

City of Half Moon Bay

Compiled by the City of Half Moon Bay City Clerk Ms. Siobhan Smith

Measure J

To provide funding only for the City of Half Moon Bay that can be used to enhance our Library, increase street maintenance, improve senior services, invest in business development and tourism, improve Smith Field recreational facilities, help fund the new Main Street bridge and improve other general city services, shall the City of Half Moon Bay pass a temporary half-cent general sales tax that will expire after 3 years, with citizens' oversight?

Full Text

ORDINANCE NO. C- 06-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HALF MOON BAY ADDING CHAPTER 3.10 TO THE HALF MOON BAY MUNICIPAL CODE IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

Section 1. The City Council of the City of Half Moon Bay ordains as follows: that a new Chapter 3.10 shall be added to Title 3, Revenue and Finance, subject to voter approval as set forth herein, as follows:

“Chapter 3.10 TRANSACTIONS AND USE TAX

Sections:

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3.10.150	Use of Proceeds.
3.10.160	Fiscal Accountability Provisions.

3.10.010 TITLE. This ordinance shall be known as the City of Half Moon Bay Transactions and Use Tax Ordinance. The City of Half Moon Bay hereinafter shall be called “City.” This ordinance shall be applicable in the incorporated territory of the City.

3.10.020 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.

3.10.030 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 therefor 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.

3.10.040 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 has not 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.

3.10.050 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 one half-percent (.50%) 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.

3.10.060 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.

3.10.070 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 one half-percent (.50%) of the sales price of

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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.

3.10.080 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.

3.10.090 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.

3.10.100 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.

3.10.110 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

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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.

3.10.120 AMENDMENT OR REPEAL.

A. 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.

B. The City Council may amend this chapter without voter approval only to make minor technical adjustments consistent with

the purposes set forth in this ordinance and applicable laws or as necessary to comply with the law, so long as such amendments do not increase the amount of tax imposed by this chapter.

3.10.130 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.

3.10.140 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.

3.10.150 USE OF PROCEEDS. The proceeds from the transactions and use tax imposed by this ordinance shall be for general governmental purposes of the City and shall be received into the general fund of the City. Nothing herein shall bind the City to use the proceeds for any specific purpose or function.

3.10.160 FISCAL ACCOUNTABILITY PROVISIONS. The amount generated by this new general purpose revenue source and how it was used shall be included in the annual audit of the City's financial operations by an independent certified public accountant.

3.10.170 AUTOMATIC REPEAL OF TAX. The transactions and use tax adopted by this Chapter shall be automatically repealed and shall be of no further force and effect after three years from the operative date set forth at Section 3.10.020."

Section 2. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately, but it shall not become operative until approved by a majority of the voters voting at the general municipal election to be held November 6, 2012.

Section 3. PUBLICATION. The City Clerk shall cause this Ordinance to be published in accordance with the requirements of Section 36933 of the Government Code of the State of California.

INTRODUCED on the 19th day of June, 2012

PASSED AND ADOPTED this 17th day of July 2012 by the following votes:

AYES: Kowalczyk, Muller, Patridge & Mayor Alifano

NOES: Fraser

ABSENT:

ABSTAIN:

/s/ **Allan Alifano**
Mayor

ATTEST:
/s/ **Siobhan Smith**
City Clerk

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Impartial Analysis of Measure J

The City Council of the City of Half Moon Bay has placed Measure J on the November 6, 2012 ballot to ask the voters to approve temporary one-half percent (0.50%) sales tax within the City. If approved, the tax would add one-half cent to the price of an item that costs a dollar, or fifty cents to the price of an item that costs one hundred dollars.

Currently, the sales tax rate in Half Moon Bay is 8.25% of the purchase price. The City, however, receives only 1% of this 8.25%. The remainder goes to the State of California (6.25%) and County of San Mateo County (1%).

Technically, the existing “sales tax” is a combination of “sales and use tax” and “transactions and use tax,” which are levied on the sale or use of tangible personal property sold at retail. Retailers collect the tax at the time of sale and remit the funds to the State Board of Equalization, which distributes the tax. This Measure, if approved by the voters, would increase the tax rate on retail sales in Half Moon Bay to 8.75%.

Because this Measure does not limit the use of tax revenue, it is a “general tax,” not a “special tax” that restricts the funds to specific purposes. Therefore, the City may use the funds for a range of services including, but not limited to, repaving streets and fixing potholes; maintaining public libraries and services; improving law enforcement services; parks and recreation programs; and youth afterschool and senior programs.

The ordinance will automatically expire and tax will no longer be in effect 3 years after collection begins, unless extended by the voters after another election. On the November 6, 2012 ballot, a ten year, one-half percent (0.50%) sales tax measure is also proposed by the County of San Mateo, and a four year, one quarter percent (0.25%) sales tax increase is proposed by the State of California. If all three measures are approved by the voters, the total sales tax in the City of Half Moon Bay will increase to 9.5%.

A “Yes” vote is a vote to approve the enactment of the half-cent tax for 3 years, with oversight by a committee of members of the public. A “No” vote is a vote against the tax. This Measure would be approved if it receives a simple majority of “Yes” votes (more than 50%).

The above statement is an impartial analysis of Measure J. If you desire a copy of the ordinance, please call the City Clerk’s office at 650- 726-8271 and a copy will be mailed at no cost to you.

DATED: August 27, 2012

/s/ **Anthony P. Condotti**
City Attorney
City of Half Moon Bay

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Arguments in support of or in opposition to the proposed laws are the opinions of the authors.

Argument in Favor of Measure J	Rebuttal to Argument in Favor of Measure J
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Measure J is a proposed one half cent sales tax for 3 years that will be used to support only Half Moon Bay. The suggested one half cent sales tax, with a limited duration of 3 years, will primarily be used for capital projects like replacing the seismically unsafe Main Street Bridge, maintaining city streets which are badly in need of repair, enhancing youth athletic facilities at Smith Field and supporting business development. All spending related to Measure J revenues will be conducted in budget sessions that are open to the public.

The City has already reduced costs significantly to stabilize operating finances, but still has an estimated short fall for capital improvements of approximately \$1,000,000 annually. Examples of cost savings initiatives that the City has successfully implemented are:

- **Contracting with San Mateo County Sheriff's Department: \$800,000/yearly savings**
- **Contracting recreation services with City of San Carlos: \$190,000/yearly savings**
- **Staff concessions and furloughs: \$150,000 in savings**
- **Miscellaneous budget saving measures: \$200,000 in savings**

The need is critical. The City extended street repairs out seven years, but considering the condition of our streets, seven years will only perpetuate streets in their current poor condition. The City's contribution to replace the seismically unsafe Main Street Bridge is estimated at approximately \$600,000. And, the City needs funds to survey our sewer system and replace sections before they fail.

Measure J is projected to generate approximately \$870,000 per year, of which a substantial portion will come from visitors to our community. Measure J also has broad based support from across the local business community.

The City will create an Independent Citizen's Oversight Committee and will publish annual financial audits.

Half Moon Bay is moving in a positive direction. Help us continue our progress forward.

Please support our community and vote YES on Measure J.

/s/ **Allan Alifano** August 17, 2012
Mayor-City of HMB

/s/ **Rick Kowalczyk** August 17, 2012
Vice Mayor, City of Half Moon Bay

/s/ **Jeanne L. Barber** August 17, 2012
Owner/Half Moon Bay Inn

/s/ **Peter Welch** August 17, 2012
Owner/Arrowhead Framing

/s/ **Mel Mello Jr** August 17, 2012
Officer I.D.E.S.

Half Moon Bay City Council and staff complain of a "shortfall for capital improvements". Yet, according to the 2012-13 budget, the city's projected 06-30-2013 General Fund balance is almost \$14,000,000 with almost \$5,000,000 in cash. For all funds, the city's projected 06-30-2013 cash balance is over \$17,000,000. The City has a multi-million dollar operating surplus. And these numbers are conservative. In 2010-11, General Fund revenue was underestimated by over a million dollars.

Some "shortfall"

If all three sales tax measures on this ballot pass, the Half Moon Bay sales tax rate will rocket to **9.5%**.

Sales taxes are regressive, and hurt the poor!

In 1960, the sales tax rate was only 3%. Raising sales tax rates sure didn't fix California's budget problems, and it isn't the answer for Half Moon Bay either. The Council and staff could spend this sales tax money on *anything they like* - including low priority or unneeded projects, as in the past.

California reduced its sales tax rate by one point on 07-01-2011. After twelve months, the unemployment rate for the state, County, and Half Moon Bay all fell by almost a full percentage point, according to the Employment Development Department.

Lower sales taxes help foster lower unemployment!

Higher sales taxes cause higher unemployment and hurt local businesses and local jobs.

The City of Half Moon Bay doesn't need to burden the community with this tax increase to provide services its citizens want and deserve. In these hard times, we simply can't afford to give the city "play money".

Vote No on Measure J

/s/ **George Gipe** August 23, 2012
HMB resident

/s/ **David R. Worden** August 24, 2012
Independent Business Owner

/s/ **Freda Jeffs** August 23, 2012
HMB resident

/s/ **Don Pettengill** August 25, 2012
Half Moon Bay Resident

/s/ **Gayle Wainwright** August 27, 2012
HMB Home Owner

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Arguments in support of or in opposition to the proposed laws are the opinions of the authors.

Argument Against Measure J	Rebuttal to Argument Against Measure J
<p>The state, San Mateo County, and HMB all want to increase your sales tax at the same time!</p>	<p>Measure J is a proposed one-half cent sales tax for 3 years that will be used to support only the needs of Half Moon Bay. The Argument Against Measure J is simply incorrect. The funds generated by Measure J are essential to Half Moon Bay.</p>
<p>California’s high unemployment is no accident. A recent nationwide study revealed that the probability that the sales tax increases unemployment is extraordinarily high. The best estimate is that California’s high sales tax accounts for 20% of the state’s unemployment.</p>	<p>FACT: Our operating budget is balanced, which allows us to maintain the basic functions of the city and cover daily expenses.</p>
<p>If this measure passes, all HMB residents will pay more when they buy a new or used car – no matter where it’s purchased.</p>	<p>FACT: Our capital budget is significantly under-funded, which prevents us from performing much needed maintenance and special projects. We are not able to effectively maintain city streets and sewers or pay for projects like the replacement of the seismically unsafe Main Street Bridge.</p>
<p>The City has \$11.1 million in revenue to support current operations, including two recently added positions. Tax revenues are on the rise. With many departments now contracted out, the City is fully staffed for operations.</p>	<p>FACT: Our City has no hidden funds. We don’t have a “structural surplus”. We do have a \$3 million RESTRICTED RESERVE that we are required to maintain by our bond holders. This money could only be accessed in the case of an extreme emergency.</p>
<p>The City Council claims it lacks funding for some capital projects. However...</p>	<p>The Council is committed to providing conservative and responsible financial direction for our City. This has been demonstrated with the financial decisions that have resulted in a balanced operating budget.</p>
<p>A close look at the City’s 2012-13 budget reveals that over \$3.2 million of the general fund “expenditures” are one-time transfers that don’t represent ongoing operations. And the City’s revenue estimates are low.</p>	<ul style="list-style-type: none"> • Our short term financial goal is to provide funding for our most critical capital projects through Measure J. • Our long term financial goal is to pay off our bonds and remove our \$1.2 million/year payment.
<p>The City definitely has a multi-million dollar structural operating surplus!</p>	<p>When our community is voting this November, we need to focus on the critical needs of our City. Only Half Moon Bay can help Half Moon Bay.</p>
<p>The City receives millions annually in grants for roads and bridges and receives gas tax funds. The operating surplus can also be used for capital projects.</p>	<p>Please support our community and vote YES on Measure J.</p>
<p>Due to the Beachwood judgment, the City has filed a claim for \$5,000,000 against an insurance company, which is in arbitration. The City received the full \$5,000,000 from a similar claim against ABAG.</p>	<p>/s/ Allan Alifano August 23, 2012 Mayor – City of Half Moon Bay</p>
<p>The City has millions in both restricted and unrestricted cash reserves.</p>	<p>/s/ Rick Kowalczyk August 27, 2012 Vice Mayor – City of Half Moon Bay</p>
<p>Before an election, the City Council talks about popular capital projects, but look at their record. They recently spent \$450,000 on a redundant EOC facility that isn’t needed. We still don’t know how it will be used.</p>	<p>/s/ Charles Nelson August 23, 2012 Business Owner</p>
<p>We don’t need a new tax and we don’t need higher unemployment.</p>	<p>/s/ Betsy del Fierro August 23, 2012 Owner, It’s Italia</p>
<p>Vote NO on this tax increase!</p>	<p>/s/ Kim Levin August 23, 2012</p>
<p>/s/ George Gipe August 13, 2012 HMB resident</p>	
<p>/s/ David R. Worden August 13, 2012 HMB Resident & Business Owner</p>	
<p>/s/ Freda Jeffs August 14, 2012 HMB resident</p>	
<p>/s/ Joe Milner August 14, 2012 HMB Resident</p>	
<p>/s/ Andrea K. Hayes August 15, 2012</p>	