ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ADDING FULLERTON MUNICIPAL CODE TITLE 21 (TAXATION), CHAPTER 21.34 (ROADS / INFRASTRUCTURE TRANSACTIONS AND USE TAX) TO IMPOSE A TRANSACTIONS AND USE TAX ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

THE CITY COUNCIL AND THE PEOPLE OF THE CITY OF FULLERTON ORDAIN AS FOLLOWS:

SECTION 1. The City Council and the People find as follows:

A. The City's aging infrastructure, especially its local streets, arterials, alleys and sidewalks, is in critical need of maintenance, repair and replacement.

B. Pursuant to the City's Ordinance No. 3284, at least 50% of property tax revenues and sales tax revenues above a baseline level are transferred each year to the City's Infrastructure Fund and can only be expended on infrastructure expenses.

C. The Infrastructure Fund is not sufficient to fully fund the City's infrastructure needs, and the City lacks other resources sufficient to meet those needs.

D. A transactions and use tax would generate dedicated funds that could only be used for infrastructure needs and for no other purpose.

SECTION 2. Chapter 21.34 (Roads/Infrastructure Transactions and Use Tax) is added to Title 21 (Taxation) of the Fullerton Municipal Code to read as follows:

Chapter 21.34 Roads/Infrastructure Transactions and Use Tax

Section 21.34.010 Title.

This chapter shall be known as the City of Fullerton Roads/Infrastructure Transactions and Use Tax Ordinance. The City of Fullerton hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

Section 21.34.020. Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Infrastructure and Natural Resources Advisory Committee means the City's

Infrastructure and Natural Resources Advisory or any successor committee designated by the City Council.

Public Infrastructure means long-lived capital assets that are generally stationary in nature and can be preserved for a significant number of years, including, but not limited to, alleys, arterials, streets, highways, curbs and gutters, sidewalks, bridges, street trees, landscaped medians, traffic signals, streetlights, retaining walls along streets and arterials, public facilities and improvements within the public right-of-ways or on public property.

Public Infrastructure Restoration means the maintenance, repair and replacement of public infrastructure in the City of Fullerton that is not eligible for funding from the City's water, sewer, or airport enterprise funds.

Street Improvements means public infrastructure restoration of local streets, arterials, alleys, sidewalks and appurtenances thereto

Section 21.34.030. Special Account

Proceeds of the taxes imposed by this chapter, net of amounts required for the administration of the taxes, shall be deposited by the City in in a special Roads/Infrastructure Account and shall be separately accounted for from the other funds of the City.

Section 21.34.050 Use of Funds

A. The specific purpose of the taxes imposed by this chapter is to fund public infrastructure restoration.

B. Funds in the Roads/Infrastructure Account created by this chapter shall not be used for any other purpose.

C. Unless the city's streets are in good condition, no less than 75% of the proceeds of the taxes imposed by this chapter shall be used for street improvements.

D. For purposes of this section, the city's streets are considered to be in good condition only if the city's then-current annual pavement management plan indicates that, based on a review conducted by a firm certified by the Orange County Transportation Authority or its successor, the City's Pavement Condition Index is 80 or higher. The Pavement Management Plan and the report of the independent review determining the City's Pavement Condition Index shall each be presented to the Infrastructure and Natural Resources Advisory Committee and made available to the public.

Section 21.34.060 Reporting

The Director of Administrative Services, or their designee, shall file a report with the City Council at least once a year detailing: (i) the amount of proceeds of the taxes imposed by this chapter that have been collected and expended; (ii) the use of those funds; and (iii) the status of any work authorized to be funded by Section 21.34.050 of this chapter, which section constitutes the expenditure plan for the taxes imposed by this chapter. This report may be a separate report or may be a part of the City's Annual Consolidated Financial Report or any other report prepared by the City.

Section 21.34.070 Audit

The collection and expenditure of the proceeds of the taxes imposed by this chapter shall be audited at least annually by an independent certified public accountant. Such audit may be a part of the annual independent audit of the city's finances.

Section 21.34.080. Citizen Oversight

The Infrastructure and Natural Resources Advisory Committee shall make such recommendations to the City Council as it deems necessary or useful regarding the use of proceeds of the taxes imposed by this chapter. The Infrastructure and Natural Resources Advisory Committee shall also review the annual report required by Section 21.34.060 of this chapter and may make such recommendations to the City Council as it deems necessary or useful. Separate from the annual report required by Section 21.34.060 of this chapter, the Infrastructure and Natural Resources Advisory Committee may, by a majority vote of its membership, choose to publish a report, in which event such report, if approved by a majority of the members, shall be published on the City's internet page. In the event the City Council, the Infrastructure and Natural Resources Advisory Committee, the City, any employee of the City, or any member of the City Council or the Infrastructure and Natural Resources Advisory Committee fails to take an action required by this Section, any court of competent jurisdiction may order that the action be taken. However, such failure to act shall not invalidate the City's authority to levy any tax or in any way affect the ongoing collection of any tax pursuant to this chapter. All meetings of the Infrastructure and Natural Resources Advisory Committee shall comply with the provisions of the Ralph M. Brown Act (Gov't Code Section 54950, et seq.).

Section 21.34.090 Operative Date

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter. For purposes of Revenue and Taxation Code section 7265, this chapter shall be considered adopted on the date of the election in which it is approved by the qualified voters of the City.

Section 21.34.100 Purpose

This chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt a tax ordinance which shall be operative if two-thirds 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.

Section 21.34.110 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.

Section 21.34.120 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 0.5% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this chapter.

Section 21.34.130 Place of Sale

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

Section 21.34.140 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 chapter for storage, use or other consumption in said territory at the rate of 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.

Section 21.34.150 Adoption of Provisions of State Law

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

Section 21.34.160 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 Chapter.

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

    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 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.

Section 21.34.170 Permit Not Required

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter.

Section 21.34.180 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 chapter.

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

operative date of this chapter.

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

C. There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this 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 chapter.

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

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

6. Except as provided in subparagraph (7), a retailer engaged in business in the 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 chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 21.34.190 Amendments

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

Section 21.34.200 Enjoining Collection Prohibited

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 chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 21.34.210 Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 3. This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately. However, no tax imposed by this Ordinance shall be effective unless that tax has been approved by a two-thirds vote of the qualified voters of the city voting on the matter as required by Section 2(d) of Article XIII C of the California Constitution and applicable law.

SECTION 4. The City Clerk shall publish this ordinance in the manner prescribed by law.

ADOPTED BY THE FULLERTON CITY COUNCIL BY A VOTE OF TWO-THIRDS OF ITS MEMBERS ON __________, 2026.

Fred Jung
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

ADOPTED BY THE PEOPLE OF THE CITY OF FULLERTON AT AN ELECTION HELD ON NOVEMBER 3, 2026.

Fred Jung
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

____
Date

Attachments:

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