

**ORDINANCE NO. 2024 - 05**

**AN ORDINANCE ADDING ARTICLE C TO CHAPTER 3 OF TITLE 3 OF THE CITY OF LEMOORE MUNICIPAL CODE IMPOSING A GENERAL TRANSACTIONS AND USE TAX (SALES TAX) TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

The City Council of the City of Lemoore does ordain as follows:

**SECTION 1.** Article C to Chapter 3 of Title 3 is hereby added to the Municipal Code to read as follows in its entirety:

**3-3C Transactions and Use Tax**

**3-3C-1 Title.**

This chapter shall be known as the City of Lemoore Transactions and Use Tax (Sales Tax) Ordinance.

**3-3C-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.

**3-3C-3 Purpose.**

This chapter is adopted to achieve the following, among other purposes, and directs that the provisions of this chapter be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax to be applied throughout the entire territory of the City to the fullest extent permitted by law and 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 of the Revenue and Taxation Code, which authorizes the City to adopt this 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 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 chapter.

**3-3C-4 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 incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City 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 contract.

**3-3C-5 Transactions 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 up to one percent (1%) of the gross receipts of any retailer for the sale of all tangible personal property sold at retail in said territory on and after the operative date of this chapter.

**3-3C-6 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 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, 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.

**3-3C-7 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 and after the operative date of this Chapter for storage, use, or other consumption in said territory at the rate of up to 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.

**3-3C-8 Adoption of Provisions of State Law.**

Except as otherwise provided in this 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 Section 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.

### **3-3C-9 Limitation on Adoption of State Law and Collection of Use Taxes.**

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

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted. The substitution, however, 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.

1. "A retailer engaged in business in the City" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the state by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of the Internal Revenue Code and the regulations thereunder.

### **3-3C-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 chapter.

### **3-3C-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 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 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 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 of the ordinance codified in this chapter.

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 the ordinance codified in this chapter.

5. For the purposes of subsections (B)(3) and (B)(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 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 of this chapter.

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 chapter.

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 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 subsection (C)(7) of this section, 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 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.

E. Nothing in this chapter shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States, or the Constitution of the State of California.

### **3-3C-12 Amendments.**

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.

### **3-3C-13 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 chapter, 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.

### **3-3C-14 Independent Annual Audit.**

The proceeds resulting from this transactions and use tax shall be deposited into the City's general fund and become subject to the same independent annual audit requirements as other general fund revenue. The independent auditor's report, which shall include an accounting of the revenues received and expenditures made from the transactions and use tax, will be presented annually to the City Council and made available for public review.

### **3-3C-15 Citizens Oversight Committee.**

Although not otherwise required by law, the City Council shall, by resolution adopted before the operative date of this chapter, establish a citizen's oversight committee to review the revenue and expenditure of funds from the tax adopted by this chapter. The members' terms and qualifications, and duties and scope of the committee, shall be as established by the resolution.

### **3-3C-16 Termination Date.**

The authority to levy the tax imposed by this chapter shall continue until repealed by the voters of the City in the manner provided by law.

**SECTION 2.** Approval by the City Council. Pursuant to California Government Code section 53724 and Revenue and Taxation Code section 7285.9, this Ordinance was duly approved for placement on the ballot by a minimum two-thirds (2/3) vote of all members of the City Council on July 2<sup>nd</sup>, 2024.

**SECTION 3.** Approval by the Voters. Pursuant to California Elections Code section 9217, this Ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Lemoore voting at the General Municipal Election of November 5, 2024. It

shall be deemed adopted when the City Council has certified the results of that election by resolution and shall take effect ten (10) days thereafter.

**SECTION 4. Severability.** If any portion of this ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this ordinance shall remain in effect. The people of the City of Lemoore hereby declare that they would have adopted each portion of this ordinance, notwithstanding that any one of more portions of this ordinance is declared invalid or unenforceable and, to that end, the provisions of this ordinance are severable.

**SECTION 5. Certification/Summary.** Following the City Clerk's certification that the citizens of Lemoore have approved this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause the same, or a summary thereof, to be published as required by law.

**SECTION 6. Effective Date.** This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

The foregoing ordinance was adopted at a regular meeting of the City Council of the City of Lemoore held on the 2nd day of July 2024 for placement on the November 5, 2024, general election ballot and subject to voter approval, by the following vote of at least two-thirds of the City Council:

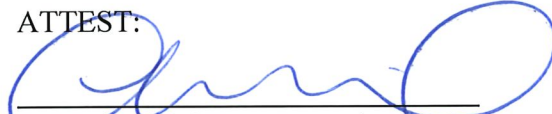
AYES: Lyons, Garza, Orth, Gornick, Matthews

NOES:

ABSTAIN:

ABSENT:

  
\_\_\_\_\_  
Patricia Matthews, Mayor

ATTEST:  
  
\_\_\_\_\_  
Christal Schisler, Deputy City Clerk

I hereby certify that the City of Lemoore Transactions and Use Tax Ordinance was PASSED, APPROVED, AND ADOPTED by the People of the City of Lemoore on the 5<sup>th</sup> day of November, 2024.

\_\_\_\_\_  
Patricia Matthews, Mayor

ATTEST:

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Marisa Avalos, City Clerk