

ORDINANCE NO. 2022-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ADDING CHAPTER 25, ARTICLE 2, DIVISION 2, SECTION 25-33.1 THROUGH 25-33.17 TO THE ESCONDIDO MUNICIPAL CODE TO ESTABLISH A 1 CENT GENERAL TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION INCLUDING PROVISIONS FOR CITIZENS' OVERSIGHT AND ACCOUNTABILITY

WHEREAS, the health, safety and welfare of all residents in the City of Escondido ("City") is the City's top priority; and

WHEREAS, the City's ability to create and collect revenue has not been able to keep pace with the growing costs of providing municipal services and thereby threatens the City's ability to provide the needed services to ensure safe neighborhoods and quality services to support its residents; and

WHEREAS, the City has aggressively responded to this financial challenge by reducing its workforce over the years below pre-recession levels; reducing pension obligations; deferring maintenance of City facilities and equipment purchases; pursuing available grant funding whenever possible; establishing Community Facilities Districts thereby capturing the additional services costs associated with new developments; and, regrettably, cutting back services despite serving a growing population; and

WHEREAS, the City fundamentally changed the methodology it uses in the budget process for its 2022/23 fiscal year budget to ensure that it maintains fiscal stability by reducing reliance on unsustainable one-time funding sources and instead, using reliable indicators of revenue and expenditures to provide a realistic balanced budget focusing on the priorities of the community; and

WHEREAS, projections for budget deficits over at least the next 20 years reflect dramatic increases in expenditures and obligations that far exceed anticipated revenues resulting in a structural budget gap; and

WHEREAS, nearly 2,000 residents of the City have expressed through multiple channels, including a community survey, a scientifically conducted survey concerning a potential local sales tax measure, and by communications directly to City staff City Service funding priorities including addressing homelessness, repairing and maintain local streets, sidewalks and infrastructure, keeping parks and public facilities safe, clean and well-maintained, providing quick responses to 911 emergencies and providing fire protection and paramedic services; and

WHEREAS, nearly all sales tax goes to either the State, County or SANDAG, a local sales tax measure will allow Escondido local control over local revenue for the services residents expect and deserve; and

WHEREAS, residents continue to prioritize 911 emergency response, the funding from this measure will help the City to ensure enough police, firefighters, dispatchers and paramedics to respond quickly to 911 emergencies; and

WHEREAS, additional local funding will the City to keep up with basic repairs and maintenance to public facilities, storm drains, streets and sidewalks; these repairs will be a lot more expensive in the future if they are not addressed now; and

WHEREAS, the City needs additional resources to retain the City's current staffing levels of police and firefighters/paramedics, to address homelessness, and provide the needed upkeep of numerous City facilities including streets, storm drains, sidewalks, curbs, gutters, park and recreation facilities, and other infrastructure which are in need of repair, replacement, upgrading and/or maintenance; and

WHEREAS, the City has determined that the enactment of a 1 cent general local transactions and use tax (commonly known as a "sales tax") until ended by the voters would allow the City to address the community's public safety, homelessness, infrastructure, facilities, and equipment priorities without compromising the provision of existing City services; and

WHEREAS, local, voter-approved funding will provide a guaranteed source of money for essential City services that cannot be taken by Sacramento or Washington, D.C, as all funds will be controlled by the City; and

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

WHEREAS, the City Council directed staff to prepare for submittal to the voters an ordinance enacting a 1 cent sales tax consistent with all applicable general-purpose tax laws, including measures providing for citizens' oversight, separate accounting and independent audits; and

WHEREAS, proposed Sections 25-33.1 through 25-33.17, of Chapter 25, Article 2, Division 2 of the Escondido Municipal Code, set forth below, establish a transaction and use tax to be administered by the California Department of Tax and Fee Administration consistent with City Council direction and State law; and

NOW, THEREFORE, subject to approval by an affirmative, simple majority vote of the people as required by law, THE PEOPLE OF THE CITY OF ESCONDIDO, CALIFORNIA, DO ORDAIN AS FOLLOWS:

SECTION 1. The Escondido Municipal Code is hereby revised to add Chapter 25, Article 2, Division 2, Sections 25-33.1 through 25-33.17 as set forth below, thereby enacting a local transaction and

use tax within the City of Escondido to be administered by the California Department of Tax and Fee Administration:

CHAPTER 25, ARTICLE 2, DIVISION 2, SECTIONS 25-33.1 THROUGH 25-33.17

ONE CENT SALES TAX

25-33.1. TITLE.

This chapter shall be known as the Escondido One Cent Sales Tax Ordinance. The City of Escondido hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

25-33.2. PURPOSE.

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

B. To adopt a retail transaction 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 California State Sales and Use Taxes.

D. To adopt a retail transaction 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 the Ordinance.

E. To provide transactions and use tax revenue for unrestricted general revenue purposes, and not specific purposes. All the proceeds from the tax imposed by this chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

25-33.3. OPERATIVE DATE.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the approval of the voters of the City of a measure approving the imposition of the transactions and use tax set forth herein, unless a later Operative Date becomes effective under the provisions of Section 25-33.6.

25-33.4. TRANSACTIONS AND USE TAX IMPOSITION RATE.

A. 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 (1.0%) 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 the ordinance codified in this chapter.

B. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date of the ordinance codified in this chapter for storage, use or other consumption in said territory at the rate of one percent

(1.0%) 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.

25-33.5. TERMINATION DATE.

The authority to levy the tax imposed by this chapter shall expire upon a vote of a majority of the voters of this City.

25-33.6. CONTRACT WITH CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION.

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

25-33.7. PLACE OF SALE.

For the purposes of this chapter, 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.

25-33.8. ADOPTION OF PROVISIONS OF STATE LAW.

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

25-33.9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.

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

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

1. The word "State" is used as part of the title of the State Controller, State Treasurer, Victim Compensation and Government Claims Board, California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action be taken by or against this City or any agency, office, 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.

25-33.10. 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 chapter.

25-33.11. 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 license in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code by

registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the Operative Date of the ordinance codified in this chapter.

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 chapter.

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 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 the ordinance codified in this chapter.

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 chapter.

5. For the purposes of subparagraphs (C)(3) and (C)(4) of this section, storage, use, or other consumption, or possession of, or exercise or 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 (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 Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or

licenses the vehicle, vessel, or aircraft at an address in the City.

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

25-33.12. AMENDMENTS TO REVENUE AND TAXATION CODE.

All amendments subsequent to the effective date of the ordinance codified in this chapter 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 chapter; provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

25-33.13. 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 chapter, 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.

25-33.14. AMENDMENTS BY CITY COUNCIL.

The following amendments to this chapter must be approved by the voters of the City: terminating the tax, increasing or decreasing 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). The City Council may otherwise amend this chapter without submitting the amendment to the voters for approval.

25-33.15. USE OF PROCEEDS.

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

25-33.16. CITIZENS' OVERSIGHT AND ACCOUNTABILITY.

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

A. Separate Fund Accounting. All revenue generated by the tax ("Measure 'E' Revenues") shall be accounted in the General Fund as a separate line item entitled "Local Sales and Use Tax - Measure 'E' Revenues." Measure 'E' Revenues will then be transferred to a General Fund subfund entitled "Measure 'E' Fund." Any and all expenditures of Measure 'E' Revenues will be tracked and accounted for by City Finance Department staff in accordance with Generally Accepted Accounting Principles (GAAP), and presented annually in a report (the "Finance Department Report") to the Citizens' Oversight Committee ("COC") created pursuant to Subdivision (D) below.

B. Initial and Annual Submittal of Measure A Spending Plan. If Measure 'E' is approved by the voters, beginning in the fiscal year 2023-24, and for each subsequent year, the City Manager shall, prior to the City Council consideration of the City's annual budget, prepare and present to the COC for its review a spending plan for Measure 'E' Revenues. It is the intent that the Measure 'E' Revenues be used to improve public safety, infrastructure, and the delivery of public services and help solve the City's structural deficit and the plan (the "Measure 'E' Spending Plan") shall reflect these priorities and include specific proposals for near term expenditures as well as a plan for expenditures while the tax is in effect, and finance options for larger-scale projects that may require the pledge of Measure 'E' Revenues. After

review and recommendation by the COC, the Measure 'E' Spending Plan shall be presented to the City Council for its consideration and final decision in its discretion, as part of the City's annual budget process. The City Council must consider for approval the expenditure of projected Measure 'E' Revenues as a separate line item category in each year's budget.

C. Annual Independent Audit. Beginning with the fiscal year that ends June 30, 2023, the City's independent auditors shall, as part of their annual audit of the City's financial statements, review the collection and expenditure of revenue from the Measure 'E' Revenues. Along with the City's Finance Department Report provided in subsection A, above, the auditors' review of such revenues ("Auditor Report") shall be presented each year to the COC at a public meeting for its review for compliance with the terms of the ordinance codified in this chapter. The results of the COC review shall then be transmitted through the City's Manager's Office to the City Council for its consideration at a public meeting.

D. Citizens' Oversight Committee. Prior to the Operative Date, the City Council shall create and convene a Citizens' Oversight Committee ("COC"). The function of the COC shall be to review and report on City compliance with the terms of this chapter and the Measure 'E' Spending Plan presented and approved by the City Council thereafter. Specific COC responsibilities shall include: (1) public review and comment on each year's Finance Department Report, Measure 'E' Spending Plan and Auditor Report (as provided in subsections A-C, above); (2) preparation of an annual report regarding compliance with the City Council adopted Measure 'E' Spending Plan for presentation to the City Council at a public meeting; (3) working with City staff to identify and apply "best practices" for tracking and reporting on Measure 'E' Revenues and expenditures relative to other City revenues and expenditures; and (4) making a finding whether the Measure 'E' Revenues have been expended consistent with the intent of the measure. Current elected City officials and employees are disqualified from membership in the COC. COC members shall be appointed by the City Council in accordance with existing City policies, or as may be

adopted by Resolution or Ordinance, and will include individuals with a range of expertise, including but not limited to accounting, finance, and engineering. The COC shall operate in accordance with the Ralph M. Brown Act, which includes requirements that meetings be noticed in advance and held in public. The COC shall be created by City Council ordinance consistent with the terms of this section adopted no later than April 30, 2023.

25-33.17. SEVERABILITY.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. This City Council and the people of the City of Escondido hereby declare that they would have adopted the ordinance codified in this chapter irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the chapter be enforced.

SECTION 2. ENVIRONMENTAL ANALYSIS. This ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code sections 2100, *et. seq.*, "CEQA") and CEQA Regulations (14 California Code of Regulations sections 1500, *et. seq.*) because it establishes rules and procedures to implement government funding mechanisms; does not have any commitment to a specific project which could result in a potentially significant physical impact on the environment; and, constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this ordinance does not constitute a "project" that requires environmental review (14 CCR section 15378(b)(4-5)).

SECTION 3. INCONSISTENT PROVISIONS. Any provisions of the Escondido Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 4. The City Clerk shall be authorized to replace the terms "Measure E" wherever they appear in this ordinance, and in Resolution 2022-98, with the respective ballot designations determined by the County Registrar before this ordinance is codified.

SECTION 5. This ordinance shall take effect immediately, upon approval by a simple majority of the voters voting on the question at the November 8, 2022 election.