ORDINANCE NO. 1899

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE RENEWING AND MODIFYING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

Section 1. TITLE. This ordinance shall be known as the City of Vacaville Transactions and Use Tax Ordinance. The City of Vacaville hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 2. OPERATIVE DATE. Pursuant to Section 7265 of the Revenue and Taxation Code, "Operative date" means April 1, 2018.

Section 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2, which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

Section 4. 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.

Section 5. **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 three-quarter percent (.75%) 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.

Section 6. **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.

Section 7. **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 three quarter percent (.75%) 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.

Section 8. **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.

Section 9. **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:

1. When the word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. When 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 of the Revenue and Taxation Code.

Section 10. 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 ordinance.

Section 11. 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.

Section 12. USE OF TAX PROCEEDS. The tax imposed hereunder is a general tax, the proceeds of which shall be deposited into the City's General Fund and expended for any lawful purpose of the City.

Section 13. AMENDMENTS. All amendments subsequent to the effective date of this ordinance 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 ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 14. 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 15. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 16. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately upon approval of the voters.

Section 17. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire twenty (20) years after the date the tax is first collected.

Section 18. PROTECTION OF FUNDING. Current law forbids any decrease in State or federal funding to the City because of City's adoption of a transactions and use tax. However, if such funding is reduced as a result of the adoption of this transactions and use tax, then the amount of the tax will be reduced annually as necessary in order to restore such State or federal funding. Consequently, whether directly or indirectly, no proceeds derived from this may be taken away by the State or federal governments.

Section 19. ELECTION.

A. Call of Election. A municipal election is hereby called and ordered to be held in the City on Tuesday, November 8, 2016, at which election there shall be submitted to the qualified voters of the City the proposition set forth below.

B. Proposition. The proposition shall appear on the ballot for said municipal election in the following form:

> **"Vacaville Essential Services Protection Measure.** To protect essential city services such as police programs to fight domestic violence, child/elder abuse, gang activity and neighborhood crime; fire/paramedic services for quick emergency response times; street lighting for safety; and other city services, shall City of Vacaville Ordinance No. 1899 be approved to renew a sales/use tax at a 3/4-cent rate for 20 years, providing approximately $14,700,000 per year in locally controlled funding that stays in Vacaville?"

The City Council ("Council") does hereby submit to the qualified voters of the City, at said municipal election, this Ordinance and the proposition set forth above.

C. Submission; Intent. The Council does hereby submit to the qualified voters of the City, at said municipal election, this Ordinance and the proposition set forth in Section 18 hereof. The City intends to levy the transactions and use tax for the objects and purposes set forth above if a majority of all qualified voters voting on the proposition set forth above vote in favor thereof.

D. Polls Open. The polls for said election shall be opened at seven o'clock A.M. of the day of said election and shall remain open continuously from said time until eight o'clock P.M. of the same day, when said polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

E. Consolidation with Statewide General Election. The municipal election hereby called for the date hereinbefore specified shall be, and is hereby, ordered consolidated with the statewide general election to be held within the City on said date, and within the territory affected by the consolidation, the election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the statewide general election and specified herein. The Board of Supervisors of the County of Solano is hereby requested to order the consolidation of the municipal election hereby called with said statewide general election, and the Board of Supervisors of the County of Solano is hereby authorized to canvass the returns of said municipal election, and said election shall be held in all respects as if there were only one election and only one form of ballot shall be used. Said Board of Supervisors shall certify the results of the canvass of the returns of said municipal election to the Council, which shall thereafter declare the results thereof. The measure submitted by this Ordinance shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in Section 13116 of the Elections Code of the State of California.

F. County Registrar of Voters' Services. The Board of Supervisors of the County of Solano is hereby requested to permit the County Registrar of Voters to provide such services as may be necessary to properly and lawfully hold and conduct a municipal election in the City on November 8, 2016, including, but not limited to, consolidation of precincts; recruitment and appointment of election officers; establishment of polling places; preparing and mailing notices of appointment; printing sample ballots, sample ballot envelopes, ballot measures, polling place cards, ballot arguments and mailing to registered voters; the providing and printing of official ballots and polling cards; purchase election supplies, including precinct and absent voter supplies, voting booths and flags; provide for absentee voting at the Office of Registrar of Voters, Election Division; cartage of voting booths, ballots, ballot boxes and precinct supplies to precincts; supervision and conduct of election; provide registration lists and any other materials and services that may be requested from time to time by the City Clerk or required to lawfully conduct the election in accordance with the California Elections Code.

G. Canvass of Returns. The County Registrar of Voters is hereby authorized to tabulate votes and canvass the returns of the municipal election, which shall be held in all respects as if there were only one election. Only one form of ballot shall be used and the returns of the election need not be canvassed by the Council. The canvass shall be made in accordance with the provisions of Division 15 (commencing with Section 15000) of the California Elections Code. The County Clerk shall declare the results of the canvass of the returns of the municipal election, based on the certified statement of results submitted by the County Registrar of Voters.

H. Reimbursement. The City shall reimburse the County of Solano for services performed pursuant to this Ordinance upon presentation of a bill to the City.

I. Voting Qualifications. All persons qualified to vote at general municipal elections in the City upon the date of the election herein provided for shall be qualified to vote upon the proposition submitted at said election.

J. Ballots. Ballots for the election shall be provided in the form and in the number provided by law. On said ballots, in addition to any other printed matter which may be required by law, two voting squares shall be set off to the right of the proposition submitted at the election, in the manner provided by law, one having the word "YES" printed before it, and the other having the word "NO" printed before it.

K. Method of Voting. Each voter to vote for the proposition shall stamp or write a cross, or indicate by hole punch or other means, in the blank space opposite the word "YES" on the ballot to the right of the proposition; and each voter to vote against the proposition shall stamp or write a cross, or indicate by hole punch or other means, in the blank space opposite the word "NO" on the ballot to the right of the proposition.

L. Compliance with Law. In all particulars not recited in this Ordinance, the election shall be held and conducted as provided by law for holding municipal elections.

M. City Clerk. The notice of the time and place of holding the election is given and the City Clerk is directed to give further or additional notice of the election in the time, form and manner as required by law. The City Clerk is hereby directed to file with the Board of Supervisors of the County of Solano and the County Registrar of Voters a certified copy of this Ordinance and to take all other actions necessary to effectuate the directives of this Ordinance including, but not limited to, revising the language of the proposition set forth in Section 19.B to

ensure that it complies with law. The City Clerk is directed to transmit to the City Attorney a copy of this Ordinance and the City Attorney is directed to prepare an impartial analysis thereof consistent with applicable law.

I HEREBY CERTIFY that this Ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the 12th day of July, 2016, and **ADOPTED AND PASSED** at a regular meeting of the City Council of the City of Vacaville, held on the 9th day of August, 2016, by the following vote:

AYES:	Councilmembers Harris, Hunt, Mashburn, Vice Mayor Rowlett, Mayor Augustine
NOES:	None
ABSENT:	None

ATTEST:

By: Michelle A. Thornbrugh

Michelle A. Thornbrugh, City Clerk

Date: August 9, 2016

APPROVED:

Leonard J. Augustine

Leonard J. Augustine, Mayor