

ORDINANCE NO. ____

ORDINANCE OF THE CITY OF CHULA VISTA ADDING CHAPTER 3.34 TO TITLE 3 OF THE CHULA VISTA MUNICIPAL CODE TO ESTABLISH A ONE- HALF CENT GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION INCLUDING PROVISIONS FOR CITIZENS' OVERSIGHT AND ACCOUNTABILITY

WHEREAS, at the June 6, 2017 Chula Vista City Council meeting, the City Manager was directed to report back to the Chula Vista City Council within 120 days with a plan to address the perceived chronic understaffing of the Police and Fire Departments, with such plan considering all options, including: i) alternative service models that may improve effectiveness and reduce costs; and ii) potential funding sources; and

WHEREAS, staff reported back to the City Council on September 26, 2017, with a Public Safety Staffing Report assessing the following factors:

- Community and stakeholder feedback/input on priorities for delivery of public safety services
- Short and long-term staffing level standards for Chula Vista Police Department (CVPD) and Chula Vista Fire Department (CVFD)
- Response times for Priority 1 and Priority 2 emergency calls for CVPD
- Consideration of alternate public safety service delivery models
- Accounting for growth: 5-year, 10-year, and build-out projection models
- Fiscal forecasts and impacts; and

WHEREAS, at the September 26, 2017 Chula Vista City Council meeting, the City Council directed the City Manager to come back to the Council with options to address staffing issues and include revenue options; and

WHEREAS, at the December 19, 2017 Chula Vista City Council meeting, after considering City staff's presentation of the public safety staffing strategies report which identified public safety critical needs as well as funding options, the City Council directed the City Manager to return with an item, for Council consideration, to place a ½ cent general sales tax on the ballot in 2018; and

WHEREAS, due to the reductions taken in the Police Department during the Great Recession, staffing levels have fallen to below pre-recession levels while the City's population has grown by approximately 10%; and

WHEREAS, the City's Police Department is staffed at a per capita ratio of 0.86 per 1,000 residents, which is below optimal staffing levels; and

WHEREAS, the Fire Department will need to add staff to accommodate growth and is currently planning for the opening of several new fire stations, adding fire squads in the eastern area of the City and continuing the transition to a 4/0 staffing model; and

WHEREAS, the City has conducted public outreach to identify the most critical needs and priorities with respect to addressing the City's public safety staffing needs , including forming a Public Safety Advisory Committee (PSAC) composed of City residents, business owners, and other stakeholders; and

WHEREAS, Public Safety is a top priority of the City, with 67% of discretionary revenues allocated to Police and Fire services; and

WHEREAS, although the City's finances have improved since the recent recession, the City is still experiencing financial challenges and, as reflected in the long term financial plan, will be unable to address the public safety critical staffing needs over the next 10 years; and

WHEREAS, the City has determined that the enactment of a general local transactions and use tax (commonly known as a "sales tax") would allow the City to significantly address the critical public safety staffing needs as presented in the Intended Public Safety Expenditure Plan without compromising existing City services; and

WHEREAS, pursuant to Article XIII C of the California Constitution, and California Revenue and Taxation Code Section 7285.9, the City has the authority to enact a local sales tax for general purposes with the approval of the majority of voters in the City voting in an election on the issue; and

WHEREAS, the City Council directed staff to prepare for submittal to the voters an ordinance enacting a one-half cent sales tax consistent with all applicable general purpose tax laws, including measures providing for citizens' oversight, separate accounting and independent audits; and

WHEREAS, proposed Chapter 3.34 of the Chula Vista Municipal Code, set forth below, establishes a transactions and use tax to be administered by the California Department of Tax and Fee Administration consistent with City Council direction; and

WHEREAS, concurrently herewith the City Council is adopting the Intended Public Safety Spending Plan expressing its intention to expend new sales tax revenues on Public Safety critical needs, as more particularly described therein (the "City Council Intended Public Safety Expenditure Plan ").

NOW, THEREFORE, subject to approval by an affirmative, simple majority vote of the people as required by law, the People of the City of Chula Vista do ordain as follows:

SECTION 1:

The Chula Vista Municipal Code is hereby revised to add Chapter 3.34 as set forth below, thereby enacting a general local transactions and use tax within the City of Chula Vista, to be administered by the California Department of Tax and Fee Administration:

CHAPTER 3.34
CHULA VISTA ONE -HALF CENT TRANSACTIONS AND USE TAX

Sections:

- 3.34.010 Title.
- 3.34.020 Operative date.
- 3.34.030 Purpose.
- 3.34.040 Contract with state.
- 3.34.050 Transactions tax rate.
- 3.34.060 Place of sale.
- 3.34.070 Use tax rate.
- 3.34.080 Adoption of provisions of state law.
- 3.34.090 Limitations on adoption of state law and collection of use taxes.
- 3.34.100 Permit not required.
- 3.34.110 Exemptions and Exclusions.
- 3.34.120 Amendments of Revenue and Taxation Code.
- 3.34.130 Enjoining collection forbidden.
- 3.34.140 Amendments by City Council.
- 3.34.150 Use of proceeds.
- 3.34.160 Citizens' oversight and accountability.
- 3.34.170 Severability.

3.33.010 TITLE.

This ordinance shall be known as the Chula Vista One-Half Cent Transaction and Use Tax Ordinance. The City of Chula Vista hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

3.33.020 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.

3.33.030. 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 general 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 vote 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 general 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 general 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 general 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.

3.33.040 CONTRACT WITH STATE.

Prior to the Operative Date, 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 effective date of such a contract.

3.33.050 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-half of one percent (0.5%) 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.

3.33.060 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.

3.33.070 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-half of one percent (0.5%) 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.

3.33.080 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.

3.33.090 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 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 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.

3.33.100 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.

3.33.110 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 Chapter 2 of 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 subsections (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 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 consumptions of which is subject to the use tax.

3.33.120 AMENDMENTS OF REVENUE AND TAXATION CODE

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.

3.33.130 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.

3.33.140 AMENDMENTS BY CITY COUNCIL.

The following amendments to this Ordinance must be approved by the voters of the City: increasing the tax rate; revising the methodology for calculating the tax, such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of law); or terminating the tax. The City Council may otherwise amend this Ordinance without submitting the amendment to the voters for approval in any manner which does not constitute a tax “increase” as that term is defined in Government Code section 53750(h).

3.33.150 USE OF PROCEEDS.

The proceeds from the tax imposed by this Ordinance shall be for unrestricted general revenue purposes of the City and shall be received into the general fund of the City. Nothing in this Ordinance shall constitute the tax imposed under this Ordinance as a special tax, or bind the City to use the proceeds for any specific purpose or function; the City Council shall retain discretion to expend the proceeds of the tax for any lawful purpose of the City.

3.33.160 CITIZENS' OVERSIGHT AND ACCOUNTABILITY.

In order to provide for citizens' oversight, transparency and accountability in connection with expenditures of tax revenues generated under the terms of this Ordinance, the City shall do the following:

A. Line Item Accounting. All revenue generated by the tax ("Measure Y Revenues") shall be accounted in the General Fund as a separate line item entitled "Local Transactions and Use Tax – Measure 'Y' Revenues." Measure Y Revenues and expenditures will be tracked and accounted for by City Finance Department staff in accordance with Generally Accepted Accounting Principles (GAAP), and presented annually in a report (the "Finance Department Report") to the Citizens' Oversight Committee ("COC") created pursuant to subdivision D., below

B. Annual Submittal of Measure Y Public Safety Expenditure Plan. If Measure 'Y' is approved by the voters, beginning in Fiscal Year 2018-19, and for each subsequent year, prior to City Council consideration of the City's annual budget, City staff will prepare and present to the COC for its review a spending plan for the Measure 'Y' Revenues. Such plan (the "Measure 'Y' Spending Plan") shall be (1) consistent with the City Council Intended Public Safety Expenditure Plan approved concurrently with this Ordinance; (2) include specific proposals for near term expenditures; and (3) a plan for expenditures for the next ten-years to address the "Phase I" Critical Needs described therein. After review by the COC, the Measure 'Y' Spending Plan for the upcoming Fiscal Year shall be incorporated into the City Manager's proposed budget, and then presented to the City Council for its consideration and action, in its discretion, as part of the City's annual budget process. The City Council must consider for approval the expenditure of projected Measure 'Y' Revenues as a separate line item category in each year's budget. The COC's duties under this section shall continue until and unless the City Council appoints another commission, committee, or group to be responsible for reporting to the City Council, pursuant to section D., below.

C. Annual, Independent Audit. Beginning with the fiscal year 2018-2019, the City's independent auditors shall, as part of their annual audit of the City's financial statements, review the collection and expenditure of Measure 'Y' Revenues.

D. Measure Y Oversight Committee. Prior to the Operative Date, the City shall create and convene a Citizens' Oversight Committee ("COC"). The function of the COC shall be to review and report on City compliance with the terms of this Ordinance and the spending guidelines contained in the City Council Intended Public Safety Expenditure Plan and each Measure Y Spending Plan presented to and approved by the City Council thereafter. The COC shall operate in accordance with the Ralph M. Brown Act, which includes requirements that

meetings be noticed in advance and held in public. The COC shall be created by City Council ordinance consistent with the terms of this Section adopted no later than 150 days following the date of the election at which Measure Y is approved by the voters. The COC may be disbanded following the implementation of "Phase I" Critical Needs, as reported in the Intended Public Safety Expenditure Plan. If the City Council elects to disband the COC, the City's Growth Management Oversight Commission, or an appropriate alternative citizens' group or committee designated by the City Council, shall be responsible for reporting to the City Council, in a manner to be determined by the City Council, regarding the collection and expenditure of Measure Y Revenues and the resulting impacts on public safety.

3.33.170 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.

Such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This People of the City of Chula Vista hereby declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intend that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 2:

The City Clerk shall be authorized to replace the terms "Measure Y" wherever they appear in this Ordinance with the respective ballot designations determined by the County Registrar before this Ordinance is codified.

SECTION 3:

Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

It is hereby certified that this Ordinance was duly adopted by the voters at the **[INSERT DATE]** election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on **[INSERT DATE]**; by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: Kerry K. Bigelow, MMC
CITY CLERK
CITY OF CHULA VISTA
Presented by: Approved as to form by:

Gary Halbert
City Manager

Glen R. Googins
City Attorney