



DATE: March 4, 2014

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Adoption of a Resolution Establishing June 3, 2014 as the Date for a Proposed Ballot Measure Asking Hayward Voters to Approve a One-Half Cent Local Transactions and Use (Sales) Tax Sunsetting after Twenty Years

RECOMMENDATION

That Council takes the following actions to place a sales tax measure, levying a half cent transactions and use (sales) tax on all applicable transactions before the voters of Hayward at the June 3, 2014 election:

1. Adopts the attached Resolution (Attachment I) approving the proposed ballot question as it will appear on the ballot, and the underlying ordinance to be enacted, and requesting the Alameda County Board of Supervisors authorize the County Clerk and the Registrar of Voters to provide election services and canvass the returns; and
2. Directs the City Attorney to develop an impartial analysis of the proposed measure

BACKGROUND

Since 2008, the City of Hayward has been weathering the effects of the Great Recession like many other cities throughout the state and the country. A series of factors converged to create the “perfect fiscal storm” and left the City’s General Fund budget facing deficits of between \$20-30 million annually over the next ten years, even with the Utility Users Tax measure approved by voters in 2009. The City Council and City staff developed a series of budget balancing measures including employee salary and benefit concessions, organizational downsizing, use of reserves, and other organizational savings to address the widening gap between future revenue growth and escalating costs.

The City Council has been incredibly conscientious in establishing long-term fiscal policies to address the City’s unfunded benefit liabilities and the City’s capital facility needs. The City has also been working diligently since 2010 to structurally reset the City’s General Fund and Enterprise Fund operating budgets in order to provide a sustainable future for City operations, protect benefits for employees, and ensure continued service delivery to the community. This has been accomplished through a combination of flattening the organization to eliminate managerial and

other positions and reducing other costs, with the primary vehicle being the concessions taken by the City's various labor groups. However, the City has significant unfunded needs, including over \$500 million in unfunded capital needs. While the economy has improved significantly over the past two years, Hayward, like all other California cities, still faces escalation in operating costs outside of their control, and which are outpacing revenue growth. This makes it a challenge to continue existing funding levels for critical services to the community and there are no additional funds in the current operating budget to begin addressing the City's large backlog of unfunded capital needs.

In the summer of 2013, the City began to evaluate options for funding some of the more immediate of these capital facilities needs. Staff and the Council Budget & Finance Committee initially explored the option of placing a facility bond measure on an upcoming ballot. However, as the City embarked on community outreach efforts related to a possible ballot measure, it became clear that the community was interested in a mix of enhanced public services in addition to improvements to capital facilities. As such, the City conducted voter surveys to test the likelihood of either a bond measure or a sales tax measure being successfully approved in an upcoming election¹. While a bond measure would be limited to funding specified capital facility projects, a sales tax measure would provide flexibility in funding either capital facilities or desired public services.

The Council asked staff and community volunteers to engage in a community listening and outreach effort to more fully understand community funding priorities and whether placing a measure on an upcoming ballot would be a prudent step to take. The results of these efforts were presented to Council on February 25, 2014² and based on this feedback, the Council asked staff to return at tonight's meeting with the necessary documents to place a sales tax measure on the June 2014 ballot.

DISCUSSION

As mentioned previously, a locally approved sales tax measure would provide the City Council with flexibility to allocate funds to either capital facility improvements or public service enhancements depending on community needs and priorities. The one-half cent sales tax, as proposed, would generate approximately \$10 million in annual revenue to the City, which would be dedicated to local purposes and could not be taken by the State. It would be applicable to the same goods that are currently subject to sales and use tax, with certain items exempt from the tax, e.g. most groceries, prescription medicines, certain medical devices, and sales of items paid for with food stamps. Attachment II provides a frequently asked questions document about the potential sales tax measure. This document is also available on www.haywardlistens.com, the City's website dedicated to providing information to the community about the proposed measure.

Based on the City's current assessment of needs, a one-half cent sales tax would provide a level of funding sufficient to cover a good portion of the high-priority City facility needs while also

¹ Polling Results begin on page 73 of the December 17, 2013 Agenda Packet: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca121713full.pdf>

² Agenda Report: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/rp/2014/cca022514-IRAPA02.pdf>
Presentation: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/rp/2014/cca022514-P02.pdf>

providing additional funding for services of a high priority to the community, primarily public safety and street maintenance services. Staff is also proposing a sunset on the sales tax of twenty years. This sunset would provide a sufficient window for issuing debt service and constructing capital facilities while also providing accountability to the public on how the funds are spent. If the public is unhappy with how the money is spent, they would have an opportunity to express their opinions if and when a future City Council decides to place the measure on the ballot for possible extension after the sunset.

Staff originally developed a list of the highest priority funding needs for the City that was used during the community outreach process. This list is included as Attachment III to this report and the annual funding totals on that list clearly exceed the amount that would be available if the sales tax measure passes. Following the community outreach process, staff refined this list to fit within the annual available funding and to better match community priorities. While the sales tax measure is proposed as a general tax (meaning that the funds would go into the General Fund and could not be dedicated for specific purposes), the Council can identify possible uses for these additional funds in order to provide the voting public with assurances that the funds will be used for identified community priorities. Table 2 below identifies the possible mix of capital projects and public services that could potentially be funded with the additional sales tax revenue.

**Table 2: Possible Funding Priorities for Sales Tax Measure
(based on \$10M in annual revenue)**

Capital Projects/Restoration of Services	Annual Debt Service Payment¹ or Annual Cost
Additional Police Services (Cost per officer: \$200,000/year)	\$2,000,000 (annual cost)
Library & Community Learning Center (Total unfunded cost: \$50,000,000)	\$3,990,000 (annual debt service)
Other Fire Station Retrofits/ Improvements (Total cost: \$10,000,000)	\$798,000 (annual debt service)
New Fire Station #6 Training Center (Total cost: \$8,200,000)	\$654,400 (annual debt service)
Street Repairs² (2 miles of overlay and 4 miles of slurry seal)	\$1,000,000 ³ (TBD)
Restoring 5 Maintenance Workers (Cost per worker: \$100,000/year)	\$500,000 (annual cost)
Total Annual Cost	\$8,942,400
Contingency	\$1,057,600
Total Committed Annual Revenue	\$10,000,000

¹ Annual debt service payment based on 20-year amortization of bond funding

² Current annual gas tax/Measure B funding for overlay/slurry seal = \$4 million

³ There may be efficiencies to be gained by issuing debt to allow for a larger number of streets to be repaired in the first few years after the revenue measure passes. Staff will evaluate these options if the measure is approved by the voters.

Identifying possible funding priorities for the measure provides an important oversight function. During last week's Council discussion on the revenue measure, the concept of an oversight committee for expenditure of funds coming from the potential measure was raised. While there may be other circumstances where an oversight committee would be beneficial, staff recommends against the formation of an oversight committee related to this revenue measure. The elected City Council is the ultimate oversight committee for the use of these revenues and will be held accountable by the voting public if there is a belief that the funds are not being utilized for community priorities. The annual budget process provides an opportunity for public input and Council direction on spending and for staff to be held accountable on the use of the funds. Additional oversight of all funds would also occur throughout the year at the Council Budget & Finance Committee meetings, as part of the Mid-Year financial report to Council, and during the Council budget hearings.

Possible Ballot Language

At last week's Council meeting, staff presented two options for possible ballot language and received feedback from the Council. The ballot language is a key element in placing the measure before the voters. Based on Council's feedback, staff prepared and is recommending a third option for the ballot language. The three options are identified below.

Option A: Language used in Tracking Poll

To protect and restore city services and facilities, including: increasing neighborhood police patrols; repairing potholes and maintaining streets and sidewalks; updating fire stations to meet neighborhood needs and earthquake standards; replacing the outdated and undersized library with a 21st century library and community learning center, and other city services; shall City of Hayward increase the sales tax by one-half percent, for twenty years, providing locally controlled funding that cannot be taken by the State?

Option B: Alternate Language from 2/25/2014 Meeting

To restore and maintain Hayward city services/facilities, including firefighting/emergency medical services; improving police protection for neighborhoods; replacing the aging library with a 21st Century facility including safe space for after-school homework/tutoring; repairing potholes, streets and sidewalks; updating aging neighborhood fire stations; and other city services; shall the City of Hayward increase the sales tax by ½ percent, for twenty years only, providing locally controlled funding that cannot be taken away by the State?

Option C: Recommended Ballot Language

To restore and maintain Hayward city services and facilities, including firefighting/emergency medical services; improving police protection for neighborhoods; replacing the aging library with a 21st century facility including safe space for after-school homework and tutoring; repairing potholes and streets; updating aging neighborhood fire stations; and other city services; shall the City of Hayward increase the sales tax by ½ percent, for twenty years only, providing locally controlled funding that cannot be taken by the State?

The attached resolution (Attachment I) is the mechanism by which Council would place this measure on the June 2014 ballot for voter consideration. Any final decisions made at this meeting would be incorporated into the resolution for submission to the County Registrar of Voters. The deadline to submit materials for placing the measure on the June 3, 2014 ballot is Friday, March 7, 2014. Staff recommends that the Council take action tonight to place a one-half cent transactions and use (sales) tax measure on the June 3, 2014 ballot with a proposed twenty-year sunset, no provision for a separate oversight committee, and ballot language Option C from above. If the voters approve the ballot question on June 3, 2014, the Ordinance included in Attachment I would be enacted automatically.

ECONOMIC AND FISCAL IMPACT

As mentioned previously in this report, a one-half cent sales tax would provide approximately \$10 million in annual funding to the City. All funds generated by the local sales tax would be locally controlled and would stay in Hayward to provide essential city services and facility improvements. By law, the State could not take this funding away.

Currently, the City of San Leandro has a sales tax rate of 9.25% and the Council there is considering a measure on the November 2014 ballot that would raise the rate to 9.5%. One of Hayward's other neighbors, Union City, also currently has a locally approved sales tax and their rate is 9.5%. If Hayward voters approved the ½ cent sales tax being proposed, the sales tax rate in Hayward would be 9.5%. Given the restrictions on locally controlled funding, many cities are considering sales tax increases given the flexibility that this revenue source provides to local communities.

The specific impact on local Hayward businesses of this proposed sales tax is nuanced. Staff has been discussing projections and implications of the local sales tax with our sales tax consultant, MuniServices. In their experiences from other jurisdictions, the small added amount of the local sales tax does not significantly impact buyers' decisions on where to make purchases. Buying decisions are more likely to be based on what retailer can give the consumer a better deal, sale prices, distance traveled, quality customer service and other factors. An example of the math is as follows: customer purchases a washer and dryer set for \$1,200. On this purchase, the local district sales tax would be equal to an additional \$6.00, for a total purchase price of \$1,206.


NEXT STEPS

If the Council adopts the resolution tonight placing the measure on the June 3, 2014 ballot, staff will work closely with the City Clerk and City Attorney to submit all of the required documentation to the County Registrar of Voters by the Friday, March 7 and Monday, March 24 deadlines. The City Attorney will also draft the impartial analysis of the measure for submittal. Below is a schedule of other key dates related to a June 2014 election:

March 7, 2014:	Deadline for the ballot measure question, ballot measure full text, City Attorney Impartial Analysis (Election Code 9286)
March 12, 2014:	Last day to withdraw a measure from the ballot (EC 9605)
March 14, 2014:	Last day to file direct arguments (EC 9282, 9286)
March 14 – 24, 2014:	Public review period for direct arguments (EC 9295)
March 21, 2014:	Last day to file rebuttal arguments (EC 9285)
March 21 – 31, 2014:	Public review period for rebuttal arguments (EC 9295)
March 24, 2014:	Deadline to submit direct arguments and rebuttal arguments to the Registrar of Voters

Prepared by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I:	Resolution
Attachment II:	Frequently Asked Questions
Attachment III:	Preliminary List of Critical City Funding Needs

CITY COUNCIL OF THE CITY OF HAYWARD

RESOLUTION NO. 14-

Introduced by Council Member

RESOLUTION OF THE CITY OF HAYWARD ESTABLISHING
JUNE 3, 2014, AS THE DATE FOR AN ELECTION ON A
PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL
RELATING TO THE ENACTMENT OF A ONE-HALF OF ONE
PERCENT (0.50%) TRANSACTIONS AND USE (SALES) TAX
FOR TWENTY YEARS AND REQUESTING THE BOARD OF
SUPERVISORS OF ALAMEDA COUNTY TO CONSOLIDATE
SAID ELECTION WITH THE STATEWIDE DIRECT PRIMARY
ELECTION

WHEREAS, a locally-enacted revenue measure would protect and maintain Hayward services because the money is legally required to stay in the City's community and cannot be taken by the State, thereby providing locally controlled funds for local services; and

WHEREAS, at its March 4, 2014 meeting, the City Council recognized the need for additional revenue to maintain and preserve the level of services desired by residents of the City; and

WHEREAS, at that meeting, the City Council concluded that all of the information presented indicated 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 20 year local transactions and use (sales) tax, the revenue from which could be used to support general municipal services; and

WHEREAS, on the basis of the foregoing, the City Council determined that it was appropriate to submit a ballot measure regarding a general transactions and use (sales) tax to the voters of the City of Hayward for their approval and adoption at the general election to be held in the City on June 3, 2014; 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-half of one percent (0.50%) (one-half cent for each dollar) 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 20 years, and would then expire automatically, unless extended by the voters. The tax shall be approved if the measure receives at least a simple majority of affirmative votes; and

WHEREAS, the Hayward City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

WHEREAS, Elections Code Sections 9281 through 9287 set forth the procedures for arguments in favor of and in opposition to any City ballot measure and for rebuttal arguments; and

WHEREAS, June 3, 2014 is the date of the Statewide Direct Primary Election and it is desirable that the election on the City's ballot measure be consolidated with the Statewide Direct Primary Election to be held on the same date; that within the City, the precincts, polling places and election officers of the two elections be the same; and that the Alameda County Department of Elections canvass the returns of the consolidated election and that the election be held in all respects as if there were only one election; and

WHEREAS, based on all of the information presented at the March 4, 2014 meeting, both written and oral, including the staff reports, minutes, and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.

2. Call Election; Placement of Measure on the Ballot. Pursuant to California Constitution Article XIII C, Section 2; Government Code Section 53724; and Elections Code Section 9222, the City Council of the City of Hayward hereby calls an election at which it shall submit to the qualified voters of the City, a measure that, if approved, would adopt a temporary general transactions and use (sales) tax, as authorized by Revenue and Taxation Code Section 7285.9. This measure shall be designated by letter by the Alameda County Registrar of Voters. Pursuant to Election Code Section 10400 *et seq.*, the election for this measure shall be consolidated with the established election to be conducted on June 3, 2014.

3. Ballot Language. The question to be presented to the voters shall be either Ballot Language Alternative (a), Ballot Language Alternative (b) or Ballot Language Alternative (c) as follows:

Ballot Language Alternative (a):

To protect and restore city services and facilities, including: increasing neighborhood police patrols; repairing potholes and maintaining streets and sidewalks; updating fire stations to meet neighborhood needs and earthquake standards; replacing the outdated and undersized library with a 21 st century library and community learning center; and other city services; shall City of Hayward increase the sales tax by one-half percent, for twenty years, providing locally controlled funding that cannot be taken by the State?	YES	
	NO	

Ballot Language Alternative (b):

To restore and maintain Hayward city services/facilities, including firefighting/emergency medical services; improving police protection for neighborhoods; replacing the aging library with a 21 st Century facility including safe space for after-school homework/tutoring; repairing potholes, streets and sidewalks; updating aging neighborhood fire stations; and other city services; shall the City of Hayward increase the sales tax by ½ percent, for twenty years only, providing locally controlled funding that cannot be taken away by the State?	YES	
	NO	

Ballot Language Alternative (c):

To restore and maintain Hayward city services and facilities, including firefighting/emergency medical services; improving police protection for neighborhoods; replacing the aging library with a 21st century facility including safe space for after-school homework and tutoring; repairing potholes and streets; updating aging neighborhood fire stations; and other city services; shall the City of Hayward increase the sales tax by ½ percent, for twenty years only, providing locally controlled funding that cannot be taken by the State?	YES	
	NO	

4. Proposed Ordinance. The ordinance authorizing the general tax to be approved by the voters pursuant to Sections 2 and 3 of the Resolution is as set forth in Attachment 1

hereto. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the June 3, 2014 election, as required by Revenue and Taxation Code Section 7285.9, subject to the approval of a majority of the voters voting on the measure at the election called by the adoption of this resolution. The entire text of the ordinance, attached hereto as Attachment 1, shall be included in the voters pamphlet. The ordinance specifies that the rate of the transactions tax shall be one-half of one percent (0.50%) 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-half of one percent (0.50%) 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 twenty years. The State Board of Equalization shall collect the tax from retailers subject to the tax and remit the funds to the City.

5. Publication of Measure. The City Clerk is hereby directed to cause notice of the measure to be published once in the official newspaper of the City of Hayward, in accordance with Section 12111 of the Elections Code and Section 6061 of the Government Code.

6. Request to Consolidate and Conduct Election and Canvass Returns.

(a) Pursuant to the requirement of Section 10403 of the Elections Code, the Board of Supervisors of the County of Alameda is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide Direct Primary Election on Tuesday June 3, 2014, for the purpose of placing the measure set forth in Sections 3 and 4 on the ballot.

(b) The County of Alameda Registrar of Voters is authorized to canvass the returns of the municipal election. The election shall be held in all respect as if there were only one election, and only one form of ballot shall be used.

(c) The Board of Supervisors is requested to issue instructions to the Alameda County Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.

(d) The City of Hayward recognizes that additional costs will be incurred by the County of Alameda by reason of this consolidation and agrees to reimburse the County for any costs.

7. Submission of Ballot Argument and Impartial Analysis.

(a) The last day for submission of direct arguments for or against the measure shall be by 5:00 p.m. on March 14, 2014.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 3:00 p.m. on March 21, 2014.

(c) Direct arguments shall not exceed three hundred (300) words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty (250) words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the direct arguments.

(e) The City Attorney shall prepare an impartial analysis of the measure by March 7, 2014.

(f) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument, which it seeks to rebut.

8. Effective Date. This Resolution shall become effective immediately upon its adoption and the City Clerk is directed to send certified copies of the Resolution to the Alameda County Board of Supervisors and the Alameda County Registrar of Voters.

9. CEQA. 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 (sales) 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.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ATTACHMENT I

ORDINANCE NO _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF
HAYWARD IMPOSING A TRANSACTIONS AND USE (SALES)
TAX TO BE ADMINISTERED BY THE STATE BOARD OF
EQUALIZATION

WHEREAS, a locally-enacted revenue measure would protect and maintain Hayward services because the money is legally required to stay in our community and cannot be taken by the State, providing locally controlled funds for local services; and

WHEREAS, at its March 4, 2014 meeting, the City Council considered calling an election to seek voter approval of a proposed general transactions and use (sales) tax, as authorized by Revenue and Taxation Code section 7285.9; and

WHEREAS, at that meeting, the City Council concluded that all of the information presented indicated 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 twenty year local transactions and use (sales) tax, the revenue from which could be used to support general municipal services; and

WHEREAS, on the basis of the foregoing, the City Council determined that it was appropriate to place a measure regarding a general transactions and use (sales) tax before the voters at the June 3, 2014 general election; and

WHEREAS, the tax, 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-half of one percent (0.50%) (one-half cent for each dollar) 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 twenty years, and would then expire automatically, unless extended by the voters. The tax shall be approved if the measure receives at least a simple majority of affirmative votes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD ORDAINS AS FOLLOWS:

Section 1. Amendment of Code.

The Hayward Municipal Code is hereby amended to add a new Chapter 8, Article 19 and shall read as follows:

“CHAPTER 8

ARTICLE 19

TRANSACTIONS AND USE (SALES) TAX

SEC. 8-19.100. Title.

This ordinance shall be known as the City of Hayward Transactions and Use (Sales) Tax Ordinance. The City of Hayward hereinafter shall be called “City.” This ordinance shall be applicable in the incorporated territory of the City.

SEC. 8-19.200 Operative Date.

“Operative Date” means October 1, 2014.

SEC. 8-19.300. 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 (sales) 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 (sales) 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 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 (sales) 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 (sales) 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 (sales) taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

SEC. 8-19.400. 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 (sales) 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.

SEC. 8-19.500. 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 0.50% 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.

SEC. 8-19.600. 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.

SEC. 8-19.700. Use Tax Rate.

A transactions and use (sales) 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 0.50% 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.

SEC. 8-19.800. 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.

SEC. 8-19.900. 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 therefor. 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 of 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 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.

SEC. 8-19.1000. 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.

SEC. 8-19.1100. Exemptions and Exclusions.

(a) There shall be excluded from the measure of the transactions and use (sales) 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:

(A) With respect to vehicles (other than commercial 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, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that address is, in fact, his or her principal place of residence; and

(B) With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

(4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

(5) For the purpose of subparagraphs (3) and (4) of this section, the sale or lease of 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.

(c) There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use (sales) tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If 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 had 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.

SEC. 8-19.1200. 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.

SEC. 8-19.1300. 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 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.

SEC. 8-19.1400. Authorization and Limitation on Issuance of Bonds.

The City is hereby authorized to issue limited tax bonds, from time to time, provided that the maximum bonded indebtedness will not exceed the total amount of this retail transactions and use (sales) tax.

SEC. 8-19.1500. Annual Audit

The proceeds resulting from this transactions and use (sales) tax shall be deposited into the City’s General Fund and become subject to the same independent annual audit requirements as other general fund revenue.

SEC. 8-19.1600. Termination Date.

The authority to levy the tax imposed by this ordinance shall expire on the twentieth anniversary of the last day of the calendar quarter following the operative date.”

Section 2. Environmental Compliance.

The findings for this ordinance in compliance with the California Environmental Quality Act (“CEQA”) are the same as those set forth in the City’s Resolution No. _____ calling for an election on this ordinance. The CEQA findings in Resolution No. _____ are incorporated herein by reference.

Section 3. 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 4. Effective Date.

The Ordinance relates to the levying and collecting of the City transactions and use (sales) taxes and shall take effect immediately.

APPROVED by the following vote of the People of the City of Hayward on June 3, 2014.

AYES:

NOES:

ADOPTED by Declaration of the vote at the June 3, 2014 election by the City Council of the City of Hayward on the _____ day of _____, 2014.

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

City of Hayward – 2014 Revenue Measure Feasibility Project
Frequently Asked Questions (FAQ)

What is this project all about?

It is the City's responsibility to provide public services and facilities that benefit our community—things like police, fire and public safety services and facilities, well-maintained streets and roads, quality libraries, etc. Maintaining these public assets isn't cheap. Hayward city facilities in particular, have grown old, deteriorated and in some cases, unsafe, over many decades of constant use. In particular, the Great Recession over the past few years has impacted the City budget, making it impossible to fund needed repairs and upgrades to aging facilities while still maintaining critical services for the community.

What are the City's critical needs that make this project necessary?

(Note – needs listed alphabetically below)

- **Fire:** Hayward's fire stations are aging and many need serious upgrades. Most of the City's fire stations were built more than 50 years ago. Some of the City's busiest stations have water damage, cracked foundations, and electrical systems that don't meet current building safety codes.
- **Library:** The main library was built in 1951, when Hayward had a population of 14,000 people. Today, Hayward is the Bay Area's fifth largest city, with a population of 150,000. The current library is deteriorating rapidly, and is too small and technologically outdated to meet the needs of our growing community.
- **Police:** Over the past six years, Hayward police have been stretched thin. The department needs increased staffing in several critical areas in order to keep pace with changes in technology and crime patterns.
- **Road Maintenance:** The city currently maintains 659 miles of streets and roads. The pavement condition score currently stands at 69 (fair). To bring the average condition up to 80 (good) would require nearly triple the City's current annual budget for road maintenance.

GOOD



FAIR



What is the goal of this project?

The City of Hayward has been working for several years investigating options to address its aging infrastructure needs. At the same time, the Great Recession and other conditions have greatly impacted the City budget, making it impossible to fund needed repairs and upgrades to aging facilities while still maintaining critical services for the community. This project is intended to find a solution to that problem in an environment of limited resources. One of the options under consideration is to ask the Hayward community to support establishing a new and stable local funding source to provide funding for critical city services that the State can't take away.

To achieve its goal, the City will need to show how it has been a good steward of the funding it gets now. How is the City managing its finances responsibly NOW?

The City has made significant changes to its personnel structure, compensation guidelines and operating strategies in an effort to keep the City financially stable. City employees, executives and elected officials have all made substantial sacrifices to aid in this effort by contributing more towards the costs of benefits, all while maintaining a high level of service to the community.

How much would a new measure cost?

The most promising kind of measure currently under consideration at Hayward City Hall, is a ½ cent sales tax. Establishing such a measure in the city of Hayward would require a vote of the people – and 50%+ 1 (simple majority) approval. If approved it would add 50 cents to a \$100 purchase made in Hayward.

How much additional funding would a ½ cent sales tax generate for the City?

A ½ cent sales tax would raise about \$10 million per year. This revenue is dependent on the economy and the amount of sales tax generated in Hayward. ALL funds generated by the local sales tax would be locally controlled and would stay in Hayward to provide essential city services and facility improvements. By law, the State could not take this funding away.

What would a sales tax apply to? What's taxed and what isn't?

A local sales tax would apply to the same goods and services and be subject to the existing state sales tax on tangible personal property. For example: furniture, cars, giftware, toys, antiques and clothing would be subject to the tax. Items that are exempt from sales tax include sales of certain food products for human consumption (most groceries), sales to the U.S. government, sales of prescription medicine and certain medical devices, and sales of items paid for with food stamps.

How long would a ½ cent sales tax last?

The measure under consideration in Hayward would most likely include a 20-year duration or "sunset". Changes could not be made without a new vote of the people.

Where to go for additional information:

For additional information please contact Assistant City Manager Kelly McAdoo at Kelly.mcadoo@hayward-ca.gov.

City of Hayward – 2014 Revenue Measure Feasibility Project

**ATTACHMENT III – Preliminary List of Critical City Funding Needs
March 4, 2014**

Capital Projects	Annual Debt Service Payment¹ or Annual Cost
Library & Community Learning Center Total unfunded cost: \$50,000,000	\$3,990,000
New Fire Station #6 Training Center Total unfunded cost: \$8,200,000	\$654,400
Other Fire Station Retrofits/Improvements Total unfunded cost: \$10,000,000	\$798,000
Street Repairs² 2 miles of overlay and 4 miles of slurry seal	\$1,000,000
New Police Facility & Jail Total unfunded cost: \$85,000,000	\$6,783,000
Restoration of Services	Annual Debt Service Payment³ or Annual Cost
Restoring 5 Police Officers Cost per officer: \$200,000/year	\$1,000,000
Restoring 5 Maintenance Workers Cost per worker: \$100,000/year	\$500,000
Maintain Current Services (Closing the General Fund Budget Deficit for FY2015)	\$2,600,000

¹ Annual debt service payment based on 20-year amortization of bond funding

² Current annual gas tax/Measure B funding for overlay/slurry seal = \$4 million

³ Annual debt service payment based on 20-year amortization of bond funding