



# ***Atascadero City Council***

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## ***Staff Report - City Manager***

### **Sales Tax Ballot Measure Ordinance Second Reading**

#### **RECOMMENDATION:**

Council adopt on second reading, by title only, the Draft Ordinance amending Title 3 of the Atascadero Municipal Code to add a Chapter 18 "Essential Services Transactions and Use Tax" to be administered by the California Department of Tax and Administration, subject to adoption by the electorate.

#### **DISCUSSION:**

The City seeks to maintain essential services and is coming to a crossroads where it cannot sustain the services it provides with the projected available resources. Atascadero receives the lowest revenue per capita in Sales Tax, in Property Tax and in General Fund revenues among all San Luis Obispo County cities and money from a local, voter-approved funding measure is needed at the local level to address the community's local needs. At the May 26, 2020 City Council Meeting, the Council directed staff to prepare the necessary legislation for City Council consideration at the July 14, 2020 meeting to place a one-percent local sales tax override measure on the November 2020 ballot.

The City Council does not have the authority to establish or raise taxes, only to put a measure on the ballot for voter approval. Revenue and Taxation Code requires that the Council introduce and adopt an ordinance to establish the tax ballot measure, subject to approval by two-thirds of the City Council, and approval by voters at the November 3, 2020 General Municipal Election. The attached ordinance would then become the full text of the sales tax measure.

The specific language of the question that will be presented to the voters as required by the Elections Code is as follows:

#### ***Measure #D-20***

*To provide funding for fire protection, paramedics, and 911 emergency response, police, crime prevention and investigations, maintenance of parks, public facilities and infrastructure, graffiti removal, and recreation, community services, and other general city services in the City of*

*Atascadero, shall an ordinance establishing a one-percent sales tax be adopted, providing approximately 4.5 million dollars annually for city services until ended by voters, with annual independent audits ensuring money is spent properly, and all money locally controlled?*

If passed by the Council and the electorate, the tax would be effective no sooner than the first day of the first calendar quarter, commencing more than 110 days after the adoption of the ordinance by the voters. Therefore, the tax would be effective no sooner than April 1, 2021.

The City Council, at their July 14, 2020 meeting, introduced for first reading, by title only, the attached Draft Ordinance. Now, in order for the Measure to be submitted to the voters, the Council must adopt by a 2/3 vote of the City Council (at least 4 members) the attached Draft Ordinance.

### **FISCAL IMPACT:**

The proposed sales tax measure would generate an estimated \$4.5 million in additional annual revenue. The total cost of placing the measures on the ballot is estimated to be approximately \$12,000 of budgeted General Funds.

### **ATTACHMENT:**

Draft Ordinance

## DRAFT ORDINANCE

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, AMENDING TITLE 3 OF THE ATASCADERO MUNICIPAL CODE TO ADD A NEW CHAPTER 18 “ESSENTIAL SERVICES TRANSACTIONS AND USE TAX” TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND ADMINISTRATION, SUBJECT TO ADOPTION BY THE ELECTORATE**

**WHEREAS**, pursuant to California Revenue & Taxation Code Sections 7251 *et seq.* and 7285.9, the City of Atascadero (“City”) is authorized to levy a Transactions and Use Tax for general purposes, subject to voter approval and

**WHEREAS**, the City proposes to levy a Transactions and Use Tax for general purposes to fund maintain and enhance important City services, with the rate set at one cent; and

**WHEREAS**, the City is fiscally challenged and while it does well with the funding that it has, general fund revenue growth has not kept pace with the increasing costs of providing services to a growing population; and

**WHEREAS**, the City seeks to maintain essential services and is coming to a crossroads where it cannot sustain the services it provides with the projected available resources; and

**WHEREAS**, one of the two fire stations protecting lives and property within the City’s approximately 26 square miles was built in 1951 and has critical safety deficits requiring replacement; and

**WHEREAS**, the City, has approximately half the national average of police officers per capita for a City its size, is amongst the lowest paying City employer in the County for most positions, and has deteriorating infrastructure including fire stations, parks, roads, zoo facilities and other buildings; and

**WHEREAS**, Atascadero receives the lowest revenue per capita in Sales Tax, in Property Tax and in General Fund revenues among all San Luis Obispo County cities and money from a local, voter-approved funding measure is needed at the local level to address the community’s local needs; and

**WHEREAS**, the proceeds from such transactions and use tax could not be taken by the State and would remain local, to be spent in the City of Atascadero for services such as police, fire, paramedic, parks, recreation, public facilities. infrastructure and other services; and

**WHEREAS**, all City revenues are subject to annual independent audits with public review of the City’s budget being widely available, including at City Hall, and online; and

**WHEREAS**, under applicable law, to enact a transactions and use tax, the City Council of the City of Atascadero must approve the Essential Services Transactions and Use Tax Ordinance and the voters of the City of Atascadero must also adopt it upon majority vote at an election.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATASCADERO HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1. Title and Text.** This Ordinance shall be known as the Essential Services Transactions and Use Tax Ordinance, the full text of which is set forth in Attachment “A,” attached hereto and incorporated herein by reference.

**SECTION 2. Approval by City Council.** Pursuant to California Revenue Taxation Code Section 7285.9, this Ordinance was duly introduced on July 14, 2020 and approved upon second reading for placement on the ballot by a two-thirds (2/3) supermajority of all members of the City Council on \_\_\_\_\_, 2020.

**SECTION 3. Approval by the Voters.** Pursuant to California Elections Code Section 9217, this Ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Atascadero voting at the Regular Election on November 3, 2020, and shall be deemed adopted and take effect ten (10) days after the City Council has certified the results of that election by resolution.

**SECTION 4. Operative Date.** “Operative Date” for the Essential Services Transactions and Use Tax means the first day of the first calendar quarter commencing more than one hundred ten (110) days after the effective date of this Ordinance, as set forth in Section 3, above.

**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. Summary.** The title and a summary of the Ordinance, along with the names of the City Council members voting for and against the Ordinance, shall be published twice in a newspaper of general circulation in the City of Atascadero.

**SECTION 7. Publication.** The City Clerk shall certify to the adoption of this Ordinance no later than fifteen (15) days following the passage of this Ordinance, and shall cause this Ordinance to be published by title and summary.

**PASSED AND ADOPTED** by the City Council of the City of Atascadero, California, held on the \_\_\_\_\_ day of \_\_\_\_\_ 2020, by a vote of at least two-thirds of the City Council.

CITY OF ATASCADERO

\_\_\_\_\_  
Heather Moreno, Mayor

ATTEST:

\_\_\_\_\_  
Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Brian A. Pierik, City Attorney

**ATTACHMENT A**

**CHAPTER 3-18  
ESSENTIAL SERVICES TRANSACTIONS AND USE TAX**

**Sections:**

- 3-18.010 Title.
- 3-18.020 Operative Date.
- 3-18.030 Purpose.
- 3-18.040 Contract with State.
- 3-18.050 Transaction Tax Rate.
- 3-18.060 Place of Sale.
- 3-18.070 Use Tax Rate.
- 3-18.080 Adoption of Provisions of State Law.
- 3-18.090 Limitations on Adoption of State Law and Collection of Use Taxes.
- 3-18.100 Permit Not Required.
- 3-18.110 Exemptions and Exclusions.
- 3-18.120 Amendments.
- 3-18.130 Enjoining Collection Forbidden.
- 3-18.140 Severability.
- 3-18.150 Effective Date.
- 3-18.140 Termination and Repeal.
- 3-18.170 Independent Annual Financial Audit.

**3-18.010 Title.**

This chapter is designated and shall be known as the Atascadero Essential Services Transactions and Use Tax Ordinance. The city of Atascadero hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

**3-18.020 Operative Date.**

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

**3-18.030 Purpose.**

This chapter is intended to achieve the following, among other purposes, and 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.

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 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 transaction and use tax revenue for unrestricted general revenue purposes, and not for specific purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the City's general fund and be available for any legal municipal purposes.

**3-18.040 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 chapter; 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.

**3-18.050 Transaction tax rate.**

For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers in the incorporated territory of the City at the rate of 1% 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.

**3-18.060 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 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.

**3-18.070 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 for storage, use or other consumption in the territory of the City at the rate of 1% 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.

**3-18.080 Adoption of provision 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.

**3-18.090 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 the City of Atascadero shall be substituted. 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 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:

a. Provide an exemption from the taxes of this chapter 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.

**3-18.100 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 chapter.

**3-18.110 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 chapter.

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.

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.

### **3-18.120 Amendments.**

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. The City Council may amend this chapter to comply with applicable law or as may be otherwise necessary in order to further the chapter's stated purposes.

However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of Atascadero affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or

C. The collection of the tax imposed by this Chapter even if the City had, for some period of time, failed to collect the tax.

**3-18.130 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 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.

**3-18.140 Severability.**

If any provision of this chapter or its application to any person or circumstance is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall not effect on any other provision of this chapter or the application of this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

**3-18.150 Effective date.**

This chapter relates to the levying and collecting of the City transactions and use taxes and shall take effect 10 days after the election results are declared by the City Council (CA Elections Code §9217). The operative date (Section 2) will be the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, which will be April 1, 2021.

**3-18.160 Termination and repeal.**

The authority to levy a retail transaction and use tax shall be in effect until and unless repealed by the voters of the City in the manner provided by law.

**3-18.170 Independent annual financial audit.**

The revenue and expenditures of this new transactions and use tax shall be included in the annual audit of the City's financial operations by an independent certified public accountant.