

RESOLUTION NO. 2016-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, CALIFORNIA, SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF LAFAYETTE AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 8, 2016 A BALLOT MEASURE SEEKING VOTER APPROVAL OF A ONE PERCENT TRANSACTIONS AND USE TAX FOR TWENTY-NINE YEARS

WHEREAS, pursuant to Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, the City of Lafayette, California ("City") is authorized to impose a retail transactions and use tax in the incorporated territory of the City for general purposes at a rate of 0.125% (or any multiple thereof);

WHEREAS, pursuant to California Constitution article XIII C, section 2(a) a general transactions and use tax is imposed for general governmental purposes to maintain the City's quality of life by funding general City services prioritizing: protecting open space; reducing downtown congestion; enhancing police protection; increasing downtown parking; acquiring land for downtown parks; revitalizing the historic Park theater;

WHEREAS, the City does not currently impose a retail transactions and use tax in the incorporated territory, but wishes to impose such a tax for general governmental purposes at a rate of one percent (1%) on the sale of tangible personal property and the storage, use, or other consumption of such property;

WHEREAS, pursuant to California Constitution article XIII C, section 2(b) and California Government Code sections 53721-53724, a general transactions and use tax is subject to approval by two-thirds vote of all the members of the City Council and by a majority vote of the qualified voters voting in an election on the issue;

WHEREAS, pursuant to section 9222 of the Elections Code, the City is authorized to place measures on the ballot to be considered at a municipal election;

WHEREAS, pursuant to California Constitution article XIII C, section 2(b) and California Government Code section 53724(c), an election for the approval of a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government;

WHEREAS, pursuant to Lafayette Municipal Code section 2-1601 and Elections Code section 1301, the City's general municipal elections are held on the same day as the statewide general election in each even-numbered year, and the next regularly scheduled general municipal election for members of the City Council and the next statewide general election will be held on Tuesday, November 8, 2016;

WHEREAS, on June 13, 2016, the City Council held a public meeting after due notice regarding the adoption of an ordinance proposing a retail transactions and use tax in the incorporated territory of the City ("Ordinance") and adopted Resolution No. 2016-30 calling a general municipal election to be consolidated with the statewide general election to be held on Tuesday, November 8, 2016, and requesting the Board of Supervisors of Contra Costa County to take any and all necessary steps to conduct the consolidated election; and

WHEREAS, the City Council desires to order an election on the Ordinance and consolidate the election of the Ordinance with the general municipal election to be held on November 8, 2016.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Findings. The City Council finds that the foregoing recitals are true and correct and are hereby incorporated and adopted as findings and determinations by the City Council as if fully set forth herein.

Section 2. Submission of Proposed Lafayette Transactions and Use Tax Ordinance. Pursuant to Government Code section 53724, any other applicable requirements of State law, and as otherwise set forth herein, the City Council hereby orders the ordinance attached hereto as Exhibit A and by this reference incorporated here in and made operative part hereof, to be submitted to the qualified voters of the City at the general municipal election to be held on Tuesday, November 8, 2016. The City Council approved the ordinance by a two-thirds vote of all members of the City Council. **The ordinance shall become effective if a majority of the qualified voters of the City of Lafayette voting on the ballot measure set forth in Section 3 below vote in favor of the ballot measure.**

Section 3. Ballot Measure. In addition to any other matters required by law, there shall be presented to the voters the question printed substantially as follows:

Measure ____:		
<p>“To provide funding that will stay 100% in Lafayette, to maintain the City’s quality of life by funding general City services prioritizing:</p> <ul style="list-style-type: none"> • Protecting open space; • Reducing downtown congestion; • Enhancing police protection; • Increasing downtown parking; • Acquiring land for downtown parks; • Revitalizing the historic Park theater; <p>shall the ordinance enacting a general 1% sales tax, for 29 years, providing \$3 million dollars annually, with citizens’ oversight, all funds spent in Lafayette, be adopted?”</p>	YES	
	NO	

Section 4. Consolidation and Conduct of Election.

a. Pursuant to California Elections Code section 10400 and following, the City Council hereby requests that the Board of Supervisors of the County of Contra Costa consent to the consolidate of the election for the Ordinance with the statewide General Election to be held on Tuesday, November 8,

2016. The consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, and all other proceedings incidental to and connected with the election shall be regulated and done by Contra Costa County in accordance with the provisions of law regulating the regularly scheduled statewide General Election, including but not limited to, California Elections Code section 10418.

- b. The Board of Supervisors is requested to issue instructions to the Contra Costa County elections official to take any and all steps necessary for the holding of the consolidated election, including canvassing the returns of that election with respect to the votes cast in the City and certifying the results to the City Council.
- c. The City recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for all costs.
- d. The City Clerk is hereby authorized and directed to cooperate with the Contra Costa County elections official and to follow the procedures and meet all deadlines established by Contra Costa County.

Section 5. Arguments and Analysis.

- a. Pursuant to article 4, chapter 3, division 9 of the California Elections Code, the City Clerk shall fix and determine a reasonable date prior to the election for the submission to the City Clerk of an argument in favor of and against the ballot measure and additional rebuttal arguments. Direct arguments shall not exceed 300 words and shall be printed with the signatures of no more than five persons. Rebuttal arguments shall not exceed 250 words and shall not be signed by more than five persons.
- b. Pursuant to California Elections Code section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the ballot measure to the authors, if any, of the arguments against, and copies of the argument against the ballot measures to the authors, if any, of the arguments in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument it seeks to rebut.
- c. Pursuant to California Elections Code section 9280, the City Attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. The impartial analysis shall not exceed 500 words.
- d. The City Council hereby designates councilmembers **Brandt Andersson** and **Don Tatzin** to prepare and file an argument and rebuttal argument on behalf of the City Council.

Section 6. Placement on Ballot. The City Clerk is hereby authorized and directed to take all steps necessary to place the ballot measure on the ballot and to cause the ballot measure to be printed and shall act as the filing authority for arguments. The full text of the ballot measure shall be printed in the voter pamphlet, and a statement shall be printed in the ballot pursuant to Section 9280 of the Elections Code, advising voters that they may obtain a copy of this Resolution, the ballot ordinance and/or ballot measure, at no cost upon request made to the City Clerk.

Section 7. Notice and Publication of Ballot Measure.

- a. The City Clerk shall, not later than the 88th day prior to the election to be held on Tuesday, November 8, 2016, file with the Contra Costa County Board of Supervisors and the Contra Costa County elections official a certified copy of this Resolution.
- b. The City Clerk is authorized and directed to give such notice of the measure and of the time and place of the election pursuant to California Elections Code section 12101 – 12113 and any additional notice required by law.

Section 8. Public Examination. Pursuant to California Elections Code section 9295, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. The examination period will end on the day that is 72 days prior to the date set for the election. The City Clerk shall post notice in the City Clerk’s office of the specific dates that the examination period will run.

Section 9. CEQA. The approval of this Resolution is exempt from the California Environmental Quality Act (“CEQA”). The transactions and use tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because, as the tax is merely “[t]he creation of [a] government funding mechanism[] or other fiscal activity which do[es] not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.” (Cal. Code Regs., tit. 14, § 15378, subd. (b)(4).)

Section 10. Severability. If any provision or clause of this Resolution, the measure proposed by the Resolution, or any application of any of the foregoing to any person or circumstance is held invalid, unconstitutional, or otherwise repealed by act of law, such invalidity shall not affect any other provisions or clauses of the same, which can be given effect without the invalid provision, clause, or application. To this end, the provisions and clauses of this Resolution and the proposed measure are hereby declared to be severable.

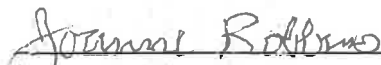
Section 11. Effective Date. This Resolution shall take effect immediately on its adoption.

ADOPTED by the City Council of the City of Lafayette, California, at a Regular Meeting thereof, held this 25th day of July, 2016, by the following vote:

AYES: Mitchell, M. Anderson, B. Andersson, Reilly and Tatzin
NOES: None
ABSTAIN: None
ABSENT: None

ATTEST:

APPROVED:



Joanne Robbins, City Clerk



Mark Mitchell, Mayor

EXHIBIT A

ORDINANCE NO. 648

AN ORDINANCE OF THE CITY OF LAFAYETTE, CALIFORNIA, IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code authorize the City of Lafayette, California ("City") to impose a retail transactions and use tax in the incorporated territory of the City for general purposes at a rate of 0.125% (or any multiple thereof);

WHEREAS, pursuant to California Constitution article XIII C, section 2(a) a general transactions and use tax is imposed for general governmental purposes to maintain the City's quality of life by funding general City services;

WHEREAS, pursuant to California Constitution article XIII C, section 2(b) and California Government Code section 53721-53724, a general transactions and use tax is subject to approval by two-thirds vote of all the members of the City Council and by a majority vote of the qualified voters voting in an election on the issue; and

WHEREAS, the City does not currently impose a retail transactions and use tax in the incorporated territory but wishes to impose such a tax for general governmental purposes at a rate of one percent (1%) on the sale of tangible personal property and the storage, use, or other consumption of such property. The tax revenue would be collected by the State Board of Equalization and remitted to the City. The tax would be in effect for twenty-nine (29) years and would then expire automatically unless extended by the voters.

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOW:

Section 1. Title. This ordinance shall be known as the Lafayette Transactions and Use Tax Ordinance. This ordinance shall be applicable in the incorporated territory of the City.

Section 2. Operative Date. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

Section 3. Purpose. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax 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 tax ordinance which shall be operative 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 therefor 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 ordinance 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.

Section 4. Contract With 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 transactions and use tax ordinance; 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.

Section 5. Transactions Tax Rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 6. 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.

Section 7. 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 ordinance for storage, use or other consumption in said territory at the rate of one percent (1%) 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.

Section 8. 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 and made a part of this ordinance as though fully set forth herein.

Section 9. 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 of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the 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 that substitution would require action to be taken by or against this 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 this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this 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 said provision of that code.

4. 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.

Section 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 ordinance.

Section 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 of California 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 ordinance.

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 ordinance.

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 ordinance.

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 ordinance.

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 the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 12. Amendments. All amendments subsequent to the effective date of this ordinance 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 a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 13. Enjoining Collection Forbidden. 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 ordinance, 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.

Section 14. Fiscal Accountability Provisions. The amount generated by this new general purpose revenue source and how it was used shall be included in the annual audit of the City's financial operations by an independent certified public accountant. No later than April 1, 2017, the City Council shall establish a Citizens' Oversight Commission to review the expenditures of tax revenues under the authority of this Ordinance, or shall assign these duties to an existing City committee or commission. The terms, composition, and specific duties of any new Citizens' Oversight Commission, or the assignment of these duties to an existing City committee or commission, shall be established by resolution of the City Council. All meetings of the Citizens' Oversight Commission shall comply with the provisions of the Ralph M. Brown Act (Government Code Section 34950 et seq.).

Section 15. Compliance With The California Environmental Quality Act ("CEQA"). The ordinance is intended to provide a funding mechanism for any legitimate governmental purpose. The ordinance does not commit the Authority to any particular project, program, or capital improvement. Accordingly, the Authority hereby finds that, pursuant to the State CEQA Guidelines section 15378(b)(4), adoption of this transactions and use tax ordinance as a government funding mechanism is not a project subject to the requirements of CEQA because the tax ordinance is merely "[t]he creation of [a] government funding mechanism[] or other fiscal activity which do[es] not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment." (Cal. Code Regs., tit. 14, § 15378, subd. (b)(4).)

Section 16. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 17. Effective Date. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately or as soon thereafter as the tax may lawfully be imposed.

Section 18. Termination Date. The authority to levy the tax imposed by this ordinance shall expire on April 1, 2046.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on June 27, 2016 and adopted and ordered published at a meeting of the City Council held on July 11, 2016 by the following vote:

AYES: **Mitchell, M. Anderson, B. Andersson, Reilly and Tatzin**

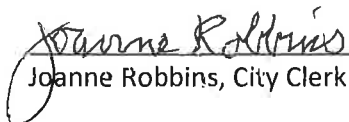
NOES: **None**

ABSTAIN: **None**

ABSENT: **None**

ATTEST:

APPROVED:


Joanne Robbins, City Clerk


Mark Mitchell, Mayor