



City of Sacramento City Council

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

Meeting Date: 7/31/2012

Report Type: Consent

Title: November 6, 2012 General Municipal Election - Ballot Measures

Report ID: 2012-00649

Location: Citywide

Recommendation: Pass a Resolution calling and giving notice of the placement of various measures on the November 6, 2012 consolidated general municipal election ballot.

Contact: Stephanie Mizuno, Assistant City Clerk, (916) 808-8093; Shirley Concolino, City Clerk, (916) 808-5442, Office of the City Clerk

Presenter: None

Department: City Clerk

Division: Elections

Dept ID: 04001021

Attachments:

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

City Attorney Review

Approved as to Form
 Matthew Ruyak
 7/25/2012 12:03:31 PM

Approvals/Acknowledgements

Department Director or Designee: Dawn Bullwinkel - 7/25/2012 8:15:19 AM



Description/Analysis

Issue: Council action is necessary to officially place a measure before the voters of the city.

Policy Considerations: Council's action will complete the administrative process for placement of previously-approved measures on the November 6, 2012 ballot.

Economic Impacts: None

Environmental Considerations: None.

Sustainability: None.

Commission/Committee Action: None.

Rationale for Recommendation: The City Council has approved various measures for inclusion on the November 6, 2012 general municipal election ballot and must now, in accordance with California Election Code, adopt a resolution that will place the measures on the ballot.

Financial Considerations: The estimated cost for each citywide measure is \$21,100. There are sufficient funds in the elections budget to cover the cost of adding these measures to the ballot.

Emerging Small Business Development (ESBD): Not applicable.



Background:

The City Council has passed motions approving measure language for two measures to be placed on the November 6, 2012 general municipal election ballot. These issues are the repeal of an initiative ordinance relating to the deposit and collection of yard and garden refuse, and a transactions and use tax.



RESOLUTION NO.

Adopted by the Sacramento City Council

CALLING AND GIVING NOTICE OF THE SUBMITTAL TO THE VOTERS OF VARIOUS MEASURES TO BE INCLUDED IN THE GENERAL MUNICIPAL ELECTION OF NOVEMBER 6, 2012

BACKGROUND

- A. On December 6, 2011, the City Council adopted a resolution calling for, and giving notice of, a General Municipal Election to be held on November 6, 2012. The same day, the City Council adopted a resolution requesting consolidation of the General Municipal Election with the November 6, 2012, Statewide General Municipal Election.
- B. On June 26, 2012, the City Council approved for placement on the November 6, 2012 ballot a measure to repeal the ordinance enacted by the adoption of Measure 'A' on September 27, 1977, relating to the deposit and collection of yard and garden refuse in the City of Sacramento.
- C. On July 24, 2012, the City Council approved for placement on the November 6, 2012 ballot a measure relating to a transactions and use tax.
- D. The City Council desires to submit the various measures to the voters at the November 6, 2012, General Municipal Election.

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

SECTION 1: The City Council hereby orders that the following questions be submitted to the voters in the City of Sacramento, California on Tuesday, November 6, 2012:

Measure – Relating to the deposit and collection of yard and garden refuse in the City of Sacramento

"Shall the ordinance enacted by voter approval of Measure A at the City of Sacramento municipal election on September 27, 1977 be repealed, which would then allow the Sacramento City Council to require yard and garden refuse to be placed into containers for collection?"	YES
	NO

Measure – City of Sacramento Essential Services Protection Measure

<p>“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 essential services including park maintenance, youth/senior services, and libraries, shall the City enact a one-half cent sales tax for six years with all revenue legally required to stay in the City’s General Fund, none for the State, with independent annual financial audits and citizen oversight?”</p>	YES
	NO

SECTION 2: That the text of the proposed measures to be submitted to the voters are attached as Exhibits A and B

SECTION 3: The ballots to be used at the election shall be in the form and content as required by law.

SECTION 4: The polls for the election shall open at 7:00 a.m. on the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, except as provided in section 14401 of the Elections Code.

SECTION 5: In all particulars not recited in this resolution, the election shall be held and conducted as provided by the law for holding municipal elections.

SECTION 6: Notice of the time and place of holding the election is hereby given and the City Clerk is hereby authorized, instructed and directed to give further or additional notice of the election, in the time, form, and manner required by law.

SECTION 7: The City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original resolutions.

Table of Contents:

- Exhibit A Measure Text (deposit and collection of yard and garden refuse)
- Exhibit B Measure Text (transactions and use tax)

Exhibit A

**AN ORDINANCE ENACTED BY THE PEOPLE
OF THE CITY OF SACRAMENTO REPEALING
THE ORDINANCE ENACTED BY THE ADOPTION OF
MEASURE 'A' ON SEPTEMBER 27, 1977, RELATING
TO THE DEPOSIT AND COLLECTION OF YARD AND
GARDEN REFUSE IN THE CITY OF SACRAMENTO**

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

SECTION 1. Repeal of Measure A.

The ordinance enacted by the adoption of Measure A at the City of Sacramento municipal election on September 27, 1977, relating to yard and garden refuse deposit and collection and prohibiting mandatory containerization of yard and garden refuse in the City of Sacramento, shall be and is hereby repealed.

SECTION 2. Purpose and Intent.

The purpose and intent of repealing the ordinance enacted by the adoption of Measure A at the City of Sacramento municipal election on September 27, 1977 is to allow the City of Sacramento to implement a Citywide containerized yard waste collection program combined with a seasonal loose-in-the-street yard waste collection program, and a large item collection program.

Exhibit B

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.

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.

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.

3.26.150 Citizens Oversight Committee.

Although not otherwise required by law, the city council shall, by resolution adopted before the operative date of this chapter, establish a citizens oversight committee to review the revenue and expenditure of funds from the tax adopted by this chapter. The members' terms and qualifications, and duties and scope of the committee, shall be as established by the resolution.

3.26.160 Termination Date.

The authority to levy the tax imposed by this chapter shall expire on March 31, 2019.

SECTION 2.

Severability. If any portion of this ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this ordinance shall remain in effect. The people of the City of Sacramento hereby declare that they would have adopted each portion of this ordinance, notwithstanding that any one or more portions of this ordinance is declared invalid or unenforceable and, to that end, the provisions of this ordinance are severable.

SECTION 3.

Majority Approval; Effective Date. This ordinance relates to the levying and collecting of transactions and use taxes and shall take effect immediately upon approval by a majority of the voters voting on this ordinance and shall be operative on the date specified above.