

ORDINANCE NO 3680

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

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

Section 1. Chapter 3-26, entitled, "Transactions and Use Tax", is added to Title 3 of the Santa Rosa City Code to read as follows:

"Section 3-26.010. TITLE. This chapter shall be known as the "City of Santa Rosa Transactions and Use Tax Ordinance". This ordinance shall be applicable in the incorporated territory of the City.

Section 3-26.015. DEFINITIONS. As used in this chapter, "City" means the City of Santa Rosa and "tax" means the transactions and use taxes imposed under the provisions of this ordinance; "tax revenue" and "tax revenues" mean all proceeds of the tax received by the City from the State Board of Equalization.

Section 3-26.020. OPERATIVE DATE. "Operative Date" means the first day that the tax is imposed and collected. The operative date shall be April 1, 2005, unless a later operative date becomes effective under the provisions of section 3-26.040.

Section 3-26.030. 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be effective if a 2/3 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.

Section 3-26.040. 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.

Section 3-26.050. 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 City at the rate of 0.25 percent (one-quarter of one percent) 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 3-26.060. 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.

Section 3-26.070. 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 0.25 percent (one-quarter of one percent) 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 3-26.080. 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.

Section 3-26.090. 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 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, 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.

Section 3-26.100. 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.

Section 3-26.110. 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.

(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.

Section 3-26.120. PERMISSIBLE USES: Expenditure Plan.

- (A) The revenues of the tax shall only be used to fund the following uses and purposes. Funding with tax revenues of all other uses and purposes, except as provided in paragraphs (C) through (E) of this section, is prohibited.

(1) POLICE

- (a) Police patrol services;
- (b) Police traffic control services;
- (c) Gang enforcement, school resource services, and bicycle patrol;
- (d) Downtown, Railroad Square, and Prince Greenway police services;
- (e) Police support services, including facilities and equipment and the financing thereof.

(2) FIRE

- (a) Construction and relocation (including but not limited to land acquisition, facilities design, and use of temporary facilities) of fire stations and the financing thereof;

- (b) Hiring of additional Firefighters to staff fire stations;
- (c) Establishment of additional paramedic units within the Fire Department;
- (d) Purchase of specialized equipment for Fire Department use;

(3) GANG PREVENTION AND YOUTH PROGRAMS

- (a) Enhancing and improving in-school gang prevention and intervention curriculum and programs;
- (b) Adding new programs in neighborhoods affected by high levels of gang activity which emphasize positive role models, problem solving, and community safety;
- (c) Providing additional after-school and summer programs which stress academic and social success, recreational activities, sports, athletic programs, and safe neighborhoods without fear of gangs, drugs or violence.
- (d) Providing grants to organizations for youth and parenting programs which focus on gang and anti-violence education, prevention and intervention, community safety, and a comprehensive array of social services in high need neighborhoods.

(B) Of the tax revenues received by the City, forty percent (40%) shall be expended for Police purposes as specified in sections (a) through (e) of subparagraph (A)(1), forty percent (40%) shall be expended for Fire purposes as specified in sections (a) through (d) of subparagraph (A)(2) and twenty percent (20%) shall be used to fund the Gang Prevention programs and purposes as specified in sections (a) through (d) of subparagraph (A) (3).

(C) As a result of increased State revenue reductions to cities in fiscal years 2004-2005 and 2005-2006, the City Council may authorize the use of a portion of the tax revenues to fund the eleven Police Department positions (nine police officers and two staff positions) and two Fire Department emergency response companies (Engine-26 and Truck-2) that were not funded in the 2004-2005 budget, as adopted on June 17, 2004. The tax revenues may only be used for these purposes during fiscal years 2004-2005 and 2005-2006.

(D) The remaining tax revenues in fiscal years 2004-2005 and 2005-2006 and tax revenues received in subsequent years shall be used to enhance Police and Fire uses and purposes and Gang Prevention and Youth Programs as outlined in paragraph (A) and detailed in the Transactions and Use Tax Implementation Plan. Funding of the implementation plan may not be below the actual revenues received from the tax nor shall tax revenues be used to replace previously budgeted funds unless approved by six Council members based on a finding of fiscal crisis or catastrophic disaster. Tax revenues will not be used to supplant the general fund obligations to fund baseline services based upon population and economic conditions.

(E) If the State of California does not reinstate the Motor Vehicle License fee back-fill revenues and property tax shifts associated with the Governor's current budget proposal and/or does not repay its loan from the City for Motor Vehicle License revenue lost in fiscal years 2003-2004, as currently anticipated, the City Council may, during fiscal year 2006-2007, consider the use of an amount of the tax revenue equal to the lost revenues and use that amount to fund the reductions in Police and Fire services identified in paragraph (C). The City Council shall first consider additional revenue growth received by the City.

(F) The Council, by resolution, shall approve, and may from time to time amend when approved by six Council members, a Transaction and Use Tax Implementation Plan which shall outline the uses and purposes and their funding, as authorized by this section, to which the tax revenues will be applied.

(G) During the continuation of the tax, annual funding of Police and Fire Department purposes and uses that are funded under the City's 2004-2005 fiscal year budget, as adopted on June 17, 2004, and certain gang prevention and youth programs, may not be lower than the funding approved in the 2004-2005 budget, adjusted annually, beginning in fiscal year 2005-2006, by the annual percentage change (April to April) in the Bureau of Labor Statistics CPI-U (Consumer Price Index – All Urban Consumers) for the San Francisco – Oakland – San Jose, California Area, unless a lower level of funding is first approved by the affirmative vote of six Council members.

(H) The Council, by resolution, shall establish a seven member Citizen Oversight Committee to annually review expenditures and appropriations of the tax revenues to ensure that all such revenues are spent or appropriated for the purposes and uses set forth in paragraph (A), in accordance with the allocation percentages set forth in paragraph (B), and, as specifically authorized, in paragraphs (C), (D) and (E).

Each member of the Council shall appoint one member of the Committee who shall have a term coinciding with the term of the appointing Council member. Each Committee member shall be a resident of the City at the time of appointment and shall remain a resident of the City while serving on the Committee. The Mayor shall appoint the chairperson of the Committee subject to the approval of the majority of the Council. The Committee shall receive the assistance of City staff and shall issue an annual public report on the expenditures and appropriations of the tax revenues. The Committee shall undertake such additional duties as the Council may designate.

Section 3-26.130. 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 3-26.140. 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 3-26.150. 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 3-26.160. TERMINATION DATE. The authority to levy the taxes imposed by this ordinance shall extend only through March 31, 2025 or at the end of 20 years from the Operative Date if the Operative Date of the tax is later than April 1, 2005 as provided in section 3-26.020.

Section 2. This ordinance, following its adoption by at least 5 affirmative of the Council and its publication, shall become effective upon the approval of the tax imposed hereunder by two-thirds 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 3-26.020.

PASSED AND ADOPTED by the Council of the City of Santa Rosa, State of California, on August 3, 2004, by the following vote:

AYES: (5) Mayor Wright; Councilmembers Blanchard, Condrón, Evans, Martini
NOES: (0)
ABSENT: (2) Councilmembers Bender, Rabinowitsh

Sharon Wright
Mayor
City of Santa Rosa

Attest Susan Stoneman
(Signature)

Susan Stoneman
City Clerk
City of Santa Rosa

APPROVED AS TO FORM:

Brien Farrell
City Attorney