

RESOLUTION 23-24-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUTTER CREEK APPROVING AND SUBMITTING TO THE VOTERS OF THE CITY OF SUTTER CREEK AN INITIATIVE MEASURE PROPOSING A ONE PERCENT (1.0%) TRANSACTION AND USE (“SALES”) TAX FOR THE GENERATION OF GENERAL MUNICIPAL REVENUE; REQUESTING THE AMADOR COUNTY BOARD OF SUPERVISORS CONSOLIDATE THE ELECTION REGARDING THE PROPOSED ORDINANCE WITH THE NOVEMBER 2024 GENERAL ELECTION; PERMITTING THE AMADOR COUNTY ELECTIONS DEPARTMENT TO ADMINISTER THE ELECTION CONCERNING THE PROPOSED ORDINANCE; DIRECTING THE CITY OF SUTTER CREEK TO REIMBURSE THE ELECTIONS DEPARTMENT FOR SUCH SERVICES; PROVIDING THE PROCEDURES FOR AUTHORIZING ARGUMENTS FOR AND AGAINST THE PROPOSED ORDINANCE; AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS THEREOF

WHEREAS, thanks to beautiful natural surroundings, rich history, a lively downtown, and safe neighborhoods, the City of Sutter Creek (“City”) is a great place to live, work, raise a family, and retire, and

WHEREAS, in a recent survey, 96% of residents rated the City as a good place to live; and

WHEREAS, much of the City’s aging infrastructure is in need of repairs and upgrades, including 15 miles of local roads maintained by the City with many rated as “failing;” and

WHEREAS, potholes and crumbling roadways damage vehicles, discourage tourists, and require repaving and maintenance; and

WHEREAS, local storm drains were improved in the 1940s, and some have not been maintained since, with the average storm drain being 45 years old; and

WHEREAS, repairing roads and the storm drains beneath them at the same time saves construction costs and reduces noise and disruption; and

WHEREAS, the City is fortunate to have its own police force, ensuring quicker emergency response times than relying on county sheriffs; and

WHEREAS, the cost of providing City services is growing at a faster rate than locally controlled revenues and while the City currently maintains a balanced budget, temporary relief and stimulus funds have run out and sustainable revenue sources are needed to maintain current City services and make critical investments for public safety; and

WHEREAS, much of the City’s funding comes from sales taxes paid by residents and visitors shopping in Sutter Creek, but out of every dollar paid in sales tax in Sutter Creek, only one cent comes back to the City; and

WHEREAS, to support local services and upgrade aging infrastructure, the City Council believes that the portion of the sales tax that stays locally in Sutter Creek must be maximized; and

WHEREAS, the City is proposing a 1¢ increase in the local sales tax, which would generate approximately \$579,000 annually and 100% of the funds would stay in Sutter Creek for essential City services and infrastructure improvements; and

WHEREAS, locally controlled funding from a sales tax that will be paid by visitors and residents would be used to improve the City’s aging infrastructure, including repairing potholes, maintaining City roads, and repairing storm drains at the same time as roads for efficiency; and

WHEREAS, locally controlled funding from a sales tax would also be used to protect public safety by maintaining rapid emergency response times, attracting and retaining qualified police officers for police patrols, and managing flammable brush and vegetation to prevent wildfires

WHEREAS, locally controlled funding from a sales tax would help the City qualify for state and federal matching funds that will otherwise go to other cities and regions; and

WHEREAS, essential purchases like groceries and prescription medicine are exempt from sales tax to help ensure the cost is not a burden to those on fixed or limited incomes; and

WHEREAS, a local funding measure would also require independent annual audits and public disclosure of all spending to ensure funds are used properly; and

WHEREAS, by law, funds from a local sales tax measure cannot be taken away by the State or redirected to other communities; and

WHEREAS, California Elections Code 9222 authorizes the City Council to submit initiative measures to City voters; and

WHEREAS, more specifically, California Revenue and Taxation Code section 7285.9 authorizes cities to enact transactions and use taxes upon the approval of two-thirds of a city council and a majority of the city voters in an initiative election; and

WHEREAS, “transactions and use” taxes are more generally referred to as “sales” taxes and are imposed by cities and counties throughout California to ensure adequate funding for essential government services; and

WHEREAS, the next regularly scheduled election is the November 2024 General Election; and

WHEREAS, the City Council proposes this tax to ensure the City may effectively provide essential services, including law enforcement, roads, fire protection, and other services that affect City residents’ quality of life.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the City Council of the Sutter Creek ordains as follows:

Section 1. Call for Election.

Pursuant to California Constitution Article XIIC, Section 2, Government Code Section 53724, and Elections Code Section 9222, the City Council of the City of Sutter Creek hereby calls an election and submits to the qualified voters of the City a measure that, if approved, would impose a 1% transactions and use tax, as authorized by Revenue and Taxation Code section 7285.9. This measure shall be designated by letter by the Amador County Elections Department. Pursuant to Election Code Section 10400 et seq., the election for this measure shall be consolidated with the established election to be conducted on November 5, 2024.

Section 2. Ballot Language.

The question to be presented to the voters shall be as follows:

<p>Sutter Creek Local Control Measure. To provide locally controlled funding for Sutter Creek essential services such as repairing roads, potholes and storm drains; maintaining rapid emergency response/ police patrols; preventing wildfires; and for general government purposes, shall the City of Sutter Creek’s measure be adopted establishing a 1% sales tax paid by residents and visitors, exempting essential purchases like groceries/ prescription medicine, providing approximately \$579,000 annually until ended by voters, requiring public spending disclosure, independent audits, all funds used locally?</p>	<p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>
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Section 3. Proposed Ordinance.

The Ordinance authorizing the imposition of the general tax to be approved by the voters is as set forth in **Exhibit A** and incorporated herein by reference. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the November 5, 2024 election, as required by Revenue and Taxation Code section 7285.9.

Section 4. Text of Measure to be Published in the Voter Information Pamphlet.

The Ordinance attached as **Exhibit A** to this Resolution is available at no cost from the City Clerk's Office at 209-567-2647 or on the City's website: cityofsuttercreek.org. A statement about how to obtain the full text of the Ordinance will be included in the Voter Information Pamphlet below the Impartial Analysis.

In addition, only the Whereas Clauses above, ballot question, Impartial Analysis, and Arguments are to be printed in the Voter Information Pamphlet for this measure.

Section 5. Request to Consolidate, Conduct Election and Canvass Returns.

The Board of Supervisors of the County of Amador is hereby requested to authorize the County Clerk/Recorder/Registrar of Voters to render all services necessary and proper for the conduct of the special municipal election called by this Resolution. Pursuant to California Elections Code section 10403, the City Council hereby requests that the Amador County Board of Supervisors consolidate that election with the election to be conducted on November 5, 2024 and order the

general municipal election to be conducted by the Registrar of Voters. The Amador County Elections Department is authorized to canvass the returns of the special election, and the election shall be held in all respects as only one election.

The City Clerk's Office is authorized, instructed and directed to work with the County Elections Department as needed to properly and lawfully conduct the election. The ballots to be used in the election shall be in form and content as required by law. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 6. Time and Place of Election.

The polls for the election shall be open at 7:00 a.m. on the day of the election and shall remain open continuously from that time until 8:00 p.m. that same day, when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California. The notice of the time and place of holding the election is hereby given, and the City Clerk is authorized to give further notice of the election, as required by law.

Section 7. Publication of Measure.

The City Clerk's Office is hereby directed to cause notice of the measure to be published once in accordance with Section 12111 of the Elections Code.

Section 8. Submission of Ballot Arguments.

The City Clerk's Office, with the concurrence of the County Elections Official, has fixed 4:30 p.m. on July 30, 2024 as the deadline for submittal of arguments for or against the measure. The direct arguments shall not exceed three hundred (300) words, and shall not be signed by more than five (5) persons. The City Council does not adopt the provisions of Elections Code Section 9285(a); there shall be no rebuttal arguments.

Section 9. Council Preparation of Argument In Support of Measure.

The City Council hereby authorizes the Mayor or Vice Mayor to prepare and file the written primary argument in support of the ballot measure described above, pursuant to Article 4 of Chapter 3 of Division 9 of the California Elections Code. At the discretion of the Mayor or Vice Mayor, the argument may also be signed by other members of the City Council, bona fide associations of citizens, or by individual voters who are eligible to vote.

Section 10. Impartial Analysis.

Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk's Office to transmit a certified copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit the impartial analysis to the Elections Division by no later than 5:30 p.m. on July 19, 2024.

Section 11. Implementation.

The City Clerk's Office is directed to file with the Board of Supervisors and the Registrar of Voters certified copies of this resolution. The City will reimburse the County for the actual cost incurred in conducting the election upon receipt of a bill stating the amount due as determined by the Election Official.

Section 12. Jurisdictional Boundaries

The jurisdictional boundaries of the City of Sutter Creek have not changed since the last general municipal election.

Section 13. CEQA

The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). The transactions and use tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, under CEQA Guidelines section 15060 review under CEQA is not required.

Section 14. Passage of this Resolution.

This tax is a general tax requiring the approval of a majority of qualified electors casting votes. While the measure lists several of the various municipal purposes to be funded, the list is illustrative only and the City Council retains complete discretion to expend the tax proceeds for any lawful purposes the City of Sutter Creek.

Section 15. Contract with the State.

The City Manager is authorized to negotiate and execute an agreement with the California Department of Tax and Fee Administration in accordance with Revenue and Taxation Code Section 7270 to perform all functions incident to the administration and operation of the ordinance.

The foregoing resolution was duly passed and adopted at a meeting of the City Council of the City of Sutter Creek on the 24th day of June 2024, by the following vote:

- AYES: Feist, Riordan, Sierk, Swift and Gunselman
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

Karen Darrow

Karen Darrow, City Clerk

Claire Ganselman

Claire Ganselman, Mayor

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 percent (1.0%) 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 percent (1.0%) 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 therefore. 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 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: Feist, Riordan, Sierk, Swift and Gunselman

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