

VOTER'S PAMPHLET

MEASURES, ANALYSES AND ARGUMENTS

(whichever is applicable to your ballot)

Arguments in support of, or in opposition to, the proposed laws are the opinions of the authors.

CITY OF CAPITOLA

O

Shall a City of Capitola permanent sales tax increase of one quarter of one percent be adopted to pay for disaster recovery and to maintain general services including public safety and street improvements?

FULL TEXT OF BALLOT MEASURE O

AN ORDINANCE OF THE CITY OF CAPITOLA IMPOSING A PERMANENT RETAIL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

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

Section 1. TITLE. This ordinance shall be known as the City of Capitola Permanent Retail Transaction and Use Tax Ordinance. The City of Capitola hereinafter shall be called "City". This ordinance shall be applicable in the incorporated territory of the City.

Section 2. 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 set forth as below.

Section 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a permanent 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 City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

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 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.

Section 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 transaction 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.

Section 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 and unincorporated territory of the City at the rate of one quarter of one percent (0.25%) 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. This tax is in addition to, and not in lieu of, the one quarter of one percent (0.25%) temporary retail transactions and use tax imposed pursuant to Chapter 3.10 of the Capitola Municipal Code.

Section 6. PLACE OF SALE. For the purpose 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 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.

Section 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 quarter of one percent (0.25%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales and use tax regardless of the place to which delivery is made. This tax is in addition to, and not in lieu of, the one quarter of one percent (0.25%) temporary excise tax imposed pursuant to Chapter 3.10 of the Capitola Municipal Code.

Section 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.

Section 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provision 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 where:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

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.

Section 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 transactors' permit shall not be required by this ordinance.

Section 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 exempt from the consumption of the amount of transactions tax the gross receipts from:

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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 Chapter 2 of 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 an 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 price 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 subsections (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 like 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 transaction tax under any state-administered transaction 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 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 purposes of subsections (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 the 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 a representative, agent, canvasser, solicitor, subsidiary, or person 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 Chapter 2 of 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 23 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.

Section 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.

Section 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.

Section 14. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected hereby.

Section 15. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

Section 16. CODIFICATION. Upon adoption of this ordinance pursuant to the voter approval, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this ordinance in the Capitola Municipal Code.

IMPARTIAL ANALYSIS BY CITY ATTORNEY MEASURE O

In 2004, City voters approved a temporary ¼ cent sales tax increase which was originally scheduled to sunset on June 30, 2010. In 2008 City voters extended the sunset date to December 31, 2017. As a result of these two voter approvals the current sales tax rate (combined state and local sales tax) in Capitola is 8 ¼ percent.

This ordinance, if adopted by the voters, would increase the sales tax rate by another ¼ percent from the current rate of 8 ¼ percent to 8 ½ percent. The sales tax increase proposed by this ballot measure has no sunset date. Accordingly if the proposed permanent ¼ percent tax increase is approved by the voters, the City's sales tax, also known as the City's retail transactions and use tax, will total 8 ½ percent through December 31, 2017 and 8 ¾ percent thereafter.

All City revenue generated by the sales tax is used by the City to pay for general City operations and programs including public safety and street improvements. As such, this ballot measure proposes a "general purpose tax" rather than a "special purpose tax" and requires a simple majority vote for adoption.

s/ John Barisone
City Attorney

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ARGUMENT IN FAVOR OF MEASURE O

The 2011 March floods depleted the city's Emergency Reserves Fund to a dangerously low level. Although the floods were officially declared a disaster, due to state & federal fiscal difficulties, Capitola received NO emergency reimbursement for flood disaster expenses.

In addition, Capitola has been hard-hit by the prolonged economic downturn. This, combined with the floods, means that Capitola is facing unprecedented fiscal challenges. In response, over the last 5 years Capitola City staffing has been significantly reduced by eight full-time employees. During this period, maintenance to the City's streets, storm drains and other infrastructure has also had to be decreased. At least \$450,000 annually is needed to keep local streets in a stable condition. *Yet only 1/3 of this has been available to spend annually on streets and infrastructure maintenance during the last three years.*

Of even greater concern are delays in preventive pavement maintenance. If preventive maintenance is delayed, our roads will deteriorate to the point where repair costs will increase dramatically, by a factor of 50 times.

Added to all of this, elimination of the Redevelopment Agency has meant that funds to manage congestion along 41st Avenue are not available.

Help keep our town of Capitola intact. If this Measure passes, the City can;

- Improve local roads at the level necessary;
- Maintain City fiscal stability to provide essential services;
- Maintain police services;
- Restore emergency reserves;
- Assist in relocating Pacific Cove Mobilehome Park residents displaced by the flood.

This measure has broad community support because;

- Visitors and nonresidents will pay 83% of the tax;
- The impact is only 25 cents for every \$100 of taxable expenditures;
- Proceeds are reinvested in Capitola, and not sent to the State or Federal government.

Please vote YES on this measure. Let's keep Capitola the very best place to live!

s/ Michael Termini
Mayor, City of Capitola

s/ Stephanie Harlan
Vice Mayor, City of Capitola

s/ Dennis Norton
Council Member, City of Capitola

s/ Kirby Nicol
Council Member, City of Capitola

s/ Sam Storey
Council Member, City of Capitola

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE O

It is the duty of city councils to assure their city is prepared for emergencies through adequate reserves and comprehensive insurance coverage. This was not done in Capitola. In 2011, the Council's inattention to these important matters resulted in substantial financial losses.

Currently, Capitola receives \$492 annually per resident in Sales Tax Revenue. (Santa Cruz receives \$225, Scotts Valley \$181, and Watsonville \$140.) This apparently isn't enough for Capitola. Eliminating eight city positions still increased the city payroll! Capitola doesn't have a revenue problem; it has a spending problem.

Since 2004, the additional sales tax levies have generated over \$6M in additional revenue yet the promised community benefits have failed to appear. During the same period, the city has increased its indebtedness by over \$8.5M. The annual debt service costs nearly \$1M. It should be apparent by now that continued sales tax increases **without** substantial spending reductions will not improve either the levels of city services or the condition of our streets.

The Council has asked for and received additional sales tax revenues twice, yet the promised benefits have failed to materialize. In the words of a concerned citizen, "The Council has spent the city into a hole and is now interested only in buying more shovels."

We believe the time has come to end the almost decade long charade that sales tax increases alone will solve Capitola's fiscal problems. **Please join us in voting no on Proposition O.**

s/ Sandra L. Erickson
Capitola Resident

s/ Willem Evers
Capitola Resident

s/ Mary Sue Leffel
Capitola Resident

s/ Michael L. Richardson
Capitola Resident

s/ Glenn Hanna
Former Capitola City Treasurer

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ARGUMENT AGAINST MEASURE O

Don't be fooled again! Capitola Council members want you to think someone else is going to pay 83% of the additional ¼% sales tax they want to add. You will pay **100%** of the tax on **every taxable item you buy in Capitola**. The Council acts as if the last five years has not changed our financial reality. Everyone, especially those of us on fixed incomes will be affected by this unnecessary tax increase.

Sixty-five percent of the city budget is in salaries and benefits. These costs have risen 37% in the last 10 years and revenue is only up by 17%. Unless these costs are addressed, there will never be enough money for roads and infrastructure maintenance. To date, personnel cuts are made only through attrition and furloughs. The Council's current spending priorities are misguided. The cost of hiring consultants and lawyers last year was almost 4 times the funding for street maintenance.

This is the third time the Council has promised that a sales tax increase will fix the problem. The temporary ¼% sales tax enacted in 2004 was extended in 2008. The current proposal will double it to ½% for the next 5 years and make the temporary ¼% permanent. If Governor Brown's tax increase passes in November, you will pay nearly 10% extra for everything. The highest in the county! The Council lacks the courage to set priorities and make tough decisions. It's far easier for them to raise your taxes!

We know from their track record we will have nothing to show for giving the City more of our money. Give Target and 300 new jobs a chance to improve Capitola's economy.

Please Vote NO!

s/ Glenn Hanna
Former Capitola City Treasurer

s/ John Dufresne
Capitola Resident

s/ Willem Evers
Capitola Resident

s/ Lawrence Borger
Capitola Resident

s/ Sandra Erickson USAFR (RET)
Capitola Resident

REBUTTAL TO ARGUMENT AGAINST MEASURE O

In the 1970's, Capitola was a sleepy beach town with low property taxes, and limited funds to run the City: police, parks, lifeguards, streets, recreation programs, etc. The City was wise to annex 41st Avenue and develop a shopping district. This provided sales tax which was used to improve the City and have more services for the residents, visitors, and businesses. We are very proud of our beautiful town, but we have many streets that need to be repaired, and we need the funds to do it.

The City has taken deliberate measures to contain costs: staffing has been reduced by 8 full-time positions. We are the only city in the area that capped retirement costs of the employees years ago. We are not facing run-away retirement costs in the future. The City was able to establish a prudent reserve account of almost \$2 million dollars. It was depleted repairing the storm drain pipe, and the flooded City Hall and Police Department. We did not receive Federal FEMA money and are seeking payment from our insurance company.

The slow economy has affected us all. Sales tax revenue since Measure P was first passed in 2004 has dropped by approximately \$900,000. Measure O will assist the City in replenishing this revenue so that the roads can be fixed, services can be maintained, emergency reserves can be restored and Capitola can recover its sound fiscal footing.

Please Vote YES on Measure O.

s/ Stephanie Harlan
City Council Member

s/ Dennis Norton
City Council Member

s/ Jacques Bertrand
City Treasurer

s/ Edward Bortorff
Traffic & Parking Commissioner