

ORDINANCE NO. 2020-2

AN ORDINANCE OF THE CITY COUNCIL AND THE PEOPLE OF THE CITY OF LAKEWOOD, CALIFORNIA ADDING CHAPTER 10 (TRANSACTIONS AND USE TAX) TO ARTICLE VI OF THE LAKEWOOD MUNICIPAL CODE TO ESTABLISH A THREE-QUARTERS PERCENT (3/4%) GENERAL TRANSACTIONS AND USE (SALES) TAX, TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

THE CITY COUNCIL AND THE PEOPLE OF THE CITY OF LAKEWOOD, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 10 is hereby added to Title VI of the Lakewood Municipal Code, to read as follows:

**“CHAPTER 10  
LOCAL TRANSACTIONS AND USE TAX**

**6920. Title.** This Chapter shall be known as the Lakewood Local Transactions and Use Tax. The City of Lakewood hereinafter shall be called the "City." This Chapter shall be applicable in the incorporated territory of the City.

**6921. Operative Date.** The Operative Date for the imposition and collection of taxes pursuant to this Chapter shall be the first day of the first calendar quarter commencing more than 110 days after the approval of the tax set forth in this Chapter by the voters pursuant to applicable law.

**6922. Purposes.** This Chapter is adopted to achieve the following purposes, among other purposes, and the provisions hereof shall be interpreted in order to accomplish such 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 Cal. Revenue and Taxation Code and § 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this Chapter 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 Cal. 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 Cal. 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.

E. To provide transactions and use tax revenue to the City to be used for general purposes.

**6923. 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 Chapter; 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.

**6924. 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 percent (3/4%) 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.

**6925. Place of Sale.** For the purposes of this Chapter, 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.

**6926. 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 said territory at the rate of three-quarters percent (3/4%) 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.

**6927. Adoption of Provisions of State Law.** Except as otherwise provided in this Chapter and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Cal. Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Cal. Revenue and Taxation Code are hereby adopted and made a part of this Chapter as though fully set forth herein.

**6928. Limitations on Adoption of State Law and Collection of Use Taxes.**

In adopting the provisions of Part 1 of Division 2 of the Cal. 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 chapter.

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 Cal. Revenue and Taxation Code, or;

b. Impose this transactions and use 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 §§ 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Cal. 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 § 6203 of the Cal. Revenue and Taxation Code and in the definition of that phrase in § 6203.

C. 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.

**6929. Permit Not Required.** If a seller's permit has been issued to a retailer under § 6067 of the Cal. Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

**6930. 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 section, 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 § 4000) of Division 3 of the Cal. Vehicle Code, aircraft licensed in compliance with § 21411 of the Cal. Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with § 9840) of the Cal. 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 paragraphs (B)(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 §§ 6366 and 6366.1 of the Cal. Revenue and Taxation Code.

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 Chapter.

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 Chapter.

5. For the purposes of paragraphs (C)(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 paragraph (C)(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 § 4000) of Division 3 of the Cal. Vehicle Code, aircraft licensed in compliance with § 21411 of the Cal. Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with § 9840) of the Cal. 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 pursuant to this Chapter 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 Cal. 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.

**6931. Annual Audit.** The proceeds of the tax imposed pursuant to this Chapter, as well as the expenditure thereof, shall be audited annually by an independent accounting firm.

**6932. Citizens Oversight.** The City Council shall appoint a Citizens Oversight Committee to review revenues generated pursuant to this Chapter, and the expenditure thereof, as part of the City's budget preparation process.

**6933. Amendments.** All amendments subsequent to the effective date of this Chapter to Part 1 of Division 2 of the Cal. 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 Cal. Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Cal. Revenue and Taxation Code, shall automatically become a part of this Chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Chapter.

**6934. 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 Chapter, or Part 1.6 of Division 2 of the Cal. Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**6935. Duration of Tax.** The authority to levy the tax set forth in this Chapter shall continue until the enacting ordinance is repealed.

**6936. Interaction With Other Code Provisions.** The taxes imposed pursuant to this Chapter shall be in addition to any other taxes of any nature paid to the City, whether imposed by other Chapters in this Code or by other operation of Law. All provisions contained in this Chapter shall be conclusive and exclusive with respect to this Chapter, and shall not be superseded by any provisions contained elsewhere in Title VI in this Code."

SECTION 2. Pursuant to California Constitution, Article XIIC, Section 2(b) and Revenue and Taxation Code Section 7285.9, this ordinance was approved for placement on the ballot by at least a two-thirds affirmative vote of all members of the City Council on November 12, 2019.

SECTION 3. Once the City Council certifies passage of this ordinance by the voters, the City Clerk shall publish the same as required by applicable law, and forward a copy of the adopted ordinance to the California Department of Tax and Fee Administration.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end the provisions of this ordinance are declared to be severable. The City Council, and the electorate by initiative, do hereby declare that they would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof, be declared invalid or unconstitutional.

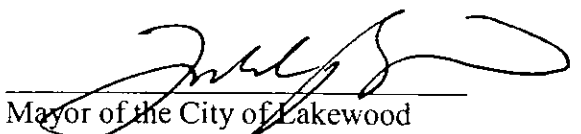
SECTION 5. The Mayor is hereby authorized to attest to the adoption of this ordinance by signing where indicated below.

Introduced by the City Council of the City of Lakewood on the 12th day of November, 2019, by the following roll call vote:

|                       | AYES     | NAYS  | ABSENT |
|-----------------------|----------|-------|--------|
| Council Member Croft  | <u>X</u> | _____ | _____  |
| Council Member DuBois | <u>X</u> | _____ | _____  |
| Council Member Wood   | <u>X</u> | _____ | _____  |
| Council Member Piazza | <u>X</u> | _____ | _____  |
| Mayor Rogers          | <u>X</u> | _____ | _____  |

Adopted and approved by the City Council of the City of Lakewood on the 28th day of January, 2020, by the following roll call vote:

|                       | AYES     | NAYS  | ABSENT |
|-----------------------|----------|-------|--------|
| Council Member Croft  | <u>X</u> | _____ | _____  |
| Council Member DuBois | <u>X</u> | _____ | _____  |
| Council Member Wood   | <u>X</u> | _____ | _____  |
| Council Member Piazza | <u>X</u> | _____ | _____  |
| Mayor Rogers          | <u>X</u> | _____ | _____  |

  
 \_\_\_\_\_  
 Mayor of the City of Lakewood

ATTEST:

  
\_\_\_\_\_  
City Clerk