



Local ballot measure: F

Full text of measure F

ORDINANCE 300

AN ORDINANCE OF THE VOTERS OF THE CITY OF DEL REY OAKS EXTENDING THE EXISTING GENERAL TRANSACTIONS AND USE TAX (A SALES TAX) INDEFINITELY TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

BE IT ORDAINED BY THE VOTERS OF THE CITY OF DEL REY OAKS:

SECTION 1. FINDINGS.

- A. The City relies on sales tax for the day to day operations of the City, its facilities and services including national economic trends and unpredictable decreases in revenue from existing taxes and fees. The City has taken necessary steps to reduce its operational costs and to protect vital services.
- B. Maintenance of the City's facilities and infrastructure has been deferred or severely curtailed.
- C. The City's public facilities, including City Hall and the City's parks and recreational facilities are aged and maintenance of these facilities and improvements to these facilities has been deferred due to lack of resources.
- D. The loss of revenue from this existing tax would broadly impact services throughout the City and undermine the public health, safety, and welfare of Del Rey Oaks' residents. The recent source of income from cannabis tax cannot be relied on to remain steady and should the regulatory landscape of the cannabis industry change, this resource could decrease significantly without notice. Absent a guaranteed source of general fund revenue, the City will not be able to maintain or to restore and improve essential services. Consequently, the City will have to defer maintenance of important public facilities and infrastructure and will not have basic quality-of-life services commonly associated with municipal government; and
- E. The City has very few means available for increasing general fund revenue and absent this source of general fund revenue the City's ability to maintain or to improve essential service levels is uncertain.
- F. The tax to be submitted to the voters, if approved, would continue to be imposed on retail transactions involving the sale and use of personal property at the existing tax rate of one percent (1%) of the value of the property. All proceeds from such tax shall be utilized for general governmental purposes. The tax revenue would be collected by the California Department of Tax and Fee Administration and remitted to the City.
- G. The tax would continue indefinitely, unless repealed or amended by the voters. The tax shall be approved if the measure receives at least a majority of affirmative votes.
- H. Based on all the information presented to it, both written and oral, the City Council finds that under CEQA Guidelines sections 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this action does not constitute a project under CEQA and therefore review under CEQA is not required.

SECTION 2. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

SECTION 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish these purposes:



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- A. To extend indefinitely 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 this additional tax at an election called for this 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 imposed a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.
- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

SECTION 4. LANGUAGE OF BALLOT MEASURE. The proposed transaction and use tax ordinance shall be submitted to the voters on the ballot in the form of the following question:

"Essential Services Measure (General Transactions and Use Tax)

To preserve essential city services and facilities in Del Rey Oaks, including crime prevention, emergency response, repair of streets and sidewalks, and other city services, shall a measure be adopted to extend indefinitely the existing one percent (1%) transactions and use tax that provides approximately \$600,000 annually in revenue to be used only in Del Rey Oaks, the proceeds of said tax to be utilized for general governmental purposes?"

SECTION 5. CONTRACT WITH STATE. Prior to the Operative Date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of the transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the Operative Date, it shall nevertheless so contract and in such a case the Operative Date shall be the first day of the first calendar quarter following the execution of such a contract.

SECTION 6. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the Operative Date of this ordinance.

SECTION 7. 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 and out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.



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SECTION 8. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchases from any retailer on and after the Operative Date of this ordinance for storage, use or other consumption in said territory at the rate of one percent (1%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

SECTION 9. 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 10. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAX. In adopting the provisions of Part 1of Division 2 of the Revenue and Taxation Code:

- A. Whenever 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 this title of the State Controller, State Treasurer, California Department of Tax and Fee Administration, California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California.
 2. When the result of that substitution would require action to be taken by or against this City or any agency, officer or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.
 3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a. Provide an exemption from this tax with respect to certain sales, storage use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage use or other consumption remain subject to tax by the State under the provisions of Part 1of 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.
 - 1) "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.
 4. In Sections 6701, 6702 (except in the last sentence thereof), 6711,6715,6737,6797 or 3828 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.



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SECTION 11. 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 12. 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. They are exempted from the computation of the amount of the 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 21411of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - b. With respect to commercial vehicles, by registration to a place of business out- of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 - 3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this ordinance.
 - 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the Operative Date of this ordinance.
 - 5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
 - 1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 - 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.



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3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the Operative Date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, of 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 21411of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

SECTION 13. AMENDMENTS TO STATE LAW. 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 14. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal 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 to enjoin the collection under this ordinance, or Part of Division 2 of the Revenue and Taxation Code, or any tax or any amount of tax required to be collected.

SECTION 15. REFUNDS AND CREDITS: SUITS AND LEGAL PROCEEDINGS.

- A. Refunds of and credits for any tax paid pursuant to this ordinance may be made only as provided for in Part 1(commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.
- B. Suits and proceedings for the recovery of any amount alleged to have been erroneously or illegally determined or collected pursuant to this ordinance may be maintained in any court only as provided for in Part 1(commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. A judgment shall not



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be rendered in favor of the plaintiff in any action brought against the California Department of Tax and Fee Administration to recover any amount paid when the action is brought by or in the name of an assignee or the person paying the amount or by any person other than the person who paid the amount.

SECTION 16. USE OF TAX REVENUE. The tax approved by this ordinance is a general tax. The City may use the revenue from the tax for any general governmental purpose.

SECTION 17. 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 18. EFFECTIVE DATE. If this ordinance is approved by a majority of the voters voting on the issue at the March 3, 2020 election, as it relates to the levying and collecting of the City transactions and use taxes, this ordinance shall take effect immediately.

SECTION 19. CODIFICATION. Upon adoption of the ordinance pursuant to the voter approval referenced in this ordinance, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this ordinance in the Del Rey Oaks Municipal Code.

PASSED AND ADOPTED by the City Council of the City of Del Rey Oaks, on November 06, 2019, by the following vote:

AYES: Lintell, Goetzelt, Gaglioti, Clark, Kerr

NOES: None

ABSENT: None

ABSTAIN: None

Signed: /s/ Alison Kerr,
Mayor

Attest: /s/ Danial D. Pick,
City Clerk