



Board of Supervisors Memorandum

June 19, 2018

Resolution Levying a Temporary 10-Year General Excise Tax for Road Repair

Background

On May 15, 2018, the Board approved Sales Tax Implementation Plan Ordinance No. 2018-16, which details how a new half-cent sales (excise) tax collected County-wide over 10 years would provide the additional funding necessary for the County's plan to repair and regularly maintain every paved road in the unincorporated area within 10 years, and to provide over \$500 million to cities and towns for their road repair plans. However, the ordinance cannot become effective without the Board adopting a Resolution Levying a General Excise Tax for Road Repair, which is scheduled for Board action on June 19, 2018, and can only be approved by a unanimous vote of Board.

Although the tax would be a general excise tax levied under A.R.S. 42-6103, which is the only legal authority available to the Board to adopt an excise tax, the resolution restricts the use of the general excise tax to road repair only. Yavapai County established precedence in 1994 for limiting use of its general excise tax, in part, to road construction and reconstruction as part of their resolution levying the tax.

The resolution also eliminates the 25-cent road repair property tax effective July 1, 2019. The excise tax would start January 1, 2019, revenues to Pima County would lag by a couple of months, and the County would not begin expending the funds until July 1, 2019. Prior to expending the Year 1 funds, the Regional Transportation Authority (RTA) would oversee the development of a regional road repair plan to include the County's plan and plans for the cities and towns. The RTA would annually audit the spending of the excise tax road repair. The State Auditor General's office would also audit spending of the excise tax on road repair. If either audit showed misspending and the misspending was not corrected, the excise tax would be terminated.

The Board's action on this resolution was noticed on the County's web site on April 19, 2018, per A.R.S. §11-251.13. Additional information about the County's efforts to fund road repair, including an interactive map and list of every paved road in unincorporated Pima County and the proposed schedule for when it would be repaired within 10 years, can be found at www.pima.gov/roadrepairplan.

Recommendation

- A. I recommend the Board approve the Resolution Levying a General Excise Tax for Road Repair.

The Honorable Chair and Members, Pima County Board of Supervisors
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- B. If the Resolution fails to get the necessary unanimous vote for approval, I recommend the Board provide direction to staff regarding how to address the road repair funding crisis.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/dr (May 23, 2018)

- c: Chair and Members of the Sales Tax Advisory Committee
Chair and Members of the Transportation Advisory Committee

RESOLUTION NO. 2018 - _____

**A RESOLUTION OF THE PIMA COUNTY BOARD OF
SUPERVISORS LEVYING A GENERAL EXCISE TAX FOR
ROAD REPAIR**

The Board of Supervisors of Pima County, Arizona, finds:

- A. Pima County has authority, under A.R.S. § 42-6103, to adopt a general excise tax by a unanimous vote of the Board of Supervisors. The tax rate specified in the statute equates to one-half percent for most transactions and applies to the same transactions subject to the State of Arizona's sales tax. It applies to transactions within cities and towns as well as those in unincorporated areas of the county levying the tax.
- B. Pima County is the only County that has not levied a sales tax.
- C. The State Legislature has not raised the gas tax in over 27 years, and the amount of Highway User Revenue Funds distributed to Pima County is inadequate to pay for needed road repair and maintenance as well as important capital projects.
- D. Approximately 70 percent of the 1,891 miles of paved County-maintained roadways in unincorporated Pima County are in poor or failed condition. It would cost over \$600 million, over a ten year period, to bring all paved and maintained roads within unincorporated Pima County up to a fair or better condition based on the Pavement Surface Evaluation and Rating ("PASER") system.
- E. Imposition of a general excise tax under A.R.S. § 42-6103, in order to provide funding for road repair and maintenance for County maintained roadways and those maintained by its incorporated municipalities, would support and enhance countywide services.
- F. The Board of Supervisors adopted the Sales Tax Implementation Plan Ordinance No. 2018-16 on May 15, 2018, which becomes effective upon the Board's approval of this resolution adopting a county sales tax.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Tax Levy; Temporary. The Board of Supervisors of Pima County hereby orders the levy of a county general excise tax under A.R.S. § 42-6103, at a rate that is ten percent of the rates prescribed by A.R.S. § 42-5010(A) on each class of business subject to the tax imposed by Title 42, Chapter 5, Article 1 of the Arizona Revised Statutes and A.R.S. § 42-5352(A) (the "County Sales Tax"). This levy is for a period of ten years, as provided below.
2. Allocation of Revenue and Termination. The Arizona Department of Revenue will collect the County Sales Tax revenue beginning on January 1, 2019 and the State Treasurer will transmit the revenue to the Pima County Treasurer, as provided by A.R.S. § 42-6103. The Pima County Treasurer will deposit the revenue in the "Road Repair Fund". The County Administrator or their designee will cause the appropriate notices terminating the collection of the Sales Tax to be delivered to the Arizona Department of Revenue so that collection ceases as of December 31, 2028.

3. Use of Revenue in Road Repair Fund.

- a. Authorized Uses. The County Sales Tax revenue deposited in the Road Repair Fund may be used only for the maintenance, repair, and rebuilding of roads within the County, and for the payment of debt service and financing costs on any debt obligations issued by the County for such purposes. Qualifying repair and preservation treatment activities include fog sealing, chip sealing, micro-surfacing, mill and overlay, and reconstruction, including repair, reconstruction, or installation of associated shoulders and headers, edge protection, curbing, and any Americans with Disabilities Act (ADA) infrastructure improvements required by the application of a particular repair or preservation treatment.
- b. Distribution of Road Repair Sales Tax Revenues among Municipalities and Pima County. The County Administrator is directed to develop and implement a program for distributing a share of the revenues in the Road Repair Fund to each incorporated municipality within the County. The distribution will be based on the municipality's population expressed as a percentage of the County's total population, plus the municipality's Taxable Net Assessed Valuation expressed as a percentage of the County's total Taxable Net Assessed Value, divided by two, and the County Administrator is further directed to develop, with the assistance of the County Attorney's Office, appropriate intergovernmental agreements between the County and each municipality, as stated in the Sales Tax Implementation Plan Ordinance.
- c. Role of Regional Transportation Authority. The County Administrator is directed to work with the Regional Transportation Authority (the "RTA") to develop an intergovernmental agreement under which the RTA will (1) oversee the County's and municipalities' road repair and pavement preservation programs that receive funding from the Road Repair Fund; (2) cause the Road Repair Fund to be audited annually by a certified public accountant as described in paragraph 3(d) below; and (3) be reimbursed by the County for costs it incurs in the course of carrying out its activities set forth in this Resolution and in the Sales Tax Implementation Plan Ordinance. The RTA, as established by State Statute, ceases to exist after 2026. It is the County's intent to enter into a similar intergovernmental agreement with the Pima Association of Governments if and when RTA ceases to exist. The refusal of the RTA or PAG to enter into such an agreement will not invalidate the County Sales Tax; in that event the County will order an independent audit.
- d. Reporting and Auditing. The County Administrator or their designee will track and report the amount of revenue received from the County Sales Tax, the amounts deposited to the Road Repair Fund, and all expenditures of monies in the Road Repair Fund, as well as all expenditures of the proceeds of any obligations issued by the County, the debt service on which is to be paid from the Road Repair Fund, in the County's financial statements that are audited annually by the Arizona Auditor General's Office. The County Administrator or their designee will also report this information in separate financial schedules, and will cause those schedules to be audited annually by an independent certified public accountant retained by the RTA per paragraph 3(c), who will attest that the schedules fairly represent Pima County's deposits to and expenditures of the monies in the Road Repair Fund; and that the use of the monies in the Road Repair Fund complied with the restrictions in paragraph 3(a) above.
- e. Cure. If an audit report issued by the Auditor General or by an independent certified public accountant under paragraph 3(d) above indicates that the deposits to the Road Repair Fund were less than they should have been, or that any expenditure of monies in the

Road Repair Fund by the County was improper, and if this finding is not reversed after consultation with the County, the County will, during the then-current fiscal year, deposit additional monies into the Road Repair Fund to cure any shortfall in the deposits and reimburse the Road Repair Fund the amount of any improper County expenditure, provided that sufficient funds are legally available to the County to be used for that purpose. The first annual independent audit that is conducted after this reimbursement will certify that the prior violation was cured.

- f. Automatic Repeal. If either of the two following events occurs, the levy of the County Sales Tax will lapse and cease as of the end of the fiscal year in which it occurs, except that the levy will continue so long as any obligations that are secured by a pledge of the County Sales Tax revenue, or for which the County Sales Tax revenue is the identified debt-service funding source, are outstanding: (1) an improper use of the monies in the Road Repair Fund is reported as provided in paragraph 3(d) above, and the following annual independent audit does not certify that the monies have been replaced as provided in paragraph 3(e) above; and (2) the County levies a property tax for roads under A.R.S. § 28-6712 for a fiscal year that commences after collection of the Sales Tax begins. If that occurs, the County Administrator or their designee will cause the appropriate notices terminating the collection of the Sales Tax to be delivered to the Arizona Department of Revenue.

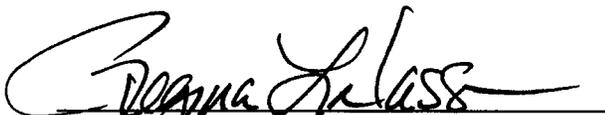
PASSED, ADOPTED AND APPROVED by the Pima County Board of Supervisors this ____ day of _____, 2018.

Richard Elias
Chairman, Pima County Board of Supervisors

ATTEST:

Julie Castañeda
Clerk of the Board

APPROVED AS TO FORM:



Deputy Pima County Attorney
REGINA NASSEN