



CITY OF DEL REY OAKS

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AGENDA

SPECIAL MEETING OF THE DEL REY OAKS CITY COUNCIL THURSDAY, AUGUST 1, 2013 AT 5:00 P.M.

CHARLIE BENSON MEMORIAL HALL, CITY HALL

[Pursuant to Government Code Section 54954.3, public comments for a special meeting are limited to the scheduled agenda item(s).]

1. 5:00 P.M. - ROLL CALL - *Council Members*
2. PLEDGE OF ALLEGIANCE
3. PUBLIC COMMENTS:
(There will be a limit of not more than three minutes for each speaker.)
4. **Proposed Revenue Measure**
 - A. Receive report from City Manager Daniel Dawson and City Attorney Christopher Callihan
 - B. Council Members' Questions
 - C. Public Comments
 - D. Council Members' Comments
 - E. Consider presenting to the voters a general transactions and use tax of one percent to preserve essential City services.
5. NEXT MEETING DATE: Confirm Tuesday, August 20, 2013 at 6:00 P.M. as the date and time of the Council's next regular meeting.
6. ADJOURNMENT

Information distributed to the Council at the meeting becomes part of the public record. A copy of written material, pictures, etc. must be provided to the secretary for this purpose.
All enclosures and materials regarding these agenda items are available for public review at the Del Rey Oaks City Hall, 650 Canyon Del Rey Road, Del Rey Oaks.

**REPORT TO THE
CITY COUNCIL**
City of Del Rey Oaks, California

DATE: August 1, 2013

FROM: Daniel Dawson, City Manager
Christopher A. Callihan, City Attorney

SUBJECT: **CITY REVENUE MEASURE OPTIONS**

RECOMMENDATION:

It is recommended that the City Council provide direction to staff regarding revenue measure options, including:

1. Preparation of a General Tax Measure that would focus on the general fiscal health of the City and would seek to raise tax revenue to fund the same; and
2. Placement of the measure on the November 2013 ballot.

DISCUSSION:

City staff has taken the lead to bring forward for the City Council's consideration the question of whether to submit to the voters of Del Rey Oaks an important revenue measure vital for the community and necessary to help stabilize and invest in the City's future. Without additional revenue sources, the City of Del Rey Oaks will not be able to fully fund essential services including public safety and will not be able to adequately maintain basic infrastructure and facilities. At this Special City Council meeting, the City Council is asked to consider whether to present a revenue measure to the voters on the November 2013 ballot.

Fiscal Condition and Forecasts

The past few years' City Budgets have been balanced by drawing down limited reserves and deferring Payables from both the General Fund and the former Redevelopment Fund. Currently the City has outstanding payables in excess of \$700,000, including over \$300,000 in attorney fees for the ongoing Federal LLC case.

Transactions and Use Tax

As the City Council is aware, the City currently has in place a one-cent transactions and use tax for General Fund services. The tax was adopted by Ordinance No. 261 in 2006 and after the recent extension will expire on March 31, 2017. The current total sales tax rate in Del Rey Oaks, including the additional transactions and use tax, is 8.50%.

Under California law, transactions and use taxes may be approved locally and added to the combined state and local sales and use tax rate. The transactions and use tax is a tax imposed on the total retail price of tangible personal property and the use or storage of such property when sales tax is not paid. The tax is collected by the retailer and paid by the purchaser. The tax is authorized by State statute (Revenue and Taxation Code §7285.9) and can be a general tax or a special tax. The rate is added on and administered in tandem with the

sales and use tax. The City has the ability to seek voter approval of a local transactions and use tax increase under the following conditions:

1. The transactions and use tax may be imposed at a rate of 0.125% of a multiple thereof;
2. The ordinance proposing the tax must be approved by a two-thirds vote of all members of the governing body (4 out of 5);
3. If for general purposes, the tax must be approved by a majority vote of the voters in the city;
4. If for specific purposes, the tax must be approved by a two-thirds vote of the voters in the city; and
5. The maximum combined rate of transactions and use taxes in any location may not exceed 2% (Revenue and Taxation Code §7251.1).

General v. Special Revenues

Taxes are categorized as either “general” or “special” taxes. The category of tax affects when the election to approve them is held, the vote required for passage and how the tax revenues can be used.

General Tax.

A general tax must be submitted to the electors at a regularly scheduled general election at which members of the Council will be elected, unless the Council by unanimous vote finds there is an emergency which justifies placing the proposed tax before the voters at a special election. (Cal. Const. Article XIII C §2) A proposed general tax will take effect if approved by a majority of the voters voting at the election (50% plus one vote). The proceeds of a general tax are placed in the general fund and may be used for any governmental purpose.

Special Tax.

A special tax may be submitted to the electorate at a general or special election. [Cal. Const. Article XIII C §2(d)] A proposed special tax will take effect if approved by two-thirds of the voters voting at the election. The proceeds of a special tax must be placed in a special fund any may be used only for the purposes specified in the measure. A special tax can be voted on at a special election, but a general tax must be voted on when Council members are elected unless the Council declares an emergency. Examples of a special tax measure are a public safety measure or a capital improvement measure.

Timing of an Election

Elections shall be held in accordance with the provisions of the Elections Code. Under the Elections Code provisions, if the Council proposes a tax to the voters and calls a special election, the election could be held on any date. Under the Elections Code, the Council must call an election no later than 88 days prior to the election date (Elections Code §9222), so the only remaining established election date in 2013 is November 5th, 2013. If the Council selects this established date, the election on the measure could be consolidated with any other elections held on that same date. The City could also request that the County conduct the election. This would help reduce the City’s costs if there is any other election with which the City’s special election could be consolidated. The deadline for submittal of ballot information to the Registrar of Voters is August 9, 2013; consequently, it is requested that the City Council provide direction to staff at this Special Meeting so there is some time available for staff to prepare the actions necessary to present certain ballot measures to the voters in November 2013.

ISSUES:

1. Shall the City Council adopt a resolution

- a. placing a measure to impose a transactions and use tax on the ballot to be presented to the voters at the November 2013 election;
- b. requesting that the election be consolidated with the established election to be held on November 5, 2013; and
- c. directing the County Elections Department to conduct the election on the City's behalf?

FISCAL IMPACT:

Additional revenue measures, if approved by the voters, would result in revenues which the City could use to maintain essential City services, including public safety and basic infrastructure and facilities.

ALTERNATIVES:

The following are alternatives to the recommendation at the beginning of this report:

1. Not place a revenue measure on the November 2013 ballot; or
2. Otherwise direct staff how to proceed.

TIME CONSIDERATIONS:

Time is of the essence as the deadline for submittal of ballot measures to the Registrar of Voters is August 9, 2013.

CONCLUSION:

The City is experiencing an existing and immediate funding crisis that is anticipated to continue and to worsen unless additional revenue sources are identified. The crisis is largely attributable to outside factors, including national economic trends, rapid and disproportionate increase in the cost of employee health insurance and retirement benefits, unpredictable decreases in revenues from existing taxes and fees, increases in charges by the County of Monterey, and state takeaways of local revenue. The City has already taken significant steps to reduce its operational costs and has very few means available for increasing general fund revenues. Absent an additional source of revenue, the City's ability to provide basic essential services and to maintain basic facilities and infrastructure is uncertain: public facilities and property will not be properly maintained, public safety standards will degrade, crime and violence may potentially increase, the City's children and families will not have adequate and safe recreational opportunities, and the health, safety, and welfare of the residents of Del Rey Oaks will be compromised. Without a sufficient investment in new capital infrastructure or sufficient maintenance and repair of the existing capital infrastructure, businesses and families will be discouraged from moving to or remaining in Del Rey Oaks.

RESOLUTION NO. 2013-08

A RESOLUTION OF THE CITY OF DEL REY OAKS PLACING A MEASURE TO IMPOSE A TRANSACTIONS AND USE TAX ON THE BALLOT TO BE SUBMITTED TO THE VOTERS AT THE NOVEMBER 5, 2013 ELECTION; AND REQUESTING THAT THE MONTEREY COUNTY BOARD OF SUPERVISORS CONSOLIDATE THE ELECTION WITH THE ESTABLISHED ELECTION TO BE HELD ON NOVEMBER 5, 2013; AND DIRECTING THE COUNTY ELECTIONS DEPARTMENT TO CONDUCT THE ELECTION ON THE CITY'S BEHALF

WHEREAS, the City is experiencing an existing and immediate funding crisis, which is the result of factors largely outside of its control, including national economic trends and unpredictable decreases in revenue from existing taxes and fees; and

WHEREAS, the City has taken necessary steps to reduce its operational costs and to protect vital services; and

WHEREAS, maintenance of the City's streets, sidewalks, and other facilities and infrastructure has been deferred or severely curtailed; and

WHEREAS, the City's public facilities, including City Hall and the City's parks and recreational facilities, are aged and maintenance of these facilities and improvements to these facilities has been deferred due to lack of resources; and

WHEREAS, the City has limited available financial resources and will have no financial resources available in the case of an emergency or future capital facilities needs; and

WHEREAS, these reductions have broadly impacted services throughout the City and are undermining the public health, safety, and welfare of Del Rey Oaks' residents. Absent a new guaranteed source of general fund revenue, the City will not be able to maintain or to restore and improve essential services; consequently, the City will have to defer maintenance of important public facilities and infrastructure and will not have basic quality-of-life services commonly associated with municipal government; and

WHEREAS, the City has very few means available for increasing general fund revenue and absent a new source of general fund revenue the City's ability to maintain or to improve essential service levels is uncertain; and

WHEREAS, unless additional sources of revenue are made available to the City, public facilities and property will not be properly maintained, public safety standards will degrade, crime and violence will increase, the City will not be able to provide recreational opportunities to the children who live within the city, businesses and families will be discouraged from moving to or remaining in Del Rey Oaks, and the health, safety, and welfare of the residents of Del Rey Oaks will be endangered; and

WHEREAS, because of that threat to the public health, safety, and welfare, an emergency exists in the City, as the term "emergency" is used in Article XIII C, section 2(b) of the California Constitution. The City must immediately address that emergency by ensuring that the City has sufficient resources to preserve the public health, safety, and welfare; and

WHEREAS, the identified emergency necessitates that the City Council submit another tax measure to the voters of Del Rey Oaks at the November 5, 2013 election, even though such an election would not be consolidated with a general election for a member of the City Council; and

WHEREAS, Article XIII C, section 2(b) of the California Constitution permits the City, in emergency situations unanimously declared by the Council, to seek voter approval for a general tax at an election that is not consolidated with an election for a member of the Council; and

WHEREAS, the tax to be submitted to the voters, if approved, would be imposed on retail transactions involving the sale and use of personal property. The existing tax rate would be increased by one percent (1%) of the value of the property. All proceeds from such tax shall be utilized for general governmental purposes. The tax revenue would be collected by the State Board of Equalization and remitted to the City. The tax would continue indefinitely, unless repealed or amended by the voters. The tax shall be approved if the measure receives at least a majority of affirmative votes; and

WHEREAS, based on all the information presented to it, both written and oral, the City Council finds that under CEQA Guidelines sections 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this action does not constitute a project under CEQA and therefore review under CEQA is not required.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEL REY OAKS, as follows:

SECTION 1. The foregoing Recitals are true and correct and are hereby adopted by the City Council.

SECTION 2. Pursuant to California Constitution Article XIII C, Section 2; California Government Code section 53724; California Elections Code section 9222; the City Council of the City of Del Rey Oaks hereby calls an election at which it shall submit to the qualified voters of the City, a measure that, if approved, would establish an additional one percent (1%) general transactions and use tax, as authorized by California Revenue and Taxation Code section 7285.9. This measure shall be designated by letter by the Monterey County Elections Department.

SECTION 3. Included in Exhibit A is one ordinance, establishing an additional one percent (1%) transactions and use tax, to be approved by the voters pursuant to Section 2. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the November 5, 2013 election, as required by Revenue and Taxation Code section 7285.9, subject to the approval of a majority of the voters voting on the measure at this election called by the adoption of this resolution. The entire text of the ordinance attached hereto as Exhibit A shall be printed in the voter information portion of the sample ballot. The ordinance adding the additional transactions and use tax does not change the existing one percent (1%) transactions and use tax. If the proposed measure is approved, the total transactions tax rate shall be two percent (2%), until the existing transactions and use tax expires, unless the same is extended by approval of the voters. The State Board of Equalization shall collect the taxes from retailers subject to the taxes and remit the funds to the City.

SECTION 4. The proposed transactions and use tax ordinance shall be submitted to the voters on the ballot in the form of the following question:

**“Essential Services Measure
(General Transactions and Use Tax)**

To preserve essential city services and facilities in Del Rey Oaks, including crime prevention and emergency response; repair of streets and sidewalks; and other city services; shall the City of Del Rey Oaks increase the transactions and use tax by an additional one percent (1%) to provide an on-going source of local funds to be used only in Del Rey Oaks, the proceeds of said tax to be utilized for general governmental purposes, protected from State takeways?”

SECTION 5. As the ballot measure directed and described herein deals with a general tax, the measure shall pass if a majority of those casting a vote on the measure vote “yes.”

SECTION 6. The official ballot to be used at said election shall conform to the provisions of the laws of the State of California with relation thereto.

SECTION 7. The City Attorney shall prepare an impartial analysis of the ballot measure not to exceed five hundred words in length showing the effect of the measure on the existing law and the operation of the measure.

SECTION 8. The City authorizes the Registrar of Voters to consolidate this election with the established election on November 5, 2013, for the ease and the convenience of the registered voters and to take advantage of any cost savings possible by such consolidation.

SECTION 9. The City Clerk may request the assistance of the County of Monterey Election Department in regard to said election, as the City Clerk deems necessary, and the City shall pay the incurred cost of such assistance.

SECTION 10. Written arguments, no longer than three hundred words, in favor of or in opposition to said measure may be submitted to the City Clerk no later than August 16, 2013. Pursuant to Section 9285 of the California Elections Code, the Mayor is hereby authorized to prepare and file a written argument in favor of the proposed ordinance, not to exceed three hundred words, on behalf of the City Council.

SECTION 11. The City Clerk is hereby authorized and directed, in a manner consistent with the California Elections Code, to cause notice of the measure to be published in a newspaper of general circulation. The City Clerk may request that the County of Monterey Elections Department prepare and publish the required notice.

SECTION 12. The election on the measure set forth in this Resolution shall be held and conducted, the votes canvassed and the returns made, and the results ascertained and determined as provided for herein. In all particulars not described in this Resolution, the election shall be held as prescribed in the Elections Code of the State of California. The Registrar of Voters of the County of Monterey is authorized to canvas the returns of that election with respect to the vote cast in the City of Del Rey Oaks and certify the results to the City Council. At the next regular meeting of the City Council occurring after the returns of the election have been canvassed and the certification of the results to the City Council, the City Council shall cause to be entered in its minutes a statement of the results of the election.

SECTION 13. The City Manager is hereby authorized and directed to expend the necessary funds to pay for the City's costs of placing the measure on the election ballot.

PASSED AND ADOPTED this 1st day of August 2013, by the following vote:

AYES:

NOES:

ABSENT:

Jerry B. Edelen, Mayor

ATTEST:

Daniel J. Dawson, City Clerk

EXHIBIT A

AN ORDINANCE OF THE CITY OF DEL REY OAKS IMPOSING AN ADDITIONAL GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

BE IT ORDAINED BY THE VOTERS OF THE CITY OF DEL REY OAKS:

SECTION 1. FINDINGS.

- a. The City is experiencing an existing and immediate funding crisis, which is the result of factors largely outside of its control, including national economic trends and unpredictable decreases in revenue from existing taxes and fees.
- b. The City has taken necessary steps to reduce its operational costs and to protect vital services.
- c. Maintenance of the City's streets, sidewalks, and other facilities and infrastructure has been deferred or severely curtailed.
- d. The City's public facilities, including City Hall and the City's parks and recreational facilities are aged and maintenance of these facilities and improvements to these facilities has been deferred due to lack of resources.
- e. The City has limited available financial resources and will have no financial resources available in the case of an emergency or future capital facilities needs.
- f. These reductions have broadly impacted services throughout the City and are undermining the public health, safety, and welfare of Del Rey Oaks' residents. Absent a new guaranteed source of general fund revenue, the City will not be able to maintain or to restore and improve essential services; consequently, the City will have to defer maintenance of important public facilities and infrastructure and will not have basic quality-of-life services commonly associated with municipal government.
- g. The City has very few means available for increasing general fund revenue and absent a new source of general fund revenue the City's ability to maintain or to improve essential service levels is uncertain.
- h. Unless additional sources of revenue are made available to the City, public facilities and property will not be properly maintained, public safety standards will degrade, crime and violence will increase, the City will not be able to provide recreational opportunities to the children who live within the city, businesses and families will be discouraged from moving to or remaining in Del Rey Oaks, and the health, safety, and welfare of the residents of Del Rey Oaks will be endangered.
- i. Because of that threat to the public health, safety, and welfare, an emergency exists in the City, as the term "emergency" is used in Article XIII C, section 2(b) of the California Constitution. The

City must immediately address that emergency by ensuring that the City has sufficient resources to preserve the public health, safety, and welfare.

- j. The identified emergency necessitates that the City Council submit another tax measure to the voters of Del Rey Oaks at the November 5, 2013 election, even though such an election would not be consolidated with a general election for a member of the City Council.
- k. Article XIII C, section 2(b) of the California Constitution permits the City, in emergency situations unanimously declared by the Council, to seek voter approval for a general tax at an election that is not consolidated with an election for a member of the Council.
- l. The tax to be submitted to the voters, if approved, would be imposed on retail transactions involving the sale and use of personal property. The existing tax rate would be increased by one percent (1%) of the value of the property. All proceeds from such tax shall be utilized for general governmental purposes. The tax revenue would be collected by the State Board of Equalization and remitted to the City. The tax would continue indefinitely, unless repealed or amended by the voters. The tax shall be approved if the measure receives at least a majority of affirmative votes.
- m. Based on all the information presented to it, both written and oral, the City Council finds that under CEQA Guidelines sections 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this action does not constitute a project under CEQA and therefore review under CEQA is not required.

SECTION 2. 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 such adoption being as set forth below.

SECTION 3. Expiration Date. The authority to levy the tax imposed by this ordinance shall continue indefinitely from the Operative Date unless terminated sooner as determined by subsequent ordinance of the City.

SECTION 4. Purpose. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish these purposes:

- a. To impose an additional 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 7282.9 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 this additional tax at an election called for this 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 imposed a tax and provides a measure therefore that can be administered and collected by the State Board of

Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

- d. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

SECTION 5. Contract with State. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

SECTION 6. 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%) 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. This tax is in addition to the existing transactions tax.

SECTION 7. 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 and out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

SECTION 8. Use Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchases 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 one percent (1%) 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. This tax is in addition to the existing use tax.

SECTION 9. 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.

SECTION 10. Limitations on Adoption of State Law and Collection of Use Tax. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- a. Whenever 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 this title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
 2. The result of that substitution would require action to be taken by or against this City or any agency, officer or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this 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 3828 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.

SECTION 11. 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.

SECTION 12. 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 the transactions tax the gross receipts from:
 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
 - (a) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
 - (b) With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this 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 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 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 subparagraphs (3) and (4) of this section, storage, use, or other consumption, of 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 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 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 13. Amendments to State Law. 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.

SECTION 14. Enjoining Collection Forbidden. No injunction or writ of mandate or other legal 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 to enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, or any tax or any amount of tax required to be collected.

SECTION 15. Refunds and Credits; Suits and Legal Proceedings.

- a. Refunds of and credits for any tax paid pursuant to this ordinance may be made only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.
- b. Suits and proceedings for the recovery of any amount alleged to have been erroneously or illegally determined or collected pursuant to this ordinance may be maintained in any court only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. A judgment shall not be rendered in favor of the plaintiff in any action brought against the State Board of Equalization to recover any amount paid when the action is brought

by or in the name of an assignee or the person paying the amount or by any person other than the person who paid the amount.

SECTION 16. Use of Tax Revenue. The tax approved by this ordinance is a general tax. The City may use the revenue from the tax for any general governmental purpose.

SECTION 17. Severability. If any provision of this ordinance 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.

SECTION 18. Effective Date. If this ordinance is approved by a majority of the voters voting on the issue at the November 5, 2013 election, as it relates to the levying and collecting of the City transactions and use taxes, this ordinance shall take effect immediately.

SECTION 19. Codification. Upon adoption of the ordinance pursuant to the voter approval referenced in this ordinance, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this ordinance in the Del Rey Oaks Municipal Code.

PASSED AND ADOPTED by the City Council of the City of Del Rey Oaks, on August 1, 2013, by the following vote:

AYES:

NOES:

ABSENT

Jerry B. Edelen, Mayor

ATTEST:

Daniel J. Dawson, City Manager