

AN ORDINANCE AUTHORIZING IMPOSITION OF A SPECIAL PURPOSE THREE-EIGHTHS OF A CENT TRANSACTIONS AND USE TAX (SALES TAX) TO REDUCE THE CITY'S UNFUNDED ACCRUED PENSION LIABILITY SUBJECT TO APPROVAL OF TWO-THIRDS OF THE ELECTORS VOTING ON THE TAX MEASURE AT THE NOVEMBER 6, 2018 GENERAL ELECTION TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

ORDINANCE NO. 940-2018

BE IT ORDAINED BY THE VOTERS OF THE CITY OF FORT BRAGG, AS FOLLOWS:

SECTION 1: CHAPTER 3.13 [TRANSACTIONS AND USE TAX]

A new Chapter 3.13 is added to Title 3 of the Fort Bragg Municipal Code to read as follows:

Chapter 3.13. Fort Bragg Special Purpose Transactions and Use Tax

3.13.010 Title. This Chapter is entitled the "Fort Bragg Special Purpose Transactions and Use Tax." The term "City," as used within this Chapter is the City of Fort Bragg. This Chapter is applicable in the incorporated territory of the City.

3.13.015 Purpose.

The ordinance codified herein is adopted to achieve the following (and other) purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a special 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 two-thirds (2/3) of the electors voting on the ordinance vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a special 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 special retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the California

Department of Tax and Fee Administration (formerly known as the State Board of Equalization) in a manner that adapts itself as fully as practical 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 special retail transactions and use tax ordinance that can be administered in a manner that will, to the degree possible, be consistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the said Revenue and Taxation Code, minimize the cost of collecting City transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions thereof.

3.13.025 Operative Dates.

This Chapter shall be operative on April 1, 2019, and shall expire on March 31, 2034, unless an extension or re-authorization of this chapter is approved by the voters of the City at an election called for that purpose.

3.13.030 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 hereof. If the City has not 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. The Council may make any technical amendments to this Chapter required by the California Department of Tax and Fee Administration, except for any changes affecting the tax rate, its manner of collection, or the purpose for which the revenue from the tax may be used.

3.13.040 Imposition of Transactions Tax.

For the privilege of selling tangible personal property at retail, a special transactions tax is hereby imposed upon all retailers in the City at the rate of three-eighths of one percent (0.375%) of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City of Fort Bragg on and after the operative date of this Chapter. This amount is in addition to any other transactions tax currently charged.

3.13.050 Presumption as to Place of Sales.

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 Department of Tax and Fee Administration.

3.13.060 Imposition of Use Tax.

An excise tax is hereby imposed on the storage, use, or other consumption in the City of Fort Bragg of tangible personal property purchased from any retailer on or after the operative date of this Chapter, at the rate of three-eighths of one percent (0.375%) of the sales price of the property subject to the tax. 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. This amount is in addition to any other use tax currently charged.

3.13.070 Adoption of Certain Sections of California Revenue & Taxation Code by Reference.

Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of Parts 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part I (commencing with Section 6001) of Division 2 of said Code, as amended and in force and effect on the operative date of this Chapter, applicable to use taxes are hereby adopted and made a part of Section 3.13.010 *et seq.*, as though fully set forth herein.

3.13.080 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 Board of Control, State 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 Chapter.

(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.

3.13.090 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 Chapter.

3.13.100 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 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 Chapter.

(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 Chapter.

(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 Chapter, 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 Chapter.

(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 Chapter.

(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 Chapter 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.

3.13.120 Amendments.

All amendments to Part 1 of Division 2 of the Revenue and Taxation Code made subsequent to the operative date of this Chapter 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 of and Part 1.7 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 Chapter.

3.13.130 Enjoining Collection Prohibited.

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 this City, or against any officer of the State or the City, to prevent or enjoin the collection hereunder, or Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.13.140 Use of Tax Proceeds.

The tax imposed hereunder is a special tax, all proceeds of which shall be deposited into a special fund or account designated for the use by the City of Fort Bragg for payment of unfunded accrued California Public Employees' Retirement System (CalPERS) liability. The Expenditure Plan is attached as Exhibit A. The Expenditure Plan may be amended from time to time by the Fort Bragg City Council.

3.13.150 Termination Date.

The authority to levy the tax imposed by this Chapter shall expire on the Fifteenth (15th) anniversary of the operative date, unless extended by the voters of the City.

SECTION 2: SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council finds and declares that it would have adopted each and every provision of this ordinance, even if it had not adopted any other provision.

SECTION 3: STATUTORY AUTHORITY FOR TAX.

This ordinance is adopted pursuant to Revenue and Taxation Code section 7285.91.

SECTION 4: ELECTION REQUIRED.

This ordinance shall not become operative unless and until two-thirds of the electors voting on this ordinance vote to approve the imposition of the tax at the election to be held on November 6, 2018.

SECTION 5: EFFECTIVE DATE.

If this ordinance is approved by two-thirds of the voters voting on the issue at the November 6, 2018 election, the special tax shall become effective April 1, 2019.

APPROVED by the following vote of the People of the City of Fort Bragg on November 6, 2018:

_____ YES _____ NO _____ TOTAL VOTES

RESULTS DECLARED by the City Council of the City of Fort Bragg on December 10, 2018.

LINDY PETERS
Mayor

ATTEST:

June Lemos, CMC
City Clerk

Exhibit A to Ordinance No. 940-2018



City of Fort Bragg, California Expenditure Plan

For Anticipated Three-Eighths of a Percent (3/8%) Sales Tax Increase

A. Allocation of Revenue

Allocation of the revenue authorized by Ordinance No. 940-2018 is established within this Expenditure Plan. The three-eighths percent (3/8%) sales tax, if passed by the Fort Bragg voters will be dedicated to the following specific use only:

1. Payment of the City's California Public Employees' Retirement System (CalPERS) Unfunded Accrued Liability (UAL).

It is estimated that the 3/8th of a percent sales tax increase will generate approximately \$623,000 in the first year. Over the 15-year term of the sales tax, assuming a .5% growth rate, an estimated \$9,679,284 will be collected. The projected use of those funds over the 15- year term of the sales tax is set forth below:

Year	Total Estimated Annual Revenue	CalPERS Unfunded Accrued Liability (UAL) Payment	CalPERS UAL Contribution From 3/8th Tax	Contribution Funded by Existing City Sources
Year 1	\$ 623,000	\$ 859,845	\$ 623,000	\$ 236,845
Year 2	626,115	885,338	626,115	259,223
Year 3	629,246	911,594	629,246	282,348
Year 4	632,392	938,641	632,392	306,249
Year 5	635,554	966,496	635,554	330,942
Year 6	638,732	995,188	638,732	356,456
Year 7	641,926	1,024,741	641,926	382,815
Year 8	645,136	1,055,182	645,136	410,046
Year 9	648,362	1,086,533	648,362	438,171
Year 10	651,604	1,118,827	651,604	467,223
Year 11	654,862	1,152,088	654,862	497,226
Year 12	658,136	1,186,348	658,136	528,212
Year 13	661,427	1,221,635	661,427	560,208
Year 14	664,734	1,257,982	664,734	593,248
Year 15	668,058	1,295,418	668,058	627,360

B. Elect a 15-year Amortization for Unfunded Pension Liability

The City of Fort Bragg has five plans with CalPERS:

1. Safety Police Plan of the City of Fort Bragg
2. Miscellaneous Plan of the City of Fort Bragg
3. Safety Fire Plan of the City of Fort Bragg
4. PEPRA Miscellaneous Plan of the City of Fort Bragg, and
5. PEPRA Safety Police Plan of the City of Fort Bragg.

The annual required contributions to the plans have two components, the Employer Normal Cost Rate which is a percent of employee payroll and an amortization of the Employer Unfunded Accrued Liability (UAL) Contribution, which is a set amount billed monthly (the UAL portion can be prepaid annual). The UAL is the present value of future employer contributions for service that has already been earned. The UAL is a liability that is owed regardless of city staffing levels going forward. The UAL for the City's five plans, based on the most current June 30, 2016 CalPERS Actuarial Valuations are set forth below:

Unfunded Accrued Liability (UAL) 06-30-18	Plan Name
\$ 4,519,851	Safety Police Plan of the City of Fort Bragg
\$ 93,056	Safety Fire Plan of the City of Fort Bragg
\$ 21,878	PEPRA Safety Police Plan of the City of Fort Bragg
\$ 25,092	PEPRA Miscellaneous Plan of the City of Fort Bragg
\$ 4,775,625	Miscellaneous Plan of the City of Fort Bragg
\$ 9,435,502	Total Plans UAL as of June 30, 2018

The UAL minimum contribution is based on a 30-year amortization period. The total cost to the City over 30 years is estimated at \$20.1 million. If the City elects to change the amortization period from 30 years to 15 years that total estimated cost is just under \$16 million, a savings of more than \$4.1 million. Such an election can only be made once and cannot be reversed by the City. Upon passage of the sales tax, the City will commit by agreement to the 15-year amortization. Figures provided here are from the most current CalPERS Annual Actuarial Valuation Reports as of June 30, 2016. Changes in assumptions in future Actuarial Valuation Reports may impact the estimated UAL and required contributions. A detailed schedule comparing the 30-year to the 15-year amortization for each City Plan is provided on the next page.

City of Fort Bragg
Comparison of California Public Employees' Retirement System
30-year vs. 15-Year Amortization of Unfunded Accrued Liability
Based on June 30, 2016 Annual Valuation Reports

		Miscellaneous Plan of the City of Fort Bragg		PEPRA Safety Police Plan of the City of Fort Bragg		Safety Police Plan of the City of Fort Bragg		PEPRA Miscellaneous Plan of the City of Fort Bragg		Safety Fire Plan of the City of Fort Bragg		Total City of Fort Bragg Unfunded Liability Cost		
		Unfunded Liability Payment 30 Year Amortization	Unfunded Liability Payment 15 Year Amortization	Unfunded Liability Payment 30 Year Amortization	Unfunded Liability Payment 15 Year Amortization	Unfunded Liability Payment 30 Year Amortization	Unfunded Liability Payment 15 Year Amortization	Unfunded Liability Payment 30 Year Amortization	Unfunded Liability Payment 15 Year Amortization	Unfunded Liability Payment 30 Year Amortization	Unfunded Liability Payment 15 Year Amortization	Total 30-Year	Total 15-Year	Difference of 15 Year vs. 30 Year Amortization
Year	Fiscal Year													
1	2018-19	\$ 234,934	\$ 434,371	\$ 542	\$ 1,990	\$ 322,009	\$ 411,107	\$ 553	\$ 2,282	\$ 6,119	\$ 10,095	\$ 564,157	\$ 859,845	\$ 295,688
2	2019-20	297,059	447,402	935	2,050	374,937	423,440	994	2,351	7,407	10,095	681,332	885,338	204,006
3	2020-21	335,479	460,824	1,352	2,111	410,265	436,143	1,461	2,421	7,966	10,095	756,523	911,594	155,071
4	2021-22	379,186	474,649	1,725	2,175	447,618	449,228	1,901	2,494	8,590	10,095	839,020	938,641	99,621
5	2022-23	412,517	488,888	2,050	2,240	476,838	462,704	2,309	2,569	8,960	10,095	902,674	966,496	63,822
6	2023-24	424,892	503,555	2,111	2,307	491,143	476,585	2,379	2,646	8,960	10,095	929,485	995,188	65,703
7	2024-25	437,639	518,662	2,175	2,376	505,878	490,883	2,450	2,725	8,960	10,095	957,102	1,024,741	67,639
8	2025-26	450,768	534,222	2,240	2,448	365,498	505,610	2,523	2,807	8,960	10,095	829,989	1,055,182	225,193
9	2026-27	464,292	550,248	2,307	2,521	376,463	520,778	2,599	2,891	8,960	10,095	854,621	1,086,533	231,912
10	2027-28	478,220	566,756	2,376	2,597	387,757	536,401	2,677	2,978	8,960	10,095	879,990	1,118,827	238,837
11	2028-29	492,567	583,758	2,448	2,675	399,390	552,493	2,757	3,067	8,960	10,095	906,122	1,152,088	245,966
12	2029-30	507,344	601,271	2,521	2,755	411,372	569,068	2,840	3,159	8,960	10,095	933,037	1,186,348	253,311
13	2030-31	522,564	619,309	2,597	2,837	423,713	586,140	2,925	3,254	8,960	10,095	960,759	1,221,635	260,876
14	2031-32	538,241	637,888	2,675	2,923	436,424	603,724	3,013	3,352	8,960	10,095	989,313	1,257,982	268,669
15	2032-33	529,105	657,025	2,589	3,010	427,469	621,836	2,990	3,452	8,587	10,095	970,740	1,295,418	324,678
16	2033-34	518,936		2,495		417,584		2,962		8,214		950,191	-	(950,191)
17	2034-35	497,687		2,190		398,780		2,661		7,723		909,041	-	(909,041)
18	2035-36	474,697		1,863		234,435		2,339		7,232		720,566	-	(720,566)
19	2036-37	449,879		1,515		208,228		1,996		6,741		668,359	-	(668,359)
20	2037-38	278,595		1,338		205,797		1,762		6,622		494,114	-	(494,114)
21	2038-39	275,705		1,148		203,032		1,512		6,504		487,901	-	(487,901)
22	2039-40	283,976		1,182		209,123		1,557		3,984		499,822	-	(499,822)
23	2040-41	292,495		1,218		215,397		1,604		3,984		514,698	-	(514,698)
24	2041-42	250,630		1,254		183,747		1,652		3,254		440,537	-	(440,537)
25	2042-43	246,013		1,389		180,089		1,754		2,964		432,209	-	(432,209)
26	2043-44	217,275		1,401		157,432		1,757		2,419		380,284	-	(380,284)
27	2044-45	157,952		1,164		113,669		1,445		1,622		275,852	-	(275,852)
28	2045-46	94,874		936		67,138		1,131		825		164,904	-	(164,904)
29	2046-47	86,576		668		61,894		778		778		150,694	-	(150,694)
30	2047-48	31,295		271		21,401		342		342		53,651	-	(53,651)
Total		\$ 10,661,392	\$ 8,078,828	\$ 50,675	\$ 37,015	\$ 9,134,520	\$ 7,646,140	\$ 59,623	\$ 42,448	\$ 191,477	\$ 151,425	\$ 20,097,687	\$ 15,955,856	\$ (4,141,831)