

**AGENDA
CITY OF UNION CITY
SPECIAL CITY COUNCIL/REDEVELOPMENT AGENCY MEETING**

**WEDNESDAY, JULY 30, 2008
7:00 P.M.**

**COUNCIL CHAMBERS
34009 ALVARADO NILES ROAD**

I. CALL TO ORDER

I.a Pledge of Allegiance

I.b Roll Call

Mayor Mark Green

Vice Mayor Manny Fernandez

Councilmember Carol Dutra-Vernaci

Councilmember Jim Navarro

Councilmember Richard Valle

II. ORAL COMMUNICATIONS

Comments from the audience on non-agenda items will be accepted for a period of 30 minutes. Speakers are limited to three minutes each. Persons wishing to speak must complete a speaker card available at the rear of the Council Chamber or from the City Clerk. If the number of speakers exceeds the time allotment, cards will be shuffled and 10 speakers chosen at random. The remaining speakers may speak under Section XI of the agenda.

III. CONSENT CALENDAR

All matters listed on the Consent Calendar are considered routine in nature and will be enacted by one motion. If discussion is required on a specific item, it will be removed from the Consent Calendar and considered separately.

3.a Adopt a Resolution Approving Revised Rates for Curbside Recycling Services for Fiscal Year 2008-09

IV. CITY MANAGER REPORTS

4.a Discussion of Proposed Challenge to the High-Speed Rail Final Programmatic EIR/S

4.b Adoption of a Resolution Calling a General Municipal Election to be held November 4, 2008 for Voter Consideration of Either a Continuation of Existing Public Safety Services Tax Ordinance, or an Increase of the Public Safety Services Tax, or Establishment of a Utility User Tax; Requesting the Board of Supervisors of the County of Alameda to Consolidate the General Municipal Election with the General Election to be held on November 4, 2008, Requesting Certain Services of the Registrar of Voters of Alameda County with Respect to the Consolidated General Municipal Election; Authorizing the Filing of an Impartial Analysis; and Authorizing the Appropriation of Funds to Pay for the Cost to Consolidate the General Municipal Election with the General Election

V. REDEVELOPMENT AGENCY - None

VI. ADJOURNMENT

A complete agenda packet is available for review at City Hall or our website www.unioncity.org

Any writings or documents provided to a majority of City Council members regarding any item on this agenda will be made available for public inspection at the City Clerk's Counter at City Hall, located at 34009 Alvarado-Niles Road, Union City, California, during normal business hours.

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested person must request the accommodation at least two working days in advance of the meeting by contacting the City Clerk at (510) 675-5348.



Agenda Item

DATE: July 30, 2008

TO: Mayor and Councilmembers

FROM: Antonio E. Acosta, Deputy City Manager

SUBJECT: **ADOPTION OF A RESOLUTION APPROVING REVISED RATES FOR CURBSIDE RECYCLING FOR FISCAL YEAR 2008-09**

A resolution has been prepared approving revised rates for curbside recycling for Fiscal Year 2008-09. Staff recommends that the proposed resolution be approved.

BACKGROUND

Curbside recycling services are provided in Union City by Tri-CED, a Union City-based non-profit corporation located on Western Avenue. The City's franchise agreement with Tri-CED allows for annual rate adjustments based on either Consumer Price Index (CPI) adjustments, or more detailed rate review calculations. This year, the CPI adjustment method is called for, and Tri-CED has submitted the required rate review documentation requesting a 5.37% rate increase.

DISCUSSION

The proposed rate increase submitted by Tri-CED is based upon adjustments for increased labor costs, fuel costs and vehicle related costs, and includes City fee increases. The rates requested are as follows:

YEAR	TRI-CED RATE	CITY FEES	TOTAL RATE	% CHANGE
2007-08	\$5.75	\$1.77	\$7.52	
2008-09	\$6.06	\$1.83	\$7.89	4.92%

FISCAL IMPACT

The fiscal impact of the proposed rate adjustment is estimated at increasing City franchise fee revenues by approximately \$13,000 annually.

RECOMMENDATIONS

Staff recommends that the City Council approve a resolution approving revised rates for curbside recycling for Fiscal Year 2008-09.

Prepared and submitted by:
Antonio E. Acosta, Deputy City Manager

Approved by:
Larry Cheeves, City Manager

RESOLUTION NUMBER _____

**RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF UNION CITY
APPROVING REVISED CURBSIDE RECYCLING RATES FOR
FISCAL YEAR 2008-09**

WHEREAS, the City of Union City and the Tri-Cities Economic Development Corporation (Tri-CED) have entered into a Franchise Agreement for the Collection and Processing of Recyclable Materials in the City; and

WHEREAS, said Agreement allows for annual rate adjustments based upon either Consumer Price Index (CPI) adjustments, or a detailed review of all operating costs and revenues; and

WHEREAS, rate adjustments for Fiscal Year 2008-09 are to be determined using the CPI adjustment method; and

WHEREAS, Tri-CED has submitted an application for rate adjustments for FY 2008-09 in accordance with said Agreement, and has requested an adjustment of 5.37% for a new monthly rate of \$6.06 per household (64 Gallon Cart); and

WHEREAS, the City Council has reviewed said rate application and finds it to be reasonable and justified.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Union City does hereby approve the rate application submitted by Tri-CED for curbside recycling services, and establishes the monthly curbside recycling rates for Fiscal Year 2008-09 to be \$7.85 per household (64 Gallon Cart), including monthly compensation of \$6.06 for Tri-CED.

Proposed Challenge to the High-Speed Rail Final Programmatic EIR/S

Presented by the California Rail Foundation and
Transportation Solutions Defense and Education Fund.

July 14, 2008

Issues to be Litigated

A. Adequacy of Evaluation of Pacheco Route

The Union Pacific Railroad's refusal to make its right-of-way available for High-Speed Rail created a major hole in the EIR. The EIR had already rejected a series of otherwise-feasible alignments that did not involve UP property. While the FEIR (and especially subsequent statements by HSRA spokespersons) claimed to review not just the UP right-of-way but also the adjacent lands, this is true only to a limited extent. Several sections of right-of-way pass through heavily built-up areas, such as south of San Jose. Substantial numbers of properties would have to be condemned to be able to lay track there, and in some places there are physical constraints on moving the HSR right-of-way away from UP property. The Authority (HSRA) claims these issues can be analyzed in a subsequent project-level EIR, but that is contrary to CEQA. Because the analysis of these impacts is material to the selection of the preferred alignment, and because sufficient information is available to identify and conduct at least a preliminary analysis of impacts now, it needs to be done at the programmatic level.

Not overturning the FEIR would mean that the HSRA could end up spending billions of dollars to condemn property (with consequent displacement of residential, commercial, and industrial uses) and then build aerial structures or tunnels through these constrained areas, instead of choosing the more cost-effective and less impacting option of choosing an entirely different route. In addition, the EIR includes no consideration of possible impacts from a derailment of either a HSR train or a UP freight train, again leaving this for the project level. Perhaps detailed design can be consigned to the project level, but there is no consideration of whether mitigation is even feasible.

B. The Ridership Analysis was based on Flawed Assumptions

The ridership analysis managed to find more riders in a corridor with a lower population. With proper assumptions, the Altamont route would have shown substantially more ridership for High-Speed Rail, for the regional commuter service added to it and for total rail ridership. The ridership analysis failed to properly evaluate the potential for commuter ridership from San Jose and San Francisco to Pleasanton, Stockton, Tracy, Modesto and Sacramento, which would be substantial for the Altamont corridor but not the Pacheco. It reduced the HSR ridership in the Altamont corridor by assuming half the trains go to San Francisco, while the other half go to San Jose. A valid comparison of the Altamont and Pacheco corridors would have used the same number of trains per day, either by splitting the trains at Fremont, or by providing a regional service connection to the other station, via a cross-platform transfer at Fremont. The FEIR rejected these reasonable alternatives without substantial justification.

C. Inadequate Analysis of Biological Resource Impacts

The Pacheco Corridor runs through the middle of the Grasslands Ecological Area, a collection of wetland resources owned in part by public agencies as well as non-profit conservation organizations. The analysis of the biological value of the wetlands, as well as the grasslands, is inadequate. While mitigation through the purchase of up to 10,000 acres of habitat is proposed by the FEIR, there is no analysis to demonstrate that this amount will adequately mitigate all the impacts on the resource.

Conversely, the FEIR assumes that an Altamont alignment would require building an entirely new Bay crossing, and that this would entail major biological impacts whose impacts would be difficult or impossible to mitigate. This is in spite of evidence submitted to the contrary, which is either dismissed or ignored.

D. Inadequate Analysis of Growth Inducement

The analysis showing a higher conversion of land to urban uses in the Altamont corridor is highly suspect. The FEIR fails to consider the high demand for very low density ranchette sprawl and fails to adequately assess the potential for induced growth south of San Jose, even in the absence of a Los Banos station.

E. Inadequate Mitigation of Growth Inducement

Absent strong regulatory intervention, the history of California suggests that HSR will cause a tremendous expansion of suburban development, with its associated impacts of air emissions, traffic congestion, energy consumption and loss of open space. The FEIR should have proposed requirements for agreements with the counties and cities through which the HSR passes, including urban limit lines, station siting criteria and Smart Growth policies for downtown station areas.

F. Inadequate Analysis of Global Warming Impacts

The FEIR does not evaluate the project's impact on the sequestration of carbon through inducing the conversion of agricultural and forest lands to urban uses. It does not provide enforceable mitigation, including a commitment to renewable electrical generation, for the increased GHG emissions that it will cause.

G. Inadequate Analysis of the Impact of Recent Petroleum Prices

Recent profound changes in the price of energy, especially petroleum-based energy, imply significant change in the competitive status of the automobile vs. commuter rail services using the High-Speed Rail tracks. The FEIR's dismissiveness towards the use of the tracks by regional and interregional commuter services strongly colored the selection of a preferred alternative.

H. Failure to Include the Cost of Grade Separations

We believe the cost estimates for the HSR project are seriously understated, due to the failure to include grade separations.

The Importance of the Issues to be Litigated

Whether the HSR bond measure passes or fails in November, the FEIR will survive and determine that any future development of HSR will use the Pacheco Corridor. Unless the FEIR is thrown out by the courts, a strong legal preference for the Pacheco Corridor will endure.

A. The Altamont Alignment would provide more service to more people. It would provide badly needed capacity accessing the Bay Area via the very congested I-80 and I-580 corridors. With relatively little expenditure by the Bay Area, the HSR infrastructure would provide an environmentally friendly interregional rail service, eliminating the need to widen highways, and encouraging current commuters to ride the train. This would be a far more cost-effective solution to Bay Area transportation problems than the HSRA's plan to build Pacheco while encouraging others to improve service on the Altamont.

B. Bay Area environmentalists have consistently fought the proposed BART extension to San Jose, because its extraordinary cost would capture all the Bay Area's funding for future transit, thus preventing the building of an extensive regional transit network. If Santa Clara County does not pass a sales tax this November for BART, that project may wither and die. That would open the door to serious consideration of the proposal by the Bay Rail Alliance for a far more cost-effective connection between San Jose and Fremont they call Caltrain Metro East. This corridor would provide direct service to the planned growth in North San Jose as well as the San Jose Airport. This project is so compatible with HSR via the Altamont corridor that upon its adoption, it would be obvious to change HSR alignments. Overturning the FEIR would keep open the option of an excellent Bay Area rail network.

C. The BART Transbay Tube between Oakland and San Francisco is a major capacity constraint in planning future Bay Area transportation facilities. Another tube would cost over \$10 billion. The construction of the HSR Altamont corridor would build a rail bridge or tunnel in the vicinity of the current Dumbarton Rail Bridge. This additional Transbay capacity would serve demand from Southern Alameda County, as well as those coming from the East, without putting any additional load on the BART Transbay Tube.

D. The two HSR FEIRs are the closest thing California has to a State-level land use plan. The Pacheco Alignment is likely to result in undesirable sprawl near the largest undisturbed wetlands in the State. Well-connected speculators have also been buying up land south of Gilroy, in the obvious expectation of a future train station. (This speculation has not been deterred by the claimed commitment not to build a Los Banos station. Money speaks louder than words.) The Altamont Alignment will encourage far more compact growth, controlled by local governments that are committed to "smart growth", in already-urbanized areas, accessible to rail and other public transit.

By overturning the certification of the FEIR, we force the HSRA to revisit these crucial issues. The scrutiny of the courts should constrain their inclination to do another advocacy document for Pacheco.



Agenda Item

DATE: July 30, 2008

TO: Mayor and Councilmembers

FROM: Antonio E. Acosta, Deputy City Manager

SUBJECT: **ADOPTION OF A RESOLUTION CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD NOVEMBER 4, 2008 FOR VOTER CONSIDERATION OF EITHER A CONTINUATION OF EXISTING PUBLIC SAFETY SERVICES TAX ORDINANCE; AN INCREASE OF THE PUBLIC SAFETY SERVICES TAX; OR, ESTABLISHMENT OF A UTILITY USER TAX; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, REQUESTING CERTAIN SERVICES OF THE REGISTRAR OF VOTERS OF ALAMEDA COUNTY WITH RESPECT TO THE CONSOLIDATED GENERAL MUNICIPAL ELECTION; AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS; AND AUTHORIZING THE APPROPRIATION OF FUNDS TO PAY FOR THE COST TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE GENERAL ELECTION**

This report is written to provide the City Council with final draft information and recommendations related to the placement of a public safety-related revenue retention and enhancement measure on the November 4, 2008 General Election ballot. This information includes:

- A draft Resolution of the City Council of the City of Union City calling a General Municipal Election to be held on November 4, 2008, for voter consideration of continuation and enhancement of an existing public safety services tax ordinance; requesting the Board of Supervisors of the County of Alameda to consolidate the General Municipal Election with the General Election to be held on November 4, 2008, requesting certain services of the Registrar of Voters of Alameda County with respect to the Consolidated General Municipal Election; and authorizing the filing of an Impartial Analysis;
- A draft Ordinance of the People of the City of Union City amending Title 3, Chapter 3.20 (Ordinance No. 622-04) of the City of Union City Municipal Code concerning the

existing public safety services excise tax;

- A draft Resolution of the City Council of the City of Union City calling a General Municipal Election to be held on November 4, 2008, for voter consideration of establishment of a utility user tax ordinance; requesting the Board of Supervisors of the County of Alameda to consolidate the General Municipal Election with the General Election to be held on November 4, 2008, requesting certain services of the Registrar of Voters of Alameda County with respect to the Consolidated General Municipal Election; and authorizing the filing of an Impartial Analysis; and
- A draft Ordinance of the People of the City of Union City adding Chapter 3.24 to the Union City Municipal Code establishing a Utility Tax.

It is hoped that by the date and time of this Special City Council meeting, the State Supreme Court will have published its decision on whether or not to grant the City's petition for review of the State Court of Appeals' decision on the City's 911 Fee.

BACKGROUND

The Parcel Tax Option - At the regular City Council meeting of July 22, 2008 the City Council indicated general support for a Public Safety Parcel Tax in November that would essentially mirror the June 2008 Measure K, with two significant differences:

- A **shorter sunset period** of six (6) to ten (10) years (instead of the 20-year sunset contained in the June 2008 Measure K); and
- A **lower CPI adjustment cap** of 2% annually (instead of the 3% cap contained in the June 2008 Measure K).

Support for including a \$2 million revenue enhancement in the parcel tax was mixed, with three Council members in support and one Council member in opposition to such an enhancement. One Council member was absent from the July 22nd Council meeting.

The UUT Option - In addition, the City Council indicated its support for considering a UUT in the event the California Supreme Court either rejected the City's petition for review of the 911 Fee State Court of Appeals decision, or failed to act on the petition prior to August 8th.

DISCUSSION

Procedural Requirements & Issues – As noted in the July 22nd staff report, the **deadline for submitting ballot measures to Alameda County for the November 4th General Election is 5p.m. Friday, August 8, 2008.** This means that the Council's decision for a Successor Measure must be made by noon on August 8, 2008 in order for a Successor Measure to be placed on the November 4, 2008 ballot by 5pm at the County Registrar of Voters (ROV) office in Oakland. Staff has been advised that the ROV will accept faxes and emails in lieu of actual paper submissions on August 8th.

Two **resolutions** have been prepared to place a ballot measure on the November 4, 2008 ballot and are attached for the Council's review:

- A resolution for an **enhanced Public Safety Parcel Tax** (similar to the 2008 Measure K, but with a shorter sunset and lower CPI adjustment cap); and
- A resolution for a Utility User Tax and Advisory Measure, with the UUT applied to gas, electric, water and telephone utilities, and blank spaces in the resolution for the tax rate, and the Advisory Measure written to earmark the UUT revenues for public safety.

In addition to the usual procedural clauses, it is important to note that both proposed resolutions also appropriate up to \$100,000 to the City Clerk's adopted FY2008-09 budget to cover election costs estimated by the County ROV. These costs have soared in the past year to rates that may prove to be 2-3 times higher than rates charged prior to 2008. No specific justification has been provided by the ROV to justify such steep rate increases, and a number of cities in Alameda County are either considering, or have already sent, letters or resolutions to the County Board of Supervisors expressing their concerns.

The Public Safety Parcel Tax –as a result of the July 22nd discussion by the Council, only two issues remain to be resolved for the proposed Public Safety Parcel Tax:

- Adjusting the **sunset clause** (i.e., term or length) of the parcel tax to less than 20 years. A term of **10 years** would be an improvement over the 5-year sunset contained in the 2004 Measure K in terms of reducing potential voter opposition to lengthy taxes. A term of **8 years** would place future parcel tax renewals in line with Presidential Elections (i.e., elections that have the highest turnout). A term of **5 years** would be consistent with a straight renewal of the 2004 Measure K. **The proposed draft parcel tax ordinance contains a 10 year sunset clause.**
- Adjusting the **amount of revenue enhancement** contained in the measure. The 2008 Measure K included \$2 million worth of revenue enhancements for police, fire, emergency preparedness and youth violence reduction programs above the baseline amount provided for by the 2004 Measure K. This 80% increase may have created voter resistance that could be reduced by lowering the amount of revenue enhancement contained in the Successor Measure. 10-year Rate Tables have been provided for both an “enhanced” (\$2 million) parcel tax, and a “continuation” (no rate increase) parcel tax. **The proposed draft parcel tax ordinance contains a \$2 million tax rate increase over the 2004 Measure K.**
- **A 2% CPI cap and exemptions** for owners of vacant parcels, low income residential property owners, and for owners of developed commercial property that is vacant (partial exemption) have already been accepted by the Council.

The Utility User Tax (UUT) – the second option for the Council to consider is the UUT, a common form of General Tax used by many cities throughout the State of California, both Charter and General Law. As a **General Tax**, the UUT requires only a **simple majority to pass**, but unlike Special Taxes, the funds generated by General Taxes cannot be restricted for any specific purpose, and can be spent on any thing the Council deems appropriate. This last factor is why staff has included an advisory measure in the draft UUT Resolution that contains the following ballot question:

“Advisory Measure ____: If the ____% utility users tax is approved, should the funds generated by the tax be expended solely for public safety services, including police services, fire services, emergency preparedness services and youth violence prevention services?”

Since prior staff reports were written, staff has learned of a creative and successful UUT measure adopted by the **City of Menlo Park** in 2006, a measure containing four components that staff recommends the Council seriously consider prior to finalizing a UUT for the November 2008 ballot:

- **UUT Cap** – in order to avoid potentially adverse consequences that might arise from a UUT being applied to large utility consumers (e.g., US Pipe, UC Cold Storage, etc.), a cap on the total annual tax can be implemented in a UUT to limit the tax paid by any individual ratepayer. A cap of \$15,000 (\$1250/month) would be roughly equivalent to the maximum parcel tax assessment for large non-residential parcel owners (\$13,622.61), and is recommended.
- **Low Income Exemption** – to protect low income residents from the impacts of a UUT, a low income exemption is recommended. The Menlo Park model uses the California Alternative Rates for Energy (CARE) program guidelines, and staff recommends the same approach be considered for Union City.
- **Biennial Sunset and Automatic Review** – Menlo Park also uses a unique method to address public concerns over “permanent taxes”, but mandating a biennial (i.e., every two years) Council review of its UUT. The Council must vote by a 2/3 majority to extend the UUT on the basis that the UUT revenues are necessary for the financial health of the City, or the UUT is terminated. This provides a regular frequent review of the UUT and gives the community and the Council opportunity to discuss (and possible amend) the UUT to address changing community needs.
- **Temporary Tax Reduction** – while any increase in UUT rates or broadening of the UUT base to new utilities requires an affirmative vote of the public, the Menlo Park UUT may also be reduced by the City Council for one year if doing so will not adversely impact the City’s financial health.

All four of these provisions were developed and implemented by Menlo Park after an extensive public hearing process, using professional consulting assistance to craft responses to community concerns. While Union City is a distinct community and differs from Menlo Park in many ways, it may be quite useful to consider their successful parcel tax measure as the Council finalizes its decision-making for the November ballot.

As previously noted, staff has prepared a UUT Yield table (attached) that shows the revenues that may be expected from various utilities at various tax rates. To summarize the rather detailed data contained in the UUT Yield Table, if the Council were to approve **a UUT that covered all major utilities*** (gas, electric, water, sewer, and telephones), a UUT would be expected to generate the following levels of revenue for FY2008-09:

1% UUT would generate \$1.42 million
2% UUT would generate \$2.84 million

3% UUT would generate \$4.26 million
4% UUT would generate \$5.68 million
5% UUT would generate \$7.10 million
6% UUT would generate \$8.52 million
7% UUT would generate \$9.94 million

*CATV and Municipal Solid Waste (MSW) utilities have been excluded from the proposed UUT because the City already collects significant Franchise Fees on both utilities (5% for CATV and 20% for MSW).

For example,

- if the Council wished to cover the revenues generated by Measure K or the 911 fee, a 2% UUT would suffice (this would be the 2nd lowest UUT rate in the Bay Area)
- If the Council wished to cover the revenues generated by both Measure K and the 911 Fee, a 4% UUT would be required; and
- If the Council wished to cover an enhanced Measure K (\$2 million) and the 911 Fee, a 5.25% UT would be required

It should be noted that **if the Council decides to place a UUT measure on the November ballot that includes telephone services, staff would also recommend that the Council adopt legislation that would eliminate the 911 fee in the event the UUT was approved by the voters, since it would essentially be replaced by the UUT.**

FISCAL IMPACT

The fiscal impact of any November 4th revenue enhancement measure will depend upon the nature of the enhancement. Staff will prepare more detailed fiscal impact projections based upon Council's direction and feedback on the preferred measure.

RECOMMENDATIONS

Staff recommends that the City Council:

1. Finalize the terms for a Public Safety Parcel Tax Ordinance, including :
 - a. tax rate (enhanced, or not)
 - b. sunset term (6, 8, or 10 years)
 - c. CPI cap (2%)
 - d. Exemptions (co change proposed), and
2. Approve a resolution calling a General Municipal Election to be held on November 4, 2008, for voter consideration of continuation and enhancement of an existing public safety services tax ordinance; requesting the Board of Supervisors of the County of Alameda to consolidate the General Municipal Election with the General Election to be held on November 4, 2008, requesting certain services of the Registrar of Voters of Alameda County with respect to the Consolidated General Municipal Election; and authorizing the filing of an Impartial Analysis; **OR**
3. finalize terms for a Utility User Tax Ordinance, including:
 - a. tax rate (2%, 4%, 5.25% or other)
 - b. tax base (gas, electric, water, telephone recommended)
 - c. maximum tax amount (cap) of \$15,000 per year (recommended)
 - d. automatic biennial review and sunset (recommended)

- e. rate reduction authorization (recommendation), and
4. Approve a resolution calling a General Municipal Election to be held on November 4, 2008, for voter consideration of establishment of a utility user tax ordinance; requesting the Board of Supervisors of the County of Alameda to consolidate the General Municipal Election with the General Election to be held on November 4, 2008, requesting certain services of the Registrar of Voters of Alameda County with respect to the Consolidated General Municipal Election; and authorizing the filing of an Impartial Analysis.

Prepared and submitted by:
Antonio E. Acosta, Deputy City Manager

Approved by:
Larry Cheeves, City Manager

DRAFT

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, FOR VOTER CONSIDERATION OF CONTINUATION OF AN EXISTING PUBLIC SAFETY SERVICES TAX ORDINANCE; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, REQUESTING CERTAIN SERVICES OF THE REGISTRAR OF VOTERS OF ALAMEDA COUNTY WITH RESPECT TO THE CONSOLIDATED GENERAL MUNICIPAL ELECTION; AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS.

WHEREAS, the existing Public Safety Services Tax is scheduled to expire on April 23, 2009; and

WHEREAS, the City Council has determined that the loss of revenues from the expiration of the Public Safety Services Tax would result in the City being unable to continue providing public safety services to its citizens at a necessary and minimum level; and

WHEREAS, in an effort to assure that public safety services continue to be provided to its citizens at a necessary and minimum level, the City Council directed Staff and the City Attorney to prepare a proposed ordinance ("Ordinance") providing for a continuation of the existing Public Safety Services Tax, for consideration by the voters on the November 2008 ballot; and

WHEREAS, the City Council desires that the Ordinance be submitted to the voters as a ballot measure for consideration at a Consolidated General Municipal Election on November 4, 2008, in accordance with the provisions of this resolution; and

WHEREAS, the City Council recognizes the need to authorize the expenditure of additional revenues for the purpose of reimbursing the County for including the Ordinance in the consolidated General Election for November 4, 2008; and

WHEREAS, on June 24, 2008, the City Council adopted Resolution No. 3655-08 by which, among other things, the City called and ordered a General Municipal Election to be held on Tuesday, November 4, 2008, for the purpose of electing one Mayor and one member of the City Council; and by which the City requested the Board of Supervisors of

the County of Alameda (the "Board of Supervisors") to consolidate that General Municipal Election with the General Election on November 4, 2008, and by which the City requested the Board of Supervisors to issue instructions to the Registrar of Voters of the County of Alameda (the "Registrar of Voters") to provide specified services to the City including any and all steps necessary for the holding of the consolidated election; and by which the City Council authorized reimbursing the County based on the County's established consolidation rate; and

WHEREAS, California Elections Code Sections 9280 through 9287 establish procedures for filing arguments in favor of a ballot measure, and filing rebuttal arguments, including a procedure by which members of the City Council may be authorized by the City Council to submit ballot arguments; and

WHEREAS, California Elections Code Section 9280 authorizes the filing of an impartial analysis regarding ballot measures proposed by cities; and

WHEREAS, on November 6, 1996, the voters of California approved Proposition 218, which added Articles XIIC and D to the California Constitution; and

WHEREAS, Article XIIC, section 2© of the California Constitution requires that any special tax must be approved by a two-thirds vote of the voters voting on the issue of the imposition of the tax; and

WHEREAS, based on all of the information presented to the City Council, the City Council finds that under CEQA Guidelines 15060©(2) and 15378(b)(2) and (4), this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

1. Pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Union City, California, on Tuesday, November 4, 2008, a General Municipal Election, at which election there shall be submitted to qualified voters the ballot measure set forth in section 2, below.

2. The City Council does hereby submit for adoption by the qualified voters of the City of Union City at the General Municipal Election of November 4, 2008, the following question:

"Measure_____ : Shall the existing Public Safety Services Tax set to expire on April 23, 2009, be continued on the same terms as the existing tax, for an additional ten (10) years, beginning April 24, 2009, in order to fund current police and fire protection services in Union City?"

3. The full text of the proposed measure to be submitted to the voters is attached as Exhibit A (the "Measure"). If two-thirds of the qualified voters voting on the Measure shall vote in favor therefore, the Measure shall be deemed adopted and shall be effective upon its adoption.

4. The election shall be held and conducted and the votes thereof canvassed and the returns thereof made and the results thereof ascertained and determined as provided by law for the holding of municipal elections in the City.

5. The Board of Supervisors of Alameda County ("Board of Supervisors") is hereby requested to consent and agree to the consolidation of the General Municipal Election described in section 1 of this Resolution with the General Election on Tuesday, November 4, 2008, and to issue instructions to the Alameda County Registrar of Voters ("Registrar of Voters") to take any and all steps necessary for the holding of the Consolidated General Municipal Election. This request is made pursuant to California Elections Code section 10403.

6. The Board of Supervisors is hereby requested to permit the Registrar of Voters to provide such services as may be necessary to properly and lawfully hold and conduct a Consolidated General Municipal Election in the City on November 4, 2008, pursuant to this Resolution, including but not restricted to the providing and printing of ballots and polling place cards, election supplies, voting booths, flags, registration lists and any other materials and services required to lawfully conduct the election. The City recognizes that additional costs will be incurred by the County by reason of this Consolidated General Municipal Election, and the City agrees to reimburse the County based on the County's established rates. This request is made pursuant to California Elections Code section 10002.

7. Unless otherwise specified in this Resolution, the General Municipal Election shall be held and conducted as provided in Resolution No. 3655-08, and as provided by law for holding municipal elections.

8. The City Council hereby authorizes Mayor Green and Councilmember Valle to prepare ballot arguments (in favor of the ballot measure set forth in section 2, and in rebuttal to any ballot argument filed against the ballot measure set forth in section 2), and the City Council hereby authorizes Councilmember Fernandez, Councilmember Dutra-Vernaci, and Councilmember Navarro to sign these ballot arguments and use their titles. Ballot arguments in favor of the ballot measure shall be submitted to the City Clerk no later than August 11, 2008, at 1:00 p.m. Rebuttal ballot arguments shall be submitted to the City Clerk by no later than August 21, 2008, at 1:00 p.m. Direct arguments shall not exceed three hundred (300) words and shall be signed by not more than five persons. Rebuttal arguments shall not exceed two hundred fifty (250) words and shall be signed by not more than five persons. Those persons may be different persons than those who signed the direct arguments.

9. In order to facilitate the preparation of an impartial analysis of the ballot measure described in this Resolution (in accordance with California Elections Code section 9280), the City Clerk is hereby directed to submit to the City Attorney a certified

copy of this Resolution and the Ordinance. The City Attorney is hereby authorized and directed to prepare an impartial analysis of the measure described in this Resolution and the Ordinance, showing the effect of the measure on the existing law and operation of the measure. The analysis shall not exceed 500 words in length and shall otherwise comply in all respects with the applicable provisions of the California Elections Code. The City Attorney shall submit the impartial analysis to the City Clerk by no later than August 11, 2008, at 1:00 p.m.

10. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open conspicuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

11. The City Clerk is hereby directed to file with the Board of Supervisors of Alameda County a certified copy of this Resolution and of the proposed Ordinance on or before Friday, August 8, 2008.

12. The City Council hereby finds the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the City Council's adoption of this Resolution.

13. This Resolution shall be effective immediately upon its adoption.

14. The City Manager is hereby authorized and directed to appropriate funds in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) from the Undesignated General Fund Reserve to the City Clerk's budget (Account 1000-14-53890-01400) to pay for the City's cost to consolidate its General Municipal Election with the General Election.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Union City, at a regular meeting held on the _____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MARK GREEN

Mayor

ATTEST:

APPROVED AS TO FORM:

RENEE ELLIOTT
City Clerk

MICHAEL S. RIBACK
City Attorney

1125665.1

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF UNION CITY AMENDING
TITLE 3, CHAPTER 3.20 (ORDINANCE NO. 622-04) OF THE CITY OF UNION
CITY MUNICIPAL CODE CONCERNING THE EXISTING PUBLIC SAFETY
SERVICES EXCISE TAX

The People of the City of Union City do hereby ordain as follows:

Section 1. Findings.

A In March 2004, the People of the City of Union City (“City”) adopted Measure K (Ordinance No. 622-04) to provide funding for one of the primary roles of City government; police- and fire-protection services (public-safety services). Measure K added Title 3, Chapter 3.20 to the City’s Municipal Code and imposed a Public Safety Services Excise Tax (“Tax”) on occupants of residential and nonresidential real property throughout the City.

B. Approval of Measure K was recognition by the City’s property owners and voters of the significant public safety challenges facing Union City. In particular, youth-related violence was and remains a serious problem. Without the additional funding provided by Measure K, the City would lack sufficient resources to fund the public safety programs that target gang activity and other violent crime. In addition, emergency preparedness is a significant public safety issue facing Union City. The public desires that significant emergency preparedness programs be put into place. The City determines that the extension and enhancement of a special tax on occupants of residential and nonresidential real property throughout the City, as more fully described and set forth below, is necessary to maintain public good, welfare and safety for a period of twenty years.

C. Measure K will automatically expire in March 2009 unless extended. The City has determined that the cost to continue to provide essential public-safety services at current levels and to provide the expanded public safety services mentioned above exceeds the amount of funds and revenues generated from all other sources of income available for such purpose, including the revenue from Measure K . If Measure K is allowed to expire, the loss of revenue will significantly impact the City’s ability to provide essential public-safety services, as well as any of the expanded public-safety services mentioned above.

D. The City also determined that the cost of providing public-safety services has increased since Measure K was adopted and it is more costly to provide the essential public-safety services.

E. Additionally, members of the public, at community and other meetings of the City Council, have expressed a strong desire that the City maintain its current level of essential public-safety services, and also expand its youth violence prevention and intervention programs, and its emergency preparedness programs. Maintaining current levels of service and providing the additional programs that the public seeks requires either the extension and expansion of Measure K, or severe reductions in other essential public services.

F. It is the purpose and intent of this Ordinance to authorize the adjustment of the City's Tax from the current rates for each parcel type, as set forth in Section 3.20.030 ("Tax Rate Schedule"), to new rates as set forth below. The Tax is a parcel tax and a special tax. The imposition of a new "Tax Rate Schedule" is necessary to continue to provide essential public safety services to occupants of residential and nonresidential real property throughout the City for a period of Twenty (20) years. The imposition of a new "Tax Rate Schedule" will also provide funding for youth violence prevention and intervention and emergency preparedness programs..

G. The City has determined that the definition of "Public safety services", as set forth in Chapter 3.20.010 ("Definitions"), does not capture all the types of public safety services provided to the people of the City using revenue generated from the Tax and therefore the definition of "Public safety services" should be amended.

H. The City recognizes that occupants of both residential and nonresidential property use public-safety services. However, the City has determined that the use of public-safety services by occupants of various classes of residential and nonresidential properties differ significantly in their occupants' respective uses of public-safety services. Therefore, the City has calculated the tax to take into account the relative use of public-safety services by the occupants of the uses of developed property. For example, the tax on multiple family unit parcels is approximately 69% of the tax on single-family residential parcels of a similar size because multiple family units in the City tend to have fewer values at risk and lower occupant densities than single-family units. The City therefore finds it is appropriate to tax multiple family unit parcels at approximately 69% of the tax on a single family parcel, reflecting the lower values at risk and lower occupant densities of multiple family units.

I. The City has determined that the size of a parcel has a direct relationship to the usage of public safety services. A larger parcel, whether residential, commercial, industrial or mixed-use, is likely to have larger structures, more occupants and more visitors located on it (referred to as "values at risk"), thus generating more use of public safety services. The annual Tax on single-family residences, commercial and industrial, and mixed-use parcels is therefore tied to the size of the parcel.

J. A parcel of non-residentially developed real property often has more than one business located on it, and such businesses may contain large quantities of materials and products that may be flammable, hazardous, and quite valuable in the aggregate. If customers and employees are accounted for, more people generally occupy a commercial

or industrial parcel than a typical residential parcel. Moreover, non-residential parcels generally create public safety responses that significantly exceed the scope and extent of the typical public safety responses attributable to residential parcels. The City has determined that, as a result, the use of public safety services attributable to the smallest size category of non-residential parcels is approximately twice that of a typical single-family residential parcel. The City further determines that the use of public safety services increases proportionately with the size of non-residential parcels. Thus, the annual tax on non-residential parcels will vary from approximately 2.7 times that of residential parcels to approximately 78 times that of typical residential parcels, for the largest commercial and industrial parcel size category.

K. The City has determined that the tax structure, as reflected in the “Tax Rate Schedule” set forth below, reflects the relative occupancies and values at risk associated with each parcel size category and the differing uses of public safety services by residents of each parcel size category.

L. The “Tax Rate Schedule” as set forth below is intended to be proportional to and based on estimates of typical use of and benefit from public-safety services by occupants of different residential parcels and of nonresidential parcels of different types. The rates are not tailored to individual use both because such tailoring is not administratively feasible and because the City must make public-safety services available to all parcels and owners and occupants of parcels equally.

M. The “Tax Rate Schedule”, as set forth below, represents the cost in today’s dollars of the privilege of using and use of real property which generates the need for public-safety services. However, the cost of the privilege of using and the use of real property which generates the need for public-safety services will vary based on market conditions and inflation rates. To capture the changes in the cost of providing the public safety services to occupants of residential and nonresidential parcels the “Tax Rate Schedule” schedule will be adjusted annually in accordance with the Consumer Price Index (“CPI”), but will not exceed 2% and in no event will result in a “Tax Rate Schedule” for any fiscal year which is less than the amount established for the preceding fiscal year.

N. The Tax is an excise tax based on the privilege of using and the use of real property, which generates the need for public-safety services. It is not a tax on real property, nor is it any other kind of tax on property or the ownership of property. Therefore, undeveloped properties are not subject to the tax, since such properties create very little need for public safety services. Similarly, because unoccupied, vacant properties create significantly decreased need for public services, properties that are unoccupied for a period of six months or more are entitled to a refund of 5% of the annual tax for each month the property is unoccupied. It is not a transaction or sales tax on the sale of real property. Finally, because the tax proceeds are deposited in a special fund and the fund is restricted for the provision of public-safety services, the tax is a special tax.

Section 2: Section 3.20.010 Amended. Section 3.20.010, “Definitions,” of Title 3, Chapter 3.20 (Ordinance No. 622-04) of the Municipal Code is hereby amended to read as follows (with text in ~~strikeout~~ indicating deletion and double-underlined text indicating addition):

“Consumer Price Index” or “CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for San Francisco-Oakland-San Jose as published by the U.S. Department of Labor, Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

~~“Public safety services” means (a) obtaining, furnishing, operating, and maintaining police protection equipment or apparatus, paying the salaries and benefits of police protection personnel, and such other police protection services expenses as are deemed necessary by the City Council for the benefit of the residents of the City; and (b) obtaining, furnishing, operating, and maintaining fire protection equipment and apparatus, paying the salaries and benefits of fire protection personnel, and such other fire protection service expenses as are deemed necessary by the City Council for the benefit of the residents of the safety.~~

“Public safety services” means (a) obtaining, furnishing, operating, and maintaining police protection equipment or apparatus, paying the salaries and benefits of police protection personnel, and such other police protection services expenses and emergency preparedness expenses as are deemed necessary by the City Council for the benefit of the residents of the City; (b) obtaining, furnishing, operating, and maintaining fire protection equipment or apparatus, paying the salaries and benefits of fire protection personnel, and such other fire protection services expenses and emergency preparedness expenses as are deemed necessary by the City Council for the benefit of the residents of the City; and (c) paying the personnel salaries and benefits of youth violence prevention and intervention services, and contract costs for youth violence prevention and intervention services, including but not limited to crime data analysis, violence prevention strategy coordination, community outreach programs, intervention counseling services, and obtaining, furnishing, operating, and maintaining youth violence prevention and intervention services property, equipment or apparatus.

Section 3: Section 3.20.020 Amended. Section 3.20.020, “Amount of Tax,” of Title 3, Chapter 3.20 (Ordinance No. 622-04) of the Municipal Code is hereby amended to read as follows (with text in ~~strikeout~~ indicating deletion and double-underlined text indicating addition):

“The tax on each parcel of real property in the City shall depend on the use to which the occupant or owner has put the property and the size of the parcel. The tax per year on each parcel in the City shall not exceed the amount applicable to the parcel, as specified below.

No later than July 15 of each year, City Manager shall determine the amount of taxes to be levied upon the parcels in the City for the then-current fiscal year as set forth below.

Tax Rate Schedule

Parcel type	Parcel size (square feet)	Maximum amount of tax	Maximum Amount of tax
<i>Single-family residential parcel</i>	0-4,999	\$82	\$ 156.96
	5,000-9,999	\$92	\$ 175.63
	10,000-14,999	\$106	\$ 203.67
	15,000-19,999	\$121	\$ 231.71
	20,000+	\$138	\$ 263.45
<i>Multi-family residential parcel</i> (tax imposed on per-dwelling-unit basis)	N/A	\$57 (per dwelling unit)	\$108.37 (per dwelling unit)
<i>Non-residential parcel</i>	0-9,999	\$200	\$ 425.71
	10,000-24,999	\$400	\$ 851.41
	25,000-49,999	\$800	\$1702.83
	50,000-99,999	\$1600	\$3405.65
	100,000-249,999	\$3200	\$6811.31
	250,000+	\$6400	\$13622.61

The foregoing tax rate schedule shall apply for the 2003/2004 fiscal year commencing July 1, 2003 and ending June 30, 2004. For each fiscal year thereafter commencing with the 2004/2005 fiscal year, the foregoing tax rate schedule shall be adjusted as follows:

By an amount equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (All Items) (Base Year 1994 = 100) for San Francisco-Oakland, California, as published by the United States Department of Labor, Bureau of Labor Statistics, for the period from December 2002 to the December of the fiscal year immediately prior to the year in which the percentage adjustment will apply, multiplied by the specific tax rate in the foregoing tax rate schedule. For purposes of example only, if the tax rate for a single family residential parcel of 4000 square feet is \$82, and if the Consumer Price Index for December 2002 is 100 and for December 2004 is 106, the increase of 6 is a 6% increase, meaning an additional tax of \$4.92 for the 2005/2006 fiscal year or a total tax of \$86.92 for such fiscal year.

The foregoing tax rate schedule shall apply for the 2009/2010 fiscal year commencing July 1, 2009 and ending June 30, 2010. In order to keep the tax on each parcel in constant first year dollars for each fiscal year subsequent to 2009/2010, the tax per year shall be adjusted as set forth below to reflect any increase in the Consumer Price Index beyond the first fiscal year the tax is levied. The tax per year on each parcel for each fiscal year subsequent to the first fiscal year shall be an amount determined as follows:

$$\begin{array}{l}
 \text{Tax Per Parcel} \\
 \text{For then Current} \\
 \text{Fiscal Year}
 \end{array}
 =
 \begin{array}{l}
 \text{Tax Per Parcel} \\
 \text{For Preceding} \\
 \text{Fiscal Year}
 \end{array}
 \times
 \begin{array}{l}
 \text{Consumer Price Index} \\
 \text{for December 2009 to} \\
 \text{December of immediately} \\
 \text{Preceding Fiscal Year} \\
 \text{OR 1.02, whichever is less}
 \end{array}$$

Provided, however, that in no event shall the tax per parcel for any fiscal year be less than the amount established for the preceding fiscal year.

If an undeveloped parcel becomes developed, the applicable tax for that fiscal year shall be one-twelfth the tax applicable to the property, based on its parcel type once developed, multiplied by the number of months, or part thereof, that is developed.

The tax on mixed-use property shall be based on the proportion that each type of development represents as part of the whole development. The exact calculation shall be defined more specifically in administrative guidelines adopted pursuant to this ordinance.

A low income exemption is hereby established for the duration of this tax. The low income exemption shall apply to property owners with incomes at or below the Annual Very Low Income (50% of median income) limits for Federal Housing and Urban Development (HUD) Programs, provided that written proof of income is provided annually to the City on such a form as may be required by the Administrative Services Director.

The taxes levied on each parcel pursuant to this section shall be a charge upon the parcel and shall be due and collectible as set forth in Section 3.20.060, below. “

Section 4: Ten Year Sunset. If this ordinance becomes effective, it shall remain in effect for 10 years from its effective date, and the Tax Rate Schedule provided in Section 3 above shall apply in the 2009/2010 Fiscal Year. If this ordinance does not become effective, then Ordinance No. 622-04 shall continue in effect for the term provided in Section 7 thereof.

Section 5: Severability. If any provision, sentence, clause, section or part of this ordinance is found to be unconstitutional, illegal or invalid, such finding shall affect only such provision, sentence, clause, section or part, and shall not affect or impair any of the remaining parts of the ordinance.

Section 6: Authority for Ordinance. This ordinance is enacted pursuant to the authority of Government Code Section 50077 and Article XIID, Section 3(a) of the California Constitution.

Section 7: Challenge to Tax. Any action to challenge the tax imposed by this ordinance shall be brought pursuant to Government Code Section 50077.5 and Code of Civil Procedure Section 860 *et seq.*

Section 8: Effective Date. If this ordinance is approved by two-thirds of the voters voting on the issue at the November 4, 2008 election, pursuant to Elections Code Section 9217, the ordinance shall become effective ten (10) days after the Council certifies the results of the election.

Section 9: Publication. If this ordinance is approved by two-thirds of the voters voting on the issue at the November 4, 2008 election, a copy of this ordinance shall be published in a local newspaper of general circulation within the City, in accordance with the requirements of California Government Code Section 36933.

APPROVED by the following vote of the People of the City of Union City on November 4, 2008:

ADOPTED by Declaration of the vote by the City Council of the City of Union City on:

AYES:	Council Members:
NOES:	Council Members:
ABSENT:	Council Members:
ABSTAINING:	Council Members:

ATTEST:

City Clerk

DRAFT

RESOLUTION NO. ___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, FOR VOTER CONSIDERATION OF ESTABLISHMENT OF A UTILITY USER TAX ORDINANCE; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, REQUESTING CERTAIN SERVICES OF THE REGISTRAR OF VOTERS OF ALAMEDA COUNTY WITH RESPECT TO THE CONSOLIDATED GENERAL MUNICIPAL ELECTION; AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS.

WHEREAS, the City Council desires that an Ordinance establishing a utility user tax be submitted to the voters as a ballot measure for consideration at a Consolidated General Municipal Election on November 4, 2008, in accordance with the provisions of this resolution; and

WHEREAS, the City Council recognizes the need to authorize the expenditure of additional revenues for the purpose of reimbursing the County for including the Ordinance in the consolidated General Election for November 4, 2008; and

WHEREAS, on June 24, 2008, the City Council adopted Resolution No. 3655-08 by which, among other things, the City called and ordered a General Municipal Election to be held on Tuesday, November 4, 2008, for the purpose of electing one Mayor and one member of the City Council; and by which the City requested the Board of Supervisors of the County of Alameda (the "Board of Supervisors") to consolidate that General Municipal Election with the General Election on November 4, 2008, and by which the City requested the Board of Supervisors to issue instructions to the Registrar of Voters of the County of Alameda (the "Registrar of Voters") to provide specified services to the City including any and all steps necessary for the holding of the consolidated election; and by which the City Council authorized reimbursing the County based on the County's established consolidation rate; and

WHEREAS, California Elections Code Sections 9280 through 9287 establish procedures for filing arguments in favor of a ballot measure, and filing rebuttal

arguments, including a procedure by which members of the City Council may be authorized by the City Council to submit ballot arguments; and

WHEREAS, California Elections Code Section 9280 authorizes the filing of an impartial analysis regarding ballot measures proposed by cities; and

WHEREAS, the utility user tax would be a general tax with the revenues not pledged or dedicated for any specific purposes; and

WHEREAS, the utility user tax would require approval by a majority of the voters voting on the issue of the imposition of the tax; and

WHEREAS, the City Council desires that a non-binding advisory measure accompany this utility user tax measure, in order to hear from the voters, if the tax measure is approved, whether they would like the revenue from such tax to be used for specific purposes, such as police, fire, emergency preparedness, and youth violence prevention programs; and

WHEREAS, based on all of the information presented to the City Council, the City Council finds that under CEQA Guidelines 15060©(2) and 15378(b)(2) and (4), this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

1. Pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Union City, California, on Tuesday, November 4, 2008, a General Municipal Election, at which election there shall be submitted to qualified voters the ballot measure set forth in section 2, below.

2. The City Council does hereby submit for adoption by the qualified voters of the City of Union City at the General Municipal Election of November 4, 2008, the following questions:

"Measure ____ : To fund general city services, including police, fire, emergency preparedness, and youth violence prevention and intervention services, and to address a significant ongoing budget imbalance, shall there be imposed a ____% utility users tax on electricity, natural gas, water, and telephone?"

"Advisory Measure ____ : If the ____% utility users tax is approved, should the funds generated by the tax be expended solely for public safety services, including police services, fire

services, emergency preparedness services and youth violence prevention services? “

3. The full text of the proposed measure to be submitted to the voters is attached as Exhibit A (the "Measure"). If a majority of the qualified voters voting on the Measure shall vote in favor therefore, the Measure shall be deemed adopted and shall be effective upon its adoption.

4. The election shall be held and conducted and the votes thereof canvassed and the returns thereof made and the results thereof ascertained and determined as provided by law for the holding of municipal elections in the City.

5. The Board of Supervisors of Alameda County ("Board of Supervisors") is hereby requested to consent and agree to the consolidation of the General Municipal Election described in section 1 of this Resolution with the General Election on Tuesday, November 4, 2008, and to issue instructions to the Alameda County Registrar of Voters ("Registrar of Voters") to take any and all steps necessary for the holding of the Consolidated General Municipal Election. This request is made pursuant to California Elections Code section 10403.

6. The Board of Supervisors is hereby requested to permit the Registrar of Voters to provide such services as may be necessary to properly and lawfully hold and conduct a Consolidated General Municipal Election in the City on November 4, 2008, pursuant to this Resolution, including but not restricted to the providing and printing of ballots and polling place cards, election supplies, voting booths, flags, registration lists and any other materials and services required to lawfully conduct the election. The City recognizes that additional costs will be incurred by the County by reason of this Consolidated General Municipal Election, and the City agrees to reimburse the County based on the County's established rates. This request is made pursuant to California Elections Code section 10002.

7. Unless otherwise specified in this Resolution, the General Municipal Election shall be held and conducted as provided in Resolution No. 3655-08, and as provided by law for holding municipal elections.

8. The City Council hereby authorizes Mayor Green and Councilmember Valle to prepare ballot arguments (in favor of the ballot measure set forth in section 2, and in rebuttal to any ballot argument filed against the ballot measure set forth in section 2), and the City Council hereby authorizes Councilmember Fernandez, Councilmember Dutra-Vernaci, and Councilmember Navarro to sign these ballot arguments and use their titles. Ballot arguments in favor of the ballot measure shall be submitted to the City Clerk no later than August 11, 2008, at 1:00 p.m. Rebuttal ballot arguments shall be submitted to the City Clerk by no later than August 21, 2008, at 1:00 p.m. Direct arguments shall not exceed three hundred (300) words and shall be signed by not more than five persons. Rebuttal arguments shall not exceed two hundred fifty (250) words and shall be signed by not more than five persons. Those persons may be different persons than those who signed the direct arguments.

9. In order to facilitate the preparation of an impartial analysis of the ballot measure described in this Resolution (in accordance with California Elections Code section 9280), the City Clerk is hereby directed to submit to the City Attorney a certified copy of this Resolution and the Ordinance. The City Attorney is hereby authorized and directed to prepare an impartial analysis of the measure described in this Resolution and the Ordinance, showing the effect of the measure on the existing law and operation of the measure. The analysis shall not exceed 500 words in length and shall otherwise comply in all respects with the applicable provisions of the California Elections Code. The City Attorney shall submit the impartial analysis to the City Clerk by no later than August 11, 2008, at 1:00 p.m.

10. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open conspicuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

11. The City Clerk is hereby directed to file with the Board of Supervisors of Alameda County a certified copy of this Resolution and of the proposed Ordinance on or before Friday, August 8, 2008.

12. The City Council hereby finds the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the City Council's adoption of this Resolution.

13. This Resolution shall be effective immediately upon its adoption.

14. The City Manager is hereby authorized and directed to appropriate funds in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) from the Undesignated General Fund Reserve to the City Clerk's budget (Account 1000-14-53890-01400) to pay for the City's cost to consolidate its General Municipal Election with the General Election.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Union City, at a regular meeting held on the _____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MARK GREEN

Mayor

ATTEST:

APPROVED AS TO FORM:

RENEE ELLIOTT
City Clerk

MICHAEL S. RIBACK
City Attorney

1125665.1

ORDINANCE NO. _____

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF UNION CITY ADDING
CHAPTER 3.24 TO THE CITY OF UNION CITY MUNICIPAL CODE,
CONCERNING ESTABLISHMENT OF A UTILITY USER TAX**

The People of the City of Union City do hereby ordain as follows:

Section 1. Chapter 3.24 is hereby added to the City of Union City Municipal Code, to read as follows:

“CHAPTER 3.24 UTILITY TAX

3.24.010 Purpose.

In order to meet the financial concerns of the city and to pay for its usual and current expenses in each fiscal year hereafter, a utility tax, as follows, is imposed.

3.24.020 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

- (a) “City” means the City of Union City.
 - (b) “Month” means a calendar month.
 - (c) “Person” means any domestic or foreign corporation, firm, association, syndicate joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society or individuals.
 - (d) “Service supplier” means a utility company which receives taxes paid and remits same as imposed by this chapter.
 - (e) “Service user” means a person required to pay a tax imposed by this chapter.
 - (f) “State” means the state of California.
 - (g) “Tax administrator” means the Administrative Service Director of the city.
 - (h) “Telephone corporation,” “electrical corporation,” “gas corporation” and “water corporation” shall have the same meanings as defined in Sections 234, 218, 222 and 241, respectively, of the Public Utilities Code of the state except, “electrical corporation,” “gas corporation” and “water corporation” shall also be construed to include any municipality or franchised agency engaged in selling or supplying of electrical power, gas or water to a service user.
-

3.24.030 Exemptions and procedures for exemptions.

(a) Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state, such as public schools and exempted churches and religious organizations.

(b) There is exempted from the tax imposed by this chapter, all service users who have an income, adjusted for family size, at or below eighty percent of the area median income as determined under the Section 8, Income Limits for Alameda County, as published by the U.S. Department of Housing and Urban Development and applicable to the Community Development Block Grant Programs.

(c) There is exempted from the tax imposed by this chapter, all service users who are veterans who have a one hundred percent disability as verified by the Veterans Administration.

(d) The city council reserves the power to, by order or resolution, establish other classes of persons or classes of utility service otherwise subject to payment of a tax imposed by this chapter and provide that such classes or persons or service shall be exempt, in whole or in part, from such tax.

(e) The tax administrator shall prepare a list of the persons exempt from the provisions of this chapter by virtue of this section and furnish a copy thereof to each service supplier.

(f) The tax administrator shall adopt rules and regulations not inconsistent with the provisions of this chapter to carry out any grant of exemption authorized by the city council pursuant to this section. The tax administrator shall require such information as necessary, including, but not limited to, personal identification and verified federal and state income tax returns, to qualify a service user for such exemption.

(g) This exemption shall not apply retroactively. Service users shall only be entitled to an exemption after filing the required information and the receipt of notification of exemption from the tax administrator.

3.24.040 Telephone users tax.

(a) There is imposed a tax on the amounts paid for any intrastate telephone services by every person in the city using such services. The tax imposed by this section shall be at the rate of _____ percent of the charges made for such services and shall be paid by the person paying for such services.

(b) As used in this section, the term “charges” does not include charges for services paid for by inserting coins in coin-operated telephones, except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor does the term “charges” include charges for any type of service or equipment furnished by a service supplied subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public

utility regulations. The term “telephone communication services” refers to that service which provides access to a telephone system and the privilege of telephone-quality communication with substantially all persons having telephone stations which are part of such telephone system. The telephone users tax is intended to, and does, apply to the charges billed to a telephone account having situs in the city, irrespective of whether a particular communication service originates and/or terminates within the city.

(c) The tax imposed by this section shall be collected from the service user by the person providing the intrastate telephone communications services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

3.24.050 Cellular telephone users tax.

(a) There is imposed a tax on the amounts paid for any cellular telephone communication services by every person who has the billing address for such services in the city. The tax imposed by this section shall be at the rate of _____ percent of the total charges made for such services, including, but not limited to, access and basic monthly charges, and shall be paid by the person paying for such services.

(b) As used in this section, the term “charges” does not include charges for services paid for by inserting coins in coin-operated cellular telephones except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor does the term “charges” include charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulations. The term “cellular telephone communication services” refers to that service which, by means of portable or fixed cellular radio telephones, provides access to a telephone system and the privilege of telephone-quality communication with substantially all persons having telephone stations which are part of such telephone systems. The term “cellular telephone communication services” also includes aeronautical mobile service, land mobile service, maritime mobile service, and mobile-satellite services, as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as it existed on October 1, 1992. The cellular telephone users tax is intended to, and does, apply to all charges billed to a cellular telephone account having a billing address in the city, irrespective of whether a particular communication service originates and/or terminates within the city.

(c) The tax imposed by this section shall be collected from the service user by the person providing the cellular telephone communications services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

(d) To prevent actual multiple taxation of any service that is subject to tax under subsection (a) of this section and which consists of a call that originates or terminates outside the city of Union City, any service user, upon proof that such service user has paid a tax in another taxing jurisdiction on such call, shall be allowed a credit against the tax imposed in subsection (a) of this section to the extent of the amount of

such tax properly due and paid in such other taxing jurisdiction. However, no credit may be allowed for any tax paid to another taxing jurisdiction on any call to the extent that such call may not, under the Constitution and statutes of the United States, be made the subject of taxation by such other taxing jurisdiction.

3.24.060 Electricity users tax.

(a) There is imposed a tax upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of _____ percent of charges made for such energy and shall be paid by the person paying for such energy. "Charges," as used in this section, includes charges made for:

- (1) Metered energy; and
- (2) Minimum charges for service, including customer charges, service charges, demand charges, standby charges and annual and monthly charges, fuel costs adjustments, etc.

(b) As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him or her for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the city for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

(c) The tax imposed in this section shall be collected from the service user by the person supplying such energy. The amount of tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month. Remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

3.24.070 Gas users tax.

(a) There is imposed a tax upon every person in the city, other than a gas corporation or electrical corporation, using in the city gas which is delivered through mains and pipes. The tax imposed by this section shall be at the rate of _____ percent of the charges made for such gas and shall be paid by the person paying for such gas. "Charges" as used in this section shall include:

- (1) Gas which is delivered through mains and pipes; and
- (2) Minimum charges for such services, including customer charges, service charges and annual and monthly charges.

(b) There shall be excluded from the base on which the tax imposed in this section is computed the following:

- (1) Charges made for gas which is to be resold and delivered through mains and pipes;

(2) Charges made for and sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;

(3) Charges made by a gas utility for gas used and consumed in the conduct of the business of gas public utilities;

(4) Charges made for gas used in the propulsion of motor vehicles, as that phrase is defined in the Vehicle Code of the state, utilizing natural gas; and

(5) Charges related to late payments and returned checks.

(c) The tax imposed by this section shall be collected from the service user by the person supplying the gas. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

3.24.080 Water users tax.

(a) There is imposed a tax upon every person in the city using water which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of _____ percent of charges made for such water and shall be paid by the person paying for such water. "Charges" as used in this section shall include:

(1) Water which is delivered through mains or pipes; and

(2) Minimum charges for service, including customer charges, service charges, demand charges, standby charges and all other annual and monthly charges.

(b) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through mains or pipes; and charges made by a municipal water department, public utility or a county or municipal water district for water used and consumed by such department, utility or district.

(c) The tax imposed in this section shall be collected from the service user by the person supplying the water. The amount collected in one month shall be remitted to the tax administrator on or before the last day of following month.

3.24.090 Cable television users tax.

(a) There is imposed a tax upon every person in the city using cable television service in the city. The tax imposed by this section shall be at the rate of _____ percent of the total charges made for such service, and shall be paid by the person paying for such service.

(b) As used in this section, the term "charges" includes, but is not limited to, charges for installation and programming, whether the programming is a cable transmission of broadcast channels, transmission of cable-only programming, or "pay-per-view" programming.

(c) The tax imposed by this section shall be collected from the service user by the person providing the cable television service, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month.

3.24.100 Interest and penalty.

(a) Taxes collected from the service user which are not remitted to the tax administrator on or before the dates provided in this chapter are delinquent.

(b) Interest and penalty shall accrue on delinquent accounts at the then maximum legal rate; nonpayment when due shall constitute a misdemeanor enforceable under the provisions of the city municipal code.

3.24.110 Actions to collect.

Any such tax received from a service user which has willfully been withheld from the tax administrator shall be deemed a debt to the city by the person required to collect and remit. Any person holding such money contrary to the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount, including but not limited to, the award by a competent court of attorneys' fees and court costs.

3.24.120 Duty to collect—Procedures.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows: The tax shall be collected insofar as practicable at the time and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user may be applied to the energy charge first until such charge has been fully satisfied. Any remaining balance shall be applied to the taxes due, except in those cases where a service user pays the full amount of the charges but notifies the service supplier of his or her refusal to pay the tax imposed on the charges.

3.24.130 Additional powers and duties of tax administrator.

(a) The tax administrator shall have the power and duty, and is directed to enforce each and all of the provisions of this chapter.

(b) The tax administrator shall have the power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes imposed by this chapter. A copy of such rules and regulations shall be on file in the office of the tax administrator and available to the public during regular business hours.

(c) The tax administrator may make administrative agreements to vary the strict requirements of this chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of a particular service supplier so long as the agreements result in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the tax administrator's office.

(d) The tax administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The tax administrator

shall provide the service supplier with the name of any person who the tax administrator determines is exempt from the tax imposed by this chapter, together with the address and account number in which service is supplied to any such exempt person. The tax administrator shall notify the service supplier of the termination of any person's right to exemption under this chapter, or the change of any address to which service is supplied to any exempt person.

3.24.140 Assessment—Administrative remedy.

(a) The tax administrator may make any assessment for taxes remitted by a person required to remit.

(b) Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by him or her from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax to such person, or whenever the tax administrator deems it in the best interest of the city, the tax administrator may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

(c) The service supplier shall provide the city with the amounts refused along with the names, addresses and reasons of the service user's refusing to pay the tax imposed under the provisions of this chapter. Whenever the service user has failed to pay the amount of the tax for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due.

(d) The tax administrator shall notify the service user that he or she has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have changed address, to the last known address. If a service user fails to remit the tax to the tax administrator within fifteen days from the date of service of the notice, which shall be the date of the mailing if service is not accomplished in person, a penalty of twenty-five percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars. The penalty shall become part of the tax required to be paid.

3.24.150 Records.

(a) Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded as provided in this section.

(b) Notwithstanding the provisions of subsection (a) of this section, a service supplier may claim a refund or take as credit against taxes collected and remitted, the amount overpaid, paid more than once, or erroneously or illegally collected or received, when it is established that the service user from whom the tax has been collected did not owe the tax; 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 service user or credited

to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter and actually due from a service user, may refund such amount to the service user and claim a credit for such overpayment against the amount of tax which is due upon any other monthly returns; provided, such credit is claimed in a return dated no later than three years from the date of overpayment.

(c) No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

(d) Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refund charges shall also be refunded to the service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the city.

3.24.160 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or part thereof. The city council declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one of more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

3.24.170 Report and review.

After the effective date of this chapter and prior to the adoption by the city council of the budget of the city for each next succeeding fiscal year, the tax administrator shall annually provide a report to the city council of the revenues generated by the taxes imposed under this chapter.

3.24.180 Tax rate.

In no event shall the amount of the tax rate to be levied under this chapter exceed _____ percent without the approval of a majority vote of the electors of the city voting upon such change at a municipal election called for such purpose in accordance with applicable law.

Section 2. Effective Date: If this ordinance is approved by a majority vote of the voters voting on the issue at the November 4, 2008 election, pursuant to Elections Code Section 9217, the ordinance shall become effective ten (10) days after the Council certifies the results of the election.

Section 3. Publication: If this ordinance is approved by a majority of the voters voting on the issue at the November 4, 2008 election, a copy of this ordinance shall be published in a local newspaper of general circulation within the City, in accordance with the requirements of California Government Code Section 36933.

APPROVED by the following vote of the People of the City of Union City on November 4, 2008:

ADOPTED by Declaration of the vote by the City Council of the City of Union City on:

AYES:	Council Members:
NOES:	Council Members:
ABSENT:	Council Members:
ABSTAINING:	Council Members:

ATTEST:

City Clerk

REQUEST FOR BUDGET TRANSFER OR SUPPLEMENTAL APPROPRIATION

Nature of adjustment:

Inter-account Transfer

Additional Appropriation

Approved by Council Action/Resolution # _____

INCREASE BUDGET OF THIS ACCOUNT		DECREASE BUDGET OF THIS ACCOUNT	
Account Number	Amount	Account Number	Amount
1000-14-53890-01400	\$ 100,000.00		

Reason for request:

Additional appropriation to cover mandatory rate increase for consolidation services provided by the Alameda County Registrar of Voters for the General Municipal Election to be held November 4, 2008.

Department Head Signature: _____ Date: _____

Availability of funds approved by Administrative Services Director: _____

City Manager approval: _____