

Pursuant to the provisions of the Governor's Executive Orders N-29-20, which suspended certain requirements of the Brown Act, you may view the agenda, agenda packet and/or the minutes of the meeting at www.atwater.org.

If you wish to make either a general public comment or to comment on a specific agenda item, please submit your comment (include Agenda Item Number in the subject line) to the City Clerk at cityinfo@atwater.org. Email comments will be accepted on or before 1:00 PM of the meeting date.

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation should contact the City in advance of the meeting, and as soon as possible, at (209) 357-6300.

NOTICE OF SPECIAL MEETING CITY COUNCIL OF THE CITY OF ATWATER

NOTICE IS HEREBY GIVEN that a special meeting of the City Council of the City of Atwater will be held on **Tuesday, August 4, 2020 at 1:00 PM**, or as soon thereafter as may be held. This meeting will be held in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California.

AGENDA

SPECIAL MEETING CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Ambriz ____, Cale ____, Raymond ____, Vierra ____, Creighton ____



PUBLIC COMMENT: Pursuant to Government Code Section 54954.3, citizens wishing to address the City Council regarding **only the items on the agenda may do so when the item is read for consideration**. You may state your name and address for the record; however, it is not required. Please limit comments to three (3) minutes or less. Under the provisions of the California Government Code, the City Council may not discuss or take action on any item that is not on the agenda.

CITY MANAGER REPORTS/UPDATES:

- **Resolution calling for and consolidating a General Municipal Election to be held on November 3, 2020 imposing a Transactions and Use Tax in the City of Atwater; and introducing an ordinance amending and restating Chapter 3.45 "Atwater Transactions and Use Tax" of the Atwater Municipal Code**

Staff's Recommendation: Motion to adopt Resolution No. 3168-20 calling for a General Municipal Election to be held on November 3, 2020, for the submission to the qualified electors of the City a measure imposing a transactions and use tax in the City of Atwater at a one cent rate and requesting the Board of Supervisors of the County of Merced consolidate the General Municipal Election with the Statewide Presidential General Election to be held on the date pursuant to Section 10403 of the Election Code and to provide specified services related to the election; and

Motion to establish priorities for written arguments regarding the measure and authorizing and directing the City Attorney to prepare an impartial analysis; and

Motion to provide for the filing of rebuttal arguments regarding the measure; and

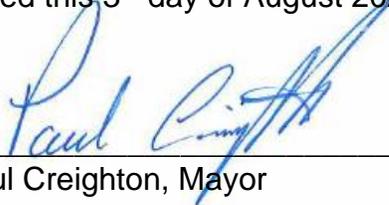
Motion to waive the first reading and introduce Ordinance No. CS 1032, amending and restating Chapter 3.45 "Atwater Transaction and Use Tax" of the Atwater Municipal Code to impose a transaction and use tax for general purposes to be administered by the California Department of Tax and Fee Administration; or

Motion to approve staff's recommendation as presented.

ADJOURNMENT:

In memory of Christopher Giesy

Dated this 3rd day of August 2020.

A handwritten signature in blue ink, appearing to read "Paul Creighton", is written over a horizontal line.

Paul Creighton, Mayor

pc: Mayor and City Council Members
Atwater Signal/Merced Sun Star
Atwater New Times



**CITY COUNCIL
AGENDA REPORT**

CITY COUNCIL

Paul Creighton, Mayor
Danny Ambriz John Cale
Brian Raymond Cindy Vierra

MEETING DATE: August 4, 2020

TO: Mayor and City Council

FROM: Lori Waterman, City Manager
Jeanna Del Real, Deputy City Manager

SUBJECT: Resolution calling for and consolidating a General Municipal Election to be held on November 3, 2020 imposing a Transactions and Use Tax in the City of Atwater; and introducing an ordinance amending and restating Chapter 3.45 “Atwater Transactions and Use Tax” of the Atwater Municipal Code

RECOMMENDED COUNCIL ACTION:

It is recommended that City Council:

1. Adopt Resolution No. 3168-20 calling for of a General Municipal Election to be held on November 3, 2020, for the submission to the qualified electors of the City a measure imposing a transactions and use tax in the City of Atwater at a one cent rate and requesting the Board of Supervisors of the County of Merced consolidate the General Municipal Election with the Statewide Presidential General Election to be held on the date pursuant to Section 10403 of the Election Code and to provide specified services related to the election; and
2. Establish priorities for written arguments regarding the measure and authorizing and directing the City Attorney to prepare an impartial analysis; and
3. Provide for the filing of rebuttal arguments regarding the measure; and
4. Waive the first reading and introduce Ordinance No. CS 1032, amending and restating Chapter 3.45 “Atwater Transaction and Use Tax” of the Atwater Municipal Code to impose a transaction and use tax for general purposes to be administered by the California Department of Tax and Fee Administration.

I. BACKGROUND:

The City of Atwater prides itself on its track record for being innovative, forward-thinking, and prioritizing local projects and control. Although the City of Atwater has taken great strides in mounting its economic comeback, once the current Public Safety tax expires on June 30, 2023, all programs and services funded through the Public Safety tax will have to be funded through the City's General Fund. The General Fund currently does not have the appropriate resources to fund these expenditures once the Public Safety Tax expires. The Public Safety Tax restored essential public safety services such as neighborhood police patrols/firefighter staffing, gang/drug suppression and enforcement, improving 911 emergency medical response times, and other vital City safety services.

At a Council meeting late last year, the City's polling consultant (FM3) provided polling results that showed that nearly three in five supported a general-purpose tax at the one-cent rate for essential services (**EXHIBIT "A"**). Essential services included:

- Fire/Police protection, 911 emergency response;
- Replacing aging police/fire facilities to meet earthquake safety standards;
- Repairing and maintaining streets, sidewalk, public parks;
- Improving traffic safety/congestion; and
- Providing senior/youth/recreation programs, and other City services

Given the significant interest from the community as it relates to a general-purpose tax and the need for the City to continue to serve the community with sufficient public safety and other services, a one-cent local relief and recovery measure sales tax would timely provide an estimated \$4 million to the City per year. This measure would also replace the current Public Safety Tax entirely.

II. ANALYSIS:

It is imperative that the City have local recovery and relief control over local funds for local needs, allowing the City to be self-reliant in recovering from the COVID-19 crisis and not co-dependent on strings-attached State policies. Since the local sales tax would be specific to the City in which the voters reside, it cannot be taken, or even borrowed, by the County or the State. It belongs solely to the City to improve services for its residents and businesses, without County or State control. In short, it ensures local money is used to exercise local control, local relief, and local priorities only.

The City must do more to continue to make City streets better, making neighborhoods even safer, and fund programs to attract new businesses and create jobs. Our local businesses would benefit from maintaining public safety, roads, and funding for business promotion. Revitalizing commercial corridors will further improve safety, reduce panhandling and help revitalize old vacant buildings to attract new business and entertainment to the area. The City seeks to help support existing businesses and attract more retail, restaurants, and recreation opportunities, making Atwater a place where families want to live and put down roots. All of which are directly related to the City Council's goals identified in the adopted 2020-2025 Strategic Plan. An approved general

sales tax measure here would replace the current Public Safety Tax. These funds would go back into these essential services to aid Atwater’s own local recovery and relief efforts.

Staff recommends that the City Council approach the expiring Public Safety Tax and the COVID-19 pandemic head-on to ensure fiscal sustainability while achieving long-term goals. Staff is recommending a defined general-purpose sales tax measure at one cent. A general-purpose sales tax measure requires a simple majority-vote of the electorate to pass.

The measure requires independent audits. These audits would be prepared annually, and the City Manager would select and retain the independent auditor who would review and examine the City’s accounting of the tax revenues received and expenditures made.

Should the City Council decide to place the sales tax on the ballot for the November 2020 General Election, and, should the voters approve the measure, following Council adoption of the Ordinance the tax rate is anticipated to be in effect by April 1, 2021. The proceeds from the sales tax would be used to maintain community priorities.

III. FISCAL IMPACTS:

The fiscal impact of a proposed measure, to the average consumer, would be an additional \$1.00 for every \$100 spent on taxable goods (non-luxury items) with a one cent tax. Revenues from the measure could generate approximately \$4,000,000 (one-cent tax) annually for General Fund expenditures.

Staff is anticipating the cost associated with the General Municipal Election, including a ballot measure, to be about \$20,000. Sufficient funding is available in the Adopted Budget for Fiscal Year 2020-2021 and is appropriated in the General Fund, City Administration/City Clerk Department, Professional Services Account No. 0001.1010.3030. This item has been reviewed by the Finance Department.

IV. LEGAL REVIEW:

This item has been reviewed by the City Attorney’s Office.

V. PUBLIC PARTICIPATION:

The public will have an opportunity to provide comments on this item prior to Council action.

VI. ENVIRONMENTAL REVIEW:

This item is exempt from review under the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. (“CEQA”) and 14 Cal. Code Reg. §§ 15000 et seq. (“CEQA Guidelines”). The tax to be submitted to the voters by this resolution and authorized by this ordinance can be used for general governmental purposes. 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 such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

VII. STEPS FOLLOWING APPROVAL:

Upon approval of this item, the City Clerk’s office will transmit the Resolution requesting measure consolidation to Merced County Registrar of Voters on or before August 7, 2020 (last day for measure consolidation). The City Clerk’s office will also provide a copy of the Resolution and Ordinance to the City Attorney’s office to prepare an impartial analysis, which will be transmitted to the Merced County Registrar of Voters on or before August 14, 2020 (last day to submit the City Attorney’s impartial analysis).

Prepared by Richard Vang, Executive Assistant/Deputy City Clerk

Submitted by: 
Jeanna Del Real, Deputy City Manager

Submitted &
Approved by: 
Lori Waterman, City Manager

Attachments:

1. Resolution No. 3168-20
2. Ordinance No. CS 1032



CITY COUNCIL OF THE CITY OF ATWATER

RESOLUTION NO. 3168-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATWATER CALLING FOR A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020 FOR THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE IMPOSING A TRANSACTIONS AND USE TAX IN THE CITY OF ATWATER AT A ONE CENT RATE AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE STATEWIDE PRESIDENTIAL GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO SECTION 10403 OF THE ELECTION CODE AND TO PROVIDE SPECIFIED SERVICES RELATED TO THE ELECTION

WHEREAS, the City of Atwater must have local control over local funds for local needs, allowing the City to be self-reliant in recovering from the COVID-19 crisis; and

WHEREAS, the City must do more to continue to make City streets better, making neighborhoods even safer, and fund programs to attract new businesses and create jobs; and

WHEREAS, local businesses would benefit from maintaining public safety, roads and funding for business promotion; and

WHEREAS, revitalizing commercial corridors will further improve safety, reduce panhandling and help revitalize old, vacant buildings to attract new business and entertainment to the area; and

WHEREAS, the City seeks to help support existing businesses and attract more retail, restaurants and recreation opportunities, making Atwater a place where young families want to live and put down roots after the crisis is over; and

WHEREAS, Revenue and Taxation Code section 7251 and following provide for the establishment of transactions and use taxes by cities; and

WHEREAS, Revenue and Taxation Code section 7285.9 authorizes the governing board of any city to levy a transactions and use tax for general revenue purposes as required by Sections 7251 and following, in an ordinance approved by a two-thirds vote of all

members of the City Council and approved by a majority vote of the voters of the city who vote on the measure; and

WHEREAS, Section 2(b) of Article XIII C of the California Constitution, added by Proposition 218, effective November 1996, requires that a measure proposing a general tax be submitted to the voters and approved by a majority vote; and

WHEREAS, pursuant to California Constitution Article XIII C, Section 2(b), Revenue and Taxation Code section 7285.9, and Elections Code section 10201, the City Council of the City of Atwater, California desires to submit to the voters of Atwater a measure to impose a transactions and use tax at a one cent rate until ended by voters; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed ordinance to the voters.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Atwater, does hereby declare, determine, and order as follows:

SECTION 1: Pursuant to Elections Code section 9222, the City Council does hereby call and order an election on the following measure at the General Municipal Election to be held on November 3, 2020, by which measure the City Council will ask the voters of Atwater to approve an ordinance imposing a transactions and use tax at the one cent rate until ended by voters pursuant to section 7285.9 of the Revenue and Taxation Code, to be administered by the State of California Department of Tax and Fee Administration.

SECTION 2: The text of the ordinance to be submitted to the voters is attached as Exhibit "A" to this Resolution and the question to be submitted to the voters shall be as follows:

To support the City of Atwater through local relief/recovery, including: <ul style="list-style-type: none"> • preventing cuts to police and fire services; • replacing aging police/fire equipment; • repairing streets/potholes; • improving parks and recreation programs; • keeping public areas clean and safe; • supporting new and existing local businesses; • preparing for any disaster/health emergency; shall the City of Atwater measure be adopted levying a 1¢ sales tax, until ended by voters, raising approximately \$4,000,000 annually, with local control and oversight?	YES
	NO

The ballot measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Elections Code section 13116.

SECTION 3: That by two-thirds vote of all members of its membership, the City Council hereby approves the proposed ordinance to be submitted to the voters. The proposed measure shall not take effect unless and until approved by a majority vote of the voters voting on the question at the election. The ordinance specifies that the rate of the transactions tax shall be one percent (1.0%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City; it specifies that the rate of

the use tax shall be one percent (1.0%) of the sales price of tangible personal property stored, used or otherwise consumed in the City. The California Department of Tax and Fee Administration shall collect the tax from retailers subject to the tax and remit the funds to the City.

SECTION 4: The City Clerk is directed to transmit a copy of the measure to the City Attorney for the purpose of preparing an impartial analysis of the measure pursuant to Election Code section 9280, which analysis shall be provided to the City Clerk on or before August 14, 2020.

SECTION 5: The City Clerk is authorized, instructed, and directed to publish any notices of the election required by the Elections Code.

SECTION 6: That the polls for the election shall be open at seven o'clock a.m. (7:00 a.m.) on the day of the election and shall remain open continuously from that time until eight o'clock p.m. (8:00 p.m.) of the same day when the polls shall be closed pursuant to Elections Code §10242, except as provided in §14401 of the Elections Code of the State of California.

SECTION 7: The City Council requests that the Board of Supervisors of Merced County, State of California, order the consolidation of the election on the measure to be held on November 3, 2020 with the Statewide General Election to be held on the same election date, under California Elections Code section 10400 *et seq.*

SECTION 8: The City Council acknowledges that the consolidated election shall be held and conducted, election officers appointed, voting precincts designated, candidates nominated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the regularly scheduled election. The Merced County Board of Supervisors is hereby requested to have the Registrar of Voters conduct the consolidated election as required by the Elections Code. The jurisdictional boundaries of the City have not changed since the last general municipal election.

SECTION 9: The City of Atwater will reimburse the County of Merced for the actual costs incurred in conducting the election upon receipt of a bill stating the amount due as required by the Elections Code section 10002.

SECTION 10: The City Council finds that approval of this resolution is exempt from review under the California Environmental Quality Act (Public Resources Code § 21000 *et seq.* ("CEQA") and 14 Cal. Code Reg. § 15000 *et seq.* ("CEQA Guidelines")). The tax to be submitted to the voters by this resolution is a general tax that may be used for general governmental purposes. 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 such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 11: The City Manager and designees are hereby authorized to execute and deliver any documents and to perform all acts necessary to place the measure on the ballot including making any revisions, corrections, or alterations to the language of the ballot measure or related resolutions of the City Council to correct minor errors or to comply with the requirements of law and the elections officials and to ensure that the applicable requirements of the Elections Code are met.

SECTION 12: The City Clerk shall certify to the passage and adoption of the resolution and enter it into the book of original resolutions.

SECTION 13: The City Clerk is directed to file with the Board of Supervisors and the County Clerk of Merced County, certified copies of this resolution.

The foregoing resolution is hereby adopted this 4th day of August, 2020.

**AYES:
NOES:
ABSENT:**

APPROVED:

PAUL CREIGHTON, MAYOR

ATTEST:

LUCY ARMSTRONG, CITY CLERK



**CITY COUNCIL
OF THE
CITY OF ATWATER**

ORDINANCE NO. CS 1032

**AN ORDINANCE OF THE CITY OF ATWATER AMENDING
AND RESTATING CHAPTER 3.45 "ATWATER
TRANSACTION AND USE TAX" OF THE ATWATER
MUNICIPAL CODE TO IMPOSE A TRANSACTIONS AND
USE TAX FOR GENERAL PURPOSES TO BE
ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF
TAX AND FEE ADMINISTRATION**

WHEREAS, the City of Atwater must have local control over local funds for local needs, allowing the City to be self-reliant in recovering from the COVID-19 crisis; and

WHEREAS, the City must do more to continue to make City streets better, making neighborhoods even safer, and fund programs to attract new businesses and create jobs; and

WHEREAS, local businesses would benefit from maintaining public safety, roads and funding for business promotion; and

WHEREAS, revitalizing commercial corridors will further improve safety, reduce panhandling and help revitalize old, vacant buildings to attract new business and entertainment to the area; and

WHEREAS, the City seeks to help support existing businesses and attract more retail, restaurants and recreation opportunities, making Atwater a place where young families want to live and put down roots after the crisis is over; and

WHEREAS, on March 5, 2013, the voters of the City of Atwater ("City") approved a one-half cent special sales tax to supplement funding for public safety services in the City ("Public Safety Tax"); and

WHEREAS, the Public Safety Tax imposed a one-half special sales tax upon all retailers in the City for the sale of all tangible personal property sold at retail in the City; and

WHEREAS, the Public Safety Tax will expire on June 30, 2023; and

WHEREAS, the City Council provided staff with direction to place a general tax measure on the November 3, 2020 ballot, which if approved, will replace the Public Safety Tax with a one cent general sales tax rate until ended by voters.

NOW, THEREFORE, the City Council of the City of Atwater does hereby ordain:

SECTION 1: That the City Council of the City of Atwater does hereby amend and restate Chapter 3.45 "Atwater Transactions and Use Tax" of Title 3 "Revenues and Finance" of the Atwater Municipal Code to read in full as follows:

3.45.010. TITLE.

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

3.45.020. 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.

3.45.030. PURPOSE.

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the 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.

3.45.040. 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 ordinance; 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.

3.45.050. 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 1.0% 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. Such tax shall be in addition to any other transactions tax imposed by this Code or applicable State law.

3.45.060. 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 California Department of Tax and Fee Administration.

3.45.070. 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 1.0% 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. Such tax shall be in addition to any other use tax imposed by this Code or applicable State law.

3.45.080. ADOPTION OF PROVISIONS OF STATE LAW.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

3.45.090. 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 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 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.
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.

3.45.100. PERMIT NOT REQUIRED.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

3.45.110. EXEMPTIONS AND EXCLUSIONS.

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
 - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the

Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

- b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
 6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
 7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.45.120. 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.

3.45.130. ENJOINING COLLECTION FORBIDDEN.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.45.140 FISCAL ACCOUNTABILITY PROVISIONS.

The revenue generated by this tax and how it was used shall be included in the annual audit of the City's financial operations by an independent certified public accountant.

3.45.150. 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.

3.45.160. TERMINATION OF TAX.

The authority to levy the tax imposed by this Chapter shall expire when ended by the voters of the City.

SECTION 2: CEQA. Approval of this ordinance is exempt from review under the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines")). The tax authorized by this ordinance is a general tax that can be used for general governmental purposes. 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 such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 3: SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the ordinance be enforced.

SECTION 4: EFFECTIVE DATE; REPLACEMENT OF EXISTING PUBLIC SAFETY TAX. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately but shall not become operative unless and until approved by a majority vote of the voters voting on the ordinance at the election held on November 3, 2020. If approved by a majority vote, upon the operative date, as defined in Section 1, this ordinance shall replace in its entirety the Public Safety Transactions and Use Tax enacted by Ordinance No. 937, approved by City voters as Measure H in 2013.

PASSED AND ADOPTED by the City Council of the City of Atwater, State of California, on the _____ of _____, 202_, pursuant to voter approval at the November 3, 2020, General Municipal Election:

**AYES:
NOES:
ABSENT:**

APPROVED:

PAUL CREIGHTON, MAYOR

ATTEST:

LUCY ARMSTRONG, CITY CLERK