

ORDINANCE NO. 21-032

**AN URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF PACIFIC GROVE
AMENDING CHAPTER 6.07 OF THE PACIFIC GROVE MUNICIPAL CODE TO
INCREASE THE GENERAL PURPOSE TRANSACTIONS AND USE TAX (SALES TAX)
RATE BY AN ADDITIONAL HALF-PERCENT (0.50%)
THEREBY ESTABLISHING A NEW TRANSACTIONS AND USE TAX RATE OF ONE
AND ONE-HALF PERCENT (1.5%) TO BE ADMINISTERED BY THE CALIFORNIA
DEPARTMENT OF TAX AND FEE ADMINISTRATION, SUBJECT TO ADOPTION BY
THE ELECTORATE**

FACTS

1. The City Council has the authority under Elections Code Section 9222, Revenue and Taxation Code Section 7285.9, and Government Code Sections 53723 and 53724 to place a ballot measure before the voters to establish a local transactions and use tax (sales tax) for general municipal purposes; and
2. The City currently imposes a 1% local transactions and use tax as previously approved by the electorate of the City, which is a significant revenue source for the City as it generates an estimated \$ 2.3 million a year; and
3. Pursuant to Revenue and Taxation Code Sections 7251.1, the combined rate of all transaction and use taxes imposed by the City and County is capped at 2%, there is remaining capacity within the local transactions and use tax cap, and the City is authorized to increase and extend the tax contingent on voter approval; and
4. The City seeks to increase the local transactions and use tax rate by an additional one-half percent (0.5%) to establish a new transaction and use tax rate of one and one-half percent (1.5%) (replacing the former one percent (1.0%) tax), in order to generate additional revenue that may be used immediately to mitigate spending reductions that will need to be enacted as part of the upcoming budget to assist with long-term financial stability; and
5. Article XIII C of the California Constitution requires new or increased taxes be submitted to the voters prior to becoming effective. Article XIII C, Section 2(b) also requires that an election to approve a general tax measure be consolidated with a City Council election unless an emergency is declared by a unanimous vote of the City Council; and
6. The City faces an emergency that necessitates the placement of this measure on the ballot prior to the next regularly scheduled City Council municipal election; and
7. Voter approval on April 12, 2022 would provide the City with financial certainty regarding the long-term viability of this revenue; and
8. Pacific Grove Municipal Charter, Article 15, paragraph (g), provides in part “no action... levying of any tax... shall be taken except by ordinance.”; and
9. Pacific Grove Municipal Charter, Article 15, paragraph (d), provides in part “any ordinance declared by the Council to be necessary as an emergency measure for preserving the public peace, health, safety or public welfare, and containing the reasons

for its urgency, may be introduced and if passed by a vote of no fewer than five members of the Council shall become effective immediately.”; and

10. The City Council unanimously declares this ordinance is necessary as an emergency measure; reasons for this declaration of urgency are that financial circumstances of the City immediate and urgent enactment of a new tax measure to increase revenues to the City and to preserve the public peace, health, safety and welfare of the community, to avoid work stoppages and service disruptions that may result from additional staff cuts or reductions in force, and to avoid permanent impairment of valued community services provided by the library, recreation department, and other cultural resources within the City. The financial emergency may also result in the crippling consequence of budget depletion; and
11. The City Council finds this ordinance is not a project under the California Environmental Quality Act by virtue of the State CEQA Guidelines, 14 Code of California Regulations section 15378, subdivision (b)(3) and, therefore, no environmental impact assessment is necessary.

THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN, SUBJECT TO ADOPTION BY THE ELECTORATE, as follows:

SECTION 1: The foregoing Facts are adopted as findings of the City Council as though set forth fully herein.

SECTION 2: The provisions of Chapter 6.07 of the Pacific Grove Municipal Code shall be deleted in their entirety, and in its place, the following provisions shall be enacted as Chapter 6.07.

6.07.010. TITLE. The ordinance enacting this Chapter shall be known as the Pacific Grove General Transactions and Use Tax Ordinance. The City of Pacific Grove hereinafter shall be called “City.” Title 6.07 shall be applicable in the incorporated territory of the City.

6.07.020. PURPOSE. This Chapter is enacted to achieve, among other purposes, the following, and directs its provisions be interpreted in order to accomplish those purposes:

A. To impose a retail Transactions and Use Tax increase 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 a majority of the electors voting on the measure vote to approve the imposition of the tax increase 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 increase 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.

6.07.030. 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.

6.07.040. 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 1.5% 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.

6.07.050. 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.

6.07.060. 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 1.5% 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.

6.07.060. 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.

6.07.070. 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.

6.07.080. 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.

6.07.090. 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.

6.07.100. 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.

6.07.110. TERMINATION. The taxes imposed by this article shall continue until terminated by a majority of the electors voting in an election.

SECTION 3. 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.

SECTION 4. 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.

SECTION 5. 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 6. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City Transactions and Use Taxes and shall take effect immediately if the tax is imposed by a simple majority of the voters voting on the question at the April 12, 2022, election. Taxes authorized by this measure shall be collected at the first date allowed by the California Revenue and Taxation Code, section 7265.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 15th day of December, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Coletti,
McAdams, Poduri, and Tomlinson.
NOES: None.
ABSENT: None.

APPROVED:

/s/

BILL PEAKE, Mayor

ATTEST:
DATED: 12/16/2021

/s/

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

/s/

DAVID C. LAREDO, City Attorney