


**CERTIFICATION OF CITY CLERK**

**ORDINANCE NO. 316**

I, Suzanne Guzzetta, City Clerk of the City of Milpitas, do hereby certify that the attached Ordinance is a true and correct copy of Ordinance No. 316 of the City of Milpitas, that this Ordinance was duly enacted and adopted by the voters of the City of Milpitas during the General Election held on the 5<sup>th</sup> of November, 2024 and adopted by the City Council at its meeting of January 7, 2025.

WITNESS my hand and the Official Seal of the City of Milpitas, California, this 28<sup>th</sup> day of January, 2025.



Suzanne Guzzetta  
Milpitas City Clerk

**REGULAR**

**NUMBER: 316**

**TITLE: AN ORDINANCE OF THE CITY OF MILPITAS ADDING CHAPTER 5 TO TITLE IX OF THE MUNICIPAL CODE TO IMPOSE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

**HISTORY:** This Ordinance was approved by the voters at the general election on November 5, 2024, and adopted by the City Council at its meeting of January 7, 2025, upon motion by Councilmember Lien. The Ordinance was duly passed and by the following vote:

AYES: (5) Councilmembers Chua, Lam, Lien, Vice Mayor Barbadillo, Mayor Montano.

NOES: (0) None.


ABSENT: (0) None.

ABSTAIN: (0) None.

ATTEST:

  
Suzanne Guzzetta, City Clerk

APPROVED:

  
Carmen Montano, Mayor

APPROVED AS TO FORM:

  
Christopher Creech, Acting City Attorney

## ORDINANCE NO. 316

### AN ORDINANCE OF THE CITY OF MILPITAS ADDING CHAPTER 5 TO TITLE IX OF THE MUNICIPAL CODE TO IMPOSE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

THE PEOPLE AND THE CITY COUNCIL OF THE CITY OF MILPITAS DO HEREBY ORDAIN AS FOLLOWS:

**SECTION 1: Amendment.** Chapter 5 (Reauthorized Transactions and Use Tax) is added to Title IX (Revenue and Taxation) of the Municipal Code to read as follows:

#### CHAPTER 5. REAUTHORIZED TRANSACTIONS AND USE TAX

IX-5-1.01	Title
IX-5-1.02	Operative Date
IX-5-1.03	Purpose
IX-5-1.04	Contract with State
IX-5-1.05	Imposition of 0.25% Transactions Tax
IX-5-1.06	Place of Sale
IX-5-1.07	Imposition of 0.25% Use Tax
IX-5-1.08	Adoption of Provisions of State Law
IX-5-1.09	Limitations on Adoption of State Law and Collection of Use Taxes
IX-5-1.10	Permit Not Required
IX-5-1.11	Exemptions and Exclusions
IX-5-1.12	Amendments
IX-5-1.13	Enjoining Collection Forbidden
IX-5-1.14	Accountability and Use of Tax Proceeds
IX-5-1.15	Duration of Tax

#### **IX-5-1.01 Title**

This chapter shall be known as the City of Milpitas Public Services Transactions and Use Tax Reauthorization Ordinance of 2024. The City of Milpitas hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

#### **IX-5-1.02 Operative Date**

"Operative Date" means April 1, 2029.

#### **IX-5-1.03 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 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 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 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 ordinance.

#### **IX-5-1.04 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 the transactions and use tax imposed by this 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.

#### **IX-5-1.05 Imposition of 0.25% Transactions Tax**

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 0.25% 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 Chapter.

#### **IX-5-1.06 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.

#### **IX-5-1.07      Imposition of 0.25% Use Tax**

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 said territory at the rate of 0.25% 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.

#### **IX-5-1.08      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.

#### **IX-5-1.09      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 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 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.

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

#### **IX-5-1.10 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.

#### **IX-5-1.11 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 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 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 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 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 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 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 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 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.

#### **IX-5-1.12 Amendments**

All amendments subsequent to the effective date of 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.

#### **IX-5-1.13 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 Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

#### **IX-5-1.14 Accountability and Use of Tax Proceeds**

Proceeds of the tax imposed by this chapter shall be deposited in the general fund of the City and shall be available for any lawful purpose. Once deposited, such proceeds shall be audited as part of City's annual independent audit of the general fund and shall be accounted for in the City's Consolidated Annual Financial Report.

#### **IX-5-1.15 Duration of Tax**

The tax imposed by this Chapter shall continue for a period of eight (8) years following the Operative Date and shall thereafter be of no further force and effect, unless said tax is extended or renewed by Milpitas voters at a future general or special municipal election lawfully called for that purpose.

**SECTION 2: Relation to Existing Tax.** Chapter 4 of Title IX of the Municipal Code currently imposes a 0.25% transactions and use tax that terminates on March 31, 2029. The intent of this Ordinance is to reauthorize the transactions and use tax for an additional eight years, until March 31, 2037.

**SECTION 3: 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 4: Election Required.** This Ordinance shall not become operative unless and until it is approved both (i) by the voters by the City Council by a vote of two thirds of all of its members and (ii) by a majority vote at the November 5, 2024 General Municipal Election. Nothing in this Ordinance shall be interpreted to repeal the existing Chapter 4 of Title IX of the Municipal Code.

**SECTION 5: Amendment.** This Ordinance may be amended by the City Council. However, no such amendment can increase the rate of the tax imposed by this Ordinance or make a change that is inconsistent with the laws of the State that govern transactions and use taxes.



**SECTION 6: Effective Date.** This Ordinance relates to the levying and collecting of a transactions and use tax and shall take effect immediately. However the operative date for the tax imposed by this Ordinance tax shall be governed by the terms set forth elsewhere in this Ordinance.