

RESOLUTION NO. 5064

A RESOLUTION ADDING A PROPOSITION TO THE BALLOT FOR THE PREVIOUSLY CALLED APRIL 10, 2018 ELECTION PURSUANT TO ELECTIONS CODE § 9222.

The City Council of the city of El Segundo resolves as follows:

SECTION 1: Pursuant to Elections Code § 9222, the City Council places an ordinance on the ballot for the general municipal election scheduled for Tuesday, April 10, 2018 as previously established and implemented by City Council Resolution Numbers 5063, 5061, and 5062 adopted on December 5, 2017 and December 19, 2017.


SECTION 2: A copy of the ordinance to be considered by the voters is attached as Exhibit "A," and incorporated by reference, and is approved by the City Council through adoption of this Resolution. The ballot measure will be designated as Measure C on the ballots, unless it must be otherwise designated to accommodate the consolidation of the City's election with other elections.

SECTION 3: Pursuant to Elections Code §§ 9222 and 13119 the exact form of the question to be voted on at the election as it should appear on the ballot is as follows:

SHALL THE MEASURE AUTHORIZING A THREE-QUARTER CENT TRANSACTIONS AND USE TAX (SALES TAX), WHICH SHALL BE IMPOSED BY THE CITY WHEN A COUNTY SALES TAX MEASURE HAS QUALIFIED FOR A BALLOT AND MAY CONTINUE TO BE IMPOSED ONLY IF IT RECEIVES VOTER APPROVAL, TO FUND GENERAL MUNICIPAL SERVICES, FOR EXAMPLE, POLICE AND FIRE SERVICES SENIOR CITIZEN SERVICES, RECREATION SERVICES AND STREET MAINTENANCE" BE ADOPTED (GENERATES APPROXIMATELY \$9 MILLION ANNUALLY IN PERPETUITY) ?	Yes <input type="checkbox"/> No <input type="checkbox"/>
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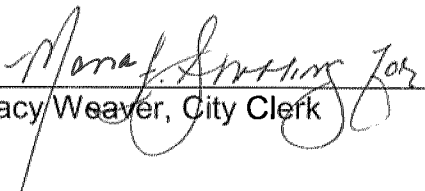
SECTION 4: In accordance with Government Code § 53724 and Revenue and Tax Code § 7285.9, this Resolution must be adopted upon a two-thirds (2/3) vote and will become effective immediately upon adoption.

PASSED, APPROVED, AND ADOPTED RESOLUTION No. 5064 this 19th day of December, 2017.




Suzanne Fuentes, Mayor

ATTEST:



Tracy Weaver, City Clerk

APPROVED AS TO FORM:



Mark D. Hensley, City Attorney

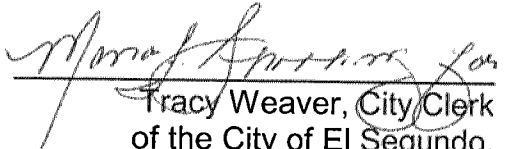
CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF EL SEGUNDO)

I, Tracy Weaver, City Clerk of the City of El Segundo, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Resolution No. 5064 was duly passed, approved and adopted by said City Council at a regular meeting held on the 19th day of December, 2017, approved and signed by the Mayor, and attested to by the City Clerk, by the following vote:

AYES: Mayor Fuentes, Mayor Pro Tem Boyles, Council Member Brann, Council
 Member Dugan and Council Member Pirsztuk
NOES: None
ABSENT: None
ABSTAIN: None

WITNESS MY HAND THE OFFICIAL SEAL OF SAID CITY this 28th day of December, 2017.



Tracy Weaver, City Clerk
of the City of El Segundo,
California

ORDINANCE NO. xx

PROPOSITION AUTHORIZING IMPOSITION OF A THREE-QUARTER CENT TRANSACTIONS AND USE TAX (SALES TAX) TO FUND GENERAL MUNICIPAL SERVICES, INCLUDING, WITHOUT LIMITATION, POLICE AND FIRE SERVICES, RAPID RESPONSE TO EMERGENCIES, SERVICES TO SENIOR CITIZENS, RECREATION FIELDS AND SERVICES AND MAINTENANCE AND REPAIR OF CITY STREETS AND LANDSCAPING TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION.

The people of the city of El Segundo do ordain as follows:

SECTION 1: A new Chapter 3-7 is added to Title 3 of the El Segundo Municipal Code ("ESMC") to read as follows:

"Chapter 7. Transactions and Use Tax

3-7-010: **TITLE.** This Chapter is entitled the "El Segundo Transactions and Use Tax." The term "City," as used within this Chapter, is the city of El Segundo. This Chapter is applicable in the incorporated territory of the City.

3-7-020: **OPERATIVE DATE.** "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this Chapter, the date of such adoption being as set forth below.

3-7-030: **PURPOSE.** This Chapter is adopted to achieve the following, among other purposes, and directs that its provisions 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 of the Revenue and Taxation Code which authorizes the City to adopt this Chapter which becomes operative if a majority of the electors voting on the ballot measure approving the Chapter vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt retail transactions and use tax regulations 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 retail transactions and use tax regulations 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.

3-7-040: **CONTRACT WITH STATE.** Before the operative date, the City must contract with the State Board of Equalization to perform all functions incident to the administration and operation of this Chapter; provided, that if the City has not contracted with the State Board of Equalization before the operative date, it must nevertheless so contract and in such a case the operative date is the first day of the first calendar quarter following the execution of such a contract.

3-7-050: **TRANSACTIONS TAX RATE.** For the privilege of selling tangible personal property at retail, a transaction tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 0.75% 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.

3-7-060: **PLACE OF SALE.** For the purposes of this Chapter, 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 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 is determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3-7-070: **USE TAX RATE.** A use tax is 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 0.75% of the sales price of the property. The sales price includes delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3-7-080: **ADOPTION OF PROVISIONS OF STATE LAW.** Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are adopted and made a part of this Chapter as though fully set forth.

3-7-090: **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 will be substituted. However, the substitution is not 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 Chapter.
 - 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" is 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 of the Revenue and Taxation Code.

3-7-100: **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 is not required by this Chapter.

3-7-110: **EXEMPTIONS AND EXCLUSIONS.**

- A. There is 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 is 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 before 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 before 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 is 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 Chapter, 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 before 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 before 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 is 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 is not 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, without limitation, 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" also includes 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 is 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 Chapter 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.

3-7-120: **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, automatically become a part of this Chapter, provided however, that no such amendment operates so as to affect the rate of tax imposed by this ordinance.

3-7-130: **ENJOINING COLLECTION FORBIDDEN.** No injunction or writ of mandate or other legal or equitable process may 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.

3-7-140: **AUTOMATIC SUSPENSION, IMPLEMENTATION.** The taxes authorized by this chapter are subject to the following:

- A. For purposes of this Section, the term "district" has the meaning set forth in

Revenue and Taxation Code § 7252 to the extent such a district may have taxing powers within the City's jurisdiction under applicable law. For example, and without limitation, the County of Los Angeles is a district for purposes of this Section.

- B. The City will suspend collection of the taxes authorized by this chapter so long as a district does not place a measure on the ballot seeking voter authorization for a new or increased 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 Sections 7285 or 7285.5 of Part 1.7 of Division 2 of the Revenue and Taxation Code.
- C. Should a district place a transaction and use tax measure on the ballot as contemplated by Subsection B, then the City will promptly commence collection of the taxes authorized by this chapter.
- D. Should a ballot measure contemplated by Subsection C fail to become effective then, notwithstanding any other provision of this chapter, the City will suspend collection of the taxes authorized by this chapter.
- E. Nothing in this Section is intended to, nor will it, limit the number of times the City may suspend or implement tax collection authorized by this chapter based upon the actions contemplated in Subsections B through C.
- F. Revenue from any taxes collected between the time periods contemplated by Subsections B through D may be retained by the City for general purposes and need not be refunded.

3-7-150: **SUSPENSION OR REDUCTION.** Nothing in this Chapter requires the City Council to collect a tax; the city council may suspend or reduce tax rates imposed by this chapter by resolution after a public hearing.

3-7-160: **CITY COUNCIL AUTHORITY TO AMEND.** Except for amendments that would increase the tax rate, impose the tax on transactions and uses not previously subject to the tax, or be inconsistent with the purposes of this chapter, the City Council may exercise all applicable powers set forth in the Government Code including, without limitation, amending this chapter by ordinance upon three affirmative votes by its members. It may, in addition, adopt by ordinance or resolution such additional regulations that may be necessary to implement the purposes of this chapter."

SECTION 2: Environmental Analysis. This Proposition is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 2100, et seq., "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, et seq.) because it establishes rules and procedures to implement government funding mechanisms; does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and constitutes an

organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this Resolution does not constitute a “project” that requires environmental review (see specifically 14 CCR § 15378(b)(4-5)).

SECTION 3: Continuity. Repeal of any provision of the El Segundo Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before this Ordinance’s effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 4: Severability. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the city council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 5: Validity of Previous Code Sections. If this the entire Ordinance or its application is deemed invalid by a court of competent jurisdiction, any repeal of the ESMC or other regulation by this Ordinance will be rendered void and cause such ESMC provision or other regulation to remain in full force and effect for all purposes.

SECTION 6: Voter Approval. This Proposition will enact and impose a general tax. Accordingly, it will be submitted to a general election on April 10, 2018 for voter approval. If a majority of voters vote in favor of this Proposition, it will become valid and binding on the date that the City Council certifies the election results. Should the provisions of Government Code §§ 53720 *et seq.* or California Constitution Article XIIC be repealed or amended, or interpreted by the courts so that voter approval is not required for enacting this Ordinance, then this Ordinance will take effect as provided for all other City ordinances and may be amended in the same manner as all other City ordinances.

SECTION 7: Miscellaneous.

- A. This Proposition must be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this Proposition is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this Proposition. The voters declare that this Proposition, and each section, sub-section, sentence, clause, phrase, part, or portion thereof, would have been adopted or passed irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases, part, or portion is found to be invalid. If any provision of this Proposition is held invalid as applied to any person or circumstance, such invalidity does not affect any application of this Proposition that can be given effect without the invalid application.
- B. If any portion of this Proposition is held by a court of competent jurisdiction

to be invalid, we the People indicate our strong desire that: (i) the City Council use its best efforts to sustain and reenact that portion, and (ii) the City Council implement this Proposition by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Proposition, and then adopting or reenacting such portion as necessary or desirable to permit the planning and development of the Project.

- C. This Proposition must be broadly construed in order to achieve the purposes stated in this Proposition. It is the intent of the voters that the provisions of this Proposition be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Proposition.

SECTION 8: The Mayor will sign this Ordinance and the City Clerk will attest and certify to the passage and adoption of this Ordinance if a majority of the voters voting in the City's general election on April 10, 2018 approve the proposition asking whether the voters approve this Ordinance.

SECTION 9: Pursuant to Revenue and Taxation Code § 7265, this Ordinance will become operative on the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED ORDINANCE No. _____ this ____ day of _____, 2018.

Suzanne Fuentes, Mayor

ATTEST:

Tracy Weaver, City Clerk

APPROVED AS TO FORM:

Mark D. Hensley, City Attorney