



<p>other fire safety measures and improvements, by levying a one-percent (1%) dedicated sales tax for 25 years raising approximately \$5.6 million annually, requiring financial audits, with all funds for Laguna Beach only, be adopted?</p>	<p>NO</p>
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Section 3. The text of the proposed Ordinance for the ballot measure submitted to the City’s voters is set forth in full in Exhibit A attached hereto and incorporated herein by this reference.

Section 4. The City Clerk is directed to submit a copy of the above-described ballot measure to the City Attorney, after which the City Attorney is directed to prepare an impartial analysis of the ballot measure, in accordance with the provisions of Elections Code section 9280, showing the effect of the measure on existing law and the operation of the measure. The impartial analysis, not exceeding 500 words in length, shall be filed with the City Clerk on or before August 10, 2018.

Section 5. The City Clerk is directed to submit a copy of the above-described ballot measure to the City Manager, after which the City Manager is authorized, instructed, and directed to prepare an impartial fiscal impact statement regarding the ballot measure. The impartial statement shall be filed with the City Clerk on or before August 10, 2018.


Section 6. Any direct arguments for or against the ballot measure, not exceeding 300 words in length, shall be filed with the City Clerk on or before August 10, 2018. Rebuttal arguments for or against the ballot measure, not exceeding 250 words in length, shall be filed with the City Clerk on or before August 20, 2018. The City Council authorizes Mayor Kelly Boyd, the members of the City Council Utility Undergrounding Subcommittee (Mayor Pro Tem Robert Zur Schmiede and Councilmember Bob Whalen), any other member(s) of the City Council wishing to join the Mayor and Subcommittee members, the Chief of Police, and the Fire Chief to file direct and rebuttal arguments in favor of the ballot measure, and to change such arguments until and including the deadline fixed for the filing of arguments with the City Clerk. If more than one argument against


1 the ballot measure is submitted, the City Clerk, in selecting the argument, shall give preference and  
2 priority to the submitted arguments in accordance with the provisions of Elections Code section  
3 9287.

4 Section 7. The City Clerk is hereby directed to deliver forthwith certified copies of this  
5 Resolution to the Registrar of Voters of the County of Orange and to the Clerk of the Board of  
6 Supervisors of the County of Orange.

7 Section 8. The City Council finds and determines that this Resolution is exempt from  
8 the requirements of the California Environmental Quality Act (“CEQA”) because the ballot  
9 measure, including without limitation the proposed Expenditure Plan therein, is not a “project”  
10 within the meaning of CEQA. Specifically, the City Council’s adoption of this Resolution does not  
11 constitute the approval of a “project” for reasons that include, but are not limited to, the following:  
12 the ballot measure pertains to the conversion of overhead utility distribution system facilities to  
13 undergrounding and to related and complementary fire safety projects; the Expenditure Plan does  
14 not involve a commitment to authorize the construction of any project that may result in any direct  
15 or indirect physical change in the environment; and the Expenditure Plan is a mechanism for the  
16 funding of potential future projects, the timing, approval, and construction of which may be  
17 modified or not implemented depending on a number of factors, including future site-specific  
18 environmental review pursuant to CEQA. (See Pub. Res. Code § 21080; Cal. Code of Regs., title  
19 14, §§ 15060(c), 15302(d), 15352, 15378.)

20 ADOPTED this 17th day of July, 2018.

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24 Kelly Boyd, Mayor

25 ATTEST:  
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28 Lisette Chel-Walker, City Clerk

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I, LISETTE CHEL-WALKER, City Clerk of the City of Laguna Beach, certify that the foregoing **Resolution No. 18.041** was duly adopted at an adjourned regular meeting of the City Council of said City held on July 17, 2018 by the following vote:

AYES: COUNCILMEMBERS: Dicterow, Iseman, Whalen, Zur Schmiede, Boyd  
NOES: COUNCILMEMBERS: None  
ABSTAIN: COUNCILMEMBERS: None  
ABSENT: COUNCILMEMBERS: None

  
City Clerk, City of Laguna Beach, California

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ORDINANCE NO. \_\_\_\_\_  
**AN ORDINANCE OF THE CITY OF LAGUNA BEACH  
IMPOSING A SPECIAL TRANSACTIONS (SALES) AND USE TAX  
TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX  
AND FEE ADMINISTRATION**

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The People of the City of Laguna Beach do hereby ordain as follows:

Section 1. Title. This Ordinance shall be known as the Laguna Beach Utility Undergrounding and Fire Safety Measure.

Section 2. Operative date. “Operative date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance, the date of such adoption being as set forth below.

Section 3. 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 retail transactions (sales) 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 7285.91 of Part 1.7 of Division 2 of said Code, which authorizes the City to adopt this tax Ordinance, which shall be operative if two-thirds 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 (sales) 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 retail transactions (sales) 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

1 followed by the California Department of Tax and Fee Administration in administering and  
2 collecting the California State Sales and Use Taxes.

3 (d) To adopt a retail transactions (sales) and use tax ordinance that can be  
4 administered in a manner that will be, to the greatest degree possible, consistent with the provisions  
5 of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting City  
6 sales and use taxes, and at the same time, minimize the burden of record keeping upon persons  
7 subject to taxation under the provisions of this ordinance.

8 Section 4. Contract with state. Prior to the operative date, the City shall contract with  
9 the California Department of Tax and Fee Administration to perform all functions incident to the  
10 administration and operation of this special sales and use tax ordinance; provided, that if the City  
11 shall not have contracted with the California Department of Tax and Fee Administration prior to the  
12 operative date, it shall nevertheless so contract and in such a case the operative date shall be the first  
13 day of the first calendar quarter following the execution of such a contract.

14 Section 5. Special transactions (sales) tax rate. For the privilege of selling tangible  
15 personal property at retail, a special tax is hereby imposed upon all retailers in the incorporated area  
16 of the City at the rate of one percent (1.0%) of the gross receipts of any retailer from the sale of all  
17 tangible personal property sold at retail in the City on and after the operative date of this Ordinance.

18 Section 6. Place of sale. For the purposes of this Ordinance, all retail sales are  
19 consummated at the place of business of the retailer unless the tangible personal property sold is  
20 delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery  
21 to an out-of-state destination. The gross receipts from such sales shall include delivery charges,  
22 when such charges are subject to the state sales and use tax, regardless of the place to which delivery  
23 is made. In the event a retailer has no permanent place of business in the State or has more than one  
24 place of business, the place or places at which the retail sales are consummated shall be determined  
25 under rules and regulations to be prescribed and adopted by the California Department of Tax and  
26 Fee Administration.

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1 Section 7. Special use tax rate. A special excise tax is hereby imposed on the storage,  
2 use or other consumption in the City of tangible personal property purchased from any retailer on  
3 and after the operative date of this ordinance for storage, use or other consumption in the City at the  
4 rate of one percent (1.0%) of the sales price of the property. The sales price shall include delivery  
5 charges when such charges are subject to state sales or use tax regardless of the place to which  
6 delivery is made.

7 Section 8. Adoption of provisions of state law. Except as otherwise provided in this  
8 Ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2  
9 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001)  
10 of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this  
11 Ordinance as though fully set forth herein.

12 Section 9. Limitations on adoption of state law and collection of use taxes. In adopting  
13 the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

14 (a) Whenever the State of California is named or referred to as the taxing agency, the name  
15 of this City shall be substituted therefor. However, the substitution shall not be made when:

16 (1) The word "State" is used as a part of the title of the State Controller, State  
17 Treasurer, State Board of Control, California Department of Tax and Fee Administration, State  
18 Treasury, or the Constitution of the State of California;

19 (2) The result of that substitution would require action to be taken by or against this  
20 City or any agency, officer, or employee thereof rather than by or against the California Department  
21 of Tax and Fee Administration, in performing the functions incident to the administration or  
22 operation of this Ordinance.

23 (3) In those sections, including, but not necessarily limited to sections referring to  
24 the exterior boundaries of the State of California, where the result of the substitution would be to:

25 (A) Provide an exemption from this tax with respect to certain sales, storage,  
26 use or other consumption of tangible personal property which would not otherwise be exempt from  
27 this tax while such sales, storage, use or other consumption remain subject to tax by the State under  
28 the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

1 (B) Impose this tax with respect to certain sales, storage, use or other  
2 consumption of tangible personal property which would not be subject to tax by the state under the  
3 said provision of that code.

4 (4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737,  
5 6797 or 6828 of the Revenue and Taxation Code.

6 (b) The word "City" shall be substituted for the word "State" in the phrase "retailer engaged  
7 in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

8 Section 10. Permit not required. If a seller's permit has been issued to a retailer under  
9 Section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required  
10 by this Ordinance.

11 Section 11. Exemptions and exclusions.

12 (a) There shall be excluded from the measure of the transactions tax and the use tax the  
13 amount of any transactions tax or use tax imposed by the State of California or by any city, city and  
14 county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the  
15 amount of any state-administered transactions or use tax.

16 (b) There are exempted from the computation of the amount of transactions tax the gross  
17 receipts from:

18 (1) Sales of tangible personal property, other than fuel or petroleum products, to  
19 operators of aircraft to be used or consumed principally outside the county in which the sale is made  
20 and directly and exclusively in the use of such aircraft as common carriers of persons or property  
21 under the authority of the laws of this State, the United States, or any foreign government.

22 (2) Sales of property to be used outside the City which is shipped to a point outside  
23 the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by  
24 delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of  
25 this paragraph, delivery to a point outside the City shall be satisfied:

26 (A) With respect to vehicles (other than commercial vehicles) subject to  
27 registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle  
28 Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and



1 undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the  
2 Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury,  
3 signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

4 (B) With respect to commercial vehicles, by registration to a place of  
5 business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle  
6 will be operated from that address.

7 (3) The sale of tangible personal property if the seller is obligated to furnish the  
8 property for a fixed price pursuant to a contract entered into prior to the operative date of this  
9 ordinance.

10 (4) A lease of tangible personal property which is a continuing sale of such property,  
11 for any period of time for which the lessor is obligated to lease the property for an amount fixed by  
12 the lease prior to the operative date of this ordinance.

13 (5) For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of  
14 tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for  
15 any period of time for which any party to the contract or lease has the unconditional right to  
16 terminate the contract or lease upon notice, whether or not such right is exercised.

17 (c) There are exempted from the use tax imposed by this ordinance, the storage, use or other  
18 consumption in this City of tangible personal property:

19 (1) The gross receipts from the sale of which have been subject to a transactions tax  
20 under any state-administered transactions and use tax ordinance.

21 (2) Other than fuel or petroleum products purchased by operators of aircraft and used  
22 or consumed by such operators directly and exclusively in the use of such aircraft as common  
23 carriers of persons or property for hire or compensation under a certificate of public convenience  
24 and necessity issued pursuant to the laws of this State, the United States, or any foreign government.  
25 This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the  
26 Revenue and Taxation Code of the State of California.

27 (3) If the purchaser is obligated to purchase the property for a fixed price pursuant  
28 to a contract entered into prior to the operative date of this ordinance.

1 (4) If the possession of, or the exercise of any right or power over, the tangible  
2 personal property arises under a lease which is a continuing purchase of such property for any period  
3 of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to  
4 the operative date of this ordinance.

5 (5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or  
6 other consumption, or possession of, or exercise of any right or power over, tangible personal  
7 property shall be deemed not to be obligated pursuant to a contract or lease for any period of time  
8 for which any party to the contract or lease has the unconditional right to terminate the contract or  
9 lease upon notice, whether or not such right is exercised.

10 (6) Except as provided in subparagraph (7), a retailer engaged in business in the City  
11 shall not be required to collect use tax from the purchaser of tangible personal property, unless the  
12 retailer ships or delivers the property into the City or participates within the City in making the sale  
13 of the property, including, but not limited to, soliciting or receiving the order, either directly or  
14 indirectly, at a place of business of the retailer in the City or through any representative, agent,  
15 canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

16 (7) "A retailer engaged in business in the City" shall also include any retailer of any  
17 of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section  
18 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the  
19 Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with  
20 Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any  
21 purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

22 (d) Any person subject to use tax under this ordinance may credit against that tax any  
23 transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable  
24 for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with  
25 respect to the sale to the person of the property the storage, use or other consumption of which is  
26 subject to the use tax.

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1           Section 12.   Amendments. All amendments subsequent to the effective date of this  
2 Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes  
3 and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation  
4 Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code,  
5 shall automatically become a part of this Ordinance, provided however, that no such amendment  
6 shall operate so as to affect the rate of tax imposed by this Ordinance.

7           Section 13.   Enjoining collection forbidden. No injunction or writ of mandate or other  
8 legal or equitable process shall issue in any suit, action or proceeding in any court against the state  
9 or the City, or against any officer of the state or the City, to prevent or enjoin the collection under  
10 this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any  
11 amount of tax required to be collected.

12           Section 14.   Effective date. This Ordinance relates to the levying and collecting of City  
13 transactions (sales) and use taxes and shall take effect immediately.

14           Section 15.   Termination Date. The authority to levy the special tax imposed by this  
15 Ordinance shall expire upon the earlier of the 25-year anniversary of the operative date of this  
16 Ordinance as defined in Section 2 or the adoption of an ordinance by the voters of the City  
17 terminating this Ordinance, provided such termination shall not impair and shall be consistent with  
18 financial obligations and commitments of the City, if any, that are dependent on the imposition of  
19 the special tax.

20           Section 16.   Use of Tax Proceeds and Expenditure Plan. All proceeds of the taxes levied  
21 and imposed under this Ordinance shall be accounted for and paid into a special fund or account  
22 designated for overhead utility undergrounding and related and complementary fire safety projects  
23 only, including without limitation:

24           (a) The following preliminary list of potential overhead utility undergrounding projects for  
25 key evacuation routes, including all design, engineering, administration, project management,  
26 permitting and project approval costs, and construction:

- 27                   (1) Laguna Canyon Road, road frontage to El Toro Road;
- 28                   (2) Monterey Drive, Hawthorne Road to Linden Street;

- 1 (3) Thalia Street, Temple Terrace to 350 feet southwest of Glenneyre Street;
- 2 (4) Glenneyre Street, Laguna Avenue to Thalia Street;
- 3 (5) Glenneyre Street, Calliope Street to Arch Street;
- 4 (6) Bluebird Canyon, Eastman Way to Cress Street;
- 5 (7) Coast Highway, Agate Street to 200 feet southeast of Upland Road;
- 6 (8) Monterey Street/Virginia Way, West Street to 5th Avenue;
- 7 (9) Temple Hills Drive, northeast and southwest of San Remo Drive;
- 8 (10) Park Avenue, Wendt Terrace to 500 feet east of St. Anns Drive;
- 9 (11) Virginia Way, 7th Avenue to 9th Avenue; and
- 10 (12) San Joaquin Street, Hillcrest Drive to alley 100 feet northeast of N. Coast
- 11 Highway

12 The City Council shall have the ability to remove, modify or prioritize projects from the above  
13 preliminary list due to cost, environmental impacts, feasibility, and related considerations. The City  
14 Council shall also have the ability to add overhead utility undergrounding projects for other key  
15 evacuation routes and other areas. Proceeds of the special sales tax shall not in any event be  
16 expended to add vehicle travel lanes to Laguna Canyon Road, but may be expended for road  
17 improvements along Laguna Canyon Road necessary to construct underground facilities so that  
18 vaults, handholes, manholes, and transformers are located outside of vehicle travel lanes but within  
19 the Caltrans right-of- way to the extent feasible, and the negotiation and acquisition of real property  
20 interests necessary to complete the underground facilities or required above-grade facilities, such as  
21 transformers.

22 (b) Payment for or construction of utility connections on private property to underground  
23 facilities.

24 (c) Bond issuance, debt service on indebtedness, and reserve fund costs relating to projects  
25 authorized pursuant to this Ordinance.

26 (d) Fire safety measures, including without limitation creation and ongoing maintenance of  
27 fire breaks, fuel modification zones and similar vegetation management for fire prevention  
28 measures; implementation of new and evolving technologies for fire detection and suppression;

1 unmanned aerial support for survey and firefighting purposes; improved fire apparatus and  
2 emergency vehicle access to impaired-access neighborhoods; and enhancement of water supplies to  
3 combat fires.

4 (e) Projects and programs that provide complementary fire safety improvements based on  
5 emerging technologies.

6 (f) Proceeds of the taxes shall not be used for salaries of existing personnel, pensions,  
7 unfunded pension liabilities, or additional facilities, including fire or police stations.

8 (g) Because the proceeds of the taxes shall be used only for overhead utility undergrounding  
9 and related or complementary fire safety projects, this Section 16 shall satisfy the expenditure plan  
10 requirement of Section 7285.91(c) of the Revenue and Taxation Code.

11 Section 17. Use of Other Funding Sources. It is the intent of the People that revenues  
12 collected under this Ordinance shall supplement, rather than supplant, existing City expenditures  
13 for overhead utility undergrounding and fire safety. The City will continue to pursue and utilize  
14 alternative sources of funding, in addition to the proceeds of the taxes levied and imposed under this  
15 Ordinance, for overhead utility undergrounding and the related or complementary fire safety  
16 measures, improvements, and other expenditures described in Section 16 above.

17 Section 18. Audits and Oversight. The City Council shall establish or designate an audit  
18 and oversight committee that will review annually the expenditures of the proceeds of the taxes  
19 levied and imposed under this Ordinance and provide a subsequent public report to the City Council  
20 regarding the conformity of the expenditures to the provisions of this Ordinance.

21 Section 19. Severability. If any provision of this Ordinance or the application thereof to  
22 any person or circumstance is held invalid, the remainder of the Ordinance and the application of  
23 such provision to other persons or circumstances shall not be affected thereby.

24 Section 20. CEQA. This Ordinance is exempt from the requirements of the California  
25 Environmental Quality Act ("CEQA") because it is not a "project" within the meaning of CEQA.  
26 The voters' adoption of this Ordinance does not constitute the approval of a "project" for reasons  
27 that include, but are not limited to, the following: the Ordinance pertains to the conversion of  
28 overhead utility distribution system facilities to undergrounding and to related and complementary

1 fire safety projects; the Expenditure Plan referenced in Section 16 does not involve a commitment  
2 to or authorize the construction of any project that may result in any direct or indirect physical  
3 change in the environment; and the Expenditure Plan is a mechanism for the funding of potential  
4 future projects, the timing, approval, and construction of which may be modified or not implemented  
5 depending on a number of factors, including future site-specific environmental review pursuant to  
6 CEQA. (See Pub. Res. Code § 21080; Cal. Code of Regs., title 14, §§ 15060(c), 15302(d), 15352,  
7 15378.)

8 APPROVED FOR PLACEMENT ON THE BALLOT on July 17, 2018 pursuant to  
9 Resolution No. 18.041.

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Mayor

ATTEST

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City Clerk