

Title 3

REVENUE AND FINANCE

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*** OTP 1-87**

Chapter 3.01

UTILITY USERS TAX

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Section 3.01.010 Authority and Purpose. This ordinance is adopted pursuant to the provisions of California Government Code Section 53723 for the purpose of providing general municipal revenue to be used for general municipal purposes. (OTP 1-87 §1, 1987)

Section 3.01.020 Tax Imposed. There is hereby imposed an annual utility users tax in the amount set forth in Sections 6.A. and 7.A hereof to raise revenues for the general governmental purposes of the City. Such general tax shall be levied for each fiscal year by the City. This ordinance may be amended by a majority vote of the City Council of Sand City to decrease, but not to increase, the tax rates set forth in Sections 6.A. and 7.A. hereof, percentage. (OTP 1-87 §2, 1987)

Section 3.01.030 Definitions. Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this ordinance.

A. “City” shall mean the City of Sand City, California, including all the territory and jurisdiction thereof as presently constituted, and any and all of the same which shall later come into

B. “Collector” shall mean the City manager of the City.

C. “Electrical Corporation” and “Gas Corporation” shall have the same meanings, except as hereafter provided, as defined in Sections 218 and 222, respectively, of the Public Utilities Code of the State of California.

D. “In the City” shall mean physically located, in whole or in part, within the exterior territorial limits of the City.

E. “Month” shall mean a calendar month.

F. “Person” shall mean any domestic and foreign corporation, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society, individual or municipal corporation.

G. “Service supplier” shall mean a person required to collect and remit a tax imposed under the provisions of this ordinance.

H. “Service user” shall mean a person required to pay a tax imposed under the provisions of this ordinance.

I. "Utility tax year" shall mean the fiscal year of Sand City, provided that the initial utility tax year shall be the effective date of this ordinance, through June 30, 1988, inclusive.
(OTP 1-87 §3, 1987)

Section 3.01.040 Conflicts. Nothing contained in this ordinance is intended to conflict with applicable rules, regulations and tariffs of any service supplier subject to the jurisdiction of the California Public Utilities Commission. In the event of any conflict the provisions of said rules, regulations and tariffs shall control. (OTP 1-87 §4, 1987)

Section 3.01.050 Effective date of Tax. The taxes imposed by this ordinance shall be imposed on the effective date of this ordinance, or at the beginning of the first regular billing period thereafter which includes service only from the effective date of this ordinance, and thereafter. (OTP 1-87 §5, 1987)

Section 3.01.060 Electricity Users Tax.

A. Tax Imposed. There is hereby imposed upon every person in the City using electrical energy for any purpose, other than an electrical corporation or a gas corporation, a tax at the rate of 5% of the charges for said service. As used in this section "charges" shall include charges made for (1) metered energy, and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges and annual and monthly charges.

B. Exclusions. As used in this section, the phrase "using electrical energy" shall not be construed to mean:

(1) The storage of such energy by a person in a battery owned or possessed by such person for use in an automobile or other machinery or device apart from the premises upon which the energy was received, provided however, that the phrase shall include the receiving of such energy for the purpose of using it in the charging of batteries; or,

(2) The mere receiving of such energy by an electrical corporation or a government agency at a point within the City for resale.

C. Tax Collection. The tax imposed in this section shall be collected from the service user by the person selling such electrical energy. The amount of the tax collected in one month shall be remitted to the collector on or before the last day of the following month.
(OTP 1-87 §6, 1987)

Section 3.01.070 Gas Users Tax.

A. Tax Imposed. There is hereby imposed upon every person in the City, other than a gas corporation or electrical corporation, using gas which is delivered through mains or pipes for any purpose, a tax at the rate of 5% of the charges made for said service.

B. Exclusions. As used in this section the word “charges” shall not include charges made for gas used in the generation of electrical energy by a public utility or a governmental agency, and the phrase “using gas” shall not be construed to mean the mere receiving of such gas by a gas corporation or governmental agency at a point within the City for resale.

C. Tax Collection. The tax imposed by this section shall be collected from the service user by the person selling the gas. The amount of tax collected in one month shall be remitted to the collector on or before the last day of the following month. (OTP 1-87 §7, 1987)

Section 3.01.080. Collection of Tax.

A. Action by the City. Any tax required to be paid by a service user under the provisions of this ordinance shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the collector shall be deemed a debt owed to the City by the person required to collect and remit. Any person owing money to the City under the provisions of this ordinance shall be liable to an action brought in the name of the City for the recovery of such amount.

B. Duty to Collection; Procedures. The duty to collect and remit the taxes imposed by this ordinance shall be performed as follows:

(1) The tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with regular billing practice of the service supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this ordinance, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this ordinance which said tax the service supplier is required to collect, if the amount paid by the service user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

(2) The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of this ordinance. Where a person receives more

than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

C. Powers and Duties of Collector. The collector shall have the power and duty, and is hereby directed to enforce each and all of the provisions of this ordinance. The collector shall have the power to adopt rules and regulations not inconsistent with the provisions of this ordinance for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed; and a copy of such rules and regulations shall be on file and available for the public examination in the collector's office.

D. Administrative Agreements. The collector may make administrative agreements to vary the strict requirements of this ordinance so that the collection and remittance on any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier so long as the overall result of said agreements results in collection of the tax in conformance with the general purpose and scope of this ordinance. A copy of each agreement shall be on file and available for public examination in the collector's office. (OTP 1-87 §8, 1987)

Section 3.01.090. Delinquent Taxes; Service Supplier. Taxes collected from a service user which are not remitted to the collector on or before the due dates provided in this ordinance are delinquent.

A. General Penalty. In addition to remitting the amount of the tax, any service supplier who fails to remit any tax imposed by this ordinance within the time required and upon ten days written notice to the service supplier of its failure to remit, shall pay a penalty of ten percent of the amount of the tax which shall be added on the last day of each month following the date on which remittance was due until the tax and penalties are remitted.

B. Penalty for Fraud. If the collector determines that the non-payment by any service supplier of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added to the penalty imposed by Section 9.A.

C. Interest. In addition to the penalties imposed by Sections 9.A. and 9.B. any service supplier who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent per month, or fraction thereof on the amount of the tax exclusive of penalties, from the date on which the remittance first became delinquent until paid.

D. Penalty and Interest Part of Tax. Every penalty imposed upon a service supplier and such interest as accrues under the provisions of Sections 9.A. to 9.C.

inclusive, shall become a part of the tax required to be remitted. (OTP 1087 §9, 1987)

Section 3.01.100. Delinquent Taxes; Service User.

A. General Penalty. In addition to paying the amount of the tax, any service user who fails to pay any tax imposed by this ordinance within sixty days of the date of the notice of the amount of tax due from the service supplier shall pay a penalty of ten percent of the amount of the tax which shall be added on the last day of each month following the date on which payment was due until the tax and penalties are paid.

B. Penalty for Fraud. If the collector determines that the non-payment by any service user of any tax imposed by this ordinance is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalty imposed by Section 10.A.

C. Interest. In addition to the penalties imposed by Sections 10.A. and 10.B. any service user who fails to pay any tax imposed by this ordinance shall pay interest at the rate of one percent per month, or fraction thereof, exclusive of penalties from the date on which the remittance first became delinquent until paid, and a collection charge of ten dollars (\$10.00) for each delinquent account.

D. Penalty and Interest Part of Tax. The penalties, interest and collection charges imposed in Sections 10.A. to 10.C., inclusive, shall not be collected by the service supplier but by the collector.

E. Collection of Penalty and Interest. Every penalty imposed upon a service user and such interest as accrues under the provisions of Sections 10.A. to 10.C., inclusive, shall become a part of the tax imposed by this ordinance. (OTP 1-87 §10, 1987)

Section 3.01.110. Failure to Collect and Report Tax.

A. Collector to Estimate Tax Due. If any service supplier shall fail to make, within the time provided in this ordinance any report and remittance of said tax or any portion thereof required by this ordinance the collector shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this ordinance and payable by any service supplier who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such service supplier the tax, interest and penalties provided for by this ordinance. In case such determination is made, the collector shall give a

notice of the amount to be assessed by serving it personally or depositing it in the United States Mail, postage prepaid, addressed to the service supplier so assessed at his last known place of address.

B. Hearing on Determination of Tax. The service supplier may within twenty days after the serving or mailing of the notice referred to in Section 11.A. make application in writing to the collector for a hearing on the amount assessed. If application by the service supplier for hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the collector shall become final and conclusive and immediately due and payable. If such application is made, the collector shall give not less than ten days written notice in the manner prescribed herein to the service supplier to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the service supplier may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.

C. Determination of Tax Following Hearing; Notice When Due. After a hearing on the amount of tax assessed, the collector shall determine the proper tax to be remitted, and shall thereafter give written notice to the service supplier in the manner prescribed above of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in this ordinance.

D. Collection of Taxes From Service User. Whenever the collector determines that a service user has deliberately withheld the amount of any tax imposed on him by the provisions of this ordinance from the amounts remitted to a service supplier required to collect the tax, or that a service user has failed to pay the amount of the tax to such service supplier for a period of four or more billing periods, or whenever the collector deems it in the best interest of the City, he may relieve such service supplier of the obligation to collect taxes due under this ordinance from certain named service users for specified billing periods. The collector shall notify the service user that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes, plus any penalty imposed and such interest as may be due pursuant to the provisions of Section 10. Of this ordinance. The notice shall be served on the service user by handing to him personally or by deposit of the notice in the United States Mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the service supplier required to collect the tax; or, should the service user have changed his address, to his last known address. (OTP 1-87 §11, 1987)

Section 3.01.120 Appeals.

A. Who May Appeal. Any person aggrieved by any decision of the collector pursuant to this ordinance may appeal to the City Council by filing a notice of appeal with the collector within fifteen days of the serving, by mail, of the decision.

B. Hearing Notice. The Council shall fix a time and place for hearing such appeal. The collector shall give notice thereof in writing to such person by serving it personally or by depositing it in the United States Mail, postage prepaid, addressed to such person at his last known place of address.

C. Hearing; Determination. The Council shall have authority to determine all questions raised on such appeal at the time of the hearing. No determinations made by the Council shall conflict with any substantive provision in this ordinance. (OTP 1-87 §12, 1987)

Section 3.01.130 Records. It shall be the duty of every service supplier required to collect and remit to the City any tax imposed by this ordinance, to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax that such service supplier may have been requested to collect and remit to the City, which records the collector shall have the right to inspect at all reasonable times. (OTP 1087 §13, 1987)

Section 3.01.140 Refunds.

A. Whenever the amount of any tax, interest or penalty has overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this ordinance, it may be refunded as provided in this section provided a claim in writing therefore, stating under penalty of perjury the specified grounds upon which the claim is founded is filed with the collector within three years of the date of payment. The claim shall be on forms furnished by the collector.

B. A service supplier may claim a refund or take as credit against taxes collected and remitted an amount overpaid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the collector that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither the refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the service supplier.

C. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Section 3.01.150 Elderly and Dis-abled Exemption.

A. Exemption. Every person who is either elderly or disabled shall be exempt from the payment of the tax imposed by this ordinance. "Elderly" means every natural person over the age of 65 years. "Disabled" means a natural person defined in California Vehicle Code Section 22511.5(a). To be eligible for exemption a person must file an application with the collector as provided in Section 15.B. and provide proof that they are:

- (1) elderly or disabled, and,
- (2) jointly or severally liable for the payment of the utility bills, and,
- (3) the utilities are used only at their principal place of residence.

B. Application. Applications for exemption may be filed with the collector at any time on such forms as he may provide. Applications shall be verified by declaration under penalty of perjury and shall contain such information as may be required by the collector.

C. Review and Certification. The collector shall review each application and shall certify the service users as exempt if the eligibility requirements of Section 15.A. are met, except that no exemption shall be granted to a service user who is receiving service from a service supplier through a master meter and no exemption shall be granted with respect to any tax imposed by this ordinance which is or has been paid by a public agency or where the service user receives funds from a public agency specifically for the payment of such tax.

D. Effective Date. Upon completion of the application and certification, the collector shall submit the information to the service suppliers. The exemption shall become effective at the next billing cycle after the service suppliers have entered the exemption in their records.

E. Prior Taxes to be Collected Taxes. Taxes billed by the service supplier to the service user prior to removing the service user from its tax billing procedure, shall be collected from the service user and the service user shall pay such taxes to the service supplier. Taxes billed to and paid by the service user between the time that the application for exemption is filed and the service supplier removes the service user from its taxing procedure will not be refunded to the service user.

F. Duration of Exemption. Exemptions certified by the collector shall continue so long as the facts supporting the qualification for exemption shall exist; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; and provided further, that such individual may nevertheless apply for a new exemption with each change of address or residence.

G. Duty To Disclose; Disqualification. Any service user who has been exempt under this section shall notify the collector within ten days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption does not exist or ceases to exist.

Any service supplier, who determines by any means that a new or nonexempt service user is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or exempt user of the same meter or connection, shall immediately notify the collector of such fact and the collector shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with, and where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

H. Audit by Collector. The collector shall have the power and right to demand evidence of continued eligibility of a service user for exemption under the provisions of this section. (OTP 1-87 §15, 1987)

Section 3.01.160. Other Exemptions

Nothing in this ordinance shall be construed as imposing a tax upon any person if the imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the State of California. (OTP 1-87 §16, 1987)

Section 3.01.170. Saving Clause. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or any part hereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance or any part hereof. The City Council hereby declares that it would have passed each section, subsection, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional. (OTP 1-87 §17, 1987)

Section 3.01.180. Date of Effect. If approved by a majority of the voters, this ordinance shall be considered as adopted upon the date that the vote is declared by the City Council and shall go into effect ten days after that date, as provided in California Elections Code Section 4013. (OTP 1-87 §18, 1987)

Chapter 3.04

FISCAL PROCEDURES

3.04.010 Adoption--Authority.

3.04.020 Presentation of demands.

3.04.030 Audit--Approval or rejection.

3.04.010 Adoption--Authority. The ordinance codified in this chapter is adopted pursuant to the provisions of Sections 37201 and 37202 of the Government Code of the state of California. (Ord. 60-7 §1, 1960)

3.04.020 Presentation of demands. All demands against the city shall be presented to the clerk. (Ord. 60-7 §2, 1960)

3.04.030 Audit--Approval or rejection. All such demands shall be audited by the treasurer and submitted for examination and approval or rejection to the council in the manner provided for in Section 37202 of the Government Code. (Ord. 60-7 §3, 1960)

Chapter 3.08

TRANSFER OF TAX ASSESSMENT AND COLLECTION DUTIES

Sections:

3.08.010 Declaration of transfer.

3.08.010 Declaration of transfer. The city council elects to proceed under Title 4, Division 4, Chapter 1, Article 4, Sections 43090 through 43101, of the Government Code of the State of California for the assessment, computation and collection of taxes by the officials of the county respectively responsible therefor. (Ord. 60-6 §1, 1960)

Chapter 3.12

FUNDS AND ACCOUNTS

Sections:

3.12.010 Established.

3.12.020 Moneys to be paid into funds and/or accounts.

3.12.030 Purpose.

3.12.010 Established. There is established in the city the following funds:

A. A general fund;

B. A special gas tax street improvement fund, as provided in Sections 2113 and 2114.5 of the Streets and Highways Code of the state of California;

C. A motor vehicle license fee account as provided in Section 11005 of the Revenue and Taxation Code of the state of California;

D. A traffic safety account, as provided in Section 1463 of the Penal Code of the state of California. (Ord. 60-14 §1, 1960)

3.12.020 Moneys to be paid into funds and/or accounts. All moneys received by the city from the state pursuant to said sections of the Revenue and Taxation Code and the Streets and Highways Code, and all moneys received pursuant to Section 1463 of the Penal Code of the state of California shall be paid respectively into said funds and/or accounts. (Ord. 60-14 §2, 1960)

3.12.030 Purpose. All moneys in said funds and/or accounts shall be expended exclusively for the purposes authorized by and subject to all of the provisions of the respective legislative acts providing therefore. (Ord. 60-14 §3, 1960)

Chapter 3.16

SALES AND USE TAX

Sections:

- 3.16.010 Short title.**
- 3.16.020 Rate.**
- 3.16.030 Operative date.**
- 3.16.040 Purpose.**
- 3.16.050 Contract with state.**
- 3.16.060 Sales tax.**
- 3.16.070 Place of sale.**
- 3.16.080 Use tax.**
- 3.16.090 Adoption of provisions of state law.**
- 3.16.100 Limitations on adoption of state law.**
- 3.16.110 Permit not required.**
- 3.16.120 Exclusions and exemptions.**
- 3.16.130 Enjoining collection prohibited.**
- 3.16.140 Credit for Payment of Sand City Redevelopment Agency Sales and Use Tax**

3.16.010 Short title. The ordinance codified in this chapter shall be known as the uniform local sales and use tax ordinance. (Ord. 73-74 §1, 1973)

3.16.020 Rate. The rate of sales tax and use tax imposed by this chapter shall be one percent. (Ord. 73-74 §2, 1973)

3.16.030 Operative date. The ordinance codified in this chapter shall be operative on January 1, 1974. (Ord. 73-74 §3, 1973)

3.16.040 Purpose. The city council declares that the ordinance codified in this chapter is adopted to achieve the following, among other purposes, and directs that the provisions of this chapter 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 practicable to, and requires the least possible deviation from the existing statutory and administrative procedure 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 chapter. (Ord. 98-03, 1998; Ord. 73-74 §4, 1973)

3.16.050 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 chapter; 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 following the execution of such a contract rather than the first day of the first calendar quarter following the adoption of the ordinance codified in this chapter. (Ord. 73-74 §5, 1973)

3.16.060 Sales tax. For the privilege of selling tangible personal property at retail a tax is imposed upon all retailers in the city at the rate stated in Section 3.16.020 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. (Ord. 73-74 §6, 1973)

3.16.070 Place of sale. For the purposes of this chapter, 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 the rules and regulations to be prescribed and adopted by the State Board of Equalization. (Ord. 73-74 §7, 1973)

3.16.080 Use tax. An excise tax is 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 3.16.020 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. (Ord. 73-74 §8, 1973)

3.16.090 Adoption of provisions of state law. Except as otherwise provided in this chapter 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 adopted and made a part of this chapter as though fully set forth in this chapter. (Ord. 73-74 §9, 1973)

3.16.100 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 the 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 Board of Equalization, 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 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 6701, 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. (Ord. 73-74 §10, 1973)

3.16.110 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 chapter. (Ord. 73-74 §11, 1973)

3.16.120 Exclusions and exemptions.

A. The amount subject to tax shall not include any sales or use tax imposed by the state upon a retailer or consumer.

B. 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 chapter.

C. 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 waterborne vessels to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

D. The storage, use or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed by such operators directly and exclusively in the carriage of persons or property of such vessels for commercial purposes is exempted from the use tax.

E. 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.

F. In addition to the exemptions provided in Section 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. (Ord. 84-10 §2, 1984; Ord. 73-74 §13, 1973)

3.16.130 Enjoining collection prohibited. 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 chapter, 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. (Ord. 73-74 §16, 1973)

3.16.140 Credit for Payment of Sand City Redevelopment Agency Sales and Use Tax. Persons required to pay any tax pursuant to this Chapter shall have a credit against the payment of such tax in the amount of sales and use tax paid, if

any, to the Redevelopment Agency of the City of Sand City pursuant to Agency Ordinance No. RA-1. (Ord. 89-3 §2, 1989)

Chapter 3.20

REAL PROPERTY TRANSFER TAX

Sections:

3.20.010 Title.

3.20.020 Tax imposed.

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3.20.090 Administration.

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3.20.010 Title. This chapter shall be known as the "real property transfer tax ordinance of the city." It is adopted pursuant to the authority contained in Part 6.7, commencing with Section 11901, of Division 2 of the Revenue and Taxation Code of the state of California. (Ord. 67-53 §1, 1967)

3.20.020 Tax imposed. There is imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the city shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrances remaining thereon at the time of sale, exceeds one hundred dollars, a tax at the rate of twenty-seven and one-half cents for each five hundred dollars or fractional part thereof. (Ord. 67-53 §2, 1967)

3.20.030 Payment. Any tax imposed pursuant to Section 3.20.020 shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued. (Ord. 67-53 §3, 1967)

3.20.040 Exemptions. The tax imposed by this chapter shall not apply to the following:

A. Instruments Given to Secure Debt. Any instrument in writing given to secure a debt.

B. Instruments Taken In Lieu of Foreclosure. Any tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgage, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

C. Marital Property.

1. Any tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or other writing which purports to transfer, divide, or allocate community, quasi-community, or quasi-marital property assets between spouses for the purpose of effecting a division of community, quasi-community, or quasi-marital property which is required by a judgment decreeing a dissolution of the marriage or legal separation, by a judgment of nullity, or by any other judgment or order rendered pursuant to Part 5, commencing with Section 4000, of Division 4 of the Civil Code, or by written agreement between the spouses, executed in contemplation of any such judgment or order, whether or not the written agreement is incorporated as part of any of those judgments or orders.

2. In order to qualify for the exemption provided in subdivision 1 of this subsection, the deed, instrument, or other writing shall include a written recital, signed by either spouse, stating that the deed, instrument, or other writing is entitled to the exemption. (Ord. 86-7 Art. 3 §3.1, 1986; Ord. 67-53 §4, 1967)

3.20.050 Exemptions--Agencies. Any deed, instrument or writing, to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title. (Ord. 86-7 Art. 3 §3.2, 1986; Ord. 67-53 §5, 1967)

3.20.060 Exemptions--Making, delivering or filing of conveyances.

A. Any tax imposed pursuant to this chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization

or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place of organization is effected.

B. Subsection A of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change. (Ord. 67-53 §6, 1967)

3.20.070 Exemptions--Making or delivery of conveyances--Securities and Exchange Commission. Any tax imposed pursuant to this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

A. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

B. Such order specifies the property which is ordered to be conveyed;

C. Such conveyance is made in obedience to such order. (Ord. 67-53 §7, 1967)

3.20.080 Exemptions--Transfer of partnership interest.

A. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if:

1. Such a partnership, or another partnership, is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and
2. Such a continuing partnership continues to hold the realty concerned.

B. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value, exclusive of the value of any lien or encumbrance remaining thereon, all realty held by such partnership at the time of such termination.

C. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subsection B of this section, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination. (Ord. 67-53 §8, 1967)

3.20.090 Administration. The county recorder shall administer this chapter in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code and the provisions of any county ordinance adopted pursuant thereto. (Ord. 67-53 §9, 1967)

3.20.100 Refunds. Claims for refund of taxes imposed pursuant to this chapter shall be governed by the provisions of Chapter 5, commencing with Section 5096, of Part 9 of Division 1 of the Revenue and Taxation Code of the state of California. (Ord. 67-53 §10, 1967)

Chapter 3.24

TRANSIENT OCCUPANCY TAX

Sections:

- 3.24.010 Title.**
- 3.24.020 Definitions.**
- 3.24.030 Tax imposed.**
- 3.24.040 Exemptions.**
- 3.24.050 Amount--Timeshare exception.**
- 3.24.060 Revenue placed in general fund.**
- 3.24.070 Operator's duties.**
- 3.24.080 Registration.**
- 3.24.090 Reporting and remitting.**

3.24.100 Penalties and interest.

3.24.110 Failure to collect and report--Determination of tax.

3.24.120 Appeal.

3.24.130 Records.

3.24.140 Refunds.

3.24.150 Actions to collect.

3.24.010 Title. This chapter shall be known as the uniform transient occupancy tax ordinance of the city. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.020 Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. "Hotel" means any structure or any portion of any structure which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home at a fixed location if said location is outside a mobile home park and if such mobile home is rented to someone other than an employee of the owner or operator of the same for occupancy as a transient for a period not exceeding thirty days, or other similar structure or portion thereof.

B. "Occupancy" means the use or possession, or the right to the use or possession of, any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

C. "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

D. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

E. "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money,

goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction there from whatsoever.

F. "Tax administrator" means the city clerk.

G. "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupancy providing for a longer period of occupancy. In determining whether a person is transient, uninterrupted period of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.030 Tax imposed. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part) , 1982)

3.24.040 Exemptions.

A. No tax shall be imposed upon the following:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax provided in this chapter;
2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

B. No exemption shall be granted except upon a claim therefore made at the time the rent is collected and under penalty of perjury upon a form prescribed by the tax administrator. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.050 Amount--Timeshare exception. The city approves and imposes an eight percent transient lodging tax. The transient lodging tax will be imposed by the city for the occupancy of any room or rooms in a hotel, inn, motel, tourist

home or other lodging facility unless such occupancy is for a period of more than thirty days. For the purposes of this section, occupancy does not include the right of an owner of a timeshare estate in a room or rooms in a timeshare project, or the guest of that owner, to occupy the room or rooms or other real property in which that owner retains the timeshare estate. "Timeshare estate" means a timeshare estate, as defined by Section 11003.5 of the Business and Professions Code, and the term "guest of that owner" means a person who occupies real property accompanied by the owner of a timeshare estate in that real property, or who exercises that owner's right of occupancy of a timeshare estate without payment of any compensation to the owner. The term "guest of that owner" specifically includes a person occupying a timeshare unit pursuant to any form of exchange program. The timeshare exception under this section shall not affect or apply to the authority of the tax administrator to collect a transient occupancy tax from timeshare projects which were in existence as of May 1, 1985, and which timeshare projects were then subject to such a tax imposed by an ordinance duly enacted prior to May 1, 1985. (Ord. 86-7 Art. 3 §4.1, 1986; Ord. 82-7 §1.0, 1982)

3.24.060 Revenue placed in general fund. Revenue generated from the transient lodging tax shall be of unrestricted use to the city and placed in the city's general fund. (Ord. 82-7 §2.0, 1982)

3.24.070 Operator's duties. Each operator shall collect the tax imposed by the ordinance codified in this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.080 Registration. Within thirty days after the effective date of the ordinance codified in this chapter, or within thirty days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register said hotel with the tax administrator and obtain from him a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued;

D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit." (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.090 Reporting and remitting. Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator. (Ord. 86-7 Art. 3 §4.0(part), 1986; Ord. 82-7 (part), 1982)

3.24.100 Penalties and interest.

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit

any tax imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof, on the amount of the tax, exclusive of penalties, from the date upon which the remittance first became delinquent until paid.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.110 Failure to collect and report--Determination of tax. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may within ten days after the serving or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.24.120. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.120 Appeal. Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk within fifteen days of the serving or mailing of the determination of tax due. The council shall fix a time and place for hearing such appeal, and the city clerk shall give

notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive and shall be served upon the applicant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.130 Records. It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.140 Refunds.

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three years of the date of payment. The claim shall be on forms furnished by the tax administrator.

B. An operator may claim a refund or take as credit against taxes collected and remitted, the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the tax administrator, or when the transient having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

3.24.150 Actions to collect. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. 86-7 Art. 3 §4.0 (part), 1986; Ord. 82-7 (part), 1982)

Chapter 3.28

FEES AND CHARGES

Sections:

3.28.010 Publication reproduction costs.

3.28.020 Filing Fee For Notice of Intent to Circulate Initiative Petition.

3.28.010 Publication reproduction costs.

A. The city shall charge the actual cost of reproduction for publications of the city furnished to members of the public.

B. The cost of such publications shall be calculated by the city administrator in the exercise of reasonable discretion. (Ord. 85-3 §§1, 2, 1985)

3.28.20 Filing Fee For Notice of Intent to Circulate Initiative Petition.

Any person filing a notice of intent with the City Clerk to circulate an initiative petition shall pay a fee to the City at the time of filing such notice in the amount of two hundred (\$200) dollars, which said fee shall be refunded to the filer of the petition if, within one year of the date of filing the notice of intent, the City Clerk certifies the sufficiency of the petition. (Ord. 99-03 §1, 1999)

Chapter 3.32

BUILDING DEVELOPMENT FEE

Sections:

3.32.010 Imposed.

3.32.020 Purpose.

3.32.030 When due.

3.32.040 Funds maintained in separate account.

3.32.010 Imposed. The city imposes a building development fee of ten cents per square foot of gross floor area. This fee shall apply to all new additions and construction of residential, commercial or industrial structures. (Ord. 82-4 §1.0, 1982)

3.32.020 Purpose. Revenue generated from the building development fee shall be used for construction and maintenance of traffic signage, street lighting, offsite parking, minor street repairs and other public improvements deemed appropriate by the city council. (Ord. 82-4 §2.0, 1982)

3.32.030 When due. The building development fee shall be due and payable prior to issuance of building permits. (Ord. 82-4 §3.0, 1982)

3.32.040 Funds maintained in separate account. A separate account shall be established by the city treasurer to maintain funds generated by this fee. (Ord. 82-4 §5.0, 1982)

Chapter 3.36

GENERAL PURPOSE TRANSACTIONS AND USE TAX

Sections:

- 3.36.010 Title**
- 3.36.020 Operative Date**
- 3.36.030 Purpose**
- 3.36.040 Contract with State**
- 3.36.050 Transactions Tax Rate**
- 3.36.060 Place of Sale**
- 3.36.070 Use Tax Rate**
- 3.36.080 Adoption of provisions of State Law**
- 3.36.090 Limitations on Adoption of State Law and Collection of Use Taxes**
- 3.36.110 Permit not Required**
- 3.36.110 Exemptions and Exclusions**
- 3.36.120 Amendments**
- 3.36.130 Enjoining Collection Forbidden**
- 3.36.140 Severability**
- 3.36.150 Codification**
- 3.36.160 Effective Date**

3.36.010 Title. This ordinance shall be known as the City of Sand City General Purpose Transactions and Use Tax Ordinance. The City of Sand City hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.36.020 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.

3.36.030 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 consistent 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 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 retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provision 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 to this ordinance.

3.36.040 Contract with State. Prior to the Operative Date, the City shall contract with the State Board of Equalization 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 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 following the execution of such a contract.

3.36.050 Transactions Tax Rate. For the privilege of selling tangible personal property at retail, a tax hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half of one percent (0.050%) 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.

Section 3.36.060 Place of Sale. For the purpose 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 State Board of Equalization.

Section 3.36.070 Use Tax Rate. An excise tax 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-half of one percent (0.50%) 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.

Section 3.36.080 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.

Section 3.36.090 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 therefore. However, the substitution shall not be made when:

1. The word "State" is used as a part of title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, 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 the City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, 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 provision 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 remains 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.

Section 3.36.100 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.

Section 3.36.110 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 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 exemptions from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business

out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the Operative Date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exemptions 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 issue 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, whether directly or indirectly, at a place of business of the retailer in the City 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.

Section 3.36.120 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.

Section 3.36.130 Enjoining Collection Forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suite, 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.

Section 3.36.140 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 3.36.150 Codification. Upon adoption of this ordinance pursuant to the voter approval referenced in herein, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this ordinance in the Sand City Municipal Code.

Section 3.36.160 Effective Date. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately upon the approval of this transaction and use taxes by a majority of qualified voters in Sand City voting in the November 2, 2004 election on a measure to adopt this tax.