

Man won't settle tax feud with East P.A.

By Suzanne Zalev
STAFF WRITER

EAST PALO ALTO — Saying his client "does not take bribes," an attorney on Friday rejected the city's offer to settle a lawsuit over its utility tax by refunding the plaintiff the amount he's paid over the last year.

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The city is collecting the utility tax illegally, attorney Tony Tanke said, and plaintiff Dennis Scherzer will only settle if the city stops collecting the tax and issues refunds to everyone who has paid it.

A court ruling last year threw the legality of the tax into question because it was never approved by voters. The City Council decided earlier this month to put the tax on the November ballot, and, in a letter to Tanke, City Attorney Michael Lawson said the vote would settle the issue.

Mayor Duane Bay said Scherzer is "just trying to stir the pot."

"I thought that's why he sued, to get the money. What more does he want?" Bay said, adding that Scherzer had previously filed a "frivolous" lawsuit over a development.

Scherzer's refund, alone, would amount to almost nothing, Tanke said. City officials have said the tax brings in about \$985,000 a year and costs the average household \$10 to \$15 a month.

A hearing is scheduled for Sept. 11, and Tanke said he will

ask the judge to immediately halt collection of the tax. If the tax is approved by voters, he said, it still won't validate past collection of an "illegal" tax.

The Supreme Court last year ruled that taxpayers have the right to challenge a tax imposed without voter approval, even if years have passed since the tax was first implemented. Lawson said Friday that what the court decision did was create a procedure for residents to file claims for refunds of the tax, and that, so far, Scherzer is the only person in East Palo Alto to do so.

"No court has decided that this tax is illegal," Lawson said.

Lawson said he had no comment on the offer because the settlement talks are confidential.

Since the ruling last year, the city has continued to collect the tax but has put it in an escrow account until the issue is resolved. There's a one-year statute of limitations, Bay said, and a year's worth of utility tax is kept in the account.

"At this point it would not be a cash hit on the city," he said.

Tanke, who is based in Davis, was also one of the attorneys representing former Sgt. Robert Cole, who settled a wrongful termination lawsuit with the city last week for \$525,000. That agreement stipulated that neither side admitted to any liability.