discontinuing negotiations with the SM-MUSD, and requested that the County Committee evaluate the City's petition (Attachment 1). On December 3, 2020, the City provided an update to the County Committee and the Committee tentatively scheduled the preliminary hearing for the City's petition in April 2021.

On March 3, 2021, the County Committee voted to hold a preliminary hearing on the City's petition on Saturday, April 17, 2021.

On March 12, 2021, the City of Malibu made what it considers a generous best and final financial offer in renewed negotiations with the Santa Monica-Malibu Unified School District (SM-MUSD) (Attachment 1). The proposal ensures that the Santa Monica schools will have at least the same per-pupil funding for the coming decade. The City proposed a tax-sharing agreement that transfers property tax revenue from Malibu to Santa Monica for up to 10 years in the event SM-MUSD's per-pupil funding dips below its current level. In addition, the proposal also identifies the approximately \$50 million in Other Local Funding (grants, sales taxes, rental income, redevelopment funds, and parent/business donations, etc.) that SM-MUSD receives each year beyond state education funding and property tax sources which Santa Monica will be able to retain in separation.

On April 8, 2021, SM-MUSD held a Virtual Special Meeting and discussed the City's petition in closed session. The following day on April 9, 2021, the SM-MUSD provided the City with a response to its Best and Final Offer dated March 12, 2021 (Attachment 2).

Staff has reviewed the District's Response with the Ad Hoc Committee and recommends that the City Council direct the City Attorney to respond to the SM-MUSD with a settlement offer to include the following provisions: a) both parties agree to separation, b) both parties agree that LACOE and/or LACOE-supervised consultants are well-suited to decide the financial terms of separation, c) both parties agree in advance to be bound by the financial terms of the separation as developed by the LACOE-supervised consultant School Services of California, Inc.; and d) both parties agree that they will not engage in any ex-parte communications with any part of the LACOE Committee, their staff, or any consultants regarding the split.

ATTACHMENTS: 1) City of Malibu's Best and Final
2) District's Response to City of Malibu's Best and Final Offer



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March 12, 2021

VIA ELECTRONIC MAIL

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***RE: City of Malibu's Best and Final Offer to the
Santa Monica-Malibu Unified School District***

Dear Mr. Soldani:

This letter represents the City of Malibu's ("City") best and final offer to the Santa Monica-Malibu Unified School District ("SMMUSD") as it relates to the City's petition before the Los Angeles County Office of Education's County Committee on School Reorganization ("County Committee"). The City continues to believe that its students, residents, and taxpayers will greatly benefit from the creation of an independent Malibu Unified School District. Accordingly, the City submitted a reorganization petition to the County Committee to separate the non-contiguous SMMUSD into two separate school districts that will distinctly serve and enhance the Malibu and Santa Monica communities.

Although negotiations between the City and SMMUSD were ongoing, the City lost confidence in a successful, reciprocal deal after SMMUSD presented a disputed funding model, rejected the parcel tax legislation, and failed to respond to the City's last series of correspondence dated April 21, 2020, and June 1, 2020. Therefore, after nearly three years of discussions that failed to produce a solution, the City felt compelled to take unilateral action by advancing its reorganization efforts.

Recently, however, the City has renewed hope of settlement after SMMUSD presented conciliatory information supporting reorganization at SMMUSD's Financial Oversight Committee (FOC) meeting on December 3, 2020. SMMUSD raised several agreeable terms that inspired the City's recommitment to forging a mutually beneficial separation agreement. Consequently, the City has prepared the following deal points to relay its best and final offer in terms of separation. Statements made by SMMUSD staff and consultants at the FOC meeting are included to demonstrate harmony with the City's objectives.



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CITY'S BEST AND FINAL OFFER

Allocation of Operating Revenues

According to Shin Green during the FOC meeting on December 3, 2020, his “understanding is that (revenues) would stay with their geographical territories of generation going forward...which is generally what we had suggested anyway.... If it’s originating in Santa Monica, it’s got to...stay there. If it’s originating in Malibu, it’s got to...stay there.” We completely agree and propose the following:

1. Property taxes to be allocated to the school district directly serving the Tax Rate Area (TRA) where the property taxes were generated. There are an estimated 106 TRAs within the current SMMUSD boundaries: an estimated 60 in the Santa Monica area and an estimated 46 in the Malibu area.
2. Redevelopment pass-through, redevelopment residual, City of Santa Monica sales taxes, and City of Santa Monica joint use funding sources to be distributed to Santa Monica USD.
3. Parcel tax revenues to be allocated to the school district directly serving the TRA where the parcel taxes were generated.
4. Local donations to remain in the school district where contributed.
5. Any other local revenues that remain from SMMUSD to be distributed to each district on a per student basis. New local revenues, such as interest revenue, would be generated by and remain with each new district.
6. Malibu USD to transfer property taxes to Santa Monica USD in an amount that will reduce State aid in the event of loss of basic aid status to the Minimum State Aid (MSA) amount, thereby holding the State harmless.

When discussing concerns with the City-proposed funding mode during the FOC meeting on December 3, 2020, Shin Green also stated the following: “[The City-proposed funding] would not bring the Santa Monica School District back to the levels of funding for the combined entity as it currently exists, but simply up to the minimum state LCFF amounts.” He further stated, “We have always recommended that we had a defined reopener where we could revisit the property tax ratio if the per-pupil funding amounts in total got too far out of whack because of changes in the sales tax....” Finally, he said, “If the per-pupil funding varied by more than X percent, we come back to the table and we reindex...just for a limited period of time. At some point in time, as with every school district in California that’s basic aid, you have to learn to live



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within your revenues...and eventually these things will diverge at some point because the tax base will not grow in an identical manner.” We concur and propose the following:

7. Malibu to transfer additional property taxes for up to 10 years from the date of the school district separation IF Santa Monica per pupil funding falls below the current per pupil funding level in order to maintain the per pupil funding that Santa Monica students would have otherwise had from the combined district.
8. Per pupil funding currently estimated at \$14,197, based on 2018-19 LA County Public Schools Financial Report, including Local Control Funding Formula (“LCFF”) revenue and Other Operating Revenue and related 2018-19 California Basic Educational Data System’s (“CBED”) enrollment of 10,629.
9. For this purpose, per pupil funding is calculated by including all LCFF funding, property taxes sources, parcel taxes, Santa Monica sales taxes, Santa Monica joint use, donations, interest earnings, and other local funding.
10. Property tax sources include: secured, unsecured, unitary, utility, supplemental (if Santa Monica is no longer basic aid), Educational Revenue Augmentation Fund (“ERAF”) (if Santa Monica is no longer basic aid), redevelopment pass-through, redevelopment residual.

Distribution of Property

According to Shin Green during the FOC meeting on December 3, 2020, “property that is located in each of the territories stays in that territory. If we want to remove something or if there’s something missing, we may provide credit for it...” We are in accord on this point and propose the following:

11. Property owned by the SMMUSD to be allocated to each future district based on location, with each district owning the property within their boundaries.
12. Santa Monica USD to share in the start-up costs needed to create a district office facility in Malibu.

SMMUSD Support of Reorganization Efforts

During the FOC meeting on December 3, 2020, Shin Green said, “Santa Monica is not averse to the division...of the existing district into two discreet districts....” “[I]f there was a Malibu Unified School District and a Santa Monica Unified School District in existence today, we could not turn them into the entity they are today. That being said, that is a compelling reason to split the district and...district staff and...board are not averse to that division.”



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Additionally, David Soldani stated, “the second criteria is whether there is a substantial community identity...Does Malibu see itself as one coherent community?...I think that’s pretty self-evident.”

13. SMMUSD to support resolution regarding special legislation that maintains existing parcel taxes when the school districts separate.

Additionally, David Soldani stated, “A parcel tax, we’d have to have some kind of guarantee that...would continue in order to keep both entities viable...so it’s not that we don’t support that special legislation. We...absolutely do. We’re insistent on it.”

14. SMMUSD to work with the City to seek CDE approval on how property tax sharing agreement would be viewed to meet requirements set forth in reorganization Criterion 5.
15. SMMUSD to support separation in discussions, public hearings, and all other correspondence with LACOE regarding this reorganization and will not delay reorganization proceedings.

Considering we concur on so many aspects of this school separation, we are asking the District to (1) review its position, as publicly stated, (2) identify where there are fundamental agreements between the parties, and (3) commit to joining us in a united petition before the County Committee. **We request that you complete this review and lodge your agreement on or before April 2, 2021, in order to allow us to proceed in a way that is most expeditious and productive for both the Malibu and Santa Monica communities.** We look forward to your response.

Regards,

Christine N. Wood
for BEST BEST & KRIEGER LLP

cc: Reva Feldman, City Manager, City of Malibu
Ben Drati, Superintendent, Santa Monica-Malibu Unified School District

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April 9, 2021

VIA EMAIL: christine.wood@bbklaw.com

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Best, Best & Krieger LLP
300 South Grand Avenue, 25th Floor
Los Angeles, CA 90071

Re: District's Response to City of Malibu's Best and Final Offer dated March 12, 2021

Dear Ms. Wood:

The undersigned has been authorized by a 6-1 vote of the District's governing board to reject the above-referenced offer ("Final Offer").

The rejection is based upon our analysis of the Final Offer. Applying our understanding of the terms of the Final Offer to projections based upon updated data indicates that a revenue "cliff effect" would occur after 10 years with funding levels well below where they would otherwise be per pupil for at least one resulting school entity.

This result appears inconsistent with the City's publically stated desire to hold the Santa Monica students "harmless" from the impacts of the separation.

Because of its negative financial and programmatic impact on the District's students, the District has no choice but to reject the Final Offer as currently posited and forcefully oppose the City's Petition.

Alternatively, the District has updated its own financial proposal and can demonstrate with mathematical precision that none of the Districts students in either territory will be significantly worse off from the separation from a per-pupil funding perspective.

As such, for your consideration, set forth below is the District's proposal on how to handle the financial aspects of the split.

- Allocation of State revenues under the LCFF Formula on a per pupil basis
- Allocation of secured property tax revenues utilizing a proportional allocation of the SMMUSD Property Tax Ratio based on the enrollment in each proposed school district

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- Allocation of redevelopment property tax losses and pass-throughs to the entity serving the redevelopment territory
- Allocation of Federal and Other State Revenues on the basis of enrollment in each proposed school district
- Allocation of local revenues with geographical restrictions (e.g.: sales tax, joint use, facility lease revenues) to the entity serving the territory from where such revenues are generated
- Retention of philanthropic local revenues to the entity which raises such revenues
- Allocation of other local revenues not directly related to reimbursement of services provided to the entity conducting the activities resulting in such revenues

If this proposal is unsatisfactory to the City, the District is willing to entertain any other proposal the City can create as long as it accomplishes both parties' stated goal — to separate without materially harming either territory's students.

I understand the County Committee on School District Organization ("Committee") has retained its own financial consultant, Schools Services of California, Inc., ("SSC") to assist the Committee staff with their evaluation of the City's petition (with particular emphasis placed on the financial aspects of the Petition).

In light of this and in furtherance of the parties' desire to pursue an equitable separation, a further proposal I have been authorized to extend is to have the City's financial consultants (*sans* lawyers and electeds) meet jointly and work with the District's financial consultant (*sans* lawyers and electeds) *and* SSC in an effort to independently evaluate the parties' competing financial methodologies to assist each side assess the viability of the competing methodologies with a goal of landing on a methodology that both sides have publically and repeatedly stated they desired: a methodology that places neither territory's students in a worse financial or programmatic position than they would otherwise be in the absence of separation ("Joint Meeting").

However, in fairness to both sides that actively continue to prepare for the upcoming Committee hearing April 17th, the District is only willing to extend the Joint Meeting component of its proposal to the City if the City agrees by April 12, 2021, to request a continuance of the April 17th Committee hearing, so that both parties may devote their time and resources to pursuing a funding solution.

Regardless of the City's response to the above proposals, we invite the City to authorize its financial consultants to meet with the District's financial consultant at the earliest opportunity to enable both sides to gain a better understanding of how the competing formulas work.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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Please let me know if you would like to discuss further or have any questions about the proposals herein.

We look forward to your response.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A handwritten signature in blue ink, appearing to read "David A. Soldani". The signature is fluid and cursive, with a prominent loop at the beginning and a trailing flourish.

David A. Soldani

DAS:las

cc: Ben Drati, Superintendent
Santa Monica Malibu Unified School District