RESOLUTION NO. 2586 (2016)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKEPORT CALLING FOR, PROVIDING FOR, AND GIVING NOTICE OF THE GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF LAKEPORT, COUNTY OF LAKE, STATE OF CALIFORNIA, ON THE 8TH DAY OF NOVEMBER, 2016, FOR THE PURPOSE OF SUBMITTING TO THE VOTERS, MEASURE Z TO LEVY A TRANSACTIONS AND USE TAX OF ONE CENT TO BE VOTED ON AT SAID ELECTION, ESTABLISHING DEADLINES FOR DIRECT AND REBUTTAL ARGUMENTS, PROVIDING FOR THE PREPARATION OF AN IMPARTIAL ANALYSIS, AND REQUESTING APPROVAL OF THE LAKE COUNTY BOARD OF SUPERVISORS FOR CONSOLIDATION OF THIS ELECTION WITH THE STATEWIDE GENERAL ELECTIONS TO BE HELD ON THAT DATE, AND REQUESTING ELECTION SERVICES TO BE PROVIDED BY THE COUNTY ELECTIONS OFFICIAL

WHEREAS, Lakeport is the heart of our region, with 30,000 people living working or visiting each day; and

WHEREAS, due to budget cuts, the City of Lakeport is currently unable to fully staff its police force, and additional funding is needed to hire, attract and retain qualified police officers to reduce emergency response times, improve neighborhood patrols, provide sufficient staffing to ensure officer safety and keep our community safe; and

WHEREAS, safe, clean neighborhoods are essential to maintaining local property values, but the City currently does not have the funding it needs to repair potholes, maintain parks and patrol neighborhood streets; and

WHEREAS, the City needs a reliable, stable source of local funding that keeps taxpayer dollars local and cannot be taken by the State; and

WHEREAS, California Revenue and Taxation Code section 7285.9 authorizes the City to levy a one cent transactions and use tax by ordinance following approval by two-thirds of the City Council and a majority vote of the qualified electors of the City voting in an election on the issue; and

WHEREAS, any funds generated by a locally-enacted revenue measure will be subject to annual audits by an independent auditor and review by an independent citizens' oversight committee at least annually to review the City's expenditure of revenues generated by the transactions and use tax, if approved by the voters, review annual audit reports related to the tax; make written reports to the City Council summarizing the committee's findings and including appropriate recommendations; and

WHEREAS, the transactions and use tax would be levied in addition to the current sales tax and would be collected at the same time and in the same manner as the existing sales tax; and

WHEREAS, the levying of the transactions and use tax of one percent (1%) would not cause the overall transactions and use tax in the City to exceed two percent in accordance with California Revenue and Taxation Code section 7251.1; and

WHEREAS, California Constitution Article XIII C, section 2(b), requires that any general tax imposed, extended, or increased by the City Council be submitted to the electorate and approved by a majority vote before becoming effective; and

WHEREAS, California Government Code section 53724 requires this Resolution calling an election on the transactions and use tax be adopted by a two-thirds vote of the City Council and consolidated with a statewide primary election, a statewide general election or a regularly scheduled local election; and

WHEREAS, California Elections Code section 9222 authorizes the City Council to submit to the voters a proposition for the enactment of any ordinance at an election held not less than 88 days after the date of the order of election; and

WHEREAS, a transactions and use tax is not a property tax on homeowners, and visitors to the Lakeport community will pay their fair share of the costs to use our parks, roads, and police; and

WHEREAS, a transactions and use tax is not applied to food purchased as groceries or prescription medication.

BE IT RESOLVED by the City Council of the City of Lakeport as follows:

SECTION 1: CALL FOR GENERAL MUNICIPAL ELECTION

A. The General Municipal Election is hereby called and ordered to be held in the City of Lakeport, County of Lake, State of California, on the 8th day of November, 2016.

B. The General Municipal Election hereby called and ordered to be held, shall be held and conducted, and the votes received and canvassed, and the returns thereof made, and the result hereof ascertained, determined, and declared as herein provided, and in all particulars not recited herein, according to the laws of the State of California, providing for Municipal Elections; and the polls for such election shall be and remain open during the time required by said laws.

C. The interests of efficiency call for the consolidation of that election with the state general election to be held that same date, the Lakeport City Council hereby declares its intent to consolidate this general election with the Statewide General Election to be held on November 8, 2016. This resolution shall constitute the request for consolidation required by Elections Code section 10403 and the City Clerk shall forward a certified copy of this resolution to the Clerk of the Lake County Board of Supervisors not later than 99 days prior to November 8, 2016.

D. All voting places, precincts, and election officials within the boundaries of the City of Lakeport shall be the same as those for the general election. The City Council hereby acknowledges that the consolidated election will be held and conducted in the manner prescribed by Elections Code section 10418.

E. The Lakeport City Council hereby requests approval of the Lake County Board of Supervisors to authorize the County Elections Official to provide election services to conduct said election.

F. The City Clerk is hereby authorized to utilize the services of the Lake County Clerk for the conduct of the general election. The City of Lakeport hereby agrees to pay the costs of those services as outlined by current policy of the Lake County Elections Division.

SECTION 2: MEASURE TO BE VOTED ON AT GENERAL MUNICIPAL ELECTION

A. The City Council of the City of Lakeport does order submitted to the voters of the City of Lakeport at the General Municipal Election Measure Z as follows:

LAKEPORT PUBLIC SAFETY/ESSENTIAL CITY SERVICES MEASURE. To maintain/enhance general City services including: recruiting, hiring, retaining qualified police officers to improve neighborhood patrols, maintain response to property, burglary, violent crimes; paving/repairing local streets/potholes; enhancing business attraction/youth recreational programs; keeping Lakeport's parks/pool safe and clean; shall the ordinance to enact a one-cent sales tax until ended by voters, providing about $1,500,000 annually, requiring independent audits, citizens' oversight, all revenues controlled locally be adopted?	YES NO

B. Vote Required for Passage of Measure Z: Measure Z shall be submitted to the voters with spaces provided on the ballot form whereby each voter may vote "yes" or "no" on the measure. This measure shall be considered approved if a simple majority plus one of the voters in said election cast a "yes" vote.

C. Measure Z Form: The full text of the ordinance authorizing the transactions and use tax to be approved by the voters, entitled the "Lakeport Public Safety/Essential City Services Measure" is attached as Exhibit "A" to this Resolution. The full text of the ordinance shall be printed in the Voter Information Pamphlet..

SECTION 3. ARGUMENTS FOR AND AGAINST THE MEASURE AND IMPARTIAL ANALYSIS.

A. Primary Arguments. The City Council hereby establishes Friday, August 5, 2016, at 5:00 p.m. as the deadline for submission to the City Clerk of direct arguments in favor or against Measure Z. All primary arguments may not exceed 300 words in length under Elections Code section 9282, and shall be 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 California Elections Code. The argument may be changed or withdrawn until and including the above date, after which no arguments for the Measure may be submitted to the City Clerk. All primary arguments submitted shall comply with Elections Code Section 9600 *et seq*. If more than one argument for or against the Measure is received, the City Clerk shall select the argument for printing and distribution to the voters giving preference and priority in accordance with California Elections Code Section 9287.

B. Rebuttal Arguments. The City Council hereby establishes, Monday, August 15, 2016, at 5:00 p.m. as the deadline for submission to the City Clerk of rebuttal arguments in favor and against Measure Z.

   a. Pursuant to California Elections Code Section 9285, subdivision (b), the City Council hereby adopts the provisions of California Elections Code Section 9285, subdivision (a), relating to rebuttal arguments for the Measure only for the November 8, 2016 election and thereafter repeals this sub-section

   b. The author or a majority of the authors of an argument relating to the Measure may prepare and submit a rebuttal argument or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. The rebuttal argument shall not exceed 250 words and shall not be signed by more than five (5) persons that shall appear therewith. All rebuttal arguments submitted shall comply with Elections Code Section 9600 *et seq*.

C. Impartial Analysis. The City Clerk is directed to transmit copies of Measure Z to the City Attorney who shall prepare an impartial analysis of the measure (not to exceed 500 words) showing the effect of the measures on the existing law and the operation of the measure and file same with the City Clerk no later than Monday, August 15, 2016 at 5:00 pm.

SECTION 4. CEQA

The adoption of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines"). The calling and noticing of a General Municipal Election is not a project within the meaning of CEQA Guidelines Section 15378. The transactions and use tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

SECTION 5. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Resolution or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution or its application to other persons and circumstances. The City Council of the City of Lakeport hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 6. EFFECTIVE DATE

This Resolution shall take effect immediately upon its adoption.

SECTION 7. CERTIFICATION AND NOTICE

The City Clerk shall certify to the passage and adoption of this Resolution, and give notice of this measure to be voted upon in the manner provided by the Elections Code of the State of California.

PASSED AND ADOPTED by the City Council of the City of Lakeport, County of Lake, State of California on this 19th day of July, 2016, by the following vote:

AYES: Mayor Spillman, Council Members Mattina, Parlet, Scheel and Turner
NOES: None
ABSENT: None
ABSTAINING: None

MARC SPILLMAN, MAYOR

ATTEST:

KELLY BUENDIA, CITY CLERK

EXHIBIT A

ORDINANCE NO._____

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

THE PEOPLE OF THE CITY OF LAKEPORT, CALIFORNIA DO ORDAIN AS FOLLOWS:

Section 1. Chapter 3.29 of Title 3 of the Lakeport Municipal Code is hereby adopted to read as follows:

3.29.010. TITLE. This ordinance shall be known as the Lakeport Public Safety and Essential City Services Transactions and Use Tax Ordinance. The city of Lakeport hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.29.020. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

3.29.030. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

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.

3.29.050. 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.

3.29.060. 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 one percent (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.

3.29.070. 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.

3.29.080. 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 one percent (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.

3.29.090. 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.

3.29.100. 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 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.

3.29.110. 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.

3.29.120. 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.

3.29.130. 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.

3.29.140. 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.

3.29.150. 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.

3.29.160. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately. However, no tax imposed by this chapter shall be effective unless that tax has been approved by the voters of the City as required by section 2(b) of Article XIII C of the California Constitution and applicable law.

3.29.170. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall not expire until subsequent action, if any, by the voters of the City to repeal or amend this Ordinance.

3.29.180. INDEPENDENT CITIZEN OVERSIGHT. A five-member Independent Citizens' Advisory Committee will be created and shall meet annually to review the expenditure of revenues generated by the tax imposed by this chapter and to make recommendations to the City Council regarding those expenditures. Members of the Committee will be appointed to terms of not more than 4 years by the City Council. The Independent Citizens' Advisory Committee shall meet publicly on at least a quarterly basis to review all revenues and expenditures of the transactions and use tax imposed by this chapter, review annual audit reports related to the tax, and make at least one written annual report to the City Council at a public meeting summarizing the Independent Citizens' Advisory Committee's findings and including any appropriate recommendations. The minutes of the meetings of Independent Citizens' Advisory Committee shall be provided to the City Council and placed on the next available regular City Council meeting agenda for informational purposes.

3.29.190. AUDIT AND REVIEW. The proceeds of the tax imposed by this chapter, as well as the expenditure thereof, shall be audited annually by an independent accounting firm. The City Council shall discuss the results of such audit at a meeting of the City Council that is open to the public. The report of such audit shall be posted on the City's website.

Section 2. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance upon certification by the City Council of the results of the election approving this Ordinance.

I hereby certify that the forgoing Ordinance was PASSED, APPROVED, AND ADOPTED by the People of the City of Lakeport, California voting on the 8th day of November, 2016.

_____
MARC SPILLMAN, Mayor

Attest:

_____
KELLY BUENDIA, City Clerk

INTRODUCED BY THE City Council of the City of Lakeport on July 19, 2016, at a regular meeting of the City Council of the City of Lakeport held on the 19th day of July, 2016, by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

FINAL PASSAGE by the City Council occurred at a meeting thereof held on the 16th day of August, 2016, by the following vote:

AYES:
NOES:
ABSTAINING:

ABSENT:

_____
MARC SPILLMAN, Mayor

Attest:

_____
KELLY BUENDIA, City Clerk