



**BENICIA CITY COUNCIL
SPECIAL MEETING AGENDA**

AMENDED

**City Council Chambers
July 28, 2014
7:00 PM**

Teleconference Location – 1535 Broadway, New York, NY 10036

*Times set forth for the agenda items are estimates.
Items may be heard before or after the times designated.*

*Please Note:
Regardless of whether there is a Closed Session scheduled, the open session will
begin at 7:30 PM*

I. CALL TO ORDER (7:00 PM):

II. CLOSED SESSION (7:00 PM):

- A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)
One case: Lewis v. City of Benicia**

III. CONVENE OPEN SESSION (7:30 PM):

A. ROLL CALL.

B. PLEDGE OF ALLEGIANCE.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC: A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

IV. ADOPTION OF AGENDA:

V. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN COMMENT.

B. PUBLIC COMMENT.

VI. BUSINESS ITEMS (7:45 PM):

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

A. ADDING THE SALES TAX AND CITY TREASURER BALLOT MEASURES TO THE CALL FOR THE ELECTION. (City Attorney)

The County has requested that the resolution calling for the November 4, 2014 election be amended to add the two ballot measures.

Recommendation:

Adopt the resolution amending the calling of the November 4, 2014 election to add the sales tax and city treasurer ballot measures.

B. ADOPTION OF AN ORDINANCE AND APPROVAL OF A RESOLUTION RELATED TO ENACTING A GENERAL PURPOSE, ONE CENT TRANSACTION AND USE ("SALES") TAX, ADDING CHAPTER 3.22 TO THE BENICIA MUNICIPAL CODE, AND ESTABLISHING NOVEMBER 4, 2014 AS THE DATE FOR A PROPOSED BALLOT MEASURE ASKING BENICIA VOTERS TO APPROVE A ONE-CENT TRANSACTION AND USE TAX. (City Manager)

On June 22nd the City Council conducted a public hearing and introduced an ordinance to place a one-cent sales tax measure on the November ballot.

Following the staff presentation and public comment the City Council unanimously passed the ordinance. The proposed general purpose local funding measure would improve or maintain essential City services relied on by our public, including public safety, 9-1-1 emergency response times, neighborhood police patrols, crime prevention services, programs for youth, pothole repair and other quality of life services. In addition, this measure is needed to ensure that our 31 local parks are properly maintained as safe spaces for children to play and families to visit. If the Council approves the proposed ordinance and resolution, the sales tax measure will be placed on the November 4, 2014 general election ballot to be considered by Benicia voters. If a majority of voters (50% plus 1) support the measure, it would go into effect on April 1, 2015. The proposed measure will also require oversight review by the City of Benicia Finance Committee.

Recommendation:

1) Adopt an ordinance establishing a one-cent, locally dedicated, sales tax measure; 2) Approve a resolution authorizing the question to approve such a measure on the November 4, 2014 general election ballot; and 3) Appoint a Council Sub-Committee to write the ballot measure argument on behalf of the City Council.

VII. ADJOURNMENT (9:00 PM):

Public Participation

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access or Special Needs

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerk's Office.

AGENDA ITEM
CITY COUNCIL MEETING DATE - JULY 28, 2014
BUSINESS ITEMS

DATE : July 23, 2014
TO : City Council
FROM : City Attorney
SUBJECT : **ADDING THE SALES TAX AND CITY TREASURER BALLOT MEASURES TO THE CALL FOR THE ELECTION**

RECOMMENDATION:

Adopt the resolution amending the calling of the November 4, 2014 election to add the sales tax and city treasurer ballot measures.

EXECUTIVE SUMMARY:

The County has requested that the resolution calling for the November 4, 2014 election be amended to add the two ballot measures.

BUDGET INFORMATION:

There is no additional cost as a result of this item. Costs for the ballot measures were noted in the items for those measures (30 cents per voter per measure).

GENERAL PLAN:

N/A

STRATEGIC PLAN:

N/A

BACKGROUND:

On June 17, 2014 the City Council adopted Resolution No. 14-52 to call for the November 4, 2014 election. At that time, the only City items on the ballot were the two council positions. Since that time the Council has taken steps to add the city treasurer ballot measure as well as the sales tax measure. The County has requested that these items be added to the resolution calling for the election. This item does that.

Attachment:

- Resolution Amending the Call for the Election

RESOLUTION NO. 14-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING RESOLUTION NO. 14-52 CALLING AND GIVING NOTICE OF THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014, TO ADD TWO BALLOT MEASURES REGARDING THE CITY TREASURER POSITION AND A SALES TAX MEASURE AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a Consolidated Districts Election shall be held on the 4th day of November, 2014, for the election two (2) City Council Members; and

WHEREAS, candidates for the office City Council are required to file nomination papers for the office selected prior to the election; and

WHEREAS, the City Council previously, by Resolution No. 14-52, called for the election to be held on November 4, 2014 to elect two city council members; and

WHEREAS, the City Council subsequently voted to place two ballot measures before the voters at the November 4, 2014.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby resolve, declare, determine, and order as follows:

1. Pursuant to the requirements of the laws of the State of California relating to general law cities within the State, there shall be, and there is hereby called and ordered held in the City of Benicia, on the 4th day of November, 2014 a General Municipal Election of the qualified electors of the City for the purpose of electing two (2) Council Members, consideration of the Benicia sales tax measure and consideration of whether the city treasurer's position should be an appointed position.
2. The \$321.57 cost for setup and printing of each Candidate's Statement will be borne by the City. The cost of printing the Statement of Qualifications in English and inspection costs to determine the accuracy and legal form of the nomination papers shall be borne by the City.
3. The polls will be open between the hours of 7:00 a.m. and 8:00 p.m.

On motion of _____, seconded by _____, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council held on the 28th day of July, 2014, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

Date

AGENDA ITEM
CITY COUNCIL MEETING DATE - JULY 28, 2014
BUSINESS ITEMS

DATE : July 23, 2014

TO : City Council

FROM : City Manager

SUBJECT : **ADOPTION OF AN ORDINANCE AND APPROVAL OF A RESOLUTION RELATED TO ENACTING A GENERAL PURPOSE, ONE CENT TRANSACTION AND USE (“SALES”) TAX, ADDING CHAPTER 3.22 TO THE BENICIA MUNICIPAL CODE, AND ESTABLISHING NOVEMBER 4, 2014 AS THE DATE FOR A PROPOSED BALLOT MEASURE ASKING BENICIA VOTERS TO APPROVE A ONE-CENT TRANSACTION AND USE TAX**

RECOMMENDATION:

1) Adopt an ordinance establishing a one-cent, locally dedicated, sales tax measure; 2) Approve a resolution authorizing the question to approve such a measure on the November 4, 2014 general election ballot; and 3) Appoint a Council Sub-Committee to write the ballot measure argument on behalf of the City Council.

EXECUTIVE SUMMARY:

On June 22nd the City Council conducted a public hearing and introduced an ordinance to place a one-cent sales tax measure on the November ballot. Following the staff presentation and public comment the City Council unanimously passed the ordinance. The proposed general purpose local funding measure would improve or maintain essential City services relied on by our public, including public safety, 9-1-1 emergency response times, neighborhood police patrols, crime prevention services, programs for youth, pothole repair and other quality of life services. In addition, this measure is needed to ensure that our 31 local parks are properly maintained as safe spaces for children to play and families to visit. If the Council approves the proposed ordinance and resolution, the sales tax measure will be placed on the November 4, 2014 general election ballot to be considered by Benicia voters. If a majority of voters (50% plus 1) support the measure, it would go into effect on April 1, 2015. The proposed measure will also require oversight review by the City of Benicia Finance Committee.

BUDGET INFORMATION:

The proposed, locally-enacted sales tax measure of one cent is projected to

generate approximately \$3.7 million in revenue to support local needs that cannot be taken away by the State.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Strategy Issue #3: Strengthening Economic and Fiscal Conditions
 - Strategy #4: Manage City finances prudently

BACKGROUND:

Since 2008 the City of Benicia has been weathering the effects of the Great Recession, taking the necessary measures to preserve, as best as possible, both the quality and quantity of desired City services. The City has been working diligently to structurally reset the City's General Fund and Enterprise Fund operating budgets in order to provide a sustainable future for City operations and ensure continued service delivery to the community.

The efforts to achieve this goal have not been easy or without sacrifice. Over the last six years the City has implemented employee salary and benefit concessions, with employees agreeing to 10% reductions in compensation, including contributing considerably more toward health care and retirement costs. The City has also downsized, including employee lay-offs and freezing positions. Over the last four years, since 2010 the City has decreased employee related expenditures by approximately \$11.2 million and reduced City's full time workforce by 12%.

In addition to reducing employee costs the City has also delayed internal service needs and postponed capital improvement projects, including improvements to streets, parks and the Library Basement Project. Over the same period, the City has maximized revenue potential of City real estate, implementing park user fees and increasing lease income by 275%, generating over \$65,000 per month. Notwithstanding these efforts the City still has significant unfunded needs including over \$100 million in unfunded capital needs, including over \$50 million in streets and transportation, \$20 million in storm drain improvements, over \$30 million in parks and facilities including the library and swimming pool.

To exacerbate matters, the effect of the Great Recession was more than a temporary period of economic contraction, but an event that reshaped Benicia's fiscal landscape. While Benicia's property tax base is returning to pre-recession levels, approximately \$1.0 billion representing 20% of the City's property tax base is at risk due to outstanding appeals. Additionally, Benicia's most prominent source of sales tax, the Benicia Industrial Park, is seeing stagnant growth. Compounding this loss of local revenue is reductions of State funding, in particular funds needed to maintain local streets.

Unfortunately, while the economy has improved significantly over the past two years, Benicia like many other California cities still faces escalation in operating costs outside of their control and which are outpacing revenue growth. This makes it a challenge to continue existing funding levels for critical services to the community.

The confluence of these elements has greatly stressed the City's General Fund budget, which, if not addressed, will lead to substantial deficits in the years to come. A recent 10-year forecast study of the General Fund indicated an average annual operating loss of approximately \$1.5 million over the 10-year period despite the cost reduction measures and at the current unsustainably low level of capital investment.

In order to address these challenges, following adoption of the 2013-15 budget, the Council directed staff to develop a budget stabilization plan. In the subsequent months, staff has been working on initiating a Sustainable Community Services Strategy, which will help prepare the organization to take the necessary steps to create a more fiscally sustainable City with the necessary resources to provide services most valued by the community.

In June of this year, as part of the SCSS process, the City commissioned a customer satisfaction survey that asked residents what their priorities were. A random sample of 400 respondents gave the City very high job and customer satisfaction ratings for the quality of life services it provides, and more than two-thirds of respondents indicated their strong feelings about protecting Benicia's status as a full-service city, including the small town quality of life services the community expects, such as improving public safety and city streets, maintaining parks, trimming trees, supporting the historic downtown and community events, attracting new businesses, and creating jobs.

Furthermore, constituents expressed concern about the fact that many of our streets have cracked or buckled sidewalks, or no sidewalks at all, potholes and other unsafe driving conditions. Additional funding is needed to fix these hazardous road conditions and maintain 94 miles of city streets and roads so motorists, pedestrians, buses, cyclists and police and fire safety vehicles are safe. Providing funding to maintain the City's 31 local parks was also identified as a priority by 70% of respondents.

Faced with the challenge of declining revenues, rising expenditures and an overwhelming desire by residents to maintain Benicia's high quality of life, which in large part manifests itself in the services and amenities the City's provides, necessitates the City consider a locally controlled revenue measure.

The timing to consider such a measure is based on a variety of factors. First, as

noted above, the economy is no longer in recession and unemployment continues to trend downward; the 2014 first quarter unemployment rate for Benicia is 4.3% and the California rate is 7.8%. Contrary to many other municipal agencies, Benicia did not move to raise taxes during the recession. This was a deliberate choice by City leaders not to raise taxes at a time when many city residents were struggling to find employment and/or pay their home mortgages.

In addition to an improving economy there is a willingness of residents to support a local tax. In the City's recently-conducted Customer Satisfaction survey, respondents were asked directly whether they wanted to cut services or identify additional revenue.

Respondents, by significant percentages, stated that services cuts in the following areas would **not** be acceptable:

- Reducing 9-1-1 emergency response times (84%)
- Reducing neighborhood police patrols (72%)
- Reducing crime prevention services (72%)
- Reducing pothole repair (70%)
- Reducing programs for youth (70%)

Respondents were also asked about their interest in a locally approved, one-cent sales tax. The results of the survey concluded that 65% of respondents would support a simple majority requirement measure. Benicia residents' willingness to support a local sales tax is consistent with state wide trends. Last month during the June primary election, six jurisdictions sought sales tax measures and all six passed.¹

The final factor in staff's recommendation to consider a locally-dedicated sales tax is the timing of the election calendar. State law requires that such measures coincide with local City Council elections. Therefore the City's opportunity to place such a measure for public vote are this upcoming November or in two years in November of 2016. Alternatively, the City could call a special election to place a sales tax measure on the ballot, but such an action is more costly and must be preceded by a City Council resolution proclaiming a fiscal emergency.

If the City Council deems it appropriate to proceed, staff recommends placing the following measure on the ballot, which has been carefully crafted to address the community's service priorities and was developed in conjunction

¹ California Cities that passed local sales tax measures at the June 4, 2014 election: Woodland, Hayward, Cathedral City, Davis, Anderson and Cotati. *Source: californiacityfinance.com*

*Refers to percentage of respondents that indicated they would find budget cuts to these services unacceptable.

with the City Attorney and City staff. The ballot question calls out some very key elements. First, the Benicia Quality of Life Measure is a general purpose tax, meaning the proceeds of the tax stay in Benicia to support the City's General Fund. Secondly, the measure requires Citizen oversight, which, as described in the related City Ordinance, will be conducted by the City of Benicia Finance Committee. No revisions are recommended to the ballot label wording.

THE BENICIA SALES TAX MEASURE	
City of Benicia Quality of Life Measure. To maintain Benicia's status as a full-service city, improve/maintain Police patrols, fire/9-1-1 response times; road conditions; pothole repair; clean water; storm drains to protect the Carquinez Strait; business attraction/job creation; park maintenance; other city services, shall the City of Benicia enact a one cent sales tax with authority to incur bonded indebtedness to accelerate infrastructure projects, requiring independent audits, Citizens' Oversight, all revenue for Benicia, none for Sacramento?	YES
	NO

The ballot question, limited to 75 words, succinctly describes what the proceeds would support, listing out those City services so highly valued by our residents. These services are framed in the title of the tax "Benicia Quality of Life Measure". Our very understanding of quality of life is, in many ways, derived from the services provided by the City of Benicia.

Quality of life is one's sense of peace, place and prosperity. In our community, residents feel safe walking alone in the evening, secure in the knowledge that our 9-1-1 dispatch center and police department are a moment away from responding. Benicians are not burdened with the worry of a long wait for medical or fire response. Playgrounds, parks, a community center, library and swimming pool foster recreation and give residents locations outside the confines of one's home to be with his/her family and friends. The lighting of the Christmas Tree on the First Friday in December or a 4th of July parade enjoyed on the evening of the 3rd are community celebrations that create a kinship between neighbors and a bond that make us all Benicians. Without waiting in long lines or enduring automated phone systems residents have access to City officials when one wants to open a business or improve his/her home. Peace, place, prosperity; City services make those impressions tangible.

Yet, these services, nearly universally appreciated, are not themselves universal. Not all communities have the services enjoyed by Benicia residents. Moreover, these services are not guaranteed; they exist because there is a desire to have them and a means to support them. In years past Benicia has met this desire

with residential development and the construction of new industrial buildings. No longer can new buildings provide the means to support those services, instead the cost must be borne from the place that gives rise to the services, the residents themselves. To that end, staff is recommending the approval of placing the proposed sales tax measure on the ballot.

If approved the local sales tax rate in Benicia would be 8.625%, consistent with the sales tax rates of Fairfield and Vallejo. Moving forward, if the City Council directs staff to proceed with the City of Benicia Quality of Life Measure for the November ballot, then the following must occur to meet the scheduled deadlines of the Solano County Registrar of Voters:

1. *July 22, 2014:*
 - *Introduce Sales Tax Ordinance **(Completed)***
2. *July 28, 2014::*
 - *Second Reading and adoption of Sale Tax Ordinance*
 - *Approval of Resolution to place sales tax measure on the ballot for the November 4, 2014 election.*
 - *Direct City Attorney to draft impartial legal analysis*
 - *Appoint City Council Sub-committee to draft ballot arguments*
3. *By August 8, 2014:*
 - *City staff submits signed Resolution to Solano County Registrar of Voters*
4. *August 12, 2014:*
 - *City Council approves ballot argument (unless delegated to the Sub-committee)*
5. *August 15, 2014:*
 - *City staff submits ballot argument to Solano County Registrar of Voters*
6. *August 25, 2014:*
 - *City Attorney submits impartial legal analysis to Solano County Registrar of Voters (last day)*
 - *Rebuttal arguments due to Registrar of Voters*

To qualify for the ballot, 2/3 of the City Council (4 members) are required to vote affirmatively for the sales tax ordinance. Only a majority of the City Council need approve the accompanying resolution. If so approved by the Council and then passed by the voters on November 4, 2014, the tax would become effective on

April 1, 2015.

In addition to submitting the requisite paperwork to Solano County, the City would also retain the services of The Lew Edwards Group to conduct informational outreach, much like the City did with the recent water rate increases. State law forbids the City from campaigning in favor of an initiative. The City may provide voters with information and facts related to the tax measure. The cost of the placing the sales tax measure on the November 4, 2014 ballot assessed by Solano County as well as project management cost is estimated to be \$46,500.

Based on all of the previous actions of the City Council to secure a sustainable budget, and the remaining need to continue to take action to ensure balanced budgets in the future, staff recommends moving forward to ask the Benicia voters to approve a local sales tax measure.

Similar to the city treasurer ballot measure, the City Council should appoint a Council subcommittee to draft the argument for the measure. The argument will not come back to the City Council for approval unless the Council desires another special meeting. The Council must also decide if rebuttal arguments are to be allowed. The City typically does allow them.

Attachments:

- Proposed Ordinance and Exhibit A
- Proposed Resolution (which also attaches the Ordinance again)

CITY OF BENICIA

ORDINANCE NO. 14-__

AN ORDINANCE OF THE CITY OF BENICIA ADDING CHAPTER 3.22 TO THE BENICIA MUNICIPAL CODE ENPOSING A GENERAL PURPOSE TRANSACTIONS AND USE (“SALES”) TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION SUBJECT TO THE APPROVAL OF CITY OF BENICIA VOTERS

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

WHEREAS, unlike many cities of similar size in the Bay Area, Benicia is a full service city, equipped with its own City-run police, fire, library, parks and recreation, and water services; and

WHEREAS, without additional revenue, the City will be forced to consider cutting back on locally controlled City services and contracting with the County or other outside entities to provide these services; and

WHEREAS, the City wishes to continue to address service priorities that the public has identified such as public safety services, 9-1-1 emergency response times, neighborhood police patrols, crime prevention services, and programs for youth and pothole repair efforts; and

WHEREAS, additional funding will improve public safety and city streets, maintain parks and trim trees, and fund programs to support our historic downtown and community events, attract new businesses and create jobs; and

WHEREAS, additional funding will help maintain Benicia’s financial viability as a full-service city and protect the small town quality of life; and

WHEREAS, many streets in Benicia have cracked or buckled sidewalks, or no sidewalks at all and many roads have potholes and other unsafe driving conditions; and

WHEREAS, additional funding is needed to fix hazardous road conditions and maintain 94 miles of city streets and roads so motorists, pedestrians, buses, cyclists and police and fire safety vehicles are safe; and

WHEREAS, additional funding is needed to ensure that our 31 local parks are properly maintained as safe spaces for children to play and families to visit; and

WHEREAS, Benicia needs local control over local funds, for local needs; and

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

WHEREAS, the City would like to levy a one percent (1%) Transactions and Use Tax for general purposes to fund essential City services; and

WHEREAS, the City believes only a locally-approved voter funding source would guarantee that new revenue stays in Benicia to help the City provide essential services to its residents; and

WHEREAS, the City's Transactions and Use Tax Ordinance will be added to the Benicia Municipal Code as Chapter 3.22; and

WHEREAS, the City plans to submit a ballot measure to the voters for a majority vote to authorize the Transactions and Use Tax at the general election on November 4, 2014.

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

Section 1.

Title. This ordinance shall be known as the Benicia Transactions and Use Tax Ordinance. 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.

Approval by the Voters. This ordinance shall be submitted to the voters at an election to be held on November 4, 2014. Upon approval by a majority of the voters of the City voting on this ordinance, a Transactions and Use Tax shall be authorized.

Section 4.

Addition. Upon approval by the voters, Chapter 3.22 will be added to the Benicia Municipal Code to read in full as set forth in the attached Exhibit "A," which is incorporated into this ordinance.

Section 5.

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 6.

Effective Date. This ordinance relates to the levying and collecting of the City's Transactions and Use Tax and shall take effect immediately.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 22nd day of July, 2014, and adopted at a regular meeting of the Council held on the 28th day of July, 2014, by the following vote:

Ayes:

Noes:

Absent:

Attest:

Mayor Patterson, Mayor

Lisa Wolfe, City Clerk

Date

CITY OF BENICIA

ORDINANCE NO. 14-__

AN ORDINANCE OF THE CITY OF BENICIA ADDING CHAPTER 3.22 TO THE BENICIA MUNICIPAL CODE IMPOSING A TRANSACTIONS AND USE TAX FOR GENERAL PURPOSES TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION SUBJECT TO THE APPROVAL OF THE VOTERS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Title 3 (Revenue and Finance) of the Benicia Municipal Code is hereby amended adding a new Chapter 3.22 (Transaction and Use Tax) to read as follows:

Chapter 3.22

Transaction and Use Tax

Sections:

- 3.22.010 Short Title.
- 3.22.020 Definitions.
- 3.22.030 Purpose.
- 3.22.040 Contract with State.
- 3.22.050 Imposition of transaction tax, transaction tax rate.
- 3.22.060 Place of sale.
- 3.22.070 Imposition of use tax, use tax rate.
- 3.22.080 Adoption of provisions of state law.
- 3.22.090 Limitations on the adoption of state law and collection of use taxes
- 3.22.100 Permit not required.
- 3.22.110 Exemptions and exclusions.
- 3.22.120 Oversight, Annual Audit and Public Report.
- 3.22.130 Amendments.
- 3.22.140 Enjoining collection forbidden.
- 3.22.150 Termination.

3.22.010 Short Title. This chapter shall be known as the Transactions and Use Tax Ordinance of the city of Benicia.

3.22.020 Definitions. For the purposes of this chapter the follow terms shall have the meanings given in this section:

"City" means the incorporated territory of the city.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter and the approval by the voters of the city of a measure approving the imposition of a transaction and use tax; provided, that if the city shall not have contracted with the State Board of Equalization as required by section 3.22.040 prior to such date, the city 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.

3.22.030 Purpose. The city council hereby declares that 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 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.

3.22.040 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 chapter.

3.22.050 Imposition of transaction tax, transaction tax rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in 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 and before the Termination Date.

3.22.060 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 State Board of Equalization.

3.22.070 Imposition of use tax, 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 and before the Termination Date 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.

3.22.080 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.

3.22.090 Limitations on the 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 the 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 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.

3.22.100 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.

3.22.110 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 the 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 subsection, 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.

3.22.120 Oversight, Annual Audit and Public Report.

A. The independent auditor hired by the City Council to conduct an audit of and provide audited financial statements for all of the City's financial activities. The auditor shall include an accounting of the revenue received from the tax and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the City Council and made available to the public.

B. The Finance Committee shall function as the tax oversight committee and shall review and report annually to the City Council on the receipt of revenue and expenditure of funds from the tax authorized by this chapter. The report shall include how the funds are being used to address the City Council's stated priorities and shall be completed in conjunction with the City's budget process. This report shall include the status and performance of the programs and services funded, wholly or partially with proceeds from the tax. It is not within the purview of the Committee to direct staff, recommend any particular contracts, or define the scope of a project using funds from the tax. Rather these responsibilities remain under the authority of the City Council and the professional staff including the city manager.

3.22.130 Amendments. All amendments subsequent to the Operative 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.

3.22.140 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 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.

3.22.150 Termination. The authority to levy the tax imposed by this ordinance shall not expire, unless terminated by a 4/5ths vote of the City Council or by a vote of the people of the City of Benicia.

Section 2.

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.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 3.

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 Ordinance shall be imposed until approved by the voters of the city as required by section 2(b) of Article XIII C of the California Constitution and applicable law.

Section 4.

Declaration. The proceeds of the taxes imposed by this Ordinance may be used for any lawful purpose of the city, as authorized by ordinance, resolution or action of the City Council or by ordinance adopted by the electorate of the city. These taxes do not meet the criteria established by Section 1(d) of Article XIII C of the California Constitution for special taxes, and are general taxes imposed for general government purposes.

Section 5.

Relationship to existing tax. The tax imposed by this Ordinance is separate from, and

in addition to, any transactions and use tax currently imposed by the city. Nothing in this Ordinance shall be interpreted to affect the rate or administration of any tax other than the tax imposed by this Ordinance.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 22nd day of July, 2014, and adopted at a regular meeting of the Council held on the _____ day of _____, 2014, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

Date

RESOLUTION NO. 14-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CALLING AND ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF BENICIA A CERTAIN MEASURE RELATING TO A PROPOSED ORDINANCE ADDING CHAPTER 3.22 TO THE BENICIA MUNICIPAL CODE ENACTING A ONE-CENT GENERAL PURPOSE TRANSACTION AND USE (“SALES”) TAX AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014

WHEREAS, unlike many cities of similar size in the Bay Area, Benicia is a full service city, equipped with its own City-run police, fire, park, library and water services; and

WHEREAS, without additional revenue, the City will be forced to consider cutting back on locally controlled City services and contracting with the County or other outside entities to provide these services; and

WHEREAS, the City wishes to continue to address service priorities that the public has identified such as public safety services, 9-1-1 emergency response times, neighborhood police patrols, crime prevention services, and programs for youth and pothole repair efforts; and

WHEREAS, additional funding will improve public safety and city streets, maintain parks and trim trees, and fund programs to support our historic downtown and community events, attract new businesses and create jobs; and

WHEREAS, additional funding will help maintain Benicia’s financial viability as a full-service city and protect the small town quality of life; and

WHEREAS, many streets in Benicia have cracked or buckled sidewalks, or no sidewalks at all and many roads have potholes and other unsafe driving conditions; and

WHEREAS, additional funding is needed to fix hazardous road conditions and maintain 94 miles of city streets and roads so motorists, pedestrians, buses, cyclists and police and fire safety vehicles are safe; and

WHEREAS, additional funding is needed to ensure that our 31 local parks are properly maintained as safe spaces for children to play and families to visit; and

WHEREAS, Benicia needs local control over local funds, for local needs; and

WHEREAS, a General Municipal election shall be held on Tuesday, November 4, 2014; and

WHEREAS, on July 22, 2014, the City Council held a public hearing

introducing an Ordinance adding Chapter 3.22 to the Benicia Municipal Code imposing a one cent transactions and use tax for general purposes subject to the approval of the voters; and

WHEREAS, the tax provided for by the proposed Ordinance shall be enacted solely to raise revenue for general purposes, and shall be placed into the City's General Fund, and is not intended for regulation; and

WHEREAS, the City Council also desires, on its own motion, to submit to the voters at the General Municipal election a question relating to the imposition of a one-cent transactions and use tax for general purposes;

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does resolve, declare, determine and order as follows, that:

SECTION 1. The City Council pursuant to its right and authority, does order to be submitted to the voters at a General Municipal election the following question:

THE BENICIA SALES TAX MEASURE	
City of Benicia Quality of Life Measure. To maintain Benicia's status as a full-service city, improve/maintain Police patrols, fire/ 9-1-1 response times; road conditions; pothole repair; clean water; storm drains to protect the Carquinez Strait; business attraction/job creation; park maintenance; other city services, shall the City of Benicia enact a one cent sales tax with authority to incur bonded indebtedness to accelerate infrastructure projects, requiring independent annual audits, Citizens' Oversight, all revenue for Benicia, none for Sacramento?	YES
	NO

SECTION 2. The proposed measure submitted to the voters is as attached in Exhibit 1 to this Resolution, which is incorporated herein by this reference.

SECTION 3. The City will reimburse the county for the actual cost incurred in conducting the election upon receipt of a bill stating the amount due as determined by the elections official.

SECTION 4. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 6. Pursuant to California Elections Code Section 9280, the City Council

hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten (10) days of the adoption of this Resolution.

SECTION 7. Arguments for or against this measure shall be submitted not later than 5 p.m. on August 15, 2014 to the City Clerk.

SECTION 8. [The City Council adopts the provisions of subdivision (a) of Section 9285 of the Elections Code to permit rebuttal arguments, if arguments have been filed in favor of and against the measure which is being submitted to the voters of the City at this special election. Rebuttal arguments shall be filed not later than 5:00 p.m. on August 25, 2014.] **OR** [The City Council declines to allow rebuttal arguments.]

SECTION 9. The City Clerk is hereby directed to file a certified copy of this Resolution with the Solano County Board of Supervisors and the Solano County Registrar of Voters.

On motion of Council Member _____, and seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a special meeting of said Council held on the _____ day of July, 2014, and adopted by the following vote.

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

CITY OF BENICIA

ORDINANCE NO. 14-__

AN ORDINANCE OF THE CITY OF BENICIA ADDING CHAPTER 3.22 TO THE BENICIA MUNICIPAL CODE ENPOSING A GENERAL PURPOSE TRANSACTIONS AND USE (“SALES”) TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION SUBJECT TO THE APPROVAL OF CITY OF BENICIA VOTERS

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

WHEREAS, unlike many cities of similar size in the Bay Area, Benicia is a full service city, equipped with its own City-run police, fire, library, parks and recreation, and water services; and

WHEREAS, without additional revenue, the City will be forced to consider cutting back on locally controlled City services and contracting with the County or other outside entities to provide these services; and

WHEREAS, the City wishes to continue to address service priorities that the public has identified such as public safety services, 9-1-1 emergency response times, neighborhood police patrols, crime prevention services, and programs for youth and pothole repair efforts; and

WHEREAS, additional funding will improve public safety and city streets, maintain parks and trim trees, and fund programs to support our historic downtown and community events, attract new businesses and create jobs; and

WHEREAS, additional funding will help maintain Benicia’s financial viability as a full-service city and protect the small town quality of life; and

WHEREAS, many streets in Benicia have cracked or buckled sidewalks, or no sidewalks at all and many roads have potholes and other unsafe driving conditions; and

WHEREAS, additional funding is needed to fix hazardous road conditions and maintain 94 miles of city streets and roads so motorists, pedestrians, buses, cyclists and police and fire safety vehicles are safe; and

WHEREAS, additional funding is needed to ensure that our 31 local parks are properly maintained as safe spaces for children to play and families to visit; and

WHEREAS, Benicia needs local control over local funds, for local needs; and

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

WHEREAS, the City would like to levy a one percent (1%) Transactions and Use Tax for general purposes to fund essential City services; and

WHEREAS, the City believes only a locally-approved voter funding source would guarantee that new revenue stays in Benicia to help the City provide essential services to its residents; and

WHEREAS, the City's Transactions and Use Tax Ordinance will be added to the Benicia Municipal Code as Chapter 3.22; and

WHEREAS, the City plans to submit a ballot measure to the voters for a majority vote to authorize the Transactions and Use Tax at the general election on November 4, 2014.

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

Section 1.

Title. This ordinance shall be known as the Benicia Transactions and Use Tax Ordinance. 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.

Approval by the Voters. This ordinance shall be submitted to the voters at an election to be held on November 4, 2014. Upon approval by a majority of the voters of the City voting on this ordinance, a Transactions and Use Tax shall be authorized.

Section 4.

Addition. Upon approval by the voters, Chapter 3.22 will be added to the Benicia Municipal Code to read in full as set forth in the attached Exhibit "A," which is incorporated into this ordinance.

Section 5.

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 6.

Effective Date. This ordinance relates to the levying and collecting of the City's Transactions and Use Tax and shall take effect immediately.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 22nd day of July, 2014, and adopted at a regular meeting of the Council held on the 28th day of July, 2014, by the following vote:

Ayes:

Noes:

Absent:

Mayor Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

CITY OF BENICIA

ORDINANCE NO. 14-__

AN ORDINANCE OF THE CITY OF BENICIA ADDING CHAPTER 3.22 TO THE BENICIA MUNICIPAL CODE IMPOSING A TRANSACTIONS AND USE TAX FOR GENERAL PURPOSES TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION SUBJECT TO THE APPROVAL OF THE VOTERS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Title 3 (Revenue and Finance) of the Benicia Municipal Code is hereby amended adding a new Chapter 3.22 (Transaction and Use Tax) to read as follows:

Chapter 3.22

Transaction and Use Tax

Sections:

- 3.22.010 Short Title.
- 3.22.020 Definitions.
- 3.22.030 Purpose.
- 3.22.040 Contract with State.
- 3.22.050 Imposition of transaction tax, transaction tax rate.
- 3.22.060 Place of sale.
- 3.22.070 Imposition of use tax, use tax rate.
- 3.22.080 Adoption of provisions of state law.
- 3.22.090 Limitations on the adoption of state law and collection of use taxes
- 3.22.100 Permit not required.
- 3.22.110 Exemptions and exclusions.
- 3.22.120 Oversight, Annual Audit and Public Report.
- 3.22.130 Amendments.
- 3.22.140 Enjoining collection forbidden.
- 3.22.150 Termination.

3.22.010 Short Title. This chapter shall be known as the Transactions and Use Tax Ordinance of the city of Benicia.

3.22.020 Definitions. For the purposes of this chapter the follow terms shall have the meanings given in this section:

"City" means the incorporated territory of the city.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter and the approval by the voters of the city of a measure approving the imposition of a transaction and use tax; provided, that if the city shall not have contracted with the State Board of Equalization as required by section 3.22.040 prior to such date, the city 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.

3.22.030 Purpose. The city council hereby declares that 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 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.

3.22.040 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 chapter.

3.22.050 Imposition of transaction tax, transaction tax rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in 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 and before the Termination Date.

3.22.060 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 State Board of Equalization.

3.22.070 Imposition of use tax, 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 and before the Termination Date 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.

3.22.080 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.

3.22.090 Limitations on the 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 the 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 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.

3.22.100 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.

3.22.110 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 the 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 subsection, 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.

3.22.120 Oversight, Annual Audit and Public Report.

A. The independent auditor hired by the City Council to conduct an audit of and provide audited financial statements for all of the City's financial activities. The auditor shall include an accounting of the revenue received from the tax and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the City Council and made available to the public.

B. The Finance Committee shall function as the tax oversight committee and shall review and report annually to the City Council on the receipt of revenue and expenditure of funds from the tax authorized by this chapter. The report shall include how the funds are being used to address the City Council's stated priorities and shall be completed in conjunction with the City's budget process. This report shall include the status and performance of the programs and services funded, wholly or partially with proceeds from the tax. It is not within the purview of the Committee to direct staff, recommend any particular contracts, or define the scope of a project using funds from the tax. Rather these responsibilities remain under the authority of the City Council and the professional staff including the city manager.

3.22.130 Amendments. All amendments subsequent to the Operative 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.

3.22.140 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 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.

3.22.150 Termination. The authority to levy the tax imposed by this ordinance shall not expire, unless terminated by a 4/5ths vote of the City Council or by a vote of the people of the City of Benicia.

Section 2.

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.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 3.

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 Ordinance shall be imposed until approved by the voters of the city as required by section 2(b) of Article XIII C of the California Constitution and applicable law.

Section 4.

Declaration. The proceeds of the taxes imposed by this Ordinance may be used for any lawful purpose of the city, as authorized by ordinance, resolution or action of the City Council or by ordinance adopted by the electorate of the city. These taxes do not meet the criteria established by Section 1(d) of Article XIII C of the California Constitution for special taxes, and are general taxes imposed for general government purposes.

Section 5.

Relationship to existing tax. The tax imposed by this Ordinance is separate from, and

in addition to, any transactions and use tax currently imposed by the city. Nothing in this Ordinance shall be interpreted to affect the rate or administration of any tax other than the tax imposed by this Ordinance.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 22nd day of July, 2014, and adopted at a regular meeting of the Council held on the _____ day of _____, 2014, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

Date