

ORDINANCE 2014-

AN ORDINANCE OF THE CITY OF SAN PABLO IMPOSING A TRANSACTIONS AND USE TAX FOR EMERGENCY MEDICAL SERVICES TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

Recitals

WHEREAS, the City Council desires to place a Transactions and Use (Sales) Tax Ordinance, as authorized by Revenue and Taxation Code section 7285.9 and attached hereto as Exhibit A, as a measure before the voters at the June 3, 2014 special election. Such tax shall be a special tax, the revenues of which shall only be used to fund Emergency Medical Services at Fire Station #70 in the City of San Pablo; should the County close Station 70, the revenues shall be used only to provide alternative EMS services for the City of San Pablo;

WHEREAS, City of San Pablo residents are serviced by the Contra Costa County Fire Protection District (ConFire) for their emergency medical and fire protection services. ConFire is currently in a financial crisis. Since 2008, it has seen a \$32 million decline in property tax revenue. In January 2012, the County Board of Supervisors approved a Fire Station Closure Plan for County Fire Stations which has closed five (5) fire stations to date (23 Engine Companies Remain). In November, 2012, a County-wide parcel tax measure (Measure Q) failed to garner sufficient 2/3rds vote to pass a \$75.00 per residential parcel tax to fund Fire and EMS Services Countywide (\$17 million annually if adopted; \$68 million over 4 years). ConFire is therefore facing insolvency in FY 2017, with a structural deficit of six million dollars to ten million dollars each year;

WHEREAS, there is only one county fire station in the City of San Pablo, Fire Station 70 in downtown San Pablo. Station 70 provides San Pablo with both fire and emergency medical services. Due to mutual aid agreements, Station 70 also provides service to seven other county unincorporated areas -- (i) Bayview, (ii) Mifflin-Barranca, (iii) North Richmond, (iv) Montalvin Manor, (v) Rollingwood, (vi) Tara Hills, and (vii) portions of El Sobrante/East Richmond Heights; and to the City of Richmond through automatic aid agreements;

WHEREAS, the current annual operating expenses required to fund Fire Station 70 amount to \$2.8 million per year. The City of San Pablo contributes only approximately \$811,000 annually;

WHEREAS, San Pablo's Station 70 is the busiest fire station in Contra Costa County. In 2012, for example, Station 70 responded to a total of 3,672 incidents in its service area. Of that total, 3,147, or 86%, were San Pablo calls. 82.5% of the service calls in San Pablo were EMS calls for Emergency Medical Services. Due to this overwhelming need for emergency medical services for its residents, and the extremely

high cost of fire engines responding not to fire calls, but to EMS calls in the City of San Pablo, the City Council finds that it is essential for the public health, safety and welfare for City residents that a funding method be found to support and ensure EMS response in the City of San Pablo through smaller EMS vehicles instead of more expensive fire vehicles, particularly in light of the threatened impending closure of Doctor's Medical Center;

WHEREAS, all funds from this local revenue measure are required to stay in San Pablo to provide EMS services and cannot be taken by the State. Fiscal accountability will be ensured by requiring independent citizens' oversight, mandatory financial audits, and yearly reports to the community;

WHEREAS, the tax, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property. The tax revenue would be collected by the State Board of Equalization and remitted to the City.

WHEREAS, the transactions and use tax to be submitted to the voters is a special tax that may only be used for the purposes specified in the measure. It shall be approved if the measure receives at least a two-thirds vote at a Special Municipal Election to be consolidated with the general election to be held on June 3, 2014.

THE PEOPLE OF THE CITY OF SAN PABLO DO ORDAIN AS FOLLOWS:

Section 1. Chapter 3.26 is hereby added to the San Pablo Municipal Code to read as follows:

“3.26.010. Title. This ordinance shall be known as the City of San Pablo Emergency Medical Services Transactions and Use Tax Ordinance. The City of San Pablo hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.26.020. 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.

3.26.030. 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 7285.91 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California

insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the 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.

3.26.040. 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 transactions and use tax ordinance; 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 first calendar quarter following the execution of such a contract.

3.26.050. 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 0.25% 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.

3.26.060. 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 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.

3.26.070. 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 0.25% 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.

3.26.080. 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 ordinance as though fully set forth herein.

3.26.090. 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 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 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 this 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 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.

3.26.100. 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.

3.26.110. 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 ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.26.120. Amendments. All amendments subsequent to the effective date of this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

3.26.130. 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.

3.26.140. Expenditure Plan, Audit, Oversight, Reporting. Revenue and Taxation Code section 7285.91 requires that this ordinance include "an expenditure plan describing the specific projects for which the revenues from the tax may be expended." All revenue from the tax shall be restricted revenue used solely to fund Emergency Medical Services for the City of San Pablo. It has been estimated that the tax will generate approximately \$550,000 annually. The City intends to negotiate an agreement with the Fire Protection District under which City will remit payment to the District on an agreed-upon basis in order to help fund the cost of providing a supplemental EMS squad at Station 70. Payments will be made on a regular basis on a frequency to be determined by city and county fire.

The city's independent auditors shall complete a report reviewing the collection, management and expenditure of revenue from the tax levied by this chapter. Additionally, there shall be a committee consisting of no fewer than five seats (if sufficient applications are received) to review and report on the receipt of revenue and expenditure of funds from the tax authorized by this chapter. The committee members shall be either San Pablo residents or representatives of San Pablo businesses; the City Council may utilize the same oversight committee established to review and report on the Measure Q Transactions and Use Tax approved in 2012. The committee's report and recommendations shall be completed by a date to allow for it to be considered as part of each annual budget process, commencing at least one full year after the tax revenue is first received. The committee's report and recommendations shall be a matter of public record and shall be considered and reported by the City Council at a public meeting.

3.26.150. Severability. If any sections, subsections, sentences, clauses, phrases or portions of this chapter are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The People hereby declare that they would have passed this and each section, subsection, phrase or clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

3.26.160. Effective date. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately upon approval by the voters.”

Section 2: The People of San Pablo find that all Recitals are true and correct and are incorporated herein by reference.

Section 3: The approval of this special tax that will provide funding for an EMS squad to use smaller EMS vehicles to respond to EMS calls in the City of San Pablo, as opposed to more expensive, larger fire rigs, is exempt from the California Environmental Quality Act under CEQA Guidelines § 15061(b)(3), in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. ConFire will respond to the same medical emergencies as before. The funds raised will be restricted to funding an EMS squad which will respond to emergency medical calls in the City via smaller EMS vehicles rather than larger fire vehicles that get worse gas mileage and emit more emissions. In addition, the activity is not a project under CEQA pursuant to Guidelines Section 15378(b)(5): Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. The City Manager is directed to ensure that a notice of exemption is filed immediately with the County Clerk.

ATTEST:

APPROVED:

Ted J. Denney, City Clerk

Paul V. Morris, Mayor

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This Ordinance was introduced by the City Council on February 18, 2014, adopted by the City Council on _____, 2014, and submitted to the People of the City of San Pablo at the June 3, 2014 special election. It was approved by the following vote of the People:

YES:
NO:
ABSENT:
ABSTAIN:

The Ordinance was thereby adopted by of the voters at the June 3, 2014, election and took effect upon adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on _____, 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

I HEREBY CERTIFY that the foregoing is a true and correct copy of an ordinance duly and regularly adopted by the People of the City of San Pablo, California.

Ted J. Denney, City Clerk