

PROPOSED ORDINANCE OF MEASURE RP

AN ORDINANCE OF THE CITY OF BEVERLY HILLS IMPOSING A REVENUE PROTECTION MEASURE BY ENACTING A TRANSACTIONS AND USE (SALES) TAX TO BE EFFECTIVE IF ANOTHER LOCAL GOVERNMENTAL ENTITY IMPOSES A SIMILAR TAX

THE PEOPLE OF THE CITY OF BEVERLY HILLS HEREBY ORDAIN AS FOLLOWS:

Section 1. A new Article 12 is hereby added to Chapter 1 of Title 3 of the Beverly Hills Municipal Code to read as follows:

“Article 12. Transactions and Use Tax

3-12-101: Short Title

3-12-102: Operative Date

3-12-103: Purpose

3-12-104: Transactions Tax Rate

3-12-105: Place Of Sale

3-12-106: Use Tax Rate

3-12-107: Contract for State Administration

3-12-108: Adoption Of Provisions of State Revenue and Taxation Code

3-12-109: Limitations On Adoption of Provisions of State Revenue and Taxation Code and Collection of Use Taxes

3-12-110: Permit Not Required

3-12-111: Exemptions And Exclusions

3-12-112: Amendments

3-12-113: Enjoining Collection Forbidden

3-12-114: Automatic Suspension, Implementation

3-12-115: Suspension Or Reduction

3-12-116: City Council Authority to Amend

3-12-101: SHORT TITLE

This article shall be known as the TRANSACTION AND USE TAX OF THE CITY.

3-12-102: OPERATIVE DATE

Except as modified by Section 3-12-114 below, this tax will become operative on the first day of the first calendar quarter commencing more than one hundred ten (110) days after the adoption of this article.

3-12-103: PURPOSE

This article is adopted to achieve the following, among other purposes, and is to be interpreted in order to accomplish these 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 state Revenue and Taxation Code and section 7285.9 of part 1.7 of division 2 of the state Revenue and Taxation Code, which authorizes the City to adopt this article, which becomes operative if a majority of electors voting on a ballot measure approving this article vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt retail transactions and use tax regulations that incorporate provisions identical to those of the Sales and Use Tax Law of the State insofar as those provisions are not inconsistent with the requirements and limitations contained in part 1.6 of division 2 of the state Revenue and Taxation Code.

C. To adopt retail transactions and use tax regulations that impose 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 state 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 article.

3-12-104: TRANSACTIONS TAX RATE

For the privilege of selling tangible personal property at retail, a transactions tax is hereby imposed upon all retailers in the incorporated territory of the City at a rate of three-quarters of one percent (0.75%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on or after the operative date of this article. The tax imposed herein is in addition to any other transactions tax imposed by the City, Los Angeles County, or the State of California.

3-12-105: PLACE OF SALE

For purposes of this article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery 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 include delivery charges, when such charges are subject to 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 is determined under the rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

3-12.106: USE TAX RATE

An excise tax is imposed on the storage, use, or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this article for storage, use, or other consumption in said territory at a rate of three-quarters of one percent (0.75%) of the sales price of the property. The sales price includes delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made. The tax imposed herein is in addition to any other excise tax imposed by the City, Los Angeles County, or the State of California.

3-12-106: CONTRACT FOR STATE ADMINISTRATION

Before 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 article; provided that, if the City has not contracted with the California Department of Tax and Fee Administration before the operative date, it must nevertheless so contract and in such case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3-12-107: ADOPTION OF PROVISIONS OF STATE REVENUE AND TAXATION CODE

Except as otherwise provided in this article and except insofar as they are inconsistent with the provisions of part 1.6 of division 2 of the State Revenue and Taxation Code, the City adopts the provisions contained in part 1

of division 2 of the State Revenue and Taxation Code, commencing with section 6001 thereof, insofar as they relate to sales and use taxes.

3-12-109: LIMITATIONS ON ADOPTION OF PROVISIONS OF STATE REVENUE AND TAXATION CODE AND COLLECTION OF USE TAXES

In adopting the provisions of part 1 of division 2 of the State Revenue and Taxation Code:

A. Wherever the State is named or referred to as the taxing agency, the name of this City will substituted.

However, the substitution is not made when:

1. The word “State” is used as 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 that functions incident to the administration or operation of this article.

3. In those sections, including, without limitation, 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 that would 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 State Revenue and Taxation Code, or

b. Impose this tax with respect to certain sales, storage, use, or other consumption of tangible personal property that 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 state Revenue and Taxation Code.

B. The word “City” is 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 of the state Revenue and Taxation Code.

1. “A retailer engaged in business in the City” 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 the 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 subsection, 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.

3-12-110: PERMIT NOT REQUIRED

If a seller’s permit has been issued to a retailer under section 6067 of the State Revenue and Taxation Code, an additional transactor’s permit is not required by this article.

3-12-111: EXEMPTIONS AND EXCLUSIONS

A. There is 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 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 country 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 that is shipped to a point outside of 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 is 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 State Vehicle Code, aircraft licensed in compliance with section 21411 of the State Public Utilities Code, and undocumented vessels registered under division 3.5 (commencing with 9840) of the State 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 before the operative date of this article.

4. A lease of tangible personal property that 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 before the operative date of this article.

5. For the purposes of subsections B3 and B4 of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this article, the storage, use, or other consumption in the 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 State Revenue and Taxation Code.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into before the operative date of this article.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease that 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 before the operative date of this article.

5. For the purposes of subsections C3 and C4 of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property is 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 subsection C7 of this section, a retailer engaged in business in the City is not required to collect use tax from the purchaser of tangible personal property, unless the retailers ships or delivers the property into the City or participates within the City in making the sale of the property, including, without limitation, 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” also includes any retailer of any of the following: vehicles subject to registration pursuant to chapter 1 (commencing with section 4000) of division 3 of the State Vehicle Code, aircraft licensed in compliance with section 21411 of the State Public Utilities Code, or undocumented vessels registered under division 3.5 (commencing with section 9840) of the State Vehicle Code. That retailer is 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 the tax under this article may credit against that tax any transactions tax or reimbursement of transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to part 1.6 of division 2 of the State 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.

3-12-112: AMENDMENTS

All amendments subsequent to the effective date of this article to part 1 of division 2 of the State Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with parts 1.6 and 1.7 of division 2 of the State Revenue and Taxation Code, and all amendments to parts 1.6 and 1.7 of division 2 of the State Revenue and Taxation Code, automatically become a part of this article, provided however, that no such amendment operates so as to affect the rate of tax imposed by this article.

3-12-113: ENJOINING COLLECTION FORBIDDEN

No injunction or writ of mandate or other legal or equitable process may issue in any suit, action, or proceeding in any court against the State of California or the City, or against any officer of the State of California or the City, to prevent or enjoin the collection under this article, or part 1.6 of division 2 of the state Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3-12-114: AUTOMATIC SUSPENSION, IMPLEMENTATION

The taxes authorized by this article are subject to the following:

A. For purposes of this section, the term “district” has the meaning set forth in section 7252 of the State Revenue and Taxation Code 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 article 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.

C. Should a district place a transaction and use tax on the ballot as contemplated by subsection B of this section, then the City will commence the process for collection of the taxes authorized by this article on the first day on the month that the election on the tax will take place.

D. Should the ballot measure contemplated by subsection C of this section fail to become effective, then, notwithstanding any other provision of this article, the City will suspend collection of the taxes, or suspend the process for collection of the taxes, authorized by this article.

E. 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 article based upon the actions contemplated in subsections B through C of this section.

F. Revenue from any taxes collected between the time periods contemplated by subsections B through C of this section may be retained by the City for general purposes and need not be refunded.

3-12-115: SUSPENSION OR REDUCTION

Nothing in this article requires the City Council to collect a tax. The City Council may suspend or reduce tax rates imposed by this article by resolution after public meeting at which public testimony may be taken.

3-12-116: CITY COUNCIL AUTHORITY TO AMEND

Except for amendments that would increase the tax rate or impose the tax on transactions and uses not previously subject to the tax, the City Council may exercise all applicable powers set forth in the state Government Code including, without limitation, amending this article by ordinance upon three (3) affirmative votes by its members. The City Council may also adopt by ordinance or resolution such additional regulations that may be necessary to implement the purposes of this article.”

Section 2. Environmental Analysis. This Proposition is exempt from review under the California Environmental Quality Act (Cal. Pub. Resources Code, § 2100 et seq.) (“CEQA”) and the CEQA Guidelines (14 Cal. Code of Regs., § 15000 et seq.) because it establishes rules and procedures to implement government funding mechanisms; does not involve any commitment to a specific project that could result in a potentially significant physical impact on the environment; and constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this Ordinance does not constitute a “project” that requires environmental review (14 Cal. Code of Regs., § 15378(b)(4)-(5)).

Section 3. Severability. This Ordinance shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, subsection, sentence, clause, phrase, part, or portion of this Ordinance is to be held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this Ordinance. The voters declare that this Ordinance, and each section, subsection, sentence, clause, phrase, part, or portion thereof, would have been adopted or passed irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, part, or portion is found to be invalid. If any provision of this Ordinance is held invalid as applied to any person or circumstance, such invalidity does not affect the application of this Ordinance that can be given effect without the invalid application.

Section 4. Validity of Previous Code Sections. If this Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal of the Beverly Hills Municipal Code or other regulation by this Ordinance shall be rendered void and cause such provision of the Beverly Hills Municipal Code or other regulation to remain in full force and effect for all purposes.

Section 5. Voter Approval. This Ordinance will enact and impose a general tax. Accordingly, the City Council on August 4, 2020, adopted Resolution No. 20-R-13302 declaring a fiscal emergency and this Ordinance will be submitted to a special election on November 3, 2020, for voter approval. If a majority of voters vote in favor of this Ordinance, it will become valid and binding on the date that the City Council certifies the elections results. Should the provisions of Government Code Section 53720 et seq. or California Constitution Article XIIC be repealed or amended, or interpreted by the courts so that voter approval is not required for enacting this Ordinance, then this Ordinance will take effect as provided for all other City ordinances and may be amended in the same manner as all other City ordinances.

Section 6. Miscellaneous.

(a) If any portion of this Ordinance is held by a court of competent jurisdiction to be invalid, we the People indicate our strong desire that: (1) the City Council use its best efforts to sustain and reenact that portion, and (2) the City Council implement this Ordinance by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Ordinance, and then adopting or reenacting such portion as necessary or desirable to permit the planning and development of this Ordinance.

(b) This Ordinance shall be broadly construed in order to achieve the purposes stated in this Ordinance. It is the intent of the voters that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Ordinance.

Section 7. Execution and Certification. The Mayor will sign this Ordinance and the City Clerk will attest and certify to the passage and adoption of this Ordinance if a majority of the voters voting in the City's special election on November 3, 2020, approve the Proposition asking whether the voters approve this Ordinance.

Section 8. Operative Date. Pursuant to Revenue and Taxation Code Section 7265, this Ordinance will become operative on the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance.