

NOT OPERATIVE UNLESS ENACTED BY VOTERS

ORDINANCE NO. 2020 – _____

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF LAKE ELSINORE,
CALIFORNIA, ADOPTING TITLE 3, CHAPTER 3.30 OF THE LAKE ELSINORE
MUNICIPAL CODE (LEMC) REGARDING A TRANSACTIONS AND USE TAX
(SALES TAX)**

Whereas, Revenue and Taxation Code section 7285.9 authorizes the governing body of any city (i.e. the City Council) to levy a transactions and use tax for general revenue purposes under Part 1.6 of the Revenue and Taxation Code; and

Whereas, Revenue and Taxation Code section 7285.9 requires the City Council to adopt an ordinance proposing to levy a general purpose transactions and use tax by a two-thirds vote of the City Council, and to then submit the ordinance to the voters, who must approve the ordinance by a majority of the voters voting on the measure for it to take effect; and

Whereas, the City Council and the People of the City of Lake Elsinore desire to adopt a transactions and use tax pursuant to Revenue and Taxation Code section 7285.9 for general revenue purposes; and

Whereas, having the capacity to respond rapidly to 9-1-1 emergencies is critical and additional locally controlled funding is necessary to ensure enough law enforcement officers, firefighters, and paramedics to respond quickly to 9-1-1 emergencies; and

Whereas, keeping Lake Elsinore safe, clean, and well-maintained will help protect and improve local property values; and

Whereas, securing additional locally controlled funding will provide the City the funding needed to avoid deep cuts in all service areas, including police, 9-1-1 emergency response, the maintenance of streets, parks and public facilities, as well as programs for youth and seniors; and

Whereas, currently, nearly all of the sales tax generated locally goes to the State of California or the County -- the proposed November 2020 measure will ensure that a higher percentage of sales tax dollars stay in Lake Elsinore; and

Whereas, all money raised by the proposed measure will be used to fund essential services and facilities in Lake Elsinore and by law, it can't be taken away by the State or used for other purposes; and

Whereas, the revenues generated from the proposed transactions and use tax would be used by the City to pay for all the aforementioned services, as well as other general municipal services.

**NOW THEREFORE, THE PEOPLE OF THE CITY OF LAKE ELSINORE, CALIFORNIA, DO
ORDAIN AS FOLLOWS:**

Section 1: Chapter 3.30, Transactions and Use Tax, is hereby added to Title 3 of the LEMC as follows:

Chapter 3.30

TRANSACTIONS AND USE TAX

Sections:

3.30.010	Short Title.
3.30.020	Purpose and Intent.
3.30.030	Transactions Tax Rate.
3.30.040	Use Tax Rate.
3.30.050	Independent Annual Audit.
3.30.060	Operative Date.
3.30.070	Termination.
3.30.080	Contract with State.
3.30.090	Place of Sale.
3.30.100	Adoption of Provisions of State Law.
3.30.110	Limitations on Adoption of State Law and Collection of Use Tax.
3.30.120	Permit Not Required.
3.30.130	Exemptions and Exclusions.
3.30.140	Amendments To State law
3.30.150	Enjoining Collection Forbidden.
3.30.160	Citizen Oversight Committee.

3.30.010 Short Title.

The Chapter shall be known as the “City of Lake Elsinore Transactions and Use Tax Ordinance” and shall be applicable in the incorporated territory of the City of Lake Elsinore. This chapter shall complement, and not replace or supersede, the city’s existing sales and use tax, as such tax is described in Chapter 3.28 of Title 3 of the Lake Elsinore Municipal Code.

3.30.020 Purpose and Intent.

In enacting the City of Lake Elsinore Transactions and Use Tax Ordinance (“Ordinance”), it is the purpose and intent of the People of the City of Lake Elsinore to:

- A. 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 of the Revenue and Taxation Code which may be used for general municipal services and all lawful public purposes of the City.
- B. Adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. 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 State Board of Equalization 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 State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

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

3.30.030 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, as it exists on the operative date of this Chapter, and in the incorporated territory of the City as it may hereafter be amended through annexation, at the rate of one percent (1%) 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 the Ordinance codified in this Chapter.

3.30.040 Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of the Ordinance codified in this Chapter for storage, use or other consumption in the incorporated territory of the City, and in the incorporated territory of the City as it may hereafter be amended through annexation, at the rate of one percent (1%) 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.

3.30.050 Independent Annual Audit.

The proceeds resulting from the transactions and use tax imposed by this Chapter shall be deposited into the City's general fund and shall be subject to the same independent annual audit requirements as other general fund revenue. The independent auditor's report, which shall include an accounting of the revenues received and expenditures made from the transactions and use tax, will be presented annually to the citizen oversight committee, the City Council and made available for public review.

3.30.060 Operative Date.

"Operative Date" shall mean the first day of the first calendar quarter commencing more than 110 days after the adoption of the City of Lake Elsinore Transactions and Use Tax Ordinance.

3.30.070 Termination.

The transactions and use tax levied by this Chapter shall commence on the operative date and shall continue until terminated by a vote of the registered voters of the City.

3.30.080 Contract with State.

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this Chapter; 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 a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract. The City Council may make any technical amendments to this Chapter required by the State Board of Equalization, except for any changes affecting the tax rate, tax methodology, or its manner of collection.

3.30.090 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 or her 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.

3.30.100 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 Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Chapter as though fully set forth herein.

3.30.110 Limitations on Adoption of State Law And Collection of Use Tax.

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

- A. Wherever the state of California is named or referred to as the taxing agency, the name of the 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 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 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 Revenue and Taxation Code, or;
 - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

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

- B. The word “city” shall be substituted for the word “state” in the phrase “retailer engaged in business in this state” in Section 6203 and in the definition of that phrase in Section 6203.

3.30.120 – Permit Not Required.

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

3.30.130 – 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 or her agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

- a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-city address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and
- b. With respect to commercial vehicles, by registration to a place of business out-of-city and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of the Ordinance codified in this Chapter.

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 the Ordinance codified in this Chapter.

5. For the purposes of subsections (B)(3) and (B)(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 Chapter, 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 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 the Ordinance codified in 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 the Ordinance codified in this Chapter.
 5. For the purposes of subsections (C)(3) and (C)(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 subsection (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 Article 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 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 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.

3.30.140 Amendments To State Law.

Subsequent to the effective date of the Ordinance codified in this Chapter, all amendments to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are consistent 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 Chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Chapter.

3.30.150 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 Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.30.160 Citizen Oversight Committee.

A. A citizens' oversight committee is hereby established to independently review and advise upon the City's expenditure of proceeds generated by the transactions and use tax. The committee shall meet at least twice each calendar year and more frequently, if necessary, to discharge the responsibilities of the committee. All meetings of the committee shall be held in accordance with provisions of the Ralph M. Brown Act (Cal. Gov. Code Section 54950 et seq.).

1. The committee shall consist of five (5) members, all whom shall be residents of the City of Lake Elsinore. The City shall initially post and publish notice soliciting applications for persons interested in being members of the committee and shall thereafter repost and republish notice soliciting applications as necessary to fill vacancies on the committee. The City Council shall review all applications for eligibility and at a public meeting appoint five (5) eligible applicants to serve as members of the committee. Each member of the committee shall serve for a term of two (2) years and such service shall be at the pleasure of the City Council. Three (3) members of the committee shall constitute a quorum. Members of the committee shall not receive a stipend for their service. Any additional responsibilities and duties of the committee shall be established by resolution of the City Council.
2. The citizens' oversight committee shall annually review and report on (i) the City's proposed and actual expenditure of proceeds generated by the transaction and use tax and (ii) the independent annual audit required under this Chapter. The committee's report shall be submitted to the City Council for review and discussion at a public meeting of the City Council.
3. The City shall provide such staff resources as are reasonably necessary to assist the committee with the discharge of its duties under this Chapter. The committee shall not have authority to hire or retain its own staff, consultants, or contractors.

Section 2: CEQA. The adoption of this Ordinance is not a "project" subject to the requirements of the California Environmental Quality Act of 1970 (California Public Resources

Code § 21000 et seq.) and the state CEQA Guidelines (California Code of Regulations, Title 14, § 15000 et seq.). CEQA Guidelines Section 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

Section 2: Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The People of the City of Lake Elsinore hereby declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

Section 3: Election Required; Effective Date. This Ordinance shall be submitted to the voters at the regular municipal election to be held on Tuesday, November 3, 2020. This Ordinance shall not become operative unless and until a majority of the electors voting on the measure vote to approve this Ordinance, in which case this Ordinance shall go into effect ten (10) days after the date on which the election results are declared by the City Council.

Section 4: Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause a synopsis of the same to be published according to law.

Passed and Adopted by the People of the City of Lake Elsinore, California, at the General Municipal Election held on November 3, 2020.

Brian Tisdale
Mayor

Attest:

Candice Alvarez, MMC
City Clerk