

ORDINANCE NO. ____

ORDINANCE OF THE CITY OF CHULA VISTA ADDING
CHAPTER 3.33 TO TITLE 3 OF THE CHULA VISTA
MUNICIPAL CODE TO ESTABLISH A GENERAL
TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY
THE STATE BOARD OF EQUALIZATION INCLUDING
PROVISIONS FOR CITIZENS' OVERSIGHT AND
ACCOUNTABILITY

WHEREAS, numerous City facilities, including streets, storm drains, sidewalks, curbs, gutters, emergency response equipment and facilities, irrigation systems, park and recreation facilities, and libraries, are in dire need of repair, replacement, upgrading and/or maintenance; and

WHEREAS, the City has conducted significant public outreach to identify the most critical needs and priorities with respect to addressing the City's infrastructure needs, including forming a working group composed of City residents, business owners, and other stakeholders; and

WHEREAS, the public outreach efforts identified certain public priorities with respect to fixing City facilities, including: repairing City streets, potholes, sidewalks, and storm drains; upgrading aging police, fire, and 911 emergency response facilities; maintaining parks, recreation centers, and libraries; and improving water recycling and irrigation systems; and

WHEREAS, although the City's finances have improved since the recent recession, it is still experiencing financial challenges and is unable to address the City's infrastructure deficiencies within its current budget; 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 address the priorities identified above 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 for 10 years consistent with all applicable general purpose tax laws, including measures providing for citizens' oversight, separate accounting and independent audits; and

WHEREAS, proposed Chapter 3.33 of the Chula Vista Municipal Code, set forth below, establishes a transactions and use tax to be administered by the State Board of Equalization consistent with City Council direction.

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 does ordain as follows:

SECTION 1:

The Chula Vista Municipal Code is hereby revised to add Chapter 3.33 as set forth below, thereby enacting a local transactions and use tax within the City of Chula Vista, to be administered by the State Board of Equalization:

CHAPTER 3.33 GENERAL TRANSACTIONS AND USE (SALES) TAX

Sections:

- 3.33.010 Application.
- 3.33.020 Purpose.
- 3.33.030 Operative date.
- 3.33.040 Transactions and use tax imposition and rate.
- 3.33.050 Termination date.
- 3.33.060 Contract with State Board of Equalization.
- 3.33.070 Place of sale.
- 3.33.080 Adoption of provisions of state law.
- 3.33.090 Limitations on adoption of state law and collection of use taxes.
- 3.33.100 Permit not required.
- 3.33.110 Exemptions and Exclusions.
- 3.33.120 Amendments of Revenue and Taxation Code.
- 3.33.130 Enjoining collection forbidden.
- 3.33.140 Amendments by City Council.
- 3.33.150 Use of Proceeds.
- 3.33.160 Citizens' oversight and accountability.
- 3.33.170 Severability.

3.33.010 APPLICATION.

This Ordinance shall be applicable to all incorporated territory within the City of Chula Vista, a chartered municipal corporation ("City").

3.33.020 PURPOSE.

This Ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax, in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 and Section 7285.9 of Part 1.7 of Division 2 of the Revenue and Taxation Code, 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 retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the 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 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.

3.33.030 OPERATIVE DATE.

The Operative Date of this Ordinance shall be the first day of the first calendar quarter commencing more than 110 days after the the approval of the voters of the City of a measure approving the imposition of the transactions and use tax set forth herein, unless a later operative date becomes effective under the provisions of Section 3.33.060.

3.33.040 TRANSACTIONS AND USE TAX IMPOSITION AND RATE.

A. For the privilege of selling tangible personal property at retail within the territorial limits of the City, a tax is hereby imposed upon all retailers in 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 the City on and after the operative date of this Ordinance.

B. 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.

3.33.050 TERMINATION DATE.

The authority to levy the tax imposed by this Ordinance shall expire ten (10) years following the Operative Date.

3.33.060 CONTRACT WITH STATE BOARD OF EQUALIZATION.

Prior to the Operative Date, City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this 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 effective date of such a contract.

3.33.070 PLACE OF SALE.

For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State's 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.

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 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 be taken by or against this 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 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, any 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 Chapter 2 of 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 any 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 TO 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 extending the term of the Tax. The City Council may otherwise amend this Ordinance without submitting the amendment to the voters for approval.

3.33.150 USE OF PROCEEDS.

The proceeds from the Tax imposed by this Ordinance shall be for general governmental 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. Separate Fund Accounting. All revenue generated by the Tax shall be accounted in the General Fund as a separate line item entitled "Local Sales and Use Tax – Measure 'X' Revenues." These revenues will then be transferred to a General Fund subfund entitled "Measure 'X' Fund." Any and all expenditures of Measure 'X' Fund monies 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. Initial and Annual Submittal of Project Spending Plan. If Measure 'X' is approved by the voters, within 30 days after such approval, the City Manager shall bring forth a spending plan for City Council consideration regarding Measure X fund revenues. Any proposed expenditures for fiscal year 2016-17 may then be presented to the City Council as an amendment to the fiscal year 2016-17 budget. 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 the City Manager's proposed spending plan for Measure 'X' Fund revenues. Such plan (the "Measure

‘X’ Spending Plan”) shall include specific proposals for near term expenditures, a plan for expenditures throughout the 10-year term of the tax, and finance options for larger-scale projects that may require the pledge of Measure ‘X’ revenues. After review by the COC, the Measure ‘X’ Spending Plan shall be incorporated into the City Manager’s proposed budget, and then presented to the City Council for its consideration as part of the City’s annual budget process. The City Council must consider for approval the expenditure of projected Measure ‘X’ Fund revenues as separate line items in each year’s budget.

C. Annual, Independent Audit. Beginning with the fiscal year that ends June 30, 2017, the City’s independent auditors shall, as part of their annual audit of the City’s financial statements, review the collection and expenditure of revenue from the Measure ‘X’ tax. Along with the City’s Finance Department report provided in subsection A., above, the auditors’ review of such revenues (“Auditor Report”) shall be presented each year to the COC at a public meeting for its review for compliance with the terms of this Ordinance and to disclose whether or not it has been expended as advised by Advisory Measure ‘Y’. The results of the COC review shall then be transmitted through the City Manager’s Office to the City Council for its consideration at a public meeting.

D. Citizens’ 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 Advisory Measure ‘Y’. Specific COC responsibilities shall include: (1) public review and comment on each year’s Finance Department Report, Measure ‘X’ Spending Plan and Auditor Report (as provided in subsections A-C, above); (2) preparation of an annual report regarding same for presentation to the City Council at a public meeting; and (3) working with City staff to identify and apply “best practices” for tracking and reporting on Measure ‘X’ revenues and expenditures relative to other City revenues and expenditures. The COC shall be comprised of City residents, and owners of City businesses, with a range of expertise, including accounting, finance and engineering. Current elected City officials and employees are disqualified from membership. COC members shall be appointed by the City Council in accordance with existing City policies. 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 December 31, 2016.

3.33.170 SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, 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 City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends 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 X" and "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:

This Ordinance shall take effect immediately, upon approval by a simple majority of the voters voting on the question at the November 8, 2016 election.

Presented by:

Approved as to form by:

Gary Halbert
City Manager

Glen R. Googins
City Attorney