

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE PEOPLE OF THE TOWN OF YUCCA VALLEY ADDING CHAPTER 3.26 TO THE YUCCA VALLEY MUNICIPAL CODE IMPOSING A TEMPORARY TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION, SUBJECT TO APPROVAL OF A MAJORITY OF THE ELECTORS VOTING ON THE TAX MEASURE AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016.**

**WHEREAS**, Article XIIC, Section 2 of the California Constitution authorizes a city to impose a general tax if approved by a majority vote of the qualified electors; and

**WHEREAS**, Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code, and Section 7285.9 of the California Revenue and Taxation Code, authorizes a city to adopt a transactions and use (sales) 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; and

**WHEREAS**, the Town has heard a great deal from the community about their desire for better local services, especially public safety and streets and pothole repair; and

**WHEREAS**, the Citizens for Lower Sewer Costs Committee, along with other community members and town staff, have concluded that the best option available to the Town to address local town service needs is a one-half cent sales tax measure; and

**WHEREAS**, the Citizens for Lower Sewer Costs Committee recommends the Town Council place a one-half cent sales tax measure for local town services on the November 2016 ballot for voters' consideration; and

**WHEREAS**, if approved, the proposed Town services measure will provide Yucca Valley with locally-controlled funding for Town services that are protected by law from Sacramento; and

**WHEREAS**, Town streets are underfunded and they are continuing to deteriorate; and

**WHEREAS**, more and more parolees and sex offenders are being released early into the local community because of state cuts to prisons, which may threaten public safety in our Town and neighborhoods; and

**WHEREAS**, local Town service priorities include preventing violent crimes, maintaining youth violence prevention and gang intervention programs, supporting fire protection services, providing additional police officers and neighborhood patrols, fixing streets and potholes, and providing ongoing street maintenance; and

**WHEREAS**, the proposed Town services measure requires an independent taxpayers' oversight committee, mandatory financial audits, and yearly reports to the community to ensure the funds are spent as promised; and

**WHEREAS**, many of the Town's neighborhood streets and roads are deteriorated and riddled with cracks, pot holes, loss of structural base, and other characteristics of asphalt deterioration. These deteriorated road conditions are exacerbated by the fact that there are many other streets that are unpaved, or located on steep hillsides, wash-out zones or otherwise regularly subjected to extreme weather conditions inherent to the desert environment. While the Town has made major improvements to a number of streets, additional funds are needed to address streets that are in the worst condition; and

**WHEREAS**, the Town estimates a deferred maintenance liability of approximately \$14 million on Town maintained roads. There is currently no identified funding source to sufficiently address this community need; and

**WHEREAS**, over the last several years, there has been an increase in crime rates, an increase in the number of calls for police services and an increase in crime in the Town of Yucca Valley, with burglaries increasing 113% in 2015 from the prior year. Nonetheless, the level of police services for the Town has remained the same since 2009 due to constraints on the Town's General Fund, which is the source of funding for police services; and

**WHEREAS**, Town citizens repeatedly rank general services, like public safety and street maintenance, as their top priorities. However, no sufficiently reliable sources of revenue exist to address the Town of Yucca Valley's critical infrastructure and general service needs, while maintaining the Town's long-term financial viability. Sacramento money grabs and unfunded state mandates continually threaten funding for local services, impacting our quality of life. A local general tax, however, is a guaranteed source of local funding that cannot be taken by Sacramento and requires that our tax dollars are spent locally for Town residents; and

**WHEREAS**, the Town of Yucca Valley has worked diligently to reduce expenditures by modifying or eliminating various Town programs; reducing employee salary costs and reducing non-public safety staff by almost 20% since 2008, and critically examining all expenditures; and

**WHEREAS**, the Town of Yucca Valley has implemented local pension reform measures, including a reduced-benefit pension program for new employees and requiring all employees to pay their share towards retirement costs, resulting in significant savings to taxpayers; and

**WHEREAS**, as stated in presentations by the Joshua Tree National Park, millions of visitors come to the Town of Yucca Valley each year to shop, use local services and traverse the Town as a gateway to the Joshua Tree National Park. To date, no fiscal measures have been taken to ensure that these visitors contribute a fair share for their use of local services, including their use of roads, sidewalks, parks, police and other services they use when they visit the Town; and

**WHEREAS**, the Town Council received valuable input from the community through the Town's Strategic Planning Outreach activities in support of identifying alternative revenue

solutions, and was approached by the Citizen's for Lower Sewer Costs seeking ways to maintain essential Town services and lower sewer costs for Town property owners, and received positive responses from the community in the April 2016 Community Needs Survey indicating potential support for a local revenue measure or measures; and

**WHEREAS**, a local revenue measure would give Yucca Valley local control over local funds, for local community priorities including but not limited to, maintaining neighborhood police patrols and 911 response, maintaining and repairing existing neighborhood streets and alleys, and maintaining community requested quality of life programming such as the Town's aquatics program, seniors site programming, and other community participant programming; and

**WHEREAS**, by taking this step, keeping the Town safe, crime rates low, emergency response times low for all areas of the Town, keeping the Town well maintained with critical public facility infrastructure and maintaining desired quality of life programming, the Town can protect property values and preserve the Town's small town atmosphere; and

**WHEREAS**, as a solution to the fiscal constraints on general services, the Town Council desires to submit to the voters a proposal to enact a one-half cent per dollar (i.e., 0.5%) transaction and use tax for a period of ten (10) years in the Town of Yucca Valley, with the funds to be deposited in the Town's General Fund and be used for general Town purposes and services, including but not limited to police and crime prevention, fire protection, paramedic and 911 emergency response services, street repair and maintenance, graffiti prevention and abatement, anti-gang activities and other quality of life programs; and

**WHEREAS**, funds from this proposed measure are subject to strict fiscal accountability and transparency provisions, including annual independent audits, review by a citizens' oversight committee, and the publishing of expenditure reports to confirm that funds are spent efficiently and effectively; and

**WHEREAS**, California Constitution Article XIIC, Section 2, provides that any general tax must be submitted to the electorate and approved by a majority vote of the electorate; and

**WHEREAS**, California Constitution Article XIIC, Section 2, provides that an election regarding a general tax must be consolidated with a regularly-scheduled general municipal election for members of the Town Council; and

**WHEREAS**, a general municipal election on Tuesday, November 8, 2016, has been called by Resolution No. 16-15, adopted on June 7, 2016; and

**WHEREAS**, on the basis of the foregoing, following a public hearing on August 2, 2016, the Town Council determines it is appropriate to place a measure before the voters at the November 8, 2016, general municipal election regarding adoption of a Town transactions and use tax.

**NOW THEREFORE**, on the basis of the foregoing, the People of the Town of Yucca Valley at the November 8, 2016, general municipal election do hereby Ordain as follows:

**SECTION 1.** A new Chapter 3.26 is hereby added to the Yucca Valley Municipal Code to read as follows:

“Chapter 3.26”

TEMPORARY TRANSACTIONS AND USE TAX

3.26.010: SHORT TITLE:

This Chapter shall be known as the Town of Yucca Valley Essential Services Transactions and Use Tax Ordinance. This Chapter shall be applicable only in the incorporated territory of the Town.

3.26.020: BASIC DEFINITIONS:

As used in this Chapter, "Town" means the Town of Yucca Valley and "tax" means the temporary transactions and use tax (general tax) imposed under the provisions of this Chapter.

3.26.030: OPERATIVE DATE:

"Operative Date" means the first day that the tax is imposed. The “operative date” means the first day of the first calendar quarter commencing more than 110 days after the effective date of this Chapter, such effective date being as set forth below.

3.26.040: 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 temporary 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 Town to adopt this tax ordinance which shall be operative only 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 temporary retail transactions and use tax (general 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 temporary retail transactions and use tax ordinance that imposes a general tax and provides a measure therefore that may be administered and collected by the State Board of Equalization 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 State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a temporary retail transactions and use tax ordinance that may 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.

#### 3.26.050: CONTRACT WITH STATE:

Prior to the operative date, the Town shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided however, that if the Town shall not have contracted with the State Board of Equalization 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.

#### 3.26.060: IMPOSITION OF TRANSACTIONS TAX; 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 Town at the rate of one-half cent per dollar (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 Chapter.

#### 3.26.070: 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 State Board of Equalization.

#### 3.26.080: USE TAX RATE:

An excise tax is hereby imposed on the storage, use or other consumption in the Town of tangible personal property purchased from any retailer on and after the operative date of this Chapter for storage, use or other consumption in said territory at the rate of one-half cent per dollar (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.

3.26.090: PROCEEDS OF TAX:

The proceeds of the transactions and use tax imposed by this Chapter shall be deposited into the General Fund of the Town to be used for all general government purposes which may include, but are not limited to, fire and police protection, street and sidewalk repair and maintenance, library services, park repair and maintenance, recreational programs, building and code enforcement services, planning and zoning services, capital equipment requirements, public infrastructure, utilities and sewer systems, repair and replacement of Town facilities, capital improvement projects, operational expenses, fiduciary responsibilities, administration, indebtedness and general obligations of the Town. The tax imposed by this Chapter is intended to be and is, a general tax, the proceeds of which are to be spent as the Town Council shall in its discretion, from time to time, determine.

3.26.100: 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.

3.26.110: 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 the Town shall be substituted therefore. 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 Board of Equalization, 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 Town or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, 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:

- i. 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
- ii. 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 "Town" 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 of the Revenue and Taxation Code.

**3.26.120: 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.

**3.26.130: EXEMPTIONS AND EXCLUSIONS:**

A. There shall be excluded from the calculation 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 Town which is shipped to a point outside the Town, 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 Town shall be satisfied:

- i. 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-Town 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
- ii. With respect to commercial vehicles, by registration to a place of business out-of-Town 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 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 Town 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 Town 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 Town or participates within the Town 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 Town or through any representative, agent, canvasser, solicitor, subsidiary, or person in the Town under the authority of the retailer.

7. "A retailer engaged in business in the Town" 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 Town.

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.

3.26.140: CHANGES IN LAW:

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.

3.26.150: 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 Town, or against any officer of the State or the Town, 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.

3.26.160: ANNUAL AUDIT:

The proceeds resulting from this Transactions and Use Tax shall be deposited into the Town's General Fund and become subject to the same independent annual audit requirements as other General Fund revenue.

3.26.170: CITIZEN OVERSIGHT COMMITTEE:

An Independent Citizens' Oversight Committee appointed by the Town Council shall review the expenditures of revenues generated by the tax imposed by this Chapter and make the results of such review publicly available. Such Committee shall meet and be subject to all provisions of the Ralph M. Brown Act, Government Code Sections 54950 et seq.

3.26.180: ALL FUNDS STAYING LOCAL:

All tax revenues collected under the authority of this Chapter shall be expended solely on local municipal services, and shall not be used for any other purposes.

3.26.190: EFFECTIVE DATE:

This Chapter levying the tax described herein shall be effective ten (10) days after the date on which the Town Council has declared that the voters of the Town of Yucca Valley have approved the Chapter by a vote of no less than a majority of the votes cast by the electors voting on the tax measure set forth in this Chapter at that general municipal election to be held on Tuesday, November 8, 2016.

3.26.200: TERMINATION DATE:

The authority to levy the tax imposed by this Chapter shall expire ten (10) years from the operative date.

3.26.210: PENALTIES:

Without limiting any remedies available at law or equity, any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor.

3.26.211: AMENDMENTS:

The tax rate in this Chapter may only be increased by a vote of the people of the Town of Yucca Valley; provided, however, that the Town Council may amend this Chapter to reduce the amount of the tax authorized herein or to otherwise implement or advance the purpose and intent of this Chapter.”

**SECTION 2.** If any section, subsection, sentence, clause or phrase of this ordinance or the application thereof to any person or circumstance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The People of the Town of Yucca Valley hereby declared that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

**SECTION 3.** The adoption of this ordinance is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section §§ 21000 et seq.). CEQA Guideline 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

I hereby certify that Ordinance No. \_\_\_\_ was passed, approved and adopted by the People of the Town of Yucca Valley, California, voting on the 8th day of November, 2016.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
TOWN CLERK

Ordinance No. \_\_\_\_ was submitted to the People of the Town of Yucca Valley at the November 8, 2016, general municipal election. It was approved by the following vote of the electors:

YES: \_\_\_\_\_

NO: \_\_\_\_\_

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State of California        )  
County of San Bernardino)  
Town of Yucca Valley    )

I, Lesley Copeland, Clerk of the Town of Yucca Valley, do hereby certify that the foregoing Ordinance was approved for placement on the ballot at the regular meeting of the Town of Yucca Valley Town Council on the 2nd day of August, 2016, and was passed by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Lesley Copeland, Town Clerk