

## RESOLUTION NO. 3491-2011

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL CALLING FOR A SPECIAL ALL-MAIL ELECTION ON MARCH 6, 2012 FOR VOTER APPROVAL OF A SPECIAL SALES TAX FOR OPERATION, MAINTENANCE, AND CAPITAL IMPROVEMENTS AT THE C.V. STARR COMMUNITY CENTER; ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION; AND REQUESTING THE SERVICES OF THE REGISTRAR OF VOTERS IN CONDUCTING SAID ELECTION**

**WHEREAS**, additional funding is necessary for operation, maintenance and capital improvements at the C.V. Starr Community Center; and

**WHEREAS**, the Fort Bragg City Council ("City Council") has considered the imposition of a sales tax increase to pay for operation, maintenance and capital improvements at the C.V. Starr Community Center; 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 a two-thirds vote of the voters voting on the issue of the imposition of the tax; and

**WHEREAS**, the City Council has considered conducting a special all-mail election to request voter approval of the proposed special sales tax; and

**WHEREAS**, California Elections Code Section 4000 authorizes the City Council to hold a special election wholly by mail where: (1) the City Council 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 March 6, 2012, 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)(3) and 15378(b)(3), 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 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 March 6, 2012, for the purpose of proposing for adoption by the people of Fort Bragg an ordinance authorizing the City Council to levy a ½ cent (\$ 005) increase in local sales tax, subject to the satisfaction and completion of specified conditions.

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 March 6, 2012, the following question:

Shall the Fort Bragg City Council be authorized to levy a ½ cent special transactions and use tax (special sales tax) to provide dedicated revenue solely for operations, maintenance and capital improvements at the C.V. Starr Community Center as set forth in the C.V. Starr Community Center Special Sales Tax Ordinance and contingent upon the Mendocino Coast Recreation and Park District transferring ownership of the C.V. Starr Community Center to the City and providing funding as described in the Ordinance?	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 shall be effective in accordance with its terms.

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 "all mail" 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 March 6, 2012 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 in conducting this special election 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 March 30, 2012, 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 December 12, 2011.

B. The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on December 22, 2011.

C. Direct arguments shall not exceed three hundred (300) words

D. Rebuttal arguments shall not exceed two hundred fifty (250) 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 December 12, 2011.

F. Pursuant to Elections Code Section 9282(b), Councilmembers Turner and Gjerde are hereby authorized to prepare a written argument in favor of the proposed ordinance, not to exceed 300 words, on behalf of the City Council. The argument will be signed by the Council as a whole and may also be signed by bona fide associations 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), Councilmembers Turner and Gjerde are hereby authorized to prepare 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 will be signed by the Council as a whole and may also be signed by bona fide associations or by individual voters who are eligible to vote. However, the total number of signatures on a rebuttal argument 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 28<sup>th</sup> day of November, 2011, by the following vote:**

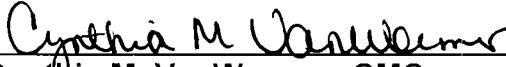
**AYES: Councilmembers Courtney, Gjerde, Hammerstrom, and Mayor Turner.  
NOES: None.  
ABSENT: None.  
ABSTAIN: None.**



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**DAVE TURNER,  
Mayor**

**ATTEST:**

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Cynthia M. VanWormer, CMC  
City Clerk

Attachment – “Exhibit A” – C.V. Starr Community Center Special Sales Tax Ordinance

**AN ORDINANCE ADDING A NEW CHAPTER 3.11 TO THE FORT BRAGG MUNICIPAL CODE TO AUTHORIZE THE CITY COUNCIL TO LEVY A ONE-HALF OF ONE PERCENT SPECIAL SALES TAX TO FUND OPERATION, MAINTENANCE AND CAPITAL IMPROVEMENTS AT THE C.V. STARR COMMUNITY CENTER AND TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

ORDINANCE NO. \_\_\_\_-2012

**BE IT ORDAINED BY THE VOTERS OF THE CITY OF FORT BRAGG, AS FOLLOWS:**

**SECTION I: AMENDMENT OF CODE.**

Fort Bragg Municipal Code is hereby amended by the addition of a new Chapter 3.11 to read as follows:

**3.11.010 Title.**

This chapter shall be known as the "C.V. Starr Community Center Special Sales Tax Ordinance". The City of Fort Bragg hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

**3.11.020 Purpose.**

The ordinance codified herein 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 authorize the imposition of a special retail transactions and use tax ("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 ordinance which shall be operative if two-thirds of the electors voting on the ordinance authorize the City Council to impose the Tax at an election called for that purpose.

B. To authorize 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 authorize 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 authorize a special retail transactions and use tax ordinance that can be administered in a manner that will, to the degree possible and 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 operation, maintenance and capital improvements at the C.V. Starr Community Center. The revenue generated by the Tax shall be restricted to those uses. The Tax is, therefore, a special tax.

**3.11.030 Special Conditions Precedent to City Council Action to Levy a Special Retail Transactions and Use Tax.**

A. The following special conditions must be satisfied prior to the City Council taking action to levy the Tax:

(1) The Mendocino Coast Recreation and Park District must convey title to the C.V. Starr Community Center property and all improvements, fixtures and furnishings thereon to the City of Fort Bragg pursuant to and in accordance with escrow instructions prepared by City and subject only to those exceptions to clear title as are acceptable to the City.

(2) The Mendocino Coast Recreation and Park District must execute and deliver to the City a tax-sharing agreement whereby the District shall assign to the City of Fort Bragg all revenues it receives from the Fort Bragg Redevelopment Agency and 45% of the District's property tax revenues, said revenues to be used solely for parks and recreation purposes within the Fort Bragg city limits.

B. In the event that the City Council determines that the foregoing special conditions have been satisfied prior to voter approval of this Chapter, then the Tax shall be imposed upon the effective date of this Chapter. In the event that approval of this Chapter precedes the City Council determining that the foregoing special conditions have been satisfied, then the Tax shall be imposed upon the effective date of the Council's determination that the special conditions have been satisfied.

**3.11.040 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, or

upon City Council action determining that the special conditions identified in Section 3.11 030 have been satisfied and levying the tax authorized by this Chapter, whichever occurs later

**3.11.050 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.

**3.11.060 Transactions Tax Rate.**

For the privilege of selling tangible personal property at retail, a 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.

**3.11.070 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.

**3.11.080 Use Tax Rate.**

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.

**3.11.090 Adoption of Provisions of State Law.**

Except as otherwise provided in this Chapter 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 Chapter as though fully set forth herein.

### **3.11.100 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 therefore. 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

### **3.11.110 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.

### **3.11.120 Exemptions and Exclusions.**

A. There shall be excluded from the measure of the 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 the 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 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 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.

**3.11.130 Amendments.**

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

**3.11.140 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

**3.11.150 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 operation, maintenance and capital improvements at the C.V. Starr Community Center 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 operation, maintenance and capital improvements at the C.V. Starr Community Center, 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 approve the imposition of the tax at the election to be held on March 6, 2012 and the conditions described in Section 3.11.030 have been satisfied as determined by the City Council.

**SECTION V: EFFECTIVE DATE.**

This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately. The City Council's authority to levy the Tax is conditional upon it determining that the special considerations identified in Section 3.11.030 have been satisfied and voting to levy the Tax. Therefore, the Tax shall only become operative upon the City Council taking those actions.

**APPROVED (or DENIED)** by the following vote of the People of the City of Fort Bragg on March 6, 2012:

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

**RESULTS DECLARED** by the City Council of the City of Fort Bragg on \_\_\_\_\_

\_\_\_\_\_  
**Dave Turner**  
**Mayor**

**ATTEST:**

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

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