

EXHIBIT "A"

CITY OF VICTORVILLE ORDINANCE NO. 2371

NOT OPERATIVE UNTIL ENACTED BY VOTERS

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 SPECIAL TRANSACTIONS AND USE TAX FOR PUBLIC SAFETY SERVICES TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

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  
Special Public Safety Transactions and Use Tax

**3.06.010 – Title.**

The ordinance codified in this chapter shall be known as the "City of Victorville Special Public Safety Transactions and Use Tax Ordinance." 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, among other purposes, and the City Council directs that the provisions hereof be interpreted in order to accomplish those purposes:

- (a) To enhance public safety within the City;
- (b) To ensure sustainability of funding available to support cost increases associated with current police, fire and emergency medical service levels;

(c) To irrevocably dedicate the proceeds from the tax created by this ordinance exclusively to law enforcement (police), fire protection, fire suppression, and emergency medical equipment, programs, facilities, personnel and services within the City;

(d) To impose a retail transactions and use tax ordinance in compliance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2 of the Revenue and Taxation Code, which authorizes the City to adopt this tax ordinance which shall be operative if two-thirds (2/3) of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose;

(e) 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;

(f) 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; and

(g) 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.

**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 has not 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-half percent (0.5%) of the gross receipts of any retailer from the sale of all tangible 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-half percent (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.

### **3.06.080 - 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) Whenever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. The substitution, however, shall not be made when:

(1) The word "State" is used as part of the title of the State Controller, State Treasurer, California Department of Tax and Fee Administration, 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.

### **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 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 levied 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) Except for amendments that would: (i) increase the tax rate or revise the methodology for calculating the tax such that a tax increase would result; (ii) impose the tax on transactions and uses not previously subject to the tax (unless the amendment occurs pursuant to Section 3.06.120(a)); or (iii) change the purposes and/or uses for which the tax is collected, the

City Council may amend this ordinance or the Expenditure Plan (in the manner set forth in Section 3.06.150 hereof) without submitting the amendment to the voters for approval.

### **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 - Refunds and Credits, Suits and Legal Proceedings**

(a) Refunds of and credits for any tax paid pursuant to this ordinance may be made only as provided in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(b) Suits and proceedings for the recovery of any amount alleged to have been erroneously or illegally determined or collected pursuant to this ordinance may be maintained in any court only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. A judgment shall not be rendered in favor of the plaintiff in any action brought against the Board of Equalization to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

### **3.06.150 - Expenditure Plan; Use of Proceeds**

(a) All proceeds of the special tax imposed by this ordinance shall be accounted for and paid into a special fund or account designated for use by the City only for the public safety purposes outlined herein and set forth in the Expenditure Plan, attached to this ordinance as Exhibit 1, and made a part hereof as though fully set forth herein.

(b) The Expenditure Plan shall be reviewed and re-adopted as part of the City's normal annual budget process, and may be amended by resolution from time to time as necessary by a majority vote of the City Council, as long as the funds continue to be utilized for the public safety purposes outlined herein.

(c) No revenues collected pursuant to the tax levied by this ordinance may be spent on General Fund operating expenses in effect at the time this ordinance becomes effective, or uses that are not part of the annual Expenditure Plan. Revenues collected by this ordinance shall supplement, rather than replace, existing City expenditures for public safety service levels as reflected in the FY 2017/2018 budget.

### **3.06.160 - Annual Audit**

The City's independent auditor will perform an annual verification to assure that the revenue from the special tax imposed by this ordinance is being used for intended purposes. The special

fund or account established for the proceeds of the special tax shall also be subject to the annual audit performed by the City's independent auditor of its books, records, accounts and fiscal procedures and which is reported in the City's Comprehensive Annual Financial Report.

**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 special City transactions and use tax, and shall take effect immediately upon approval of the voters at the Special Municipal Election to be held on November 7, 2017. If approved by two-thirds (2/3) of the electors voting on the measure in said election, this ordinance shall be considered adopted 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 adoption of this ordinance by 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. 2371 WAS APPROVED BY A TWO-THIRDS (2/3) VOTE OF THE CITY COUNCIL ON \_\_\_\_\_, AND WAS SUBMITTED TO THE VOTERS OF THE CITY OF VICTORVILLE AT THE NOVEMBER 7, 2017 SPECIAL MUNICIPAL ELECTION AND APPROVED BY THE FOLLOWING VOTE:

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

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

Ordinance No. 2371 was approved by the voters at the November 7, 2017 special municipal election and was thereby considered adopted and effective on \_\_\_\_\_, 2017, 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:

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.

\_\_\_\_\_  
**Carolee Bates, City Clerk**

## **Exhibit 1**

### **Special Public Safety Transactions and Use Tax Expenditure Plan**

The one-half percent (0.5%) Special Public Safety Transactions and Use Tax is estimated to generate \$8,471,157 annually based on forecasted sales tax revenue for Fiscal Year 2017/2018, excluding potential one-time revenue from construction or business-to-business activity. Annual tax proceeds will vary based upon the operative date in year one, and actual economic activity occurring within the incorporated territory of the City.

The City Council has dedicated the use of proceeds from the Special Public Safety Transactions and Use Tax exclusively in support of maintaining and enhancing law enforcement (police), fire protection, fire suppression, and emergency medical equipment, programs, facilities, personnel and services within the City of Victorville.

The City Council is committed to utilizing Special Public Safety Transactions and Use Tax proceeds for one-time and ongoing annual expenses associated with the following:

#### **Law Enforcement (Police)**

- Minimum of 10 additional sworn deputies;
- Equipment, training and support for additional deputy positions; and
- Future cost increases associated with current and increased service levels.

#### **Fire Protection, Suppression and Emergency Medical Response**

- Minimum of 15 additional sworn firefighter/paramedic personnel;
- Equipment, training and support for additional firefighter/paramedic positions;
- Opening Fire Station 315;
- Establishing one additional paramedic squad;
- Apparatus for Fire Station 315 and the additional paramedic squad;
- Future cost increases associated with current and increased service levels; and
- Development of a schedule and funding for the replacement of aging fire apparatus.

*Note: New positions outlined above would be in addition to budgeted positions associated with current service levels as approved in the Fiscal Year 2017/2018 budget.*

Any tax proceeds not utilized during a particular fiscal year, or received in excess of the cost requirements to support the expenditures outlined above, shall be reserved in a special fund or account for exclusive use in support of public safety services, and will remain eligible for expenditures outlined above.