

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

AN ORDINANCE OF THE CITY OF FORT BRAGG EXTENDING THE CITY'S ONE-HALF OF ONE PERCENT TRANSACTIONS AND USE TAX TO FUND REPAIR, MAINTENANCE AND RECONSTRUCTION OF CITY STREETS TO CONTINUE TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

ORDINANCE NO. 984-2023

WHEREAS, pursuant to California Revenue and Taxation Code Sections 7285.91, the City of Fort Bragg (the "City") has the authority to levy a transactions and use tax for the repair, maintenance, and reconstruction of City streets; and

WHEREAS, the City has imposed such a tax (the "Streets Maintenance Tax") since January 1, 2005, at a rate of one-half of one percent (0.5%); and

WHEREAS, the Streets Maintenance Tax is administered by the California Department of Tax and Fee Administration; and

WHEREAS, the voters of the City first approved the Streets Maintenance Tax at an election held on August 31, 2004, and then extended the tax at an election held on August 27, 2013; and

WHEREAS, the Ordinance imposing the Streets Maintenance Tax is codified as Chapter 3.10 of the City's Municipal Code; and

WHEREAS, Section 3.10.025 of the Municipal Code provides that the Streets Maintenance Tax will expire on December 31, 2024, unless an extension or reauthorization of the Streets Maintenance Tax is approved by the voters of the City at an election called for that purpose; and

WHEREAS, the City's streets include the streets, highways, avenues, lanes, alleys, courts, or curbs in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state; and

WHEREAS, many of the City's streets incorporate storm drains, inlets, and culverts that are an integral part of these streets; and

WHEREAS, the proper function of the streets depends on the proper functioning of the drainage components that are a part of the streets, and the maintenance, repair, and reconstruction of these components is often a part of any project to maintain, repair, or reconstruct a street; and

WHEREAS, the repair, maintenance, and reconstruction of the City's streets is an ongoing effort that is highly important to the City, its residents, and its businesses; and

WHEREAS, it is critical that the Streets Maintenance Tax that provides funding for this effort continue without interruption; and

WHEREAS, the need for these funds is expected to be continuous and will not sunset; and

WHEREAS, the People and the City Council desire to extend the Streets Maintenance Tax.

NOW, THEREFORE, THE PEOPLE AND THE CITY COUNCIL OF THE CITY OF FORT BRAGG DO HEREBY ORDAIN AS FOLLOWS:

SECTION I: Amendment. Chapter 3.10 (SPECIAL PURPOSE TRANSACTIONS AND USE TAX) of Title 3 (REVENUE AND FINANCE) of the Municipal Code is hereby repealed in its entirety and replaced with the following:

“Section 3.10.005. Title.

This ordinance shall be known as the City of Fort Bragg Streets Maintenance Transactions and Use Tax Ordinance. The City of Fort Bragg hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 3.10.010 Definition.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

STREET. Includes all streets, highways, avenues, lanes, alleys, courts, or curbs in this City, which have been or may hereafter be dedicated and open to public use or such other public property so designated in any law of this state. Each Street includes any incorporated drainage infrastructure that is necessary to the proper function of the street. Each Street also includes any sidewalks, curbs, gutters, and other appurtenances to that street.

Section 3.10.015 Purpose.

This ordinance codified in this chapter 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds 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 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 ordinance.

Section 3.10.020 Use of Other Funding Sources

In addition to the tax imposed by this Chapter, the City will continue to pursue and utilize alternative sources of funding, in addition to sales tax dollars, to complete the repair, maintenance, and reconstruction of City Streets.

Section 3.10.025 Operative Date

This Chapter shall be operative on July 1, 2024. It is the intent of this Section that the version of this Chapter that was operative prior to the operative date established by this Section (as well as the tax imposed by that version of this Chapter) shall remain in effect until the operative date established by this Section.

Section 3.10.030 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 transactions and use tax ordinance; 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.

Section 3.10.040 Imposition of 0.5% Transactions Tax

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 0.5% 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 Chapter.

Section 3.10.050 Place of Sale

For the purposes of this Chapter, 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 California Department of Tax and Fee Administration.

Section 3.10.060 Imposition of 0.5% Use Tax

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 0.5% 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 3.10.070 Adoption of Provisions of State Law

Except as otherwise provided in this Chapter 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 3.10.080 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 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 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.

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.

Section 3.10.090 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 3.10.100 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 3.10.120 Amendments

All amendments subsequent to the effective date of this chapter 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 chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

Section 3.10.130 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 Chapter, 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 3.10.140 Use of Tax Proceeds

Proceeds of the tax imposed by this Chapter shall be used only for the purpose of street repair, maintenance and reconstruction and for no other purpose. Tax proceeds shall be accounted for and paid into a special fund or account designated for such purpose.

Section 3.10.150 Ongoing Tax

The authority to levy the tax imposed by this Chapter shall not expire. The intent of this Chapter is to continue the City’s existing 0.5% special transactions and use tax without interruption and without sunset.

Section 3.10.160 Annual Report

The City’s Finance Officer shall, at least once a year file an annual report with the City Council that shall contain both of the following:

- (a) The amount of funds collected and expended.
- (b) The status of any project required or authorized to be funded.

This annual financial report may be combined with (or a part of) any other report filed with the City Council, and, specifically, may be included in the City’s Consolidated Annual Financial Report.

SECTION II: 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 III: Declaratory of Existing Law. Section 3.10.010 of the Municipal Code, as added by Section 1 of this ordinance, is intended to be declaratory of existing law.

SECTION IV: Expenditure Plan. The proceeds of the tax imposed by this Ordinance shall be expended only on the repair, maintenance, and reconstruction of the City’s streets.

SECTION V: Election Required. This Ordinance shall not become operative unless and until a two-thirds majority of the electors voting on this Ordinance vote to approve it at the November 7, 2023, Special Election. The intent of this Ordinance is that the existing provisions of Chapter 3.10 of the Municipal Code shall remain in effect if the electors do not approve this Ordinance. The intent of this ordinance is that, if this Ordinance is adopted by the voters, the tax imposed pursuant to the current Chapter 3.10 of the Municipal Code shall cease to be levied and collected on June 30, 2024, and the tax imposed pursuant to this Ordinance shall begin to be levied and collected on July 1, 2024.

SECTION VI: Effective Date. If this ordinance is approved by two-thirds of the voters voting on the issue at the November 7, 2023, Special Election, this ordinance shall take effect immediately.

The above and foregoing Ordinance was introduced at a meeting of the City Council of the City of Fort Bragg on June 26, 2023, and was passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on July 10, 2023 by the following two-thirds vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Bernie Norvell
Mayor

ATTEST:

Cristal Muñoz
Acting City Clerk

ADOPTED by the voters of the City of Fort Bragg by a two-thirds vote at the Special Election of November 7, 2023, by a vote declared by the City Council on _____, 2023.

Bernie Norvell
Mayor

ATTEST:

Cristal Muñoz
Acting City Clerk