ORDINANCE NO. 210-10

AN ORDINANCE OF THE CITY OF WESTLAKE VILLAGE REGARDING THE PURCHASING SYSTEM AND TRANSIENT OCCUPANCY TAX AND AMENDING THE WESTLAKE VILLAGE MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF WESTLAKE VILLAGE DOES ORDAIN AS FOLLOWS:

Section 1. Findings and Intent.

A. The purpose of this Ordinance is to update the City's purchasing system and transient occupancy tax ordinance to improve administrative efficiency and to make clerical revisions.

B. This Ordinance does not extend or increase the City’s transient occupancy tax.

Section 2. Code Amendment. Chapter 1.4 (Miscellaneous) of Article 1 (General Provisions) of the Westlake Village Municipal Code is hereby amended by adding a new Section 1.4.020 to read as follows:

"1.4.020. Claims and Demands Against City.

A. Authority. This section is enacted pursuant to California Government Code Section 935.

B. Claim Requirement. All claims against the City for money or damages not otherwise governed by California Government Code Section 900 et seq., or by other state law, shall be presented within the time and in the manner prescribed by California Government Code Section 900 et seq. for the claims to which that part applies by its own terms and as further provided by this section.

C. Form of Claim. All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed by a class of persons unless verified by every member of that class as required by this section. In addition, all claims shall contain the information required by California Government Code Section 910.

D. Claim Prerequisite to Suit. All claims shall be presented as provided in this section and acted upon by the City prior to the filing of any action on such claims, and no such action may be maintained by a person who has not complied with the requirements of subparagraph B of this section.
E. Suit. Any action brought against the City upon any claim or demand shall conform to the requirements of California Government Code Sections 940 - 949. Any action brought against an employee of the City shall conform to the requirements of California Government Code Sections 950 - 951.

F. Tax Collection Suit. No injunction, writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or any officer thereof to prevent or enjoin the collection of taxes sought to be collected pursuant to this Code. Payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability imposed by this Code."

Section 3. Code Amendment. Subparagraph (D) of Section 2.6.020 (Bidding Procedures for Supplies and Equipment) of Chapter 2.6 (Purchasing System) of Article 2 (Administration) of the Westlake Village Municipal Code is hereby amended to read as follows:

"D. When deemed necessary by the City Council, bid security may be prescribed in the public notices inviting bids. Bidders shall be entitled to the return of bid security provided that a successful bidder shall forfeit its bid security upon refusal or failure to execute the contract within ten (10) days after the notice of award of contract has been mailed, unless the City is responsible for the delay. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the City Council awards the contract to the next lowest bidder, the City shall utilize the lowest bidder's bid security to offset the difference between the low bid and the second lowest bid. Any surplus remaining after such offset shall be returned to the lowest bidder."

Section 4. Code Amendment. Section 2.6.060 (Execution of Service Contracts) of Chapter 2.6 (Purchasing System) of Article 2 (Administration) of the Westlake Village Municipal Code is hereby amended to read as follows:

"2.6.060. Execution of Service Contracts.

The City Manager is authorized to execute on behalf of the City contracts for services for a sum not to exceed fifteen thousand dollars ($15,000) or whenever authorization is provided by the City Council. Contracts for services shall not exceed one year in duration unless the City Council determines that a contract exceeding one year would serve the public interest. Service contracts shall be systematically reviewed on a regular basis in accordance with City Council policy."

Section 5. Code Amendment. Subparagraph (C) of Section 2.6.070 (Award of Contracts for Public Projects) of Chapter 2.6 (Purchasing System) of Article 2 (Administration) of the Westlake Village Municipal Code is hereby amended to read as follows:
"C. Contracts of One Hundred Twenty-Five Thousand Dollars ($125,000) or More. Contracts of one hundred twenty-five thousand dollars ($125,000) or more shall be let by the formal bidding procedures specified in the Uniform Public Construction Cost Accounting Act ("Act")."

Section 6. Code Amendment. The "Tax Administrator" definition of Section 6.4.010 (Definitions) of Chapter 6.4 (Transient Occupancy Tax) of Article 6 (Taxes and Licenses) of the Westlake Village Municipal Code is hereby amended to read as follows:

""Tax Administrator" shall mean the City Manager of the City of Westlake Village."

Section 7. Code Amendment. Section 6.4.060 (Reporting and Remitting) of Chapter 6.4 (Transient Occupancy Tax) of Article 6 (Taxes and Licenses) of the Westlake Village Municipal Code is hereby amended to read as follows:

"6.4.060. Reporting and Remitting.

Each operator shall, on or before the last day of each month or of such different reporting period as may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by the Tax Administrator, of the total rents charged and received during the prior month, the amount of tax collected for transient occupancies during the prior month, and such other information as may be reasonably required. At the time the return is filed, the full amount of the tax collected during the prior month shall be remitted to the Tax Administrator. The Tax Administrator may establish either shorter or longer reporting periods for any individual certificate holder or category of certificate holders if the Tax Administrator deems it necessary or desirable in order to ensure collection of the tax or to increase the efficiency of its administration. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator."

Section 8. Code Amendment. Section 6.4.080 (Failure to Collect and Report Tax Determination of Tax by Tax Administrator) of Chapter 6.4 (Transient Occupancy Tax) of Article 6 (Taxes and Licenses) of the Westlake Village Municipal Code is hereby amended to read as follows:

"6.4.080. Failure to Collect and Report Tax; Determination by Tax Administrator.

A. If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the Tax Administrator shall proceed in such manner as the Tax Administrator may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator shall procure such facts and
information as the Tax Administrator is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the Tax Administrator shall proceed to determine and assess against such operator the tax, interest, and penalties provided for by this chapter. In the event such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at its last known address.

B. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 6.4.090.”

Section 9. Code Amendment. Section 6.4.090 (Appeal) of Chapter 6.4 (Transient Occupancy Tax) of Article 6 (Taxes and Licenses) of the Westlake Village Municipal Code is hereby amended to read as follows:

“6.4.090. Appeal.

Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of determination of tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at its last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice unless otherwise ordered by a court of competent jurisdiction upon a timely petition for judicial review pursuant to California Code of Civil Procedure Section 1094.5 following satisfaction of Section 1.4.020 of this Code.”

Section 10. Code Amendment. Section 6.4.100 (Records) of Chapter 6.4 (Transient Occupancy Tax) of Article 6 (Taxes and Licenses) of the Westlake Village Municipal Code is hereby amended to read as follows:
"6.4.100. Records.

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of four (4) years, all records as may be necessary to determine the amount of such tax as it may have been liable for the collection and payment of to the City, which records the Tax Administrator shall have the right to inspect at all reasonable times."

Section 11. Code Amendment. Section 6.4.110 (Refunds) of Chapter 6.4 (Transient Occupancy Tax) of Article 6 (Taxes and Licenses) of the Westlake Village Municipal Code is hereby amended to read as follows:

"6.4.110. Credits and Refunds.

A. Claim Required. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this chapter it may be credited or refunded as provided in subparagraphs B and C of this section; provided, that a claim therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within one (1) year of the date of payment. The claim shall be made on forms furnished by the Tax Administrator. All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed by a class of persons unless verified by every member of that class as required by this section. It is the intent of the City that the one-year claims period set for this in this subparagraph be given retroactive effect; provided, however, that any claims that arose prior to the effective date of the enactment of the one-year claims period and that are not otherwise barred by the then-applicable statute of limitations or claim procedure must be filed with the Tax Administrator as provided in this Chapter within ninety (90) days following the effective date of the enactment of the one-year claims period.

B. Claim by Operator. An operator may claim as a credit against taxes collected and remitted, or may claim as a refund, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a credit nor a refund shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator. If an operator establishes its right to a credit or refund under this section, the Tax Administrator shall afford a credit unless the claim specifically requests that a refund be paid.

C. Claim by Transient. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subparagraph A, but only when the tax was paid by
the transient directly to the Tax Administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

D. Evidence. No credit shall be afforded or refund shall be paid under the provisions of this section unless the claimant establishes its right thereto by written records showing entitlement thereto.”

Section 12. CEQA Determination. The City Council finds that it can be seen with certainty there is no possibility the adoption of this Ordinance may have a significant effect on the environment. It is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

Section 13. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 14. Certification and Posting. The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be posted in three public places within the City of Westlake Village within fifteen days after its passage in the manner prescribed by law.

PASSED, APPROVED AND ADOPTED this 22nd day of September, 2010.

Mark Rutherford, Mayor

ATTEST:

Beth A. Schott, City Clerk

On September 22, 2010 Ordinance No. 210-10 was duly adopted by the following vote, to wit:

AYES: Klessig, McSweeney, Davis, Rutherford
NOES: None
ABSTAIN: None
ABSENT: Slavin