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## OFFICE OF THE COUNTY COUNSEL

### MEMORANDUM

**DATE:** June 2, 2022  
**TO:** Board of Supervisors  
**FROM:** Christian M. Curtis, County Counsel *CMC*  
**SUBJECT:** Sales Tax Staff Report

#### I. BACKGROUND

On May 17, 2022, this Board gave direction to staff to begin work on a possible sales tax for submission to the voters. The Board roughly discussed the possibility of a tax dedicated to provide fire protection and/or the provision of water. It was determined that staff would return with more specific questions on key decision points on June 8.

#### II. DISCUSSION

In order to craft an ordinance that meets the Board's need, counsel has identified a number of specific decision points on which more guidance is needed. Counsel can craft or refine appropriate language once the Board provides direction on these policy decisions.

##### A. Amount of Tax

If the Board chooses to put a proposed tax to the voters, it will need to decide what the rate of the tax will be. Later this year, the tax imposed by Measure B will be reduced from one-half cent (0.5%), to one-eighth cent (0.125%), meaning that a new tax of three-eighths of a cent (0.375%) would present as no change to the consumer. The Board, however, can choose to propose an alternative amount to the voters in multiples of one-eighth cent (0.125%).

##### B. General or Specific Tax

The Board will need to determine whether it wants to formally commit to keep the use of funds limited to a specific purpose or allow for general governmental purposes. A general tax only needs approval by a majority of the voters while a special tax needs approval by 2/3. At the prior meeting, the Board seemed to want a special tax, but staff would like to confirm that direction.

##### C. Geographic Area Taxed

The Board of Supervisors will need to direct whether the proposed tax will include transactions inside the cities or be limited to the unincorporated area of the County. Rev. & Tax Code §§ 7285, 7285.5.

##### D. Specific Purpose

If the Board chooses to enact a special tax, it will need to decide how that purpose is defined. Please note that this language will limit the use of the funds for the life of the ordinance

and may not be change without additional voter approval. As such, it is generally advised that the limitations be specific enough to capture the intended use but not so specific as to dedicate funds to particular uses or allocations that may become moot.

There are a range of possibilities here, and County Counsel can prepare and/or refine language to suit the Board's intent. There are, however, a few policy level decisions on which counsel needs direction.

For fire protection, counsel needs to know how broadly these services are intended to be. Possibilities include:

- The full range of functions a fire protection district can perform under state statutes. If the intent is to transfer funds to the fire districts, this option would minimize the amount of administrative work in any transfer. Agreements could mirror current transfer mechanisms for TOT funds.<sup>1</sup> Agencies not bound by relevant state laws (e.g. private fire agencies) would be contractually committed to use the funds for the same purpose.
- Provision of one or more specific services. The powers of fire agencies extend to EMS, ambulance services, hazardous material emergency response, etc. The Board could choose a more limited range of services if it wants the funds dedicated to a more fire specific purpose.
- Provision of a broader range of fire related services within the County's powers. It is possible that there may be fire or fire prevention related projects (e.g. emergency access routes) that might utilize powers held by the County but not fire protection districts. If the Board desires, the special purpose could be more broadly framed to encompass such uses.

For water, counsel needs similar guidance on the intended specific purposes. Possibilities include:

- Any use within the statutorily defined powers of the Mendocino County Water Agency.
- A defined list of specific uses. Counsel would need some more guidance as to what this would look like and what the intent of the fund is. A few examples:
  - Capital projects for water storage
  - Other projects or activities to provide water for human consumption (e.g., water hauling to the coast during drought)
  - Projects or activities to provide water for agricultural or commercial purposes

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<sup>1</sup> Current agreements reference the powers of the district under Health and Safety Code section 13862. That section reads:

A district shall have the power to provide the following services:

- (a) Fire protection services.
- (b) Rescue services.
- (c) Emergency medical services.
- (d) Hazardous material emergency response services.
- (e) Ambulance services, pursuant to Division 2.5 (commencing with Section 1797).
- (f) Any other services relating to the protection of lives and property.

- Indirect costs associated with increasing or preserving existing water supply (e.g., scientific studies and legal expenses related to the Potter Valley Project, raising Coyote Valley Dam, etc.)
- A broader statement of purpose that includes all uses related to the provision, preservation, or expansion of water supply within Mendocino County.

In addition to the above, counsel would like direction on any language about whether indirect costs (e.g. A87) may be covered. This may be relevant both to address relevant County administrative costs (e.g., auditor/tax collector expenses, if any) as well as administrative costs for any districts, JPAs or other entities receiving funds.

**E. Allocation of Funds / Number of Ordinances**

As multiple possible uses are suggested here, the Board will also need to decide whether and how tax revenues will be split between these purposes. Indeed, after review of the May 17, 2022, Board meeting, counsel is unclear as to whether the Board intends to propose two separate taxes for fire and water or a single tax that can be used for both. Counsel needs further direction before proceeding. Key issues include:

- Whether the Board wants one or two tax ordinances and ballot measures.
  - If the Board chooses two tax measures, it must decide the amount of each tax in eighth-cent increments (0.125%). This means that it would be impossible to have a 50/50 split between fire and water should the Board desire a total tax amount matching the three-eighths cent (0.375%) set to expire under Measure B.
- If the Board chooses a single tax measure, whether and how to split the funds between fire and water. Should the Board desire, this allocation can be less than 100%. For example, the Board could allocate 40% to fire, 40% to water, and the remaining 20% to either fire or water based on the Board’s discretion in any particular budget year.
- Whether a portion of funds within one use will be further restricted or subdivided. (e.g., 80% direct services and 20% indirect or 70% fire protection and 30% EMS.) Please note that restrictions on this level are likely to increase administrative costs.
- Whether to include limits on expenditures or allocation to particular agencies and/or regions. Counsel generally advises against this approach because of the possibility of increased administrative costs and unintended consequences.

**F. Additional Provisions / Requirements**

In addition to the above, counsel would also like direction on any additional requirements or restrictions that the Board would like to incorporate into the ordinance. In particular, it is clear that the Board is interested in some sort of mechanism to ensure that funds are used in a manner that fairly addresses the needs of the entire County rather than letting all revenues go to a few, limited geographical areas. Discussions have included the possibility of an equal distribution between fire districts or minimum expenditures of water funds in certain supervisorial districts.

Counsel generally recommends against spending restrictions that are overly specific because of the strong possibility of unintended consequences. For example, a specific allocation formula among fire districts may become complicated by the creation, dissolution, or merger of

districts within the County. Additionally, populations, needs and district boundaries are not static, and a formula that is equitable in 2022 might look very different in 2032. Moreover, there remains the possibility that unforeseen changes to state law might alter underlying laws or boundaries in a way that render such formulas nonsensical or ill-advised.

There are a number of options as to how an ordinance might choose to include protections for equitable distribution of funds while minimizing the potential for unforeseen consequences as laws and circumstances change. The Board's choice of such mechanism will need to weigh the risks of strong restrictions against the political and structural benefits they include. Examples include:

- The creation of a citizens oversight body to review expenditures and opine as to the appropriateness of expenditures and how funds are used.
- The creation of one or more advisory bodies to provide a recommended allocation formula for each fiscal year. To avoid mission creep or delays, the Board could include language requiring specific elements of any recommendation and a deadline for submission sufficient in advance of the County's annual budget hearings.
- A process for individual fire districts or other fund recipients to submit proposals to the Board in advance of the County's annual budget hearings.
- A specific fund allocation formula with an ordinance provision authorizing future Boards to make amendments or other changes.

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