

# VOTER INFORMATION PAMPHLET

Containing

**MEASURE A**

**CITY OF EL CERRITO**

**TUESDAY, FEBRUARY 5, 2008**

Arguments in favor of or against the proposed measure are the opinions of the authors.



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## **SALES TAX MEASURE A CITY OF EL CERRITO**

**The El Cerrito Pothole Repair, Local Street Improvement and Maintenance Measure.** To improve neighborhood streets; enhance road safety citywide by fixing potholes; maintaining, repairing and repaving streets; sealing cracks; improving handicap ramps, crosswalks, bicycle lanes; and maintaining road markings and signage, shall the City of El Cerrito incur debt to immediately begin and accelerate street improvements, paid by establishing a dedicated one-half cent sales tax used exclusively for street improvements, with citizens' oversight and independent audits of expenditures?

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### **CITY ATTORNEY'S IMPARTIAL ANALYSIS OF SALES TAX MEASURE A**

Measure A, the El Cerrito Pothole Repair, Local Street Improvement and Maintenance Measure, would raise revenue to pay for street maintenance and improvements in the City of El Cerrito by authorizing a one-half percent transactions and use tax (commonly referred to as a "sales tax") within the City. The one-half percent tax would be paid in addition to current sales taxes. The new revenue measure has been approved by unanimous vote of the City Council; if approved by two-thirds of the voters, the tax would go into effect July 1, 2008.

Current State law permits cities to adopt additional sales and use taxes for special purposes. Measure A requires that the revenue raised be used only for the special purposes of "Street Maintenance and Improvements" as set forth in the Expenditure Plan that is a part of Measure A. Generally, "Street Maintenance and Improvements," for which Measure A funds could be spent by the City, include (a) repairs and other preparatory work necessary to prepare a street for resurfacing, including crack sealing, structural pavement repairs, leveling and rideability corrections, installation of curb ramps, and curb, gutter, and sidewalk repairs; (b) finish resurfacing, including installation of the final pavement surface and markings, pavement leveling, edge conform grinding, asphalt overlay, micropaving, slurry seal, and cape seal, and replacement and enhancement of pavement markings, striping, and signage; and (c) ongoing maintenance of the system in a manner to protect the City's street infrastructure; as well as related administrative costs. The City will annually prioritize the projects that the sales tax revenues will fund, to respond to the most significant maintenance and improvement needs.

In order to accelerate the schedule of street improvements, Measure A would also authorize the City to incur indebtedness in the form of bonds, notes, contractual obligations or other evidences of indebtedness to finance or refinance these costs. This indebtedness would be paid solely from the proceeds of the sales tax.

Measure A requires the City Council to appoint an independent Citizens Oversight Committee of five El Cerrito residents to monitor the expenditure of Measure A revenues and report to the People and the City Council. Members of the Oversight Committee cannot have conflicts of interest or benefit financially from Measure A revenues. The Measure also requires the City's independent auditors to complete and submit for public review an annual audit report. The audit report must review whether the sales tax revenues collected by the City are collected, managed and expended in accordance with the requirements of applicable law.

A "yes" vote on Measure A enacts the sales tax ordinance. It is estimated by the City's Finance Department that this measure will raise an additional \$16.9 million in revenue for the City over a five-year period. A "no" vote will result in the tax not being adopted.

Alexander Abbe  
City Attorney

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**ARGUMENT IN FAVOR OF  
SALES TAX MEASURE A**

Repair and Maintain our El Cerrito Neighborhood Streets – **Vote YES on A!**

City and neighborhood streets are pitted with potholes and cracks. Maintaining the City's 68 miles of roads is important to El Cerrito's future. Repairing potholes and maintaining neighborhood streets are essential to our quality of life.

**The El Cerrito Pothole Repair and Local Street Improvement and Maintenance Measure** will allow the City to immediately begin and accelerate repair of residential streets.

**YES on A** to fix the streets now! This measure will repair and maintain neighborhood streets and keep repaired streets from deteriorating again.

**YES on A** for accountability!

The money raised by the measure will be placed in a restricted fund and can only be used for street related repair and maintenance.

An independent citizen's oversight committee will provide financial oversight of funds authorized by the Measure to ensure proper spending of taxpayer money.

**YES on A** to fix residential streets!

95% of the money will be spent to repair and maintain neighborhood streets.

The streets that are in the worst shape will be repaired first. Under the proposed expenditure plan, over half of the basic repairs will be done in the first year and an estimated 75 percent of the streets will be completed within four years.

**YES on A** to repair the streets now so that they do not deteriorate further.

**YES on A** to fully fund El Cerrito's long-range street maintenance program.

Measure A costs just 5 cents on every \$10 of sales. Prescription medications and grocery food are exempt. Visitors to El Cerrito also pay – not just residents.

**Vote YES on A – fix El Cerrito streets.**

Letitia D. Moore, Mayor of El Cerrito  
William C. Jones, Mayor Pro Tem  
Janet Abelson, City Councilmember  
El Cerrito Chamber of Commerce  
by Blaine J. Davis, President  
Ron Egberman, Owner, Marvin Gardens Real Estate

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**REBUTTAL TO ARGUMENT IN FAVOR OF  
SALES TAX MEASURE A**

Street repair is necessary but Measure A is not. Measure A creates a gimmick that really enables the City to incur unstated levels of debt. Over half the basic street repairs can be done by simply reallocating \$2.6 million from existing funds. Once streets are repaired, however, Measure A's half-cent sales tax will continue.

The question is reasonably asked, "Where will the Measure A money REALLY GO?" Streets? Or bond fees, interest and even more bureaucracy, administrative salaries and lucrative benefits? Recent history suggests an answer.

While our streets steadily deteriorated, over the last four years the City's administrative costs grew as much as 173% and non-safety staffing grew as much as 180%! This tendency to increase bureaucracy at the expense of infrastructure and essential safety services is especially evident where the City's own budget plans an 80% decrease for streets by 2011.

In November, voters should be offered a pay-as-you-go sales tax alternative with guarantees to keep streets repaired without incurring debt. A half-cent sales tax increase for the general fund could provide \$1.2 million annual revenue that pays for street repairs not bonds and provides the \$1 million needed for annual maintenance.

Such information is not provided in the sound bite "Argument For" which tries to politically sell something that the City's own numbers dispute. Reject Measure A until reasonably asked fund allocation questions are backed up with clear commitments, iron clad guarantees, and sunset clauses. Vote NO!

Larry Damon, Former Mayor  
Kenneth A. (Ken) Berndt, Former Mayor

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### **ARGUMENT AGAINST SALES TAX MEASURE A**

This "Pothole Measure" does NOT guarantee El Cerrito good quality streets. Instead, this Measure is nothing more than an immediate guarantee of record City debt and expanded City administrative payrolls. Keeping El Cerrito streets in good condition requires a Commitment that the City has been lacking. The "Pothole Measure" trades a half-cent sales tax for more debt cosigned by the El Cerrito taxpayer.

A "Yes" vote will merely increase City debt by \$12 million. It's a "quick fix" that conveniently suggests improved streets for the next 10 years but Does Not Guarantee quality streets for El Cerrito residents. In the first two years the "Pothole Measure" could spend over \$2 million of taxpayer money on financial administrative costs, interest and fee obligations resulting from the escalating indebtedness.

Instead of increased City debt, the City should effectively employ

Redevelopment funding and a pay-as-you-go plan. The Agency was established in 1970 to cure blight. The biggest blight in El Cerrito is the condition of its streets. The Agency does not budget money for capital improvements of its streets and curbs (including disabled access), which precludes the City from complying with Federal requirements.

The City has allowed our streets to fail by diverting maintenance funding to excessive administrative salaries. Before voting for any tax measure, we deserve a guarantee from our City that our streets will be maintained in good condition, bring curbs up to Federal standards, and demand that the Redevelopment Agency pay its fair share.

Vote “NO” and, instead, demand that your taxes be spent on investing in the future of El Cerrito. Demand a pay-as-you-go street improvement plan that will guarantee quality streets, reduce blight, and avoid diversion of funds to escalating bureaucracy and excessive administrative staffing, salaries and benefits.

Ken Berndt, Former Mayor  
Larry Damon, Former Mayor

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### **REBUTTAL TO ARGUMENT AGAINST SALES TAX MEASURE A**

The opponent’s argument is wrong. Don’t be misled.

**FACT:** Every dime generated can only be spent on El Cerrito street repair and maintenance programs. ALL funds will be deposited into a **separate, restricted Pothole Repair and Street Improvement and Maintenance Services Fund.**

**FACT:** Without Measure A, El Cerrito doesn’t have adequate dedicated funding to make significant repairs to neighborhood streets in poor condition, or maintain roads in good condition. In the next five years El Cerrito’s average street rating will drop from fair to poor if neighborhood roads are not maintained. **It is important to fix the streets now so that they don’t deteriorate further.**

**FACT:** El Cerrito is running as efficiently as possible, and making do with limited local resources. The City has spent available money to fix the streets, but it’s not enough. Redevelopment Agency funds cannot be used to repair streets in residential neighborhoods. Doing a little each year will only make our streets more expensive to fix.

**FACT:** Measure A allows El Cerrito to **immediately begin and accelerate repair of neighborhood streets.**

**FACT:** Measure A costs just 5 cents on a \$10 purchase—a small price to pay to **fix the streets now.** Measure A does NOT apply to purchases of grocery food or prescription medicine.

**FACT:** Measure A requires **strict fiscal accountability,** such as annual financial audits and an Independent Citizens’ Oversight to ensure funds are spent as promised.

Measure A isn’t about misleading voters, it’s about fixing El Cerrito streets.

**Vote Yes on Measure A.**

Letitia D. Moore, Mayor of El Cerrito  
Sandi Potter, El Cerrito City Councilmember  
Janice L. Bridges, City Councilmember  
Brad Joel Cafel, Chair, El Cerrito Financial Advisory Board  
Howard Abelson, Former Mayor

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**FULL TEXT OF  
SALES TAX MEASURE A**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE VOTERS OF THE CITY OF EL CERRITO AMENDING THE EL CERRITO MUNICIPAL CODE, IMPOSING A 1/2 CENT TRANSACTIONS AND USE TAX FOR THE REPAIR AND MAINTENANCE OF CITY STREETS TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION AND AUTHORIZING THE INCURRENCE BY THE CITY OF INDEBTEDNESS PAYABLE SOLELY FROM SUCH TAX.

THE PEOPLE OF THE CITY OF EL CERRITO DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 4.60 is hereby added to Title 4 (“Revenue and Finance”) of the El Cerrito Municipal Code, to read as follows:

**“Chapter 4.60                      Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax**

**4.60.010. TITLE.** This ordinance shall be known as the “El Cerrito Pothole Repair and Local Street Improvement and Maintenance” Transactions and Use Tax Ordinance. The City of El Cerrito hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

**4.60.020. OPERATIVE DATE.** "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

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

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

**4.60.040. CONTRACT WITH STATE.** Prior to the Operative Date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

**4.60.050. TRANSACTIONS TAX RATE.** For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 0.50% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance. Such tax shall be in addition to any other transactions tax imposed by this Code or applicable State law.

**4.60.060. PLACE OF SALE.** For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

**4.60.070. USE TAX RATE.** An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of 0.50% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. Such tax shall be in addition to any other use tax imposed by this Code or applicable State law.

**4.60.080. ADOPTION OF PROVISIONS OF STATE LAW.** Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are

hereby adopted and made a part of this ordinance as though fully set forth herein.

**4.60.090. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.** In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:
  - 1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
  - 2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
  - 3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
    - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
    - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
  - 4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

**4.60.100. PERMIT NOT REQUIRED.** If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

**4.60.110. EXEMPTIONS AND EXCLUSIONS.**

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
  - 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
  - 2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
    - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
    - b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
  4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
  5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
  2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
  3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
  4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
  6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
  7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

#### **4.60.120. AMENDMENTS.**

- A. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6

and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance unless any increase in the rate of this tax is first approved by 2/3 of the voters of the City of El Cerrito voting on such question.

- B. Pursuant to California Elections Code Section 9217 or any successor statute, the City Council of the City of El Cerrito may amend or repeal this ordinance and any of its exhibits, provided that written notification is submitted to the State Board of Equalization 110 days prior to the operative date of the amendment or repeal, but not increase or extend the rate of tax imposed herein, or the indebtedness authorized hereunder, without the approval of 2/3 of the voters of the City of El Cerrito voting on such question.

**4.60.130. ENJOINING COLLECTION FORBIDDEN.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**4.60.140. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

**4.60.150. USE OF TAX PROCEEDS AND EXPENDITURE PLAN.**  
(a) All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund designated for use by the City of El Cerrito only for the Pothole Repair and Street Improvement and Maintenance Services set forth in the Expenditure Plan for the administration and expenditure of the tax proceeds, attached to this ordinance as Exhibit "1". The Expenditure Plan may be amended from time to time by a majority vote of the City Council, so long as the funds are utilized for pothole repair and street improvement and maintenance services. For the purposes of this Part, "Pothole Repair and Street Improvement and Maintenance Services" means (1) all aspects of street repair and maintenance including repair, reconstruction and sealing of city streets; repair, maintenance and reconstruction of curbs and ramps adjacent to City streets; crosswalk and pedestrian improvements on or adjacent to City streets; other related services such as lane line, crosswalk and bicycle lane striping and other necessary pavement markings; and other such improvements as are deemed necessary by

the City Council for the benefit of the residents of the City; (2) No revenues collected pursuant to the tax levied hereby may be spent on department administrators' salaries, General Fund operating expenses in effect at the time this ordinance becomes effective, or projects not a part of the Expenditure Plan. It is the intent of the People that revenues collected hereunder shall supplement, rather than supplant, existing City expenditures for Street Repair and Maintenance.

(b) The City is hereby authorized to incur indebtedness in the form of bonds, notes, contractual obligations or other evidences of indebtedness authorized by law to finance or refinance costs described in subsection (a) above, and to pay any and all costs of issuing or incurring such indebtedness, to fund reserve funds, capitalized interest, costs of credit enhancement, costs of interest rate hedging arrangements or any other financing costs associated with such indebtedness. Such indebtedness shall be solely payable from, and may be secured by a pledge and lien on, the proceeds of the tax levied and imposed hereunder. Such indebtedness shall be limited in amount such that the annual debt service in each year is not in excess of 75% of the amount of tax proceeds projected by the City to be received in each year.

#### **4.60.160. ANNUAL AUDIT.**

By no later than December 31st of each year, the City's independent auditors shall complete a Streets Repair and Maintenance Tax Ordinance Compliance and Internal Control Audit Report. Such report shall review whether the Tax revenue is collected, managed and expended in accordance with this Chapter."

SECTION 2. Chapter 2.04 ("City Council") of Title 2 ("Administration") of the El Cerrito Municipal Code is hereby amended by adding a new Section 2.04.320, to read as follows:

#### **2.04.320. CITIZENS' OVERSIGHT COMMITTEE.**

- A. Committee Established. There is hereby established in the City of El Cerrito a Citizens' Oversight Committee to monitor the expenditures of revenue collected pursuant to Chapter **4.60 (the "Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax")** only and report to the People and the City Council. The title of this Committee shall be the "Street Repair and Maintenance Citizens' Oversight Committee" (hereinafter the "Citizens' Oversight Committee" or the "Committee").
- B. Selection of Members.

1. Members of the Citizens' Oversight Committee shall be appointed by majority vote of the City Council. The Committee shall consist of five members. The Citizens' Oversight Committee members shall not be current City of El Cerrito employees, officials, contractors or vendors of the City. Past employees, officials or vendors shall be eligible to serve on the Committee, provided that such service would not be a violation of law, as determined by the City Attorney.
2. Of the members of the Committee first appointed, three shall be appointed for terms of four years and two for terms of three years. Their successors shall be appointed for terms of four years. No member may serve more than two consecutive four-year terms.
3. The City Council shall solicit Citizens' Oversight Committee members through an open application process that is promoted through the City's normal recruiting process. Any El Cerrito resident is eligible to apply for Committee membership, subject to the limitations specified above. All applications will be reviewed by the City Council, which will have the authority to make all final decisions on Committee representation, subject to these guidelines.

C. Purpose and Jurisdiction.

1. The Citizens' Oversight Committee shall review expenditures of revenue collected pursuant to this Chapter only to determine whether such funds are expended for the purposes specified in the then-current Street Repair and Maintenance Expenditure Plan, and issuing reports on their findings to the City Council and public at least annually. The Committee may also review the annual financial or performance audits performed by an independent auditor. The Committee shall confine its oversight specifically to revenues generated under Chapter 4.60. Revenue generated through other sources shall be outside the jurisdiction of the Street Repair and Maintenance Citizens' Oversight Committee.
2. In order to preserve the integrity and independence of the oversight process, Committee members will not play a formal role in contracting, project

management, or any other aspect of the Street Repair and Maintenance Measure funding.

3. The Committee is not charged with decision-making on spending priorities, schedules, project details, funding source decisions (e.g. leveraged funds, developer fees, etc.), financing plans, or tax rate assumptions. The Committee shall serve in an advisory-only role to the City Council. The Committee shall have no jurisdiction other than that delegated to it by the People pursuant to this Ordinance. The failure of the Committee to carry out any of its duties under this Section shall not affect the validity of any of the provisions of Chapter 4.60.
  4. The City of El Cerrito City Manager or his designee shall provide any reasonable administrative or technical assistance required by the Committee to fulfill its responsibilities or publicize its findings.
- D. Meetings. The Citizens' Oversight Committee shall meet semi-annually (or as otherwise provided for in approved or amended by-laws) with specific meeting dates to be determined by the Committee. Citizens' Oversight Committee meetings are subject to the requirements of the Ralph M. Brown Act (Government Code § 54950 et seq., as may be amended from time to time). Meetings must be noticed and open to the public. Additional meetings may be scheduled by the Committee as necessary. All Committee members shall attend a training and orientation session upon commencing their duties.
- E. Attendance. Committee members are expected to attend all regular meetings.
- F. Committee Operations. At the first meeting of each calendar year, the Citizens' Oversight Committee will select members to serve as Chair and Vice Chair of the Committee. A City staff person will be appointed by the City Manager or his designee to serve as Secretary. The Secretary will be responsible for preparing, posting and distributing agendas and taking minutes at each meeting. Approved minutes shall be made available to the public. Committee decisions, positions, findings and procedures shall require a simple majority of those Members voting.
- G. Vacancies. In the event of removal, resignation, or death, the City Council shall appoint a person to fill the vacant seat.

- H. Miscellaneous. With the exception of those items specifically addressed in this ordinance, the Committee may draft and adopt its own standard procedures and by-laws by majority vote. All Citizens' Oversight Committee procedures and by-laws remain subject to review and approval by the City Council. Citizens' Oversight Committee reports and audits are subject to review and approval of the City Council."

SECTION 3. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect 10 days following certification of the vote by the City Council.

SECTION 4. The City Clerk shall certify the passage of this ordinance; publish the same as required by applicable law, and forward a copy of the adopted ordinance to the Board of Equalization.

PASSED AND ADOPTED by the voters of El Cerrito at an election held February 5, 2008 by the following vote:

AYES:

NOES:

ATTEST:

\_\_\_\_\_  
Cheryl Morse, City Clerk

APPROVED:

\_\_\_\_\_  
Mayor of El Cerrito

**EXHIBIT 1**  
**CITY OF EL CERRITO**  
**POTHOLE REPAIR AND STREET IMPROVEMENT AND MAINTENANCE SERVICES**

**PAVEMENT EXPENDITURE PLAN**  
  
OF  
ONE-HALF (1/2) CENT  
TRANSACTIONS AND USE TAX REVENUE

The City of El Cerrito street system consists of approximately 68 miles of streets, the majority of which were constructed to the standards and conditions of the early to mid-20th century with many streets unable to meet today's traffic demands. The City's Pavement Condition Index (PCI), which was compiled by staff and its consulting engineers, illustrates that El Cerrito's streets have a very low average pavement condition rating (51 on a 100-point scale). Further analysis shows that the residential streets are in the worst condition of all categories with an average PCI of 38, while the neighborhood collectors and arterials are in better condition with PCIs of 68 and 80, respectively.

The needed improvements and maintenance on the City of El Cerrito street system far exceed the available revenues for these activities. While the City remains committed to continue efforts to obtain all possible Federal and State funding for street improvements, it is apparent that without the one-half (1/2) cent transactions and use tax revenue, the City will be unable to improve the street system to a level that will adequately serve the traveling public. This Pavement Expenditure Plan describes the specific projects for which the revenues from the tax will be expended, and satisfies the requirements of Section 7285.91(c) of the Revenue and Taxation Code.

The Expenditure Plan is a simple one, as it proposes to utilize the one-half cent transactions and use tax for street maintenance and improvement-related purposes, rather than specific capital improvement projects. The goal of this plan is to rapidly improve the City's street system to provide the traveling public with the best and most efficient road maintenance possible given the existing facilities and the available funds.

**Annual Program of Maintenance and Improvement**

The City shall prepare a "Maintenance and/or Improvement Program" that the tax revenues will fund. This Program will be a flexible document that responds to the most significant maintenance and improvement

needs as they are identified. It will be updated annually as part of the City's annual Capital Improvement Program budget, and available funds will be appropriated. It will follow recommendations and priorities established annually by the City Council and Citizens' Oversight Committee, and will itemize each year's particular capital projects and debt service payments. An annual independent audit will be performed by the City's external auditors that will include review of compliance with the requirement that all expenditures are related to street improvement, maintenance and associated debt service.

### **Accelerated Work Plan in First Five Years**

The initial years will be devoted to the rehabilitation of the residential streets within the City of El Cerrito along with an effort to maintain the arterials in good condition. When possible, the City will utilize these funds as matching funds for Federal and State Grants related to street improvement and rehabilitation projects. In addition, approximately 15% of the transactions and use tax would be set aside to improve the non-vehicular mobility and accessibility (curb ramps, improved striping) and significant drainage problems associated with the City's street system.

The first five years of the Pavement Expenditure Plan include a significantly accelerated work plan. This is intended to bring the City's Street System average PCI up to or near 70. Most of the accelerated work will occur in the first four years, and the fifth year would be used to transition to an annual comprehensive ongoing maintenance program.

The work plan is broken into two categories:

1. Preparatory Work: The Preparatory Work will consist of repair and other activities as aimed at preparing a street for the final resurfacing work. This typically includes:
  - Crack sealing
  - Structural pavement repairs
  - Leveling and rideability corrections
  - Installation of curb ramps pursuant to the Americans with Disabilities Act
  - Curb, gutter, and sidewalk repair (as needed)
  - Temporary or restored pavement markings and striping
2. Finish Resurfacing: Finish Resurfacing will consist of installing the final pavement surface and pavement markings. Typical activities would be:
  - Leveling and rideability corrections
  - Edge conform grinding

- Asphalt overlay, micropaving, slurry seal, and cape seal
- Replacement and enhancement of pavement markings, striping and signage.

The table below demonstrates how the accelerated (shown as “XXX”) work will be performed for the various work items, and also indicates where a normal level of work (shown as “X”) would be performed. This also indicates the approximate annual monetary value of work in each construction season.

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	
Preparation Work	<b>Curb Ramps</b>	XXX	XXX	X	X	X
	<b>Crack Seal</b>	XXX	XXX	XXX	X	X
	<b>Structural Repairs</b>	XXX	XXX	X	X	X
Finish Work	<b>Slurry / Cape Seal</b>		XXX	XXX	XXX	X
	<b>Asphalt Overlay</b>		XXX	XXX	XXX	X
	<b>\$16.9 million</b>	<b>\$2.6 M</b>	<b>\$5.5 M</b>	<b>\$4.5 M</b>	<b>\$3.3 M</b>	<b>\$1.0 M</b>

### Subsequent Years

After completion of the accelerated work plan, the subsequent years will be devoted to ongoing maintenance of the system in a manner to protect the City’s valuable street infrastructure. Maintenance priorities will be reviewed annually by the City Council and the Citizen Oversight Committee with funds for each year to be expended on the priority items first.

### Annual Debt Services

The transactions and use tax revenues will also be used for the payment of interest and principal on obligations resulting from the issuance of bonds, notes, leases, and other indebtedness.

## **Administrative Costs**

In addition to the above expenditures directly related to the goals of the transactions and use tax, the tax will be used for certain administrative costs.

1. Financial Administration Costs: Staff accounting, auditing, and financial activities and contract services that are necessary and reasonable for the City to carry out its responsibilities under the Revenue and Taxation Code.
2. Costs Related to Bonds or Other Indebtedness: Expenses in the sale or issuance of bonds and/or other forms of debt.
3. Project Management and Engineering Costs: Expenditures approved by the City Council that are necessary and reasonable for implementing the projects identified in the Maintenance and/or Improvement Program.
4. Mandatory Independent Annual Fiscal Audit: Expenditures related to the independent annual audit required by the ordinance, which ensures that the expenditure of funds is in accordance with this plan.