



City of Sunnyvale

Agenda Item

16-0600

Agenda Date: 7/12/2016

REPORT TO COUNCIL

SUBJECT

Adopt a Resolution Calling a General Municipal Election to be Held in the City of Sunnyvale on Tuesday, November 8, 2016, for the Purpose of Submitting to City Voters a Measure to Modernize the Utility Users Tax; Requesting Consolidation with the Statewide General Election and Election Services from Santa Clara County; Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments

BACKGROUND

City Council sponsored a Study Issue to evaluate the potential of a Utility Users Tax (UUT) ballot measure (FIN 15-01) for the November 2016 election. On December 1, 2015, a Council Study Session was held to discuss the City's current UUT regulations and ways to prevent UUT revenues from declining (SS 15-0860) due the fact that significant portions of the current ordinance have not been updated for virtually four decades, during which time technology and telecommunications have changed dramatically. Staff presented a range of options for updating these outdated UUT regulations, all of which would require voter approval. It is important to note that this is an existing revenue stream and the City Council is not creating a new tax. The options for updating the existing ordinance included potential rate increases, broadening the base against which the tax is collected, and ways to address modern telecommunication services that didn't exist when the City's UUT regulations were adopted. Council comments favored staff returning with an ordinance modernizing the telecommunications UUT without broadening the base or increasing the rate. Council also supported conducting community opinion research to evaluate the public's potential interest in, and the viability of a UUT update.

The City retained the services of the Lew Edwards Group to develop draft ballot language and conduct opinion research. A draft ballot question reviewed by the City Attorney's Office was created to evaluate interest in modernizing the City's telecommunication UUT without raising the tax rate. This measure would need a simple majority to pass. Support for the measure was between 57% - 58% which is above the margin of error for the study. The public clearly recognized that a consistent, locally-enacted revenue stream was prudent for maintaining the City's long-term financial stability and addressing community priorities including services such as 911 and other police programs, pothole and street repairs, and maintaining neighborhood parks and open spaces.

Considering the overall results, on May 17, 2016, Council directed staff to return with the necessary documents to place a measure on the ballot for the November 2016 election to modernize the City's Utility User Tax without increasing the rate (RTC 16-0077).

ENVIRONMENTAL REVIEW

The adoption of the resolution does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15378(b)(4) and 15378

(b)(5) in that it is a fiscal and governmental organizational or administrative activity that will not result in direct or indirect changes in the environment and does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

DISCUSSION

UUT Modernization Ordinance

The City of Sunnyvale adopted a Utility Users Tax (UUT) ordinance on telecommunications, gas, and electricity in 1969, that currently applies to electricity/natural gas services, and to telephone calls made on landlines and cell phones. Newer telecommunication technologies - such as broadband wireless service, prepaid wireless, and voice over I-P (VOIP) - are not covered by the City's existing ordinance. Additionally, some telecommunications providers apply the tax and some do not. Modernizing this ordinance would achieve, among other objectives, treating all residents equally regardless of what types of telecommunications services they use.

The current tax rate for all utilities is 2%. Approximately 150 California Cities have similar UUT ordinances, although the particular utilities to which the tax is applied vary. Tax rates range between 1% and 11%; the most common rate (the mode) is 5%, applied broadly among many types of utilities.

In December 2015, the Council favored staff returning with an ordinance modernizing the telecommunications UUT without broadening the base or increasing the rate. In recent years, many cities have modernized their UUT ordinances by voter approval to reflect the migration from traditional landline telephone use to new electronic communication technologies, such as wireless and VOIP. In Santa Clara County, most cities have modernized their UUT ordinances in the past five to seven years.

Telephone communications services were included in the City of Sunnyvale's original ordinance, which references now-outdated federal laws. Due to numerous changes in technologies and changes to state and federal laws, the City must update and modernize its UUT ordinance, with voter approval, in order to protect its existing UUT revenue from this erosion.

The vast majority of public agencies with UUT ordinances have successfully secured voter approval to update, at a minimum, the telecommunication components of their UUT ordinance. These updates close loopholes and include modern definitions that avoid potential legal challenges. Nearly all of these types of measures have received overwhelming voter approval because they simply "modernize" the telecommunication definitions so that all taxpayers are treated the same. Approximately 90% of the UUT ordinances in California are now voter-approved with modern definitions.

The proposed ordinance (Exhibit A to the Attachment 1) makes amendments to Sunnyvale Municipal Code Chapter 3.12 to modernize the existing UUT ordinance to clarify that it is intended to apply to all electronic communication technologies such as wireless phones and VOIP, not just traditional land lines. The following is a brief summary of the amendments included in the proposed ordinance:

- Includes a modern, functional definition of telecommunication and video services that is technology-neutral, and includes VoIP (voice over internet protocol) telephone service, paging,

and private communication services.

- Specifically excludes internet services such as email and digital downloads such games, music, and software etc. Federal law also prohibits any state or local tax on “internet access”.
- Incorporates definitions of “ancillary telecommunication and video services” that are commonly recognized by the industry as being part of such services.
- Incorporates mobile communications services to include pre-paid mobile services, which is now covered by state law (AB 1717).
- Updates administrative provisions related to collection and enforcement to ensure that the telecommunications tax will be properly collected and that all revenues will be properly expended through the use of third party independent audits.
- Anticipates the possibility of new technologies and services to provide telecommunication (such as VoIP), so that all taxpayers will be treated the same.
- Provides other administrative tools for addressing telecommunication tax issues, including administrative rulings and sourcing, bundling and nexus guidelines.

Besides the issue of taxpayer equity and fairness, staff believes these amendments are warranted to protect the existing tax revenue as technologies continue to advance. If the City does not seek voter approval of a modern telecommunications tax, then adverse litigation or new technologies (not covered by the old ordinance) could cause the City to lose the vast majority (if not) all of the annual revenue from the telecommunications component of the UUT. If the City does seek voter approval of a modern UUT ordinance with technology-neutral definitions, then a majority vote is required as the UUT is a general tax (imposed for general governmental purposes) and not a two-thirds vote required for the adoption of a special tax (imposed for special purposes). If the ballot measure were to fail, then the current telecommunication would continue at its current 2% rate, subject to the risks of litigation and continued tax erosion due to technology changes, as mentioned above.

Resolution Placing UUT Measure on November 8, 2016 Ballot

Consistent with the Council’s May 17, 2016 direction to return with the actions necessary to place the ballot measure on the November 8, 2016 ballot, this report provides the required Resolution to place the measure on the ballot. In addition to placing the measure on the ballot, the Resolution also provides for:

- Direction to the City Attorney to prepare an impartial analysis for the measure pursuant to Elections Code Section 9280.
- Submission of ballot arguments to the City Clerk to be printed in the Sample Ballot.

Ballot Arguments

Elections Code Section 9282(b) provides that when a measure is placed on the ballot by the City Council, written arguments for and against the measure may be filed by the following: the City Council or any member or members of the Council authorized by the Council, or any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations

Staff coordinated with Mayor Hendricks who has expressed interest in submitting an argument in favor of the ordinance, if the Council chooses to assign him that role. As the Council considers the options for ballot arguments discussed below, they may wish to consider Mayor Hendricks’ interest.

Other Council Members who may have an interest in signing the argument in favor of the ballot measure can express their interest at the meeting or coordinate with the City Clerk's Office.

The Council may authorize the City Council or any member or members of the City Council to submit an argument in favor of the ordinance. Elections Code Section 9287(a) provides that if more than one argument for or against any city measure is submitted, the city elections official shall give preference and priority in the following order: (a) The legislative body, or member or members of the legislative body authorized by that body; (b) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure, (c) Bona fide associations of citizens; (d) Individual voters who are eligible to vote on the measure.

If the Council decides to either submit an argument in favor of the ballot measure or authorize certain members to submit an argument, then pursuant to Election Code Section 9287(a) that argument will be given preference over any other argument submitted in favor of the ballot measure. If the Council chooses not to submit an argument, the City Clerk will follow the priorities described in Elections Code Section 9287(a) in selecting an argument to be printed in the Sample Ballot.

The resolution is drafted with three options for the Council's consideration regarding the submission of the argument in favor of the measure:

- a. Authorize the City Council as a body to submit a written argument [in favor] or [against] the measure;
- b. Authorizes ___[#]___ member(s) of the City Council to submit a written argument for the measure: [one or more name(s)] . At [Name(s)] discretion, the argument may also be signed by other members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure [Name(s)] is also authorized to submit a rebuttal argument on behalf of the City Council, which, at [Name(s)] discretion, may also be signed by members of the City Council, bona fide associations, or individual voters who are eligible to vote on the measure. Signatures on the rebuttal argument may be different from those who signed the primary argument.

OR

- c. Take no action with regard to authorizing the Council, or member or members of the Council to submit a written argument [in favor] or [against] the measure.

The deadline for submitting arguments for and against the measure will be 14 days from the adoption of the Resolution Calling the Election (Elections Code Section 9286). Rebuttal arguments may then be filed by the author(s) of the primary arguments no later than 10 days after the final filing date for primary arguments (Elections Code Section 9285(4)). If Council selects Option A, a special Council meeting would need to be held for the Council to consider and approve the written argument.

If Council does not take action to adopt the resolution calling the election and other necessary actions at this meeting, the matter could be brought back on July 26 for further consideration by the Council and to take action to place the measure on the ballot. Action must be taken no later than the July 26 meeting in order for the Santa Clara County Board of Supervisors to act on the City's consolidation request before the August 12, 2016 deadline to place matters on the November 8, 2016 election.

FISCAL IMPACT

The estimated cost for this to be included as a ballot measure on Sunnyvale's next general election is approximately \$74,000. The Registrar of Voters estimates the cost of conducting the 2016 General Municipal Election for the City of Sunnyvale, including the election of officers and up to three possible ballot measures, to be \$441,000. The proposed FY 2016/17 budget for election costs is \$452,158. Following the election, the County will determine the actual costs and will bill the City for its pro-rata share. Should costs exceed the approved budget amount, staff will return to Council to request additional funds via a budget modification.

Modernization of the existing Utility Users Tax will assure continued receipt of approximately \$1.5 million in ongoing, locally-generated annual revenue used to fund vital City services. Failure to modernize the City's UUT relative to telecommunication services could place a significant General Fund revenue source at risk. In the May 2016 survey, Sunnyvale residents prioritized maintaining the City's long-term financial stability with funding that supports police and fire, street and park maintenance services, among other programs.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center, and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk, and on the City's website.

ALTERNATIVES

1. Adopt a Resolution Calling a General Municipal Election to be Held in the City of Sunnyvale on Tuesday, November 8, 2016, for the Purpose of Submitting to City Voters a Measure to Modernize the Utility Users Tax; Requesting Consolidation with the Statewide General Election and Election Services from Santa Clara County; Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments.
2. Do not adopt the Resolution placing the Utility Users Tax modernization measure on the ballot, provide further direction to staff, and return with the appropriate actions July 26, 2016 to submit the measure to the County Registrar of Voters for the November 8, 2016 election.

STAFF RECOMMENDATION

Alternative 1: Adopt a Resolution Calling a General Municipal Election to be Held in the City of Sunnyvale on Tuesday, November 8, 2016, for the Purpose of Submitting to City Voters a Measure to Modernize the Utility Users Tax; Requesting Consolidation with the Statewide General Election and Election Services from Santa Clara County; Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments.

Prepared by: Brice McQueen, Senior Management Analyst
Reviewed by: John Nagel, City Attorney
Reviewed by: Timothy J. Kirby, Finance Director
Reviewed by: Kent Steffens, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Resolution Calling a General Municipal Election to be Held in the City of Sunnyvale on Tuesday, November 8, 2016, for the Purpose of Submitting to City Voters a Measure to Modernize

the Utility Users Tax; Requesting Consolidation with the Statewide General Election and Election Services from Santa Clara County; Directing the City Attorney to Prepare an Impartial Analysis; and Setting Priorities for Ballot Arguments (with proposed Ordinance attached thereto as Exhibit A)