

ORDINANCE NO. 2024-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ADDING CHAPTER 25, ARTICLE 2, DIVISION 2, SECTION 25-33.1 THROUGH 25-33.14 TO THE ESCONDIDO MUNICIPAL CODE TO ESTABLISH A ONE-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, on January 9, 2024, proponents for the Escondido Community Investment Initiative ("Proponents") filed a Notice of Intention to Circulate a Petition in the City of Escondido ("City"), to establish a one-cent general transaction and use (sales) tax increase, for twenty years, pursuant to California Elections Code Section 9202 ("Petition"), with the Office of the City Clerk for the City of Escondido ("City Clerk"); and

WHEREAS, on January 17, 2024, the City Attorney for the City of Escondido drafted a Ballot Title and Summary, pursuant to California Elections Code section 9203(a). The City Clerk provided the Ballot Title and Summary to the Proponents, pursuant to California Elections Code Section 9203(b); and

WHEREAS, on January 25, 2024, Proponents published the Notice of Intention to Circulate a Petition and the Ballot Title and Summary in the Escondido Times-Advocate, pursuant to California Elections Code Section 9205. The Proponents provided a copy of the proof of publication to the City Clerk, pursuant to California Elections Code Section 9206. After the Notice of Intention to Circulate a Petition and the Ballot Title and Summary were published, Proponents commenced circulation of the Petition, pursuant to California Elections Code Section 9207; and

WHEREAS, on May 31, 2024, Proponents filed the Petitions with the City Clerk and the City Clerk conducted a prima facie count of the signatures, pursuant to California Elections Code Section 9210. On

June 3, 2024 the City Clerk provided the Petitions to the San Diego County Registrar of Voters for verification, pursuant to California Elections Code Section 9115(a); and

WHEREAS, on June 18, 2024, the San Diego County Registrar of Voters informed the City Clerk that 7,717 signatures for the Escondido Community Investment Initiative had been verified, via their 3 percent Random Sample Count. Per the San Diego County Registrar of Voters Registration Report that was on file prior to the Notice of Intention being submitted to the City Clerk's Office on January 9, 2024, the number of signatures required to qualify a measure for the ballot in Escondido was 7,748; and

WHEREAS, on June 19, 2024, the City Clerk requested that the San Diego County Registrar of Voters proceed with conducting a full count of all signatures submitted for the Escondido Community Investment Initiative; and

WHEREAS, on June 20, 2024, the San Diego County Registrar of Voters notified the City Clerk that their official deadline to count the remaining signatures is October 8, 2024; and

WHEREAS, the deadline to place a measure on the November 5, 2024 General Election Ballot is August 9, 2024; 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.

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. TITLE.

Division 2 of Article 2 of this chapter shall be known as the "Escondido Community Investment Measure."

The City of Escondido hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

SECTION 2. PURPOSE.

The purpose of this measure is to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish these 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 Division shall be placed in the City's general fund and be available for any legal municipal purpose.

SECTION 3. CODE AMENDMENT.

The Escondido Municipal Code is hereby revised to create a Chapter 25, Article 2, Division 1 incorporating without amending existing Sections 25-17 through 25-32, inclusive, to be titled "Uniform Local Sales and Use Tax;" replacing reserved section 25.33 by adding Chapter 25, Article 2, Division 2, Sections 25-33.1 through 25-33.14 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. ONE CENT SALES TAX

Section 25-33.1. 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%) 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 Division.

B. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date of this Division 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.

Section 25-33.2. 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 25-33.4.

Section 25-33.3. Termination Date.

The authority to levy the tax imposed by this Division shall expire twenty (20) years after the Operative Date.

Section 25-33.4. 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 this Division; 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.

Section 25-33.5. Place of Sale.

For the purposes of this Division, 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.

Section 25-33.6. Adoption of Provisions of State Law.

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

Section 25-33.7. 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 Division.

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.

Section 25-33.8. 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 Division.

Section 25-33.9. Exemptions and Exclusions.

A. There shall be excluded from this Division 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 this Division.

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 Division.

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 Division, 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 Division.

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 Division.

5. For the purposes of subparagraphs (C)(3) and (C)(4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in 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 Division 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.

Section 25-33.10. Amendments to Revenue and Taxation Code.

All amendments subsequent to the Operative Date of this Division 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 Division; provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Division.

Section 25-33.11. 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 Division, 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.

Section 25-33.12. Amendments by City Council.

The following amendments to this Division 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 Division without submitting the amendment to the voters for approval.

Section 25-33.13. Use of Proceeds.

The proceeds from the tax imposed by this Division shall be for unrestricted general revenue purposes of the City and shall be received into the general fund of the City. Nothing in this Division shall constitute the tax imposed under this Division 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.

Section 25-33.14. Citizens' Oversight and Accountability.

- A. Purpose. The purpose of the Citizens' Oversight Committee is to ensure citizen participation, open discussion, and accountability regarding the use of the revenue generated under this Division.
- B. Establishment. A Citizens' Oversight Committee ("Committee") is hereby established to oversee revenues received by the City from the transaction and use tax imposed pursuant to this Division, and to ensure that tax revenues are used by the City in a manner consistent with the voter approved measure adopting this Division.
- C. Appointment and Composition of Committee Members.
 - 1. The Citizens' Oversight Committee shall consist of five (5) members, as follows:
 - a. One (1) member shall be a current serving Officer of the Escondido Police Officers Association, as selected by the Association's Board of Directors.
 - b. One (1) member shall be a current serving Officer of the Escondido Firefighters Association, as selected by the Association's Board of Directors.
 - c. Three (3) members shall be appointed by the City Council, as follows:
 - i. One (1) member shall be active in a business organization representing the business community located in the City.
 - ii. One (1) member shall be a representative of the San Diego County Taxpayers Association. In the case that a member of the San Diego

County Taxpayers Association cannot be identified to serve on the Committee, solicitation for representation of a bona-fide taxpayers association shall be opened to the broader community.

iii. One (1) member shall be of the community at-large.

2. The City Council shall also appoint one (1) alternate member who will serve only when quorum is not met without his or her participation.
3. If no representative is able and willing to serve on the Committee in any of the appointment categories specified in subsection (1), the City Council shall have the discretion to appoint a member of the community at-large to fill that Committee position.
4. Upon their appointment and during their incumbency, members of the Committee shall be and remain residents of the incorporated territory of the City. Current and past employees, officials or vendors shall be eligible to serve on the Committee, provided that there are no conflicts of interest as determined by the City Attorney.
5. Candidates for Committee membership pursuant to subsection (1)(c) shall be solicited through an open application process that is promoted through a broad-based recruitment process. Any resident of the incorporated territory of the City of voting age is eligible to apply for Committee membership, subject to the appointment categories specified in subsection (1)(c). All applications will be reviewed by the City Council, who will collectively have the authority to make all final decisions on committee membership.

D. Terms of Service; Vacancies.

1. Members of the Committee shall be appointed for terms of two (2) years. No committee member shall serve more than three (3) consecutive terms.

2. Committee members whose terms expire shall continue to serve until their successor is appointed and qualified. If a vacancy occurs other than by expiration of a term, it shall be filled by appointment for the unexpired portion of the term.
3. Should a member of the Committee fail to attend two (2) consecutive regular meetings, unless excused for cause by the chairperson, that member's service shall be deemed vacant and the member's term ended. The Committee secretary shall immediately notify the City Council of such termination.
4. Committee members shall serve at the pleasure of the City Council and may be removed in the sole determination, with or without cause, notice, hearing or appeal, by the City Council.
5. All Committee members' terms will end when the Escondido Community Investment Measure terminates pursuant to Section 25-33.3.

E. Meetings; Officers; Rules of Procedure; Quorum.

1. The Committee may adopt rules and regulations to govern proceedings and shall set a time for regular meetings which shall be held at least bi-annually.
2. The Committee shall elect a chairperson, vice-chairperson and secretary. Their respective duties shall be as are usually carried out by such officers. In the chairperson, vice-chairperson or secretary's absence or disability, the Committee may designate a chairperson, vice-chairperson or secretary pro tempore. Officers shall hold office for one year and until their successors are elected.
3. A majority of the committee shall constitute a quorum for the transaction of business.
4. Committee meetings are subject to all open-meeting laws, and must be noticed and open to the public. Committee minutes and reports are a matter of public record and must be made available to the public in the manner provided by law.

5. Orientation and training is mandatory for all new committee members. Each committee member shall attend such orientation and training prior to their first regular committee meeting.

F. Powers and Duties.

1. The Citizens' Oversight Committee shall review the revenue collected pursuant to this Division and provide an audit report on the use of that revenue to the City Council at least annually, no later than ninety (90) days following the conclusion of each fiscal year. The Committee shall confine its oversight specifically to revenues generated under this Division.
2. The City Manager or his or her designee shall provide any reasonable administrative or technical assistance required by the Committee to fulfill its responsibilities or publicize its findings.

SECTION 4. EFFECTIVE DATE.

This ordinance shall be binding and effectively immediately, upon the approval of a simple majority of the voters voting on the question at an election called for that purpose.

SECTION 5. SEVERABILITY.

If any provision of this Division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Division which can be given effect without the invalid provision or application, and to this end the provisions of this Division 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 Division irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Chapter or Division be enforced.

SECTION 6. INCONSISTENT PROVISIONS.

If any provision of this ordinance conflicts with other provisions contained in the Escondido Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, the provisions of this ordinance shall supersede any other conflicting provision.

SECTION 7. CONFLICTS WITH STATE AND FEDERAL LAW.

The provisions of this ordinance shall not apply to the extent that they would violate state or federal laws.

SECTION 8.

The City Clerk shall be authorized, but it not required, to replace the term "Escondido Community Investment Measure" wherever it appears in this ordinance, and in Resolution No. 2024-08, with the respective ballot designations determined by the County Registrar before this ordinance is codified.