

NOT OPERATIVE UNTIL ENACTED BY VOTERS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WILDOMAR, CALIFORNIA, ADOPTING A GENERAL TRANSACTIONS AND USE TAX, (SALES TAX) AS ENACTED BY THE CITY OF WILDOMAR VOTERS

WHEREAS, Revenue and Taxation Code section 7285.9 authorizes the governing body of any city (i.e. the City Council) to levy a transactions and use tax for general revenue purposes under Part 1.6 of the Revenue and Taxation Code; and

WHEREAS, Revenue and Taxation Code section 7285.9 requires the City Council to adopt an ordinance proposing to levy a general purpose transactions and use tax by a two-thirds vote of the City Council, and to then submit the ordinance to the voters, who must approve the ordinance by a majority of the voters voting on the measure for it to take effect; and

WHEREAS, the City Council and the People of the City of Wildomar desire to adopt a transactions and use tax pursuant to Revenue and Taxation Code section 7285.9 for general revenue purposes; and

WHEREAS, the City of Wildomar doesn't have enough fire stations, firefighters and emergency paramedics, and 80% of responses to 911 calls don't meet emergency medical time standards; and

WHEREAS, the City wishes to preserve its 911 medical response times by upgrading the City's only existing fire station and adding an additional station with additional firefighters and paramedics; and

WHEREAS, due to state takeaways, the City has had to reduce neighborhood police patrols --at the same time, the number of robberies and thefts in the City are increasing and there is growing concern about school safety/security; and

WHEREAS, more than 30% of Wildomar streets are rated 'poor,' 'very poor' or 'failed' by independent pavement management engineers, with many local streets still unpaved--essential repairs and safety improvements need to be implemented, before they become even more expensive; and

WHEREAS, Wildomar has a growing number of homeless individuals and resources are needed to enable the City to address mental health, substance abuse, and job training needs while ensuring our local business and public areas are safe and secure for everyone; and

WHEREAS, over the last six years, Wildomar lost over \$12,500,000 from Sacramento money grabs, resulting in the City having to cut back on neighborhood police patrols, maintenance and upgrades of local streets and other City infrastructure; and

WHEREAS, the revenues generated from the proposed transactions and use tax would be used by the City to pay for all of the aforementioned services, as well as other general municipal services.

**THE PEOPLE AND THE CITY COUNCIL OF THE CITY OF WILDOMAR DO
ORDAIN AS FOLLOWS:**

SECTION 1: CITY OF WILDOMAR TRANSACTIONS AND USE TAX

A new Chapter 3.22 (Transactions and Use Tax) is added to Title 3 (Revenue and Finance) of the Wildomar Municipal Code as follows:

“Chapter 3.22. – TRANSACTIONS AND USE TAX

Sec. 3.22.010. – Title.

This article shall be known as the “City of Wildomar Transactions and Use Tax Ordinance.”

Sec. 3.22.020. – Purpose and Intent.

In enacting the City of Wildomar Transactions and Use Tax Ordinance (“ordinance”), it is the purpose and intent of the People of the City of Wildomar to:

A. 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 of the Revenue and Taxation Code which may be used for general municipal services and all lawful public purposes of the City.

B. 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. 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. 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 article.

Sec. 3.22.030 – 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, as it exists on the operative date of this article, and in the incorporated territory of the City as it may hereafter be amended through annexation, at the rate of one percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Sec. 3.22.040 – 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 the incorporated territory of the City, and in the incorporated territory of the City as it may hereafter be amended through annexation, at the rate of one percent (1%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Sec. 3.22.050 – Independent Annual Audit.

The proceeds resulting from the transactions and use tax imposed by this article shall be deposited into the City's general fund and shall be subject to the same

independent annual audit requirements as other general fund revenue. The independent auditor's report, which shall include an accounting of the revenues received and expenditures made from the transactions and use tax, will be presented annually to the citizen oversight committee, the City Council and made available for public review.

Sec. 3.22.060 – Operative Date.

“Operative Date” shall mean the first day of the first calendar quarter commencing more than 110 days after the adoption of the City of Wildomar Transactions and Use Tax Ordinance.

Sec. 3.22.070 – Termination.

The transactions and use tax levied by this article shall commence on the operative date and shall continue until terminated by a vote of the registered voters of the City.

Sec. 3.22.080 – 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 article; 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.

Sec. 3.22.090 – Place Of Sale.

For the purposes of this article, 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 or her 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.

Sec. 3.22.100 – Adoption Of Provisions Of State Law.

Except as otherwise provided in this article 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 article as though fully set forth herein.

Sec. 3.22.110 – Limitations On Adoption Of State Law And Collection Of Use Tax.

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 the City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "state" is used as a part of the title of the state Controller, state Treasurer, State 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 article.

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.

Sec. 3.22.120 – 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 article.

Sec. 3.22.130 – 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 or her 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 Article 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 the ordinance codified in this article.

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 the ordinance codified in this article.

5. For the purposes of subsections (B)(3) and (B)(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 article, the storage, use or other consumption in the 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 the ordinance codified in this article.

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 the ordinance codified in this article.

5. For the purposes of subsections (C)(3) and (C)(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 subsection (C)(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 Article 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 article 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.

Sec. 3.22.150 – Amendments.

All amendments subsequent to the effective date of this article to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are consistent 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 article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this article.

Sec. 3.22.160 – 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 article, 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.

Sec. 3.22.170 – Citizen Oversight Committee.

A. A citizens' oversight committee is hereby established to independently review and advise upon the City's expenditure of proceeds generated by the transactions and use tax. The committee shall meet at least twice each calendar year and more frequently if necessary to discharge the responsibilities of the committee. All meetings of the committee shall be held in accordance with provisions of the Ralph M. Brown Act (Cal. Gov. Code Section 54950 et seq.).

1. The committee shall consist of five (5) members, all whom shall be residents of the City of Wildomar. The City shall initially post and publish notice soliciting applications for persons interested in being members of the committee and shall thereafter repost and republish notice soliciting applications as

necessary to fill vacancies on the committee. The City Council shall review all applications for eligibility and at a public meeting appoint five (5) eligible applicants to serve as members of the committee. Each member of the committee shall serve for a term of two (2) years and such service shall be at the pleasure of the City Council. Three (3) members of the committee shall constitute a quorum. Members of the committee shall not receive a stipend for their service. Any additional responsibilities and duties of the committee shall be established by resolution of the City Council.

2. The citizens' oversight committee shall annually review and report on (i) the City's proposed and actual expenditure of proceeds generated by the transaction and use tax and (ii) the independent annual audit required under this article. The committee's report shall be submitted to the City Council for review and discussion at a public meeting of the City Council.

3. The City shall provide such staff resources as are reasonably necessary to assist the committee with the discharge of its duties under this article. The committee shall not have authority to hire or retain its own staff, consultants, or contractors."

SECTION 2: CEQA

The adoption of this ordinance is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). CEQA Guideline 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

SECTION 3: SEVERABILITY

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

SECTION 4: ELECTION REQUIRED; EFFECTIVE DATE.

This ordinance shall be submitted to the voters at the regular municipal election to be held on November 6, 2018. This ordinance shall not become operative unless and until a majority of the electors voting on the measure vote to approve this ordinance, in which case this ordinance shall go into effect ten (10) days after the date on which the election results are declared by the City Council.

PASSED, APPROVED, AND ADOPTED BY THE PEOPLE OF THE CITY OF WILDOMAR AT THE REGULAR MUNICIPAL ELECTION HELD ON THE 6TH DAY OF NOVEMBER 2018.

Ben J. Benoit, Mayor

ATTEST:

APPROVED AS TO FORM:

Debbie Lee, City Clerk

Thomas D. Jex, City Attorney