

DRAFT ORDINANCE

**AN ORDINANCE OF THE PEOPLE OF THE TOWN OF LOS GATOS, CALIFORNIA
IMPOSING A GENERAL TRANSACTIONS AND USE TAX
FOR A PERIOD OF TWENTY YEARS**

WHEREAS, Town of Los Gatos residents have indicated that the quality of life in Los Gatos is highly valued; and

WHEREAS, the Town of Los Gatos has over \$70 Million in unmet infrastructure needs for projects such as pothole, street, and road repair, the proper maintenance of which are important to maintaining local property values and quality of life; and

WHEREAS, the Town seeks to not only maintain, but enhance neighborhood police patrols and local crime prevention programs, both of which are priorities identified by the public; and

WHEREAS, the Town also seeks to improving traffic flow to reduce traffic congestion; and

WHEREAS, repairing potholes and maintaining Los Gatos' streets, roads, and sidewalks so they do not deteriorate further and become even more costly to fix in the future has been a longstanding objective of the Town; and

WHEREAS, locally-enacted funding sources such as a voter-approved sales tax are not subject to seizure by the State, and must be spent in Los Gatos to maintain its local services; and

WHEREAS, the proposed measure requires Independent Citizens Oversight, mandatory financial audits, and yearly reports to the community to ensure funds are spent as promised and would sunset in 20 years; and

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, an election shall be held on November 6, 2018, for the submission to the voters of a question relating to a local one-eighth-cent (0.125%) sales tax; 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 Town, the precincts, polling places, and election officers of the two elections be the same; and

NOW THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS DO ORDAIN AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The People of Los Gatos, subject to voter approval, find that all Recitals are true and correct and incorporate them herein by this reference.

ATTACHMENT 1

SECTION 2. AMENDMENT OF MUNICIPAL CODE. Chapter 2.60, Transactions and Use Tax, of the Los Gatos Town Code, is hereby added to read as follows:

Sec. 2.60.010. Title.

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

Sec. 2.60.020. 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.

Sec. 2.60.030. 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 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 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.

E. To provide transactions and use tax revenue to the Town to be used to fund general revenue purposes.

Sec. 2.60.040. Contract with State.

Prior to the operative date, the Town 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 Town 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.

Sec. 2.60.050. 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 one-eighth 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.

Sec. 2.60.060. 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 California Department of Tax and Fee Administration.

Sec. 2.60.070. Use of 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 one-eighth of one percent (0.125%) 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.

Sec. 2.60.080. 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.

Sec. 2.60.090. Limitations of Adoption of State Law and Collection of Use Tax.

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 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 Treasury, the California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration or 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 "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.

Sec. 2.60.100. 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.

Sec. 2.60.110. 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, 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 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.

Sec. 2.60.120. 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.

Sec. 2.60.130. 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.

Sec. 2.60.140. Citizens' oversight and annual audit.

A. There shall be a committee appointed by the Town Council to review and report on the receipt of revenue and expenditure of funds from the tax authorized by this chapter ("revenues and expenditures"). The number, qualifications and duties of Committee members shall be established by ordinance or resolution of the Town Council.

B. Beginning with the fiscal year that ends June 30, 2019, the Town's independent auditors shall, as part of their annual audit of the Town's financial statements, review the collection and expenditure of revenue from the tax authorized by this chapter. The auditors' review shall be a public document. The committee shall annually review the auditors' findings and report in writing to the Town Council regarding the auditors' findings regarding the revenues and expenditures. The committee's statement shall be transmitted to the Town Council for consideration at a public meeting.

C. By January 31, 2019, the Town Council shall adopt a resolution establishing the composition of the committee and further defining its responsibilities consistently with this section. Provisions defining the scope of committee responsibilities and reporting requirements shall address bond oversight, in the event that a decision is made at a later time to sell bonds that are in part backed by the revenues referenced in this section. The Town Council shall appoint the initial members of the committee no later than March 1, 2019.

Sec. 2.60.150. Termination Date.

The authority to levy the tax imposed by this chapter shall automatically expire on March 31, 2039, without further action by the Town Council or the voters of the Town. After said date, the tax imposed by this Chapter can only be continued or reestablished by a majority vote of Los Gatos voters.

SECTION 3. ADJUSTMENT OF APPROPRIATIONS LIMIT. Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the Town is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2018-2019 and each year thereafter.

SECTION 4. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). This ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the ordinance is not a "project" within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the Town would undertake the required CEQA review for that project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 5. 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 6. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the Town transactions and use taxes and shall take effect immediately.

SECTION 7. NOTICE. Upon approval by the voters, the Town Clerk Administrator shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

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It is hereby certified that this Ordinance was duly adopted by the voters at the November 6, 2018 Election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on _____, 2018 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____