

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 4 OF THE PASADENA MUNICIPAL CODE TO ADD A NEW CHAPTER 4.42 ENTITLED "TRANSACTIONS AND USE TAX" TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, SUBJECT TO ADOPTION BY THE ELECTORATE

WHEREAS, pursuant to California Revenue & Taxation Code Sections 7251 *et seq.* and 7285.9, the City of Pasadena ("City") is authorized to levy a Transactions and Use Tax for general purposes, subject to voter approval;

WHEREAS, the City proposes to levy a Transactions and Use Tax for general purposes to fund, enhance, and maintain important City services, with the rate set at three quarters of one cent (3/4¢);

WHEREAS, the City of Pasadena is 132 years old and has aging infrastructure which must be repaired, including deteriorating streets, sidewalks, emergency shelters and bridges which should be upgraded before it becomes more expensive in the future;

WHEREAS, the City's fire stations must be upgraded so firefighters, paramedics and stations can remain operational in a major earthquake to deploy and respond to the community's major medical emergency, search and rescue needs;

WHEREAS, the City seeks to maintain essential services for its residents, including support for City-run children and youth after-school and summer programs; physical fitness and recreational opportunities at local parks which keep Pasadena children safe;

WHEREAS, the City seeks to provide educational support for 18,000 Pasadena public school students by supporting quality classroom instruction, enrichment support, crisis intervention, and school safety and security;

WHEREAS, the City of Pasadena homeless population – especially those over 50 years of age – has increased steadily over the last two years, with the City now having one of the largest homeless populations in the San Gabriel Valley, and additional mental health, substance abuse, and job training services are needed to help individuals, veterans, and families with young children;

WHEREAS, the State of California has seized over \$130,000,000 from Pasadena over the past decade and money from a local, voter-approved funding measure is needed at the local level to address the Pasadena community's local needs;

WHEREAS, all City revenues are subject to annual independent audits with public review of the City's budget being widely available, including at City Hall, online, and at the City's public libraries; and

WHEREAS, under applicable law, to enact a transactions and use tax, the City Council of the City of Pasadena must approve the transactions and use tax ordinance and the voters of the City of Pasadena must also adopt it upon majority vote at an election.

NOW THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. Summary. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of

the Pasadena City Charter. The approved summary reads as follows:

“SUMMARY

Ordinance No. _____ amends Title 4 of the Pasadena Municipal Code to add a new Chapter 4.42 to levy a Transactions and Use Tax in the amount of three-quarters of one percent (0.75%). The proceeds from this tax shall be placed in the City's general fund.

Ordinance No. _____ shall take effect ten (10) days after the City Council has certified the results of the November 6, 2018 Regular Election by resolution.”

SECTION 2. Title and Text. This ordinance shall be known as the Transactions and Use Tax ordinance, the full text of which is set forth in Attachment “A,” attached hereto and incorporated by reference.

SECTION 3. Approval by City Council. Pursuant to California Revenue & Taxation Code Section 7285.9, this ordinance was duly introduced on July 16, 2018 and approved upon second reading for placement on the ballot by a two-thirds (2/3) supermajority of all members of the City Council on July 23, 2018.

SECTION 4. Approval by the Voters. Pursuant to California Elections Code Section 9217, this ordinance shall be deemed adopted and take effect only if approved by a majority of the eligible voters of the City of Pasadena voting at the Regular Election of November 6, 2018, and shall be deemed adopted and take effect ten (10) days after the City Council has certified the results of that election by resolution

SECTION 5. Publication. If the ordinance is adopted as set forth in Section 3, above, the City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 6. Operative Date. "Operative Date" for the Transactions and Use Tax means the first day of the first calendar quarter commencing more than one hundred ten (110) days after the effective date of this ordinance, as set forth in Section 3, above.

SECTION 7. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance

and the application of such provision to other persons or circumstances shall not be affected thereby.

Signed and approved this _____ day of _____, 2018.

Terry Tornek
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:



Jayan N. Rad
Chief Assistant City Attorney

Attachment "A"

Chapter 4.42 Transactions and Use Tax

Sections:

4.42.010	Title.
4.42.020	Purpose
4.42.030	Contract with State
4.42.040	Transactions Tax Rate
4.42.050	Place of Sale
4.42.060	Use Tax Rate
4.42.070	Adoption of Provisions of State Law
4.42.080	Limitations on Adoption of State Law and Collection of Use Taxes
4.42.090	Permit Not Required
4.42.100	Exemptions and Exclusions
4.42.110	Amendments
4.42.120	Termination and Repeal
4.42.130	Prohibitions on Enjoining Collection

4.42.010 Title.

This chapter is designated and shall be known as the Transactions and Use Tax.

4.42.020 Purpose.

This chapter is intended to achieve the following, among other purposes, and shall be interpreted liberally in order to accomplish all of its lawful purposes:

A. To impose a retail transactions and use tax to be applied throughout the entire territory of the City to the fullest extent permitted by law and in accordance with the provisions of or Part 1.6 of Division 2 of the Revenue & Taxation Code (and specifically Sections 7251 et seq. and 7285.9).

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 Revenue & Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure 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 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 chapter.

E. To provide transactions and use tax revenue for unrestricted general revenue purposes, and not for specific purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

4.42.030 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.

4.42.040 Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a transactions tax is imposed on all retailers in the incorporated territory of the City at the rate of three quarters of one percent (0.75%) of gross receipts of any retailer from the sale of all tangible personal property sold at retail within the territory of the City on and after the operative date.

4.42.050 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 the sale 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.

4.42.060 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 territory of 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.

4.42.070 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 & Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue & Taxation Code are adopted, incorporated and made a part of this chapter as though fully set forth in it.

4.42.080 Limitations on Adoption of State Law and Collection of Use Taxes.

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

A. Wherever the State of California is named or referred to as the taxing agency, the name of the City of Pasadena shall be substituted. 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 Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California;

2. The result of the 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 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 the taxes of this chapter with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from the 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 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 & 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.

4.42.090 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 chapter.

4.42.100 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 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.

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.

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 chapter, 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 & 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.
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.

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 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 & 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.

4.42.110 Amendments.

All amendments subsequent to the effective date of this chapter to Part 1 of Division 2 of the Revenue & 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 & Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate as to affect the rate of tax imposed by this chapter. The City Council may amend this chapter to comply with applicable law or as may be otherwise necessary in order to further the chapter's stated purposes.

4.42.120 Termination and Repeal.

The authority to levy the taxes imposed by this ordinance shall be in effect until and unless this ordinance is repealed.

4.42.130 Prohibition on Enjoining Collection.

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 City, to prevent or enjoin the collection under this chapter, or Part

1.6 of Division 2 of the Revenue & Taxation Code, of any tax or any amount of tax required to be collected.