

ORDINANCE NO. 493-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, IN THE COUNTY OF MADERA, CALIFORNIA ADDING CHAPTER 3.13 TO THE CHOWCHILLA MUNICIPAL CODE IMPOSING A PUBLIC SAFETY TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE DEPARTMENT OF TAX AND FEE ADMINISTRATION

WHEREAS, Pursuant to its right, power and authority under the laws of the State of California and the Municipal Code of the City of Chowchilla, the City Council of the City of Chowchilla provided notice of the inclusion of a ballot measure relating to a “Public Safety Transactions and Use Tax” to be voted on at the General Election on November 6, 2018; and,

WHEREAS, The measure proposed a special tax as defined under Article XIIC of the Constitution of the State of California be imposed as an additional Transaction and Use Tax to be collected by the Department of Tax and Fee Administration at a rate of 1.0%; and,

WHEREAS the measure was passed by the required 2/3 majority of the voters voting on the measure at the November 6, 2018 General Election, and

WHEREAS, the November 6, 2018 General election was held and conducted as provided for by law in all respects including those that are mandated for holding municipal elections;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHOWCHILLA DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. Chapter 3.13, entitled “Public Safety Transactions and Use Tax” is added to the City of Chowchilla Municipal code to read as follows:

Chapter 3.13

Public Safety Transactions and Use Tax

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3.13.030	Operative Date
3.13.040	Purpose
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3.13.060	Place Of Sale
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3.13.150	Severability
3.13.160	Contract With State

3.13.010 **Title.** This chapter shall be known as the City of Chowchilla “Public Safety Transactions and Use Tax.” The provisions of this chapter shall be applicable throughout the entire incorporated area of the City of Chowchilla.

3.13.020 **Definitions.** As used in this chapter, “City” means the City of Chowchilla. “Tax” means the transactions and use taxes imposed under the provisions of this chapter. “Tax Revenue” and “Tax Revenues” mean all proceeds of the tax received by the City from the California State Department of Tax and Fee Administration pursuant to this chapter. “California State Department of Tax and Fee Administration” means the Department of Tax and Fee Administration or any other subdivision of the government of the State of California that is responsible for administering California's state, local, and district sales and use tax programs.

3.13.030 **Operative Date.** The operative date of this ordinance shall be no earlier than thirty (30) calendar days following the adoption of this ordinance as set forth below, and further shall not precede passage of the ballot measure

approving a Public Safety Transactions and Use Tax (Measure N) by a majority 2/3 of the voters of the City of Chowchilla.

3.13.040 Purpose. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions of this chapter be interpreted in order to give full effect to and accomplish those purposes:

A) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code; and Section 7285.91 of Part 1.7 of Division 2 of the Revenue and Taxation Code which authorize the City of Chowchilla to adopt this tax ordinance, that shall be effective following a 2/3 majority of the duly authorized voters of the City of Chowchilla vote to approve a measure calling for the imposition of the tax at an election called for that purpose.

B) To adopt a retail transactions and use tax ordinance that incorporates the 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 of Part 1.6, Division 2 of the Revenue and Taxation Code.

C) To adopt a retail transactions and use tax ordinance that imposes a 1% tax and providing a measure therefor that can be administered and collected by the State Department of Tax and Fee Administration in a manner that adapts itself fully as practicable to, and requires the least deviation from existing statutory and administrative procedures followed by the State 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 consistent, to the greatest degree possible, with the provisions of Part 1.6 Division 2 of the Revenue and Taxation Code; minimizing the costs associated with collection of the transactions and use taxes, and simultaneously minimizing the recordkeeping burdens of persons subject to taxation under the provisions of this ordinance.

3.13.050 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%) 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.

3.13.060 Place Of Sale. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-

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

3.13.070 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 within the territory of the City 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 taxes regardless of the place to which delivery is made.

3.13.080 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 Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as if fully set forth herein.

3.13.090 Limitations on Adoption of State Law and Collection of Use Taxes. In adopting the provisions of Part 1 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 the City shall be substituted therefore. 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 Board of Control, State Board of Equalization, Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California.

2) The result 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 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 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 said provision of that Code.

4) In Sections 6701, 6702 (except 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 for that phrase in Section 6203.

3.13.100 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.

3.13.110 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 California 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 in 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 for 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 the lease prior to the operative date of this ordinance.

5) For the purposes of subparagraphs 3) and 4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6) Except as provided in subparagraph 7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and 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 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.

3.13.120 Permissible Uses, Expenditure Plan.

A) Revenues received by the City from the Public Safety Transactions and Use Tax may only be used to provide support for public safety purposes. The “Five Year Expenditure Plan”, attached hereto as Exhibit “A” illustrates revenues and expenditures, to the extent these are known and/or anticipated at the time of passage of this ordinance, for the initial five year period after the effective date of the tax. Funding with tax revenues of all other uses and purposes, except as provided in this section is prohibited.

Permissible uses include, but are not limited to the following:

1) Police

- a) Police patrol services;
- b) Police traffic control services;
- c) Drug and Gang enforcement and prevention services, school resource services, youth outreach, crime prevention and investigations services, and anti-gang and anti-drug mitigation programs;
- d) Comprehensive programs that mitigate against methamphetamine use, eliminate methamphetamine labs and reducing methamphetamine use for youths
- d) Police support services, including but not limited to: recruitment of new and retention of existing civilian staff, facilities, vehicles, equipment, supplies and the financing thereof;
- e) Competitive salary, retention and benefit compensation for police personnel;
- f) Funding new police department personnel
- g) Construction of police facilities and relocation (including but not limited to land acquisition, facilities design and engineering, construction and funding for the use of temporary facilities, and the financing thereof.

2) Fire

- a) Construction of fire facilities and relocation (including but not limited to land acquisition, facilities design and engineering, construction and funding for the use of temporary facilities, and the financing thereof.
- b) Fire Department support services, including but not limited to: recruitment of new and retention of existing staff, facilities, vehicles, equipment, supplies and the financing thereof;

- c) Purchase of specialized equipment for Fire Department;
- d) Competitive salary, retention and benefit compensation for Fire personnel;
- e) Maintaining 9-1-1 fire and medical emergency response times;
- f) ensuring that all fire stations are fully staffed
- g) Supporting comprehensive fire prevention programs
- h) funding new fire personnel

B) The tax revenues received by the City shall be reviewed and allocated annually following the recommendation of the Citizen's Oversight Committee and approval of the City Council and shall thereafter be expended for purposes as specified in Subsection A) 1) and subsection A) 2) of this section.

C) In order to assist the City in maintaining a sufficient level of public safety services, the proceeds of this section shall be designated exclusively to maintain, improve, or expand funding of public safety and local law enforcement. All revenue raised with this tax will be allocated per the Expenditure Plan and expended. At no point shall tax revenues be used to fund public safety expenditures below 44% of that year's General Fund Operating Budget unless approved by a 4/5 vote of the City Council. The City shall continue to fund public safety (Police and Fire), at a range of 44% to 48% of the General Fund Operating Budget as calculated for each Fiscal Year for the term of this tax measure.

D) The City Council, by resolution, shall establish a five-member Citizen's Oversight Committee to annually review expenditures and appropriations of the tax revenues to ensure that all such revenues are spent or appropriated for the purposes and uses set forth in paragraphs A) and C). Each applicant desiring to serve on the Citizen's Advisory Committee shall complete an application. Those applicants demonstrating the experience, knowledge, civic-mindedness and/or community involvement deemed by the city council to be of sufficient merit, and without direct financial conflict of interest, to best serve the interests of the commission/committee shall be given preference. Should applications be received that are insufficient to satisfy appointments meeting the preferred qualifications, the city council reserves the option to appoint members without regard to such preferred qualifications. Preferred qualifications are guidelines for the city council and not definitive or controlling as to final action on appointments by the city council. Each Committee member shall be a resident of the City at the time of appointment and shall remain a resident of the City while serving on the Committee. The chairperson of the Committee shall be selected by the members of the Citizen's Oversight Committee. Each January at its first meeting, the commission members shall elect from its membership a

chair and vice chair. The officers shall hold office for the calendar year in which they are elected and until their successors are elected and sworn into office. The Committee shall receive the assistance of City staff and shall issue an annual public report on the expenditures and appropriations of the tax revenues. The Committee shall undertake such additional duties as the City Council may designate.

3.13.130 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 chapter.

3.13.140 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 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.

3.13.150 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.

3.13.160 Contract With State.

Prior to the operative date, the City shall contract with the State 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 State 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 execution of such a contract.

SECTION 3. This ordinance shall become effective following approval of Measure N by at least 2/3 of the voters of the City voting thereon in the November 2018 General Election and no sooner than thirty (30) days following adoption by the majority vote of the City Council of the City of Chowchilla.

PASSED, APPROVED, and ADOPTED this 11th day of December 2018

_____/s/_____
Dennis Haworth, *Mayor*

_____/s/_____
Joann McClendon, CMC, *City Clerk*

APPROVED AS TO FORM:

_____/s/_____
James Sanchez, *City Attorney*

I, Joann McClendon, City Clerk of the City of Chowchilla, California, do hereby certify that the foregoing Ordinance number 493-18 was duly introduced for first reading on July 24, 2018 and regularly adopted at a regular meeting of the City Council of the City of Chowchilla on December 11, 2018 by the following vote:

AYES: 5 – Barragan, Ahmed, Chavez, Gaumnitz, Haworth

NOES: 0

ABSENT: 0

ABSTAIN: 0

IN WITNESS THEREOF, I hereunto set my hand and affix the official seal of the City of Chowchilla on this 11th day of December, 2018.

_____/s/_____
Joann McClendon, *City Clerk*

SEAL