

RESOLUTION NO. 2010-42

RESOLUTION OF THE CITY OF EUREKA, CALIFORNIA CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2010, FOR THE SUBMISSION TO THE VOTERS OF A BALLOT MEASURE RELATING TO A SUPPLEMENTAL TRANSACTION AND USE TAX.

WHEREAS, under the provisions of the Charter and of the Elections Code of the State of California, a General Municipal Election shall be held on Tuesday, November 2, 2010; and

WHEREAS, the Eureka City Council desires to submit to the voters a question relating to amendment of pertinent sections of the Eureka Municipal Code relating to a Supplemental Transaction and Use Tax:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EUREKA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the Charter of the City of Eureka and the Election Code of the State of California, there is called and ordered to be held in the City of Eureka, California, on Tuesday, November 2, 2010 a General Municipal Election for the purpose of submitting to the voters a ballot measure relating to a Supplemental Transaction and Use Tax.

SECTION 2. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question:

Shall the Eureka Municipal Code be amended to add a one-half of one percent (0.50%) supplemental transaction and use tax to fund essential services such as police, fire, medical response, street maintenance, environmental programs, zoo, parks and recreation with the following restrictions? <ul style="list-style-type: none">• The supplemental transaction and use tax will expire after five years, unless reauthorized by the voters.• A citizen's oversight committee shall be established to conduct annual audits of all expenditures generated by the tax to ensure fiscal accountability and public participation.	YES	
	NO	

SECTION 3. That the proposed complete text of the ordinance submitted to the voters is attached as Exhibit A.

SECTION 4. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 5. That the polls for the election shall be open at seven o'clock A.M. of the day of the election and shall remain open continuously from that time until eight o'clock P.M. of the same day when the polls shall be closed, pursuant to Election Code §10242, except as provided in § 14401 of the Elections Code of the State of California.

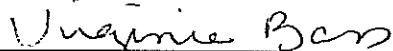
SECTION 6. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

Passed, approved and adopted by the Council of the City of Eureka, County of Humboldt, State of California, on the 15th day of June, 2010, by the following vote:

AYES: COUNCIL MEMBERS GLASS, ATKINS, LEONARD, JAGER, JONES
NOES: COUNCIL MEMBERS
ABSENT: COUNCIL MEMBERS



VIRGINIA BASS
MAYOR OF THE CITY OF EUREKA

ATTEST:


PAMELA J. POWELL
CITY CLERK

APPROVED AS TO FORM:



SHERYL SCHAFFNER
CITY ATTORNEY

APPROVED AS TO ADMINISTRATION:



DAVID W. TYSON
CITY MANAGER

Bill No. 818-CS

Ordinance No. _____

**AN ORDINANCE OF THE CITY OF EUREKA
AMENDING CHAPTER 35 OF THE EUREKA MUNICIPAL CODE
RELATING TO A SUPPLEMENTAL TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

WHEREAS, in the last 20 years the state has taken more than \$20 million from Eureka in property tax and other revenues and without these monies its has become increasingly more difficult to balance our own budget and fund City services; and

WHEREAS, the City's General Fund is used to fund such essential government services as police, fire, medical response, public works, parks and recreation, environmental programs and other essential services provided by the City to its citizens; and

WHEREAS, the voters of the State of California approved Proposition 218, the "Tax Payer's Right to Vote", which requires new and/or increased taxes to be submitted to the voters for approval; and

WHEREAS, a one-half of one percent increase to the City's existing Transaction and Use Tax will generate approximately \$3,200,000 per year, which will partially offset the City's general fund revenue losses to the State, and will permit the City to maintain these essential governmental services; and

WHEREAS, the Eureka City Council desires to submit to the voters a question relating to amendment of pertinent sections of the Eureka Municipal Code adding a one-half of one percent (0.50%) "Supplemental Transaction and Use Tax"; and

WHEREAS, a Municipal Election is to be held in the City of Eureka, California, on Tuesday, November 2, 2010, at which there will be submitted to the voters the following measure:

SHALL THE EUREKA CITY COUNCIL IMPLEMENT A SALES TAX OF ONE-HALF OF ONE PERCENT (0.50%) TO FUND ESSENTIAL SERVICES SUCH AS POLICE, FIRE, MEDICAL RESPONSE, STREET MAINTENANCE, ENVIRONMENTAL PROGRAMS, ZOO, AND PARKS AND RECREATION, WITH THE FOLLOWING RESRICTIONS?

- The sales tax will expire after five years, unless reauthorized by the voters.
- A Citizen's Oversight Committee shall be established to conduct annual audits of all expenditures generated by the tax to ensure fiscal accountability and public participation.

Be it ordained by the City Council of the City of Eureka as follows:

Section 1. Authority. The City Council enacts this ordinance in accordance with the authority granted to cities by Article XI, Section 7 of the California Constitution and Section 7285.9 of the California Revenue and Taxation Code.

Section 2. Amendments to Chapter 35. That upon majority approval, by a vote of the electorate, of the Supplemental Transaction and Use Tax Measure during the November 2, 2010, Municipal Election the City Council of the City of Eureka shall adopt the following amendments to Chapter 35 of the Eureka Municipal Code regarding "Supplemental Transaction and Use Tax":

Chapter 35 of the Eureka Municipal Code is amended to read as follows:

Section 35.175 TITLE. This ordinance shall be known as the "Supplemental Transactions and Use Tax". The City of EUREKA hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City. This ordinance shall be a complement, and not replace or supersede, the City's existing Transaction and Use Tax, as such described in Chapter 35 Sections 35.160 thru 35.173 of the Eureka Municipal Code.

Section 35.176 DEFINITIONS.

For the purpose of this ordinance the following words terms shall have the meaning given in this Section:

"In the City" means and includes all territory within the City limits.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption. If the measure is approved at the November 2, 2010 election, the operative date shall be April 1, 2011.

"Termination Date" initially shall mean the June 30, 2016, and if by a majority of the electors voting on the measure at an election subsequent to November 2, 2010 election, shall mean such later date as the electors may approve.

Section 35.177. 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 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 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 35.178. 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 35.179. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the City at the rate of one-half of one percent (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. The tax in addition the City's existing sales and use tax set forth in Article 5 of Chapter 3.24 of Title 3 of the EUREKA Municipal Code.

Section 35.180. 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 35.181. 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-half of one percent (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.

Section 35.182. 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 35.183. 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 therefore. 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 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 35.184. 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 35.185. 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 City 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 Chapter 2 of 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 subsections (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 subsections (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 Chapter 2 of 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 35.186. 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 35.187. 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 35.188. 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 35.189. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

Section 35.190. TERMINATION DATE. Termination Date" initially shall mean the June 30, 2016, and if by a majority of the electors voting on the measure at an election subsequent to November 2, 2010 election, shall mean such later date as the electors may approve.

Section 35.191. FISCAL ACCOUNTABILITY PROVISIONS. Consistent with Eureka's value to be transparent, a Citizen's Oversight Committee shall be established to conduct annual audits of all expenditures generated by the tax to ensure fiscal accountability and public participation. The Oversight Committee may be substituted with the City's existing Finance Advisory Committee.

Passed, approved, and adopted by the Council of the City of Eureka, County of Humboldt, State of California, on the ____ day of _____, 2010, by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS

MAYOR OF THE CITY OF EUREKA

The above ordinance was submitted to me on the ____ day of _____, 2010, and I hereby approve the same.

Mayor of the City of Eureka

ATTEST:

Pamela Powell, City Clerk

APPROVED AS TO ADMINISTRATION:

APPROVED AS TO FORM:

David W. Tyson, City Manager

Sheryl Schaffner, City Attorney