

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF ARROYO GRANDE
ADDING CHAPTER 3.23 TO TITLE 3 OF THE ARROYO
GRANDE MUNICIPAL CODE RELATED TO A
TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY
THE CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

WHEREAS, Revenue and Taxation Code section 7285.9 authorizes the City of Arroyo Grande ("City"), subject to approval by a majority vote of the qualified voters of the City voting in an election on the issue, to levy a transactions and use tax pursuant to the Transactions and Use Tax Law at a rate of 0.125% or any multiple thereof for general purposes and projects; and

WHEREAS, Section 2(b) of Article XIII C of the California Constitution, added by Proposition 218 effective November, 1996, requires that the 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; and

WHEREAS, pursuant to California Constitution Article XIII C, section 2 and Elections Code section 10201, the City has determined to submit a proposition to enact an ordinance establishing a transactions and use tax to the voters at the City's next regular election; and

WHEREAS, pursuant to California Elections Code section 9222, the City Council has authority to place measures on the ballot to be considered at a General Municipal Election and desires to place a local funding measure on the ballot at the statewide general election on November 8, 2022; and

WHEREAS, pursuant to Government Code Section 53724(b) and Revenue & Taxation Code Section 7285.9, this ordinance proposing the transactions and use tax requires approval by a two-thirds (2/3) vote of all members of the City Council and approval of the ballot measure and the ordinance by majority of the voters casting votes at the General Municipal Election on November 8, 2022.

THE PEOPLE OF THE CITY OF ARROYO GRANDE, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Addition of Chapter 3.23. Chapter 3.23 is hereby added to Title 3 of the Arroyo Grande Municipal Code to read as follows:

Chapter 3.23 - TRANSACTIONS AND USE TAX.

3.23.010 - Short title.

This chapter shall be known as the "Transactions and Use Tax" and shall be applicable in the incorporated territory of the City of Arroyo Grande ("city"). This chapter shall complement, and not replace or supersede, the city's existing sales and use tax, as such tax is described in Chapter 3.20 and existing transaction and use tax Chapter 3.22 of Title 3 of the Arroyo Grande Municipal Code.

3.23.020 - Definitions.

For the purpose of this chapter the following words terms shall have the meaning given in this section:

"In the city" means and includes all territory within the city limits.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the later of the adoption of this chapter and the approval by the voters of the city of a measure approving the imposition of an increased transactions and use tax; provided that, if the city shall not have entered into a contract with the California Department of Tax and Fee Administration as required by section 3.11.040 prior to such date, the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3.23.030 - Purpose.

This chapter of the Arroyo Grande Municipal Code has been adopted for the following 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 7285.9 of Part 1.7 of Division 2, which authorizes the city to adopt this tax. This chapter 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 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 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 that can be administered in a manner that will, to the greatest degree possible, be consistent with the provisions of Part 1.6 of Division 2 of the said Revenue and Taxation Code, and thereby minimize the cost of collecting city transactions and use taxes, and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions thereof.

3.23.040 - Contract with state.

Prior to the operative date, the city shall contract with the California Department of Tax and Fee Administration to perform all functions incidental to the administration and operation of this transactions and use tax ordinance. If the city has not 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. The city council may make any technical amendments to this chapter required by the California Department of Tax and Fee Administration, except for any changes affecting the tax rate, tax methodology, or its manner of collection.

3.23.050 - Imposition of transactions and use tax – Rate.

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 chapter.

3.23.060 - Place of sale.

For the purposes of this chapter, 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.

3.23.070 - Imposition of use tax – Use tax rate.

An excise tax is hereby imposed on the storage, use, or other consumption in the city of tangible personal property purchased from any retailer on or after the operative date of this chapter for storage, use or other consumption in said territory at the rate of one percent (1%) of the sales price of the property subject to the tax. 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.

3.23.080 - Adoption of provisions of state law – Generally.

Except as otherwise provided in the chapter 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 § 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein.

3.23.090 - Adoption of provisions of state law – Limitations; Limitations on collection of use taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made when:

1. The word “State” is used as a part of the title of the State Controller, State Treasurer, State 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 city 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 chapter.

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.

3.23.100 - 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 chapter.

3.23.110 - Exemptions and exclusions.

A. Measure of Tax. There shall be excluded from the measure of the transactions and 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. Transactions Tax Exemptions. 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.

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.

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.

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. Use Tax Exemptions. There are exempted from the use tax imposed by this chapter, 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.

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.

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.

D. Exemption from Collection of Use Tax. Except as provided in subsection (E), 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.

E. Retailer Not Exempt from Collection of Use Tax. "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.

F. Credit Against Use Tax for Transactions Tax Paid Elsewhere. Any person subject to use tax under this chapter 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.

3.23.120 - Adoption of amendments to state law.

All amendments subsequent to the effective date of this chapter 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 chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

3.23.130 - Enjoining collection prohibited.

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 hereunder, or Parts 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.23.140. Annual Report.

City shall annually mail to each household an annual report, which presents in summary form expenditures from the prior fiscal year from revenue generated from the Transactions and Use Tax and budgeted expenditures for the upcoming fiscal year.

3.23.150. Period Review.

The City Council shall consider reduction or repeal of the Transactions and Use Tax at public hearings every five years after the effective date of this ordinance.

SECTION 2. Use of Tax Proceeds. All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into the City of Arroyo Grande General Fund, and may be used for any lawful purpose as designated by the City Council.

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SECTION 3. Effective Date. Pursuant to the California Constitution Article XIIC(2)(b) and California Elections Code 9217, if approved by a majority vote of the qualified voters of the City voting on the issue at the November 8, 2022 General Municipal Election, this ordinance shall be deemed valid and binding and shall be considered adopted upon the date that the vote is declared by the City Council, and shall go into effect ten (10) days after that date.

SECTION 4. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The People of the City of Arroyo Grande hereby declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 5. Statutory Authority for Tax. This ordinance is adopted pursuant to Revenue and Taxation Code section 7285.9.

SECTION 6. Codification. Upon adoption of this ordinance pursuant to the voter approval referenced in this ordinance, the City Clerk is hereby authorized and directed to codify this ordinance in the Arroyo Grande Municipal Code.

I HEREBY CERTIFY that the foregoing ordinance was adopted by a two-thirds vote of all members of the City Council of the City of Arroyo Grande as required by Revenue and Taxation Code Section 7285.9 and Government Code Section 53724 and submitted to the voters at the meeting of the City Council held on the 14th day of June, 2022, by the following roll call vote:

AYES:

NOES:

ABSENT:

CAREN RAY RUSSOM, MAYOR

ATTEST:

JESSICA MATSON, CITY CLERK

Ordinance No. ____ was submitted to the People of the City of Arroyo Grande at the November 8, 2022 General Election. It is hereby certified that this ordinance was passed and approved by following vote of the People of the City of Arroyo Grande:

YES:

NO:

This ordinance was thereby adopted by the voters at the November 8, 2022 General Election and shall take effect as provided by law.