

ORDINANCE NO. Measure A

AN ORDINANCE OF THE PEOPLE OF THE CITY OF LONG BEACH, CALIFORNIA, AMENDING CHAPTER 3.62 OF THE LONG BEACH MUNICIPAL CODE TO EXTEND AND ADJUST THE RATE OF A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

WHEREAS, pursuant to California Revenue and Taxation Code Section 7285.9 the City of Long Beach (“City”) is authorized to levy a Transactions and Use Tax for general purposes, subject to majority voter approval; and

WHEREAS, on June 7, 2016, Long Beach voters approved Measure “A”, a Transactions and Use Tax (“TUT”) enacted for a period of ten (10) years on the sale and/or use of all tangible personal property sold at retail in the City, initially at a rate of one cent (1%) for the first six operative years of the tax (January 1, 2017 – December 31, 2022), and declining to one-half percent ( $\frac{1}{2}\%$ ) for the remaining four operative years of the tax (January 1, 2023 – December 31, 2026), with the tax scheduled to sunset on January 1, 2027; and

WHEREAS, the people of the City desire to extend the term of the Transactions and Use Tax beyond 2027 for general purposes to fund important City services, including public safety services, at the following rates: (i) from January 1, 2017 through December 31, 2022 – at 1% on the sale and/or use of all tangible personal property sold at retail in the City, (ii) from January 1, 2023 through September 30, 2027, at a rate of three-quarters percent ( $\frac{3}{4}\%$ ), and after October 1, 2027, again at a rate of one percent (1%); and

WHEREAS, if approved by the City Council and Long Beach voters, the

proposed amendments to the City's Transactions and Use Tax Ordinance will be incorporated into the Long Beach Municipal Code at Chapter 3.62.

The City Council of the City of Long Beach ordains as follows:

Section 1. Title and Text. This Ordinance shall be known as the Long Beach Transactions and Use Tax Ordinance, the full text of which is set forth in Attachment "1", attached hereto and incorporated herein by reference.

Section 2. Approval by the City Council. Pursuant to California Revenue and Taxation Code, Section 7285.9, this Ordinance was duly introduced on July 16, 2019 and approved and placed on the March 3, 2020 ballot.

Section 3. Approval by the Voters. Pursuant to California Elections Code Section 9217, this Ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Long Beach voting at the Special Municipal Election of March 3, 2020, and shall be deemed adopted and take effect ten (10) days after the City Council has certified the results of that election by resolution.

Section 4. Operative Date. "Operative Date" for the Transactions and Use Tax means the first day of the first calendar quarter commencing more than one hundred ten (110) days after the date this Ordinance is adopted, as set forth in Section 3 above.

Section 5. 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.

## Chapter 3.62- Transactions and Use Tax

### Sections:

3.62.010 - Purpose.

3.62.020 - Contract With State.

3.62.030 - Transactions Tax Rate.

3.62.040 - Place of Sale.

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3.62.120 – Sunset of Tax

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3.62.010 - 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 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.

#### 3.62.020 - 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.

#### 3.62.030 - 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 following rates:

A. One cent (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 Measure "A" (January 1, 2017) through December 31, 2022.

B. Three-quarters cent ( $\frac{3}{4}\%$ ) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on or after January 1, 2023 through September 30, 2027.

C. One cent (1%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on or after October 1, 2027 (the sunset date for Los Angeles County Measure "H").

#### 3.62.040 - 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 California Department of Tax and Fee Administration.

#### 3.62.050 - 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 Measure "A" for storage, use or other consumption in said territory at the following rates:

A. One cent (1%) of the sales price of the property on and after the operative date of Measure "A" (January 1, 2017) through December 31, 2022.

B. Three-quarters cent ( $\frac{3}{4}\%$ ) of the sales price of the property on or after January 1, 2023 through September 30, 2027.

C. One cent (1%) of the sales price of the property on or after October 1, 2027 (the sunset date for Los Angeles County Measure "H").

The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

#### 3.62.060 - Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

#### 3.62.070 - 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 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.

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.

3.62.080 - 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.

3.62.090 - 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 subsection, 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 subsection, 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.

### 3.62.100 - 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.

The City Council, by majority vote of the full Council, may lower the rate of the retail transactions and use tax adopted by this Chapter to 0%.

### 3.62.110 - 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.

### 3.62.120 – Duration of Tax.

The tax imposed by this article shall continue until this ordinance is repealed.

### 3.62.130 – Citizens' Advisory Committee.

There is hereby established a five-member citizens' advisory committee, whose members shall be appointed by and serve at the pleasure of the City Council. The committee shall periodically review the City's use of revenues generated by this

Tax and shall make recommendations to the City Council with regard to the Tax.

3.62.140 – Effect of Los Angeles County Measure “H” and of Future County Transactions and Use Tax Measures on this Ordinance.

When contracting with the California Department of Tax and Fee Administration pursuant to section 3.62.020 to administer the tax imposed by this ordinance, it shall be the City’s intent, and any agreement shall ensure, that the combined rate limit specified in Revenue and Taxation Code section 7251.1 is not exceeded in the City of Long Beach. As such, the following terms shall apply:

A. Because Long Beach voters approved Measure “A” prior to Los Angeles County Measure “H”, it is the intent of this ordinance to give full effect to the one cent (1%) tax already enacted under Measure “A” until January 1, 2023, when the one cent (1%) tax would reduce in rate under Measure “A’s” terms. Measure “H” shall not have any effect on the City’s ability to levy and collect the 1% rate until January 1, 2023 and Los Angeles County shall not levy nor collect any Measure “H” taxes within the territory of Long Beach until January 1, 2023.

B. From January 1, 2023 until October 1, 2027, the City of Long Beach shall levy and collect a three-quarter cent ( $\frac{3}{4}\%$ ) Transactions and Use Tax and Los Angeles County may levy and collect the quarter-cent ( $\frac{1}{4}\%$ ) Measure “H” tax within the territory of Long Beach until Measure “H” sunsets on October 1, 2027.

C. When Measure “H” sunsets on October 1, 2027, the City of Long Beach shall again be authorized to levy and collect the Transactions and Use Tax at the rate of one cent (1%).

D. In the event that Los Angeles County voters approve a future measure after the effective date of this ordinance that either extends Measure “H” or otherwise enacts a new Transactions and Use Tax that, when aggregated with Long Beach’s transactions and use taxes under this ordinance, causes the combined rate

limit set forth in Revenue and Taxation Code section 7152.1 to be exceeded, such future County measure shall not have any effect on the City's ability to levy and collect Transactions and Use taxes at the rates set forth herein. Unless State law is amended to increase the combined rate limit under Revenue and Taxation Code section 7251.1 or this ordinance is later repealed or amended to reduce its tax rates, Los Angeles County shall not levy nor collect any Transactions and Use Taxes within the territory of Long Beach which were approved by Los Angeles County voters after the effective date of this ordinance.