

**ORDINANCE NO. 1166**

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF LOS BANOS, CALIFORNIA ADDING CHAPTER 12.2 TO TITLE 3 OF THE LOS BANOS MUNICIPAL CODE TO ESTABLISH A 1/2% (1/2 CENT PER DOLLAR) TRANSACTIONS AND USE TAX (SALES TAX) FOR A PERIOD OF FIFTEEN YEARS**

**THE PEOPLE OF THE CITY OF LOS BANOS DO HEREBY ORDAIN AS FOLLOWS:**

**Section 1:** Chapter 12.2 is hereby added to Title 3 of the Los Banos Municipal Code ("Finance") and shall read as follows:

**3-12.2.01. Title.** This chapter shall be known as the Los Banos Essential City Services Measure. The City of Los Banos hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

**3-12.2.02. Operative Date.** "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the effective date of this chapter, the effective date being as set forth below.

**3-12.2.03. Purpose.** This chapter is adopted to achieve the following, among 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 Cal. Revenue and Taxation Code and § 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax chapter which shall be operative 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 chapter 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 Cal. Revenue and Taxation Code.

C. To adopt a retail transactions and use tax chapter that imposes a tax and provides a measure therefore 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 chapter 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 Cal. 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.

**3-12.2.04. 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 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.

**3-12.2.05. 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 percent (1/2%) 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 chapter.

**3-12.2.06. 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 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.

**3-12.2.07. 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 chapter for storage, use or other consumption in said territory at the rate of one-half percent (1/2%) 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.

**3-12.2.08. 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 Cal. Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Cal. Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein.

**3-12.2.09. Limitations on Adoption of State Law and Collection of Use Taxes.**

In adopting the provisions of Part 1 of Division 2 of the Cal. 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 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 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 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 Cal. 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 §§ 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Cal. 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 § 6203 of the Cal. Revenue and Taxation Code and in the definition of that phrase in § 6203.

**3-12.2.10. Permit Not Required.** If a seller's permit has been issued to a retailer under § 6067 of the Cal. Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter.

**3-12.2.11. 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 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 subsection (B)(2), 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 § 4000) of Division 3 of the Cal. Vehicle Code, aircraft licensed in compliance with § 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with § 9840) of the Cal. 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 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 this chapter.

5. For the purposes of subsections (B)(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 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 §§ 6366 and 6366.1 of the Cal. Revenue and Taxation Code.

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 (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 § 4000) of Division 3 of the Cal. Vehicle Code, aircraft licensed in compliance with § 21411 of the Cal. Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with § 9840) of the Cal. 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 Cal. 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.

**3-12.2.12. Citizens' Oversight and Accountability.** In order to provide for citizens' oversight, transparency and accountability in connection with expenditures of tax revenues generated under the terms of this chapter, the City shall do the following:

A. **Citizens' Oversight Committee.** Prior to the operative date, the City Council shall (a) adopt a resolution establishing the composition of a committee of no more than five (5) residents of the City to review, make recommendations, and annually report on the revenue and expenditure of the funds from the tax adopted by this ordinance, (b) define the scope of the committee's responsibilities, and (c) appoint at least a quorum of the members of the committee. City employees, consultants, or vendors are expressly precluded from serving as members of the committee. The committee's reports shall be presented to the City Council and made available to the public.

B. **Annual Audit.** By no later than December 31 of each year, the City shall cause an independent auditor to complete a Los Banos Essential City Services

Measure Report.” Such report shall review whether the tax revenues collected pursuant to this ordinance are collected, managed and expended in accordance with the requirements of this chapter.

**C. Accounting.** All revenue generated by the tax (“Los Banos Essential City Services Measure Revenues”) shall be accounted in the General Fund as a separate line item entitled “Los Banos Essential City Services Measure Revenues.” Measure revenues and expenditures will be tracked and accounted for by City Finance Department staff in accordance with Generally Accepted Accounting Principles (GAAP), and presented annually in a report to the Citizens’ Oversight Committee.

**3-12.2.13. Amendments of the Revenue and Taxation Code** All amendments subsequent to the effective date of this chapter to Part 1 of Division 2 of the Cal. 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 Cal. Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Cal. 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.

**3-12.2.14. 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 Cal. Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**3-12.2.15. Amendments by City Council.** The following amendments to this Ordinance must be approved by the voters of the City: increasing the tax rate; revising the methodology for calculating the tax, such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of law); or terminating the tax. The City Council may otherwise amend this Ordinance 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).

**3-12.2.16. Use of Proceeds.** The proceeds from the tax imposed by this Ordinance shall be for unrestricted general revenue purposes of the City and shall be received into the general fund of the City. Nothing in this Ordinance shall constitute the tax imposed under this Ordinance as a special tax, or bind the City to use the proceeds for any specific purpose or function; the City Council shall retain discretion to expend the proceeds of the tax for any lawful purpose of the City.

**3-12.2.17. Termination Date.** The authority to levy the tax imposed by this chapter shall automatically expire on fifteen (15) years from the effective date of this chapter, without further action by the City Council or the voters of the City. After said date, the tax imposed by this chapter can only be continued or reestablished by a majority vote of Los Banos voters pursuant to California Proposition 218.”

**Section 2:** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**Section 3:** Pursuant to California Revenue and Taxation Code Section 7285.9, this ordinance was approved for placement on the ballot by at least a two-third (2/3) supermajority of all members of the City Council on July 18, 2018.

**Section 4:** Once the City Council certifies passage of this ordinance by the voters, the City Clerk shall publish the same as required by applicable law, and forward a copy of the adopted ordinance to the Board of Equalization.

**Section 5:** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent

jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable. The City Council, and the electorate by referendum, do hereby declare that they would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof, be declared invalid or unconstitutional.

**Section 6:** Pursuant to Elections Code Section 9217, this ordinance shall be deemed adopted and become effective only if approved by a majority of the eligible voters of the City of Los Banos voting thereon, at an election to be held on November 6, 2018, and shall take effect ten (10) days after the City Council has certified the results of that election by resolution.

**Section 7:** The Mayor is hereby authorized to attest to the adoption of this ordinance by signing where indicated below.

I hereby certify that the foregoing ordinance was PASSED, APPROVED AND ADOPTED by the people of the City of Los Banos voting on the 6th day of November, 2018.

By:

  
MICHAEL VILLALTA, Mayor

ATTEST:



LUCILLE MALLONEE, City Clerk