

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council
FROM: Steven Kueny, City Manager 
DATE: May 1, 2014 (CC Meeting of 5/7/14)
SUBJECT: Consider Golf Tax

BACKGROUND

On March 19, 2014, the City Council considered conducting a community outreach program to raise awareness of the fiscal crossroads the City is facing and to demonstrate the need to bring a 1/4 cent sales tax measure to the voters on the 2014 November ballot. Due to marginal public support and insufficient time to effectively inform the public of the City's financial condition, the City Council decided against moving forward with a community outreach program and elected not to pursue the 1/4 cent sales tax ballot measure. Over the past few years the City Council has taken several cost-saving actions but added no new revenue sources to balance the general fund operating budget. In addition to cost-saving actions, the budget also included the use of General Fund Reserves to close the funding gap. The City's budget condition requires additional revenue to avoid severe budget cuts that could harm the City's quality of life.

DISCUSSION

The City's budget has been negatively affected by the recession and lingering decline in new development while current annual property taxes are estimated to be at about the Fiscal Year (FY) 2007/2008 level. In addition, while sales tax revenue has increased, it has been less than statewide average increases and has been hampered by increasing on-line sales. Cost increases for police services, utilities, liability insurance, and workers' compensation insurance have been increasing above the recognized cost-of-living index. The elimination of the Redevelopment Agency of the City of Moorpark has shifted some costs to the City, and the State continues to divert about \$500,000 a year from the City to the Education Revenue Augmentation Fund (ERAF).

Staff has continued to review revenue options because of the City's structural imbalance between revenues and expenditures despite taking several actions including delaying maintenance, reducing staff by twelve percent (12%), lowering maintenance levels for parks and landscape areas, use of General Fund reserve to pay down liability insurance and Other Post-Employment Benefits (OPEB) obligations and fund street lighting and landscape districts operating deficits and postponing contributions to the Equipment Replacement Fund and certain capital projects.

Other than fee adjustments, new retail sales businesses, construction of a hotel (City has ten percent [10%] Transient Occupancy Tax [TOT]) and property tax from new development (140 homes with an average assessed value of \$750,000 yields about \$100,000 of property tax revenue to the City including the library portion), the City would have to obtain voter approval for a new tax or assessment. In addition to a general sales tax, the City can also consider business license tax or utility users' tax. These require a simple majority of voter support. Assessments have been rejected in the past because it would not yield sufficient revenue at the levels likely to receive public support. A special sales tax for a specific purpose such as police would require a two-thirds (2/3) affirmative vote.

Another potential revenue source for the City is a golf tax. The City of Rancho Palos Verdes has had a golf tax for over 20 years. For the opportunity to play golf in the City of Rancho Palos Verdes, each user (golfer) pays a tax in the amount of ten percent (10%) of the green fees charged by the golf course operator. A copy of its Municipal Code is attached.

Staff has evaluated a golf tax. It taxes the user of the golf course not the owner/operator. About ten percent (10%) of the U.S. population plays at least one 18-hole round of golf per year. Approximately 50,000 rounds of golf are played annually at the Moorpark Country Club, and about fifteen percent (15%) of the rounds are played as part of tournaments. Because a golf tax, like a TOT for hotels and admissions tax for a sporting event, is applied to specific users of those venues, it is more likely to have support of Moorpark voters than a general sales tax. For this reason, staff believes that a focused information campaign can be successful, even though there is limited time to reach the public. These three types of taxes also generate revenue from people who don't reside in the City but have an impact on City services. If automobile dealers and shopping centers didn't generate sales tax revenue, it's unlikely a City would promote such uses because of the impact on City services.

If the City Council determines to place a measure on the November 2014 Ballot, it must take requisite actions including delivering the election resolution with the ballot question for the golf tax measure to the County by June 30, 2014. Further, if placed on the Ballot, staff would recommend retaining a consultant to assist with a public information campaign. As part of the consideration of this proposed action, staff recommends

holding a public meeting on May 21, 2014, to hear from the public and affected golf course operator.

FISCAL IMPACT

An estimated 50,000 rounds of golf at an average cost of \$90 are likely to be taxed. A ten percent (10%) tax is estimated to provide about \$450,000 in revenue to the City. As with a sales tax measure, should the City Council elect to proceed with a golf tax initiative, it will be necessary to implement a public information effort during the coming months. While considering a sales tax ballot measure, two communications consulting firms were interviewed regarding their proposals. The proposals call for a City funded public information campaign for the purpose of explaining the City's reasons for the additional revenue and to gain public support. Such an effort would cost approximately \$50,000 and would include material mailed to the City's voters as well as direct contact with individuals and groups. The primary message of the information campaign would emphasize the importance of having sufficient revenue to avoid drastic cuts and maintenance deferrals that could cost the City even more in the long term.

As previously stated, based on current information and depending on the amount of the tax, this could be a significant revenue source for the City. There would be some administrative costs associated with a golf tax but would not require hiring additional staff. A contractor such as currently used to assist the City with sales and property tax oversight and management would be used as needed. No cost estimate has been developed but is not expected to be a significant cost.

STAFF RECOMMENDATION

Direct staff to notice a public meeting on a proposed golf tax for May 21, 2014.

SK:db

Attachment 1: City of Rancho Palos Verdes Municipal Code

Attachment 1

Rancho Palos Verdes, California, Code of Ordinances >> Title 3 - REVENUE AND FINANCE >> Chapter 3.40 GOLF TAX >>

Chapter 3.40 GOLF TAX**Sections:**

- 3.40.010 Title.
- 3.40.020 Definitions.
- 3.40.030 Tax imposed.
- 3.40.040 Tax collection.
- 3.40.050 Reporting and remitting.
- 3.40.060 Failure to remit tax.
- 3.40.070 Failure to collect and report tax—Determination of tax by tax administrator.
- 3.40.080 Appeal.
- 3.40.090 Records.
- 3.40.100 Refunds.
- 3.40.110 Actions to collect.
- 3.40.120 Penalty for violation.
- 3.40.130 Exemptions.
- 3.40.140 Legislative review.

3.40.010 Title.

The ordinance codified in this chapter shall be known as the uniform golf tax ordinance of the city.

(Ord. 291 § 2 (part), 1993)

3.40.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

- A. "Golf course" means any large course having a series of holes spaced considerably apart designed for the playing of the game of golf. For the purpose of this chapter, a golf course includes a driving range.
- B. "Golf fees" means the consideration charged, whether or not received, for the use of a golf course or driving range, whether to be received in money, or in any other form including, without limitation, services, credits, goods, or labor of any kind or nature, without any deduction therefrom.
- C. "Operator" means the person who is the proprietor of the golf course, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs some or all of his/her functions through an agent of any type or character, other than an employee, including an agent whose only duty is to sell or resell the opportunity to use a golf course, the agent shall also

be deemed an operator for the purpose of this chapter and shall have the same duties and liabilities as the principal.

- D. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- E. "Tax administrator" means the director of finance of the city or other person designated by the city manager.
- F. "User" means any person who exercises use of or is entitled to use a golf course by reason of concession, permit, right of access, membership, license or other agreement.

(Ord. 370 § 1, 2001; Ord. 291 § 2 (part), 1993)

3.40.030 Tax imposed.

For the opportunity of playing golf in the city, each user is subject to and shall pay a tax in the amount of ten percent of the golf fees charged by the operator. The tax constitutes a debt owed by the user to the city which is extinguished only by payment to the operator or the city.

(Ord. 291 § 2 (part), 1993)

3.40.040 Tax collection.

- A. Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the golf fees are collected from every user.
- B. The amount of tax shall be separately stated from the amount of the golf fees charged, and each user shall receive a receipt for payment from the operator.
- C. Any good(s) or service(s) that the operator requires any user to rent or purchase in order to use the golf course, which the operator contends is (are) exempt from the golf tax, shall be separately stated from the amount of the golf fees on the invoice or receipt that is provided to the user. In no event shall the total charges for such separately stated required items exceed twenty-five percent of the golf fee that is charged to the user to play a round of golf.
- D. If the golf fee is combined with any other service or use (such as, for example, the purchase of a meal), then for purposes of computing the tax that is imposed under this chapter, the charge for the round of golf or use of a driving range shall be imputed at the standard golf fee that is charged by the operator without any discount, promotion or combination of services.
- E. If the golf fees are paid in installments, a proportionate share of the tax shall be paid with each installment; any unpaid tax shall be due upon the user's ceasing use of the golf course.
- F. If golf fees are paid as part of any membership fee or dues, the operator shall collect a tax on an amount thereof that is fairly allocable to the golf fees or number of rounds the person paying such membership fee or dues is entitled to play under the terms of the membership, or the average number of rounds played by persons paying such membership fees or dues, whichever is greater.
- G. Any operator shall maintain accounting records, using generally accepted accounting principles, that are acceptable to the tax administrator to compute, collect, report and remit the golf tax. Such accounting records shall include, but not be limited to, vouchers or any other methods that the tax administrator may require to verify the golf fees that are being charged, whether by sale or resale, and the golf tax that is owed to the city.

(Ord. 370 § 2, 2001; Ord. 291 § 2 (part), 1993)

3.40.050 Reporting and remitting.

Each operator shall, on or before the twentieth day of the month following the close of the prior calendar month, make a return to the tax administrator, on forms provided by the tax administrator, of the total golf fees charged and received and the amount of the tax collected. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any operator if the tax administrator deems it necessary in order to insure collection of the tax, and the tax administrator may require additional information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator.

(Ord. 291 § 2 (part), 1993)

3.40.060 Failure to remit tax.

- A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.
- B. Continued Delinquency. Any operator who fails to remit any delinquent remittance within thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.
- C. Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.
- D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax which is required to be paid.

(Ord. 291 § 2 (part), 1993)

3.40.070 Failure to collect and report tax—Determination of tax by tax administrator.

- A. If any operator fails or refuses to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due.
- B. As soon as the tax administrator procures such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the tax administrator shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. When such a determination is made, the tax administrator shall give a notice of the amount so assessed by personal service to the operator or the operator's representative, or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last

known place of address. Such operator may within ten days after the service or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is timely made, the tax administrator shall give not less than five days' written notice, in the manner prescribed in this section, to the operator of the time and place fixed for a hearing. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest and penalties so determined. The amount determined to be due shall thereupon be due and payable.

(Ord. 291 § 2 (part), 1993)

3.40.080 Appeal.

Any operator aggrieved by any decision of the tax administrator made at or following such a hearing with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen days after the serving or mailing of notice of a determination by the tax administrator of the tax which is due. The city council shall set a time and place for hearing such appeal, and the city clerk shall give notice of the time and place of such hearing in writing to such operator at his/her last known place of address. The findings of the city council shall be final and conclusive and notice thereof shall be served upon the appellant in the manner prescribed in Section 3.40.070 for service of notice of hearing. Any amount found to be due, together with interest at the rate prescribed in Section 3.40.060 from the date such tax accrued and penalty, shall be immediately due and payable upon the service of notice.

(Ord. 291 § 2 (part), 1993)

3.40.090 Records.

It shall be the duty of every operator required by this chapter to collect and pay to the city any tax imposed by this chapter, to keep and preserve, for a period of three years from the date of payment to the city, all records as may be necessary to determine the amount of such tax as the operator may have been responsible for the collection of and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times. If any operator fails to maintain such records, the tax administrator shall make a determination of the amount of tax due using such information and criteria as the tax administrator deems to be reasonable and relevant.

(Ord. 291 § 2 (part), 1993)

3.40.100 Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid, paid more than once or erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within one year of the date of payment. Any action brought against the city pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946. Compliance with this section shall be a

prerequisite to a suit thereon. The claim shall be on forms furnished by the tax administrator, shall be presented in accordance with the requirements of Section 3.24.030 and shall clearly establish the claimant's right to the refund by written records demonstrating entitlement thereto. It is the intent of the city that the one-year claim requirement of this subsection be given retroactive effect; provided, however, that any claims that arose prior to the enactment date of the one-year claims period set forth in this subsection, which are not otherwise barred by the then-applicable statute of limitations or claim procedure, are filed with the tax administrator as provided in this title within ninety days following the effective date of this amended subsection (March 2, 2004).

- B. An operator may claim a refund, or take as a credit against taxes due and not yet remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a user; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the user or credited to any golf fees subsequently payable by the user to the operator.
- C. A user may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the user directly to the tax administrator, or when the user having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the user has been unable to obtain a refund from the operator who collected the tax.
- D. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records and/or other evidence to the satisfaction of the tax administrator.

(Ord. 403 § 12, 2004; Ord. 291 § 2 (part), 1993)

3.40.110 Actions to collect.

Any tax required to be paid by any user under the provisions of this chapter shall be deemed a debt owed by the user to the city. Any tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. The amount of any tax the operator refuses or fails to collect, and which has been assessed against the operator pursuant to Section 3.40.070 shall be deemed a debt owed by the operator to the city. Any person owing money to the city under any provision of this chapter shall be liable for the amount of tax owed, plus interest and penalty, if any, in a civil action brought in the name of the city for the recovery of such amount.

(Ord. 291 § 2 (part), 1993)

3.40.120 Penalty for violation.

- A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than one thousand dollars or by imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment.
- B. Any operator or other person who fails or refuses to furnish any return required to be made by this chapter, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as set forth in subsection A of this section. Any person required to make, render, sign or verify any report or claim who makes any false or

fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as set forth in subsection A of this section.

(Ord. 291 § 2 (part), 1993)

3.40.130 Exemptions.

- A. No tax shall be imposed upon any person as to whom it is beyond the power of the city to impose the tax provided in this chapter.
- B. No tax shall be imposed upon any user of a golf course that is entirely owned and/or operated by a governmental entity.

(Ord. 370 § 3, 2001; Ord. 291 § 2 (part), 1993)

3.40.140 Legislative review.

Beginning in January, 1996, and every four years thereafter, the city manager shall submit for consideration by the city council an analysis of the revenues derived from the taxes imposed by this chapter. Based on the needs of the city, the city council shall determine if any modifications to the rate is necessary or if the tax imposed by this chapter should be repealed. Said review shall be completed by the city council prior to the adoption of the budget being prepared for the next fiscal year. This chapter shall be repealed if the city council does not conduct the review required by this section.

(Ord. 291 § 2 (part), 1993)