

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

08-1125

October 29, 2008

TO: Honorable Members of the Los Angeles City Council

FROM: Gerry F. Miller *GFM*
Chief Legislative Analyst

Assignment No. 08-10-2055

**ALTERNATIVE BALLOT MEASURES
TO A LUXURY TAX PROPOSAL**

SUMMARY

At the October 27, 2008 Budget & Finance Committee meeting, the Committee considered the CLA's report in response to Motion (Alarcón-Reyes), which proposed to levy a luxury tax on all homes larger than 5,000 square feet. The author of that Motion requested that the Committee, and the Council, instead consider an alternative surcharge on excess utility usage. The Committee, while not supportive of the luxury tax proposal, referred the matter to Council without recommendation and instructed the CLA to provide alternatives for consideration when this matter is before the City Council. This report outlines various options for Council's consideration, as well as the pending revenue generation options to be heard in Council in November 2008.

RECOMMENDATIONS

If the City Council wishes to proceed with placement of any of the measures described below on the next ballot, then the City Council should:

1. REQUEST the City Attorney, with the assistance of the Chief Legislative Analyst (CLA) and the City Administrative Officer (CAO), to prepare the necessary Ordinance and Resolution of Necessity to place the measure on the March 3, 2009 City Primary Election ballot, with said documents to be transmitted no later than November 5, 2008.
2. INSTRUCT the City Clerk to, upon submission of the Ordinance and Resolution of Necessity, to place them on the next available Council Agenda for consideration on or before November 7, 2008.

BACKGROUND

This office recently submitted to the City Council a report in response to Motion (Alarcón-Reyes) which proposed to impose a 'luxury tax' on homes within the City of Los Angeles that



exceed 5,000 square feet. The Motion suggests a graduated levy amount beginning at \$1,000 and increasing to \$6,000 for homes of 10,000 square feet or more. The Motion instructs staff to review this proposal, calculate its impact, and report with recommendations, including alternatives.

The CLA report presented to the Budget & Finance Committee on October 27, 2008 estimated that levying a luxury tax in the manner suggested in the Motion could generate \$15M per year, but would likely be invalidated as an Ad Valorem tax that violates the State Constitution. The CLA, City Attorney, CAO, and Building & Safety discussed various alternatives that could be considered by the Council that would be less likely to be characterized as an Ad Valorem tax, such as a two-category alternative (homes larger than 5,000 and 10,000 square feet, respectively), or a surcharge on documentary transfer tax transactions for similar sized homes. Those alternatives were suggested for discussion purposes only, not as recommendations.

The deadline for placing any proposal on the City's March 2009 Primary Election Ballot is October 29, 2008. Alternatively, the deadline for placing a measure on the May 2009 General Election ballot is January 14, 2009. As currently proposed in the Motion, any luxury tax proposal would require 2/3-voter approval to be ratified. A surcharge on documentary transfer tax transactions, or similar non-property-based transactions, would require a simple majority if the proceeds are utilized for general City purposes.

At the October 27, 2008 Budget & Finance Committee meeting, the Chief of Staff for Council District 7 requested that the Committee, and the City Council, consider placing an alternative proposal on the City's March 2009 Primary Election Ballot, instead of the proposal outlined in the Motion. Under CD 7's alternative proposal, a surcharge would be placed on the Utility Users Tax bill of certain homeowners (homes larger than 5,000 square feet) or homes that have 'excess' usage. Committee members expressed concern with the original Motion and alternative proposal, but forwarded the entire matter to Council without recommendation and requested that the CLA report with more information on the various alternatives when the Luxury Tax proposal is considered in Council.

The following are a series of alternatives, similar to the Luxury Tax proposal in Motion (Alarcón-Reyes), which could be placed on a future ballot:

1. **Increase the documentary transfer tax for all homes in excess of 5,000 square feet.** This proposal was also discussed in the CLA's report to the Council as an example of one alternative to a luxury tax levy. This is a very volatile revenue source and it would be difficult to project the amount to be generated.
2. **Apply a surcharge on all Utility Users Taxes (UUT), except the telephone/telecommunications component, for all single family residences in excess of 5,000 square feet in a manner that would generate at least \$10M per year.** This proposal is an iteration of the concept of a UUT surcharge, as raised in the Budget & Finance Committee. \$10M would be similar in size to the alternate two-tiered luxury tax proposal.

If the Council wishes to proceed with this option, the City Attorney should be instructed

to work with the CAO and the CLA to review two of the three components of the current UUT - natural gas and electricity - and develop a proposal that could generate the targeted revenue amount of \$10M. Given that the City recently submitted to the voters an adjustment of the third component of the UUT - telephone/telecommunications - an adjustment in that component should be avoided.

3. **Apply a surcharge on the electrical usage component of the UUT for all single family residences that use in excess of 4,000 Killowatt Hours (kWh) of electricity on a bi-monthly basis.** According to DWP's calculations, the median bi-monthly electric consumption for residential usage is 1,000 kWh. An argument could be made that homes which use more than the average kWh are using an excessive amount of electricity and should pay a surcharge. For the most part, homes in excess of 5,000 square feet utilize more than 4,000 kWh on a bi-monthly basis. A proposal to place a surcharge on homes using more than 4,000 kWh would be consistent with the category of homes proposed in the original luxury tax proposal.

We note that the following revenue-generation options that require the approval of the electorate are also pending before the City Council, and are scheduled for consideration at 'Finance Day' on Tuesday, November 18, 2008.

4. **Recovery fee for cost of 911 and dispatch operations**
5. **Increase TOT tax rate**
6. **Flood Control Assessment (Stormwater pollution abatement fee)**
7. **Barrel tax on petroleum extraction**
8. **Increase sales tax up to 1¢**
9. **Increase document transfer tax rate on real estate transfers**
10. **Reinstitute a Wastewater franchise fee.**

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