

ORDINANCE NO. 2013-07-09-1601

AN ORDINANCE OF THE CITY OF STOCKTON ENACTING A GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION, UPON ADOPTION BY THE VOTERS

The people of the City of Stockton do ordain as follows:

Section 1. Title. This ordinance shall be known as the City of Stockton Transactions and Use Tax Ordinance.

Section 2. Definitions. The following words and phrases shall be defined as set forth in this Ordinance, except that any term or phrase not defined in this Ordinance shall have the same meaning as that term or phrase is defined in the California Revenue and Taxation Code, Division 2, Parts 1.6 and 1.7:

- A. "City" means the City of Stockton.
- B. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance by vote of the electorate on November 5, 2013.
- C. "Ordinance" means the City of Stockton Transactions and Use Tax Ordinance.
- D. "State" means the State of California.

Section 3. Purpose. This Ordinance is adopted to achieve the following among other purposes, and the Ordinance shall be interpreted liberally in order to accomplish all of its lawful 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, which authorizes the City to adopt this Ordinance 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 that can be administered and collected by the State Board of Equalization 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 Board of Equalization 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.
- E. To provide transactions and use tax revenue to the City to be used for the general governmental purposes of the City, with any transactions and use tax revenue received being placed into the City's general fund.

Section 4. Contract with the State. Prior to the Operative Date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this Ordinance; provided, that if the City shall not have contracted with the State Board of Equalization 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.

Section 5. Transactions Tax Rate. For the privilege of selling tangible personal property at retail, a transactions tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 0.75% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail within the territory of the City on and after the Operative Date of this Ordinance.

Section 6. 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 Board of Equalization.

Section 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 Ordinance for storage, use or other consumption in the territory of the City at the rate of 0.75% 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.

Section 8. 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, incorporated, and made a part of this Ordinance as though fully set forth herein.

Section 9. 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 is named or referred to as the taxing agency, the name of the City shall be substituted. However, this 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 Board of Equalization, State Treasury, or the Constitution of the State of California;
2. The result of the substitution would require action to be taken by or against the City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, 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 the tax in this Ordinance with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from the 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 same 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.

Section 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 Ordinance.

Section 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 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.

Section 12. 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 adopted and 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 or the City's voters may amend this Ordinance to comply with applicable law or as may be otherwise necessary to further the Ordinance's stated purposes. However, as required by Article XIII C of the California Constitution, no amendment to this Ordinance may increase the rates of the taxes authorized by this Ordinance unless such amendment is submitted to and approved by the voters.

Section 13. Prohibition on Enjoining Collection. 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 under this Ordinance.

Section 14. 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 15. Effective Date. This Ordinance relates to the levying and collecting of City transactions and use taxes and shall take effect immediately. However, no tax imposed by this Ordinance shall be effective unless that tax has been approved by the voters of the City as required by section 2(b) of Article XIII C of the California Constitution and applicable law.

Section 16. Precedence over Other Provisions in the Municipal Code. Any provision of the Stockton Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistency and no further, is hereby repealed or modified to the extent necessary to effect the provisions of this Ordinance.

Section 17. Sunset of Tax. (a) The taxes imposed by this Ordinance shall remain effective until the soonest to occur of the following: (i) the City Council repeals, or the voters repeal, this Ordinance; (ii) the City Council determines that the City has experienced economic recovery as defined in Section 18 of this ordinance, or (iii) ten (10) years from the date the taxes imposed by this Ordinance are first collected. However, the voters hereby authorize the Council to extend the sunset of the taxes pursuant to paragraph (b) of this Section 17.

(b) The City Council may extend the sunset of the taxes imposed by this Ordinance as follows. The Council shall hold two publicly noticed meetings at least 14 days apart and shall adopt findings based on evidence before it that: (i) the revenues provided by the taxes imposed by this Ordinance continue to be necessary to accomplish the purposes stated in Section 21 of this Ordinance and (ii) the total compensation paid to City employees is not excessive when compared to those of other similarly situated public-sector employers.

Section 18. Economic Recovery Review. Peak revenues to the City's general fund occurred in fiscal year 2008–2009, when the City received approximately \$203,101,529 in such revenues. In the event the City, during any fiscal year in which this Ordinance is in effect, receives general fund (excluding amounts of such revenues transferred by the City to San Joaquin County pursuant to any tax sharing agreement, and excluding revenues under this Ordinance) in excess of the peak amount reached in fiscal year 2008–2009 adjusted for inflation from July 1, 2008 to the date of measurement using an average of the Consumer Price Indices for All Urban Consumers (1982-84=100) (CPI-U) for (i) U.S. City Average; (ii) San Francisco-Oakland-San Jose; and (iii) Western Urban, then the City Council shall hold a noticed public hearing to consider whether to reduce or eliminate the tax imposed by this Ordinance.

Section 19. Citizen Oversight. The City Council shall appoint a seven-member Citizens' Advisory Committee, which shall meet at least annually to review the expenditure of revenues generated by the tax imposed by this Ordinance and to make recommendations to the City Council regarding those expenditures. The minutes of Citizens' Advisory Committee meetings shall be provided to the City Council and placed on the next available regular Council meeting agenda thereafter. The Citizens' Advisory Committee shall also review progress toward peak general fund revenues as described in section 18 of this Ordinance and any findings made by the City Council under that section or section 17, subdivision (b).

Section 20. Audit and Review. The proceeds of the tax imposed by this Ordinance, as well as the expenditure thereof, shall be audited annually by an independent accounting firm. The City Council shall discuss the results of such audit at a meeting of the City Council that is open to the public. The report of such audit shall be posted on the City's website.

Section 21. Declaration. The proceeds of the taxes imposed by this Ordinance may be used for any lawful purpose of the City, as authorized by ordinance, resolution or action of the City Council. These taxes are not special taxes within the meaning of section 1, subdivision (d) of Article XIII C of the California Constitution, but are general taxes imposed for general governmental purposes.

Section 22. Execution. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance upon certification by the City Council of the results of the election approving this Ordinance.

PASSED AND ADOPTED by the City Council of the City of Stockton, on July 9, 2013, by the following vote:

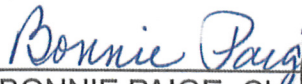
AYES: Councilmember Burgos, Councilmember Holman, Councilmember Miller
Councilmember Tubbs, Councilmember Zapien, Vice Mayor Canepa, Mayor Silva
NOES: 0

ABSENT: 0



ANTHONY SILVA, Mayor of
the City of Stockton

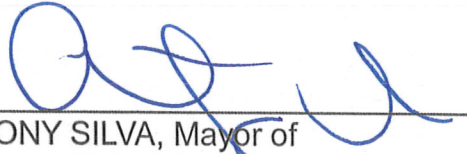
ATTEST:



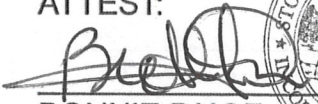

BONNIE PAIGE, Clerk of
the City of Stockton



I hereby certify that this Ordinance was APPROVED by the voters of the City of Stockton, State of California, at a general election held on November 5, 2013, and by the City Council of the City of Stockton at a regular meeting of the Council held on _____
December 3, 2013.



ANTHONY SILVA, Mayor of
the City of Stockton

ATTEST:



BONNIE PAIGE, Clerk of
the City of Stockton