

**MEASURE Y**  
**Ordinance No. 2316 (CCS)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA  
ENACTING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY  
THE STATE BOARD OF EQUALIZATION, SUBJECT TO ADOPTION BY THE ELECTORATE

WHEREAS, the State of California has forecast operating deficits approaching \$20 Billion for its 2010-2011 fiscal year; and

WHEREAS, over the last several years the State of California has gone from one financial crisis to another with no end in sight; and

WHEREAS, during each of the past several years the State of California has reduced or taken funding from cities, counties and school districts in order to fund its deficits and may continue to do so into the foreseeable future; and

WHEREAS, since 2004 the State of California has reduced funding to the City of Santa Monica by \$40 Million; and

WHEREAS, the City of Santa Monica needs dependable and local sources of revenue to fund and to support essential, necessary and appropriate general City services including such things such as police, fire, paramedic and emergency 911 response, school, educational and after school programs, public transit, services for the disabled, gang and drug prevention programs, environmental and library programs; and

WHEREAS, many residents live in the City of Santa Monica because it offers a higher level of service, programs and quality of life than in neighboring cities and creating and preserving local revenue sources will ensure that the City can maintain and improve the high quality of programs and services that residents desire and expect; and

WHEREAS, all City revenues are subject to annual independent audits with public review of the Budget being widely available, including at City Hall, on-line and at the library; and

WHEREAS, in accordance with the provisions of California Revenue and Taxation Code Parts 1.6 and 1.7, Sections 7251 et seq. and Section 7285.9, the City of Santa Monica is authorized to enact a transactions and use tax; and

WHEREAS, the City of Santa Monica wishes to enact a transactions and use tax as permitted by law; and

WHEREAS, the measure enacts a one-half percent transaction and use tax in accordance with state law; and

WHEREAS, under applicable law to enact a transactions and use tax the City Council must adopt the transactions and use tax ordinance and then the electorate of the City of Santa Monica must also adopt it upon majority vote at an election,

NOW THEREFORE, the City Council of the City of Santa Monica does ordain as follows:

SECTION 1. Chapter 6.62 is added to the Santa Monica Municipal Code to read as follows:  
TRANSACTIONS AND USE TAX

Section 6.62.010 TITLE

This ordinance shall be known as the City of Santa Monica Transactions and Use Tax Ordinance.

Section 6.62.020 DEFINITIONS

The following words and phrases shall be defined as set forth in this Ordinance, except that any term or phrase not defined in this Ordinance shall have the same meaning as that term or phrase is defined in Parts 1.6 and 1.7 of the State of California Revenue and Taxation Code:

- (a) "City" means the City of Santa Monica
- (b) "Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance by vote of the electorate on November 2, 2010.
- (c) "Ordinance" means the City of Santa Monica Transactions and Use Tax Ordinance.
- (d) "State" means the State of California.

Section 6.62.030 PURPOSE

This Ordinance is adopted to achieve the following, among other purposes, and the Ordinance 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 the California Revenue and Taxation Code Sections 7251 et seq., and 7285.9, which authorizes the City to adopt this Ordinance 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 California Revenue and 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 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.

M  
E  
A  
S  
U  
R  
E

Y

M  
E  
D  
I  
D  
A

Y

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 California 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 the general governmental purposes of the City and with any transactions and use tax revenue received being placed into the City's general fund.

Section 6.62.040. 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 Ordinance; 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.

Section 6.62.050 TRANSACTIONS TAX RATE

For the privilege of selling tangible personal property at retail, a transactions tax is imposed upon all retailers in the incorporated territory of the City at the rate of 0.50% of the 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 of this Ordinance.

Section 6.62.060 PLACE OF SALE

For the purposes of this Ordinance, 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 State Board of Equalization.

Section 6.62.070 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 this Ordinance for storage, use or other consumption in the territory of the City at the rate of 0.50% 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.

Section 6.62.080 ADOPTION OF PROVISIONS OF STATE LAW

Except as otherwise provided in this Ordinance, 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 adopted, incorporated and made a part of this Ordinance as though fully set forth in it.

Section 6.62.090 LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES

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

A. Wherever the State of California is named or referred to as the taxing agency, the name of the City of Santa Monica 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 Board of Equalization, 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 State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance;

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 these taxes of this Ordinance 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 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 California 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.

Section 6.62.100 PERMIT NOT REQUIRED

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

Section 6.62.110 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 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 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.

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.

Section 6.62.120 AMENDMENTS

All amendments subsequent to the effective date of this ordinance 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 adopted and a part of this Ordinance without further action of the City Council of the City of Santa Monica or the City's electorate, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Ordinance. The City Council

may amend this Ordinance to comply with applicable law or as may be otherwise necessary in order to further the Ordinance's stated purposes.

Section 6.62.130 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 the City, to prevent or enjoin the collection under this Ordinance, 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 under this Ordinance.

Section 6.62.140 SEVERABILITY

If any provision of this Ordinance or the application of it 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.

Section 6.62.150 EFFECTIVE DATE

This Ordinance relates to the levying and collecting of a transactions and use tax and shall take effect without second reading by the City Council of the City of Santa Monica in accordance with the City Charter Section 619 (c), except that also in accordance with applicable law no tax imposed by this Ordinance shall take effect unless this Ordinance is adopted by the electorate at an election to be held on November 2, 2010 election.

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption.

APPROVED AS TO FORM:

/s/ MARSHA JONES MOUTRIE  
City Attorney

M  
E  
A  
S  
U  
R  
E  
Y

M  
E  
D  
I  
D  
A  
Y