



**Measure C Citizens' Oversight Committee
Tuesday, September 19, 2017, 7:00 p.m.**

Department of Public Works Conference Room
325 Doherty Drive, Larkspur, CA

- 1. INTRODUCTIONS/ROLL**
- 2. REVIEW OF AUDITED FINANCIAL STATEMENT**
Committee to review audited financial statement for Fiscal Year Ending June 30, 2016.
- 3. UPDATE ON 2016-17 PAVEMENT REHABILITATION PROGRAM***
Committee to receive presentation and discuss.
- 4. UPDATE ON LARKSPUR STREET REPAIR AND ESSENTIAL SERVICES MEASURE 2017 (MEASURE B)***
Committee to receive presentation and discuss.
- 5. PROPOSED REVISION TO ORDINANCE FOR MEASURE B ENSURING CONSISTENCY OF RESPONSIBILITIES ASSIGNED TO CITIZENS' OVERSIGHT COMMITTEE**
Committee to consider staff's recommendation to have City Council amend the ordinance.
- 6. RELATIONSHIP OF STREET MAINTENANCE AND REPAIR PROGRAM ON UNDERGROUNDING OF WIRES IN NEIGHBORHOODS***
Committee to receive presentation and discuss.
- 7. PUBLIC COMMENT AND OPEN TIME FOR COMMITTEE MEMBERS**
- 8. ADJOURN**

**Indicates no written material is attached.*



CITY ADMINISTRATION
MEMORANDUM

August 25, 2017

TO: Measure C Citizens' Oversight Committee

FROM: Cathy Orme, Finance Director

SUBJECT: Measure C Financial Statement for Fiscal Year Ending June 30, 2016

The Measure C Citizens' Oversight Committee determined that the cost to have a stand-alone audit of the Measure C Fund was not a good use of taxpayer money. Instead, the Measure C Fund is independently audited as part of the City's annual comprehensive audit. The Measure C Fund is then included in the City's Financial Statements.

The Measure C transaction and use tax went into effect on April 1, 2014.

Attached is Page 74 of the City's Financial Statements for the Fiscal Year Ending June 30, 2016; the Measure C Fund received total revenue of \$1,357,427.

The adopted City budget projected Measure C revenues of \$900,000 for Fiscal Year 2015-16, and the City Council adopted the Committee's recommendation that 95% of the budgeted amount be applied to the Street Maintenance and Rehabilitation Program. Accordingly, \$855,000 was budgeted for transfer from the Measure C Fund to the Street Maintenance and Rehabilitation Program. Public Works determined that it could fund the FY 2015-16 program with \$810,000 from Measure C, due to the availability of other sources of funds for road repair. Initially, \$45,000 was held in the Measure C Fund as a contingency; as the contingency was not used, the monies were retained in the Fund to be used with the FY 2016-17 paving program.

The City Council also adopted the Committee's recommendation that 5% of the budgeted amount (\$45,000) be used to invested in repairs to the City's fire stations. The repairs scheduled for FY 2015-16 did not occur during the fiscal year, so the monies were held in the Measure C Fund until needed.

The amount drawn from the Measure C Fund in FY 2015-16 was \$835,270. Of this amount, \$810,000 was used for the Street Maintenance and Rehabilitation Program and \$25,270 was used for vegetation management to ensure safe passage of larger vehicles on some of Larkspur's hillside roads. In FY 2014-15, the City Council set aside \$45,000 of Measure C revenue to create an account for vegetation management. The first round of work in this program did not occur until FY 2015-16.

On June 30, 2016, the Measure C Fund had a net positive balance of \$954,086.¹ At that time, the balance consisted of:

\$844,356	Unassigned Reserve
\$ 45,000	FY2015-16 Unused Road Repair Carried Forward to FY2016-17
\$ 45,000	FY 2015-16 Designation for Fire Station Repairs
\$ 19,730	Amount remaining from Designation for Vegetation Management

ATTEST: 
Cathy Orme, Finance Director

¹ It should be noted that because Measure C revenues proved more robust than anticipated in the first two years of the tax, the Committee recommended and the Council concurred that excess funds be invested in the subsequent year's pavement program. As a result, much of this fund balance has now been spent on roads.

CITY OF LARKSPUR
NON-MAJOR GOVERNMENTAL FUNDS
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
FOR YEAR ENDED JUNE 30, 2016

	SPECIAL REVENUE FUNDS			
	Park Development	Property Development	Gas Tax	Measure C
REVENUES				
Taxes			\$278,196	\$1,353,251
License and permits				
Use of money and property	\$832	\$229	229	4,176
Charges for services				
Other revenue	81,974	925		
Total Revenues	<u>82,806</u>	<u>1,154</u>	<u>278,425</u>	<u>1,357,427</u>
EXPENDITURES				
Current:				
Recreation				
Special projects				
Public works / parks	133,329			
Capital outlay				
Total Expenditures	<u>133,329</u>			
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	<u>(50,523)</u>	<u>1,154</u>	<u>278,425</u>	<u>1,357,427</u>
OTHER FINANCING SOURCES (USES)				
Transfers in				
Transfers (out)			(285,240)	(835,270)
Total Other Financing Sources (Uses)			<u>(285,240)</u>	<u>(835,270)</u>
NET CHANGE IN FUND BALANCES	(50,523)	1,154	(6,815)	522,157
BEGINNING FUND BALANCES	<u>262,612</u>	<u>53,842</u>	<u>674,446</u>	<u>431,929</u>
ENDING FUND BALANCES	<u><u>\$212,089</u></u>	<u><u>\$54,996</u></u>	<u><u>\$667,631</u></u>	<u><u>\$954,086</u></u>



CITY ADMINISTRATION
MEMORANDUM

August 25, 2017

TO: Measure C Citizens' Oversight Committee

FROM: Dan Schwarz, City Manager

SUBJECT: PROPOSED REVISION TO ORDINANCE FOR MEASURE B ENSURING
CONSISTENCY OF RESPONSIBILITIES ASSIGNED TO CITIZENS'
OVERSIGHT COMMITTEE

In reviewing the ordinance for Measure B, the sales tax measure on the ballot in November, some committee members noted that the language clarifying that the Oversight Committee has the responsibility to "evaluate the projects and services provided with revenue from the tax" is not found in the ordinance. In drafting the new ordinance and streamlining the language, the City Attorney's Office did not include this language. As an advisory body on the use of the sales tax measure, the responsibility of the committee to consider the use of the revenue in terms of the projects and services is given and the attorneys that prepared the language simply omitted it. Staff has considered the concerns of the committee members and believes putting the language back in the ordinance would be helpful for the purpose of clarification.

The City Attorney's Office advises staff that the language can be restored by the City Council through an amendment to the ordinance. While the amended language will not appear in ballot books, as they have gone to print, staff can place a notice on the City website informing the public of the change.

Staff intends to propose amending the language at the October 4, 2017 City Council meeting.

CITY OF LARKSPUR
ORDINANCE No. 993

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

WHEREAS, Larkspur's essential service needs include repairing deteriorating streets, roads and potholes, preparing Larkspur for natural disasters, and preserving public safety services such as fire and police protection and 9-1-1 emergency medical response times;

WHEREAS, Larkspur's streets and roads are some of the worst in the Bay Area. In 2011, Larkspur's roads were rated as the second worst in the entire Bay Area;

WHEREAS, Larkspur's neighborhood streets and roads are deteriorating, riddled with cracks, and mostly on steep hillsides, creating hazardous road conditions for residents;

WHEREAS, continuing to delay maintenance and repair of Larkspur's local streets and roads will increase costs in the long-run;

WHEREAS, it is fiscally responsible to address street and road needs now, before they become more expensive in the future;

WHEREAS, essential service needs include clearing hazardous and flammable brush to prevent fires and improve emergency vehicle access so Larkspur is prepared for natural disasters, such as fires, floods and earthquakes;

WHEREAS, additional funds are needed to address Larkspur's essential community service needs and priorities including repairing deteriorating streets, roads and potholes, preparing Larkspur for natural disasters, and preserving public safety services such as fire and police protection and 9-1-1 emergency medical response times; and

WHEREAS, a local funding measure would maintain our essential city services and address community priorities by creating a local source of revenue that cannot be taken by Sacramento.

**NOW THEREFORE, THE PEOPLE OF THE CITY OF LARKSPUR DO
HEREBY ORDAIN AS FOLLOWS:**

Section 1. Recitals. The People of Larkspur find that the above Recitals are true and correct and are incorporated herein by reference.

Section 2. Amendment of Larkspur Municipal Code to Add Chapter 3.24. Title 3 of the Larkspur Municipal Code is hereby amended by adding a new Chapter 3.24, which shall read as follows:

3.24.010 Title.

This ordinance shall be known as the Larkspur Transactions and Use Tax Ordinance. The City of Larkspur hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

3.24.020. Operative Date.

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

3.24.030 Purpose.

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

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

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

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

3.24.050 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 .5% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

3.24.060 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.

3.24.070 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 .5% 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.

3.24.080 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.

3.24.090. 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:
 - 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.

3.24.100 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.

3.24.110 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 Ordinance.
 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to

terminate the contract or lease upon notice, whether or not such right is exercised.

- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
 3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
 7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

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

3.24.120 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.

3.24.130 Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.24.140. Annual Audit; Citizens' Oversight

A. By no later than December 31 of each year after the operative date, the City's independent auditors shall complete a report reviewing the collection, management and expenditure of revenue from the tax authorized by this Chapter. The auditors' report shall be a public document.

B. There shall be a committee consisting of no fewer than five members of the public to review and report on the receipt of revenue and expenditure of funds from the tax authorized by this Chapter.

The committee shall review the auditors' report, for each year in which the auditors prepare such a report, evaluate the projects and services provided with revenue from the tax, and make recommendations to the City Council regarding priorities for expenditures of revenue from the tax authorized by this Chapter for the following budget year. The City Council shall consider the committee's recommendations as part of its budget deliberations.

C. By December 31, 2013, the City Council shall adopt a resolution establishing the composition of the committee required by subsection B, setting the terms of office of the committee members, and defining the scope of the committee's responsibilities, which at a minimum shall include reviewing the annual auditor's report and making recommendations to the City Council for use of revenue from the tax authorized by this Chapter. The City Council shall appoint all members of the committee by January 31, 2014. Thereafter, appointment of committee members and filling vacancies shall be governed by the resolution required by this subsection.

3.24.150 Termination Date.

The authority to levy the tax imposed by this Chapter shall expire on the 5th anniversary of the last day of the calendar quarter preceding the operative date.

Section 3. Compliance with the California Environmental Quality Act. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The transactions and use tax imposed by the adoption of this Ordinance is general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

Section 4. 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 5. Effective Date and Publication. This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

IT IS HEREBY CERTIFIED that the foregoing Ordinance was approved by the following vote of the People of the City of Larkspur on November 5, 2013:

YESES:

NOES:

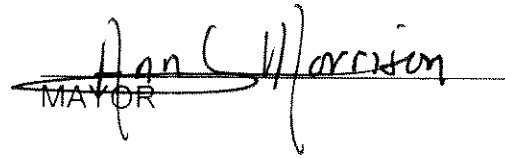
IT IS HEREBY FURTHER CERTIFIED that the foregoing Ordinance was adopted by Declaration of the November 5, 2013 election results by the City Council of the City of Larkspur on December 18, 2013, by the following vote, to wit:

AYES: COUNCILMEMBER: Chu, Haroff, Hillmer, Morrison

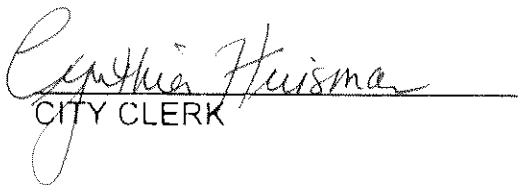
NOES: COUNCILMEMBER: None

ABSENT: COUNCILMEMBER: Way

ABSTAIN: COUNCILMEMBER: None


MAYOR

ATTEST:


CITY CLERK

2116159.1

**CITY OF LARKSPUR
ORDINANCE No. 1019/17**

**AN ORDINANCE OF THE CITY OF LARKSPUR
AMENDING CHAPTER 3.24 OF THE LARKSPUR MUNICIPAL CODE
IMPOSING A LOCAL TRANSACTIONS AND USE (SALES) TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

WHEREAS, many of Larkspur's neighborhood streets and roads are deteriorating and riddled with cracks; and

WHEREAS, the City seeks to address aging road conditions for the safety of motorists, buses, cyclists, police and fire safety vehicles and the best approach to doing so is to accelerate road repairs so all City roads can be repaved within 5 years; and

WHEREAS, doing so will not only maintain safety, but prevent further deterioration, and lower future maintenance costs as delaying maintenance and repairs to Larkspur's streets and roads only increases costs in the long-run by as much as 40 times higher; and

WHEREAS, funding is also needed to continue to clear hazardous and flammable brush, prevent fires and improve emergency vehicle access, improve drainage in low-lying areas, and retrofit buildings, storm drains and other infrastructure so Larkspur is prepared for natural disasters such as fires, floods and earthquakes; and

WHEREAS, local, voter-approved funding by Larkspur residents has been critical in preventing our roads from falling into further disrepair—maintaining this funding is essential to keeping our roads safe; and

WHEREAS, 90% of existing local funding as spent on road repair and none were spent on salaries or pensions; and

WHEREAS, with recent political changes, the City of Larkspur cannot count on federal or state governments to provide funding as they've done in the past--only by maintaining control locally can the City ensure road repairs, police protection, fire services, storm drain repairs, and other essential city services are adequately preserved; and

WHEREAS, previous voter-approved local funding will expire and needs to be renewed; and

WHEREAS, at its June 7, 2017 meeting, the City Council adopted a budget for Fiscal Year 2017-18 that recognizes the need for additional revenue to

continue to address aging road conditions, clear hazardous and flammable brush, prevent fires and improve emergency vehicle access, improve drainage in low-lying areas, and retrofit buildings, storm drains and other infrastructure, and fund general municipal services; and

WHEREAS, to obtain the revenue necessary for those projects and services and to maintain general municipal services, the City Council has concluded that it should call an election to ask the voters of the City to continue its local transactions and use tax ("sales tax") at the three-quarter cent rate; and

WHEREAS, the tax to be submitted to the voters, if approved, would be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property; the tax rate would be three-quarters of a cent for each dollar (0.75%) of the sales price of the property; the tax revenue would be collected by the State Board of Equalization and remitted to the City; and the tax shall be approved if the measure receives at least a simple majority vote of affirmative votes; and

WHEREAS, at the November 2013 election, the voters of the City of Larkspur approved Measure C, a local, half-cent transactions and use tax, to be in effect for five years and sunset in 2018. Measure C was codified as Chapter 3.24 of the Larkspur Municipal Code. This ordinance amends and restates Chapter 3.24 to extend the existing tax at the three-quarter cent rate.

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

Section 1. Recitals. The People of Larkspur find that the above Recitals are true and correct and are incorporated herein by reference.

Section 2. Amendment of Larkspur Municipal Code Chapter 3.24. Chapter 3.24 of the Larkspur Municipal Code is hereby amended and restated to read as follows:

3.24.010 Title.

This ordinance shall be known as the Larkspur Transactions and Use Tax Ordinance. The City of Larkspur hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

3.24.020. Operative Date.

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

3.24.030 Purpose.

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

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

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance

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

3.24.050 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 0.75% of the gross receipts of any retailer from the sale of all

tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

3.24.060 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.

3.24.070 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 0.75% 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.

3.24.080 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.

3.24.090. 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:
 - 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.

3.24.100 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.

3.24.110 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 Ordinance.
4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing

purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

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

3.24.120 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.

3.24.130 Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.24.140. Annual Audit; Citizens' Oversight

A. By no later than December 31 of each year after the operative date, the City's independent auditors shall complete a report reviewing the collection, management and expenditure of revenue from the tax authorized by this Chapter. The auditors' report shall be a public document.

B. There shall be a committee consisting of no fewer than five members of the public to review and report on the receipt of revenue and expenditure of funds from the tax authorized by this Chapter. The committee members shall be either Larkspur residents or representatives of Larkspur businesses. The auditors' annual report required by subsection A shall be provided to the committee. By March 31 of each year, the committee shall review the auditors' report and make recommendations to the City Council regarding priorities for expenditures of revenue from the tax authorized by this Chapter for the following budget year. The City Council shall consider the committee's recommendations as part of its budget deliberations.

C. The City Council shall by resolution establish the composition of the committee required by subsection B, setting the terms of office of the committee members, and defining the scope of the committee's responsibilities, which at a minimum shall include reviewing the annual auditor's report and making recommendations to the City Council for use of revenue from the tax authorized by this Chapter. The City Council shall maintain a quorum of appointed committee members while the tax approved by this Chapter is in effect. Appointment of committee members and filling vacancies shall be governed by the resolution establishing the composition and rules of operation of the committee.

D. In the event that the City Council authorizes the incurrence of debt to accelerate infrastructure projects, the committee shall additionally review the expenditure of funds for consistency with the purposes of the debt and make recommendations regarding the use thereof. The auditor shall include expenditure of proceeds of the debt in its annual report.

E. The oversight committee is hereby authorized as part of an annual report to recommend that the City Council submit a measure to Larkspur voters to confirm whether to continue the tax.

3.24.150 Use of Tax Proceeds

All proceeds of the tax levied and imposed under this Chapter shall be paid into the General Fund for use by the City of Larkspur for general municipal services. The City Council is authorized to incur indebtedness in the form of bonds, notes, contractual obligations or other evidences of indebtedness authorized by law to finance or refinance the costs of capital projects, including but not limited to street and storm drain repair and improvement, and to pay any and all costs of issuing or incurring such indebtedness, to fund reserve funds, capitalized interest, costs of credit enhancement, costs of interest rate hedging arrangements or any other financing costs associated with such indebtedness. Such indebtedness shall be solely payable from, and may be secured by a pledge and lien on, the proceeds of the tax levied and imposed hereunder. The annual indebtedness, including principal and interest, shall not exceed the estimated annual proceeds of the tax authorized by this Chapter.

Section 3. Compliance with the California Environmental Quality Act. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). The transactions and use tax imposed by the adoption of this Ordinance is general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

Section 4. 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 5. Effective Date and Publication. This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately. Notwithstanding the foregoing, Chapter 3.24 of the Municipal Code shall not be amended until the operative date.

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the Larkspur City Council held on July 19, 2017 and thereafter passed and adopted by the Larkspur City Council, subject to voter approval, on July 26, 2017 by the following vote, to wit:

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

ABSTAIN: COUNCILMEMBER

MAYOR

ATTEST:

CITY CLERK

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