



## Agenda Report

21-1172

Agenda Date: 9/7/2021

### REPORT TO COUNCIL

#### SUBJECT

Action on City Positions on Proposed League of California Cities' 2021 Annual Conference Resolutions

#### COUNCIL PILLAR

Enhance Community Engagement and Transparency

#### BACKGROUND

The League of California Cities (Cal Cities) will hold its Annual Conference in Sacramento, CA on September 22-24, 2021. As part of the Annual Conference, Cal Cities will hold its General Assembly where the membership will act on Annual Conference Resolutions that establish League policy. Annual Conference Resolutions guide cities and Cal Cities to improve the quality, responsiveness, and vitality of local government in California.

Cal Cities' 2021 Annual Conference Resolutions Packet (Attachment 1) contains two resolutions that have been introduced for consideration at the Annual Conference and referred to League policy committees. As part of the August 24, 2021 Council Meeting, the Council designated Mayor Gillmor as the voting delegate, Councilmember Watanabe as the first alternate voting delegate, and Councilmember Park as the second alternate voting delegate.

#### DISCUSSION

This report transmits Cal Cities' 2021 Annual Conference Resolutions Packet (Attachment 1) which contains two proposed resolutions that will be considered during the Cal Cities' General Assembly Meeting on September 24, 2021. As recommended by Cal Cities, staff requests Council approval of the positions the voting delegate should take on behalf of the City regarding the resolutions discussed in this report.

Below is a description of the resolutions followed by background, analysis and recommendation prepared by staff and the City's legislative consultant, Townsend Public Affairs. The recommendation options are: Support, Oppose, or Take No Action. Any resolution submitted to the General Assembly must be concurred by five cities or by city officials from at least five or more cities.

***Resolution No. 1 - Resolution of the League of California Cities Calling on the State Legislature to Pass Legislation That Provides For a Fair and Equitable Distribution Of The Bradley Burns 1% Local Sales Tax From In-state Online Purchases, Based On Data Where Products Are Shipped To, And That Rightfully Takes Into Consideration the Impacts that Fulfillment Centers Have On Host Cities But Also Provides a Fair Share to California Cities that Do Not and/or Cannot Have a Fulfillment Center Within Their Jurisdiction***

The City of Rancho Cucamonga has submitted a resolution for consideration related to online sales tax equity. The resolution would ask the Cal Cities to call on the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Concurrence: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; and City of Sacramento.

Relevant City Policy:

- Legislative Guiding Principle: Protect local revenue sources and prevent unfunded mandates

Background: Sales tax in California was originally enacted as part of the Riley-Stewart Tax Reform Act of 1933 to reduce property tax burdens and tax foreclosures and to increase school revenues. Following its enactment, the State added a “use tax” to protect California retailers from competition generated by tax-free out of state purchasers. In the following years, California cities began imposing their own sales taxes, which led to more than three-fourths of California’s incorporated cities levying their own sales taxes by 1955. In response to complaints by national and regional retailers and the onerous bookkeeping and reporting requirements, the State passed the Bradley-Burns Uniform Local Sales and Use Tax law in 1955, which set a rate of 1 percent. By 1967, all cities and counties had contracted with the State and the uniform sales and use tax was fully achieved.

Sales tax is imposed on retailers for the privilege of selling tangible personal property. The tax is administered and distributed by the State but includes both state and local levies. Sales tax applies to a transaction if: 1) the seller’s registered place of business in California participates in the sale, and 2) title to the goods passes to the customer within the state. A corresponding use tax is imposed on the buyer of tangible property if the retailer is not otherwise required to collect the tax or if the retailer fabricates or takes tangible personal property out of its inventory for self-use. Use tax is commonly paid on purchases of goods from out-of-state, long-term lease payments, private party vehicle transactions, and by contractors that are considered consumers rather than sellers of the property that they install on-site.

Because sales tax is allocated to the jurisdiction where the principal negotiations are carried out or where the order is taken, the expansion of e-commerce transactions has raised concerns over the equitable distribution of tax revenue, particularly for jurisdictions that harbor warehouse distribution centers or large-grossing companies. These concerns have mounted as online shopping drastically expanded as a result of the COVID-9 pandemic. Concerns include the portion of local use tax collections which are allocated through a “countywide pool” where reported taxes are distributed to each jurisdiction within a county on a pro-rata share of taxable sales. In (many online transaction) cases where the county cannot be identified, the revenues are shifted to the statewide pool for a pro-rata distribution on a statewide basis. Below is a table identifying the components of the City’s sales and use tax:

<b>Components of the California Sales and Use Tax</b>	
State General Fund	3.9375%
Local Revenue Fund for Health and Social Services	0.5000%
Local Revenue Fund for Corrections	1.0625%
Counties and Cities Public Safety Prop 172	0.5000%
County Transportation Fund	0.2500%
City or County General Fund	1.0000%
<b>Additional Add-On Tax Measures for City of Santa Clara, Totaling 1.75%</b>	
County – General	0.1250%
VTA BART	0.1250%
Silicon Valley Transportation Solutions Tax	0.5000%
Santa Clara County Transit District	0.5000%
Santa Clara County Valley Transportation Authority	0.5000%
<b>Total Sales and Use Tax Rate</b>	<b>9.0%</b>

The 2019 Wayfair decision and implementing legislation (AB 147, Burke) clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state. Under AB 147, the obligation to collect applicable transactions and use tax on all sales made for delivery in any city or county that imposes a transactions and use tax applies to a retailer whether inside or outside of California if, during the preceding or current calendar year, the total combined sales of tangible personal property in California or for delivery in California by the retailer and all persons related to the retailer exceed \$500,000.

Analysis: The following themes have emerged from the decades-long discussions over sales and use tax reform:

- The growing dependence on e-commerce has intensified the focus on sales tax reform for many jurisdictions that do not harbor warehouse and fulfillment distribution centers.
- The preservation of local control as it relates to the development of rebate agreements vs. a blanket approach to sales tax equity via a shift to destination-based allocation.
- The COVID-19 pandemic has significantly contributed to the escalation of this policy issue.

Though the current legislative session does not feature legislation that explicitly seeks to implement sales tax reform, Senator Glazer's SB 792, which would require retailers whose annual online sales exceed \$50 million in the previous calendar year to provide information for each local jurisdiction regarding the gross receipts from the sale of goods shipped or delivered to a purchaser in that jurisdiction, represents a first step in doing so. It is expected that reform legislation, possibly similar to Senator Glazer's SCA 20 (2018), will emerge in future legislative sessions.

The potential impact from a sales tax shift will vary significantly from community to community. Communities that have invested heavily in fulfillment and distribution centers will likely experience significant revenue losses, while those communities that are more residential in nature, or lack businesses that conduct significant e-commerce, will benefit.

While the Resolution being proposed calls for a “fair and equitable” distribution of sales tax revenue, the implementation of such a policy would result in some cities receiving additional sales tax dollars, while others will lose sales tax dollars. It was recommended that cities take into account the potential benefit that could come to their city, in terms of additional sales tax from products that are delivered to residents, versus the loss of revenue that could come from companies located within the city that ship goods in-state for orders that are placed online. It is worth noting that the resolution being presented to the League does not contain a specific proposal of how the sales tax revenues would be redistributed.

There is not enough current data to determine whether this proposal would have long term positive, negative, or neutral tax revenue impacts to the City. However, based on very rough estimates, the proposed change to point of destination for online retailers will likely result in neutral tax revenue impacts to the City.

Recommended Position: Take No Action

***Resolution No. 2 - A Resolution Calling Upon the Governor and the Legislature to Provide Necessary Funding for The California Public Utilities Commission (CPUC) to Fulfill Its Obligation to Inspect Railroad Lines to Ensure That Operators Are Removing Illegal Dumping, Graffiti and Homeless Encampments That Degrade the Quality of Life and Results in Increased Public Safety Concerns for Communities and Neighborhoods That Abut the Railroad Right-of-way***

The City of South Gate has submitted a resolution for consideration related to ensuring ongoing railroad property maintenance. The resolution would ask the Cal Cities to call on the Governor and Legislature to work with Cal Cities and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues.

Concurrence: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; and City of Pico Rivera

Relevant City Policies:

- Legislative Advocacy Position: Public Safety
- Legislative Advocacy Position: Sustainability and Environmental Legislation, Regulations and Issues
- Legislative Guiding Principle: Protect and/or increase funding for specific programs and services

Background: CPUC has legal regulatory authority over rail safety within California and is responsible for enforcing state and federal railroad safety standards and mitigating risks and safety hazards. These responsibilities are carried out through its Rail Safety Division (RSD), which includes the Railroad Operations and Safety Branch (ROSB). ROSB is responsible for enforcing both state and federal laws, regulations, Commission General Orders, and directives relating to the transportation of persons and commodities by rail. For California's 6,000+ miles of railroad lines, the CPUC employs a total of 41 inspectors who are certified to perform regular inspections to ensure the safety and function of rail lines.

A major safety concern associated with California's rail lines is the increasing number of homeless individuals and encampments near railroad tracks. This increases the risks associated with homeless individuals being struck by trains and can affect rail operator's ability to run trains according to schedule. Additionally, the illegal dumping of hazardous materials and the placement of encampments near to rail lines creates an unsafe working environment for railroad operators and poses safety concerns (e.g. fire).

Analysis: As presented to the Council at the August 24, 2021 Study Session on Homeless Encampments and Vehicle Dwelling facilitated by the Community Development and Police Departments, homelessness is a significant condition impacting all levels of government, including the City.

Cities have few options available to handle issues related to homeless encampments near rail lines. The *Martin v Boise* Federal appeals court ruling deems it is unconstitutional to criminalize homelessness. Thus, if the CPUC cannot compel homeless individuals to vacate railroad rights of way, it cannot relocate homeless encampments except if they violate standards for walkway surfaces or clearance standards between tracks. This leaves the CPUC with a few enforcement measures to reduce the risks caused by homeless encampments. Many rail lines are immediately adjacent to private property or public property. As a result, the agency of jurisdiction is complicated as an encampment may be on multiple properties.

As noted in Cal Cities' Staff Analysis for this Resolution, it can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community. Staff recommends a "Support" position because this action aims to provide adequate regulatory authority and funding to support efforts to manage and maintain railroad rights-of-way and mitigate safety hazards around rail lines.

Recommended Position: Support

As stated, the recommended positions above provide the City's voting delegate/alternates guidance on how to vote on the issues as they pertain to City business.

## **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

**FISCAL IMPACT**

The City has an existing three-year agreement with Townsend Public Affairs for state and federal legislative advocacy services in an amount not-to-exceed \$252,000, which includes developing and implementing a legislative strategy. These services are included at no additional cost as part of the consultant's monthly service fee.

**COORDINATION**

This report was coordinated with the City's legislative consultant, Townsend Public Affairs, Finance, Police and Public Works Departments, and the City Attorney's Office.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**RECOMMENDATION**

1. Approve a "Take No Action" position for the proposed Cal Cities 2021 Annual Conference Resolution calling on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Brady Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction, and authorize the City's voting delegate/alternates to cast a vote consistent with the City Council's adopted position; and
2. Approve a "Support" position for the proposed Cal Cities' 2021 Annual Conference Resolution calling upon the Governor and the Legislature to work with the League of California Cities and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues, and authorize the City's voting delegate/alternates to cast a vote consistent with the City Council's adopted position.

Prepared by: Christine Jung, Assistant to the City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. League of California Cities 2021 Annual Conference Resolutions Packet