Atascadero City Council
Staff Report - City Manager

Sales Tax Measure
Ordinance Second Reading

RECOMMENDATION:

Council adopt on second reading, by title only, the Draft Ordinance imposing a transactions and use tax to be administered by the State Board of Equalization.

DISCUSSION:

The maintenance, funding and condition of the City’s infrastructure, particularly roads, have been a critical concern of the City Council for some time. As part of the 2013-2015 budget, the Council allocated funds to conduct a poll to determine how potential voters would react to a one half cent (0.5%) sales tax increase to fund infrastructure repairs. At the February 1, 2014 Council strategic planning session, the Council discussed critical infrastructure needs such as roads, storm drains, parks and zoo infrastructure, and facilities infrastructure. The poll was conducted in March to gauge citizen’s interest in the various infrastructure needs.

As we discussed during the April 22, 2014 Council meeting, overall poll results showed there is strong community interest in a sales tax measure, particularly if the proceeds of the sales tax were to go primarily to roads. Based on the community interest, Council directed staff to reach out to the community with an education campaign and to receive input from the community about a potential sales tax measure for roads.

Staff presented an informational presentation about the City roads and the potential sales tax measure to several community groups including Kiwanis, Chamber of Commerce Board, Rotary, Republican Women, North County Tea Party, and Realtors. In addition a public community forum open to the public and advertised widely was held on June 5th. At all of the presentations, staff answered questions and encouraged comments on both the roads and the potential sales tax measure. Staff was also available after each of the presentations for comments and questions.
Regarding increases to the sales tax rate, in order to make a change to any general tax rate, the change must be approved by the voters. The City Council does not have the authority to raise taxes, only to put a measure on the ballot. In order to place a tax measure on the November 4, 2014 ballot, it takes a 2/3 vote of the City Council (at least 4 members). If passed by the Council and the electorate, the tax would be effective no sooner than the first day of the first calendar quarter, commencing more than 110 days after the adoption of the ordinance. Therefore, the tax would be effective no sooner than April 1, 2015.

The City Council, at their June 24, 2014 meeting, introduced for first reading, by title only, the attached Draft Ordinance. This ordinance, if adopted on second reading, by title only, will then become the full text of the sales tax measure. The advisory measure does not require an ordinance. The sales tax increase will only take place if the voting majority of the City of Atascadero vote to approve the increase.

The advisory and ballot measures will read as follows:

**ADVISORY VOTE ONLY**

**ADVISORY MEASURE #E-14**

*If the voters of the City of Atascadero approve a one half cent limited term general sales tax increase, should the additional revenues be used for the purpose of repairing and maintaining neighborhood roads and other roadways?*

The ballot measure would read as follows:

**MEASURE #F-14**

*To provide funding that cannot be seized by the State, and will stay in Atascadero to be used for such things as the repair of neighborhood roads and aging roadways along with other vital City needs - Shall the City of Atascadero’s sales tax rate be temporarily increased to include a local general sales tax of a one half cent, for a period of 12 years, with citizen committee oversight, published annual reporting and independent financial audits?*

**FISCAL IMPACT:**

The proposed sales tax measure would generate an estimated $1.7 - $2.0 million in additional annual revenue. The total cost of placing the measures on the ballot is estimated to be approximately $6,500 of budgeted General Funds.

**ALTERNATIVES:**

1. Council may not pursue an increase to the sales tax rate.
ATTACHMENT:

1. Draft Ordinance A, Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization.
DRAFT ORDINANCE A

AN ORDINANCE OF THE CITY OF ATASCADERO
IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

Section 1. TITLE. This ordinance shall be known as the Atascadero Transactions and Use Tax Ordinance. The city of Atascadero hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 2. 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.

Section 3. 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 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.

Section 4. 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.

Section 5. **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 **0.5 %** 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.

Section 6. **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.

Section 7. **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 **0.5 %** 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.

Section 8. **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.

Section 9. **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 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 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.

Section 10. 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.

Section 11. 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:

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 such 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 purposes 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 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 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.

Section 12. 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.

Section 13. 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.

Section 14. CITIZENS’ OVERSIGHT COMMITTEE. There shall be a permanent citizens’ advisory committee called the “Citizens’ Oversight Committee” (hereafter
“Committee”) which shall annually review revenues and expenditures from the collection of the tax. The committee shall have 9 members. Seven members shall be appointed to the committee by individual Atascadero community groups. Two members shall be appointed by the City Council. Appointees shall be residents of the City; however, no member of the Committee shall be an elected official.

Section 15. ANNUAL ROAD REPORT. An Annual Road Report shall be prepared by the City no later than the last day of the sixth month following the end of each City fiscal year. The Report shall be submitted to the Citizens’ Oversight Committee for review. The Committee will submit their findings and conclusions to the City Council. The Report will also be made available to the public. The Annual Road Report shall detail the prior fiscal year’s activities related to the retail transaction and use tax. The Report shall include revenues generated by the Transaction and Use Tax, expenditures (in summary form), funds carried over from previous fiscal years, and any remaining funds to be carried over for expenditure in subsequent fiscal years.

Section 16. INDEPENDENT ANNUAL FINANCIAL AUDIT. The amount generated by this new general purpose revenue source and how it was used shall be included in the annual audit of the City’s financial operations by an independent certified public accountant.

Section 17. TWELVE-YEAR SUNSET. The authority to levy a retail transaction and use tax shall expire twelve years from the operative date of this ordinance, unless extended by the voters of the City in the manner provided by law.

Section 18. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect 10 days after the election results are declared by the City Council (CA Elections Code §9217). The operative date (Section 2) will be the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, which will be April 1, 2015.

Section 19. 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 20. PUBLISHING OF ORDINANCE. A summary of this ordinance, approved by the City Attorney, shall be published twice: at least five days prior to its final passage in the Atascadero News, a newspaper published and circulated in the City of Atascadero, and; before the expiration of fifteen (15) days after its final passage, in the Atascadero News, a newspaper published and circulated in the City of Atascadero. A copy of the full text of this ordinance shall be on file in the City Clerk’s Office on and after the date following introduction and passage and shall be available to any interested member of the public.
INTRODUCED at a regular meeting of the City Council held on _____________, and PASSED and ADOPTED by the City Council of the City of Atascadero, State of California, on _____________, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: ______________________________________
Marcia McClure Torgerson, C.M.C.,
City Clerk

CITY OF ATASCADERO

______________________________
Tom O’Malley, Mayor

APPROVED AS TO FORM:

______________________________
Brian A. Pierik, City Attorney