

ORDINANCE NO.20-2009

AN ORDINANCE OF THE PEOPLE OF THE CITY OF CARSON ADDING CHAPTER 1.5 TO ARTICLE 6 OF THE CARSON MUNICIPAL CODE, THEREBY ESTABLISHING A TRANSACTIONS AND USE GENERAL TAX AT THE RATE OF .75%

WHEREAS, this measure would establish a transactions and use general tax under a new Chapter 1.5 of Article 6 of the Carson Municipal Code at the rate of 0.75%; and

WHEREAS, Article XIII C, Section 2, of the California Constitution provides that any general tax must be submitted to the electorate and approved by a majority vote of the electorate; and

WHEREAS, Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code, and Section 7285.9 of the California Revenue and Taxation Code, authorizes a city to adopt a transactions and use (sales) 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; and

WHEREAS, by its Resolution No. _____ adopted on August 4, 2020, the City Council submitted this Ordinance to the City's voters at the November 3, 2020, election, approved this Ordinance, pursuant to Revenue & Taxation Code Section 7285.9, subject to the City's voters' approval, and approved this Ordinance's submission to the City's voters; and

WHEREAS, this Ordinance imposes a general tax where generated revenues will be deposited in the City's General Fund; and

WHEREAS, the City Council of the City of Carson is authorized and directed by statute to submit to the voters this Ordinance, and the City Council therefore wishes to have the voters consider the same at a General Municipal Election to be held on November 3, 2020; and

WHEREAS, approving this proposed measure requires approval of the majority of voters at either a general or special municipal election; and

NOW THEREFORE, ON THE BASIS OF THE FORGOING, THE PEOPLE OF THE CITY OF CARSON, AT THE NOVEMBER 3, 2020, GENERAL MUNICIPAL ELECTION DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 1.5 (CARSON TRANSACTIONS AND USE GENERAL TAX) is hereby added to Article 6 of the Carson Municipal Code as follows:

“Chapter 1.5 - Carson Transactions and Use General Tax

61501. TITLE. This Ordinance shall be known as the “Carson Transactions and Use General Tax Ordinance”. The City of Carson hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

61502. 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.

61503. 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.

61504. 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.

61505. 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 three quarters of a cent per dollar (0.75%) 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.

61506. 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.

61507. 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 three quarters of a cent per dollar (0.75%) 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.

61508. 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.

61509. 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 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.

1. "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.

61510. 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.

61511. 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.

61512. **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.

61513. **ABILITY TO LOWER RATE.** The tax rate in this Ordinance may only be increased by a vote of the people of the City of Carson; provided, however, that the City Council may amend this Ordinance to reduce the amount of the tax authorized herein or to otherwise implement or advance the purpose and intent of this Ordinance.

61514. **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.

61515. **ANNUAL AUDIT.** The proceeds resulting from the Transactions and Use Tax established in this Ordinance shall be deposited into the City's General Fund and become subject to the same independent annual audit requirements as other General Fund revenues. In addition, by December 31st of each year, the City shall cause an independent auditor to complete a "Carson Essential Services Protection Transactions and Use Tax Ordinance Report," provided that such report may be combined with the City's independent annual audit requirements as described above. Such report shall review whether the tax revenues collected pursuant to this Ordinance are collected, managed and expended in accordance with the requirements of this Ordinance.

61516. **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.

61517. **COUNCIL AUTHORITY TO AMEND.** Pursuant to Elections Code Section 9217, the City Council shall have and retain the right and authority to amend this ordinance to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

61518. **EFFECTIVE DATE.** This Ordinance levying the tax described herein shall be effective ten (10) days after the date on which the City Council has declared that the voters of the City of Carson have approved the Ordinance by a vote of no less than a majority of the votes cast by the electors voting on the tax measure set forth in this Ordinance at that general municipal election to be held on Tuesday, November 3, 2020.

61519. **TERMINATION DATE.** The authority to levy the tax imposed by this Ordinance shall not expire unless terminated by lawful vote of the electorate or as required or authorized by law.

61520. **AUTOMATIC SUSPENSION AND IMPLEMENTATION.** The taxes authorized by this Ordinance are subject to the following:

A. For purposes of this Section, the term “district” has the meaning set forth in Revenue and Taxation Code Section 7252 to the extent such a district may have taxing powers within the City’s jurisdiction under applicable law. For example, and without limitation, the County of Los Angeles is a district for purposes of this Section.

B. The City will suspend collection of the taxes authorized by this Ordinance so long as a district does not place a measure on the ballot seeking voter authorization for a new or increased 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 Sections 7285 or 7285.5 of Part 1.7 of Division 2 of the Revenue and Taxation Code.

C. Should a district place a transaction and use tax measure on the ballot as contemplated by subsection B, then the City will promptly commence collection of taxes authorized by this Ordinance.

D. Nothing in this section is intended to, nor will it, limit the number of times the City may suspend or implement tax collection authorized by this Ordinance.

E. Revenue from any taxes collected may be retained by the City for general purposes and need not be refunded.

Section 2. Council Authority to Amend. This is a City Council-sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City. However, pursuant to Elections Code Section 9217, the City Council shall have and retain the right and authority to amend the Ordinance to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

Section 3. CEQA Exemption. The adoption of this ordinance is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) (Public

Resources Code Section §§ 21000 et seq.). CEQA Guideline 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

Section 4. **Severability.** If any section, subsection, sentence, clause or phrase of this ordinance or the application thereof to any person or circumstance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The People of the City of Carson hereby declared that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

Section 5. **Appropriations Limit.** Pursuant to Article XIII B of the California Constitution, the appropriations limit for the City of Carson is increased to the maximum extent over the maximum period of time allowed under the law consistent with the revenues generated by this tax.

Section 6. **Effective Date.** If a majority of the voters of the City of Carson voting at the General Municipal Election of November 3, 2020, vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Carson, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Carson, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code section 9217.

Section 7. **Passage and Execution.** The Mayor shall sign this Ordinance and the City Clerk shall attest and certify to the approval thereof and cause same to be published or posted pursuant to law.

PASSED AND ADOPTED by the voters of the City of Carson at an election held on November 3, 2020.

Albert Robles, Mayor

ATTEST:

Donesia Gause-Aldana, City Clerk

PASSED AND ADOPTED by the City Council of the City of Carson, State of California,

on ____[date of election certification]_____ by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Albert Robles, Mayor

ATTEST:

Donesia Gause-Aldana, City Clerk