

RESOLUTION NO. 16-123

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA CALLING FOR AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2016 TO PRESENT TO VOTERS A MEASURE TO LEVY A TRANSACTIONS AND USE TAX OF ONE-HALF OF ONE PERCENT, AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES; REQUESTING CONSOLIDATION THEREOF WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DATE; AND REQUESTING THAT THE MADERA COUNTY BOARD OF SUPERVISORS AUTHORIZE THE MADERA COUNTY CLERK TO RENDER SPECIFIED SERVICES TO THE CITY OF MADERA RELATING TO THE CONDUCT OF THE GENERAL MUNICIPAL ELECTION

**WHEREAS**, the City of Madera (the City) is a wonderful place to live, work and raise a family, and as a result the City has grown to over 63,000 residents; and

**WHEREAS**, public safety services like police, fire and 9-1-1 emergency response have not expanded at the same rate, with just four police officers on patrol at certain times and just two fire stations to protect the entire city; and

**WHEREAS**, with the State providing early parole to reduce state prison populations, the City now has many new parolees in the area, and as a result the violent crime rate has increased by 47% in the past year, and property crimes are up 14%; and

**WHEREAS**, current City funding is simply inadequate to expand our police, fire protection, and emergency response services to the level needed to keep the community safe; and

**WHEREAS**, current City funding is insufficient to repair and maintain local roads and infrastructure; and

**WHEREAS**, in order to address this issue as soon as possible, the City Council desires to place a local funding measure on the ballot at the statewide general election on November 8, 2016; and

**WHEREAS**, if enacted, a local funding measure would provide a local revenue source to hire additional police officers and increase the number of neighborhood police patrols, provide services for youth and teens to keep them off the streets, and reduce gang activity and drug-related crimes; and

**WHEREAS**, if enacted, a local funding measure would repair and maintain potholes, local streets, public buildings and infrastructure including sidewalks, storm drains and gas pipes; and

**WHEREAS**, if enacted, a local funding measure would provide local revenue to add a fire station, fire engine, and additional firefighters to improve fire protection, emergency medical services and emergency response times; and



b. Proposed Ordinance.

The full text of the ordinance authorizing the transactions and use tax to be approved by the voters, entitled "An Ordinance of the City of Madera Enacting a Transactions and Use Tax to be Administered by the State Board of Equalization, Upon Adoption by the Voters," is attached as Exhibit "A" to this Resolution. The full text of the ordinance shall be printed in the Voter Information Pamphlet.

c. Form of the Measure.

The exact form of the measure is as specified in Section 1(a) of this Resolution.

d. Passage of the Measure.

The transactions and use tax is a general tax requiring the approval of a majority of the votes cast by qualified electors of the City voting in the election on the issue.

e. Publication of Measure.

The City Clerk is hereby directed to cause notice of the measure to be published in accordance with California Elections Code Section 12111.

f. Letter Designation.

This measure shall be designated by letter by the Madera County Clerk.

## SECTION 2. IMPLEMENTATION

The City Clerk is authorized and directed to perform all acts necessary or required by law to implement this Resolution and related to the election.

a. That the ballots to be used at the election shall be in form and content as required by law.

b. Pursuant to Section 10002 of the Elections Code, the City requests the Board of Supervisors of the County of Madera to permit the Madera County Clerk to render specified services to the City relating to the election.

c. The Madera County Clerk is authorized and directed to do any and all things necessary in order to ensure the lawful conduct of the election.

d. In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding elections in the City of Madera that are consolidated with any other election.

e. Notice of time and place of holding the election is given and the Madera County Clerk is authorized and directed to give such further or additional information in the time, form and manner as required by law in connection with the election.

f. Pursuant to Section 10403 of the Elections Code of the State of California, the Board of Supervisors of the County of Madera is hereby requested to consolidate the election referred to herein with the statewide election to be held on Tuesday, November 8, 2016.

g. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

### SECTION 3. ELECTION EXPENSES

For and in consideration of the election services rendered by the Madera County Clerk, the City of Madera agrees to pay to Madera County the proportionate share of reasonable expenses of said election, said share to consist of all direct costs as determined by the Madera County Clerk to be directly related to the conduct of the City of Madera's general municipal election together with the City's proportionate share of the expenses for election services rendered by Madera County that are being shared equally with other jurisdictions, if any, by virtue of the consolidation of the City's municipal election with elections being held by other jurisdictions, if any, in the City of Madera on November 8, 2016.

### SECTION 4. CEQA

The adoption of this Resolution is exempt from the California Environmental Quality Act, Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines"). The calling and noticing of a General Municipal Election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines Section 15378. The transactions and use tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

### SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Resolution or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution or its application to other persons and circumstances. The City Council of the City of Madera hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 6. IMPARTIAL ANALYSIS

The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280.

SECTION 7. EFFECTIVE DATE

This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Madera this 3<sup>rd</sup> day of August, 2016 by the following vote:

AYES: Mayor Poythress, Council Members Rigby, Medellin, Holley, Robinson, Oliver, Foley Gallegos.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

APPROVED:

  
\_\_\_\_\_  
ROBERT L. POYTHRESS, Mayor

ATTEST:

  
\_\_\_\_\_  
SONIA ALVAREZ, City Clerk



APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
BRENT RICHARDSON, City Attorney

EXHIBIT A

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MADERA, CALIFORNIA ENACTING A TRANSACTIONS AND USE TAX  
TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION,  
UPON ADOPTION BY THE VOTERS

The City Council of the City of Madera does hereby ordain as follows:

SECTION 1. Chapter 8 of Title VIII is hereby added to the Madera Municipal Code as follows:

**§8-8.01 TITLE.** This Ordinance shall be known as the City of Madera Transactions and Use Tax Ordinance. The City of Madera will hereinafter be called City. This Ordinance shall be applicable in the incorporated territory of the City.

**§8-8.02 DEFINITIONS.** The following words and phrases shall be defined as set forth herein, except that any term or phrase not defined in this shall have the same meaning as that term or phrase is defined in the California Revenue and Taxation Code, Division 2, Parts 1.6 and 1.7:

(A) "*City*" means the City of Madera.

(B) "*Operative Date*" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter by vote of the electorate on November 8, 2016.

(C) "*State*" means the State of California.

**§8-8.03 PURPOSE.** This Ordinance is adopted to achieve the following, among other purposes, and it shall be interpreted liberally in order to accomplish all of its lawful purposes:

(A) To impose a retail transactions and use tax to be applied throughout the entire territory of the City to the fullest extent permitted by law and in accordance with the provisions of Part 1.6 (commencing with section 7251) of Division 2 of the Revenue and Taxation Code and section 7285.9 of Part 1.7 of Division 2, which authorizes the City to adopt this Ordinance if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

- (B) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- (C) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
- (D) To adopt a retail transactions and use tax chapter that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes and, at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this Ordinance.
- (E) To provide transactions and use tax revenue to the City to be used for general purposes.

**§8-8.04 CONTRACT WITH THE STATE.** Prior to the Operative Date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this chapter; provided, that if the City shall not have contracted with the State Board of Equalization prior to the Operative Date, it shall nevertheless so contract and in such a case the Operative Date shall be the first day of the first calendar quarter following the execution of such a contract.

**§8-8.05 TRANSACTIONS TAX RATE.** For the privilege of selling tangible personal property at retail, a general transactions tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 0.5% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail within the territory of the City on and after the Operative Date of this Ordinance.

**§8-8.06 PLACE OF SALE.** For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.



**§8-8.07 USE TAX RATE.** An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date of this chapter for storage, use or other consumption in the territory of the City at the rate of 0.5% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made.

**§8-8.08 ADOPTION OF PROVISIONS OF STATE LAW.** Except as otherwise provided in this Ordinance, and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted, incorporated, and made a part of this chapter as though fully set forth herein.

**§8-8.09 LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.** In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

(A) Wherever the State is named or referred to as the taxing agency, the name of the City shall be substituted. However, this substitution shall not be made when:

- (1) The word "State" is used as a part of the title of the State Controller, State Treasurer, Victim Compensation and Government Claims Board, State Board of Equalization, State Treasury, or the Constitution of the State of California;
- (2) The result of the substitution would require action to be taken by or against the City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
- (3) In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
  - (a) Provide an exemption from the tax in this chapter with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from the tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or
  - (b) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the same provision of that code.

(c) In sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

(B) The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in section 6203 and in the definition of that phrase in section 6203.

**§8-8.10 PERMIT NOT REQUIRED.** If a seller's permit has been issued to a retailer under section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter.

**§8-8.11 EXEMPTIONS AND EXCLUSIONS.**

(A) There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

(B) There are exempted from the computation of the amount of transactions tax the gross receipts from:

(1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government;

(2) Sales of property to be used outside the City, which is shipped to a point outside the City pursuant to the contract of sale by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

(a) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

- (b) With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
  - (3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this chapter.
  - (4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the Operative Date of this chapter.
  - (5) For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- (C) There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this City of tangible personal property:
- (1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance;
  - (2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California;
  - (3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this chapter;
  - (4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the Operative Date of this chapter.

- (5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
  - (6) Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
  - (7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- (D) Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for, a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to such person of the property the storage, use or other consumption of which is subject to the use tax.

**§8-8.12 AMENDMENTS.** All amendments subsequent to the Effective Date of this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become adopted and part of this chapter; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter. The City Council or the City's voters may amend this chapter to comply with applicable law or as may be otherwise necessary to further the chapter's stated purposes. However, as required by Article XIII C of the California Constitution, no amendment to this chapter may increase the rates of the taxes authorized by this chapter unless such amendment is submitted to and approved by the voters.

**§8-8.13 PROHIBITION ON ENJOINING COLLECTION.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected under this chapter.

SECTION 2. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the chapter or the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 3. Effective Date.

This Ordinance relates to the levying and collecting of City transactions and use taxes and shall take effect immediately. However, no tax imposed by this chapter shall be effective unless that tax has been approved by the voters of the City as required by section 2(b) of Article XIII C of the California Constitution and applicable law.

SECTION 4. Precedence Over Other Provisions in the Municipal Code.

Any provision of the Madera Municipal Code or appendices thereto inconsistent with the provisions of this chapter, to the extent of such inconsistency and no further, is hereby repealed or modified to the extent necessary to effect the provisions of this chapter.