

## FULL TEXT OF MEASURE H

**AN ORDINANCE AUTHORIZING IMPOSITION OF A GENERAL PURPOSE THREE-EIGHTHS OF A CENT TRANSACTIONS AND USE TAX (SALES TAX) SUBJECT TO APPROVAL OF A MAJORITY OF THE ELECTORS VOTING ON THE TAX MEASURE AT THE NOVEMBER 6, 2018 GENERAL ELECTION TO BE ADMINISTED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

**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 General Purpose Transactions and Use Tax

**3.13.010 Title.** This Chapter is entitled the "Fort Bragg General 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 general 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 ordinance vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a general 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 general 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 general 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.

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### **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 general 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 deliver 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 1 (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:

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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:

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- (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 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 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 general purpose tax, all proceeds of which shall be deposited into the City of Fort Bragg's General Fund to be used by the City of Fort Bragg for general municipal services and facilities.

### **3.13.150 Termination Date.**

The authority to levy the tax imposed by this Chapter shall expire on the Fifteenth (15<sup>th</sup>) 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 7285.9.

## **SECTION 4: ELECTION REQUIRED.**

This ordinance shall not become operative unless and until a majority 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 a majority of the voters voting on the issue at the November 6, 2018 election, the general tax shall become effective April 1, 2019.

## **MEASURE H IMPARTIAL ANALYSIS**

On July 11, 2018, the City Council unanimously voted to place Measure H on the November 6, 2018 ballot. If approved by a majority of Fort Bragg voters, this Measure would authorize a three-eighths percent (3/8%) retail transactions and use (sales) tax within the City of Fort Bragg. It is estimated that Measure H will provide an additional \$623,000 in annual funding. This tax would be a "general tax," meaning that revenues raised from the tax would go into the City's general fund to pay for any lawful City program, improvement, service, or purpose, such as maintenance of streets, sidewalks and storm drains, funding for public safety, or payment of unfunded accrued pension liability.

California Revenue and Taxation Code section 7285.9 authorizes the City to levy a general transactions and use (sales) tax at a rate of three-eighths percent (3/8%) so long as the tax is approved by a majority of the voters voting in an election on that issue. The tax will be for a limited term of 15 years. If approved, the tax would become effective on April 1, 2019 and expire on March 31, 2034, unless extended by Fort Bragg voters voting at a subsequent election.

The tax would be paid in addition to current sales taxes and would be collected at the same time and in the same manner as existing sales taxes. All revenues raised by the tax would belong to the City and would not be shared with the State or any other agency. The tax will be paid by all persons, including those who do not reside in the City, who purchase goods at retail establishments within the City of Fort Bragg.

By placing Measure H on the ballot, the City complies with Article XIII C of the California Constitution (Proposition 218), which requires a majority of the voters to approve an ordinance which establishes a general tax. The vote requirement for the new measure to pass is a majority (50% plus 1) of the votes cast.

A "yes" vote on Measure H will authorize the 3/8% transactions and use (sales) tax.

A "no" vote on Measure H will not authorize the 3/8% transactions and use (sales) tax.

/s/ Russell Hildebrand, City Attorney, City of Fort Bragg

**MEASURE H**  
**ARGUMENT IN FAVOR – General Tax Measure**

**“YES” on Measure H! It makes financial sense and saves taxpayers millions.**

Almost all California cities, including Fort Bragg, face the financial challenge of increasing pension obligations. Like most cities in California, Fort Bragg must rely on the California Public Employees' Retirement System (CalPERS) to manage its pension plans. Unlike a 401(k) or other pension programs, Fort Bragg cannot shop for a new pension provider, change investments or change the benefits that have been or will be offered. Those decisions are made in Sacramento and set in law.

The most current CalPERS Reports set the Unfunded Accrued Liability (UAL) for the City's CalPERS plans at \$9.4 million. The unfunded accrued liability is the additional amount needed to fund pension benefits that were established in years past. This pension shortfall is owed and represents service already earned. This is a City obligation that must be paid.

Measure H spreads the tax burden to our tourist and regional populations who use our services. Tourists will generate about 40% of the sales tax revenue and regional residents who live outside City limits but shop in the City will generate about 33%. City residents will generate the smallest portion, about 27% of the sales tax revenue.

The City's budget was balanced this year in part by freezing one Police Officer position. Without additional revenue more City positions and programs are likely to be eliminated in future years, resulting in reduced City services. The success or failure of Measure H will not change the amount due - only the ability to keep pace with increasing costs and repay the debt early. With the passage of Measure H, the City can commit to a 15-year payment payoff plan (instead of 30-year) which will save the taxpayers more than \$4.1 million.

s/Lindy Peters, Mayor  
Fort Bragg City Council

s/Will Lee, Vice Mayor  
Fort Bragg City Council

s/Mike Cimolino, Councilmember  
Fort Bragg City Council

s/Bernie Norvell, Councilmember  
Fort Bragg City Council

s/Dave Turner, Councilmember  
Fort Bragg City Council

No Argument Against Measure H was received.