

RESOLUTION NO. 8717

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY IMPOSING A TRANSACTIONS AND USE TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF BUTTE IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, the California Government Code authorizes the City to levy a transactions and use tax, for revenue purposes, upon business transacted in the City; and

WHEREAS, the City of Oroville has experienced serious fiscal issues year over year for more than the past five years; and

WHEREAS, the City Council desires to place a transactions and use tax to be placed on the ballot for consideration by the voters to be imposed, to be known as the "Transactions and Use Tax"; and

WHEREAS, the Transactions and Use Tax cannot be imposed without voter approval; and

WHEREAS, the City Council desires to submit a Transactions and Use Tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date; and

WHEREAS, the proposed Transactions and Use Tax can be spent for unrestricted general revenue purposes; and

WHEREAS, the proposed Transactions and Use Tax is more completely described in the ordinance attached hereto as Attachment "A" and incorporated herein by reference (the "Tax Ordinance").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OROVILLE AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Proposal. The City Council hereby proposes the Transactions and Use Tax.

Section 3. Election. The City Council hereby calls a General Municipal Election for Tuesday November 6, 2018 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance be submitted to the voters at that election.

Section 4. Ballot Question. The question submitted by Section 3 of this Resolution shall appear on the ballot as follows:

To prevent cuts and restore essential public safety services, including 911 response, police officers, gang/youth violence prevention, fire protection / emergency medical response, and other essential services including street repairs, youth/senior services and park maintenance, shall the City enact a one cent sales tax providing approximately three million seven hundred thousand dollars annually with all revenue required to stay in the general fund, with local control and independent annual financial audits and citizen oversight?	YES	
	NO	

Section 5. Complete Text. The proposed complete text of the measure (Ordinance) submitted to the voters is attached as Exhibit A.

Section 6. Approval. Pursuant to Section 2(b) of Article XIII A of the Constitution, this measure requires approval by a majority of those casting ballots on the measure.

Section 7. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Butte County is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 8. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 9. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 10. Filing with County. The City Clerk shall file a certified copy of this Resolution with the County Clerk.

Section 11. Analysis and Argument. The City Attorney shall prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on the existing law and the operation of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

Section 12. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED by the Oroville City Council of the City of Oroville, County of Butte, State of California, on this 10th day of July 2018, by the following two-thirds vote:

Ayes: Council Members Jack Berry, Marlene Del Rosario, Linda Draper, Art Hatley, Scott Thomson, Vice Mayor Janet Goodson and Mayor Linda Dahlmeier.

Noes: None.

Abstain: None.

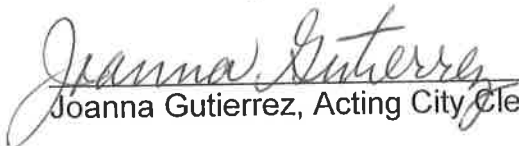
Absent: None.


Linda L. Dahlmeier, Mayor

APPROVED AS TO FORM:

ATTEST: *July 11, 2018*

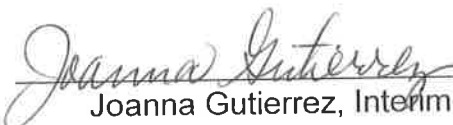
Scott E. Huber, City Attorney


Joanna Gutierrez, Acting City Clerk

STATE OF CALIFORNIA)
COUNTY OF BUTTE) ss
CITY OF OROVILLE)

I, Joanna Gutierrez, Interim City Clerk of the City of Oroville, do hereby certify the foregoing Resolution was duly passed and adopted at a regular meeting of the City Council of the City of Oroville held on the 10th day of July 2018.

Date: *July 11, 2018*


Joanna Gutierrez, Interim City Clerk

**CITY OF OROVILLE
ORDINANCE NO. 1829**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE AMENDING
AND ADDING CHAPTER 3.18 TO THE OROVILLE MUNICIPAL CODE REGARDING
A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA
DEPARTMENT OF TAX AND FEE ADMINISTRATION (CDTFA)**

The People of the City of Oroville, State of California do **ordain as follows**:

SECTION 1: Chapter 3.18 is hereby added to the Oroville Municipal Code to read as follows:

**CHAPTER 3.18
Transactions and Use Tax**

Sections:

- 3.18.010 Title and General Purpose Tax
- 3.18.020 Operative Date
- 3.18.030 Purpose
- 3.18.040 Contract with State
- 3.18.050 Transaction Tax Rate
- 3.18.060 Place of Sale
- 3.18.070 Use Tax Rate
- 3.18.075 Citizens Oversight Committee
- 3.18.080 Adoption of Provisions of State Law
- 3.18.090 Limitations on Adoption of State Law and Collection of Use Taxes
- 3.18.100 Permit Not Required
- 3.18.110 Exemptions and Exclusions
- 3.18.120 Amendments
- 3.18.130 Enjoining Collection Prohibited

3.18.010 Title and General Purpose Tax

This ordinance shall be known as the Transactions and Use Tax Ordinance. The City of Oroville hereinafter shall be called "City". This ordinance shall be applicable in the incorporated area of the City. The Transactions and Use Tax is a general tax enacted solely for unrestricted general revenue purposes for the City and not for specific purposes. All the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and can be used for unrestricted general revenue purposes.

3.18.020 Operative Date

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

3.18.030 Purpose

This ordinance is adopted to achieve the following, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To maintain and preserve City of Oroville public services, including police protection, fire suppression, vehicle repair and maintenance, finance analyst and human resources services with the City.
- B. To impose a retail transactions and use tax in accordance with the provision 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.
- C. 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.
- D. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor 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 California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.
- E. 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.

3.18.040 Contract with State

Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date it shall nevertheless so contract and in such case the operative date shall be the first day of the first calendar quarter following the execution of such contract.

3.18.050 Transactions Rate Tax

For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers in the incorporated area of the City at the rate of one percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said area.

3.18.060 Place of Sale

For the purposes of this ordinance all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his /her or its 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 of California 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 California Department of Tax and Fee Administration.

3.18.070 Use Tax Rate

A complementary tax is hereby imposed on the storage, use, or other consumption in the incorporated area of the City on tangible personal property purchased from any retailer after the operative date of this ordinance for storage, use, or other consumption in such area at the rate of one percent (1%) 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.

3.18.075 Citizens Oversight Committee

A. The City Council shall establish and appoint a Citizens Oversight Committee.

B. The Citizens Oversight Committee shall consist of a nine-member board of residents and/or business owners and two elected City Council members of the City of Oroville.

C. The purpose of the Citizens Oversight Committee shall be to meet with the City's Department Heads during the preparation of each fiscal year budget until the ordinance sunsets, to make recommendations to the City Council regarding how the proceeds from the implementation of the ordinance will be allocated for the ensuing budget year. The committee shall make recommendations to the Council to provide for local public services, including but not limited to police protection, fire suppression, vehicle repair and maintenance, finance analyst and human resources services that will improve the quality of life for residents and businesses within the City of Oroville. The committee shall meet at least quarterly during the fiscal year to ensure that the revenue generated by the ordinance is allocated and disbursed in accordance with the City budget. All quarterly and annual budget reports from the committee shall be published on the City of Oroville website prior to Council adoption of the budget and will be available for public review.

3.18.080 Adoption of Provisions of State Law

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

3.18.090 Limitations of Adoption of State Law and Collection of Use Taxes

In adopting the provisions of Part 1 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, Victim Compensation and Government Control 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 City or any agency, officer or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance.

3. In those sections, including but not necessarily limited to sections referring to the exterior boundaries of the State of California where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code or;

b. Impose this tax with respect to certain sales, storage use or other consumption of tangible personal property which would not be subject to tax by the state under the 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.

3.18.100 Permit not Required

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code an additional transaction's permit shall not be required by this ordinance.

3.18.110 Exemptions and Exclusions

A. There shall be excluded from the measure of the transactions tax and the use tax in 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 shall be 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 City pursuant to the contract of sale by delivery to such point by the retailer or his/her or its agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purpose of this paragraph, delivery to a point 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 Chapter 2 of Division 3.5 commencing with Section 9840) if 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 the ordinance.

5. For the purposes of subsections (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 purchase 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 any amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subsections (3) and (4) of this sub-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 in 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 Chapter 2 of 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.

3.18.130 Amendments

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

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

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase portion of the application thereof to any person or circumstance of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision of such ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 3. CEQA COMPLIANCE. The City Council finds and determines that the enactment of this Ordinance is not a “project” as that term is used in the California Environmental Quality Act (“CEQA,” Cal Pub. Resources Code Section 21000 et seq.) or the State CEQA Guidelines (Cal.Code of Regs. Title 14, Section 15000 et seq.) Therefore no environmental assessment is required or necessary.

SECTION 4. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately upon its approval by voters of the City.

SECTION 5. TERMINATION DATE. The tax levied by this ordinance shall continue at the rate of 1% beginning April 01, 2019. The authority to levy the tax imposed by this ordinance shall not only expire unless action is initiated and approved by the voters of the City of Oroville to repeal the tax.

SECTION 6. 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. These taxes are not special taxes within the meaning of Section 1(d) of Article XIII C of the California Constitution, but are general taxes imposed for general government purposes.

SECTION 7. EXECUTION. The Mayor and City Council are authorized to subscribe this ordinance where indicated below to evidence its approval by the voters of the City.

INTRODUCED by the Oroville City Council of the City of Oroville, County of Butte, State of California, on this 10th day of July, 2018, by the following two-thirds vote:

Ayes: Council Members Jack Berry, Marlene Del Rosario, Linda Draper, Art Hatley, Scott Thomson, Vice Mayor Goodson and Mayor Linda Dahlmeier.

Noes: None.

Abstain: None.

Absent: None.


Linda L. Dahlmeier, Mayor

APPROVED AS TO FORM:

ATTEST: *July 11, 2018*

Scott E. Huber, City Attorney


Joanna Gutierrez, Acting City Clerk