

Dear Council Members,

Agenda Item 15 needs to be pulled from the November 7, 2023 meeting as it is misleading and erroneous about the process for putting a sales tax on the ballot. After the signature is a copy of the language in Item 15.

The posted information implied that for any sales tax to go on the ballot, it would require a unanimous Council vote in favor of declaring a State of Emergency.

The posted information says if the Council voted for a State of Emergency Declaration, then it would require at least two-thirds (4/5ths) Council approval for a General Sales Tax and/or a 2/3 vote (requires 4/5ths Council approval for a Special Sales Tax. Special Sales Tax is a tax that is dedicated for a specific purpose such as parks, fire service, parks.

Through last minute correspondence with a Council Member, it was revealed there are actually two different processes. One for General Sales Tax. One for Special Sales Tax.

The General Sales Tax requires a unanimous Emergency Declaration and at least two-thirds (4/5ths) Council approval.

The Special Sales Tax does NOT require any Emergency Declaration and can be put on the ballot with simple majority vote.

These are two radically different processes which are not clearly outlined in the packet.

In addition, the packet has a significant typo.

Instead of saying the Special Sales Tax requires a simple majority, it erroneously says it requires a "2/3 vote (requires 4/5ths Council approval" for a Special Sales Tax.

The packet was handled completely incorrectly and is misleading.

If there are two different processes, they need to be clearly outlined.

The process for a General Sales Tax requires an emergency declaration and 4/5 vote.

The process for a Special Sales Tax does not require an emergency declaration and is a simple majority.

These radically different processes need to be clearly delineated in the packet for the general public. This is much more complicated than a typo. The current packet obscures the two different processes.

It is unethical to move forward with the packet as it is.

In addition, if Council wants to consider a Special Sales Tax dedicated toward a single service, the service needs to be named and publicly posted at least 72 hours before the meeting so citizens can see what Council wants to fund with the Special Sales Tax. Citizens need to know what service will be funded by the Special Sales Tax. Council Members cannot designate a service to fund at the last minute without public input.

If Council Members are considering a Special Sales Tax, they need to inform the public what special services they are considering funding and why. There needs to be a clear accounting of how much money will be raised and exactly where that money will go and how it works with the budget and the deficit. Council cannot randomly put a Special Tax on the ballot without information to the public about what the Special Tax will fund and how it will be integrated into the budget.

As the budget is in flux and money can appear (at one recent meeting \$1,600,000 appeared) and disappear, it is premature to consider any sales tax.

Agenda Item 15 needs to be removed from the meeting, corrected and pushed to the next meeting. As it stands, it is misleading and undermines the democratic process and the practice of transparency in government.

Thank you,
Kate Haug

Item 1. Proposed Sales Tax Measure for March 2024 Election:

As discussed at the last Council meeting, there was initial discussion that a Sales Tax Measure could be considered for the March 2024 election. The March 2024 Election Date is not a general election for the City of Sebastopol (General Election is the November 2024 Election).

For information purposes:

- The March primary is not a “a regularly scheduled general election for members of the governing body of the local government” because it is not one of the regular elections at which council seats are on the ballot, which for Sebastopol is, the November election in even numbered years.
- Consequently, if the City wants to put a general sales tax measure on the ballot in March, it can only do that if the City Council unanimously declares an emergency, which it could do if it is facing a financial emergency.

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Corrected Report as of: 11-2-2023

- To provide more background, Article XIIC, section 2(b) of the California Constitution states: No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.
- The courts have interpreted this to mean an election in which a seat for the city council is normally up for election. This includes any election in which city council seats are on the ballot, and it also includes elections in which a councilmember is running unopposed and therefore is not on the ballot or a primary-general format where no legislative seats remain unresolved after the primary. (*Silicon Valley Taxpayers' Assn. v. Garner* (2013) 216 Cal.App.4th 402, 407-08.)
- The declaration has to be unanimous, and the declaration should state the factual reasons for the emergency. If the City does that, it should be safe from a challenge. The courts should not question whether indeed it is an emergency, provided the facts, as declared by the City Council, could reasonable amount to an emergency.
- If the declaration of emergency is approved, the Council would then need to vote on moving the ballot measure forward. This would require at least two-thirds (4/5ths) Council approval.
- If the City decides to go this route, legal counsel will help with the language.
- A general tax at 50%+1 is still permissible, given the fiscal emergency is declared.
- A special tax 2/3 vote (requires 4/5ths Council approval).

*Further detailed information will be provided at the meeting

Of Note: There is no June Statewide election and the March election is considered the Primary.

If the Council provided direction to staff to return with a potential sales tax measure for the March 2024 election, staff would work with the consultant to provide alternative questions and ordinance for Council consideration for the November 21, 2023 City Council Meeting.

To put a measure onto the March 2024 Election, all Resolutions, Ordinances, to include Ballot Measure Question will need to be submitted to the County Elections by December 8, 2023.

There was no consensus on the Committee on this item.