

Exhibit "A"

FILED

JUL 23 2020

BY  DEPUTY
REGISTRAR OF VOTERS

CITY OF VICTORVILLE ORDINANCE NO. 2409

AN ORDINANCE OF THE CITY OF VICTORVILLE, CALIFORNIA, ADDING CHAPTER 3.06 TO TITLE 3 OF THE VICTORVILLE MUNICIPAL CODE FOR THE PURPOSE OF ESTABLISHING AND IMPOSING A ONE PERCENT (1%) GENERAL TRANSACTIONS AND USE TAX FOR ESSENTIAL MUNICIPAL SERVICES TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, SUBJECT TO ADOPTION BY THE ELECTORATE

THE PEOPLE OF THE CITY OF VICTORVILLE DO ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 3.06 SHALL BE ADDED TO TITLE 3 OF THE VICTORVILLE MUNICIPAL CODE TO READ AS FOLLOWS:

**Chapter 3.06
General Transactions and Use Tax**

3.06.010 – Title.

The ordinance codified in this chapter shall be known as the “City of Victorville General Transactions and Use Tax Ordinance for Essential Municipal Services.” The City of Victorville hereinafter shall be referred to as the “City.” This ordinance shall be applicable in the incorporated territory of the City.

3.06.020 - Operative Date.

“Operative date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

3.06.030 - Purpose.

This ordinance is adopted to achieve the following purposes, and the City Council 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 City 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.

(e) To provide transaction and use tax revenue to the City to be spent for unrestricted general revenue purposes, including without limitation: essential municipal services, such as: enhancing public safety by supporting community relations and community policing; ensuring sustainability of funding available to expand fire protection and emergency medical service levels; expanding crime suppression, investigation and traffic enforcement; expanding and ensuring sustainability of code enforcement and animal control; helping to address and eliminate homelessness; keeping public areas clean and free of graffiti, including graffiti abatement; repairing and maintaining public buildings and infrastructure, including without limitation, the City library, recreational facilities and parks; improving and maintaining city streets, including without limitation, sidewalks, curbs, storm drains and gutters and the repair of potholes; job creation and economic improvement programs; senior and youth services; with all transactions and use tax revenue received being placed into the City's general fund.

3.06.040 - Contract with State.

Prior to the operative date of this ordinance, 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.

3.06.050 - 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 (1.0%) 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 this ordinance.

3.06.060 - Place of Sale.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

3.06.070 - 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 (1.0%) 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.

3.06.080 - Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

3.06.090 - 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. The substitution, however, 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 the City or any agency, officer, or employee thereof, rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance;

(3) In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

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 said provisions 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.

i. "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3.06.100 - 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 ordinance.

3.06.110 - Exclusions and Exemptions.

(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:

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-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

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

(3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance

(4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

(5) For the purposes of subsections (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(c) There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

(4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

(5) For the purposes of subsections (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 subsection (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

(7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

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

3.06.120 - Amendments.

(a) All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to the sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

(b) The City Council may amend this ordinance without voter approval to make minor technical adjustments consistent with the purposes set forth in this ordinance and applicable laws or as necessary to comply with the law.

(c) Notwithstanding any provision to the contrary, any proposed change to the tax rate imposed under this ordinance shall be submitted to the vote of the people.

3.06.130 - 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 this City, or against any officer of the State or this City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.06.140 – Use of Funds

The proceeds of the tax imposed by this ordinance shall be deposited into the general fund of the City and may be used to fund any of the services, programs, or purposes set forth in Section 3.06.030(e) of this ordinance, or for any other lawful municipal purpose. The tax does not meet the criteria specified in Government Code Section 53724 and Section 1(d) of Article XIII C of the California Constitution for special taxes and is a general tax imposed for general governmental purposes.

3.06.150 – Independent Annual Audit.

The proceeds of this transactions and use tax shall be subject to the same independent annual audit requirements as other general fund revenues. The independent auditor’s report, which shall include an accounting of the revenues received and expenditures made from the transactions and use tax, will be presented annually to the City Council and made available for public review.

3.06.160 – Termination Date.

The authority to levy the tax imposed by this ordinance shall continue indefinitely until terminated by a majority of the voters at a regularly scheduled municipal election.

SECTION 2. CEQA

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.

SECTION 3. SEVERABILITY

If any part or provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable and the City Council hereby declares that they would have adopted each and every provision of this ordinance regardless of the invalidity of any other provision.

SECTION 4. ELECTION REQUIRED; EFFECTIVE DATE

This ordinance relates to the levying and collecting of a general City transactions and use tax, and shall take effect immediately upon certification of the approval of the voters at the General Municipal Election to be held on November 3, 2020. If approved by a majority of the electors voting on the measure in said election, this ordinance shall be considered effective upon the date that the election results are declared by the City Council and a resolution certifying the same is duly adopted by the City Council.

SECTION 5. CERTIFICATION AND PUBLICATION

The City Clerk shall certify to the approval and adoption of this ordinance by the Victorville City Council and the voters, cause it to be published as required by law, and forward a copy of the adopted ordinance to the California Department of Tax and Fee Administration.

THE FOREGOING ORDINANCE NO. 2409 WAS:

(1) INTRODUCED AND APPROVED FOR FIRST READING AT A REGULAR MEETING OF THE CITY COUNCIL ON July 7, 2020 BY THE FOLLOWING VOTE, CONSTITUTING AT LEAST A 2/3 VOTE OF THE MEMBERSHIP OF THE CITY COUNCIL:

AYES: Mayor Garcia, Councilmembers Cox, Jones and Ramirez
NOES: Councilmember Gomez
ABSENT:
ABSTAIN:

(2) READ A SECOND TIME ON July 21, 2020, AND ADOPTED/APPROVED FOR FINAL PASSAGE (CONTINGENT UPON MAJORITY VOTER APPROVAL) BY THE FOLLOWING VOTE, CONSTITUTING AT LEAST A 2/3 VOTE OF THE MEMBERSHIP OF THE CITY COUNCIL:

AYES: Mayor Garcia, Councilmembers Cox, Jones, and Ramirez
NOES: Councilmember Gomez
ABSENT:
ABSTAIN:

(3) SUBMITTED TO THE VOTERS OF THE CITY OF VICTORVILLE AT THE NOVEMBER 3, 2020 GENERAL MUNICIPAL ELECTION AND APPROVED BY THE FOLLOWING VOTE:

YES: _____ NO: _____

Ordinance No. _____ was approved by the voters at the November 3, 2020 general municipal election and was thereby considered effective on _____, 2020, the date on which the City Council at a regular meeting adopted a resolution declaring the results of said election by the following vote.

AYES:
NOES:
ABSENT:
ABSTAIN:

I HEREBY CERTIFY that the foregoing is a true and correct copy of an ordinance duly and regularly adopted by the People of the City of Victorville, California

Charlene Robinson, City Clerk

Date

ORDINANCE NO. 2409

PASSED, APPROVED AND ADOPTED THIS 21ST DAY OF JULY, 2020 (SUBJECT TO VOTER APPROVAL AT THE NOVEMBER 3, 2020 GENERAL ELECTION)


MAYOR OF THE CITY OF VICTORVILLE

ATTEST:


ASSISTANT CITY CLERK

7-23-2020
DATE

APPROVED AS TO FORM:


CITY ATTORNEY

I, MARCIE WOLTERS, Assistant City Clerk of the City of Victorville and assistant ex-officio Clerk to the City Council of said City, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2409 which was duly adopted at a meeting held on the 21st day of July 2020 by the following roll call vote, to wit:

AYES: Mayor Garcia, Councilmembers Cox, Jones, and Ramirez

NOES: Councilmember Gomez

ABSENT: None

ABSTAIN: None


ASSISTANT CITY CLERK OF THE CITY OF VICTORVILLE