

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**

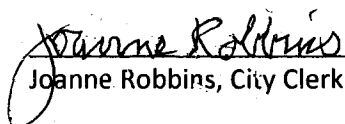
NOES: **None**


ABSTAIN: **None**

ABSENT: **None**

ATTEST:

APPROVED:


Joanne Robbins, City Clerk


Mark Mitchell, Mayor

Contra Costa Times

175 Lennon Lane, Suite 100
Walnut Creek, CA 94598
925-943-8019

2010502

LAFAYETTE, CITY OF
ATTN: ACCOUNTS PAYABLE
3675 MT. DIABLO BLVD., #210
LAFAYETTE, CA 94549-3793

PROOF OF PUBLICATION

FILE NO. Joanne Robbins Ord 648 7/11/16

In the matter of

Contra Costa Times

I am a citizen of the United States. I am over the age of eighteen years and I am not a party to or interested in the above entitled matter. I am the Legal Advertising Clerk of the printer and publisher of the Contra Costa Times, a newspaper published in the English language in the City of Walnut Creek, County of Contra Costa, State of California.

I declare that the Contra Costa Times is a newspaper of general circulation as defined by the laws of the State of California as determined by court decree dated October 22, 1934, Case Number 19764. Said decree states that the Contra Costa Times is adjudged to be a newspaper of general circulation for the City of Walnut Creek, County of Contra Costa and State of California. Said order has not been revoked.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

07/06/2016

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.
On this 6th day of July, 2016.

Signature

Legal No.

0005768398

SUMMARY OF PROPOSED ORDINANCE NO. 648 OF THE CITY OF LAFAYETTE APPROVING A ONE PERCENT TRANSACTIONS AND USE TAX TO BE SUBMITTED TO THE CITY ELECTORATE AT THE NOVEMBER 8, 2016 ELEC- TION

At a regular meeting of the City Council of the City of Lafayette ("City Council") on Monday, July 11, 2016, at 7 p.m., at the Lafayette Library and Learning Center, Community Hall, located at 3491 Mt. Diablo Blvd., Lafayette, California, the City Council will consider the adoption of Ordinance No. 648. Ordinance No. 648 authorizes a one percent (1%) transactions and use tax ("TUT") within the City of Lafayette ("City") on the sale of tangible personal property and the storage, use or other consumption of such property. The TUT shall not be effective until submitted to and approved by a majority of City voters voting on the TUT measure at the November 8, 2016 election.

If adopted by the City Council and approved by a majority of the City voters at the November 8, 2016 election, TUT revenue would be collected by the State Board of Equalization from any retailer engaged in business in the City and remitted to the City. The TUT would be a general tax. The revenues raised from the TUT would go into the City's general fund to fund general governmental purposes of the City. The TUT would be in effect for twenty-nine (29) years and would automatically expire on April 1, 2046 unless extended by the voters.

Ordinance No. 648 requires that the amount of tax revenue generated and how it is 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, Ordinance No. 648 requires the City to establish a Citizens' Oversight Commission to review the City's expenditures of tax revenues, or to assign these duties to an existing City committee or commission.

The above summary constitutes the major highlights of the proposed Ordinance. A copy of the full text of the Ordinance is available at the City Clerk's office located at 3675 Mt. Diablo Blvd., #210, Lafayette, California, 94549. Persons interested may appear before the City Council at the above date, place and time.

Joanne Robbins
City Clerk

CCT #5768398; Jul. 6, 2016

Contra Costa Times

175 Lennon Lane, Suite 100
Walnut Creek, CA 94598
925-943-8019

2010502

LAFAYETTE, CITY OF
ATTN: ACCOUNTS PAYABLE
3675 MT. DIABLO BLVD., #210
LAFAYETTE, CA 94549-3793

PROOF OF PUBLICATION

FILE NO. Joanne Robbins Ord 648

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Contra Costa Times

I am a citizen of the United States. I am over the age of eighteen years and I am not a party to or interested in the above entitled matter. I am the Legal Advertising Clerk of the printer and publisher of the Contra Costa Times, a newspaper published in the English language in the City of Walnut Creek, County of Contra Costa, State of California.

I declare that the Contra Costa Times is a newspaper of general circulation as defined by the laws of the State of California as determined by court decree dated October 22, 1934, Case Number 19764. Said decree states that the Contra Costa Times is adjudged to be a newspaper of general circulation for the City of Walnut Creek, County of Contra Costa and State of California. Said order has not been revoked.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

07/20/2016

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.
On this 20th day of July, 2016.

Signature

Legal No.

0005775517

**NOTICE OF ADOPTION OF ORDINANCE 648
OF THE CITY OF LAFAYETTE APPROVING
A ONE PERCENT TRANSACTIONS AND USE
TAX TO BE SUBMITTED TO THE
CITY ELECTORATE AT THE
NOVEMBER 8, 2016 ELECTION**

At its regular meeting on Monday, July 11, 2016, the City Council of the City of Lafayette adopted Ordinance 648. The recorded vote of the City Council was as follows:
AYES: Mitchell, M. Anderson, B. Andersson, Reilly and Tatzin
NOES: None
ABSTAIN: None
ABSENT: None

Ordinance 648 authorizes a one percent (1%) transactions and use tax ("TUT") within the City of Lafayette ("City") on the sale of tangible personal property and the storage, use or other consumption of such property. The TUT shall not be effective until submitted to and approved by a majority of City voters voting on the TUT measure at the November 8, 2016 election.

If approved by a majority of the City voters at the November 8, 2016 election, TUT revenue would be collected by the State Board of Equalization from any retailer engaged in business in the City and remitted to the City. The TUT would be a general tax. The revenues raised from the TUT would go into the City's general fund to fund general governmental purposes of the City. The TUT would be in effect for twenty-nine (29) years and would automatically expire on April 1, 2046 unless extended by the voters.

Ordinance 648 requires that the amount of tax revenue generated and how it is 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, Ordinance 648 requires the City to establish a Citizens' Oversight Commission to review the City's expenditures of tax revenues, or to assign these duties to an existing City committee or commission.

Note: The above is a summary of Ordinance 648. A reading of the entire ordinance is necessary to obtain a full understanding of the ordinance. Certified copies of the full text of the Ordinance are available at the City Clerk's office located at 3675 Mt. Diablo Blvd., #210, Lafayette, California, 94549. A copy may be obtained from the office upon payment of the fee based on the City's actual cost of providing the copy.

Joanne Robbins
City Clerk

CCT #5775517; Jul. 20, 2016