

ORDINANCE NO. 2014–XX

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING AND RESTATING CHAPTER 4.62 OF THE MUNICIPAL CODE TO EXTEND AND INCREASE AT THE ONE CENT RATE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, the State began shifting property tax from local governments in 1992 and these “takes” continue, including about \$1.8 million annually from El Cerrito from a portion of the City’s property tax to the Educational Revenue Augmentation Fund that could otherwise be used for essential City services; and

WHEREAS, since 1993, El Cerrito has been required by State legislation to pay for booking fees and property tax administration, another loss of general fund revenues that would otherwise be available for essential City services; and

WHEREAS, since 2003, the State has taken an additional \$3 million of Redevelopment Agency funds that could have been spent on local projects such as a library, public safety building, senior center or economic development programs; and

WHEREAS, the State has eliminated the City of El Cerrito Redevelopment Agency resulting in a loss of over \$1 million annually to the City and greatly decreased the City’s ability to promote economic development and retail growth along San Pablo Avenue; and

WHEREAS, the recession, continued State takeaways, falling home values, store relocations and strained revenues could erode the high quality of service in the City of El Cerrito and the accomplishments that have taken years to develop; and

WHEREAS, El Cerrito has seen a reduction in sales tax revenue resulting from the closure of the Target Store, the Mitsubishi car dealership, the Guitar Center and OSH and an overall decline in consumer spending; and

WHEREAS, the City has already made cuts and reductions to balance the FY 2015 budget and operate as efficiently as possible; and

WHEREAS, to help balance the budget, approximately 15% of authorized positions are eliminated or unfilled, including police officers, firefighters, maintenance and parks and recreation staff; and

WHEREAS, City’s employees have agreed to defer or forego compensation adjustments and to increase their contributions to offset increased benefit costs to help maintain the current level of service; and

WHEREAS, while the City has made significant progress in reducing certain crimes in El Cerrito, property crimes continue to increase and the current vacancies in the Police Department could result in an overall increase in the crime rate; and

WHEREAS, supporting the services that make El Cerrito a great community are important to our residents' quality of life; and

WHEREAS, El Cerrito needs local control over local funds, for local needs; and

WHEREAS, extending existing, voter-approved funding at the one cent sales tax rate will continue to address city service and delivery needs; and

WHEREAS, additional funding will help maintain current levels of fire and police (public safety) services, including neighborhood patrols, crime prevention programs, and rapid 9-1-1 response times; and

WHEREAS, property crimes have increased in El Cerrito and we desire a fully-staffed police force to prevent crime from getting worse; and

WHEREAS, local funding would help maintain and protect city services for children and teens –including pre-school and after-school programs; and

WHEREAS, the City wishes to continue to address service priorities that the public has identified such as police and fire services, earthquake and disaster preparedness programs, and maintaining city parks, paths, playfields and open spaces; and

WHEREAS, any local funding would continue to require citizens' oversight, mandatory financial audits, and yearly reporting to the community to continue to ensure that all voter-approved funds are spent as promised; and

WHEREAS, at its June 17, 2014 meeting, the City Council adopted a budget for Fiscal Year 2015 and 2016 that recognizes the need for additional revenue to maintain and preserve the level of services and adequate reserves desired by residents of the City; and

WHEREAS, the City Council has concluded that all of the information presented indicates that, to obtain the revenue necessary to maintain and preserve service levels, the Council should call an election to ask the voters of the City to approve a 12-year local transactions and use tax ("sales tax"), the revenue from which could be used to support general municipal services; and

WHEREAS, the tax to be submitted to the voters, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property; the tax rate would be one percent (1.0%) of the sales price of the property; the tax revenue would be collected by the State Board of Equalization and remitted to the

City; the tax would be in effect for 12 years, and would then expire automatically, unless extended by the voters; and the tax shall be approved if the measure receives at least a simple majority vote of affirmative votes;

WHEREAS, at the November 4, 2010 election, the voters of the City approved Measure R, a 0.5% transactions and use tax, to be in effect for eight years and sunset in 2018. Measure R was codified as Chapter 4.62 of the El Cerrito Municipal Code. This ordinance amends and restates Chapter 4.62 to extend the existing tax for 12 years, until March 31, 2027, and adjust the rate to 1%.

NOW THEREFORE, THE PEOPLE OF THE CITY OF EL CERRITO DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The People of El Cerrito find that all Recitals are true and correct and are incorporated herein by reference.

SECTION 2. Amendment of Municipal Code. Chapter 4.62 of the El Cerrito Municipal Code is hereby amended and restated to read as follows:

4.62.010 - Title.

This ordinance shall be known as the El Cerrito Transactions and Use Tax Ordinance. The city of El Cerrito hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

4.62.020 - 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.

4.62.030 - 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 Sections 7285.9, 7293, and 7294 of Part 1.7 of Division 2 which authorize 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.¹

¹ Citations to Revenue and Taxation Code Sections 7293 and 7294 were added administratively to Section 4.62.030(A) on July 25, 2014. These citations will appear in the official voter information pamphlet.

- 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.

4.62.040 - 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.

4.62.050 - 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 one percent (1.0%) 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.

4.62.060 - 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.

4.62.070 - 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 one percent (1.0%) 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.

4.62.080 - 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.

4.62.090 - 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:

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.

4.62.120 - 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.

4.62.130 - 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 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.

4.62.140 - Annual Audit.

By no later than December 31st of each year, the city's independent auditors shall complete a report shall reviewing the collection, management and expenditure of revenue from the tax levied by this Chapter. The report shall be reviewed by the Financial Advisory Board as part of its review of the annual audit.

4.62.150 – Amendments by City Council.

The following amendments to this Chapter must be approved by the voters of the City: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of Section 12); or extending the tax. The City Council may otherwise amend this Chapter without submitting the amendment to the voters for approval.

4.62.160 - Termination Date.

The authority to levy the tax imposed by this ordinance shall expire on the twelfth anniversary of the operative date (which is anticipated to be March 31, 2027).

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 City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2014-15 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 city would undertake the required CEQA review for that particular 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 City transactions and use taxes and shall take effect immediately.

SECTION 7. Relationship to Assembly Bill 1324 (2014).

The authority to adopt this ordinance depends in part upon the passage and effectiveness of Assembly Bill 1324 (2014), which was pending approval in the California Legislature at the time that this ordinance was submitted to the voters of the City for approval. This ordinance shall only become effective if AB 1324 is approved by the Legislature and signed by the Governor. The operative date of the tax approved by this ordinance shall relate to the date of approval by the voters of the City regardless of the effective date of AB 1324, as long as AB 1324 is effective prior to the operative date.

The foregoing ordinance was approved by the following vote of the People of the City of El Cerrito on November 4, 2014:

YESES:

NOES:

The foregoing ordinance was adopted by Declaration of the vote at the November 4, 2014 election by the City Council of the City of El Cerrito on _____, 2014:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

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