



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 7/19/2012

Report Type: Staff/Discussion

**Title: Ordinance: Transactions and Use Tax For Possible Placement on November 6, 2012
 Ballot [2/3 Vote Required]**

Report ID: 2012-00661

Location: Citywide

Recommendation: Pass 1) an Ordinance adding Chapter 3.26 to the Sacramento City Code relating to a transactions and use tax effective upon voter approval ; 2) a Resolution approving ballot measure text for placement on November 6, 2012 ballot.

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Presenter: John F. Shirey, City Manager, (916) 808-7495, Office of the City Manager

Department: City Manager

Division: Executive Office

Dept ID:

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Ordinance
- 4-Resolution

City Attorney Review

Approved as to Form
 Matthew Ruyak
 7/12/2012 10:59:14 AM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 7/12/2012 8:06:17 AM



Description/Analysis

Issue: On May 22, 2012, the City Council received an informational briefing on results of a telephone survey that assessed community support for a variety of potential revenue measures. The survey results indicated strong community support (68 percent) for a one-half cent general purpose transactions (sales) and use tax measure. The survey also found even stronger support for a quarter-cent general purpose sales and use tax (71 percent). General purpose sales taxes require a majority voter approval for passage. On June 7, 2012, staff presented the City Council with additional information and background on the transactions and use tax. This report provides the City Council with the opportunity to place a transactions and use tax measure on the November 6, 2012 ballot.

Policy Considerations: General purpose tax measures provide revenue for general governmental purposes and require majority voter approval. Revenue is legally required to stay in the City of Sacramento for local services and cannot be taken by the State.

Economic Impacts:None.

Environmental Considerations: Not applicable.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: This report provides an opportunity for the Council to place a transactions and use tax measure on the November 6, 2012 ballot.

Financial Considerations: California state law authorizes cities to seek voter approval of transaction taxes in multiples of 0.125 percent so long as the combined transactions and use taxes do not exceed two percent. General purpose sales tax revenues may be used for any general fund purpose including police, fire and parks services. Using fiscal year 2013 budget estimates, general purpose transaction and use taxes of 0.25 percent and 0.50 percent are estimated to generate annual revenue of approximately \$15.7 million and \$31.4 million, respectively, if approved.

Emerging Small Business Development (ESBD): Not applicable.

BACKGROUND

The deep national recession has significantly reduced the City's available revenue to fund essential local services. Cumulatively, the City's property and sales tax revenues are nearly \$30 million lower than their peak only a few years ago. Property tax revenues, for example, are forecast to be more than \$21 million lower this fiscal year than their peak in Fiscal Year 2007/08. Additionally, the City's current year sales tax revenue projection of \$62.7 million remains nearly \$7 million below its peak of \$69.5 million in Fiscal Year 2006/07.

The persistent decline in City revenue has affected the City's ability to maintain services and service levels. Today, the City operates with fewer police officers, browned-out fire stations, fewer parks maintenance workers, and substantially lower staffing levels in its General Fund operations.

As a result of the decline in revenue, the City has eliminated 1,318 full-time positions during the past five years, a workforce reduction of more than 25 percent. These staffing reductions have been necessary to close General Fund deficits totaling more than \$230 million since the recession began. Even with reduced service levels, the City's finances are not fully stabilized as a deficit of \$7.4 million is projected for next fiscal year.

In late April 2012, the City utilized a public opinion research firm to evaluate community support for a variety of potential revenue measures to help restore and protect essential City services. The telephone survey of 800 likely November 2012 voters was conducted by Fairbank, Maslin, Maullin, Metz and Associates (FM3).

On May 22, 2012, the City Council received an informational briefing on results of the City-commissioned survey. While strong majorities of voters appeared willing to support all of the nine potential measures tested, survey results indicated a general purpose sales (transactions) and use tax measure to be the most electorally viable measure.

California Revenue and Taxation Code 7285.9 authorizes the City to levy a transactions and use tax for general purposes if the ordinance proposing the tax is approved by a two-thirds vote of all members of the City Council and approved by a majority vote of the electorate. Voters in approximately 80 California cities have approved transactions and use taxes to support local services and ensure that the revenue is used locally.

Support for the 0.50 percent (half cent) general-purpose sales and use tax exceeded the majority vote threshold by 18 percentage points (68 percent "yes") and the 0.25 percent (quarter cent) general-purpose sales and use tax exceeded the majority vote

threshold by 21 percentage points (71 percent “yes”). The survey’s margin of error was +/- 4.9 percent.

On June 7, 2012, staff presented the City Council with additional background on the transactions and use tax, election procedures, and community engagement. This report provides the City Council with the opportunity to place a transactions and use tax measure on the November 6, 2012 ballot.

Revenue derived from a transactions and use tax is legally required to stay in the City of Sacramento for local services and cannot be taken by the State. General purpose transactions and use tax revenues may be used for any general fund purpose. Using fiscal year 2013 budget estimates, a general purpose transaction and use tax of 0.50 percent will generate annual revenue of \$31.4 million if approved. A rate of 0.25 percent is estimated to generate annual revenue of approximately \$15.7 million.

Some jurisdictions have placed a sunset provision in their measure. If a sunset is added, staff recommends it be set to expire in an even-numbered year in order to reduce election costs if there is a desire to extend the measure.



ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE ADDING CHAPTER 3.26 TO THE SACRAMENTO CITY CODE RELATING TO A TRANSACTIONS AND USE TAX

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 3.26 is added to the Sacramento City Code to read as follows

3.26 Transactions and Use Tax

3.26.010 Title

This chapter shall be known as the City of Sacramento Transactions and Use Tax Ordinance.

3.26.020 Purpose.

This chapter is adopted to achieve the following, among other purposes, and directs that the provisions of this chapter be interpreted in order to accomplish those purposes:

- (a) To impose a retail transactions and use tax to be applied throughout the entire territory of the city to the fullest extent permitted by law and in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 of the Revenue and Taxation Code, which authorizes the city to adopt this chapter if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- (b) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the sales and use tax law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- (c) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures

followed by the State Board of Equalization in administering and collecting the California State sales and use taxes.

(d) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

(e) To provide transactions and use tax revenue to the city to be used for the general governmental purposes of the city and with any transactions and use tax revenue received being placed into the city's general fund.

3.26.030 Operative date.

This Chapter shall be operative on the first day of the first calendar quarter commencing at least 110 days after the adoption of the ordinance codified in this chapter by vote of the electorate on November 6, 2012.

3.26.040 Contract with State.

Prior to the operative date, the city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the city shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such contract.

3.26.050 Transactions and sales tax rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half of one percent (.5%) of the gross receipts of any retailers for the sale of all tangible personal property sold at retail in said territory on and after the operative date of this chapter.

3.26.060 Place of sale.

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.26.070 Use tax rate.

An excise tax is hereby imposed on the storage, use, or other consumption in the city of tangible personal property purchased from any retailer on and after the operative date of this Chapter for storage, use, or other consumption in said territory at the rate of one-half of one percent (.5%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made.

3.26.080 Adoption of provisions of state law.

Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Chapter as though fully set forth herein.

3.26.090 Limitation on adoption of state law and collection of use taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this city shall be substituted. The substitution, however, shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California.

2. The result of that substitution would require action to be taken by or against this city or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter.

3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provision of that Code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

3.26.100 Permit not required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required by this chapter.

3.26.110 Exemptions and exclusions.

A. There shall be excluded from the measure of the transactions and sales tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any State-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the city which is shipped to a point outside the city, pursuant to the contract of sale, by delivery to such point by the retailer or his or her agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the city shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-city address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-city and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance codified in this chapter.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the ordinance codified in this chapter.

5. For the purposes of subsections (B)(3) and (B)(4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this city of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any State-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this chapter.

5. For the purposes of subsections (C)(3) and (C)(4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subsection (C)(7) of this section, a retailer engaged in business in the city shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the city

or participates within the city in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the city or through any representative, agent, canvasser, solicitor, subsidiary, or person in the city under the authority of the retailer.

7. "A retailer engaged in business in the city" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the city.

(d) Any person subject to use tax under this chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

(e) Nothing in this chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States, or the Constitution of the State of California.

3.26.120 Amendments.

A. All amendments subsequent to the effective date of this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

B. The city council may amend this chapter without voter approval to make minor technical adjustments consistent with the purposes set forth in this chapter and applicable laws or as necessary to comply with the law.

3.26.130 Enjoining collection forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the state or the city, or against any officer of the State or the City, to prevent or enjoin the collection under this chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.26.140 Independent annual audit.

The proceeds resulting from this transactions and use tax shall be deposited into the city's general fund and become subject to the same independent annual audit requirements as other general fund revenue. The independent auditor's report, which shall include an accounting of the revenues received and expenditures made from the transactions and use tax, will be presented annually to the city council and made available for public review.

Adopted by the City of Sacramento City Council on _____ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

MAYOR

Attest:

City Clerk

Passed for Publication:

Published:

Effective:



RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS IN A QUESTION RELATING TO A TRANSACTIONS AND USE TAX TO BE INCLUDED WITH THE CONSOLIDATED GENERAL MUNICIPAL ELECTION OF NOVEMBER 6, 2012

BACKGROUND

- A. The deep national recession has significantly reduced the City's available revenue to fund essential local services.
- B. The City's property and sales tax revenues are nearly \$30 million lower than their peak only a few years ago.
- C. The persistent decline in City revenue has affected the City's ability to maintain services and service levels.
- D. The City has eliminated more than 1,300 full-time equivalent positions during the past five years, a workforce reduction of more than 25 percent, resulting in diminished service levels to Sacramento residents and business.
- E. The City of Sacramento's long-term budget remains challenging with the City projecting a \$7.4 million deficit in the General Fund in Fiscal Year 2013/14.
- F. Sales tax revenues are a primary source of funding for key general fund-supported services including fire, police and parks services.
- G. The State of California authorizes cities to seek approval of additional sales and use taxes (transaction taxes) to enhance services in their communities.
- H. Voters in approximately 80 California cities have approved transactions and use taxes to support local services.
- I. A locally-enacted revenue measure will restore and protect Sacramento services because the money is legally required to stay in our community and cannot be taken by the State.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1: That the City Council approves for submittal to the voters at the November 6,

2012 General Municipal Election the following question:

City of Sacramento Essential City Services Protection Measure. To restore and protect essential public safety services, including 9-1-1 response, police officers, gang/youth violence prevention, fire protection/emergency medical response, and other services such as park safety/maintenance, youth/senior services, and library services, shall the City enact a one-half cent sales tax [*for _____ years*] with all revenue legally required to stay in the City's General Fund, and none for the State, with independent financial audits?