



**CITY OF LARKSPUR
Staff Report**

August 3, 2022, City Council Meeting

DATE: July 25, 2022
TO: Honorable Mayor Hillmer and the Larkspur City Council
FROM: Dan Schwarz, City Manager
SUBJECT: WAIVE SECOND READING AND ADOPT ORDINANCE 1059 IMPOSING A ONE-QUARTER CENT DISASTER PREPAREDNESS AND ESSENTIAL SERVICES TRANSACTIONS AND USE TAX TO BE APPROVED BY VOTERS

ACTION REQUESTED

That the City Council waive second reading and adopt Ordinance 1059 imposing a one-quarter cent transactions and use tax for disaster preparedness and essential services to be approved by voters.

BACKGROUND

On July 20, 2022, the City Council received a staff report, considered public comment, and introduced Ordinance 1059 imposing the Larkspur Disaster Preparedness and Essential Services tax at the one-quarter cent rate for disaster preparedness and essential services, as drafted. As part of the meeting on July 20th, the City Council also adopted Resolution 57/22, which places this matter before the voters on November 8, 2022.

STAFF RECOMMENDATION

Waive the second reading and adopt Ordinance 1059.

Respectfully submitted,
Dan Schwarz, City Manager

Attachments

1. Ordinance 1059

CITY OF LARKSPUR
ORDINANCE 1059

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LARKSPUR
IMPOSING A ONE-QUARTER CENT DISASTER PREPAREDNESS AND ESSENTIAL
SERVICES TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA
DEPARTMENT OF TAX AND FEE ADMINISTRATION

WHEREAS, natural disasters have become a fact of everyday life, and Larkspur needs to be better prepared; and

WHEREAS, Larkspur's 75-100 year old storm drains are aging and deteriorating rapidly. Many haven't been repaired in over 25 years, some are starting to create sinkholes, and they must be updated to the new clean water regulations; and

WHEREAS, storm drains are critical infrastructure that Larkspur must repair and upgrade so that it is resilient and functional in the event of a natural disaster; and

WHEREAS, delaying maintenance and repairs to Larkspur's storm drains only increases costs in the long-run and makes us less safe in the event of a natural disaster; and

WHEREAS, it is imperative that Larkspur improve existing infrastructure and facilities and expand disaster preparedness efforts so that the City can ensure that in the case of an earthquake, fire, or flooding, residents can stay safe and evacuate quickly; and

WHEREAS, Larkspur must also maintain our roads, parks and infrastructure to ensure that it continues to be a great place to live and raise a family; and

WHEREAS, Larkspur must maintain its financial stability by making repairs and upgrades to our deteriorating storm drains and infrastructure before the costs of flooding, sinkholes, and other damage become even more expensive in the future; and

WHEREAS, at the November 2013 election, the voters of the City of Larkspur approved Measure C, a local, half-cent local transactions and use tax ("sales tax"), to be in effect for five years, and at the November 2017 election, the voters of the City of Larkspur approved Measure B, increasing the sales tax to the existing three-quarter cent rate and extending the sales tax until ended by the voters; and

WHEREAS, to obtain the revenue necessary for the foregoing and to maintain general municipal services, the City Council has concluded that it should call an election to ask the voters of the City to adopt an additional local transactions and use tax ("sales tax") at the one-quarter cent rate until ended by the voters; and

WHEREAS, California Constitution Article XIII C, Section 2, provides that no local government may impose, extend or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote; and

WHEREAS, California Constitution Article XIII C, Section 2, further requires that a measure proposing to impose, extend or increase a general tax must be consolidated with a City's general municipal election for members of the City Council; and

WHEREAS, on June 1, 2022, the City Council called a general municipal election on November 8, 2022 by Resolution No. 37/22, to be consolidated with the statewide general election held on the same date; and

WHEREAS, the City Council is authorized by California Elections Code Section 9222 to place measures before the voters; and

WHEREAS, the City Council desires that the proposed measure be consolidated with the November 8, 2022 general election, to be held on the same date, and that within the City, the polling places and election officers of the two elections be the same, and that the Marin County Election Department canvass the returns of the general election and that the election be held in all respects as if there were only one election.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LARKSPUR DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by reference.

Section 2. Amendment of Larkspur Municipal Code Chapter 3.32. Title 3 of the Larkspur Municipal Code is hereby amended by adding a new Chapter 3.32, which shall read as follows:

3.32.010 Title.

This ordinance shall be known as the Larkspur Disaster Preparedness and Essential Services Transactions and Use Tax Ordinance. The City of Larkspur hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

3.32.020. 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.

3.32.030 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.

3.32.040 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.

3.32.050 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 one-quarter percent 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.

3.32.060 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.

3.32.070 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 one-quarter percent 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.

3.32.080 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.

3.32.090. 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.

3.32.100 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.

3.32.110 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

4.4 ATTACHMENT 1

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.

3.32.120 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.

3.32.130 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.

3.32.140. Annual Audit; Citizens' Oversight

A. By no later than December 31st of each year after the operative date, the City's independent auditors shall complete a report reviewing the collection, management and expenditure of revenue from the tax authorized by this chapter. The auditors' report shall be a public document.

B. There shall be a committee consisting of no fewer than five (5) members of the public to review and report on the receipt of revenue and expenditure of funds from the tax authorized by this chapter. The committee members shall be either Larkspur residents or representatives of Larkspur businesses. The auditors' annual report required by subsection (A) of this section shall be provided to the committee. By March 31st of each year, the committee shall review the auditors' report, evaluate the projects and services provided with revenue from the tax, and make recommendations to the City Council regarding priorities for expenditures of revenue from the tax authorized by this chapter for the following budget year. The City Council shall consider the committee's recommendations as part of its budget deliberations.

C. The City Council shall by resolution establish the composition of the committee required by subsection (B) of this section, setting the terms of office of the committee members, and defining the scope of the committee's responsibilities, which at a minimum shall include reviewing the annual auditor's report and making recommendations to the City Council for use of revenue from the tax authorized by this chapter. The City Council shall maintain a quorum of appointed committee members while the tax approved by this chapter is in effect. Appointment of committee members and filling vacancies shall be governed by the resolution establishing the composition and rules of operation of the committee. The City Council may designate the Measure B Citizens' Oversight Committee as the committee required by subsection (B) of this section.

D. In the event that the City Council authorizes the incurrence of debt to accelerate infrastructure projects, the committee shall additionally review the expenditure of funds for

consistency with the purposes of the debt and make recommendations regarding the use thereof. The auditor shall include expenditure of proceeds of the debt in its annual report.

E. The oversight committee is hereby authorized as part of an annual report to recommend that the City Council submit a measure to Larkspur voters to confirm whether to continue the tax.

3.32.150 Use of Tax Proceeds

All proceeds of the tax levied and imposed under this Chapter shall be paid into the General Fund for use by the City of Larkspur for general municipal services. The City Council is authorized to incur indebtedness in the form of bonds, notes, contractual obligations or other evidences of indebtedness authorized by law to finance or refinance the costs of capital projects, including but not limited to street and storm drain system repair and improvement, and to pay any and all costs of issuing or incurring such indebtedness, to fund reserve funds, capitalized interest, costs of credit enhancement, costs of interest rate hedging arrangements or any other financing costs associated with such indebtedness. Such indebtedness shall be solely payable from, and may be secured by a pledge and lien on, the proceeds of the tax levied and imposed hereunder. The annual indebtedness, including principal and interest, shall not exceed the estimated annual proceeds of the tax authorized by this Chapter.

- Section 3.** Compliance with the California Environmental Quality Act. The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). The transactions and use tax imposed by the adoption of this Ordinance is general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. 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 either such effect, the city would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.
- Section 4.** Adjustment of Appropriations Limit. Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2022-23 and each year thereafter.
- 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.
- Section 6.** Effective Date and Publication. This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately. Notwithstanding the foregoing, Chapter 3.32 of the Municipal Code shall not be amended until the operative date.

4.4 ATTACHMENT 1

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a meeting of the Larkspur City Council held on July 20, 2022, and thereafter passed and adopted by the Larkspur City Council on a regular meeting held on August 3, 2022, by the following vote:

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

ABSTAIN: COUNCILMEMBER:

Dan Hillmer, Mayor

ATTEST:

Alison Foulis, City Clerk

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