



City of Chula Vista

Staff Report

File#: 16-0322, **Item#:** 8.

CONSIDERATION OF CALLING A SPECIAL MUNICIPAL ELECTION TO BE HELD NOVEMBER 8, 2016; SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE RELATING TO THE ESTABLISHMENT OF A GENERAL TRANSACTIONS AND USE (SALES) TAX; APPROVING AN ADVISORY MEASURE REGARDING THE USE OF THE SALES TAX PROCEEDS; APPROVING OTHER REQUIRED MEASURES TO CONSOLIDATE AND CARRY OUT NECESSARY PROCEDURES FOR THE ELECTION; AND APPROVING AN ORDINANCE TO ADD CHULA VISTA MUNICIPAL CODE CHAPTER 3.33, TITLED "LOCAL FUNDING FOR SAFETY, REPAIRS, AND IMPROVEMENTS"

- A. ORDINANCE OF THE CITY OF CHULA VISTA ADDING CHAPTER 3.33 TO TITLE 3 OF THE CHULA VISTA MUNICIPAL CODE TO ESTABLISH A GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION (FIRST READING) (4/5 VOTE REQUIRED)

- B. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD NOVEMBER 8, 2016 FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE RELATING TO THE ESTABLISHMENT OF A GENERAL TRANSACTIONS AND USE (SALES) TAX, AND AN ADVISORY MEASURE REGARDING THE USE OF THE SALES TAX PROCEEDS; CONSOLIDATING THE ELECTION WITH THE STATEWIDE ELECTION; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO TO PERMIT THE REGISTRAR OF VOTERS TO CONDUCT SUCH ELECTION; AUTHORIZING THE CITY CLERK OR HER DULY AUTHORIZED AGENTS TO CARRY OUT THE NECESSARY PROCEDURES FOR SUCH ELECTION; AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURES; AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF EACH MEASURE (4/5 VOTE REQUIRED)

RECOMMENDED ACTION

Council place the ordinance on first reading and adopt the resolution.

SUMMARY

The City of Chula Vista, like many cities throughout the country, is struggling to repair and/or replace its aging infrastructure. Since 2014, the City of Chula Vista has been developing a comprehensive Asset Management Program (AMP) to more effectively and transparently identify the condition of City-owned assets. The AMP identified a significant shortfall in funding needed to repair or replace critically needed infrastructure. This item presents two formal ballot measures for City Council consideration for placement on the November 8, 2016 statewide election ballot to address high-

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priority needs. The first measure is for a one-half cent transactions and use tax measure (the "Measure"). Although the City's most pressing need is infrastructure improvement, repair and maintenance, the tax is a general tax which can be spent for any lawful purpose of the City. The accompanying advisory measure advises the City to spend the tax proceeds for infrastructure purposes (the "Advisory Measure"), that advice will be politically forceful but not legally binding. Any legally enforceable restriction on the use of tax proceeds would make it a special tax requiring two-thirds voter approval.

ENVIRONMENTAL REVIEW

Environmental Notice

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Environmental Determination

The Environmental Review Coordinator has reviewed the proposed activity for compliance with the California Environmental Quality Act and has determined that discussion on Infrastructure Financing is not a "Project" as defined under Section 15378(b)(4) of the State CEQA Guidelines because this item involves only the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

BOARD/COMMISSION RECOMMENDATION

Not applicable.

DISCUSSION

Several years ago, the City initiated efforts to develop a comprehensive Asset Management Program (AMP) to more effectively and transparently operate and maintain the City-owned assets. Staff has provided annual updates to the City Council on this program. Over this time, City staff has made a variety of outreach efforts to include the community in identifying the most critical needs and priorities. The Asset Management Program Advisory Committee (AMPAC) was convened as a working group composed of Chula Vista residents, business owners, and other stakeholders willing and interested in engaging with City staff regarding preserving, maintaining and upgrading public infrastructure. The AMPAC has been meeting since March 2014 and has been engaged in learning the City's infrastructure systems, touring sites, observing repairs and maintenance activities, and reviewing information on the City's finances.

With input and concurrence of the AMPAC, City staff is recommending a half-cent general transactions and use (sales) tax for ten years to address many needed infrastructure improvements

such as:

- Streets
- Traffic Signal Systems
- Sports Fields and Courts
- Park Infrastructure
- Other Public Infrastructure
- Fire Safety Equipment
- Fire Stations
- Fire Response Vehicles
- Police Facilities
- Police Response Vehicles
- Public Safety Communication Systems (Dispatch and Regional Communication System)

While a general use tax cannot approve a specific list of projects, **Attachments 1 & 2** provide the types of critical and emerging needs that could be addressed with such a measure. As a general tax, the approval requirement is a simple majority (50%+1) of voters. City staff recommends that an Advisory Measure also be placed on the November 2016 ballot in order to determine public support for how the tax proceeds will be spent. A Citizen Oversight Committee is also recommended to ensure public confidence in the use of the funds.

A Citizen Oversight Committee is an effective way to guide the expenditure of the funds throughout the life of the measure. The Citizen Oversight Committee would be established in conjunction with the passage of the Measure. The Committee would serve in an advisory capacity. In particular, the Committee will review the Measure's annual spending plan and state whether or not it is consistent with the Advisory Measure and, if not, on what purposes it is spent. The Committee would review the Independent Auditors' Report on revenues and expenditures and present an annual report to the City Council with findings relative to the use of Measure's funds. The Mayor and City Council shall appoint all members of the Committee, which shall be comprised of experts in areas such as accounting, finance and engineering. The members shall be residents or representatives of businesses located within the City of Chula Vista and shall not be elected officials or current city employees. While the Citizen Oversight Committee would not have budget authority, it would be a public body governed by the Brown Act, which requires open public meetings, properly noticed and posted agendas and reports and minutes. Within 30 days of successful approval of Measure, the City Council shall adopt an ordinance establishing the composition of the committee and defining the scope of committee responsibilities and reporting requirements.

The clear accounting of additional revenue and resulting expenditures is key to transparency. Revenue from the sales tax Measure is a general tax and shall be realized in the General Fund in a separate line item (i.e. Sales Tax - Measure X). In order to provide greater transparency, these funds will then be transferred to a fund established for the Measure where all transactions will be accounted for in accordance with generally accepted accounting principles (GAAP).

If the Measure is approved by the voters, within 30 days after such approval, the City Manager shall bring forth a spending plan for City Council consideration regarding the Measures revenues. Any proposed expenditures for fiscal year 2016-17 may then be presented to the City Council as an amendment to the fiscal year 2016-17 budget. For each subsequent year, prior to the City Council consideration of the City's annual budget, City staff will prepare and present to the Citizen Oversight Committee the City Manager's proposed spending plan for the Measures revenues. Such plan shall include specific proposals for near term expenditures, a plan for expenditures throughout the 10 year term of the tax, and finance options for larger scale projects. After review by the Committee, the spending plan will be incorporated into the City Manager's proposed budget for considerations as part of the City's annual budget process.

PROPOSED CHULA VISTA TRANSACTIONS AND USE (SALES) TAX

The sales tax rate currently applied in the City of Chula Vista is 8%. This includes a combined statewide amount of 7.5%, and a San Diego County district tax of 0.50% for the TransNet program. Of the total 8% collected, the City receives 1%. Pursuant to California Revenue and Taxation Code Section 7251.1, the combined rate of all taxes imposed in any county (above the statewide tax rate) may not exceed 2%. A general purpose tax increase of one-half percent (0.50%) is recommended, with a 10-year sunset. This increase is projected to generate an estimated \$176 million in additional revenues over the life of the measure (this assumes an average 2% increase per year); with actual revenues determined by economic conditions. Also pursuant to California Revenue and Taxation Code, food items (groceries), prescriptions, certain medical devices, and other "Necessities of Life" items are exempt from sales tax (see Sections 6006, 6010, 6016, 6018, 6353, 6358, 6359, 6363, 6364, 6365, 6366, 6370, 6371, 6373, 6408, and 6409). The tax would go into effect on the first day of the first calendar quarter commencing more than 110 days after the approval of the ordinance by the electorate. (California Revenue and Taxation Code Section 7265). Staff anticipates an April 1, 2017 effective date if voters approve the tax in November.

The ballot language to be presented to the voters is as follows:

"Chula Vista: Local Funding for Safety, Repairs, Improvements:

To fix potholes, repair/ maintain streets, sidewalks, and aging storm drains to prevent sinkholes; upgrade aging police, fire and 911 emergency response facilities/ equipment; maintain parks, recreation centers, libraries; water conservation; and other projects/services; shall an ordinance be adopted enacting a one-half cent sales tax for 10 years, generating an estimated \$16 million per year to be spent locally, requiring citizen oversight and independent audits?"

The revenue from this Measure would be paid in addition to the existing sales tax and would be collected at the same time and in the same manner as the existing sales tax except as to vehicle sales, which are taxed based on where the vehicle will be used, rather than where it is sold. This avoids creating a competitive disadvantage for car and other vehicle dealers in cities with local sales taxes. As with the existing tax, the new revenue would be collected by the State Board of

Equalization, however all revenue generated would be dedicated to Chula Vista and could not be diverted to the state or other agencies. Because the Measure is a proposed "general tax", the revenues would go into the City's general fund and could be used for any legal municipal purpose. While staff recommends a general use sales tax measure to address general asset management needs, the City Council has asked staff to report on methods to direct the use of a new revenue source specifically for infrastructure.

An advisory vote was recommended as one option to provide formal guidance to future City Councils on a direction for future spending. An advisory vote is a type of ballot measure in which citizens vote on a non-binding question. While the outcome of the ballot question will not result in a new law, it would symbolically make the general opinion of the voting population known in regard to a particular issue. Such measures have political force, but are not legally binding. If the City Council desires to put an advisory vote as a companion piece to the revenue measure, the following is recommended:

Advisory Vote Only

"If Measure X passes, generating an estimated \$16 million annually for the City of Chula Vista, shall the new revenue be used only to repair and replace critical City infrastructure and facilities, with a minimum of 40% of the total funds collected being used to upgrade aging police, fire and 911 emergency response facilities/ equipment and the remaining funds to be used only for essential city infrastructure and public buildings?"

PROCESS

The California Revenue and Taxation code authorizes the levy of a transactions and use tax (a sales tax or 'district' tax) by any county, city, city and county, or any other governmental agency.

In order to proceed, pursuant to California Revenue and Taxation Code Section 7285.9 and other applicable state law, the City Council must first enact an ordinance amending the Municipal Code by adding Chapter 3.33, entitled "Local Funding for Safety, Repairs, and Improvements," thereto.

The next step is adoption of a resolution calling and giving notice of a Special Election to be held on November 8, 2016, and ordering the submission of a proposition to the voters at said election, to consider approval of the ordinance. If approved, the ordinance would impose a transactions and use (sales) tax at the rate of one-half percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold in the City.

Ballot Arguments

California Elections Code Section 9282 allows the legislative body, any member or members of the legislative body authorized by that body, any individual voter who is eligible to vote on the Measure, or bona fide association of citizens, or any combination of voters and associations, to submit an argument for or against a measure placed on the ballot by the legislative body. Arguments may not exceed 300 words in length, and must be submitted to the City Clerk no later than August 24, 2016.

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The action tonight would authorize the Mayor to submit an argument in favor of the Measures, on behalf of the City Council.

Pursuant to a resolution previously adopted by the Council allowing rebuttal arguments, rebuttal arguments will be allowed, in accordance with Elections Code Section 9285. Rebuttal arguments may not exceed 250 words, and must be submitted to the City Clerk no later than September 1, 2016.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site specific and consequently, the 500-foot rule found in California Code of Regulations section 18702.2 (a)(11), is not applicable to this decision. Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. Implementation of the Asset Management Program, including a funding mechanism, will advance all of these goals by realizing efficient, transparent operations with safe and reliable stewardship of the natural and built environments to ensure a sustainable quality of life expect by the community.

CURRENT YEAR FISCAL IMPACT

The cost to perform current work on the AMP and the Financing Study were included in the 2015/2016 fiscal year budget. There are no additional fiscal impacts in the current fiscal year.

ONGOING FISCAL IMPACT

The Fiscal Year 2016-17 adopted budget includes funding to place the measures on the November 8, 2016 ballot.

If the ballot measure is approved by the voters, it would generate an estimated \$176 million over a 10 -year period, with the actual revenues determined by economic conditions. (As stated in the proposed ballot question, the estimated tax revenues for the first year is \$16 million; this 10-year estimate includes an inflation escalator.) On an annual basis, city staff will prepare a spending plan for Citizen Oversight Committee compliance review. If the Measure is approved by the voters, the initial spending plan will be brought forward for Council consideration within 30 days after such approval. Any proposed expenditures for the initial year will be presented as budget amendments to the FY 2016-17 budget. For each subsequent year, the spending plan after review by the Citizen Oversight Committee, will be included in the City Manager's proposed budget for Council consideration as part of the normal budget process.

ATTACHMENTS

Attachment 1 & 2 - Infrastructure Funding Scenario Summary Table & Detail Table

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