



CITY OF LEMON GROVE

CITY COUNCIL STAFF REPORT

Item No. 2.

Meeting Date: July 16, 2024

Submitted to: Honorable Mayor and Members of the City Council

Department: City Manager's Office

Staff Contact: Lydia Romero, City Manager (lromero@lemongrove.ca.gov)
Kristen S. Steinke, City Attorney (ksteinke@bwslaw.com)

Item Title: **Consideration of a Resolution Submitting to the Electors a
Ballot Measure to Increase the City's Sales and Use Tax
(Sales Tax) by One Percent (One Cent)**

Recommended Action:

That the City Council adopt by a four-fifths vote a Resolution (**Attachment A**) calling an election in the City of Lemon Grove to be consolidated with the City's next general municipal election on November 5, 2024 and submitting to the electors a ballot measure to increase the City's Sales and Use Tax (Sales Tax) by one percent (one cent) by adding Lemon Grove Municipal Code Chapter 3.18 (Sales and Use Tax), establishing the policies and procedures for such an election, requesting that San Diego County provide election services, directing the City Attorney to prepare an impartial analysis and authorizing the filing of rebuttal argument.

Background:

As part of the City's effort to meet the service needs of its community, the City is considering submitting a measure to the voters for an increase of one percent or one cent to the City's existing Sales and Use Tax (Sales Tax). The decision about whether to enact such a funding measure would be considered by the City of Lemon Grove voters at the November 5, 2024 Statewide General Election. If a majority of voters (50% plus 1) support the measure, it would go into effect ten days after certification of the vote is presented to the City Council. Certification of the vote is scheduled for the Council's December 17th meeting which would make the effective date of the ordinance December 27th.

Discussion:

The City Council has had exploring whether to move forward with adding a general Sales Tax measure to the November 5, 2024 Statewide General Election Ballot, as part of it FY 2023-24 and FY 2024-25 Strategic Priorities. At the June 4, 2024 City Council meeting, the City Council was given the results of a public opinion poll, conducted by True North

Research, regarding support for a sales tax measure. Based on the polling data, adding one percent or one cent to the City’s existing Sales and Use Tax (Sales Tax) which is currently one percent or one cent is before the City Council for consideration. If approved by the voters this would make the City’s Sales Tax rate two percent or two cents. This will allow the city use locally generated dollars to address local concerns. .

If a majority of voters (50% plus 1) support the Sales Tax measure, it would go into effect ten days after the City Council receives the certification of the election results from the City’s Elections Official which is scheduled for December 17th making the effective date of the ordinance December 27th. The proposed measure will be subject to annual independent audits and also require oversight review by an independent oversight committee.

If the City of Lemon Grove’s measure passes, then the City’s sales tax rate will be 8.75%. Below are current tax rates for many jurisdictions in San Diego County:

Table 1: Sales Tax Rate Comparison

| City | Sales Tax Rate |
|--------------------------------------|-----------------------|
| Lemon Grove Current Rate | 7.75% |
| Lemon Grove Proposed New Rate | 8.75% |
| La Mesa | 8.50% |
| Santee | 7.75% |
| El Cajon | 8.25% |
| Imperial Beach | 8.75% |
| National City | 8.75% |
| Chula Vista | 8.75% |
| San Diego | 7.75% |

If the City Council deems it appropriate to proceed, staff recommends placing the following measure on the ballot. As noted in the body of the measure, the tax is a general-purpose tax, meaning the proceeds of the tax stay in Lemon Grove to support the City’s General Fund and can be used for any general purpose, including addressing some of the City’s highest priorities, like keeping local streets, sidewalks, stormdrains, parks, and community facilities safe, clean, and well-maintained; fixing potholes; providing fire protection, paramedic, police, and 911 emergency response; traffic management; addressing homelessness; and removing graffiti/ trash.

The title of the measure is: City Services and Infrastructure Funding Measure highlighting areas of priority for the City.

The measure will sunset ten (10) years from the date of its adoption. The measure requires annual independent audits. Additionally, the measure requires citizen oversight, which, as described in the draft Ordinance, will be conducted by the Citizens Oversight

Committee to be formed upon adoption of the Sales Tax Measure by a vote of the citizens of Lemon Grove. No revisions are recommended to the ballot measure wording.

| Proposed Language for New Sales Tax Measure Statewide General Election on November 5, 2024 THE LEMON GROVE SALES TAX MEASURE | |
|--|------------|
| <p>To provide funding for city services in Lemon Grove, such as keeping local streets, sidewalks, stormdrains, parks, and community facilities safe, clean, and well-maintained; fixing potholes; providing fire protection, paramedic, police, and 911 emergency response; traffic management; addressing homelessness; and removing graffiti/ trash; shall City of Lemon Grove's ordinance establishing a one-cent sales and use (sales) tax be adopted, providing \$5,957,000 annually for general government use, to sunset in 10 years, with citizen oversight, independent audits, and all money locally controlled?</p> | <p>YES</p> |
| | <p>NO</p> |

Conclusion:

To qualify for the ballot, 4/5 of the City Council (4 members) are required to vote affirmatively to place the measure on the ballot. If approved by the Council, and then passed by a majority of voters (50% plus 1) on Tuesday, November 5, 2024, it would go into effect ten days after the certification of the election.

Should the Council choose to place the measure on the November 2024 ballot, the City Attorney will need to prepare an impartial analysis showing the effect of the measure on the existing laws and the operation of the measure. The City Clerk will also need to establish a process and timeline for the submittal of ballot arguments, consistent with the requirements of State law and the County Registrar of Voters. These items are addressed in the attached draft Resolution (**Attachment A**).

Environmental Review:

- Not subject to review
- Negative Declaration
- Categorical Exemption
- Mitigated Negative Declaration

This action is not a “Project” as defined under Section 15378(b)(4) of the California Environmental Quality Act (CEQA) Guidelines because it is a financing decision without commitment to a specific project that may result in a potentially significant physical

impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA.

Fiscal Impact: Biennial general municipal election costs are determined by the number of registered voters, the County Registrar of Voter's costs for services, and the City's costs for its required publication notices, etc. The cost to place a measure on the November ballot for a City Measure (5 pages) is \$30k – 45k and/or City Measure (10 pages): \$40k – 55k based on the last estimate from the County Registrar of Voters (which would be in addition to the costs for the election of Councilmembers).

Staff Recommendation:

Staff recommends that the City Council adopt by a four-fifths vote a Resolution (**Attachment A**) calling an election in the City of Lemon Grove to be consolidated with the City's next general municipal election on November 5, 2024 and submitting to the electors a ballot measure to increase the City's Sales and Use Tax (Sales Tax) by one percent (one cent) by amending Lemon Grove Municipal Code Chapter 3.18 (Sales and Use Tax), establishing the policies and procedures for such an election, requesting that San Diego County provide election services, directing the City Attorney to prepare an impartial analysis and authorizing the filing of rebuttal argument.

Attachments:

Attachment A – Draft Council Resolution; Exhibit A – Draft Ordinance

RESOLUTION NO. 2024 - XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE CALLING AN ELECTION IN THE CITY OF LEMON GROVE TO BE CONSOLIDATED WITH THE CITY'S NEXT GENERAL MUNICIPAL ELECTION ON NOVEMBER 5, 2024 AND SUBMITTING TO THE ELECTORS A BALLOT MEASURE TO INCREASE THE CITY'S SALES AND USE TAX ("SALES TAX") BY ONE PERCENT (ONE CENT) BY ADDING LEMON GROVE MUNICIPAL CODE CHAPTER 3.18 (SALES AND USE TAX), ESTABLISHING THE POLICIES AND PROCEDURES FOR SUCH AN ELECTION, REQUESTING THAT SAN DIEGO COUNTY PROVIDE ELECTION SERVICES, DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS AND AUTHORIZING THE FILING OF REBUTTAL ARGUMENT

WHEREAS, the health and safety of all residents in the City of Lemon Grove is the City's top priority; and

WHEREAS, as part of the City's effort to meet the needs of the community, the City has been exploring the addition of a General Sales Tax measure to the November 5, 2024, election ballot; and

WHEREAS, the City proposes an increase in the amount of one percent (one cent) to the existing Transaction and Use Tax (Sales Tax) as directed by City Council; and

WHEREAS, the proposed, locally enacted, Sales Tax measure is projected to generate general fund revenue of approximately \$5,957,000 million annually for a one cent increase; and

WHEREAS, money raised by this measure would be used for community priorities, such as keeping local streets, sidewalks, storm drains, parks, and community facilities safe, clean, and well-maintained; fixing potholes; providing fire protection, paramedic, police, and 911 emergency response; traffic management; addressing homelessness; and removing graffiti/trash; and

WHEREAS, local, voter-approved funding for essential services will provide a guaranteed source of funding for the City of Lemon Grove; and

WHEREAS, the City will continue its high standards for fiscal accountability and transparency regarding this measure to include a 10 year sunset, citizen oversight, independent financial audits, and yearly reports to the community to ensure City funds are spent responsibly for the community's priorities; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7285.9 the City of Lemon Grove ("City") has the authority to levy a Transactions and Use ("Sales") Tax for general purposes, and subject to voter approval; and

WHEREAS, Article XIIC, section 2(b) of the California Constitution requires that any general tax, such as the Sales Tax, must be approved by a majority vote of the voters voting on the issue; and

WHEREAS, Article XIIC, section 2(b) of the California Constitution requires that an election by the voters to approve a general tax must be consolidated with a statewide general election at which members of the City Council will be elected; and

WHEREAS, November 5, 2024 is the date of the statewide general election at which members of the City Council will be elected; and

WHEREAS, the City Council believes that it is in the best interests of the City to submit the proposed one percent (one cent) upward adjustment to the Sales Tax to the voters of the City.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Lemon Grove does resolve, declare, determine and order as follows, that:

SECTION 1. Pursuant to Elections Code Section 9222, the City Council hereby calls an election at which it shall submit to the qualified voters of the City of Lemon Grove, a measure that, if approved, would increase the Transactions and Use by one percent (1%) or once cent to fund general services in the City. This measure shall be designated by letter by the San Diego County Registrar of Voters.

SECTION 2. The ballot language for the proposed measure shall be as follows:

| THE LEMON GROVE SALES TAX MEASURE | |
|--|-----|
| <p>To provide funding for city services in Lemon Grove, such as keeping local streets, sidewalks, stormdrains, parks, and community facilities safe, clean, and well-maintained; fixing potholes; providing fire protection, paramedic, police, and 911 emergency response; traffic management; addressing homelessness; and removing graffiti/ trash; shall City of Lemon Grove's ordinance establishing a one-cent sales and use (sales) tax be adopted, providing \$5,957,000 annually for general government use, to sunset in 10 years, with citizen oversight, independent audits, and all money locally controlled?</p> | YES |
| | NO |

SECTION 3. The proposed measure to be submitted to the voters is attached hereto as Attachment 1, which is incorporated herein by this reference. The City Council hereby approves the proposed ordinance, in the form thereof, and its submission to the voters of the City at the November 5, 2024 election. The full text of the measure shall be printed in the ballot materials and be available for public inspection in the City Clerk's office and on the City's website: lemongrove.ca.gov

SECTION 4. The City Clerk is hereby directed to cause notice of the measure to be published once in the official newspaper of the City of Lemon Grove, in accordance with Section 12111 of the California Elections Code.

SECTION 5.

a) Pursuant to California Elections Code Section 10400 *et seq.*, the election for this measure shall be consolidated with the established election to be conducted on November 5, 2024. The City Council hereby requests that the San Diego County Board of Supervisors consolidate the election called by this Resolution with the statewide election to be conducted on November 5, 2024 and order the election to be conducted by the San Diego County Registrar of Voters. The City Council of the City of Lemon Grove acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418. The City Council recognizes that additional cost will be incurred by San Diego County by reason of the consolidation of the election with the Statewide election and agrees to reimburse San Diego

County for any costs that are not reimbursed by the State, and the City Council hereby authorizes the City Manager to pay San Diego County for said services in full. The City Clerk is directed to file a certified copy of this Resolution with the San Diego County Board of Supervisors and the Registrar of Voters on or before August 9, 2024.

(b) The election on the measure set forth in Section 3 shall be held and conducted, the voters canvassed and the returns made, and the results ascertained and determined as provided herein. The election shall be held in accordance with the Elections Code of the State of California.

(c) The election on the measure set forth in Section 3 shall be held in San Diego County in the City of Lemon Grove on November 5, 2024, as required by law, and the Board of Supervisors of San Diego County is authorized to canvass the returns of the election with respect to the votes cast in the City of Lemon Grove and certify the results to the City Council of the City of Lemon Grove.

(d) At the next regular meeting of the City Council of the City of Lemon Grove occurring after the returns of the election for the measure set forth in Section 3 have been canvassed and the results have been certified to the City Council, or at a special meeting called for such purpose if required by law, the City Council shall cause to be entered in its minutes a statement of the results of the election.

SECTION 6. The City Clerk is hereby authorized and directed to take all steps necessary to place the measure on the ballot and to cause the ordinance or measure to be printed. A copy of the measure shall be made available to any voter upon request.

SECTION 7. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk by August 9, 2024.

SECTION 8.

(a) Arguments for or against this measure shall be submitted not later than 5 p.m. on August 9, 2024 to the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name assigned, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

(b) Direct arguments shall not exceed three hundred (300) words and shall be signed by not more than five (5) persons.

(c) Pursuant to California Elections Code Section 9285(b), the City Council is hereby

adopting provisions for the filing of rebuttal arguments for this measure. Accordingly, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against it, and copies of the argument against it to the authors of the argument in favor. Rebuttal arguments shall not exceed 250 words and shall be filed no later than 5:00 p.m. on August 20, 2024.

SECTION 9. Should any section, subsection, clause or provision of this resolution for any reason be held to be invalid, then the remainder of the resolution shall be deemed valid, it being expressly declared that this resolution, and each and every section, subsection, clause and phrase hereof would have been prepared, proposed, approved, adopted and/or ratified even if any other section, subsection, sentence, clause or phrase of this resolution were declared invalid.

SECTION 10. The City Council finds and determines that this activity is not a "Project" as defined under Section 15378(b)(4) of the California Environmental Quality Act (CEQA) Guidelines because it is a financing decision without commitment to a specific project that may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA.

SECTION 11. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED on _____, 2024, the City Council of the City of Lemon Grove, California, adopted Resolution No. _____, passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Racquel Vasquez, Mayor

Attest:

Joel G. Pablo, City Clerk

Approved as to Form:

Kristen Steinke, City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA, ADDING CHAPTER 3.18 TO TITLE 3 OF THE LEMON GROVE MUNICIPAL CODE TO ESTABLISH A ONE PERCENT (ONE CENT) GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION INCLUDING PROVISIONS FOR A TEN-YEAR SUNSET AND CITIZENS' OVERSIGHT AND ACCOUNTABILITY

WHEREAS, at the July 16, 2024 Lemon Grove City Council meeting, the City Council approved, by a four-fifths vote, a Resolution consolidating the Regular Municipal Election with the State General Election on November 5, 2024 to include this Ordinance; and

WHEREAS, the health and safety of all residents in the City of Lemon Grove is the City's top priority; and

WHEREAS, as part of the City's effort to meet the needs of the community, the City has been exploring the addition of a General Sales Tax measure to the November 5, 2024, election ballot; and

WHEREAS, the City proposes an increase in the amount of one percent (one cent) to the existing Transaction and Use Tax (Sales Tax) as directed by City Council; and

WHEREAS, the proposed, locally enacted, Sales Tax measure is projected to generate general fund revenue of approximately \$5,957,000 million annually for a one cent increase; and

WHEREAS, money raised by this measure would be used for community priorities, such as keeping local streets, sidewalks, storm drains, parks, and community facilities safe, clean, and well-maintained; fixing potholes; providing fire protection, paramedic, police, and 911 emergency response; traffic management; addressing homelessness; and removing graffiti/ trash; and

WHEREAS, local, voter-approved funding for essential services will provide a guaranteed source of funding for the City of Lemon Grove; and

WHEREAS, the City will continue its high standards for fiscal accountability and transparency regarding this measure to include a ten-year sunset, citizen oversight, independent financial audits, and yearly reports to the community to ensure City funds are spent responsibly for the community's priorities; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7285.9 the City of Lemon Grove ("City") has the authority to levy a Transactions and Use ("Sales") Tax for general purposes, and subject to voter approval; and

WHEREAS, Article XIII C, section 2(b) of the California Constitution requires that

any general tax, such as the Sales Tax, must be approved by a majority vote of the voters voting on the issue; and

WHEREAS, Article XIII C, section 2(b) of the California Constitution requires that an election by the voters to approve a general tax must be consolidated with a statewide general election at which members of the City Council will be elected; and

WHEREAS, November 5, 2024 is the date of the statewide general election at which members of the City Council will be elected; and

WHEREAS, the City Council believes that it is in the best interests of the City to submit the proposed one percent (one cent) upward adjustment to the Sales Tax to the voters of the City; and

WHEREAS, proposed Chapter 3.18 of the Lemon Grove Municipal Code, set forth below, establishes a transactions and use tax to be administered by the California Department of Tax and Fee Administration consistent with City Council direction and state law.

NOW, THEREFORE, subject to approval by an affirmative, simple majority vote of the people as required by law, the People of the City of Lemon Grove do ordain as follows:

SECTION 1: The Lemon Grove Municipal Code is hereby revised to add Chapter 3.18 as set forth below, thereby enacting a general local transactions and use tax within the City of Lemon Grove, to be administered by the California Department of Tax and Fee Administration:

CHAPTER 3.18: LEMON GROVE ONE CENT TRANSACTIONS AND USE TAX

Sections:

3.18.010 Title.

3.18.020 Operative date.

3.18.030 Purpose.

3.18.040 Contract with state.

3.18.050 Transactions tax rate.

3.18.060 Place of sale.

3.18.070 Use tax rate.

3.18.080 Adoption of provisions of state law.

3.18.090 Limitations on adoption of state law and collection of use taxes.

3.18.100 Permit not required.

3.18.110 Exemptions and Exclusions.

3.18.120 Amendments of Revenue and Taxation Code.

3.18.130 Enjoining collection forbidden.

3.18.140 Amendments by City Council.

3.18.150 Use of proceeds.

3.18.160 Citizens' oversight and accountability.

3.18.170 Severability.

3.18.010 TITLE.

This ordinance shall be known as the Lemon Grove One Cent Transaction and Use Tax Ordinance. The City of Lemon Grove hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

3.18.020 OPERATIVE DATE.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of the ordinance codified in this chapter, the date of adoption being December 27, 2024.

3.18.030. PURPOSE. This Ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a general 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 which authorizes the City to adopt this tax ordinance which shall be operative if a majority vote 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 general 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. To adopt a general 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 general 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 Ordinance.

3.18.040 CONTRACT WITH STATE.

Prior to the Operative Date, City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax Ordinance; 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 effective date of such a contract.

3.18.050 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 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 this Ordinance.

3.18.060 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 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.

3.18.070 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 said territory 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.

3.18.080 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 hereby adopted and made a part of this Ordinance as though fully set forth herein.

3.18.090 LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.

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 this 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 Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action 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 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 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.

3.18.100 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 Ordinance.

3.18.110 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 Chapter 2 of 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 subsections (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 City 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 consumptions of which is subject to the use tax.

3.18.120 AMENDMENTS OF REVENUE AND TAXATION CODE.

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 a part of this Ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

3.18.130 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 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.

3.18.140 AMENDMENTS BY CITY COUNCIL.

The following amendments to this Ordinance must be approved by the voters of the City: increasing the tax rate; revising the methodology for calculating the tax, such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of law); continuing the tax beyond ten years of its Operative Date; or terminating the tax. The City Council may otherwise amend this Ordinance without submitting the amendment to the voters for approval in any manner which does not constitute a tax “increase” as that term is defined in Government Code section 53750(h).

3.18.150 USE OF PROCEEDS.

The proceeds from the tax imposed by this Ordinance shall be for unrestricted general revenue purposes of the City and shall be received into the general fund of the City. Nothing in this Ordinance shall constitute the tax imposed under this Ordinance as a special tax, or bind the City to use the proceeds for any specific purpose or function; the City Council shall retain discretion to expend the proceeds of the tax for any lawful purpose of the City.

3.18.160 CITIZENS’ OVERSIGHT AND ACCOUNTABILITY.

In order to provide for citizens’ oversight, transparency and accountability in connection with expenditures of tax revenues generated under the terms of this Ordinance, the City shall do the following:

A. Line Item Accounting. All revenue generated by the tax (“Measure ‘LG’ Revenues”) shall be accounted in the General Fund as a separate line item entitled “Local Transactions and Use Tax – Measure ‘LG’ Revenues.” Measure ‘LG’ Revenues and expenditures will be tracked and accounted for by City Finance Department staff in accordance with Generally Accepted Accounting Principles (GAAP), and presented

annually in a report (the "Finance Department Report") to the Citizens' Oversight Committee ("COC") created pursuant to subdivision D., below

B. Annual Submittal of Measure 'LG' Expenditure Plan. If Measure 'LG' is approved by the Voters, beginning in Fiscal Year 2025-26, and for each subsequent year, prior to the City Council consideration of the City's annual budget, City staff will prepare and present to the COC for its review a spending plan for the Measure 'LG' Revenues. Such plan (the "Measure 'LG' Spending Plan") shall be (1) spent on Lemon Grove projects that use general fund monies within the boundaries of the City of Lemon Grove; (2) include specific proposals for near term expenditures; and (3) a plan for expenditures for the next five-years to address the Critical General Future Fund Needs described therein. After review by the COC, the Measure 'LG' Spending Plan for the upcoming Fiscal Year shall be incorporated into the City Manager's proposed budget, and then presented to the City Council for its consideration and action, in its discretion, as part of the City's annual budget process. The City Council must consider for approval the expenditure of projected Measure 'LG' Revenues as a separate line item category in each year's budget. The COC's duties under this section shall continue until and unless the City Council appoints another commission, committee, or group to be responsible for reporting to the City Council, pursuant to section D., below.

C. Annual, Independent Audit. Beginning with the fiscal year 2025-2026, the City's independent auditors shall, as part of their annual audit of the City's financial statements, review the collection and expenditure of Measure 'LG' Revenues.

D. Measure 'LG' Oversight Committee. Prior to the Operative Date, the City shall create and convene a Citizens' Oversight Committee ("COC"). The City Council shall initially designate the Community Advisory Commission, established under Chapter 2.08 of the Lemon Grove Municipal Code, as the COC with either five or seven members to be determined on a regular basis by the City Council. If the Community Advisory Commission is no longer operational, the City Council shall create and convene a new Citizens' Oversight Committee by Resolution.

E. Citizens' Oversight Committee Operation. The function of the COC shall be to review and report on City compliance with the terms of this Ordinance and each annual 'LG' Measure Spending Plan presented to and approved by the City Council thereafter. The COC shall operate in accordance with the Ralph M. Brown Act, which includes requirements that meetings be noticed in advance and held in public. The COC shall be created by City Council Resolution consistent with the terms of this Section adopted no later than 150 days following the date of the election at which this Ordinance is approved by the voters.

F. No Subsidy of User Fees or Charges. Measure 'LG' Funds shall not be used to subsidize user fees or charges levied for non-General Fund purposes. As many fee based general fund programs contain a partial subsidy by the General Fund, no Measure

'LG' funds may be used to increase the general fund subsidy of any fee or charge for a program that relies on user fees or charges.

3.18.170 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.

Such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This People of the City of Lemon Grove hereby declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intend that the invalid portions should be severed, and the balance of the Ordinance be enforced.

3.18.180 TERMINATION OF TAX. This Chapter will automatically terminate after a period of ten years from the Operative Date unless continued or changed by voters at a duly called regular or special election.

SECTION 2: The City Clerk shall be authorized to replace the term "Measure 'LG'" wherever it appears in this Ordinance with the respective ballot designation determined by the County Registrar before this Ordinance is codified.

SECTION 3: Proceeds resulting from the Sales Tax shall be deposited into the City's general fund and become subject to the same audit requirements as other general fund revenues. Any auditor's report shall be presented to the applicable commissioners and City Council annually and made available for public review.

SECTION 4: If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 5: The City Council finds and determines that this ordinance is not a "Project" as defined under Section 15378(b)(4) of the California Environmental Quality Act (CEQA) Guidelines because it is a financing decision without commitment to a specific project that may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA.

SECTION 6: This Ordinance shall go into effect in accordance with Elections Code Section 9217 and shall be deemed adopted and become effective only if approved by a majority of the eligible voters of the City of Lemon Grove voting thereon, at an election to be held on November 5, 2024, and shall take effect ten (10) days after the City Council has certified the results of that election by resolution. The levying and collection of the Sales Tax shall be as specified in Title 3 of the Lemon Grove Municipal Code and as directed by the City Council.

PASSED, APPROVED AND ADOPTED BY THE PEOPLE OF THE CITY OF LEMON GROVE this 5th day of November, 2024.

It is hereby certified that this Ordinance was duly adopted by the voters at the November 5, 2024 election, and that the City Council declared the results of such election, in the manner required by law, at a meeting of the City Council held on [----INSERT DATE-----] by the following vote:

PASSED AND ADOPTED on _____, 2024, the City Council of the City of Lemon Grove, California, adopted Ordinance No. _____, passed by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Racquel Vasquez, Mayor

Attest:

Joel G. Pablo, City Clerk

Approved as to Form:

Kristen Steinke, City Attorney