



AGENDA BILL

Agenda Item No. 7(B)

Date: July 15, 2014
To: El Cerrito City Council
From: Scott Hanin, City Manager
Sky Woodruff, City Attorney
Subject: Direction on November 2014 Sales Tax Ballot Measure for Maintenance of City Services

ACTION REQUESTED

Adopt a resolution of the City Council of the City of El Cerrito:

- a) Approving an ordinance (Exhibit A to the resolution) extending existing local funding at the one-cent (1.0%) sales tax rate in order to maintain and/or increase the current level of services provided by the City, which would become effective only if adopted by 50 percent plus one vote of the El Cerrito electorate;
- b) Submitting to the El Cerrito electorate a measure to extend existing local funding at the one-cent (1.0%) sales tax rate in order to maintain and/or increase the current level of services provided by the City; and,
- c) Requesting that the Contra Costa Board of Supervisors consent to the consolidation of this election with the statewide general election to be held on November 4, 2014 and direct the Registrar of Voters to provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of the resolution.

BACKGROUND

The voters of El Cerrito have approved two transactions and use taxes (also known as “sales taxes”) in recent years. Measure A, the Pothole Repair, Local Street Improvement and Maintenance Measure, was passed in 2008 and is a 0.5% tax that generates funding exclusively for the comprehensive street repair and maintenance program in El Cerrito. Measure A has resulted in a dramatic improvement in the City’s streets and provides a dedicated funding source to maintain them in good condition.

Measure R, the Preservation of Citywide Services Measure, was approved by local voters in 2010. Measure R is a 0.5% general sales tax that generates revenues that have been essential in maintaining city services, including 9-1-1 emergency response, police patrols, and fire protection, with funds that can’t be taken by Sacramento. Measure R has generated approximately \$1.4 million per year and is scheduled to expire in 2017.

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Since 2010, however, El Cerrito's financial challenges have continued to increase largely due to events beyond the City's control. Most notably, the state of California eliminated the City of El Cerrito Redevelopment Agency resulting in a loss of over \$1 million annually to the City and greatly decreased the City's ability to promote economic development and retail growth along San Pablo Avenue. The effects of the recession, continued State takeaways, falling property values, store relocations and strained revenues have continued to take a toll on the City's operating budget.

City staff has worked diligently to deal with these challenges, including making cuts and reductions to balance the budget, and has worked to conduct City operations as efficiently as possible. Additionally, over the past few years, approximately 15% of authorized positions were eliminated or remain unfilled, including police officers, firefighters, maintenance and parks and recreation staff. As the citizens of El Cerrito are asked to increase their financial support, City staff has also made contributions to the City's fiscal sustainability. City employees have agreed to defer or forego adjustments in salary and have increased their contribution to the cost of pension benefits, even as their workloads have grown to cover the loss in productivity from the vacant positions throughout the City. Despite these efforts to control costs, the City's revenue projections have not improved, creating concerns that threaten to erode the quality of service to residents and the accomplishments that have taken years to develop.

In February 2014, staff engaged Godbe Research to conduct a telephone survey of El Cerrito residents to determine their service priorities and gauge support for a possible reauthorization of Measure R. Public safety services such as maintaining 9-1-1 emergency response times and neighborhood police patrols received a high level of support. Respondents also stated a strong desire for programs that enhance quality of life, such as community events, library programs, after-school programs for children and teens, and maintaining parks, playfields and open space.

At the March 4, 2014 City Council meeting, the Council was presented with the results of the completed Godbe Research survey. The initial and final ballot tests found 73% and 71% support, respectively, for a one-cent sales tax to protect and maintain City services and facilities. At this meeting it was moved and seconded (Friedman/Lyman) and carried unanimously to direct staff, based upon the survey results presented at the meeting, to prepare for the possibility of placing a measure on the November 2014 ballot.

To determine the approach for a potential ballot measure to enhance revenues, City staff has taken the following actions:

- At the April 22, 2014 City Council Meeting, a Budget Priority Setting study session was held that included a presentation from staff that discussed the Fiscal Year 2014 budget challenges. Staff provided projections for the next two fiscal years outlining the balancing measures that would be necessary as well as the likely projected level of the City's General Fund reserves.
- On June 9, 2014, the City Manager presented the Fiscal Years 2015 and 2016 Biennial Budget to the City Council. The budget assumptions included the

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General Fund reserve balance projection at 5.4%, well below the desired 10% minimum. The budget presentation described the necessary balancing measures including continued use of significant vacancies, including police, fire and public works maintenance, and the need for further employee wage concessions to balance the budget.

- On June 17, 2014, the City Council adopted the Biennial Budget and appropriated funds for Fiscal Year 2015, assuming no revenue from a potential ballot measure. At the meeting, there appeared to be a City Council consensus that there was a desire to ensure revenues sufficient to meet the City's needs rather than make additional service reductions.

AB 1324

The current sales tax of 9.5% includes the two El Cerrito sales taxes and the voter-approved sales taxes for the Contra Costa Transportation Authority (0.5%) and BART (0.5%). This total of 2% in "local" sales taxes is at the cap allowed by law; therefore it is currently not possible to increase the City's rate should that be the desire of the City Council, and ultimately the voters, of El Cerrito. On February 8, 2014, the Council authorized Mayor Abelson to request support from Assemblywoman Nancy Skinner in seeking legislation that would allow the City of El Cerrito the flexibility to consider a measure that could increase the current level of transaction and use taxes above the cumulative local limit of 2%. To that end, Assemblywoman Skinner introduced Assembly Bill 1324 that would authorize the City of El Cerrito to impose a separate transactions and use tax for general purposes at a rate of no more than 0.5% that, in combination with other specified taxes, would be allowed to exceed the combined rate limit. At this point, AB 1324 is still active and has not yet been enacted into law. The City Attorney has taken this into consideration within the attached draft ordinance, providing language explaining that the new measure is not effective until AB 1324 becomes law and is in effect. The Board of Equalization has approved of this language.

ANALYSIS

El Cerrito continues to face a variety of fiscal and service delivery challenges, including continued Sacramento takeaways and the slow economic recovery. El Cerrito needs local control over local funds, for local needs.

Although the City's primary operating fund, the General Fund, is in balance, the continued reliance on vacancies is taking a toll on the City's ability to achieve the goals described in the Strategic Plan. Nearly 9% of the approved workforce will remain vacant and approximately 16% of previously approved positions are either vacant or have been eliminated. This is felt most directly in Public Works, Police, Economic Development and Code Enforcement – all areas that directly impact the health and safety of residents. Entering Fiscal Year 2015, the positions of Human Resources Manager, Economic Development Program Manager and an Accounts Receivable Clerk were added to the list of vacancies which already included four vacancies in both the Police and Fire Departments. These vacancies shift responsibilities to existing staff, hindering the ability to deliver the level of service that has come to be expected.

Measure Overview

The ballot measure under consideration has the following key components:

- Measure R would be extended, providing local funding at the one-cent sales tax rate, to sunset in twelve years
- All funds generated by the measure would be used to maintain or increase the current level of services provided by the City
- The measure would allow priority police, fire, recreation services and other positions to be filled over time
- Independent audits of revenues generated would be required
- The Financial Advisory Board would review the use of the funds as part of its annual budget review
- All revenues would be kept local

The City's Comprehensive Financial Policy sets a goal of 10% minimum General Fund reserves. The current projection for the reserves at the end of Fiscal Year 2015 is 5.4 %. Should this measure pass, under the adopted budget, new revenues collected during Fiscal Year 2015 would increase reserves by 1% to 1.5% if all other budget projections remain constant. The actual appropriation of any new funds would be completed by the City Council as part of the Fiscal Year 2016 budget process in 2015.

Because Measure R is a general tax, it can only be considered for extension by the voters at a general municipal election at which members of the City Council are elected. With that being the case, November 2014 would be the optimal time to consider a reauthorization of the measure prior to its expiration, irrespective of the City's current financial challenges.

If Measure R were to be extended at the one-cent rate for 12 years by the citizens of El Cerrito, the measure would continue to provide a protected and reliable source of revenue to prevent further cuts to critical resident services and give El Cerrito local control over local funds for local needs. No funds raised by this ballot measure could be taken by Sacramento. The City would be able to maintain current levels of fire protection and police services, and continue to provide the quality of life programs residents rely on. Revenues from this measure may be used to bring the Police and Fire Departments to full strength, continue services to children and older adults, increase park, playfield and facility maintenance, and maintain current operating hours at the Senior Center, Swim Center, and Library. Any continuation of Measure R funds would continue to require citizens' oversight, mandatory financial audits, and yearly reports to the community to continue to ensure that all voter-approved funds are spent as promised.

Next Steps

The ordinance (Exhibit A to the resolution) would be subject to voter approval and contains the details of the sales tax collection. The proposed resolution would approve the ordinance as written, and calls for the measure to be submitted to the voters of the City at an election to be consolidated with the City Council and statewide election to be held on November 4, 2014. The proposed resolution also directs the City Attorney to

prepare the impartial analysis and authorizes a member of the City Council to prepare the argument in favor of the measure.

FINANCIAL CONSIDERATIONS

If the measure as presented is passed by the voters, General Fund revenues would increase by approximately \$1.4 million annually. These funds would go to core City services such as police, fire, recreation and maintenance of park, playfields and open space.

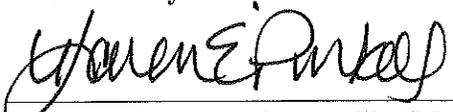
Election Costs

Contra Costa County has estimated that the actual cost of the election to the City will be approximately \$35,000. This amount was included in the adopted Fiscal Year 2015 budget.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved all of the documentation with respect to this measure, including all public information and outreach materials as well as the attached resolution and ordinance. Staff will continue to work with the City Attorney to ensure that all activities of the City and its employees are strictly limited to providing accurate, fair and impartial information about the ballot measure and the election process.

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. Resolution
2. Ordinance (Exhibit A to Resolution)

RESOLUTION NO. 2014-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CALLING AND GIVING NOTICE OF THE HOLDING OF THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 4, 2014; APPROVING AN ORDINANCE ENACTING A ONE-CENT SALES TAX FOR TWELVE YEARS FOR THE MAINTENANCE OF CITY SERVICES; ORDERING THE SUBMITTAL OF THE ORDINANCE TO THE VOTERS AT THE ELECTION; AND REQUESTING THAT THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS CONSENT TO THE CONSOLIDATION OF THIS ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE AND DIRECT THE REGISTRAR OF VOTERS TO CONDUCT THE ELECTION

WHEREAS, the State began shifting property tax from local governments in 1992 and these “takes” continue, including about \$1.8 million annually from El Cerrito from a portion of the City’s property tax to the Educational Revenue Augmentation Fund that could otherwise be used for essential City services; and

WHEREAS, since 1993, El Cerrito has been required by State legislation to pay for booking fees and property tax administration, another loss of general fund revenues that would otherwise be available for essential City services; and

WHEREAS, since 2003, the State has taken an additional \$3 million of Redevelopment Agency funds that could have been spent on local projects such as a library, public safety building, senior center or economic development programs; and

WHEREAS, the State has eliminated the City of El Cerrito Redevelopment Agency resulting in a loss of over \$1 million annually to the City and greatly decreased the City’s ability to promote economic development and retail growth along San Pablo Avenue; and

WHEREAS, the recession, continued State takeaways, falling home values, store relocations and strained revenues could erode the high quality of service in the City of El Cerrito and the accomplishments that have taken years to develop; and

WHEREAS, El Cerrito has seen a reduction in sales tax revenue resulting from the closure of the Target Store, the Mitsubishi car dealership, the Guitar Center and OSH and an overall decline in consumer spending; and

WHEREAS, the City has already made cuts and reductions to balance the FY 2015 budget and operate as efficiently as possible; and

WHEREAS, to help balance the budget, approximately 15% of authorized positions are eliminated or unfilled, including police officers, firefighters, maintenance and parks and recreation staff; and

WHEREAS, City’s employees have agreed to defer or forego compensation adjustments and to increase their contributions to offset increased benefit costs to help maintain the current level of service; and

WHEREAS, while the City has made significant progress in reducing certain crimes in El Cerrito, property crimes continue to increase and the current vacancies in the Police Department could result in an overall increase in the crime rate; and

WHEREAS, supporting the services that make El Cerrito a great community are important to our residents' quality of life; and

WHEREAS, El Cerrito needs local control over local funds, for local needs; and

WHEREAS, extending existing, voter-approved funding at the one cent sales tax rate will continue to address city service and delivery needs; and

WHEREAS, additional funding will help maintain current levels of fire and police (public safety) services, including neighborhood patrols, crime prevention programs, and rapid 9-1-1 response times; and

WHEREAS, property crimes have increased in El Cerrito and we desire a fully-staffed police force to prevent crime from getting worse; and

WHEREAS, local funding would help maintain and protect city services for children and teens –including pre-school and after-school programs; and

WHEREAS, the City wishes to continue to address service priorities that the public has identified such as police and fire services, earthquake and disaster preparedness programs, and maintaining city parks, paths, playfields and open spaces; and

WHEREAS, any local funding would continue to require citizens' oversight, mandatory financial audits, and yearly reporting to the community to continue to ensure that all voter-approved funds are spent as promised; and

WHEREAS, at its June 17, 2014 meeting, the City Council adopted a budget for Fiscal Year 2015 and 2016 that recognizes the need for additional revenue to maintain and preserve the level of services and adequate reserves desired by residents of the City; and

WHEREAS, the City Council has concluded that all of the information presented indicates that, to obtain the revenue necessary to maintain and preserve service levels, the Council should call an election to ask the voters of the City to approve a 12-year local transactions and use tax ("sales tax"), the revenue from which could be used to support general municipal services; and

WHEREAS, the tax to be submitted to the voters, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property; the tax rate would be one percent (1.0%) of the sales price of the property; the tax revenue would be collected by the State Board of Equalization and remitted to the City; the tax would be in effect for 12 years, and would then expire automatically, unless extended by the voters; and the tax shall be approved if the measure receives at least a simple majority vote of affirmative votes; and

WHEREAS, at the November 4, 2010 election, the voters of the City approved Measure R, a 0.5% transactions and use tax, to be in effect for eight years and sunset in 2018. Measure R was codified as Chapter 4.62 of the El Cerrito Municipal Code. This ordinance amends and restates

Chapter 4.62 to extend the existing tax for 12 years, until March 31, 2027, and adjust the rate to 1%.

WHEREAS, it is desirable that the election be consolidated with the statewide election to be held 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 election department of the County of Contra Costa canvass the returns of the General Election and that the election be held in all respects as if there were only one election.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that:

SECTION 1. DECLARATION OF FINDINGS.

Current revenues are not sufficient to maintain the current level of services provided by the City. Therefore, the El Cerrito City Council has determined that a measure to extend an existing local sales tax at the one-cent rate be submitted to the voters for approval at a future municipal election; and the next statewide general election is scheduled for November 4, 2014.

SECTION 2. ELECTION CALLED

Pursuant to the requirements of the laws of the State of California relating to general law cities, there is called and ordered to be held in the City of El Cerrito, California, on Tuesday, November 4, 2014, a general municipal election for submitting to the voters the El Cerrito Preservation of Citywide Services Funding Measure.

SECTION 3. MEASURE TO BE SUBMITTED TO VOTERS

The full text of the El Cerrito Preservation of Citywide Services Funding Measure, attached to this Resolution as Exhibit A, shall be completely printed in the voter pamphlet. The City Council, pursuant to its right and authority, does order the following measure to be submitted to the voters which shall appear and be printed on the ballot as follows:

CITY OF EL CERRITO	
To continue to protect/ maintain City services, including fire prevention/ emergency services; emergency response times; neighborhood police patrols; firefighter/ police staffing; crime prevention/ investigation resources; after-school programs; library hours/ programs; senior services; open space, parks, paths/ playfields; other general City services, shall El Cerrito extend the existing voter-approved sales tax and set the future rate at one cent for 12 years, with citizens' oversight, annual audits, and all funds staying local, none to Sacramento?	YES
	NO

SECTION 4. APPROVAL OF ORDINANCE. By an affirmative vote of at least a simple majority of its full membership, the City Council hereby approves the proposed ordinance

to be submitted to the voters, attached hereto as Exhibit A. The proposed measure shall not take effect unless and until approved by a vote of at least a simple majority of affirmative votes of the voters voting on the question at the election. The ordinance specifies that the rate of the transactions tax shall be one percent (1.0%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City; it specifies that the rate of the use tax shall be one percent (1.0%) of the sales price of tangible personal property stored, used or otherwise consumed in the City, and that the tax shall be in effect for 12 years . The State Board of Equalization shall collect the tax from retailers subject to the tax and remit the funds to the City.

SECTION 5. BALLOT FORMAT. The ballots to be used at the election shall be in the same form and content as required by law.

SECTION 6. IMPARTIAL ANALYSIS. The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280 which shall be filed no later than July 28, 2014 at 4:00 p.m.

SECTION 7. BALLOT ARGUMENT. The City Council hereby authorizes the Mayor to submit a ballot argument in favor of the measure, pursuant to Elections Code Section 9282. The last day for filing of primary arguments is July 28, 2014 at 4:00 p.m. At the Mayor's discretion, the argument may also be signed by members of the City Council or representatives of bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, the Mayor is also authorized to submit a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or representatives of bona fide associations or by individual voters who are eligible to vote on the measure.

SECTION 8. REQUESTING THE CONSOLIDATION OF ELECTIONS: Pursuant to Elections Code Section 10400 et seq., the City Council of the City of El Cerrito hereby requests that the Contra Costa County Board of Supervisors consent and agree to the consolidation of the its municipal election with the general election to be held on November 4, 2014 and provide all services necessary to conduct the election and print a measure on the ballot as described in Section 3 of this resolution. The county election department is authorized to canvass the returns of the special municipal election. Within the City of El Cerrito, the election precincts, election officers, hours of voting, polling places and voting booths shall in every case be the same as those selected and designated by the Contra Costa County Registrar of Voters; provided that no person not a qualified elector of the City of El Cerrito shall be permitted to vote for the measure placed on the ballot by the City Council. The City Council recognizes that the County will incur additional costs in conducting the election called by this resolution, agrees to reimburse the County for those costs, and authorizes and directs the City Manager or his designee to expend the funds necessary to pay for the costs of conducting the election.

SECTION 9. PROVISIONS FOR REBUTTAL ARGUMENTS. The provisions of Elections Code Section 9285 shall apply to this election. The last day for filing of rebuttal arguments is August 7, 2014 at 5:00 p.m.

SECTION 10. HOURS OF POLLING. The polls for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed except as provided in Elections Code Section 14401.

SECTION 11. OTHER PROCEDURES. In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections. The City Council acknowledges that the consolidated election will be conducted in the manner prescribed in Elections Code section 10418.

SECTION 12. NOTICE. The City Clerk is authorized and directed to give notice of the election as required by law. The City Clerk shall file a copy of this resolution with the County Elections Official and the Clerk of the Board of Supervisors forthwith.

SECTION 13. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). The transactions and use tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, under CEQA Guidelines section 15060 review under CEQA is not required.

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on the 15th day of July 2014, the City Council of the City of El Cerrito passed this resolution by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers
ABSTAIN: Councilmembers

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

ORDINANCE NO. 2014–XX

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING AND RESTATING CHAPTER 4.62 OF THE MUNICIPAL CODE TO EXTEND AND INCREASE AT THE ONE CENT RATE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, the State began shifting property tax from local governments in 1992 and these “takes” continue, including about \$1.8 million annually from El Cerrito from a portion of the City’s property tax to the Educational Revenue Augmentation Fund that could otherwise be used for essential City services; and

WHEREAS, since 1993, El Cerrito has been required by State legislation to pay for booking fees and property tax administration, another loss of general fund revenues that would otherwise be available for essential City services; and

WHEREAS, since 2003, the State has taken an additional \$3 million of Redevelopment Agency funds that could have been spent on local projects such as a library, public safety building, senior center or economic development programs; and

WHEREAS, the State has eliminated the City of El Cerrito Redevelopment Agency resulting in a loss of over \$1 million annually to the City and greatly decreased the City’s ability to promote economic development and retail growth along San Pablo Avenue; and

WHEREAS, the recession, continued State takeaways, falling home values, store relocations and strained revenues could erode the high quality of service in the City of El Cerrito and the accomplishments that have taken years to develop; and

WHEREAS, El Cerrito has seen a reduction in sales tax revenue resulting from the closure of the Target Store, the Mitsubishi car dealership, the Guitar Center and OSH and an overall decline in consumer spending; and

WHEREAS, the City has already made cuts and reductions to balance the FY 2015 budget and operate as efficiently as possible; and

WHEREAS, to help balance the budget, approximately 15% of authorized positions are eliminated or unfilled, including police officers, firefighters, maintenance and parks and recreation staff; and

WHEREAS, City’s employees have agreed to defer or forego compensation adjustments and to increase their contributions to offset increased benefit costs to help maintain the current level of service; and

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WHEREAS, while the City has made significant progress in reducing certain crimes in El Cerrito, property crimes continue to increase and the current vacancies in the Police Department could result in an overall increase in the crime rate; and

WHEREAS, supporting the services that make El Cerrito a great community are important to our residents' quality of life; and

WHEREAS, El Cerrito needs local control over local funds, for local needs; and

WHEREAS, extending existing, voter-approved funding at the one cent sales tax rate will continue to address city service and delivery needs; and

WHEREAS, additional funding will help maintain current levels of fire and police (public safety) services, including neighborhood patrols, crime prevention programs, and rapid 9-1-1 response times; and

WHEREAS, property crimes have increased in El Cerrito and we desire a fully-staffed police force to prevent crime from getting worse; and

WHEREAS, local funding would help maintain and protect city services for children and teens –including pre-school and after-school programs; and

WHEREAS, the City wishes to continue to address service priorities that the public has identified such as police and fire services, earthquake and disaster preparedness programs, and maintaining city parks, paths, playfields and open spaces; and

WHEREAS, any local funding would continue to require citizens' oversight, mandatory financial audits, and yearly reporting to the community to continue to ensure that all voter-approved funds are spent as promised; and

WHEREAS, at its June 17, 2014 meeting, the City Council adopted a budget for Fiscal Year 2015 and 2016 that recognizes the need for additional revenue to maintain and preserve the level of services and adequate reserves desired by residents of the City; and

WHEREAS, the City Council has concluded that all of the information presented indicates that, to obtain the revenue necessary to maintain and preserve service levels, the Council should call an election to ask the voters of the City to approve a 12-year local transactions and use tax ("sales tax"), the revenue from which could be used to support general municipal services; and

WHEREAS, the tax to be submitted to the voters, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property; the tax rate would be one percent (1.0%) of the sales price of the property; the tax revenue would be collected by the State Board of Equalization and remitted to the

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City; the tax would be in effect for 12 years, and would then expire automatically, unless extended by the voters; and the tax shall be approved if the measure receives at least a simple majority vote of affirmative votes;

WHEREAS, at the November 4, 2010 election, the voters of the City approved Measure R, a 0.5% transactions and use tax, to be in effect for eight years and sunset in 2018. Measure R was codified as Chapter 4.62 of the El Cerrito Municipal Code. This ordinance amends and restates Chapter 4.62 to extend the existing tax for 12 years, until March 31, 2027, and adjust the rate to 1%.

NOW THEREFORE, THE PEOPLE OF THE CITY OF EL CERRITO DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The People of El Cerrito find that all Recitals are true and correct and are incorporated herein by reference.

SECTION 2. Amendment of Municipal Code. Chapter 4.62 of the El Cerrito Municipal Code is hereby amended and restated to read as follows:

4.62.010 - Title.

This ordinance shall be known as the El Cerrito Transactions and Use Tax Ordinance. The city of El Cerrito hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

4.62.020 - Operative Date.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

4.62.030 - Purpose.

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A.** To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B.** To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the

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requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

4.62.040 - Contract With State.

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

4.62.050 - Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1.0%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

4.62.060 - Place of Sale.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

4.62.070 - Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one percent (1.0%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

4.62.080 - Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

4.62.090 - Limitations on Adoption of State Law and Collection of Use Taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:
 - 1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
 - 2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
 - 3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the

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provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

- b.** Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
- 4.** In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- 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.

4.62.100 - Permit Not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

4.62.110 - Exemptions and Exclusions.

- A.** There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B.** There are exempted from the computation of the amount of transactions tax the gross receipts from:
 - 1.** Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 - 2.** Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

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3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
 7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D.** Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

4.62.120 - Amendments.

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation

Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

4.62.130 - Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

4.62.140 - Annual Audit.

By no later than December 31st of each year, the city's independent auditors shall complete a report shall reviewing the collection, management and expenditure of revenue from the tax levied by this Chapter. The report shall be reviewed by the Financial Advisory Board as part of its review of the annual audit.

4.62.150 – Amendments by City Council.

The following amendments to this Chapter must be approved by the voters of the City: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of Section 12); or extending the tax. The City Council may otherwise amend this Chapter without submitting the amendment to the voters for approval.

4.62.160 - Termination Date.

The authority to levy the tax imposed by this ordinance shall expire on the twelfth anniversary of the operative date (which is anticipated to be March 31, 2027).

SECTION 3. Adjustment of Appropriations Limit. Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2014-15 and each year thereafter.

SECTION 4. Compliance with the California Environmental Quality Act. The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). This ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the ordinance is not a project within the meaning of CEQA because it creates a government funding mechanism that does not

involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 6. Effective Date.

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

SECTION 7. Relationship to Assembly Bill 1324 (2014).

The authority to adopt this ordinance depends in part upon the passage and effectiveness of Assembly Bill 1324 (2014), which was [pending approval in the California Legislature at the time that this ordinance was submitted to the voters of the City for approval. This ordinance shall only become effective if AB 1324 is approved by the Legislature and signed by the Governor. The operative date of the tax approved by this ordinance shall relate to the date of approval by the voters of the City regardless of the effective date of AB 1324, as long as AB 1324 is effective prior to the operative date.

The foregoing ordinance was approved by the following vote of the People of the City of El Cerrito on November 4, 2014:

YESES:

NOES:

The foregoing ordinance was adopted by Declaration of the vote at the November 4, 2014 election by the City Council of the City of El Cerrito on _____, 2014:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

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Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk