



CITY OF POMONA COUNCIL REPORT

August 6, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Onyx Jones, Finance Director/City Treasurer

Subject: **ADOPT A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, SUBMITTING A THREE QUARTERS OF ONE PERCENT (0.75%) SALES TAX MEASURE TO THE CITY OF POMONA'S QUALIFIED ELECTORS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018, AND AUTHORIZING OTHER NECESSARY ACTIONS AND DOCUMENTS FOR BALLOT PLACEMENT**

OVERVIEW

Recommendation – That the City Council:

1. Adopt the Attached Resolution:
 - A. Submitting a 0.75% Transaction and Use Tax (sales tax) Measure (Ordinance at Attachment "A" to the Resolution) to the City's qualified electors at the November 6, 2018 General Election;
 - B. Requesting the assistance of the County of Los Angeles Registrar in connection with that election and requesting consolidation of that election with any other election held on that date;
 - C. Directing the City Attorney to prepare an impartial analysis for the proposed measure; and
 - D. Directing the City Clerk to set forth the timeline and process for filing written arguments and rebuttals.

Fiscal Impact – If Council gives direction to place a revenue measure on the November 2018 Ballot, there will be an election cost estimated to be less than \$12,000 which is currently budgeted in the FY 2019 Budget. If the actual election cost is more than the estimate, the budget will be amended during the FY 2019 Mid-Year process.

If approved by the voters, this measure will not be effective until April 1, 2019 and the first tax advance received from the Board of Equalization will be June 2019. HdL Companies, the City's consultant for sales tax analysis, estimates based on present sales tax revenues and

future projections, that approximately \$12 million would be generated annually from the proposed sales tax measure. There has also been extensive research by HdL, which is a prominent auditor of sales tax in California, and there have been no reductions in taxable sales in any California city that has increased their transaction and use tax.

Previous Related Action – On July 16, 2018, City Council voted by majority vote to give Staff and the City Attorney direction to return to the August 6, 2018 Council Meeting and present the necessary documents to place a Transaction and Use Tax before the voters of the City of Pomona in the November 2018 Election.

May 14, 2018, during the City's annual Budget Study Session, Staff was able to present the final Phase II of the 10 Year Fiscal Sustainability Analysis which included a very detailed written report from Urban Futures Incorporated (UFI), the City's financial advisor, that clearly defined the current financial situation of the City of Pomona, and made recommendations of various immediate strategies to preserve vital City services. In UFI's report, they indicated that if no action is taken by the City, the City of Pomona would be cash insolvent, service insolvent, and budget insolvent by FY 2021.

On May 7, 2018, UFI presented Council with a power point presentation that updated the Ten-Year Fiscal Sustainability Plan based on FY 2019 Budget projections. UFI also included specific recommendations for Council to consider that could generate additional revenues for the General Fund and methods to streamline and reduce cost.

On December 11, 2017, City Council reviewed and discussed Phase I of the Ten-Year Fiscal Sustainability Plan presented by UFI.

When the City Council adopted FY 2017-18 Operating Budget there was significant discussion of the critical need for the City to develop a long-term financial plan. To that end, the City Council approved a professional services agreement with Urban Futures, Inc. on August 7, 2017 to draft a financial plan.

EXECUTIVE SUMMARY

During the July 16, 2018, City Council meeting, City Council directed staff and the City Attorney to bring back a proposed ordinance for a 0.75% sales tax, independent Citizen's Oversight Committee, and necessary documents to place a Transaction and Use Tax measure in the November 2018 election for the voters to consider. The City Council also directed staff and the City Attorney to include a ten-year sunset clause so that the sales tax would automatically expire in ten years; however, based on an assessment of community needs, the proposed ordinance gives the voters the power to repeal the tax, rather than asserting a specific expiration date.

DISCUSSION

The City of Pomona's General Fund provides a variety of essential municipal services including: fire, police, emergency 911 medical response; after-school programming for youth; library services;

various street related maintenance; land use planning and permitting; and other general services. In FY 2008, the City's General Fund had budget appropriations of \$99M and in FY 2018, ten years later, the budget is only \$98M. The economic recession from 2008-2012 caused the General Fund revenues to decline at an alarming rate, which caused the City to make significant budget cuts over the years as follows:

- Community Programs were cut
- The total number of authorized positions were decreased from 777 in FY 2008 to as low as 539 in FY 2013 (31 of those positions eliminated were sworn positions)
- City employees who remained agreed to furloughs, salary cuts, paying for a portion of retirement contributions and non-competitive medical benefits
- Maintenance on City buildings and parks was deferred
- Software and hardware in the IT Department had minimal upgrades
- Street related services previously funded by the General Fund had to be funded with Special Revenue Funds such as Gas Tax, and the list goes on.

Today, in FY 2019, the City has a budget deficit of \$4.7M. Additionally, when you eliminate the use of one-time monies, the City's General Fund could experience budget insolvency and an operating annual deficit of \$8M to \$10M. If the City is not able to acquire a new revenue source for the General Fund, the City will have to make even more significant budget reductions in FY 2018/2019 and in years to come. This will surely jeopardize vital services that impact the quality of life for Pomona residents and could deter new development in the City.

Proposed Transaction and Use Tax Ballot Measure

By adopting the attached resolutions, the City Council would be approving the language in Transactions and Use Tax Ordinance which is attached to the Resolution as Attachment "A", and submitting the Ordinance as a ballot measure for voter approval at the November 2018 election – as required by Revenue and Taxation Code section 7285.9.¹ The transactions and use tax is a general tax requiring approval by a majority of voters voting on the ballot measure. If approved by the voters, the transactions and use tax would take effect on April 1, 2019 and is estimated to generate \$12M annually for the City's General Fund.

By approving placement of the measure on the November 2018 ballot, the City's is able to access

¹ Contained within the previously submitted July 16, 2018 agenda report, HdL had recommended that the resolution calling for the election should be passed by a 2/3 vote of the City Council (5 votes). While this is the language found in Government Code Section 53724, there is a case which has interpreted this Code Section, *Traders Sports, Inc v. City of San Leandro*, 93 Cal. App. 4th 37 (2001), which found that the 2/3rds vote required by the Government Code does not apply to Charter Cities, provided the Charter allows for a majority vote by the City Council to place the measure before the voters. The Pomona City Charter at Section 507 reads "Except in cases where a greater number of votes is required by any other provision of this Charter, a majority vote of the total membership of the Council shall be required for the adoption of any ordinance or resolution." In the *Trader Sports, Inc.* case, the City of San Leandro had a Charter provision specifically allowing City initiatives to be placed on the ballot with a majority vote of the City Council, the Pomona City Charter does not specifically address initiatives, but discusses the adoption of ordinances or resolutions in general. Since the Charter does allow for a majority vote of the total membership (4 of 7) to adopt a resolution and it is by resolution that the City Council must approve the call for the sales tax measure, the vote required to call for the sales tax initiative election and to place the tax ordinances before the voters should be 4 affirmative votes of the City Council. **However, certainly a safer approach would be to have the City Council call for the election with 5 affirmative votes.**

the tax amount which is available under State law. Based on existing voter approved sales taxes, currently the maximum amount of local sales tax that can be implemented by the voters in Pomona is 3/4¢. Other agencies like the South Coast Air Quality Management District and Los Angeles County Board of Supervisors could act to place a measure on the November 2020 ballot and either one of those actions could reduce or eliminate Pomona's ability to establish a locally-controlled sales tax revenue source.

Independent Citizens' Oversight Committee

The proposed Ordinance includes the formation of an Independent Citizens' Oversight Committee to annually review the City's revenues and expenditures of the transactions and use tax. The Committee would be comprised of members appointed by the City Council. The committee would hold public meetings throughout the year, review annual audit reports related to the tax, and make written reports to the City Council summarizing Committee findings and any appropriate recommendations.

Ballot Measure Title and Language

POMONA PUBLIC SAFETY, HOMELESSNESS AND ESSENTIAL CITY SERVICES PROTECTION MEASURE	YES	
To maintain/prevent reductions to City services including 911 emergency response times, police/fire protection, drug/gang-prevention, youth/after-school/park programs, address homelessness; fix streets/potholes to keep safe/clean, provide senior, business development and other general services for the City of Pomona shall the measure establishing a ¾¢ sales tax providing approximately \$12,000,000 annually until ended by voters be adopted, requiring public disclosure, oversight, all funds for Pomona?	NO	

Attachment: Resolution of the City Council of the City of Pomona, California, Submitting a Three Quarters of One Percent (0.75%) Sales Tax Measure to the City Of Pomona's Qualified Electors at the General Municipal Election to be Held on Tuesday, November 6, 2018, and Authorizing Related Actions Including Directing the City Attorney to Prepare an Impartial Analysis of the Measure and Authorizing Arguments and Rebuttals on the Measure, with Attachment "A" – Transaction and Use Tax Ordinance