

RESOLUTION NO. 4793

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER CALLING FOR THE PLACEMENT OF A MEASURE ON THE BALLOT OF THE NOVEMBER 8, 2016 ELECTION TO ADOPT A TRANSACTIONS AND USE TAX, AND PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS REGARDING THIS SAME TAX MEASURE

WHEREAS, due to Sacramento takeaways, the City of Westminster ("City") has lost over \$12 million annually in local tax dollars, and now faces a \$5.3 million budget deficit which will double by 2017; and

WHEREAS, the City has depleted its rainy-day fund, will soon be unable to present a balanced budget as required by state law, and is facing Bankruptcy as soon as the 2018 Fiscal Year; and

WHEREAS, the City Council holds the authority to levy a Transactions and Use Tax for general purposes pursuant to Revenue and Taxation Code Section 7285.9, subject to approval by a majority vote of the electorate pursuant to Article XIII C, Section 2 of the California Constitution ("Proposition 218"); and

WHEREAS, without taking a formal position on the matter, the City Council has decided to submit to the voters the question whether the attached ordinance should be approved, enacting a Transactions and Use Tax ("Sales Tax") of one percent (1%) on the sale of all tangible personal property sold at retail in the City; and

WHEREAS, The City Council has requested the consolidation of the City's General Municipal Election with the Statewide General Election by adopting Resoltuion No. 4782 on May 11, 2016; and

WHEREAS, the Sales Tax would be a general tax, the revenue of which would be placed in the City's general fund and would be used to pay for essential City services.

WHEREAS, the proposed ordinance includes strict accountability provisions, such as independent citizens' oversight, public spending reports and annual independent financial audits, to ensure every cent is used effectively, efficiently and as promised to voters; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WESTMINSTER, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

SECTION 2. Pursuant to Government Code Section 53724, Revenue and Taxation Code Section 7285.9 and any other applicable requirements of California law relating to general law cities, the City Council, by a two-thirds vote, hereby calls and orders to be held in the City of Westminster on Tuesday, November 8, 2016, a General Municipal Election for the purpose of submitting a ballot measure to the voters, seeking the approval of the ordinance attached hereto as Exhibit "A" and incorporated herein by this reference.

SECTION 3. The City Council, pursuant to Elections Code Section 9222, hereby orders that the following question be submitted to the voters of the City of Westminster at the election to be held on November 8, 2016:

<p>Westminster Police/9-1-1/Essential City Services Measure. To address state takeaways of local funds, protect property values, drinking water supplies and prevent cuts to: 9-1-1 response times; police officers/firefighters/paramedics; drug/gang prevention, domestic violence/sex crimes/human trafficking units; and other general city services, shall an ordinance establishing a 1% transactions and use (sales) tax, expiring December 31, 2022, providing estimated \$13.9 million annually, requiring audits, citizens' oversight, all funds remaining in Westminster, be adopted?</p>	<p>YES</p>
	<p>NO</p>

SECTION 4. The City Clerk is hereby directed to transmit a copy of the measure set forth in Section 3 above to the City Attorney, who shall prepare an impartial analysis of the measure in accordance with Elections Code Section 9280. The impartial analysis shall include a statement indicating whether the measure was placed on the ballot by the City Council. In the event that the entire text of the measure is not printed on the ballot, or in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font type, the following: "The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the election official's office at (714) 548-3174 and a copy will be mailed at no cost to you."

SECTION 5. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. Notice of the time and place of the election is hereby given. Additionally, the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 7. The City Treasurer is hereby authorized and directed to appropriate the necessary funds to pay for the City's cost of placing the ballot measure on the election ballot.

SECTION 8. That arguments for and against said measure may be filed in accordance with applicable provisions of the law. That the Council does not authorize the Council as a body or any individual member of the Council to file a written argument or any rebuttal argument for or against the measure. The City Clerk shall consider other arguments and rebuttal arguments filed by bona fide associations or individual residents who are eligible to vote in accordance with Elections Code Sections 9282, 9285 and 9287. Pursuant to Section 9285 of the California Elections Code, the provisions of which are hereby adopted, 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, and copies of the argument against to the authors of the argument in favor. The rebuttal arguments shall be filed with the City Clerk not more than ten (10) days after the final date for filing direct arguments. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut. The text of the measure shall be printed on the ballot in the voter information portion of the sample ballot.

SECTION 9. Pursuant to Elections Code section 12111, the City Clerk's Office shall publish the required notice in a newspaper of general circulation in the City of Westminster.

SECTION 10. The City Council finds that this Resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA guidelines, California Code of Regulations Title 14, Chapter 3 because it has no potential for resulting in physical change to the environment directly or indirectly.

SECTION 11. Severability. The provisions of this Resolution are severable, and if any provision of this Resolution is held invalid that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect and not be affected by such invalidity.

SECTION 12. This resolution shall become effective upon its adoption.

SECTION 13. The City Clerk shall certify to the adoption of this Resolution.

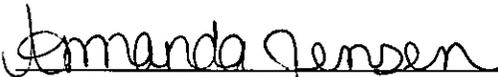
PASSED, APPROVED, and ADOPTED this 22nd day of June 2016, by the following vote:

AYES:	COUNCIL MEMBERS:	TA, CONTRERAS, CAREY, RICE
NOES:	COUNCIL MEMBERS:	DIEP
ABSENT:	COUNCIL MEMBERS:	NONE



TRI TA, MAYOR

ATTEST:



AMANDA JENSEN, CITY CLERK

APPROVED AS TO FORM:



RICHARD D. JONES, CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF WESTMINSTER)

I, Amanda Jensen, hereby certify that I am the duly appointed Clerk of the City of Westminster, and that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Westminster held on the 22nd day of June 2016.



Amanda Jensen
City Clerk

Exhibit "A": Transactions and Use Tax Ordinance

THE ORDINANCE BELOW WILL BE PRESENTED TO THE VOTERS OF THE CITY OF WESTMINSTER AT THE NOVEMBER 8, 2016 ELECTION.

ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF WESTMINSTER, ADDING CHAPTER 3.10 TO TITLE 3 (REVENUE AND FINANCE) OF THE WESTMINSTER MUNICIPAL CODE, RELATING TO A TRANSACTIONS AND USE ("SALES") TAX

WHEREAS, due to Sacramento takeaways, the City of Westminster ("City") has lost over \$12 million annually in local tax dollars, and now faces a \$5.3 million budget deficit which will double by 2017;

WHEREAS, the City has depleted its rainy-day fund, will soon be unable to present a balanced budget as required by state law, and is facing Bankruptcy as soon as the 2018 Fiscal Year;

WHEREAS, this ordinance ensures that our city has a guaranteed source of funding for local services that cannot be seized by Sacramento, and requires that our tax dollars remain local and can only be used in Westminster;

WHEREAS, in just the last year there have been more than 42,000 9-1-1 calls in Westminster that have required emergency medical attention. This ordinance will help to maintain firefighters and paramedics, and keep rapid 9-1-1 emergency response times so that people suffering from heart attacks, strokes or other medical emergencies continue to receive the immediate, life-saving care they need; and

WHEREAS, public safety is a top priority in Westminster, comprising 77% of the City's current budget, and without a local funding source the City will be forced to make further significant cuts to public safety services, potentially including gang and drug prevention; neighborhood police patrols; reducing the number of paramedics and firefighters; and consider eliminating the Police Narcotics, Domestic Violence, Sex Crimes, and human trafficking units in the Westminster Police Department; and

WHEREAS, our community has a history of gang problems, and currently there are over 100 active gang members in Westminster.

WHEREAS, the adoption of this revenue measure will prevent further deep cuts to gang and drug prevention programs, and will continue after school programs that keep children and youth off the streets and away from gangs and drugs; and

WHEREAS, we need to do more to stimulate local economic growth and create

more well-paying local jobs for residents, and additional funds will help Westminster remain attractive to businesses, visitors and homebuyers by fixing blight and filling vacant storefronts with new businesses, strengthening local property values; and

WHEREAS, this ordinance provides the funds necessary to prevent further cuts to basic programs such as the continued provision of fast 911 emergency, police and fire protection response times, preventing cuts to paramedics, gang prevention officers and firefighters, protecting drinking water supplies, repairing streets and potholes, and providing a good environment for businesses, and helping to financially stabilize the city and prevent bankruptcy; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7285.9, the City of Westminster has the authority to levy a Transactions and Use Tax for general purposes, subject to approval by a majority vote of the electorate pursuant to Article XIII C, Section 2 of the California Constitution ("Proposition 218")

WHEREAS, the people of the City desire to levy a one percent (1%) Transactions and Use Tax ("Sales Tax") on the sale of all tangible personal property sold at retail in the City;

WHEREAS, the Sales Tax would be a general tax, the revenue of which would be placed in the City's general fund and used to pay for essential City services, including public safety.

WHEREAS, this ordinance includes strict accountability provisions such as independent citizens' oversight, public spending reports and annual independent financial audits to ensure that every cent of our money is used effectively, efficiently, and as promised to voters; and

WHEREAS, the people of the City believe that only a locally approved voter funding source would guarantee that new revenue stays in Westminster to help the City provide essential services to its residents; and

THE PEOPLE OF THE CITY OF WESTMINSTER DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3.10 (Transactions and Use Tax) is hereby added to Title 3 (Revenue and Finance) of the Westminster Municipal Code as follows:

3.10.005. This ordinance shall be known as the "City of Westminster Transactions (Sales) and Use Tax Ordinance." The City of Westminster hereinafter shall be referred to as "City." This ordinance shall be applicable in the incorporated territory of the City.

3.10.010 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 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 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 Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue 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.

3.10.020 Contract with state.

Prior to the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance ("operative date"), the City shall contract with the State Board of Equalization 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 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.

3.10.030 Transactions tax rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City 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.

3.10.040 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 State Board of Equalization.

3.10.050 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.

3.10.060 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.

3.10.070 Limitation 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 the City of Westminster shall be substituted therefor. However, the substitution shall not be made when:
 1. The word " State' is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California.
 2. The result of that substitution would require action to be taken by or against this 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 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.

3.10.080 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.

3.10.090 Exemptions, exclusions and termination.

- 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 subsection (C), 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) of this subsection (C), 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.
- E. The transactions and use tax imposed hereunder shall be levied until December 31, 2022, at which time it will terminate.

3.10.100 Amendments.

- A. 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.
- B. The following amendments shall not be effective unless they are first approved by the voters of the City: any increase to the tax rate; any revision to the methodology for calculating the tax such that a tax increase would result; any imposition of the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically under state law by operation of section 3.10.100A). Except as limited above, the City Council is authorized to amend this Ordinance.

3.10.110 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.

3.10.120 Fiscal Accountability Provisions; Citizen Oversight and Independent Annual Financial Audits.

Consistent with the City's ongoing commitment to citizen involvement as a fundamental principle of good government, specific citizen oversight and fiscal accountability provisions regarding the revenues collected as a result of the adoption of this ordinance are hereby established as follows:

A. Independent Annual Financial Audit. The amount generated by this new general purpose revenue source and how the revenues were used shall be included in the annual audit of the City's financial operations by an independent certified public accountant.

B. Integration of the Use of Funds into the City's Budget and Strategic Planning Process. The estimated revenue and proposed use of funds generated by this ordinance shall be an integral part of the City's budget and strategic planning process, and significant opportunities will be provided for meaningful participation by citizens in determining priority use of these funds.

C. Annual Community Report. A written report will be provided annually to every household in the City detailing how much revenue is being generated by the ordinance

and how funds are being used.

D. Bi-annual Citizen Oversight Meeting. An oversight committee appointed by City Council will convene twice in a yearly period to review and discuss the use of the revenue generated by the measure. City staff will also be available to meet with any group that requests a specific briefing with their members to discuss and answer questions about the revenue generated by the measure and its uses.

SECTION 2. Approval by the Voters.

Pursuant to California Elections Code section 9217, this Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Westminster voting at the Regular Election of November 8, 2016, and shall take effect ten (10) days after the City Council has certified the results of that election by resolution.

SECTION 3. 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.

I hereby certify that this Ordinance was PASSED, APPROVED, AND ADOPTED by the people of the City of Westminster at the general election held on this 8th day of November, 2016.

TRI TA, MAYOR

ATTEST:

AMANDA JENSEN, CITY CLERK

APPROVED AS TO FORM:

RICHARD D. JONES, CITY ATTORNEY