

MEASURE N

ORDINANCE NO. 2018-_____

AN ORDINANCE ADDING CHAPTER 4.10, DIXON STREETS TRANSACTIONS AND USE TAX, TO TITLE 4, REVENUE AND FINANCE, TO THE CITY OF DIXON MUNICIPAL CODE TO IMPOSE A TEN-YEAR, ONE-HALF PERCENT (0.5%) TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

WHEREAS, the City requires additional revenue to fund street maintenance and roadway projects, including the construction of the Parkway Boulevard overcrossing; and

WHEREAS, the City finds that imposing a transactions and use tax will generate revenue needed for the construction Parkway Boulevard overcrossing; and

WHEREAS, the City finds that revenues collected pursuant to this section shall be allocated to street maintenance and roadway improvement projects pursuant to the expenditure plan provided herein, in accordance with Revenue and Taxation Code section 7285.91; and

WHEREAS, the City's Transportation Advisory Commission shall serve as an oversight committee for the one-half percent (0.5%) transactions and use tax; and

WHEREAS, on July 10, 2018, the City Council submitted this ordinance to the qualified voters of the City at the statewide general election on November 6, 2018; and

NOW, THEREFORE, THE PEOPLE OF THE CITY OF DIXON ORDAIN:

SECTION 1:

Title 4, Revenue and Finance, of the City of Dixon Municipal Code shall be amended to add Chapter 4.10, "Dixon Streets Transactions and Use Tax", as follows:

4.10.010. TITLE. This ordinance shall be known as the Dixon Streets Transactions and Use Tax Ordinance. The City of Dixon hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

4.10.020. 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.

4.10.030. 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax

ordinance which shall be operative if two-thirds 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 California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration 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.

4.10.040. CONTRACT WITH STATE. Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration 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.

4.10.050. 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 City at the rate of one half percent (0.5%) 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.

4.10.060. 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 California Department of Tax and Fee Administration.

4.10.070. 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 half percent (0.5%) 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.

4.10.080. 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.

4.10.090. 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 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 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 California Department of Tax and Fee Administration, 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.

4.10.100. 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.

4.10.110. 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 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.

4.10.120. USE OF TAX PROCEEDS/EXPENDITURE PLAN.

A. The tax imposed hereunder is a special tax, the proceeds of which shall be deposited into a special fund or account designated for use by the City of Dixon only for street and roadway improvements, as set forth herein.

B. The expenditure plan required by Revenue and Taxation Code section 7285.91(c) for the revenue from the tax approved by this Chapter involves the following: the City may use revenues from the tax only for purposes of funding street maintenance and roadway improvements within the City of Dixon. Expenditures related to roadway improvements may include (1) preconstruction costs, including but not limited to architectural, engineering, and planning services; (2) relocation and trenching of adjacent utilities; (3) construction management; (4) costs associated with temporary relocation of facilities during planning and construction; and (5) administrative costs. The City Council shall prioritize funding of roadway improvements for the Parkway Boulevard overcrossing project and related facilities. The City Council may, by resolution, adopt a more detailed expenditure plan, based on projected revenues over the term of this transactions and use tax. Such plan may be amended from time to time by a majority vote of the City Council, provided that all proceeds collected through this transactions and use tax must be utilized for street maintenance and roadway improvements, as provided herein.

4.10.130 OVERSIGHT COMMITTEE.

A. The City's Transportation Advisory Commission ("TAC") shall serve as an advisory committee to monitor the expenditures of revenue collected pursuant to this Chapter only and report to the people and the City Council.

B. The TAC shall review expenditures of revenue collected pursuant to this Chapter to determine whether such funds are expended for the purposes specified in the Expenditure Plan, as amended. The TAC shall issue reports on their findings to the City Council and public at least once, annually. TAC members may review annual financial or performance audits performed by any independent auditor selected by the City Council. The TAC oversight role in connection with this Chapter shall be confined specifically to revenues generated pursuant to this Chapter. In order to preserve the integrity and independence of the oversight process, TAC members shall not play a formal role in contracting, project management, or any other aspect of funding projects pursuant to this Chapter.

C. The TAC is not charged with decision-making on spending priorities, schedules, project details, funding source decisions (e.g., leveraged funds, developer fees, etc.), financing plans, or tax rate assumptions. The TAC shall serve in an advisory role to the City Council. The TAC shall have no jurisdiction other than that delegated to it by the people pursuant to this Chapter, and as provided through TAC bylaws and policies, provided however that the provisions of this Chapter shall supersede.

D. The City Manager or his or her designee shall provide reasonable administrative assistance required by the TAC to fulfill its responsibilities pursuant to this

Chapter, provided, however, that the TAC shall conduct its duties under this Chapter concurrently with any ongoing duties performed pursuant to DMC Chapter 2.05.

4.10.140. 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.

4.10.150. 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.

4.10.160. 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.

4.10.170. EFFECTIVE DATE. Pursuant to Section 9217 of the Elections Code, this ordinance shall be deemed adopted on the date when the vote approving the measure by a two-thirds majority in the November 6, 2018, election is declared by the City Council, and this ordinance shall go into effect ten (10) days after that date. The authority to levy the transactions and use tax pursuant to this Chapter, however, shall take effect on the Operative Date.

4.10.180. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire ten (10) years after the Operative Date, unless otherwise extended by qualified voters of the City.

SECTION 2. This is a City Council sponsored initiative ordinance that shall only be amended by the qualified voters of the City, as provided in the ordinance. The City Council reserves the right and authority to amend the ordinance as authorized, or at any time after a state or federal law is enacted, which requires amendments in order for the ordinance to be in compliance with such law or laws.