

**Council Meeting: March 23, 2010****SUBJECT: Update on Potential for Utility Users Tax Ballot Measure****BACKGROUND**

At the January 29, 2010 Study and Budget Issues Workshop, Council requested that staff provide an update on the potential for an increase in the rate and/or base of the City's Utility Users Tax and a timeline for a possible ballot measure. This report is being provided in response to that request.

The Utility Users Tax (UUT) is a general tax that was first adopted in Sunnyvale in 1969. At time of adoption, the tax rate was 1%, which was increased to 2% in 1975. The UUT is a tax on the users of certain utilities and is collected and remitted by the utility companies as a part of their bill. In Sunnyvale, the UUT is applied to electricity and gas and intrastate telephone services. Sunnyvale's UUT rate of 2% remains well below the average of Santa Clara County cities, which is 3.7%, and significantly below the statewide average of 6%.

UUT may be collected by a city on a wide variety of utility services, including but not limited to electricity, gas, water, sewer, telephone (including long distance), trash collection, and cable television. As Sunnyvale's UUT applies to only electricity, gas, and intrastate telephone the opportunity exists to broaden its base to other areas of coverage allowable under state law. Any change to either the rate or the base would require voter approval. If the revenue is not earmarked for a specific purpose, it would be considered a general tax and require a majority vote in conjunction with a general election of the City Council. If it were earmarked, it would require a 2/3 vote and could be placed on the ballot at any time as a special election. Currently all UUT levies by California cities are for general taxes.

Sunnyvale's receipts from UUT currently total about \$7 million annually and account for about 6% of the General Fund's revenues. The UUT is used by the City to support basic services.

**EXISTING POLICY**

The Fiscal Sub-Element of the General Plan contains a number of policies which apply to this issue:

**B.1 Revenue Base**

B.1.1 The City will maintain a diversified and stable revenue base, not overly dependent on any land use or external funding source

B.1.2 Taxes levied by the City will be used for the purpose of financing services performed for the common benefit.

B.1.3 Taxes should be held at their lowest possible level, while maintaining Council-approved service levels.

B.1.4 When considering a new tax or revenue source or an increase in an existing tax or revenue source, the following criteria should be considered:

- Community/voter acceptance
- Competitiveness with surrounding communities
- Efficiency of revenue collection and enforcement
- Effectiveness in generating sufficient revenues in the short and long-term to justify its establishment
- Enhancement of revenue diversity to promote stability and provide protection from downturns in business cycles
- Equity/Fairness in distribution of the revenue burden on various segments of the community

B.1.7 Revenue should not be targeted for a specific program, unless a revenue source has been established for the sole purpose of financing a particular expenditure.

B.1.8 Potential new revenue sources will be investigated periodically to ensure that the City’s revenue base is stable and diversified.

**DISCUSSION**

As noted above, there are two opportunities available to modify Sunnyvale’s existing Utility Users Tax. The first is to increase the rate, and the second is to broaden the base. Table 1, below, summarizes information on the rates and the base for each of the seven cities in Santa Clara County that levy a UUT.

**Table 1  
 Utility User Tax Applications**

City	Rate	Electric	Gas	Cable TV	Water	Telecom		Solid Waste
						Inter- State	Intra- State	
Cupertino	2.4%	X	X			X	X	
Gilroy	5.0%	X	X	X			X	
Los Altos	3.5%	X	X	X	X		X	
Mountain View	3.0%	X	X				X	
Palo Alto	5.0%	X	X		X		X	
San Jose	5.0%	X	X		X		X	
Sunnyvale	2.0%	X	X				X	
Average	3.7%							

As shown on the table, only one other city, Cupertino, has a rate below 3%, with some as high as 5%. Additionally, in most other cities (with the exception of Mountain View), the UUT is applied to a base which is broader than ours.

Table 2, below, shows the types of increases and/or modifications in the UUT that could raise additional revenue for City services.

**Table 2**  
**Potential Revenue from UUT Modifications**

<u>Tax Measure</u>	<u>Voter Approval</u>	<u>Est. Additional Annual Revenue</u>
Increase UUT to 3% with current base	Majority	\$3.5 million
Increase UUT to 3% with expanded base	Majority	\$6.4 million
Increase UUT to County Average of 3.7% with current base	Majority	\$5.9 million
Increase UUT to County Average of 3.7% with expanded base	Majority	\$7.8 million
Broaden base at current 2% rate for: - Water - Wastewater - Solid Waste - Cable TV	- Majority - Majority - Majority - Majority	- \$470,000 - \$400,000 - \$600,000 - \$450,000
Broaden base to include interstate telephone service	Majority	*

\*Difficult to estimate because of manner in which remittances are received from telephone companies.

Timeline for Ballot Measure to Increase UUT Rate or Broaden Base

If a change in the UUT rate or base results in revenues for general purposes, it would be a general tax that would require voter approval at a general election of the City Council. Voter approval needed would be 50% of those voting, plus one. The next Council election will occur in November 2011. Although we do not have a calendar from the County Registrar of Voters for this election, we do have such a calendar for the upcoming November 2010 election and can infer from it certain information regarding steps and deadlines. Basically, the process if initiated by the Council must start in June 2011, with the election called in July. Of course there are a number of required steps before the initiation of the election, but Council would have more than a year to research and prepare a ballot measure if it were so inclined.

As mentioned earlier, a change in the UUT could also be earmarked for a specific purpose, which would make it a special tax subject to a 2/3 voter approval threshold. As a special tax, an election can be held at any time. It should be noted that a few cities have attempted to pass an earmarked UUT in the last few years, but none have been successful.

#### Results of November 3, 2009 Election Local Revenue Measures

During the most recent election in November 2009, voters considered 41 separate measures involving taxes or fees for cities. 36 of these measures were for general taxes, and five were for special taxes. Of the general tax measures, there were 13 to either increase or expand Utility Users Taxes. Five cities asked voters to modernize their existing UUTs to cover new telecommunications technologies while maintaining existing rates; all of these measures passed. Four cities asked voters to modernize their existing UUTs but also reduced the tax rate. Likewise, all four of these passed. An additional city was successful in extending the sunset of its UUT for four more years, while in one city a proposal to expand the UUT to tax power plants in the city failed. Only two measures proposed tax rate increases, and both failed.

The November 2009 results are similar to recent historical election outcomes. Since 2001 nearly all proposals to modernize UUTs without increasing the tax rate have passed, while only one in four proposals for new or increased UUTs have received voter approval.

#### Alternative Revenue Measures

As Council considers proposing a change in the UUT to voters, there are several alternative measures that could also be examined. These include a local add-on sales and use tax, a landscaping and lighting district, and a city real property transfer tax. Each of these, if intended to support core city services, would be considered a general tax and would be subject to the majority plus one voter approval threshold.

In the November 2009 election five cities had proposals to adopt an add-on sales and use tax for general purposes. The proposals ranged from increases of  $\frac{1}{4}$  percent to 1 percent. Two of the measures passed: one for  $\frac{1}{4}$  percent increase and one for  $\frac{1}{2}$  percent. Three did not pass, ranging from  $\frac{1}{2}$  to 1 percent. Since 2001, sixty percent of the add-on sales tax measures proposed by cities have passed. In Santa Clara County, the voters of the City of Campbell approved a  $\frac{1}{4}$  cent add-on Sales Tax in November 2008 for general city purposes. For Sunnyvale, a  $\frac{1}{4}$  cent sales tax measure would generate almost \$6 million annually.

The Landscaping and Lighting Act of 1972 allows cities to form districts to fund certain ongoing services including street lighting, traffic signals, median and park landscaping, and street improvements such as curbs, gutters, and sidewalks. The districts establish assessments on property which can pay for either special improvements or ongoing services. A district can either be

citywide or formed in a particular benefit area. The district is formed with **majority** approval. These districts are in widespread use throughout the state.

Real Property Transfer Tax, also called Documentary Transfer Tax, is a charge on the transfer of ownership in real estate at the time of sale. By state law, a county may levy this tax at a rate of \$0.55 per \$500 (which equals \$1.10 per \$1,000) of property sales value. The revenue is then split equally between the county and the city. Sunnyvale receives approximately \$600,000 annually under this arrangement. Charter cities have the ability to adopt an additional city transfer fee, and a number of cities throughout the state have done so. There are six charter cities in Santa Clara County, and the cities of Palo Alto, Mountain View, and San Jose have each adopted an additional transfer tax of \$3.30 per \$1,000 of sale value. In these cases, the county retains the entire original amount while the city receives the full amount of the additional city tax. Approval of this tax would again require voter approval at the majority plus one threshold. At the rate charged by the three cities in our county, Sunnyvale would realize an additional \$3 million annually.

### **FISCAL IMPACT**

The fiscal impacts of each potential revenue measure are included throughout the report.

### **PUBLIC CONTACT**

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

### **ALTERNATIVES**

1. Council directs the City Manager to pursue a ballot measure for the November 2011 election to increase the rate and/or base of the City's Utility Users Tax or to propose any of the alternative revenue measures discussed in the report.
2. Council takes no action at this time.

### **RECOMMENDATION**

Staff recommends Alternative 1, Council directs the City Manager to pursue a ballot measure for the November 2011 election to increase the rate and/or base of the City's Utility Users Tax or to propose any of the alternative revenue measures discussed in the report.

The City's General Fund revenues are decreasing in virtually every major category. In light of this fact, it would be prudent to consider increasing our revenue base along with the efforts that are being undertaken to cut and control expenses.

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