ORDINANCE 2020-1154

MEETING: August 4, 2020

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel

RE: Ordinance Increasing Transaction and Use Tax by 1% for John C. Fremont Healthcare District

RECOMMENDED ACTION AND JUSTIFICATION:

Waive the Second Reading and Adopt an Ordinance Increasing the Transactions and Use Tax by One Percent (1%) for the Benefit of the John C. Fremont Healthcare District Until Ended by Voters According to Law and Placing the Ordinance Before the Electorate of Mariposa County.

On July 22, 2020, the Board of Directors of the John C. Fremont Healthcare District adopted Resolution 04-20 entitled "Resolution of the John C. Fremont Healthcare District Requesting the County of Mariposa to Adopt an Ordinance Establishing a Transaction and Use Sales Tax and Calling for Election." A copy of Resolution 04-20 is attached hereto.

This Resolution was introduced on July 28, 2020.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On March 2, 2004, the Board of Directors of the John C. Fremont Healthcare District requested that the Board of Supervisors adopt an Ordinance to place a measure on the November 2004 ballot to increase the transactions and use tax by 1/2 of 1% for a period of 20 years for the benefit of the District.

On June 8, 2004, the Board of Supervisors adopted Ordinance No. 1007 entitled "An Ordinance of the County of Mariposa Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization."

On November 2, 2004, two-thirds (2/3) or more of the electors voting on the measure voted to approve an increase in the transactions and use tax by 1/2 of 1% for a period of 20 years.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Ordinance 2020-1154

If this ordinance is not adopted, the measure to increase the transactions and use tax by 1% for the benefit of the John C. Fremont Healthcare District until ended by voters according to law will not be placed before the electorate of Mariposa County on November 3, 2020.

ATTACHMENTS:
JCF Ord (DOC)
Expenditure Plan for Sales Tax - JCF Healthcare District-c2 (DOCX)
JCF Ordinance Summary (DOCX)
JCF Resolution (PDF)
PUBLIC COMMENT: Web comment in support from unidentified sender (PDF)

RESULT: ADOPTED [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Miles Menetrey, District V Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
MARIPOSA COUNTY ORDINANCE NO. 1154

AN ORDINANCE OF THE COUNTY OF MARIPOSA
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE CALIFORNIA DEPARTMENT
OF TAX AND FEE ADMINISTRATION

(NOT TO BE CODIFIED)

Section 1. **TITLE.** This ordinance shall be known as the Mariposa County Healthcare 2020 Transactions and Use Tax Ordinance. The County of Mariposa, hereinafter, shall be called “County” or “District.” This ordinance shall be applicable throughout the entire territory of the County.

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. **PURPOSES.** This ordinance is adopted to achieve the following purposes, 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 7285.5 of Part 1.7 of Division 2 which authorizes the County to adopt this tax ordinance which shall be operative if a two-thirds (2/3) 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 California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration 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.

Section 4. **CONTRACT WITH STATE.**

A. Prior to the operative date, the County shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the County shall not have contracted with the California Department of Tax and Fee Administration 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.

B. Payment for the cost of contracting with the California Department of Tax and Fee
Administration for administration of the tax shall be the responsibility of the County. If the election is successful, the County shall be reimbursed for any fee charged by the California Department of Tax and Fee Administration.

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 territory of the District at the rate of one percent (1%) 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 California Department of Tax and Fee Administration.

Section 7. **Use Tax Rate.** An excise tax is hereby imposed on the storage, use or other consumption in the District 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 percent (1%) 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 I (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 I 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 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 California Department of Tax and Fee Administration, 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 I 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 “District” 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 District which is shipped to a point outside the District, 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 District 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 Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-District 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-District 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 subsections (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 District 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 subsections (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 District 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 District or participates within the District 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 district or through any representative, agent, canvasser, solicitor, subsidiary, or person in the District under the authority of the retailer.

7. “A retailer engaged in business in the District” 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 Chapter 2 of 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 District.

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. In conformance with Section 7285.5 of the Revenue and
Taxation Code, the specific projects for which the revenues from the tax set forth in this ordinance may be expended is attached hereto in Attachment 1 entitled “Expenditure Plan.”

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 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.

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 District transactions and use taxes and shall take effect immediately only if two-third (2/3) or more of the electors voting on the measure at the election held on November 3, 2020 vote to approve this ordinance.

Section 17. BALLOT QUESTION. The following question shall appear on the November 3, 2020 ballot: “Shall Ordinance No. 1154 of the Mariposa County Board of Supervisors, enacting a 1 percent transaction and use (sales) tax providing approximately $2,600,000 annually, to maintain local access to emergency and life-saving medical care; upgrade John C. Fremont Hospital medical facilities to meet current earthquake safety and building standards; renovate and maintain facilities essential to attract and retain qualified doctors, nurses and specialists, until ended by voters, be approved?”

Section 18. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall remain in effect until ended by voters according to law.

PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 4th day of August 2020 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY
NOES: NONE
ABSENT: NONE
ABSTAINED: NONE

KEVIN CANN, Chairman
Mariposa County Board of Supervisors

ATTEST:

RENE LAROCHE
Clerk of the Board

APPROVED AS TO FORM:

STEVEN W. DAHLEM
County Counsel
Resolution 04-20

RESOLUTION OF THE
JOHN C. FREMONT HEALTHCARE DISTRICT
REQUESTING THE COUNTY OF MARIPOSA TO
ADOPT AN ORDINANCE ESTABLISHING A TRANSACTION AND USE SALES TAX
AND CALLING FOR ELECTION

Whereas, John C. Fremont Healthcare District has boundaries coterminous with the boundaries of Mariposa County; and

Whereas, the District operates John C. Fremont Hospital, the only hospital in Mariposa County, and

Whereas, John C. Fremont Hospital operates the only 24/7 emergency room in the County of Mariposa, where highly qualified doctors, nurses, and specialists provide life-saving medical care for victims of accidents, heart attacks, strokes and other medical emergencies; and

Whereas, the loss of the easily accessible emergency room would jeopardize the health of Mariposa’s residents because time is of the essence in an emergency; and

Whereas, the expansion and modernization of the aging hospital building is necessary to house the appropriately updated facilities and increasingly sophisticated imaging and lab equipment that are essential to attract highly qualified doctors, nurses, and specialists and make it possible for them to do their lifesaving work, and

Whereas, under SB 1953, Chapter 740, Statutes of 1994, the State of California mandates that all hospitals must conform to seismic earthquake safety codes established by OSHPD (Office of Statewide Health Planning & Development) to protect hospitalized patients from seismic disasters by 2030, or must terminate their services; and

Whereas, John C. Fremont Hospital does not currently meet the seismic earthquake safety standards required by the State of California, and is therefore facing closure if it does not rebuild to the required OSHPD standards; and

Whereas, pursuant to California Revenue and Taxation Code Section 7285.5, the Board of Supervisors of Mariposa County may adopt an ordinance by a 2/3 vote establishing a transaction and use tax, otherwise known as a sales tax, for specific purposes, and said transaction and use tax ordinance is effective if approved by a 2/3 vote of the electors within the County; and

Whereas, the District requests the Board of Supervisors adopt an ordinance pursuant to Revenue and Taxation Code Section 7285.5 for the purpose of augmenting revenues for rebuilding deficient parts of the hospital to current OSHPD seismic safety requirements in order to continue the provision of health care services for the residents of the County of Mariposa;

NOW, THEREFORE, BE IT RESOLVED as follows:
1. That pursuant to Revenue and Taxation Code Section 7285.5, the District requests the Board of Supervisors of the County of Mariposa to adopt an ordinance establishing a countywide transaction and use tax, otherwise known as a sales tax, conforming to Part 1.6, commencing with Section 7527 of the Revenue and Taxation Code at a rate of one percent (1%) for the purpose set forth below. Such ongoing tax may be imposed henceforth from the date of an ordinance passed and adopted for the purpose of imposing such tax.

2. That the County of Mariposa call an election pursuant to Revenue and Taxation Code Section 7285.5 of the electors of the County and if approved by 2/3 of the electors the transaction and use tax ordinance shall be effective January 1, 2021.

3. The County of Mariposa shall cause the collection and administration for the collection of such revenues, and the use of such revenues for the following specific purpose: Payment of the costs of collection and administration of the transaction and use tax, and augmentation of the revenues of John C. Fremont Healthcare District, for the payment of reconstruction of the facility to required OSHPD seismic code safety standards for the protection of patients, and to assure ongoing continuation of modern, high quality community medical services.

4. Upon approval of this ordinance by 2/3 or more of the voters voting, the County in coordination with John C. Fremont Healthcare District may adopt policies and take such other action as may be necessary for the implementation of the transaction and use tax authorized by the ordinance.

AYES: Candy O'Donel-Browne, Linda Pribyl, Philip De Bry, Brenda Forrest, and Joseph Rogers

NOES: None

Candy O'Donel-Browne, Chairperson
Board of Directors, John C. Fremont Healthcare District

ATTEST:

Kym Brownell, Clerk of the Board
Board of Directors, John C. Fremont Healthcare District
Certificate of Publication
C.C.P. 2015.5

STATE OF CALIFORNIA

COUNTY OF MARIPosa

I, the undersigned, state:

I am the publisher and printer of GAZETTE AND MINER, an established general circulation, within the Town and County of Mariposa, State of California, within the provision of Chapter 1 Division 7 of Title 1 of the California Government Code, and which newspaper has been printed and published weekly in the Town of Mariposa, County of Mariposa, State of California, continuously since the year 1854; that I am a citizen of the United States, over the age of 18 years, and a resident of the County aforesaid; that the notice, of which the annexed is a printed copy, has been published in each regular issue of said newspaper and not in any supplement thereof on the following dates, to wit:

7/1/2020

_______________________________

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

_______________________________
Signature (Nicole W. Little, Publisher)

Date 7/23/2020
MARIPOSA COUNTY BOARD OF SUPERVISORS

SUMMARY OF ADOPTED ORDINANCE 1154 IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

(NOT TO BE CODIFIED)

Notice is hereby given that on Tuesday, August 4, 2020, the Mariposa County Board of Supervisors adopted ordinance 1154 increasing the Transactions and Use Tax by One Percent (1%) for the benefit of the John C. Fremont Healthcare District (District) until ended by voters and allow the District to place the Ordinance before the electorate of Mariposa County on the November 3, 2020 ballot.

A certified copy of the full text of this ordinance is posted for public review in the Office of the Clerk of the Board of Supervisors at 5100 Bullion Street, Mariposa, California, and is available for public inspection and copying in that office in accordance with the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1.

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY
NOES: NONE
ABSENT: NONE
ABSTAINED: NONE

Rene’ LaRoche
Clerk of the Board