

# CITY OF ISLETON

## Measure D

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### MEASURE D

Shall the measure imposing a 0.75 percent transaction and use tax, to be used solely to fund fire protection needs for the City of Isleton be adopted?

Shall the measure D be imposed?

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### CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE D: ISLETON SPECIAL PUBLIC SAFETY AND TAX MEASURE

The City Council of the City of Isleton has placed Measure D on the March 3, 2020, ballot. California Revenue and Taxation Code section 7285.91 authorizes the City Council to levy a special transactions and use tax via ordinance, provided the ordinance establishing the tax is ultimately approved by the voters. Measure D would, if approved by voters, raise revenue for fire protection services in the City of Isleton by increasing the existing 0.5 percent (i.e., 1/2 cent) transactions and use tax to 0.75 percent (i.e., 3/4 cent). The measure also eliminates the oversight committee requirement imposed in conjunction with the existing tax.

A transactions and use tax is administered by the State Board of Equalization. Once established, a transactions and use tax is allocated to the city where any goods are delivered or placed into use. The transactions and use tax that would be established by Measure D is considered to be a "special tax."

As a "special tax," the revenue generated by Measure D may only be used for specific purposes. The ballot question for Measure D states that the 0.75 percent transactions and use tax will be used "solely to fund fire protection needs for the City of Isleton." Because this transactions and use tax would be a "special tax," the City of Isleton would be required to use tax proceeds only for these services. Measure D requires that the City make an annual public report on the revenue generated from Measure D and the expenditures of that revenue.

Finally, because Measure D is a "special tax," it will only be approved if it receives a 2/3 (over 66.66%) vote in favor of the Measure. If approved, Measure D would become operative on July 1, 2020, and would remain in effect for a period of five (5) years.

A "**YES**" vote is a vote to approve the ordinance levying the 0.75 percent transactions and use tax. A "**NO**" vote is a vote against the tax.

**\*\*\*YOU CAN FIND THE MEASURE ARGUMENTS FOLLOWING THE FULL TEXT OF THIS MEASURE\*\*\***

### ORDINANCE NO. CC 19-12

### AN AMENDMENT TO ORDINANCE NO. 2014-05-AN ORDINANCE OF THE CITY OF ISLETON IMPOSING A SPECIAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

Section 1. TITLE. This ordinance shall be known as the Isleton Special Transactions and Use Tax Ordinance. The city of Isleton hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

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

Section 3. PURPOSE. This ordinance shall amend Ordinance No. 2014-05 to read as set forth herein, and 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds 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.

E. To increase the amount of the special tax adopted pursuant to Ordinance number 2014-05 from 0.5 percent (i.e. 1/2 cent) to 0.75 percent (i.e. 3/4 cent) and to remove the provision requiring an oversight committee, and to eliminate the sunset clause, thereby enabling the tax to remain in perpetuity until either repealed or replaced.

Section 4. 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.

Section 5. 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.

Section 6. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 7. 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.

Section 8. 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 9. 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.

Section 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.

Section 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 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.

Section 12. EXPENDITURE PLAN. Revenue and Taxation Code section 7285.91 requires that this ordinance include "an expenditure plan describing the specific projects for which the revenues from the tax may be expended."

A. All revenue from the tax shall be restricted revenue used solely to fund Fire Department Services.

B. The City's independent auditor shall complete a report reviewing the collection, management and expenditure of revenue from the tax levied by this chapter, the results of which shall be included in the City's annual financial audit.

C. Following approval of this special tax by the Isleton voters, the City Manager shall file a report with the City Council annually. The report shall contain the following information: (a) the amount of funds collected and expended, (b) the status of any project required or authorized to be funded by the special tax.

Section 13. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 14. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 15. 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 16. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

Section 17. TERM OF TAX. The authority to levy the tax imposed by this ordinance shall expire five (5) years after the Operative Date.

PASSED AND ADOPTED by the City Council of the City of Isleton, State of California, on the 12 day of November 2019, by the following vote:

AYES: Councilmember's Dean Dockery, Robert Jankovitz, Iva Walton, Vice Mayor Pamela Bulahan, Mayor Eric Pene.

NOES: None.

ABSENT: None.

ABSTAIN: None.

### **ARGUMENT IN FAVOR OF MEASURE D**

This is a special sales tax to help supplement the funding of the Isleton Fire Department. The funds generated from this tax will help purchase and replace aging and outdated Fire Department equipment, allow the Fire Department to properly maintain current equipment and apparatus, address and maintain current and future staffing levels and needs, and provide necessary and mandatory training for all Fire Department personnel. With the passing of this sales tax increase we will be able to purchase equipment and tools that allow us to better serve our community, continue to maintain both new and older equipment and apparatus and allow us to continue our training to meet the ever changing guidelines set forth by both the state and federal government. Please approve this measure and help better

equip the Isleton Fire Department so that we can continue to provide the high level of service that this great community has come to expect from us.

s/ Scott Baroni  
Fire Chief

**NO REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE D WAS FILED**

**NO ARGUMENT AGAINST MEASURE D WAS FILED**

**NO REBUTTAL TO ARGUMENT AGAINST MEASURE D WAS FILED**