



Agenda Item

DATE: July 13, 2004
TO: Board of Supervisors
FROM: Bart Bohn, County Administrative Officer *Bart Bohn*
 Dennis A. Marshall, Interim County Counsel *Dennis A. Marshall*
SUBJECT: Creation of Fresno County Zoo Authority; Adoption of Sales Tax Ordinance

RECOMMENDED ACTIONS:

Adopt resolution creating Fresno County Zoo Authority. If resolution to create Authority is approved, then, sitting as the Fresno County Zoo Authority:

1. Hold first hearing on ordinance to propose special transactions and use tax of one tenth of one percent (0.10%) pursuant to Revenue and Taxation Code section 7286.43, to be administered by the State Board of Equalization (2/3 vote required), and waive further reading; and
2. Set second hearing for July 27, 2004.

FISCAL IMPACT:

Election Costs: A proposed transactions and use tax (hereafter "sales tax") under Revenue and Taxation Code section 7286.43 must be approved by the voters. If your

ADMINISTRATIVE OFFICE REVIEW *J. Clark*
 BOARD ACTION: DATE July 13, 2004 APPROVED AS RECOMMENDED X Page 1 of 6
 OTHER X

APPROVED ORDINANCE VERSION WITH TEN-YEAR LIMIT AND REDUCTION OF SUPPORT BY CITY OF FRESNO.



Official Action of
Board of Supervisors

Deputy

UNANIMOUS X ANDERSON Aye ARAMBULA Aye CASE Aye LARSON Aye WATERSTON Absent

Board, sitting as the Authority Board, approves the sales tax ordinance, it will be placed on the ballot and consolidated with the November 2, 2004 general election.

The proposed ordinance obligates the Authority to repay the County its full share of the election expense (estimated at \$60,000 to \$80,000) from the proceeds of the tax, if the election is successful. The proposed ordinance is silent on payment of the election expense if the election is unsuccessful.

Sales Tax: Under Revenue and Taxation Code section 7251.1, Fresno County's sales tax rate cannot exceed 2.0 percent above the statewide tax rate. As shown in the attached exhibit, the current total statewide tax rate is 7.25 percent. This means that Fresno County's maximum rate is 9.25 percent.

Presently, the total rate in most of Fresno County is 7.875 percent. In the City of Clovis, the rate is 8.175 percent due to a 0.3 percent sales tax in that city. The highest rate anywhere in the county is used to determine the available portion of the 2.0 percent local option. Therefore, only 1.075 percent (9.25% less 8.175%) is still available for local sales tax increases.¹

Passage of the 0.10 percent zoo tax would increase the total rate in most of Fresno County to 7.975 percent, and in the City of Clovis to 8.275 percent. This would leave only 0.975 percent available (9.25% less 8.275%) for future sales tax increases.²

Total sales tax rates in surrounding counties may be lower. The approval of the zoo tax would have an unknown effect on consumers who might choose to shop in a neighboring county in order to avoid the higher tax here.

DISCUSSION:

Creation of Authority

Revenue and Taxation Code section 7286.43 authorizes the Fresno County Board of Supervisors to establish a special purpose Authority for the support of zoos, zoological facilities, and related zoological purposes in Fresno County. If the Authority is established, it may, by ordinance, impose a transactions and use tax (sales tax) at the rate of 0.10 percent if all of the following conditions are met:

(1) The ordinance proposing the tax is approved by two-thirds of the entire membership of the governing board of the Authority.

¹ General sales tax authority requires sales taxes to be in increments of 0.25 percent. Thus, only 1.0 percent would be available without special legislation.

² Only 0.75 percent would be available without special legislation.

(2) The ordinance proposing the tax is approved by two-thirds of the voters of Fresno County voting on the ordinance.

(3) The ordinance proposing the tax requires all revenues, net of refunds, derived from the tax to be expended exclusively for the support of zoos, zoological facilities, and related zoological purposes within Fresno County.

Therefore, if your Board supports creating a Fresno County Zoo Authority and approves a resolution, your Board will then sit as the Board of the Authority as your Board considers adopting an ordinance establishing the tax.

The attached resolution creating the Authority follows the format approved by your Board when a prior zoo tax proposal was presented to the voters in March 2002. As in that proposal, the attached resolution provides that the proposed Authority would be governed by your Board until after the election. If the ordinance is passed by the voters, a successor Authority Board would be appointed, consisting of the Mayor of the City of Fresno, a qualified elector with expertise in local zoo matters nominated by the Board of Supervisors Chair and approved by the Board of Supervisors, and five other qualified electors of Fresno County, each nominated by one Supervisor and approved by the Board of Supervisors.

Under the 2002 zoo tax proposal, the tax proceeds would have been awarded on a grant basis, and any "zoological organization" or "zoological support organization," as defined in the 2002 ordinance, could have competed for the grants. In contrast, the attached ordinance provides that all of the tax proceeds would be used to benefit the Chaffee Zoo in Fresno, so no grant procedure would be required.

As a result, your Board may wish to change the composition of the Authority Board. For example, your Board might decide to have the Authority continue to be governed by your Board after the election, and to add a citizens' review panel after the election. Any changes should be made today as part of creating the Authority.

If the ordinance is not passed by the voters, the Authority would cease to exist.

Ordinance

The proposed ordinance establishes the tax and describes the expenditure plan.

Four different versions of the ordinance are presented to your Board, sitting as the Authority Board, today for first reading. As noted above, under all four versions the use of the tax proceeds would be limited to the Chaffee Zoo in the City of Fresno. The variations among the four versions (highlighted by underlining and/or strikeout text in each version) are as follows:

- Ordinance 1 Limits the tax to a 10-year period.
- Requires the City of Fresno to maintain its current contribution to the zoo of approximately \$1.2 million for the lifetime of the tax.
- Ordinance 2 Limits the tax to a 10-year period.
- Authorizes the City of Fresno to reduce its current contribution to the zoo (approx. \$1.2 million) by 20% each year over the first five years of the tax, so that in year 6 and beyond the city would have no maintenance of effort requirement.
- Ordinance 3 Has no time limit on the tax.³
- Requires the City of Fresno to maintain its current contribution to the zoo of approximately \$1.2 million indefinitely.
- Ordinance 4 Has no time limit on the tax.
- Authorizes the City of Fresno to reduce its current contribution to the zoo (approx. \$1.2 million) by 20% each year over the first five years of the tax, so that in year 6 and beyond the city would have no maintenance of effort requirement.

The ordinance includes the technical language for sales taxes required by the State Board of Equalization (SBE). Your Board, sitting as the Authority Board, should not make any changes to this language without SBE review and approval.

The ordinance also includes an expenditure plan. Any changes your Board, sitting as the Authority Board, proposes to the expenditure plan should be made before the proposed ordinance is approved by the Authority Board. This is because the statute requires the ordinance to be submitted to the voters, and the ordinance must include the expenditure plan, so a court would probably conclude that amendments to the expenditure plan must also be approved by the voters.

³ Unlike the statute authorizing the library tax (Rev. & Tax. Code, § 7286.59), the statute authorizing the zoo tax (Rev. & Tax. Code, § 7286.43) does not require a time limit on the tax.

The expenditure plan would use the revenue from the proposed tax as follows. First, the Authority would reimburse the County for the full election costs. (The tax revenues would also be available to pay the cost of an election for a successor tax, if the 10-year version of the ordinance is adopted.) Second, the revenues would be available to pay the Authority's administrative expenses, such as for any consultants or staff the Authority needed. Third, the revenues would be turned over to the Chaffee Zoo.

The ordinance states that the Authority would not be obligated to turn over any funds to the Zoo if the City of Fresno failed to provide the financial support described in the ordinance (either the current amount of approximately \$1.2 million, or the step-down amount ending after five years). The ordinance further states that the Authority would need to be satisfied with the uses made by the Chaffee Zoo of the tax revenues already distributed before being obligated to turn over additional funds to the Zoo.

After first reading, one of the four versions of the tax should be approved by a two-thirds vote of your Board, sitting as the Authority Board, and the second reading should be set for July 27, 2004.

A separate agenda item on July 27, 2004 will provide for the resolution placing the ordinance on the November 2, 2004 ballot.

OTHER REVIEWING AGENCIES

The State Board of Equalization has reviewed and approved the technical language of the ordinance. The Fresno Zoo Society has been consulted during the preparation of the resolution and ordinance.

SALES TAXES IN FRESNO COUNTY

Statutory Limits	Existing Taxes as of Jan. 1, 2004	Effect of Adding Zoo Tax
2.0% local option under § 7251.1	1.075% available (but only 1.0% usable*)	0.975% available (but only 0.75% usable*)
	0.125% Library	0.1% Zoo
	0.5% FCTA	0.125% Library
		0.5% FCTA
7.25% statewide	7.25% statewide	7.25% statewide

* The general statutes authorizing counties to impose local sales taxes require the tax to be in increments of 0.25 percent. (Rev. & Tax. Code, §§ 7285, 7285.5.) Special legislation is required for other percentages.

BEFORE THE BOARD OF SUPERVISORS
FRESNO COUNTY, CALIFORNIA

In the Matter of) Resolution No 04-341
ESTABLISHING THE FRESNO)
COUNTY ZOO AUTHORITY)

WHEREAS, Revenue and Taxation Code section 7286 43 provides that the Fresno County Board of Supervisors may establish a special purpose authority for the support of zoos, zoological facilities, and related zoological purposes in the County, and

WHEREAS, the Fresno County Board of Supervisors desires to establish the Fresno County Zoo Authority

NOW, THEREFORE, the Board of Supervisors of the County of Fresno hereby resolves as follows

Section 1: The Fresno County Zoo Authority, Created - Terms of Office

There shall be a Fresno County Zoo Authority (hereinafter referred to as the "Authority" or the "Zoo Authority"), created by this Resolution. The Board of Supervisors shall govern the Authority until the voters approve the ordinance imposing a special transactions and use tax (sales tax) for the Authority. Thereafter, the Board of Supervisors shall appoint a successor Authority Board, no later than March 31, 2005, consisting of the Mayor of the City of Fresno, a qualified elector with expertise in local zoo matters as defined herein, and five appointed qualified electors

The Board of Supervisors shall appoint the six qualified electors ("appointed Board members"), who shall hold no other public office for profit. Each supervisor shall nominate one appointed Board member. The sixth member under Section 2 below shall be nominated by the Chair of the Board of Supervisors. The sixth member shall possess the qualifications stated in Section 2 below. The Board of Supervisors may reject any nominee, whereupon the supervisor making the nomination may nominate

1 another person until a nominee acceptable to the Board of Supervisors is appointed
2 The terms of office of the five members nominated by individual members of the Board
3 of Supervisors shall coincide with the terms of the respective members of the Board of
4 Supervisors nominating them. The sixth member appointed under Section 2 below shall
5 serve for a one-year term, coinciding with the term of the nominating supervisor as
6 Chairman. Any appointment to fill a vacancy shall be for the remainder of the unexpired
7 term. Each appointed Board member shall serve until his or her successor is appointed
8 and qualifies.

10 If the transactions and use tax proposed by the Authority is not approved by the
11 voters, the Authority shall cease to exist.

12 **Section 2: Special Board Member Qualifications**

13 The sixth member of the Authority Board nominated by the Chair of the Board of
14 Supervisors shall be selected for the member's expertise in zoo matters.

16 **Section 3. Board Members - Removal**

17 The Board of Supervisors, by a four-fifths vote of all the members, may remove
18 an appointed Board member at any time.

19 **Section 4. Authority - Chair Election, Meetings, Records**

20 After installation of the appointed Board members, the Authority Board shall elect
21 one of its members as chair. It shall thereafter elect a chair at the first meeting of each
22 calendar year. The Authority Board shall meet at least four times a year. The Ralph M.
23 Brown Act (Gov. Code, § 54950 et seq.) shall govern meetings of the Authority Board.
24 Four Board members shall constitute a quorum, provided that no action shall be taken
25 without the affirmative vote of at least three Board members. The Authority Board shall
26 keep minutes of its proceedings and records of its activities and actions and shall make
27 an annual report to the Board of Supervisors.

1 **Section 5. Duties**

2 In order to effectuate the purposes of this Authority, the Board shall have the
3 authority to do the following

4 a Adopt ordinances, resolutions, policies and procedures to implement this
5 Resolution,

6 b Enter into contracts to accomplish the purposes of the Authority;

7 c Perform duties prescribed hereunder, and

8 d Take all steps necessary to implement this Resolution, including hiring or
9 contracting with appropriate staff, if necessary

10
11 **Section 6. Conflict of Interest Code - Adoption**

12 The Authority Board shall adopt a Conflict of Interest Code Nothing contained in
13 the adopted conflict of interest code may modify or abridge the provisions of the Political
14 Reform Act of 1974 as amended (Gov Code, § 81000 et seq) The provisions of any
15 adopted code shall be in addition to Government Code section 87100 and other laws
16 pertaining to conflicts of interest

17
18 **Section 7. Conflict of Interest - Disqualification**

19 Board members must disqualify themselves from making or participating in
20 making any decision in which they have a financial interest, when it is reasonably
21 foreseeable that such interest may be materially affected by the decision in a manner
22 distinguishable from the effect on the public generally

23 **Section 8. Procedures - Rules of Order**

24 Robert's Rules of Order shall govern the proceedings of the Authority in the
25 transaction of business unless otherwise provided herein or by the general laws of the
26 state or the county Unless otherwise specified by the Authority Board, Robert's Rules
27 of Order Newly Revised, Tenth Edition, shall be used by the Authority Board
28

1 **Section 9. Duties**

2 The Authority shall oversee the general administration of the funds and of the
3 implementation of this initiative, including but not limited to

4 1 Requiring the Chaffee Zoo to enter into appropriate contracts to
5 expend the tax proceeds as provided in the ordinance

6
7 2 Employing the services of an auditor to oversee the State Board of
8 Equalization's records if desired, and, if deemed necessary, employing the
9 services of an auditor or other professionals to audit and/or report on the
10 activities of the Chaffee Zoo regarding the expenditure of Authority funds and the
11 progress of approved projects

12
13 THE FOREGOING was passed and adopted by the Board of Supervisors of the
14 County of Fresno this 13th day of July, 2004, by the following vote, to-wit

15 AYES Supervisors Larson, Case, Arambula, Anderson

16 NOES None

17 ABSENT Supervisor Waterston

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20 G:\Support\ofaz\Zoo Tax\Chaffee Zoo only\Resolution creating Auth doc

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CHAIR, Board of Supervisors

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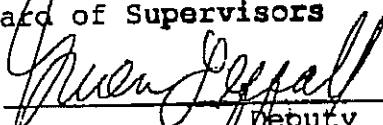
ATTEST:

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BERNICE E. SEIDEL, Clerk
Board of Supervisors

25

26

By 

deputy

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Agenda #8

Resolution #04-341

CERTIFICATE OF DELIVERY OF DOCUMENT

I am employed by the County of Fresno as a Deputy Clerk of the Board of Supervisors. On July 13, 2004, I delivered a copy of Resolution #04-341 regarding Item #8 to the Chairperson of the Fresno County Board of Supervisors.

Gwen Leffall,
Deputy Clerk