

REVISED BALLOT MEASURE TEXT

ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF HAYWARD EXTENDING THE TRANSACTIONS AND USE (SALES) TAX FOR 20 YEARS THROUGH 2034, TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, a locally-enacted revenue measure would protect and maintain Hayward services because the money is legally required to stay in our community and cannot be taken by the State, providing locally controlled funds for local services; and

WHEREAS, at its March 4, 2014 meeting, the City Council adopted a resolution calling an election to seek voter approval of a proposed general transactions and use (sales) tax (Measure C), as authorized by Revenue and Taxation Code section 7285.9; and

WHEREAS, at that meeting, the City Council concluded that all of the information presented indicated that, to obtain the revenue necessary to maintain and preserve service levels, the Council should call an election to ask the voters of the City to approve a twenty year local transactions and use (sales) tax, the revenue from which could be used to support general municipal services; and

WHEREAS, on the basis of the foregoing, the City Council determined that it was appropriate to place a measure regarding a general transactions and use (sales) tax before the voters at the June 3, 2014 general election; and

WHEREAS, the tax, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property. The tax rate would be one-half of one percent (0.50%) (one-half cent for each dollar) of the sales price of the 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 years, and would then expire automatically, unless extended by the voters. The tax shall be approved if the measure receives at least a simple majority of affirmative votes; and

WHEREAS, during the June 3, 2014 general election Measure C received a majority of votes in favor of imposing the tax, which would be in place through December 31, 2034; and

WHEREAS, the tax revenues have been used to fund capital projects such as construction of the new Downtown Hayward Public Library and adjacent Heritage Plaza, retrofit and improvement of five neighborhood fires stations, construction of new Fire Station No. 6 and regional Fire and Rescue Training Center, and six miles of street repairs amounting to the largest annual road project in City history; and

WHEREAS, the tax revenues have also been used to fund fourteen Hayward Police Department positions, including three patrol officers, a police lieutenant, a crime analyst, a fingerprint analyst, plus seven communications operators and one communications supervisor in the City's 9-1-1 Dispatch Center, and nine groundskeeper and maintenance positions in the Maintenance Services Department; and

WHEREAS, the City continues to have ongoing spending needs and unfunded capital projects which would benefit from extension of the tax beyond 2034.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF HAYWARD
ORDAINS AS FOLLOWS:

Section 1.

Article 19 of Chapter 8 of the Hayward Municipal Code is hereby amended to read as follows:

CHAPTER 8
ARTICLE 19 TRANSACTIONS AND USE (SALES) TAX

SEC. 8-19.100. Title.

This ordinance shall be known as the City of Hayward Transactions and Use (Sales) Tax Ordinance. The City of Hayward hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

SEC. 8-19.200 Operative Date. "Operative Date" means October 1, 2014.

SEC. 8-19.300. 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 (sales) 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 (sales) 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 (sales) tax ordinance that imposes a tax and provides a measure therefore 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 (sales) 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 (sales) taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

SEC. 8-19.400. 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 (sales) 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.

SEC. 8-19.500. 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 0.50% 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.

SEC. 8-19.600. 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.

SEC. 8-19.700. Use Tax Rate.

A transactions and use (sales) 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 0.50% 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.

SEC. 8-19.800. 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.

SEC. 8-19.900. 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, State Board of Control, 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 of 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.

SEC. 8-19.1000. 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.

SEC. 8-19.1100. Exemptions and Exclusions.

(a) There shall be excluded from the measure of the transactions and use (sales) 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-Bums 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 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 purpose 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 (sales) 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 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 had 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.

SEC. 8-19.1200. 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.

SEC. 8-19.1300. 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 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.

SEC. 8-19.1400. Authorization and Limitation on Issuance of Bonds.

The City is hereby authorized to issue limited tax bonds, from time to time, provided that the maximum bonded indebtedness will not exceed the total amount of this retail transactions and use (sales) tax.

SEC. 8-19.1500. Annual Audit

The proceeds resulting from this transactions and use (sales) tax shall be deposited into the City's General Fund and become subject to the same independent annual audit requirements as other general fund revenue

SEC. 8-19.1600. Termination Date.

The authority to levy the tax imposed by this Article shall expire on *December 31, 2054, unless re-enacted by a separate ordinance of the City Council following a majority vote of the electorate. The termination of the levy of taxes as provided herein shall not terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to December 31, 2054, shall remain a debt payable to the City. All provisions of this Article, except those related to the levy of taxes, shall continue in full force and effect after such date.*

Section 2. Environmental Compliance.

The findings for this ordinance in compliance with the California Environmental Quality Act ("CEQA") are the same as those set forth in the City's Resolution No. ___ calling for an election on this ordinance. The CEQA findings in Resolution No. ___ are incorporated herein by reference.

Section 3. 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 4. Effective Date.

The Ordinance relates to the levying and collecting of the City transactions and use (sales) taxes and shall take effect immediately upon declaration of the election results by the City Council pursuant to Elections Code section 9217 and City Charter section 620(c).

APPROVED by the following vote of the People of the City of Hayward on November 5, 2024.

AYES:

NOES:

ADOPTED by Declaration of the vote at the November 5, 2024 election by the City Council of the City of Hayward on the __day of _____ 2024.

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward