

CITY OF DEL MAR

(This Measure will appear on the ballot in the following form.)

MEASURE Q

To provide funding for general city services and infrastructure projects, such as improvement of streets and sidewalks, utility undergrounding, public landscapes, improvement of community parks, trails and recreation facilities; police, crime prevention, fire prevention and other public safety services, shall an ordinance that establishes an ongoing one-cent sales tax be adopted, providing an estimated 2 million dollars annually for the City of Del Mar, requiring citizen oversight and independent audits, and all funds controlled locally?

This measure requires approval by a simple majority (over 50%) of the voters voting on the measure. Full text of this measure follows the argument.

CITY ATTORNEY IMPARTIAL ANALYSIS

The Del Mar City Council approved Measure Q at its meeting of August 1, 2016 and requested that San Diego County place Measure Q on the ballot at the November 8, 2016 general election. Measure Q is a transactions and use tax within the City of Del Mar that would tax retail sales at one percent (1%) of the retail sales price, i.e. one cent for an item that costs one dollar.

The current sales tax rate in Del mar is 8%. The City receives 1%. The State General Fund receives 3.9375%. San Diego County receives 1.8125%. Proposition 30 receives 0.25%. Proposition 172 receives 0.5% and SANDAG receives 0.5%

Measure Q is a “transactions and use tax” as opposed to a “sales tax.” A transactions and use tax is collected in the same manner as a traditional sales tax with minor exceptions. Measure Q would authorize a one percent (1%) transactions and use tax which would increase the combined sales tax rate in Del Mar to nine percent (9%). Taxes collected pursuant to Measure Q would be deposited into the City’s general fund and used for any purpose for which general fund revenues may be used. Measure Q is classified as a general tax and not a special tax. General tax proceeds may be used for any municipal purpose including, but not limited to, undergrounding utilities, street improvements, park improvements, police, fire, senior programs and youth programs. Retailers collect the tax from customers at the time of a retail purchase and remit the funds to the State Board of Equalization, which administers the tax. The tax will be paid by anyone, including residents of Del Mar, who purchase goods at retail establishments within Del Mar. In addition, Del Mar residents will be required to pay the tax when they purchase an automobile, boat or aircraft anywhere in California and register it to an address in Del Mar. Measure Q is estimated to generate approximately \$2 million of revenue annually.

Measure Q requires oversight by a citizens committee. In addition, expenditures of Measure Q funds are subject to audit by the City’s auditors. Any report by the citizens committee as well as any audit are public records and available for inspection by any member of the public.

A “Yes” vote is a vote in favor of the tax. A “No” vote is a vote against the tax. Measure Q will be approved if it receives a simple majority of “Yes” votes.

/s/ Leslie E. Devaney, City Attorney

ARGUMENT IN FAVOR OF MEASURE Q

Based upon the goals of the Community Plan and community input, the City of Del Mar maintains a list of capital projects that are important to the community, but must be scheduled for completion over an extended period of time because funding is not available.

Increasing the sales tax rate by 1% enables the City to fund projects that are important to the community, but not yet included in the City budget such as Shores Park development, the undergrounding of utility wires, Streetscape, public landscapes, public safety and other General Fund projects.

At present Del Mar keeps 1% of the current 8% sales tax with the first 7% going to the State and County. The additional 1% increase would be fully retained by Del Mar. This increase would provide approximately \$1.6 to \$2.0 million per year in new revenues to help the City fund important projects.

Del Mar's ability to increase the sales tax for local projects is subject to a District Sales Tax cap. This means that if the available sales taxes are approved for County purposes, the City of Del Mar may not be able to increase its sales tax rate. This measure would allow Del Mar to capture its fair share of sales tax revenues for Del Mar specific projects.

Finally, it is estimated that the millions of visitors to Del Mar each year pay over 80% of the sales tax collected in Del Mar. Residents pay less than 20% of the sales tax. In effect, the funding for these priority projects is being spread across the millions of visitors to Del Mar each year through this sales tax increase. In effect, visitors will then pay their fair share of costs to make improvements in Del Mar.

SHERRYL L. PARKS
Mayor, City of Del Mar

THOMAS K. MCGREAL
Chair, Del Mar Finance Committee

TERRY L. SINNOTT
Member, Del Mar City Council

JAMES K. ECKMANN
Past Chair, Del Mar Finance Committee

ARGUMENT AGAINST MEASURE Q

No argument against Measure Q was filed in the office of the City Clerk

FULL TEXT OF MEASURE Q

ORDINANCE NO. 916

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

BE IT ORDAINED BY THE VOTERS OF THE CITY OF DEL MAR:

SECTION 1: Chapter 3.32 ""Transactions and Use Tax"" shall be added to the Del Mar Municipal Code and shall read as follows:

Section 3.32.010 TITLE. This ordinance shall be known as the City of Del Mar Transactions and Use Tax Ordinance. The City of Del Mar hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 3.32.020 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.

Section 3.32.030 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.

Section 3.32.040 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 transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative

FULL TEXT OF MEASURE Q (CONTINUED)

date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 3.32.050 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 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. The tax imposed hereby shall be in addition to the tax imposed pursuant to Chapter 3.24 of the Del Mar Municipal Code.

Section 3.32.060 PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 3.32.070 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 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. The tax imposed hereby shall be in addition to the tax imposed pursuant to Chapter 3.24 of the Del Mar Municipal Code.

Section 3.32.080 ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 3.32.090 LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

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

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

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

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

FULL TEXT OF MEASURE Q (CONTINUED)

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

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

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

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

Section 3.32.100 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 ordinance.

Section 3.32.110 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, county 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.

FULL TEXT OF MEASURE Q (CONTINUED)

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 (B), 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 (C), 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 (C)(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.

FULL TEXT OF MEASURE Q (CONTINUED)

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

Section 3.32.120 AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 3.32.130 CITIZENS OVERSIGHT COMMITTEE. Prior to the operative date, the City Council shall (a) adopt a resolution establishing the composition of a committee of no more than five (5) residents of the City to review and annually report on the revenue and expenditure of the funds from the tax adopted by this ordinance, (b) define the scope of the committee's responsibilities, and (c) appoint at least a quorum of the members of the committee. City employees, consultants, or vendors are expressly precluded from serving as members of the committee. The committee's reports shall be presented to the Council and made available to the public.

Section 3.32.140 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.

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.

SECTION 3 EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.