

TOWN OF FAIRFAX MEASURE D

FULL TEXT OF MEASURE D

EXHIBIT A

ORDINANCE NO. ____

AN ORDINANCE OF THE VOTERS OF THE TOWN OF FAIRFAX IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

THE PEOPLE OF THE TOWN OF FAIRFAX DO HEREBY ORDAIN AS FOLLOWS:

D MEASURE D: The Fairfax Vital Town Service Emergency Protection Measure. To offset declining property tax revenues and severe state budget cuts and to prevent further cuts to general Town services, shall an ordinance be adopted to enact a one-half cent transaction and use tax in the town of Fairfax, subject to annual independent audits, public expenditure reports, local use of all funds, and expiration on March 31, 2017?	YES
	NO

Section 1. A new Chapter 3.10 is hereby added to Title 3 (“Revenue and Finance”) of the Fairfax Municipal Code, to read as follows:

TOWN ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE D

3.10.010 TITLE. This ordinance shall be known as the Fairfax Transactions and Use Tax Ordinance. The Town of Fairfax hereinafter shall be called “Town.” This ordinance shall be applicable in the incorporated territory of the Town.

3.10.020 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.

3.10.030 PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the Town to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the 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.

3.10.040 CONTRACT WITH STATE. Prior to the operative date, the Town shall contract with the State

Measure D asks the voters to approve an ordinance that provides for an additional 1/2-cent tax on each dollar of taxable sales of goods in the Town of Fairfax, and on the taxable storage, use or consumption in the Town of goods purchased from a retailer. This is commonly known as a “sales tax,” and is technically referred to as a “transactions and use tax.” The tax revenues would be deposited into the Town’s general fund and could be used for general municipal governmental purposes. The measure would not obligate the Town to use the revenues of the proposed sales tax for any particular services, facilities, or programs.

The 1/2-cent sales would be in addition to the current sales tax, and would be collected in the same manner as the existing sales tax. Presently, the combined state and local sales tax rate in Fairfax totals 8 cents per dollar. This measure would have the effect of increasing the total sales tax rate to 8 1/2 cents per dollar in Fairfax.

The proposed sales tax would be subject to an annual independent financial audit that reviews whether the tax is collected, managed and expended in accordance with law.

The Town Council unanimously voted to place this sales tax measure on the ballot. If approved by a majority of the voters, the sales tax would go into effect on April 1, 2012 and continue for five years. A full copy of the text of the sales tax ordinance is printed in these ballot materials.

A “YES” vote on Measure D will enact the sales tax ordinance to increase by 1/2-cent the sales tax rate in Fairfax.

A “NO” vote on Measure D will result in the sales tax ordinance not being adopted.

s/JIM R. KARPIAK
Town Attorney

Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the Town shall not have contracted with the 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.

3.10.050 TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the Town at the rate of one-half % 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.

3.10.060 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.

3.10.070 USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the Town of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one-half % 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.

3.10.080 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.

3.10.090 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 Town shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State 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 Town 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 "Town" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

3.10.100 PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

3.10.110 EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any 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 Town which is shipped to a point outside the town, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the Town shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with,

Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-Town address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-Town and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this Town of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the uncondi-

tional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the Town shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the Town or participates within the Town in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the Town or through any representative, agent, canvasser, solicitor, subsidiary, or person in the Town under the authority of the retailer.

7. "A retailer engaged in business in the Town" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, or aircraft at an address in the Town.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.10.120 ANNUAL AUDIT. By no later than December 31st of each year, the Town shall cause an independent auditor to complete a "Fairfax Transactions and Use Tax Ordinance Report." Such report shall review whether the tax revenues collected pursuant to this ordinance are collected, managed and expended in accordance with the requirements of this ordinance.

3.10.130 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.

3.10.140 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 Town, or against any officer of the State or the Town, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation code, of any tax or any amount of tax required to be collected.

3.10.150 SEVERABILITY. If any provision of this ordinance or the application thereof to any person or cir-

cumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

3.10.160 **TERMINATION DATE.** The authority to levy the tax imposed by this ordinance shall expire on March 31, 2017, at 11:59 p.m.

Section 2. This ordinance relates to the levying and collecting of the Town transactions and use taxes and shall take effect immediately.

Section 3. The Town Clerk shall certify the passage of this ordinance, publish or post the same as required by applicable law, and forward a copy of the adopted ordinance to the Board of Equalization.

PASSED AND ADOPTED by the voters of the Town of Fairfax at an election held on November 8, 2011.

ARGUMENT IN FAVOR OF MEASURE D

The financial crisis of 2008 and the deep recession that followed created a devastating one-two punch to local governments. Property tax revenues are down, while public pension costs, tied to the volatile stock market, continue to rise. Fairfax has taken aggressive actions to reduce costs:

- Performed a rigorous, strategic budgeting process, reducing departmental budgets across the board
- Implemented a two-tier system which reduces pension benefits
- Increased pension cost sharing for employees
- Consolidated management positions and left open staff positions unfilled
- Froze salaries for employees

In spite of these efforts, Fairfax still faces a budget shortfall and severe cuts in core public safety and public works services that residents count on to maintain our quality of life. To help balance the budget, we must implement a one-half cent sales tax because:

- It allows everyone who enjoys Fairfax, particularly the many visitors who come here for recreational activities, to pay their fair share
- Sales taxes do not apply to basic purchases like grocery food items
- The State of California recently expired a one cent sales tax, so even with this measure; our sales tax will still be lower than before
- It will sunset in five years as the economy recovers

Fairfax already employs the fewest public employees per capita of any small town in Marin County and our public safety services are being delivered at exceptionally low cost. At the same time, Fairfax has earned a reputation for being one of the most engaged local governments in the Bay Area.

The Fairfax Town Council unanimously approved Measure D, and it is endorsed by Supervisor Hal Brown. Now Fairfax voters must step up to pass this measure and strengthen Fairfax's stability and independence. Put your money where your community is by shopping locally and voting Yes on Measure D.

s/LARRY BRAGMAN

Fairfax Mayor

s/PAM HARTWELL-HERRERO

Fairfax Vice Mayor

s/INGRID WEISS

Former Director of Fairfax Chamber of Commerce

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE D

The flood is Council's excuse, not a reason. Fairfax is financially whole. Fact: Council approved improvements that FEMA wouldn't reimburse. Therein lies Council's "devastating loss."

Council squandered Measure F, again cried "financial crisis," then misled voters into approving Measure I.

Fact: Timely audits were NOT conducted for five years. After that mess was cleaned up, audits prove Council sold "financial woe" budgets by understating revenue by \$2,718,700! This is NOT flood money as Council falsely claims! It is "found" revenue eclipsing Measure F! Fact: We didn't need Measures F or I.

Other irresponsible spending: Unwarranted pay raises to Town Manager and senior staff. Unsustainable lifetime health and pension benefits costing taxpayers \$980,000 from 2006-2009. Our budget actually doubled!

Council proclaims "We need to pay well to attract and retain good people." Fact: Fairfax is now on its second Town Manager, sixth Finance Director, third Planning Director, and third Public Works Director since 2005. Council's mantra sounds good but actually is false.

Council touts staff changes worth \$137,000. Fact: Staff reductions occurred years ago! Not one recent consolidation or reduction has occurred!

Fact: Sales tax is regressive. While voters struggle to survive, Fairfax already collects thirteen other taxes and assessments – and now claims it must have another! Fairfax businesses are struggling. More tax makes them less attractive.

THE PROBLEM ISN'T REVENUE - IT IS COUNCIL'S SPENDING HABITS.

FORCE REAL FINANCIAL MANAGEMENT - VOTE NO ON MEASURE D.

s/JOHN MOLLOY

s/SUSAN A BRANDBORG

Former Mayor of Fairfax

s/ROSE TABER

Fairfax Merchant

s/M.K. BROWN

s/SHEILA SMITH

**ARGUMENT AGAINST MEASURE D
VOTE NO ON MEASURE D**

This is an important ballot measure, so please get all of the facts before you vote.

The facts are straightforward – Fairfax Council has created an unsustainable budget and their answer is more taxes instead of more fiscal responsibility. The claim they are spending wisely but the facts prove differently.

Auditor’s reports from fiscal years 2005 thru 2010 show the real facts that cannot be manipulated. Council tries to manipulate but these data are taken directly from the Town’s own auditor’s reports.

While Council Members attempt to distort what these numbers say – here are the facts:

Over this period, budgets adopted by Council UNDERSTATED general fund revenue by a total of \$2,790,000! This is how they supported their free-spending ways and “justified” Measure F. During that same period, Fairfax spent \$909,000 more than budget. Where did that remaining revenue “surplus” of \$1,881,000 go? To off-budget expenditures.

Yet, Council promised that Measure F would sunset in five years. Instead, Council came back with a repeat Measure I for the same amount – because they claimed “the Town needs the money.”

Council blames the flood, the economy and the state for Fairfax’s financial woes – and now that the statewide tax of 1% expired on July 1st, Council again “needs the money” from Measure D to balance its budget.

When projected general fund revenue is understated by OVER TWO MILLION, SEVEN HUNDRED THOUSAND DOLLARS, what possible credibility is there in Council’s plea that the “Town now needs this additional money” Short answer – none.

The more we taxpayers feed the monster, the more that monster will consume. Council must learn to do what we all must – live within our means! Send Council that message by voting NO on Measure D!

Citizens Opposed to Measure D
s/BILL PARKER

**REBUTTAL TO ARGUMENT AGAINST
MEASURE D**

The argument against Measure D is misleading and its conclusions lack factual basis. Every year, Fairfax Town finances undergo a rigorous audit by independent Certified Public Accountants. The audits definitely state that all Town revenues and expenditures have been properly accounted for.

The challenges Fairfax faces are the result of falling property tax revenues, State of California revenue grabs, and rising medical and pension costs. The Town has already taken aggressive actions to reduce costs, including: making across the board budget reductions, freezing staff salaries, increasing pension cost sharing, and eliminating staff positions.

In spite of these efforts, Fairfax still faces a budget shortfall and severe cuts in core public safety and public works services that residents count on to maintain our quality of life. To help balance the budget, we must implement this one-half cent sales tax.

The Fairfax Town Council, Chamber of Commerce, and Supervisor Brown have all endorsed Measure D. Stand with your community, shop locally, and vote Yes on Measure D.

s/LARRY BRAGMAN

Fairfax Mayor

s/PAM HARTWELL-HERRERO

Fairfax Vice Mayor

s/BARBARA PETTY

Fairfax Town Treasurer

s/FAIRFAX CHAMBER OF COMMERCE

by Morgan Hall, Board Member