

ORDINANCE NO. _____

AN INITIATIVE ORDINANCE OF THE PEOPLE OF THE CITY OF GARDEN GROVE, ADDING CHAPTER 3.09 TO TITLE 3 OF THE GARDEN GROVE MUNICIPAL CODE, IMPOSING A TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

City Attorney Summary

This Ordinance, presented to the City's voters for approval at the regular municipal election of November 6, 2018, imposes a 1% sales tax in the City.

WHEREAS, people live in Garden Grove because it offers a better quality of life and better services than other nearby communities; and

WHEREAS, years of state takeaways and changes to state law have severely impacted the City's ability to provide the quality of life services that make Garden Grove a great place to live, work, and raise a family; and

WHEREAS, the State of California has taken millions in local tax dollars from Garden Grove since 1992. The City will continue to lose another \$3.5 million dollars every year in General Fund property tax revenues due to the State's required shift of Education Revenue Augmentation Fund (ERAF) and about \$13.7 million dollars in Redevelopment/Housing Tax Increment; and

WHEREAS, in 2012, the City was forced to return to the State of California \$9.8 million of redevelopment and housing tax increment that has been legally collected for critical economic, redevelopment and housing activities in Garden Grove. In addition, the dissolution of Redevelopment Agencies by the State has required the City's General Fund to pick up prior RDA obligations of \$3.9 million each year starting in 2012; and

WHEREAS, since 2009, the City has been forced to adopt General Fund budgets with structural deficits. For Fiscal Year 2018-19 that structural operating deficit has grown to \$4.2 million and the City has been using reserves to balance its General Fund operations; and

WHEREAS, in order to balance the FY 2018-19 Budget, various cost-reduction programs were implemented including an early-retirement incentive program and 5% budget reduction. Even with these cuts, the City's structural deficit is projected to increase from \$4.2 million to over \$75 million dollars annually within the next seven years; and

WHEREAS, eliminating the structural deficit will require additional deep cuts in all service areas, including police, 9-1-1 emergency response times, street, park, and public facilities maintenance; and

WHEREAS, response times for 9-1-1 calls are critical for stopping crime, protecting victims, and saving lives; and

WHEREAS, this measure will increase funding for neighborhood police patrols, retain officers on the street, and improve law enforcement response times to all neighborhoods in our city; and

WHEREAS, when you have an emergency, seconds count. The majority of calls to the City of Garden Grove's Fire Department are related to medical emergencies; and

WHEREAS, this measure will keep fire stations open and ensure that firefighters and paramedics can quickly respond to emergencies and save lives; and

WHEREAS, public safety is a top priority in Garden Grove and represents 71% of the City's General Fund. However, Public Safety staffing levels have not been restored to pre-recession levels even after making other significant citywide cuts and adding seven additional police officers over the past three fiscal years; and

WHEREAS, due in large part to statewide early prison release laws and voter approved initiatives that have changed many felonies to misdemeanors, overall Part I crimes (e.g., robberies, burglaries, aggravated assault and homicide) have increased by over 45% in Garden Grove since 2015 and homeless/mentally ill calls for service have increased by an alarming 47%; and

WHEREAS, policies enacted by Sacramento politicians like early release from prison and other changes to state laws are putting more criminals back on the street; and

WHEREAS, passing this measure will allow the Garden Grove Police Department to put more officers on the street to patrol neighborhoods and parks, and crack down on drugs and gangs, making our community safer; and

WHEREAS, without a continued local funding source the City will be forced to cut public safety services, including gang and drug prevention; neighborhood police patrols; police officer staffing at local schools; and consider reducing firefighting services. The City needs additional funds to continue to provide citywide crime prevention, gang and youth violence prevention and intervention programs and keep police officers in schools to keep kids off the streets and away from gangs and drugs; and

WHEREAS, this measure will allow the City police department to dedicate officers and resources to keep gang members and drug dealers from nearby communities out of our City, which will keep our neighborhoods safe; and

WHEREAS, the City needs funds to maintain firefighters and paramedics levels, and keep rapid 9-1-1 emergency response times so that people suffering from heart attacks, strokes or other medical emergencies continue to receive the immediate, life-saving care they need; and

WHEREAS, the American Heart Association says that brain deterioration starts six minutes after a person stops breathing, but right now our local paramedics only meet that standard 38% of the time; and

WHEREAS, in 2007, more than 11,000 or 85% of calls to 9-1-1 were related to medical emergencies, like heart attacks, strokes, and car accidents; and

WHEREAS, with an aging population, this measure is needed to provide Garden Grove paramedics and firefighters with the staffing and resources they need to respond quickly and effectively to medical emergencies; and

WHEREAS, over the last few decades the City has used General Fund revenues to help support the maintenance of the community's local streets; fund park and playground equipment at the City's 21 neighborhood parks; and maintain City owned buildings, which include Police public safety buildings and fire stations. Going forward, starting with the FY 2019-20 Fiscal Year budget, none of these vital programs will be funded beyond the City's required allocation for OCTA grant eligibility; and

WHEREAS, an independent analysis of Garden Grove's infrastructure found that nearly 40% of our local streets and roads are in fair/very poor condition; and

WHEREAS, this measure will provide a local source of funding to invest in our roads by fixing potholes, curbs and sidewalks, and repaving streets, which will reduce wear-and-tear on cars and improve safety for drivers and pedestrians; and

WHEREAS, in light of the structural deficit, additional revenues are needed in order to preserve essential city services and the high quality of life in the City of Garden Grove; and

WHEREAS, this measure will help our local property values by making sure Garden Grove has well-maintained streets, safe and clean neighborhoods, and high quality public safety services, keeping our property values strong; and

WHEREAS, additional revenues will be subject to a clear system of accountability, including public audits and disclosures of all funds spent to ensure that all funds are spent properly; and

WHEREAS, this measure includes strict Citizen Oversight, giving an independent voice in overseeing this measure's funds; and

WHEREAS, all additional revenues raised by this measure will be used to fund essential city services in Garden Grove, and cannot be taken away by the state or used for other purposes.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF GARDEN GROVE HEREBY ORDAIN AS FOLLOWS:

Chapter 3.09 is hereby added to Title 3 of the Garden Grove Municipal Code to read as follows:

CHAPTER 3.09

TRANSACTIONS AND USE TAX

Section 3.09.010. TITLE. This chapter shall be known as the “Garden Grove Transactions and Use Tax Ordinance.” The city of Garden Grove hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

Section 3.09.020. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of the ordinance enacting this chapter, the date of such adoption being as set forth below.

Section 3.09.030. PURPOSE. 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 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 chapter.

Section 3.09.040. 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.

Section 3.09.050. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated

territory of the City at the rate of one percent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of the ordinance enacting this chapter.

Section 3.09.060. 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.

Section 3.09.070. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one percent (1%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 3.09.080. 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.

Section 3.09.090. 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 chapter.

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 3.09.100. 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.

Section 3.09.110. 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 the ordinance enacting 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 this chapter.

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 chapter, 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 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 this chapter.

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 chapter 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.

Section 3.09.120. AMENDMENTS. All amendments subsequent to the effective date of 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.

Section 3.09.130. 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.

Section 3.09.140. SEVERABILITY. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 3.09.150. EFFECTIVE DATE. This chapter and the ordinance enacting it relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

Section 3.09.160. CITIZEN OVERSIGHT COMMITTEE. The City shall empanel a Citizen's Oversight Committee to review and report on the revenue and expenditure from funds raised under the tax adopted by this chapter.

Section 3.09.170. ANNUAL INDEPENDENT AUDITS. The City shall ensure that annual independent audits are conducted to account for the tax revenues received and expenditures made in relation to the one percent (1%) transaction and use tax. Such audits will be provided to the Citizens' Oversight Committee for their review.

PASSED AND ADOPTED by the City Council of the City of Garden Grove, State of California, at a regular meeting held on _____, by the following vote:

AYES:

NOES:

ABSENT:

Mayor

Attest:

City Clerk