



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: December 3, 2019

TO: Christine Daniel, City Manager

FROM: Sheri Hartz, City Clerk
Susan Hsieh, Finance Director

SUBJECT: **City Council Consideration Of Placing A Measure Requesting Voter Approval Of A Special Sales And Use Tax On The March 3, 2020 Ballot**

RECOMMENDATION

Staff recommends that the City Council conduct final deliberations and, if the decision is made to place a sales tax measure on the March 3, 2020 ballot, consider approval of the following legislative actions:

- A. Resolution Of The City Council Of The City Of Emeryville Calling A Special Municipal Election On March 3, 2020; Ordering The Submission To The Qualified Electors Of The City Of Emeryville A Measure To Approve A Quarter-Cent Special Transactions And Use Tax; Requesting That the Alameda County Board Of Supervisors Permit Consolidation Of The Emeryville Special Municipal Election With The Statewide Direct Primary Election To Be Held On The Same Date; Requesting That The County Registrar Perform Certain Election Services In Connection With Said Consolidated Election; Authorizing The City To Reimburse The County Registrar Of Voters For Election Services Performed; Directing The City Attorney To Prepare An Impartial Analysis; And Authorizing The Filing Of Direct Argument For The Measure And Rebuttal Argument (CEQA Determination: Exempt Pursuant To CEQA Guidelines 15378(b)(4) And 15061(b)(3)); and,
- B. An Ordinance Adding Article 3.5, "Transactions and Use Tax," Imposing A Transactions And Use Tax To Be Administered By The California Department Of Tax And Fee Administration, To Chapter 3 of Title 3 of the Emeryville Municipal Code.

BACKGROUND

At the May 21, 2019 City Council meeting, staff provided the City Council with an overview regarding the March and November 2020 election timelines and the estimated costs associated with those elections. The Council discussed election timing and various types of revenue measures. One of the several possible measures identified was a sales tax increase of a quarter cent that would be dedicated to a number of specific City services. Staff estimated that a quarter-cent sales tax would raise approximately \$2 million annually. The Council discussed funding additional firefighter and police officer positions, a Code Enforcement Officer, an Assistant Engineer and funding to support the Emeryville Child Development Center and/or Capital Improvement Projects with revenues from the sales tax measure.

The California Legislature approved, and the Governor subsequently signed, AB 723 which confirms Emeryville's authority to place a local sales tax measure before the voters.

On October 1, 2019 the City Council authorized staff to proceed with a community survey to assess voter support for a local quarter-cent sales tax measure.

At a special City Council meeting held on October 29, 2019, staff and the polling consultant presented the results of the survey that had been conducted in the middle of October which indicated support for the proposed measure, as discussed in more detail below.

The City Council gave direction to move forward with preparing a ballot measure for final approval at its December 3, 2019 meeting, to include revised descriptions of the services and positions to be funded by the revenue received from the sales tax, if enacted, and to alter the ballot question language slightly to better reflect public interests as shown in the results of the community survey.

DISCUSSION

Approval of a quarter-cent sales tax increase would improve the City's ability to provide the level of services Emeryville residents have consistently said they want. Sales tax revenues are paid by out-of-town visitors patronizing the City's retail, dining, lodging and entertainment businesses, as well as local residents. Costs generated by visitors who impact Emeryville's local infrastructure can appropriately be supported through a local sales tax measure. The proposed measure would provide Emeryville with a guaranteed source of local funding for vital City services that will stay local.

If approved, the revenue measure to be submitted to the voters would establish a quarter-cent, or 0.25%, local rate on retail transactions and sales. The revenue would be collected at point of sale and subsequently remitted to the City by the California Department of Tax and Fee Administration. The measure would be approved if it receives affirmative votes by at least two-thirds of eligible City voters.

Proposed Ballot Question

If the City Council decides to place the measure on the March 3, 2020 ballot, staff recommends the Council consider authorizing the following language for the ballot question, which is generally the language that was tested in the voter survey, revised slightly in response to the Council's direction at its October 29th meeting. The language meets the specific legal and technical requirements of the Elections Code for placement of a transactions and use tax measure before the voters. The City Council has authorized a subcommittee of the City Council consisting of Council Members Bauters and Martinez to file an argument in favor of the measure and a rebuttal to an argument filed against it, if any are submitted.

Ballot Question Language:

“To maintain healthy communities and improve quality of life in Emeryville, shall a measure to protect the safety of local residents, reduce property crimes/auto burglaries, improve fire protection services, and provide a safe, nurturing environment for pre-K/early childhood education for working families by levying a quarter-cent sales tax, raising approximately \$2 million annually, until ended by voters, with independent oversight and audits, exclusively for public safety and child development in Emeryville, be adopted?”

YES _____ NO _____

Fiscal Impacts and Spending Priorities

If adopted by voters, it is estimated that the proposed measure would generate approximately \$2 million per year. The Council has identified the following services that could be funded from the tax proceeds. If the measure specifies the services to be funded, it is a special tax that requires 2/3 voter approval:

1. Additional firefighter positions
2. Additional police officer positions
3. Additional public safety support positions
4. Additional code enforcement positions
5. Additional engineering positions
6. Funding the Emeryville Child Development Center and/or Capital Improvement Projects

Revenues from the measure may not be sufficient to simultaneously fund all of the services that are included in the list above. Accordingly, the proposed tax ordinance includes language authorizing the City Council to determine funding priorities as part of its regular budget process. This is to ensure that the costs of the services funded from the measure do not exceed the revenues generated by the measure. For example, if sales tax revenues increase by 2% per year, but personnel costs increase by 5% or 6% per year, the Council should consider an expenditure plan for tax revenues that ensures sufficient revenues are available to sustain the services funded by proceeds from the measure. In any event, the only services that could be funded from these tax proceeds are those listed in the ordinance approved by the voters.

Results of Recent Polling

EMC Research conducted a statistically valid and representative survey, using a hybrid telephone/email methodology, of 302 registered voters in the City of Emeryville. After hearing a summary of the quarter-cent special sales tax measure, 73% of those surveyed indicated support for the measure. Support rose slightly to 74% after respondents heard additional information on the measure, including potential city positions and services to be funded.

Support decreased to 64% after respondents heard negative or oppositional information on the measure, including statements that the cost of living is already too high, or that increasing the sales tax would drive businesses and jobs out of the City.

Given the 5.64% margin of error for the study, EMC Research conservatively estimated that a potential sales tax measure to fund public safety and early childhood education is viable for the March 2020 election, and that, if informative stakeholder engagement is conducted, supportive votes will not fall below 66.7%, the two-thirds vote required to approve a special tax.

PROPOSED TAX MEASURE

The recommendation under consideration is to place a quarter-cent Transactions and Use Tax (known commonly as a "Sales Tax") on the March 2020 ballot. If approved, the Transactions and Use Tax would add a new Article 3.5 to Chapter 3 of Title 3 of the Emeryville Municipal Code. If approved the Transactions and Use Tax be implemented by the California Department of Tax and Fee Administration in July 2020, at which time businesses would begin to collect the tax. The City would begin receiving revenue thereafter. The total sales tax in Emeryville would increase from 9.25% to 9.50%.

In Alameda County, the base sales tax rate is 9.25%. The cities that have taken action to impose additional sales tax are Alameda, Albany, Hayward, Newark, San Leandro and Union City; all have increased their local sales tax rate by a half-cent (.50%), for a total current rate of 9.75%.

The proposed tax would be a special purpose tax paid by all consumers purchasing goods and services in the City and would be used for the specific City services enumerated in the measure. The additional tax revenue could not be taken by the State of California for any reason or purpose.

Sales tax does not apply to groceries or prescriptions. For large purchases that are delivered (such as appliances) and vehicles, the sales tax is determined by the location where the buyer lives - not by the location of the business where the purchase is made.

OTHER ACTIONS OF THE RESOLUTION

In addition to calling a special municipal election on the proposed tax measure for the March 3, 2020 ballot, the resolution also authorizes the following actions:

- requests the Board of Supervisors of the County of Alameda to consolidate the election on the proposed measure with the statewide primary election and commits the City to reimburse the County for those expenses incurred for conducting the election;

- directs the City Clerk to forward the proposed measure to the City Attorney to prepare an impartial analysis; the City Attorney's impartial analysis may not exceed 500 words and must be submitted to the City Clerk by 4:00 p.m. December 4, 2019;
- authorizes the City Council to author a single ballot argument in favor of the proposed measure; all arguments, either for or against the measure, may not exceed 300 words and must be submitted to the City Clerk by 4:00 p.m. on December 12, 2019. Note that at its November 5, 2019 special meeting, the City Council created an ad hoc committee of Councilmembers Bauters and Martinez to prepare direct argument and rebuttal argument on behalf of the Council;
- authorizes the filing of rebuttal arguments, which shall not exceed 250 words and which must be submitted to the City Clerk by 4:00 p.m. on December 19, 2019.

FISCAL IMPACT

The cost of placing the measure on the March 2020 ballot is estimated to be approximately \$40,000. Funds are available in the Elections account 1250-80550 for this purpose.

ENVIRONMENTAL REVIEW

The proposed measure involves the creation of a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment and thus is not a "project" subject to the requirements of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to CEQA Guidelines Section 15378 (b)(4); additionally, it can be seen with certainty that there is no possibility the adoption and implementation of the ordinance may have a significant effect on the environment, and accordingly the adoption of the ordinance is exempt from the provisions of CEQA pursuant to the "general rule" at CEQA Guidelines Section 15061(b)(3).

STAFF COMMUNICATION WITH THE PUBLIC

Staff has had no communication with the public on this matter. EMC conducted the community survey described above in October.

PREPARED BY: Sheri Hartz, City Clerk

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Christine Daniel, City Manager

ATTACHMENTS

- Draft Resolution Calling the Election
- Draft Ordinance Imposing a Transactions and Use Tax