

ORDINANCE NO. _____

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF SUTTER CREEK ENACTING
CHAPTER 4.06 OF THE SUTTER CREEK MUNICIPAL CODE CONCERNING THE
IMPOSITION OF TRANSACTION AND USE TAXES**

The People of the City of Sutter Creek, California do ordain as follows:

Section 1

Chapter 4.06 of the Sutter Creek Municipal Code is enacted to read as follows:

CHAPTER 4.06 – TRANSACTIONS AND USE TAXES

4.06.010 Title.

This chapter shall be known as the “Sutter Creek Transactions and Use Tax Ordinance”. The City of Sutter Creek hereinafter shall be called “city”. This chapter shall be applicable in the incorporated territory of the city.

4.06.020 Operative Date.

For purposes of this chapter, “operative date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter.

4.06.030 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 the California Revenue and Taxation Code Division 2, Part 1.6 (commencing with section 7251) and California Revenue and Taxation Code section 7285.9, 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 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 the California Revenue and Taxation Code Division 2, part 1.6.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax 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 California

Revenue and Taxation Code Division 2, Part 1.6, 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

4.06.040 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 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.

4.06.050 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 and one-half percent (1.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the territory on and after the operative date of this chapter.

4.06.060 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 or her 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

4.06.080 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 such territory at the rate of one and one-half percent (1.50%) 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.

4.06.090 Adoption of Provisions of State Law.

Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of the California Revenue and Taxation Code Division 2, Part 1.6, all of the provisions of the California Revenue and Taxation Code Division 2, Part 1 (commencing with section 6001) are hereby adopted and made a part of this chapter as though fully set forth herein.

4.06.100 Limitations on Adoption of State Law and Collection of Use Taxes.

In adopting the provisions of California Revenue and Taxation Code Division 2, Part 1:

- 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, California Department of Tax and Fee Administration, 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 the California Revenue and Taxation Code Division 2, Part 1, 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 California Revenue and Taxation Code sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828.
- B. The word “district” 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.

4.06.110 Permit not Required.

If a seller’s permit has been issued to a retailer under California Revenue and Taxation Code section 6067, an additional transactor’s permit shall not be required by this chapter.

4.06.120 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 or her 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 California Vehicle Code Division 3, Chapter 1 (commencing with section 4000), aircraft licensed in compliance with California Public Utilities Code section 21411, and undocumented vessels registered under California Vehicle Code Division 3.5 (commencing with section 9840) 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 paragraphs (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 California Revenue and Taxation Code sections 6366 and 6366.1.

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 paragraphs (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 paragraph (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 California Vehicle Code Division 3, Chapter 1 (commencing with section 4000), aircraft licensed in compliance with California Public Utilities Code section 21411, or undocumented vessels registered under California Vehicle Code Division 3.5 (commencing with section 9840). 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 California Revenue and Taxation Code Division 2, Part 1.6 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.

4.06.130 Amendments.

- A. All amendments subsequent to the effective date of this chapter to California Revenue and Taxation Code Division 2, Part 1 relating to sales and use taxes and which are not inconsistent with California Revenue and Taxation Code Division 2, Part 1.6 and Part 1.7, and all amendments to California Revenue and Taxation Code Division 2, Part 1.6 and Part 1.7, 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.
- B. Pursuant to California Elections Code section 9217 or any successor statute, the City Council of the City of Sutter Creek may amend or repeal this chapter in the manner prescribed for general city ordinances, but the City Council may not increase or extend the rate of tax imposed by the chapter, without the approval of the voters of the City of Sutter Creek voting on such question.

4.06.140 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 California Revenue and Taxation Code Division 2, Part 1.6, of any tax or any amount of tax required to be collected.

4.06.150 Use of Tax Proceeds.

All proceeds of the tax levied and imposed under this chapter shall be paid into the General Fund for use by the City of Sutter Creek.

4.06.160 Annual Audit.

By no later than December 31 of each year, the City’s independent auditors shall complete a financial audit report to include the revenue raised and expended by this tax to be reflected in the city’s budget.

4.06.170 Termination.

This chapter shall remain in effect until repealed by the voters of the city.

I HEREBY CERTIFY that the foregoing ordinance was adopted by two thirds of the City Council at a regular meeting of the City Council of the City of Sutter Creek held on the 24th day of June, 2024, and submitted to a vote People of the City of Sutter Creek by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Claire Gunselman, Mayor

ATTEST:

Karen Darrow, City Clerk

Post-Election Certifications

Ordinance No. _____ was submitted to the People of the City of Sutter Creek at the November 5, 2024 General Election. It is hereby certified that this Ordinance was APPROVED by the following vote of the People of Sutter Creek:

YES:

NO:

This Ordinance took effect upon adoption of a resolution of the City Council declaring the results of the November 5, 2024 General Election at a regular meeting of the City Council held on December 3, 2024 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

I hereby certify that the foregoing is a true and correct copy of an ordinance duly and regularly adopted by the People of the City of Sutter Creek, California.

Karen Darrow, City Clerk