

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ADDING CHAPTER 3-30 TO TITLE 3 OF THE SANTA ROSA CITY CODE TO IMPOSE A TEMPORARY HALF-CENT GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, AND REPEALING CHAPTERS 3-27 AND 3-29 OF THE SANTA ROSA CITY CODE

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. The Council of the City of Santa Rosa in adopting this ordinance and placing the general tax levied herein before the voters of the City, finds, determines, and states as follows:

1. The City seeks to continue to provide excellent service to the residents of Santa Rosa;
2. The City has three existing .25% Transactions and Use Taxes, including Chapter 3-26 Transactions and Use Tax; Chapter 3-27 2010 Transaction and Use Tax; and Chapter 3-29 2018 Transactions and Use Tax;
3. Chapters 3-27 and 3-29 are general Transactions and Use taxes which provide revenue for general City services; Chapter 3-26 is a Transactions and Use tax which provides revenue for enhanced police, fire, and violence prevention services;
4. Chapter 3-26 expires on March 31, 2025; Chapter 3-27 expires on March 31, 2027; and Chapter 3-29 expires on March 31, 2025;
5. Funding is needed to maintain and strengthen 911 emergency, paramedic and fire response; disaster, wildfire and pandemic preparedness and response; parks and recreation opportunities; street and pothole repair, senior and youth programs; and other city services;
6. Santa Rosa's population has and will continue to grow, and it is crucial to invest in proper land use planning and social services management to meet the changing demographics and needs of the City's diverse and growing population to help ensure the city's vibrancy, resiliency and long-term economic stability;
7. Without continuation of existing City sales tax revenues, our City will not be able to offer the kind of services we need, deserve and count on;
8. The general tax set forth in this ordinance will replace Chapter 3-27 2010 Transaction and Use Tax, and Chapter 3-29 2018 Transactions and Use Tax, and will remain in effect for ten years only;
9. The general tax set forth in this ordinance and in its ballot measure is subject to the City's existing fiscal accountability measures such as the Charter-required independent audit, review of City budget in a series of public hearings, and year-end public expenditure reports on City expenditures; and

10. The Council has evaluated Santa Rosa's needs with input from the public.

Section 2. Chapter 3-30 entitled "2020 TRANSACTIONS AND USE TAX" is added to Title 3 of the Santa Rosa City Code to read as follows:

"Section 3-30.010 Title. This ordinance shall be known as the City of Santa Rosa 2020 Transactions and Use Tax Ordinance. The City of Santa Rosa hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 3-30.015 Operative date. "Operative date" means the first day of the first calendar quarter commencing more than 110 days after the effective date of this ordinance, the effective date being as set forth in section 3-30.120.

Section 3-30.020 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 general retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a general 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 general retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

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

Section 3-30.030 Contract with State. Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration

prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 3-30.040 Transactions tax rate. For the privilege of selling tangible personal property at retail, a general tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one half of one percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 3-30.045 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 California Department of Tax and Fee Administration.

Section 3-30.050 Use tax rate. A general 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 half of one percent (0.50%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 3-30.055 Adoption of provisions of state law. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 3-30.060 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, California Department of Tax and Fee Administration, 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 California

Department of Tax and Fee Administration, 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.

C. "A retailer engaged in business in the City" shall also include:

1. Any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the state by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of the Internal Revenue Code and the regulations thereunder.
2. 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.

Section 3-30.070 Permit not required. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

Section 3-30.080 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 sales or use tax.

B. There are exempted from the computation of the amount of sales 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 section 3-30.060(C)(2), 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.

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

Section 3-30.090 Amendments. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and

Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 3-30.100 Enjoining collection forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 3-30.110 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 3-30.120 Effective date. This ordinance, following its approval by at least 5 affirmative votes of the Council, and its publication in accordance with the Government Code, shall become effective upon the approval of the tax imposed hereunder by more than 50 percent of the voters of the City voting thereon at an election called for that purpose. The “operative date” of the tax imposed hereunder shall be as provided in section 3-30.015.

Section 3-29.130 Termination date. The authority to levy the tax imposed by this ordinance shall extend only through March 31, 2031, or, if the operative date is later than April 1, 2021, at the end of ten years from the operative date as provided in section 3-30.015.”

Section 3. Chapter 3-27 of the Santa Rosa City Code is hereby repealed in its entirety.

Section 4. Chapter 3-29 of the Santa Rosa City Code is hereby repealed in its entirety.

IN COUNCIL DULY PASSED AND APPROVED this ____ day of _____, 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
City Clerk

APPROVED: _____
Mayor

APPROVED AS TO FORM:

City Attorney