

CITY OF CLEARLAKE

ORDINANCE NO. 189-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE
ADDING CHAPTER 3-7 TO THE CLEARLAKE MUNICIPAL CODE
RELATED TO A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

THE PEOPLE OF THE CITY OF CLEARLAKE, CALIFORNIA DO ORDAIN AS
FOLLOWS:

Section 1. Amendment. Chapter 3-7 entitled "City of Clearlake Road Maintenance and Improvement Transactions and Use Tax" is added to the City of Clearlake Municipal Code to read as follows:

3-7.1 **Title.** This ordinance shall be known as the City of Clearlake Improvement Transactions and Use Tax Ordinance. The City of Clearlake hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3-7.2 **Operative Date.** "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the Effective Date of this ordinance, the date of such effectiveness being as set forth below.

3-7.3. **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 operative if a two-thirds (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. A transactions and use tax for road maintenance and improvement requires a vote of the residents of the City, and two-thirds (2/3) of those voting on the tax must approve the tax in order for it to be implemented. In addition, this Ordinance, along with the Transactions and Use Tax Expenditure Plan ("Expenditure Plan") for use of the proceeds of the tax, which is attached to this Ordinance as Exhibit A, must be approved by two-thirds (2/3) of the City Council.

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 ordinance.

3-7.4. **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.

3-7.5. **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 %) 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.

3-7.6 **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.

3-7.7 **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 %) 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.

3-7.8 **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.

3-7.9 **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, Victim Compensation and Government Claims Board, 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.

3-7.10. **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.

3-7.11 **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.

3-7.12 **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.

3-7.13 **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.

3-7.14 **Citizen Oversight Committee.** The City Council, by resolution, shall establish a five member Citizen Oversight Committee to meet annually to 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 the Expenditure Plan. Each member of the City 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 undertake such additional duties as the Council may designate.

3-7.15 **Sunset.** The authority to levy the tax imposed by this Chapter 3-7 shall expire twenty years from the date of its Effective Date.

Section 2. 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. Effective Date. This Ordinance, if approved by the electorate of the City of Clearlake at the General Municipal Election of November 8, 2016 shall become effective immediately upon the declaration of the results of that election by the City Council of the City of Clearlake.

INTRODUCED by the City Council of the City of Clearlake at a regular meeting of the City Council held on the 26th day of May, 2016 and **PASSED AND ADOPTED** by the City Council at a regular meeting of the City Council on the 23rd day of June, 2016 by the following vote:

AYES: Mayor Perdock, Vice Mayor Fortino Dickson, Council Members Overton, Sabatier and Bennett
NOES: None
ABSENT OR NOT VOTING: None



Russell Perdock, Mayor

ATTEST:

Melissa Swanson, City Clerk



CITY OF CLEARLAKE

Road Maintenance and Improvement Transactions and Use Tax Expenditure Plan FOR Anticipated One (1%) Percent Transactions and use tax Revenue

The one (1%) percent transactions and use tax passed by the City of Clearlake voters will be dedicated to specific uses: road maintenance and improvement. The funds cannot, and will not, be used for any other purpose. One hundred percent (100%) of the revenues generated by the new tax will be allocated to road maintenance and improvement.

ROAD MAINTENANCE AND IMPROVEMENT

The City of Clearlake's street system consists of approximately 112 miles of streets and is composed of:

Asphalt Paved Streets	63 Miles
Unpaved Gravel or Dirt Streets	49 Miles

The majority of the street system was constructed to the standards and conditions of the 1930's and 40's and is unable to meet today's traffic demands. A pavement management study was completed for the City of Clearlake by Nichols Consulting Engineers in 2008 and updated in 2015. The report called the Pavement Management Program (PMP) indicates that Clearlake's streets have one of the lowest pavement condition index (PCI) rating of any city that they had evaluated. The average PCI for City streets was 38 on a 100-point scale. That is well below an F grade which is unacceptable.

The report further indicates that the City currently has a total deferred maintenance need of \$15.2M. That means the City needs to spend \$15,200,000 for the reconstruction and rehabilitation of its streets system in 2016 alone to bring it up to acceptable standards. The City currently expends approximately \$50,000 annually for repair and maintenance of its streets. At that funding level, the City can only patch some potholes and minimally re-grade a few gravel roads. Current funding does not allow for any major street repair or reconstruction. If the City's maintenance level remains at \$50,000, the PCI of 38 will drop even lower. In that case most of the City's paved streets will completely fail and require total reconstruction.

The PMP recommends the City of Clearlake budget \$740,000 annually over the next ten (10) years for asphalt pavement work, it would improve the City's overall PCI from 38 up to 60. In addition to improving the asphalt surfacing of the City's streets, there is a need to maintain and improve drainage, and city owned sidewalks which are an integral part of the street system.

The Pavement Management Program addresses the paved streets only and not the unpaved roads. A PCI rating does not apply to gravel/dirt roads. Many of these roads are in residential areas and have not received any maintenance for several years. Some are nearly impassable. These

City of Clearlake Road Maintenance Transactions and Use Tax Expenditure Plan

conditions cause significant wear and tear on safety vehicles (Police and Fire) as well as to anyone who drives these roads. Grading contracts for these roads will significantly smooth travel in these areas. Obviously the improvements and maintenance needed on City streets far exceed the available revenues for these activities. The City remains committed to continued efforts to obtain Federal and State funding for street improvements. Without the one percent (1%) transactions and use tax revenue the City will be unable to accomplish its task to maintain the streets at an adequate level to serve the traveling public. It is estimated that a one percent (1%) special road transactions and use tax will produce \$1,600,000 in revenues annually. State law requires the City to prepare and adopt an expenditure plan describing the specific projects for which the revenues from the tax may be expended.

The City of Clearlake has prepared a proposed Road Maintenance and Improvement Transactions and Use Tax Expenditure Plan for the next twenty (20) years beginning in 2016 and going through 2036. The expenditure plan will be annually reviewed by the oversight committee and updates to the expenditure plan will be recommended by the Oversight Committee (with input from Public Works and the City Engineer) to the City Council who will make the final annual allocations.

City of Clearlake Road Maintenance Transactions and Use Tax Expenditure Plan

Annual Expenditure Program 2016-2036	
Activity	Estimated Expenditure (% of tax proceeds)
<p>Road Maintenance & Improvements</p> <ul style="list-style-type: none"> • Annual grading and associated graveling on existing unpaved roads maintained by the City • Pothole and surface repair • Pavement dig outs & minor asphalt blankets • Drainage repairs/replacement • Minor chip seals • Crack filling • Shoulder restoration • Pavement grinding, removal & replacement • Chip seals, Micro-seals and other surface treatments • Storm Drain System improvements • Re-striping, painting and installation of pavement reflector markings • Maintenance of street signs • Asphalt pavement overlay and rehabilitation projects • Rock rip-rap protection • Bridge deck and railing replacement • Sidewalk restoration • Maintenance equipment lease, rental, or purchase • Sidewalk and bicycle facilities • Bridge replacement/rehabilitation • Road construction equipment rental, lease, purchase • Road construction equipment repair 	<p>95% % equivalent in \$ \$1,520,000</p>
<p>Matching Grant Funding</p> <ul style="list-style-type: none"> • Grant matching funds for street improvement projects 	<p>5% % Equivalent in \$ \$80,000</p>
<p>Total</p>	<p>100% (Approx. \$1,600,000)</p>