

VOTER INFORMATION PAMPHLET

MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

Arguments in support of, or in opposition to, the proposed laws are the opinions of the authors.



In order to limit further reductions in the City's General Fund, shall the Santa Cruz Municipal Code be amended to add a Chapter imposing a Franchise Tax of 3% on the water utility rate, 3% on the sewer utility rate, and 12% on the refuse utility rate, to replace the comparable Franchise Fee that was recently discontinued?

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF SANTA CRUZ ADDING CHAPTER 3.26 TO THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO THE FRANCHISE TAX

BE IT ORDAINED By The City Of Santa Cruz As Follows:

Chapter 3.26 Franchise Tax

- 3.26.010 Short Title
- 3.26.020 Definitions
- 3.26.030 Franchise Tax Imposition
- 3.26.040 Franchise Tax Rate/Payments
- 3.26.050 Rules and Regulations
- 3.26.060 Penalties
- 3.26.070 Actions to Collect
- 3.26.080 Appeal
- 3.26.090 Refunds

Section 1. Chapter 3.26 is hereby added to the Santa Cruz Municipal Code to read as follows:

3.26.010 Short Title. This Chapter shall be known as the "Franchise Tax Ordinance of the City of Santa Cruz."

3.26.020 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter:

- (1) "Person" shall mean any domestic or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, common-law trust, society, other entity or individual.
- (2) "City" shall mean the City of Santa Cruz.
- (3) "Service user" shall mean a person required to pay the tax imposed by this Chapter.
- (4) "Month" shall mean a calendar month.

3.26.030 Franchise Tax Imposition. There is hereby imposed a franchise tax upon every person in the City who, through the use of City roads, City streets, City pipeline easements or any other easement or right-of-way managed, constructed and/or maintained by the City, receives water service, sewer service, refuse collection/recycling or refuse disposal service in the City.

The tax imposed by this Chapter is a general tax intended by the City Council to generate revenue for general City governmental purposes.

3.26.040 Franchise Tax Rate/Payments.

The franchise tax shall be paid by service users on a monthly basis and shall be computed as follows: 3% of charges made by the City for water delivered to the service user (including minimum service charge) + 3% of charges made by the City for sewer service received by the service user + 12% of charges made by the City for refuse collection/recycling service received by the service user = service user's total monthly franchise tax. The service user shall remit the tax directly to the City as part of the service user's monthly remittance submitted in response to the City's monthly unified utility billing for water, sewer and refuse collection/ recycling service.

3.26.050 Rules and Regulations.

(a) The Director of Finance shall have 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 tax herein imposed. A copy of such rules and regulations shall be on file and available for public examination in the Director of Finance's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this Chapter.

3.26.060 Penalties.

- (a) Taxes which are not remitted by the service user to the City on or before the due date for payment as specified in the City's monthly unified utility billing are delinquent.
- (b) A service user who fails to remit any tax imposed by this Chapter within the time required shall pay a penalty of ten percent of the amount of the tax, per month or fraction thereof, from the first day of delinquency until the date of payment. The total amount of the penalties provided for in this subsection shall not exceed fifty percent of the total amount of the tax due.
- (c) If the Director of Finance determines that a service user's nonpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated above.
- (d) Every penalty imposed under the provisions of this section shall become a part of the tax required to be remitted.
- (e) In addition to the penalties imposed, a service user who fails to remit any tax imposed by this Chapter shall pay interest at the rate of one and one-half percent per month or fraction thereof on the amount of tax, exclusive of penalties, from the first day of the month following the month for which the amount or any portion thereof should have been remitted until the date of payment.

VOTER INFORMATION PAMPHLET

MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

Arguments in support of, or in opposition to, the proposed laws are the opinions of the authors.

3.26.070 Actions to Collect. Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the City. Any person owing money to the City under the provisions of this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount and shall also be subject to any applicable judicial, administrative or criminal enforcement action authorized by Title 4 of this Code.

3.26.080 Appeal. A service user aggrieved by any decision of the Director of Finance with respect to the payment or nonpayment of the tax imposed by this Chapter or with respect to the Director of Finance's computation of due and payable tax, interest and/or penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Clerk pursuant to Section 1.16.030 within fifteen days of the serving or mailing of the determination of the tax, interest and/or penalties due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to the service user's last known place of address. The findings of the City Council shall be final and conclusive and shall be served upon the appellant either personally or by mail. Any amount found to be due shall be immediately due and payable upon the service of the notice.

3.26.090 Refunds. Whenever the amount of any tax, interest or penalty has been overpaid by a service user or paid more than once by a service user, or has been erroneously or illegally collected or received by the City, it may be refunded to the service user by the City provided a claim in writing therefor, stating under penalty of perjury the specified grounds upon which the claim is founded, is filed with the Director of Finance within three years of the date of payment.

FISCAL IMPACT STATEMENT BY FINANCE DIRECTOR MEASURE X

The proposed franchise tax, if approved by voters, would produce approximately \$2.5 million dollars for the current fiscal year to support general operations such as police, fire, parks & recreation, and public works. A budget deficit for the current fiscal year is projected to be approximately \$4 million in the City's general operations fund, and the approval of the franchise tax will reduce the projected deficit to \$1.5 million. Therefore, as these numbers indicate, if the franchise tax is approved it would reduce but not eliminate the City's projected deficit.

s/ David P. Culver
Finance Director
City of Santa Cruz

IMPARTIAL ANALYSIS BY CITY ATTORNEY MEASURE X

The City of Santa Cruz operates its own water, sewer and refuse collection utilities. Each utility is separately operated by the City through the use of fees which are collected from the City's utility service users when they pay their monthly utility bill for water, sewer and refuse collection. Historically Santa Cruz has dealt with its water, sewer and refuse collection enterprises in a fashion analogous to the manner in which other cities with private utility providers deal with those private utilities. Therefore, just as private utilities have historically paid franchise fees to the cities in which they operate, the Santa Cruz water, sewer and refuse collection enterprises have historically paid in lieu franchise fees to the City. The City, in turn, has deposited those fees into its General Fund in recognition of the fact that General Fund money is typically used to maintain the street system relied upon by the utility enterprises for the delivery of utility services to Santa Cruz residents and businesses.

On March 23, 2005, a California appellate court issued a decision holding that a city-owned utility cannot collect in lieu franchise fees without voter approval because this practice violates Article XIID of the California Constitution (Proposition 218). The court found that a city utility's collection of in lieu franchise fees from its customers which, in turn, are transferred to the city's general fund, constitutes a general tax levy for purposes of Proposition 218. Because Proposition 218 requires voter approval for taxes, a city utility cannot continue to collect in lieu franchise fees from its customers unless city electors by a majority vote approve collection of the in lieu franchise fee in the form of a general tax.

This ballot measure, if adopted by the voters, would therefore enact a franchise tax to replace the formerly collected in lieu franchise fee. The franchise tax would be paid by all City utility service users who reside or are located in the City. The franchise tax would be paid each month as part of the service user's monthly utility billing. The franchise tax would be computed as follows: 3% of charges made by the City for water delivered to the service user (including monthly service charge) + 3% of charges made by the City for sewer service received by the service user + 12% of charges made by the City for refuse collection/recycling service received by the service user = the service user's total monthly franchise tax. The franchise tax would be separate from, and in addition to, the 7% utility users tax which is already paid by City utility service customers.

Because the revenue generated by the proposed franchise tax would be deposited in the City's General Fund and used by the City to provide municipal services paid for by the General Fund including police, fire, park, recreation and street maintenance services, the tax is considered a "general tax" and requires a simple majority vote for approval.

s/ John G. Barisone
City Attorney

VOTER INFORMATION PAMPHLET

MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

Arguments in support of, or in opposition to, the proposed laws are the opinions of the authors.

ARGUMENT IN FAVOR OF MEASURE X

Santa Cruz residents value their City services, including protection by firefighters and police, parks and recreational facilities, safe streets, and programs that enhance the quality of life for all. We all know that these services have been stretched thin in recent years by a series of unavoidable budget cuts.

Now City services face a new threat. A state court has said that only by passing Measure X can we preserve vital City services, and prevent additional deep cuts.

Measure X is a renewal of existing funding that Santa Cruz residents have been paying as part of their utility bills since the 1960's to support vital public safety and City services.

Passing Measure X will not cause your utility bills to increase.

But if Measure X fails, the City will be forced to cut \$2.5 million each year from its annual budget. Potential budget cuts include:

- **Reducing one fire engine company**, making fewer paramedics available for emergency calls, and reducing firefighting and life saving capabilities for major fires, earthquakes or other natural disasters;
- **Reducing or eliminating crime prevention programs;**
- **Cutting back on repairs to damaged sidewalks and maintenance of our streets;**
- **Drastically cutting hours, programs and maintenance at popular city facilities and parks;**
- **Severely reducing the City's support for services to seniors, children, the disabled and working families.**

Measure X is needed because state courts recently said that franchise fees for water, sewer, and garbage collection are really taxes, and therefore must be approved by the voters.

Passing Measure X allows the City of Santa Cruz to continue collecting this revenue to provide the funds for public safety, street maintenance, parks, and community programs.

Please PROTECT THE SERVICES WE COUNT ON.

VOTE YES on MEASURE X.

s/ Ron A. Prince, Fire Chief, City of Santa Cruz
s/ Fred Keeley, Treasurer, County of Santa Cruz
s/ Emily Reilly, Councilmember & bakery owner
s/ Charles L. Canfield, President Santa Cruz Seaside Co.
s/ Karen A. Cogswell, Owner-Network Mortgage Co.

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE X

Santa Cruz is a very creative city. A permanent and ever-increasing tax on utilities is not a very creative solution for generating revenue. Here's what's wrong with the proponents' arguments:

Scare Tactics. Public safety services (police, fire protection, etc.), listed among the "potential budget cuts", are protected by the California Constitution. It says: "The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services". [Art. 13, Sec.35 (a) (2)]

Outrageous Taxation. If Measure X passes, the total tax will be 10% for water, 10% for sewer, and a *whopping* 19% for garbage collection!

Unfair Taxation. UCSC, Live Oak, Pasatiempo Golf Course, and many other utility users will be exempt from the Measure X tax despite having paid the old franchise fee for years. Also, taxing "working families" on the basic necessities of life is unfair. Furthermore, the tax bite increases as water rates are rising as 124% through 2009.

Fiscal Irresponsibility. The real threats to City services are bad decisions, runaway spending, an anti-business climate, and a tendency to promote pet projects while ignoring basic infrastructure.

A NO vote will force politicians to make the changes necessary for an economically sustainable City government.

For more information, visit www.NOonX.info

Please join us in voting NO on Measure X.

s/ Thomas J. Mullen
s/ Sylvia S. Mullen
s/ Regis Paul Marcelin-Sampson

VOTER INFORMATION PAMPHLET

MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

Arguments in support of, or in opposition to, the proposed laws are the opinions of the authors.

ARGUMENT AGAINST MEASURE X

Utility taxes like Measure X affect everyone. Liberal or conservative, you'll find good reasons to vote NO.

Hidden tax increase. The City happens to be raising water rates by 124% through 2009, so the "take" from Measure X will also increase.

Tax on the poor. By taxing essentials like water, Measure X targets those who can least afford it. City Council chose the status quo — padding utility bills — instead of promoting a sales tax, which would have exempted essentials.

Tourists, visitors won't pay. Tourists and visitors benefit from City services, but they won't pay the Measure X utility tax. Again, a sales tax would have made sense.

The less you use, the more you pay. Those who use the least water pay the highest amount per gallon, so they will also pay the most tax per gallon. If you use 25 gallons a day, Measure X will cost you almost 3 times more per gallon than someone who uses 225 gallons a day. The graph in the April, 2005 Municipal Utilities newsletter is misleading; they left out the minimum monthly charge!

Runaway personnel costs. Would you like to retire at 50? Would you like a raise? Would you like more workers comp for you and your colleagues? City Council has been spending like mad! (Actually, Council robbed Peter to pay Paul, eliminating 71 jobs while giving enhancements to the remaining employees. Putting more money in the hands of fewer workers is hardly a progressive policy.) Budget documents show that the average cost of a City employee has risen almost \$10,000 since 2002. That's about 3½ times the local inflation rate (which already includes housing and health insurance). Measure X just gives Council more money to burn.

For more information, go to www.NOonX.info

s/ Regis Paul Marcelin-Sampson

REBUTTAL TO ARGUMENT AGAINST MEASURE X

Our opponents are misleading you. Let's get the facts straight. A vote for Measure X is a vote for the status quo. **Measure X will not cause your rates to go up – but important public services will be protected from drastic budget cuts.**

Santa Cruz prospers because we've all been willing to support safer homes and neighborhoods and better streets, sidewalks and parks through utility fees. Our opponents – who share our firefighters, police, roads, parks and everything else – simply don't want to pay their fair share any longer.

Measure X will not impact the cost of getting clean water to our homes and businesses. It will renew our commitment to the vital services that make Santa Cruz a great place to live. **Measure X is about everybody continuing to pay our fair share** to keep Santa Cruz working for everyone.

Opponents want you to believe that we must choose between what's good for us individually and what's good for our community. We believe that everyone benefits from a healthy community. Measure X is simply a renewal of our existing support for important community services – it is not a new payment.

Nobody disputes that firefighters, paramedics, police, streets, parks and community services all face serious budget cuts if Measure X fails. That's why the Santa Cruz Sentinel has joined hundreds of citizens in supporting Measure X. We urge you to support Measure X as well.

For more information or to learn how you can help:
www.yesonmeasurex.com.

s/ Howard Skerry, Police Chief, City of Santa Cruz
s/ Yolanda Henry, Executive Director, Familia Center
s/ Assemblymember John Laird
s/ George Ow, Jr., Developer & Philanthropist
s/ Lorette M. Wood, Former Mayor Santa Cruz