

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF EL MONTE ADOPTING A GENERAL
TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY
THE STATE BOARD OF EQUALIZATION PURSUANT TO
REVENUE & TAXATION CODE SECTIONS 7251 ET SEQ.,
SUBJECT TO VOTER APPROVAL

WHEREAS, the City of El Monte, like municipalities throughout the State of California, has endured numerous fiscal strains and stress brought on by a succession of economic and legislative developments, including the stagnant national economy, a depressed housing market, inflated prices for fuel and construction materials (e.g., diesel fuel for trucks and petroleum-based construction materials like roadway asphalt), increased costs for municipal services as well as State take-a-ways and regulatory mandates (e.g. state requirements for massive storm drain improvements); and

WHEREAS, the City of El Monte is currently operating “paycheck to paycheck” given the depletion of General Fund and Working Capital reserves – this against the backdrop of increasing inflationary pressures; and

WHEREAS, the current fiscal state leaves the City of El Monte, like many others in California, at imminent risk of having inadequate funding to address essential public safety and municipal service needs; and

WHEREAS, the City has attempted to temper these harsh fiscal realities with significant budgetary cutbacks; staffing reductions; and improved fiscal accountability protocols; and

WHEREAS, over the past several months, the City has implemented a number of cost-saving measures which include reductions in the number of employees, the consolidation of City departments and the implementation of fiscal accountability measures, including the recent adoption of a General Fund Reserves Policy at the City Council’s meeting of July 8, 2008; and

WHEREAS, customary fiscal prudence generally prescribes that municipalities, at an extreme minimum, maintain Working Capital levels equivalent to one month’s worth of bills and other routine expenses. For the City of El Monte this means maintaining Working Capital levels of *at least* \$5,000,000, the average sum of the City’s monthly operating expenses; and

WHEREAS, customary fiscal prudence also prescribes that municipalities, also at the very minimum, maintain General Funds reserves equivalent to 15% of the City’s average annual budget. For the City of El Monte this means maintaining General Fund reserves of at least \$8,500,000; and

WHEREAS, for Fiscal Year 2008-2009 it is *estimated* that the City’s General Fund revenues will be approximately \$53.9 million and that the City will have “transfers in” of approximately \$2,787,000, combining for a *projected* sum of \$56.7 million in Total Available Resources for Fiscal Year 2008-2009; and

WHEREAS, the City’s anticipated expenditures for Fiscal Year 2008-2009 are approximately \$55.4 million with anticipated “transfers out” of approximately \$1,700,000. Accordingly, the Total Anticipated Resources Needed by the City to maintain operations is approximately \$57.1 million; and

WHEREAS, Total Resources Needed by the City for Fiscal Year 2008-2009 (\$57.1 million) with the City’s *projected* Total Available Resources for Fiscal Year 2008-2009 (\$56.7 million), meaning the City’s 2008-2009 budget is in deficit by approximately \$400,000; and

WHEREAS, projected revenues and projected liabilities for Fiscal Year 2008-2009 are just that: *projections*, meaning there is no iron-clad guarantee that City revenues will meet current estimates or that City expenditures will remain within current anticipated projections – particularly given current inflationary pressures, the renewed likelihood of further State take-aways from existing revenue sources, as well as the possibility of extraordinary emergencies or other unforeseen events; and

WHEREAS, the failure to meet projections would almost certainly compel more draconian cost cutting measures which would significantly erode the City's ability to deliver basic and essential municipal services: fire and other emergency response services, pothole repair, street and storm drain maintenance, graffiti removal, on-duty police staffing, street lighting, park maintenance, and other general city services just to name a few.

WHEREAS, a local transactions and use tax measure will allow the City to maintain and preserve basic community services and infrastructure obligations during the current economic downturn and will also allow the City to build-up critical operating reserves; and

WHEREAS, pursuant to Section 2(b) of California Constitution Article XIIC, the City Council has unanimously declared the existence of a fiscal 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 essential municipal services without disruption, and has called a special municipal election on Tuesday, November 4, 2008, at which election, this Ordinance shall be submitted to the qualified voters of the City of El Monte; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL MONTE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 3 (Revenue and Finance) of the El Monte Municipal Code is hereby amended by the addition of a new Chapter 3.14 (Temporary Transactions and Use Tax) which shall state the following:

Chapter 3.14

Temporary Transactions and Use Tax

Sections:

- 3.14.010 Title**
- 3.14.020 Five-Year Sunset**
- 3.14.030 Purpose**
- 3.14.040 Contract with State**
- 3.14.050 Transactions Tax Rate**
- 3.14.060 Place of Sale**
- 3.14.070 Use Tax Rate**
- 3.14.080 Adoption of Provisions of State Law**
- 3.14.090 Limitations on Adoption of State Law and Collection of Use Taxes**
- 3.14.100 Seller's Permit Not Required**
- 3.14.110 Exemptions and Exclusions**
- 3.14.120 Amendments**
- 3.14.130 Enjoining Collection Forbidden**
- 3.14.140 Fiscal Oversight Committee**

3.14.010 Title.

This ordinance shall be known as the "El Monte Temporary Transactions and Use Tax Ordinance." The City of El Monte hereinafter shall be referred as "City". This ordinance shall be applicable in the incorporated territory of the City.

3.14.020 Five-Year Sunset.

This Chapter and the transaction and use tax imposed hereunder, shall remain in effect for a period of five (5) years commencing from the operative date. For purposes of this Chapter, the term "operative date" means the first day of the first calendar quarter commencing more than one hundred and ten (110) calendar days after the special election of November 4, 2008.

3.14.030 Purpose.

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

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

3.14.040 Contract with State.

Prior to the operative date of this Chapter, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3.14.050 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 .50% 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.

3.14.060 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.

3.14.070 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 .50% of the sales price of the property. The sales price shall

include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3.14.080 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 hereby adopted and made a part of this ordinance as though fully set forth herein.

3.14.090 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 therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.
3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
 - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
 - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

3.14.100 Seller's Permit Not Required.

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

3.14.110 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 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.

3.14.120 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, 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.

3.14.130 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.

3.14.140 Fiscal Oversight Committee.

The City Council shall also establish a Transactions and Use Tax Fiscal Oversight Committee to analyze and make recommendations as to the annual expenditure of revenues generated pursuant to this Chapter. The committee shall consist of at least three (3) members and shall have such composition and structure as may be established by City Council resolution. The committee may not include more than two (2) members of the City Council. The El Monte Finance Division shall be the division responsible for providing administrative assistance as well as analytical and technical support to the committee.

SECTION 2. 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.

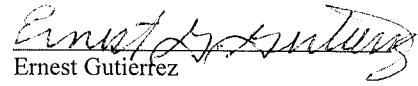
SECTION 3. GOVERNMENT CODE SECTION 36937 FINDINGS. This ordinance is an urgency ordinance within the meaning of Government Code Section 36937 in that it relates to taxes for the usual and current expenses of the City – expenses that include any lawful purpose of the City, as authorized by ordinance, resolution or action of the City Council or by ordinance adopted by the electorate of the City. This ordinance is also an urgency ordinance within the meaning of Government Code Section 36937 in that it is for the immediate preservation of the public peace, health or safety in that the City of El Monte has declared a fiscal emergency within the meaning of Article XIII C of the California Constitution. By unanimous vote of the City Council at its meeting of July 22, 2008, this ordinance was approved by the City Council and submitted to the voters for adoption at a special municipal election to be held November 4, 2008.

SECTION 4. EFFECTIVE DATE. This ordinance relates to the levying and collecting of City transactions and use taxes and shall take effect immediately upon adoption. The foregoing notwithstanding, no tax imposed by this ordinance shall be effective unless approved by the voters of the City, at an election to be held on November 4, 2008 as required by Section 2(b) of the Article XIII C of the California Constitution and applicable law. This ordinance shall not become operative until the first day of the first calendar quarter commencing after the special election of November 4, 2008, provided a majority of the electors voting on the ballot measure seeking approval of this ordinance vote to adopt this ordinance and thereby approve the imposition of the transactions and use tax contemplated herein.

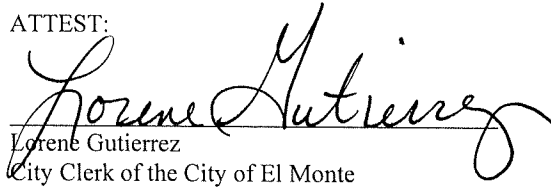
SECTION 5. CEQA. This ordinance and the contemplated levy of the transactions and use tax referenced herein is not a “project” within the meaning of the California Environmental Quality Action codified as 21000 et seq. of the California Public Resources Code (“CEQA”) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment nor does it involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

SECTION 6. The City Clerk shall certify the adoption of this Ordinance and shall cause the same to be published pursuant to California Government Code Section 36933.

PASSED, APPROVED AND ADOPTED this 22nd day of July, 2008.


Ernest Gutierrez
Mayor of the City of El Monte

ATTEST:


Lorene Gutierrez
City Clerk of the City of El Monte

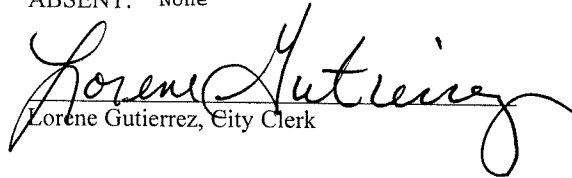
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF EL MONTE)

I, Lorene Gutierrez, City Clerk for the City of El Monte, hereby certify that the foregoing Ordinance No. 2725 was passed and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the 22nd day of July, 2008 and that said ordinance was adopted by the following vote, to-wit:

AYES: Mayor Gutierrez, Mayor Pro-Tem Gomez, Councilman Barrios,
 Councilwoman Ishigaki and Councilwoman Wallach

NOES: None

ABSENT: None


Lorene Gutierrez, City Clerk