

ORDINANCE NO. 2020-006

AN ORDINANCE OF THE CITY COUNCIL AND THE PEOPLE OF THE CITY OF CITRUS HEIGHTS, CALIFORNIA ADDING ARTICLE VI (TRANSACTIONS AND USE TAX) TO CHAPTER 86 OF THE CITRUS HEIGHTS MUNICIPAL CODE

THE CITY COUNCIL AND THE PEOPLE OF THE CITY OF CITRUS HEIGHTS, CALIFORNIA, CALIFORNIA DO ORDAIN AS FOLLOWS:

SECTION 1. Article VI (Transactions and Use Tax) is hereby added to Chapter 86 of the Citrus Heights Municipal Code to read as follows:

ARTICLE VI –TRANSACTIONS AND USE TAX

Section 86-171 Title

This Article shall be known as the “City of Citrus Heights Transactions (Sales) and Use Tax Ordinance of 2020.” The City of Citrus Heights hereinafter shall be called "City." This Article shall be applicable in the incorporated territory of the City.

Section 86-172 Operative Date

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this Article.

Section 86-173 Purpose

This Article 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.

Section 86-174 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.

Section 86-175 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 (1.00%) 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 Article.

Section 86-176 Place of Sale

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

Section 86-177 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 Article for storage, use or other consumption in said territory at the rate of one percent (1.00%) 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.

Section 86-178 Adoption of Provisions of State Law

Except as otherwise provided in this Article 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 Article as though fully set forth herein.

Section 86-179 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, 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 California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Article.

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

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

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

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

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

C. "A retailer engaged in business in the District" 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.

Section 86-180 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 Article.

Section 86-181 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 Article 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 Article.

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 Article.

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 Article, 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 Article.

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 Article.

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 Article 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.

Section 86-182 Amendment or Repeal

A. All amendments subsequent to the effective date of this Article 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 Article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Article.

B. The City Council may amend this Article without voter approval only to make minor technical adjustments consistent with the purposes set forth in this Article and applicable laws or as necessary to comply with the law.

Section 86-183 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 Article, 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.

Section 86-184 Severability

If any provision of this Article or the application thereof to any person or circumstance is held invalid, the remainder of the Article and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 86-185 Use of Proceeds

The proceeds from the transactions and use tax imposed by this Article shall be deposited in the general fund of the City and available for any lawful municipal purpose.

Section 86-186 Fiscal Accountability Provisions

The following fiscal accountability requirements shall apply:

A. Independent Annual Financial Audit. All revenues generated by the tax imposed pursuant to this Article shall be annually audited by an independent accounting firm and included in an annual financial report to the City Council which may be a part of the City's Consolidated Annual Financial Report.

B. Expenditures. All expenditures shall be a matter of public record to the extent required by the California Public Records Act or other applicable law.

Section 86-187 Citizens Oversight Committee

The City Council shall establish a Citizen’s Oversight Committee, which shall have no less than five members. The terms, composition, and specific duties of the Committee shall be established by resolution of the City Council; however all members of the Committee shall be residents of the City. The Committee shall review the annual report required by Section 86-186 of this article and may make such recommendations to the City Council as it deems necessary or useful. The Committee may, by a majority vote of its membership, choose to publish a report, in which event such report, if approved by a majority of the members, shall be published on the City’s internet page. Members of the Citizen’s Oversight Committee shall be appointed by the City Council, and any member may be removed from the Committee prior to the end of his or her term by a two-thirds vote of the Council. In the event the City Council, the Citizen’s Oversight Committee, the City, any employee of the City, or any member of the City Council or the Citizen’s Oversight Committee fails to take an action required by this Section, any court of competent jurisdiction may order that the action be taken. However, such failure to act shall not invalidate the City’s authority to levy any tax or in any way affect the ongoing collection of any tax pursuant to this Ordinance. All meetings of the Committee shall comply with the provisions of the Ralph M. Brown Act (Gov’t Code Section 54950, et seq.).

SECTION 2. Effective Date. This Ordinance shall not take effect until it has been approved by a majority of the voters voting at the general municipal election to be held November 3, 2020. The tax imposed by this Ordinance shall become effective as set forth in the new Section 86-171 of the Municipal Code as amended by Section 1 of this Ordinance.

SECTION 3. Severability. If any section, subsection, 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 and City Council of the City of Citrus Heights hereby declare that they would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

INTRODUCED BY THE CITY COUNCIL ON JULY 23, 2020 AND PASSED,
APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CITRUS
HEIGHTS this _____ day of _____ 2020 BY THE FOLLOWING VOTE.

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

Jeff Slowey, Mayor

ATTEST:

Amy Van, City Clerk

ADOPTED BY THE VOTERS OF THE CITY OF CITRUS HEIGHTS AT THE NOVEMBER 3, 2020 ELECTION.

Jeff Slowey, Mayor

ATTEST:

Amy Van, City Clerk

Date: _____