



TOWN OF FAIRFAX

STAFF REPORT

July 13, 2016

TO: Mayor and Council

FROM: Garrett Toy, Town Manager GT

SUBJECT: Adoption of a Resolution Calling a Special Municipal Election to be Held in its Jurisdiction on November 8, 2016, for the Purpose of Submitting to Voters a General Tax Measure to Continue a Retail Transactions and Use Tax for an Additional Period of Ten Years and Increasing the Rate of Said Tax from 1/2% to 3/4%; Requesting the Marin County Board of Supervisors to Consolidate Said Election with the Statewide General Election to be Conducted on the Same Date and to Permit the Elections Department to Provide Election Services; and Setting Rules for Arguments and Rebuttals for and against Said Measure

RECOMMENDATION

Adopt a resolution calling for a Municipal Election to be held on November 8, 2016 for the purpose of submitting to voters a general tax measure to continue a retail transactions and use tax for an additional period of ten (10) years and increasing the rate of said tax from 1/2% to 3/4%; Requesting the Marin County Board of Supervisors to consolidate said election with the general election to be conducted on that date; requesting elections services of the County; and setting rules for arguments and rebuttals for and against said measure

BACKGROUND

In November 2011, the voters approved Measure D, an “add-on” half-cent sales tax, which took effect April 2012. Measure D had been placed on the ballot by the Town Council due to a structural budget deficit. The initial estimate was that the half-cent sales tax would generate approximately \$150,000 per year in annual revenue. Measure D was approved by 65% of the vote. A sales tax measure only requires a simple majority vote. Measure D was initially for five years and will expire in March 2017.

In the current fiscal year, Measure D will generate approximately \$425,000 in revenues to the Town, or 5% of the Town’s general fund expenditures. It should be noted that the half-cent sales tax captures more local purchases such as auto and on-line purchases that the regular 1% sales tax cannot capture due to state statutes. The Town uses the revenue to fund both general operations (e.g., police, fire) and capital projects (e.g., streets).

At its May 4th meeting, the Council conducted a workshop to discuss the extension of the sales tax measure. The extension of the tax would need to be placed on the November

2016 ballot in order to avoid a funding gap. The Council indicated at the workshop it would like to extend the tax for ten years and increase the tax by $\frac{1}{4}$ percent from $\frac{1}{2}$ to $\frac{3}{4}$ percent.

The Council also discussed the extension at its budget workshop on May 20th. At the workshop, the Council reviewed the ballot language from 2011 and discussed proposed ballot language for 2016. The Council also designated Councilmembers Coler and Lacques to work on the proposed ballot language.

On June 1, 2016, the Council discussed the proposed ballot language and agreed to the following:

"Maintaining Quality Fairfax Services. Shall the Town of Fairfax extend the existing one-half percent local sales tax and increase the rate by one-quarter percent to provide funding that cannot be taken by the State, and can be used for a period of 10 years subject to annual independent audits to maintain and enhance quality public safety and general services, improve infrastructure such as repairing sidewalks, pedestrian trails, repaving streets, and enhancing downtown, while retaining Fairfax's character?"

The word count has been confirmed (e.g., Town of Fairfax counts as one word) and there is room for one additional word. It should be noted that the County of Marin does not allow formatting (e.g., no bolding of title).

DISCUSSION

Whenever the Town of Fairfax submits a question to the voters to appear on the same ballot as the statewide election, the Council adopts a resolution calling for the municipal election for the purpose of putting the question on the ballot, and requesting consolidation and election services from the County of Marin.

The Council wishes to ask the voters to extend the transaction and use tax ("sales tax") that is set to expire on March 31, 2017. The resolution includes the exact language to appear on the ballot, as well as the ordinance that would be adopted if the measure passes. The measure includes a $\frac{1}{4}$ percent increase over the current $\frac{1}{2}$ percent sales tax rate, for a total tax of $\frac{3}{4}$ percent, and extends it for ten years.

Under Proposition 218 (i.e., requirement that voters must approve taxes), any general tax measure submitted to the voters must be consolidated with a regularly scheduled election for members of the Town Council, unless the Town Council places it on a special election and makes findings that there exists an emergency requiring an election to be conducted earlier than the next regularly scheduled election at which Town Council members are to be elected. As the next regularly scheduled election at which Town Council members are to be elected is not until November 7, 2017, the Council must make the required findings to place the tax measure on the ballot this year. This action requires unanimous approval by the Council.

The resolution makes the findings that the loss of the sales tax represents a 5% of the Town's total general fund revenues which would necessitate cuts in basic services, including cuts to public safety, public works, and capital improvements. It further states that delaying the

election until November 7, 2017 will create an emergency situation and add substantial uncertainty to the budgeting process, further jeopardizing Town services and quality of life. The ordinance that is an exhibit to the resolution is substantively the same as the existing ordinance except it was amended to extend the term and increased the tax amount. The ordinance also reflects revisions to ensure it is in compliance with Prop 218 requirements.

The deadline to submit the resolution to the Board of Supervisors is August 12, 2016.

With the adoption of the resolution, the Town Clerk will post a "Notice of Election and Notice of Time Within Which Arguments For or Against Measures May Be Submitted to the Town Clerk." The Council has designated Councilmembers Coler and Lacques to author ballot arguments, and rebuttals, if needed, and find other signers for said arguments and rebuttals.

FISCAL IMPACT

The half-cent sales tax represents approximately 5% or \$440,000 of the Town's General Fund FY16-17 operating budget. The preliminary Five Year Forecast indicates that without the renewal, the Town would need to significantly dip into general fund reserves in FY17-18 and/or cut services to maintain the same level of services. The proposed one-quarter cent increase would add over \$225,000 annually in additional sales tax revenue to the Town for general operations and/or capital improvement projects (e.g., street paving).

The estimated cost of the election is approximately \$14,000.

ATTACHMENT

Resolution

RESOLUTION 16-_____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX, CALIFORNIA, CALLING A SPECIAL MUNICIPAL ELECTION TO BE HELD IN ITS JURISDICTION ON NOVEMBER 8, 2016 FOR THE PURPOSE OF SUBMITTING TO VOTERS A GENERAL TAX MEASURE TO CONTINUE A RETAIL TRANSACTIONS AND USE TAX FOR AN ADDITIONAL PERIOD OF TEN (10) YEARS AND INCREASING THE RATE OF SAID TAX FROM 1/2% TO 3/4%; REQUESTING THE MARIN COUNTY BOARD OF SUPERVISORS TO CONSOLIDATE SAID ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE CONDUCTED ON THE SAME DATE AND TO PERMIT THE ELECTIONS DEPARTMENT TO PROVIDE ELECTION SERVICES; AND SETTING RULES FOR ARGUMENTS AND REBUTTALS FOR AND AGAINST SAID MEASURE

WHEREAS, the Town Council of the Town of Fairfax ("Town") is authorized to levy a Transactions and Use Tax for general purposes pursuant to California Revenue and Taxation Code section 7285.9, subject to approval by a majority vote of the electorate pursuant to Article XIII C, Section 2 of the California Constitution ("Proposition 218"); and

WHEREAS, on November 8, 2011, a majority of the voters of the Town approved the existing Transactions and Use Tax ("TUT") at a rate of 1/2% on the sale and/or use of all tangible personal property sold at retail in the Town;

WHEREAS, the existing voter-approved TUT is scheduled to expire on March 31, 2017; and

WHEREAS, the TUT is a general tax, the revenue of which is and will continue to be placed in the Town's general fund and is used to pay for important general Town services; and

WHEREAS, pursuant to Section 9222 of the California Elections Code, the Town Council has authority to place propositions on the ballot to be considered at a special Municipal Election; and

WHEREAS, the Town Council would like to submit to the voters a measure continuing the existing TUT for an additional period of ten (10) years (thereby expiring on March 31, 2027) and increasing the rate of the TUT from 1/2% to 3/4% on the sale and/or use of all tangible personal property sold at retail in the Town; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218 (California Constitution, Article XIII C), an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be approved by a majority vote of the voters; and

WHEREAS, pursuant to Proposition 218, any general tax measure submitted to the voters must be consolidated with a regularly scheduled election for members of the Town Council, unless the Town Council places it on a special election, by a unanimous vote, and upon

finding that there exists an emergency requiring an election to be conducted earlier than the next regularly scheduled election at which Town Council members are to be elected; and

WHEREAS, the next regularly scheduled regular election at which Town Council members are to be elected is not until November 7, 2017; and

WHEREAS, for the following reasons, the health, safety and general welfare of the citizens of the Town would be endangered if the Town were unable to place this Measure before its voters until November 7, 2017; and

WHEREAS, the existing voter-approved TUT is scheduled to expire on March 31, 2017; and

WHEREAS, this will represent an estimated loss of 5% of the Town's General Fund; and

WHEREAS, this loss of general fund money will necessitate cuts in basic services, including cuts to public safety, public works, capital improvements and cuts in the provision of general Town services; and

WHEREAS, the Town Council finds that there is a need to have the People of the Town of Fairfax decide the TUT Measure before November 7, 2017 so that the Council may prudently budget for the Town's expenses; and delaying the election until November 7, 2017 will add substantial uncertainty to the budgeting process, further jeopardizing Town services and quality of life; and

WHEREAS, all of the circumstances described above create an emergency situation warranting the placement of the TUT Measure on the next available special election ballot to permit the voters to decide pursuant to Proposition 218; and

WHEREAS, the Town Council also desires to consolidate the election for the ballot measure described herein with the Statewide General Election to be held on November 8, 2016; and

WHEREAS, pursuant to California Elections Code, the Town Council further desires to establish rules and regulations for the preparation, submittal and printing of arguments and rebuttals for and against the Measure described herein; and

WHEREAS, the specific terms relating to the TUT tax are provided for in the ordinance to be considered by the qualified voters, attached hereto as Exhibit "A" (the "Ordinance") and by this reference made an operative part hereof, and in accordance with all applicable laws.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. Recitals. The Town Council of the Town hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

SECTION 2. Declaration of Emergency. Pursuant to California Constitution, Article XIII C, Section 2(b), the Town Council, **by a unanimous vote**, hereby declares the existence of an emergency in that there are imminent financial risks and dangers, as described above, to the public welfare and the Town's financial ability to provide necessary municipal services without disruption, so that a special election is necessary to address such risks and dangers.

SECTION 2. Submission of Ballot Measure. Pursuant to California Revenue and Taxation Code Section 7285.9, California Elections Code Section 9222, and any other applicable requirements of the laws of the State of California relating to general law cities, the Town Council, **by a unanimous vote**, hereby calls and orders to be held in the Town of Fairfax on Tuesday, November 8, 2016, a Special Municipal Election for the purpose of submitting the ballot measure ordinance attached hereto as Exhibit "A" and incorporated herein by this reference to the qualified electors of the Town (the "Measure"), said election to be held and consolidated with the Statewide General Election on Tuesday, November 8, 2016.

SECTION 3. Ballot Measure. The Town Council, pursuant to its right and authority, does hereby **ORDER** that the ballot measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the election to be held at the Special Municipal Election to be consolidated with the Statewide General Election on Tuesday, November 8, 2016, in addition to any other matters required by law, there shall be printed substantially the following:

"Maintaining Quality Fairfax Services. Shall the Town of Fairfax extend the existing one-half percent local sales tax and increase the rate by one-quarter percent to provide funding that cannot be taken by the State, and can be used for a period of 10 years subject to annual independent audits to maintain and enhance quality public safety and general services, improve infrastructure such as repairing sidewalks, pedestrian trails, repaving streets, and enhancing downtown, while retaining Fairfax's character?"	YES	
	NO	

SECTION 4. Election Procedures.

- A. The Town Council consents to the consolidation of the election on this Measure with all other elections being held in the same territory on November 8, 2016, and to hold and conduct the consolidated election in the manner prescribed in Elections Code Section 10418.
- B. The ballots to be used at the election shall be in the form and content as required by law.
- C. In accordance with Section 10002 of the Elections Code, the Board of Supervisors of

Marin County is hereby requested to consent to having the Registrar of Voters render such election services to the Town of Fairfax as may be requested by the Town Clerk of said Town, the County of Marin to be reimbursed in full for such services as are performed.

- D. The election services which the Town of Fairfax requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts, polling places, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the Town Clerk of the Town of Fairfax; and the performance of such other election services as may be requested by the Town Clerk.
- E. The polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.
- F. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the Town.
- G. Notice of the time and place of holding the election is given and the Town Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- H. All ballots shall be tallied at a central counting place and not at the precincts. Said central counting place shall be at a County center as designated by the Registrar of Voters.
- I. The Marin County Registrar of Voters is hereby authorized to canvass the returns of said election.
- J. The Town Clerk of the Town of Fairfax shall receive the canvass as it pertains to the election on the measure, and shall certify the results to the Town Council, as required by law.

SECTION 5. Arguments and Impartial Analysis.

- A. Arguments in favor of or against the measure shall be prepared and filed with the Town Clerk in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and any other applicable provisions of law.
- B. Pursuant to Section 9280 of the Elections Code, the Town Council directs the Town

Clerk to transmit a copy of the measure to the Town Attorney. The Town 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. The Town Attorney shall transmit such impartial analysis to the Town Clerk, who shall cause the analysis to be published in the ballot pamphlet along with the ballot measure as provided by law. The Impartial Analysis shall be filed by the deadline set for filing of primary arguments. The impartial analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the Town Council. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **“The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the election official’s office at 415-453-1584 and a copy will be mailed at no cost to you.”**

SECTION 6. Rebuttals.

- A. That pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk has selected the arguments for and against the Measure which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the Measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the Town Clerk not later than the deadline to be provided by the Town Clerk. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.
- B. That all previous resolutions providing for the filing of rebuttal arguments for Town measures are repealed.
- C. That the provisions herein shall apply only to the election to be held on November 8, 2016, and shall then be repealed.

SECTION 7. Placement on the Ballot. The full text of the Ballot Ordinance shall be printed in the voter pamphlet, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this Resolution, the Ballot Ordinance and/or ballot measure, at no cost, upon request made to the Town Clerk.

SECTION 8. Delivery of Resolution to County. The Town Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions. The Town Council directs the Town Clerk to deliver copies of this Resolution, including the Ballot Ordinance attached hereto as Exhibit “A”, to the Clerk of the Board of Supervisors of Marin County and to the Registrar of Voters of Marin County.

SECTION 9. CEQA. The Town Council hereby finds and determines that the ballot measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5).

SECTION 10. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Town Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 11. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the Town Council of the Town of Fairfax, California, at a regular meeting held on this 13th day of July, 2016.

RENÉE GODDARD, MAYOR

CERTIFICATION FOR RESOLUTION 16-____

I, Michele Gardner, Town Clerk of the Town Council of the Town of Fairfax, California, do hereby certify that the whole number of the members of the Town Council is five (5); that the above and foregoing Resolution was duly and regularly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax on the 13th day of July, 2016, by the following vote:

AYES:

NOES:

ATTEST:

APPROVED AS TO FORM:

**MICHELE GARDNER,
TOWN CLERK**

**JANET COLESON,
TOWN ATTORNEY**

EXHIBIT "A"

ORDINANCE NO. ____

AN ORDINANCE OF THE PEOPLE OF THE TOWN OF FAIRFAX, CALIFORNIA
AMENDING CHAPTER 3.10 OF THE FAIRFAX MUNICIPAL CODE
TO INCREASE THE RATE FROM 1/2% TO 3/4% AND EXTEND THE TERM OF
THE TOWN'S TRANSACTIONS AND USE TAX BY TEN YEARS,
SAID TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

THE PEOPLE OF THE TOWN OF FAIRFAX DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 3.10 of Title 3 of the Fairfax Municipal Code ("Revenue and Finance") is hereby amended to read as follows:

"3.10.010 TITLE. This chapter shall be known as the Fairfax Transactions and Use Tax Ordinance. The Town of Fairfax hereinafter shall be called "Town." This chapter shall be applicable in the incorporated territory of the Town.

3.10.020. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the effective date of this chapter, the effective date being as set forth below.

3.10.030 PURPOSE. This chapter 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 Cal. Revenue and Taxation Code and § 7285.9 of Part 1.7 of Division 2 which authorizes the Town to adopt this tax chapter 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 chapter 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 Cal. Revenue and Taxation Code.

C. To adopt a retail transactions and use tax chapter 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 chapter 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 Cal. 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 chapter.

3.10.040 CONTRACT WITH STATE. Prior to the operative date, the Town shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax chapter; provided, that if the Town 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.

3.10.050 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 Town at the rate of three-fourths percent 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 chapter.

3.10.060 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.

3.10.070 USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the Town of tangible personal property purchased from any retailer on and after the operative date of this chapter for storage, use or other consumption in said territory at the rate of three-fourths percent 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.

3.10.080 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 Cal. Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Cal. Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein.

3.10.090 LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.

In adopting the provisions of Part 1 of Division 2 of the Cal. Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this Town 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, Victim Compensation and Government Claims Board, 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 Town 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 Cal. 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 §§ 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Cal. Revenue and Taxation Code.

B. The word "Town" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in § 6203 of the Cal. Revenue and Taxation Code and in the definition of that phrase in § 6203.

3.10.100 PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under § 6067 of the Cal. Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter.

3.10.110 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 Town which is shipped to a point outside the Town, 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 division (B)(2), delivery to a point outside the Town shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with § 4000) of Division 3 of the Cal. Vehicle Code, aircraft licensed in compliance with § 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with § 9840) of the Cal. Vehicle Code by registration to an out-of-Town 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-Town 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 division (B)(3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this Town 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 §§ 6366 and 6366.1 of the Cal. Revenue and Taxation Code.

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 divisions (C)(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 division (C)(7), a retailer engaged in business in the Town 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 Town or participates within the Town 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 Town or through any representative, agent, canvasser, solicitor, subsidiary, or person in the Town under the authority of the retailer.

7. "A retailer engaged in business in the Town" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with § 4000) of Division 3 of the Cal. Vehicle Code, aircraft licensed in compliance with § 21411 of the Cal. Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with § 9840) of the Cal. 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 Town.

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 Cal. 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.

3.10.120 ANNUAL AUDIT. By no later than December 31st of each year, the Town shall cause an independent auditor to complete a "Fairfax Transactions and Use Tax Ordinance Report." Such report shall review whether the tax revenues collected pursuant to this ordinance are collected, managed, and expended in accordance with the requirements of this chapter.

3.10.130 AMENDMENTS. All amendments subsequent to the effective date of this chapter to Part 1 of Division 2 of the Cal. 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 Cal. Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Cal. 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.

3.10.140 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 Town, or against any officer of the State or the Town, to prevent or

enjoin the collection under this chapter, or Part 1.6 of Division 2 of the Cal. Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.10.150 SEVERABILITY. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

3.10.160. TERMINATION DATE. The authority to levy the tax imposed by this chapter shall automatically expire on March 31, 2027, without further action by the Town Council or the voters of the Town. After said date, the tax imposed by this Chapter can only be continued or reestablished by a majority vote of Fairfax voters pursuant to California Proposition 218.”

Section 2: Pursuant to California Revenue and Taxation Code Section 7285.9, this ordinance was approved for placement on the ballot by at least a two-third (2/3) supermajority of all members of the Town Council on July 13, 2016.

Section 3: Once the Town Council certifies passage of this ordinance by the voters, the Town Clerk shall publish the same as required by applicable law, and forward a copy of the adopted ordinance to the Board of Equalization.

Section 4: If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable. The Town Council, and the electorate by referendum, do hereby declare that they would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof, be declared invalid or unconstitutional.

Section 5: Pursuant to Elections Code Section 9217, this ordinance shall be deemed adopted and become effective only if approved by a majority of the eligible voters of the Town of Fairfax voting thereon, at an election to be held on November 8, 2016, and shall take effect ten (10) days after the Town Council has certified the results of that election by resolution.

Section 6: The Mayor is hereby authorized to attest to the adoption of this ordinance by signing where indicated below.

I hereby certify that the foregoing ordinance was PASSED, APPROVED AND ADOPTED by the people of the Town of Fairfax voting on the 8th day of November, 2016.

By:

Renée Goddard, Mayor

ATTEST: _____
Michele Gardner, Town Clerk