ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL SPECIAL ELECTION CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2010, ONE PROPOSITION THAT REQUIRES SATISFYING REFORM CONDITIONS RELATED TO CERTAIN PENSION, RETIREE HEALTH CARE, MANAGED COMPETITION AND OTHER FINANCIAL REFORMS BEFORE IMPOSING A TEMPORARY TRANSACTIONS (SALES) AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION.

WHEREAS, by Ordinance No. O-19965, introduced and adopted on June 28, 2010, the Council of the City of San Diego has called a Municipal Special Election to be consolidated with the State General Election on November 2, 2010, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Special Election one proposition requiring that reform conditions related to certain pension, retiree health care, managed competition, and other financial reforms be met before approving a temporary one-half of one percent transactions (sales) and use tax, expiring after five years; and

WHEREAS, the City will deposit all revenues it receives from the tax into the City's general fund, to be expended for any lawful governmental purpose; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one proposition proposing a temporary one-half of one percent transactions (sales) and use tax, is hereby approved by the Council and submitted to the qualified voters at the Municipal Special Election to be held on November 2, 2010, and consolidated with the State General Election to be held on the same date, with the proposition to read as follows:

PROPOSITION

AN ORDINANCE OF THE SAN DIEGO CITY COUNCIL AND THE PEOPLE OF THE CITY OF SAN DIEGO THAT REQUIRES SATISFYING REFORM CONDITIONS RELATED TO CERTAIN PENSION, RETIREE HEALTH CARE, MANAGED COMPETITION, AND OTHER FINANCIAL REFORMS BEFORE IMPOSING A TEMPORARY TRANSACTIONS (SALES) AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION.

WHEREAS, state law authorizes the City of San Diego to levy this one-half cent transactions (sales) and use tax following a two-thirds vote of the City Council approving the ordinance proposing the tax and approval by a majority of voters voting in an election on that issue; and

WHEREAS, the City is facing a multi-million dollar deficit as a result of the economic downturn; and

WHEREAS, the City has cut services and taken other actions to reduce the City deficit but the continuation of essential services is at risk; and

WHEREAS, on August 3, 2010, the City's Chief Financial Officer issued a memorandum entitled "Citywide reforms and associated savings and budget reductions – REVISED" in which she identified over $153 million in annual savings the City would realize due to reforms and savings already made and an additional $182 million in annual savings from budget reductions already taken for a total of $335 million in savings; and

WHEREAS, the City wishes to ensure that the City has the financial resources necessary to preserve the public health, safety, and welfare of the City residents; and

WHEREAS, the City desires to offset severe state cuts and protect and restore essential services, including police, fire, lifeguards, and street resurfacing and continue to provide a variety of City services, including park and branch library services, and to maintain the City's infrastructure such as streets, sidewalks and public facilities; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Special Election one proposition approving a temporary one-half of one percent transactions (sales) and use tax, expiring after five years; and

WHEREAS, the tax will not be operative until certain conditions related to pension, retiree health, managed competition, and other financial reforms have been satisfied; and

WHEREAS, the City will deposit all revenues it receives from the tax into the general fund of the City to be expended for any lawful governmental purpose; NOW, THEREFORE,

BE IT ORDAINED, by the Council and the People of the City of San Diego, as follows:

Section 1. TITLE. This ordinance shall be known as the Pension Reform, Financial Stabilization, and Sales Tax Ordinance. This ordinance shall be applicable in the incorporated territory of the City of San Diego (City).

Section 2. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the Board of Equalization receives the certification from the City of San Diego, City Auditor, that the conditions listed below have been satisfied.

A. Conditions.

1. Ordinance to Eliminate Employee Retirement Offsets for Elected Officials and Unrepresented City Employees: An ordinance has been adopted to eliminate retirement offsets for elected officials and those City employees who are not represented by a labor organization. "Retirement offsets" means the amount of an individual's retirement system contribution which the City agrees to pay on behalf of the individual.

2. Complete Managed Competition Guide: The City has adopted a Managed Competition Guide, by ordinance, to allow the City to implement a managed competition process pursuant to San Diego Charter section 117(c) involving services such as, solid waste collection, print shop and publishing services, auto and fleet maintenance, landscaping and facilities operations and maintenance.

3. Complete DROP Cost Neutrality Study. The Mayor has completed a Deferred Retirement Option Plan (DROP) cost neutrality study, presented the findings to the City Council and, if said findings are that DROP is not cost neutral, the City will initiate "meet and confer" to make DROP cost neutral. Cost neutral means that the present value of the City's share of costs for all compensation and benefit programs of the City of San Diego with DROP included is less than or equal to 102% of the present value of what those costs would be in the absence of DROP.

4. Solicit Request for Qualifications to Take Over Miramar Landfill Operations/Lease. The Mayor has solicited Requests for Qualifications from qualified bidders to assume the operations of the Miramar Landfill.

5. Eliminate Terminal Leave for all City Employees. The City has adopted an ordinance eliminating terminal leave for all City employees. Under the ordinance, upon separation from the City, an employee may only cash out accrued leave.

6. Reduce Retirement Offset for Represented City Employees. The City has reduced the total cost of Retirement Offsets existing as of June 30, 2010, for employees

represented by labor organizations. "Retirement offsets" means the amount of an individual's retirement system contribution which the City agrees to pay on behalf of the individual.

7. Reduce Retiree Health Costs. The City's future unfunded retiree health care liability existing on June 30, 2010, has been reduced. For purposes of this section, "future unfunded retiree health care liability" means the actuarial accrued liability based upon the retiree health care plan in effect on June 30, 2010.

8. Solicit Proposals to Take Over Information Technology Services. The Mayor has solicited proposals from qualified bidders to provide information technology services to the City which are provided by the San Diego Data Processing Corporation.

9. Establish Second Tier Pension Plan for Firefighters. The City has established a second tier pension plan for new employees represented by San Diego City Firefighters, International Association of Fire Fighters, Local 145 comparable to the terms of the plan currently in place for new employees represented by San Diego Police Officers Association as set forth at San Diego Municipal Code section 24.0403(i).

10. Adopt Ordinance for Voluntary Defined Contribution Pension Plan. The City has adopted an ordinance creating an alternative Defined Contribution Plan intended to reduce City costs from the current City retirement plan. The ordinance would allow all City employees to voluntarily select or switch from a current City retirement plan to the alternative Defined Contribution Plan, which may be subject to IRS and other governmental agency approvals, but obtaining such approval is not part of this condition.

B. The independent City Auditor shall certify under this process:

1. The City Manager shall provide documentation to the independent City Auditor each time a reform measure has been satisfied.

2. The independent City Auditor shall review the documentation from the City Manager and any other information necessary to determine whether the reform measures have been met. Upon such determination, the independent City Auditor shall notify the City Manager within 10 business days of such determination. If the independent City Auditor determines that a reform measure has not been satisfied, he shall state the reason why the reform measure has not been met.

3. Within five calendar days of certifying that all reform measures have been satisfied, the independent City Auditor shall notify the State Board of Equalization to levy the sales tax.

C. Nothing contained herein is intended to waive or excuse compliance with the City Charter or other state, federal or local laws.

Section 3. 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 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 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 4. 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 this 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 5. 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-half of one percent (0.50%) 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.

Section 6. 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 under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Section 7. 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 one-half of one percent (0.50%) 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 8. 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 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State 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 6828 of the Revenue and Taxation Code.

C. 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 10. 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 11. 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 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, 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 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 12. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

Section 13. 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.

Section 14. 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 15. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately upon the date the final canvas is issued by the San Diego County Registrar of Voters.

Section 16. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire five years after the operative date of this ordinance, or December 31, 2017, whichever is earlier. If the Council determines that the levy and collection of the tax is no longer necessary for the purposes for which the tax is imposed, the Council may suspend or terminate the imposition of the tax prior to that date.

Section 17. CODIFICATION. Upon adoption of this Ordinance by the voters, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this Ordinance in the City's Municipal Code.

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ____. IF FINANCIAL REFORM CONDITIONS ARE MET, AUTHORIZES TEMPORARY ONE-HALF CENT SALES TAX. To help offset severe state cuts and help restore essential services, including police, fire and street resurfacing, shall the City of San Diego enact a temporary one-half cent sales tax for up to five years, only if the independent City Auditor certifies conditions have been met, including pension reforms and managed competition?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. That this ordinance may be passed by the Council on the date of introduction pursuant to Charter section 275(c) and shall take effect upon final passage pursuant to Charter sections 295(a) and 295(d).

APPROVED AS TO FORM: JAN I. GOLDSMITH, City Attorney

By _____
Catherine M. Bradley
Chief Deputy City Attorney

CMB:MJL:sc:jb
08/3/10
08/4/10 REV.
08/4/10 REV. 2
Or.Dept:Council

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND
City Clerk

By_____
Deputy City Clerk

Approved: _____
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor