

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**AN ORDINANCE IMPOSING A ONE-HALF CENT RETAIL TRANSACTIONS
(SALES) AND USE TAX IN THE COUNTY OF SAN MATEO FOR GENERAL
FUND PURPOSES FOR A PERIOD OF TEN (10) YEARS**

WHEREAS, the County of San Mateo continues to face increased demand for, and expenses in providing, essential County services and facilities that its residents rely on, such as:

- Maintaining child abuse protection programs;
- Maintaining 911 emergency dispatch services;
- Maintaining healthcare for low-income children, seniors and disabled;
- Maintaining fire prevention and response;
- Maintaining pre-school, after-school and library programs for children and teens, including reading programs and homework centers;
- Keeping county parks open;
- Maintaining county-wide gang and drug task forces;
- Providing neighborhood health clinics;
- Maintaining adequate jail staffing;
- Ensuring that hospitals in the county, including Seton Medical Center, are earthquake safe, maintain long term care beds for low-income patients requiring more intensive care than nursing facilities can provide, and expand and improve the overall quality of health care in the County, including emergency services and advanced medical technology to reduce emergency room wait times and increase capacity and efficiency for county residents;
- Ensuring that Medi-Cal patients and applicants for Medi-Cal benefits referred by the Health Plan of San Mateo (HPSM) receive appropriate and timely inpatient and outpatient services; and

WHEREAS, the Board is considering whether to use general funds to provide substantial assistance to Seton Medical Center to rebuild to meet seismic standards so that it can continue providing critical healthcare services in the community.

WHEREAS, without additional revenue, the County of San Mateo will be hampered in providing these and other essential County services.

The Board of Supervisors of the County of San Mateo, State of California, **ORDAINS** as follows:

SECTION 1. Chapter 5.150, consisting of sections 5.150.010 through 5.150.160, is hereby added to Title 5 of the San Mateo Ordinance Code to read as follows:

CHAPTER 5.150 – RETAIL TRANSACTIONS (SALES) AND USE TAX

SECTION 5.150.010. TITLE. This Chapter shall be known as the County of San Mateo Retail Transactions (Sales) and Use Tax Ordinance. The County of San Mateo shall hereinafter be called “County.” This Chapter shall be applicable in the incorporated and unincorporated territory of the County.

SECTION 5.150.020. OPERATIVE DATE. “Operative Date” means the first day of the first calendar quarter commencing more than 110 days after the effective date of the ordinance adding this Chapter, unless such date is extended pursuant to Section 5.150.040.

SECTION 5.150.030. PURPOSE. This Chapter is adopted to achieve the following, among other purposes, and the provisions hereof shall be interpreted in order to accomplish those purposes:

A. To generate revenue that will be placed in the general fund to support general County services and functions.

B. 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 of Part 1.7 of Division 2 of the Revenue and Taxation Code, which authorize the County 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.

C. 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.

D. 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.

E. 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 Chapter.

SECTION 5.150.040. CONTRACT WITH STATE. Prior to the Operative Date, the County shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this Chapter; provided, that if the County 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 execution of the such a contract.

SECTION 5.150.050. TRANSACTIONS (SALES) TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of one-half of one percent (0.5%) 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.

SECTION 5.150.060. PLACE OF SALE. 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. 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.

SECTION 5.150.070. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the Operative Date for storage, use or other consumption in said territory at the rate of one-half of one percent (0.5%) of the sales price of the property. The sales price 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.

SECTION 5.150.080. 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.

SECTION 5.150.090. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAX. In adopting the provisions of Part 1.6 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 County 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 the County 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 consumptions remain subject to tax by the State under 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. The word "State" appears 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 "County" 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.

SECTION 5.150.100. 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 Chapter.

SECTION 5.150.110. 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 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, as a result of the following:

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 County which is shipped to a point outside the County, 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 purposes of this paragraph, delivery to a point outside the County 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-County address and by 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-County 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 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.

B. There are exempted from the use tax imposed by this Chapter, the storage, use or other consumption in this County 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 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 County 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 County or participates within the County 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 County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.
7. "A retailer engaged in business in the County" 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 County.

C. Any person subject to use tax under this Chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a City or County 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, which is subject to the use tax.

SECTION 5.150.120. AMENDMENTS. All amendments to Part 1 of Division 2 of the Revenue and Taxation Code that are made subsequent to the effective 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 Chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Chapter or the duration thereof.

SECTION 5.150.130. 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 County, or against any officer of the State or the County, to prevent or enjoin the collection under this Chapter, 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 5.150.140. AUDIT. Within 60 days of the Operative Date, the Board of Supervisors will designate, by resolution, a committee to perform an annual audit of the general fund revenues generated by this Retail Transactions (Sales) and Use Tax.

SECTION 5.150.150. SEVERABILITY. If any provision of this Chapter or the application thereof to any person or circumstance is held to be invalid, the remainder of the Chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

SECTION 5.150.160. SUNSET. The tax imposed by this Chapter shall be imposed for ten years from the Operative Date of the tax as defined in section 5.150.020 of this Chapter and, thereafter, shall no longer be imposed.

SECTION 2. This ordinance shall take effect thirty days after its final adoption by the Board of Supervisors by a two-thirds vote, or upon adoption by a majority vote of the electorate of the ballot measure described in paragraphs 6 and 7 of Resolution No.

_____ of this Board of Supervisors, whichever date is later, provided that the ordinance shall only take effect if it is approved by both the Board of Supervisors and the electorate.