

**CITY OF WALNUT CREEK
RESOLUTION NO. 22-40**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK ESTABLISHING NOVEMBER 8, 2022 AS THE ELECTION DATE TO CONSIDER AN ORDINANCE IMPOSING A ONE-HALF PERCENT (0.5%) TRANSACTIONS AND USE (“SALES”) TAX FOR A PERIOD OF TEN YEARS; ORDERING THE SUBMITTAL OF THE ORDINANCE TO THE VOTERS AT THE ELECTION; REQUESTING THAT THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS CONSENT TO THE CONSOLIDATION OF THIS ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE, DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AND SPECIFYING PROCEDURES RELATED TO SUBMISSION OF BALLOT ARGUMENTS

WHEREAS, the City of Walnut Creek (“City”) offers outstanding quality of life services for approximately 70,000 residents and businesses in its community;

WHEREAS, the City is a regional center for economic vitality with a variety of offices, restaurants, shopping destinations, and arts and recreation venues;

WHEREAS, the City provides vital services to ensure that its residents and business community enjoy safe neighborhoods, emergency services, quality public facilities, streets, parks, open spaces, and recreation venues, and vibrant arts and cultural opportunities;

WHEREAS, Walnut Creek went through several periods of growth between the 1950s and 1980s. During this time, many City facilities were constructed. In several cases, voter approved funding (i.e. taxes) was used to pay for the facilities;

WHEREAS, an Open Space Bond Measure was approved by the voters in the 1970s that helped to fund the purchase of more than 2,000 acres of permanently preserved open space lands;

WHEREAS, between 1990 and 2010, the City was realizing significant surpluses in operating budgets, which allowed year-end budget balances to be allocated towards construction of new facilities and infrastructure including City Hall and Police Department, Veterans Memorial Plaza, the Downtown Walnut Creek Library, numerous parks, Tice Valley Gymnasium, and the Leshner Center for the Arts;

WHEREAS, the Great Recession meant that, in addition to budget cuts and staffing reductions, there was not a significant amount of funding left at year-end to set aside for new facilities. This dynamic contributed to an “infrastructure deficit” wherein the cost of replacing existing infrastructure has outpaced the City’s allocated infrastructure replacement funding;

WHEREAS, rising costs and the economic effect of the COVID-19 pandemic, which reduced sales tax, transient occupancy tax, and department revenues, also contribute to a fiscal picture that has changed significantly from the 1990s and 2000s;

WHEREAS, the City’s latest Long Term Financial Forecast update, indicates that it is unlikely that Walnut Creek will return to the surpluses of that time. Nevertheless, Walnut Creek is fiscally sound with robust financial policies, very low debt levels, healthy reserves, and funding set aside in an irrevocable trust to cover future pension costs;

WHEREAS, although the City has long maintained prudent, responsible fiscal management and performance, economic downturn and loss of revenue brought on by the COVID-19 pandemic has resulted in a \$15 million revenue loss, which in turn has required the City to reduce expenditures, cut operational and program budgets, eliminate City services, and rely on one-time federal stimulus funding to sustain various aspects of municipal operations;

WHEREAS, the federal post-pandemic stimulus funds are limited in purpose and must be spent within limited time frames;

WHEREAS, in order to maintain Walnut Creek's quality of life now and into the future, the City Council and staff, with input from Walnut Creek residents and businesses, identified the following needs:

- Maintaining neighborhood and downtown police patrols, crime prevention programs, 911 emergency response, emergency/disaster preparedness, increasing pedestrian safety, and ensuring consistent crossing guards on school routes;
- Providing solutions to address homelessness in our community;
- Maintaining senior services and programs, art programs, and after-school programs for children and teens, including additional library hours and access to books/technology;
- Supporting small businesses and economic recovery and attracting new businesses, jobs, and economic activity;
- Investing in sustainability initiatives and parks and open space, including creeks and watersheds;
- Replacing the City's aging, deteriorated 50+-year old Clarke Swim Center and Community Center (built in 1972) at Heather Farm Park, and making repairs and improvements to other aging City facilities including public streets and roads.

WHEREAS, the City Council studied revenue options that could both address the City's infrastructure deficit and support on-going programs and services including using existing reserve funds, increasing park and facility user fees, issuing debt (municipal bonds), relying on one-time funding options such as requiring new development to fund community improvements, State and Federal grants, Community fundraising and donations, and public-private partnerships, or seeking voter-approved increases to transient occupancy, sales and use, or utility users taxes, parcel taxes, or general obligation bonds;

WHEREAS, after multiple discussions the City Council chose to focus on a sales tax that would generate adequate revenues to fund the community's needs and gives the flexibility needed to both fund important quality of life community services and upgrade or rebuild facilities that support the programs;

WHEREAS, the City engaged the community in a variety of outreach efforts to determine what services are important to the community;

WHEREAS, the Walnut Creek community desires to maintain the quality of life and services they currently enjoy, desires for the City to continue and expand such services to address the needs that have been identified. In particular, the community is concerned about maintaining public safety, enhancing emergency preparedness, increasing pedestrian safety, maintaining the level and quality of the services provided to residents through the libraries, recreation and arts programs, the youth and senior programs, improving and replacing aging facilities, improving sustainability initiatives, combating homelessness, and protecting the parks and open space including creeks and watersheds;

WHEREAS, the City Council believes that locally-controlled revenue is needed to maintain neighborhood and downtown police patrols, crime prevention programs, 911 emergency response, emergency/disaster preparedness, increasing pedestrian safety, and ensuring consistent crossing guards on school routes;

WHEREAS, additional locally-controlled revenue is needed to maintain senior services and programs, arts programs, and after-school programs for children and teens, including additional library hours and access to books/technology;

WHEREAS, additional locally controlled revenue is needed to provide solutions to address homelessness in Walnut Creek;

WHEREAS, additional locally-controlled revenue is needed to continue addressing climate change through sustainability initiatives.

WHEREAS, additional locally-controlled revenue is needed to support small businesses, continue economic recovery, attract new businesses, jobs, and economic activity;

WHEREAS, additional locally-controlled revenue is needed to replace the City's aging, deteriorated 50+ year old Clarke Swim Center and Community Center (built in 1972) at Heather Farm Park and to maintain and make repairs and improvements to other aging facilities, including public streets and roads;

WHEREAS, a local funding measure would provide a flexible and reliable, locally-controlled source of funds for the City to continue to offer the quality of life services to its residents and to respond to the foregoing fiscal, health, economic and social challenges for the benefit of the Walnut Creek community;

WHEREAS, the attached ordinance would: (1) require that the revenues generated by the one-half percent (0.5%) general transactions and use (sales) tax approved in this measure and any associated expenditures of those revenues would be specifically identified and tracked and (2) establish an independent citizen oversight committee that would review and report to the City Council and the public annually on the use of the revenue;

WHEREAS, to increase revenues in effort to provide level of services, programs and facilities and quality of life the community desires as set forth above, the City Council desires to ask the voters to adopt an ordinance that would impose a one-half percent (0.5%) cent transactions and use tax for a period of ten (10) years.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WALNUT CREEK DOES RESOLVE AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2. Pursuant to California Constitution Article XIII C, Section 2, Government Code Section 53724, and Elections Code Section 9222, the City Council of the City of Walnut Creek hereby calls an election at which it shall submit to the qualified voters of the City, the Walnut Creek Transactions and Use Tax Ordinance ("Ordinance"), which if approved, such tax measure would adopt a one-half percent (0.5%) general transactions and use (sales) tax, as authorized by Revenue and

Taxation Code section 7285.9. This measure shall be designated by letter by the Contra Costa County Registrar of Voters. Pursuant to Election Code Section 10400 *et.seq.*, the election for this measure shall be consolidated with the general election to be conducted on November 8, 2022.

Section 3. The Ordinance to be approved by the voters pursuant to Section 2 is set forth in Exhibit A hereto. The City Council hereby approves the Ordinance, the form thereof, and its submission to the voters of the City at the November 8, 2022 election, as required by Revenue and Taxation Code section 7285.9, subject to the approval of a majority of the voters voting on the measure at the election called by the adoption of this Resolution. The Board of Supervisors of the County of Contra Costa is requested to order the County Registrar of Voters to set forth in the voter information portion of all sample ballots to be mailed to the qualified electors of the City the full text of the Ordinance and to mail with the sample ballots to the electors printed copies of the full text of the Ordinance, together with the primary arguments and rebuttal arguments (if any) for and against the measure, and to provide voter ballots for the election for use by qualified electors of the City who are entitled thereto in the manner provided by law. The Ordinance specifies that the rate of the tax shall be one-half percent (0.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City; it specifies that the total rate of the use tax shall be nine and one quarter percent (9.25%) of the sales price of tangible personal property stored, used or otherwise consumed in the City, and that the tax shall be in effect for ten years. The California Department of Tax and Fee Administration shall collect the tax from retailers subject to the tax and remit the funds to the City.

Section 4. The proposed Ordinance shall be submitted to the voters on the ballot in the form of the following question, which questions shall require the approval of a majority of qualified electors casting votes:

To provide funding to maintain and enhance City of Walnut Creek services and facilities, including crime prevention; public safety; disaster preparedness; parks/open space; youth, senior and arts programs; sustainability initiatives; local business support; downtown improvements; replacing aging recreation, aquatics and community facilities at Heather Farm Park; and other important services and facilities, shall the City of Walnut Creek levy a half-cent sales tax, providing approximately \$11,000,000 annually for 10 years, requiring annual audits, independent citizens' oversight, and all funds benefitting Walnut Creek?	YES	
	NO	

Section 5. The City Clerk is authorized, instructed and directed to work with the Contra Costa County Registrar of Voters as needed in order to properly and lawfully conduct the election. The ballots to be used in the election shall be in form and content as required by law. The Contra Costa County Registrar of Voters is authorized to canvass the returns of the general municipal election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 6. The Board of Supervisors is requested to instruct the Contra Costa County Registrar of Voters to provide such services as may be necessary for the holding of the consolidated election. The election shall be held in all respects as if there were only one election. The City of Walnut Creek acknowledges that the consolidated election will be held and conducted in the manner prescribed in

Elections Code Section 10418. The City of Walnut Creek recognizes that the County will incur additional costs because of this consolidation and agrees to reimburse the County for those costs. The City Manager is hereby authorized and directed to expend the necessary funds to pay for the City's cost of placing the measure on the election ballot.

Section 7. The polls for the election shall be open at 7:00 a.m. on the day of the election and shall remain open continuously from that time until 8:00 p.m. that same day, when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California. The notice of the time and place of holding the election is hereby given, and the City Clerk is authorized to give further notice of the election, as required by law.

Section 8.

(a) The last day for submission of primary arguments for or against the measure shall be by 5:00 p.m. on August 24, 2022.

(b) The last day for submission of rebuttal arguments for or against the measure shall be by 5:00 p.m. on August 29, 2022.

(c) Primary arguments shall not exceed three hundred (300) words and shall be signed by not more than five persons.

(d) Rebuttal arguments shall not exceed two hundred fifty (250) words and shall be signed by not more than five persons; those persons may be different persons than the persons who signed the primary arguments.

(e) Pursuant to California Elections Code Section 9282, Councilmembers Francois and Silva are hereby authorized to submit a written argument in favor of the proposed measure, not to exceed three hundred (300) words, on behalf of the City Council. At Councilmember Francois' discretion, the argument may also be signed by other members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure. In the event that an argument is filed against the measure, Councilmembers Francois and Silva are also authorized to submit a rebuttal argument on behalf of the City Council, which may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote on the measure, which may be different from those who signed the primary argument.

(f) Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a certified copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed five hundred (500) words in length, showing the effect of the measure on the existing law and the operation of the measure, and file the impartial analysis with the City Clerk by August 19, 2022.

(g) Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument, which it seeks to rebut.

Section 9. The City Clerk is directed to file certified copies of this Resolution with the Board of Supervisors and the Registrar of Voters of the County of Contra Costa, together with the attached ballot measure.

Section 10. The jurisdictional boundaries of the City of Walnut Creek have not changed since the last general municipal election.

Section 11. The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.*, “CEQA,” and 14 Cal. Code Reg. §§ 15000 *et seq.*, “CEQA Guidelines”). The transactions and use tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. Accordingly, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required.

Section 12. This Resolution shall become effective immediately upon its passage and adoption.

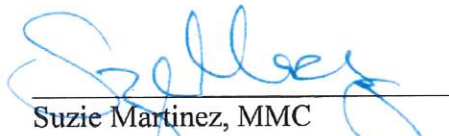
PASSED AND ADOPTED by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 19th day of July 2022 by the following called vote:

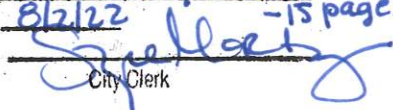
AYES:	Councilmembers:	Darling, Haskew, Wilk, Silva, Mayor Francois
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None



Matt Francois
Mayor of the City of Walnut Creek

Attest:


Suzie Martinez, MMC
City Clerk of the City of Walnut Creek

CITY OF WALNUT CREEK
I HEREBY CERTIFY that the foregoing is a
true and correct copy of
Resolution 22-40
adopted 7/19/22
by the WC City Council
Date: 8/2/22 -15 pages

City Clerk

**CITY OF WALNUT CREEK
ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK
IMPOSING A ONE-HALF OF ONE PERCENT (0.5%) TRANSACTIONS AND USE TAX FOR
TEN YEARS TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION**

The City Council of the City of Walnut Creek does ordain as follows:

Section 1. Findings.

- a. The City of Walnut Creek ("City") offers outstanding quality of life services for approximately 70,000 residents and businesses in its community. The City is a regional center for economic vitality with a variety of offices, restaurants, shopping destinations, and arts and recreation venues;
- b. The City provides vital services to ensure that its residents and business community enjoy safe neighborhoods, emergency services, quality public facilities, streets, parks, open spaces, and recreation venues, and vibrant arts and cultural opportunities;
- c. Walnut Creek went through several periods of growth between the 1950s and 1980s. During this time, many City facilities were constructed. In several cases, voter approved funding (i.e. taxes) was used to pay for the facilities;
- d. An Open Space Bond Measure was approved by the voters in the 1970s that helped to fund the purchase of more than 2,000 acres of permanently preserved open space lands;
- e. Between 1990 and 2010, the City was realizing significant surpluses in operating budgets, which allowed year-end budget balances to be allocated towards construction of the new facilities and infrastructure including City Hall and Police Department, Veterans Memorial Plaza, the Downtown Walnut Creek Library, numerous parks, Tice Valley Gymnasium, and the Leshner Center for the Arts;
- f. The Great Recession meant that, in addition to budget cuts and staffing reductions, there was not a significant amount of funding left at year-end to set aside for new facilities. This dynamic contributed to an "infrastructure deficit" wherein the cost of replacing existing infrastructure has outpaced the City's allocated infrastructure replacement funding;
- g. Rising costs and the economic effect of the COVID-19 pandemic, which reduced sales tax, transient occupancy tax, and department revenues, also contribute to a fiscal picture that has changed significantly from the 1990s and 2000s;
- h. The City's latest Long Term Financial Forecast update, indicates that it is unlikely that Walnut Creek will return to the surpluses of that time. Nevertheless, Walnut Creek is fiscally sound with robust financial policies, very low debt levels, healthy reserves, and funding set aside in an irrevocable trust to cover future pension costs;
- i. Although the City has long maintained prudent, responsible fiscal management and performance, economic downturn and loss of revenue brought on by the COVID-19 pandemic has resulted in a \$15 million revenue loss, which in turn has required the City to reduce expenditures, cut operational and program budgets, eliminate City services, and rely on one-time federal stimulus funding to sustain various aspects of municipal operations;

- j. The federal post-pandemic stimulus funds are limited in purpose and must be spent within limited time frames;
- k. In order to maintain Walnut Creek's quality of life now and into the future, the City Council and staff, with input from residents and businesses, identified the following needs:
- Maintaining neighborhood and downtown police patrols, crime prevention programs, 911 emergency response, emergency/disaster preparedness, increasing pedestrian safety, and ensuring consistent crossing guards on school routes;
 - Providing solutions to address homelessness in our community;
 - Maintaining senior services and programs, arts programs, and after-school programs for children and teens, including additional library hours and access to books/technology;
 - Supporting small businesses and economic recovery and attracting new businesses, jobs, and economic recovery and activity;
 - Investing in sustainability initiatives and parks and open space, including creeks and watersheds;
 - Replacing the City's aging, deteriorated 50+-year old Clarke Swim Center and Community Center (built in 1972) at Heather Farm Park, and making repairs and improvements to other aging City facilities including public streets and roads;
- l. The City Council studied revenue options that could both address the City's infrastructure deficit and support on-going programs and services including using existing reserve funds, increasing park and facility user fees, issuing debt (municipal bonds), relying on one-time funding options such as requiring new development to fund community improvements, State and Federal grants, community fundraising and donations, and public-private partnerships, or seeking voter-approved increases to transient occupancy, sales and use, or utility users taxes, parcel taxes, or general obligation bonds;
- m. After multiple discussions, the City Council chose to focus on a sales tax that would generate adequate revenues to fund the community's needs and give the flexibility needed to both fund important quality of life community services and upgrade or rebuild facilities that support the programs;
- n. The City engaged the community in a variety of outreach efforts to determine what services are important to the community;
- o. The Walnut Creek community desires to maintain the quality of life and services they currently enjoy, desires for the City to continue and expand such services to address the needs that have been identified. In particular, the community is concerned about maintaining public safety, enhancing emergency preparedness, increasing pedestrian safety, maintaining the level and quality of the services provided to residents through the libraries, recreation and arts programs, the youth and senior programs, improving and replacing aging facilities, improving sustainability initiatives, combating homelessness, and protecting the parks and open space including creeks and watersheds;
- p. The City Council believes that locally-controlled revenue is needed to maintain neighborhood and downtown police patrols, crime prevention programs, 911 emergency response, emergency/disaster preparedness, increasing pedestrian safety, and ensuring consistent crossing guards on school routes;

- q. Additional locally-controlled revenue is needed to maintain senior services and programs, and after-school programs for children and teens, including additional library hours and access to books/technology;
- r. Additional locally-controlled revenue is needed to provide solutions to address homelessness in Walnut Creek;
- s. Additional locally-controlled revenue is needed to continue addressing climate change through sustainability initiatives.
- t. Additional locally-controlled revenue is needed to support small businesses, continue economic recovery, and attract new businesses, jobs, and economic activity;
- u. Additional locally-controlled revenue is needed to replace the City's aging, deteriorated 50+-year old Clarke Swim Center and Community Center (built in 1972) at Heather Farm Park and to maintain and make repairs and improvements to other aging facilities, including public streets, and roads;
- v. A local funding measure would provide a flexible and reliable, locally-controlled source of funds for the City to continue to offer the quality of life services to its residents and to respond to the foregoing fiscal, health, economic and social challenges for the benefit of the Walnut Creek community;
- w. This ordinance would: (1) require that the revenues generated by the one-half percent (0.5%) general transactions and use (sales) tax approved in this measure and any associated expenditures of those revenues would be specifically identified and tracked and (2) establish an independent citizen oversight committee that would review and report to the City Council and the public annually on the use of the revenue; and,
- x. To increase revenues in an effort to provide the level of services, programs and facilities and quality of life the community desires as set forth above, the City Council desires to ask the voters to adopt an ordinance that would impose a half cent (i.e. one-half percent (0.5%)) transactions and use tax for a period of ten (10) years.

Section 2. Amendment of Municipal Code.

Title 8 (Finance, Revenue, and Taxation) of the Walnut Creek Municipal Code is hereby amended by adding Chapter 8 in its entirety as follows:

Chapter 8 TRANSACTIONS AND USE TAX

8-8.01. Title.

This Chapter shall be known as the Walnut Creek Transactions and Use Tax Ordinance. The City of Walnut Creek hereinafter shall be called "City." This Chapter shall be applicable in the incorporated territory of the City.

8-8.02. 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.

8-8.03. Purpose.

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

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not 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.

8-8.04. 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.

8-8.05. 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 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.

8-8.06. 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.

8-8.07. 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 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.

8-8.08. 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.

8-8.09. 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.

8-8.10. 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.

8-8.11. 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 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.

8-8.12. Amendments to State Law.

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.

8-8.13. 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.

8-8.14. Annual Audit; Citizens' Oversight Committee.

A. There shall be a five-person committee appointed by the City Council to review and report on the receipt of revenue and expenditure of funds from the tax authorized by this section ("revenues and expenditures"). Members of the committee shall be residents of the city or representatives of businesses located in the City.

B. Beginning with the fiscal year that ends June 30, 2024, 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 tax authorized by this chapter. The auditors' review shall be a public document. The committee shall annually review the auditors' findings and report in writing to the City Council regarding the accuracy of the auditors' findings regarding the revenues and expenditures. The committee's statement shall be transmitted through the City Manager's office to the City Council for consideration at a public meeting.

C. By July 1, 2023, the City Council shall adopt a resolution establishing the composition of the committee and defining the scope of its responsibilities consistent with this section. Provisions defining the scope of committee responsibilities and reporting requirements shall address bond oversight, in the event that a decision is made at a later time to sell bonds that are in part backed by the revenues referenced in this section. The City Council shall appoint the initial members of the committee no later than December 31, 2023.

8-8.15. Termination Date.

The authority to levy the tax imposed by this ordinance shall expire ten years after the Operative Date.

Section 3. Adjustment of Appropriations Limit.

Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2022-23 and each year thereafter.

Section 4. CEQA.

The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et. seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et. seq., “CEQA Guidelines”). The transactions and use tax imposed by the adoption of this ordinance is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. Accordingly, under CEQA Guidelines Section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines Section 15060 CEQA analysis is not required.

Section 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6. Effective Date.

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