

ORDINANCE NO.4360

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ADOPTING ENACTING LANGUAGE TO ALLOW THE STATE BOARD OF EQUALIZATION TO ADMINISTER THE TRANSACTIONS AND USE TAX THAT MAY BE IMPOSED BY A VOTER SPONSORED INITIATIVE ON THE NOVEMBER 8, 2016, MENDOCINO COUNTY BALLOT

WHEREAS, the people of Mendocino County circulated a petition titled "An Initiative to Add a Temporary Half-Cent Sales Tax to Fund Facilities in Mendocino County to Assist in the Diagnosis and Treatment of Mental Health and Drug Dependency" (the "Initiative"), which would adopt a five (5) year, one-half cent (0.5%) sales tax (transactions and use tax) in all parts of Mendocino County; and

WHEREAS, on June 24, 2016, the Initiative was filed with the Registrar of Voters with a total of 4,238 signatures to place the Initiative on the November 8, 2016, election ballot; and

WHEREAS, on July 12, 2016, the County Registrar of Voters verified the minimum number of signatures to place the Initiative on the November 8, 2016, election ballot; and

WHEREAS, the Initiative desires to impose a special purpose sales tax, which requires the approval of a two-thirds vote of the qualified voters of the County; and

WHEREAS, in order for the tax proposed by the Initiative to be collected, the County must adopt enacting language required by the State Board of Equalization that allows the State Board of Equalization to administer the tax, and without such required enacting language the tax proposed by the Initiative would not be collected; and

WHEREAS, the County Board of Supervisors desires to implement the will of the voters of Mendocino County, should the voters determine to approve the Initiative by a two-thirds vote; and

WHEREAS, Government Code section 25131 provides that an urgency ordinance may be passed immediately upon introduction and either at a regular or special meeting, and Government Code section 25123 provides that an ordinance calling for the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency and approved by a four-fifths vote of the Board of Supervisors, shall become effective immediately; and

WHEREAS, the approval of the Initiative by the qualified electors of the County without the required enacting language would effectively nullify the voice of the people.

NOW, THEREFORE, THE MENDOCINO COUNTY BOARD OF SUPERVISORS ORDAINS AS FOLLOWS:

Section 1. The above recitals are incorporated herein by this reference.

Section 2. Chapter 5.180 is added to the Mendocino County Code to read as follows:

COUNTY MENTAL HEALTH FACILITY DEVELOPMENT TRANSACTIONS AND USE TAX

Section 5.180.010. Title.

This ordinance shall be known as the Mental Health Facility Development Transactions and Use Tax Ordinance. The County of Mendocino, hereinafter shall be called "County." This ordinance shall be applicable in the incorporated and unincorporated territory of the County.

Section 5.180.020. 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.

Section 5.180.030. 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 7285.5 of Part 1.7 of Division 2 which authorizes the County to adopt this tax ordinance which shall be operative if a (2/3) 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 therefor 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 5.180.040. Contract With State.

Prior to the operative date, the County 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 County 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 5.180.050. Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of one-half cent (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.

Section 5.180.060. 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.

Section 5.180.070. Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the County 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 cent (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.

Section 5.180.080. 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.

Section 5.180.090. 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 County 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 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 County 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 "County" 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 5.180.100. 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.

Section 5.180.110. 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 County which is shipped to a point outside the County, 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 County 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-County 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-County 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 County 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 County 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 County or participates within the County 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 County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

7. "A retailer engaged in business in the County" 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 County.

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 5.180.120. 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 5.180.130. 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 County, or against any officer of the State or the County, 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 5.180.140. 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 5.180.150. Use of Tax Proceeds.

The expenditure plan required by Revenue and Taxation Code section 7285.5 for the revenue from the tax approved by this Chapter is set forth in Appendix A to this Chapter, which shall be the text of "An Initiative to Add a Temporary Half-Cent Sales Tax to Fund Facilities in Mendocino County to Assist in the Diagnosis and Treatment of Mental Health and Drug Dependency" (the "Initiative"), which was approved by the qualified voters of Mendocino County at the November 8, 2016, election. All proceeds of the taxes levied and imposed hereunder shall be used for the purposes stated in the Initiative.

Section 5.180.160. Effective Date.

This ordinance relates to the levying and collecting of the County transactions and use taxes and shall take effect following adoption by the Board of Supervisors, the subsequent adoption by two-thirds vote of the electorate and the declaration of the vote by the Board of Supervisors.

Section 5.180.170. Termination Date.

The authority to levy the tax imposed by this ordinance shall expire five (5) years after the Operative Date of this Chapter.

Section 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The Board of Supervisors hereby finds that this ordinance is not a project subject to the California Environmental Quality Act (Public Resources Code section 21000 et seq.; "CEQA") pursuant to CEQA Guidelines (14 Cal. Code Regs. section 15000 et seq.) sections 15060(c)(3) and 15378(b)(4), as the ballot measure for which this ordinance is providing enacting language involves a government funding mechanism and related fiscal activities that does not involve any commitment to any specific project.

Section 4. VOTER APPROVAL. This ordinance shall be effective only if approved by two-thirds of the voters voting on both this measure and the Initiative at the November 8, 2016, election, and after the vote is declared by the Board of Supervisors. If this ordinance and the Initiative are approved by the voters, this ordinance shall take effect on the Effective Date and become operative on the Operative Date, as those dates are defined herein.

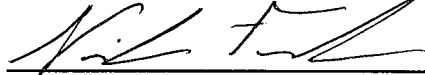
Section 5. URGENCY. The Board of Supervisors finds and determines that the immediate preservation of the public health and safety require that this ordinance be enacted as an urgency ordinance pursuant to Government Code section 25123. Without this urgency ordinance, should the voters approve the Initiative by a two-thirds vote, the lack of enacting language required by the State Board of Equalization would mean that the will of the voters regarding mental health services would not be implemented.

PASSED AND ADOPTED by a four-fifths vote of the Board of Supervisors of the County of Mendocino, State of California, on this 2nd day of August, 2016, by the following vote:

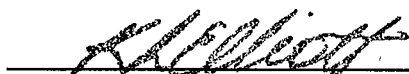
AYES: Supervisors Brown, McCowen, Woodhouse, Gjerde, Hamburg
NOES: None
ABSENT: None

WHEREUPON, the Chair declared the Ordinance passed and adopted
and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board


Deputy

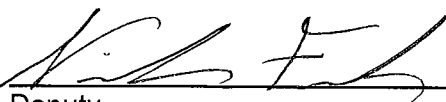
APPROVED AS TO FORM:
Katharine L. Elliott, County Counsel




DAN GJERDE, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions
of Government Code section 25103, delivery
of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board


Deputy