To: Hon. Ron Morrison, Mayor National City &
Members of the City Council

From: Proposition D Independent Evaluation Committee

Date: November 10, 2011

Re: Report and Recommendation on Proposition D

The Proposition D Independent Evaluation Committee was asked to evaluate and offer a recommendation as to whether the sales tax increase allowed by the passage of the Proposition shall remain in effect at the rate of one percent, or whether the City Council should reduce or terminate the imposition of the tax.

The committee began its work on September 22, 2011, and concluded its evaluation on November 3, 2011. Committee members met four times in sessions noticed and open to the public. The evaluation, findings and recommendation from the committee's work is shown in the attached report. The members of the three person evaluation committee included: Chair, Marney Cox, Chief Economist, San Diego Association of Governments; Chris Cate, Vice-President, San Diego County Taxpayers Association; and Dale Nielsen, Finance Manager, City of Vista.

The committee members would like to thank the National City staff members that assisted the committee with its work; making themselves available to answer inquiries and immediately responding to the committee's request for additional information.

The committee will present its findings during the November 15, 2011 Council meeting.

Report from the Proposition D Independent Evaluation Committee

Introduction and Recommendation

On June 6, 2006, National City voters passed a one percent District Sales Tax. The measure, known as Proposition D, requires that "every five years the Mayor, with approval of the City Council, shall appoint an independent committee" with experience and expertise in municipal finance to evaluate and offer a recommendation as to whether the sales tax increase allowed by the passage of the Proposition shall remain in effect at the rate of one percent, or whether the City Council should reduce or terminate the imposition of the tax. The tax will sunset in 2016.

The committee began its work on September 22, 2011. The City staff provided committee members with copies of the City's Annual Budget (FY 2006 through FY 2011) and the Comprehensive Annual Finance Report (FY 2006 through FY 2010, the latest available). In addition, specific data or information requests from the committee were handled by staff. The committee is expected to conclude its work on November 3, 2011 with the completion of this report and recommendation to the Mayor and City Council.

During the first meeting the committee received a presentation from the City Manager, Mr. Chris Zapata, focusing on the City's General Fund finances and the impact of revenues from the District Tax (Proposition D). The City Manager indicated that prior to the passage of the District Tax, the City projected a structural deficit of $4 million for fiscal year 2004-2005; the 2005-2006 budget was out of balance by $6.7 million with reserves and other one-time funds used to fill the gap. With the passage of the Proposition D in fiscal year 2006-2007, the City began to close its deficit through a combination of the District Tax and a variety of internal efficiencies and cost savings measures. In recent years, these efforts have been hampered by the national economic downturn.

The root cause of the General Fund deficit stems from three factors: rising General Fund budget expenditure commitments beginning in fiscal year 2004-2005; the fall in sales tax revenue due to the effects of the Great Recession; and finally revenue that the state of California has reduced or taken away from local governments, including National City, to help cover its own budget deficits. Clearly, two of these factors are beyond the control of the City, yet the Council and staff must deal with their impacts.

Through a combination of actions, discussed in the three sections of the report below, the City has been able to balance the General Fund budget each year, but the deficit is structural, returning the next year because revenues are insufficient to cover expenses. Worse yet, the City's five year budget forecast show these deficits will persist through 2016. In other words, the City is not expecting to solve the structural deficit problem, although, thanks to revenue from the District Tax and actions taken to reduce General Fund expenditures, the City does expect to keep the deficit from spiraling out of control. However, when Proposition D expires in 2016 the sales tax revenue it has been contributing goes away, at which time the general fund deficit would balloon by its expected value, estimated to be $9.5 million.

Thus, despite city residents approving Proposition D and the specific actions taken to reduce or control expenditures, City budgets continue to experience structural deficits that have ranged between $3 million and $7 million. Each year the City has been able to close the budget deficit through one time funding transfers, reductions in department expenditures, not filling vacant positions and employing contingency reserves.

For these reasons, it is the RECOMMENDATION of the Proposition D Independent Evaluation Committee that the Mayor and City Council keep the District Tax in effect at the full rate of one percent.

Section 1: National City General Fund Financial Condition – Then and Now

As National City prepared its annual budget for Fiscal Year 2004/05, a $4 million structural deficit in the General Fund was projected. As with other California cities, National City faced continual threat from Sacramento as the State tried to balance its budget. Unfortunately history has taught us that the State seems to view City revenues as a viable source to balance its own budget. Also facing National City, as well as all other California cities, is the fact that the ability for a city to raise revenues is very limited due to the California Constitution and various ballot measures that have been passed by the California voters over the years.

When a city's general fund is facing a projected budget deficit, there are really only three choices: 1) Revenues can be increased, 2) Expenditures can be reduced, or 3) A combination of the first two. In most cases a city's only real choice is to reduce expenditures. Enhancement of revenues is very difficult and for the most part it is usually due to natural revenue growth, which generally occurs slowly, or from economic development programs which, in some cases, can take many years to see results.

In National City's case, Proposition "D" was passed by 59% of voters on June 6, 2006. It was passed as a general tax and therefore could be used for any general fund purpose that the City Council deemed appropriate. This 1% addition to the general sales tax rate was put into place for a period of up to ten years. This would allow the City to address the structural deficit and provide adequate time to develop and implement a strategic plan to eliminate the structural deficit. Per the ballot measure "The authority to levy the tax imposed by Proposition "D" would expire ten years from the Operative Date, unless the City Council prior to that date determines that the levy and collection of the tax is no longer necessary, in which case the City Council has the authority to reduce the rate of tax, or terminate the imposition of the tax".

Is the collection of the tax no longer necessary? In order to answer that question a review of the financial conditions of the General Fund over the time since Proposition "D" was passed is needed. For the Fiscal Year ended June 30, 2006, National City had total General Fund revenues of $30,926,229 and total expenditures of $32,768,401 resulting in a deficiency for the year in the amount of $1,842,172. The table below provides audited revenue information from the 2006 year through 2010.

Revenues	2006	2007	2008	2009	2010
	Year Ended June 30,				
Taxes	$25,627,904	$31,375,184	$33,638,924	$31,230,431	$29,007,351
Licenses & permits	$ 874,854	$ 859,430	$ 799,452	$ 723,913	$ 551,517
Fines & forfeitures	$ 1,003,262	$ 783,056	$ 1,084,647	$ 1,137,181	$ 1,219,418
Interest & rents	$ 1,088,901	$ 2,056,097	$ 2,168,962	$ 1,488,925	$ 432,226
Intergovernmental	$ 1,131,714	$ 1,259,455	$ 802,557	$ 663,436	$ 571,308
Charges for services	$ 925,769	$ 1,318,470	$ 414,298	$ 564,347	$ 482,975
Other revenue	$ 273,825	$ 430,423	$ 152,148	$ 380,627	$ 593,968
	$30,926,229	$38,082,115	$39,060,988	$36,188,860	$32,858,763

As the above table shows, General Fund revenues took a significant upturn in the year ended 2007. It is clear that the majority of the increased revenues from 2006 to 2007 are in the area of taxes, and most of this is from the implementation of the Proposition "D" sales tax. By 2008 tax revenues had increased to $33.6 million, with the City's traditional 1% tax of $11.8 million, combined with the Proposition "D" tax of $8.5 million, providing $20.3 million of the total sales tax revenues. As of 2008, total general fund revenues had reached $39 million. We all know what happened next, the recession and housing crisis. Both sales tax and property tax, the mainstays of most California cities, dropped. The Federal Reserve in order to stimulate the economy started reducing interest rates in order to jump-start the economy. Investment income dropped at an alarming rate. By 2009 General Fund revenues were down to $36.2 million, and by 2010 they had dropped to $32.9 million, only about $2 million more than in 2006.

It should be noted that in 2010, the traditional 1% sales tax combined with the Proposition "D" sales tax totaled approximately $16.6 million, while in 2004 the City's traditional 1% sales tax alone was $16.5 million. The recession had taken its toll and the now combined sales taxes have barely managed to replace just the traditional sales tax revenue when it was at its highs. It is difficult to imagine what reductions National City would have had to make these last four years had Proposition "D" not been in place.

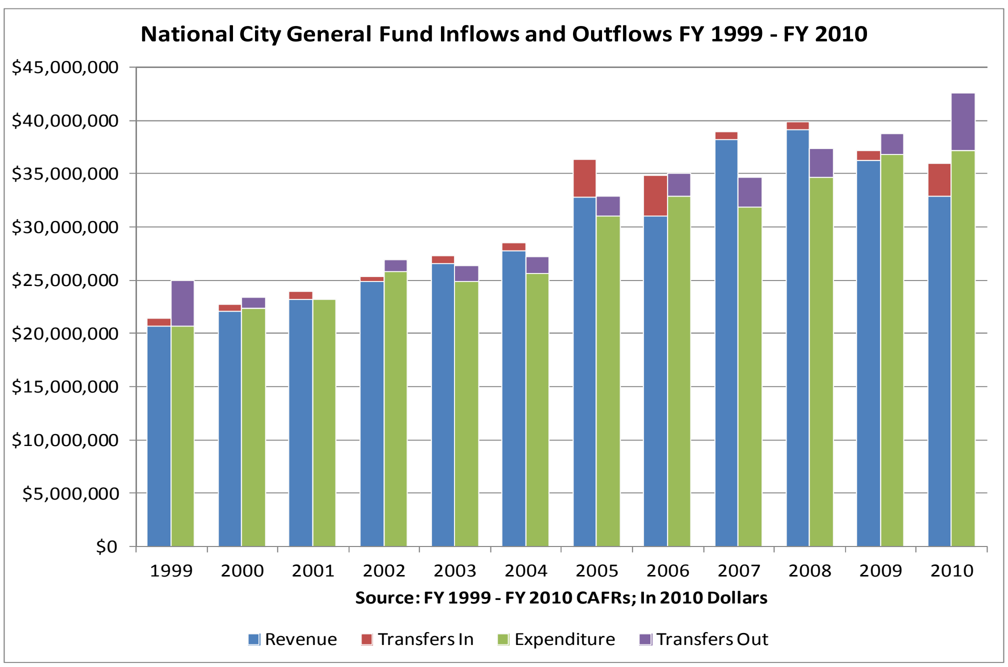
What has happened on the expenditure side over the same time period? The table below provides audited expenditure numbers over the same 5-year period.

Expenditures	2006	2007	2008	2009	2010
	Year Ended June 30,				
Current:					
General Government	$ 3,733,413	$ 3,023,335	$ 3,215,981	$ 3,931,370	$ 4,578,197
Public safety	$ 23,688,513	$ 23,740,549	$ 25,393,406	$ 26,673,528	$ 28,402,451
Transportation	$ 2,662,781	$ 2,592,419	$ 2,678,673	$ 2,726,801	$ 1,777,073
Community development	$ 727,936	$ 754,339	$ 1,128,843	$ 26,934	$ -
Culture & leisure	$ 1,363,291	$ 1,340,716	$ 1,527,397	$ 2,086,779	$ 1,828,785
Capital outlay	$ 417,755	$ 26,793	$ 364,946	$ 1,013,344	$ 301,404
Debt service:					
Principal	$ 113,186	$ 201,600	$ 196,709	$ 214,837	$ 261,174
Interest & fiscal charges	$ 61,526	$ 61,705	$ 66,596	$ 57,481	$ 23,962
	$ 32,768,401	$ 31,741,456	$ 34,572,551	$ 36,731,074	$ 37,173,046

The above table shows that over the five years presented, expenditures have gone from $32.8 million in 2006 to $37.2 million in 2010, an increase of $4.4 million. While most areas shown have had somewhat marginal increases and decreases, the area of public safety has grown $4.7 million over the time frame presented, thereby indicating that, overall, all of the net expenditure growth is in this area. Analysis of the audited financial statements indicates that the PERS Safety contribution rates between 2007 and 2010 varied from 26.870% to 28.806% and covered public safety payrolls have increased from $8.8 million in 2006 to $11.3 million in 2009. As of 2010, Public Safety expenditures account for 86.4% of the use of total General Fund revenues. The City appears to continue to look for cost savings measures, such as increasing employee contribution towards retirement and implementing a two-tiered retirement benefit program.

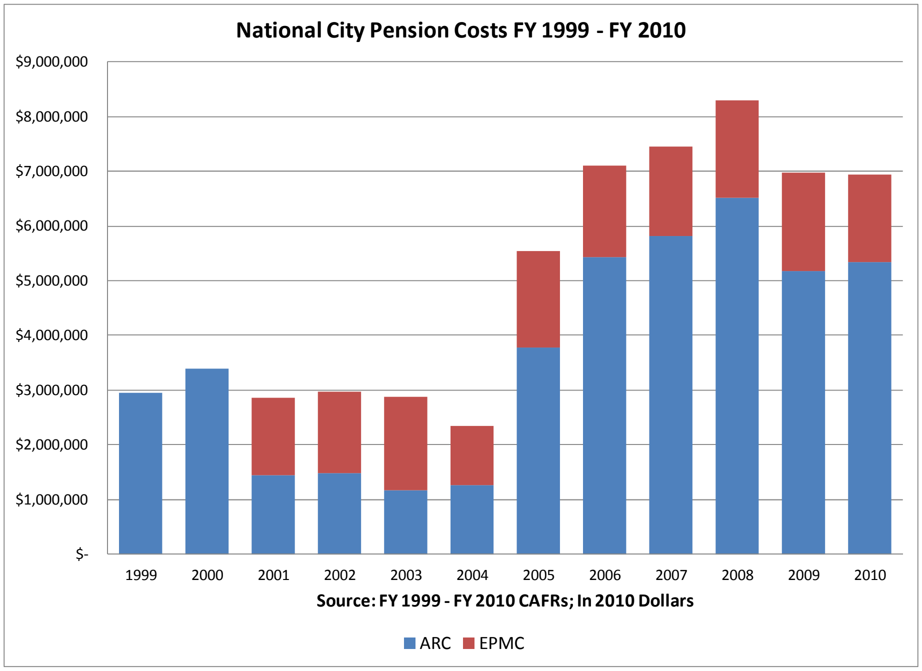
So is National City's General Fund in a financial position that it could tolerate a reduction or elimination of the Proposition "D" sales tax? From a purely financial aspect, this writer would say no. In 2010 expenditures exceeded revenues and the weakened economy continues to have negative impacts on the City's mainstay revenues of property and sales taxes. The largest challenge that the City faces is implementing a financial plan that will allow the City's General Fund to free itself from the need of the Proposition "D" sales tax revenues by the time that they expire on September 30, 2016.

Section 2: Financial Trends & Outlook

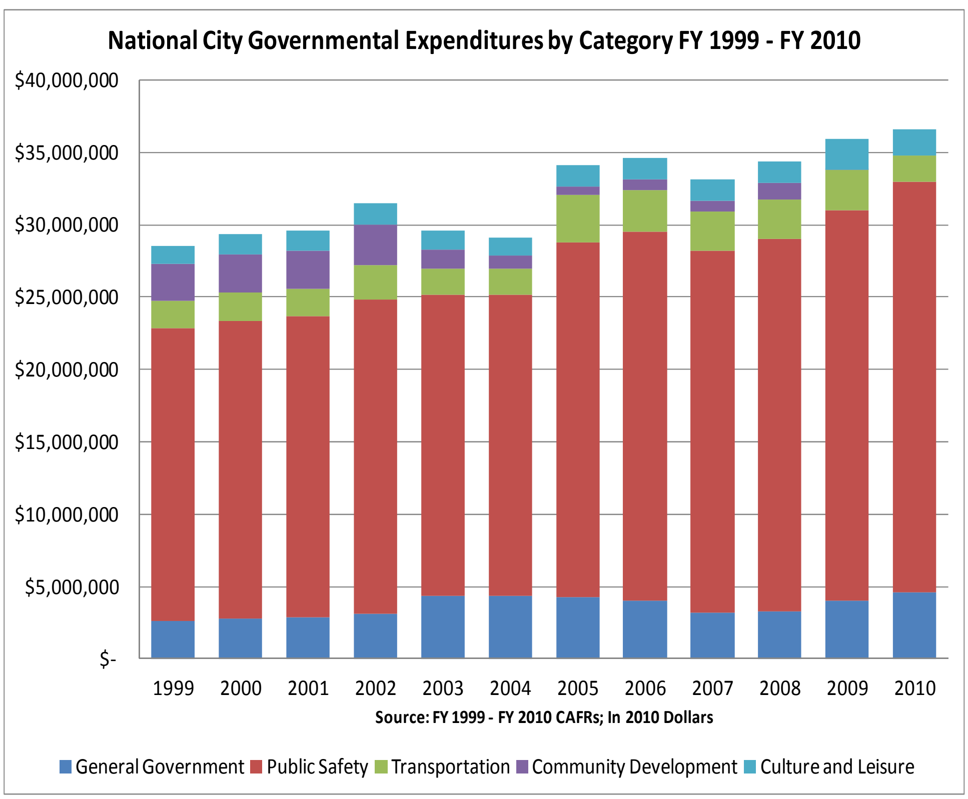


Between Fiscal Year (FY) 1999 and FY 2010, general fund expenditures for the City of National City have exceeded revenues in six of those twelve years. The City has recently experienced years in which revenues declined from the prior year, but did not experience a similar reduction in expenditures. In four of the past twelve fiscal years, expenditures have been reduced over prior year totals. In general, total general fund expenditures have increased by an average of 5%

Over the last two years as expenditures have surpassed revenues, the City has also experienced a decline in budgetary reserves. In FY 2010, the total fund balance for the general fund declined from $18.4 million to $11.8 million. The City's Comprehensive Annual Financial Report for 2010 shows that the decline in budgetary reserves was due to a number actions, including the use of reserves available at the end of fiscal year 2009 to help balance the 2010 budget by covering the 2010 general fund deficit.



As mentioned previously, public safety expenditures accounts for a large portion of the City's budget. Since FY 1999, the percentage of the budget spent on public safety services has increased from 71% to 78% as of FY 2010. Overall, staffing levels for the City have increased since FY 2003, but dropped by 1.5% from FY 2009 to FY 2010. One way to evaluate compensation of cities is by reviewing actuarial valuation reports from the California Public Employees Retirement System (CalPERS). Based on information submitted to CalPERS by the City for the period between FY 2006 and FY 2009, the average payroll per employee has increased from $51,585 to $54,671 for non-public safety employees, and increased from $73,292 to $86,679 for public safety employees (not adjusted for inflation).



Since FY 1999, the City has also experienced rising pension costs. In an effort to combat these rising costs, the City is now requiring employees to pay their share of pension costs, as well as implementing a second, low-tier pension plan for new employees. In the past, the City has spent as much as $1.8 million on behalf of employees for the "employee share" of pension costs, also referred to as EPMC (Employer Paid Member Contribution). Requiring employees to pay for their share of pension costs provides immediate savings to the City. Unfortunately, due to accounting methods on behalf of CalPERS, all cities enrolled with CalPERS may continue to see increases in pension costs as they continue to pay for past investment losses. It is expected pension costs for the City will increase by approximately 17% between FY 2011 and FY 2012, from $5.4 million to $6.3 million.

The City provides a stipend towards the cost of retiree health care for employees that are eligible to receive pension benefits and with at least 20 years of service. The City pays for this benefit on a pay-as-you-go basis, meaning only the cost of providing the benefit for retirees is paid by the City each year; funding of the benefit for current employees is not being set aside. While the cost of paying this benefit for retired employees amounts to less than $100,000 each year, the City's unfunded liability for this benefit will continue to increase if funding is not provided for current employees that may be eligible to receive the benefit.

Based on projections developed by the City, a deficit is expected each year between FY 2012 and FY 2016, with a projected deficit of $10.9 million for FY 2016. The Proposition D sales tax increase is scheduled to expire in FY 2016. Between FY 2008 and FY 2011, the City's sales tax increase has generated an average of $8.15 million each year. By FY 2016, the City's sales tax could account for nearly $9.5 million of the projected deficit. Voters within National City on two occasions approved a ten year sales tax increase, and thus the tax should continue. In the interim, the City will need to continue to introduce reform and efficiency measures to limit growth in expenditures and reduce reliance on the City's additional sales tax revenue. Finally, in order to correctly calculate the City's structural budget deficit, it is important to include the costs of fully funding the City's retiree health care benefits as well as understanding the true costs of maintaining the City's infrastructure (roads, sidewalks, facilities, etc.) each year.

Section 3: Actions Taken to Improve and/or Stabilize the General Fund

Through a variety of actions the City has been able to balance its annual budget each year since the General Fund deficit problem first appeared during Fiscal Year 2004-2005 and maintain the City and the redevelopment agency Standard and Poor's ratings of A and A minus, respectively. The most effective actions fall into two general areas, revenue increases and controlling expenditures, which are summarized below. For a fuller appreciation of the actions taken by the City please refer to the City Manager's Budget Message at the front of City's Annual Budget and to the Annual Budget presentations available on the City's web site.

Although the lists below are not comprehensive, the selected actions provide a sampling of the range and magnitude of the actions taken to adequately confront and prevent the structural deficit challenge from spiraling out of control. It seems clear that despite all of the actions taken to close the City's recurring structural deficit it would spiral out of control without the revenues temporarily being provided by the District Tax. For this reason the District Tax should remain in effect.

Actions Taken to Increase General Fund Revenue.

- 2006-- Proposition D passed by 59 percent of the voters on June 6, 2006; the measure increased the local sales tax rate one percent to 8.75 percent from 7.75 percent for a period of up to 10 years. The City estimated that the additional revenue from the sales tax rate increase would generate between $7 million and $9 million annually, and to date the annual collections have been within this range. Cumulatively the City has collected approximately $30.4 million through fiscal year 2010.
- Marina Gateway Development—since 2010 the project has provided approximately $772,000 annually in redevelopment and municipal tax revenue. The City invested (contributed) $2.4 million in property tax increment funds to the $61 million development.
- Plaza Bonita Mall--$134 million expansion and improvements should lead to additional sales tax revenue.
- 2010—increased American Medical Response franchise fee by $120,000.
- 2008—internal audit of federal Housing and Urban Development Program resulted in approximately $3.3 million in recouped program income.

Actions Taken to Control General Fund Expenditures.

Accounting

- Quarterly written financial reports to the City Council and residents of National City provide data on the revenues generated by the District Sales Tax separate from the City's general sales tax to increase accountability.

Cost-Cutting

- 2006--reduced expenditures for City services by 20 percent across the board, saving $984,000 and a managed attrition program was instituted affecting General Fund positions in 13 departments.
- Since 2006 the city has provided employees with one-time stipends rather than salary increases. Annual non-pensionable stipends provide a way to limit and control ongoing salary impacts to the City's budget. Cost of living adjustments are scheduled to begin in 2012 as required in labor contracts.
- 2009--the City unblended retiree health care from active employees resulting in no cost increases in benefits for that year.
- 2010--the City implemented a 40 hour Employee Work Furlough Program resulting in an estimated $135,441 savings in salary and approximately $12,000 in energy savings. In 2011 the City negotiated a continuance of the furlough program through 2013 which is expected to result in $338,383 in savings over the three years.

Consolidating and Restructuring Departments and Divisions

- 2006— the redevelopment agency was placed under the City Manager resulting in the elimination of managerial positions.

- 2008—the Building and Planning Departments were merged, eliminating a department director position.
- 2009—the Purchasing Division was consolidated into the Finance Department eliminating a managerial position.
- 2009—the recently merged Building and Planning Department was further consolidated with the Engineering Department, eliminating a department director position.
- 2011—overall, the City has streamlined its organizational structure from eleven to five departments, eliminating 20 executive and management level positions.

Managed Attrition

- 2009—the City introduced the Employee Voluntary Separation Program resulting in the separation of 29 employees.
- 2011—the City reports 71 vacant positions, 61 of these positions are frozen and/or unfunded and 10 are vacant.

Pension Reform

- 2007—no City employee contributed to their retirement.
- 2009—89 percent of City employees contributed to their retirement.
- 2010—100 percent of City employees contributed to their retirement, and new sworn police safety positions retirement formula decreases from 3% @ 50 to 3% @ 55.
- 2011—employee retirement contributions from elected officials, executive, management and municipal employees are increased to the full 8%. Fire safety employees agree to contribute their full 9% in 3% increments by 2013. New fire safety employees will receive a reduced retirement formula from 3% @ 50 to 3% @ 55.

Attachment: Proposition D Ballot Initiative

CITY OF NATIONAL CITY

Proposition D

(This proposition will appear on the ballot in the following form.)

PROP D	Shall an ordinance be approved imposing a one percent transactions and use tax (a sales tax) for up to 10 years for City services, facilities and programs?

This proposition requires approval by a simple majority (over 50%) of the voters.

Full text of this proposition follows the arguments.

CITY ATTORNEY IMPARTIAL ANALYSIS

Ballot Proposition "D" proposes to raise revenue for general purposes for the City of National City by authorizing a one percent transaction and use tax (commonly referred to as a "sales tax") within the City of National City. The one percent tax would be paid in addition to current sales taxes and would be collected at the same time and in the same manner as existing sales taxes.

California Revenue and Taxation Code Section 7285.9 authorizes the City Council to levy a transaction and use tax at a rate of 0.25 percent or a multiple thereof, provided the tax is approved by a majority of the voters voting in an election on that issue. If approved, the tax would go into effect October 1, 2006 (the "Operative Date").

Proposition "D" states that the one percent sales tax is to be used "for City services, facilities and programs." Because this sales tax would be a "general tax," the tax would go into the City's general fund and could be used for any legal municipal purpose. The City would not be legally bound in any way to use the tax monies for any special purpose or for any particular services, facilities or programs.

The authority to levy the tax imposed by Proposition "D" would expire ten years from the Operative Date, unless the City Council prior to that date determines that the levy and collection of the tax is no longer necessary, in which case the City Council has the authority to reduce the rate of tax, or terminate the imposition of the tax.

Proposition "D" provides that every five years the Mayor, with the approval of the City Council, shall appoint an independent committee comprised of three experts in financial matters, who will report their recommendation to the Mayor and City Council as to whether the transaction and use tax should remain in effect at the rate of one percent, or whether the City Council should reduce the rate of tax or terminate the imposition of the tax.

ARGUMENT IN FAVOR OF PROPOSITION D

- Proposition "D" is to raise the sales tax to cover the City General Fund $6.7 million shortfall
- Every resident from senior citizens, students to infants would be affected by the outcome of this proposition
- The sales tax will automatically expire in ten years
- National City residents have continually stated that public safety is their number #1 priority
- 72% of the total National City General Fund budget is given to the police and fire department

WHY YOU SHOULD VOTE "YES" ON D

- If Proposition "D" does not pass the following will happen:
  - The City will be required to reduce their general fund budget by 20%
  - The Police Department and Fire Department will be required to terminate employees to reach the 20% cut
  - The Fire Department will not be able to adequately man the Euclid Street Fire Station
  - The response time by the Police and Fire Department will be greatly reduced
  - The new Public Library will be required to terminate employees and be forced to close more days

WHAT IS TAXED AND WHAT IS NOT TAXED

- No tax on medicine, non-prepared food (groceries), rent, mortgage, utilities or property tax
- Per State Law no new tax on car, motorcycle, boat or plane sales made to consumers from outside the city, but residents pay
- Car dealerships will pay taxes on all vehicle repair and parts sold

NATIONAL CITY RESIDENTS WILL NOT BE REQUIRED TO COVER 100% OF SHORTFALL

- Projections show that one-half to two thirds of the tax will be paid by non-National City residents who purchase merchandise in the City

WHY THE SHORTFALL

- The State of California keeps millions of dollars in revenue (to help balance their budget) that should be returned to the City
- Larger mandatory employee pension contribution than expected

ROBERT "DUKIE" VALDERRAMA
Port Commissioner

ADOLFO GONZALES
Chief of Police

ANNE CAMPBELL
City Librarian

ROBERT V. MEDINA
President, National City Firefighters Association

ROSALIE "ROSIE" ALVERADO
President, National School District

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ARGUMENT AGAINST PROPOSITION D

What?! Another tax increase?

We've already voted down this tax once before. But the politicians won't listen.

They're trying AGAIN to raise taxes, and this time we're being told that essential police and fire services may be cut! But we're ALREADY paying for public safety!

In 1993 we voters approved Prop. 172, a sales tax for public safety funding. According to the Union-Tribune, National City collects about $7.75 MILLION annually in sales tax for "local public safety protection and improvement." Where's THAT money, now that we need it??

Much of this regressive tax will fall on the backs of our poorer citizens. That's unfair!

If this tax passes, National City will charge the highest sales tax in the county. To avoid this tax, National City citizens will tend to buy goods outside their own city, and county consumers will tend to avoid National City as a place to shop or visit. That means more closed local businesses and more lost jobs.

Citizens of National City will pay an additional one percent on any taxable item they buy locally. But the National City car dealers' customers who live outside National City will NOT pay the higher tax, due to state law. That's unfair!

Read the measure carefully. Though the tax hikers claim that the tax increase will be used for vital city services, there is NO LEGAL REQUIREMENT that the money be spent that way. None!

Voters are supposed to trust National City politicians to do the right thing. And not only today's politicians, but all the city politicians for the next 10 years while the tax is being collected. Bad idea!

If you think that your taxes are already too high, or even just high enough, you should vote NO on this tax increase.

Reject this tax!

www.lesstax.org/PropD

RICHARD RIDER
Chair, San Diego Tax Fighters

MARIA RAQUEL D. ASTORGA
Working Mother

EDWARD TEYSSIER
Chair, San Diego Libertarian Party

EDWARD G. LOHLEIN
Small Business Owner

MARTHA SANCHEZ
Small Business Owner

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Page 19

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ORDINANCE NO. 2006 – 2278

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF NATIONAL CITY ADDING
CHAPTER 4.60 TO THE NATIONAL CITY MUNICIPAL CODE
TO IMPOSE A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

BE IT ORDAINED by the People of the City of National City as follows:

Section 1. That Title 4 of the National City Municipal Code is hereby amended by adding Chapter 4.60 to read as follows:

Chapter 4.60

TRANSACTIONS AND USE TAX

Sections:

4.60.010 Title. This chapter shall be known as the "City of National City Transactions and Use Tax Ordinance". This ordinance shall be applicable in the incorporated territory of the City.

4.60.020 Definitions. As used in this chapter, "City" means the City of National City and "tax" means the transactions and use taxes, sometimes also referred to as "sales tax", imposed under the provisions of this ordinance; "tax revenue" and "tax revenues" mean all proceeds of the tax received by the City from the State Board of Equalization.

4.60.030 Operative date. "Operative date" means the first day that the tax is imposed and collected. The operative date shall be October 1, 2006, unless a later operative date becomes effective under the provisions of Section 4.60.050.

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

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority vote of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

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

4.60.050 Contract with State Board of Equalization. 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.

4.60.060 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 1% (one percent) 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.

4.60.070 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.

4.60.080 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 1% (one percent) 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.

4.60.090 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.

4.60.100 Limitations on adoption of state law and collection of use taxes. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

4.60.110 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.

4.60.120 Exclusion; exemptions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs 3 and 4 of this subsection B, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs 3 and 4 of this subsection C, 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 of this subsection C, 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.

<u>4.60.130</u> <u>Permissible uses</u>. The revenues of the tax shall be deposited in the City's general fund and may be used for any legal municipal purpose.

<u>4.60.140</u> <u>Amendments</u>. 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.

<u>4.60.150</u> <u>Enjoining collection forbidden</u>. 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.

4.60.160 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.

4.60.170 Expiration. The authority to levy the tax imposed by this Chapter shall expire ten (10) years from the Operative Date, unless the City Council prior to that date determines that the levy and collection of the tax is no longer necessary, in which case the City Council has the authority to reduce the rate of tax, or to terminate the imposition of the tax. The City shall immediately notify the State Board of Equalization in writing in the event that the tax is reduced or terminated. The operative date of such rate reduction or termination shall be the first (1st) calendar quarter commencing more than one hundred and ten (110) days after the Board of Equalization receives such notice of termination.

4.60.180 Independent committee. Every five (5) years the Mayor, with approval of the City Council, shall appoint an independent committee comprised of three (3) experts in financial matters, who will report their recommendations to the Mayor and City Council as to whether the transaction and use tax should remain in effect at the rate of one percent (1%), or whether the City Council should reduce the rate of tax or terminate the imposition of the tax pursuant to Section 4.60.170.

Section 2. This ordinance, following its adoption by at least 4 affirmative votes of the City Council and its publication, shall become effective upon the approval of the tax imposed hereunder by a majority of the voters of the City voting thereon at an election called for that purpose. The "operative date" of the tax imposed hereunder shall be as provided in Section 4.60.030.

PASSED and ADOPTED by the City Council of the City of National City, California, on February 7, 2006, by the following vote, to-wit:

Ayes:	Councilmembers: Inzunza, Morrison, Natividad, Parra, Zarate.
Nays:	None.
Absent:	None.
Abstain:	None.