



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Finance

Prepared by: Nadine Atieh Hade,  
Finance Director

City Manager Approval: 

**TOPIC: TRANSACTION AND USE TAX AGREEMENTS**

**SUBJECT: CONSIDERATION OF ADOPTION OF:**

- 1. A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE TWO AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION (CDTFA) FOR IMPLEMENTATION OF THE CITY'S TRANSACTIONS AND USE TAX.**
- 2. A RESOLUTION AUTHORIZING EXAMINATION OF SALES AND USE TAX AND TRANSACTIONS AND USE TAX RECORDS.**

**RECOMMENDATION:** Staff recommends the City Council adopt the resolutions authorizing the Mayor to execute agreements with the California Department of Tax and Fee Administration ("CDTFA") and authorizing examination of sales and use tax and transactions and use tax records.

**BACKGROUND:** The County Registrar has certified the results of the November 3, 2020 election, showing that Measure R, the new 0.25% transactions and use tax was adopted by a majority vote of the City electors voting at the election. The City Clerk has now designated the measure as [Ordinance No. 1986](#). The new transactions and use tax will go into effect on April 1, 2021. Under the State Revenue and Taxation Code, prior to the operative date of the Ordinance, the City is required to contract with the CDTFA to perform all the functions incident to the administration and operation of the Ordinance.

The CDTFA has provided the City with two forms of agreement containing the provisions required by law. In addition to a contract providing for CDTFA administration of the transactions and use tax (the "Administrative Agreement"), there is a second agreement covering the activities required of the CDTFA in its preparation to administer the transaction and use tax (the "Preparatory Agreement"). The CDTFA is authorized to assess a separate fee for these activities, which include developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Department's staff and for taxpayers and other direct and indirect costs as permitted under Government Code section 11256. Under the terms of the agreement, the costs to be assessed are the actual cost to CDTFA, and, in no event shall CDTFA's costs exceed \$175,000.

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

**ANALYSIS:** Implementation of the City's new transactions and use tax requires that the City execute the Administration and Preparatory Agreements with the CDTFA. The City will comply with the CDTFA requirement if the Council adopts the Resolution approving and authorizing the Mayor to execute these agreements. Any delay in the approval of these agreements may delay the implementation and collection of the new tax.

Due to the proprietary and confidential nature of sales and use tax-related information and the legal restrictions on its distribution and use, the CDTFA requires a City Council resolution to allow the City's authorized agents to access transaction and use tax records. Because the transaction and use tax approved under Measure R is a new tax, a new resolution is required that authorizes HdL, a company that specializes in sales tax consulting and audit services and that has been providing these services to the City for several years, to access and examine the City's transactions and use tax records. The resolution also confirms the existing authority of the City Manager to designate City employees whose job functions justify access to the City's sales and use tax and transactions and use tax records.

**FISCAL IMPACT:** The CDTFA will charge its actual costs for the preparation to administer the tax (not to exceed \$175,000) and will charge an on-going administration fee calculated based upon the gross tax revenue collected. These costs will be deducted from the gross tax revenue and the net tax revenue will be dispersed to the City.

**RECOMMENDED ACTION:** Adopt the resolutions authorizing the Mayor to execute agreements with the CDTFA and authorizing examination of sales and use tax and transactions and use tax records.

**ATTACHMENT:**

1. Resolution authorizing the Mayor to execute two agreements with the California Department of Tax and Fee Administration for implementation of City Transactions and Use Tax, with attached Preparatory and Administrative Agreements.
2. Resolution authorizing examination of sales and use tax and transactions and use tax records.

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
AUTHORIZING THE MAYOR TO EXECUTE TWO AGREEMENTS WITH THE  
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION FOR  
IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX.**

WHEREAS, on December 7, 2020, the City Council certified the passage of Measure R by a majority vote of the electors voting at the November 3, 2020 General Municipal Election; and

WHEREAS, Measure R, now designated by the City Clerk as Ordinance No. 1986, amends the City Municipal Code to add new Chapter 3.19(A) providing for a local transactions and use tax; and

WHEREAS, the California Department of Tax and Fee Administration (Department) administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the Department will be responsible to administer and collect the transactions and use tax for the City; and

WHEREAS, the Department requires that the City enter into a “Preparatory Agreement” and an “Administration Agreement” prior to implementation of said taxes, and

Whereas, the Department requires that the City Council authorize the agreements;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of San Rafael that the “Preparatory Agreement” attached as Exhibit A and the “Administrative Agreement” attached as Exhibit B are hereby approved and the Mayor is hereby authorized to execute each agreement, subject to final approval as to form by the City Attorney.

\* \* \* \* \*

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 21<sup>st</sup> day of December 2020 by the following vote, to wit:

AYES:           COUNCILMEMBERS:  
NOES:           COUNCILMEMBERS:  
ABSENT:        COUNCILMEMBERS:

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LINDSAY LARA, City Clerk

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE  
CITY'S TRANSACTIONS AND USE TAX ORDINANCE**

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of San Rafael, hereinafter called *City*, and the CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, hereinafter called *Department*, do agree as follows:

1. The Department agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Department at the times and in the amounts hereinafter specified all of the Department's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Department's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Department's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Department. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Department shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Department shall be billed by the Department periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Department the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Department's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000). (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Department shall be addressed to:

California Department of Tax and Fee Administration  
P.O. Box 942879 MIC: 27  
Sacramento, California 94279-0027

Attention: Administrator  
Local Revenue Branch

Communications and notices to be sent to City shall be addressed to:

City of San Rafael ATTN: Nadine Atieh Hade  
1400 Fifth Avenue Rm 204  
San Rafael, CA 94901

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Department has received all payments due from City under the terms of this agreement.

CITY OF SAN RAFAEL

CALIFORNIA DEPARTMENT OF TAX  
AND FEE ADMINISTRATION

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
Administrator  
Local Revenue Branch

Kate Colin  
(Typed Name)

Mayor  
(Title)

**AGREEMENT FOR STATE ADMINISTRATION  
OF CITY TRANSACTIONS AND USE TAXES**

The City Council of the City of San Rafael has adopted, and the voters of the City of San Rafael (hereafter called "City" or "District") have approved by the required majority vote, the City of San Rafael Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the California State Department of Tax and Fee Administration, (hereinafter called the "Department") and the City do agree as follows:

**ARTICLE I  
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7261 and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No.1986, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

**ARTICLE II  
ADMINISTRATION AND COLLECTION  
OF CITY TAXES**

**A. Administration.** The Department and City agree that the Department shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

**B. Other Applicable Laws.** City agrees that all provisions of law applicable to the administration and operation of the Department Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Department pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

**C. Transmittal of money.**

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

**D. Rules.** The Department shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

**E. Preference.** Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Department shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.



**F. Security.** The Department agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Department shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Department.

**G. Records of the Department.**

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Department agrees to permit authorized personnel of the City to examine the records of the Department, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Department's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Department pursuant to this Agreement.

**H. Annexation.** City agrees that the Department shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Department. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

**ARTICLE III**

**ALLOCATION OF TAX**

**A. Allocation.** In the administration of the Department's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Department, to all districts with which the Department has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Department, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

**B. Vehicles, Vessels, and Aircraft.** For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Department in determining the place of use.

#### **ARTICLE IV** COMPENSATION

The City agrees to pay to the Department as the State's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Department for the City.

#### **ARTICLE V** MISCELLANEOUS PROVISIONS

**A. Communications.** Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Department shall be addressed to:

California State Department of Tax and Fee Administration  
P.O. Box 942879  
Sacramento, California 94279-0027

Attention: Administrator  
Local Revenue Branch

Communications and notices to be sent to the City shall be addressed to:

City of San Rafael ATTN: Nadine Atieh Hade

1400 Fifth Avenue Room 204

San Rafael, CA 94901

**Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.**

**B. Term.** The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2021. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Department completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

**C. Notice of Repeal of Ordinance.** City shall give the Department written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

**ARTICLE VI**  
ADMINISTRATION OF TAXES IF THE  
ORDINANCE IS CHALLENGED AS BEING INVALID

**A. Impoundment of funds.**

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Department the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

**B. Costs of administration.** Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Department may retain all payments made by City to Department to prepare to administer the City Ordinance.

2. City will pay to Department and allow Department to retain Department's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Department or to the State of California the amount of any taxes plus interest and penalties, if any, that Department or the State of California may be required to rebate or refund to taxpayers.

4. City will pay to Department its costs for rebating or refunding such taxes, interest, or penalties. Department's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Department's staff for use in making these rebates or refunds and any other costs incurred by Department which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Department's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Department. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Department in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Department in connection with such refunds shall be billed by Department on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Department shall bill City on or before the 25th of each month for all costs incurred by Department for the preceding calendar month. City shall pay to Department the amount of such costs on or before the last day of the succeeding month and shall pay to Department the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Department costs incurred in making those refunds.

CITY OF SAN RAFAEL

CALIFORNIA STATE DEPARTMENT OF  
TAX AND FEE ADMINISTRATION

By \_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
Administrator  
Local Revenue Branch

Kate Colin  
(Typed Name)

Mayor  
(Title)

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING EXAMINATION OF SALES AND USE TAX AND TRANSACTIONS AND USE TAX RECORDS**

**WHEREAS**, pursuant to Ordinance No. 1986 of the City of San Rafael and Section 7270 of the Revenue and Taxation Code, the City entered into a contract with the California Department of Tax and Fee Administration (CDTFA) to perform all functions incident to the administration and operation of the Transactions and Use Tax Ordinance; and

**WHEREAS**, the City deems it desirable and necessary for authorized representatives of the City to examine confidential transactions and use tax records of the California Department of Tax and Fee Administration pertaining to transactions and use taxes collected by the CDTFA for the City pursuant to that contract; and

**WHEREAS**, Section 7056 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of California Department of Tax and Fee Administration records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from, the transactions and use tax records of the CDTFA;

**NOW, THEREFORE IT IS RESOLVED AND ORDERED BY THE SAN RAFAEL CITY COUNCIL AS FOLLOWS:**

**Section 1.** That the City Manager or other officer or employee of the City of San Rafael designated in writing by the City Manager to the California Dept of Tax and Fee Administration (hereafter referred to as the CDTFA) is hereby appointed to represent the City with authority to examine transactions and use tax records of the CDTFA pertaining to transactions and use taxes collected for the City by the CDTFA pursuant to the contract between the City and the CDTFA. The information obtained by examination of CDTFA records shall be used only for purposes related to the collection of the City's transactions and use taxes by the CDTFA pursuant to the contract.

The information obtained by examination of CDTFA records shall be used only for those governmental functions of the City listed above.

**Section 2.** That Hinderliter, de Llama and Associates is hereby designated to examine the transactions and use tax records of the California Department of Tax and Fee Administration pertaining to transactions and use taxes collected for the City by the Department. The person or entity designated by this section meets all of the following conditions:

- a) has an existing contract with the City to examine those transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from those transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information;

- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in or derived from those transactions and use tax records after that contract has expired.

**BE IT FURTHER RESOLVED** that the information obtained by examination of the CDTFA records shall be used only for purposes related to the collection of City’s transactions and use taxes by the Board pursuant to the contracts between the City and the CDTFA.

**Section 3.** That this resolution supersedes all prior transactions and use tax resolutions of the City adopted pursuant to subdivision (b) of Revenue and Taxation Section 7056.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 21<sup>st</sup> day of December 2020 by the following vote, to wit:

AYES:            COUNCILMEMBERS:  
 NOES:            COUNCILMEMBERS:  
 ABSENT:        COUNCILMEMBERS:

\_\_\_\_\_  
 LINDSAY LARA, City Clerk