

CITY OF PLACERVILLE
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLACERVILLE
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, beginning in 2002, to comply with federal and state clean water regulations, the City of Placerville undertook a multi-million dollar upgrade of its wastewater treatment facility, the Hangtown Creek Water Reclamation Facility; and

WHEREAS, the finished project is a state-of-the-art treatment plant that has reduced operating costs, improved the quality of water discharged into Hangtown Creek, and addressed health and safety issues, as well as bringing the City into compliance with state and federal law. As a result of the improvements, water quality has improved, as have air and land quality. The improved plant requires fewer chemicals, produces fewer solids, and results in less trucking. Because of those features, the Hangtown Creek Facility has won several awards, including Wastewater Project of the Year from the American Association of Civil Engineers – California; the 2009 Engineering Achievement Award from the California Water Environment Association – Sacramento; and one from the American Academy of Environmental Engineers; and

WHEREAS, to pay for the improvements, the City issued revenue bonds and borrowed from the State Revolving Fund, a low-interest program operated by the State of California to assist local agencies bring existing facilities up to current standards. To generate sufficient funds to repay those debts, the City increased the charges for wastewater; and

WHEREAS, because revenue from increased wastewater charges has been committed to repaying the loans and bonds for the improvements to the Hangtown Creek Facility, the City has limited funds available for water and wastewater improvement projects, such as replacing existing lines; and

WHEREAS, if an alternative revenue source were available to partially finance debt repayment for the water and wastewater system improvements and to fund water and wastewater construction projects, such as line replacement, the City would be able to reduce water and/or sewer rates; and

WHEREAS, at its June 22, 2010 meeting, the City Council received a report indicating there is substantial community support for a temporary sales tax (“transactions and use tax”)

dedicated to the repayment of water and wastewater system debt and funding for water and /or wastewater improvement projects; and

WHEREAS, at a public hearing on July 8, 2010, the Council considered calling a special election to seek voter approval of a proposed special transactions and use tax (or “sales tax”), as authorized by Revenue and Taxation Code section 7285.91; and

WHEREAS, after that hearing, the City Council concluded that all of the information presented indicated that, to create an additional source of revenue to assist with the repayment of wastewater treatment plant debt and to fund water and wastewater improvement projects, the Council should call an election to ask the voters of the City to approve a 30-year local transactions and use tax of one-quarter cent (0.25%); and

WHEREAS, on the basis of the foregoing, the City Council determined that it was appropriate to place a measure regarding a special transactions and use (sales) tax before the voters at the November 2, 2010 general election; and

WHEREAS, the tax to be submitted, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property. The tax rate would be one-quarter of one percent (0.25%) (a quarter cent for each dollar) of the sales price of the property. The tax revenue would be collected by the State Board of Equalization and remitted to the City. The tax would be in effect for 30 years, and would then expire automatically, unless extended by the voters. The tax shall be approved if the measure receives at least two-thirds of those voting on the measure; and

WHEREAS, the Placerville City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

WHEREAS, Elections Code Sections 9281 through 9287 set forth the procedures for arguments in favor of and in opposition to any City measure and for rebuttal arguments; and

WHEREAS, it is desirable that the election be consolidated with the statewide election to be held on the same date and that within the City, the precincts, polling places and election officers of the two elections be the same, and that the County Elections Department of the County of El Dorado canvass the returns of the election and that the election be held in all respects as if there were only one election.

The People of the City of Placerville do ordain as follows:

Section 1: Title V of the City Code shall be amended to add a new Chapter 26, entitled “City of Placerville Special Transactions and Use Tax Ordinance for Repayment of Water and Wastewater Debt Repayment and System Improvements,” to read as follows:

5-26-1: TITLE: This ordinance shall be known as the City of Placerville Special Transactions and Use Tax Ordinance for Repayment of Water and Wastewater Debt Repayment and System Improvements. The city of Placerville hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

5-26-2: 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.

5-26-3: 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 7285.91 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 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, to the greatest degree possible, be 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 recordkeeping upon persons subject to taxation under the provisions of this ordinance.

5-26-4: 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.

5-26-5: **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 one-quarter of one percent (0.25%) 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.

5-26-6 **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.

5-26-7: **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 one-quarter of one percent (0.25%) 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.

5-26-8: **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.

5-26-9: **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 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 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.

5-26-10: 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.

5-26-11: 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.

5-26-12: 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.

5-26-13: 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.

5-26-14: EXPENDITURE PLAN: The expenditure plan required by Revenue and Taxation Code Section 7285.91(c) for the revenue from the tax approved by this Chapter is the following: The City may use revenue from the tax only to repay bond and State Revolving Fund debt incurred for improvements to the Hangtown Creek Water Reclamation Facility and to fund water and sewer construction projects, including, but not limited to, line replacement.

5-26-15: CITIZENS OVERSIGHT COMMITTEE: There shall be a five-person committee of members of the public to review and report on the revenue and expenditure of funds from the tax adopted by this Chapter. Prior to the operative date, the City Council shall adopt a resolution establishing the composition of the committee and defining the scope of its responsibilities. Also prior to the operative date, the City Council shall appoint at least a quorum of the members of the committee; the Council shall complete the appointment of members of the committee by the end of fiscal year 2011.

5-26-16: TERMINATION DATE: The authority to levy the tax imposed by this ordinance shall expire on the thirtieth anniversary of the last day of the calendar quarter following the operative date.

Section 2: ENVIRONMENTAL COMPLIANCE: The findings for this ordinance in compliance with the California Environmental Quality Act ("CEQA") are the same as those set forth in the City's Resolution No. 7820 calling for an election on this ordinance. The CEQA findings in Resolution No. 7820 are incorporated herein by reference.

Section 3: 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 4: EFFECTIVE DATE: This ordinance relates to the levying and collecting of the City's transactions and use taxes and shall take effect immediately.

The above ordinance was submitted to the People of the City of Placerville at the November 2, 2010, general municipal election. It was approved by the following vote of the Voters:

YESSES:

NOES:

The above ordinance was adopted by declaration of the vote of the November 2, 2010, election at a regular meeting of the City Council on _____, 2010. The motion to declare the results of the election was made by Councilmember _____. The motion was seconded by Councilmember _____. A poll vote was taken, which stood as follows:

AYES:

NOES:

ABSENT:

ABSTAIN:

Pierre Rivas, Mayor

ATTEST:

Susan Zito, City Clerk

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