

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF UNION CITY AMENDING AND RESTATING
CHAPTER 3.22 OF THE UNION CITY MUNICIPAL CODE TO EXTEND THE
EXISTING, VOTER-APPROVED MEASURE AA TRANSACTIONS AND USE (SALES)
TAX ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

WHEREAS, for the past 12 years, Union City has relied upon approximately \$6 million annually in locally-controlled funding from a half-cent sales tax measure first approved by 60% of local voters in 2010 and renewed by 73% of local voters in 2014; and

WHEREAS, funds from Union City's locally controlled sales tax maintain city services such as firefighters, paramedics, 9-1-1 emergency response, police patrols, pothole and street repairs, and services for children, families and seniors; and

WHEREAS, public reports from the independent citizens' oversight committee that reviews the use of funds from Union City's local sales tax have consistently confirmed that funds have been collected and spent properly; and

WHEREAS, unless renewed by local voters, Union City's locally controlled sales tax funding is set to expire and the City will lose approximately \$6 million in annual funding, requiring budget cuts that could include 911 emergency response, community and neighborhood policing, and reductions in street repair and maintenance; and

WHEREAS, to prevent cuts to local programs and services, the City Council desires to place a measure on the November 8, 2022 ballot to renew local sales tax funding for nine years without increasing the tax rate; and

WHEREAS, essential purchases like groceries and prescription medicine are exempt from the cost of the sales tax to ensure the cost is not a burden to those on fixed or limited incomes; and

WHEREAS, shoppers and visitors from other communities must pay the cost of the sales tax to support Union City services, including shoppers from throughout the region who visit Union Landing; and

WHEREAS, the measure to renew locally controlled funding would continue strict fiscal accountability protections, including an independent citizens' oversight committee, mandatory annual audits and public disclosure of all spending; and

WHEREAS, all funds from a renewed local sales tax must remain under local funds for local needs in Union City and no funds can be taken away by the State; and

WHEREAS, at an election held on November 2, 2010, a majority of the voters of the City of Union City approved a local funding measure that provided revenue that could not be taken by the State commonly known as "Measure AA"; and

WHEREAS, at an election held on November 2, 2014, a majority of voters of the City of Union City approved renewal of Measure AA; and

WHEREAS, Measure AA has been critical in maintaining essential City services, such as 9-1-1 emergency response, police patrols, fire protection, youth, senior, after-school, and family recreational services, as well as programs for residents with special needs, among others; and

WHEREAS, Measure AA is set to expire unless extended by a majority of the voters of the City; and

WHEREAS, the City of Union City has carefully evaluated how to deal with this potential loss of funds, while continuing to provide the quality of life services that community residents rely upon; and

WHEREAS, without Measure AA, the City of Union City will not be able to maintain all existing programs, will not be able to adequately maintain infrastructure or facilities, and will not be able to maintain the service levels currently in place; and

WHEREAS, a continuation of Measure AA with no increase in tax rate, will ensure that all money raised will be controlled locally for local services, and cannot be taken away by the State; and

WHEREAS, Measure AA is codified in Chapter 3.22 of the Union City Municipal Code. Under section 3.22.150 "Termination Date," Measure AA is set to expire on April 1, 2025, unless extended by the voters, which would deprive the City of a crucial source of funding to prevent severe cuts to essential services such as police, fire, paramedic, streets, parks and other services; and

WHEREAS, the proposed measure would extend the existing Measure AA tax for an additional 9 years, until March 31, 2034, on the sale of tangible personal property and the storage, use, or other consumption of such property. The tax rate would continue to be one-half of one percent (0.5%) (a one-half cent for each dollar) of the sales price of the property. The proposed measure would also provide that the tax revenue would be collected by the California Department of Tax and Fee Administration and remitted to the City. The tax would be in effect for an additional 9 years, and would then expire automatically, unless extended by the voters. The tax shall be approved if the measure receives at least a simple majority of affirmative votes.

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

SECTION 1. **Recitals.** The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. **Amendment of Chapter 3.22 of the Municipal Code.** Chapter 3.22 of the Union City Municipal Code is hereby amended and restated to read as follows:

“3.22.010 - Title.

This ordinance shall be known as the Union City Transactions and Use Tax Ordinance. The City of Union City hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.22.020 - 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.

3.22.030 - Purpose.

This ordinance 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 ordinance.

3.22.040 - 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.

3.22.050 - 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-half of one percent 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.

3.22.060 - 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.

3.22.070 - 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-half of one percent 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.

3.22.080 - 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.

3.22.090 - 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 Ordinance.
 - 3.** In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a.** Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
 - b.** Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
 - 4.** In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B.** The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.
- 1.** "A retailer engaged in business in the City" 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.

3.22.100 - 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.

3.22.110 - 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 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 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 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 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 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.

3.22.120 - Amendments.

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

3.22.130 - 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 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.

3.22.140 – Citizens Oversight Committee and Independent Audit.

There shall be a five-person committee of members of the public to review and report on the revenue and expenditure of funds from the tax adopted by this chapter. Prior to the operative date, the City Council shall adopt a resolution establishing the composition of the committee and defining the scope of its responsibilities. Also prior to the operative date, the City Council shall appoint at least a quorum of the members of the committee; the Council shall complete the appointment of members of the committee by the end of fiscal year 2011.

The City shall annually verify that the taxes owed under this chapter have been properly applied, collected, and remitted in accordance with this chapter, and properly expended according to applicable law. The annual verification shall be performed by a qualified, independent third party, and the review shall employ reasonable, cost-effective steps to assure compliance, including

the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be received.

3.22.150 - Termination Date.

The authority to levy the tax imposed by this ordinance shall expire on March 31, 2034.”

SECTION 3. Adjustment of Appropriations Limit. Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax.

SECTION 4. Compliance with the California Environmental Quality Act. The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). This ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the ordinance is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. If this ordinance is approved by a majority of the voters voting on the issue at the November 8, 2022 election, pursuant to Elections Code Section 9217, this ordinance shall become effective ten (10) days after the Council declares the results of the election, and the tax shall become operative on the “operative date,” as defined in this ordinance.

APPROVED by the following vote of the People of the City of Union City on November 8, 2022:

YESSES:

NOES:

ADOPTED by Declaration of the November 8, 2022 election results by the City Council of the City of Union City at a regular meeting held on _____, 2022, by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS

APPROVED:

Carol Dutra-Vernaci, Mayor

ATTEST:

Anna Brown, City Clerk

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APPROVED AS TO FORM:

Kristopher Kokotaylo, City Attorney