

February 15, 2005

NOTE TO FILE:

Corrections to Ordinance No. 038-04 CS, **Adding a New Part to Chapter 8 of the Stockton Municipal Code to Provide For an Additional One-Quarter of One Percent Transactions and Use Tax to Fund Police and Fire Protection Services and Related Capital Projects and to be Administered by the State Board of Equalization**, were authorized and initialed off by the City Attorney's Office on February 7, 2005.

KATHERINE GONG MEISSNER
CITY CLERK

ORDINANCE NO. 038-04C.S.

AN ORDINANCE ADDING A NEW PART TO CHAPTER 8 OF THE STOCKTON MUNICIPAL CODE TO PROVIDE FOR AN ADDITIONAL ONE-QUARTER OF ONE PERCENT TRANSACTIONS AND USE TAX TO FUND POLICE AND FIRE PROTECTION SERVICES AND RELATED CAPITAL PROJECTS AND TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

BE IT ORDAINED BY THE VOTERS OF THE CITY OF STOCKTON, AS
FOLLOWS:

*Part IX
Funding for Police and Fire Protection Services*

SECTION I: AMENDMENT OF CODE.

Stockton Municipal Code Chapter 8 is hereby amended by the addition of a new Part to read as follows:

SEC. 8-²⁹⁰~~201~~. PURPOSE:

This Part of the Stockton Municipal Code has been adopted for the following (and 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds 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 State Board of Equalization in a manner that adapts itself as fully as practical 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 Transactions and Use Taxes;

(d) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will, to the degree possible consistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the said Revenue and Taxation Code, 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.

(e) To provide a source of revenue for maintaining the City's current level of police and fire protection services and undertake necessary capital projects to support those

services. The revenue generated by the tax provided for herein shall be restricted to those uses. The tax is, therefore, a special tax.

²⁹¹
SEC. 8-~~202~~. OPERATIVE DATE:

"Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this Part, the date of such adoption being set forth below.

²⁹²
SEC. 8-~~203~~. CONTRACT WITH 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 hereof. If the City has not 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. The Council may make any technical amendments to this Part required by the State Board of Equalization, except for any changes affecting the tax rate, its manner of collection, or the purpose for which the revenue from the tax may be used.

²⁹³
SEC. 8-~~204~~. IMPOSITION OF TRANSACTIONS TAX:

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the City at the rate of one-quarter of one percent (0.25%) of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City of Stockton on and after the effective date of this Part. The City Council is authorized to establish a tax rate of one-quarter of one percent by resolution.

²⁹⁴
SEC. 8-~~205~~. PRESUMPTION AS TO PLACE OF SALES:

For the purposes of this Part, 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 Board of Equalization.

²⁹⁵
SEC. 8-~~206~~. IMPOSITION OF USE TAX:

An excise tax is hereby imposed on the storage, use, or other consumption in the City of Stockton of tangible personal property purchased from any retailer on or after the operative date of this Part, at the rate of one-quarter of one percent (0.25%) 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 transactions or use tax regardless of the place to which delivery is made. The City Council is authorized to establish a tax rate of one-quarter of one percent by resolution.

296

SEC. 8-207. ADOPTION OF CERTAIN SECTIONS OF CALIFORNIA REVENUE & TAXATION CODE BY REFERENCE:

Except as hereinafter provided, and except in so far as they are inconsistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of said Code, as amended and in force and effect on the operative date of this Part, applicable to use taxes are hereby adopted and made a part of this section as though fully set forth herein.

297

SEC. 8-208. 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 Board of Control, State Board of Equalization, 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 State Board of Equalization, in performing the functions incident to the administration or operation of this Part.

(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.

(5) ^{PN} 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.

298

SEC. 8-209. 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 Part.

299

SEC. 8-210. 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 Chapter 2 of 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 Part.

(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 Part.

(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) There are exempted from the use tax imposed by this Part, 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 Part.

(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 Part.

(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.

(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 Chapter 2 of 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 Part 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.

³⁰⁰
SEC. 8-~~244~~. AMENDMENTS:

All amendments subsequent to the operative date of this Part 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 Part.

³⁰¹
SEC. 8-~~244~~. 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 this City, or against any officer of the State or this City, to prevent or enjoin the collection hereunder, or Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION II: USE OF TAX PROCEEDS AND EXPENDITURE PLAN.

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund or account designated for use for Public Safety Services only. The City Council shall adopt by resolution Program Guidelines for the administration and expenditure of the tax proceeds. For the purposes of this Part, "Public Safety Services" means obtaining, furnishing, operating, and 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; and (b) obtaining, furnishing, operating, and 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. Because the proceeds of the tax shall be used for maintaining current police and fire protection service levels, this section shall satisfy the expenditure plan requirement of Section 7285.91(c) of the Revenue and Taxation Code.

SECTION III: SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council finds and declares that it would have adopted each and every provision of this ordinance, even if it had not adopted any other provision.

SECTION IV: STATUTORY AUTHORITY FOR TAX.

This ordinance is adopted pursuant to Revenue and Taxation Code section 7285.91.

SECTION V: ELECTION REQUIRED.

This ordinance shall not become operative unless and until a two-thirds majority of the electors voting on this measure vote to approve the imposition of the tax at the election to be held on November 2, 2004.

SECTION VI: EFFECTIVE DATE.

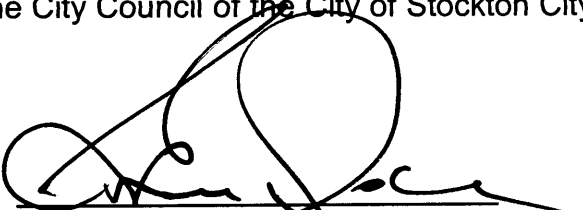
If this ordinance is approved by two-thirds of the voters voting on the issue at the November 2, 2004, election, pursuant to Elections Code Section 9217, the tax shall become effective ten (10) days after the Council certifies the results of the election.

APPROVED by the following vote of the People of the City of Stockton on November 2, 2004:

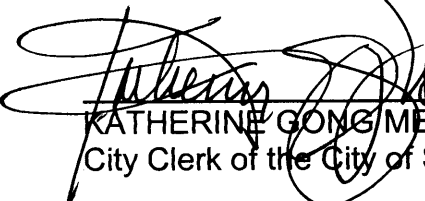
Yes	46894	73.62%
No	16806	26.38%

ADOPTED by Declaration of the vote by the City Council of the City of Stockton City on December 7, 2004:

EFFECTIVE: **DEC 17 2004**


 GARY A. PODESTO, Mayor
 of the City of Stockton

ATTEST:


 KATHERINE GONG-MERRETT
 City Clerk of the City of Stockton

