

**TOWN OF SAN ANSELMO
STAFF REPORT
July 31, 2013**

For the Meeting of August 13, 2013

TO: Town Council

FROM: Debra Stutsman, Town Manager

SUBJECT: November 5, 2013 Election

RECOMMENDATION

That Council approves the resolution and proposed ordinance calling an election be held on November 5, 2013 submitting to the voters an ordinance enacting a one-half percent (.5%) transaction and use tax for general purposes for a period of ten years.

BACKGROUND

The Town is scheduled to hold a regular election on November 5, 2013 for nomination of candidates for three (3) seats on the Town Council. The terms of Mayor Coleman and Councilmembers Kroot and McInerney are expiring. The two years remaining on the term to which Councilmember Dahlgren was appointed is also on the ballot.

In addition, the Council has directed staff to prepare a resolution and ordinance submitting to the voters a general purpose one-half percent (.5%) transactions and use tax measure. At the meeting of Tuesday, May 14, 2013, the Town Council heard a presentation from the Financial Advisory Committee that included their recommendations concerning the Town's financial health and ongoing needs. The Committee found that the Town has done a good job of managing expenses and that significant work has been done in reducing expenses. The Committee also found that further significant progress on meeting the Town's most urgent needs, such as street and storm drain maintenance, would require going to the voters for a supplemental tax measure. The Committee recommended that the Council put a sales tax measure on the ballot. A public opinion poll was conducted in June 2013 with the following key findings:

- Local voters are highly satisfied with the performance of Town government, and satisfaction has increased since 2006.
- Voters express a higher degree of concern about street and road conditions than about many other issues facing the Town.
- More than three in five voters (65%) express an inclination to vote to increase sales taxes by one half percent (.5%) to fund general Town services, including street repair.

At its meeting of July 9, 2013, the Town Council directed staff to draft a proposed transactions and use tax measure for the Council's consideration and for potential submission to the voters.

BALLOT QUESTION

The proposed ballot question is:

To repair potholes, repave roads, reduce traffic congestion, maintain and improve sidewalks/drainage/street medians, preserve public safety, and improve other general Town services, facilities, and infrastructure, shall the Town of San Anselmo establish a one-half percent (.5%) sales tax for ten years, with annual independent audits, mandatory public expenditure reports, and an independent citizens' oversight committee with all funds staying in San Anselmo under local control?

TRANSACTIONS AND USE TAX ORDINANCE

Attached for the Council's consideration is a proposed Ordinance of the People of the Town of San Anselmo Adding Chapter 8.8 to the San Anselmo Municipal Code Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization. The proposed "transactions and use tax" would be imposed on tangible personal property sold at retail stores in the Town or purchased outside the Town for specific use in the Town. For example, the tax would be collected not only on items sold within the Town, but would also be imposed on purchases of automobiles sold outside of Town that are registered within the Town.

This .5% tax on sales would be a "general tax," meaning that the revenue raised from the tax would go into the Town's general fund and could be used for any municipal governmental purpose.

The Ordinance includes the following features:

- Annual independent audits with mandatory public expenditure reports.
- An independent citizens' oversight committee comprised of members of the community.
- A duration of ten (10) years.
- Authority to contract with the State Board of Equalization to administer and collect the tax.

ELECTION TIMING

For Town Council candidates:

July 15 – August 9	Filing period for candidates
August 14	Extended filing period deadline (if ALL incumbents don't file for candidacy)
November 5	Election

For Measure:

August 9	Deadline to submit resolutions calling for election and exact ballot language.
Aug. 10-19	10 day public examination period
August 19	Last day to submit ballot arguments
August 20-29	10 day public examination period
August 26	Last day to submit rebuttal arguments
Aug. 27-Sept. 5	10 day public examination period
November 5	Election

CONCLUSION

The resolution and attached ordinance containing the proposed transactions and use tax measure must be approved by a 2/3 vote of the Town Council.

Respectfully submitted,



Debra Stutsman
Town Manager

Attachment: Draft resolution and ordinance

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO CALLING AND GIVING NOTICE OF THE HOLDING OF AN ELECTION TO BE HELD NOVEMBER 5, 2013 AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN CONSOLIDATE SAID ELECTION; AND AUTHORIZE THE TOWN CLERK OR HER DULY AUTHORIZED OFFICERS AND AGENCY TO CARRY OUT ALL THE NECESSARY PROCEDURES FOR SAID ELECTION SUBMITTING TO THE VOTERS A ONE HALF PERCENT (.5%) TRANSACTIONS AND USE TAX MEASURE FOR GENERAL PURPOSES TO THE QUALIFIED VOTERS OF THE TOWN AND SETTING THE BALLOT LANGUAGE.

Whereas, the Town Council is committed to protecting the small town ambience, access to parks and open space, historic downtown and the great overall quality of life in San Anselmo; and

Whereas, many of San Anselmo's local streets and roads are in need of repaving and pothole repair, current street drainage on many roads is inadequate, in disrepair or collapsed, and some streets are also in need of medians or median improvements, and these issues contribute to traffic and congestion that affects all residents; and

Whereas, several public facilities have long-deferred maintenance needs that must be addressed before they become more expensive; and

Whereas, the Town of San Anselmo has effectively managed its expenses while protecting vital Town services, reduced expenses by consolidating police and fire services with nearby communities and by implementing pension reform, and the Town's independent Financial Advisory Committee has concluded that there are not further significant savings to be found in the Town budget; and

Whereas, all funds from a locally approved tax cannot be taken by the State and must stay in San Anselmo under local control to benefit local residents.

Whereas, Article XIII C, Section 2 of the California Constitution authorizes cities, by a majority vote of the qualified electors, to impose a general tax; and

Whereas, Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 authorize a city to adopt a transactions and use 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; and

Whereas, the Town Council desires to submit the ordinance attached hereto as Exhibit A containing a ballot measure to adopt a one-half of one percent (.5%) sales tax measure (transactions and use tax) to be used exclusively for general purposes to the qualified voters of the Town of San Anselmo at the Uniform District Election to be held in the Town on November 5, 2013; and

Whereas, it is desirable that the election be consolidated with the statewide election to be held on the same date and that within the Town, the precincts, polling places, and election officers of the two elections to be the same; and

Whereas, it is desirable that the County Election Department of County of Marin canvass the returns of the Uniform District Election and that the election be handled in all respects as if there were only one election.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered an election to be held in the Town of San Anselmo, California, on Tuesday, November 5, 2013.

Section 2. That pursuant to the requirements of Section 10403 of the California Elections Code, the Board of Supervisors of the County of Marin is hereby requested to consent and agree to the consolidation of said election.

Section 3. That the Town Council, pursuant to its rights and authority, does order submitted to the voters at the election the following question:

To repair potholes, repave roads, reduce traffic congestion, maintain and improve sidewalks/drainage/street medians, preserve public safety, and improve other general Town services, facilities, and infrastructure, shall the Town of San Anselmo establish a one-half percent (.5%) sales tax for ten years, with annual independent audits, mandatory public expenditure reports, and an independent citizens' oversight committee with all funds staying in San Anselmo under local control?	Yes	
	No	

Section 4. The text of the proposed ordinance to be submitted to the voters is attached hereto as Exhibit A.

Section 5. Pursuant to California Elections Code Section 9280, the Town Clerk shall transmit a copy of the measure to the Town Attorney who shall prepare an impartial analysis of the measure in accordance with said Section 9280.

Section 6. Arguments for and against said measure may be filed in accordance with applicable provisions of the law. Pursuant to Section 9285 of the California Elections Code, (the provisions of which are hereby adopted), when the Town Clerk has selected the arguments for and against the measure which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The rebuttal arguments shall be filed with the Town Clerk not more than 10 days after the final date for filing direct arguments. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut. The text of the measure shall be printed on the ballot in the voter information portion of the sample ballot.

Section 7. That the County Election Department is authorized to canvass the returns of said election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 8. That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

Section 9. That the Town Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

Section 10. That the polls for the election shall be open at 7:00 a.m. of the election and shall remain open continuously from that time until 8:00 p.m. of the same day, when the polls shall be closed, except as provided in Section 14401 of the California Elections Code.

Section 11. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 12. That notice of the time and place of holding the election is given and Town 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 13. That the Town Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Election Department of the County of Marin.

Section 14. This resolution shall take effect immediately.

August 5, 2013

I, the undersigned hereby certify that the foregoing is a full, true, and complete copy of a resolution duly passed and adopted by the Council of the Town of San Anselmo at a special meeting thereof held on the 5th day of August, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved: _____
Kay Coleman, Mayor

ATTEST: _____
Barbara Chambers, Town Clerk

**TOWN OF SAN ANSELMO
ORDINANCE NO. _____**

AN ORDINANCE OF THE PEOPLE OF THE TOWN OF SAN ANSELMO
ADDING CHAPTER 8-8 TO THE SAN ANSELMO MUNICIPAL CODE IMPOSING
A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION
(November 5, 2013 Ballot Measure)

Section 1. The People of the Town of San Anselmo ordain as follows: that a new Chapter 8 shall be added to Title 8, Finance, Revenue, and Taxation, subject to voter approval as set forth herein, as follows:

Chapter 8-8 TRANSACTIONS AND USE TAX

Sections:

- 8-8.01. Title.**
- 8-8.02. Operative Date.**
- 8-8.03. Purpose.**
- 8-8.04. Contract with State.**
- 8-8.05. Transactions Tax Rate.**
- 8-8.06. Place of Sale.**
- 8-8.07. Use Tax Rate.**
- 8-8.08. Adoption of Provisions of State Law.**
- 8-8.09. Limitations on Adoption of State Law and Collection of Use Taxes.**
- 8-8.10. Permit Not Required.**
- 8-8.11. Exemptions and Exclusions.**
- 8-8.12. Amendments.**
- 8-8.13. Enjoining Collection Forbidden.**
- 8-8.14. Severability.**
- 8-8.15. Effective Date.**
- 8-8.16. Use of Proceeds.**
- 8-8.17. Fiscal Accountability Provisions.**

8-8.01. TITLE. This ordinance shall be known as the Town of San Anselmo Transactions and Use Tax. The Town of San Anselmo hereinafter shall be referred to as "the Town." This ordinance shall be applicable in the incorporated territory of the Town.

8-8.02. 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.

8-8.03. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and the provisions hereof should 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 Town 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.

8-8.04. CONTRACT WITH STATE. Prior to the operative date, the Town 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 Town shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

8-8.05. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax hereby is imposed upon all retailers in the incorporated territory of the Town at the rate of .50% (one half of one percent) 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.

8-8.06. 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.

8-8.07. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the Town 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 .50% (one half of one percent) 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.

8-8.08. 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 (“Transactions and Use Taxes”), all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code (“Sales and Use Taxes”) are hereby adopted and made a part of this ordinance as though fully set forth herein.

8-8.09. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of the Town shall be substituted therefor. However, the substitution shall not be made under the following circumstances:

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

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

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

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

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

B. The word "Town" 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.

8-8.10. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

8-8.11. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made, and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the Town which is shipped to a point outside the Town, 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 Town 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-Town 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-Town 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 Town 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. 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 that is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time during 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 Town shall not be required to collect the use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the Town or participates within the Town 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 Town or through any representative, agent, canvasser, solicitor, subsidiary, or person in the Town under the authority of the retailer.

7. "A retailer engaged in business in the Town" 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 the use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the Town.

D. Any person subject to the 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.

8-8.12. 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.

8-8.13. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the State or the Town, or against any officer of the State or the Town, 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.

8-8.14. 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.

8-8.15. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the Town transactions and use tax and shall be in full force and effect ten (10) days after the certification by the Town Council of the election returns indicating passage of the Ordinance by a majority of the voters casting votes in the Uniform District Election of November 5, 2013. The San Anselmo Transactions and Use Tax will be assessed beginning April 1, 2014. The authority to levy the tax imposed by this ordinance shall expire ten years after the Effective Date.

8-8.16. USE OF PROCEEDS. The proceeds from the transactions and use tax imposed by this ordinance shall be for general governmental purposes of the Town and shall be received into the general fund of the Town. Nothing herein shall bind the Town to use the proceeds for any specific purpose or function. This ordinance raises the Town's appropriations limit by the amount of the tax for the next 10 years.

8-8.17. FISCAL ACCOUNTABILITY PROVISIONS. The Town shall include in its annual audit of the Town's financial operations by an independent certified public accountant, an accounting of the revenue generated by the San Anselmo Transactions and Use Tax, and how the revenue was used. Additionally, the Town Council will establish a Transactions and Use Tax Oversight Committee to review and report on the use of the general purpose revenues generated by the San Anselmo Transactions and Use Tax.

Section 2. This Ordinance was approved for placement on the November 5, 2013 ballot by a two-thirds vote of all members of the Town Council. The Ordinance was adopted by the voters of the Town of San Anselmo at the Uniform District Election held on the 5th day of November, 2013, by the following vote tally:

AYES:
NOES:
ABSENT:
ABSTAIN

Mayor

Attest: _____
(Signature)