RESOLUTION NO. 17-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE

SUBMITTING A PROPOSAL TO ADOPT AN ORDINANCE AT THE JUNE 6, 2017, SPECIAL MUNICIPAL ELECTION TO AMEND CHAPTER 3.21 OF THE SEASIDE MUNICIPAL CODE TO INCREASE THE TRANSACTIONS AND USE TAX BY 0.5% FOR GENERAL PURPOSE REVENUES, APPROVING THE BALLOT LANGUAGE AS REVIEWED BY THE CITY ATTORNEY, DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS, AND PROVIDING DIRECTION REGARDING THE SUBMISSION OF BALLOT ARGUMENTS FOR OR AGAINST THE MEASURE

WHEREAS, the City of Seaside (the “City”), despite its diligent efforts of fiscal prudence and responsibility, is operating with limited funds due to losing two significant grants, the recent damage caused by heavy winter storms and the potential impact on funding from the November 8, 2016 national election, including a potential loss of Federal and State funding, future capital project needs and the implementation costs from the legalization of adult use of marijuana; and

WHEREAS, the community relies on the City’s services and requires improved local services; and

WHEREAS, the City’s population has grown by more than 35% in the past 20 years, but the number of police officers and firefighters has remained the same; and

WHEREAS, the City’s infrastructure has deteriorated due to deferred maintenance and insufficient funding to maintain and rebuild the infrastructure; and

WHEREAS, the City Council has found and declared the existence of an emergency that requires an immediate increase in locally-controlled funding that cannot be taken by the state; and

WHEREAS, the City Council has identified an increase in the Transaction and Use Tax of up to 0.5% that will provide some of the locally-controlled funding to maintain vital city services, fiscal stability and our quality of life; and

WHEREAS, people live in Seaside because of its quality of life, beautiful natural surroundings, and small-town feel; and

WHEREAS, the City of Seaside needs locally-controlled funding to maintain financial stability and vital city services such as street maintenance and paving, emergency response services, public parks and waterfronts, and youth violence prevention, senior programs, and general City services; and

WHEREAS, the City of Seaside is dedicated to maintaining and improving public safety; and

WHEREAS, drug trafficking and gang-related crimes are seen by residents as being
serious problems in Seaside; and

WHEREAS, locally-controlled funding will help fight these problems by expanding drug and gang prevention efforts, as well as after-school programs that help keep youth off the streets and out of trouble; and

WHEREAS, the region’s marine life in Monterey Bay is currently suffering from urban runoff and water pollution; and

WHEREAS, the City of Seaside must comply with state and federal clean water laws; and

WHEREAS, locally-controlled funding will help update storm drains to prevent toxic chemicals from entering our gutters and drains to be dumped into coastal waters where it is affecting marine life; and

WHEREAS, the City needs a reliable, stable source of local funding that keeps taxpayer dollars local and cannot be taken by the State; and

WHEREAS, California Revenue and Taxation Code section 7285.9 authorizes the City to levy a transactions and use tax by ordinance following approval by two-thirds of the City Council and a majority vote of the qualified electors of the City voting in an election on the issue; and

WHEREAS, any funds generated by a locally-enacted revenue measure will be subject to annual audits by an independent auditor for public review; and

WHEREAS, the transactions and use tax would be levied in addition to the current sales tax and would be collected at the same time and in the same manner as the existing sales tax; and

WHEREAS, the levying of the transactions and use tax of 0.5% would not cause the overall transactions and use tax in the City to exceed 2% in accordance with California Revenue and Taxation Code section 7251.1; and

WHEREAS, a transactions and use tax is not a property tax on homeowners, and visitors to the Seaside community will pay their fair share of the costs to use our parks, roads, and police; and

WHEREAS, a transactions and use tax is not applied to food purchased as groceries or prescription medication; and

WHEREAS, any tax measure submitted to voters must be consolidated with a regularly scheduled general election for members of City Council except in cases of emergency as determined by a unanimous vote of the Council pursuant to Article XIIIIC of the Constitution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEASIDE:

Section 1. The City Council, pursuant to its right, power and authority, has called a
special municipal election to be held on June 6, 2017 for the purpose of submitting a question or questions to the voters. At the special municipal election, the City Council hereby directs that the following ordinance also be submitted to the voters:

<table>
<thead>
<tr>
<th>City of Seaside Measure</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEASIDE VITAL CITY SERVICES MEASURE. To generate an estimated $1,900,000 annually until ended by voters to maintain essential City services such as police, fire, 9-1-1 emergency response; hiring police officers/firefighters; youth violence prevention programs; improving street maintenance, water cleanliness, earthquake, flood preparedness, parks, beaches, youth/senior programs, and other general services; with required independent audits and all funds staying in Seaside; shall the ordinance increasing the City’s sales tax by ½ cent be adopted?</td>
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Section 2. The City Council hereby approves proposed Ordinance No. [ ], attached to this Resolution as Exhibit A, to be submitted to the voters. The proposed measure is a general tax as defined in Article XIIIC of the California Constitution, to be collected as a sales and use tax as provided by applicable law and shall not take effect unless and until approved by a vote of at least a majority of the voters voting on the question in the election.

Section 3. The City Clerk is authorized to print such forms, publish such notices, establish deadlines and provide such information and contract for services as may be necessary or convenient to assure the orderly holding of the election, and the City Clerk shall do all other things necessary to facilitate the holding of the election in a manner harmonious and consistent with law.

Section 4. The City Attorney is directed to submit an impartial analysis of the measure pursuant to Elections Code Section 9280 on or before March 16, 2017.

Section 5. The last day to submit arguments for or against the measure shall be March 16, 2017. Submittals must be delivered to the City Clerk on or before 5:00 p.m.

Section 6. The City Clerk shall publish a copy of this resolution in a newspaper of general circulation within the City once within fifteen (15) days after the adoption of this resolution.

Section 7. The City Council shall meet to declare the results of the election called for by this Resolution at their first regular meeting following certification of the election results.

Section 8. The City Clerk shall certify to the passage and adoption of this resolution.
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside duly held on the 2nd day of March 2017.

AYES: 5 COUNCIL MEMBERS: Alexander, Campbell, Jones, Pacheco, Rubio
NOES: 0 COUNCILMEMBERS: None
ABSENT: 0 COUNCILMEMBERS: None
ABSTAIN: 0 COUNCILMEMBERS: None

ATTEST:

Ralph Rubio, Mayor

Lesley Milton-Rerig, City Clerk
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SEASIDE INCREASING THE TRANSACTIONS AND USE TAX ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

THE PEOPLE OF THE CITY OF SEASIDE DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 3.21 of the Seaside Municipal Code is amended to read in full as follows:

CHAPTER 3.21 TRANSACTIONS AND USE TAX

3.14.010 Title.

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

3.14.020 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.


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.


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.

3.14.050 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 1.5% 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 ordinance.

3.14.060 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.

3.14.070 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 1.5% 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.


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.
3.14.090    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 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 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.

3.14.100    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.


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.

3.14.120 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.

3.14.130 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.


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.


By no later than December 31 of each year, the City’s independent auditors shall complete a Transactions and Use Tax Ordinance Compliance and Internal Control Audit 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 ordinance."

Section 2. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

Section 3. The City Clerk shall certify the passage of this ordinance and forward a copy of the adopted ordinance to the Board of Equalization.

PASSED AND ADOPTED by the People of the City of Seaside, State of California, on June 6, 2017.

Ralph Rubio, Mayor

ATTEST:

Lesley E. Milton-Rerig, City Clerk