CITY OF SAUSALITO

ORDINANCE NO. 1228

AN ORDINANCE OF THE CITY OF SAUSALITO ADDING CHAPTER 3.06 TO TITLE 3 OF THE SAUSALITO MUNICIPAL CODE IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION (November 4, 2014 Ballot Measure)

WHEREAS, with tens of thousands of tourists coming to Sausalito each year to shop, this measure ensures that out-of-towners pay their fair share for the strain they place on local services including road and sidewalk maintenance, parks, police and other services they use when they visit our city; and

WHEREAS, this measure will not be applied to food purchased as groceries or prescription medication, including prescription medications delivered through the mail, limiting its impact on Sausalito residents; and

WHEREAS, no reliable sources of revenue exist to address Sausalito's critical infrastructure and service needs and maintain the City's long-term financial viability; and

WHEREAS, Sausalito's storm drains are 80 years old and many are completely deteriorated and rusted through, which allows pollutants, garbage and plastics to spill over into the Bay, and the City needs additional funds to make vital storm drain upgrades to protect water quality and avoid expensive fines and harming the environment; and

WHEREAS, many of Sausalito's neighborhood streets and roads are not only deteriorating and riddled with cracks, but are also on steep hillsides, and while the city has made major improvements to a number of streets, we need additional funds to address the concrete streets that are in the worst condition and cost up to five times as much to fix so that we eliminate these hazardous road conditions; and

WHEREAS, Sacramento money grabs continually threaten funding for local services, impacting our quality of life, and this measure ensures that our City has a guaranteed source of local funding that cannot be taken by Sacramento and requires that our tax dollars are spent locally for Sausalito residents; and

WHEREAS, funds from this measure are subject to strict fiscal accountability and transparency provisions, including annual independent audits and publishing of expenditure reports to ensure funds are spent efficiently and effectively.

NOW THEREFORE, THE PEOPLE OF THE CITY OF SAUSALITO ORDAIN AS FOLLOWS:

Section 1. Recitals. The People of Sausalito find that the above Recitals are true and correct and are incorporated herein by reference.

Section 2. Amendment of the Sausalito Municipal Code to Add Chapter 3.06. Title 3 of the Sausalito Municipal Code is hereby amended to add a new Chapter 3.06, which shall read as follows:

Chapter 3.06 2014 TRANSACTIONS AND USE TAX

Sections

3.06.010 Title.
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3.06.050. Transactions Tax Rate.
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3.06.100 Permit Not Required.
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3.06.130. Enjoining Collection Forbidden.
3.06.140. Annual Audit.
3.06.150 Severability.
3.06.160. Effective Date.
3.06.170. Termination Date.
3.06.180 Use of Proceeds.

3.06.010. TITLE. This ordinance shall be known as the 2014 Transaction and Use Tax (the "Ordinance"). The City of Sausalito hereinafter shall be referred to as the "City." This Ordinance shall be applicable in the incorporated territory of the City.

3.06.020. 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.

3.06.030. PURPOSE. This Ordinance is adopted to achieve the following, among other purposes, and the provisions hereof should 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 Division 2 which authorizes the City to adopt this 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.

3.06.040. 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, 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.

3.06.050. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax hereby is imposed upon all retailers in the incorporated territory of the City at the rate of .50% (one half of one percent) 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.

3.06.060. 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 or her 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.

3.06.070. 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 .50% (one half of one percent) 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.

3.06.080. 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 ("Transactions and Use Taxes"), all of the provisions of Part 1 (commencing with Section 6061) of Division 2 of the Revenue and Taxation Code ("Sales and Use Taxes") are hereby adopted and made a part of this Ordinance as though fully set forth herein.

3.06.090. 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 the City shall be substituted therefor. However, the substitution shall not be made under the following circumstances:

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 Ordinance.

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

a. Provide an exemption from this tax with respect to certain sales, storage, use, or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use, or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use, or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

3.06.100. 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.

3.06.110. 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 or her 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. 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.

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 that 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 during 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) of this Section, a retailer engaged in business in the City shall not be required to collect the 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 the 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 the 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 under this Ordinance.

3.06.120. AMENDMENTS.

A. All amendments subsequent to the Operative 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. The forgoing amendments shall not require voter approval.

B. The following amendments to this Title must be approved by a majority of qualified voters of the City of Sausalito: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of the preceding paragraph); or extending the tax beyond the tenth (10th) anniversary of the Operative Date. The City Council may otherwise amend this Title without submitting the amendment to the voters for approval.

3.06.130. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.06.140. ANNUAL AUDIT. The City shall include an accounting of the revenue generated by the Sausalito Transactions and Use Tax, and an explanation how the revenue was used, in its annual audit of the City financial operations by an independent certified public accountant. Said auditor's report shall be presented to the City Council and made available to the public.

3.06.150 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.

3.06.160. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the City transactions and use tax and shall be in full force and effect ten (10) days after the certification by the City Council of the election returns indicating passage of the Ordinance by a majority of the voters casting votes in the election of November 4, 2014.

3.06.170 TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire on the tenth (10th) anniversary of the Operative Date, unless extended by a majority vote of the qualified voters in the City.

3.06.180. USE OF PROCEEDS. The proceeds from the transactions and use tax imposed by this Ordinance shall be for general governmental purposes of the City and shall be received into the general fund of the City. Nothing herein shall bind the City to use the proceeds for any specific purpose or function.

Section 3. This Ordinance was approved for placement on the November 4, 2014 ballot by a two-thirds vote of all members of the City Council of the City of Sausalito.

Section 4. The Ordinance was introduced at a regular meeting of the Sausalito City Council on the 22nd day of July and adopted at a regular meeting of the Sausalito City Council on the 18th day of November, 2014 by the following vote:

AYES:	COUNCILMEMBER:	Leone, Pfeifer, Theodores, Weiner, Mayor Withy
NOES:	COUNCILMEMBER:	None
ABSTAIN:	COUNCILMEMBER:	None
ABSENT:	COUNCILMEMBER:	None

Section 5. This ordinance was adopted by the voters of the City of Sausalito at the election held on the 4th day of November, 2014, by the following vote tally:

YES: 1,848
NO: 1,174

MAYOR OF THE CITY OF SAUSALITO

ATTEST:

CITY CLERK