

**EXHIBIT A TO  
RESOLUTION NO. 24-126**

**ORDINANCE NO. 1777**

AN ORDINANCE OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADDING A NEW CHAPTER 3.22 TO THE SAN CLEMENTE MUNICIPAL CODE ESTABLISHING AND IMPOSING A DEDICATED ONE HALF OF ONE PERCENT (0.5%) SPECIAL TRANSACTIONS AND USE (SALES) TAX FOR MAINTAINING BEACH ACCESS FOR RESIDENTS, KEEPING SAND ON LOCAL SAN CLEMENTE BEACHES, REDUCING BEACH EROSION, PROTECTING OCEAN WATER QUALITY AND SURFING AND OCEAN SWIMMING LOCATIONS, RESTORING AND MAINTAINING THE BEACH TRAIL, PIER AND LIFEGUARD LIFESAVING EQUIPMENT TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

WHEREAS, San Clemente beaches have been deteriorating since the 1990s, but with recent extreme rainstorms and the erosion of beaches and bluffs, independent scientists now say the problem is getting worse; and

WHEREAS, this ordinance includes stringent fiscal accountability provisions and safeguards such as requiring public disclosure of all spending and guaranteed annual independent audits to ensure funds are used efficiently, effectively, and as promised; and

WHEREAS, the funding from this ordinance is dedicated to restoring San Clemente's local beaches and keeping local beaches and coastal waters clean and in good condition for years to come and by law, funding cannot be taken for other purposes, so residents can know where their money is going; and

WHEREAS, a significant portion of the funding from this ordinance will come from residents of nearby cities, tourists and other people who come to San Clemente and this Measure will allow non-residents to contribute towards maintaining, protecting and restoring the local beaches and coastal waters that they enjoy when they visit our City; and

WHEREAS, Article XVI, section 6 of the California Constitution requires all funding to be spent locally for the benefit of the San Clemente community and cannot be taken by the County, State or Federal government; and

WHEREAS, the funds of this ordinance will be dedicated to be used for the following resident identified priorities: maintaining local beaches and beach access for residents, keeping sand on local San Clemente beaches, reducing beach erosion, protecting ocean water quality, protecting surfing and ocean swimming locations, and restoring and maintaining the beach trail, the City pier and City lifeguard lifesaving

equipment and facilities, all of which will help protect San Clemente's local beach economy, and will not be used for any other purposes; and

WHEREAS, pursuant to California Revenue and Taxation Code section 7285.91 the City of San Clemente ("City") has the authority to levy a Transactions and Use ("Sales") Tax for specific purposes that is subject to voter approval; and

WHEREAS, Article XIII C, section 2(d) of the California Constitution requires that this ordinance must be approved by a two-thirds vote of the voters voting on the issue; and

WHEREAS, on July 17, 2024, the City Council held a hearing where all interested persons were heard on the matter of holding an election for the purpose of amending the San Clemente Municipal Code relating to a proposed Transactions and Use (Sales) Tax; and

WHEREAS, on August 6, 2024, the City Council held a duly noticed public hearing where all interested persons were heard on the matter of holding an election for the purpose of amending the San Clemente Municipal Code relating to a proposed Transactions and Use (Sales) Tax; and

WHEREAS, on August 6, 2024, the City Council submitted this ordinance to the voters of the City of San Clemente to decide on November 5, 2024; and

WHEREAS, the proposed Chapter 3.22 of the San Clemente Municipal Code, set forth below, establishes a transactions and use tax to be administered by the California Department of Tax and Fee Administration consistent with state law.

NOW THEREFORE, subject to approval by an affirmative, two-thirds vote of the qualified electors as required by law, the People of the City of San Clemente do ordain as follows:

## **SECTION 1. FINDINGS**

The facts set forth in the recitals are true and correct and incorporated herein by this reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Ordinance.

## **SECTION 2. ADDITION OF CHAPTER 3.22**

The San Clemente Municipal Code is hereby amended to add Chapter 3.22 as set forth below, thereby enacting a one half of one percent special local transactions and use tax within the City of San Clemente, to be administered by the California Department of Tax and Fee Administration:

## **CHAPTER 3.22: SAN CLEMENTE BEACH PROTECTION, RESTORATION AND CLEAN OCEAN SPECIAL TRANSACTIONS AND USE TAX**

### **Sections:**

- 3.22.010 Title.**
- 3.22.020 Operative date.**
- 3.22.030 Purpose.**
- 3.22.040 Contract with state.**
- 3.22.050 Transactions tax rate.**
- 3.22.060 Place of sale.**
- 3.22.070 Use tax rate.**
- 3.22.080 Adoption of provisions of state law.**
- 3.22.090 Limitations on adoption of state law and collection of use taxes.**
- 3.22.100 Permit not required.**
- 3.22.110 Exemptions and Exclusions.**
- 3.22.120 Amendments of Revenue and Taxation Code.**
- 3.22.130 Enjoining collection forbidden.**
- 3.22.140 Amendments by City Council.**
- 3.22.150 Use of proceeds; Expenditure Plan.**
- 3.22.160 Independent Annual Audit.**
- 3.22.170 Citizen Oversight Committee.**
- 3.22.180 Severability.**

**3.22.010 Title.**

The Ordinance codified in this chapter shall be known as the "San Clemente Beach Protection, Restoration and Clean Ocean Special Transactions and Use Tax." The City of San Clemente hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

**3.22.020 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 adoption being set forth below.

**3.22.030. 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 specific purpose 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 a two-thirds vote 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 specific purpose 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 specific purpose 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 specific purpose 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.

#### **3.22.040 Contract with State.**

Prior to the Operative Date, 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 effective date of such a contract.

#### **3.22.050 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 0.5 percent 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.

#### **3.22.060 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 for the purpose of a transactions tax proposed by this Ordinance shall be determined under rules and regulations prescribed and adopted or to be prescribed and adopted by the California Department of Tax and Fee Administration or under the Revenue and Taxation Code.

### **3.22.070 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 0.5 percent 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.

### **3.22.080 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.

### **3.22.090 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 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 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 that would not otherwise be exempt from this tax while such sales, storage, use or other consumption remains 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 (except in relation to the Code of Civil Procedure and the Civil Code), 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.

C. The word "City" shall be substituted for the word "state" in Revenue and Taxation Code Sections 6041 and 6044.

### **3.22.100 Permit/Registration Not Required.**

A. 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.

B. If a marketplace facilitator is registered or required to register with the California Department of Tax and Fee Administration under Chapter 2 (commencing with Section 6051), Chapter 3 (commencing with Section 6201), or under any other law that imposes a fee administered pursuant to Part 30 (commencing with Section 55001) of the Revenue and Taxation Code, no additional registration is required by this Ordinance.

### **3.22.110 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 Chapter 2 of 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 subsections (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 subsections (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 subsection (7) of this section, 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 City 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 consumptions of which is subject to the use tax.

### **3.22.120 Amendments of Revenue and Taxation Code.**

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 as codified in this chapter; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

### **3.22.130 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.

### **3.22.140 Amendments by City Council.**

The following amendments to this Ordinance as codified in this chapter must be approved by the voters of the City: increasing the tax rate; revising the methodology for calculating the tax, such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of law); or terminating the tax. The City Council may otherwise amend this Ordinance as codified in this chapter without submitting the amendment to the voters for approval in any manner that does not constitute a tax "increase" as that term is defined in Government Code section 53750(h).

### **3.22.150 Use of Proceeds; Expenditure Plan.**

The proceeds from the tax imposed by this Chapter shall be used exclusively for the following specific purposes: the preservation of the City's coastal resources, including, but not limited to, maintaining local beaches, maintaining beach access for residents,



keeping sand on local San Clemente beaches, reducing beach erosion, protecting ocean water quality, protecting surfing and ocean swimming locations, enhancing and maintaining clean local beaches, and restoring and maintaining beach infrastructure, including the beach trail, the City pier and City lifeguard lifesaving equipment and facilities.

All tax proceeds received pursuant to this Chapter shall be deposited into a special fund to be known as the Beach Protection, Restoration and Clean Ocean Fund.

### **3.22.160 Independent Annual Audit.**

The proceeds resulting from this transactions and use tax shall be subject to the same independent annual audit requirements as other City revenues. The independent auditor's report, which shall include an accounting of the revenues received and expenditures made from the transactions and use tax, will be presented annually to the City Council and made available for public review.

### **3.22.170 Oversight Committee.**

A. Committee Established. The City's Investment Advisory Committee is hereby established an Oversight Committee with respect to this chapter.

B. Functions and Duties. The Oversight Committee's functions and duties are to:

1. Review expenditures of special revenue collected pursuant to this Chapter only to determine whether such funds are expended for the purposes specified herein.

2. Issue reports on its findings to the City Council at least annually.

3. Review annual financial or performance audits performed by an independent auditor pursuant to Section 3.22.160.

C. Conduct of Committee. The Oversight Committee shall conduct itself and be subject to the same requirements as the Investment Advisory Committee as set forth in Chapter 2.43 of this Code and shall be subject to the rules and regulations regarding the conduct of meetings under state and City law and to the provisions of this Code and any other applicable ordinance or policy of the City.

### **3.22.180 Severability.**

If any provision of this Ordinance as codified in 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. 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. The People of the City of San Clemente hereby declare that they would have adopted this Ordinance as codified in this chapter irrespective of the invalidity of any particular portion thereof and intend that the invalid portions should be severed, and the balance of the Ordinance be enforced.

## **SECTION 3. ENVIRONMENTAL REVIEW**

The adoption of this Ordinance is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Sections 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. IMPLEMENTATION**

This Ordinance authorizes City of San Clemente officers and employees to take all steps necessary to implement this Ordinance in the manner required by law, including any applicable amendments to the laws of the State of California.

#### **SECTION 5. ADOPTION**

Pursuant to Elections Code Section 9217, this Ordinance shall be considered as adopted upon the date that the vote by the electorate of the City of San Clemente is declared by the City Council, and shall become effective ten (10) days after that date.

#### **SECTION 6. CERTIFICATION**

The City Clerk shall certify to the adoption of this Ordinance by the voters, cause it to be published as required by law, and forward a copy of the adopted Ordinance to the California Department of Tax and Fee Administration.

PASSED, APPROVED AND ADOPTED BY THE PEOPLE OF THE CITY OF SAN CLEMENTE this 5<sup>th</sup> day of November, 2024.

It is hereby certified that this Ordinance was duly adopted by the voters at the November 5, 2024 election, and that the City Council declared the results of such election, in the manner required by law, at a meeting of the City Council held on December \_\_, 2024 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Mayor of the City of  
San Clemente, California

ATTEST:

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CITY CLERK of the City of  
San Clemente, California

Approved as to form:

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City Attorney of the City of  
San Clemente, California