

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**RESOLUTION NO. 2019-070**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA ORDERING AN ELECTION ON MARCH 3, 2020 TO SUBMIT TO THE VOTERS AN ORDINANCE TO INCREASE THE TRANSACTIONS AND USE TAXES (SALES TAX) RATE TO ONE AND ONE HALF PERCENT (1.5%) FOR A PERIOD OF TWENTY (20) YEARS FOR GENERAL PURPOSES; FINDING AND DECLARING THAT AN EMERGENCY EXISTS THAT REQUIRES THE ELECTION TO BE HELD BEFORE THE NEXT REGULARLY SCHEDULED MUNICIPAL ELECTION; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF MONTEREY TO CONSOLIDATE THE ELECTION REGARDING THE ORDINANCE WITH THE MARCH 3, 2020 PRESIDENTIAL PRIMARY ELECTION AND TO PERMIT THE MONTEREY COUNTY ELECTION DEPARTMENT TO CONDUCT SAID ELECTION; DIRECTING THE CITY CLERK TO TAKE ALL NECESSARY ACTIONS AND COORDINATE WITH THE COUNTY OF MONTEREY TO ENSURE PLACEMENT OF THE ORDINANCE ON THE MARCH 3, 2020 BALLOT; AUTHORIZING ARGUMENT AND REBUTTAL AGRGUMENT FOR AND AGAINST THE ORDINANCE; AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS**

WHEREAS, the City of Carmel-by-the-Sea ("City") is a local government that prides itself on maintaining the unique community characteristics of the Village; protecting its natural resources and providing quality services to its residents, businesses and visitors; and

WHEREAS, the City's capacity to continue to provide services and address community needs is contingent on the City's economic resources and its ability to control costs; and

WHEREAS, the City's major revenues of property, sales and transient occupancy taxes are sensitive to international, national, state and local preferences, policies and trends; and

WHEREAS, international instability and foreign policies as well as national economic conditions influence tourism and impact the City's sales and transient occupancy taxes; and

WHEREAS, economic growth experienced by the nation since 2009 is soon likely to come to an end and the probability of a recession is high, which will also impact City revenue; and

WHEREAS, local governments are already constrained in their ability to generate revenue and recent voter initiatives seek to further curtail a government's authority to raise taxes; and

WHEREAS, while the provision of services requires a quality workforce to deliver services, the City's costs for employee healthcare, retirement and other post-employment benefits are on the rise, and

WHEREAS, while the City has proactively taken steps to address its pension liabilities, such as adopting lower retirement tiers for employees, utilizing employer cost sharing and issuing a pension-obligation bond to re-finance its pension debt, the City's pension cost, namely its portion of the pension system's unfunded actuarial liability, continues to grow exponentially, largely due to investment strategies and other decisions made by the California Public Employees' Retirement System (CalPERS), which are outside of the City's control; further, costs of employee healthcare also continue to rise on an annual basis; and

WHEREAS, the City has delayed the hiring of new staff, promoted the cross-sharing of staff among different departments to achieve cost savings and used alternative staffing methods to address rising healthcare and pension costs; and

WHEREAS, service levels were decreased as part of budgetary reductions within the Fiscal Year 2019-2020 Operating Budget and Council deferred funding various capital projects to offset the increased cost of pension, health insurance and workers' compensation and general liability insurance; and

WHEREAS, based upon projected increases in some largely uncontrollable operating costs as well as required debt service payments, the City, without additional revenue, will need to enact further spending reductions in order to balance the budget that could impact the gamut of services provided by the City in the areas of administration, code enforcement, community planning and building, community activities, emergency services, libraries, public safety and public works, and/or, despite an infrastructure deficit, defer the funding for maintenance and new capital projects for facilities; vehicles and equipment; streets, sidewalks and storm drains; Carmel beach and shoreline, parks, the nature preserve and trails and the Village forest; and

WHEREAS, the City Council has the authority under Elections Code Section 9222, Revenue and Taxation Code Section 7285.9, and Government Code Sections 53723 and 53724 to place a ballot measure before the voters to establish a local transactions and use tax (sales tax) for general municipal purposes; and

WHEREAS, the City currently imposes a 1% local transactions and use tax pursuant to Measure D adopted by the electorate of the City on November 6, 2012, which is a significant revenue source for the City as it generates an estimated \$3 million a year, or about 13% of the City's total revenues; and

WHEREAS, the authorization to collect the tax imposed pursuant to Measure D will expire on March 31, 2023, and thus the City seeks voter approval to increase the local transaction and use tax to 1.5% for twenty (20) years before the original Measure D authorization terminates and;

WHEREAS, pursuant to Revenue and Taxation Code Sections 7251.1, the combined rate of all transaction and use taxes imposed by the City and County is capped at 2%, there is remaining capacity within the local transactions and use tax cap, and the City is authorized to increase and extend the tax contingent on voter approval; and

WHEREAS, the City seeks to increase the local transactions and use tax rate by one-half percent (0.5%) to a new tax rate of one and one-half percent (1.5%) in order to generate additional revenue that may be used immediately to mitigate spending reductions that will need to be enacted as part of the upcoming budget, as well as to extend the duration of the increased tax rate in order to assist with long-term financial stability; and

WHEREAS, Article XIII C, Section 2(b) of the California Constitution requires that an election to approve a general tax measure be consolidated with a City Council election unless an emergency is declared by a unanimous vote of the City Council; and

WHEREAS, the City faces an emergency that necessitates the placement of a sales tax measure on the ballot prior to the next regularly scheduled City Council municipal election; and

WHEREAS, the City will lose a major source of General Fund revenue when Measure D expires on March 31, 2023, and thus needs to start enacting spending reduction plans imminently to prepare for the phasing out of this revenue if a new sales tax ordinance is not approved by the voters; and

WHEREAS, voter approval in March 3, 2020 to increase the sales tax amount and extend the duration of the sales tax would provide the City with financial certainty regarding the long-term viability of this revenue; and

WHEREAS, due to the timing associated with the disbursement of sales tax to the City by the State, consolidating the vote on the proposed transaction and use tax ordinance with the March 3, 2020 presidential primary would enable the City to receive additional revenue, if approved by the voters, approximately 9 months earlier than waiting for the consolidation of the vote on the proposed transaction and use tax ordinance with the City Council general election in November 2020; and

WHEREAS, as the City faces a structural deficit between revenues and expenses, the receipt of additional revenue sooner would help mitigate spending reductions that will be required to be made to programs, capital projects and services as part of the annual budget and allow the City to recognize this revenue as part of its long-term financial planning; and

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city or district may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city or district relating to the conduct of an election. The city or district shall reimburse the county in full for the services performed upon presentation of a bill to the city or district; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation. The resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY DETERMINE AS FOLLOWS:**

1. Pursuant to California Constitution Article XIIC, Section 2(b), Government Code Sections 53723 and 53724, Revenue and Taxation Code Section 7285.9, and Elections Code

Section 9222, the City Council hereby calls for an election at which it shall submit to the qualified voters of the City a measure, that if approved by the majority of voters voting in the election, would adopt an increase to the existing transactions and use (sales) tax from 1% to 1.5% for a period of twenty (20) years. The election shall be held in the City on March 3, 2020.

2. The City Council hereby approves the Ordinance authorizing the levying of the transactions and use tax for general purposes as set forth in Exhibit A attached hereto and its submittal to the qualified voters of the City during the March 3, 2020 election in accordance with Government Code Sections 53723, 53724(b) and Revenue and Taxation Code Section 7285.9. The Ordinance specifies that (i) the rate of the sales tax shall be one and a half percent (1.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City, (ii) the rate of the sales tax shall be one and a half percent (1.5%) of the sales price of tangible personal property stored, used, or otherwise consumed in the City, (iii) that the tax shall be in effect for a period of twenty (20) years, after which time it shall be terminated, and (iv) that upon the Operative Date of the Ordinance, the transactions and use taxes authorized by Measure D, approved by the electorate of the City of Carmel-by-the-Sea on November 6, 2012, is repealed, terminated and of no further force or effect. The California Department of Tax and Fee Administration shall collect the tax from retailers that are subject to the tax and remit the funds to the City.

3. Pursuant to California Constitution Article XIII C, Section 2(b), the City Council hereby finds and determines that emergency conditions exist that require the placement of the Ordinance on the ballot on March 3, 2020. The City has taken action to reduce its operating costs as revenues decline; however, the precipitous rise in expenses such as employee healthcare premiums and pension liability will force the City to make further cuts to programs and services that may jeopardize the public health, safety and general welfare of residents and visitors as well as curtail funding for maintenance, construction and other improvements to City facilities, infrastructure and the natural environment as part of the upcoming Fiscal Year 2020-2021 budget and beyond without an infusion of new revenues.

The City Council hereby declares an emergency exists that requires immediate action to increase tax revenues in order for the City to meet its immediate and long-term obligations to its citizens. A delay in the collection of these enhanced revenues would negatively impact the City as the Council will be compelled to make reductions in operational and capital expenses to align with the City's existing revenues. Without sufficient revenues, additional spending reductions will need to be enacted so that the City is able to adopt a balanced budget as required by State law.

4. Pursuant to Elections Code Sections 10400 and 10403, the City Council hereby orders an election be called and consolidated with any and all elections also called to be held on March 3, 2020 within the same territory. Further, pursuant to Elections Code Section 10002, the City Council hereby requests the Board of Supervisors of the County of Monterey to consolidate the election regarding the Ordinance with the March 3, 2020 presidential primary election and to permit the Monterey County Elections Department to provide any and all services necessary for conducting an election regarding the Ordinance. The County of Monterey and its staff are authorized and instructed to procure and furnish any and all official ballots, notices, printed matter and all supplies and equipment and other necessary items in order to properly and lawfully conduct the election; the County of Monterey is authorized to canvass the returns of the election, which shall be held in all respects as if there were only one election, and only one form of ballot shall be used; and the City Council recognizes that additional costs will be incurred by the County of Monterey by reason of the consolidation of the election regarding the Ordinance with the

Statewide election and agrees to reimburse the County of Monterey for any costs that are not reimbursed by the State, and the City Council hereby authorizes the City Manager to pay the County of Monterey for said services in full.

5. The City Council hereby orders the City Clerk and the Monterey County Elections Department to submit the following question to the electorate at the March 3, 2020 election:

“Shall the Ordinance to increase the City of Carmel-by-the-Sea's current 1% sales tax to 1.5% to generate an estimated \$4.5 million per year for 20 years to enhance the City's green infrastructure of parks, trails, beaches and trees; invest in community facilities and spaces; maintain public safety and emergency preparation; fund capital needs; address pension liabilities and provide general City services, with all funds staying local, and with an annual independent audit, be adopted?”

Yes ( )

No ( )

6. The City Council hereby orders that the Monterey County Elections Department print the full text of the Ordinance attached hereto as Exhibit A exactly as filed or indicated on the filed document in the voter information guide for the March 3, 2020 election.

7. The City Council hereby finds and determines that the transactions and use (sales) taxes imposed pursuant to the Ordinance is for general municipal purposes and accordingly the taxes shall be approved upon a majority vote of the qualified voters of the City of Carmel-by-the-Sea voting in the election on the Ordinance.

8. The City Council hereby directs the City Clerk to (i) publish a notice of elections and a synopsis of the measure as required by Elections Code Sections 12101 and 12111; (ii) file certified copies of this resolution, including the Ordinance, with the County of Monterey and take other necessary actions to ensure the placement of the Ordinance on the March 3, 2020 ballot; and (iii) coordinate with the County of Monterey and take all necessary actions to oversee and certify the March 3, 2020 election process as required by Elections Code.

9. In accordance with Elections Code §9282, the City Council does resolve, declare, determine, and order that the City Council of the City of Carmel-by-the-Sea is authorized to file a written argument in favor of the Ordinance as specified above, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed by the City Clerk set forth below after which no arguments for or against the Ordinance may be submitted to the City Clerk.

10. In accordance with California Elections Code §9282, arguments in favor and against, not exceeding 300 words, shall be filed with the City Clerk no later than **5:00 p.m. on Friday, November 8, 2019**, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the *Form of Statement to Be Filed By Author(s) of Argument*, which can be obtained from the Office of the City Clerk.

11. In accordance with California Elections Code §9280, the City Council directs the City Clerk to transmit a copy of the Ordinance to the City Attorney, who shall prepare an impartial

analysis showing the effect of the Ordinance on the existing law and the operation of the Ordinance; the City Attorney's impartial analysis may not exceed 500 words and shall be filed with the City Clerk no later than **5:00 p.m. on Monday, November 25, 2019.**

12. The City Council has elected to author a ballot argument in support of the Ordinance, and California Elections Code §9285 authorizes the City Council to adopt provisions for the filing of rebuttal arguments at municipal elections; accordingly, when the City Clerk has selected the argument for and against the Ordinance which will be printed and distributed to the voters, the City Clerk shall send a copy of the argument in favor of the Ordinance to the authors of the argument against, and a copy of the argument against to the authors of the argument in favor of the Ordinance immediately upon receiving the arguments. The authors may prepare and submit rebuttal arguments not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. The rebuttal arguments shall be filed no later than **5:00 p.m. on Friday, November 22, 2019**, accompanied by the printed names and signatures of the persons submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers. The rebuttal arguments shall be accompanied by the *Form of Statement To Be Filed By Author(s) of Argument*, which can be obtained from the Office of the City Clerk. Rebuttal arguments shall be printed in the same manner as the direct arguments, and rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

13. All previous resolutions providing for the filing of rebuttal arguments for city measures are hereby repealed and the provisions of this resolution providing for the filing of rebuttal arguments regarding the Ordinance shall only apply to the election to be held on March 3, 2020, and shall thereafter be repealed.

14. The City Council has elected to author a ballot argument in support of the Ordinance and to permit rebuttal argument, and as authorized by California Elections Code §9285, the City Council wishes to authorize the release of the City Council's rebuttal argument to individual voters and thus hereby authorizes each individual member of the City Council to release rebuttal argument in writing to any other person or persons to prepare, submit, or sign the rebuttal argument.

15. For purposes of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), a "project" is defined in State CEQA Guidelines Section 15378 (a) as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment". The City Council hereby finds that the proposed Ordinance will not result in any change in the environment and thus is not a project subject to the requirements of CEQA. Additionally, the proposed Ordinance involves the creation of a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment and thus the City Council finds the proposed Ordinance is not a project subject to the requirements of CEQA pursuant to CEQA Guidelines Section 15378 (b)(4). Further, even if the adoption of this Ordinance was deemed to be a project subject to CEQA, the City Council finds the proposed Ordinance is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus 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.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-  
THE-SEA this 8th day of October, 2019, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

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Dave Potter  
Mayor

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Britt Avrit, MMC  
City Clerk

**EXHIBIT A**

**CITY OF CARMEL-BY-THE-SEA**

**ORDINANCE NO. 2019-004**

**AN ORDINANCE AMENDING ARTICLE 1V, TRANSACTIONS AND USE TAX, OF CHAPTER 3.28, SALES AND USE TAX, OF THE CARMEL-BY-THE-SEA MUNICIPAL CODE**

WHEREAS, stagnant growth in City revenues and escalating operating costs constrain the City's ability to maintain the quality of services provided and address its capital needs; and

WHEREAS, without additional revenues, the City will be compelled to make spending reductions to programs and services that may jeopardize the public health, safety and general welfare of residents and visitors as well as curtail funding for maintenance, construction and other improvements to City facilities, infrastructure and the natural environment; and

WHEREAS, all funds from a local revenue measure must stay in Carmel-by-the-Sea and cannot be taken by the State; and

WHEREAS, the City Council has determined that an emergency exists requiring placement of a measure for a transactions and use (sales) tax before the voters at the March 3, 2020 presidential primary election. The tax would be a one and one-half percent (1.5%) tax on the sale of tangible personal property and the storage, use, or other consumption of such property for a period of twenty (20) years. The tax revenue would be collected by the California Department of Tax and Fee Administration and remitted to the City; and

WHEREAS, 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 actions or purposes, and the specific purposes recited in the ballot measure are non-restricted and non-exclusive example only. The tax is a general tax and shall be approved if the measure receives at least a simple majority of affirmative votes.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Findings.**

1. The City Council of the City of Carmel-by-the-Sea does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

**SECTION 2. Amendment to Code**

1. Article IV, Transactions and Use Tax, of Chapter 3.28 of the Carmel-by-the-Sea Municipal Code is hereby amended to read as follows:

“Article IV. Transactions and Use Tax

3.28.170. Imposition. A Transactions and Use Tax is hereby imposed as a general tax on the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City for a period of twenty (20) years, and upon the sales price of tangible personal property stored, used or otherwise consumed in the City as further set forth below.

3.28.180. Operative Date. The transactions and use tax imposed herein shall be operative the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance. Based upon a March 3, 2020 election, the Operative Date for the transactions and use tax imposed hereunder shall be July 1, 2020.

3.28.190. Purpose. This Ordinance is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish these 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 of Division 2, and which authorizes the City to adopt this tax Ordinance, which shall be operative if a majority of the electors voting on the measure approve the imposition of the tax at an election called for that purpose. The tax is a general tax whose proceeds shall be deposited in the City's general fund and expended for any lawful purpose of the City.
- B. To adopt a retail transactions and use tax 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 that imposes a tax and provides a measure therefore 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 collecting the California State Sales and Use Taxes.
- D. To adopt a retail transactions and use tax 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.

3.28.200. 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; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration 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.

3.28.210. Transactions Tax Rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated area of the City at the rate of one and one-half percent (1.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this Ordinance for a period of twenty (20) years following the effective date of the tax and shall then be terminated.

3.28.220. 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 California Department of Tax and Fee Administration.

3.28.230. 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 the City at the rate of one and one-half percent (1.5%) of the sales price of the property for a period of twenty (20) years following the effective date of the tax, and shall then be terminated. The sales price shall include delivery charges when such charges are subject to sales or use tax regardless of the place to which delivery is made.

3.28.240. Adoption of Provisions of State Law. Except as otherwise provided in this Chapter and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxations Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxations Code are hereby adopted by reference and made a part of this Ordinance as if fully set forth herein.

3.28.250. 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 Taxations Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of City shall be substituted therefore. 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 Treasury, or the Constitution of the State of California;
  2. The result of that substitution would require action to be taken by or against 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.
  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 the 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.
  1. "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this State or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3.28.260. 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 Section.

3.28.270. 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 productions, 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 Taxations 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 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 person of the property the storage, use or other consumption of which is subject to the use tax.

3.28.280. Amendments. All amendments subsequent to the effective date of this Article 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 Article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Article.

3.28.290. 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.

3.28.300. Annual Audit and Public Report. Annually the City Council retains an independent auditor to conduct an audit of and provide audited financial statements for all of 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 auditors' report shall be presented to the Council and made available to the public. Additionally, the City Administrator shall annually prepare and present to the Council and the public a report in conjunction with the audit that reviews the status and performance of the programs and services funded wholly or partially with proceeds of the tax.

3.28.310. Termination Date. The authority to levy the taxes imposed by this Ordinance shall expire twenty (20) years from the Operative Date, unless extended by the voters."

**SECTION 3. REPEAL OF MEASURE D.** Upon the Operative Date of this Ordinance as provided in Section 3.28.180 of the Carmel-by-the-Sea Municipal Code, the 1% transactions and use taxes authorized by Measure D, approved by the electorate of the City of Carmel-by-the-Sea on November 6, 2012, is hereby repealed, terminated and of no further force or effect.

**SECTION 4. CEQA Findings.** For purposes of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), a "project" is defined in State CEQA Guidelines Section 15378 (a) as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment". The City Council hereby finds that the proposed Ordinance will not result in any change in the environment and thus is not a project subject to the requirements of CEQA. Additionally, the proposed Ordinance involves the creation of a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment and thus the City Council finds the proposed Ordinance is not a project subject to the requirements of CEQA pursuant to CEQA Guidelines Section 15378 (b)(4). Further, even if the adoption of this Ordinance was deemed to be a project subject to CEQA, the City Council finds the proposed Ordinance is exempt from CEQA under the common sense exemption set forth in Section 15061(b)(3), which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and thus 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.

**SECTION 5. Effective Date.** This Ordinance relates to the levying and collecting of transactions and use taxes 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 voters casting votes in the election; however, the collection of the transactions and use taxes shall be in accordance with Section 3.28.180 of the Carmel-by-the-Sea Municipal Code as the Operative Date.

**SECTION 6. Severability.** If any sections, subsections, sentences, clauses, phrases or portions of this chapter are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The People hereby declare that they would have passed this and each section, subsection, phrase or clause of this Ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

**SECTION 7. Publication.** The City Clerk is directed to publish this Ordinance as required by State law.

**PASSED AND ADOPTED BY THE ELECTORATE OF THE CITY OF CARMEL-BY-THE-SEA  
this 3rd day of March 2020, by the following vote:**

AYES:

NOES:

APPROVED:

ATTEST:

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Dave Potter  
Mayor

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Britt Avrit, MMC  
City Clerk