

RESOLUTION NO. 7614

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SOUTH PASADENA, CALIFORNIA,
DECLARING A FISCAL EMERGENCY, AND CALLING FOR THE
PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT AT
THE NOVEMBER 5, 2019, SPECIAL MUNICIPAL ELECTION FOR
THE SUBMISSION TO THE QUALIFIED VOTERS OF A PROPOSED
ORDINANCE ADDING ARTICLE VIII (“TRANSACTIONS AND USE
TAX”) TO CHAPTER 18 (“BUSINESS, PROFESSIONS AND TRADES”) OF
THE SOUTH PASADENA MUNICIPAL CODE TO ESTABLISH A
THREE-QUARTERS PERCENT (THREE-QUARTER CENT)
GENERAL TRANSACTIONS AND USE TAX (SALES TAX)**

WHEREAS, the City Council of the City of South Pasadena is authorized to levy a Transactions and Use Tax for general purposes pursuant to California Revenue and Taxation Code Section 7285.9, subject to approval by a two-thirds vote of all members of the City Council and by a majority vote of the electorate pursuant to Article XXII, Section 2 of the California Constitution ("Proposition 218"); and

WHEREAS, pursuant to California Elections Code Section 9222, the City Council has authority to place initiative measures on the ballot to be considered at a Municipal Election; and

WHEREAS, the City Council would like to submit to the voters an initiative measure establishing a general Transactions and Use Tax ("TUT") on the sale and/or use of all tangible personal property sold at retail in the City at a rate of .75% or three-quarters of a cent (3/4¢); and

WHEREAS, the TUT is a general sales tax, the revenue of which will be placed in the City's general fund and will be used to pay for important general City services; and

WHEREAS, revenue generated by this measure can be used to address community identified spending priorities, such as: maintaining local 911, police and fire services, preventing and investigating property crimes, like thefts and burglaries, keeping fire stations operating at current levels, and maintaining police patrols around neighborhood schools and parks, street maintenance; park maintenance; community service programs for seniors and youth; and library services; and

WHEREAS, South Pasadena faces significant challenges in short- and long-term financial sustainability, due to rising expenses and flat or declining revenues—specifically, the costs of staffing, which make up the majority of the cost of City services, rise every year, as do costs of materials and professional services. Additionally, property tax increases are minimal, UUT revenues are declining and sales tax revenue is flat or declining;

WHEREAS, according to the 2019/2020 Budget presentation beginning at the public hearing on May 15, 2019, even at current levels of infrastructure investment and necessary

investment in personnel costs, expenses will exceed revenues in fiscal year 2019/2020, and therefore, maintaining the status quo is fiscally unsustainable; further, attempts to downsize the organization, reducing staffing and programs will be insufficient to keep pace with inflation; and

WHEREAS, the single greatest cost to the City is the cost of personnel, which includes salary, medical benefits, pension costs and training, and South Pasadena employees are currently paid 10% to 30% below average for cities in the San Gabriel Valley, which has led to high turnover rates and positions going unfilled due to lack of applicants; additionally, increased demands from the California Public Employees Retirement System (CalPERS) have added significant costs in that CalPERS has mandated huge payments from member cities to cover unfunded liability resulting from the facts that CalPERS investments have lost 35% of their value during the recession and the CalPERS pension fund is presently funding at just under 70%;

WHEREAS, maintenance of City infrastructure is also a significant cost burden to the City, and the City's five-year Capital Improvement Plan projects the need for \$150 million in capitals needs through fiscal year 2024, while available funding is less than one-half the amount needed to implement the Capital Improvement Plan; and

WHEREAS, in spite of conservative fiscal planning, given the rising costs and declining revenues, the City estimates that without additional revenue sources, it will have a budget shortfall of \$1 million in fiscal year 2019/2020, increasing to a shortfall of \$2 million in five years; and

WHEREAS, people live in South Pasadena because it offers a better quality of life and better services than nearby communities, and the City seeks to keep taxpayer dollars local; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218, an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, pursuant to Proposition 218 (California Constitution Article XIII C, §2(b)), an election for the approval of a new or increased general tax must generally be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, Proposition 218 permits the City Council to call a special election for the voters to consider imposing, increasing or extending a general tax if the City Council finds, by a unanimous vote, that there exists an emergency requiring a special election to be conducted earlier than the next regularly scheduled general election at which city council members are to be elected; and

WHEREAS, the next regularly scheduled general election at which city council members are to be elected is not until November 6, 2020; and

WHEREAS, for the reasons set forth herein and discussed at the City's May 15, 2019 Budget review and review of long-term financial sustainability strategies, the health, safety and general welfare of the citizens of the City would be endangered if the City were unable to place this Measure before its voters prior to November 6, 2020; and

WHEREAS, the circumstances described above create an emergency situation warranting the placement of the Measure on the next available special election ballot to permit the voters to decide on the Measure pursuant to Proposition 218; and

WHEREAS, the initiative ordinance to be considered by the qualified voters and the terms of approval, and collection and use of the general TUT are described and provided for in the initiative ballot measure attached hereto as Exhibit "A" (the "Measure") and by this reference made an operative part hereof, in accordance with all applicable laws.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DOES HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. Findings. The City Council finds that all of the preceding recitals are true and correct and are hereby incorporated and adopted as findings and determinations by the City Council as if fully set forth herein.

SECTION 2. Declaration of Emergency. Pursuant to California Constitution, Article XIII C, Section 2(b), the City Council, **by a unanimous vote**, hereby declares the existence of an emergency in that there are imminent financial risks and dangers, as described above, to the public welfare and the City's financial ability to provide municipal services at current levels and without disruption, so that a special election is necessary to address such risks and dangers.

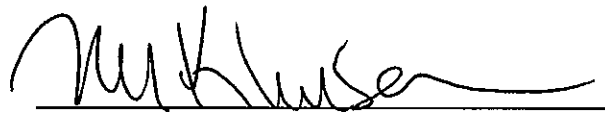
SECTION 3. Submission of Measure. Pursuant to California Constitution, Article XIII C, Section 2(b), California Elections Code Section 9222, California Revenue and Taxation Code Section 7285.9 and any other applicable requirements of the laws of the State of California relating to general law cities, the City Council, **by a unanimous vote**, hereby calls and orders to be held in the City of South Pasadena on Tuesday, November 5, 2019, a Special Municipal Election for the purpose of submitting the Measure attached hereto as Exhibit "A" and incorporated herein by this reference to the qualified electors of the City.

SECTION 4. Pursuant to Revenue & Taxation Code Section 7285.91, Election Code Section 9222 and Government Code Section 53724, the City Council hereby orders the following question regarding the adoption of an ordinance to be submitted to the voters at the special municipal election called for Tuesday, November 5, 2019:

SECTION 10. Public Examination. Pursuant to California Elections Code Section 9295, this measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The Clerk shall post notice in the Clerk's office of the specific dates that the examination period will run.


SECTION 11. The City Clerk of the City of South Pasadena shall certify to the passage and adoption of this resolution and its approval by the City Council and shall cause the same to be listed in the records of the City.


PASSED, APPROVED AND ADOPTED ON this 19th day of June, 2019.


Marina Khubesrian, M.D., Mayor

ATTEST:

APPROVED AS TO FORM:


Evelyn G. Zneimer, City Clerk
(seal)


Teresa L. Highsmith, City Attorney


I HEREBY CERTIFY the foregoing resolution was duly adopted by the City Council of the City of South Pasadena, California, at a regular meeting held on the 19th day of June, 2019, by the following vote:

AYES: Cacciotti, Joe, Schneider, Mahmud, and Mayor Khubesrian

NOES: None

ABSENT: None

ABSTAINED: None


Evelyn G. Zneimer, City Clerk
(seal)

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SOUTH PASADENA
IMPOSING A GENERAL TRANSACTIONS AND USE TAX UPON
APPROVAL BY VOTERS, TO BE ADMINISTERED
BY THE CALIFORNIA DEPARTMENT OF
TAX AND FEE ADMINISTRATION**

The people of the City of South Pasadena do hereby ordain as follows:

Section 1. Article VIII ("Transactions and Use Tax") is hereby added to Chapter 18 ("Business, Professions and Trades") of the South Pasadena Municipal Code with the following provisions:

Section 18.130 Title. This chapter shall be known as the City of South Pasadena Transactions and Use Tax Ordinance. The City of South Pasadena will hereinafter be called City. This chapter shall be applicable in the incorporated territory of the City.

Section 18.131 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 18.132 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 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 State California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

- D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue 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.

Section 18.133 Contract with State. Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this 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 execution of such a contract.

Section 18.134 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 .75% 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.

Section 18.135 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.

Section 18.136 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 .75% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 18.137 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.

Section 18.138 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 a 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 to 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. 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.

C. "A retailer engaged in business in the City" shall also include:

- a) any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in California or for delivery in California by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). That retailer shall be required to

collect use tax on the sale of tangible personal property delivered to an address in the City. For purposes of this subdivision, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

Section 18.139 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.

Section 18.140 Exemptions and Exclusions.

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
 1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
 2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
 - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

- b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
 3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
 4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
 5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
 1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance;
 2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California;
 3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this chapter;
 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 chapter.
 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 include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

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

Section 18.141 Amendments. All amendments subsequent to the Effective Date of this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become adopted and part of this chapter; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

Section 18.142 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 chapter, 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.

Section 18.143 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter or the

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

Section 18.144 Effective Date. This chapter relates to the levying and collecting of City transactions and use taxes and shall take effect immediately.

Section 2. Execution. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance upon certification by the City Council of the results of the election approving this Ordinance.

PASSED AND ADOPTED by the City Council of the City of South Pasadena, State of California, on [date] by the following vote:

AYES:

NOES:

ABSENT:

Marina Khubesrian, M.D., Mayor

Attest:

Evelyn Zneimer, City Clerk