

RESOLUTION NO. R-2018-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLACENTIA PLACING THE PLACENTIA 911/ESSENTIAL SERVICES MEASURE BEFORE THE VOTERS OF THE CITY AT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION; REQUESTING THE ASSISTANCE OF THE COUNTY OF ORANGE IN CONNECTION WITH THAT ELECTION AND CONSOLIDATING THAT ELECTION WITH THE STATEWIDE GENERAL ELECTION BEING HELD ON THAT DATE

WHEREAS, nearly 77% of 9-1-1 emergency calls placed by Placentia residents are for medical emergencies and the City seeks to maintain rapid emergency response times; and

WHEREAS, the City of Placentia is one of a declining number of cities that still maintains its own local police department, so that that Placentia police officers and neighborhood patrols are available when needed and not diverted to service other cities; and

WHEREAS, the City must avoid additional deep cuts in all service areas, including police and fire protection, 911 emergency response times, the maintenance of streets, parks and public facilities, and programs for youth and seniors; and

WHEREAS, an Independent Citizens Financial Task Force has spent four years studying the City's needs and has recommended the implementation of reliable, secure sources of local funding that can be used to fund Placentia's essential city services and can't be taken by the State; and

WHEREAS, the City has engaged hundreds of residents in community survey interviews and public meetings, and residents have identified the following service priorities which the City seeks to address in any new revenue:

Repair potholes and pave local streets

Provide quick responses to 9-1-1 emergencies

Provide fire protection and emergency medical services

Reduce gang activity and drug related crimes

Keep public areas clean and free of graffiti; and

WHEREAS, all money raised by a local, voter-approved funding measure will be used exclusively to maintain essential city services in Placentia, not for other purposes; and

WHEREAS, the proposed measure will include Independent Citizens Oversight and annual reports to the community to ensure that any funds generated are spent properly; and

WHEREAS, the measure will provide resources to the City that will help the City to maintain its financial viability and provide funding for its local police department and essential city services, including street/pothole repair; quick responses to 9-1-1 emergencies; fire protection/emergency medical services; gang, drug, graffiti prevention; public cleanliness; and general services.

WHEREAS, Section 7285.9 of the Revenue and Taxation Code authorizes the City to levy a transactions and use tax; and

WHEREAS, the levy of such a tax requires the approval of the voters; and

WHEREAS, the City Council has called a General Municipal Election for Tuesday, November 6, 2018 (the "Election"); and

WHEREAS, the City Council desires to submit to the voters at the Election a transactions and use tax ordinance, and desires that the election on this "Placentia 911/Essential Services Measure" be consolidated with the statewide general election to be held on that date.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLACENTIA AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are correct.

Section 2. Election. The City Council hereby orders, pursuant to Section 9222 of the Elections Code, that the City of Placentia Transactions and Use Tax Ordinance of 2018 (the "Tax Ordinance"), which is attached hereto as Exhibit "A" and incorporated herein by reference, be submitted to the voters at the Election. Adoption of the ordinance requires a majority vote of those voting on the matter. **Ballot Question.** The question submitted by Section 2 of this Resolution shall appear on the ballot as follows:

Placentia 911/Essential Services Measure. To maintain Placentia's financial viability and provide funding for its local police department and essential city services, including street/pothole repair; quick responses to 911 emergencies; fire protection/emergency medical services; gang, drug, graffiti prevention; public cleanliness; general services, shall the ordinance establishing a one cent transactions and use (sales) tax be adopted, providing approximately \$5,000,000 annually until ended by voters, with citizens' oversight, independent audits, all funds controlled locally?	YES	
	NO	

Section 3. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Orange County is requested to consolidate the Election with other elections (including the City's general municipal election, which was called by separate resolution) held on the same day in the same territory or in the territory that is in part the same.

Section 4. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 5. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 6. Filing with County. The City Clerk shall file a certified copy of this Resolution with the County Clerk.

Section 7. Impartial Analysis. The City Attorney shall prepare an impartial analysis of the measure. The analysis shall be included with other ballot materials.

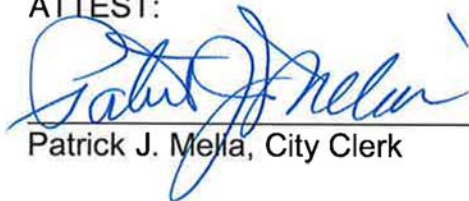
Section 8. Arguments. Any person may prepare an argument for or against the measure not exceeding 300 words in length. Rebuttal arguments shall be permitted. If more than one argument is submitted for or against the measure, or more than one rebuttal is submitted for or against the measure, for each, the City Clerk shall select the argument/rebuttal to be included with the ballot materials.

PASSED, APPROVED and ADOPTED this 24th day of July 2018.



Chad P. Wanke, Mayor

ATTEST:



Patrick J. Melia, City Clerk



STATE OF CALIFORNIA
COUNTY OF ORANGE

I, Patrick J. Melia, City Clerk of the City of Placentia do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council of the City of Placentia held on the 24th day of July 2018 by the following vote:

AYES:	Councilmembers:	Green, Smith, Yamaguchi, Shader, Wanke
NOES:	Councilmembers	None
ABSENT:	Councilmembers	None
ABSTAIN:	Councilmembers	None



Patrick J. Melia, City Clerk

APPROVED AS TO FORM:



Christian L. Bettenhausen, City Attorney

Exhibit "A"
Tax Ordinance

ORDINANCE NO. O-2018-08

**ORDINANCE OF THE CITY OF PLACENTIA, CALIFORNIA
ENACTING A LOCAL TRANSACTIONS AND USE TAX
("SALES TAX") TO BE ADMINISTERED BY THE
CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION, SUBJECT TO ADOPTION BY THE
ELECTORATE**

THE PEOPLE OF THE CITY OF PLACENTIA DO ORDAIN AS FOLLOWS:

Section 1. TITLE. This ordinance shall be known as the City of Placentia Transactions and Use Tax Ordinance of 2018. The City of Placentia hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 2. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter, commencing more than 110 days after the approval of the tax set forth herein by the voters pursuant to Section 15 of this ordinance.

Section 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To extend the imposition of an existing 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 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 4. **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 5. **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 1% (one cent per dollar) 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 6. **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 7. **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 1% (one cent per dollar) 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 8. **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 9. **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 Board of Control, California Department of Tax and

Fee Administration, 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 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. 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.

Section 10. 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 11. 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 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 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 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 12. AMENDMENTS TO STATE LAW. 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.

Section 13. 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.

Section 14. **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 15. **EFFECTIVE DATE AND SUBMISSION TO VOTERS.** This ordinance relates to the levying and collecting of City transactions and use tax and shall take effect immediately. However, no tax imposed by this ordinance shall be effective unless this Ordinance has been approved by the voters of the City as required by Section 2(b) of Article XIII C of the California Constitution and applicable law. Furthermore, no tax imposed by this ordinance shall be effective prior to the operative date set by Section 2 of this ordinance.

Section 16. **AUDIT.** The proceeds of the tax imposed pursuant to this Ordinance, as well as the expenditure thereof, shall be audited annually by an independent accounting firm. Such independent audit may be a part of any other independent audit of municipal finances.

Section 17. **CITIZENS' OVERSIGHT.** A Citizens' Oversight Committee shall be formed to review the expenditure of funds generated by this ordinance, and to provide an annual report to the City Council on those expenditures. The committee shall consist of three members, appointed by the City Council. As long as those bodies exist, two of the members shall come from the Citizens Fiscal Sustainability Task Force and one from the Financial Audit Oversight Committee. Members so appointed shall serve without compensation for a term of four (4) years.

The Committee shall meet at least once annually. The Committee's annual report shall be presented to the City Council and shall also be published on the City's webpage. Unless otherwise directed by resolution or ordinance of the City Council, the Committee shall not have any function, power, or authority other than those expressly provided herein. In no event shall a failure of the City Council or the Citizens' Oversight Committee to meet or to take any other action invalidate any tax collected under this Chapter; however, any court of competent jurisdiction may issue an order to the City compelling the City to comply with this Section.

Section 18. **USE OF FUNDS.** The proceeds of the tax imposed by this ordinance shall be deposited in the general fund of the City and may be used to fund additional public safety and street and pothole repair services and for any other lawful municipal purpose. The tax does not meet the criteria established by Section 1(d) of Article XIII C of the California Constitution for special taxes, and is a general tax imposed for general government purposes.

Section 19. **FINDING.** The proposed tax will provide resources to the City that will help the City to maintain its financial viability and provide funding for its local police department and essential city services, including street/pothole repair; quick responses to 911 emergencies; fire protection/emergency medical services; gang, drug, graffiti prevention; public cleanliness; and general services.

Section 20. TERMINATION. The tax shall continue without sunset or expiration unless terminated by action of the voters.

INTRODUCED at a regular meeting of the City Council of the City of Placentia held on July 24, 2018.

PASSED, APPROVED AND ADOPTED this ____ day of ____ 2018.

Chad P. Wanke

ATTEST:

Patrick J. Melia, City Clerk

I, Patrick J. Melia, City Clerk of the City of Placentia, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Placentia, held on the ____ day of ____, 2018 by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

Patrick J. Melia, City Clerk

APPROVED AS TO FORM:

Christian L. Bettenhausen, City Attorney