

STAFF REPORT

DATE: September 3, 2019

TO: City Council

FROM: Mike Webb, City Manager
Nitish Sharma, Director of Finance
Diane Parro, Director of Community and Business Engagement

SUBJECT: Actions to Place a Measure to Renew the Transaction and Use (Sales) Tax on the Ballot in a Municipal Election in March 2020

Recommendation

It is recommended that the City Council:

- 1) Approve a Resolution Declaring a Fiscal Emergency; Calling an Election on March 3, 2020; Approving an Ordinance Extending the Existing Transaction and Use Tax Administered by the CA Dept. of Tax and Fee Administration by Ordering the Submittal of Said Ordinance to the Voters at Said Election (Attachments 1a and 1b); and
- 2) Approve a Resolution Requesting the Yolo County Board of Supervisors Consolidate a Special Municipal Election with the Statewide Primary Election to be held on March 3, 2020 (Attachment 2); and
- 3) Appoint a Council Subcommittee to draft Argument in Favor and Rebuttal to Argument Against Measure.

Fiscal Impact

The adopted budget for Fiscal Year 2019/20 estimates a total of \$8.6 million in annual revenue will be generated by the one percent sales tax approved by the voters in June of 2014. All of this revenue is recorded in the General Fund and represents approximately fifteen percent of the total General Fund revenue. Unless renewed, this source of revenue will sunset on December 31st, 2020 thereby leaving a significant gap in revenue beginning in the 2020/2021 fiscal year.

The magnitude of the decline of General Fund revenue if the tax sales collection is not renewed would be dramatic. The delay of the potential approval from March 2020 to November 2020 would have drastic effects as well. The loss of the \$2.2M anticipated to be collected from January 1-March 31, 2021 would require the City Council to determine how to reprioritize among critical city services, reducing or cutting numerous City programs including public safety (Police and Fire); maintenance of city roads, sidewalks, bike paths and parks; and community programs, such as recreation for youth and seniors.

Council Goal(s)

To Ensure Fiscal Resilience is an overarching goal of the City Council. As the General Fund is the primary revenue source and operating fund for most city services, the tax renewal measure touches on all Council Goals.

Background and Analysis

The requested move of the General Municipal Election to November of 2020 (a separate agenda item) has created the need for actions to allow the Measure to Renew the 1% Transaction and Use Tax (sales tax) to be submitted on the ballot in March 2020 under the declaration of a fiscal emergency. The California Constitution requires the election for a general tax measure such as this to be held on a regularly scheduled general municipal election, except in cases of emergency declared by a unanimous vote of the City Council.

Keeping the sales tax renewal on a March 2020 ballot will allow for an uninterrupted collection of the sales tax and a seamless funding of critical city services. If the sales tax measure were to be submitted to and approved by the voters in the General Municipal Election held in November 2020, the operations date or the date on which collection of the tax would commence is the first day of the first calendar quarter commencing more than 110 days after adoption.(CA Revenue & Tax Code 7285.9) Therefore, tax collection would end on December 31, 2020 and not begin again until April 1, 2021 causing the loss of approximately \$2.2 million in general fund revenue for that year. In addition, there is a three-month time lag between collection and the City receiving the funding. This interruption to cash flow will exacerbate the inability to fund City services.

There is evidence to suggest that a sales tax renewal measure will meet with successful approval by the voters. On July 9, 2019, Council received a presentation of the results of a resident satisfaction survey that was conducted by the City consultants, EMC Research and TBWB Strategies. The scientifically valid survey was completed in May 2019, with a random sample of 500 registered voters in the City of Davis. One section of the questionnaire administered by telephone or online concerned the potential for the renewal of the sales tax of one percent. The results show that the vast majority of voters would support a measure to renew the sales tax with initial reaction to the ballot language at 77% of respondents saying they would vote yes and 21% saying they would vote no. After hearing statements of opposition to the measure, 71% of respondents said they would vote yes, with 27% saying they would vote no. A question that asked about likelihood to support the measure with inclusion of an expiration of eight years revealed that this sunset clause had no effect on likelihood to support the measure.

The proposed wording included in the Resolution for the Measure is as follows:

MEASURE “(letter to be assigned)”

Shall the Ordinance extending the existing one percent sales tax with no increase to the current rate, providing approximately \$8,600,000 annually until repealed by the voters, subject to annual review, with all funds staying local, and continuing existing funding for city services such as police, fire, recreation programs, city roads, sidewalks, bike path maintenance and other city services, be adopted?	YES	
	NO	

The renewal of the sales tax would not increase the City's tax rate, and pursuant to California Revenue and Taxation Code, food items (groceries), prescriptions, certain medical devices, and other "Necessities of Life" are exempt from sales taxes.

The proposed tax would be effective on the first day of the first calendar quarter commencing more than 110 days after approval of the ordinance by electorate.

Next Steps

If the City Council decides to place the renewal of the transaction and use (sales) tax on the ballot in 2020, the State Election Code outlines next steps, which include actions to call and consolidate an election with that of another jurisdiction (Attachments 1a and 2). In addition, staff recommends that the Council appoint a Council Subcommittee to draft the argument in favor of the measure and the rebuttal to the argument against the measure. Finally, the City Attorney will prepare an impartial analysis.

Attachments

- **Attachment 1a)** -Resolution Declaring a Fiscal Emergency; Calling an Election on March 3, 2020; Approving an Ordinance Extending the Existing Transaction and Use Tax Administered by the CA Dept. of Tax and Fee Administration by Ordering the Submittal of Said Ordinance to the Voters at Said Election
- **Attachment 1b)** –Ordinance Amending Article 15.19 of Chapter 15 of Davis Municipal Code to Extend the Existing Transactions and Use Tax (sales tax) Administered by the CA Dept. of Tax and Fee Administration.
- **Attachment 2)** -Resolution Requesting the Yolo County Board of Supervisors Consolidate a Special Municipal Election with the Statewide Primary Election to be held on March 3, 2020.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
DECLARING A FISCAL EMERGENCY; CALLING AND PROVIDING FOR AN
ELECTION TO BE HELD IN THE CITY OF DAVIS ON TUESDAY, MARCH 3, 2020;
APPROVING AN ORDINANCE EXTENDING THE EXISTING TRANSACTIONS AND
USE TAX ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION AND ORDERING THE SUBMITTAL OF SAID ORDINANCE
TO THE VOTERS AT SAID ELECTION**

WHEREAS, in 2014, the voters of the City of Davis approved an ordinance to authorize the City to impose a local transactions and use tax for general purposes at a rate of one percent (1%) (the “Tax”), pursuant to California Revenue and Taxation Code Section 7285.9; and

WHEREAS, the Tax is set to expire on December 31, 2020 and the City wishes to submit a measure to the voters at an election to be held on March 3, 2020 to extend the Tax before the Tax expires on December 31, 2020; and

WHEREAS, on this date, the City Council has introduced an ordinance entitled “Ordinance of the City Council of the City Of Davis Changing the Date of the City’s General Municipal Election by Amending Section 12.01.090 of the Davis Municipal Code” (the “Election Ordinance”) to change the date of the City’s general municipal election date from the statewide direct primary election date to the statewide general election date, in response to the threat of a legal challenge to the City’s at-large election to be held on March 3, 2020; and

WHEREAS, the loss of the \$2.2 million anticipated to be collected from January 1-March 31, 2021 would require the City Council to determine how to reprioritize among critical city services, reducing or cutting numerous City programs including public safety (Police and Fire); maintenance of city roads, sidewalks, bike paths and parks; and community programs, such as recreation for youth and seniors; and

WHEREAS, the City Council proposes to submit to the voters of the City an ordinance to extend the Tax by eliminating the December 31, 2020 expiration date (the “Tax Ordinance”); and

WHEREAS, Section 7285.9 of the California Revenue and Taxation Code authorizes any city to levy, increase or extend a transactions and use tax for general purposes at a rate of 0.125 percent, or a multiple thereof, subject to approval by a two-thirds vote of all of the members of the City Council and by a majority of the qualified voters of the city voting in an election on the issue; and

WHEREAS, Section 2(b) of Article XIII C of the California Constitution requires the election for the Tax measure to be consolidated with a regularly scheduled general election for members of the City Council, except in cases of emergency declared by a unanimous vote of the City Council; and

WHEREAS, upon the City Council’s unanimous declaration of a fiscal emergency, the City Council is permitted to submit the Tax measure to the voters at a special election; and

WHEREAS, the City Council wishes to call an election on March 3, 2020, which election will be either: (i) a general municipal election or (ii) upon the effective date of the Election Ordinance, a special election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS HEREBY RESOLVES:

SECTION 1. Declaration of Fiscal Emergency: The City Council hereby finds and declares by a unanimous vote that a fiscal emergency exists in the City of Davis for the reasons specified herein and provided by the City Manager at the meeting of the City Council herewith. Loss of tax revenue will require cuts or reductions to public safety (Police and Fire); maintenance of city roads, sidewalks, bike paths and parks; and community programs, such as recreation for youth and seniors. For the reasons provided above, the City Council must submit the Tax to the voters at an election to be held on March 3, 2020, and in the event that the Election Ordinance becomes effective, the City Council cannot wait until the November 3, 2020 general municipal election.

SECTION 2. Calling Election: Pursuant to California Elections Code Sections 9222 and 10201, the City Council hereby orders that an election shall be held in and for the City of Davis on Tuesday, March 3, 2020, for the purpose of approving the Tax Ordinance. The election shall be a general municipal election; provided, however, that upon the effective date of the Election Ordinance, the election shall instead be a special election. The full text of the Tax Ordinance is attached to this Resolution as Exhibit A, hereby incorporated in this Resolution by this reference, and shall be printed in the voter pamphlet. The measure to be submitted to the voters shall appear and be printed on the ballot as follows:

City of Davis	
Shall the Ordinance extending the existing one percent sales tax with no increase to the current rate, providing approximately \$8,600,000 annually until repealed by the voters, subject to annual review, with all funds staying local, and continuing existing funding for city services such as police, fire, recreation programs, city roads, sidewalks, bike path maintenance, and other city services, be adopted?	YES
	NO

SECTION 3. Approval of Tax Ordinance: The City Council hereby approves the proposed Tax Ordinance, attached to this Resolution as Exhibit A, to be submitted to the voters. The proposed measure is a general tax as defined in Article XIIC of the California Constitution and shall not take effect unless and until approved by a vote of at least a majority of the voters voting on the question at the election.

SECTION 4. Impartial Analysis: The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280.

SECTION 5. Ballot Argument: The City Council hereby authorizes one or more of its members to submit a ballot argument in favor of the measure pursuant to Elections Code Section 9282.

PASSED AND ADOPTED this _____ day of September, 2019, by the following vote:

AYES:

NOES:

Brett Lee
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

ORDINANCE NO.

ORDINANCE OF THE CITY OF DAVIS AMENDING ARTICLE 15.19 OF CHAPTER 15 OF THE DAVIS MUNICIPAL CODE TO EXTEND THE EXISTING TRANSACTIONS AND USE TAX ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

THE PEOPLE OF THE CITY OF DAVIS DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Code Amendment. Article 15.19 of the Davis Municipal Code is hereby amended as follows:

a. Sections 15.19.040 and 15.19.050 are amended by replacing the term “State Board of Equalization” with the term “California Department of Tax and Fee Administration.

b. Paragraph A.1. of Section 15.19.090 is amended in its entirety to read as follows: “The word ‘State’ is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California.”

c. Paragraph B. of Section 15.19.090 is amended in its entirety to read as follows:

“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.

1. ‘A retailer engaged in business in the District’ shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.”

d. Section 15.19.150 (Effective Date) is repealed in its entirety.

e. Section 15.19.160 (Termination Date) is repealed in its entirety.

f. Section 15.19.150 A new Section 15.19.160 is added to read as follows: Annual Review. As part of the City’s annual budget process, City staff shall review the tax revenues collected pursuant to this Article.”

SECTION 2. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

SECTION 3. The City Clerk shall certify the passage of this ordinance and forward a copy of the adopted ordinance to the Board of Equalization.

PASSED AND ADOPTED by the People of the City of Davis, State of California, at an election held on March 3, 2020.

Brett Lee
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS REQUESTING THAT THE BOARD OF SUPERVISORS OF THE COUNTY OF YOLO CONSENT TO THE CONSOLIDATION OF THE CITY OF DAVIS'S SPECIAL MUNICIPAL ELECTION ON MARCH 3, 2020 WITH THE CONSOLIDATED STATEWIDE ELECTION TO BE CONDUCTED ON THE SAME DATE, AND DIRECT THE ASSESSOR / CLERK-RECORDER / ELECTIONS OFFICE TO ADMINISTER, MANAGE AND OVERSEE THE SAID SPECIAL MUNICIPAL ELECTION AND CANVASS THE RESULTS THEREOF

WHEREAS, the City Council of the City of Davis has called a Special Municipal Election to be held on Tuesday, March 3, 2020, for the purpose of submitting a ballot measure for consideration by the voters; and

WHEREAS, it is desirable that the Special Municipal Election be consolidated with the Consolidated Statewide Election to be conducted by the County of Yolo on the same date, and that within the City the precincts, polling places, and election officers of the two elections be the same, and that the County Elections Official canvass the returns of the Special Municipal Election, and that the election be held in all respects as if there were only one election; and

WHEREAS, Elections Code section 10002 authorizes the City Council to request by resolution that the Board of Supervisors approve the election consolidation and authorize the County Elections Official to conduct specified election services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS HEREBY RESOLVES:

Section 1. That pursuant to the requirements of the laws of the State of California relating to General Law cities, there has been called and ordered to be held in the City of Davis, California, on Tuesday, March 3, 2020 a Special Municipal Election for the purpose of submitting the following question to the voters:

City of Davis	
Shall the Ordinance extending the existing one percent sales tax with no increase to the current rate, providing approximately \$8,600,000 annually until repealed by the voters, subject to annual review, with all funds staying local, and continuing existing funding for city services such as police, fire, recreation programs, city roads, sidewalks, bike path maintenance, and other city services, be adopted?	YES
	NO

Section 2. That the form and full content of the measure to be submitted to the voters are set forth in City Council Resolution _____, a complete copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

Section 3. That the City Council hereby requests the Board of Supervisors to consent and agree to the consolidation of the City of Davis's Special Municipal Election with the Consolidated Local and Statewide Election to be held on March 3, 2020 and that the County of Yolo take all necessary steps to hold a consolidated election.

Section 4. That the City Council hereby further requests the Board of Supervisors to direct the Assessor / Clerk-Recorder / Elections Office to administer, manage and oversee all facets of the City of Davis's March 3, 2020 Special Municipal Election and further direct the Assessor / Clerk-Recorder / Elections Office to perform all necessary functions, services and tasks related to the complete and successful conduct of the election including, without limitation: the provision of all election materials and equipment; the hiring, training and supervision of poll workers and other election personnel; the printing and distribution of ballot materials; the translation of ballot materials; the collection of submitted ballots; the tallying of votes; and the canvassing and the certification of election results.

Section 5. That the City of Davis recognizes that all necessary expenses incurred by the County in performing these services shall be paid by the City of Davis, in accordance with the County's normal charges for such services and authorizes the City Clerk and City Manager to make payment for such services upon presentation of valid invoices from the County for the same.

Section 6. That in all particulars not otherwise specifically provided in this Resolution, the Election shall be held and conducted as provided by law.

Section 7. That the City Clerk is directed to file a copy of this Resolution with the Clerk of the Board of Supervisors and a copy with the County Elections Official forthwith.

Section 8. That the City Clerk shall certify to the passage and adoption of this Resolution.

PASSED AND ADOPTED this ___ day of September, 2019 by the following vote:

AYES:

NOES:

Brett Lee
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk