

RESOLUTION NO. 2022-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FERNDALE ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF FERNDALE A CERTAIN MEASURE RELATING TO A PROPOSED ORDINANCE APPROVING AND AUTHORIZING A THREE-QUARTER PERCENT TRANSACTIONS AND USE (“SALES”) TAX FOR GENERAL PURPOSES AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022; DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE; SETTING THE DATES FOR ARGUMENTS ON THE MEASURE; AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT TO CONSOLIDATE SAID ELECTION PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE

WHEREAS, pursuant to Ordinance No. 2022-03, a copy of which is attached as **Exhibit A** hereto, the City Council of the City of Ferndale (“City”) approved for the submission to and approval of the qualified voters of the City a three-quarter percent (0.75%) transaction and use (sales) tax for general purposes; and

WHEREAS, a locally-enacted sales tax measure would protect and maintain the City’s essential services because the money is legally required to stay in the community and cannot be taken by the State, providing locally controlled funds for essential services, including police protection, code enforcement, and other essential services; and

WHEREAS, the City Council has determined that the most prudent, reasonable, and financially responsible action it can take to preserve the fiscal stability of the City and to protect vital services in the City is to place before the voters a ballot measure to approve the local tax measure and to recommend its adoption to the voters; and

WHEREAS, a General Municipal Election will occur on Tuesday, November 8, 2022, at which time the City Council of the City of Ferndale desires and intends to have the qualified voters of the City vote upon the question of whether to adopt the proposed ordinance; and

WHEREAS, the City Council of the City of Ferndale desires that the County of Humboldt Elections Department conduct the municipal election, pursuant to Elections Code Section 10403.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FERNDALE DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election of November 8, 2022, the following question:

Ferndale Police and Essential Services Tax Measure	
To maintain and improve essential public safety services, including police services and nuisance abatement, shall the City of Ferndale measure to levy a three quarter-percent sales tax, raising approximately \$104,000 annually, until March 31, 2031, with independent annual audits and all funds remaining in Ferndale, be adopted?	Yes
	No

SECTION 2. The proposed measure submitted to the voters is attached as **Exhibit A**. The City Council hereby approves the ordinance by a two-thirds vote of the City Council, the form thereof, and its submission to the voters of the City at the November 8, 2022, General Municipal Election, as required by Revenue and Taxation Code section 7285.9. The ordinance specifies that the rate of the transactions tax shall be three-quarter percent (0.75%) of the sales price of certain personal property sold at retail; it specifies that the rate of the use tax shall be three-quarters of percent (0.75%) of the sales price of tangible

personal property stored, used or otherwise consumed in the City. The California Department of Tax and Fee Administration shall collect the tax from retailers subject to the tax and remit the funds to the City.

SECTION 3. In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections, including but not limited to Elections Code section 10418.

SECTION 4. Pursuant to the requirements of Section 10403 of the Elections Code, the City Council of the City of Ferndale hereby requests the Board of Supervisors of the County of Humboldt to agree to the consolidation of the Municipal Election with the Statewide General Election on November 8, 2022, and issue instructions to the Humboldt County Elections Department that the election in all respects be held as if there were only one election and to conduct the Municipal Election including the publishing of all election materials, the mailing of sample ballots, the hiring of election officers, canvassing the returns, and the actual conduct of the election.

SECTION 5.

a. The last day for submission of primary arguments for or against the measure shall be by 5:00 p.m. on August 12, 2022.

b. The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on August 26, 2022.

c. Primary arguments shall not exceed three hundred (300) words and shall be signed by not more than five persons.

d. Rebuttal arguments shall not exceed two hundred fifty (250) words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the primary arguments.

e. Pursuant to California Elections Code Section 9282, Mayor Don Hindley is hereby authorized to file a written argument in favor of the proposed measure on behalf of the City Council. At Mayor Hindley's discretion, the argument may be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, Mayor Hindley is also authorized to file a rebuttal argument on behalf of the City Council, which may be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure, which may be different from those who signed the primary argument.

f. Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument, which it seeks to rebut.

g. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a certified copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and file the impartial analysis with the City Clerk by August 26, 2022.

SECTION 6. The City of Ferndale recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County of Humboldt for all costs associated with the conduct of the City of Ferndale's municipal election to be held on November 8, 2022; and

SECTION 7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 9. The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The transactions and use tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

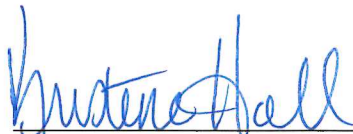
NOW THEREFORE BE IT FURTHER RESOLVED the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Humboldt County Registrar of Voters.

PASSED AND ADOPTED this 15th day of June, 2022, by the following vote:

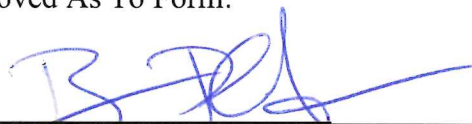
AYES: 5
NOES: 0
ABSENT: 0
ABSTAIN: 0


Don Hindley, Mayor

ATTEST:


Kristene Hall, City Clerk

Approved As To Form:


Ryan Plotz, City Attorney

ORDINANCE NO. 2022-03

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF FERNDALE
APPROVING AND AUTHORIZING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION TO PROVIDE SUPPLEMENTAL FUNDING FOR POLICE AND
ESSENTIAL SERVICES WITHIN THE CITY OF FERNDALE**

WHEREAS, the City of Ferndale ("City") does not now—and historically has not—levied a local sales tax in excess of the State-wide base sales tax;

WHEREAS, the tax revenue generated by the State-wide sales tax within the City is not controlled by the City, but is controlled and expended by the State, with only a small percentage actually returning to our community;

WHEREAS, Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code authorize the City to impose a retail transaction and use tax in the incorporated territory of the City for general purposes at a rate of 0.125% (or any multiple thereof);

WHEREAS, a locally-enacted sales tax measure would protect and maintain the City's essential services because the money is legally required to stay in our community and cannot be taken by the State, providing locally controlled funds for local services;

WHEREAS, the City desires to impose such a tax for the purpose of funding local public safety services at a rate of three-quarters percent (0.75%) on the sale of tangible personal property and the storage, use, or other consumption of such property. The tax revenue would be collected by the California Department of Tax and Fee Administration and remitted to the City;

WHEREAS, the City Council has determined that the most prudent, reasonable, and financially responsible action it can take to preserve the fiscal stability of the City and to protect vital services in our City is to place before the voters a ballot measure to approve the local tax measure and to recommend its adoption to the voters; and

WHEREAS, the tax, if approved by a majority of the voters, would be authorized until March 31, 2031, and would then expire automatically, unless extended by the voters.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF FERNDALE ORDAIN
AS FOLLOWS:**

**ARTICLE 1: FERNDALE POLICE AND ESSENTIAL SERVICES TRANSACTION
AND USE (SALES) TAX**

§1.01 Title: This ordinance shall be known as the "Ferndale Police and Essential Services Transactions and Use (Sales) Tax Ordinance." The City of Ferndale hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the city.

§1.02 Operative Date: “Operative date” means the first day of the first calendar quarter commencing more than 110 days after the effective date, as determined in section 2.03 of this ordinance.

§1.03 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:

1.03.01 To impose a retail transaction 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.

1.03.02 To adopt a retail transaction 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.

1.03.03 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 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 collection of the California state sales and use taxes.

1.03.04 To adopt a retail transaction and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provision 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.

§1.04 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 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.

§1.05 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 three-quarters percent (0.75%) 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.

§1.06 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 sales 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.

§1.07 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 three-quarters percent (0.75%) 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.

§1.08 Adoption of provisions of state law: Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provision 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.

§1.09 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:

- 1.09.01 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:
- a. 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.
 - b. 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.

- c. 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:
 - i. 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;
 - ii. 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.
- d. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

1.09.02 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.

§1.10 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 transactor's permit shall not be required by this ordinance.

§1.11 Exemptions and Exclusions:

1.11.01 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.

1.11.02 There are exempted from the computation of the amount of transactions tax the gross receipts from:

- a. 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.
- b. 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:
 - i. 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
 - ii. 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.
- c. 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.
- d. 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.
- e. For the purposes of subparagraphs (c) and (d) 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.

1.11.03

There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

- a. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
- b. 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.
- c. 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.
- d. 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.
- e. For the purposes of subparagraphs (c) and (d) 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.
- f. Except as provided in subparagraph (g), 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.

- g. "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.

1.11.04 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.

§1.12 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.

§1.13 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.

§1.14 Independent annual audit: Annually the City Council retains an independent auditor to conduct an audit of and provide audited financial statements for all the City's financial activities. The auditor shall include an accounting of the revenue received from the tax and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the City Council and made available to the public.

§1.15

Amendments of Ordinance – Rescission of tax:

- 1.15.01 The following amendments to this ordinance must be approved by the voters of the City of Ferndale:
- a. increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result;
 - b. imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of section 1.12 of this ordinance); or
 - c. extending the tax beyond the termination date set forth in section 1.16 of this ordinance.
- 1.15.02 Except as provided in subsection 1.15.01 of this ordinance or as prohibited by law, the City Council may amend this ordinance without submitting the amendment to the voters for approval.
- 1.15.03 The City Council may, with a four-fifths vote of the entire Council, rescind the ordinance codified in this ordinance and terminate the tax at any time and without voter approval.

§1.16

Termination of Tax: The authority to levy the tax imposed by this ordinance shall expire March 31, 2031, unless sooner repealed by the City Council or by the voters.

ARTICLE 2: GENERAL PROVISIONS

§2.01

Approval by Voters: The qualified votes of the City of Ferndale hereby approve and adopt this ordinance.

§2.02

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.

§2.03

Effective Date: This ordinance relates to the levying and collecting of the City transactions and use taxes. If this ordinance is approved by the City of Ferndale electorate as outlined above, then this ordinance shall become effective ten (10) days following the date the vote is declared by the City Council in accordance with Elections Code Section 9217.

§2.04


Compliance with CEQA. The action to adopt this ordinance involves the establishment of a retail transactions and use tax and does not involve any commitment to any specific project that may result in a potentially significant

impact on the environment and thus is not a "project" subject to the requirements of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to CEQA Guidelines Section 15378 (b)(4); additionally, it can be seen with certainty that there is no possibility the adoption and implementation' of this ordinance may have a significant effect on the environment, and accordingly the adoption of this ordinance is exempt from the provisions of CEQA pursuant to the "general rule" at CEQA Guidelines Section 15061(b)(3).

§2.05 Publication: Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this ordinance and shall cause it to be published according to law and transmitted to the California Department of Tax and Fee Administration.

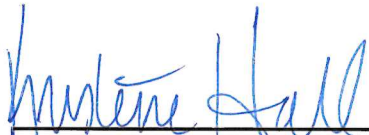
INTRODUCED, PASSED, AND SUBMITTED TO THE VOTERS FOR ADOPTION by the City Council of the City of Ferndale on the 15th day of June, 2022, by **at least a two-thirds vote** of the City Council, as follows:

AYES: 5
NOES: 0
ABSENT: 0
ABSTAIN: 0



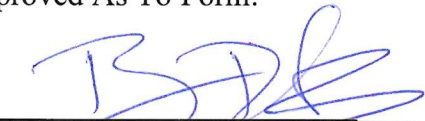
Don Hindley, Mayor

ATTEST:



Kristene Hall, City Clerk

Approved As To Form:



Ryan Plotz, City Attorney