

RESOLUTION
Police Department
Fiscal Year 2022-2023 Appropriations and
Police Sales Tax Expenditures and Projects

A RESOLUTION REGARDING APPROPRIATIONS FOR THE POLICE DEPARTMENT FOR FISCAL YEAR 2022-2023; STATING COUNCIL’S INTENT REGARDING GENERAL FUND APPROPRIATIONS FOR THE POLICE DEPARTMENT; STATING COUNCIL’S INTENT REGARDING POLICE SALES TAX APPROPRIATIONS FOR THE POLICE DEPARTMENT; AND APPROVING CERTAIN POLICE SALES TAX EXPENDITURES AND/OR PROJECTS, INCLUDING POLICE “LISTED” PROJECTS AND “OTHER” PROJECTS.

WHEREAS, pursuant to Oklahoma City Charter, Art. II, § 1, the City Council (“Council”) of The City of Oklahoma City (“City”) is the legislative branch of City government; and

WHEREAS, pursuant to 11 O.S. (2011) § 17-204(15), the Council is the “governing body” of the City for purposes of the Oklahoma Municipal Budget Act, 11 O.S. §§ 17-201, *et seq.*; and

WHEREAS, pursuant to the Oklahoma Municipal Budget Act, 11 O.S. (2011) § 17-204(3), an “appropriation” is “an authorization to expend or encumber revenues and fund balance of a fund” and without a sufficient appropriation an expenditure of funds is unlawful (11 O.S. (2011) § 17-211(A), § 17-215(D)); and

WHEREAS, pursuant to the Oklahoma Municipal Budget Act, 11 O.S. (2011) § 17-209(A), Council has the legal discretion and authority to “add or increase items or delete or decrease items in the budget”; and

WHEREAS, this Resolution expresses Council’s intent regarding appropriations of revenue in the General Fund and the Police Sales Tax Fund for the Oklahoma City Police

Department for Fiscal Year 2022-2023 and further approves certain Police Sales Tax expenditures and/or projects (attached Exhibits A-K); and

WHEREAS, in the exercise of its legal discretion under the Oklahoma Municipal Budget Act and the common law, Council desires to express its intent to appropriate \$163,911,659 in the City General Fund for the Police Department in Fiscal Year 2022-2023, which appropriations includes funding for 1,015 General Fund Police Officer employment positions in the Police Department; and

WHEREAS, in regard to the Police Sales Tax, in 1989, pursuant to Okla. Const. Art. 18, § 4, certain citizens of the City circulated Initiative Petition No. 24 (*see* Finding No. 1 in the January 12, 1993, Journal Entry of Judgment in *City v. Stone, et al.*, CJ-92-3864-09 (Okla. Co.) (“JE”)); and

WHEREAS, Initiative Petition No. 24 called for the adoption of an ordinance levying an additional three-quarters percent (3/4%) sales tax to be earmarked and “expended only for the purposes of providing...[police, fire-fighting, or fire-rescue]...services, facilities, and equipment, ‘commencing with’ an *administrative* mandate to fund certain projects” (JE, Finding No. 1, emphasis added); and

WHEREAS, pursuant to Okla. Const. Art. 18, § 4, City voters approved Initiative Petition No. 24 at a City special election held on June 20, 1989 (JE, Finding No. 3); and

WHEREAS, the Ballot Title for the June 20, 1989, City special election stated:

BALLOT TITLE

Shall the Ordinance proposed by Initiative Petition Number 24, amending the City Sales Tax Code, Chapter 52, Article II of the Oklahoma City Municipal Code, 1980, by the addition thereto of a new Section 52-20.1, levying an additional three-quarters (3/4%) percent excise tax; *one-half (1/2) to be earmarked and expended only for the purposes of providing police services, facilities and/or equipment*; and *one-half (1/2) to be earmarked and expended only for the purposes of providing fire-fighting and fire-rescue services, facilities and/or*

equipment; and establishing two limited-purpose tax funds, all as specified in said ordinance, be approved? (JE, Finding No. 3, emphasis added); and

WHEREAS, following approval by City voters, Initiative Petition No. 24 was designated as Ordinance No. 19,226 (“Ordinance No. 19,226” or "Ordinance") and is now codified as Section 52-21 of the Oklahoma City Municipal Code, 2020 (“2020 Code”) (JE, Finding No. 4; and 2020 Code, § 52-21); and

WHEREAS, “[b]y its express terms, Ordinance No. 19,226: (1) levies an additional three-quarters percent (3/4%) sales tax upon the gross receipts derived from all sales taxable under the sales tax laws of the State of Oklahoma; (2) *expressly earmarks and authorizes expenditures* of said tax “for the purposes of *providing...[police, fire-fighting, or fire-rescue]...services, facilities or equipment*, ‘commencing with’ an *administrative* mandate to fund certain projects; and (3) establishes two limited-purpose tax funds for the administration of revenues generated by the Ordinance;....” (JE, Finding No. 5, emphasis added); and

WHEREAS, one-half of the tax levied and earmarked by the 2020 Code, § 52-21, is known as the “Police Sales Tax”; and

WHEREAS, pursuant to the plain wording in both the June 20, 1989, Ballot Title and the 2020 Code, § 52-21(b) (1), the legislative earmarking for the Police Sales Tax is “for the purposes of providing police services, facilities and/or equipment”, with such legislative purpose followed by an “administrative mandate” to commence with (start or begin with) certain projects involving specific administrative details (JE, Findings No. 1, 3, 5); and

WHEREAS, fifteen of the seventeen projects set forth in the administrative "commencing with" portions of the Ordinance have been characterized as the "listed projects"; the listed projects are now codified in the 2020 Code, § 52-21(b)(1)(a) through (g), inclusive (Police), and § 52-21(b)(2)(a) through (h), inclusive (Fire) (the Police Department listed projects

are hereinafter referred to as the "Police Listed Projects" or, if singular, the "Police Listed Project") (JE, Finding No. 6; and 2020 Code, § 52-21); and

WHEREAS, two of the seventeen projects set forth in the administrative "commencing with" portions of the Ordinance have been characterized as "other projects"; the other projects are now codified in the 2020 Code, § 52-21(b)(1)(h) (Police) and § 52-21(b)(2)(i) (Fire) (the Police Department other projects are hereinafter referred to as the "Police Other Projects" or, if singular, the "Police Other Project") (JE, Finding No.7; and 2020 Code, § 52-21); and

WHEREAS, JE, Conclusion No. 16, states that any obligations imposed upon the City or the Council by the terms of the JE “shall *not* be *construed or enforced* in a manner that is *inconsistent with* the provisions of Article 10, § 19, *Article 10, § 26 or Article 18, § 4 of the Oklahoma Constitution or any other applicable law*” (emphasis added); and

WHEREAS, JE, Conclusion No. 17, states that “none of the parties shall be deemed to have forfeited any rights they may have under Article 10, § 19, *Article 10, § 26 or Article 18, § 4 of the Oklahoma Constitution, or any other law applicable to the administration of municipal finance*” (emphasis added); and

WHEREAS, the Oklahoma Municipal Budget Act, 11 O.S. (2011) § 17-209(A), and the common law are laws “applicable to the administration of municipal finance,” and pursuant to these laws the Council, as the City’s legislative branch, is vested with legal discretion concerning appropriations in the General Fund and the Police Sales Tax Fund for Police Department purposes; and

WHEREAS, under Okla. Const. Art. 10, § 26, as cited in the JE, Conclusions No. 16 and 17, a multiyear obligation cannot lawfully be imposed on a municipality without approval of the obligation by 3/5ths vote of the electors of the municipality and without concurrent approval

by said electors of the levy of an ad valorem tax to defray such obligation; hence, Ordinance No. 19,226 cannot constitutionally be construed as imposing a *legal obligation* on the City to maintain General Funding for the Police Department at any specific or minimum level or to maintain a minimum number of General Fund police officers on the City payroll; and

WHEREAS, JE, Finding No. 24, states that “at issue” in the litigation resulting in the JE “were expectations that the sales tax proposed thereby would provide additional tax dollars to fund improvements to the Police and Fire Departments of The City...*and that The City’s General Fund appropriations for said Departments would not be reduced below the dollar-levels appropriated by Council for said Departments in the 1988-1989 Fiscal Year, the Fiscal Year in which Initiative Petition No. 24 was circulated and approved,*” with the 1988-1989 appropriations for said Departments being \$34,694,784 for the Police Department and \$28,876,716 for the Fire Department (JE, Findings No. 24, 25 emphasis added);

WHEREAS, accordingly, based on JE, Finding No. 24—but also in recognition of the legal discretion of the Council over appropriations of City funds and the debt limitations imposed by Okla. Const. Art. 10, § 26—JE, Conclusion No. 1, states that the “parties agree in principle that General Fund appropriations for the Police and Fire Departments should not fall below the dollar-levels appropriated by Council for said Departments in Fiscal Year 1988-1989, the Fiscal Year in which Initiative Petition was circulated and approved; *provided, however, that actual General Fund appropriations for said Departments in any particular fiscal year shall at all times be strictly conditioned upon annual appropriation of funds by a majority vote of the Council of The City of Oklahoma City as required by applicable law; provided, further, that nothing herein shall ever be construed as mandating an appropriation of funds by Council in any particular*

fiscal year, since such a mandate may constitute a violation of Article 10, § 26 of the Oklahoma Constitution” (emphasis in original); and

WHEREAS, this Resolution expresses Council’s intent to meet the General Funding moral obligation stated in the JE, Conclusion No. 1, and to appropriate \$163,911,659 the City General Fund for the Police Department for Fiscal Year 2022-2023, which dollar amount substantially exceeds the dollar-level of General Fund appropriations for the Police Department in Fiscal Year 1988-1989; and

WHEREAS, under Okla. Const. Art. 18, § 4, as construed by the Oklahoma Supreme Court, municipal elected officials cannot be compelled or prohibited from performing *administrative* acts—i.e., the power of initiative or referendum under Okla. Const. Art. 18, § 4, cannot be used to compel or prohibit acts by elected officials involving *administrative discretion* and/or involving the *administrative implementation of existing authority* (see *Brazell v. Zeigler*, 1910 OK 193, 110 P. 1052; *Yarbrough v. Donaldson*, 1918 OK 73, 170 P. 1165; *In re Initiative Petition No. 2 of Town of Skiatook*, 1951 OK 238, 236 P.2d 247; *Hughes v. Bryan*, 1967 OK 57, 425 P.2d 952; *In Re Supreme Court Adjudication of Sufficiency of Initiative Petition in Tulsa*, 1979 OK 103, 597 P.2d; *Fite v. Lacey*, 1984 OK 83, 691 P.2d 901; and *Moseby v. Kier*, Oklahoma Supreme Court Case No. 83,092 (OK CIV APP, DIV. 4, 1995)); and

WHEREAS, in *Moseby*, the Oklahoma Court of Appeals held that a proposed Tulsa initiative petition calling, *inter alia*, for “additional police personnel” and “additional fire...personnel” was administrative in nature because said subject matter involves decision-making that is primarily dependent upon economic conditions and that relates to personnel management and because it involves the method and manner of implementing existing authority (see Oklahoma Court of Appeals opinion in *Moseby*, pp. 6-7); and

WHEREAS, by law, *administrative* acts involve administrative details (such as timing, numbers of personnel, numbers of items, personnel management, funding levels, etc.) reserved to the administrative discretion of elected officials and administrative provisions in an initiative petition measure cannot constitutionally be construed to be *legally binding* on elected officials; therefore, notwithstanding the administrative portions of the Ordinance (*see* JE, Findings No. 1, 5, 6, and Stipulations No. 1, 5 and 6), Council retains its inherent legal discretion over such administrative matters and details; and

WHEREAS, JE, Conclusion No. 16, as cited above, provides that no obligation imposed upon the City or the Council by the terms of the JE can “be *construed or enforced* in a manner that is *inconsistent with* the provisions of...*Article 18, § 4 of the Oklahoma Constitution*” (emphasis added); and

WHEREAS, JE, Conclusion No. 17, as cited above, provides that the City did *not* forfeit “*any rights...under...Article 18, § 4 of the Oklahoma Constitution*” (emphasis added); and

WHEREAS, therefore, notwithstanding the administrative portions of the Ordinance, by law (as expressly incorporated into the JE by Conclusions No. 16 and 17), Council retains administrative discretion over the funding of personnel for the Police Department, including specific dollar levels of General Fund and Police Sales Tax appropriations for police officer employment positions in the Police Department; and

WHEREAS, notwithstanding the fact that the “commencing with” portions of the Ordinance are administrative in nature (*see* JE, Findings No. 1, 5, 6, and Stipulations No. 1, 5 and 6), Council has since 1989 exercised its legal discretion *to fully complete* all Police Listed

Projects; and, in addition, Council has exercised said discretion to continue to fund several Police Listed Projects each fiscal year from and since 1989; and

WHEREAS, the status of the administrative Police Listed Projects for Fiscal Year 2021-2022 is hereby declared by Council to be as follows:

<u>Police “Listed Projects”</u>	<u>City Code Ref.</u>	<u>Current Status</u>
"The funding of a minimum additional 200 fully equipped police officers for the Oklahoma City Police Department;"	Sec. 52-21 (b) (1) (a)	Completed, with 219 police officer employment positions to be funded in Fiscal Year 2021-2022 as a Police Sales Tax expenditure, per authorization of June 20, 1989, Ballot Title and per authorization of the legislative purpose specified in Sec. 52-21(b)(1)(a), <i>see</i> Exhibit A, attached, and <i>see also</i> City Budget for Fiscal Year 2021-2022;
"The funding of purchase, maintenance and operation costs for 192 fully equipped new police cars;"	Sec. 52-21 (b) (1) (b)	Completed, with maintenance costs continuing, <i>see</i> Exhibit B, attached
"The funding of purchase, maintenance and operation costs for 80 additional vehicles to complete implementation of the ‘Take-Home-Car-Program’ for the Oklahoma City Police Department;"	Sec. 52-21 (b) (1) (c)	Completed, with maintenance costs continuing, <i>see</i> Exhibit B, attached
"The funding of purchase, maintenance and operation costs to replace the police motorcycle fleet;"	Sec. 52-21 (b) (1) (d)	Completed, with maintenance costs continuing, <i>see</i> Exhibit B, attached
"The funding of purchase, maintenance and operation costs for a new police mobile command post;"	Sec. 52-21 (b) (1) (e)	Completed, with maintenance costs continuing, <i>see</i> Exhibit B, attached

"The purchase of new equipment for the Oklahoma City Police Department, including....;" Sec. 52-21 (b) (1) (f) Completed

"The funding of improvements to Oklahoma City Police Department buildings and facilities, including....;" Sec. 52-21 (b) (1) (g) Completed

and

WHEREAS, as stated above, Council desires to fund 219 police officer employment positions in the Police Department as a Police Sales Tax expenditure authorized by the legislative purpose for the Police Sales Tax specified in the June 20, 1989, Ballot Title and in the 2020 Code, § 52-21(b)(1)(a); and

WHEREAS, the Police Sales Tax expenditure for 219 police officer employment positions is set forth on Exhibit A, Police Sales Tax expenditure, attached; and

WHEREAS, JE, Conclusion No. 10, states that certain administrative "listed projects" should receive funding priority over administrative "other projects", but with the express proviso *“that actual limited-purpose tax funding for ‘listed projects’ in any particular fiscal year shall at all times be strictly conditioned upon annual appropriation of funds by a majority vote of the Council of The City of Oklahoma City as required by law”* (emphasis in original); and

WHEREAS, Council desires to fund one Police Listed Project for Fiscal Year 2022-2023, which Police Listed Project is described in Exhibit B attached hereto.

WHEREAS, JE, Conclusion No. 11, states that when funding of all "listed projects" has been declared "completed," "commenced with a projected completion date," and/or "commenced

and continuing from year-to-year" by resolution of Council, Council may continue to declare "other projects" under the 2020 Code, §§ 52-21(b)(1)(h) (Police) and 52-21(b)(2)(i) (Fire), and to expend limited-purpose tax funds for such "other projects"; provided, however, that "other projects" under the 2020 Code, §§ 52-21(b)(1)(h) (Police) and 52-21(b)(2)(i) (Fire), shall henceforth be limited to projects which provide "new, additional, or increased" police, fire fighting, or fire-rescue services and/or "new, additional, or improved" facilities or equipment; and

WHEREAS, on January 12, 1993, Council first adopted a Resolution declaring that funding of all "listed projects" has been "completed", "commenced with a projected completion date," and/or "commenced and continuing from year-to-year," as contemplated by Conclusion No. 11 of the JE, with the current status of all "listed projects" for Fiscal Year 2021-2022 being as previously stated in this Resolution; and

WHEREAS, JE, Conclusion No. 10, states that "listed projects" "commenced with a projected completion date" and/or "commenced and continuing from year-to-year" should henceforth receive funding priority over "other projects", with the express proviso "*that actual limited-purpose tax funding for "listed projects" in any particular fiscal year shall at all times be strictly conditioned upon annual appropriation of funds by a majority vote of the Council of The City of Oklahoma City as required by law*" (emphasis in original); and

WHEREAS, Police Sales Tax funding for all Police Listed Projects "commenced and continuing from year-to-year" has been provided for in the City Budget for Fiscal Year 2022-2023 in the actual amounts which a majority of Council desired and voted in its discretion to appropriate, as provided by law; and

WHEREAS, Council desires to approve one or more Police Department "other project(s)" for Fiscal Year 2022-2023 under the administrative provisions of the 2020 Code, § 52-21(B)(1)(h) (Police), and to authorize expenditures of Police Sales Tax funds for the police "services, facilities, or equipment" included in said "other project(s)"; and

WHEREAS, JE, Conclusion No. 12, states that if "other projects" are, in the future, considered for funding by Council under the provisions of the 2020 Code, §§ 52-21(b)(1)(h) (Police) and/or 52-21(b)(2)(i) (Fire), there shall be a complete description of the proposed "other project" presented, which description should include the following information: (1) specification of what is to be included by item, (2) the cost thereof, (3) the purpose for said project, and (4) how said project will provide "new", "additional" or "increased" police, fire-fighting, or fire-rescue services, and/or "new", "additional" and/or "improved" facilities or equipment to the Police or Fire Departments; and

WHEREAS, JE, Conclusion No. 12, states that Council shall hold not less than two (2) public hearings on an "other project" proposed under the provisions of the 2020 Code, §§ 52-21(b)(1)(h) (Police) and/or 52-21(b)(2)(i) (Fire), and make the above-described information available for public review not less than three (3) calendar days prior to the first public hearing on the matter; and

WHEREAS, the procedural requirements for "other projects" as set forth in the JE, Conclusion No. 12, have been satisfied for the Police Other Projects attached to this Resolution as Exhibits C through K.

NOW, THEREFORE, BE IT RESOLVED that the Council of The City of Oklahoma City exercises its discretion pursuant to law and does hereby:

1. Express its intent to authorize \$163,911,659 in the General Fund for the Police Department for Fiscal Year 2022-2023, which includes funding for 1,015 General Fund police officer employment positions; and

2. Express its intent to authorize \$49,515,656 in the Police Sales Tax Fund for the Police Department for Fiscal Year 2022-2023, which includes funding for 220 police officer employment positions; and

3. Approves a Police Sales Tax expenditure for 219 police officer employment positions as described in Exhibit A, attached; and

4. Approves the Police Listed Project described in Exhibit B, attached; and

5. Approves the Police Other Projects described in Exhibits C through K, attached;

ADOPTED in an open meeting of the Council of The City of Oklahoma City on the 21st day of June, 2022.

SIGNED by the Mayor of The City of Oklahoma City on the 21st day of June, 2022

ATTEST: (SEAL)

Amy K Simpson
CITY CLERK



[Signature]
VICE-MAYOR

REVIEWED for form and legality.

[Signature]
Assistant Municipal Counselor