

RESOLUTION NO. 16-553

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENIFEE, CALIFORNIA, REQUESTING PLACEMENT OF A MEASURE ON THE GENERAL ELECTION BALLOT FOR THE CITY OF MENIFEE ON NOVEMBER 8, 2016, TO CONSIDER APPROVING AN ORDINANCE ADDING CHAPTER 3.26 TO THE MENIFEE MUNICIPAL CODE ESTABLISHING A TRANSACTIONS AND USE (SALES) TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, traffic congestion in Menifee is a serious problem for local residents and commuters and improving traffic circulation, reducing congestion, and making local city streets and roads safer for drivers and pedestrians alike has been identified as a community and city priority; and

WHEREAS, in just eight years alone, the City of Menifee has grown by 36%, with population growth expected to continue to increase in the next decade, and the City wishes to maintain the quality of its city services under the pressure of this growth; and

WHEREAS, our residents have chosen to live in Menifee because it offers a better quality of life and services than many other nearby cities, but additional, locally-controlled funding is needed to continue to provide a high level of 911 emergency response, keep local roads in good condition, maintain public parks, and provide all the services that make Menifee a great place to live, work and visit; and

WHEREAS, with crime from surrounding communities increasing, the City seeks to maintain police protection, including the number of officers on our streets; and

WHEREAS, safe neighborhoods and well-maintained streets and parks help maintain local property values; and

WHEREAS, Sacramento has taken almost \$20,000,000 in Menifee's vehicle license fee revenue and the City of Menifee needs a dedicated, locally-controlled local funding source that cannot be seized by Sacramento, and that funding source must be dedicated to the benefit of the local community; and

WHEREAS, pursuant to the requirements of the laws of the State of California relating to general law cities, the City Council of the City of Menifee requests that a ballot measure be placed on the General Election ballot for the election to be held in the City of Menifee, California, on November 8, 2016, relating to establishing a 1% transactions and use (sales) tax in the City of Menifee; and

WHEREAS, if enacted, all funds generated by the measure would include fiscal accountability provisions such as annual, independent financial audits to ensure funds are used efficiently and effectively on the community's priorities; and

WHEREAS, it is desirable that the election be consolidated with the general election to be held on November 8, 2016 and that within the City precincts, polling places

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and election officers of the elections be the same, and that the County of Riverside Registrar of Voters canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

WHEREAS, the City Council requests the County of Riverside Registrar of Voters to conduct the consolidated election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENIFEE, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Pursuant to the requirements of the laws of the State of California relating to general law cities within the state, there shall be, and there is hereby called and ordered to be held in the City of Menifee, California, on November 8, 2016, an election of the qualified electors of Menifee on a ballot measure ordinance set forth as Exhibit A hereto and incorporated herein by reference relating to the establishment of a transactions and use (sales) tax in the City of Menifee.

SECTION 2. The election called and ordered by this Resolution shall be consolidated with the general election to be held on November 8, 2016.

SECTION 3. Pursuant to the requirements of the California Elections Code, the Board of Supervisors of the County of Riverside is hereby requested to consent and agree to the consolidation of the election with the general election on November 8, 2016, for the purpose of consideration of adoption of a council-sponsored initiative ordinance related to establishing a 1% transactions and use tax to be administered by the State Board of Equalization by adding Chapter 3.26 to the Menifee Municipal Code. The wording of the measure to be submitted to the voters shall be printed on the ballot as follows:

MEASURE

<p>MENIFEE PUBLIC SAFETY/TRAFFIC CONGESTION RELIEF/VITAL CITY SERVICES MEASURE. Shall Ordinance 2016-199 of the City of Menifee to reduce traffic congestion; improve/repair local interchanges/overpasses/streets/roads/bridges/potholes; maintain local police/fire protection/paramedics/9-1-1 emergency response times; prevent cuts to senior/disabled/youth programs; and provide other general services by enacting a 1¢ sales tax providing \$6.2 million annually until ended by voters; requiring annual independent audits, all funds spent locally, be adopted?</p>	YES
	NO

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SECTION 4. If the sales tax measure passes, the City Manager shall, every five years, place an item on the agenda for the City Council of the City of Menifee so that the City Council can, in connection with its budget process evaluate whether to place an item on the ballot to discontinue the 1% sales tax increase.

SECTION 5. The City Manager is directed to formulate and present to the City Council a financial policy to implement the direction of Section 4.

SECTION 6. That the County of Riverside Registrar of Voters is authorized to canvass the returns of the consolidated election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 7. That the Board of Supervisors is requested to issue instructions to the County of Riverside Registrar of Voters to take any and all steps necessary for the holding of the general consolidated election.

SECTION 8. That the City of Menifee recognizes additional costs will be incurred by the County, by reason of this consolidation, and agrees to reimburse the County for any associated costs.

SECTION 9. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County of Riverside Registrar of Voters.

SECTION 10. The polls for the election shall be open at seven o'clock a.m. on the day of the election, and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

SECTION 11. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding general elections in the City.

SECTION 12. The notice of the time and place of holding the general election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the general election, in time, form and manner as required by law.

SECTION 13. The City Clerk is directed to transmit a copy of the measure to the City Attorney to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280 and Resolution No. 16-552. The analysis shall be printed preceding the

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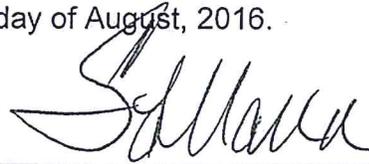
arguments for and against the measure and shall not exceed 500 words in length. The impartial analysis shall be submitted to the City Clerk by 5:00 pm on August 18, 2016.

SECTION 14. The City Council authorizes the submission of a ballot argument in favor of the proposed transactions and use (sales) tax measure by members of the City Council, bona fide associations and/or eligible individual residents in favor of the measure pursuant to Elections Code Section 9282 and Resolution No. 16-552 and further authorizes rebuttal arguments to be submitted pursuant to Elections Code 9285. The arguments must be submitted to the City Clerk by 5:00 pm on August 18, 2016. Rebuttal arguments must be submitted to the City Clerk by 5:00 pm on August 26, 2016.

SECTION 15. The City Clerk is directed to forward without delay to the County of Riverside Registrar of Voters, a certified copy of this Resolution.

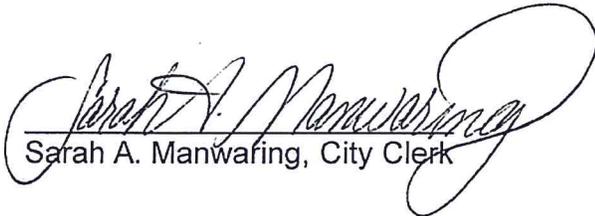
SECTION 16. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

Passed, approved and adopted on the 3rd day of August, 2016.



Scott A. Mann, Mayor

Attest:



Sarah A. Manwaring, City Clerk

Approved as to form:



Jeffrey T. Melching, City Attorney



Scott A. Mann
Mayor

Greg August
Mayor Pro Tem
District 1

Matthew Liesemeyer
Councilmember
District 2

Lesa Sobek
Councilmember
District 3

John V. Denver
Councilmember
District 4

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF MENIFEE)

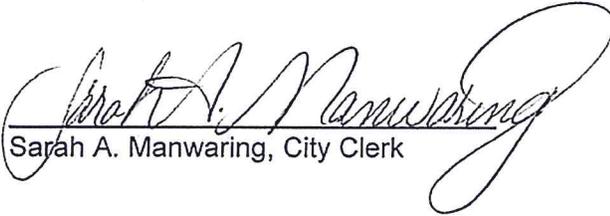
I, Sarah A. Manwaring, City Clerk of the City of Menifee, do hereby certify that the foregoing Resolution No. 16-553 was duly adopted by the City Council of the City of Menifee at a meeting thereof held on the 3rd day of August, 2016 by the following vote:

Ayes: August, Denver, Liesemeyer, Mann, Sobek

Noes: None

Absent: None

Abstain: None



Sarah A. Manwaring, City Clerk

EXHIBIT A

**COUNCIL-SPONSORED INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY
TO THE VOTERS**

The City Council of the City of Menifee submits the following initiative measure to the voters of the City for approval and enactment:

ORDINANCE NO. 2016-199

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF MENIFEE, CALIFORNIA,
ESTABLISHING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY
THE STATE BOARD OF EQUALIZATION BY ADDING CHAPTER 3.26 TO
THE MENIFEE MUNICIPAL CODE**

THE PEOPLE OF THE CITY OF MENIFEE ORDAIN AS FOLLOWS:

Section 1. The Menifee Municipal Code is hereby amended by the addition of a new Chapter 3.26 to read in its entirety as follows:

Chapter 3.26
Transactions and Use Tax

Sections:

3.26.010	Title
3.26.020	Operative Date
3.26.030	Purpose
3.26.040	Contract With State
3.26.050	Transaction Tax Rate
3.26.060	Place of Sale
3.26.070	Use Tax Rate
3.26.080	Adoption of Provisions of State Law
3.26.090	Limitations on Adoption of State Law and Collection of Use Taxes
3.26.100	Permit Not Required
3.26.110	Exemptions and Exclusions
3.26.120	Amendments
3.26.130	Enjoining Collection Forbidden
3.26.140	Use Tax Proceeds
3.26.150	Annual Audit
3.26.160	Termination Date

3.26.010 Title. This Chapter shall be known as the Menifee Transactions and Use Tax Ordinance. The City of Menifee hereinafter shall be called "City." This Chapter shall be applicable in the incorporated territory of the City.

3.26.020 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.

3.26.030 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 adopt 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 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 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.

3.26.040 Contract With State. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transaction and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative data, 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.

3.26.050 Transaction 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 1% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

3.26.060 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 State Board of Equalization.

3.26.070 Use Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in the incorporated territory of 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 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.

3.26.080 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.

3.26.090 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 the City shall be substituted therefor. However, the substitution, however, shall not be made when:
1. The word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, the 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 State Board of Equalization, 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 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 substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 or in the definition of that phrase in Section 6203.

3.26.100 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.

3.26.110 Exemptions and Exclusions.

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales 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 the 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

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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 the 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.

3.26.120 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.

3.26.130 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.

3.26.140 Use of Tax Proceeds. All proceeds of the tax levied and imposed under this chapter shall be paid into the General Fund for use by the City of Menifee.

3.26.150 Annual Audit. By no later than December 31st of each year, the City's independent auditors shall complete a financial audit report to include the revenue raised and expended by this tax to be reflected in the City's budget. The audit shall review whether the tax revenues collected pursuant to this chapter are collected, managed and expended in accordance with the adopting ordinance.

3.26.160 Termination Date. The authority to levy the tax imposed by this chapter shall expire when ended by voters.

Section 2. If any section, subsection, sentence or clause of this ordinance is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. The adoption of this ordinance is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA). Pursuant to CEQA Guidelines section 15378(b)(4) the tax 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 impact on the environment and therefore CEQA review is not required.

Section 4. This ordinance relates to the levying and collecting of the City's transactions and use taxes and shall take effect immediately upon approval by the majority of voters voting at the general municipal election on November 8, 2016.

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Section 5. The City Clerk shall certify the passage of this ordinance and forward a copy of the adopted ordinance to the State Board of Equalization.

PASSED, APPROVED AND ADOPTED by the People of the City of Menifee, California, at the general election held on November 8, 2016.

Scott A. Mann, Mayor

Attest:

Sarah A. Manwaring, City Clerk