

## EXHIBIT A

### ORDINANCE NO. 23-2022

#### **AN ORDINANCE OF THE PEOPLE OF THE CITY OF ELK GROVE ADDING CHAPTER 3.06 TO THE MUNICIPAL CODE TO IMPOSE A ONE CENT PER DOLLAR TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

**WHEREAS**, Elk Grove residents continue to enjoy a high quality of life and the City is known as a great place to live, work, and raise a family; and

**WHEREAS**, recently commissioned independent opinion research in the City shows residents feel that the City is moving in the right direction and the City wishes to continue doing so; and

**WHEREAS**, many in the community believe that additional local funding is needed to address community priorities and essential quality of life services; and

**WHEREAS**, the community's top priorities include reducing crime, rapid 911, fire, police, medical emergency and disaster response, keeping public spaces safe and clean, addressing homelessness, pothole repair, street and parks maintenance, attracting and retaining local jobs and businesses, and youth crime and gang prevention programs; and

**WHEREAS**, the City is committed to making neighborhoods safer; and

**WHEREAS**, in an emergency seconds count and approximately 75% of calls to the local Fire Department are for medical emergencies; and

**WHEREAS**, the City is committed to ensuring that Elk Grove has the needed emergency first responders and life-saving equipment to improve response times and save lives; and

**WHEREAS**, since last year, violent and property crimes are on the rise in Elk Grove, with more than 325 robberies and burglaries and close to 200 car thefts; and

**WHEREAS**, our community has over 100 parks serving more than 178,000 people but does not have the funding needed to continue to keep them clean and safe; and

**WHEREAS**, approval of this measure will provide funding that could be used to help maintain and repair public bathrooms; maintain landscaping and sports fields; and upgrade security lighting and children's playgrounds, among other general community purposes, so that children have safe places to play; and

**WHEREAS**, many local streets are in need of repair and maintenance to keep them safe and reduce traffic congestion; and

**WHEREAS**, it is fiscally responsible to maintain our streets, roads and fix potholes now, so they do not deteriorate further and become more costly to fix in the future; and

**WHEREAS**, Elk Grove incorporated on July 1, 2000, to ensure local control of the City's future and essential quality of life services upon which residents rely; and

**WHEREAS**, approval of this measure will provide locally controlled funding, which could be used to maintain financial stability and continue providing essential public safety,

and parks and street repair, that are more important than ever, among other general community purposes; and

**WHEREAS**, by law, all funds from this measure must stay in Elk Grove and no funds can be taken by the State; and

**WHEREAS**, safe neighborhoods, well maintained streets, safe and clean public spaces and a variety of activities for all are vitally important to maintaining and enhancing Elk Grove's quality of life, community and property values; and

**WHEREAS**, the proposed measure requires mandatory financial audits, an independent Citizen's Oversight Committee, and public disclosure of spending to help ensure that all funds are responsibly and locally spent; and

**WHEREAS**, the tax to be submitted to the voters, if approved, would increase the City's transactions and use ("sales") tax by one cent and the funds would be used to support neighborhood police patrols, fire protection, and rapid police, medical, and emergency disaster response, reduce crime, attract and retain local businesses and jobs, reduce traffic congestion, address homelessness, maintain local streets, parks, and youth programs, keep public areas safe and clean, and other general community purposes, and require an independent Citizen's Oversight Committee, annual audits, and all funds to be locally controlled; and

**WHEREAS**, California Constitution Article XIII C, Section 2 provides that no local government may impose, extend or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote and that such vote must be consolidated with a City's general municipal election for members of the City Council; and

**WHEREAS**, November 8, 2022, is the date of the City's regular municipal election and a general election has been called on that date by Resolution 2022-124 approved on May 25, 2022; and

**WHEREAS**, the City Council is authorized by California Elections Code Section 9222 to place measures before the voters at the November 8, 2022, Nationwide General Election that would increase the tax by one cent per dollar; and

**WHEREAS**, the City Council desires that the proposed measure be consolidated with the November 8, 2022, Nationwide General Election, to be held on the same date, and within the City, the polling places and election officers of the two elections be the same, and that the Sacramento County Voter Registration and Elections Department canvass the returns of the general election be held in all respects as if there were only one election.

**NOW, THEREFORE**, the People of the City of Elk Grove do ordain as follows:

Section 1: Incorporation of Recitals.

The People of Elk Grove find that all Recitals are true and correct and are incorporated herein by reference.

Section 2. Amendment of Municipal Code.

The Elk Grove Municipal Code is hereby amended to add Chapter 3.06 as follows:

**Chapter 3.06  
ELK GROVE TRANSACTIONS AND USE TAX**

**Sections:**

- 3.06.010 Title**
- 3.06.020 Operative Date**
- 3.06.030 Purpose**
- 3.06.040 Contract With State**
- 3.06.050 Transactions Tax Rate**
- 3.06.060 Place of Sale**
- 3.06.070 Use Tax Rate**
- 3.06.080 Adoption of Provisions of State Law**
- 3.06.090 Limitations on Adoption of State Law and Collection of Use Taxes**
- 3.06.100 Additional Permit Not Required**
- 3.06.110 Exemptions and Exclusions**
- 3.06.120 Amendments**
- 3.06.130 Enjoining Collection Forbidden**
- 3.06.140 Independent Citizen's Oversight Committee**
- 3.06.150 Annual Audit**
- 3.06.155 Local Banking Requirement**
- 3.06.160 Amendments by City Council**
- 3.06.170 Termination Date**

**3.06.010 Title**

This Chapter shall be known as the Elk Grove Transactions and Use Tax. The City of Elk Grove hereinafter shall be called "City." This Chapter shall be applicable in the incorporated territory of the City.

**3.06.020 Operative Date**

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

**3.06.030 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 7285.9 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 Ordinance.

#### **3.06.040 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.

#### **3.06.050 Transactions Tax Rate**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1.0%) on the sale of all tangible personal property sold at retail in said territory on and after the Operative Date of this Chapter.

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

#### **3.06.070 Use Tax Rate**

An excise tax is hereby imposed on the storage, use, or other consumption in the City of tangible personal property purchased from any retailer on and after the Operative Date of this Chapter for storage, use, or other consumption in said territory at the rate of one

percent (1.0%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made.

### **3.06.080 Adoption of Provisions of State Law**

Except as otherwise provided in this 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.

### **3.06.090 Limitations on Adoption of State Law and Collection of Use Taxes**

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

- A. 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 of California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California;
  2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State of 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. 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. "A retailer engaged in business in this 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

### **3.06.100 Additional 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.

### **3.06.110 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 their 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, their 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.

### **3.06.120 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.

### **3.06.130 Enjoining Collection Forbidden**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or 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.

### **3.06.140 Independent Citizen's Oversight Committee**

Although not otherwise required by law, the City Council shall, by resolution adopted before the Operative Date of this Chapter, establish a Citizens' Oversight Committee, as an advisory body, to review the revenue and expenditure of funds from the tax adopted by this Chapter. The members' terms and qualifications and the duties and scope of the Committee shall be as established by the resolution.

### **3.06.150 Annual Audit**

Annually the City Council retains an independent auditor to conduct an audit of and provide audited financial statements for all of the City's financial activities. The auditor shall include an accounting of the revenue received from the tax collected pursuant to this Chapter in the audited financial statements. The auditor's report shall be presented to the Council and made available to the public.

### **3.06.155 Local Banking Requirement**

Unless restricted or prohibited by state or federal law or regulations, the City will hold at least twenty-five percent (25%) of all funds generated pursuant to this Chapter in accounts locally through a community bank. For purposes of this section, the definition of a community bank is a federally- or a state-chartered community bank with recognized headquarters located in Sacramento County or an adjacent county as long as its FDIC recognized headquarters is within 25 miles of the boundary of Sacramento County. To qualify under this section, a community bank must be authorized to receive deposits from public agencies and must maintain a “Superior,” “5 Star”, or equivalent rating from a nationally recognized rating agency. The City shall be responsible for compliance with this section and must certify to the City Council through annual reports that the requirements have been met or provide an explanation for not meeting them.

### **3.06.160 Amendments by City Council**

The following amendments to this Chapter must be approved by the voters of the City: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; or imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of Section 3.06.120), or extending the tax. The City Council may otherwise amend this Chapter without submitting the amendment to the voters for approval.

### **3.06.170 Termination Date**

The authority to levy the tax imposed by this Chapter shall continue indefinitely until this Chapter is repealed by a majority vote of the voters of the City, or until it is repealed, suspended, or reduced by a majority vote of the City Council. In the event that the City Council suspends or reduces the tax, the City Council may thereafter resume collection of the tax without voter approval as long as the transactions tax rate and use tax rate are not higher than the rates set forth in Sections 3.06.050 and 3.06.070, respectively.

### Section 3. Adjustment of Appropriations Limit.

Pursuant to Article XIIB of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2022-23 and each year thereafter.

### Section 4. Compliance with the California Environmental Quality Act.

The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). This Ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the Ordinance is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

Section 5: No Mandatory Duty of Care.

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 6: Severability.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Section 7: Savings Clause

The provisions of this Ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and effect to all intents and purposes as if such Ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such Ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior Ordinance or part thereof had not been repealed or altered.

Section 8: Effectiveness: Submission to the Voters

This Ordinance relates to the levying and collecting of the City transactions and use taxes shall not take effect unless and until the Ordinance is submitted to the electorate of the City of Elk Grove and approved by a majority vote of the qualified votes cast on the Ordinance at the election.

**ORDINANCE: 23-2022**

APPROVED: July 27, 2022

ADOPTED:

EFFECTIVE:

\_\_\_\_\_  
BOBBIE SINGH-ALLEN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: \_\_\_\_\_