

**ORDINANCE NO. 2007-975**

**AN ORDINANCE OF THE VOTERS OF THE CITY OF CERES ADDING CHAPTER 3.10 TO THE CERES MUNICIPAL CODE, IMPOSING A 1/2 CENT TRANSACTIONS AND USE TAX FOR THE IMPROVEMENT OF *POLICE, FIRE AND 9-1-1 EMERGENCY RESPONSE* TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

**THE PEOPLE OF THE CITY OF CERES DO HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 3.10 is hereby added to the Ceres Municipal Code, to read as follows:

**CHAPTER 3.10. CERES PUBLIC SAFETY TRANSACTIONS AND USE TAX**

**3.10.010. TITLE.** This ordinance shall be known as the *Ceres Police, Fire, 9-1-1 Emergency Response* Transactions and Use Tax Ordinance. The City of Ceres hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

**3.10.020. 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.

**3.10.030. 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this 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 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.

**3.10.040. 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 transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization 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.

**3.10.050. 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 0.50% 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. Such tax shall be in addition to any other transactions tax imposed by this Code or applicable State law.

**3.10.060. 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.

**3.10.070. 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 0.50% 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. Such tax shall be in addition to any other use tax imposed by this Code or applicable State law.

**3.10.080. 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.

**3.10.090. 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 Board of Control, State Board of Equalization, 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 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 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.

**3.10.100. 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.

**3.10.110. 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.

### **3.10.120. 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 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 unless any increase in the rate of this tax is first approved by 2/3 of the voters of the City of Ceres voting on such question.
- B. Pursuant to California Elections Code Section 9217 or any successor statute, the City Council of the City of Ceres may amend or repeal this ordinance and any of its exhibits, but not increase or extend the rate of tax imposed herein, without a vote of the people.

**3.10.130. 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.

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

**3.10.150. USE OF TAX PROCEEDS AND EXPENDITURE PLAN.** All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund or account designated for use by the City of Ceres only for the Public Safety Services set forth in the Public Safety Expenditure Plan for the administration and expenditure of the tax proceeds, attached to this Ordinance as Exhibit "1." The Public Safety Expenditure Plan may be amended from time to time by a majority vote of the City Council, so long as the funds are utilized for public safety, police and fire protection services. For the purposes of this Part, "Public Safety Services" means (a) obtaining, furnishing, operating, and/or maintaining police protection equipment or apparatus, paying the salaries and benefits of police protection personnel, and such other police protection service expenses as are deemed necessary by the City Council for the benefit of the residents of the City; (b) obtaining, furnishing, operating, and/or maintaining fire protection equipment or apparatus, paying the salaries and benefits of fire protection personnel, and such other fire protection service expenses, as are deemed necessary by the City Council for the benefit of the residents of the City. No revenues collected pursuant to the tax levied hereby may be spent on department administrators' salaries, General Fund operating expenses in effect at the time this ordinance becomes effective, or projects not a part of the Public Safety Expenditure Plan. It is the intent of the People that revenues collected hereunder shall supplement, rather than supplant, existing City expenditures for Public Safety.

**3.10.160. ESTABLISHMENT OF CITIZENS' OVERSIGHT COMMITTEE.**

- A. Committee Established. There is hereby established in the City of Ceres a Citizen's Oversight Committee to monitor the expenditures of revenue collected pursuant to this Chapter only and report to the People and the City Council.
- B. Selection of Members. Members of the Citizens' Oversight Committee shall be appointed by the City Council. The Committee shall consist of five members. The Citizens' Oversight Committee members shall not be current City of Ceres employees, officials, contractors or vendors of the City. Past employees, officials or vendors shall be eligible to serve on the Committee, provided that there are no conflicts of interest as determined by the City Attorney.

Of the members of the Committee first appointed, three shall be appointed for terms of two years and two for terms of three years. Their successors shall be appointed for terms of three years. No member may serve more than two consecutive three-year terms.

The City Council shall solicit Citizens' Oversight Committee members through an open application process. Any Ceres resident is eligible to apply for Committee membership, subject to the appointment categories specified above. All applications will be reviewed by the City Council, which will have the authority to make all final decisions on Committee representation, subject to these guidelines.

- C. Purpose and Jurisdiction. The Citizens' Oversight Committee shall review expenditures of revenue collected pursuant to this Chapter only to determine whether such funds are expended for the purposes specified in the then-current Public Safety Expenditure Plan, and issuing reports on their findings to the City Council and public at least annually. Committee members may also review the annual financial or performance audits performed by an independent auditor selected by the City Council. The Committee shall confine its oversight specifically to revenues generated under this Chapter. Revenue generated through other sources shall be outside the jurisdiction of the Public Safety Citizens' Oversight Committee.

In order to preserve the integrity and independence of the oversight process, Committee members will not play a formal role in contracting, project management, or any other aspect of the Public Safety Measure funding.

The Committee is not charged with decision-making on spending priorities, schedules, project details, funding source decisions (e.g. leveraged funds, developer fees, etc.), financing plans, or tax rate assumptions. The Committee shall serve in an advisory-only role to the City Council. The Committee shall have no jurisdiction other than that delegated to it by the People pursuant to this Ordinance.

The City of Ceres City Manager or his designee shall provide any reasonable administrative or technical assistance required by the Committee to fulfill its responsibilities or publicize its findings.

- D. Meetings. The Citizens' Oversight Committee shall meet semi-annually (or as otherwise provided for in approved or amended by-laws) with specific meeting dates to be determined by Committee members. Citizens' Oversight Committee meetings are subject to the Brown Act. Meetings must be noticed and open to the public. Committee minutes and reports are a matter of public record, and must be posted on a web site provided by the City. Additional meetings may be scheduled by the Committee as necessary. All Committee members shall attend a training and orientation session prior to the first regular Committee meeting.

Committee members are expected to attend all regular meetings. Failure to attend two consecutive meetings may result in removal from the Committee at the discretion of the City Council.

- E. **Committee Operations.** The Citizens' Oversight Committee will select members to serve as Chair and Vice Chair of the Committee. A City staff person will be appointed by the City Manager or his designee to serve as Secretary. The Secretary will be responsible for preparing, posting and distributing agendas and taking minutes at each meeting. Approved minutes shall be made available to the public. Committee decisions, positions, findings and procedures shall require a simple majority vote of those Members in attendance. The quorum requirement for any meeting shall be a minimum of three (3) members.
- F. **Vacancies.** Committee members may be removed from the Committee only by the City Council for repeated absence (see Section D above), for malfeasance, for failing to meet the qualifications set forth in this Section or for inability or unwillingness to fulfill the duties of a Member. In the event of removal, resignation, or death, the City Council shall appoint a person to fill the vacant seat.
- G. **Miscellaneous.** With the exception of those items specifically addressed in these Guiding Principles, the Committee may draft and adopt its own standard procedures and by-laws by majority vote. All Citizens' Oversight Committee procedures and by-laws remain subject to review and approval by the City Council. Citizen's Oversight Committee reports are subject to review and approval of the City Council for the sole purpose of confirming that the report has been prepared in compliance with the provisions of this chapter.

**SECTION 2. EFFECTIVE DATE.** This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect 10 days following certification of the vote by the City Council."

**SECTION 3.** The City Clerk shall certify the passage of this ordinance, publish the same as required by applicable law, and forward a copy of the adopted ordinance to the Board of Equalization.