

**ORDINANCE NO. 2016-0\_\_**

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, AMENDING DIVISION 4, "REVENUE AND FINANCE," OF THE SAN BUENAVENTURA MUNICIPAL CODE BY ADDING CHAPTER 4.129, "SAN BUENAVENTURA CITY CLEAN WATER/BEACHES/ STREET REPAIRS / SAFETY MEASURE GENERAL TRANSACTIONS AND USE TAX," TO THE SAN BUENAVENTURA MUNICIPAL CODE**

**RECITALS**

WHEREAS, During each of the past several years, the State of California has reduced funding for infrastructure improvements to the City of San Buenaventura; and,

WHEREAS, the City of San Buenaventura needs dependable and local sources of revenue to fund and to support essential, necessary, and appropriate general City services including such things as police, fire, paramedic and emergency response, public transit, services for the disabled, public safety and homeless programs, environmental and library programs; and,

WHEREAS, The City of San Buenaventura is celebrating its 150<sup>th</sup> Anniversary and strives to continue to be a wonderful place to live, do business, and visit; and,

WHEREAS, Many residents live in the City of San Buenaventura because it offers a higher level of service, programs, and quality of life than in neighboring cities, and creating and preserving local revenue sources will ensure that the City can maintain and improve the quality of programs and services that residents desire and expect; and,

WHEREAS, The City of San Buenaventura's unique geography, with its beaches, coastline, rivers, and scenic hillsides, combined with the age of

its roads, sidewalks, public buildings, streetlights, and drainage systems, make it an expensive City to maintain; and,

WHEREAS, The City has conducted a comprehensive assessment of the long-term needs of the community and identified capital, infrastructure, and maintenance programs, and community programs and services, that need additional funding, which include:

- Protecting local drinking water supplies and establishing water conservation programs
- Maintaining and improving fire, police, and paramedic response times
- Keeping all fire stations open
- Protecting local beaches, rivers, and coast waters from pollution
- Keeping our neighborhood safe from gangs and drugs
- Effectively addressing the issue of homelessness
- Protecting and seismically repairing bridges
- Maintaining local streets, roads, and essential City services
- Improving services for seniors, the disabled, and veterans

**BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN BUENAVENTURA AS FOLLOWS:**

**SECTION 1. AMENDMENT TO CODE.** Division 4, "Revenue and Finance," of the San Buenaventura Municipal Code is hereby amended by the addition of Chapter 4.129, "San Buenaventura Essential City Services Protection Measure General Transactions and Use Tax," to read as follows:

**"CHAPTER 4.129**

**San Buenaventura City Clean Water/ Beaches/ Street  
Repairs / Safety Measure  
[General Transactions and Use Tax]**

**Sections:**

- 4.129.010 Chapter Title.
- 4.129.020 Need for Chapter.
- 4.129.030 Operative Date.
- 4.129.040 Purpose.

- 4.129.050 Contract with State.
- 4.129.060 Transactions Tax Rate.
- 4.129.070 Place of Sale.
- 4.129.080 Use Tax Rate.
- 4.129.090 Adoption of Provisions of State Law.
- 4.129.100 Limitations on Adoption of State Law and Collection of Use Taxes.
- 4.129.110 Permit Not Required.
- 4.129.120 Exemptions and Exclusions.
- 4.129.130 Amendments.
- 4.129.140 Enjoining Collection Forbidden.
- 4.129.150 Tax Suspended if Proceeds Taken by State.
- 4.129.160 Citizens Oversight Committee.
- 4.129.170 Accounting and Report.
- 4.129.180 Independent Audit.
- 4.129.190 Authority to Amend.
- 4.129.200 Termination Date.

**4.129.010 Chapter Title.** This Chapter shall be known as the 'San Buenaventura City Clean Water/ Beaches/ Street Repairs/ Safety Measure' (the 'Measure'). This Chapter shall be applicable in the incorporated territory of the City.

**4.129.020 Need for Chapter.**

The People of the City of San Buenaventura declare that this Chapter, pursuant to the Measure, is adopted as a general tax to ensure adequate funding for essential City services which are funded by the City's General Fund. Among the essential services funded by the General Fund are police protection, fire protection, and road and street maintenance and improvements.

**4.129.030 Operative Date.** The general transactions and use tax imposed hereunder shall be operative the first day of the first calendar quarter commencing more than 110 days after the adoption of this Chapter ('Operative Date'). Based on a November 8, 2016 election, the

Operative Date for the general transactions and use tax imposed hereunder shall be April 1, 2017.

**4.129.040 Purpose.** Pursuant to the requirements of the State Board of Equalization, 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 7285.9 of Part 1.7 of Division 2, and which authorizes the City to adopt this tax ordinance, which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

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

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

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code,

minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this Chapter.

**4.129.050 Contract with State.** Prior to the Operative Date of this Chapter, 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 imposed under this Chapter; 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.

**4.129.060 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 of one percent (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 Chapter.

**4.129.070 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 or her 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.

**4.129.080 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 the City at the rate of one-half of one percent (0.50%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to the State sales or use tax regardless of the place to which delivery is made.

**4.129.090 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.

**4.129.100 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 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 use 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 of the Revenue and Taxation Code.

**4.129.110 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.

**4.129.120 Exemptions and Exclusions.**

A. There shall be excluded from the measure of the transactions 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 the 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.

**4.129.130 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.

**4.129.140 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 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 hereunder.

**4.129.150 Tax Suspended If Proceeds Taken By State.**

A. Upon written notice from the City Council to the State Board of Equalization as required, the tax imposed by the provisions of this Chapter shall be suspended, and all funding related thereto stopped, if the revenue generated under this Chapter is diverted, seized, or taken by the State of California without the authorization of a majority of the voters of the City casting ballots on the issue.

B. The effective date of the suspension of the general transactions and use tax imposed hereunder shall be the first day of the first calendar quarter commencing more than 110 days after the receipt by the State Board of Equalization.

C. The City Council may, at any time thereafter, find that the State of California is no longer diverting, seizing, or taking the proceeds of the transactions and use tax imposed by this Chapter. Upon making that finding, the City Council shall notify the State Board of Equalization that the suspension of the tax is to be lifted. The lifting of the suspension shall be effective and the tax thereafter collected on the first day of the first calendar quarter commencing more than 110 days after the receipt by the State Board of Equalization of the notice from the City Council.

**4.129.160 Citizens Oversight Committee.**

A. There is hereby created a San Buenaventura City Clean Water/ Beaches/ Street Repairs/ Safety Measure Citizens Oversight Committee ('Citizens Oversight

Committee') to review the revenues and expenditures generated and spent under this Chapter.

B. The Citizens Oversight Committee shall consist of seven members who shall be residents of the City. Members shall be selected, appointed, and removed in accordance with Chapter 2.410 of this Code.

C. Members of the Citizen Oversight Committee shall serve terms as provided for in Section 2.410.220 of this Code.

D. Any vacancy for a member on the Citizens Oversight Committee shall be filled in accordance with Section 2.410.260 of this Code.

E. Members of the Citizens Oversight Committee shall be restricted to individuals who are registered voters within the City of San Buenaventura. Elected officials at any level of government and employees of the City of San Buenaventura and the dependents of each are ineligible to serve as members of the Citizens Oversight Committee.

F. The Citizens Oversight Committee shall review the projected revenues and recommended expenditures for the funds generated by this Chapter and shall make their recommendations to the City Council on the same as a part of the City's budget process. After a review of the independent audit required by Section 4.129.180 hereof, the Citizens Oversight Committee shall provide its findings to the City Council. Unless modified by City Council by Ordinance, the Citizens Oversight Committee shall not have any function, power, or authority other than as expressly provided herein.

G. The Citizens Oversight Committee shall meet quarterly or as often as it deems necessary to accomplish the objectives stated in this Section.

**4.129.170 Accounting and Report.** Prior to the adoption of the City budget in June of each year, the City Manager and the Director of Finance and Technology shall present to the City Council an accounting of the tax revenues received and expenditures made under this Chapter.

**4.129.180 Independent Audit.** After the close of every fiscal year in which the tax imposed hereunder is levied, the City shall cause an independent audit to be conducted as to the revenue generated as a result of this Measure and to ensure the proper expenditure thereof consistent with the purposes of this Chapter. The report and any findings of the independent auditor shall be transmitted to the Mayor, City Council, City Manager, City Attorney, Director of Finance and Technology, and the Citizens Oversight Committee established by Section 4.129.160 hereof.

**4.129.190 Authority to Amend.** In order to further the purposes and intent of this Chapter, the City Council is authorized to amend this Chapter in the following areas without a further vote of the People:

- A. The composition of the Citizens Oversight Committee;
- B. The suspension or reactivation of this Chapter if the revenue generated under this Chapter is diverted by the State of California for purposes other than those specifically enumerated herein;
- C. Any change required by the State of California as a precondition to the collection of the tax authorized hereunder.

Notwithstanding any provision to the contrary, any proposed change to the tax rate imposed under this Chapter shall be submitted to the vote of the People.

**4.129.200 Termination Date.** The authority to levy the tax imposed hereunder shall expire twenty-five (25) years from the Operative Date, unless extended by the voters.”

**SECTION 2 EFFECTIVE DATE.** This Ordinance relates to the levying and collecting of the City transactions and use tax shall be in full force and effect ten (10) days after the certification by the City Council of the election returns indicating passage of the Ordinance by a majority of the voters casting votes in the election; however, the collection of the transaction and use tax shall be in accordance with Section 4.129.030 of the San Buenaventura Municipal Code as the Operative Date.

**SECTION 3. SEVERABILITY.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of San Buenaventura hereby declare that they would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 4. PUBLICATION.** The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its approval by the voters.

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The foregoing Ordinance was approved by the voters of the City of San Buenaventura at a General Municipal Election held on the \_\_\_\_ day of November 2016, by the following vote tally:

**YES:**

**NOES:**

**OTHER:**

**APPROVED:**

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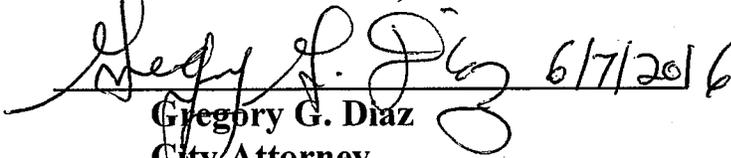
**Erik Nasarenko**  
**Mayor**

**ATTEST:**  
**CITY CLERK**

**BY:** \_\_\_\_\_  
**City Clerk**

**(SEAL)**

**APPROVED AS TO FORM:**  
**GREGORY G. DIAZ, CITY ATTORNEY**

  
\_\_\_\_\_  
**Gregory G. Diaz**  
**City Attorney**