

ORDINANCE NO. 08-17

AN URGENCY ORDINANCE OF THE CITY OF WILDOMAR, CALIFORNIA ADDING CHAPTER 3.05 TO THE WILDOMAR MUNICIPAL CODE IMPOSING A SALES AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

- (a) On July 1, 2008, the City of Wildomar became a general law city with the power and duty to enact all local police, sanitary and other ordinances not in conflict with general law, and to provide general law municipal services to the residents of Wildomar.
- (b) The City will incur substantial costs in providing municipal services, parts of which costs can be paid through sales and use taxes.
- (c) The Local Agency Formation Commission of the County of Riverside has authorized the City to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the City by the County or other subject agency, including, but not limited to, transient occupancy taxes, franchise fees, business license fees, property transfer taxes, sales and use taxes, and any taxes assessments, fees or charges by County Service Areas 22, 104 and 142.
- (d) California Revenue and Taxation Code section 7200 et seq., authorizes the City to adopt a local sales and use tax in accordance with Part 1 and Part 1.5 of Division 2 of the Revenue and Taxation Code.

SECTION 2. Addition of Chapter 3.05. Chapter 3.05, "Sales and Use Tax," is hereby added to Title 3, "Revenue and Finance," of the Wildomar Municipal Code, and shall read as follows:

"Chapter 3.05

SALES AND USE TAX

Sections:

- 3.05.010 Short Title.
- 3.05.020 Rate.
- 3.05.030 Operative Date.
- 3.05.040 Purpose.
- 3.05.050 Contract With State.
- 3.05.060 Sales Tax.
- 3.05.070 Place of Sale.
- 3.05.080 Use Tax.
- 3.05.090 Adoption of Provisions of State Law.
- 3.05.100 Limitations on Adoption of State Law.
- 3.05.110 Permit Not Required.
- 3.05.120 Exclusions and Exemptions.
- 3.05.130 Amendments.
- 3.05.140 Enjoining Collection Forbidden.
- 3.05.150 Penalties.

3.05.010 Short Title. This Ordinance shall be known as the Uniform Local Sales and Use Tax Ordinance.

3.05.020 Rate. The rate of sales tax and use tax imposed by this Ordinance shall be one percent (1%).

3.05.030 Operative Date. This Ordinance shall be operative on October 1, 2008.

3.05.040 Purpose. The City Council hereby declares that 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 adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

(b) To adopt a sales and use tax ordinance which 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 1.5 of Division 2 of the Revenue and Taxation Code;

(c) To adopt a sales and use tax ordinance which imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes;

(d) To adopt a sales and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting city sales 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.

3.05.050 Contract with State. Prior to the operative date this City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this sales and use tax ordinance; provided, that if this City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter followed the execution of such a contract rather than the first day of the first calendar quarter following the adoption of this Ordinance.

3.05.060 Sales Tax. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers in the City at the rate stated in Section 2 of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in this City on and after the operative date.

3.05.070 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 had more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.05.080 Use Tax. An excise tax is hereby imposed on the storage, use or other consumption in this City of tangible personal property purchased from any retailer on and after the operative date for storage, use or other consumption in this City at the rate stated in Section 2 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.

3.05.090 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 1.5 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 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.

3.05.100 Limitations on Adoption of State Law. In adopting the provisions of part 1 of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. The substitution, however, shall not be made when the word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Treasury, or the constitution of the State of California; the

substitution shall not be made when the result of that substitution would require action to be taken by or against the City, or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance; the substitution shall not be made 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 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 to 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 provisions of that Code; the substitution shall not be made in Sections 670, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code; and the substitution shall not be made for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 or in the definition of that phrase in Section 6203.

3.05.110 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 seller's permit shall not be required by this Ordinance.

3.05.120 Exclusions and Exemptions.

(e) The amount subject to tax shall not include any sales or use tax imposed by the State of California upon a retailer or consumer.

(f) The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this State shall be exempt from the tax due under this ordinance.

(g) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city 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.

(h) In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code the storage, use, or other consumption of tangible personal property 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 is exempted from the use tax.

3.05.130 Amendments. All subsequent amendments of Part 1 of Division 2 of the Revenue and Taxation code which are not inconsistent with part 1.5 of Division 2 of the Revenue and Taxation Code shall automatically become part of this Ordinance. this Ordinance also shall be deemed to adopt by reference the provisions of Sections 7202 to 7203, inclusive, of the Revenue and Taxation Code, as now in effect or as later amended, which are required to be included in this Ordinance.

3.05.140 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 this City, or against any officer of the State or this City, to prevent or enjoin the collection under this Ordinance, or Part 1.5 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.05.150 Penalties. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six month, or by both such fine and imprisonment.”

SECTION 3. Intent to Supersede County Ordinances. The provisions of this ordinance shall supersede the County ordinances codified in Chapter 4.12 of the Riverside County Code, as those County ordinances were adopted by City Ordinance No. 08-01.

SECTION 4. Declaration of Facts Constituting Urgency. The City has just been incorporated and has no funds available to provide for the usual and current expenses of the City. Enacting this ordinance will provide the City with a source of revenue. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

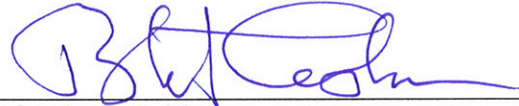
SECTION 5. Repeal of Prior Ordinance. Urgency Ordinance No. 08-07 which incorrectly set forth its operative date as July 1, 2008, is hereby repealed in its entirety.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 7. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this 13th day of August, 2008.



Bob Cashman, Mayor

ATTEST:



Sheryll Schroeder, City Clerk

APPROVED AS TO FORM:



Julie Hayward Biggs, Interim City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, Sheryll Schroeder, City Clerk of the City of Wildomar, do hereby certify that the foregoing Ordinance No. 08-17 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 13th day of August, 2008, by the following vote of the Council:

AYES: Cashman; Swanson; Moore; Farnam; Ade

NOES: None

ABSTAIN: None

ABSENT: None



Sheryll Schroeder, City Clerk

I, Sheryll Schroeder, City Clerk for the City of Wildomar California, do hereby certify that I posted Ordinance No. 08-17, adopted on the 13th day of August, on the 15th day of August at the following locations:

City of Wildomar, 238873 Clinton Keith Road, Wildomar;
U. S. Post Office, 21392 Polomar Street, Wildomar
Mission Trail Library, 34303 Mission Trail Blvd., Wildomar

8-15-08

Date



Sheryll Schroeder

City Clerk

City of Wildomar, CA