

REPORT TO CITY COUNCIL

City of Nevada City
317 Broad Street
Nevada City, CA 95959
www.nevadacityca.gov

January 13, 2015

TITLE: Transaction and Use Tax Options and Election Timing

RECOMMENDATION: Hold a public hearing on both the proposed General Tax ordinance and the proposed Special Tax ordinance and either 1) hold a first reading of the General Tax ordinance or the Special Tax ordinance to preserve the ability to adopt in time for the June 7, 2016 election; or 2) provide alternate direction to the City Manager.

CONTACT: Mark Prestwich, City Manager

BACKGROUND: On January 22, 2015, the City Council unanimously adopted a long-term funding strategy to place a transactions and use tax (sales tax) measure on the June 7, 2016 ballot. This decision was made after the City received notice from the Nevada County Consolidated Fire District that they were ending an 11-year co-staffing relationship. Consolidated Fire District's subsequent removal of three firefighters from Nevada City's Fire Station 54 on Providence Mine Road on April 19, 2015 added a new annual operational cost of \$275,000 to the City's General Fund.

DISCUSSION: On October 28, 2015, the City Council provided direction to Staff to prepare an Ordinance, subject to voter approval, extending the existing 3/8 cent Transactions and Use Tax for general purposes. The annual projected revenue of \$432,000 would provide the City the availability to continue addressing its citywide operational, capital and maintenance needs, and prevent a deterioration in service levels. The proposed ordinance requires a 4/5 vote in order to be placed on the ballot and majority voter support. A copy of the draft Ordinance is attached to this report.

Since this direction, City staff has received some citizen feedback that the City should alternatively consider a Special Tax and that such a tax should also include resources for the Police Department. A 3/8 cent Transaction and Use Special Tax for fire and police would provide the needed sustainable funding for three replacement firefighters as well as a new dedicated 40-hour per week walking "foot-beat" Police Officer in the downtown for crime prevention.

While the City's sales tax rate would increase temporarily by 3/8 cent for less than 18 months (from 8.5% to 8.875%), the rate would be reduced by a corresponding 3/8 cent when the City's temporary Measure L tax expired March 31, 2018. Special tax measures require 2/3 voter approval and a 4/5 City Council vote to be placed on an election ballot.

General vs. Special Tax

The challenges with the Fire Department involves a long-term shortfall that requires a sustainable revenue source on an ongoing basis. The City is currently utilizing temporary Measure L funds that could suffice if the sunset provision were removed on the City's

existing Measure L general tax, leaving approximately \$150,000 annually to address recurring one-time needs of the City. Alternatively, a special tax for fire and police could provide the necessary funding to keep Fire Station 54 open and enhance Police services. The passage of a special tax ordinance in June 2016 would free up Measure L funds that have been used to pay for replacement firefighters.

Election Timing

There are several issues to consider regarding a June vs. November 2016 election date:

- Both the June and November elections will likely include large voter turnout. For example, the June 2016 election is the City's Municipal Election involving three City Council seats, a Presidential Primary involving no incumbent President, and will include a Business License Tax Simplification Measure and a short-term rental initiative. The November election is a Presidential Election which historically draws large voter turnout.
- Passage of a Special Tax measure in June (vs. November) provides the resources to restore an administrative position in City Hall earlier that has been vacant since the Consolidated Fire District removed their three firefighters (the vacant position is paying for one of the three limited-term firefighter positions currently). The vacancy has resulted in significant workload impacts on the Administrative/Finance Department which provides human resources, risk management, finance and customer service functions with only three staff currently.
- The City was fortunate to hire three limited-term firefighters through June 2016 that tested at the top of their class. Council action will be necessary to extend the limited-term positions to November 2016 at a cost of approximately \$65,000 if that is the preferred election date.

Staff has prepared General Tax and Special Tax ordinances for a June 7, 2016 ballot and is recommending the City Council hold a public hearing and first reading of either ordinance, or provide alternate direction to the City Manager (e.g. prepare an ordinance for the November election and return with a draft for review and public hearing at the subsequent Council meeting).

ENVIRONMENTAL CONSIDERATIONS: Not applicable.

FINANCIAL CONSIDERATIONS: California state law authorizes cities to seek voter approval of transaction and use taxes in multiples of 0.125 percent so long as the combined transaction and use taxes do not exceed two percent. Special tax revenues must be used for purposes specified in an ordinance. General Purpose sales tax revenues may be used for any General Fund purpose including Fire, Police, Parks and routine maintenance requirements. An extension of the City's existing 3/8 cent General sales tax would provide approximately \$432,000 annually, as would a 3/8 cent Special Tax. It is estimated that non-City residents generate more than 60% of Nevada City sales tax revenues.

ATTACHMENTS:

- ✓ General Tax Draft Ordinance
- ✓ Special Tax Draft Ordinance

ORDINANCE NO. 2016-XX

AN ORDINANCE OF THE CITY OF NEVADA CITY EXTENDING THE 3/8 OF 1% TRANSACTIONS AND USE TAX FOR GENERAL PURPOSES TO CONTINUE TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, pursuant to California Revenue and Taxation Code Sections 7285.9, the City of Nevada City (the "City") has the authority to levy a Transactions and Use Tax for general purposes;

WHEREAS, a majority of the voters of the City approved a three-eighths cent per one dollar (0.375%) Transactions and Use Tax at an election held on November 6, 2012;

WHEREAS, the City's Transactions and Use Tax Ordinance is found in Chapter 3.52 of Title 3 of the City's Municipal Code;

WHEREAS, Section 3.52.160 of Chapter 3.52 sets forth a "Termination Date" of five (5) years after its operative date, at which time Chapter 3.52 will be repealed unless an amendment is approved by the voters of the City at an election called for that purpose; and

WHEREAS, an amendment of the City's Transactions and Use Tax will be submitted to the voters to delete the sunset provision of Section 3.52.160 and thus extend the "Termination Date" of Chapter 3.52 indefinitely.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEVADA CITY DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Amendment. Section 3.52.160 of Chapter 3.52 of Title 3 of the City's Municipal Code providing that the tax shall expire five (5) years after its operative date is hereby repealed.

Section 2. Approval by the Voters. This Ordinance shall be submitted to the voters at the general municipal election to be held on June 7, 2016. Upon approval by a majority of the voters of the City voting on this Ordinance, the Transactions and Use Tax set forth in Chapter 3.26 of the City's Municipal Code shall be re-authorized and extended indefinitely.

PASSED AND ADOPTED at a regularly scheduled meeting by the City Council of the City of Nevada City this _____ day of _____, 2015, by a two-thirds vote of the City Council, by the following vote:

AYES:

NOES:

ABSTAIN/ABSENT:

Jennifer Ray, Mayor

Attest: _____
Niel Locke, City Clerk

ORDINANCE NO. 2016-XX

**AN ORDINANCE OF THE CITY OF NEVADA CITY
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

THE CITY COUNCIL OF THE CITY OF NEVADA CITY DOES ORDAIN AS FOLLOWS:

Section 1. TITLE. This ordinance shall be known as the Nevada City Fire and Police Transactions and Use Tax Ordinance. The city of Nevada City hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 2. 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 3. 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

Section 4. CONTRACT WITH STATE. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 5. 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 3/8 of 1% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 6. 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 7. 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 3/8 of 1% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 8. 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 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

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

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

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

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

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

Section 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.

Section 11. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

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

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

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

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 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.

Section 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.

Section 14. CITIZENS OVERSIGHT COMMITTEE. Although not otherwise required by law, the city council shall, by resolution adopted before the operative date of this ordinance, establish a citizens oversight committee to review the revenue and expenditure of funds from the tax adopted by this ordinance. The members' terms and qualifications, and duties and scope of the committee, shall be as established by the resolution.

Section 15. INDEPENDENT ANNUAL AUDIT. The proceeds resulting from this transactions and use tax shall be accounted for in a special fund and become subject to the same independent annual audit requirements as other general fund revenue. The independent auditor's report, which shall include an accounting of the revenues received and expenditures made from the transactions and use tax, will be presented annually to the City Council and made available for public review.

Section 16. 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 17. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

Section 18. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall continue indefinitely until terminated by a majority of the voters at a regularly scheduled municipal election.

Section 19. The following measure shall be placed on the ballot for the general election to be held on June 7, 2016, and the measure shall read as follows:

To ensure Nevada City's Fire Station No. 54 remains operational, continues to provide essential emergency and medical response services to the community, and maintains current emergency response times, and to fund one extra Police Officer dedicated to Historic District patrol and crime prevention services, shall the City of Nevada City enact a three-eighths cent per one dollar transactions and use tax with all funds to be spent locally, and subject to annual audit and citizen oversight?

_____ YES _____ No

Section 20. All of the funds generated from this revenue source shall be restricted to use exclusively for fire and police protection purposes: including the operation, maintenance, and improvement of fire and police facilities within the City; maintenance, replacement, and upgrading of fire and police equipment; staffing and training of fire and police personnel and support staff; and expenditures necessary to support mutual aid from and to like agencies in other jurisdictions in time of need, and for no other purpose. It is intended that the revenues generated

will provide the resources for Nevada City to maintain and operate its own municipal fire and police department to adequately provide for public safety for its residents and to participate in mutual aid arrangements with like agencies. These expenses are real and ongoing rather than one-time expenditures that could be satisfied within a set period of time, so that collection of this tax shall be ongoing, with no term or sunset provision, without any need to resubmit it to the voters, but subject to termination by a majority of the voters at a future regular municipal election called that purpose. An Expenditure Plan has been prepared by the Nevada City Fire and Police Departments reflecting existing and anticipated expenditures currently know to be necessary to provide effective fire and police protection purposes now and when the existing general tax sunsets in 2018 and the funds raised by this ordinance will be expended in accordance with that plan. The Expenditure Plan is attached hereto and incorporated herein.

PUBLICATION: The City of Nevada city shall publish this Ordinance in The Union, a newspaper of general circulation, within 15 days of the date of its passage

PASSED AND ADOPTED at a regularly scheduled meeting of the City Council of the city of Nevada City , State of California, on _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

Jennifer Ray, Mayor

Attest: _____
Niel Locke, City Clerk

I, Niel Locke, duly deputized City Clerk of the City of Nevada City, California, do hereby certify that the above is a true and correct copy of Ordinance No. 2016-XX duly passed and adopted by the City council of the City of Nevada City on the ____ day of _____, 2016.

Niel Locke, City Clerk

City of Nevada City Expenditure Plan of Anticipated Three-Eight (3/8) Cent Sales Tax Revenue

The City requires a sustainable funding source to fund three permanent firefighter positions to address a staffing shortfall that occurred in April 2015 when the Nevada County Consolidated Fire District removed three firefighters from the formerly co-staffed City Fire Station No. 54 on Providence Mine Road. The City also desires to increase sworn Police staffing to include sustainable funding for a new full-time Police Officer dedicated to foot patrol and crime prevention in the Historic District. Remaining resources shall be allocated for Police and Fire equipment, training and facility maintenance and other eligible expenses.

The City estimates the sales tax will provide annual revenues of approximately \$432,000 in fiscal year 2016/17.

Expenditure Plan for a Typical Year*

Three (3) Firefighters	\$ 275,000
One (1) Police Foot Patrol Officer	120,000
Police/Fire Equipment, Training & Facility Maintenance	37,000
TOTAL	\$ 432,000

* Revenue and expenditure figures will adjust annually due to inflation and performance