Transactions and Use Tax Oversight Committee
Annual Report for Fiscal Year 2008/2009
Prepared for the Porterville City Council                  March 16, 2010

Members:
Gregory Francisco Gillett, Chair
Dick Eckhoff, Vice-Chair
Rick McIntire, Secretary
John Baumgartner
Barbra Black
Shirley Hickman
Jack Irish
Greg Shelton
Pursuant to the Resolution No. 24-2006, the Transactions and Use Tax Oversight Committee respectfully submits this annual report to the City Council for review.

HISTORY
On November 8, 2005 Ordinance No. 1684 entitled the Transactions and Use Tax for Public Safety, Police and Fire Protection appeared on the Special Consolidated Election ballot as Measure H.

Ballot Measure H read:

**PORTERVILLE POLICE AND EMERGENCY RESPONSE/911 SAFETY MEASURE.** In order to increase the number of police and firefighters, expand neighborhood crime prevention efforts, improve 9-1-1 response times and communication, upgrade the 9-1-1 dispatch center, build a new fire station, and expand and improve anti-gang, anti-drug and anti-bullying programs, shall the sales tax be increased by one-half cent with citizens oversight and independent annual performance and financial audits?  YES  NO

On December 6, 2006, the City Council reaffirmed Ordinance No. 1684 and adopted the Program Guidelines and public Safety Expenditure Plan for the administration and expenditure of the tax proceeds. General Fund 004 was designated as the Measure H Tax Fund.

On February 21, 2006, the City Council adopted Resolution No. 24-2006 establishing an independent citizen’s oversight committee charged to monitor the expenditure of General Fund Revenues derived from the Transactions and Use Tax for Public Safety, Police and Fire Protection.

The Purpose of the Transactions and Use Tax Oversight Committee (TUTOC) is to review the revenue and expenditures of the three Measure H Budgets (Fire, Police and Literacy) contained in General Fund No. 004, Public Safety Sales tax, and report to Council their finding as “consistent with the intent of the ballot measure” or “non consistent.”

Should a determination of “non consistent” be brought forth, the Council shall hold a public hearing on the issue and take whatever action Is necessary and appropriate to correct any issues the Council concurs are inconsistent.

TUTOC shall issue an annual report of its conclusions.

The Proposed Budget and the Administrative Policy was not provided to TUTOC for review at that meeting.

After review of the expenditures, TUTOC, in a majority vote, determined that the expenditures were not consistent with the intent of the ballot measure. The Council was notified through City staff and in person of TUTOC’s determination.

On February 22, 2010, the City Audit Committee met to review Resolution 24-2006 and discuss process, procedure and protocol to increase communication between the City and TUTOC in order to fulfill the committee’s obligations under the resolution. The City Attorney recommended that a public hearing be set for March 16, 2010 “to consider sustaining or rejecting the finding of TUTOC that the 2008/2009 Measure H expenditures were ‘inconsistent’ with the adopted 2008-2009 Measure ‘H’ Expenditure Plan. (Emphasis added to distinguish the language set forth by the City Attorney and Resolution 24-2006 which reads: “To review the revenue and expenditures …and report to Council their finding as ‘consistent with the intent of the ballot measure’ or ‘non consistent.’”)

On February 25, 2010, the City Attorney advised City Council that a public hearing would not be fruitful until TUTOC could receive documents from City staff and prepare its annual report. Council was further notified of TUTOC’s intent to hold a meeting on March 4, 2010 to request documents necessary for preparation of the annual report.

On March 4, 2010, TUTOC met to determine documents necessary to draft the annual report and establish protocol for delivery of committee determination and creation of annual report.

On March 11, 2010, TUTOC met to review the documents provided by the City and prepare the Annual Report for fiscal year 2008/2009. Despite notice that TUTOC required time to prepare the report, the Council set March 16, 2010 as the time and place for a public hearing on TUTOC’s determination.

DETERMINATION
TUTOC renews its determination that the expenditures for fiscal year 2008/2009 as detailed in General Fund 004 are “non consistent” [sic] with ballot Measure H.

COMMITTEE CONCLUSIONS
It is a consensus of the committee that the majority of the expenditures were consistent with the ballot measures. However, a majority of the committee did find that the below-detailed expenditures were not consistent with the intent of ballot Measure H. Moreover, it appears that this Council has established spending policy as it relates to General Fund 004 that will lead to future findings of “non consistent” by TUTOC.
Public Safety Building
Members of TUTOC have determined that the only capital building project identified in the original ballot measure and spending plan voted upon and approved by the voters was a “New Fire Station”. On June 9, 2009 during a TUTOC meeting, City Staff advised the committee that the building of a “Public Safety Building” housing both Police and Fire operations was included in the original ballot measure expenditure plan.

Members of TUTOC have determined that this is inaccurate, and that the expenditure of Measure H funds for any capital building project other than a “new fire station” is inconsistent with the intent of the ballot measure. Measure H funds can be used for that portion of a “Public Safety Building” designed and used to fulfill the spending plan identification of a “new fire station.” However, other funding sources must be used for the balance of a capital building project used for police related operations.

Animal Control Activities
According the detailed expenditures the City has spent $302,966.78 on capital expenditures (land), salaries and benefits, and equipment for the Porterville Animal Shelter. There is, however, a hand-written note stating “1/2 Measure H” on the expenditure list so true expenditure from General Fund 004 is unknown.

Members of TUTOC have determined that it is impossible to find even a reasonable relationship between expenditures in any amount whatever toward an animal shelter and the intent of ballot Measure H. On June 16, 2009, a “Recertification for 2008-09 Fiscal Year Measure H Expenditure Plan” was issued by City Staff which revised the expenditure plan established by the voters, and added funding for the acquisition of land for an Animal Shelter. No such capital project was listed or otherwise identified in the ballot measure and is inconsistent with the intent of the ballot measure. The planning for, acquisition of property, and the building of facilities as well as funding operational costs for animal control activities of the city is completely inconsistent with the intent of the ballot measure as determined by the TUTOC.

Capital Library Construction Project
Members of TUTOC have determined that the only capital building project identified in the original ballot measure and spending plan voted upon and approved by the voters was a “New Fire Station”. On June 7, 2007 during a TUTOC meeting, City Staff advised the committee that the tax measure passed by the voters included provisions for the building of police, library, and fire facilities”.

Members of TUTOC have determined that this is inaccurate, and that the expenditure of Measure H funds for any capital building project other than a “new fire station” is inconsistent with the intent of the ballot measure. On June 19, 2007, a “Recertification for 2007-08 Fiscal Year Measure H Expenditure Plan” was issued by City Staff which revised the expenditure plan established by the voters, and added funding for the construction of a Library Facility. No such capital project was listed or otherwise identified in the ballot measure and is inconsistent with the intent of the ballot measure. The primary concern for TUTOC was the $88,000.00 expenditure (of the $220,000.00
budgeted) on the Library Consultants as listed in account 5094-083-880. Additional concerns within account 5094-083-8800 that highlight vast nature of the inconsistency include expenditures on Golden Touch Limousine services and food and snack items. The planning, acquisition of property for, and the building of library facilities are completely inconsistent with the intent of the ballot measure as determined by the TUTOC.

Policy on allocating Measure H funds for personnel who serve general purpose

The original intent of the Ballot Measure was to increase the number of police officers and firefighters serving the citizens of Porterville along with a minor component related to literacy efforts by the City. It is clear that the City has in fact increased, to some degree, the number of Police Officers and Firefighters as promised in the tax measure. The employment of other personnel, using Measure H funds, who serve a more general purpose outside of direct police and fire protection activities for the citizens, is inconsistent with the intent of the ballot measure.

Members of TUTOC set forth the following as examples of As an example, the employment of a full time custodian to perform maintenance activities for the library is not consistent with the intent of the ballot measure. The full time employment, with Measure H funds, of a fire management employee who performs general duties for the entire department and all of its personnel is inconsistent with the ballot measure. While an argument can be made that a portion of such an employees salary should be paid for with Measure H funds, the cost of his/her full salary is inconsistent with the ballot measure. The TUTOC is concerned that this is a “slippery slope” type of practice which will lead to the supplanting of general fund activities with Measure H funds. The TUTOC is suggesting that the City Council adopt a strict policy in this regard in order to prevent future findings by the TUTOC of “non-consistent” expenditures.

Capital remodel/improvement

Members of TUTOC have determined that the only capital building project identified in the original ballot measure and spending plan voted upon and approved by the voters was a “New Fire Station”. On June 7, 2007 during a TUTOC meeting, City Staff advised the committee that the tax measure passed by the voters included provisions for the building of police, library, and fire facilities”. Members of TUTOC have determined that this is inaccurate, and that the expenditure of Measure H funds for any capital building project other than a “new fire station” is inconsistent with the intent of the ballot measure. On June 16, 2009, a “Recertification for 2008-09 Fiscal Year Measure H Expenditure Plan” was issued by City Staff which revised the expenditure plan established by the voters, and added funding for the remodel of the existing library Facility. Additional example, since rescinded from the Measure H fund after TUTOC members expressed concerns, include expenditures on new carpeting for the Police Station and an air conditioning unit for the library. No such capital project was listed or otherwise identified in the ballot measure and is inconsistent with the intent of the ballot measure. Any activities associated with the remodeling of existing library facilities are completely inconsistent with the intent of the ballot measure as determined by the TUTOC.
ADOPTION OF THIS REPORT

This report was prepared in draft form at the meeting of March 11, 2010 where a majority of TUTOC members concurred on the abovementioned items. TUTOC was unable to adopt this report due to the time necessary to format the report and the time constraints caused by the City Council by the setting of a Public Hearing on March 16, 2010. It was agreed that this draft report may be submitted to Council at the Public Hearing. TUTOC members were encouraged to appear at the Public Hearing to express support of this report in current form or offer their statement of dissent.

If members are not present at the Public Hearing to confirm their support for this written document, the Chair shall call a meeting to adopt this report and forward it to City Council.

Respectfully Submitted,

Gregory Francisco Gillett, Chair

CONCURRING COMMITTEE MEMBERS

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DISSENTING COMMITTEE MEMBERS

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