

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, AT THE MUNICIPAL SPECIAL ELECTION, CONSOLIDATED WITH THE CALIFORNIA STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 5, 2024, ONE MEASURE AMENDING THE SAN DIEGO MUNICIPAL CODE BY ADDING CHAPTER 3, ARTICLE 2, DIVISION 1, SECTIONS 32.0101 THROUGH 32.0120, RELATING TO A GENERAL TRANSACTIONS AND USE TAX.

WHEREAS, under San Diego Charter (Charter) section 23 and San Diego Municipal Code section 27.0502, the Council of the City of San Diego (Council) may place a municipal ballot measure on the ballot to be considered at a Municipal Special Election; and

WHEREAS, by San Diego Ordinance O-21824, introduced and adopted on June 10, 2024, the Council called a Municipal Special Election to be consolidated with the California State General Election to be held November 5, 2024, for the purpose of submitting to the qualified voters of the City of San Diego (City) one or more ballot measures; and

WHEREAS, the Council now desires to submit to the voters at the Municipal Special Election a measure amending the San Diego Municipal Code by adding Chapter 3, Article 2, Division 1, sections 32.0101 through 32.0120, relating to a General Transactions and Use Tax; and

WHEREAS, the City currently receives 1.00 percent (i.e., one cent per sales or use transaction) of the total 7.75 percent sales tax rate (Current Sales Tax) charged on transactions occurring within the City, resulting in approximately \$377.5 million of unrestricted revenue to the City's General Fund in Fiscal Year 2023; and

WHEREAS, inflation has severely impacted the costs of infrastructure projects over the last five years, one example being a 173 percent increase in the average cost to repair one mile of City streets; and

WHEREAS, the City has identified critical infrastructure maintenance and construction needs in areas such as the City's roads, sidewalks, streetlights, parks, libraries, and other facilities totaling \$9.25 billion over the next five fiscal years, not including the costs of maintaining vital public safety services like police, fire, and emergency services; and

WHEREAS, according to the California Department of Tax and Fee Administration (CDTFA), the City's Current Sales Tax is tied for the fourth lowest out of the 482 individual cities in the State, and 9 of the 18 cities in San Diego County have a higher sales tax than the City, even though the City of San Diego is the nation's eighth largest city; and

WHEREAS, the Council now desires to amend the Municipal Code by adding Chapter 3, Article 2, Division 1, sections 32.0101 through 32.0120 to impose and collect a one-cent transactions and use tax so that the City can better provide for the public infrastructure and core service needs of the City's residents; and

WHEREAS, the CDTFA collects sales and use tax revenue in California and allocates the revenue to public agencies through prescribed fund allocations; and

WHEREAS, retailers engaged in business in California must register with the CDTFA and pay the state's sales tax, which applies to all retail sales of goods and merchandise except those sales specifically exempted by law; and

WHEREAS, the state's use tax generally applies to the storage, use, or other consumption in California of goods purchased from retailers in transactions not subject to the sales tax; and

WHEREAS, the state's use tax also may apply to purchases shipped to a California consumer from another state, including purchases made by mail order, telephone, or internet; and

WHEREAS, the sales and use tax rate in a specific California location has three parts: the state tax rate; the local tax rate (e.g., the City's Current Sales Tax); and any district tax rate that may be in effect; and

WHEREAS, as the state-level administrator of sales and use tax, the CDTFA has issued a template with specific language that must be included verbatim (except for several fill-in-the-blank items) in any local ordinance proposing to increase the local rate of sales and use tax, and the proposed amendments strictly adhere to the CDTFA's mandatory template; and

WHEREAS, Mayor Todd Gloria and Councilmember Raul Campillo proposed the Municipal Code amendments as part of the Council Policy 000-21 process, and the amendments were heard by the Council's Rules Committee on March 20, 2024 and June 5, 2024, and are presented in this Ordinance for placement on the November 5, 2024 Municipal Special Election ballot; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided and verified by City staff with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. One measure amending the Municipal Code by adding Chapter 3, Article 2, Division 1, sections 32.0101 through 32.0120, relating to a General Transactions and Use Tax, is hereby submitted to the qualified voters at the Municipal Special Election to be held on November 5, 2024, and consolidated with the California State General Election to be held on the same date, with the measure to read as follows:

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**MEASURE**

**Chapter 3**

**Article 2: Sales Tax**

**Division 1: General Transactions and Use Tax**

**§32.0101**      **Title**

This Division shall be known as the San Diego General Transactions and Use Tax Ordinance and shall be applicable in the incorporated territory of the City.

**§32.0102**      **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.

**§32.0103**      **Purpose**

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

- (a) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with section 7251) of Division 2 of the Revenue and Taxation Code and section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- (b) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

- (c) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.
- (d) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

**§32.0104** **Contract with State**

Prior to the *Operative Date*, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the *Operative Date*, it shall nevertheless so contract and in such a case the *Operative Date* shall be the first day of the first calendar quarter following the execution of such a contract.

**§32.0105** **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 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.

**§32.0106**      **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.

**§32.0107**      **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 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.

**§32.0108**      **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.

**§32.0109**     **Limitations on Adoption of State Law and Collection of Use Taxes**

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

(a) Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

(1) The word “State” is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

(2) The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance.

(3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

(A) Provide an exemption from this tax with respect to certain sales, storage, use, or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use, or other

consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

(B) Impose this tax with respect to certain sales, storage, use, or other consumption of tangible personal property which would not be subject to tax by the State under the said provision of that code.

(4) In sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828 of the Revenue and Taxation Code.

(b) The word “City” shall be substituted for the word “State” in the phrase “retailer engaged in business in this State” in section 6203 and in the definition of that phrase in section 6203.

(1) “A retailer engaged in business in the District” shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to section 267(b) of Title 26 of the United States Code and the regulations thereunder.

**§32.0110**      **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.

**§32.0111 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 that 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 exempted from the use tax imposed by this ordinance, the storage, use, or other consumption in this City of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the *Operative Date* of this ordinance.

(4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for

which the lessee is obligated to lease the property for an amount fixed by a lease prior to the *Operative Date* of this ordinance.

- (5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- (6) Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
- (7) “A retailer engaged in business in the City” shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of

the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

(d) Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use, or other consumption of which is subject to the use tax

**§32.0112**      **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.

**§32.0113**      **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.

**§32.0114**      **Amendments by City Council**

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

**§32.0115**      **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 establish 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 Mayor and City Council shall retain discretion to expend the proceeds of the tax for any lawful purpose of the City.

**§32.0116**      **Citizen Oversight**

Public oversight of the City’s annual expenditures of the proceeds of the transactions and use tax under this ordinance shall be accomplished through the City’s current budgetary process. The City’s Department of Finance provides periodic budgetary updates throughout the year, and each fiscal year’s budget is developed through a process involving multiple public hearings allowing City Council and public participation.

**§32.0117**      **Independent Annual Audit**

The proceeds resulting from the transactions and use tax under this ordinance shall be subject to the same independent annual audit requirements as other General Fund revenue. The City's annual financial statements, which are subject to audit procedures performed by an auditor independent of the City, will include the revenues received and expenditures made from the proceeds resulting from this transactions and use tax, and will be presented annually to the City's Audit Committee and City Council at publicly-noticed meetings, and be made available for public review.

**§32.0118 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.

**§32.0119 Effective Date**

This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

**§32.0120 Termination Date**

The authority to levy the tax imposed by this ordinance shall continue indefinitely until terminated by a majority vote of the qualified voters voting on a new measure at a regularly scheduled municipal election.

**END OF MEASURE**

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Section 2. The measure shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this Ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

<b>MEASURE ____ . CITY OF SAN DIEGO SALES TAX</b>  To invest in neighborhood upgrades which can include fixing potholes, repairing streets, sidewalks, and streetlights, improving parks and libraries, updating police, fire, paramedic, and 9-1-1 response, and providing infrastructure and delivering general services across San Diego neighborhoods, shall the measure enacting a one-cent sales tax be adopted, generating approximately \$400,000,000 per year until ended by voters, requiring citizen oversight and independent audits, with all funds staying in the City of San Diego?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this measure. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the measure.

Section 5. Passage of this measure requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election.

Section 6. The City Clerk shall cause this Ordinance or a digest of this Ordinance to be published once in the official newspaper following this Ordinance’s adoption by the Council.

Section 7. In compliance with San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The City Clerk shall post notice of the specific dates that the examination period will run.



Section 8. A full reading of this Ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the Council and the public prior to the day of its passage.

Section 9. This Ordinance may be passed by the Council on the date of introduction pursuant to Charter section 275(c) and shall take effect upon final passage under Charter sections 295(a) and 295(d).

APPROVED: MARA W. ELLIOTT, City Attorney

By \_\_\_\_\_  
Bret A. Bartolotta  
Deputy City Attorney

BAB:jdf  
06/27/2024  
Or. Dept: CD7  
Doc. No. 3606087

I certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

DIANA J.S. FUENTES  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor