

Full text of Measure R

ORDINANCE NO. _____ (CM)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE ADDING A NEW ARTICLE 15 (TRANSACTIONS AND USE TAX: COMMUNITY INVESTMENT TRANSACTIONS AND USE TAX MEASURE) OF CHAPTER 6 (TAXATION) OF TITLE 3 (FINANCE) OF THE WATSONVILLE MUNICIPAL CODE TO BE ADMINISTERED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION AND TO BE APPROVED BY VOTERS

WHEREAS, the impact of COVID-19 on the local economy and City revenues, combined with escalating operating costs, constrains the City’s ability to maintain the quality of services provided and address its capital needs; and

WHEREAS, without additional revenues, the City will be compelled to make spending reductions to programs and services that may jeopardize the public health, safety and general welfare of residents and visitors as well as curtail funding for maintenance, construction and other improvements to City facilities, infrastructure and the natural environment; and

WHEREAS, increased tax revenues would provide a secure, local revenue stream that would enable to the City to invest in repair and expansion of aging parks, playgrounds and trails; creating safe places for kids; maintaining after-school and gang prevention programs; fixing potholes and maintaining streets; expanding library access and services for seniors; and creating employment opportunities; and

WHEREAS, all funds from a local revenue measure must stay in the City of Watsonville and cannot be taken by the State; and

WHEREAS, the City Council has determined that fiscal necessity requires the placement before the voters at the November 8, 2022 general election of a measure for a transactions and use (sales) tax at the rate of one-half percent (0.5%) on the sale of tangible personal property and the storage, use, or other consumption of such property until repealed by the voters; and

WHEREAS, 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 actions or purposes, and any specific purposes recited in the ballot measure are non-exclusive examples only. This tax is a general tax and shall be approved if the measure receives at least a simple majority of affirmative votes.

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NOW, THEREFORE, THE PEOPLE OF THE CITY OF WATSONVILLE, CALIFORNIA, DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

The people of the City of Watsonville do hereby find that the above recitals are true and correct and material to the adoption of this Ordinance.

SECTION 2. ENACTMENT.

Title 3 (Finance) of the Watsonville Municipal Code is hereby amended by adding a new Article 15 (Community Investment Transactions and Use Tax Measure) of Chapter 6 (Taxation) to read in words and figures as follows:

ARTICLE 15

COMMUNITY INVESTMENT TRANSACTIONS AND USE TAX

Sec. 3-6.1501 Title.

This article shall be known as the City of Watsonville Community Investment Transactions and Use Tax. The City of Watsonville hereinafter shall be called "City." This article shall be applicable in the incorporated territory of the City of Watsonville.

Sec. 3-6.1502 Program Priorities.

The community investment transactions and use tax measure will provide a secure, local revenue stream to the City of Watsonville that will be used for general fund purposes to support investment in our community such as: repair and expand aging parks, playgrounds and trails; create safe places for kids; maintain after-school and gang prevention programs;

fix potholes and maintain streets; expand library access and services for seniors; create employment opportunities; invest in community partners; and general government use. Detailed expenditure plans shall be developed to explain how the funds will be spent if the one-half of one (0.50%) percent sales tax is approved by voters.

The revenue generated by this transactions and use tax measure will enable the City to invest, maintain, improve and sustain general fund expenses that directly affect the quality of life of Watsonville residents as prioritized by the community needs assessment survey.

(a) The City shall commission an independent third-party to conduct a community needs assessment survey at least once every decade, no later than two years after final decennial census data is available. This survey shall be used to update the short-term, and long-term investment of the revenue generated by this transactions and use tax measure in a way that is consistent with current community needs. The first assessment should be conducted by July 2032, paid for by the measure.

(b) Oversight: The City Revenue Measure Oversight Committee shall serve in an oversight capacity to at least bi-annually review revenues and expenditures and provide second independent verification that all expenditures are being made as promised to Watsonville residents. The findings of both the Revenue Measure Oversight Committee shall be reviewed by the City Council at a publicly noticed meeting of the Council and made available to the public.

(c) The Community Investment Tax Measure will be in effect until repealed by Watsonville voters.

(d) Contingency/Reserve Fund. A community investment sales tax measure contingency/reserve fund shall be consistent with the General Fund reserve policy of the City.

Sec. 3-6.1503 Operative date.

“Operative date” shall mean the first day of the first calendar quarter commencing more than one hundred ten (110) days after the adoption of this Article.

Sec. 3-6.1504 Purpose.

This Article is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish these purposes:

(a) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) and Section 7285.91 of Part 1.7 both in Division 2 of the Revenue and Taxation Code 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. This tax is a general tax whose proceeds shall be deposited in the City’s general fund and expended for any lawful purpose of the City.

(b) To adopt a retail transactions and use tax 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 that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration 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 article.

Sec. 3-6.1505 Contract with State.

Prior to the Operative Date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transaction and use tax article; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration 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. 3-6.1506 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-half of one (0.50%) percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the Operative Date and until repealed by voters.

Sec. 3-6.1507 Place of sale.

For the purposes of this article, 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. If a retailer has no permanent place of business in the State or has more than one (1) 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 California Department of Tax and Fee Administration.

Sec. 3-6.1508 Use tax rate.

An excise tax is hereby imposed on the storage, use or other consumption in the incorporated territory of the City of tangible personal property purchased from any retailer on or after the Operative Date and until repealed by the voters, for storage, use or other consumption in the City at the rate of one-half of one (0.50%) percent 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. 3-6.1509 Adoption of provisions of State law.

Except as otherwise provided in this article 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 article as though fully set forth herein.

Sec. 3-6.1510 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 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, *California Department of Tax and Fee Administration*, 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 *California Department of Tax and Fee Administration*, in performing the functions incident to the administration or operation of this article.

(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:

(i) 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 remains subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

(ii) 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.

(1) "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For

purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

Sec. 3-6.1511 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 article.

Sec. 3-6.1512 Exemptions and exclusions.

(a) There shall be excluded from 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 subsection, delivery to a point outside the City shall be satisfied:

(i) 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

(ii) With respect to commercial vehicles, by registration to a place of business out of the 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 Article.

(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 Article.

(5) For the purposes of subsections (b)(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 is exempted from the use tax imposed by this article 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 the this article.

(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 the this article.

(5) For the purposes of subsections (c)(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 subsection (c)(7) of this section, 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 article 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. 3-6.1513 Amendments.

All amendments subsequent to the effective date of this this article to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this article; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this article.

Sec. 3-6.1514 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 article, 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. 3-6.1515 Annual Audit and Public Report.

Annually the City Council retains an independent auditor to conduct an audit of and provide audited financial statements for all of the City's financial activities. The auditor shall include an accounting of the revenue received from the tax collected pursuant to this Article and expenditures therefore in the audited financial statements. The auditor's report shall be presented to the Council and made available to the public. Additionally, the City Manager or his or her designee shall annually prepare and present to the Council and the public a report in conjunction with the audit that reviews the status and performance of the programs and services funded wholly or partially with proceeds of the tax authorized by this Article.

Sec. 3-6.1516 Termination date.

The tax levied by this article shall continue until repealed by voters from the operative date of this article.

SECTION 3. CEQA FINDINGS.

For purposes of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), a "project" is defined in State CEQA Guidelines Section 15378 (a) as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment". The people of the Watsonville hereby find that the proposed Ordinance will not result in any change in the environment and thus is not a project subject to the requirements of CEQA. Additionally, the proposed Ordinance involves the creation of a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment and thus the proposed Ordinance is not a project subject to the requirements of CEQA pursuant to CEQA Guidelines Section 15378 (b)(4). Further, even if the adoption of this Ordinance was deemed to be a project subject to CEQA, the people of the City of Watsonville find the proposed Ordinance is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3),

which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 4. PUBLICATION.

This ordinance shall be published in compliance with the provisions of the City Charter.

SECTION 5. 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 6. EFFECTIVE DATE.

This Ordinance relates to the levying and collecting of the City transactions and use tax and shall take effect ten (10) days after the certification by the City Council of the election returns indicating passage of the Ordinance by a majority of voters voting in the election.