

ORDINANCE NO. 3504 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

ENACTING A SPECIAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION, SUBJECT TO ADOPTION BY THE ELECTORATE

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

Section 1. FINDINGS.

A. Monterey's essential infrastructure needs include the repair of deteriorating streets, sidewalks, and storm drains. These essential infrastructure needs suffer from inadequate funding.

B. Monterey's streets and sidewalks are heavily used by Monterey's residents and over 3,000,000 daytime visitors per year, resulting in the steady decline of our streets and sidewalks. Monterey's residents rated the streets as poor and in need of maintenance. In a 2013 National Citizen Survey, Monterey residents ranked the quality of the streets at a level "much below" the ranking of street quality in at least 100 benchmark jurisdictions.

C. Monterey's streets have been independently rated with an overall pavement condition index of 54 out of 100 points, which categorizes the Monterey street system as "At Risk", only five points away from a "Poor" rating. On May 28, 2014, the City Council discussed the worsening condition of the City's streets and expressed a desire to bring the overall pavement condition index up to 70 ("Very Good"). In order to bring up the overall pavement condition index from 54 to 67 (a rating of "Fair" and somewhat less than the Council goal of 70, but still considered satisfactory) within four years, the annual funding need is estimated to be \$4.3 million.

D. Monterey's sidewalks, curbs, and gutters are damaged and in need of repair, requiring \$500,000 per year to rehabilitate.

E. Maintenance of the City's streets and sidewalks has been deferred and has exposed the City to liability, and further delays to repairs and upgrades will make them more costly in the future. The American Society of Engineers reported that the cost of reconstruction may be more than three times the cost of preservation treatments over the same time period.

F. Part of Monterey's storm drain system is broken and in urgent need of upgrading in order to prevent flooding, wash-outs and damage to private and public property. The repair and upgrade of Monterey's storm drain system will help protect Monterey Bay and lessen potential road failures due to failing pipes. . The repair of the City's aging storm drain infrastructure is estimated to be \$700,000 per year, and cannot be funded out of the storm water fees presently collected. It is most cost effective to make these repairs to these underground systems while making other infrastructure repairs and upgrades.

G. The City must upgrade access and improve safety for disabled residents and visitors, and comply with American's with Disabilities Act (ADA) standards when rehabilitating streets and sidewalks, requiring an annual expenditure of approximately \$2.5 million.

H. The City's adopted budget for FY2014/15 is only able to provide for minimal funding for the repair and maintenance of street, sidewalk, and storm drain infrastructure, and continues to defer capital investment needs. The City's financial forecast over the next five years continues to reflect a lack of resources available to address the renewal of the City street infrastructure.

I. On May 6, 2015, the City Council created a Ballot Measure Advisory Committee to explore a potential revenue measure. On July 1, 2014, the City Council considered recommendations from the Ballot Measure Advisory Committee Meeting, and directed staff to prepare a resolution calling an election to seek voter approval of a proposed special transactions and use (sales) tax to create an additional source of revenue to fund needed repairs to streets, sidewalks, and storm drains.

J. The tax to be submitted to the voters, if approved, would be imposed on retail transactions involving the use of personal property. The tax rate would be one percent (1%) of the value of the property. The tax revenue would be collected by the State Board of Equalization and remitted to the City. The tax would continue for four (4) years, at which time it will sunset unless extended by the voters. A committee composed of members of the public would review and report on the use of the revenue from the tax. Fiscal accountability will be ensured by requiring independent citizens' oversight, an annual independent financial/performance audit, and yearly reports to the community. The tax shall be approved if the measure receives at least a 2/3rds affirmative vote of the electorate of the City of Monterey.

K. All funds collected by this tax shall be deposited into a special fund and expended only to repair and rehabilitate the City's streets, sidewalks, and storm drains. All funds from this local revenue measure are required to stay in the City of Monterey and cannot be taken by the State.

L. The City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA)(CCR, Title 14, Chapter 3 ("CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines Section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary street infrastructure rehabilitation projects that may be funded using sales tax revenue received from the referenced special transactions and use tax resulting from this action will be assessed for CEQA applicability. Lastly, CEQA Guidelines Section 15378 (b) (4) specifically states that the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project as 'not a project.'

Section 2. AMENDMENT OF THE MONTEREY CITY CODE.

Chapter 35, Article 7, Street Infrastructure Rehabilitation Transactions and Use Tax Ordinance, shall be added to the Monterey City Code and shall read as follows:

“Section 35-69. Title. This ordinance shall be known as the Street Infrastructure Rehabilitation Transactions and Use Tax Ordinance. The City of Monterey hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 35-70. Restricted Uses of the Tax/Expenditure Plan

a. Proceeds from this tax shall be deposited into the City treasury in a special fund entitled the “Street Infrastructure Rehabilitation Transactions and Use Tax Fund”. Monies deposited into this fund, together with any interest that accrues thereon, shall be used exclusively for the rehabilitation, repair, and improvement of the City’s streets, sidewalks, and storm drains.

b. The expenditure plan required by Revenue and Taxation Code section 7285.91 for the revenue of tax approved by this ordinance is set forth below and is based on an estimated \$8 million in annual revenue expected to be received from the tax.

INFRASTRUCTURE ASSET TYPE	IMPROVEMENTS	COSTS
Streets	Improve & Repair the overall condition of streets	\$17,200,000
Senior & Disabled Access and Safety Improvements (“ADA”)	Build curb ramps and safety improvement upgrades to 57 signaled intersections to assist senior citizens, disabled persons, and visually impaired persons	\$10,080,000
Sidewalks	Improve & Repair over 17 miles of sidewalks	\$2,000,000
Storm Drain System	Rehabilitate pipes; Remove silt from retention pools; Rehabilitate catch basins, headwalls	\$2,720,000

Total: \$32 Million

The expenditure plan may be amended from time to time by a vote of the City Council, so long as the funds are used for the purposes approved by the electors in approving the tax described herein.

Section 35-71. Oversight Committee. The City Council shall appoint a five-member citizens' advisory board (the “Oversight Committee”) which shall meet at least annually to review the

revenues generated by the tax imposed by this ordinance and expenditures of those revenues, and shall report to the City Council on the conformity of such expenditures for purposes set forth in Section 35-70.

Section 35-72. Annual Independent Audit. Annually the City shall have an independent auditor conduct an audit and provide audited financial statements for revenue received from the tax approved by this ordinance and expenditures thereof. The auditor's report shall be presented to the Oversight Committee and shall be made available to the public.

Section 35-73. 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.

Section 35-74. Purpose. This ordinance is adopted to achieve the following general 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 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.

Section 35-75. 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.

Section 35-76. 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 1% 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.

Section 35-77. 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.

Section 35-78. 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 1% 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.

Section 35-79. 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 35-80. 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 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 35-81. 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.

Section 35-82. 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.

Section 35-83. 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 35-84. 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 35-85. Amendment of this Chapter. The following amendments to this ordinance must be approved by the voters of the City: 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; or extending the tax beyond the fourth anniversary of the operative date. The City Council may otherwise amend this ordinance without submitting the amendment to the voters for approval.

Section 35-86 Termination Date. The authority to levy the tax imposed by this ordinance shall expire on the fourth anniversary of the operative date, unless extended by a two-thirds majority vote of the voters of the City.

Section 35-87. Refunds and Credits; Suits and Legal Proceedings. Refunds of and any credits for any tax paid pursuant to this article may be made only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. Suits and proceedings for the recover of any amount alleged to have been erroneously or illegally determined or collected pursuant to this article may be maintained in any court only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. A judgment shall not be rendered in favor of the plaintiff in any action brought against the State Board of Equalization to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.”

Section 3 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.

Section 4 CODIFICATION. Upon adoption of this ordinance pursuant to the voter approval referenced herein, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this ordinance in the Monterey City Code.

Section 5 EFFECTIVE DATE. If this ordinance is approved by two thirds of the voters voting on the issue at the November 4, 2014 election, pursuant to Elections Code section 9217, this ordinance shall become effective ten (10) days after the City Council declares the results of the election.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 5th day of August, 2014, by the following vote:


AYES:	5	COUNCILMEMBERS:	Downey, Haffa, Selfridge, Sollecito, Della Sala
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:



Mayor of said City



City Clerk thereof

