

**RESOLUTION NO. 22-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVALON, CALIFORNIA CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT FOR THE JUNE 7, 2022 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF AN ORDINANCE TO ENACT A GENERAL TRANSACTIONS AND USE TAX AT THE RATE OF ONE-QUARTER PERCENT (1/4%)**

**WHEREAS**, the City Council of the City of Avalon ("City") is authorized to levy a Transactions and Use Tax ("TUT") for general purposes pursuant to California Revenue and Taxation Code §7285.9, subject to approval by a majority vote of the electorate pursuant to Article XIII C, §2 of the California Constitution ("Proposition 218"); and

**WHEREAS**, pursuant to California Elections Code §9222, the City Council has authority to place local measures on the ballot to be considered at a Municipal Election; and

**WHEREAS**, the City Council would like to submit to the voters at the June 7, 2022 General Municipal Election a measure enacting a general TUT at a rate of one-quarter percent (1/4%) on the sale and/or use of all tangible personal property sold at retail in the City until it is ended by voters, as more specifically set forth in the attached proposed ordinance adding Article 8 to Chapter 3 of Title 3 of the City's Municipal Code; and

**WHEREAS**, the 1/4% TUT is a general tax, the revenue of which will be placed in the City's general fund and will be used to pay for important general City services; and

**WHEREAS**, on November 6, 1996, the voters of the State of California approved Proposition 218, an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

**WHEREAS**, pursuant to Proposition 218 (California Constitution Article XIII C, §2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

**WHEREAS**, the next regularly scheduled general election at which City Council members are to be elected is June 7, 2022; and

**WHEREAS**, pursuant to Government Code §53724 ("Proposition 62") and Revenue and Taxation Code §7285.9, a two-thirds (2/3) vote of all members of the City Council is required to place the Measure on the June 7, 2022 ballot; and

**WHEREAS**, the ordinance to be considered by the qualified voters and the terms of approval, collection and use of the general TUT are described and provided for in the ordinance/measure attached hereto as Exhibit "A" (the "Measure") and by this reference made an operative part hereof, in accordance with all applicable laws.

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

**SECTION 1.** Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

**SECTION 2.** Submission of Ballot Measure. Pursuant to California Elections Code §9222, Government Code §53724, Revenue and Taxation Code §7285.9 and any other applicable requirements of the laws of the State of California relating to the City, the City Council, **by a two-thirds (2/3) vote of all members**, hereby orders the Measure to be submitted to the voters of the City at the General Municipal Election to be held on **Tuesday, June 7, 2022**.

**SECTION 3.** The City Council, pursuant to California Elections Code §9222, hereby orders that the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the General Municipal Election to be held on Tuesday, June 7, 2022, in addition to any other matters required by law, there shall be printed substantially the following ballot question:

"Shall a measure be adopted by the City of Avalon enacting a one-quarter percent (1/4%) transactions and use (sales) tax, generating approximately \$250,000.00 annually for general government use until ended by voters?"	YES
	NO

**SECTION 4.** Conduct of Election. The City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

**SECTION 5.** Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a 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 such impartial analysis to the City Clerk not later than the deadline for submittal of primary arguments for or against the Measure.

The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure \_\_\_\_\_. If you desire a copy of the ordinance or measure, please call the Office of the City Clerk at [insert phone number] and a copy will be mailed at no cost to you."**

**SECTION 6.** Notice of the election is hereby given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

**SECTION 7.** Placement on the Ballot. The full text of the Measure shall not be printed in the voter information guide, and a statement shall be printed in the ballot pursuant to Elections Code §9223 advising voters that they may obtain a copy of this Resolution and the Measure, at no cost, upon request made to the City Clerk.

**SECTION 8.** Filing with County. The City Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, June 7, 2022, file with the Board of Supervisors and the County Clerk – Registrar of Voters of the County of Los Angeles, State of California, a certified copy of this Resolution.

**SECTION 9.** Public Examination. Pursuant to California Elections Code §9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The City Clerk shall post notice in the Clerk’s office of the specific dates that the examination period will run.

**SECTION 10.** The City Council hereby finds and determines that the Measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines, section 15378(b)(5).

**SECTION 11.** Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

**SECTION 12.** This Resolution shall become effective upon its adoption.

**SECTION 13.** The City Clerk shall certify to the adoption of this Resolution.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Avalon on this 15<sup>th</sup> day of February, 2022, by the following vote:

Ayes: Mayor Marshall, Councilmembers De La Rosa, Lavelle, MacGugan-Cassidy, and Ponce.

Noes: None.

Absent: None.

Abstain: None.



Ann H. Marshall, Mayor

**ATTEST:**



Gabrielle Morones, Deputy City Clerk / Sr. Admin. Assistant

Exhibit "A"  
Transactions and Use Tax Ordinance

[Attached behind this page]

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF AVALON, CALIFORNIA, ADDING ARTICLE 8 TO CHAPTER 3 OF TITLE 3 OF THE AVALON MUNICIPAL CODE TO ENACT A ONE-QUARTER PERCENT (1/4%) GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

**WHEREAS**, pursuant to California Revenue and Taxation Code Section 7285.9 the City of Avalon ("City") is authorized to levy a Transactions and Use Tax for general purposes, subject to majority voter approval; and

**WHEREAS**, the People of the City desire to levy a Transactions and Use Tax for general purposes until repealed to fund important general City services, at a rate of one-quarter percent (1/4%); and

**WHEREAS**, if approved by the City Council and Avalon voters, the Transactions and Use Tax ordinance will be incorporated into Article 8 of Chapter 3 of Title 3 of the Avalon Municipal Code.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF AVALON DO HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Title and Text.** This Ordinance shall be known as the Avalon Transactions and Use Tax Ordinance, the full text of which is set forth in Attachment "1", attached hereto and incorporated herein by reference.

**Section 2. Approval by the City Council.** Pursuant to California Government Code Section 53724 and Revenue and Taxation Code Section 7285.9, this Ordinance was duly approved for placement on the ballot by a minimum two-thirds (2/3) supermajority of all members of the City Council on February 15, 2022.

**Section 3. Approval by the Voters.** Pursuant to California Elections Code Section 9217, this Ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Avalon voting at the General Municipal Election of June 7, 2022. It shall be deemed adopted when the City Council has certified the results of that election by resolution and shall take effect ten (10) days thereafter.

**Section 4. Operative Date.** "Operative Date" for the Transactions and Use Tax means the first day of the first calendar quarter commencing more than 110 days after the date this Ordinance is adopted, as set forth in Section 3 above.

**Section 5. 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.

I hereby certify that the Avalon Transactions and Use Tax Ordinance was **PASSED, APPROVED, AND ADOPTED** by the People of the City of Avalon on the 7<sup>th</sup> day of June, 2022.

CITY OF AVALON

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Ann H. Marshall, Mayor

ATTEST:

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Denise A. Radde, City Clerk

APPROVED AS TO FORM:

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Scott Campbell, City Attorney

## **Article 8 - Transactions and Use Tax**

### **Sections:**

**3-3.801 - Purpose.**

**3-3.802 - Contract With State.**

**3-3.803 - Transactions Tax Rate.**

**3-3.804 - Place of Sale.**

**3-3.805 - Use Tax Rate.**

**3-3.806 - Adoption of Provisions of State Law.**

**3-3.807 - Limitations on Adoption of State Law and Collection of Use Taxes.**

**3-3.808 - Permit Not Required.**

**3-3.809 - Exemptions and Exclusions.**

**3-3.810 - Amendments.**

**3-3.811 - Enjoining Collection Forbidden.**

**3-3.812 - Duration of Tax**

### **Sections:**

**3-3.801 - 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.

**3-3.802 - 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.

### **3-3.803 - Transactions Tax Rate.**

In addition to the tax set forth in Article 2 of this Chapter, 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-quarter percent (1/4%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

### **3-3.804 - 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.

### **3-3.805 - Use Tax Rate.**

In addition to the tax set forth in Article 2 of this Chapter, 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 one-quarter percent (1/4%) 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.

### **3-3.806 - 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.

### **3-3.807 - Limitations on Adoption of State Law and Collection of Use Taxes.**

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:
  1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, 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 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.

### **3-3.808 - 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.

### **3-3.809 - 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 subsection, 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 subsection, 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.

### **3-3.810 - 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.

The City Council, by majority vote of the full Council, may lower the rate of the retail transactions and use tax adopted by this Chapter to 0%.

### **3-3.811 - 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.

**3-3.812 – Duration of Tax.**

The tax imposed by this Article shall continue until this ordinance is repealed.


STATE OF CALIFORNIA        )  
COUNTY OF LOS ANGELES    ) SS.  
CITY OF AVALON                )

I, GABRIELLE MORONES, DEPUTY CITY CLERK OF THE CITY OF AVALON, do hereby certify that the foregoing is a true and correct copy of Resolution No. 22-11 and was duly passed, approved, and adopted by the Avalon City Council at the regular meeting of February 15, 2022 by the following vote:

Ayes:            Mayor Marshall, Councilmembers De La Rosa, Lavelle, MacGugan-Cassidy  
                    and Ponce.  
Noes:            None  
Absent:          None  
Abstain:         None

and that the same has not been amended nor repealed.

Dated this 18th day of February, 2022.

  
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Gabrielle Morones, Deputy City Clerk  
City of Avalon, California