

MEASURE SUBMITTED TO THE VOTERS

MUNICIPAL

**CITY OF SAN RAFAEL
TRANSACTIONS AND USE TAX
MEASURE S**

S To prevent further cuts and preserve funding for general city services, including maintaining the number of on-duty firefighters and police officers on patrol, preventing the closure of fire stations and community centers, repairing city streets and maintaining library service hours, shall the City of San Rafael adopt an ordinance enacting a one-half of one percent transactions (sales) and use tax, automatically expiring in ten years, with independent oversight and annual audits?

**CITY OF SAN RAFAEL
TRANSACTIONS AND USE TAX
FULL TEXT OF ORDINANCE
MEASURE S**

ORDINANCE NO. 1837

**AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING
CHAPTER 3.19 TO THE SAN RAFAEL MUNICIPAL CODE
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF
EQUALIZATION, SUBJECT TO APPROVAL OF A
MAJORITY OF THE ELECTORS VOTING ON THE TAX
MEASURE AT THE GENERAL MUNICIPAL ELECTION TO
BE HELD ON TUESDAY, NOVEMBER 8, 2005.**

The City Council of the City of San Rafael hereby makes the following findings in connection with the adoption of this Ordinance:

DIVISION 1.

WHEREAS, the City of San Rafael projects a budget deficit in excess of \$3 million next year and each year for the foreseeable future. Last year the City cut \$4.7 million. This comes on top of millions in cuts over the previous three years. The City has already cut staff, reduced pay for employees, reduced services in all departments, and been required to use emergency reserves and increase fees; and

WHEREAS, three primary factors have contributed to the City's budget deficit. First, in recent years the State government has taken away a larger and larger share of local tax revenue that have historically been used to fund local government services like police, fire, streets and libraries. The State took these funds to help deal with their own budget deficit. Second, growth in local sales tax and property tax revenues have not kept pace with the increased costs of providing City services. Last, like problems most businesses are facing, costs such as utilities, workers compensation, healthcare benefits and others are on the rise; and

WHEREAS, if the City were to address this shortfall with cuts alone, it would have to consider cuts to police patrols, firefighters and emergency response, street and sidewalk repair, parks and community centers, and curtail access to libraries. These cuts are a last resort. However, police and fire account for about half of San Rafael's budget. In order to address a deficit of this magnitude, the City would have to include cuts to public safety; and

WHEREAS, because of the scale of the City's budget shortfall and the depth of the cuts that have already been made, only two realistic choices remain for dealing with this deficit. San Rafael must either generate additional revenue or begin making deep cuts to essential City services; and

WHEREAS, the City Council appointed a citizens committee, the Critical Facilities Committee, to review the status of its critical facilities and then, due to the City's increasing financial difficulties, expanded the committee's role to include a comprehensive review of the City's operational budget and overall financial condition; and

WHEREAS, estimates show that San Rafael has over \$75 million in facility and infrastructure needs. Five of our six firehouses need seismic repairs to withstand an earthquake. Our library and police station are undersized and outdated for a city of our size. However, the Critical Facilities Committee reported to the City Council in April of 2005 that reducing the City's operating deficit of over \$3,000,000 per year should be the City Council's highest priority and recommended that the City Council take steps to consider placing a ½ percent transactions and use tax on the November, 2005 ballot; and

WHEREAS, all funds from a locally approved tax could not be taken away by the state and would stay in San Rafael to benefit local residents; and

WHEREAS, after study of the financial issues facing the City, and following numerous discussions with citizens in town hall meetings, neighborhood association and service group meetings, after reviewing the Critical Facilities Committee's report, findings and recommendations, and after extensive efforts to gauge the public's opinions and priorities through several surveys of San Rafael residents the City Council has determined that the most prudent, reasonable and financially responsible action it can take to address the dire fiscal circumstances now confronting the City, is to place before the voters a ½ percent transaction and use tax and to recommend its adoption to the voters.

NOW THEREFORE, the City Council Of the City of San Rafael does hereby Ordain as follows:

DIVISION 2.

A new Chapter 3.19 is hereby added to the San Rafael Municipal Code to read as follows:

Chapter 3.19

TRANSACTIONS AND USE TAX

3.19.010 -- Short Title.

This Chapter shall be known as the City of San Rafael Transactions and Use Tax Ordinance. This Chapter shall be applicable only in the incorporated territory of the City.

3.19.015 -- Definitions.

As used in this Chapter, "City" means the City of San Rafael and "tax" means the transactions and use tax imposed under the provisions of this Chapter.

3.19.020 -- Operative Date.

"Operative Date" means the first day that the tax is imposed and collected. The operative date shall be April 1, 2006, unless a later operative date becomes effective under the provisions of Section 3.19.040.

3.19.030 -- Purpose.

This Chapter is adopted to achieve the following, among other purposes, and the City Council 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

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(Full Text of Measure S Continued)

the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative only 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 may 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 may 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.

3.19.040 -- 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 however, 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.

3.19.050 -- Imposition of Transactions Tax; 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-half of one percent (.50%) 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.

3.19.060 -- Place of Transaction.

For the purposes of this Chapter, 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.

3.19.070 -- Imposition of Use Tax; 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-half of one percent (.50%) 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.

3.19.080 -- Proceeds of Tax.

The proceeds of the transactions and use tax imposed by this Chapter

shall be deposited into the General Fund of the City to be used for all general government purposes which may include, but are not limited to, fire and police protection, street and sidewalk repair and maintenance, library services, park repair and maintenance, recreational programs, building and code enforcement services, planning and zoning services, capital equipment requirements, repair and replacement of City facilities, capital improvement projects, operational expenses, fiduciary responsibilities, administration, indebtedness and general obligations of the City. The tax imposed by this Chapter is intended to be and is, a general tax, the proceeds of which are to be spent as the City Council shall in its discretion, from time to time, determine.

3.19.090 -- Adoption of Provisions of State Law.

Except as otherwise provided in this Chapter 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 Chapter as though fully set forth herein.

3.19.100 -- 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 therefore. However, the substitution shall not be made:

1. When 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. When 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 Chapter.

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.

3.19.110 -- 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.

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3.19.120 -- Exemptions and Exclusions.

A. There shall be excluded from the calculation 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 Chapter, 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 Chapter.

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 Chapter.

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.

3.19.130 -- Amendments.

All amendments subsequent to the effective date of this Chapter 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 Chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Chapter.

3.19.140 -- 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 Chapter, 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.

3.19.142 -- Annual Audit.

The proceeds resulting from this Transactions and Use Tax shall be deposited into the City's General Fund and become subject to the same independent annual audit requirements as other general fund revenue.

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(Full Text of Measure S Continued)

3.19.144 -- Independent Citizen Oversight.

By no later than June 30, 2006, the City Council shall establish a City Transactions and Use Tax Committee to review the collection and expenditure of tax revenues collected under the authority of this Chapter. The Committee shall consist of at least five members, who shall be residents of the City. The terms of the Committee members and their specific duties shall be established by resolution of the City Council.

3.19.146 -- All Funds Staying Local.

All tax revenues collected under the authority of this Chapter shall be expended solely on local municipal services, and shall not be used for any other purposes.

3.19.148 -- Effective Date.

This ordinance levying the tax described herein shall be effective ten days after the date on which the City Council has declared that the voters of the City of San Rafael have approved said ordinance by a vote of no less than a majority of the votes cast by the electors voting on the tax measure set forth in this ordinance at the general municipal election to be held on Tuesday, November 8, 2005.

3.19.150 -- Termination Date.

The authority to levy the tax imposed by this Chapter shall expire on March 31, 2016, or at the end of ten years from the operative date if the operative date is later than April 1, 2006 as provided in Section 3.19.040.

DIVISION 3:

If any section, subsection, sentence, clause or phrase of this Ordinance or the application thereof to any person or circumstance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

DIVISION 4:

This ordinance shall be published once in full before its final passage, in a newspaper of general circulation, published and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage.

s/ Albert J. Boro
Albert J. Boro, Mayor

ATTEST:

s/ Jeanne M. Leoncini (Seal)
JEANNE M. LEONCINI, City Clerk

The foregoing Ordinance No.1837 was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 18th day of July, 2005 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Cohen, Heller, Miller, Phillips and Mayor Boro

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 1st day of August, 2005, subject to voter approval at the General Municipal Election to be held on Tuesday, November 8, 2005.

s/ Jeanne M. Leoncini (Seal)
JEANNE M. LEONCINI, City Clerk

**IMPARTIAL ANALYSIS BY CITY ATTORNEY
MEASURE S**

If approved by the voters, this measure would amend the San Rafael Municipal Code to establish a retail transactions and use tax within the City. This measure would set the retail transactions and use tax rate at one-half of one percent (0.50%) in the City of San Rafael. At this rate, for example, a transaction amounting to \$100 in value would generate a tax of 50 cents.

The proposed transactions and use tax would be imposed upon the sale of all tangible personal property sold at retail within the City as well as on the storage, use or other consumption of tangible personal property purchased from any retailer within the City. This measure would authorize the City, as required by law, to contract with the State Board of Equalization to administer and collect the tax.

This measure requires all proceeds of the tax to be deposited into the City's General Fund to be used for all general municipal governmental purposes in the City's discretion.

This measure would provide several enumerated exemptions and exclusions from the transactions and use tax. It would further prohibit the issuance of any injunction to prohibit the collection of the tax, as well as provide for a citizens oversight committee to be appointed by the City Council to review the collection and expenditures of tax revenues generated by the tax. The measure would provide that the City's authority to impose this tax would expire ten years following its operative date.

The ordinance proposed by this measure will only become effective if approved by a simple majority of those electors voting on the measure.

A **YES** vote approves the measure.

A **NO** vote rejects the measure.

Dated: August 2, 2005

Gary T. Raghianti
City Attorney of San Rafael

**THE ARGUMENT IN FAVOR
OF THIS MEASURE
IS ON THE NEXT PAGE**

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ARGUMENT IN FAVOR OF MEASURE S

Critical city services in San Rafael are at risk. After four straight years of reductions in city services, MEASURE S has been placed on the ballot to provide local funds to prevent extreme reductions to essential city services, including:

- Police patrols
- On-duty firefighters
- Emergency response
- Street and sidewalk repair
- Library hours
- Community centers

Without passage of Measure S, San Rafael will be forced to lay off firefighters, police officers and close at least one fire station. Response times for emergencies will increase.

Last year the city made \$4.7 million in budget cuts - a 10% reduction. San Rafael cut thirty staff positions, reduced pay for management and employees, reduced services in all departments, increased fees and used emergency reserves to the point that they are at a bare minimum. Even with these cuts, San Rafael faced a \$3.5 million deficit this fiscal year. The projected deficit for next year is \$3.7 million and similar deficits are projected for the foreseeable future.

Because of the scale of San Rafael's budget shortfall, only two choices remain: generate additional revenue or continue making deep cuts to city services.

MEASURE S will provide a stable source of local funding to prevent these cuts to critical city services.

One of the chief causes of San Rafael's budget deficit is the State of California's ongoing practice of taking away local tax dollars that have traditionally been used to fund police, fire, streets and other local costs. The State is prohibited from taking any MEASURE S revenue from the city. Every penny generated by MEASURE S will stay in our community to benefit local residents.

A citizens oversight committee will ensure funds are properly spent and will monitor all funds. MEASURE S requires annual independent audits.

Please Vote YES on MEASURE S.

s/ Jenny Fowler Callaway, President
San Rafael City Schools Board of
Education

s/ Jean M. Starkweather
Environmentalist

s/ Mary Ellen Irwin
San Rafael Fire Commission

s/ Sandy Greenblat, Former President
San Rafael Chamber of Commerce

s/ Michael J. Cronin
San Rafael Police Chief (Retired)

**NO ARGUMENT AGAINST
THIS MEASURE
WAS SUBMITTED**

END OF MEASURE S