

**ORDINANCE NO.** \_\_\_\_\_  
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA

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AN ORDINANCE PROPOSING A ONE-EIGHTH CENT RETAIL TRANSACTIONS AND  
USE TAX FOR PARK AND RECREATION PURPOSES IN SAN MATEO COUNTY

The Board of Supervisors of the County of San Mateo, State of California,

**ORDAINS** as follows:

**SECTION 1.** Title.

This ordinance shall be known as the “County of San Mateo Parks for the Future Ordinance”. This ordinance shall be applicable in the incorporated and unincorporated territory of the County of San Mateo, which shall be referred to herein as “County”.

**SECTION 2.** Purpose.

This ordinance establishes a one-eighth of one percent retail transactions and use tax in the incorporated and unincorporated areas of the County, for a period of 25 years, for the purposes of funding park acquisition, improvements, maintenance, programs, and operations, including recreation and recreation programs. The ordinance is hereby adopted, and should be interpreted, so as to achieve the purposes set forth herein:

- a. To establish a transactions and use tax at a rate of one-eighth of one percent (0.125%), in the incorporated and unincorporated territories of the County of San Mateo, under the authority provided for in Chapter 2.995 (commencing with Section 7286.90) of Part 1.7 of Division 2 of the California Revenue and Taxation Code, and in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code.
- 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 therefor 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 authorize administration of the retail transactions and use tax ordinance in a manner that will, to the greatest degree possible, be 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 set a maximum term of twenty-five (25) years during which time this tax shall be imposed pursuant to the authority granted by section 7286.90 of the Revenue and Taxation Code.

**SECTION 3.** Contract with State Board of Equalization.

Prior to the operative date of the tax, the County shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this retail transactions and use tax; provided, that if the County shall not have contracted with the State Board of Equalization prior to the operative date of the tax, it shall nevertheless so contract and in such a case the operative date of the tax shall be the first day of the first calendar quarter following the execution of such a contract.

**SECTION 4.** Transactions Tax Rate of One-Eighth of One Percent, and Term.

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 this County at the rate of one-eighth of one percent (0.125%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this County on and after the operative date of this ordinance. This tax shall be imposed for a maximum period of twenty-five (25) years.

**SECTION 5.** 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 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 6.** Use Tax Rate of One-Eighth of One Percent, and Term.

An excise tax is hereby imposed on the storage, use or other consumption in this County of tangible personal property purchased from any retailer on and after the operative date of this ordinance, for storage, use or other consumption in this County 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. This tax shall be imposed for a maximum period of twenty-five (25) years.

**SECTION 7.** 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 8.** 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, wherever the State of California is named or referred to as the taxing agency, the name of the County shall be substituted therefore. The substitution, however, shall not be made when the word "State" is used as 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; when 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 ordinance; 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 (1) 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 remains subject to tax by the state under the said provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or; (2) 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 provisions of that code; and in sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code. The name of the "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 9.** 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 10.** Exemptions, Exclusions, and Credits.

- 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 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 gross receipts derived 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 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 the purposes of this paragraph, delivery to a point outside the County shall be satisfied;
    - (i) 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 a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his principal place of residence;
    - (ii) With respect to commercial vehicles by registration to a place of business out-of-County, and a declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address;
  - (3) 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; and
  - (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.

For the purposes of subsections (3) and (4), above, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract of lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract 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 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; and
  - (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 subsections (3) and (4), above, storage, use or other consumption, or possession, 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 during 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 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.
- d. Any person subject to use tax under this ordinance may credit against that tax any transactions or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transaction tax pursuant to Chapter 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 12.** Full Text of Measure.

There shall be proposed to the voters of San Mateo County for approval at the election set for November 7, 2006, the following Measure:

## **San Mateo County 1/8 Cent Sales Tax Measure for Parks and Recreation**

This measure authorizes the enactment of a one-eighth (1/8) cent retail transaction and use (sales) tax to fund park acquisition, improvements, maintenance, programs and operations, including recreation and recreation programs, within the incorporated and unincorporated areas of San Mateo County, with the following requirements:

- \$ The tax will be levied for a period of twenty-five (25) years.
- \$ Revenues from the tax may only be used for park acquisition, improvements, maintenance, programs, and operations, including recreation and recreation programs, within the incorporated and unincorporated areas of the County, and shall be used only in accordance with the expenditure plan set forth below.
- \$ During the first year that the tax is levied, net tax revenues, after deduction of administrative expenses, will be apportioned among the County, all cities within the County ("Cities"), and the MidPeninsula Regional Open Space District, the Highlands Recreation District, and the Ladera Recreation District (collectively, "Districts") on the following basis:
  1. The County will receive 42% of net tax revenues.
  2. Districts will receive 6% of net tax revenues. Of the amounts allocated to the Districts, the MidPeninsula Regional Open Space District will receive 70%, the Highlands Recreation District will receive 20%, and Ladera Recreation District will receive 10% of such amounts.
  3. Cities will receive 52% of net tax revenues, with each city to receive a portion of the total Cities' allocation calculated on a per capita basis, using yearly population figures published by the State Department of Finance. Notwithstanding the amounts calculated on a per capita basis, each city will receive from the Cities' allocation a minimum distribution equal to 1.357% of total net tax revenues and the remaining City allocations will be adjusted accordingly.
- \$ In each year after the first year, the County, Districts, and Cities shall share in any growth in sales tax revenues of up to four percent (4%) over the previous year in accordance with the allocation percentages set forth above. In each year after the first year, the Cities and Districts only shall share in any growth in sales tax revenues over the previous year which exceeds four percent (4%). Districts will be allocated 10% and Cities will be allocated 90% of any such sales tax revenues exceeding a four percent (4%) growth in sales tax revenues over the previous year. The allocation of the funds in excess of the 4% growth for the respective District and City will be in proportion to the shares established for each agency for the funds less than 4% growth. For each year after the first year, the method of allocation to each of the Cities and Districts shall be the same as that for first year, including the minimum allocation of 1.357% for each City.
- \$ The County and each city will establish a general fund baseline Parks and Recreation budget for Fiscal Year 2006/07, measured in dollars. The baseline budget will be adjusted every five years, beginning in Fiscal Year 2011/12, and continuing at five year intervals thereafter, by applying the Bay Area Consumer Price Index, published by the Bureau of Labor Statistics, or a successor index.

In order to receive its full share of sales tax proceeds for a given fiscal year, the County and each city must either (1) maintain or increase its Parks and Recreation budget in dollars as measured against the baseline budget, or (2) reduce its Parks and Recreation budget compared to the baseline budget, in percentage terms, no more than the percentage by which the combined budgets of all other non-public safety departments is reduced as measured against the combined budgets of all other non-public safety departments for the prior fiscal year. In the event the County or a city reduces its Parks and Recreation budget compared to the baseline budget, measured on a percentage basis, more than percentage reduction of the combined budgets of all other non-public safety departments over the prior year's combined budgets, or reduces its Parks and Recreation budget compared to the baseline budget, measured on a percentage basis, while the combined budgets of all other non-public safety departments increases in relation to the prior year's combined budgets, the sales tax revenue that would otherwise have been payable to that County or city for that fiscal year shall be reduced by the difference between those percentage variances. For each fiscal year beginning in Fiscal Year 2007/08, before sales tax revenues for that year may be disbursed to the County or city, a resolution must be adopted stating the baseline Parks and Recreation budget in dollars; the Parks and Recreation budget in dollars for the fiscal year; the reduction in percentage terms of the Parks and Recreation budget from the baseline, if any; and the variance in percentage terms of the combined budgets for all other non-public safety departments from the combined budgets for the prior fiscal year. The County and each City shall certify the data provided. All requests for disbursement must be made within the fiscal year for which the measure funds are made available or the funds will not be disbursed to the city or County and will be rolled over for the next year. For purposes of this section, neither the baseline Parks and Recreation budget, nor any yearly Parks and Recreation budget used for purposes of the calculations set forth herein, shall include any revenues from the sales tax disbursed pursuant to this measure.

§ The following expenditure plan represents allocations for the first year of sales tax revenue collection and distribution (Fiscal Year 2006-07), and is based on population figures published by the State Department of Finance on January 1, 2006. The allocations will change from year to year based on the allocation specified above, changes in published populations, and any adjustments based on the failure of an entity to maintain its required general fund baseline Parks and Recreation budget.

**Expenditure Plan (Fiscal Year 2006-07)**

<u>Entity</u>	<u>Population</u>	<u>Percent Allocation of Tax Revenue</u>
County of San Mateo	724,104	42.00%
Highlands Recreation District	N/A	1.20%
Ladera Recreation District	N/A	0.60%
MidPeninsula Regional Open Space District	N/A	4.20%
Atherton, Town of	7,262	1.357%
Belmont, City of	25,648	1.778%
Brisbane, City of	3,744	1.357%
Burlingame, City of	28,322	1.964%
Colma, Town of	1,575	1.357%
Daly City, City of	104,820	7.267%
East Palo Alto, City of	32,083	2.224%
Foster City, City of	29,900	2.073%
Half Moon Bay, City of	12,739	1.357%
Hillsborough, Town of	10,965	1.357%
Menlo Park, City of	30,750	2.132%
Millbrae, City of	20,735	1.438%
Pacifica, City of	38,739	2.686%
Portola Valley, Town of	4,553	1.357%
Redwood City, City of	76,087	5.275%
San Bruno, City of	41,515	2.878%
San Carlos, City of	28,265	1.960%
San Mateo, City of	94,315	6.539%
South San Francisco, City of	61,824	4.286%
Woodside, Town of	5,507	1.357%

Notes:

1. Population figures represent populations served by parks and recreation facilities within the jurisdiction of the specified entity. For the County of San Mateo, the population figure represents the entire County population. City population figures are those published by the State Department of Finance.
2. The estimated yearly tax revenues available for distribution, after deduction for administrative expenses, is approximately \$16,000,000, based on taxable sales during the 2002 calendar year. For FY 2006-07, it is anticipated that revenues will be collected for the last quarter (April-June) only.
3. Tax revenues will supplement any amounts specified by an entity under its annual General Fund Parks and Recreation budget.
4. Funds must be used for parks and recreation purposes, including but not limited to, maintaining and improving park bathrooms, picnic areas and athletic facilities; repairing and upgrading playgrounds and play structures;



improving access to parks and playgrounds for the disabled; preserving natural open spaces; and maintaining hiking, walking and biking trails.

- \$ Tax revenues received will be deposited into a separate account maintained and administered by the City/County Association of Governments (C/CAG), or a successor entity as may be selected by the County and Cities, which shall calculate the amounts to be allocated to the County, Cities and Districts as provided for in this measure, and distribute such amounts on a quarterly basis to the Cities, County and Districts. C/CAG shall audit the distribution and use of the tax revenues distributed pursuant to this measure on a yearly basis, shall audit the performance of the entities receiving tax revenues on a periodic basis, shall consider and approve the audit results in an open meeting, and shall provide a copy of the audit results to the County, the Cities and the Districts. C/CAG shall be entitled to reimbursement for its services from available tax revenues at a rate of one percent (1%) of such revenues for the first full year of such services, with reimbursement to be adjusted for future years based on the actual cost of such services.
  
- \$ Any election costs and state startup costs required by state law, borne by the County of San Mateo shall be reimbursed to the County from net tax revenues received during the first year of collection.

**SECTION 13.** Abbreviated Statement of Measure.

The abbreviated statement of the measure for inclusion on the ballot pursuant to California Elections Code section 13247 shall be as follows:

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SAN MATEO COUNTY 1/8 CENT SALES TAX MEASURE FOR PARKS AND RECREATION

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Measure \_\_\_\_\_.

Shall San Mateo County enact a one-eighth cent sales tax, with annual audits and reports to the community, to support parks and recreation services provided by cities, the county and special districts, including, but not limited to: maintaining and improving park bathrooms, picnic areas and athletic facilities; repairing and upgrading playgrounds and play structures; improving access to parks and playgrounds for the disabled; preserving natural open spaces; and maintaining hiking, walking and biking trails.

**SECTION 14.** Use of Proceeds.

The proceeds of the tax imposed by this ordinance shall be used in accordance with applicable law and solely for the projects and purposes set forth in the expenditure plan required by this ordinance, and administrative costs as set forth in this ordinance

**SECTION 15.** Amendments.

All amendments to Part I of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 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, subsequent to the effective date of this ordinance 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 16.** 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 ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, or any tax or any amount of tax required to be collected.

**SECTION 17.** 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 circumstance shall not be affected thereby.

**SECTION 18.** Operative Date; Period of Tax Imposition.

**“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 adopting being as set forth throughout this ordinance.**

This ordinance relates, in substantial part, to the levying and collecting of the County’s retail transaction and use taxes and will become effective at the close of the polls on the day of election at which the Measure in Sections 12 and 13 is adopted by a two-thirds (2/3) majority vote of the electors voting on the Measure. The maximum period during which this tax will be imposed is twenty-five (25) years.

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