



Local Ballot Measure: D

Full Text of Measure D

ORDINANCE NO. 2022-132

AN ORDINANCE OF THE VOTERS OF THE CITY OF GONZALES IMPOSING A TEMPORARY SPECIAL TRANSACTIONS AND USE TAX, KNOWN AS THE “GONZALES COMMUNITY CENTER TEMPORARY TAX MEASURE” TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION AND RESTRICTING THE USE OF TAX REVENUES TO GONZALES COMMUNITY CENTER COMPLEX FINANCING AND FUNDING AND THEREAFTER ON STREET MAINTENANCE AND REPAIR, SUBJECT TO ANNUAL AUDITS AND ANNUAL PUBLIC EXPENDITURE REPORTS

BE IT ORDAINED BY THE VOTERS OF THE CITY OF GONZALES:

SECTION 1. FINDINGS. The voters of the City of Gonzales hereby find as follows:

1. The voters of the City of Gonzales have previously approved two tax measures (Measure K and Measure X), setting the City’s current Temporary Transaction and Use Tax (TUT) at one percent (1%). The 1% TUT has established a sales tax rate in Gonzales at 8.75%, the second lowest rate in Monterey County. With guidance provided by TUT Advisory Committees, TUT revenues in Gonzales have been used for a variety of projects, including but not limited to funding debt service for the Community Pool, youth services and leadership development, park improvements (restrooms, tot lot, playground equipment), grant programs, senior programs, and internet accessibility for all citizens.
2. After several years of planning and extensive public outreach and input, the City of Gonzales is pursuing the construction of a Community Center Complex Project (“Project”) which will include a public library, a Teen Innovation Center, a fitness studio, stand-alone gymnasium, multi-use conference rooms, consulting and counseling rooms, a commercial kitchen, a 3,500 square foot Community Hall to host fitness and recreation classes, competitive sports events, and public and private functions, and extensive outdoor venues that include an exercise area, amphitheater with stage, and meet-and-greet lounge areas. The Council, Staff and community are largely unified in the belief that the Project, as planned, will provide a multitude of recreation, education and social activities for local and regional residents and will be of significant benefit to the health and the quality of life for City residents of all ages.
3. Project estimated costs are \$34.8 million for the base project, and an additional \$8 million for a standalone gymnasium requested and supported by community members and the Council, for a total cost estimate for the Project of \$42.8 million dollars.
4. While the City has been and continues to be diligent in seeking and obtaining funding sources for the Project, including significant State and local grants and the recommended use of a portion of the proceeds from the City’s Measure X TUT revenues, Project costs have been adversely impacted by the COVID pandemic and the current war between Russia and Ukraine. As a result of these circumstances, Project costs are significantly outpacing available funding sources, thus creating a substantial Project funding deficit.



Local Ballot Measure: D

5. In light of the above-referenced Project funding deficit, when paired with the community and Council desire for the Project, on April 4, 2022, the Council directed staff to prepare a resolution and ordinance that would call for an all-mail ballot election for the City's electorate to consider adoption of a special one-half percent (0.5%) increase to the City's TUT. The Tax would be a special tax, requiring a two-thirds vote for approval, with use of the tax revenues restricted initially to financing and funding the Community Center Project, and only upon the completion of such funding, to be used for street maintenance and repair.
6. Pursuant to Part 6.1 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, and Part 1.7 of Division 2, and more specifically Section 7285.91, the City may seek voter approval for a special transactions and use tax (TUT.)

SECTION 2. AMENDMENT OF CODE. "Chapter 3.30- Community Center Temporary Special Transactions and Use Tax" shall be added to Title 3- Revenue and Finance of the Gonzales City Code and shall read as follows:

"3.30.010 Title. The ordinance codified in this Chapter shall be known as the "Gonzales Community Center Special Temporary Transactions and Use Tax Measure" Ordinance. This ordinance shall be applicable in the incorporated territory of the City.

3.30.020 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.

3.30.030 Purpose. The city council declares that the ordinance codified in this chapter is adopted to achieve the following purposes, and directs that the provisions hereof be interpreted in order to accomplish said purposes:

A. To impose a temporary special 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 (2/3) of the electors voting on the measure vote to approve the imposition of the tax at an all-mail ballot election called for that purpose.

B. To adopt a temporary special 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 temporary special retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration ("CDTFA") 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 CDTFA in administering and collecting the California State Sales and Use Taxes.

D. To adopt a temporary special 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



Local Ballot Measure: D

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.

3.30.040 Contract with State. Prior to the operative date, the city shall contract with the CDTFA 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 CDTFA 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.

3.30.050 Transactions tax rate. For the privilege of selling tangible personal property at retail, a special tax is hereby imposed upon all retailers in the incorporated territory of the city at the rate of one-half percent (0.5%) 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.

3.30.060 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 CDTFA.

3.30.070 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 (0.5%) 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.

3.30.080 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.

3.30.090 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 therefore. 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 Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California;



Local Ballot Measure: D

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 CDTFA, 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.

3.30.100 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.

3.30.110 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:



Local Ballot Measure: D

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.



Local Ballot Measure: D

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 etc to the use tax.

3.30.120 Amendments. All amendments subsequent to the effective date of this ordinance to Part I 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. The foregoing amendments shall not require voter approval.

The following amendments to this ordinance must be approved by the voters of the city of Gonzales; increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; or imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of the preceding paragraph); identifying a use for tax revenues other than that specified herein. The city council may otherwise amend this ordinance without submitting the amendment to voters for approval.

3.30.130 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.

3.30.140 Annual audits, expenditure report and oversight committee.



Local Ballot Measure: D

Annually, the city retains an independent auditor to conduct an audit of and provide audited financial statements for all of the city's financial activities. The auditor shall include an accounting of the revenue received from the tax and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the council at a public meeting and made available to the public. The City Manager and City Finance Director shall annually prepare and present to the council and the public a report in conjunction with the budget that reviews the use of the proceeds of the special tax.

3.30.150 Refunds and credits; suits and legal proceedings.

A. Refunds of and credits for any tax paid pursuant to this article may be made only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

B. Suits and proceedings for the recovery of any amount alleged to have been erroneously or illegally determined or collected pursuant to this article may be maintained in any court only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. A judgment shall not be rendered in favor of the plaintiff in any action brought against the CDTFA to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

3.30.160 Termination date. This ordinance is meant to establish a special transactions and use tax for a limited period of time. The authority to levy the tax imposed by this chapter shall expire on the fortieth anniversary of the last day of the calendar quarter preceding the operative date.

3.30.170 Effect of tax. The tax established herein is meant to be imposed and collected in addition to any existing tax established by the city, and is not meant to supersede or otherwise impact the tax established in Chapters 3.28 and 3.29 of this code.

SECTION 3. USE OF TAX REVENUE. The tax approved by this ordinance is a special tax. The city may only initially use the revenue from the tax for financing and funding the City of Gonzales Community Center Complex Project, and thereafter, upon achieving full funding of the Complex, for street maintenance and repair.

SECTION 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The voters of the City of Gonzales hereby declare that they would have adopted each and every provision of this ordinance regardless of the invalidity of any other provision.

SECTION 5. CODIFICATION. Upon adoption of this ordinance pursuant to the voter approval referenced in Section 2, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this ordinance in the Gonzales City Code.

SECTION 6. EFFECTIVE DATE. If approved by a two-thirds majority of the voters voting on the issue at the August 30, 2022 all mail ballot election, this ordinance shall



Local Ballot Measure: D

become effective ten (10) days after the Council declares the results of the election, and the tax shall become operative on the "operative date," as defined in Section 2 of this ordinance.

SECTION 7. PUBLICATION. The Clerk of the City of Gonzales is hereby directed to cause the following summary of the ordinance to be published by one (1) insertion in The Salinas Valley Tribune, a newspaper of general circulation in the City of Gonzales:

Contingent upon two-thirds voter approval, this ordinance adopts a new one-half percent (0.5%) special transactions and use tax on the sale or consumption of tangible personal property within the City of Gonzales. The special tax will be collected for a term of forty (40) years. The ordinance requires independent annual audits and annual public expenditure reports. The tax revenues will only be spent initially on financing and funding the City of Gonzales Community Center Complex Project, and upon achievement of full funding, thereafter will be used exclusively for street repair and maintenance.

APPROVED by the following vote of the Voters of the City of Gonzales on August 30, __, 2022.

ADOPTED by Declaration of the vote by the City Council of the City of Gonzales on ____, 2022:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

Jose L. Rios, The Honorable Mayor

ATTEST:

Mary Villegas, Deputy City Clerk