

RESOLUTION NO. 2024-23

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT FOR THE NOVEMBER 5, 2024 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF AN ORDINANCE TO ENACT A GENERAL TRANSACTIONS AND USE TAX (SALES TAX) AT THE RATE OF ONE CENT (1¢)

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

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

WHEREAS, the Town Council would like to submit to the voters at the November 5, 2024 General Municipal Election a measure establishing the rate of the TUT of one cent (1¢) on the sale and/or use of all tangible personal property sold at retail in the Town until it is repealed by voters, as more specifically set forth in the attached proposed ordinance adding Chapter 3.26 to Title 3 of the Town's Municipal Code; and

WHEREAS, the one cent (1¢) TUT is a general tax, the revenue of which will be placed in the Town's general fund and will be used to pay for general Town services; and

WHEREAS, the Town of Apple Valley has experienced general fund budget deficits of approximately \$1,363,133 in 2016, \$4,011,651 in 2017, \$990,764 in 2018, \$6,326,434 in 2020, \$3,420,013 in 2022, and \$3,179,551 in 2023; and

WHEREAS, the Town of Apple Valley currently projects general fund budget deficits of \$5,461,985 in 2024 and \$3,120,323 in 2025; and

WHEREAS, the Town of Apple Valley is committed to maintaining and enhancing Town services for its residents, including 911 police response to property crimes, thefts, and burglaries, and maintaining sale routes to schools programs; and

WHEREAS, the Town's infrastructure, including streets and roads, requires regular maintenance and repair, including addressing potholes; and

WHEREAS, the Town's priorities include cleaning and maintaining public areas, parks, and recreational facilities for our residents; and

WHEREAS, the Town's general services, such as those above, may face cuts due

to projected budget deficits.

WHEREAS, the projected \$9,000,000 annual revenue from the proposed 1¢ sales tax measure could provide locally controlled funding to mitigate projected budget deficits and support maintaining and enhancing general Town services; and

WHEREAS, the proposed measure incorporates transparency and accountability provisions for audits and public spending disclosure, with all funds used locally; 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, section 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 Town Council members will be elected is November 5, 2024; and

WHEREAS, pursuant to Government Code section 53724 and Revenue and Taxation Code section 7285.9, a two-thirds (2/3) vote of all members of the Town Council is required to place the Measure on the November 5, 2024 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 TOWN COUNCIL OF THE TOWN OF APPLE VALLEY:

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 section 9222, Government Code section 53724, Revenue and Taxation Code section 7285.9 and any other applicable requirements of the laws of the State of California relating to the Town, the Town Council, **by a two-thirds (2/3) vote of all members**, hereby orders the Measure to be submitted to the voters of the Town at the General Municipal Election to be held on **Tuesday, November 5, 2024**.

SECTION 3. The Town Council, pursuant to California Elections Code section 9222, hereby orders that the ballot question for 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, November 5, 2024, in addition to any other matters required by law, there shall be printed substantially the following ballot question:

<p>“Town of Apple Valley Public Safety/Town Services Measure:</p>	<p>YES</p>
<p>Shall the measure funding Town of Apple Valley services such as maintaining 911 response times, safe routes to schools programs; responding to property crimes/thefts/burglaries; hiring/retaining sheriff’s deputies; repairing streets/potholes; retaining/attracting local businesses; addressing homelessness; cleaning/maintaining public areas/parks; general town services; by establishing a 1¢ sales tax providing approximately \$9,000,000 annually until ended by voters; requiring audits/public spending disclosure, all funds used locally, be adopted?”</p>	<p>NO</p>

SECTION 4. Conduct of Election. The Town 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 Elections Code section 9280, the Town Council hereby directs the Town Clerk to transmit a copy of the Measure to the Town Attorney. The Town 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 Town Clerk not later than **August 19, 2024, at 5:00 p.m.**

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 Town Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information guide, 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 Town Clerk at (760) 240-7000 and a copy will be mailed at no cost to you.”**

SECTION 6. Notice of the election is hereby given and the Town 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 be printed in the voter information guide, and a statement shall be printed on the ballot pursuant to Elections Code section 9223 advising voters that they may obtain a copy of this Resolution and the Measure, at no cost, upon request made to the Town Clerk.

SECTION 8. Filing with County. The Town Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, November 5, 2024, file with the Board of Supervisors and the Registrar of Voters of the County of San Bernardino, State of California, a certified copy of this Resolution.

SECTION 9. Public Examination. Pursuant to Elections Code section 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 Town Clerk shall post notice in the Clerk's office of the specific dates that the examination period will run.

SECTION 10. The Town 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 Town Clerk shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED by the Town Council of the Town of Apple Valley this 23rd day of July 2024.

ATTEST:



La Vonda M-Pearson, Town Clerk



Scott Nassif, Mayor

Town of Apple Valley
Resolution No. 2024-23

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

TOWN OF APPLE VALLEY

I, LA VONDA M-PEARSON, Town Clerk for the Town of Apple Valley, Apple Valley, California, do hereby certify that Resolution No. 2024-23, duly and regularly adopted by the Town Council at a meeting thereof held on the 23rd day of July 2024 by the following vote:

AYES: Council Members Cusack, Emick, Leon, Mayor Pro Tem Bishop, Mayor Nassif.

NOES: None.

ABSTAIN: None.

ABSENT: None.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Town of Apple Valley, California, this 24th day of July 2024.

LA VONDA M-PEARSON, CMC
TOWN CLERK

By:


La Vonda M-Pearson, Town Clerk



Exhibit "A"
Transactions and Use Tax Ordinance

[attached behind this page]

ORDINANCE NO. 570

AN ORDINANCE OF THE PEOPLE OF THE TOWN OF APPLE VALLEY, CALIFORNIA, ADDING CHAPTER 3.26 TO TITLE 3 OF THE APPLE VALLEY MUNICIPAL CODE TO ENACT A ONE PERCENT (1%) GENERAL TRANSACTIONS AND USE TAX (SALES 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 Town of Apple Valley ("Town") is authorized to levy a Transactions and Use Tax for general purposes, subject to majority voter approval; and

WHEREAS, the People of the Town desire to add Chapter 3.26 to Title 3 of the Apple Valley Municipal Code establishing a general Transactions and Use Tax ("TUT") until ended by voters, on the sale and/or use of all tangible personal property sold at retail in the Town, at a rate of one percent (1%).

NOW, THEREFORE, THE PEOPLE OF THE TOWN OF APPLE VALLEY DO HEREBY ORDAIN AS FOLLOWS:

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

Section 2. Approval by the Town 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 Town Council on July 23, 2024.

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 Town of Apple Valley voting at the General Municipal Election of November 5, 2024. It shall be deemed adopted when the Town 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 Apple Valley General Transactions and Use Tax Ordinance was **PASSED, APPROVED, AND ADOPTED** by the People of the Town of Apple Valley on the 5th day of November, 2024.

TOWN OF APPLE VALLEY

Scott Nassif, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Thomas Rice, Town Attorney

Douglas B. Robertson, Town Manager

Article XI – GENERAL TRANSACTIONS AND USE TAX

Sections:

3.26.010 - Title.

3.26.020 - Purpose.

3.26.030 - Contract With State.

3.26.040 - Transactions Tax Rate.

3.26.050 - Place of Sale.

3.26.060 - Use Tax Rate.

3.26.070 - Adoption of Provisions of State Law.

3.26.080 - Limitations on Adoption of State Law and Collection of Use Taxes.

3.26.090 - Permit Not Required.

3.26.100 - Exemptions and Exclusions.

3.26.110 - Amendments.

3.26.120 - Enjoining Collection Forbidden.

3.26.130 - Duration of Tax

Sections:

3.26.010. – Title.

This ordinance shall be known as the “Town of Apple Valley General Transactions and Use Tax Ordinance”. The Town of Apple Valley hereinafter shall be called “Town.” This ordinance shall be applicable in the incorporated territory of the Town.

3.26.020. – 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 Town 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.

3.26.030. - Contract With State.

Prior to the operative date, the Town 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 Town 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.

3.26.040. - 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 Town at the rate of one percent (1%) 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.

3.26.050. - 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.

3.26.060. - Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the Town 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 percent (1%) 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.

3.26.070. - 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.

3.26.080. - 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 Town 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, California Victim Compensation Board, 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 Town 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 reference to Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word “Town” shall be substituted for the word “state” in the phrase “retailer engaged in business in this state” in Section 6203 of the Revenue and Taxation Code and in the definition of that phrase in Section 6203.
1. “A retailer engaged in business in the Town” 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.

3.26.090. - 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.

3.26.100. - 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, town, 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 Town which is shipped to a point outside the Town, 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 Town 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-Town 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-Town 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 Town 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 Town 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 Town or participates within the Town 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 Town or through any representative, agent, canvasser, solicitor, subsidiary, or person in the Town under the authority of the retailer.
 7. "A retailer engaged in business in the Town" 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 Town.
- 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.

3.26.110. - 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.

3.26.120. - 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 Town, or against any officer of the State or the Town, 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.

3.26.130. – Duration of Tax.

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