

JUL 28 2016

MARK CHURCH, Chief Elections Officer
B [REDACTED]
DEPUTY CLERK

RESOLUTION NO. 4759

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO
CALLING AND ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF EAST PALO ALTO A CERTAIN MEASURE RELATING TO A PROPOSED ORDINANCE ADDING CHAPTER 3.57 TO THE EAST PALO ALTO MUNICIPAL CODE ENACTING A ONE-HALF CENT (1/2%) GENERAL PURPOSE TRANSACTIONS (SALES) AND USE TAX AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016**

WHEREAS, like many cities of similar size in the Bay Area, East Palo Alto is equipped with its own City run police department, owns its water system, maintains its parks, and provides other vital services to its residents; and

WHEREAS, without additional revenue, the City will be forced to consider cutting back on locally controlled City services and expand contracting with outside entities to provide these services or even reduce the provision of such services; and

WHEREAS, the City wishes to continue to address service priorities the public has identified such as public safety services including maintaining rapid police response times, maintaining neighborhood policing programs, repairing streets, fixing potholes; and

WHEREAS, many streets in East Palo Alto have cracked or buckled sidewalks, or no sidewalks at all and many roads have potholes and other maintenance conditions; and

WHEREAS, additional funding will help maintain East Palo Alto's financial viability as a city providing a good level of services to its citizens, and protect the small town quality of life; and

WHEREAS, additional funding is needed to update our storm drain system and prevent flooding our local streets and to stop pollution from flowing to the Bay; and

WHEREAS, additional funding can improve drinking water quality and make vital repairs that will protect us in case of earthquake or other disaster; and

WHEREAS, additional funding is needed to ensure that the City can maintain youth and senior programs, and other vital City services such as ensuring local parks are properly maintained for children to play and families to visit; and

WHEREAS, East Palo Alto needs local control over local funds, for local needs; and

WHEREAS, this includes tough accountability provisions such as annual independent audits and publishing of expenditure reports; and

WHEREAS, on July 5, 2016 the City Council held a public hearing introducing an Ordinance adding Chapter 3.57 to the East Palo Alto Municipal Code imposing a one-half cent (1/2%) transactions and use tax for general purposes subject to the approval of the voters; and

WHEREAS, the tax provided for by the proposed Ordinance shall be enacted solely to raise revenue for general purposes, and shall be placed into the City's General Fund; and

WHEREAS, the City Council also desires, on its own motion, to submit to the voters at the General Municipal Election a question relating to the imposition of a one-half cent (1/2%) transactions and use tax for general purposes; and

WHEREAS, a Consolidated General Municipal Election on Tuesday, November 8, 2016 has been called by Resolution Nos. 4750 and 4751, adopted on July 5, 2016; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO THAT:

SECTION 1. The City Council pursuant to its right and authority, does order to be submitted to the voters at the Consolidated General Municipal Election the following question:

| EAST PALO ALTO NEIGHBORHOOD SAFETY AND VITAL CITY SERVICES MEASURE. | |
|--|-----|
| To make neighborhoods safer by maintaining rapid police response times/number of police officers patrolling neighborhood streets; repairing streets/potholes; updating drinking water/storm drain infrastructure; maintaining youth/senior programs and other vital City services, shall East Palo Alto enact a one-half cent (1/2%) sales tax that can only be ended by voters providing about \$1,800,000 annually, with citizens' oversight, annual independent audits, all funds benefitting East Palo Alto? | YES |
| | NO |

66 words

SECTION 2. The full text of the proposed measure submitted to the voters is as attached in Exhibit A to this Resolution, which is incorporated herein by this reference. To become effective, two-thirds of the City Council must vote to place the measure on

the ballot and a majority of the voters voting on the measure must vote in the affirmative. The tax shall be administered by the State Board of Equalization.

SECTION 3. The City Council hereby requests the San Mateo County Registrar of Voters to provide all services necessary to conduct the Election and to conduct and canvass the results of the Election. The City will reimburse San Mateo County for the actual cost incurred in conducting the election when the work is completed and upon receipt of a bill stating the amount due as determined by the elections official.

SECTION 4. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, for and a manner as required by law. The hours during which the polling places for the Election shall be open shall be the hours established for the Consolidated Municipal Election.

SECTION 6. The City Clerk is hereby directed to do all things required by law to effectuate the Consolidated General Municipal Election, and to present the measure submitted herein to the electorate, including, but not limited to, required publications, postings, noticing and filings.

SECTION 7. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within fifteen (15) days of the adoption of this Resolution.

SECTION 8. Arguments for and against, not to exceed 300 words in length may be filed consistent with Elections Code Section 9282 requirements. The City Council declines, pursuant to the provisions of Section 9285 of the Elections Code to permit rebuttal arguments.

SECTION 9. The City Clerk is hereby directed to file a certified copy of this Resolution with the San Mateo County Board of Supervisors and the San Mateo County Registrar of Voters.

ADOPTED this 19th day of July 2016, by the following vote:

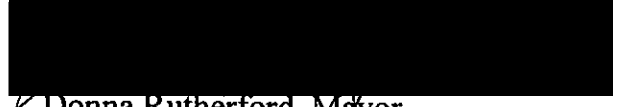
AYES: ROMERO, GAUTHIER, RUTHERFORD, MOODY, ABRICA

NOES:

ABSENT:

ABSTAIN:

SIGNED:



✓ Donna Rutherford, Mayor

ATTEST:



Terrie Gillen, Deputy City Clerk

APPROVED AS TO FORM:



Marc G. Hynes, Interim City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO ADDING CHAPTER 3.57 TO THE EAST PALO ALTO MUNICIPAL CODE IMPOSING A TRANSACTIONS AND USE TAX FOR GENERAL PURPOSES TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION SUBJECT TO THE APPROVAL OF THE VOTERS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN as follows:

Section 1.

Title 3 (Revenue and Finance) of the East Palo Alto Municipal Code is hereby amended adding a new Chapter 3.57 (Transactions and Use Tax) to read as follows:

Chapter 3.57

Transactions and Use Tax

Sections:

- 3.57.010 Short Title.
- 3.57.020 Definitions.
- 3.57.030 Purpose.
- 3.57.040 Contract with State.
- 3.57.050 Transactions tax rate.
- 3.57.060 Place of sale.
- 3.57.070 Use tax rate.
- 3.57.080 Adoption of provisions of state law.
- 3.57.090 Limitations on the adoption of state law and collection of use taxes.
- 3.57.100 Permit not required.
- 3.57.110 Exemptions and exclusions.
- 3.57.120 Annual Independent Audit and Citizen Oversight.
- 3.57.130 Amendments.
- 3.57.140 Enjoining collection forbidden.
- 3.57.150 Termination.

3.57.010 Short Title. This chapter shall be known as the Transactions and Use Tax Ordinance of the City of East Palo Alto.

3.57.020 Definitions. For the purposes of this chapter the follow terms shall have the meanings given in this section:

"City" means the incorporated territory of the City of East Palo Alto.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter and the approval by the voters of the city of a measure approving the imposition of a transactions and use tax; provided, that if the city shall not have contracted with the State Board of Equalization as required by section 3.57.040 prior to such date, the city 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.

3.57.030 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 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 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 record keeping upon persons subject to taxation under the provisions of this ordinance.

3.57.040 Contract with State. Prior to the Operative Date, the city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this chapter; provided, that if the city shall not have contracted with the State Board of Equalization 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 calendar quarter following the execution of such a contract.

3.57.050 Transactions tax rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the city at the rate of one-half cent (1/2%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the city on and after the Operative Date.

3.57.060 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 State Board of Equalization.

3.57.070 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 for storage, use or other consumption in said territory at the rate of one-half cent (1/2%) 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.

3.57.080 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 chapter as though fully set forth herein.

3.57.090 Limitations on the 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 therefore; 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, Victim Compensation and Government Claims Board, State Board of Control, State Board of Equalization, 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 the city or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, 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 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.

3.57.100 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 chapter.

3.57.110 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 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 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 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 chapter, the storage, use or other consumption in the 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 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 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.

3.57.120 Annual Independent Audit and Citizen Oversight.

A. Annual Independent Audit. An accounting of the revenues generated by this ordinance, and how such revenues are used, shall be included in the annual financial audit performed by the independent auditors hired by the city council to conduct the audit of, and provide audited financial statements for, the city's financial activities.

B. Citizen Oversight. Annually, the city council shall hold a community forum to review the financial audit results and discuss use of the revenues generated by this ordinance. Such forum shall include a discussion of spending priorities related to this ordinance as part of the city's annual strategic goal-setting and budget process. A report shall be prepared detailing how the funds are being used to address the city council's strategic priorities.

3.57.130 Amendments. All amendments subsequent to the Operative 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.

3.57.140 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.

3.57.150 Termination. The authority to levy the tax imposed by this chapter shall not expire, unless ended by a vote of the people of the City of East Palo Alto.

Section 2.

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.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 3.

Effective date. This Ordinance relates to the levying and collecting of the city transactions and use taxes and shall take effect immediately; however, no tax imposed by this Ordinance shall be imposed until approved by the voters of the City as required by section 2(b) of Article XIII C of the California Constitution and applicable law.

Section 4.

Declaration. The proceeds of the taxes imposed by this Ordinance may be used for any lawful purpose of the city, as authorized by ordinance, resolution or action of the City Council or by ordinance adopted by the electorate of the city. These taxes do not meet the criteria established by Section 1(d) of Article XIII C of the California Constitution for special taxes, and are general taxes imposed for general government purposes.

Section 5.

Relationship to existing tax. The tax imposed by this Ordinance is separate from, and in addition to, any transactions and use tax currently imposed by the city. Nothing in this Ordinance shall be interpreted to affect the rate or administration of any tax other than the tax imposed by this Ordinance.

This Ordinance was introduced by the City Council of the City of East Palo Alto at a regular meeting of said Council held on the 5th day of July 2016.