

ORDINANCE NO. CS 1024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATWATER AMENDING AND RESTATING CHAPTER 3.45 "ATWATER PUBLIC SAFETY TRANSACTIONS AND USE TAX" OF THE ATWATER MUNICIPAL CODE TO EXTEND A TRANSACTIONS AND USE TAX FOR SPECIAL PURPOSES TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

WHEREAS, on March 5, 2013, the voters of the City of Atwater ("City") approved a one-half cent sales tax to supplement funding for public safety services in the City; and

WHEREAS, the Public Safety Tax imposed a one-half sales tax upon all retailers in the City for the sale of all tangible personal property sold at retail in the City; and

WHEREAS, the Public Safety tax will expire on June 30, 2023; and

WHEREAS, the City Council provided staff with direction to place a measure on the March 3, 2020 ballot to renew the Public Safety Tax.

NOW, THEREFORE, the City Council of the City of Atwater does hereby ordain:

SECTION 1: That the City Council of the City of Atwater does hereby amend and restate Chapter 3.45 "Atwater Public Safety Transactions and Use Tax" of Title 3 "Revenues and Finance" of the Atwater Municipal Code to read in full as follows:

3.45.010. TITLE.

This ordinance shall be known as the "Atwater Police, Fire and 911 Emergency Response Transactions and Use Tax Ordinance." The City of Atwater hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.45.020. 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.

3.45.030. PURPOSE.

This ordinance is adopted to achieve the following, 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 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be

operative if two-thirds 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 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.

3.45.040. 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 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 a contract.

3.45.050. 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 1.0% 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. Such tax shall be in addition to any other transactions tax imposed by this Code or applicable State law.

3.45.060 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 California Department of Tax and Fee Administration.

3.45.070. 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 ordinance for storage, use or other consumption in said territory at the rate of 1.0% 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. Such tax shall be in addition to any other use tax imposed by this Code or applicable State law.

3.45.080. 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.

3.45.090. 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 of this City 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 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 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.
1. "A retailer engaged in business in the District" 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 Title 26 of the United States Code and the regulations thereunder.

3.45.100. 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.

3.45.110. 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.

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.

3.45.120. 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.

3.45.130. 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.

3.45.140. 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.

3.45.150 USE OF TAX PROCEEDS AND EXPENDITURE PLAN; EXPENDITURE PLAN.

- A. All proceeds of the tax levied and imposed pursuant to this chapter shall be accounted for and paid into a special fund or account designated for use by the City only for the public safety services set forth in this section. This section shall serve as the expenditure plan required by Revenue and Taxation Code section 7285.91(c). The expenditure plan may be amended from time to time by a majority vote of the City Council, so long as the funds are utilized for public safety services. The City Council shall include in its annual budget projected revenue from the tax imposed by this ordinance and authorized expenditures of revenue received from the tax.
- B. For the purposes of this chapter, "public safety services" means either or both:
 - 1. Obtaining, furnishing, operating, and/or maintaining police protection equipment or apparatus, paying the salaries and benefits of police protection personnel, and such other police protection service expenses as are deemed necessary by the City Council for the benefit of the residents of the City.
 - 2. Obtaining, furnishing, operating, and/or maintaining fire protection equipment or apparatus, paying the salaries and benefits of fire protection personnel, and such other fire protection service expenses, including capital expenses, as are deemed necessary by the City Council for the benefit of the residents of the City.

3.45.160 ESTABLISHMENT OF CITIZENS' OVERSIGHT COMMITTEE.

- A. Committee Established. There is hereby established in the City a citizens' oversight committee to monitor the expenditures of revenue collected pursuant to this chapter only and report to the people of the City and the City Council.

- B. Selection of Members. Members of the citizens' oversight committee shall be appointed by the City Council. The committee shall consist of five members. The initial committee shall consist of those members serving on the oversight committee established pursuant to the City's Measure H (2012). The citizens' oversight committee members shall not be current City employees, officials, contractors or vendors of the City. Past employees, officials or vendors shall be eligible to serve on the committee, provided that there are no conflicts of interest as determined by the City Attorney.
- C. As used in this chapter, the term "official" is not synonymous with the term "public official" as defined in the California Political Reform Act. The term "official" shall not include members or appointees serving on existing boards or commissions of the City of Atwater, including, but not limited to, the Planning and Zoning Commission and the Parks and Recreation Commission. The term "official" shall mean any person who is not an employee, but performs the duties or functions of an employee of the City of Atwater for compensation under an outsourcing arrangement, including, but not limited to, the Fire Chief, the Finance Officer and any other positions which may be outsourced subsequent to the enactment of this chapter.
- D. Members of the oversight committee established pursuant to the City's Measure H (2012) shall continue for the balance of their terms as members of the citizens' oversight committee established by this chapter. Their successors shall be appointed for terms of three years. No member may serve more than two consecutive three-year terms. Prior service of a full three-year term on the oversight committee established pursuant to the City's Measure H (2012) shall count as a term for the purposes of the citizens' oversight committee
- E. The City Council shall solicit citizens' oversight committee members through an open application process that is promoted through the City's adopted recruiting process. Any Atwater resident is eligible to apply for committee membership, subject to the appointment categories specified above. All applications will be reviewed by the City Council, which will have the authority to make all final decisions on committee representation, subject to these guidelines.
- F. Purpose and Jurisdiction. The citizens' oversight committee shall review expenditures of revenue collected pursuant to this chapter only to determine whether such funds are expended for the purposes specified in the then-current public safety measure police and fire expenditure plan and issuing reports on their findings to the City Council and public at least annually. Committee members may also review the annual financial or performance audits performed by an independent auditor. The committee

shall confine its oversight specifically to revenues generated under this chapter. Revenue generated through other sources shall be outside the jurisdiction of the public safety measure citizens' oversight committee.

- G. In order to preserve the integrity and independence of the oversight process, committee members will not play a formal role in contracting, project management, or any other aspect of the public safety measure funding.
- H. The committee is not charged with decision-making on spending priorities, schedules, project details, funding source decisions (e.g., leveraged funds, developer fees, etc.), financing plans, or tax rate assumptions. The committee shall serve in an advisory-only role to the City Council. The committee shall have no jurisdiction other than that delegated to it by the people pursuant to this chapter.
- I. The City Manager or designee shall provide any reasonable administrative or technical assistance required by the committee to fulfill its responsibilities or publicize its findings.
- J. Meetings. The citizens' oversight committee shall meet semi-annually (or as otherwise provided for in approved or amended bylaws) with specific meeting dates to be determined by committee members. Citizens' oversight committee meetings are subject to the Brown Act. Meetings must be noticed and open to the public. Committee minutes and reports are a matter of public record and must be posted on a web site provided by the City. Additional meetings may be scheduled by the committee as necessary. All committee members shall attend a training and orientation session prior to the first regular committee meeting.
- K. Committee members are expected to attend all regular meetings. Failure to attend two consecutive meetings may result in removal from the committee at the discretion of the City Council.
- L. Committee Operations. The citizens' oversight committee will select members to serve as chair and vice chair of the committee. A City staff person will be appointed by the City Manager or designee to serve as secretary. The secretary will be responsible for preparing, posting and distributing agendas and taking minutes at each meeting. Approved minutes shall be made available to the public. Committee decisions, positions, findings, and procedures shall require a simple majority vote of those members in attendance. The quorum requirement for any meeting shall be a minimum of four members of the committee.
- M. Vacancies. Committee members may be removed from the committee only by the City Council for repeated absence, as set forth in this chapter;

for malfeasance; for failing to meet the qualifications set forth in this chapter; or for inability or unwillingness to fulfill the duties of a member. In the event of removal, resignation, or death, the City Council shall appoint a person to fill the vacant seat.

- N. Miscellaneous. With the exception of those items specifically addressed in these guiding principles, the committee may draft and adopt its own standard procedures and bylaws by majority vote. All citizens' oversight committee procedures and bylaws remain subject to review and approval by the City Council. Citizens' oversight committee reports and audits are subject to review and approval of the City Council.

3.45.170 FISCAL ACCOUNTABILITY PROVISIONS.

The amount generated by this new special purpose revenue source and how it was used shall be included in the annual audit of the City's financial operations by an independent certified public accountant.

3.45.180. TERMINATION OF TAX.

The authority to levy the tax imposed by this Chapter shall expire when ended by the voters of the City.

SECTION 4: This ordinance shall not become operative unless and until approved by two-thirds of voters voting on the ordinance at the election held on March 3, 2020.

SECTION 5: Approval of this ordinance is exempt from review under the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines")). The tax authorized by this ordinance is a special tax that can be used for specified governmental purposes. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 6: SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it 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 7: EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.