



Public Works Department

# AGENDA

## REGULAR MEETING OF THE CITIZEN STREET OVERSIGHT COMMITTEE

**Monday, September 22, 2008, 7:00 p.m.**  
**Temporary El Cerrito City Hall**  
Conference Room A  
10940 San Pablo Avenue

### Roll Call

#### 1. Council / Staff Liaison Report

#### 2. Comments from the Public

*(Each speaker is limited to a maximum of 2 minutes.)*

#### 3. Approval of Minutes

No previous meeting.

#### 4. Self Introductions

The committee members will provide a brief background on themselves as it relates to the Committee. (attachment: Committee Roster)

#### 5. Election of Committee Chair

#### 6. Review Enabling Ordinance

Discussion of background of Ordinance (El Cerrito Municipal Code 2.04.320) and role of the Committee. (attachment: Staff Report and Ordinance)

#### 7. Meeting Schedule

Discussion and possible action on scheduling of future meetings.

#### 8. Adjournment

*Any writings or documents provided to a majority of the Citizen Street Oversight Committee regarding any item on this agenda will be made available for public inspection in the Public Works Department located at 10940 San Pablo Avenue during normal business hours.*

### COMMUNICATION ACCESS INFORMATION

*To request a meeting agenda in large print, Braille, or on cassette, or to request a sign language interpreter for the meeting, call Jerry Bradshaw, Staff Liaison at 215-4382 (voice) at least FIVE (5) WORKING DAYS NOTICE PRIOR TO THE MEETING to ensure availability.*

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Finance Department

**Minutes**  
**REGULAR MEETING**  
**OF THE**  
**CITIZEN STREET OVERSIGHT COMMITTEE**

**Thursday, September 22, 2008, 7:00 p.m.**  
**El Cerrito Temporary City Hall**  
Conference Room A  
10940 San Pablo Avenue

**Roll Call at 7:00 p.m.**

Present: Committee Members Kessler, Al Miller, Thomas Miller, Roberton, and Ozselcuk.  
Absent: none

Staff Liaison Jerry Bradshaw and Finance Director Mary Dodge also present.

**1. Council / Staff Liaison Report**

No reports.

**2. Comments from the Public**

None.

**3. Approval of Minutes**

No previous meeting.

**Action:** no action

**4. Self Introductions**

The committee members will provide a brief background on themselves as it relates to the Committee.

**Action:** no action.

**5. Election of Committee Chair**

**COMMUNICATION ACCESS INFORMATION**

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10890 San Pablo Avenue., El Cerrito, CA 94530 Tel: 510.215.4382  
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City of El Cerrito  
Special Financial Advisory Board Meeting Agenda

**Actions:** Al Miller was nominated for chair and was approved unanimously.  
Lynne Kessler was nominated for vice chair and was approved unanimously.

**6. Review Enabling Ordinance**

Discussion of background of Ordinance (El Cerrito Municipal Code 2.04.320) and role of the Committee.

**Action:** No formal action. Staff agreed to follow up with clarification on two apparent discrepancies between the ordinance and the Expenditure Plan.

**7. Meeting Schedule**

Discussion and possible action on scheduling of future meetings.

**Action:** By consensus agreement, the next meeting was scheduled for November 13, 2008 at 7:00 p.m. at the Temporary City Hall building (unless the New City Hall is available). The purpose of the meeting is to brief Committee members on the background of the Measure A program.

**8. Adjourned** at approximately 8:30 p.m.

# CITIZENS STREET OVERSIGHT COMMITTEE

E.C.M.C 2.04.320

## MEETING INFORMATION

To be announced  
10940 San Pablo Avenue

## STAFF LIAISON INFORMATION

Jerry Bradshaw  
Public Works Director  
jbradshaw@ci.el-cerrito.ca.us  
(510) 215-4368

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The five member Citizens Street Oversight Committee monitors the expenditures of revenue collected pursuant to ECMC Chapter 4.60 (the "Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax") to determine whether such funds are expended for the purposes specified in the then-current Street Repair and Maintenance Expenditure Plan, and issues reports on their findings to the City Council and public at least annually. The Committee may also review the annual financial or performance audits performed by an independent auditor.

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Updated: 06/12/08

	<b>Name/Address</b>	<b>Phone/Email</b>	<b>Term of Office</b>
1	Ms. Lynne Kessler 1035 Liberty Street El Cerrito, CA 94530	524-0883 (H) <a href="mailto:Lynne4@sbcglobal.net">Lynne4@sbcglobal.net</a>	05/27/08 – 01/01/12
2	Mr. Al Miller 625 Ashbury Avenue El Cerrito, CA 94530	526-4874 (H) <a href="mailto:Amil2323@comcast.net">Amil2323@comcast.net</a>	05/27/08 – 01/01/12
3	Ms. Arlene Robertson 1132 Contra Costa Drive El Cerrito, CA 94530	525-0056 (H) <a href="mailto:aroberton@comcast.net">aroberton@comcast.net</a>	05/27/08 – 01/01/12
4	Mr. Thomas N. Miller 2700 Tulare Avenue El Cerrito, CA 94530	233-1047 (H) <a href="mailto:schwabbi@aol.com">schwabbi@aol.com</a>	05/27/08 – 01/01/11
5	Ms. Elizabeth Ozseleuk 5830 Ray Avenue El Cerrito, CA 94530	237-8396 (H) 642-4529 (W) <a href="mailto:Lizo7@earthlink.net">Lizo7@earthlink.net</a> <a href="mailto:elto@demog.berkeley.edu">elto@demog.berkeley.edu</a>	05/27/08 – 01/01/11



## STAFF REPORT

### Agenda Item No. 6

**Date:** July 21, 2008  
**To:** Citizen Street Oversight Committee  
**From:** Jerry Bradshaw, Public Works Director   
**Subject:** Street Improvement Program Enabling Ordinance

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Item No. 6 on the Agenda is discussion of the background of the ordinance and the role of the committee. I am furnishing a copy of the ordinance as passed by the City Council on November 5, 2007 and approved by voters on February 4, 2008. This ordinance establishes a half-cent sales tax for the purpose of making significant improvements to the streets of El Cerrito. Your attention is directed to the three components of the ordinance pertinent to the Committee:

1. Section 4.60.150 USE OF TAX PROCEEDS AND EXPENDITURE PLAN (page 6-8). The pertinent portion has been annotated.
2. Section 4.60.160 ANNUAL AUDIT (page 6-9)
3. Section 2.04.320 CITIZENS' OVERSIGHT COMMITTEE (beginning on page 6-10)

Also included for informational purposes is the Expenditure Plan (beginning on page 6-13) and the Council Agenda Bill (beginning on page 6-17).

EXHIBIT A

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE VOTERS OF THE CITY OF EL CERRITO AMENDING THE EL CERRITO MUNICIPAL CODE, IMPOSING A 1/2 CENT TRANSACTIONS AND USE TAX FOR THE REPAIR AND MAINTENANCE OF CITY STREETS TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION AND AUTHORIZING THE INCURRENCE BY THE CITY OF INDEBTEDNESS PAYABLE SOLELY FROM SUCH TAX

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

SECTION 1. A new Chapter 4.60 is hereby added to Title 4 ("Revenue and Finance") of the El Cerrito Municipal Code, to read as follows:

**"Chapter 4.60 Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax**

**4.60.010. TITLE.** This ordinance shall be known as the "El Cerrito Pothole Repair and Local Street Improvement and Maintenance" Transactions and Use Tax Ordinance. The City of El Cerrito hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

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

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

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds 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

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administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

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

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

**4.60.050. TRANSACTIONS TAX RATE.** For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 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. Such tax shall be in addition to any other transactions tax imposed by this Code or applicable State law.

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

**4.60.070. USE TAX RATE.** An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of 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. Such tax shall be in addition to any other use tax imposed by this Code or applicable State law.

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

**4.60.090. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.** In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:
1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
  2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
  3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
    - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
    - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
  4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

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

**4.60.110. EXEMPTIONS AND EXCLUSIONS.**

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the

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- 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.

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

**4.60.120. AMENDMENTS.**

- A. 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 unless any increase in the rate of this tax is first approved by 2/3 of the voters of the City of El Cerrito voting on such question.

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B. Pursuant to California Elections Code Section 9217 or any successor statute, the City Council of the City of El Cerrito may amend or repeal this ordinance and any of its exhibits, provided that written notification is submitted to the State Board of Equalization 110 days prior to the operative date of the amendment or repeal, but not increase or extend the rate of tax imposed herein, or the indebtedness authorized hereunder, without the approval of 2/3 of the voters of the City of El Cerrito voting on such question..

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

**4.60.140. 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.

**4.60.150. USE OF TAX PROCEEDS AND EXPENDITURE PLAN.**

(a) All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund designated for use by the City of El Cerrito only for the Pothole Repair and Street Improvement and Maintenance Services set forth in the Expenditure Plan for the administration and expenditure of the tax proceeds, attached to this ordinance as Exhibit "1". The Expenditure Plan may be amended from time to time by a majority vote of the City Council, so long as the funds are utilized for pothole repair and street improvement and maintenance services. For the purposes of this Part, "Pothole Repair and Street Improvement and Maintenance Services" means (1) all aspects of street repair and maintenance including repair, reconstruction and sealing of city streets; repair, maintenance and reconstruction of curbs and ramps adjacent to City streets; crosswalk and pedestrian improvements on or adjacent to City streets; other related services such as lane line, crosswalk and bicycle lane striping and other necessary pavement markings; and other such improvements as are deemed necessary by the City Council for the benefit of the residents of the City; (2) No revenues collected pursuant to the tax levied hereby may be spent on department administrators' salaries, General Fund operating expenses in effect at the time this ordinance becomes effective, or projects not a part of the Expenditure Plan. It is the intent of the People that revenues collected hereunder shall supplement, rather than supplant, existing City expenditures for Street Repair and Maintenance.

(b) The City is hereby authorized to incur indebtedness in the form of bonds, notes, contractual obligations or other evidences of indebtedness authorized by law to finance or refinance costs described in subsection (a) above, and to pay any and all costs of issuing or incurring such indebtedness, to fund reserve funds, capitalized interest, costs of credit enhancement, costs of interest rate hedging arrangements or any other financing costs associated with such indebtedness. Such indebtedness shall be solely payable from, and may be secured by a pledge and lien on, the proceeds of the tax levied and imposed hereunder. Such indebtedness shall be limited in amount such that the annual debt

service in each year is not in excess of 75% of the amount of tax proceeds projected by the City to be received in each year.

**4.60.160. ANNUAL AUDIT.**

By no later than December 31st of each year, the City's independent auditors shall complete a Streets Repair and Maintenance Tax Ordinance Compliance and Internal Control Audit Report. Such report shall review whether the Tax revenue is collected, managed and expended in accordance with this Chapter."

SECTION 2. Chapter 2.04 ("City Council") of Title 2 ("Administration") of the El Cerrito Municipal Code is hereby amended by adding a new Section 2.04.320, to read as follows:

**2.04.320. CITIZENS' OVERSIGHT COMMITTEE.**

A. Committee Established. There is hereby established in the City of El Cerrito a Citizens' Oversight Committee to monitor the expenditures of revenue collected pursuant to Chapter 4.60 (the "Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax") only and report to the People and the City Council. The title of this Committee shall be the "Street Repair and Maintenance Citizens' Oversight Committee" (hereinafter the "Citizens' Oversight Committee" or the "Committee").

B. Selection of Members.

1. Members of the Citizens' Oversight Committee shall be appointed by majority vote of the City Council. The Committee shall consist of five members. The Citizens' Oversight Committee members shall not be current City of El Cerrito employees, officials, contractors or vendors of the City. Past employees, officials or vendors shall be eligible to serve on the Committee, provided that such service would not be a violation of law, as determined by the City Attorney.
2. Of the members of the Committee first appointed, three shall be appointed for terms of four years and two for terms of three years. Their successors shall be appointed for terms of four years. No member may serve more than two consecutive four-year terms.
3. The City Council shall solicit Citizens' Oversight Committee members through an open application process that is promoted through the City's normal recruiting process. Any El Cerrito resident is eligible to apply for Committee membership, subject to the limitations specified above. All applications will be reviewed by the City Council, which will have the authority to make all final decisions on Committee representation, subject to these guidelines.

C. Purpose and Jurisdiction.

1. The Citizens' Oversight Committee shall review expenditures of revenue collected pursuant to this Chapter only to determine whether such funds are expended for the purposes specified in the then-current Street Repair and Maintenance Expenditure Plan, and issuing reports on their findings to the City Council and public at least annually. The Committee may also

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review the annual financial or performance audits performed by an independent auditor. The Committee shall confine its oversight specifically to revenues generated under Chapter 4.60. Revenue generated through other sources shall be outside the jurisdiction of the Street Repair and Maintenance Citizens' Oversight Committee.

2. In order to preserve the integrity and independence of the oversight process, Committee members will not play a formal role in contracting, project management, or any other aspect of the Street Repair and Maintenance Measure funding.
  3. The Committee is not charged with decision-making on spending priorities, schedules, project details, funding source decisions (e.g. leveraged funds, developer fees, etc.), financing plans, or tax rate assumptions. The Committee shall serve in an advisory-only role to the City Council. The Committee shall have no jurisdiction other than that delegated to it by the People pursuant to this Ordinance. The failure of the Committee to carry out any of its duties under this Section shall not affect the validity of any of the provisions of Chapter 4.60.
  4. The City of El Cerrito City Manager or his designee shall provide any reasonable administrative or technical assistance required by the Committee to fulfill its responsibilities or publicize its findings.
- D. Meetings. The Citizens' Oversight Committee shall meet semi-annually (or as otherwise provided for in approved or amended by-laws) with specific meeting dates to be determined by the Committee. Citizens' Oversight Committee meetings are subject to the requirements of the Ralph M. Brown Act (Government Code § 54950 et seq., as may be amended from time to time). Meetings must be noticed and open to the public. Additional meetings may be scheduled by the Committee as necessary. All Committee members shall attend a training and orientation session upon commencing their duties.
- E. Attendance. Committee members are expected to attend all regular meetings.
- F. Committee Operations. At the first meeting of each calendar year, the Citizens' Oversight Committee will select members to serve as Chair and Vice Chair of the Committee. A City staff person will be appointed by the City Manager or his designee to serve as Secretary. The Secretary will be responsible for preparing, posting and distributing agendas and taking minutes at each meeting. Approved minutes shall be made available to the public. Committee decisions, positions, findings and procedures shall require a simple majority of those Members voting.
- G. Vacancies. In the event of removal, resignation, or death, the City Council shall appoint a person to fill the vacant seat.
- H. Miscellaneous. With the exception of those items specifically addressed in this ordinance, the Committee may draft and adopt its own standard procedures and by-laws by majority vote. All Citizens' Oversight Committee procedures and by-laws remain subject to review and approval by the City Council. Citizens' Oversight Committee reports and audits are subject to review and approval of the City Council."

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SECTION 3. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect 10 days following certification of the vote by the City Council.

SECTION 4. The City Clerk shall certify the passage of this ordinance; publish the same as required by applicable law, and forward a copy of the adopted ordinance to the Board of Equalization.

\* \* \* \* \*

PASSED AND ADOPTED by the voters of El Cerrito at an election held February 5, 2008 by the following vote:

AYES:

NOES:

ATTEST:

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Cheryl Morse, City Clerk

APPROVED:

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Letitia D. Moore, Mayor

BLANK

EXHIBIT 1

CITY OF EL CERRITO  
POTHOLE REPAIR AND STREET IMPROVEMENT AND MAINTENANCE SERVICES

PAVEMENT EXPENDITURE PLAN

OF  
ONE-HALF (1/2) CENT  
TRANSACTIONS AND USE TAX REVENUE

The City of El Cerrito street system consists of approximately 68 miles of streets, the majority of which were constructed to the standards and conditions of the early to mid-20th century with many streets unable to meet today's traffic demands. The City's Pavement Condition Index (PCI), which was compiled by staff and its consulting engineers, illustrates that El Cerrito's streets have a very low average pavement condition rating (51 on a 100-point scale). Further analysis shows that the residential streets are in the worst condition of all categories with an average PCI of 38, while the neighborhood collectors and arterials are in better condition with PCIs of 68 and 80, respectively.

The needed improvements and maintenance on the City of El Cerrito street system far exceed the available revenues for these activities. While the City remains committed to continue efforts to obtain all possible Federal and State funding for street improvements, it is apparent that without the one-half (1/2) cent transactions and use tax revenue, the City will be unable to improve the street system to a level that will adequately serve the traveling public. This Pavement Expenditure Plan describes the specific projects for which the revenues from the tax will be expended, and satisfies the requirements of Section 7285.91(c) of the Revenue and Taxation Code.

The Expenditure Plan is a simple one, as it proposes to utilize the one-half cent transactions and use tax for street maintenance and improvement-related purposes, rather than specific capital improvement projects. The goal of this plan is to rapidly improve the City's street system to provide the traveling public with the best and most efficient road maintenance possible given the existing facilities and the available funds.

*Annual Program of Maintenance and Improvement*

The City shall prepare a "Maintenance and/or Improvement Program" that the tax revenues will fund. This Program will be a flexible document that responds to the most significant maintenance and improvement needs as they are identified. It will be updated annually as part of the City's annual Capital Improvement Program budget, and available funds will be appropriated. It will follow recommendations and priorities established annually by the City Council and Citizens' Oversight Committee, and will itemize each year's particular capital projects and debt service payments. An annual independent audit will be performed by the City's external auditors that will include review of compliance with the requirement that all expenditures are related to street improvement, maintenance and associated debt service.

*Accelerated Work Plan in First Five Years*

The initial years will be devoted to the rehabilitation of the residential streets within the City of El Cerrito along with an effort to maintain the arterials in good condition. When possible, the City

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will utilize these funds as matching funds for Federal and State Grants related to street improvement and rehabilitation projects. In addition, approximately 15% of the transactions and use tax would be set aside to improve the non-vehicular mobility and accessibility (curb ramps, improved striping) and significant drainage problems associated with the City's street system.

The first five years of the Pavement Expenditure Plan include a significantly accelerated work plan. This is intended to bring the City's Street System average PCI up to or near 70. Most of the accelerated work will occur in the first four years, and the fifth year would be used to transition to an annual comprehensive ongoing maintenance program.

The work plan is broken into two categories:

1. Preparatory Work: The Preparatory Work will consist of repair and other activities as aimed at preparing a street for the final resurfacing work. This typically includes:
  - Crack sealing
  - Structural pavement repairs
  - Leveling and rideability corrections
  - Installation of curb ramps pursuant to the Americans with Disabilities Act
  - Curb, gutter, and sidewalk repair (as needed)
  - Temporary or restored pavement markings and striping
  
2. Finish Resurfacing: Finish Resurfacing will consist of installing the final pavement surface and pavement markings. Typical activities would be:
  - Leveling and rideability corrections
  - Edge conform grinding
  - Asphalt overlay, micropaving, slurry seal, and cape seal
  - Replacement and enhancement of pavement markings, striping and signage.

The table below demonstrates how the accelerated (shown as "XXX") work will be performed for the various work items, and also indicates where a normal level of work (shown as "X") would be performed. This also indicates the approximate annual monetary value of work in each construction season.

		<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	
Preparation Work	<i>Curb Ramps</i>	XXX	XXX	X	X	X	
	<i>Crack Seal</i>	XXX	XXX	XXX	X	X	
	<i>Structural Repairs</i>	XXX	XXX	X	X	X	
Finish Work	<i>Slurry / Cape Seal</i>		XXX	XXX	XXX	X	
	<i>Asphalt Overlay</i>		XXX	XXX	XXX	X	
		\$16.9 million	\$2.6 M	\$5.5 M	\$4.5 M	\$3.3 M	\$1.0 M

Subsequent Years

After completion of the accelerated work plan, the subsequent years will be devoted to ongoing maintenance of the system in a manner to protect the City's valuable street infrastructure. Maintenance priorities will be reviewed annually by the City Council and the Citizen Oversight Committee with funds for each year to be expended on the priority items first.

Annual Debt Services

The transactions and use tax revenues will also be used for the payment of interest and principal on obligations resulting from the issuance of bonds, notes, leases, and other indebtedness.

Administrative Costs

In addition to the above expenditures directly related to the goals of the transactions and use tax, the tax will be used for certain administrative costs.

1. Financial Administration Costs: Staff accounting, auditing, and financial activities and contract services that are necessary and reasonable for the City to carry out its responsibilities under the Revenue and Taxation Code.
2. Costs Related to Bonds or Other Indebtedness: Expenses in the sale or issuance of bonds and/or other forms of debt
3. Project Management and Engineering Costs: Expenditures approved by the City Council that are necessary and reasonable for implementing the projects identified in the Maintenance and/or Improvement Program
4. Mandatory Independent Annual Fiscal Audit: Expenditures related to the independent annual audit required by the ordinance, which ensures that the expenditure of funds is in accordance with this plan.

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## AGENDA BILL

Agenda Item No. 6(B)

**Date:** November 5, 2007  
**To:** El Cerrito City Council  
**From:** Jerry Bradshaw, Public Works Director  
Scott Hanin, City Manager  
**Subject:** Direction on February 2008 Sales Tax Ballot Measure for City Pothole Repair and Local Street Improvements and Maintenance

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### ACTION REQUESTED

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

- a) Calling for a Special Municipal Election to be consolidated with the Statewide Presidential Primary to be held on February 5, 2008;
- b) Approving an Ordinance (Exhibit A to the Resolution) establishing a one-half (1/2) cent sales tax increase for the repair of potholes and improvement and maintenance of city streets, which would be effective only if adopted by a two-thirds vote of the El Cerrito electorate;
- c) Submitting to the El Cerrito electorate a measure to adopt the Ordinance establishing a one-half (1/2) cent sales tax increase for the repair of potholes and improvement and maintenance of city streets;
- d) Requesting that the Contra Costa Board of Supervisors consent to the consolidation of this election with the statewide primary election to be held on the same date.

### BACKGROUND

In order make a determination on the City's approach for future revenue enhancements, the following actions have been undertaken:

- At its January 2, 2007 meeting, the City Council was presented with the results of a recently completed Godbe Research survey of resident attitudes about possible new future taxes to fund the City's largest outstanding capital needs.
- At its March 5, 2007 meeting, based on the prior research and public input, the City Council favored a measure on the February 2008 ballot to fund City street repairs and improvements.
- At its April 16, 2007 meeting, staff was authorized to engage Godbe Research for a follow-up survey that would focus on the City's future street improvement program and collect information to better articulate the City's needs, and the

## Agenda Item No. 6(B)

Lew Edwards Group (LEG) to help the City develop, oversee and implement a public information and outreach program.

### Public Outreach

Since April, the City has conducted a public outreach program, which has consisted of the following:

- **Mailers:** Two citywide mailers were sent, the first in July which included a postage-paid questionnaire, and the second in mid-October. The City has received approximately 1,200 responses to the questionnaire (either mailed back or completed online). Those responses were generally supportive of the possibility of a ballot measure and focused heavily on potholes and neighborhood street repair.
- **Newsletter:** Articles on streets appeared in the last two Citywide newsletters.
- **Meetings:** Recently, staff gave presentations at two Community Meetings:
  - October 10th at Madera School – ten people attended
  - October 16th at Community Center – fourteen people attended

Staff has also spoken at the following meetings:

- Financial Advisory Board – Presentation on July 10th
- Human Relations Commission – Discussed on September 5th
- Economic Development Board – Presentation on September 6th
- El Cerrito Rotary Club – Presentation on October 4th

In the near future, staff hopes to make presentations to other Boards and Commissions and other community/neighborhood groups, and will be presenting to the El Cerrito Chamber of Commerce on November 7th.

- **Updates:** The City has sent two letters to community groups to inform and update about the needs and request opportunities to come speak to their organization. We also conducted one-on-one meetings as needed with community stakeholders to build awareness of the needs.
- **Citizens' Working Group:** The City Manager convened an ad-hoc Citizens' Working Group composed of key stakeholders to provide feedback on community needs and priorities. Two meetings were held which consisted of 8-12 members of the community.
- **Additional Outreach:** Information about the City's neighborhood street repair and maintenance needs has been posted on the City website and updated frequently.

In addition to the extensive outreach effort, Godbe Research conducted a new statistically valid phone survey of El Cerrito residents. Unlike the survey that was conducted last year, this survey focused only on streets and asked voters to primarily consider a sales tax. Similar to the 2006 survey, over 70% of those residents surveyed

## Agenda Item No. 6(B)

indicated they were in favor of the proposed ballot measure. Respondents indicated the most important streets-related issues included:

- Filling potholes
- Maintaining and repairing neighborhood streets
- Providing a constant stream of funding for the ongoing maintenance of all 68 miles of the city's roads

Conversely, when asked if they would consider a parcel tax, only 34% responded favorably (a 28% decrease from last year's survey).

### Measure Overview

The local ballot measure under consideration has the following key components:

- Sales tax would increase by one-half cent
- The City would incur debt in order to immediately begin and accelerate street improvements
- All funds generated by the measure would be used exclusively for City streets
- Independent audits of funds usage would be required
- A Citizens' Oversight Committee would be created
- All revenues would be kept in a restricted fund

### Next Steps

The Ordinance (Exhibit A to the Resolution) would be subject to voter approval and contains the details of the sales tax collection and approved expenditures. The proposed Resolution would approve the Ordinance as written, and calls for a special municipal election to be consolidated with the Statewide Presidential Primary to be held on February 5, 2008. Should the City Council adopt the Resolution in order to place the sales tax measure on the ballot, the previously approved public information and outreach program will continue and be centered around 3-4 additional public information mailings as described in April:

NOVEMBER 2007	<ul style="list-style-type: none"><li>➤ Council acts to place Measure on February 2008 Ballot</li><li>➤ Issue nonpartisan City Mailer #3 (announcement of Council action)</li><li>➤ Issue Opinion Leader Update #3</li></ul>
DECEMBER 2007	<ul style="list-style-type: none"><li>➤ Refine/update January - February communications plan</li></ul>
JANUARY 2008	<ul style="list-style-type: none"><li>➤ Produce nonpartisan City mailers #4 and #5</li><li>➤ Issue Opinion Leader Update #4</li></ul>
FEBRUARY 2008	<ul style="list-style-type: none"><li>➤ Produce nonpartisan City Mailer #6</li></ul>

The proposed resolution also directs the City Attorney to prepare the impartial analysis and authorizes a member of the Council to prepare the argument in favor of the measure.

## **ANALYSIS/FINANCIAL CONSIDERATIONS**

### **Expenditure Plan**

The needed street improvements and maintenance in the City of El Cerrito far exceed the available revenues for these activities. While the City remains committed to continue efforts to obtain all possible Federal and State funding for street improvements, it is apparent that without the one-half cent sales tax revenue, the City will be unable to improve the street system to a level that will adequately serve the traveling public. Staff has prepared a Pavement Expenditure Plan (Exhibit 1 to the Ordinance) that describes how the revenues from the tax will be expended, and satisfies the requirements of Section 7285.91(c) of the Revenue and Taxation Code.

The Expenditure Plan is a simple one, as it proposes to utilize the one-half cent sales tax for street maintenance and improvement-related purposes, rather than specific capital improvement projects. The goal of this plan is to rapidly improve the City's Street System to provide the traveling public with the best and most efficient road maintenance possible given the existing facilities and the available funds.

### **Annual Program of Maintenance and Improvement**

The City will annually prepare a "Maintenance and Improvement Program" that the sales tax revenues will fund. This Program will be a flexible document that responds to the most significant maintenance and improvement needs as they are identified. It will be updated as part of the City's annual Capital Improvement Program budget, and available funds will be appropriated. It will follow recommendations and priorities established by the City Council and Citizens' Oversight Committee, and will itemize each year's particular capital projects and debt service payments. An annual independent audit will be performed by the City's external auditors that will include review of compliance with the requirement that all expenditures are related to street improvement, maintenance and associated debt service.

### **Accelerated Work Plan in First Five Years**

The initial phase of street improvement work will be devoted to the rehabilitation of the residential streets within the City of El Cerrito along with an effort to maintain the arterials in good condition. When possible, the City will utilize the sales tax revenue as matching funds for Federal and State Grants related to street improvement and rehabilitation projects. In addition, approximately 15% of the sales tax revenues would be set aside to improve the non-vehicular mobility and accessibility (curb ramps, improved striping) and significant drainage problems associated with the City's street system.

The first five years of the Pavement Expenditure Plan include a significantly accelerated work plan. This is intended to bring the City's Street System average Pavement Condition Index (PCI) up to or near 70, a "Good" rating. Most of the accelerated work will occur in the first four years, and the fifth year would be used to transition to an annual comprehensive ongoing maintenance program.

The work plan is broken into two categories:

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- Crack sealing
- Structural pavement repairs
- Leveling and rideability corrections
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- Asphalt overlay, micropaving, slurry seal, and cape seal
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The table below demonstrates how the accelerated (shown as "XXX") work will be performed for the various work items, and also indicates where a normal level of work (shown as "X") would be performed. This also indicates the approximate annual monetary value of work in each construction season.

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	<b>Crack Seal</b>	XXX	XXX	XXX	X	X
	<b>Structural Repairs</b>	XXX	XXX	X	X	X
Finish Work	<b>Slurry / Cape Seal</b>		XXX	XXX	XXX	X
	<b>Asphalt Overlay</b>		XXX	XXX	XXX	X
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**Subsequent Years**

After completion of the accelerated work plan, the subsequent years will be devoted to ongoing maintenance of the system in a manner to protect the City's valuable street infrastructure. Maintenance priorities will be reviewed annually by the City Council and the Citizens' Oversight Committee with funds to be expended on the priority items first.

**Annual Debt Services**

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**Administrative Costs**

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- **Financial Administration Costs:** Staff accounting, auditing, and financial activities and contract services that are necessary and reasonable for the City to carry out its responsibilities under the Revenue and Taxation Code
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- **Project Management and Engineering Costs:** Expenditures approved by the City Council that are necessary and reasonable for implementing the projects identified in the Maintenance and Improvement Program
- **Mandatory Independent Annual Fiscal Audit:** Expenditures related to the independent annual audit required by the ordinance, which ensures that the expenditure of funds is in accordance with this plan

**Election Costs**

Contra Costa County has estimated that the actual cost of the election to the City will be approximately \$30,000. This would be funded by undesignated General Fund balance.

**LEGAL CONSIDERATIONS**

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

Reviewed by:

  
Karen Pinkos, Assistant City Manager

Attachments:

1. Resolution
2. Ordinance (Exhibit A to Resolution)
3. Expenditure Plan (Exhibit 1 to the Ordinance)