

**CITY OF PISMO BEACH
FULL TEXT OF MEASURE C-08
ORDINANCE NO. O-2008-002**

**AN ORDINANCE OF THE CITY OF PISMO
BEACH ADDING CHAPTER 3.22 TO TITLE 3 OF
THE PISMO BEACH MUNICIPAL CODE
ESTABLISHING A TRANSACTIONS AND USE
TAX TO BE ADMINISTERED BY THE STATE
BOARD OF EQUALIZATION**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PISMO
BEACH AND THE VOTERS OF THE CITY OF PISMO BEACH, AS
FOLLOWS:**

SECTION 1. FINDINGS

A. One of the primary roles of City government is to provide vital public services such as public safety; street and sidewalk maintenance; pothole repair; parks and recreation programs and facilities; and many other essential city services.

B. Over the past eight years, the state has taken over three million dollars, and will continue to take money away in the next several years, from Pismo Beach – money that would otherwise be spent on essential City services.

C. Budget cuts have forced the City to spend less on street and sidewalk maintenance, pothole repair, upgrades to our pier and replacement of 20-30 year old storm drains than is necessary to adequately maintain this infrastructure in fully functional working condition. As a result, many City streets are in poor condition and inefficient storm drainage can lead to flooding.

D. The City's revenue for such vital services comes from property tax, sales tax, hotel tax, and other such revenues.

E. The cost to continue to provide these vital services at current levels of service exceeds the amount of funds and revenues generated from all other sources of income available for such purpose. The imposition of a transactions and use tax in the amount of one-half of one percent, as more fully described and set forth below, is necessary to maintain the public good, welfare, and safety.

F. The City must either generate additional revenue or begin making cuts to essential City services.

G. A local finance measure gives Pismo Beach residents local control. Every penny generated by the measure stays in Pismo Beach to be used for the needs and services of our residents and the City.

H. The imposition of such a tax will allow the City to provide essential services to occupants of residential and commercial real property throughout the City.

I. All funds from a locally approved transactions and use tax could not be taken away by the State and would stay in Pismo Beach to benefit local residents.

J. A local measure will include a six and one half year sunset clause, after which the tax will cease to be collected unless reauthorized by the voters.

SECTION 2. AMENDMENT OF CODE.

Pismo Beach Municipal Code Title 3 is hereby amended to add Chapter 3.22 to read as follows:

CHAPTER 3.22. TRANSACTIONS AND USE TAX.

3.22.010. TITLE.

This ordinance shall be known as the "Transactions and Use Tax Ordinance of the City of Pismo Beach". The City of Pismo Beach hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.22.020. PURPOSE.

This ordinance 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 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 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 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 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.

3.22.030. 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.

3.22.040. 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 of this transactions and use tax ordinance; provided, that if the City shall not have 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.

3.22.050. 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 .5% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this ordinance.

3.22.060. 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 State Board of Equalization.

3.22.070. 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 of this ordinance for storage, use or other consumption in said territory at the rate of .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.

3.22.080. 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.

3.22.090. 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 Pismo Beach 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 Pismo Beach 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 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.

3.22.100. 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 ordinance.

3.22.110. 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 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.

3.22.120. 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.

3.22.130. 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 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.

3.22.140. SEMI-ANNUAL REPORT TO COUNCIL

The City Manager shall report to Council not less frequently than semi-annually on the amount of tax collected under this ordinance, and any expenditures made, or proposed to be made with such collections.

SECTION 3. USE OF TAX PROCEEDS.

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into the City of Pismo Beach General Fund, and may be used for any lawful purpose as designated by the City Council.

SECTION 4. 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 5. STATUTORY AUTHORITY FOR TAX.

This ordinance is adopted pursuant to Revenue and Taxation Code section 7285.9.

SECTION 6. ELECTION REQUIRED.

This ordinance shall not become operative unless and until a majority of the electors voting on this measure vote to approve the imposition of the tax at the general municipal election to be held on June 3, 2008.

SECTION 7. EFFECTIVE DATE AND TERMINATION DATE.

If this ordinance is approved by a majority of the electors voting on the issue at the June 3, 2008 general municipal election, pursuant to Elections Code Section 9217, the ordinance shall be become effective ten (10) days after the City Council accepts the certified results of the election. Should this ordinance be approved by a majority of electors at the June 3, 2008 election, it shall be repealed without further action of the City Council or voters six and one half years after the Operative Date, after which date the tax imposed by this ordinance shall not be collected.

IMPARTIAL ANALYSIS OF MEASURE C-08

If approved by the voters, Measure C, entitled "**The Pismo Beach Vital Public Service Protection Measure**", would amend the Pismo Beach Municipal Code to establish a retail transactions and use tax within the City, as authorized by the State Legislature under Revenue and Taxation Code Section 7285.9. This measure would set the retail transactions and use tax rate at one-half of one percent (0.50%). At this rate, for example, a retail transaction \$100 in value would generate a tax of 50 cents. The proposed transactions and use tax would be imposed upon the sale of all tangible personal property sold at retail within the City. This measure would authorize the City to enter into a contract with the State Board Of Equalization to administer and collect the tax.

This measure requires all proceeds of the tax to be deposited into the City's General Fund to be used for such general municipal governmental purposes as the City Council shall direct. Among such purposes are street and sidewalk construction, maintenance and repair, pothole repair, storm drain construction, maintenance and repair, and pier maintenance.

This measure would provide several enumerated exemptions and exclusions from the transactions and use tax. It would further prohibit the issuance of any injunction to prohibit the collection of the tax. The ordinance proposed by this measure will only become effective if approved by a majority of those electors voting on the measure. The measure provides that, if approved at election, the tax would expire six and one-half years following its operative date without further action of the City Council or the voters. The measure would also provide for semi-annual reports to the City Council of the amounts collected and the purposes to which the amounts collected were put.

A YES vote approves the measure.

A NO vote rejects the measure

s/ David Fleishman
City Attorney, City of Pismo Beach

ARGUMENT IN FAVOR OF MEASURE C-08

Your "Yes" vote on Measure C will create additional revenue for the City of Pismo Beach. An increase in the sales tax rate from 7.25% to 7.75% will give the City more than \$1,000,000 every year. Since this is a "local" tax all the increase will stay in Pismo Beach, not go to the state or county like other sales taxes. Citizens of Pismo have made it clear they want to improve the conditions of our stairs, sidewalks, storm drains, streets and to underground utilities. This tax money will do exactly that: maintain Pismo Beach's aging infrastructure. This Measure C will make that possible at very little cost to you.

Consider the following facts:

- Groceries, medicine, rent, and services won't cost a penny more.
- Between 70 and 80% of all taxable purchases in Pismo Beach are made by people who don't live here.
- You are already paying 7.75% when you shop in any of the neighboring cities.
- The tax increase will cost you only \$0.05 on every \$10.00 taxable purchase you make.
- The tax ends automatically in 6 ½ years unless you vote to extend it.
- The City is required to give residents written reports twice yearly detailing how the City has used this money. These reports will be mailed to every resident and the City Council will give you the opportunity to comment.

SUMMARY: Yes on Measure C will provide the city with additional funding with very little cost to Pismo Beach residents. Most of the money comes from outside the area. Our city will be held accountable for applying these funds to infrastructure maintenance and improvements for our citizens. The tax ends automatically. All good reasons to VOTE YES ON MEASURE C.

More information at www.PismoBeachSalesTax.com.

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|---------------------------------------|-----------------------------|
| s/ Shelly Higginbotham, Mayor Pro Tem | |
| s/ Tim Bittner, Former Mayor | s/ Rick Turton, Businessman |
| s/ Paul Sawko, Citizen | s/ Marilee Hyman, Citizen |

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE C-08

Pismo Beach has more than enough money. Our hotel tax and visitor-generated receipts continue to increase. Proponents of this measure have been forced to use smoke and mirrors to hide the inconvenient truth; **PISMO BEACH IS A WEALTHY CITY.**

Facts from the official reports by the City Finance Dept.

- Currently there is over \$26 million in interest earning investments which the city can use for any purpose almost immediately.
- At the end of June 2007, city income was up over \$1 million from estimates used in budget decisions last May, apparently due to healthier tourism activity than anticipated.
- Even with the recent road improvement projects, the council increased Reserve Funds by over 10% this year.

Demand accountability.

Most importantly, proponents have not given us any reason to trust the City Council with additional funds. Without citizen oversight, this Council may well use this extra \$1,000,000 a year to:

- Build an underground parking lot downtown or,
- Another botched up freeway overpass.

Demand the truth.

- Despite the promises of accountability, this measure only provides for a report after the tax dollars have been spent. We've all been there before!
- "Visitors do pay sales tax." **When they're here!** However, Pismo Citizens pay sales tax all the time.

Vote **No** on **Measure C.**

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| s/ Benito Joseph Crescione | s/ David Zardeneta |
| s/ Sheldon Cohen | s/ John Cullen |
| s/ Lowell D. Forister | |

ARGUMENT AGAINST MEASURE C-08

It was a disappointment to see the City Council again place this proposal on the June ballot.

As discussed by the Council, this increase will be undesignated for any special purpose. It can be spent at the whim of the council, without any citizen oversight whatsoever. In other words, the reasons the voters previously rejected a sales tax increase remain an integral part of the current proposal.

Unfortunately, examples of government waste abound in Pismo Beach.

- \$30,000 to deport pigeons to New Cuyama.
- Thousands of dollars on engineering for an underground parking garage downtown.

Unfortunately, more examples of lack of government trust abound in Pismo Beach. During a Council meeting the city claimed to have no lawsuits. If so, why is the city actively seeking to retain law firms:

- To break a contract with the Lucia Mar School District and not give the district its money that the city has used for twenty years, thus denying the children the money it needs to retain teachers.
- Why is the city ready to waste the taxpayers money to fight the Coastal Commission and place parking meters downtown without it's permission.

Unfortunately, the only example of government in Pismo Beach is that it simply wants more of your money. But Why? Just because all of our neighbors have it, so should we?

June 3rd Vote NO on this tax increase!

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| s/ Benito Joseph Crescione | s/ John Cullen |
| s/ Sheldon Cohen | s/ David Zardeneta |
| s/ Richard Craig Grecnik | |

REBUTTAL TO ARGUMENT AGAINST MEASURE C-08

Those against Measure C are not telling you the truth.

The City:

- did NOT spend one cent removing pigeons;
- did NOT spend one cent engineering underground parking;
- is NOT seeking a lawyer to dispute Lucia Mar and is not in any litigation with the school district;
- does NOT cause teachers to be fired;
- has followed all Coastal Commission regulations regarding parking and is not seeking a lawyer to defend Pismo Beach.

Citizens asked for a sunset clause on the tax. Measure C provides that time limit and ensures accountability.

Measure C requires Pismo Beach to send YOU a report on every tax-related expenditure in writing twice a year, so everyone, not a select handful, can provide oversight. That same type of oversight is working very well in San Luis Obispo and Arroyo Grande.

Pismo Beach needs to repair ongoing wear that results from being a tourist town. Who better to pay for these repairs than tourists? Four of every five dollars collected will come from visitors. The surrounding cities already collect the higher tax and are be-coming prettier and safer while attracting our tourist dollars.

Both the City Council and the Chamber of Commerce support Measure C. So do residents who know a well maintained city means higher property values. Join those of us who care about our city and property. Help take Care of Pismo Beach.

Vote Yes on Measure C.

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| s/ Ted Ehring, Councilmember | s/ Rev. Paul Jones, Retired pastor |
| s/ John Sorgenfrei, Businessman | s/ Dr. Marc Lebed, Mediator |
| s/ Dr. Tony Hyman, Retired educator | |