



NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

Date/Time: **Tuesday, July 9, 2024, 6:00 p.m.**
(or as soon thereafter as possible)

Location: **Tracy City Hall, Council Chambers**
333 Civic Center Plaza, Tracy, CA. 95376

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

This meeting will be open to the public for in-person and remote participation pursuant to Government Code Section 54953(e)

For Remote Public Comment:

During the Items from the Audience, public comment will be accepted via the options listed below. If you would like to comment remotely, please follow the protocols below:

- *Comments via:*
 - **Online by visiting** <https://cityoftracyevents.webex.com> and using the following **Event Number: 2552 685 5360** and **Event Password: TracyCC**
 - ***If you would like to participate in the public comment anonymously***, you may submit your comment via phone or in WebEx by typing “Anonymous” when prompted to provide a First and Last Name and inserting Anonymous@example.com when prompted to provide an email address.
 - Join by phone by dialing +1-408-418-9388, enter 25526855360#8722922# Press *3 to raise the hand icon to speak on an item.

- *Protocols for commenting via WebEx:*
 - *If you wish to comment under “Items from the Audience/Public Comment” portion of the agenda:*
 - *Listen for the Mayor to open “Items from the Audience/Public Comment”, then raise your hand to speak by clicking on the Hand icon on the Participants panel to the right of your screen.*
 - *If you no longer wish to comment, you may lower your hand by clicking on the Hand icon again.*
 - *Comments for the “Items from the Audience/Public Comment” will be accepted until the public comment period is closed.*

1. Call to Order
2. Actions, by Motion, of City Council pursuant to AB 2449, if any
3. Roll Call and Declaration of Conflicts
4. Items from the audience - *In accordance with Council Meeting Protocols and Rules of Procedure, adopted by Resolution No. 2019-240, and last amended by Resolution No. 2021-049, a five-minute maximum time limit per speaker will apply to all individuals speaking during "Items from the Audience/Public Comment". For non-agendized items, Council Members may briefly respond to statements made or questions posed by individuals during public comment; ask questions for clarification; direct the individual to the appropriate staff member; or request that the matter be placed on a future agenda or that staff provide additional information to Council.*
5. DISCUSSION ITEMS
 - 5.A. Conduct a Public Hearing, and upon conclusion, adopt an Urgency Ordinance making findings and extending for ten months and fifteen days, pursuant to Government Code 65858, the temporary moratorium on the processing of Business Tax under Chapter 6.04 of the Tracy Municipal Code, to take effect immediately upon adoption.
6. Council Items and Comments
7. Adjournment

Posting Date: July 3, 2024

The City of Tracy is in compliance with the Americans with Disabilities Act and will make all reasonable accommodations for the disabled to participate in employment, programs and facilities. Persons requiring assistance or auxiliary aids in order to participate, should contact the City Manager's Office at (209) 831-6000 at least 24 hours prior to the meeting.

Agenda Item 5.A

RECOMMENDATION

Conduct a Public Hearing, and upon conclusion, adopt an Urgency Ordinance making findings and extending for ten months and fifteen days, pursuant to Government Code 65858, the temporary moratorium on the processing of Business Tax under Chapter 6.04 of the Tracy Municipal Code, to take effect immediately upon adoption.

EXECUTIVE SUMMARY

On June 18, 2024, the City Council, requested an extension of the 45-day moratorium on the processing of Business Tax under Chapter 6.04 established on June 4, 2024, by Urgency Ordinance 1345. The request was made by Council in recognition of the fact that 45-days is not sufficient time to meet with stakeholders, discuss the variety of methods and methodologies that can be implemented to address the impacts of the business tax on stakeholders and develop modifications to Chapter 6.04.

BACKGROUND AND LEGISLATIVE HISTORY

On the November 8, 2022, general election, the voters of Tracy approved a new business tax structure proposed pursuant to Ballot Measure B, which was proposed as a voluntary referendum item (as opposed to a voter initiative). The new tax structure took effect on July 1, 2023, and was codified as Chapter 6.04 in the Tracy Municipal Code. According to the voter approved changes to Chapter 6.04, commencing on July 1, 2023, businesses would pay a flat business tax of \$50 on the first \$500,000 of gross receipts and pay a percentage of gross receipts for any gross receipts above \$500,000. The percentage applied to gross receipts over \$500,000 ranges from \$0.001 to \$0.003, or \$1 to \$3 for every \$1,000 in gross receipts, depending on the category of business.

Measure B was the result of efforts started in March 2020, when the City Council formed the Ad-Hoc Committee for fiscal sustainability (which now has become the standing Finance Committee of the City Council). The Ad-Hoc Committee, consisting of former Mayor Pro Tem Vargas and current Councilmember Arriola, was formed with the intention of providing guidance to develop short and long-term fiscal sustainability strategies. During this time, the City was facing a budget deficit. One of the recommendations from the Ad-Hoc Committee was to review the structure of the City's Business Tax, which had remained unchanged since 1984. This old business tax structure was based upon the number of employees and had a cap of \$2,018, regardless of the sales volume or category of the business.

At the regular City Council meeting of May 21, 2024, many business owners expressed their concerns about the financial impact and strain caused by the new business tax on their operations. Some businesses indicated that they would not be able to survive this new business tax burden, and other businesses indicated they would be relocating outside of the City of Tracy.

On June 4, 2024, the City Council adopted Urgency Ordinance 1345 to establish a temporary moratorium for 45 days, on the processing of the adopted business tax as the City Council and

staff needed additional time to analyze potential amendments to the current tax structure that could mitigate the severe consequences to local businesses if tax bills are sent under the current version of Chapter 6.04. On June 18, 2024, the City Council further analyzed the information presented to them and determined that much more robust analysis was needed before amendments to the existing business structure could be made. This additional analysis included information gathering that would occur at a “town hall” style special City Council meeting and additional meetings between staff and the Tracy Chamber of Commerce. This additional analysis could not be completed within the 45-day moratorium period, so the City Council requested that staff return with this extension.

In the interim, staff has been working on scheduling meetings with stakeholders and has posed to the City Council several dates for the “town hall” style special council meeting. Currently staff has scheduled and proposed:

1. A meeting with the Chamber of Commerce and key staff occurred on July 3, 2024. The meeting allowed for continued communication and discussion with additional stakeholders impacts and proposed solutions.
2. The City Council has requested that a “town hall” style meeting be held. Staff is tentatively scheduling such a meeting to occur on August 13, 2024, at which the City Council can have several breakout discussions to delve further into proposed solutions and modifications that will balance the impacts to the stakeholders. The “town hall” meeting will still be required to adhere to the Ralph P. Brown Act regarding public meetings of a legislative body. These requirements including, among other things, documenting minutes of the discussions, adhering to quorum restrictions regarding Council representations at “break out” groups, and allowing public comments to be made in some form. The resulting discussion will be intended to provide solutions for amending Chapter 6.04 in a manner that funds appropriate service levels and programs while being responsive to members of the community residents and businesses alike.
3. Staff proposes to return to the City Council on September 3, 2024, with the results of the “town hall” and stakeholder meetings, and specific solutions that arise out of these meetings. Concurrently, staff will continue to vet and consider all the potential impacts of the moratorium and the proposed modification(s) as any proposal must still be lawful and within the confines of the laws of the State of California and within the adopted parameters of the Measure B ballot measure.

ANALYSIS

While many cities use employee count as the basis for calculating the tax due, many cities have moved away from this methodology as it is often perceived as a tax on jobs. Under Government Code section 37101(b), any city imposing a business tax must “levy the tax so that the measure of tax fairly reflects that proportion of the taxed activity actually carried on within the taxing jurisdiction.” Many view the gross receipts methodology to best meet this State law requirement, and this methodology allows a city to proportionally collect tax and automatically adjust the tax based on how the economy affects each company’s financial performance.

The current moratorium and the extension proposed have direct impact on the service levels available to all residents and businesses of Tracy. A business tax has been a chief contributor to the service levels. As a result, the moratorium has directly impacted the 2024-2025 budget by necessitating staff to reduce the budget by the equivalent amount of revenue that would have

been collected had the moratorium not been adopted. The consequence of which is that the current budget funds service and program levels at a lower rate than those provided for in prior years.

The proposed extension is taken pursuant to section 65858 of California Government Code provides that after notice pursuant to Section 65090 and a public hearing, the legislative body may extend the initial moratorium for an additional 10 months and 15 days. The extension requires a four-fifths vote for adoption and requisite findings to be made.

Unless and until the City Council removes the moratorium or adopts a proposed modification to the tax structure that allows for the City to collect business tax revenues service levels will remain at diminished levels. The proposed extension should only be in place for a sufficient period of time to develop and adopt a reasonable solution that will allow for fiscally sound budget and service levels to be adopted.

Without an extension of the moratorium, the existing business tax structure set forth in Chapter 6.04 would become effective as of July 20, 2024, and staff would be required to send bills to businesses immediately. The extension of the moratorium is necessary because the City Council needs additional time to analyze potential amendments to the current tax structure that could mitigate the severe consequences to local businesses if tax bills are sent under the current version of Chapter 6.04. If adopted by a vote of 4/5, the proposed urgency ordinance will extend the existing moratorium by an additional 10 month and 15 -days and staff will not be sending bills until the moratorium lifts or Chapter 6.04 has been amended by future action of the City Council.

FISCAL IMPACT

The moratorium has a direct and deleterious effect on the current fiscal year's budget. Until the moratorium is removed pursuant to City Council action, service levels and important capital improvement projects will remain funded below prior years funding.

PUBLIC OUTREACH/ INTEREST

Staff has engaged the greater business community and the topic remains of great public interest and discussion. Meetings with impacted businesses and industries continue to be scheduled and still will continue to receive input and dialogue with the public.

COORDINATION

This report has been jointly prepared by the City Attorney's Office, City Manager's Office and the Finance Director.

CEQA DETERMINATION

Review under the California Environmental Quality Act is not applicable for this report.

STRATEGIC PLAN

This agenda item relates to Council's Strategic Priorities for Fiscal Health.

ACTION REQUESTED OF THE CITY COUNCIL

Conduct a Public Hearing, and upon conclusion, adopt an Urgency Ordinance making findings and extending for ten months and fifteen days, pursuant to Government Code 65858, the temporary moratorium on the processing of Business Tax under Chapter 6.04 of the Tracy Municipal Code, to take effect immediately upon adoption.

Prepared by: Bijal Patel, City Attorney
Sara Cowell, Finance Director
Arturo M. Sanchez, Assistant City Manager

Approved by: Midori Lichtwardt, City Manager

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL

URGENCY ORDINANCE NO. _____

**MAKING FINDINGS AND EXTENDING FOR TEN MONTHS AND FIFTEEN DAYS,
PURSUANT TO GOVERNMENT CODE 65858, THE TEMPORARY MORATORIUM
ON THE PROCESSING OF BUSINESS TAX UNDER CHAPTER 6.04 OF THE TRACY
MUNICIPAL CODE, TO TAKE EFFECT IMMEDIATELY UPON ADOPTION**

WHEREAS, pursuant to Government Code Section 37101(a), the governing body of a city has the power to license, regulate and tax any lawful occupation; and

WHEREAS, pursuant to Chapter 6.04 of the Tracy Municipal Code, business tax is an annual tax charged to businesses operating in the City of Tracy, for the purpose of contributing revenue to the City's General Fund in support of essential services, such as public safety, streets maintenance, and recreation programs; and

WHEREAS, in March 2020, the City Council formed an Ad-Hoc Committee, consisting of former Mayor Pro Tem Vargas and Councilmember Arriola, for fiscal sustainability; and

WHEREAS, the Ad-Hoc Committee now has become the standing Finance Committee of the City Council and has broader fiscal jurisdiction; and

WHEREAS, the Ad-Hoc Committee was formed with the intention of providing guidance to develop short and long-term fiscal sustainability strategies, as during this time, the City was facing a budget deficit; and

WHEREAS, one of the recommendations from the Ad-Hoc Committee was to review the structure of the City's Business Tax, which structure was based upon the number of employees, had a cap of \$2,018 and had remained unchanged since 1984; and

WHEREAS, In March 2022, the City Council directed staff to proceed with placing a tax measure on the November 2022 ballot; and

WHEREAS, in November 2022, voters in the City of Tracy approved Measure B, which adopted an updated Business Tax structure based upon gross receipts; and

WHEREAS, Measure B took effect July 1, 2023, and is codified in Tracy Municipal Code (TMC) Chapter 6.04; and

WHEREAS, according to Chapter 6.04, businesses pay a flat business tax of \$50 on the first \$500,000 of gross receipts and pay a percentage of gross receipts for any gross receipts above

\$500,000; the percentage applied to gross receipts over \$500,000 ranges from \$0.001 to \$0.003, or \$1 to \$3 for every \$1,000 in gross receipts, depending on the category of business; and

WHEREAS, the updated Business Tax structure was aimed to bring a proportionate tax amongst small and large businesses and to give Tracy control over local funds, providing resources for community priorities including public safety, recreational programs, and economic development; and

WHEREAS, at the City Council meeting on May 21, 2024, various business owners in the City expressed concerns about the substantial financial impact and strain on their operations caused by the new business tax; and

WHEREAS, some businesses indicated that they would not be able to survive the business tax burden, and other businesses indicated they would be relocating outside of the City of Tracy; and

WHEREAS, based upon requisite finding, the City Council adopted Urgency Ordinance 1345 on June 4, 2024, establishing a 45-day moratorium on the application of Chapter 6.04 of the TMC; and

WHEREAS, on June 18, 2024, the City Council further analyzed the information presented to them and determined that much more robust analysis was needed before amendments to the existing business structure could be made; and

WHEREAS, this additional analysis included information gathering that would occur at a “town hall” style special City Council meeting and additional meetings between staff and the Tracy Chamber of Commerce;

WHEREAS, this additional analysis could not be completed within the 45-day moratorium period, so the City Council requested staff to return with this extension; and

WHEREAS, Section 65858 of the California Government Code provides that after notice pursuant to Section 65090 and a public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently for one year, and

WHEREAS, as staff must send bills to businesses immediately to meet the current tax deadline of July 1, 2024, the City Council must take urgent action to halt the implementation of Chapter 6.04; and

WHEREAS, the City Council and the staff need additional time to analyze potential amendments to the current tax structure that could mitigate the severe consequences to local businesses if tax bills are sent under the current version of Chapter 6.04; and

WHEREAS, absent the adoption of this interim urgency ordinance, the business owners will be forced to pay the new increased business tax to renew their business licenses and, consequently, will likely make decisions that will severely impact the public safety, health and welfare of the City by either shutting down operations or relocating outside of the City limits; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations

not in conflict with general laws; and

WHEREAS, the City Council conducted a properly noticed public hearing on July 9, 2024, to consider the adoption of this Urgency Ordinance; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals/Findings. The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City.

SECTION 2. Moratorium. The City Council hereby extends the 45-day temporary moratorium for an additional 10 months and 15 days on the processing of business taxes under Chapter 6.04 of the Tracy Municipal Code, and staff is directed to take all necessary actions to implement the purpose of this moratorium; and

SECTION 3. "Town Hall" Style Meeting. The City Council directs the City Manager to conduct a "town hall" style meeting, subject to modification as needed to comply with the Ralph P. Brown Act no later than the end of August, to hold additional meetings between City staff and the Chamber of Commerce, and to return to the City Council for further deliberation upon conclusion of such efforts.

SECTION 4. Effect of Ordinance. For the term of this Ordinance, as set forth in Section 2 hereof, the provisions of this Ordinance shall govern, and to the extent there is any conflict between the provisions of this Ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended; and

SECTION 5. CEQA Determination. The City Council finds and determines the adoption this Ordinance is not a project within the meaning of the California Environmental Quality Act (CEQA), including as the term "project" is defined by section 15378 of the CEQA Guidelines, and that even if it were a project under CEQA, it is subject to the CEQA exemptions contained in CEQA Guidelines Sections 15061(b)(3), 15183, and/or 15308, each of which provides a separate and independent basis for a CEQA exemption and when viewed collectively provides an overall basis for a CEQA exemption; and

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional; and

SECTION 7. Effective Date. In accordance with Government Code Section 65858, this Ordinance shall be in full force and become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare, for a period of 10 months and 15 days from the date of its adoption. This period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858; and

SECTION 8. Publication. The City Clerk is directed to certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect; and

SECTION 9. Codification. This Ordinance shall not be codified in the Tracy Municipal Code

The foregoing Ordinance _____ was introduced and adopted at a regular meeting of the Tracy City Council on the 9th day of July 2024, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTENTION:	COUNCIL MEMBERS

NANCY D. YOUNG
Mayor of the City of Tracy, California

ATTEST: _____
ADRIANNE RICHARDSON
City Clerk and Clerk of the Council of
the City of Tracy, California

Date of Attestation: