



CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Consider 1) Adoption of an Urgency Ordinance Imposing a ¼-cent sales tax subject to approval of a majority of the Lodi electorate; 2) adoption of a Resolution Submitting a ¼-cent Sales Tax Initiative and Companion Advisory Measure to a vote of the Electorate of the City of Lodi on November 2, 2004, Setting Priorities for Filing Written Arguments, and Directing the City Attorney to prepare an Impartial Analysis; and 3) Approval of a Special Allocation of \$10,000 to the Elections Fund.

MEETING DATE: Wednesday, August 4, 2004

PREPARED BY: D. Stephen Schwabauer, City Attorney

RECOMMENDED ACTION: Consider: 1) Adoption of an Urgency Ordinance Imposing a ¼-cent sales tax subject to approval of a majority of the Lodi electorate; 2) Adoption of a Resolution Submitting a ¼-cent Sales Tax Initiative and Companion Advisory Measure to a Vote of the Electorate of the City of Lodi on November 2, 2004, Setting Priorities for Filing Written Arguments, and Directing the City Attorney to prepare an Impartial Analysis; and 3) Approval of a Special Allocation of \$10,000 to the Elections Fund.

BACKGROUND INFORMATION: This item comes before Council at the request of Mayor Pro Tempore Beckman. As Council is aware, a local citizens group has been considering a signature drive to put a ¼-cent sales tax initiative on the ballot with a companion advisory measure prioritizing a list of City projects that could be funded with the revenue derived therefrom. The Initiative has a 10-year sunset clause. Mayor Pro Tempore Beckman proposes that the Council consider using its own initiative power to place the sales tax measure on the ballot for the November 2, 2004 election. This would obviate the need for a signature drive.

In order to pursue the Council sponsored initiative route, Council must first adopt an urgency ordinance imposing the tax subject to approval by a majority of the Lodi electorate. Proposition 62 (Government Code Section 53724(a)) requires that a general tax be proposed by a 2/3's vote of the council, in our case, four votes. An urgency ordinance requires approval by 2/3's vote as well. The proposed initiative calls for the assessment of a general tax, i.e. once levied it can be used for any general governmental purpose and therefore must pass by a simple majority vote of the electorate. The enactment of a general tax must be consolidated with a regularly scheduled general election unless the Council finds an emergency by unanimous vote. (Cal. Const. art. XIIC § 2(b) "No local government may impose . . . any general tax unless and until the tax is submitted to the electorate and approved by a majority vote. . . . The election required by this subdivision shall be consolidated with a regularly scheduled general election . . . except in cases of emergency declared by a unanimous vote of the governing body."). However, if the citizens group itself collects signatures to put the initiative on the ballot, it may be able to proceed via special election, since the tax is not imposed by the local government.

APPROVED: _____
H. Dixon Flynn, City Manager

The sales tax initiative would be accompanied by an advisory measure that would give Lodi Citizens the opportunity to voice their opinion on how the revenue should be spent. The advisory measure would list a group of projects that are currently on hold such as placing paramedics on Lodi fire trucks, building an indoor sports center, building an aquatics center and developing DeBenedetti Park, and constructing and operating a new Animal Shelter. The companion measure is advisory only and would not be binding on the City.

Finance Director James Krueger estimates the proposed initiative would raise approximately 2.2 million dollars per year. Because this election was not in the clerk's budget, it would require a special allocation of \$10,000 (the high estimate provided by the San Joaquin County Registrar) to the Elections Fund to pay the cost of placing the measure on the ballot.

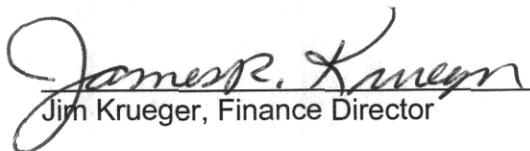
I have prepared this staff report and agenda title. However, the proposed resolution has been paid for and drafted by the Citizens group's counsel at a well-respected municipal law firm, Best Best and Krieger. I have reviewed and approved their resolution.

FUNDING: up to \$10,000, Elections Fund 100102



D. Stephen Schwabauer
City Attorney

Approved:



James R. Krueger
Jim Krueger, Finance Director

ORDINANCE NO. 1751

AN URGENCY ORDINANCE OF THE CITY OF LODI IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION AND ADDING CHAPTER 3.09 TO THE LODI MUNICIPAL CODE

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WHEREAS, the City of Lodi's Revised Budget for 2004-2005 shows an approximately \$1.9 million shortfall in the amount of revenue relative to the amount of expenditures; and

WHEREAS, the State budget will likely involve significant funding cuts for cities, and there are currently insufficient alternative sources for funding local governments; and

WHEREAS, the City's 2004-2005 Financial Plan and Budget states that "the City will seek to maintain a diversified and stable revenue base to protect it from short-term fluctuations in any one revenue source" and that "the City will make all current expenditures with current revenues, avoiding procedures that balance current budgets by accruing future revenues, rolling over short-term debt or borrowing reserves of one fund to another"; and

WHEREAS, in light of the budget shortfall and decreasing funding from the State, the City cannot currently fund many important capital projects and thus has a vital need to increase its revenue to finance critical public projects, facilities, and services; and

WHEREAS, the City's Finance Director has estimated that a one quarter cent increase in the City's transactions and use tax would result in \$2.2 million dollars in revenue annually; and

WHEREAS, Government Code Section 36937 permits cities to enact urgency ordinances for the immediate preservation of the public peace, health, and safety; and

WHEREAS, the City Council hereby finds that, because of the inability to fund critical public projects, facilities, and services, an increase in the transactions and use tax is necessary for the immediate preservation of the public peace, health, and safety.

THE CITY COUNCIL OF THE CITY OF LODI DOES ORDAIN AS FOLLOWS:

SECTION 1. The Lodi Municipal Code is hereby amended by the addition of Chapter 3.09, which shall read as follows:

"3.09.010. Title and Effect.

This chapter shall be known as the Lodi Transactions and Use Tax Ordinance. This chapter shall be applicable in the incorporated territory of the City of Lodi ("City"). This chapter shall complement, and not replace or supersede, the City's existing sales and use tax, as such tax is described in Chapter 3.08 of the Municipal Code.

3.09.020. Operative Date

As used in Chapter 3.09, "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter. If this chapter is approved by the City Council, and subsequently approved by the voters at the November 2004 election, the operative date shall be April 1, 2005.

3.09.030. Purpose

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

A. To impose retail transactions and use tax regulations 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 chapter, 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 retail transactions and use tax regulations 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 retail transactions and use tax regulations that impose a tax and provide a measure therefor 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 retail transactions and use tax regulations 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 chapter.

3.09.040. Contract with State.

Prior to the Operative Date of April 1, 2005, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of these transactions and use tax regulations; 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.

3.09.050. 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 .25% 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 chapter.

3.09.060. Place of Sale.

For the purposes of this chapter, 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.

3.09.070. 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 chapter for storage, use or other consumption in said territory at the rate of .25% 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.

3.09.080. Adoption of Provisions of State Law.

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

3.09.090. 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 Chapter.
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.

3.09.100. 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 chapter.

3.09.110. 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 chapter.
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 chapter.
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 chapter, 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 regulations.
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 chapter.
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 chapter.

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 chapter 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.

3.09.120. 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 chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter. Except as provided above and in Section 3.40.140, this chapter may be amended only by the voters pursuant to the provisions of Elections Code section 9217 and as provided by law.

3.09.130. Termination of Tax.

The transactions and use tax imposed by this Chapter shall terminate ten years from the Operative Date.

3.09.140. 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 chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.”

SECTION 2. Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. The City Council hereby declares that it would have adopted this chapter irrespective of the invalidity of any particular portion thereof.

SECTION 3. Effective Date. After its adoption by the voters, this chapter shall be in full force and effect ten (10) days after the vote is declared by the legislative body, pursuant to the provisions of Elections Code sections 9217 and 15400 and as provided by law.

SECTION 4. Publication. The City Clerk shall certify to the adoption of this chapter and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Lodi.

Approved this 4th day of August, 2004

LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1751 was adopted as an urgency ordinance at a regular meeting of the City Council of the City of Lodi held August 4, 2004 and was thereafter passed, adopted and ordered to print by the following vote:

AYES: COUNCIL MEMBERS –
NOES; COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1751 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:



D. STEPHEN SCHWABAUER
City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI CALLING AN ELECTION TO SUBMIT TO THE VOTERS A BALLOT MEASURE TO LEVY A ONE QUARTER CENT TRANSACTIONS AND USE TAX AND AN ADVISORY BALLOT MEASURE, REQUESTING THE SAN JOAQUIN COUNTY BOARD OF SUPERVISORS TO CONSOLIDATE THE ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2004 AND TO CONDUCT THE ELECTION, PROVIDING FOR THE SUBMISSION OF BALLOT ARGUMENTS FOR AND AGAINST THE MEASURE, AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

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WHEREAS, Section 2(b) of Article XIII C of the California Constitution requires that a ballot measure proposing a general tax be submitted to the voters at an election consolidated with a regularly scheduled general election for members of the governing body of the City; and

WHEREAS, the California State Legislature has enacted Revenue and Taxation Code Section 7285.9, which section authorizes the City, subject to the approval of a majority of the qualified voters of the City in an election on the issue, to levy a .25% transactions and use tax for general revenue purposes; and

WHEREAS, pursuant to Section 7285.9, the City Council has approved by a two-thirds majority Ordinance No. 1751, levying a .25% transactions and use tax, subject to the approval of a majority of the qualified voters at the next regularly scheduled general election; and

WHEREAS, it is desirable that the election on the transactions and use tax ballot measure be consolidated with the statewide general election to be held on November 2, 2004; and

WHEREAS, Elections Code Section 9603 permits the submission of advisory measures to the voters.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI DOES HEREBY RESOLVE THAT:

SECTION 1. Pursuant to the requirements of Revenue and Taxation Code Section 7285.9 and Elections Code Section 9222, an election is hereby called on the following ballot measure to enact an ordinance establishing a transactions and use tax, and the ballot forms shall have printed on them the following words with regard to the measure:

Shall Ordinance No. 1751, which would enact a one quarter cent transactions and use tax for general government purposes, be adopted?

A true and correct copy of Ordinance No. 1751 is attached hereto as Exhibit 1 and is expressly incorporated herein.

SECTION 2. Pursuant to the requirements of Revenue and Taxation Code Section 7285.9 and Elections Code Section 9222, an election is hereby called on the following ballot measure to submit to the voters an advisory measure concerning the uses to which the proceeds from the proposed transactions and use tax would be put, and the ballot forms shall have printed on them the following words with regard to the measure:

Should the proceeds from the one quarter cent transactions and use tax, if adopted, first be spent on the following City projects, in no order of priority:

- (1) A new animal shelter;**
- (2) A new aquatic center;**
- (3) A new downtown indoor athletic center;**
- (4) Remodeling Fire Station #2;**
- (5) A new fire station in the southeast portion of Lodi; and**
- (6) Placing paramedics in each fire station?**

SECTION 3. The San Joaquin County Board of Supervisors is requested to consolidate the election on these two ballot measures with the statewide general election to be held on November 2, 2004 and to direct the San Joaquin County Registrar of Voters to take any and all necessary steps to conduct the consolidated election.

SECTION 4. Arguments in favor of and in opposition to the two ballot measures and rebuttal arguments shall be permitted. The City hereby adopts the provisions of Elections Code

Sections 9220(a), 9282, and 9285(a), regarding the acceptance of arguments relating to ballot measures. The City Clerk shall fix the dates for submittal of arguments and rebuttals as provided for in the Elections Code and in conjunction with the San Joaquin County Registrar of Voters.

SECTION 5. The City Clerk is hereby authorized and directed to transmit to the City Attorney copies of the two measures to be submitted to the voters by this resolution, and the City Attorney shall prepare an impartial analysis of the two measures pursuant to Elections Code Section 9280.

Approved this 4th day of August, 2004

LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

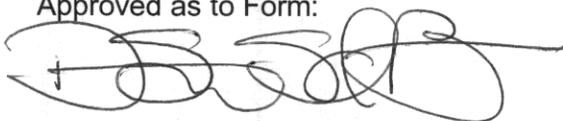
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State of California
County of San Joaquin, ss.

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 4, 2004, by the following vote:

AYES: COUNCIL MEMBERS –
NOES; COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:



D. STEPHEN SCHWABAUER
City Attorney

ORDINANCE NO. 1751

AN URGENCY ORDINANCE OF THE CITY OF LODI IMPOSING
A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY
THE STATE BOARD OF EQUALIZATION AND ADDING
CHAPTER 3.09 TO THE LODI MUNICIPAL CODE

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WHEREAS, the City of Lodi's Revised Budget for 2004-2005 shows an approximately \$1.9 million shortfall in the amount of revenue relative to the amount of expenditures; and

WHEREAS, the State budget will likely involve significant funding cuts for cities, and there are currently insufficient alternative sources for funding local governments; and

WHEREAS, the City's 2004-2005 Financial Plan and Budget states that "the City will seek to maintain a diversified and stable revenue base to protect it from short-term fluctuations in any one revenue source" and that "the City will make all current expenditures with current revenues, avoiding procedures that balance current budgets by accruing future revenues, rolling over short-term debt or borrowing reserves of one fund to another"; and

WHEREAS, in light of the budget shortfall and decreasing funding from the State, the City cannot currently fund many important capital projects and thus has a vital need to increase its revenue to finance critical public projects, facilities, and services; and

WHEREAS, the City's Finance Director has estimated that a one quarter cent increase in the City's transactions and use tax would result in \$2.2 million dollars in revenue annually; and

WHEREAS, Government Code Section 36937 permits cities to enact urgency ordinances for the immediate preservation of the public peace, health, and safety; and

WHEREAS, the City Council hereby finds that, because of the inability to fund critical public projects, facilities, and services, an increase in the transactions and use tax is necessary for the immediate preservation of the public peace, health, and safety.

THE CITY COUNCIL OF THE CITY OF LODI DOES ORDAIN AS FOLLOWS:

SECTION 1. The Lodi Municipal Code is hereby amended by the addition of Chapter 3.09, which shall read as follows:

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3.09.020. Operative Date

As used in Chapter 3.09, "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter. If this chapter is approved by the City Council, and subsequently approved by the voters at the November 2004 election, the operative date shall be April 1, 2005.

3.09.030. Purpose

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

A. To impose retail transactions and use tax regulations 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 chapter, 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 retail transactions and use tax regulations 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 retail transactions and use tax regulations that impose a tax and provide a measure therefor 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 retail transactions and use tax regulations 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 chapter.

3.09.040. Contract with State.

Prior to the Operative Date of April 1, 2005, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of these transactions and use tax regulations; 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.

3.09.050. Transactions Tax Rate.

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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 chapter.

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For the purposes of this chapter, 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.

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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 chapter for storage, use or other consumption in said territory at the rate of .25% 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.

3.09.080. Adoption of Provisions of State Law.

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

3.09.090. 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 Chapter.
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.

3.09.100. 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 chapter.

3.09.110. 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 chapter.
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 chapter.
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 chapter, 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 regulations.
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 chapter.
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 chapter.

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 chapter 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.

3.09.120. 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 chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter. Except as provided above and in Section 3.40.140, this chapter may be amended only by the voters pursuant to the provisions of Elections Code section 9217 and as provided by law.

3.09.130. Termination of Tax.

The transactions and use tax imposed by this Chapter shall terminate ten years from the Operative Date.

3.09.140. 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 chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected."

SECTION 2. Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. The City Council hereby declares that it would have adopted this chapter irrespective of the invalidity of any particular portion thereof.

SECTION 3. Effective Date. After its adoption by the voters, this chapter shall be in full force and effect ten (10) days after the vote is declared by the legislative body, pursuant to the provisions of Elections Code sections 9217 and 15400 and as provided by law.

SECTION 4. Publication. The City Clerk shall certify to the adoption of this chapter and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Lodi.

Approved this 4th day of August, 2004

LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1751 was adopted as an urgency ordinance at a regular meeting of the City Council of the City of Lodi held August 4, 2004 and was thereafter passed, adopted and ordered to print by the following vote:

AYES: COUNCIL MEMBERS –
NOES; COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1751 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

RESOLUTION NO. 1751

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI CALLING AN ELECTION TO SUBMIT TO THE VOTERS A BALLOT MEASURE TO LEVY A ONE QUARTER CENT TRANSACTIONS AND USE TAX AND AN ADVISORY BALLOT MEASURE, REQUESTING THE SAN JOAQUIN COUNTY BOARD OF SUPERVISORS TO CONSOLIDATE THE ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2004 AND TO CONDUCT THE ELECTION, PROVIDING FOR THE SUBMISSION OF BALLOT ARGUMENTS FOR AND AGAINST THE MEASURE, AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

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WHEREAS, Section 2(b) of Article XIIC of the California Constitution requires that a ballot measure proposing a general tax be submitted to the voters at an election consolidated with a regularly scheduled general election for members of the governing body of the City; and

WHEREAS, the California State Legislature has enacted Revenue and Taxation Code Section 7285.9, which section authorizes the City, subject to the approval of a majority of the qualified voters of the City in an election on the issue, to levy a .25% transactions and use tax for general revenue purposes; and

WHEREAS, pursuant to Section 7285.9, the City Council has approved by a two-thirds majority Ordinance No. 1751, levying a .25% transactions and use tax, subject to the approval of a majority of the qualified voters at the next regularly scheduled general election; and

WHEREAS, it is desirable that the election on the transactions and use tax ballot measure be consolidated with the statewide general election to be held on November 2, 2004; and

WHEREAS, Elections Code Section 9603 permits the submission of advisory measures to the voters.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI DOES HEREBY RESOLVE THAT:

SECTION 1. Pursuant to the requirements of Revenue and Taxation Code Section 7285.9 and Elections Code Section 9222, an election is hereby called on the following ballot measure to enact an ordinance establishing a transactions and use tax, and the ballot forms shall have printed on them the following words with regard to the measure:

Shall Ordinance No. 1751, which would enact a one quarter cent transactions and use tax for general government purposes, be adopted?

A true and correct copy of Ordinance No. 1751 is attached hereto as Exhibit 1 and is expressly incorporated herein.

SECTION 2. Pursuant to the requirements of Revenue and Taxation Code Section 7285.9 and Elections Code Section 9222, an election is hereby called on the following ballot measure to submit to the voters an advisory measure concerning the uses to which the proceeds from the proposed transactions and use tax would be put, and the ballot forms shall have printed on them the following words with regard to the measure:

Should the proceeds from the one quarter cent transactions and use tax, if adopted, first be spent on the following City projects, in no order of priority:

- (1) A new animal shelter;**
- (2) A new aquatic center;**
- (3) A new downtown indoor athletic center;**
- (4) Remodeling Fire Station #2;**
- (5) A new fire station in the southeast portion of Lodi; and**
- (6) Placing paramedics in each fire station?**

SECTION 3. The San Joaquin County Board of Supervisors is requested to consolidate the election on these two ballot measures with the statewide general election to be held on November 2, 2004 and to direct the San Joaquin County Registrar of Voters to take any and all necessary steps to conduct the consolidated election.

SECTION 4. Arguments in favor of and in opposition to the two ballot measures and rebuttal arguments shall be permitted. The City hereby adopts the provisions of Elections Code

Sections 9220(a), 9282, and 9285(a), regarding the acceptance of arguments relating to ballot measures. The City Clerk shall fix the dates for submittal of arguments and rebuttals as provided for in the Elections Code and in conjunction with the San Joaquin County Registrar of Voters.

SECTION 5. The City Clerk is hereby authorized and directed to transmit to the City Attorney copies of the two measures to be submitted to the voters by this resolution, and the City Attorney shall prepare an impartial analysis of the two measures pursuant to Elections Code Section 9280.

Approved this 4th day of August, 2004

LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 4, 2004, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES; COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney