

## RESOLUTION NO. 3611-2013

### RESOLUTION OF THE FORT BRAGG CITY COUNCIL CALLING FOR A SPECIAL ALL-MAIL BALLOT ELECTION ON AUGUST 27, 2013 FOR VOTER APPROVAL TO EXTEND THE SPECIAL SALES TAX FOR STREET REPAIR, MAINTENANCE AND RECONSTRUCTION; ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION; AND REQUESTING THE SERVICES OF THE REGISTRAR OF VOTERS IN CONDUCTING SAID ELECTION

**WHEREAS**, since 2004, the City of Fort Bragg has had a one-half cent special transactions and use tax (sales tax) that has funded the repair, maintenance and reconstruction of streets; and

**WHEREAS**, the sales tax for street repairs will expire on December 31, 2014 unless it is extended by a vote of the citizens of Fort Bragg; and

**WHEREAS**, the Fort Bragg City Council ("City Council") has determined that an extension of the sales tax for an additional ten years is necessary to provide adequate funding for repair, maintenance and reconstruction of streets in Fort Bragg; and

**WHEREAS**, pursuant to Section 1.04.010 of the City Municipal Code the term "streets" includes streets, highways, avenues, lanes, alleys, courts, places, squares, curbs or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state; and

**WHEREAS**, on November 6, 1996, the voters of California approved Proposition 218, which added Articles XIII C to the California Constitution, Section 2(c) of which requires that any special tax must be approved by two-thirds of the voters voting on the issue of the imposition of the tax; and

**WHEREAS**, the City Council has determined that a special all-mail ballot election should be conducted to request voter approval of the proposed sales tax extension; and

**WHEREAS**, California Elections Code Section 4000 authorizes the City Council to hold a special election wholly by mail where: (1) the governing body authorizes the use of mailed ballots for the election; and (2) the election will be held on an established mailed ballot election date pursuant to California Elections Code Section 1500; and (3) the election is for a measure restricted to the imposition of a special tax in a city with 5,000 or less registered voters; and

**WHEREAS**, the proposed election will be held on August 27, 2013, which is an established mailed ballot election date pursuant to California Elections Code Section 1500; and

**WHEREAS**, the proposed election is for a measure restricted to the imposition of a special tax; and

**WHEREAS**, less than 5,000 citizens are registered to vote in the City of Fort Bragg; and

**WHEREAS**, based on all of the information presented to the City Council, both written and oral, including the staff reports, minutes, and other relevant materials (hereafter the "Record"), the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), the proposed sales tax increase does not constitute a project under CEQA and therefore review under CEQA is not required.

**NOW, THEREFORE**, BE IT HEREBY RESOLVED by the City Council of the City of Fort Bragg as follows:

Section 1 - Order Calling for a Special All-Mail Ballot Election

A. Pursuant to Sections 9222, 10201, 4000 and 1500 of the California Elections Code, a special all-mail municipal election is hereby called to be held in the City of Fort Bragg on August 27, 2013, for the purpose of proposing for adoption by the people of Fort Bragg a ten-year extension of the \$.005 (1/2 cent) increase in local sales tax.

B. The City Council does hereby submit for adoption by the qualified voters of the City of Fort Bragg at the special municipal election of August 27, 2013, the following question:

Shall the local Fort Bragg special purpose transactions and use tax (sales tax) of one-half of one percent for the express purpose of repairing, maintaining, and reconstructing existing streets, which expires on December 31, 2014, be extended until December 31, 2024 to allow for continued maintenance of streets and alleys in Fort Bragg?	Yes	
	No	

C. The full text of the proposed ordinance to be submitted to the voters is attached as Exhibit A (the "Ordinance"). If two-thirds of the qualified voters voting on the Ordinance shall vote in favor therefore, the Ordinance shall be deemed adopted and the expiration date shall be extended to December 31, 2024.

D. The election shall be held and conducted and the votes thereof canvassed and the returns thereof made and the results thereof ascertained and determined as provided by law for the holding of municipal elections in the City.

Section 2 - Request for Election Services

A. Pursuant to Section 10002 of the California Elections Code, the City Council of the City of Fort Bragg requests that the Mendocino County Board of Supervisors permit the Registrar of Voters to render assistance in all required election services in the conduct of the August 27, 2013 special municipal election including, but not limited to the following:

- (1) Preparation of mail ballots, establishment of ballot return procedures, securing election officers to count the returned ballots, preparing and mailing notices of mail ballot procedures and appointment and publication of election officers.
- (2) Typesetting and printing sample ballots and ballot arguments, and mailing to registered voters.
- (3) Printing of official ballots.

- (4) Purchasing supplies.
- (5) Providing for return of mail ballots to the County Registrar's Office.
- (6) Tabulation of votes.
- (7) Certifying to City Clerk the results of elections.
- (8) All things necessary or incidental to the above in accordance with California election law in effect at the time of the election or other functions as may be requested from time to time by the City.

B. The City of Fort Bragg will reimburse Mendocino County in full for the services performed upon presentation of an invoice to the City.

C. In the event the Board of Supervisors does not approve the request for the Registrar of Voters to conduct the election, the City Clerk shall cause the election to be conducted pursuant to Elections Code Section 10000 *et seq.* The City Clerk shall canvass the election returns and certify the results to the City Council no later than September 20, 2013, pursuant to Elections Code Section 10260 *et seq.*

### Section 3 - Ballot Arguments

A. The last day for submission of direct arguments for or against the measure shall be by 5:00 p.m. on Tuesday, May 21, 2013.

B. The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on Friday, May 31, 2013.

C. Direct arguments shall not exceed three hundred words.

D. Rebuttal arguments shall not exceed two hundred fifty words.

E. The City Attorney shall prepare an impartial analysis of the Ordinance showing the effect of the Ordinance on the existing law and the operation of the Ordinance. The impartial analysis shall be filed by 5:00 p.m. on May 21, 2013.

F. Pursuant to Elections Code Section 9282(b), Mayor Turner and Vice Mayor Courtney are hereby authorized to prepare and file a written argument in favor of the proposed ordinance, not to exceed 300 words, on behalf of the City Council. The argument may be signed by the Council as a whole and may also be signed by representatives of bona fide associates or by individual voters who are eligible to vote. However, the total number of signatures in support of the ordinance shall not exceed five.

G. Pursuant to Elections Code Section 9285(a), Mayor Turner and Vice Mayor Courtney are hereby authorized to prepare and file a written rebuttal argument in response to any written argument that is submitted opposing the proposed ordinance, not to exceed 250 words, on behalf of the City Council. The rebuttal may be signed by the Council as a whole and may also be signed by representatives of bona fide associates or by individual voters who are eligible to vote. However, the total number of signatures in support of the ordinance shall not exceed five.

H. Pursuant to Section 9285 of the California Elections Code, when the City Clerk has selected the arguments for and against the Ordinance, which arguments will be printed and distributed to the voters, the City Clerk shall send copies of the arguments in favor of the Ordinance to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. 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.

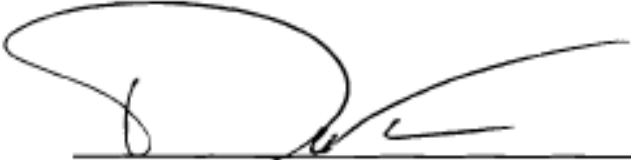
I. The provisions of Section 9285(a) of the Elections Code relating to arguments are hereby adopted and made applicable.

Section 4. Direction to City Clerk

The City Clerk is directed to forward without delay a certified copy of this resolution to the Board of Supervisors and to the County Elections Department. The City Clerk is hereby authorized and directed to take all steps necessary to place the Ordinance on the ballot and to cause the Ordinance to be printed. A copy of the Ordinance shall be made available to any voter upon request.

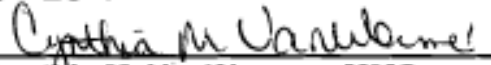
**The above and foregoing Resolution was introduced by Councilmember Courtney, seconded by Councilmember Hammerstrom, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 22<sup>nd</sup> day of April, 2013, by the following vote:**

**AYES: Councilmembers Courtney, Deitz, Hammerstrom, and Mayor Turner.  
NOES: None.  
ABSENT: None.  
ABSTAIN: None.**



**DAVE TURNER,  
Mayor**

**ATTEST:**

  
**Cynthia M. VanWormer, MMC  
City Clerk**

Attachment – “Exhibit A” – Special Purpose Transactions and Use Tax Ordinance

**AN ORDINANCE EXTENDING THE ONE-HALF OF ONE PERCENT TRANSACTIONS AND USE TAX (SALES TAX) TO FUND REPAIR, MAINTENANCE AND RECONSTRUCTION OF CITY STREETS TO CONTINUE TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

**ORDINANCE NO. \_\_\_\_-2013**

**WHEREAS**, pursuant to California Revenue and Taxation Code Sections 7285.9 and 7290, the City of Fort Bragg (the "City") has the authority to levy a Transactions and Use Tax for repair, maintenance and reconstruction of City streets; and

**WHEREAS**, a majority of the voters of the City approved a one-half of one percent (0.5%) Transactions and Use Tax for repair, maintenance and reconstruction of City streets at an election held on August 31, 2004; and

**WHEREAS**, the City's Special Purpose Transactions and Use Tax Ordinance is found in Chapter 3.10 of the City's Municipal Code; and

**WHEREAS**, Section 3.10.020 of Chapter 3.10 sets forth an expiration date of December 31, 2014, at which time Chapter 3.10 will be repealed unless an extension or re-authorization is approved by the voters of the City at an election called for that purpose; and

**WHEREAS**, an extension or re-authorization of the City's Special Purpose Transactions and Use Tax will be submitted to the voters to extend the expiration date of Chapter 3.10 to December 31, 2024; and

**WHEREAS**, the City Council desires to clarify that the term "streets" as used in this Ordinance includes all streets, highways, avenues, lanes, alleys, courts, or curbs in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FORT BRAGG DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION I: Amendment.** Chapter 3.10 **SPECIAL PURPOSE TRANSACTIONS AND USE TAX** of Title 3 **REVENUE AND FINANCE** is hereby repealed in its entirety and replaced with the following:

**"3.10.005 Title.**

This chapter shall be known as the "Special Purpose Transactions and Use Tax" ordinance.

**3.10.010 Definition.**

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**STREET.** Includes all streets, highways, avenues, lanes, alleys, courts, or curbs in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

**3.10.015 Purpose.**

The ordinance codified herein is adopted to achieve the following (and other) purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a special retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds of the electors voting on the ordinance vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a special 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 special 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 practical 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 special retail transactions and use tax ordinance that can be administered in a manner that will, to the degree possible consistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the said Revenue and Taxation Code, minimize the cost of collecting City transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions thereof.
- E. To provide a source of revenue for repairing, maintaining and reconstructing City streets. The revenue generated by the tax provided for herein shall be restricted to those uses. The tax is, therefore, a special tax.

**3.10.020. Use of other funding sources.**

The City will continue to pursue and utilize alternate sources of funding, in addition to sales tax dollars, to complete repair, maintenance and reconstruction of City streets.

### **3.10.025 Operative Dates.**

This Chapter shall be operative on January 1, 2015, and shall expire on December 31, 2024, unless an extension or re-authorization of this Chapter is approved by the voters of the City at an election called for that purpose.

### **3.10.030 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 hereof. If the City has not 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. The Council may make any technical amendments to this Chapter required by the State Board of Equalization, except for any changes affecting the tax rate, its manner of collection, or the purpose for which the revenue from the tax may be used.

### **3.10.040 Imposition of Special Transactions Tax.**

For the privilege of selling tangible personal property at retail, a special tax is hereby imposed upon all retailers in the City at the rate of one-half of one percent (0.5%) of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City of Fort Bragg on and after the operative date of this Chapter.

### **3.10.050 Presumption as to Place of Sales.**

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 Board of Equalization.

### **3.10.060 Imposition of Special Use Tax.**

An excise tax is hereby imposed on the storage, use, or other consumption in the City of Fort Bragg of tangible personal property purchased from any retailer on or after the operative date of this Chapter, at the rate of one-half of one percent (0.5%) of the sales price of the property subject to the tax. 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.

**3.10.070 Adoption of Certain Sections of California Revenue & Taxation Code by Reference.**

Except as hereinafter provided, and except in so far as they are inconsistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of said Code, as amended and in force and effect on the operative date of this Chapter, applicable to use taxes are hereby adopted and made a part of Section 3.10.010 *et seq.*, as though fully set forth herein.

**3.10.080 Limitations on Adoption of State Law and Collection of Use Taxes.**

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

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

(1) The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

(2) The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this 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 Revenue and Taxation Code, or;

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

(4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.



### **3.10.090 Permit Not Required.**

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

### **3.10.100 Exemptions and Exclusions.**

A. There shall be excluded from the measure of the special transactions tax and the special 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 special 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 Chapter 2 of 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 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 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 special use tax imposed by this Chapter, 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 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 subsections (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 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 special use tax under this Chapter may credit against that tax any transactions tax or reimbursement for transaction 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.

**3.10.120 Amendments.**

All amendments to Part 1 of Division 2 of the Revenue and Taxation Code made subsequent to the operative date of this Chapter 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 Chapter.

**3.10.130 Enjoining Collection Prohibited.**

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 this City, or against any officer of the State or the City, to prevent or enjoin the collection hereunder, or Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**3.10.140 Use of Tax Proceeds and Expenditure Plan.**

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund or account designated for use for street repair, maintenance and reconstruction only, including related expenses as are deemed necessary by the City Council for the benefit of the residents of the City. Because the proceeds of the tax shall be used only for repairing, maintaining and reconstructing City streets, this section shall satisfy the expenditure plan requirement of Section 7285.91(c) of the Revenue and Taxation Code.

**SECTION II: SEVERABILITY.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council finds and declares that it would have adopted each and every provision of this ordinance, even if it had not adopted any other provision.

**SECTION III: STATUTORY AUTHORITY FOR TAX.**

This ordinance is adopted pursuant to Revenue and Taxation Code section 7285.91.

**SECTION IV: ELECTION REQUIRED.**

This ordinance shall not become operative unless and until a two-thirds majority of the electors voting on this ordinance vote to approve the imposition of the tax at the election to be held on August 27, 2013.

**SECTION V: EFFECTIVE DATE.**

If this ordinance is approved by two-thirds of the voters voting on the issue at the August 27, 2013 election, the ordinance shall take effect immediately.

**ADOPTED** by Declaration of the vote at the August 27, 2013 election by the City Council of the City of Fort Bragg on \_\_\_\_\_, 2013

\_\_\_\_ YES      \_\_\_\_ NO      \_\_\_\_ TOTAL VOTES

\_\_\_\_\_  
**DAVE TURNER**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**Cynthia M. VanWormer, MMC**  
City Clerk