

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

**Imposing a Transactions and Use)
Tax to be Administered by the State)
Board of Equalization)**

ORDINANCE NO. 238

WHEREAS, Moraga was founded on November 13, 1974, to preserve and enhance the unique quality of life in our Town by providing a safe environment and traffic congestion relief while honoring our tradition of minimal service government; and

WHEREAS, the Town has seen flat revenues with dramatically increasing operational costs due to the overall downturn in the economy, rising health care costs, and continued takeaways by the State amounting to nearly \$5 million over the past 20 years; and

WHEREAS, while the Town continues to be fiscally prudent and constantly seeks ways to keep costs low and reduce expenses in all departments, the Town still faces more cuts to essential Town services, street paving and pothole repair, and park maintenance; and

WHEREAS, the community has expressed a clear interest in supporting the Town in order to preserve the safety of Moraga, maintain and repair local streets and fix potholes and cracks, protect vital police services provided by the Town's Police Department and maintain the Town's recreation programs; and

WHEREAS, the Town of Moraga never spends more than the current revenue would allow, but as a consequence, the streets have fallen further into disrepair through deferred maintenance and repairs to Moraga's local streets and roads; and

WHEREAS, in the next five years the Town's average rating for streets will drop from "at risk" to "poor" or "failed" if roads are not maintained; and

WHEREAS, the Town must start making these essential repairs immediately, because waiting will make Town roads more dangerous and significantly more expensive to fix; and

WHEREAS, this temporary measure would create a guaranteed source of local funding revenue vital to maintaining Town services that cannot be taken by the State, ensuring our tax dollars are spent locally for Moraga residents; and

WHEREAS, because of changes in State law, particularly the approval of Propositions 62 and 218, the Town has very few means available for increasing General Fund revenue; and

WHEREAS, absent a new source of General Fund revenue, the Town's ability to properly maintain public roads, facilities and property, ensure public safety standards are met, and provide the community with adequate and safe recreational opportunities will be jeopardized.

NOW, THEREFORE, the Town of Moraga does hereby ordain as follows:

SECTION 1: "Chapter 3.20 Transactions and Use Tax" shall be added to the Moraga Municipal Code and shall read as follows:

"Chapter 3.20 TRANSACTIONS AND USE TAX"

Sections:

3.20.010	Short Title
3.20.020	Operative Date
3.20.030	Purpose
3.20.040	Contract with State
3.20.050	Transactions Tax Rate
3.20.060	Place of Sale
3.20.070	Use Tax Rate
3.20.080	Adoption of Provisions of State Law
3.20.090	Limitations on Adoption of State Law and Collection of Use Taxes
3.20.100	Permit Not Required
3.20.110	Exemptions and Exclusions
3.20.120	Amendments
3.20.130	Enjoining Collection Forbidden
3.20.140	Oversight, Annual Audit and Public Report
3.20.150	Termination Date

3.20.010 Short Title

This ordinance shall be known as the Town of Moraga Transactions and Use Tax Ordinance. The Town of Moraga hereinafter shall be called "Town." This ordinance shall be applicable in the incorporated territory of the Town.

3.20.020 Operative Date

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

3.20.030 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 Town 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.

3.20.040 Contract with State

Prior to the operative date, the Town 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 Town 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.

3.20.050 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 Town at the rate of 1.0% 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.

3.20.060 Place of Sale

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his 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.

3.20.070 Use Tax Rate

An excise tax is hereby imposed on the storage, use or other consumption in the Town 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 1.0% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3.20.080 Adoption of Provisions of State Law

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

3.20.090 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 Town 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 Town or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incidental 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 "Town" 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.

3.20.100 Permit Not Required

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

3.20.110 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 Town, Town 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 Town which is shipped to a point outside the Town, 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 Town 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-Town 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-Town 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 Town 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 Town 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 Town or participates within the Town 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 Town or through any representative, agent, canvasser, solicitor, subsidiary, or person in the Town under the authority of the retailer.

7. "A retailer engaged in business in the Town" 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 Town.

- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.20.120 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.

The foregoing amendments shall not require voter approval.

The following amendments to this ordinance must be approved by the voters of the Town of Moraga: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of the preceding paragraph); or extending the tax beyond the twentieth anniversary of the operative date. The Town Council may otherwise amend this ordinance without submitting the amendment to the voters for approval.

3.20.130 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 Town, or against any officer of the State or the Town, 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.

3.20.140 Oversight, Annual Audit and Public Report

Annually the Town Council retains an independent auditor to conduct an audit of and provide audited financial statements for all of the Town’s financial activities. The auditor shall include an accounting of the revenue received from the tax and expenditures thereof in the audited financial statements. The auditor’s report shall be presented to the Council and made available to the public. Additionally, the Director of Administrative Services shall annually prepare and present to the Council and the public a report in conjunction with the audit that reviews the status and performance of the programs and services funded wholly or partially with proceeds of the tax. There shall also be a Citizens’ Oversight Committee to review and report annually on the receipt of revenue and expenditure of funds from the tax authorized by this chapter. The Town Council shall adopt a resolution establishing the terms, composition and duties of the committee no later than April 30, 2013.

3.20.150 Termination Date

The authority to levy the tax imposed by this ordinance shall expire on the twentieth anniversary of the operative date, unless extended by a majority vote of the voters of the Town.

SECTION 2: SEVERABILITY. The Town Council hereby declares that every section, paragraph, sentence, clause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

SECTION 3: EFFECTIVE DATE. This ordinance relating to the levying and collection of the Town transactions and use taxes and shall take effect immediately.

SECTION 4: PUBLICATION. The Clerk of the Town of Moraga is hereby directed to cause the following summary of the ordinance to be published by a newspaper of general circulation, published and circulated in the Town of Moraga:

Contingent upon majority voter approval, this ordinance adopts a one cent (1.0%) transactions and use tax on the sale or consumption of tangible personal property within the Town of Moraga. The tax shall terminate automatically upon the twentieth anniversary of the State beginning to collect it, unless extended by the voters.

This ordinance was approved by the Town Council of the Town of Moraga on July 25, 2012, by the following vote:

- AYES:** Mayor Metcalf, Vice Mayor Harpham, Councilmembers Mendonca and Trotter
- NOES:** None
- ABSTAIN:** None
- ABSENT:** Councilmember Chew

This ordinance was approved and adopted by a majority vote of the People of the Town of Moraga on November 6, 2012.

AYES: 5,993
NOES: 2,503

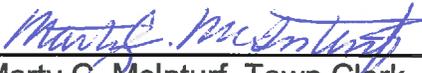
The Town Council of the Town of Moraga declared this result of the November 6, 2012 election, and the ordinance is thereby adopted on December 12, 2012 by the following vote:

AYES: Mayor Metcalf, Vice Mayor Harpham, Councilmembers Chew, Mendonca and Trotter
NOES: None
ABSTAIN: None
ABSENT: None



Michael Metcalf, Mayor

ATTEST:



Marty C. McInturf, Town Clerk