

ORDINANCE NO. 887-C.S.

AN ORDINANCE OF THE CITY OF PACIFICA ADOPTING CHAPTER 19, "TRANSACTIONS AND USE (SALES) TAX" OF TITLE 3 OF THE PACIFICA MUNICIPAL CODE TO IMPOSE A ½ CENT TRANSACTIONS AND USE TAX

WHEREAS, the City of Pacifica has authority, pursuant to Article XIII C of the California Constitution and Revenue and Tax Code section 7285.9 et seq. to propose a transactions and use tax to be adopted by a majority vote of qualified voters, and is authorized by Elections Code section 9222 to submit an ordinance directly to the voters at the general election to be held on November 8, 2022,

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PACIFICA DO ORDAIN AS FOLLOWS:

Section 1. Adoption. Chapter 19, "Transactions and Use (Sales) Tax" of Title 3 of the Pacifica Municipal Code is hereby adopted to read in its entirety as follows:

Sec. 3-19.01 Short title.

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

Sec. 3-19.02 Purpose.

Pursuant to the requirements of the California Department of Tax and Fee Administration, 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 chapter 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.

(e) To provide transactions and use tax revenue to the city to be used to fund city services, including, but not limited to: maintaining neighborhood police patrols, fire protection, 911 emergency response times, maintaining crime suppression and investigation, city streets and pothole repair, parks and recreation, job creation and economic improvement programs, senior and youth services, and with any transactions and use tax revenue received being placed into the city's general fund.

(f) To provide transaction and use tax revenue to the city that can be spent for unrestricted general revenue purposes.

Sec. 3-19.03 Operative date; sunset date.

In accordance with Revenue and Tax Code section 7265, this chapter shall be operative on the first day of the first calendar quarter commencing at least 110 days after the adoption of the ordinance codified in this chapter by vote of the electorate. This chapter shall cease to be operative nine years from the date that this chapter is first operative, unless subsequently extended by vote of the electorate of the City of Pacifica.

Sec. 3-19.04 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.

Sec. 3-19.05 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 one-half of one percent of the gross receipts of any retailers for the sale of all tangible personal property sold at retail in said territory on and after the operative date of this chapter.

Sec. 3-19.06 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.

Sec. 3-19.07 Use tax rate.

A use 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 one-half of one percent 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.

Sec. 3-19.08 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.

Sec. 3-19.09 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 Board of Control, California 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 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:

(i) 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

(ii) 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 of the Revenue and Taxation Code.

(c) "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.

Sec. 3-19.10 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 seller's permit shall not be required by this chapter.

Sec. 3-19.11 Exemptions and exclusions.

(a) There shall be excluded from the measure of the transactions 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:

(i) 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

(ii) 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.

Sec. 3-19.12 Amendments.

(a) 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.

(b) The city council may otherwise amend this chapter without submitting the amendment to the voters for approval in any manner which does not constitute a tax "increase" as that term is defined in Government Code section 53750(h). The city council may amend this chapter without voter approval provided such amendments do not increase the tax rate; extend the duration of the tax; revise the methodology for calculating the tax, such that a tax increase would result; impose the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of law); or terminate the tax.

(c) Notwithstanding any provision to the contrary, any proposed change to the tax rate imposed under this chapter shall be submitted to the vote of the people.

Sec. 3-19.13 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.

Sec. 3-19.14 Audit Requirements.

The proceeds resulting from the transactions and use tax shall be deposited into the city's general fund and become subject to the same audit requirements as other general fund revenue. Any auditor's report shall include an accounting of the revenues received from the transactions and use tax and shall be presented to the city council and made available for public review.

Sec. 3-19.15 Citizens' oversight committee.

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

Section 2. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), under Section 15061(b)(3) of the CEQA Guidelines (14 Cal. Code Regs. 15000 et seq.) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

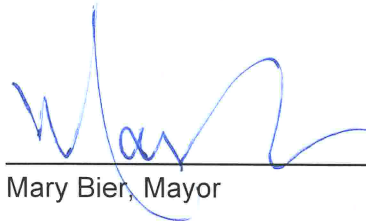
Section 4. Passage. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State law.

Section 5. Effective Date. This Ordinance shall go into effect in accordance with Elections Code Section 9217, and shall be deemed adopted and become effective only if approved by a majority of the eligible voters of the City of Pacifica voting thereon, at an election to be held on November 8, 2022, and shall take effect ten (10) days after the City Council has certified the results of that election by resolution. The levying and collection of the transaction and use tax shall be as specified in the Ordinance.

PASSED AND ADOPTED by the voters of the City of Pacifica this November 8, 2022.

It is hereby certified that this Ordinance was duly adopted by the voters at the November 8, 2022 election, and that the City Council declared the results of such election, in the manner required by law, at a meeting of the City Council held on the 15th day of December, 2022 by the following vote:

AYES: Beckmeyer, Bier, Bigstyeck, O'Neill, Vaterlaus
NOES: n/a
ABSTAIN: n/a
ABSENT: n/a



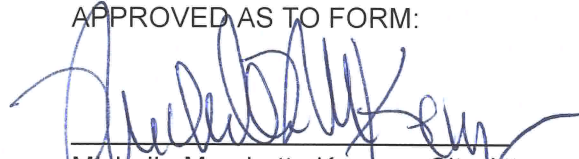
Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Marchetta Kenyon, City Attorney