

ORDINANCE NO. 5423

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 5.38 TO THE MONTEREY COUNTY CODE TO IMPOSE A TRANSACTIONS AND USE TAX

County Counsel Summary

This ordinance adds Chapter 5.38 to the Monterey County Code to impose a general purpose transactions and use tax. The ordinance sets the transaction tax at 1% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the unincorporated area of Monterey County. The ordinance also sets a use tax from any retailer for storage, use or other consumption in unincorporated Monterey County at the rate of 1% of the sales price of the property. The tax is for general governmental purposes and will go into effect only if the tax is approved by a majority of the voters voting on the tax at the November 5, 2024 general election.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Declarations.

A. Pursuant to Article XI, Section 7 of the California Constitution, the County of Monterey ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its residents.

B. Revenue and Taxation Code section 7285 authorizes a county board of supervisors to levy, increase, or extend a transactions and use tax throughout the entire county or within the unincorporated area of the county for general purposes at a rate of 0.125 percent or a multiple thereof, if the ordinance proposing that tax is approved by a two-thirds vote of all members of the board of supervisors and the tax is approved by a majority vote of the qualified voters of the entire county if levied on the entire county or the unincorporated area of the county if levied on the unincorporated area of the county, voting in an election on the issue.

C. Section 2(b) of Article XIII C of the California Constitution, added by Proposition 218 effective November 1996, requires that the measure proposing a general tax be submitted to the voters at an election consolidated with a regularly scheduled general election for members of the governing body of the local government.

D. The Board of Supervisors has determined it is in the best interest of the County and its residents to submit to the voters a proposed measure authorizing the Board to amend the Monterey County Code to add a 1% transactions and use tax for retail transactions in the unincorporated area of Monterey County at the next regular election on November 5, 2024.

E. The funds collected from the increase in the transactions and use tax will be used to provide funding for essential County services, including but not limited to programs for street maintenance and pothole repair; enhanced public safety, emergency services and disaster response, prevention, and recovery; programs to reduce homelessness; libraries, parks, and recreation facilities; water and sewer infrastructure; healthcare; clean and affordable drinking water and other services.

F. The transactions and use tax will be enacted solely to raise revenue for general governmental purposes of the County and not for purposes of regulation or for raising revenue for regulatory purposes, in that all of the proceeds from the tax shall be placed in the County's general fund and be used for the usual current expenses of the County.

SECTION 2. Chapter 5.38 is added to the Monterey County Code to read as follows:

Chapter 5.38
TRANSACTIONS AND USE TAX

Sections:

- 5.38.010 Title.
- 5.38.020 Operative date.
- 5.38.030 Purpose.
- 5.38.040 Contract with the State of California.
- 5.38.050 Transactions tax rate.
- 5.38.060 Place of sale.
- 5.38.070 Use tax rate.
- 5.38.080 Adoption of provisions of State law.
- 5.38.090 Limitations on adoption of State law and collection of use taxes
- 5.38.100 Permit not required.
- 5.38.110 Exemptions and exclusions.
- 5.38.120 Amendments.
- 5.38.130 Enjoining collection forbidden.
- 5.38.140 Severability.

5.38.010 Title.

This ordinance shall be known as the County of Monterey Transactions and Use Tax Ordinance. This ordinance shall be applicable in the unincorporated territory of the County of Monterey, which shall be referred to herein as "County."

5.38.020 Operative date.

"Operative date" means the first day of the first calendar quarter commencing more than 110 days after the electorate approval of the transactions and use tax prescribed in the ordinance codified in this Chapter, the date of such approval being November 5, 2024.

5.38.030 Purpose.

This Chapter is adopted to achieve the following purposes, among others, 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 of Part 1.7 of Division 2 which authorizes the County to adopt the tax ordinance codified in this Chapter based on the electorate's approval of the imposition of the general purpose tax.
- 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 therefor 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.

5.38.040 Contract with State of California.

Prior to the operative date, the County 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 County 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.

5.38.050 Transactions tax rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the unincorporated territory of the County at the rate of one percent (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 of the ordinance codified in this Chapter.

5.38.060 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.

5.38.070 Use tax rate.

An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the operative date of the ordinance codified in this Chapter for storage, use or other consumption in said territory at the rate of one percent (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.

5.38.080 Adoption of provisions 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.

5.38.090 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 this County 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 the County 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 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 "County" 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 County" 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 California or for delivery in California 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.

5.38.100 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.

5.38.110 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 County which is shipped to a point outside the County, 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 subsection, delivery to a point outside the County 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-County 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-County 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 the ordinance codified in 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 the ordinance codified in 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 County 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 the ordinance codified in 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 the ordinance codified in 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.

D. Collection of use tax.

1. Except as provided in subsection (D)(2) of this Section, a retailer engaged in business in the County 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 County or participates within the County 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 County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

2. "A retailer engaged in business in the County" 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 County.

E. 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 or retailer in a district imposing a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code

with respect to the sale to that person of the property, the storage, use or other consumption of which is subject to the use tax.

5.38.120 Amendments.

All amendments subsequent to the effective date of the ordinance codified in 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.

5.38.130 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 County, or against any officer of the State or the County, 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.

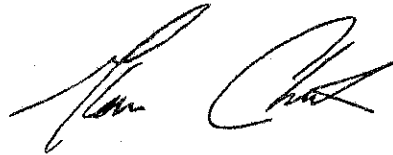
5.38.140 Severability.

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. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the County of Monterey's transactions and use taxes and shall take effect if approved by a majority of the voters voting on the tax at the November 5, 2024 general election.

PASSED AND ADOPTED on this 27th day of August 2024 by the following vote:

AYES	Supervisors Alejo, Church, Lopez, Root Askew, and Adams
NOES	None
ABSENT	None
ASTAIN	None



Glenn Church, Chair
Monterey County Board of Supervisors

ATTEST

VALERIE RALPH
Clerk of the Board of Supervisors

By: Emmanuel H. Santos
Deputy

APPROVED AS TO FORM:

Kelly L. Donlon

KELLY L. DONLON
Assistant County Counsel