

Exhibit "A"

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO, CALIFORNIA, ESTABLISHING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

THE PEOPLE OF THE CITY OF CHINO DO HEREBY ORDAIN AS FOLLOWS:

WHEREAS, Article XIII C, Section 2 of the California Constitution authorizes a city to impose a general tax if approved by a majority vote of the qualified electors; and

WHEREAS, pursuant to Article XIII C, the general tax may be approved at a special election in cases of emergency with the unanimous approval of the governing body; and

WHEREAS, Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code, and Section 7285.9 of the California Revenue and Taxation Code, authorizes a city to adopt a transactions and use (sales) 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; and

WHEREAS, the City of Chino ("City") faces severe budget pressures due to continued increases in operating expenditures significantly outpacing increases in revenue; and

WHEREAS, protecting the City's long-term financial stability is key to maintaining essential city services for residents and businesses, including police, 911 emergency medical response, street repair, clean local drinking water, clean and safe public areas, while addressing homelessness, and maintaining senior, veteran, and youth programming; and

WHEREAS, the City is facing a financial crisis. The City is projecting a structural deficit of \$15 million on average annually starting in fiscal year 2024-2025. In Fiscal Year 2023-2024, the City shortfall was \$5.7 million, with reserves covering the difference; and

WHEREAS, based on the current Fiscal Year (FY) 2023-2025 budget, which outlines \$118 million and \$118.7 million in expenditures for the FY 2023-2024 and FY 2024-2025 budgets, respectively, it is estimated that the City's current needs require an additional \$15 million on average annually, which would deplete the \$73 million currently in reserves today by FY 2028-29; and

WHEREAS, the City Council undertook a financially responsible approach to overcoming hurdles in the years during and after the recession and COVID-19 to balance the budget, which included reducing the City's workforce, eliminating programs, and deferring repairs and maintenance; and

WHEREAS, while having an operationally balanced budget, the City has approximately \$260 million in unfunded infrastructure and neighborhood improvement projects that, over time, will become more expensive to address; and

WHEREAS, unless addressed, the City will be facing challenges that may force essential City services and programs to be reduced or eliminated in the coming years if additional sources of revenue for the General Fund are not identified; and

WHEREAS, it will become more difficult to protect the City's valued quality of life programs and maintain essential City services including police, 911 emergency medical response, street repair, clean local drinking water, clean and safe public areas, while addressing homelessness, and maintaining senior, veteran, and youth programming; and

WHEREAS, additional locally controlled funding is needed to address service priorities including police, 911 emergency medical response, street repair, clean local drinking water, clean and safe public areas, while addressing homelessness, and maintaining senior, veteran, and youth programming; and

WHEREAS, local control over taxpayer dollars will help to ensure more money stays in the City for essential local services and help to maintain the level of service residents expect and deserve; and

WHEREAS, on November 21, 2023, by unanimous approval, the City Council of the City adopted Resolution No 2023-071, declaring a fiscal emergency due to the severe expected budget deficits in the City; and

WHEREAS, this Ordinance will maintain funding for vital City services and help implement the needs and plans of the City by establishing a general tax; and

WHEREAS, this Ordinance creates a locally-controlled funding source that can only be used for local services and address local priorities, which is legally-protected from being taken by the State; and

WHEREAS, this Ordinance requires strict fiscal accountability, such as public spending reports, and annual independent audits to ensure all funds are spent responsibly.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF CHINO AT THE MARCH 5, 2024 SPECIAL ELECTION DO RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. ADOPTION OF NEW CHAPTER. A new Chapter 3.18 is hereby added to the Chino Municipal Code to read as follows:

"Chapter 3.18
TRANSACTIONS AND USE TAX

3.18.010 Title.

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

3.18.020 Operative date.

"Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance by the electorate, the date of such adoption being as set forth below.

3.18.030 Purpose.

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

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the city to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

3.18.040 Contract with state.

Prior to the operative date, the city shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the city shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3.18.050 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 cent per dollar (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.

3.18.060 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.

3.18.070 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 cent per dollar (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.

3.18.080 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.

3.18.090 Limitations on adoption of state law and collection of use taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this city shall be substituted therefor. However, the substitution shall not be made when:

1. The word "state" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this city or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance.

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

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "city" shall be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 and in the definition of that phrase in Section 6203.

The words "A retailer engaged in business in the city" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3.18.100 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.

3.18.110 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 or meets the requirements of a retailer engaged in business in the City Section 3.18.090(B).

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.

3.18.120 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.

3.18.130 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.

3.18.140 Severability.

If any provision of this chapter 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.

3.18.150 Effective date.

This chapter levying the tax described herein shall be effective ten (10) days after the date on which the City Council has declared that the voters of the City of Chino have approved the ordinance by a vote of no less than a majority of the votes cast by the electors voting on the tax measure set forth in this chapter at that special municipal election to be held on March 5, 2024.

3.18.160 Termination date.

The authority to levy the tax imposed by this ordinance shall not expire unless terminated by lawful vote of the electorate or as required or authorized by law.”

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people of the City of Chino hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 3. 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 4. APPROPRIATIONS LIMIT. Pursuant to Article XIII B of the California Constitution, the appropriations limit for the City of Chino is increased to the maximum extent over the maximum period of time allowed under the law consistent with the revenues generated by this tax.

SECTION 5. EXECUTION. The Mayor shall sign this Ordinance and the City Clerk shall attest and certify to the approval thereof and cause same to be published at least once in a weekly newspaper of general circulation, published in the City of Chino, which newspaper is hereby designated for that purpose (GC § 40806). This Ordinance shall only be in effect following the approval of a majority of the voters at an election on March 5, 2024, as certified by the election official.

SECTION 6. CERTIFICATION. The City Clerk of the City of Chino shall certify that this ordinance was passed, approved and adopted by the People of the City of Chino, California, voting on the 5th day of March, 2024.

This Ordinance was approved by the City on November 21, 2023.

PASSED, APPROVED and ADOPTED this ___ day of _____, 2024.

By: _____
EUNICE M. ULLOA, MAYOR

ATTEST:

By: _____
NATALIE GONZAGA, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) §
CITY OF CHINO)

I, Natalia Gonzaga, City Clerk of the City of Chino do hereby certify that the foregoing Ordinance of the City of Chino was duly adopted by said City Council at a regular meeting held on the ___ day of _____ 2024 by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

By: _____
NATALIE GONZAGA, CITY CLERK