

## **Initiative Measure to be Submitted Directly to the Voters**

**Notice of Intention' to Circulate an Initiative Petition:** 'Notice' is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of Kern imposing one-eighth cent (0.125%) sales tax for sixteen years to maintain and improve library hours, internet access (WIFI), technology, collections of books, CDs, DVDs, materials, programs and services to benefit children, seniors and all residents of Kern County. A statement of the reasons of the proposed actions as contemplated in the petition is as follows: Since 1911, the Kern County Library has been a place for education, self-help and lifelong learning for the citizens of Kern County. Today, the Library is vital to a public that depends on reliable and valuable information, materials, and the means to access new technologies available such as internet databases, on-line job searches and applications, homework assistance and research, CDs, DVDs, eAudioBooks and WIFI. Though the scope of Library services has increased, the funding for providing these services has decreased dramatically. The loss of Public Library Funding from the State of California and reduced funding available from the County of Kern has left the Library with dwindling resources and reduced services. While all Library users have been affected as a result of the limited funding, the impacts are felt most by the Library user that lacks the financial means to obtain the necessary services elsewhere.

**The County Counsel of the County of Kern has prepared the following circulating title and summary of the chief purposes and points of the proposed measure:**

### **Library Tax Measure**

This measure would authorize the Board of Supervisors to adopt an ordinance imposing a retail sales and use tax at the rate of 1/8 of one percent (0.125%) for a period of 16 years for the sole purpose of funding public libraries. The tax, which amounts to 1/8 of a cent on each dollar spent and subject to the tax, will be imposed throughout Kern County, in both the incorporated and unincorporated territory. The tax will be administered and collected by the State Board of Equalization, and revenues from the tax will be deposited into the County Treasury in a special fund entitled "Library Special Tax Fund." At the end of 16 years from its adoption by the Board of Supervisors, the tax will expire unless renewed. The tax can be renewed in succeeding periods of up to 16 additional years upon voter approval. As required by law, the ordinance provides that the revenue from the tax may only be used to fund the projects and purposes described in the expenditure plan. The revenues may be used only to supplement existing expenditures for public libraries and may not be used to supplant existing funding for the support of public libraries. "Existing funding" is defined in the ordinance as "the contribution made from the County General Fund in the 2018/2019 budget year and services provided to the Kern County Public Library, at no cost, by other County departments as of June 30, 2018." As required by law, the ordinance includes an expenditure plan identifying the specific purposes for which the tax revenues may be expended. Those purposes include acquisition of new technology, equipment, and materials; upgrading library facilities, collections, and materials; providing programs, classes, workshops, and services; preserving existing facilities; acquisition of real and personal property; construction of improvements; and providing branch public library services to unserved and under-served areas of the County. The Library Director is required to report annually to the Board of Supervisors regarding utilization of the tax revenues. The ordinance also provides for a Citizens Library Advisory Committee, the five members of which are appointed by the Board of Supervisors. The Committee's role is advisory only, and its sole responsibilities are to discuss and make recommendations to the Library Director and the Board of Supervisors regarding expenditure of the tax revenues, the implementation and prioritization of library plans and programs, and efficiency and scope of library operations and services to the public. The ordinance allows for amendment by the Board of Supervisors without voter approval, provided such amendments do not interfere with library funding. Given the mandatory terms of Revenue and Taxation Code section 7286.59, any amendment of the ordinance that had the effect of directing the library tax revenue to a use other than libraries would be legally void. #23R5444

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To the Board of Supervisors and County Clerk of the County of Kern:

We, the undersigned, registered, qualified voters of California, and residents of Kern County, hereby propose an Ordinance relating to a Library Tax Measure, and petition the Kern County Board of Supervisors to submit the same to the voters of Kern County, for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed Ordinance reads as follows:

**THE PEOPLE OF THE COUNTY OF KERN ORDAIN AS FOLLOWS:**

**4.17.010 Purpose and Application**

The purpose of this Chapter is to achieve the following, among other purposes, and shall be interpreted so as 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 7286.59 of Part 1.7 of Division 2 which authorizes the County to adopt this tax ordinance to fund library construction, acquisition, programs, and operations within the County, as further described in the Expenditure Plan, Section herein.
- 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 consistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail and transactions 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 Sales and Use Taxes;
- D. To adopt a retail and transactions use tax ordinance which can be administered in a manner which, to the greatest degree possible, will be consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, will reduce the cost of collecting the transactions and use taxes and simultaneously will reduce the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

**4.17.020 Use of the Tax; Library Special Tax Fund**

After the reimbursement of the County for the costs of the election, as provided in Section 4.17.130, and payment for any fee charged by the State Board of Equalization for preparing and administering the tax, revenues from the tax shall be deposited into the County Treasury in a special fund entitled "Library Special Tax Fund" (hereinafter the "Fund") and used exclusively to fund projects and purposes described in the Expenditure Plan, Section 4.17.150 herein. The revenues collected from the tax shall be used only to supplement existing revenue and shall not be used to supplant existing library funding. For purposes of this chapter, "existing library funding" shall be defined as the contribution made from the County General Fund in the 2018/2019 budget year and services provided to the Kern County Public Library, at no cost, by other County departments as of June 30, 2018.

**4.17.030 Contract with State of California**

Prior to the operative date, the County 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. However, if the County 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.

**4.17.040 Transactions Tax Rate**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of one-eighth of one percent (0.125 %) 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.

**4.17.050 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.

**4.17.060 Use Tax Rate**

An excise tax is hereby imposed on the storage, use or other consumption in the County 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-eighth of one percent (0.125 %) 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.

**4.17.070 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.

**4.17.080 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 County 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 County 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:
    - a. The word "County" 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.

**4.17.090 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 seller's permit shall not be required by this ordinance.

**4.17.100 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-Bums Uniform Local Sales and Use Tax Law (Part 1.5 of Division 2 of the Revenue and Taxation Code) 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 County which is shipped to a point outside the County, 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 County 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 Utility Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-County 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 County 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 County 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 County 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 County or participates within the County 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 County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

7. "A retailer engaged in business in the County" 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 County.

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 County 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.

#### **4.17.110 Amendments to Revenue and Taxation Code**

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.

#### **4.17.120 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 County, or against any officer of the State or the County, 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.

#### **4.17.130 Election Costs**

Payment for the costs of the election shall be the responsibility of the County. If the election results in approval of voters voting on the ordinance, the County shall be reimbursed for the cost of the election from the proceeds of the tax.

#### **4.17.140 Increase in Appropriations Limit**

The appropriations limit of the County shall be increased by the anticipated amount of revenue generated by the tax to allow spending of the tax for the period allowed by law.

#### **4.17.150 Expenditure Plan**

A. Monies deposited into the Fund, estimated to be \$15 Million annually, together with any interest that accrues thereon, shall be used exclusively for public library purposes, including, acquisition of new technology, equipment and materials, upgrading library facilities, collections and materials, providing and expanding programs, classes, workshops and services, preserving existing library facilities, acquisition of real and personal property, construction of improvements, and providing branch services to the unserved and under-served areas of the County. The Library Director shall report annually to the Board of Supervisors regarding utilization of the Library Special Tax fund monies.

#### **4.17.155 Citizens Library Advisory Committee**

A. Establish Committee. There is hereby established a Citizens Library Advisory Committee ("Committee").

B. Committee Membership. The Committee shall consist of five (5) voting members. Each member of the Board of Supervisors shall appoint one member to the Committee and may give preference to individuals residing in his or hers respective supervisory district. The initial terms of office shall serve at the pleasure of his or her respective appointing Supervisor and may be removed at any time without cause.

C. Term of Office. Members shall serve a term of two years. Members shall conduct the first meeting of the Committee within thirty days of the appointment of a quorum of members. In the event a vacancy in Committee membership occurs, the successor to the vacant position shall be appointed to complete the unexpired term of the office vacated in the same manner used to select the previous occupant of that position, consistent with subparagraph B herein.

D. Failure to Attend Meetings of Committee. Any member whom the Committee certifies to have missed three consecutive regularly scheduled meetings of the Committee without prior authorization of the Committee shall be deemed to have resigned from the Committee effective on the date of the written certification from the Committee. A successor to the vacant position shall be appointed to complete the unexpired term of the office vacated in the same manner used to select the previous occupant of that position, consistent with subparagraph B herein.

E. Compensation. Members of the Committee shall not be compensated, nor shall they be reimbursed for expenses.

F. Purposes and Duties of the Committee. The purpose and duties of the Committee are solely advisory in nature and are to publicly discuss and make recommendations to the Library Director and the Board of Supervisors regarding:

1. The expenditure of Library Special Tax Fund Monies;
2. The implementation and prioritization of library plans and programs; and
3. The efficiency and scope of Library operations and services to the public.

G. Reporting Requirements. The Committee shall take minutes of its regular and special meetings and shall submit copies of Committee-approved minutes to the Board of Supervisors on a quarterly basis. Where the Committee identifies areas that it concludes may require changes or improvements, the Committee shall recommend appropriate action to be taken by the Library Director and the Board of Supervisors. The Committee shall submit to the Board of Supervisors a written report, by June 30 of each year, summarizing its findings and recommendations.

H. Officers. At the initial meeting of the Committee, the Committee members shall select a Chairperson and Vice-Chairperson.

I. Meetings. The Committee shall meet at least quarterly. The meetings of the Committee shall be subject to the Ralph M. Brown Act. All meetings of the Committee, except as provided by applicable laws, shall be open to the public.

**4.17.160 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.

**4.17.170 Effective Date**

This ordinance relates to the levying and collecting of the County transactions and use taxes and shall take effect immediately upon adoption by the Kern County Board of Supervisors.

**4.17.180 Termination Date**

The authority to levy the tax imposed by this ordinance shall expire sixteen (16) years from the operative date. The board of supervisors may impose a transactions and use tax in any succeeding period not to exceed 16 years per period if all of the conditions specified in Revenue and Taxations Code 7286.59(a) are met for that succeeding period.

**4.17.190 Fiscal Powers**

Nothing in this ordinance shall be construed to restrict the fiscal management powers and authority of the Kern County Board of Supervisors.

**4.17.200 Amendments**

This ordinance may be amended by the Board of Supervisors without voter approval and as allowed by law, provided such amendments do not interfere with Library funding.