



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Ben Harvey, City Manager

MEETING DATE: July 20, 2016

SUBJECT: Resolution Approving a Ballot Measure to Modify and Increase the Existing Business License Tax

CEQA: Does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Approve the Resolution to place a Ballot Measure on the November 8, 2016 election to modify and increase the existing Business License Tax in accord with Council's concept approval provided on June 15, 2016. The modified Business License Tax shall take effect only if a majority of the voters of the City casts ballots in favor of the measure.

DISCUSSION

The City of Pacific Grove (City) is a charter City and has collected a Business License tax in its present form since at least 1970, as codified in Chapter 7.04 of the Pacific Grove Municipal Code (PGMC). Non-substantive amendments were made to this Chapter by seven separate ordinances between 1975 and 2014. Before 1970, the City had enacted prior versions of a Business License tax.

The Business License tax authorized by PGMC Chapter 7.04, in general, collects revenue from business organizations based upon the total amounts charged or receivable from sales or for performance of any act or service of whatever nature for which a charge is imposed.

In accord with the City Council's concept approval provided on June 15, 2016, the proposed resolution would modify the existing Business License tax rate of one mill (\$0.001) on each dollar of gross receipts, and increase that rate to two and 4/10 mill (\$0.0024) on each dollar of gross receipts. The resolution would also repeal the existing \$3,000 maximum annual tax "cap" which applies only businesses with annual gross receipts exceeding \$3,000,000. The resolution would also allow businesses to collect and pay taxes for subsidiary vendors, and create an exemption for very low revenue enterprises.

The resolution affirms the City Council may author and sign ballot arguments related to the measure, and delegates that power to the Mayor or his designate.

This measure is proposed as a general tax solely to raise revenue for any and all municipal purposes, and to be placed into the City's General Fund. It is not intended for regulation. If approved by a majority of the voters of the City, the amendments to Chapter 7.04 shall take effect the first business day in January, 2017.

The Resolution is exempt from the California Environmental Quality Act (CEQA) as it is not a Project as defined by section 15378 of the CEQA Guidelines, and shall not cause a physical change to the environment.

OPTIONS

1. Take no action. No Business License Tax Measure would be placed on the November 2016 ballot.
2. Modify proposed amendments to PGMC Chapter 7.04, and direct that the modified measure be placed on the November 2016 ballot. (The last regular council meeting to authorize any proposed resolution for delivery to the Registrar of Voters is August 3, 2016.)

FISCAL IMPACT

As presented in the Jun3 15, 2016 agenda report (Agenda No. 12D), removal of the Business License tax cap is projected to increase annual tax revenue by approximately \$180,000. The proposed increase to the tax rate of one and 4/10 mill (\$0.0014) on each dollar of gross receipts is projected to increase annual tax revenue by approximately \$131,000.

The cost of the general election in November is set by Monterey County Elections. The County provided all municipalities with its estimated cost for the November election at between \$6.00 and \$8.00 per registered voter. Pacific Grove has 9415 registered voters. Thus, the cost range for the entire election ranges from a low of \$56,490 to a high of \$75,320. The number of measures on the ballot suggests the elections cost will tend toward the higher range.

ATTACHMENTS

1. Resolution.

RESPECTFULLY SUBMITTED:



Ben Harvey
City Manager

Business License tax

RESOLUTION NO. 16 -

A RESOLUTION OF THE CITY OF PACIFIC GROVE APPROVING A BALLOT MEASURE TO AMEND PACIFIC GROVE MUNICIPAL CODE CHAPTER 7.04 TO MODIFY AND INCREASE THE EXISTING BUSINESS LICENSE TAX

FINDINGS

1. The City of Pacific Grove (City) is a charter City, holding home rule powers necessary and appropriate to a municipal corporation that are not prohibited by the California or federal Constitutions. This includes the authority to impose taxes in accord with Article XI of the California Constitution. The City alternatively has the general authority to levy a tax under California Government Code section 37101; and
2. Enactment of any tax must be approved by the voters of the City; and
3. The City has collected a Business License tax in its present form since at least 1970, as codified in Chapter 7.04 of the Pacific Grove Municipal Code (PGMC). Non-substantive amendments were made to this measure in 1975, 2002, 2004, 2008, 2009, 2011 and 2014. Before 1970, prior versions of a Business License tax were enacted by ordinance, including but not limited to Ordinances 210 N.S. §§ 12-101 through 12-127, 306 N.S., 313 N.S., 401 N.S., 434 N.S., 452 N.S., 523 N.S., 551 N.S., 584 N.S., 585 N.S., 592 N.S., 594 N.S., 646 N.S. and 655 N.S.; and
4. PGMC Chapter 7.04, in general, collects revenue from business organizations based upon the total amounts charged or receivable from sales or for performance of any act or service of whatever nature for which a charge is imposed; and
5. If approved by a majority of the voters of the City, the Business License tax would increase from the existing tax rate of one mill (\$0.0010) on each dollar of gross receipts to the rate of two and 4/10's mill (\$0.0024) on each dollar of gross receipts, the existing \$3,000 maximum annual tax "cap" would be repealed (affecting only businesses with annual gross receipts exceeding \$3,000,000), businesses would be allowed to collect and pay taxes for subsidiary vendors, and low revenue enterprises would be exempt from this tax; and
6. The proposed amended Business License tax shall be enacted as a general tax solely to raise revenue for any and all municipal purposes, and shall be placed into the City's General Fund, and is not intended for regulation; and

7. The PGMC shall be amended and the Business License tax, as proposed to be amended, shall be enacted and take effect only if a majority of the voters of the City casts ballots in favor of the ballot measure authorized for that purpose at the election to be held on November 8, 2016; and
8. The proposed amendment to PGMC is exempt from the California Environmental Quality Act (CEQA) it is not a Project as defined by section 15378 of the CEQA Guidelines, and shall not cause a physical change to the environment.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE:

SECTION 1. The City Council adopts each Finding set forth above as though fully set forth in the body of this Resolution.

SECTION 2. A municipal election of the City shall be held in the City on November 8, 2016, at which time there shall be submitted to the voters the Ballot Measure to Amend City Municipal Code Chapter 7.04 to Modify and Increase the Existing Business License tax, in accord with this Resolution.

SECTION 3. Except as amended by this Resolution, approved by majority vote, each remaining provision of PGMC Chapter 7.04 shall be affirmed and republished.

SECTION 4. If approved by a majority of the voters of the City, the one mill (\$0.001) tax rate on each dollar of gross receipts provided in PGMC Section 7.04.220, shall be amended to increase the Business License tax rate to two and 4/10 mill (\$0.0024) on each dollar of gross receipts by deleting the word shown in strikeout text and adding the words shown in italicized and bold text:

“Every person who engages in business within the city shall pay a license tax based upon gross receipts of the previous calendar year at the rate of ~~one~~ ***two and 4/10*** mill on each dollar of gross receipts... .”

SECTION 5. If approved by a majority of the voters of the City, the maximum annual Business License tax “cap” provided in PGMC Chapter 7.04 shall be removed, by deleting from Section 7.04.220 the words shown below in strikeout text:

“Every person who engages in business within the city shall pay a license tax based upon gross receipts of the previous calendar year... with a minimum annual tax of \$15.00 ~~and a maximum annual tax of \$3,000.~~”

SECTION 6. If approved by a majority of the voters of the City, PGMC section 7.04.230 shall be amended to authorize staff to implement rules to allow businesses to collect and pay Business License taxes for subsidiary vendors, as shown in italicized and bold text:

The collector may make rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to aid in the enforcement of the provisions of this chapter, ***or which enable a licensed business to collect and pay taxes for subsidiary vendors.***

SECTION 7. Proceeds deriving from PGMC Chapter 7.04 shall be a “general tax,” the revenue from which shall be placed into the City’s General Fund and be available for any and all municipal purposes.

SECTION 8. The ballot question for the Business License tax measure shall be substantially as follows:

CITY MEASURE ()

Shall Chapter 7.04 of the Pacific Grove Municipal Code be amended to add a one and 4/10 mill (\$0.0014) tax on each dollar of gross receipts, thereby increasing the existing Business License tax, to delete the annual Business License tax cap, and to allow businesses to collect and pay Business License taxes for subsidiary vendors, as provided in Resolution No. 16 – [xxx]?

Yes (_____)

No (_____)

SECTION 9. The City Council does hereby determine, in accord with California Elections Code Section 9282 that it wishes to exercise its right to author and sign ballot arguments and rebuttal arguments regarding this measure, and delegates that power to the Mayor or such other member of the City Council as the Mayor may designate.

SECTION 10. The last day to submit arguments for or against the proposed measure shall be August 19, 2016. Submittals are to be delivered to Monterey County Elections on or before 5:00 p.m. The last day to submit rebuttal arguments for the proposed measure shall be August 29, 2016. Submittals are to be delivered to Monterey County Elections on or before 5:00 p.m.

SECTION 11. On or before August 29, 2016, the City Attorney is directed to submit an impartial analysis, of no more than 500 words, of the proposed measure pursuant to California Elections Code section 9203.

SECTION 12. The City Council shall meet to declare the results of the election called for by this Resolution at their first regular meeting following certification of election results.

SECTION 13. If approved by a majority of the voters of the City, the amendments to Chapter 7.04 shall be given effect the first business day in January, 2017. The City Manager, City Attorney and City Clerk are directed to perform all tasks necessary to implement amended Chapter 7.04 as of that date. This measure shall cause republication of the Pacific Grove Municipal Code.

SECTION 14. If approved by a majority of the voters of the City, taxes imposed by Chapter 7.04, entitled "Business License Tax", shall be amended or rescinded only as approved by a subsequent majority vote. The City Council may, from time to time, revise, amend or repeal provisions set forth in Sections 7.04.010 (Definitions), 7.04.045 (Business list), 7.04.060 (Evidence of doing business), 7.04.080 (Contents of license), 7.04.090 (Application – First license), and/or 7.04.100 (Renewal license), provided the Council shall not impose a greater tax rate without a subsequent majority vote.

SECTION 15. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses, or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 16. This Resolution shall take effect immediately following its adoption.

RESOLVED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this ____ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

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