RESOLUTION NO. 2016-080

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT CALLING FOR A SPECIAL MUNICIPAL ELECTION ON NOVEMBER 8, 2016 ON A MEASURE TO APPROVE A LOCAL HALF-CENT SALES TAX FOR GENERAL CITY PURPOSES

WHEREAS, Belmont has nearly $100,000,000 in unmet street and storm drain infrastructure needs; and,

WHEREAS, its streets are the worst in the County and in the bottom 8% in the Bay Area; and,

WHEREAS, Belmont's storm drain system, much of which is over 50-years old, and is completely inadequate to deal with major storms, with some neighborhoods lacking storm drains entirely; and,

WHEREAS, additional funding is needed to help protect the environment and water quality by repairing Belmont's 50-year-old storm drain infrastructure, replacing rusted-through pipes and reducing runoff; and,

WHEREAS, the City seeks to repair roads and reduce congestion on major streets, particularly Alameda, Ralston, and on neighborhood streets as well; and,

WHEREAS, the unit cost to restore the city's deteriorating infrastructure to an acceptable level of maintenance increases disproportionately with the degree of further deterioration, such that continued deferment of repair and maintenance causes the infrastructure deficit to accelerate; and,

WHEREAS, current and projected City revenues are insufficient to maintain the City's infrastructure at its present deteriorated condition and prevent accelerating decline in the condition of the City's streets and storm drains; and

WHEREAS, Belmont needs a reliable source of local revenue where local control is exercised over local funds, requiring that all funds be spent for Belmont residents, and no funds can be taken by Sacramento; and,

WHEREAS, on June 28, 2016, the City Council adopted Resolution No. 2016-071 finding among other things that the City's infrastructure is critical to protecting the public safety and welfare and to providing Belmont residents with a high quality of life, and that the continuing decline of the City's infrastructure places the public at increasingly greater risk of injury and increases the exposure of the City to overwhelming potential liability; and,

WHEREAS, the City Council has determined to submit to the Citizens of Belmont for their approval a ballot measure establishing a local transactions and use tax whose revenues may not be taken away by the State Legislature and will go to Belmont for general city purposes including funding essential services such as maintaining 9-1-1 emergency response and fixing streets and storm drains; and,

WHEREAS, Election Code Section 9222 and Revenue and Taxation Code Section 7285.9 authorize the city to levy a transactions and use tax ("sales tax") for general purposes at the rate of 0.125 percent or a multiple thereof if the ordinance proposing that tax is approved by a two-thirds vote of the members of the City Council and a majority vote of the qualified voters of the City; and,

WHEREAS, this measure will not be applied to food purchased as groceries or prescription medication, limiting its impact on Belmont residents; and,

WHEREAS, under California Constitution Article XIIIC and Belmont's current general municipal election cycle at which councilmembers are elected, Belmont voters may only vote on a general tax measure proposed by the Council once every two years in November of odd-numbered years unless the City Council unanimously declares an emergency.

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

SECTION 1. Resolution No. 2016-071 is incorporated herein by reference.

SECTION 2. Call for Municipal Election.

(a) A municipal election in the City of Belmont is called for November 8, 2016 for the purpose of submitting to the electorate a ballot measure approving on ordinance imposing a transactions and use tax of one-half cent per one dollar for thirty years to be used for general purposes of the city.

(b) The polls for the election shall be open at 7:00 a.m. on the day of the election and shall remain open continuously from that time until 8:00 p.m. that same day, when the polls shall be closed, except as provided in Elections Code Section 14401. The City Clerk is authorized to give further notice of the election, as required by law.

SECTION 3. Consolidation with Statewide General Election

(a) The City Council orders the municipal election consolidated with the statewide general election on Tuesday, November 8, 2016.

(b) In accordance with Elections Code Section 10403, the City Council requests the County of San Mateo Board of Supervisors consolidate the municipal election with the statewide election.

(c) The question to be presented to the voters is as follows:

Belmont Streets and City Services Measure	
To provide local funding for maintaining general City of Belmont services/ facilities, such as: • fixing potholes;	YES

• repairing 69 miles of City streets; • maintaining 911 emergency response; • repairing deteriorating storm drains; • reducing traffic congestion/ improving public safety on neighborhood streets; shall Belmont enact a 1/2 cent sales tax, providing $1,300,000 annually for 30 years, requiring citizen's oversight, independent audits, with all funds for local City of Belmont services, and no funds for Sacramento?	NO

This question requires the approval of the majority of qualified electors casting votes.

(d) The City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Election Code Section 10418.

SECTION 4. Conduct of Election

In accordance with Elections Code Section 10002, the City Council requests the County of San Mateo Board of Supervisors authorize the County Clerk to render all services necessary for the conduct of the election regarding the general tax measure and agrees to reimburse the County of San Mateo for the costs of conducting this election.

SECTION 5. Proposed Ordinance

(a) The ordinance authorizing the transactions and use tax to be approved by the voters is as set forth in Attachment 1 hereto.

(b) The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the November 8, 2016 election, as required by Revenue and Taxation Code Section 7285.9.

(c) The ordinance specifies that the rate of the transactions tax is one-half of one percent (0.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City. It specifies that the rate of the use tax is one-half of one percent (0.5%) of the sales price of tangible personal property stored, used or otherwise consumed in the City. The State Board of Equalization shall collect the tax from retailers subject to the tax and remit the funds to the City. The proposed tax is for general city purposes and will be deposited in the city's general fund.

(d) The City Council requests the County of San Mateo Board of Supervisors to order the County Clerk to set forth in the voter information portion of all sample ballots to be mailed to the qualified electors of the City the full text of the Ordinance and to mail with the sample ballots to the electors printed copies of the full text of the Ordinance, together with the primary arguments for and against the measure, and to provide absent voter ballots for the election for use by qualified electors of the City who are entitled thereto in the manner provided by law.

SECTION 6. Publication of Synopsis

The City Clerk is directed to publish a synopsis of the measure in the manner required by Elections Code Section 12111 at least one week before the election.

SECTION 7. Submission to County Officials

The City Clerk is directed to file a certified copy of this Resolution, with Attachments, with the County of San Mateo Board of Supervisors and the County Elections Official no later than close of business on August 12, 2016.

SECTION 8. Impartial Analysis

The City Clerk is directed to transmit a copy of the measure to the City Attorney who is directed to prepare an impartial analysis of the measure in accordance with Elections Code Section 9280.

SECTION 9. Ballot Arguments

(a) Ballot arguments for or against the measure may be submitted in accordance with this resolution and applicable provisions of the law.

(b) The City Council will designate by motion a subcommittee of two councilmembers to prepare a written argument not exceeding 300 words in favor of the measure. If a qualified argument against measure is submitted, the subcommittee may prepare a rebuttal argument not exceeding 250 words. At the discretion of the subcommittee, the argument in favor and rebuttal, if any, may also be signed by other members of the City Council, bona fide associations of citizens, or by individual votes who are eligible to vote. Arguments and rebuttals shall otherwise conform to and comply with all applicable provisions of the Elections Code and be submitted by the deadline required by the County of San Mateo Elections Official.

SECTION 10. Agreement with Board of Equalization

The City Manager is authorized to negotiate and execute an agreement with the Board of Equalization in accordance with Revenue and Taxation Code Section 7270 to perform all functions incident to the administration and operation of the ordinance if adopted.

SECTION 11. Effective Upon Unanimous Passage

This resolution is effective only if adopted by unanimous vote of all members of the City Council. In so adopting this resolution, the Council declares that the City has an urgent need for additional revenue in order to stem further deterioration of streets and storm drains and restore city infrastructure to an adequate and sustainable level of maintenance, and thereby protect the public from ever-increasing present harm and the City from overwhelming potential liability, and that this urgent need is declared an emergency that requires the voters of Belmont to consider the proposed ordinance in Attachment 1 sooner than the next regularly scheduled municipal election.

* * *

ADOPTED July 26, 2016, by the City of Belmont City Council by the following vote:

Ayes: Hurt, Stone, Lieberman, Kim, Reed

Noes:

Absent:

Abstain:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

Attachment 1

To Resolution 2016-080

An Ordinance of the City of Belmont Adding Article V to Belmont City Code Chapter 23 Establishing a Local Transaction and Use Tax for General City Purposes

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELMONT ADDING ARTICLE V TO BELMONT CITY CODE CHAPTER 23 ESTABLISHING A LOCAL TRANSACTION AND USE TAX FOR GENERAL CITY PURPOSES

WHEREAS, the Citizens of Belmont find that maintaining essential services such as neighborhood police patrols, 9-1-1 emergency response, properly maintained roads and storm drains is critical to protecting the public's safety and welfare and providing Belmont residents with a high quality of life, and,

WHEREAS, Belmont has nearly $100,000,000 in unmet street and storm drain infrastructure needs; and,

WHEREAS, its streets are the worst in the County and in the bottom 8% in the Bay Area; and,

WHEREAS, Belmont's 50-year-old storm drain system, much of which is over 50-years old, is completely inadequate to deal with major storms, with some neighborhoods lacking storm drains entirely; and,

WHEREAS, Belmont's current and projected revenues are insufficient to maintain the city's infrastructure at its present deteriorated condition and prevent accelerating decline in the condition of the city's storm drains and streets; and,

WHEREAS, additional funding is needed to protect the environment and water quality by repairing Belmont's 50-year-old storm drain infrastructure, replacing rusted-through pipes and reducing runoff; and,

WHEREAS, additional funding will help repair roads and reduce congestion on major streets, particularly Alameda, Ralston, and on neighborhood streets as well; and,

WHEREAS, Belmont needs a reliable source of local revenue where local control is exercised over local funds, requiring that all funds be spent for Belmont residents, and no funds can be taken by Sacramento; and,

WHEREAS, this ordinance will establish a local Transactions and Use (Sales) Tax at the rate of one-half of one percent (0.5%) to remain in effect for a period of thirty years for the exclusive use of the City of Belmont for any legitimate city purpose, and not being limited to specific city purposes will be enacted if it receives at least a simple majority of affirmative votes; and,

WHEREAS, the tax will be imposed on the sale of tangible personal property and the storage, use, or other consumption of such property and the tax revenue would be collected by the State Board of Equalization and remitted to the City; and

WHEREAS, this measure will not be applied to food purchased as groceries or prescription medication, limiting its impact on Belmont residents; and,

WHEREAS, the City Council unanimous approved this ordinance for placement on the November 8, 2016 ballot and submission to Belmont residents for approval.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF BELMONT DO ORDAIN AS FOLLOWS:

SECTION 1. BCC CHAPTER 23, ARTICLE V ADDED

Belmont City Code Chapter 23, Article V is added as follows:

ARTICLE V. TRANSACTION AND USE (SALES) TAX

Sec. 23-101 Title

This article may be cited as the City of Belmont Transactions and Use (Sales) Tax Ordinance. This article shall be applicable in the incorporated territory of the City of Belmont.

Sec.23-102 Operative Date

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this article, the date of such adoption being as set forth below.

Sec. 23-103 Purpose.

(a) This article is adopted to achieve the following purposes, among others, and shall be interpreted to accomplish those purposes.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

Sec. 23-104 Contract with the 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.

Sec. 23-105 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 of Belmont at the rate of 0.5% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail on and after the operative date of the ordinance adopting this section.

Sec. 23-106 Place of Sale.

For the purposes of this article, 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 or her 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 the 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.

Sec 23-107 Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the incorporated territory of City of Belmont of tangible personal property purchased from any retailer on and after the operative date of the ordinance adopting this section for storage, use or other consumption in the City at the rate of 0.5% 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.

Sec. 23-108 Adoption of Provisions of State Law.

Except as otherwise provided in this article 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 article as though fully set forth herein.

Sec. 23-109 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 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.

Sec. 23-110 Permit Not Required.

If a seller's permit has been issued to a retailer under Revenue and Taxation Code Section 6067, an additional transactor permit is not required by this article.

Sec. 23-111 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 the ordinance adopting this article.

(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 article, 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 the ordinance adopting this article.

(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 the ordinance adopting this article.

(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 article 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.

Sec. 23-112. Amendments.

All amendments subsequent to the effective date of the ordinance adopting this article 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 article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this article.

Sec. 23-113 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 article, 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.

Sec. 23-114 Annual Audit.

By no later than December 31st of each year after the operative date, the City's independent

auditors shall complete a report to verify that the taxes levied under this article are have been properly applied, exempted, collected, and remitted in accordance with the law.

Sec. 23-115 Advisory Committee

The City Council shall form an advisory committee whose members include non-elected citizens to monitor and report on how the tax levied by this article has been spent. The City Council shall determine the composition, appointment, and other duties of the committee.

Sec. 23-116 Termination Date.

The authority to levy the tax imposed by this article expires thirty years after the first tax is collected.

Sec. 23-117 Proceeds

The proceeds from the transactions and use tax imposed by this article shall be for general purposes of the City of Belmont and shall be received into the general fund of the City Nothing herein shall bind the city to use the proceeds for any specific purpose or function.

SECTION 2. RECITALS

The People of the City of Belmont find that all Recitals contained in this ordinance are true and correct and are incorporated herein by reference.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Belmont hereby declare that they would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. AMENDMENT

(a) The tax adopted herein may be extended or increased only by a vote of the people of the City of Belmont in accordance with California Constitution Article XIIIC, Section 2(b).

(b) Except as provided in subsection (a), the provisions herein may amended by ordinance adopted by the City Council.

SECTION 5. EFFECTIVE.

This ordinance relates to the levying and collecting of the City transactions and use tax and shall be in full force and effect 10 days after the certification by the City Council of the election returns indicating passage of the ordinance codified in this article by a majority of the voters casting votes in the election of November 8, 2016.

SECTION 6. CITY COUNCIL APPROVAL.

The City Council of the City of Belmont approved this ordinance for placement on the November 8, 2016 ballot by Resolution 2016____ adopted by a two-thirds vote of all members.

* * *

This ordinance was introduced by the City Council on July 26, 2016 and adopted by the City Council at a regular meeting on August _____, 2016 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

This ordinance was submitted to the People of the City of Belmont at the November 8, 2016 election and was adopted by the following vote of the People:

YES:

NO:

ATTEST:

_____ _____

City Clerk Mayor