



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-14

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March 1, 2016

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RECOMMENDATION:

- 1) Approve an Ordinance of the People of the City of Long Beach, California, Adding Chapter 3.62 to the Long Beach Municipal Code Relating to Transactions and Use Tax;
- 2) Approve an Ordinance of the People of the City Of Long Beach, California, Adding Chapter 3.62 to the Long Beach Municipal Code to Impose a Transactions and Use Tax to Be Administered By the State Board of Equalization; and
- 3) Approve an Ordinance of the People of the City of Long Beach, California, Adding Chapter 3.94 to the Long Beach Municipal Code to Establish a Budget Stabilization ("Rainy Day") Fund.

DISCUSSION:

This Office prepared and now transmits for second reading three ordinances relating to a proposed transactions and use tax; administration of the proposed transactions and use tax by the State Board of Equalization; and establishment of a budget stabilization ("rainy-day") fund, which were approved on first reading by the City Council on February 23, 2016 for placement on the June 7, 2016 ballot. These three ordinances shall only be adopted and take effect if approved by a majority of the eligible voters of the City of Long Beach voting at the election of June 7, 2016. Pursuant to California Revenue and Taxation Code, a two-thirds vote of the City Council is required to approve and place a transaction and use tax measure on the June 7, 2016 ballot.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By


AMY R. WEBBER
Deputy City Attorney

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ATTACHMENT "1"

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.
- 3.62.050 - Use Tax Rate.
- 3.62.060 - Adoption of Provisions of State Law.
- 3.62.070 - Limitations on Adoption of State Law and Collection of Use Taxes.
- 3.62.080 - Permit Not Required.
- 3.62.090 - Exemptions and Exclusions.
- 3.62.100 - Amendments.
- 3.62.110 - Enjoining Collection Forbidden.
- 3.62.120 – Sunset of Tax
- 3.62.130 – Citizens’ Advisory Committee.

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

1 be operative if a majority of the electors voting on the measure vote to
2 approve the imposition of the tax at an election called for that purpose.

3 B. To adopt a retail transactions and use tax ordinance that
4 incorporates provisions identical to those of the Sales and Use Tax Law of
5 the State of California insofar as those provisions are not inconsistent with
6 the requirements and limitations contained in Part 1.6 of Division 2 of the
7 Revenue and Taxation Code.

8 C. To adopt a retail transactions and use tax ordinance that
9 imposes a tax and provides a measure therefore that can be administered
10 and collected by the State Board of Equalization in a manner that adapts
11 itself as fully as practicable to, and requires the least possible deviation
12 from, the existing statutory and administrative procedures followed by the
13 State Board of Equalization in administering and collecting the California
14 State Sales and Use Taxes.

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

21 3.62.020 Contract with State.

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

1 3.62.030 Transactions tax rate.

2 For the privilege of selling tangible personal property at retail, a tax is
3 hereby imposed upon all retailers in the incorporated territory of the City at
4 the rate of one cent (1%) of the gross receipts of any retailer from the sale
5 of all tangible personal property sold at retail in said territory on and after the
6 operative date of this ordinance. The rate shall remain at one cent (1%) until
7 the sixth anniversary of the Operative Date, after which the rate shall be
8 reduced to one-half cent for the remaining term of the tax.

9 3.62.040 Place of sale.

10 For the purposes of this ordinance, all retail sales are consummated
11 at the place of business of the retailer unless the tangible personal property
12 sold is delivered by the retailer or his agent to an out-of-state destination or
13 to a common carrier for delivery to an out-of-state destination. The gross
14 receipts from such sales shall include delivery charges, when such charges
15 are subject to the state sales and use tax, regardless of the place to which
16 delivery is made. In the event a retailer has no permanent place of
17 business in the State or has more than one place of business, the place or
18 places at which the retail sales are consummated shall be determined under
19 rules and regulations to be prescribed and adopted by the State Board of
20 Equalization.

21 3.62.050 Use tax rate.

22 An excise tax is hereby imposed on the storage, use or other
23 consumption in the City of tangible personal property purchased from any
24 retailer on and after the operative date of this ordinance for storage, use or
25 other consumption in said territory at the rate of one cent (1%) of the sales
26 price of the property. The sales price shall include delivery charges when
27 such charges are subject to state sales or use tax regardless of the place to
28 which delivery is made. The rate shall remain at one cent (1%) until the

1 sixth anniversary of the Operative Date, after which the rate shall be
2 reduced to one-half cent for the remaining term of the tax.

3 3.62.060 Adoption of provisions of State law.

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

10 3.62.070 Limitations on adoption of State law and collection of use taxes.

11 In adopting the provisions of Part 1 of Division 2 of the Revenue and
12 Taxation Code:

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

16 1. The word "State" is used as a part of the title of the
17 State Controller, State Treasurer, State Board of Control, State Board of
18 Equalization, State Treasury, or the Constitution of the State of California;

19 2. The result of that substitution would require action to be
20 taken by or against this City or any agency, officer, or employee thereof
21 rather than by or against the State Board of Equalization, in performing the
22 functions incident to the administration or operation of this Ordinance.

23 3. In those sections, including, but not necessarily limited
24 to sections referring to the exterior boundaries of the State of California,
25 where the result of the substitution would be to:

26 a. Provide an exemption from this tax with respect
27 to certain sales, storage, use or other consumption of tangible personal
28 property which would not otherwise be exempt from this tax while such

1 sales, storage, use or other consumption remain subject to tax by the State
2 under the provisions of Part 1 of Division 2 of the Revenue and Taxation
3 Code, or;

4 b. Impose this tax with respect to certain sales,
5 storage, use or other consumption of tangible personal property which
6 would not be subject to tax by the state under the said provision of that
7 code.

8 4. In Sections 6701, 6702 (except in the last sentence
9 thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation
10 Code.

11 B. The word "City" shall be substituted for the word "State" in the
12 phrase "retailer engaged in business in this State" in Section 6203 and in
13 the definition of that phrase in Section 6203.

14 3.62.080 Permit not required.

15 If a seller's permit has been issued to a retailer under Section 6067 of
16 the Revenue and Taxation Code, an additional transactor's permit shall not
17 be required by this ordinance.

18 3.62.090 Exemptions and exclusions.

19 A. There shall be excluded from the measure of the transactions
20 tax and the use tax the amount of any sales tax or use tax imposed by the
21 State of California or by any city, city and county, or county pursuant to the
22 Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any
23 state-administered transactions or use tax.

24 B. There are exempted from the computation of the amount of
25 transactions tax the gross receipts from:

26 1. Sales of tangible personal property, other than fuel or
27 petroleum products, to operators of aircraft to be used or consumed
28 principally outside the county in which the sale is made and directly and

1 exclusively in the use of such aircraft as common carriers of persons or
2 property under the authority of the laws of this State, the United States, or
3 any foreign government.

4 2. Sales of property to be used outside the City which is
5 shipped to a point outside the City, pursuant to the contract of sale, by
6 delivery to such point by the retailer or his agent, or by delivery by the
7 retailer to a carrier for shipment to a consignee at such point. For the
8 purposes of this paragraph, delivery to a point outside the City shall be
9 satisfied:

10 a. With respect to vehicles (other than commercial
11 vehicles) subject to registration pursuant to Chapter 1 (commencing with
12 Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in
13 compliance with Section 21411 of the Public Utilities Code, and
14 undocumented vessels registered under Division 3.5 (commencing with
15 Section 9840) of the Vehicle Code by registration to an out-of-City address
16 and by a declaration under penalty of perjury, signed by the buyer, stating
17 that such address is, in fact, his or her principal place of residence; and

18 b. With respect to commercial vehicles, by
19 registration to a place of business out-of-City and declaration under penalty
20 of perjury, signed by the buyer, that the vehicle will be operated from that
21 address.

22 3. The sale of tangible personal property if the seller is
23 obligated to furnish the property for a fixed price pursuant to a contract
24 entered into prior to the operative date of this ordinance.

25 4. A lease of tangible personal property which is a
26 continuing sale of such property, for any period of time for which the lessor
27 is obligated to lease the property for an amount fixed by the lease prior to
28 the operative date of this ordinance.

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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.

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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.

1 3.62.100 Amendments.

2 All amendments subsequent to the effective date of this ordinance to
3 Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and
4 use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of
5 Division 2 of the Revenue and Taxation Code, and all amendments to Part
6 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall
7 automatically become a part of this ordinance, provided however, that no
8 such amendment shall operate so as to affect the rate of tax imposed by
9 this ordinance.

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

12 3.62.110 Enjoining collection forbidden.

13 No injunction or writ of mandate or other legal or equitable process
14 shall issue in any suit, action or proceeding in any court against the State or
15 the City, or against any officer of the State or the City, to prevent or enjoin
16 the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue
17 and Taxation Code, of any tax or any amount of tax required to be collected.

18 3.62.120 Sunset of tax.

19 The tax imposed by this article shall automatically be terminated,
20 without further action by the city council, or the electors of the city, ten (10)
21 years after the Operative Date. After said date, the tax imposed by this
22 chapter can only be continued or reestablished by a majority vote of Long
23 Beach voters pursuant to California Proposition 218.

24 3.62.130 Citizens' Advisory Committee.

25 There is hereby established a five-member citizens' advisory
26 committee, whose members shall be appointed by the Mayor and confirmed
27 by the City Council. The committee shall periodically review the City's use

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of revenues generated by this Tax and shall make recommendations to the
City Council with regard to the use of the Tax.

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ORDINANCE NO.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF
LONG BEACH, CALIFORNIA, ADDING CHAPTER 3.62 TO
THE LONG BEACH MUNICIPAL CODE TO IMPOSE A
TRANSACTIONS AND USE TAX TO BE ADMINISTERED
BY THE STATE BOARD OF EQUALIZATION

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, the people of the City desire to levy a Transactions and Use
Tax for a period of ten (10) years for general purposes to fund, enhance and maintain
important City services, including public safety services and an investment in City
infrastructure, with the rate initially set at one cent (1%) for the first six (6) years of the
tax, and declining to one-half cent for the remaining four (4) years of the tax; and

WHEREAS, the people of the City believe that only a local voter-approved
funding source would guarantee that new revenue stays in Long Beach to help the City
provide necessary services to its residents; and

WHEREAS, the City's Transactions and Use Tax ordinance will be added to
the Long Beach Municipal Code as Chapter 3.62:

NOW, THEREFORE, 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 February 23,

1 2016 and approved upon second reading for placement on the ballot by a two-thirds (2/3)
2 supermajority of all members of the City Council on _____, 2016.

3 Section 3. Approval by the Voters. Pursuant to California Elections Code
4 Section 9217, this ordinance shall be deemed adopted and take effect only if approved
5 by a majority of the eligible voters of the City of Long Beach voting at the Regular
6 Election of June 7, 2016, and shall be deemed adopted and take effect ten (10) days
7 after the City Council has certified the results of that election by resolution.

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

12 Section 5. Severability. If any provision of this ordinance or the
13 application thereof to any person or circumstance is held invalid, the remainder of the
14 ordinance and the application of such provision to other persons or circumstances shall
15 not be affected thereby.

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ORDINANCE NO.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF
LONG BEACH, CALIFORNIA, ADDING CHAPTER 3.94 TO
THE LONG BEACH MUNICIPAL CODE TO ESTABLISH A
BUDGET STABILIZATION ("RAINY DAY") FUND

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

Section 1. Chapter 3.94 is hereby added to the Long Beach Municipal
Code to read as follows:

Chapter 3.94

BUDGET STABILIZATION ("RAINY DAY") FUND

3.94.010 Establishment of the fund.

There is hereby established within the City of Long Beach the
"Budget Stabilization Fund", which shall be either a subfund within the City's
General Fund or in a separate fund (the "Budget Stabilization Fund").

3.94.020 Purpose.

The Budget Stabilization Fund shall be used to fund future City
operations and activities that would otherwise be reduced in scope,
suspended or eliminated due to unanticipated shortfalls in General Fund
structural revenues, whether caused by economic recession or other
financial hardship of the City. For purposes of this Subsection, the phrase
"General Fund structural revenues" means on-going revenues which are
available to fund on-going General Fund operations.

3.94.030 Transfers into and from the Budget Stabilization Fund.

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A. Automatic Deposit of New General Tax Revenues into the Budget Stabilization Fund. The Budget Stabilization Fund shall be funded by an automatic deposit/transfer of one percent (1%) of any new general tax revenues generated each year, commencing with Fiscal Year 2017. For purposes of this subsection, the phrase "new general tax revenues" means all revenues generated from any new or increased general tax which has been approved by the voters of the City on or after the effective date of this Chapter including, but not limited to revenues from the Transactions and Use Tax which was submitted to the voters concurrently with this ordinance.

B. Discretionary Deposits into Budget Stabilization Fund not Prohibited. Nothing in this Chapter shall prohibit the City Council, as part of the budgeting process, from contributing additional revenues to the Budget Stabilization Fund, as determined in the City Council's sound legislative discretion.

C. Expenditures from the Budget Stabilization Fund. The City Council may expend up to fifty percent (50%) of funds available from the Budget Stabilization Fund in any single fiscal year if the City Council declares a fiscal hardship requiring the use of such resources to maintain current levels of City services and programs. For purposes of this section, a "fiscal hardship" shall be deemed to occur whenever the City Manager, in the proposed budget for a fiscal year, projects a level of General Fund structural revenues that will result in a two percent (2%) or greater reduction in funding for general City services, as compared to the base budget that would be needed to maintain existing services. For purposes of this subsection, the phrase "base budget" means the projected on-going costs needed to maintain the same level of General Fund operations as the prior fiscal year's budget. The City Council may not draw down from the Budget Stabilization Fund more than three (3) consecutive years, after which the

1 City Council must consider alternative revenue sources or permanent
2 reductions in general City services for the ensuing fiscal year. An
3 assessment of the City's long-term financial outlook should be considered
4 when making decisions about how much to expend from the Budget
5 Stabilization Fund, including a projection of how Budget Stabilization Fund
6 resources are expected to be used and at least partially replenished over
7 the following years..

8 D. Maximum balance for Budget Stabilization Fund. At no time
9 shall the balance of the Budget Stabilization Fund exceed five percent (5%)
10 of the City's General Fund structural revenues forecast in the adopted
11 budget for the subsequent fiscal year. Automatic transfers of revenues into
12 the Budget Stabilization Fund as required by Subsection A shall be made
13 only to the extent that the Fund balance does not exceed the five percent
14 (5%) threshold, as calculated above, and any automatic transfer that would
15 result in such an excess balance shall be suspended.

16 E. Suspension of automatic transfer. The automatic transfer
17 described in Subsection A shall be temporarily suspended when revenue
18 forecasts underlying the adopted budget anticipate a decline in General
19 Fund structural revenues, as compared to the structural revenue underlying
20 the adopted or amended budget, whichever is greater, for the fiscal year
21 immediately prior. Automatic transfers shall remain suspended until
22 positive revenue growth is reflected in the structural revenue forecasts
23 underlying the adopted budget. The automatic transfer described in
24 Subsection A shall also be temporarily suspended in any year where the
25 Council authorizes an expenditure from the Budget Stabilization Fund.

26 F. Resumption of automatic transfer. In the first fiscal year
27 during which positive General Fund structural revenue growth is again
28 forecast, and during which the Council does not authorize an expenditure

1 from the Budget Stabilization Fund, the automatic transfer shall resume,
2 and shall continue in each fiscal year thereafter, unless (i) the City again
3 forecasts a nominal decline in General Fund structural revenues, (ii) the
4 Budget Stabilization Fund reaches five percent (5%) of the City's General
5 Fund revenues, or (iii) the City Council again authorizes an expenditure
6 from the Budget Stabilization Fund.

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8 Section 2. Approval by the City Council. This ordinance was duly
9 introduced on February 23, 2016 and approved upon second reading for placement on
10 the ballot by the City Council on _____, 2016.

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12 Section 3. Approval by the Voters – Transactions and Use Tax Measure
13 Contingency. Pursuant to California Elections Code Section 9217, this ordinance shall
14 be deemed adopted and take effect only if approved by a majority of the eligible voters of
15 the City of Long Beach voting at the Regular Election of June 7, 2016. Notwithstanding
16 the above, this ordinance shall only become effective if the City's Transactions and Use
17 Tax Measure, which is on the ballot for the same Election, is also approved by the eligible
18 voters of the City of Long Beach.

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20 Section 4. Severability. If any provision of this ordinance or the
21 application thereof to any person or circumstance is held invalid, the remainder of the
22 ordinance and the application of such provision to other persons or circumstances shall
23 not be affected thereby.

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