

October 1, 2009

To: Mayor and City Council Members

From: Greg Burris, City Manager

Re: **Clarification of Pension Sales Tax Repeal Provision in Ballot Language**

The purpose of this memo is to clarify any remaining misunderstandings about the pension sales tax repeal provision in the November 3rd ballot language. It seems that the article included as the top story in the Sept. 28 edition of the News-Leader "Ending sales tax would require vote" has confused the issue, so hopefully this information will help provide clarification.

Perhaps the most clear explanation was that provided to the Council by Dan Wichmer during the Aug. 13, 2009 City Council meeting. Since I was out of town on that date, Dan presented the explanation of the ballot language bills (two alternative tax amounts) and specifically addressed the repeal and sunset provisions. The transcript of that portion of the Aug. 13 Council meeting is provided as Attachment A. The ordinance titles that Brenda Cirtin read immediately prior to the discussion transcript included the phrase "repeal election" to promote full transparency. For those of you who would rather watch it on video, this Council meeting is also available on the City's web site:

- Go to www.springfieldmo.gov
- Select CityView in the bottom, right corner of the page
- Select City Council on the left menu
- Select August 13, 2009
- (Note: The explanation is only a few minutes into the meeting)

During the Aug. 24, 2009 meeting, Mayor O'Neal requested that Dan again explain the repeal and sunset provisions of the proposed ballot language. The transcript of that portion of the Aug. 24 Council meeting is provided as Attachment B. This meeting is also available on the City's Web site – just follow the same instructions as above and select the Aug. 24, 2009 meeting (the transcribed dialogue occurs just short of the meeting's half-way point or use the "bookmark" function to reach CB 2009-206/207).

Since the Police-Fire Pension Fund Citizens' Task Force and members of City Council have repeatedly stated that a pension sales tax at this time and at less than the 1-cent level would most likely require a renewal, the state-mandated ballot language that permits a continuation of the tax after five years was specified in the bills for Council's consideration. For example, during the Aug. 13 Council meeting, when two different sales tax rates were being debated, Councilman Chiles noted that "It seems obvious that we're going to have to ask for a renewal. We're going to have to perform well enough so that the citizens view this as an ongoing commitment. And I don't see how anything short of that 1-cent proposal, which we're not going to do, would fix it in five years. It seems we're going to have to present this to the voters, in one form or another, in five years." Councilman Chiles' remarks are consistent with the

recommendations from the Citizens' Task Force and remarks from other members of Council. Thus, the ballot language ordinance presented to Council reflected the stated direction of both the Citizens' Task Force and Council.

The Police-Fire Pension Fund Citizens' Task Force recommendations included two sales tax alternatives for Council's consideration: a 5/8-cent sales tax and a 3/4-cent sales tax. Both included the statement that "the Task Force acknowledges that a sales tax at this rate may require two 5-year periods (original passage and one renewal).

To my knowledge, at no time did the Citizens' Task Force or any Council member state an interest in passing a five-year pension sales tax, waiting for some period of time, then going through the process again. This action would have resulted in a funding gap – a period of time when the City would not be collecting the pension sales tax. Given that the City would not be permitted to initiate a second 3/4-cent tax initiative until the first one completely expired (to avoid illegal "tax stacking"), this approach would necessitate a funding gap. To offer a public safety sales tax that will allow the possibility of the desired continuity of funding, the state-specified ballot language requiring a repeal election must be used.

Regardless, if the proposed tax passes in November, the citizens of Springfield will have an opportunity to determine whether the tax would continue or not. In fact, there are three ways the tax could end and one way the tax could continue.

- If, after the initial five years, the City Council elects not to place the repeal on the ballot, the tax would end.
- If, after the initial five years, the City Council does elect to place the repeal on the ballot and the citizens vote to repeal the tax, the tax would end.
- If, after the initial five years, the City Council does elect to place the repeal on the ballot and the citizens vote not to repeal the tax, the tax would continue for an additional period of time to be determined by Council (not to exceed five years) and included in the repeal ballot language.
- Either the Council or citizens could use the initiative petition process to place the measure on the ballot within the five-year period.

As an additional reference, I have also attached (Attachment C) the clarification letter recently provided to the Chamber of Commerce regarding this matter and their questions following the recent News-Leader article.

I hope you find this additional information helpful. Please contact me or Dan Wichmer if you have any additional questions.

Attachments

Cc: Dan Wichmer
Brenda Cirtin
Evelyn Honea
Collin Quigley
Louise Whall

Appendix A

Transcription of Dialogue at Special City Council Meeting – August 13, 2009

(Brenda Cirtin read the bills)

Mayor O'Neal: Thank you. Mr. Wichmer?

Mr. Wichmer: Yes, Mr. Mayor, and Members of Council. This is mostly identical to the bill that was presented in February for a sales tax. Obviously, the amounts have changed. One thing I want to bring to the attention of the Council and the public is the language at the end of the ordinances, which talks about a repeal election. As you know, back in February, the idea was that at one-cent funding, a one-cent sales tax, the funding at 100-percent or full funding, which should have occurred somewhere between five and six years, or the tax would end. Since you're going with a lower amount, and since the fund has lost money due to the market, you're looking at conservatively nine to twelve years of a five-eighths or three-fourths-cent sales tax assuming seven and one-half-cent return and good market experience. Under state law, under State Law 94.579, the law requires that if you enact this sales tax, and it's going to go beyond five years, that every five years you have to submit to the voters of the city a measure to whether or not they want to repeal the tax. So you don't have a sunset per se, you have a repeal election. Now, if for some reason we have great market experience and revenues come in greater than expected, we do have the ability that once it is fully funded, it ceases, it does sunset with a, with a full funding status as determined by an independent actuary, which would be 100-percent funding. I'd be happy to answer any questions.

Mayor O'Neal: Are there questions for Mr. Wichmer? Yes, Mr. Burlison.

Mr. Burlison: Just to clarify when at the end of the five-year period, if this tax was to come into place, at that point in time, the voters would have the option to, in other words, to carry on the tax, they would vote no to not repeal it? Is that correct?

Mr. Wichmer: That is correct.

Mr. Burlison: Thank you.

Mayor O'Neal: And it probably bears...oh, go ahead, Mr. Ibarra.

Mr. Ibarra: I had a question about the language of both the bills, and my question is, during the February election, the question that was brought up a lot at least to these ears, was the difference between a general sales tax and a special sales tax, and a general sales tax from my understanding being one that could be used

for anything even though it was supposed to be used for something in a special tax had legal bounds to it to where it was earmarked for lack of a better term. Is that accurate?

Mr. Wichmer: Yes, under Missouri law, a city is allowed to levy up to one cent of a general fund sales tax. We have that in place. That is what our General Fund is basically funded by. Every other tax that we have has been put to an election as a special tax. This tax, as you note in the language, has to be used solely to fund the Police and Fire Pension Plan. It cannot be used for anything else.

Mr. Ibarra: Okay. Legally.

Mr. Wichmer: Correct.

Mr. Ibarra: Okay.

(Forwarded)

Mayor O'Neal: I have a question for Mr. Wichmer. We did put here, and I'm looking at the, that's the 30-percent city contribution with the 6.75-percent return, and the top line is the seven-eighths cent, and you work your way down an eighth all way to a quarter-cent sales tax at the bottom. What are those, there are some legal thresholds, that's my question, that there's a couple, 60, 70, 80-percent funding that those are kind of bars or thresholds that if we don't, if we're not at them in certain points in time, it creates, it's problematic, so could you address that, please?

Mr. Wichmer: Yes. Under any of the scenarios, you need to hit 60 percent before you get out from under the state mandated every, making your actuarial contribution once every five years to avoid having the state withhold money. Below 80 percent, under the same law, you cannot give out any benefit increases period.

Mayor O'Neal: So those are the two state mandates that we keep in mind.

Mr. Wichmer: Yes.

Mayor O'Neal: So, as to the purpose of looking at this chart, is it correct for me to say that as long as the funding level stays above 60 percent, that there would not be a time when the state would come in and say, you're not adequately funding, therefore we withhold your sales tax at the state level up to, not just sales tax, all tax, they can withhold up to 25 percent, is that right?

Mr. Wichmer: Correct.

Appendix B

Transcription of Dialogue at City Council Meeting – August 24, 2009

(Forward)

Comments from citizen regarding Council bills 2009-206 and 207.

Mayor O'Neal: I believe that was in there earlier. Ms. Cirtin, the Clerk, believes it was, too. We will look if it's...

Citizen: Okay.

Mr. Wichmer: Mr. Mayor, if you'll recall, I told Council last, at the beginning of this public hearing that state statute says that this is not a tax that automatically renews, that you have to go to a vote to repeal the tax at the end of five years, and our prior tax of one-percent proposal would have funded at 100 percent within five, so we put it in sunset language at the earlier of five years or full funding. This one, as Council knows, we anticipate this is going to require another election at whatever percentage these two provide, and that state law requires that in five years, we go to a repeal election to see if you want to continue the tax. That was explained at the beginning of the last public hearing.

Mayor O'Neal: Very well. Thank you. Uh, please allow him the full five minutes.

(Forward)

Comments from citizen regarding Council bills 2009-206 and 207.

Mayor O'Neal: Thank you, sir. Are there any other questions for the speaker? If not, I'm going to ask Mr. Wichmer to address a couple of these things and I'm going to address a couple also, but with regard to the ballot language, would you address that one more time?

Mr. Wichmer: Yes, the ballot language is set forth in 94.579 of state law, that's the language. We put in the sunset so that if for some reason, the market went great, and the investment returns were much better than expected, that once it hit fully funded, the tax would end on its own. Otherwise, the state requires a repeal election, and it is not part of the ballot language.

Mayor O'Neal: And we have to place this before the County Clerk tomorrow. . .

Mr. Wichmer: Correct.

Mayor O'Neal: . . .and so, that's why we have this language before us this evening. I can tell you that the Council will be considering, beginning tomorrow at our Council luncheon, the other items to address the pension problem in some fashion like it was done in February, and I will address your other issues here in my comments in a few minutes. Thank you.