

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING THE CITY CODE TO ADD ARTICLE XI¹ (TRANSACTIONS AND USE TAX) TO CHAPTER 50 OF THE POMONA MUNICIPAL CODE AND ADOPTING A THREE QUARTERS OF ONE PERCENT (0.75%) TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION PURSUANT TO CALIFORNIA REVENUE & TAXATION CODE SECTIONS 7251 ET SEQ., SUBJECT TO VOTER APPROVAL

WHEREAS, despite the City of Pomona's efforts to maintain fiscal management and accountability, it is experiencing serious and detrimental financial and budgetary impacts because of increased service demands, difficulty recruiting and retaining of qualified employees, deferred maintenance and improvements to public utilities and infrastructure, and a reduction in state and federal funding support, and like many cities in California faces inadequate funding to address essential public safety and public service needs;

WHEREAS, the City has implemented a number of cost-saving measures, having reduced the number of employees, implemented operational efficiency and other controls, deferred cost of living adjustments, and deferred utility and capital improvement needs;

WHEREAS, the City has identified millions of dollars in needed funding to address these needs;

WHEREAS, various changes in state and federal law and policy have significantly reduced or entirely eliminated local programs and revenues sources the City was previously reliant on, and recent changes in state law have increased local costs associated with public safety efforts and state program administration;

WHEREAS, despite its efforts, the City of Pomona is projecting a general fund budget deficit and the City's general fund reserves may be entirely depleted in the near future;

WHEREAS, without an immediate source of new revenue, the City of Pomona will be forced to make further reductions to essential services to the community;

WHEREAS, a local revenue measure will make it possible for the City of Pomona to improve: its overall community services, for example, by hiring additional police officers and fire personnel to reduce emergency response times, and recruit and maintain the most qualified public safety personnel; fix and repair the condition of deteriorating neighborhood streets and major roads and highways which would improve traffic flow, reduce congestion, and improve

¹ The Article number and Section numbers assigned to the proposed City Code amendment at Section 2 of this Ordinance are subject to change depending on the concurrent ballot measures that, if approved, would amend the City Code. (i.e. The Cannabis Business Tax Ordinance and related ballot measure that will be concurrently presented to the voters at the November 6, 2018 General Election.)

emergency response times; fighting blight and crime by expanding neighborhood graffiti removal programs, youth anti-gang and drugs prevention programs, and after-school programs and activities;

WHEREAS, pursuant to California Revenue and Taxation Section 7251 *et seq.* and 7285.9, the City is authorized to levy a Transactions and Use Tax for general purposes, subject to voter approval;

WHEREAS, the City Council of the City of Pomona, pursuant to California Elections Code Section 9222 and California Government Code Sections 53720, *et seq.*, submitted a 0.75% Transactions and Use Tax measure to the City's qualified electors in the November 6, 2018 General Municipal Election; and

WHEREAS, a majority of the voters approved the measure, and this Ordinance implements the approved Transaction and Use Tax of three quarters of one cent (3/4¢, or 0.75%).

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF POMONA DOES HEREBY ORDAIN AS FOLLOWS, AND IF APPROVED BY THE VOTERS OF THE CITY OF POMONA, THE PEOPLE OF THE CITY OF POMONA DO ORDAIN AS FOLLOWS:

SECTION 1. DECLARATION OF NEED. Based upon staff reports, presentations, public testimony, and other matters presented to the City Council during its consideration of this Ordinance, the City Council hereby finds and declares that the foregoing recitals are true and correct, and expressly incorporates the same herein as a substantive part of this Ordinance, and further that such recitals accurately reflect the dire financial condition of the City, the immediate and long-term needs of the City, and the inadequacy of existing revenues to fund such needs, all of which create a present and immediate threat to the public health, safety and general welfare of the community, in that absent the adoption of this Ordinance, the City will lack sufficient revenues to fund necessary public safety and community services and programs, or to pay for essential improvements, repairs, and maintenance of public infrastructure and facilities.

SECTION 2. CITY CODE AMENDMENT. Article XI – Transactions and Use Tax shall be added to the City Code as follows:

Article XI – Transactions and Use Tax

DIVISION 1. – GENERALLY

Sec. 50-601. – Operative Date. “Operative Date” as used herein means the first day of the first calendar quarter commencing more than one hundred and ten (110) days after the City Council declares the results of the general election held on November 6, 2018.

Sec. 50-602. – Purpose. This Article is adopted to achieve the following purposes, among others, and directs that the provisions hereof be liberally 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 & Taxation Code and Section 7285.9 of Part 1.7 of Division 2.
- B. To adopt a retail transactions and use tax 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 & Taxation Code.
- C. To adopt a retail transactions and use tax that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adopts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California Sales and Use Taxes.
- D. To adopt a retail transactions and use tax 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 & 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.

Sec. 50-603. – New Revenue Use Restrictions. Any new revenues generated by the passage and collection of this transaction and use tax shall be available for any general fund purpose(s)

Sec. 50-604. – Contract with the State. Prior to the Operative Date of this Article, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax; provided that if the City shall not have contracted with the State Board of Equalization prior to the Operative Date, it shall nevertheless so contract and in such case the Operative Date shall be the first day of the first calendar quarter following the execution of the contract.

Sec. 50-605. Transaction 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 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 and after the operative date of this Article.

Sec. 50-606. – 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 to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or

has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

Sec. 50-607. – 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 for storage, use, or other consumption in the City at the rate of three quarters of one percent (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.

Sec. 50-608. – Adoption of Provisions of State Law. 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 Revenue & 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 Article as though fully set forth herein.

Sec. 50-609. – Limitations on Adoption of State Law and Collection of Use Taxes. In adopting the provisions of Part 1 of Division 2 of the Revenue & Taxations Code:

- A. Wherever the State of California is named or referred to as the taxing entity, the name of the City shall be substituted therefor. However, the substitution shall not be made when:
 - 1) The word “State” is used as part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
 - 2) The result of that substitution would require action to be taken by or against the City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Article;
 - 3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the results of the substitution would be to:
 - a) Provide an exception 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 & 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 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 & Taxation Code; and
- 5) The word “City” shall be substituted for the word “State” in the phrase “retailer engaged in the business of this state” in Section 6203 and in the definition of that phrase in Section 6203.

Sec. 50-610. – Permit Not Required. If a seller’s permit has been issued to a retailer under Section 6067 of the Revenue & Taxation Code, an additional transactor’s permit shall not be required by this Article.

Sec. 50-611. – 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 purpose 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 Article.
- 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 Article.
- 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 Article, 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 Article.
- 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 Article.
- 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.

Sec. 50-612. – Amendments to State Law. Subsequent to the effective date of this Article, all amendments 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 Article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Article.

Sec. 50-613. – Enjoining Collection Forbidden. No injunction or writ of mandate or other legal or equitable process shall be issued 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 Article, 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.

Sec. 50-614. – Termination and Repeal. The authority to levy the taxes imposed by this Article shall be in effect until and unless this Article is repealed.

Sec. 50-615 to 50-650. Reserved.

DIVISION 2. – CITIZENS OVERSIGHT COMMITTEE

Sec. 50-651. – Established. There is established a Citizens' Oversight Committee. Each Council Member shall appoint one committee member.

Sec. 50-652. – Staff Liaison. The City Manager shall designate a member of city staff to serve as the staff liaison of the Citizens' Oversight Committee. The Staff Liaison shall:

- A. Serve as a liaison between the Citizens' Oversight Committee and the City Council and the City Manager;
- B. Assist the Committee in carrying out its duties and responsibilities as provided for by this division;
- C. Prepare reports as directed by the City Manager or City Council;
- D. Attend the Committee's meetings as necessary to carry out the Liaison's functions; and
- E. Provide advice, information, and material to assist the Committee.

Sec. 50-653. – Duties and responsibilities. The Citizens' Oversight Committee serves in an advisory capacity. The Committee shall:

- A. Annually review the City's revenues and expenditures of the Transactions and Use Tax;
- B. Hold public meetings throughout the year, as often as City Council directs;
- C. Review annual audit reports related to the tax; and
- D. Prepare written reports to the City Council that summarize the Committee's findings and recommendations.

Sec. 50-654 to 50-700. Reserved.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid.

SECTION 4. EFFECTIVE DATE AND SUBMISSION TO VOTERS. This Ordinance relates to the levying and collecting of a City Transactions and Use Tax as approved by the voters of the City at the November 6, 2018 General Election and in compliance with Section 2(b) of Article XIIC of the California Constitution and applicable law, and shall take effect immediately.

SECTION 5. AMENDMENT AND TERMINATION. The authority to levy the taxes imposed by this Ordinance shall continue indefinitely until this Ordinance is repealed. The City Council may amend this Ordinance to reduce the rate of the taxes, either permanently or for a set period of time, without a further vote of the people. The City Council shall not amend this Ordinance to increase the Transactions and Use Tax rate above what is authorized by this Ordinance, unless such amendment is submitted to and approved by the voters.

SECTION 6. DECLARATION. The proceeds of the taxes imposed by this Ordinance may be used for any lawful purpose of the City, as authorized by ordinance, resolution or action of the City Council or by ordinance adopted by the electorate of the City. These taxes do not meet the criteria established by Section (d) of Article XIII C of the California Constitution for special taxes, and are general taxes imposed for general government purposes.

SECTION 7. ACCOUNTABILITY. The City's expenditure of the proceeds of the taxes imposed by this Ordinance shall be reviewed annually in conjunction with, and as part of the City's usual annual financial audit, and the results of such review shall be made available for inspection by the public.

SECTION 8. CODIFICATION. If a majority of the electors voting on the Transaction and Use Tax measure vote to approve the imposition of the Transaction and Use Tax, then the provisions of Section 2 of this Ordinance shall be codified in the Pomona Code at Chapter 50, but the Article number and Section numbers assigned to the proposed City Code amendment at Section 2 are subject to change depending on the concurrent ballot measures that, if approved, would amend the City Code. (I.e. The Cannabis Business Tax Ordinance and related ballot measure that will be presented to the voters at the November 6, 2018 General Election.)

SECTION 9. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published as required by law.

PASSED, APPROVED, AND ADOPTED BY THE QUALIFIED VOTERS IN THE CITY OF POMONA AT THE NOVEMBER 6, 2018 GENERAL ELECTION.

ATTEST:

CITY OF POMONA

Maria Macias, Interim City Clerk

Tim Sandoval, Mayor

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney