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City Council Puts User Tax On The Ballot

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One of the most important resolutions presented at the July 16th Joint City Council/Redevelopment Agency meeting occurred very late at night after most citizens had gone home. The recommendation to submit the utility users tax to voters in the November 5th election began with a staff report by City Attorney Michael Lawson. Changes to the wording of the ordinance were presented to accomplish two things: establish a sunset (termination) date of November 30th, 2006, and modify the language to include land-based and wireless communications technology (such as cellular phones and cable TV) that is not currently contained in Ordinance 103.

Background

The 5-percent utility tax was passed by the City Council in 1987. But in a precedent-setting case on July 4th, 2001, the state Supreme Court ruled that the city of La Habra's utility tax was in violation of Proposition 62, which requires that all local taxes must be passed by voters. The City of EPA continued to collect the tax, but took the precaution of collecting, but not spending the tax revenue. So the issue at hand is whether the city should continue collecting the tax that residents are already paying.

Staff Opinion

Sandy Salerno, speaking in her capacity as Finance Director, wanted to offer an alternative that would not include sunseting the tax. "To go through the effort to try and get this passed--which is going to be formidable--and then have it go away, given the

range of obligations that face this city--some of which were brought to your attention this evening by your own employees--I would recommend against that," she said. Salerno felt that ballot measures are difficult enough to pass, even without a sunset clause.

Council Opinions

Council Member Rutherford supports the sunset clause. Citizens are taxed enough. We imposed increases in garbage collection and other fees and taxes. Citizens are telling her that we're being taxed out of the city, and we cannot afford to live. If this passes, and four years down the road the council decides to visit and put it back on the ballot, that's another option. Having a cell phone is a choice, and we are already being charged a fee for that. Later on, there will be other developments generating revenue.

Council Member Walker said she doesn't know if taxpayers will go along with another tax. "We need to get more information on where we are with the tax and the lawsuit," she said. Walker is in favor of the sunset date. "If we manage our finances right, November 30th 2006 would be a time when we should not need the utility tax. We should not continually tax the residents when we don't need to."

Explaining the status of the lawsuit, Lawson said no court has made a decision with regard to East Palo Alto's utility users tax. "About a year ago, staff reported to council about a state Supreme Court decision affecting the City of La Habra in southern California, the effect of which was to create a rolling statute of limitations, so that any city imposing a tax that was not voter approved (which was approximately 50 to 100 cities at the time) could be sued by anyone who paid the tax. And while that is not a determination of merits of any tax, it raised the possibility that anyone who paid the tax could file a claim for a refund. In the case of East Palo Alto over the past year, there has been just one claim for a refund."

If it is placed on the ballot, it will take a simple majority vote to pass, "If it were to pass, it would most likely resolve all of the significant issues related to litigation challenging this type of general tax," Lawson continued.

Walker said this issue should have been on at the beginning of the meeting. "We have three or four people left here in this room and we're talking about passing a resolution to impose a tax on the people of this city; and they are not here to hear that we are doing this." (It was about 10:32 p.m. when she spoke.) Walker would like for it to come back on July 23rd, and with some notification to the community that this is what is being done.

Mayor Bay clarified that we are not imposing a tax; we are talking about putting it on the ballot.

Speaking in opposition to a sunset clause, Council Member Foster said "Less than 20 years ago, we incorporated; we relied on grants and loans and all kinds of handouts. I think it's about time to begin...to pay our way, and not rely any more on grants and loans."

Later on, Foster said that she feels that the voters read carefully and actively look at the issues, and would approve the measure without a sunset clause if they were well informed with the proper information. But she said she would go along with the majority vote of the Council.

Council Member Wilson gave initial support for the sunset clause. "It is a challenge in the community to have residents really understand the need for taxes, and it will be easier for people to accept if they see that there is a date when it will stop," she remarked. While she understands the need for it in terms of long-term revenue planning, it is a challenge in any community to get a tax passed. It is easier to have the tax passed if there is a sunset date. "People need to understand that is something they are actually paying now (although it may increase, since it is currently not on the cell phones), and that they would continue doing it until 2006."

Mayor Bay very reluctantly supports a sunset clause, due to the closeness of recent elections and lawsuits. He will commit to working to extend the tax in 2006.

The Vote

A motion to put the utility tax measure on the November 5th 2002 ballot was moved and seconded. During the discussion, Walker asked if this would come back to the community before the Council goes forward with it, "because they don't know we're doing this." Lawson said it was discussed by the Council on June 5th, and it was noticed as a public hearing for July 2nd, at which time the Council asked for this specific language at the night's meeting, and it will go into the voter's handbook. Walker replied, "So will the community know we took a vote tonight to pass this before it goes to the voter's manual?" Bay answered that there was a (Mercury News) reporter present, and this was the third time that it has been discussed in public in a month. Walker again commented on the lateness of the hour (about 10:45 p.m. at this point). The motion carried 4-0; Walker abstained "because the public doesn't know we are doing this."

Back to Closed Session

At this point, the Council returned to closed session to complete some business that was started at 6:30 p.m. It had already delayed the start of the study session that was scheduled to start at 6:45 p.m. to discuss the benefits of the University Place and University Palms project developments (I will report on this study session in another message). Note that it is not unusual for City Council/Redevelopment Agency meetings to go past 11:00 p.m. with only three or four citizens remaining in the audience. It is also not unusual for some of the most controversial topics to appear toward the end of the meeting. Both City Council and Redevelopment Agency business is conducted in the same meeting, and the community has unlimited opportunity to speak in two-minute intervals, either in open forum, or in response to agenda items.

Contributed by [Dennis Parker](#)

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