

CITY COUNCIL OF THE CITY OF MARTINEZ

ORDINANCE NO.

**AN ORDINANCE OF THE VOTERS OF THE CITY OF MARTINEZ APPROVING THE
MARTINEZ QUALITY OF LIFE/ESSENTIAL SERVICES MEASURE TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

THE CITY COUNCIL OF THE CITY OF MARTINEZ DOES ORDAIN AS FOLLOWS:

SECTION 1: Findings: The voters of the City of Martinez hereby find and declare as follows:

- A. State revenue takeaways from the City's budgets have amounted to a total in excess of 24 million dollars.
- B. The City of Martinez has been fiscally prudent in spending and has made expenditure adjustments in response to the reduction in revenues from State takeaways by reducing its workforce, reducing or maintaining staff salary and benefits to levels below the majority of other Contra Costa County cities, and implemented numerous other cost-savings measures, which has resulted in the reduction of essential services.
- C. As a result, the City is facing significant financial difficulty in maintaining 911 emergency response times, retaining and recruiting experienced police officers, protecting open space and parks, providing and maintaining the level of youth, senior and other essential City services to the community.
- D. A reliable locally controlled source of funding is needed to maintain core safety and quality of life services the community expects and deserves.
- E. By law, all funds from a City of Martinez Quality of Life/Essential Services Measure must stay in Martinez to maintain local services and no funds can be taken by the State.
- F. The City of Martinez Quality of Life/Essential Services Measure requires independent Citizens' Oversight, mandatory financial audits, and yearly reports to the community to ensure all funds are spent responsibly on general City services consistent with community priorities.
- G. If the City of Martinez Quality of Life/Essential Services Measure is approved, the City wishes to maintain and address service priorities that the public has identified as being important to them, including 911 police emergency response times; violent crime prevention and property investigations; school safety; youth, recreation, and senior programs; storm drains and pollution prevention; retention and recruitment of police officers; protecting and maintaining open space and parks; addressing homelessness; and providing other essential City services.
- H. Establishment of locally-controlled funding will permit the City to maintain 911 response times, maintain, attract, recruit and train experienced police officers, continue neighborhood police patrols and address crime related to drugs and alcohol.
- I. Maintaining Martinez's Neighborhood Policing Program will continue to provide at least one on-duty officer assigned to each neighborhood area – ensuring police officers can respond quickly to 911 emergency calls.

- J. Establishment of locally controlled funding will allow the City to address homelessness and school safety.
- K. Establishment of locally controlled funding will allow the City to protect open space and maintain parks.
- L. Establishment of locally controlled funding will assist the City in maintaining storm drains and preventing flooding.
- M. Establishment of locally controlled funding will allow the City to continue to provide youth, senior and other essential City services.
- N. Sales tax is not a tax on one's home or property, and out of town visitors to Martinez share in the cost.
- O. The Martinez Quality of Life/Essential Services Measure to be submitted to the voters, if approved, would continue to be imposed on retail transactions involving the sale and use of personal property. The tax rate would be one half cent (0.50%) of the sales price of the property, excluding items such as food purchased as groceries and prescription medications. The tax revenue would be collected by the State Board of Equalization and remitted to the City. The tax would continue to remain in effect unless otherwise rescinded in a subsequent election by the voters or repealed as outlined in the ordinance. The tax shall be approved if the measure receives at least a majority of affirmative votes.
- P. The Martinez City Council is authorized by California Elections Code Section 9222 to place the Martinez Quality of Life/Essential Services Measure before the voters.
- Q. Elections Code Section 9282 sets forth the procedures for arguments in favor of or in opposition to any City measure.
- R. Elections Code Section 9285 sets forth the procedures for rebuttal arguments.
- S. On June 20, 2018, the Martinez City Council adopted a resolution calling for the City's General Municipal Election to be held on the same day as and consolidated with all other applicable elections to be held on November 6, 2018. It is desirable that the election called by this Resolution be consolidated with the City's General Municipal Election and that, within the City, the precincts, polling places, and election officers of the two elections be the same, and that the Elections Department of the County of Contra Costa canvass the returns of the General Election and that the election be held in all respects as if there were only one election.
- T. Based on all of the information presented at this meeting to consider the "Martinez Quality of Life/Essential Services Measure, both written and oral, including the staff reports and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) & (3) and 15378(b)(2) & (4), this resolution is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq, "CEQA", and 14 Cal. Code Reg. Sections 15000 et seq, "CEQA Guidelines"). 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 government action. As such, under CEQA Guidelines Section 15060(c)(2) the submission of the sales tax measure to the voters will not result in a direct or reasonably foreseeable indirect physical change in the environment. The proceeds of the tax are anticipated to assist the City with retaining existing governmental functions and services to the public. Therefore, pursuant to CEQA Guidelines Section 15378(b)(2), the sales tax measure is not a project pursuant to CEQA. In addition, pursuant to CEQA

Guidelines Section 15060(c)(3) and 15378(b)4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project.

SECTION 2: Amendment of Code: “Section 3-18 Transactions and Use Tax” is hereby added to the Martinez Municipal Code to read as follows:

SECTION 3-18.010 TITLE. This ordinance shall be known as the City of Martinez Transactions and Use Tax Ordinance. The City of Martinez hereinafter shall be called “City.” This ordinance shall be applicable in the incorporated territory of the City.

SECTION 3-18.020 OPERATIVE DATE. “Operative Date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

SECTION 3-18.030 PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Sections 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes and, at the same time, minimize the burden of recordkeeping upon persons subject to taxation under the provisions of this ordinance.

SECTION 3-18.040 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 3-18.050 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 0.50% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the Operative Date of this ordinance.

SECTION 3-18.060 PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his/her 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 prescribed and adopted by the California Department of Tax and Fee Administration.

SECTION 3-18.070 USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date of this ordinance for storage, use or other consumption in said territory at the rate of 0.50% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

SECTION 3-18.080 ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

SECTION 3-18.090 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 the City shall be substituted therefor. However, the substitution shall not be made:

1. When 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. When 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.

SECTION 3-18.100 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 3-18.110 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 receipt 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/her 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 b., 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 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 c., 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 c.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 3-18.120 AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 3-18.130 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 ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 3-18.140 CITIZENS OVERSIGHT COMMITTEE. Prior to the Operative Date, the City Council shall (a) adopt a resolution establishing the composition of a committee of no more than seven residents of Martinez to review and report on the revenue and expenditure of funds from the tax adopted by this ordinance, (b) define the scope of the committee's responsibilities, and (c) appoint at least a quorum of the members of the committee. City employees, consultants, or vendors are expressly precluded from serving as members of the Citizens Oversight Committee. The Committee's reports shall be made available to the Council and public.

SECTION 3: Environmental Compliance:

The findings for this ordinance in compliance with the California Environmental Quality Act (CEQA) are the same as those set forth in the City's Resolution No. _____ calling for an election on this ordinance. The CEQA findings in Resolution No. _____ are incorporated herein by reference.

SECTION 4: Severability:

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

SECTION 5: Effective Date:

This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately after the date of its passage and adoption.

SECTION 6: Termination Date:

The authority to levy the tax imposed by this ordinance shall expire March 31, 2034.

PASSED AND ADOPTED by the People of the City of Martinez at the November 6, 2018 general municipal election, by the following vote:

YES:

NO:

This Ordinance relates to the levying and collecting of the City transactions and use taxes. The City Council, by a two-thirds vote of the Council by adopting Resolution No. _____, approved this Ordinance and the submission thereof to the voters at an election to be held on November 6, 2018. Upon approval by a majority of the voters of the City, and upon adoption of a resolution declaring the election results, the Mayor shall hereby be authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

Robert Schroder, Mayor

Approved as to form:

Attest:

City Attorney

Richard G. Hernandez, City Clerk