SPECIAL MEETING OF THE MILPITAS CITY COUNCIL

AGENDA

MONDAY, AUGUST 5, 2024
MILPITAS COMMUNITY CENTER AUDITORIUM,
457 E. CALAVERAS BLVD, MILPITAS, CA
5:30 PM (PUBLIC BUSINESS)

For assistance in the following languages, you may call:
Đối với Việt Nam, gọi 408-586-2400
Para sa Tagalog, tumawag sa 408-586-3051
Para español, llame 408-586-3072

** To access written translation during the meeting, scan the QR Code.*

The City Council meeting is held in the Milpitas Community Center, 457 E. Calaveras Blvd., Milpitas and via teleconference/Zoom webinar.
You may watch the Council meeting without providing public comment by accessing it via links here.

Meeting shall be livestreamed - Go to:
Facebook: https://www.facebook.com/CityofMilpitas/
YouTube: https://www.milpitas.gov/youtube
Web Streaming: https://www.milpitas.gov/webstreaming

PUBLIC COMMENT INSTRUCTIONS

Oral public comments may only be provided live during the City Council meeting in person, unless the City Council approves remote public comment. All comments provided shall be limited to three minutes or less as determined by the Mayor. All members of the public will be limited to one comment per agenda item, and one comment for non-agenda items. Members of the public may submit written comments by email to CityClerk@milpitas.gov

The meeting will be streamed via Zoom for viewing purposes only unless the City Council approves remote public comment. To watch via Zoom, please register at:

https://ci-milpitas-ca-gov.zoom.us/webinar/register/WN_BOCoe9RJQ8ai_dvtVuwTPQ

NOTE: If a member of the public wishes to share any presentation materials for Council consideration, they must be submitted to the Clerk's Office by email to CityClerk@milpitas.gov by 12:00 p.m. on the day of the meeting. No presentations will be accepted in person in the Council Chambers.

MILPITAS CITY COUNCIL CODE OF CONDUCT

- Be respectful and courteous (words, tone, and body language).
- Model civility.
- Avoid surprises.
- Praise publicly and criticize privately.
- Focus on the issue, not the person.
- Refrain from using electronic devices while on the Council dais.
- Disclose conflicts of interest and affiliations related to agenda items.
- Separate governing from campaigning.
- The Council speaks with one voice after making policy on issues.
- Respect the line between policy and administration.
- Council will hold one another accountable to comply with this Code of Conduct.

CALL MEETING TO ORDER by Mayor and ROLL CALL by City Clerk (5:30 PM)

PLEDGE OF ALLEGIANCE

INVOCATION (Councilmember Barbadillo)

PRESENTATIONS

PUBLIC FORUM

Members of the public are invited to address the City Council on the agenda items listed below only. Comments will be limited to three minutes or less at the Mayor's discretion. When called to speak, you are encouraged to state your name for the record.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

READING OF THE CITY COUNCIL CODE OF CONDUCT

APPROVAL OF AGENDA

AGENDA ITEMS

1. **Adopt a Resolution Submitting the City of Milpitas Public Services Reauthorization Measure to the Voters at the November 5, 2024 General Municipal Election, Reiterating the City's Request that the Election be Consolidated with Other Elections Held on that Date and Taking Certain Related Actions (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)**

   Recommendation: Adopt a resolution by 4/5 vote calling for the placement of a General Tax Measure on the Ballot for the November 5, 2024 General Municipal Election for submission to the qualified voters of an Ordinance of the City Of Milpitas Amending Chapter 4 of Title IX of the Municipal Code to Impose a Transactions and Use Tax to be Administered by the California Department of Tax and Fee Administration, requesting the Board of Supervisors of the County of Santa Clara to consolidate a General Municipal Election to be held on November 5, 2024 with the Statewide General Election on that date and providing for filing of primary and rebuttal arguments and setting rules for filing of written arguments regarding a City Measure to be submitted at the election.

ANNOUNCEMENTS AND FUTURE AGENDA ITEMS

Members of the City Council or City Manager may make brief announcements at this time. Members of the City Council may also suggest future agenda items. For future agenda items, the City Council shall not debate the topic or engage in discussion but shall simply state a "yes" or "no" as whether to move the item forward. If a majority of the City Council agrees to move the item forward, the City Manager shall place the item on a future agenda.

ADJOURN TO CLOSED SESSION

(a) CONFERENCE WITH LEGAL COUNSEL - Existing Litigation

Existing Litigation Pursuant to Government Code § 54956.9(d)(2)
In the Matter of *McHarris vs. City of Milpitas*, Superior Court of California, County of Santa Clara, Case No. 23CV427505
City as Defendant

CLOSED SESSION ANNOUNCEMENT:

Report on action taken in Closed Session, if required per Government Code Section 54957.1, including the vote or abstention of each member present.

ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other City agencies exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail:mmutalipassi@milpitas.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.milpitas.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on City website. City Council agendas and related materials can be viewed online: www.milpitas.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.milpitas.gov or at Milpitas City Hall.
Contact the City Clerk's Office at 408-586-3001 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to CityClerk@milpitas.gov prior to the meeting. You may request a larger font agenda.

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Adopt a Resolution Submitting the City of Milpitas Public Services Reauthorization Measure to the Voters at the November 5, 2024 General Municipal Election, Reiterating the City's Request that the Election be Consolidated with Other Elections Held on that Date and Taking Certain Related Actions (Staff Contact: Matt Cano, Assistant City Manager, 408-586-3012)**
Category:	Leadership and Support Services
Meeting Date:	8/5/2024
Recommendation:	Adopt a resolution by 4/5 vote calling for the placement of a General Tax Measure on the Ballot for the November 5, 2024 General Municipal Election for submission to the qualified voters of an Ordinance of the City of Milpitas Amending Chapter 4 of Title IX of the Municipal Code to Impose a Transactions and Use Tax to be Administered by the California Department of Tax and Fee Administration, requesting the Board of Supervisors of the County of Santa Clara to consolidate a General Municipal Election to be held on November 5, 2024 with the Statewide General Election on that date and providing for filing of primary and rebuttal arguments and setting rules for filing of written arguments regarding a City Measure to be submitted at the election.

BACKGROUND:
The City of Milpitas Public Services Measure (Measure F) is a general quarter-cent (¼ ¢) local transactions and use tax that can be used for any lawful purpose, but has traditionally been used to maintain the City's finances and services, including but not limited to police and fire protection; 9-1-1 emergency response and natural disaster preparation; youth, senior, and recreation services; repairing park equipment and maintaining parks and recreation centers; and attracting and retaining local businesses. This measure is set to expire soon. On August 4, 2020, the City Council adopted a resolution calling for the placement of Measure F on the ballot for the general election in November 2020. This General Tax Measure was approved by the voters of the City of Milpitas on November 3, 2020 for an eight year period.

ANALYSIS:
This agenda report provides general information about the survey results and sales tax, presents the final ballot measure language to reauthorize the quarter-cent general-purpose local Transactions and Use Tax (TUT) Measure for Council consideration, summarizes the various prepared resolutions, and outlines the timeline and critical steps for the Measure.

Community Survey & Citywide Community Engagement
On January 23, 2024, the Mayor and City Council authorized staff to perform a community survey in Spring 2024 to gauge residents' perspectives on local services, priorities, and potential re-authorization of Measure F, the current voter-approved quarter-cent local TUT sales tax, as part of the November 2024 General Election ballot. Based on Council direction staff engaged independent survey experts – Fairbank, Maslin, Maulin, Metz and Associates (FM3) to survey likely November 2024 voters in Milpitas regarding local services, priorities, and reauthorization of the local TUT sales tax.

On May 7, 2024, as part of the Operating Budget Study Session, staff presented key themes and community priorities that were heard by the community as part of the survey regarding the reauthorization of Measure F. Overall, the survey results showed that the number of residents that would likely be in favor of reauthorizing Measure F was above the required threshold for the measure to pass. The survey results have been posted on the City's website.

Following the City's commissioning of an independent community survey, the City solicited feedback on local needs and priorities from residents, business owners, and community members through a city-wide engagement program. The City engaged community members through:

- Two Informational Mailings
- Digital Media Placements
- Social Media & Online Postings
- Informational Emails, Letters, and Community Presentations

The City has engaged hundreds of community members who identified the following top local priorities:

- Maintaining 911 emergency response services
- Repairing streets and fixing potholes
- Maintaining police and fire protection and tracking/investigating crime
- Addressing homeless encampments
- Maintaining public infrastructure and parks

Safety is a priority for our community. Response times for 911 calls to police, fire, and paramedics are critical for stopping crime, protecting victims, and saving lives. The current, voter-approved funding allows the City to maintain neighborhood patrols and officers on the street, preserving our community as a safe place to live, run a business, and raise a family.

Milpitas has a backlog of street and sidewalk repair projects, and if the current voter-approved local funding is lost, the City may have to reduce street repair services, pothole repair, and fixing cracked sidewalks.

Reauthorization of the current voter-approved funding would continue providing a source of locally controlled revenue that must be spent to benefit Milpitas, and does not raise taxes. It simply reauthorizes a measure that was previously approved by voters, allowing the City to continue addressing community priorities and maintain our local quality of life.

Reauthorizing this measure also supports our fiscal stability and continues the strict accountability provisions including annual financial audits, full public disclosure of all spending, citizens oversight committee, and a requirement that all funds be spent to benefit Milpitas – to ensure funds are used efficiently, effectively, and as promised.

Sales Tax Information

The City currently receives its local share of the long-established Bradley-Burns uniform local sales and use tax. Sales tax applies to all retail sales of goods and merchandise except those sales specifically exempted by law. For example, California law exempts the purchase of groceries, prescription medicine, animal feed, and utility payments (electricity, gas, and water) from the payment of sales tax. The use tax generally applies to the storage, use, or other consumption in California of goods purchased from retailers in transactions not subject to the sales tax. Use tax may also apply to purchases shipped to California consumers from another state, including purchases made by mail order, telephone, or Internet.

Measure F currently provides for an extra quarter-cent local transactions and use tax. Including the Measure F local transactions and use tax, the current local sales tax in Milpitas is 9.35%. Several neighboring cities in the South Bay and East Bay also have an overall sales tax percentage of 9.25% or higher. The Cities of San José and Campbell have a sales tax rate of 9.375%, and every city in Alameda County has a sales tax between 10.25% and 10.75%, with neighboring Fremont at 10.25%.

Proposed Ballot Measure Language

Based on Council direction, input from the City Attorney, and the City's communications experts, below is the proposed ballot question for renewal of the quarter-cent general-purpose tax measure, with the maximum number of words as allowed by law (75 words), that would continue until ended by voters. It should be noted that as “City of Milpitas” is a proper noun, it counts as one word, as opposed to three words, in the ballot question:

> **City of Milpitas Public Services Reauthorization Measure.** To maintain fiscal stability and essential City services, including 911 emergency response, police and fire protection; repairing streets/fixing potholes; tracking/investigating crime; addressing homeless encampments/affordable housing needs; natural disaster/emergency preparation; maintaining neighborhood parks/public infrastructure, shall the measure continuing the existing voter-approved ¼-cent sales tax be adopted, until ended by voters, providing approximately $7,000,000 annually, requiring independent audits, public disclosure, and all funds controlled locally?

Resolution Prepared for Adoption

To place the recommended measure on November 5, 2024 General Municipal Election ballot, staff recommends Council adopt, by at least a 4/5 vote, one resolution with three separate actions, as follows:

1. Submits to the voters an Ordinance to enact a General Transactions and Use Tax (TUT) at the rate of one-quarter cent (1/4 ¢) until ended by voters;
2. Requests that the County Board of Supervisors consolidate the City’s election with the statewide general election on November 5, 2024; and
3. Establishes the parameters for filing primary and rebuttal arguments regarding the measure.

Ballot Arguments

Elections Code Section 9282(b) provides that when a measure is placed on the ballot by the City Council, written arguments for and against the measure may be filed by any of the following: the City Council or any member or members of the Council authorized by the Council; any individual voter who is eligible to vote on the measure; a bona fide association of citizens; or any combination of voters and associations.

Elections Code Section 9287(a) provides that if more than one argument for or against any city measure is submitted, the city elections official shall give preference and priority in the following order: (1) the legislative body, or member or members of the legislative body authorized by that body; (2) individual voter or bona fide association of citizens, or combination of those two; (3) bona fide associations of citizens; (4) individual voters who are eligible to vote on the measure.

If the City Council decides to authorize certain members of the Council to submit an argument on the Council’s behalf, then pursuant to Election Code Section 9287(a) that argument will be given preference over any other argument submitted in favor of the ballot measure. If the Council chooses not to authorize an argument, the City Clerk will follow the priorities described in Elections Code Section 9287(a) in selecting an argument to be printed in the Voter Information Guide.

Staff recommends that the Council adopt a resolution without designating any Members of the Council to submit a written argument in favor of the measure. This action would allow greater opportunity for local associations and/or voters to submit ballot arguments.

Timeline of Approvals for Potential Ballot Measures

If the City Council decides to move forward with placing the reauthorization of the local TUT measure on the November 5, 2024 ballot, the Council must adopt the related resolution on or before August 9, 2024, to meet California Elections Code deadlines. The table below outlines a timeline of actions for the TUT Measure.

Day of Week	Date	Action
Monday	August 5, 2024	City Council meeting to place TUT measure on the November ballot
Friday	August 9, 2024	Last day to submit TUT measure to Registrar of Voters
Tuesday	August 13, 2024	All Arguments in Favor or Opposed to the Measure to be submitted to the City Clerk

Tuesday	August 20, 2024	Rebuttals to Arguments to be submitted to the City Clerk
Tuesday	November 5, 2024	Election Day
Thursday	December 5, 2024	County Registrar of Voters scheduled to certify final election results
Tuesday	December 17, 2024	City Council scheduled to certify the Measure's results

POLICY ALTERNATIVE(S):

Alternative: Do not approve placing the TUT measure on the ballot.

Pros: The City will save in upfront one-time expenditures.

Cons: The City will potentially forgo an opportunity for the voters to decide whether to maintain the City's finances and services, including 911 emergency response, police and fire protection; repairing streets/fixing potholes; tracking/investigating crime; addressing homeless encampments/affordable housing needs; natural disaster/emergency preparation; maintaining neighborhood parks/public infrastructure.

Reason not recommended: As indicated in the City Manager's Transmittal Letter to the City Council in the FY 2024-25 Adopted Budget, the City is facing significant fiscal challenges over the next decade. By ensuring the City maintains the quarter-cent sales tax, these fiscal challenges can be mitigated. Absent this ongoing funding, the City would likely face a significant structural deficit with service level reductions after the expiration of the funding in April 2029. By placing the ballot measure for voter consideration on the November 5, 2024 ballot, voters can weigh in on maintaining or reducing City services. Additionally, if this locally controlled sales tax measure is not extended in 2029, another regional entity may request this sales tax increment from Milpitas voters in the future, which would mean that Milpitas residents would still pay this tax, but it would not be locally controlled.

FISCAL IMPACT:
The cost for placing the local TUT measure on the ballot for voter consideration is estimated to be approximately $89,000, and the educational outreach is estimated to be approximately $135,000. There are sufficient funds in the unanticipated expenditure reserve to cover these costs. The City of Milpitas FY 2024-25 Adopted Budget projects sales tax revenues of $29.6 million from the Bradley-Burns uniform local sales and use tax, and $7.3 million from the Measure F local transactions and use tax.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):
The action is a fiscal activity of the City government or an action to create a City government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and is not a project pursuant to Cal. Code of Regs., tit. 14, § 15378.

RECOMMENDATION:
Adopt a resolution by 4/5 vote calling for the placement of a General Tax Measure on the Ballot for the November 5, 2024 General Municipal Election for submission to the qualified voters of An Ordinance of the City Of Milpitas Amending Chapter 4 of Title IX of the Municipal Code to Impose a Transactions and Use Tax to be Administered by the California Department of Tax and Fee Administration, requesting the Board of Supervisors of the County of Santa Clara to consolidate a General Municipal Election to be held on November 5, 2024 with the Statewide General Election on that date and providing for filing of primary and rebuttal arguments and setting rules for filing of written arguments regarding a City Measure to be submitted at the election.

ATTACHMENT(S):
(a) Resolution calling for the ballot measure, requesting consolidation and regarding ballot arguments, and establishing the parameters for filing primary and rebuttal arguments regarding the measure.

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA, SUBMITTING THE CITY OF MILPITAS PUBLIC SERVICES REAUTHORIZATION MEASURE TO THE VOTERS AT THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION, REITERATING THE CITY'S REQUEST THAT THE ELECTION BE CONSOLIDATED WITH OTHER ELECTIONS HELD ON THAT DATE AND TAKING CERTAIN RELATED ACTIONS

WHEREAS, the City of Milpitas takes pride in delivering essential local services and ensuring a high quality of life for its residents; and

WHEREAS, the existing voter-approved City of Milpitas Public Services Measure expires soon and without reauthorization, the City will lose $7 million a year in local funding for City services, such as 911 emergency response and street repair, potentially resulting in cuts to public services; and

WHEREAS, reauthorization of this measure makes our City safer by continuing to raise funds that will allow the City to provide services including, to repair potholes and cracked sidewalks, and addressing our severe backlog of repairs; and

WHEREAS, 911 police, fire, and paramedic response times are critical for stopping crime, protecting victims, and saving lives, and funds from this measure could be used to retain neighborhood patrols and officers on the street, keeping our community safe to live, run a business, and raise a family; and

WHEREAS, this measure helps support our fiscal stability and ability to provide essential City services, such as 911 emergency response, police and fire protection; repairing streets/fixing potholes; tracking/investigating crime; addressing homeless encampments and affordable housing needs; natural disaster/emergency preparation; maintaining neighborhood parks/public infrastructure; and

WHEREAS, reauthorizing this measure supports our fiscal stability and continues the strict accountability provisions including annual financial audits, full public disclosure of all spending, and by law, all funds be spent to benefit Milpitas, ensuring funds are used efficiently, effectively, and as promised; and

WHEREAS, funding from this measure continues to be monitored by an independent citizen's oversight committee created by the City Council; and

WHEREAS, this measure does not increase taxes but simply authorizes a continuation of an existing voter-approved transaction and use tax that provides locally controlled funding for local services;

WHEREAS, by law, non-prepared food purchased as groceries and prescription medications would continue to be exempt from this measure; and

WHEREAS, by its Resolution No. 9330, adopted on June 4, 2024, the City Council called a general municipal election to be held on November 5, 2024 (the "Election") and requested that the Santa Clara County Board of Supervisors consolidate the Election with the statewide election conducted on the same date by the Santa Clara County Registrar of Voters; and

WHEREAS, Section 7285.9 of the Revenue & Taxation Code authorizes the qualified voters of the City to approve a transactions and use tax for general purposes by a majority vote of those casting ballots on the tax at an election when the ordinance is also adopted by a two-thirds vote of all of the members of the City Council; and

WHEREAS, such transactions and use taxes are commonly referred to as "local sales taxes" and are separate taxes from the basic one-percent (1%) Bradley-Burns sales and use tax that is collected in every city in California; and

WHEREAS, at the November 3, 2020 election, by their adoption of Measure F, the voters of the City of Milpitas approved the City of Milpitas Public Services Measure, which imposed a quarter-cent (0.25%) transactions and use tax; and

WHEREAS, the City of Milpitas Public Services Measure will, by its own terms, expire in 2029; and

WHEREAS, the City Council desires to submit to the voters at the Election a ballot measure that will reauthorize the existing voter-approved City of Milpitas Public Services Measure and change the sunset date to until ended by voters; and

WHEREAS, as is currently the case for the City of Milpitas Public Services Measure, proceeds of the reauthorized tax will be deposited in the City's general fund and available for any lawful municipal purpose.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines and resolves as follows**:**

1. The foregoing recitals are true and correct and incorporated herein.

2. Pursuant to Elections Code Section 9222, Government Code Section 53723 and Revenue & Taxation Code Section 7285.9, the ordinance attached hereto as Exhibit "A" and incorporated herein by reference, (the "Ordinance") shall be submitted to the voters at the Election.

3. The question submitted regarding the Ordinance shall appear on the ballot as follows:

City of Milpitas Public Services Reauthorization Measure. To maintain fiscal stability and essential City services, including 911 emergency response, police and fire protection; repairing streets/fixing potholes; tracking/investigating crime; addressing homeless encampments/affordable housing needs; natural disaster/emergency preparation; maintaining neighborhood parks/public infrastructure, shall the measure continuing the existing voter-approved ¼-cent sales tax be adopted, until ended by voters, providing approximately $7,000,000 annually, requiring independent audits, public disclosure, and all funds controlled locally?	Yes No	

4. Adoption of this measure requires a majority vote of those voting on the matter. The type of tax, rate of tax, and manner of collection are set forth in the Ordinance.

5. The City Clerk is instructed to transmit the Ordinance to the City Attorney along with a request that an impartial analysis be prepared pursuant to Elections Code Section 9280.

6. Request for Consolidation. Pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of Santa Clara is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 5, 2024, for the purpose of submitting to the voters the question relating to the City of Milpitas Public Services Reauthorization Measure.

7. Canvass of Returns. The County Registrar of Voters is authorized to canvass the returns and perform all other proceedings incidental to and connected with the General Municipal Election. The Election shall be held in

all respects as if there were only one election, and only one form of ballot shall be used, which shall be in form and content as required by law. Pursuant to California Elections Code Sections 10403 and 10418, the election will be held and conducted in accordance with the provisions of law regulating the Statewide General Election.

8. The vote centers in the City for the Election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when the polls shall be closed, pursuant to Election Code section 10242, except as provided in Section 14401 of the Elections Code of the State of California.

9. In all particulars not recited in this Resolution, the Election shall be held and conducted as provided by law for holding municipal elections.

10. The City Council authorizes the City Clerk to take any necessary actions to administer the Election. All reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

11. The Board of Supervisors is requested to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the consolidated election.

12. The City recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for all costs.

13. Pursuant to Section 9282 of the Elections Code, the City Council, or any member or members of the City Council authorized by the body, or any individual voter who is eligible to vote on the measure or bona fide association of citizens, or any combination of voters and associations, may file a written argument, not to exceed 300 words in length, accompanied by the printed name(s) and signature(s) of the person(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, for or against the measure. In the event that more than one argument for or against a measure is timely submitted, the City's elections official shall give preference and priority first, to arguments submitted by member(s) of the City Council, as authorized by this Resolution, and second, to individual voters, bona fide associations, or a combination thereof, in the order set forth in Section 9287 of the Elections Code.

14. The City Council elects to authorize rebuttal arguments pursuant to Section 9285 of the Elections Code. When the City's elections official has selected the arguments for and against the measure to be printed and distributed to the voters, the elections official 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. The author or a majority of the authors of an argument relating to the foregoing city measure may prepare and submit a rebuttal argument not to exceed two hundred and fifty (250) words in length. A rebuttal argument may not be signed by more than five (5) authors. The rebuttal arguments shall be filed with the City Clerk not more than ten (10) days after the final date for filing direct arguments. Rebuttal arguments shall be printed in the same manner as direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

15. The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

16. Notice of the election is hereby 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.

17. The full text of the Measure shall not be printed in the voter information guide, and a statement shall be printed in the ballot pursuant to Elections Code 9223 advising voters that they may obtain a copy of this resolution and the Measure, at no cost, upon request made to the City Clerk.

18. The City Clerk is authorized, instructed, and directed to coordinate with the Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the Election.

19. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

20. The City Clerk shall transmit certified copies of this Resolution to the Board of Supervisors and the Registrar of Voters.

Passed and adopted this ___the day of August, 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

____
Suzanne Guzzetta, City Clerk

APPROVED:

____
Carmen Montano, Mayor

APPROVED AS TO FORM:

____
Michael Mutalipassi, City Attorney

Attachment "A"
Ordinance to be Submitted To Voters

<u>REGULAR</u>

NUMBER:

TITLE: **AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 4 OF TITLE IX OF THE MUNICIPAL CODE TO IMPOSE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

HISTORY: This Ordinance was approved by the voters at the general election on ______________.

ATTEST: APPROVED:

________________________________ ___________________________

Suzanne Guzzetta, City Clerk Carmen Montano, Mayor

APPROVED AS TO FORM:

____

Michael Mutalipassi, City Attorney

ORDINANCE NO._________

AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 4 OF TITLE IX OF THE MUNICIPAL CODE TO IMPOSE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

THE PEOPLE AND THE CITY COUNCIL OF THE CITY OF MILPITAS DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Amendment. Chapter 4 (Transactions and Use Tax) of Title IX (Revenue and Taxation) of the Municipal Code is amended to read as follows:

“**CHAPTER 4. TRANSACTIONS AND USE TAX**

IX-4-1.01 Title

This chapter shall be known as the City of Milpitas Public Services Transactions and Use Tax Ordinance of 2024. The City of Milpitas hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

IX-4-1.02 Operative Date

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter, the date of such adoption being as set forth at the bottom of the voter-approved ordinance adding this chapter to this code.

IX-4-1.03 Purpose

This chapter 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 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this 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.

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 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 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.

IX-4-1.04 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 the transactions and use tax imposed by this chapter; 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.

IX-4-1.05 Imposition of 0.25% Transactions Tax

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 0.25% 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 Chapter.

IX-4-1.06 Place of Sale

For the purposes of this chapter, 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.

IX-4-1.07 Imposition of 0.25% Use Tax

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 chapter for storage, use or other consumption in said territory at the rate of 0.25% 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.

IX-4-1.08 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 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 chapter as though fully set forth herein.

IX-4-1.09 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:

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 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 California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Chapter.

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.

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

IX-4-1.10 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 chapter.

IX-4-1.11 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 chapter.

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 chapter.

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 chapter, 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 chapter.

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 chapter.

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 chapter 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.

IX-4-1.12 Amendments

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

IX-4-1.13 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 chapter, 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.

IX-4-1.14 Accountability and Use of Tax Proceeds

Proceeds of the tax imposed by this chapter shall be deposited in the general fund of the City and shall be available for any lawful purpose. Once deposited, such proceeds shall be audited as part of City's annual independent audit of the general fund and shall be accounted for in the City's Consolidated Annual Financial Report."

SECTION 2: Relation to Prior Tax. The intent of this Ordinance is to reauthorize the City's existing transactions and use tax without a sunset date. Chapter 4 of Title IX of the Municipal Code currently imposes a 0.25% transactions and use tax that terminates in 2029. The intent of this Ordinance is that, upon the operative date of the 0.25% transactions and use tax imposed by this Ordinance, the existing 0.25% transactions and use tax will terminate. Nothing in this Ordinance shall be interpreted to (i) cause there to be any calendar quarter in 2025 during which the existing 0.25% tax and the reauthorized 0.25% tax both apply or (ii) cause there to be any calendar quarter in 2025 during which neither the existing tax nor the reauthorized tax apply.

SECTION 3: Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 4: Election Required. This Ordinance shall not become operative unless and until it is approved both (i) by the voters by the City Council by a vote of two thirds of all of its members and (ii) by a majority vote at the November 5, 2024 General Municipal Election. Nothing in this Ordinance shall be interpreted to repeal the existing Chapter 4 of Title IX of the Municipal Code unless this ordinance has been approved by the voters.

SECTION 5: **Amendment.** This Ordinance may be amended by the City Council. However, no such amendment can increase the rate of the tax imposed by this Ordinance or make a change that is inconsistent with the laws of the State that govern transactions and use taxes.

SECTION 6: Effective Date. This Ordinance relates to the levying and collecting of a transactions and use tax and shall take effect immediately. However the operative date for the tax imposed by this Ordinance and the termination date for the City's existing transactions and use tax shall be governed by the terms set forth elsewhere in this Ordinance.