



# ORDINANCE No. \_\_\_\_\_

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

### **AN ORDINANCE AMENDING ARTICLE 7 OF CHAPTER V OF THE GENERAL CODE OF THE COUNTY OF NEVADA REGARDING CONTINUATION AND ADJUSTMENT OF THE NEVADA COUNTY LIBRARY SALES TAX**

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA,  
ORDAINS AS FOLLOWS:

#### SECTION I:

Article 7 of Chapter V of the General Code of the County of Nevada is hereby amended to read as shown in Exhibit A attached hereto.

#### SECTION II:

CEQA. The Board of Supervisors hereby finds that this Ordinance is not a project subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(3) and 15378 because the ballot measure involves a government funding mechanism and related fiscal activities, which does not involve a commitment to a specific project.

#### SECTION III:

Pursuant to Government Code sections 25123(c), 50077, 53722 and 53724(b), this Ordinance shall be adopted by a four-fifths vote of the Board of Supervisors and shall take effect and be in force immediately upon its approval by 2/3<sup>rds</sup> of voters voting at the November 8, 2016, general statewide election. Before the expiration of fifteen (15) days after its passage by the Board of Supervisors it shall be published once, with the names of the Supervisors voting for and against same in the Union and Sierra Sun, newspapers of general circulation printed and published in the County of Nevada. Upon approval by the voters, the Nevada County Clerk-Recorder shall certify to the passage and adoption of this Ordinance and the Clerk of the Board shall again cause the Ordinance to be published as required by law.

PASSED AND ADOPTED by a four-fifths vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 28<sup>th</sup> day of June, 2016, by the following vote of said Board:

## **EXHIBIT A**

### ARTICLE 7. LIBRARY TRANSACTIONS AND USE TAX

#### Sec. G-V 7.1 Title

This Article shall be known as the Nevada County Public Library Transactions and Use Tax Article of the County of Nevada. The transactions and use tax provisions of this Article shall be applicable in the incorporated and unincorporated territory of Nevada County.

#### Sec. G-V 7.2 Purpose of Article

The Board of Supervisors of the County of Nevada hereby declares that this Article is adopted to achieve the following, among other, purposes and directs that its provisions be interpreted to accomplish those purposes:

- A. To adopt a one-quarter of 1 percent (0.25%) retail transactions and use tax pursuant to the provisions of Part 1.6 (commencing with section 7251) and Part 1.7 (commencing with section 7280) of Division 2 of the Revenue and Taxation Code, and as specifically authorized by section 7286.59 of the Revenue and Taxation Code;
- B. To adopt a retail transactions and use tax article which 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 and Part 1.7 of Division 2 of the Revenue and Taxation Code;
- C. To adopt a retail transactions and use tax article which imposes a tax and provides a measure for it that the Board of Equalization can administer and collect 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 transactions and use tax article which can be administered in a manner which will be, to the greatest degree possible, consistent with the provisions of Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, reduce the cost of collecting the transactions and use taxes and simultaneously reduce the burden of record keeping upon persons subject to taxation under the provisions of this Article;
- E. To adopt a retail transactions and use tax article that provides for funding public library acquisition, programs and operations within Nevada County.

#### Sec. G-V 7.3 Use of the Tax; Annual Report

- A. All revenues from the tax shall be deposited into a special fund and used exclusively to fund projects and purposes described in the Expenditure Plan set forth in Section G-V 7.4. Such revenues shall be used only to supplement existing Library funding, and shall not be used to supplant existing funding for the support of County library services.
- B. Pursuant to Government Code sections 50075.1, *et seq.*, the County's Chief Fiscal Officer shall file a report annually with the Board of Supervisors regarding the amount of tax revenue collected and expended, and the status of any project funded by the tax revenue pursuant to the Expenditure Plan.

#### Sec. G-V 7.4 Expenditure Plan

The Expenditure Plan is designed to provide and continue to improve library services by accomplishing the specific projects listed below with the revenues from the transactions and use tax generated over the voter-approved period. The expenditure plan preserves the existing libraries, enhances services and collections at the libraries, and extends branch library services to

the served and unserved areas of the County. An annual expenditure plan for the use of funds allocated to library services shall be reviewed and adopted by the Board of Supervisors prior to July 1 of each year.

The specific projects for which the revenues from the transactions and use tax shall be expended are contingent upon total revenue received and allocated as follows:

- A. **OPEN HOURS:** Extend hours at Library locations in response to needs and desires of Library users.
- B. **PROGRAMS AND SERVICES FOR CHILDREN AND TEENS:** Increase children's services at all age levels and at all circulating library branches, including for the Summer Reading Program. Provide after school programs, homework help, and reference services for students at circulating branches in response to needs and desires of Library users.
- C. **LIBRARY MATERIALS:** Increase books and other materials for all ages and replace worn and out-of-date items at all library locations. Continue to include a variety of formats, such as DVDs, audiobooks, eBooks, and online resources.
- D. **INFORMATION AND TECHNOLOGY ACCESS:** Provide current information services and products in libraries and for remote access. Keep pace with changing and emerging technologies. Increase and improve public access to computers, high-speed broadband, and other technologies such as 3D printers, tablets, video conferencing, software, etc. Provide technology and digital literacy based educational classes for all ages.
- E. **SERVICES FOR SENIORS AND LIBRARY USERS WITH DISABILITIES:** Improve the accessibility of library locations, services, and materials for seniors and library users with disabilities. Offer a variety of library materials and services in order to be inclusive of the needs of all library users.
- F. **LIBRARY SERVICE LOCATIONS:** Establish, move or add library service locations in areas where the demand for services and cost effectiveness is warranted. Improve and enhance current service locations to meet community needs and the objectives listed in this expenditure plan.
- G. **CITIZENS OVERSIGHT COMMITTEE:** A Citizens Oversight Committee will be appointed by the Board of Supervisors consisting of members of the public interested in the continued operation of the public libraries. The purpose of the Committee will be to ensure that the proceeds of the library sales tax are appropriated in accordance with the Expenditure Plan set forth in this Section. Such Committee shall serve without compensation.
- H. The County Librarian will meet with representatives of the County's Eastern and Western Friends of the Library organizations to develop and propose an equitable and fair fiscal plan for the operation of the libraries and the proceeds of the tax.

#### Sec. G-V 7.5 Contract with State

Before the Operative Date, the County of Nevada will contract with the State Board of Equalization to perform all functions incident to the administration and operation of this Article; provided, that if the Nevada County Library has not contracted with the State Board of Equalization before the Operative Date, it will nevertheless reach an agreement, with the operative date to be the first day of the first calendar quarter following the execution of the contract.

#### Sec. G-V 7.6 Transactions Tax Rate

For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of one-quarter of one percent (0.25%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the territory on and after the Operative Date.

### Sec. G-V 7.7 Place of Sale

For the purposes of this Article, 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 or her 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, despite the place to which delivery is made. In the event a retailer has no permanent 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.

### Sec. G-V 7.8 Use Tax Rate

An excise tax is 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 Article for storage, use or other consumption in the territory at the rate of one-quarter of 1 percent (0.25%) 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 despite the place to which delivery is made.

### Sec. G-V 7.9 Adoptions of Provisions of State Law

Except as otherwise provided in this Article and to the extent that 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 adopted and incorporated by this reference.

### Sec. G-V 7.10 Limitations on Adoption of State Law and Collection of Use Taxes

- A. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing authority, the name of this County shall be substituted for it. 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 of it rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Article.
  3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where 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;
    - 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 provisions of that code.
  4. In sections 6701, 6702 (except in the last sentence), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

- B. The word "County" will be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Revenue and Taxation Code section 6203 and in the definition of that phrase in Revenue and Taxation Code section 6203.

#### Sec. G-V 7.11 Permit Not Required

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, this Article shall not require an additional transactor's permit.

#### Sec. G-V 7.12 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 of 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 California, 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 or her agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this subsection, delivery to a point outside the County will be satisfied:
    - a. With respect to vehicles, other than commercial vehicles subject to registration under Chapter I (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed according to 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-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, stating 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 under a contract entered into before the Operative Date.
  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 before the Operative Date.
  5. For the purposes of subsections B.3 and B.4 of this section, the sale or lease of tangible personal property will be deemed not to be obligated under 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 is exempted from the use tax imposed by this Article, 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 operations 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 under the laws of California, 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;
  3. If the purchaser is obligated to purchase the property for a fixed price under a contract entered into before the Operative Date;
  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 before the Operative Date;
  5. For the purposes of subsections C.3 and C.4 of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property will be deemed not to be obligated under 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 for in subsection C.7 of this section, a retailer engaged in business in the County will 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 canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer;
  7. "A retailer engaged in business in the County" will also include any retailer of the following: vehicles subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed according to 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. This 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 Article may credit against that tax any transactions tax or reimbursement for transactions tax paid to a County imposing, or a retailer liable for a transactions tax under 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.

#### Sec. G-V 7.13 Amendment

All amendments after the Operative Date to Part I of Division 2 of the Revenue and Taxation Code relating to sale and use taxes 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, will automatically become a part of this Article; provided however, that no such amendment will operate to affect the rate of tax imposed by this Article.

#### Sec. G-V 7.14 Enjoining Collection Forbidden

No injunction or writ of mandate or other legal or equitable process will issue in any suit, action or proceeding in any court against the State of California or the County, or against any officer of the State of California or the County, to prevent or enjoin the collection under this Article, 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.

#### Sec G-V 7.15 Use of the Taxes

Any and all transactions and use taxes shall be used exclusively for County-wide library programs and operations as such is set forth in the Expenditure Plan established by section G-V 7.4.

#### Sec. G-V 7.16 Implementing Policies and Regulations

Upon approval of this Article, or any amendments thereto, by two-thirds of the voters, the public libraries within Nevada County may adopt policies and regulations and take such other action as may be necessary for the implementation of the transactions and use tax authorized by this Article.

#### Sec. G-V 7.17 Effective and Operative Dates

- A. This Article shall relate to the levying and collecting of a County transactions and use tax and shall take effect as provided by law. This Article shall take effect according to law only if at least two-thirds of the electors voting on the measure at the June 2, 1998, election approve the enactment of the Article. If approved, the provisions of this Article authorizing the levy of the one-eighth of 1 percent (0.125%) transactions and use tax will become operative on October 1, 1998.
- B. The amendment to this Article shall take effect according to law only if at least two-thirds of the electors voting on the measure at the November 5, 2002, election approve the amendment to Section G-V 7.17. If approved, the amendment of this Article authorizing the continuation of the one-eight of 1 percent (0.125%) transactions and use tax through September 30, 2018, shall become effective immediately.
- C. The 2016 amendment to this Article shall take effect according to law only if at least thirds of the electors voting on the measure at the November 8, 2016, election approve the proposed Ordinance adjusting the tax rate to one-quarter of 1 percent (0.25%) and extending the tax for an additional 15 years. If approved by the voters, the adjusted tax rate will replace and supersede the existing tax rate as of the Operative Date.
- D. The "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the election approving the imposition of the tax imposed by this Article, such election to be held on November 8, 2016.

#### Sec. G-V 7.18 Termination Date

This Article shall expire fifteen (15) years from the Operative Date.

#### Sec. G-V 7.19 Severability

If any section, subsection, sentence, clause or phrase of this Article or the application thereof to any person or circumstances is, for any reason, held to be invalid or unenforceable, then such portion shall be deemed to be a separate, distinct, and independent provision and such invalidity shall not affect the validity of the remaining portions thereof, or the application of such provision to other persons or circumstances.

#### Sec. G-V 7.20 Actions to Determine Validity of Ordinance, Tax or Related Proceedings

Any action or proceeding wherein the validity of the adoption of the retail transactions and use tax ordinance provided for in this Article, or any amendments hereto, or any of the proceedings in

relation thereto is contested, questioned, or denied, shall be commenced pursuant to Chapter 9 (commencing with section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Otherwise, the tax, and all proceedings in relation thereto, including the adoption and approval of this Article by ordinance, shall be held to be valid and in every respect legal and uncontestable.