



**CITY OF
LA MESA**

JEWEL of the HILLS

INTEROFFICE MEMO

DATE: July 29, 2008
TO: Mayor and Councilmembers
FROM: Sandra L. Kerl, City Manager *SK*
SUBJECT: Resolution Placing Tax Measure on the Ballot

As per the Council's direction at your last meeting, attached is a resolution placing the sales tax measure to fund vital City services on the November ballot. As you are aware, a four-fifths vote is necessary to adopt the resolution.

RESOLUTION NO. 2008-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA MESA, CALIFORNIA, ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE RELATING TO THE ESTABLISHMENT OF A LOCAL TRANSACTIONS AND USE TAX (SALES TAX) AT THE GENERAL ELECTION TO BE HELD ON TUESDAY NOVEMBER 4, 2008 AS CALLED BY RESOLUTION

WHEREAS, there has been a 73% increase in robberies and assaults since 2004, 13 bank robberies in the City of La Mesa last year, and the Police Department estimates that approximately 100 gang members live in the City;

WHEREAS, robberies, auto thefts, burglaries and violent crime have sharply increased in La Mesa, and the City is compelled to recruit and retain quality police officers to maintain a strong police force that will keep crime and gangs out of La Mesa;

WHEREAS, the quality of La Mesa streets are deteriorating, and funding is needed to fix potholes, repair sidewalks and repave local streets to improve safety and traffic flow throughout La Mesa;

WHEREAS, due to a lack of funds, the City of La Mesa has cut back on maintaining City parks, ball fields and open space and funding is needed to upgrade and maintain fields, and replace and repair playground equipment;

WHEREAS, since 1990 the State has taken over \$16 Million in local tax revenue from La Mesa;

WHEREAS, the State is facing a \$17.2 Billion deficit this year, and the Legislature has already proposed funding cuts that threaten the quality of essential City services;

WHEREAS, due to declining revenue, increased costs and years of "state money grabs" the City cannot maintain and improve essential services;

WHEREAS, reserve funds have been tapped to maintain service levels and these one-time moneys will run out in less than two years;

WHEREAS, similar to cities throughout the State, La Mesa will be compelled to implement devastating service cuts without a local funding measure;

WHEREAS, the La Mesa Vital City Services Measure (this "Measure") will provide a local funding solution to ensure funding to repair neighborhood streets, maintain senior services, and expand youth anti-drug and anti-gang programs;

WHEREAS, this Measure would ensure that the City's reserves can be replenished and that there will be sufficient funding to maintain reserves at levels expected by the financial markets based on fiscally sound best practices;

WHEREAS, Revenue and Taxation Code Section 7285.9 authorizes the City of La Mesa, subject to approval by a majority vote of the qualified voters of the City voting in an election on the issue, to levy a transactions and use tax pursuant to the Transactions and Use Tax Law in multiples of 0.25% for general revenue purposes;

WHEREAS, Section 2 (b) of Article XIII C of the California Constitution added by Proposition 218 effective November 1996 requires that a measure proposing a general tax be submitted to the voters at an election consolidated with a regularly scheduled general election for members of the governing body of the local government;

WHEREAS, the La Mesa City Council did, by Resolution No. 2008-057 and Resolution No. 2008-058, respectively, call said General Municipal Election and requested the County Board of Supervisors to approve consolidation of the election with the Statewide General Election to be held on the same day; and

WHEREAS, pursuant to California Constitution Article XIII C Section 2 (b) and Elections Code Section 10201 the City has determined to submit a measure to the voters to enact an ordinance establishing a transactions and use tax at the City's next regular general municipal election.

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

SECTION 1. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question:

<p>“La Mesa Vital City Services Measure. To maintain essential City services including natural disaster response/preparedness programs; youth anti-gang/anti-drug prevention; retaining quality firefighters/paramedics and police officers; increasing street paving/pothole repair; enhancing trolley station security; maintaining the senior community center, after school tutoring and recreation programs; and other general services shall the City sales tax be increased by three-quarters of a cent, requiring annual audits, public expenditure reports, with 20 year expiration?”</p>	Yes
	No

SECTION 2. The City Clerk is hereby directed to forward a copy of this Resolution to the Board of Supervisors and the Registrar of Voters for inclusion in the ballot for the November 4, 2008 General Municipal Election.

SECTION 3. The Measure shall pass only if a majority of the votes cast by voters voting on the Measure are “yes” votes and shall, if passed, take precedence over any other conflicting measure receiving less votes in this election.

SECTION 4. The City Council hereby directs the City Attorney to prepare an impartial written analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on existing law and the operation of the Measure. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

SECTION 5. The City Council authorizes its members to file written arguments, not to exceed 300 words, in favor of or against the Measure described above and which is contained in Exhibit A to this Resolution, which Exhibit is incorporated by reference. All written arguments filed by any person in favor of or against the Measure shall be accompanied by the printed names and signatures of the persons submitting the arguments as required by applicable law and any printed names, signatures and arguments may be filed until the time and date fixed by the City Clerk, after which no change may be submitted to the City Clerk unless permitted by law.

SECTION 6. Pursuant to a resolution previously adopted by the Council allowing rebuttal arguments, rebuttal arguments will be allowed, in accordance with Elections Code Section 9285. All written rebuttal arguments may not exceed 250 words and shall be accompanied by the printed names and signatures of the persons submitting the rebuttals as required by applicable law and any printed names, signatures and shall be filed not more than 10 days after the final date for filing direct arguments.

SECTION 7. The City Clerk shall cause the text of the Measure, which is contained in Exhibit A, together with the City Attorney's impartial analysis, and any arguments for or against the Measure, to be mailed to all qualified voters with the ballot. In addition to other notices and publications required by law, the City Clerk, not less than forty (40) days and not more than sixty (60) days before the General Municipal Election, shall cause the text of the Measure to be published once in a newspaper of general circulation. The City Clerk is authorized to give such notices and to fix such times and dates as are required by law or which are appropriate to properly conduct the election.

SECTION 8. The provisions of Resolution No. 2008-057 and Resolution No. 2008-058, respectively, refer to more particulars concerning the General Municipal Election to be held on November 4, 2008 and in all respects the election shall be held and conducted as provided for by applicable law. The City Clerk is authorized and directed to procure and furnish any official ballots, notices, printed materials and all supplies or equipment that may be necessary in order to properly and lawfully conduct the election.

PASSED AND ADOPTED at a Special meeting of the City Council of the City of La Mesa, California, held the 29th day of July 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

CERTIFICATE OF CITY CLERK

I, MARY J. KENNEDY, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and exact copy of Resolution No. 2008-__, duly passed and adopted by the City Council of said City on the date and by the vote therein recited.

MARY J. KENNEDY, CMC, City Clerk

(SEAL OF CITY)

ORDINANCE NO. 2008-

AN ORDINANCE OF THE CITY OF LA MESA ADDING CHAPTER 5.28 TO THE MUNICIPAL CODE ESTABLISHING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

THE CITY COUNCIL OF THE CITY OF LA MESA DOES ORDAIN AS FOLLOWS:

Section 1. Authority.

The City Council enacts this ordinance in accordance with the authority granted to cities by Article XI, Section 7, of the California Constitution.

Section 2. Addition of Chapter.

Chapter 5.28 is hereby added to the La Mesa Municipal Code to read as follows:

5.28.010 Title.

This Chapter shall be known as the City of La Mesa Transactions and Use Tax Ordinance. The City of La Mesa hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

5.28.020 Operative Date.

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the later of the adoption of this Ordinance and chapter, the date of such adoption being as set forth below, and the approval of the voters of the City of a measure approving the imposition of the transaction and use tax set forth herein.

5.28.030 Purpose.

The purpose of this chapter is 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 qualified voters of the City 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.

5.28.040 Contract With State.

Prior to the 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.

5.28.050 Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of three quarters of one percent (0.75%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this ordinance.

5.28.060 Place Of Sale.

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

5.28.070 Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the incorporated territory of 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 the City at the rate of three quarters of one percent (0.75%) 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.

5.28.080 Adoption Of Provisions Of State Law.

Except as otherwise provided in this ordinance and Chapter 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 and Chapter as though fully set forth herein.

5.28.090 Limitations On Adoption Of State Law And Collection Of Use Taxes.

In Adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. 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.

5.28.100 Permit Not Required.

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

5.28.110 Exemptions And Exclusions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any State-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

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

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

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

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

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

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

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

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

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

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

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

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

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

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

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of 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.

5.28.120 Amendments.

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.

5.28.130 Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.28.140 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.

Section 3. Effective Date.

This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately and shall be published within 15 days after adoption in a paper of general circulation published and circulated within the City of La Mesa.

Section 4. Termination Date.

The authority to levy the tax imposed by this Ordinance shall expire in twenty (20) years.