

RESOLUTION NO. R-2024-040

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH, CALIFORNIA ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE RELATING TO THE EXTENSION AND MODIFICATION OF A LOCAL TRANSACTION AND USE TAX AT THE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2024, AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS THEREOF

WHEREAS, the City Council of the City of Pismo Beach has by Resolution R-2024-033 called for a general municipal election to be held on November 5, 2024; and

WHEREAS, in 2008 and 2014, the voters of the City of Pismo Beach approved an ordinance adding Chapter 3.22 of the Pismo Beach City Municipal Code, establishing a local transactions and use tax at the rate of 0.5 percent; and

WHEREAS, the City Council has the authority under Elections Code Section 9222 to place on the ballot a measure for the voters of the City of Pismo Beach to extend the implementation of Chapter 3.22 of the Pismo Beach City Municipal Code; and

WHEREAS, Section 2(b) of Article XIII C of the California Constitution, added by Proposition 218, effective November, 1996, requires that a measure proposing a general tax be submitted to the voters at an election consolidated with a regularly scheduled general election for members of the governing body of the local government except in cases of emergency as declared by the City Council; and

WHEREAS, the City Council has by Resolution R-2024-034 requested that the County of San Luis Obispo consent and agree to the consolidation of the general municipal election with the statewide general election; and

WHEREAS, pursuant to California Constitution Article XIII C, Section 2(b) and Elections Code Section 10201, the City has determined to submit a measure to the voters to enact an ordinance extending and modifying the rate of the transactions and use tax at the City's next regular consolidated general municipal election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PISMO BEACH DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Pursuant to Election Code Section 9222, the proposed ballot proposition attached hereto in draft ordinance form as **Exhibit A**, and titled "**The Pismo Beach Essential Services Measure**", is hereby approved for placement on the ballot and submission to voters at the City's regular election scheduled for November 5, 2024. The question shall be posed as follows:

<p>CITY OF PISMO BEACH MEASURE _____</p>	<p>YES</p>
<p>The Pismo Beach Essential Services Measure. To maintain the City of Pismo Beach’s long term financial stability and services such as fixing potholes; keeping streets, sidewalks, infrastructure, parks, and public facilities safe, clean, and well-maintained; providing police/fire protection, 9-1-1 emergency services; addressing homelessness; and for general government use, shall the City extend its Measure I sales tax and set the rate at 1¢ per dollar, providing approximately \$4,000,000 annually for 12 years; requiring independent audits, with all funds used locally?</p>	<p>NO</p>

Section 2. City staff is directed to take all appropriate and necessary actions to cause the foregoing proposition to be placed on the ballot at the regular election of November 5, 2024.

Section 3. Pursuant to Election Code Section 9280, the City Attorney of the City of Pismo Beach is hereby directed to prepare and submit an impartial analysis explaining the effect of the measure on existing law and the operation of the measure.

Section 4. The City Clerk shall certify to the passage and adoption of this resolution, and immediately transmit a certified copy of this resolution to the San Luis Obispo County Clerk-Recorder for inclusion on the November 5, 2024, ballot.

Section 5. Pursuant to the requirements of Elections Code Section 10403 and in addition to the request previously set forth in Resolution R-2024-034, the Board of Supervisors of San Luis Obispo County is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 5, 2024 for the placement of the above-referenced measure on the same ballot and under the same conditions set forth in Resolution R-2024-034.

UPON MOTION OF Mayor Pro Tem Reiss, seconded by Council Member Guthrie, the foregoing resolution was adopted by the City Council of the City of Pismo Beach this 4th day of June 2024, by the following vote:

AYES: 4 Reiss, Guthrie, Inman, Waage
NOES: 1 Newton
ABSENT: 0
ABSTAIN: 0
RECUSED: 0

Approved:

DocuSigned by:
Ed Waage
ED5824E053144A9...

Ed Waage, Mayor

Attest:

DocuSigned by:
Erica Inderlied
1F3729F7C9824AA...

Erica Inderlied, City Clerk

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Pismo Beach, California, on 6/5/2024.

DocuSigned by:
Erica Inderlied
1F3729F7C9824AA...

Erica Inderlied, City Clerk

ORDINANCE NO. O-2024-XXX**AN ORDINANCE OF THE PEOPLE OF THE CITY OF PISMO BEACH, CALIFORNIA
AMENDING TITLE 3, CHAPTER 3.22 OF THE PISMO BEACH MUNICIPAL CODE
EXTENDING AND MODIFYING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

The People of the City of Pismo Beach, California do ordain as follows:

SECTION 1. FINDINGS.

- A. One of the primary roles of City government is to provide vital public services such as fixing potholes, keeping streets, sidewalks, infrastructure, parks, and public facilities safe, clean, and well-maintained, providing police/fire protection, 9-1-1 emergency services, addressing homelessness, and many other essential city services.
- B. The City's revenue for such vital services comes from property tax, sales tax, hotel tax, and other such revenues.
- C. Prior to 2008, budget cuts forced the City to spend less on street and sidewalk maintenance, pothole repair, park maintenance and replacement of 20- to 30-year-old storm drains than was necessary to adequately maintain this infrastructure in fully functional working condition. As a result, many City streets were in poor condition and inefficient storm drainage could have resulted in flooding.
- D. In 2008, the voters of Pismo Beach approved a transactions and use tax in the amount of one-half of one percent, the funds from which have been used entirely for the improvement of City infrastructure, with none of the additional funds being used for administrative or other soft costs. In 2014, the voters of Pismo Beach approved the extension of the transactions and use tax. The City has used this money to pave streets, improve drainage and other City infrastructure.
- E. The cost to continue to provide these vital services at current levels of service continues to escalate and exceeds the amount of funds and revenues generated from all other sources of income available for such purpose. The extension of the transactions and use tax, originally approved by the voters in 2008 and extended by the voters in 2014, and modification of the tax rate to one percent, is necessary to continue to maintain the public good, welfare, and safety.
- F. Without the extension of the transactions and use tax, the City will have to either generate additional revenue to continue to maintain existing City infrastructure or begin making cuts to other essential City services.

- G. A local finance measure gives Pismo Beach residents local control. More than 63% of taxable purchases in the City are made by visitors to the City. Every penny generated by the measure stays in Pismo Beach to be used for the needs and services of our residents and the City.
- H. The extension and modification of such a tax will allow the City to continue to provide a high level of essential services to residents, businesses and visitors throughout the City.
- I. All funds from a locally approved transactions and use tax would stay in Pismo Beach to benefit local residents and could not be taken away by the State.
- J. A local measure will include a twelve-year sunset clause, after which the tax will cease to be collected unless reauthorized by the voters.

SECTION 2. AMENDMENT OF CODE.

Pismo Beach Municipal Code Title 3 is hereby amended to revise Chapter 3.22 to read in its entirety as follows:

CHAPTER 3.22 TRANSACTIONS AND USE TAX

3.22.010 Title.

This ordinance shall be known as the “Transactions and Use Tax Ordinance of the City of Pismo Beach”. The City of Pismo Beach hereinafter shall be called “City.” This ordinance shall be applicable in the incorporated territory of the City.

3.22.020 Purpose.

This ordinance is adopted to extend and modify the transactions and use tax initially approved by the voters in 2008 and extended by the voters in 2014, to achieve the following, among other purposes, and the provisions hereof shall be interpreted in order to accomplish those purposes:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the

requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State 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 State 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.

3.22.030 Operative date.

As to adoption of the transactions and use tax pursuant to Ordinance O-2008-002 approved by the voters in November 2008, "Operative Date" means the first day of the first calendar quarter commencing more than one hundred ten (110) days after the adoption of Ordinance O-2008-002.

As to the extension of the transactions and use tax pursuant to Ordinance O-2014-008 approved by the voters in November 2014, "Operative Date" means the first day of the first calendar quarter commencing more than one hundred ten (110) days after the adoption of Ordinance O-2014-008.

Otherwise, "Operative Date" means the first day of the first calendar quarter commencing more than one hundred ten (110) days after the adoption of this ordinance, the date of adoption being set forth below.

3.22.040 Contract with state.

Prior to the operative date, the City shall contract with the State 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 City shall not have contracted with the State 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.

3.22.050 Transactions tax rate.

Commencing on the Operative Date under Ordinances O-2008-002 and O-2014-008, for the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one half of one percent (0.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this ordinance. Commencing on the Operative Date, for the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this ordinance.

3.22.060 Place of sale.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Department of Tax and Fee Administration.

3.22.070 Use tax rate.

Commencing on the Operative Date under Ordinances O-2008-002 and O-2014-008, 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 of one percent (0.5%) of the sales price of the property. Commencing on the Operative Date, 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 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.

3.22.080 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.

3.22.090 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 City of Pismo Beach 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 Department of Tax and Fee Administration, 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 Pismo Beach or any agency, officer, or employee thereof rather than by or against the State 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 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.

3.22.100 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.

3.22.110 Exemptions and exclusions.

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
 - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

Exhibit A

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.
 5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed

not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
 7. “A retailer engaged in business in the City” shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.22.120 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. The City Council may make amendments to this chapter that do not affect the rate or duration of the tax imposed without approval of the voters of the City.

3.22.130 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.

3.22.140 Semi-annual report to council.

The City Manager shall report to Council not less frequently than semi-annually on the amount of tax collected under this ordinance, and any expenditures made, or proposed to be made with such collections.

SECTION 3. USE OF TAX PROCEEDS.

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into the City of Pismo Beach General Fund, and may be used for any lawful purpose as designated by the City Council.

SECTION 4. 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 5. STATUTORY AUTHORITY FOR TAX.

This ordinance is adopted pursuant to Revenue and Taxation Code section 7285.9.

SECTION 6. ELECTION REQUIRED.

This ordinance shall not become operative unless and until a majority of the electors voting on this measure vote to approve the imposition of the tax at the general municipal election to be held on November 5, 2024.

SECTION 7. EFFECTIVE DATE AND TERMINATION DATE.

If this ordinance is approved by a majority of the electors voting on the issue at the November 5, 2024 general municipal election, pursuant to Elections Code Section 9217, the ordinance shall become effective ten (10) days after the City Council accepts the certified results of the election. Should this ordinance be approved by a majority of electors at the November 5, 2024 election, it shall be repealed without further action of the City Council or voters twelve (12) years after the Operative Date, after which date the tax imposed by this ordinance shall not be collected.

Exhibit A

INTRODUCED at a regular meeting of the City Council held this 4th day of June, 2024, on motion of Council Member , seconded by Council Member , and on the following roll call vote, to wit:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

Approved:

Attest:

Ed Waage, Mayor

Erica Inderlied, City Clerk

ADOPTED at a regular meeting of the City Council held this th day of , 2024, on motion of Council Member , seconded by Council Member , and on the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

Approved:

Attest:

Ed Waage, Mayor

Erica Inderlied, City Clerk

APPROVED AS TO FORM:

David M. Fleishman, City Attorney

PASSED AND ADOPTED by the People of the City of Pismo Beach this 5th day of November 2024.

Attest:

Erica Inderlied, City Clerk