



CITY OF LODI  
COUNCIL COMMUNICATION

**AGENDA TITLE:** Introduce Ordinance Enacting the Fire and Facilities Initiative

**MEETING DATE:** June 21, 2006 City Council Meeting

**PREPARED BY:** City Attorney's Office

**RECOMMENDED ACTION:** Introduce Ordinance Enacting the Fire and Facilities Initiative.

**BACKGROUND INFORMATION:** A local citizens group circulated a petition to place the Fire and Facilities Initiative on the November 7, 2006 Ballot (see Exhibit A). If passed by a 2/3rds margin the Initiative will impose a citywide ¼-cent transactions and use tax for 10 years from its effective date. The Initiative would require that the proceeds of the tax be expended on certain defined programs (placing paramedics on Lodi engine companies, building Fire Stations #2 and #5; building an Indoor Sports Complex and Maintenance and Operations for the above facilities.

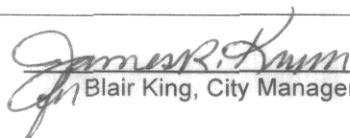
The Initiative obtained sufficient signatures to qualify for the ballot and is now titled Measure G. Because Measure G has qualified for the ballot and may pass, staff recommends that Council pass the Initiative as an Ordinance in advance of the election. Staff makes this recommendation because the Board of Equalization ("BOE") has indicated it would refuse to collect the tax and would refuse to collect the City's existing 1-cent sales tax, and instead transfer that tax to San Joaquin County (see February 9, 2006 letter from the BOE to the City of Richmond, attached as Exhibit B) if Measure G passes. This result would obviously be devastating because it represents a \$10.4 million dollar loss to the City's General Fund.

In summary, the BOE's position is that the transactions and use tax implementation statute, Revenue and Taxation Code §7285.91 provides the exclusive mechanism for passing a transaction and use tax and requires by its terms that the transactions and use tax be first passed by a 2/3rds vote of the City Council: "The [transactions and use] tax may be levied. . .if all of the following requirements are met: (a) the Ordinance proposing the tax is approved by a 2/3rds vote of all members of the governing body and is subsequently approved by a 2/3rds vote of the qualified voters of the City. . .(Revenue and Taxation Code §7285.91 (emphasis added)).

Moreover, since State law requires the BOE to terminate its contract with a city to administer all of its sales and use taxes if the city imposes a sales and use tax that does not conform to the requirements of the Revenue and Taxation Code, (Revenue and Taxation Code §7203.5) the BOE opines that it would be required to terminate its contract for our existing sales and use tax and cede it to the County. (See Exhibit B).

Despite the express language of the Revenue and Taxation Code there is an argument that the BOE's position is wrong. Even though literally correct, it is my opinion that a court of appeal could interpret the initiative power broadly to allow a transactions and use tax by initiative. (See e.g. Associated Homebuilders v. City of Livermore, 18 Cal.3d 582. (Permitting a zoning initiative despite its failure to be run through the City Council hearing process as literally required by statute because the requirement did

APPROVED:

  
Blair King, City Manager

not make sense in the context of an initiative, and the use of the initiative power was not expressly prohibited.)

Because Measure G secured sufficient signatures, you must place the initiative on the ballot for November pursuant to Elections Code §9215: "If the initiative petition is signed by not less than 10 percent of the voters of the City...the legislative body shall do one of the following: (a) adopt the ordinance...[or] *submit* the ordinance, without alteration, to the voters pursuant to subdivision (b) of §1405..." (emphasis supplied). Note the operative language is *submit*, not *pass*. As such you may in my opinion chose not to pass the ordinance before you tonight.<sup>1</sup>

However, if you do not to pass it, and the citizens vote in favor of the ordinance, the Board of Equalization will refuse to implement it. A vote in favor of the ordinance would prevent the need for a writ of mandate against the Board to require them to implement it, in the event the initiative passes. You should note that these are uncharted waters and no answer is certain. A court could interpret the Elections Code consistent with the BOE position, in which case the City would forfeit \$10.4 million dollars to the County.

**FISCAL IMPACT:** Unknown expense cost to the General Fund.

  
\_\_\_\_\_  
Ruby Paiste, Interim Finance Director

  
\_\_\_\_\_  
Stephen Schwabauer, City Attorney

<sup>1</sup> However, you must, absent a conflict vote on the matter because under Lodi Municipal Code 2.04.140, abstentions when not required by a conflict of interest are counted as a yes vote.

Pursuant to Elections Code § 9203, the city attorney has prepared the following title and summary of the chief purpose and points of the following proposed measure:

### FIRE AND FACILITIES SALES TAX INITIATIVE

The Fire and Facilities Sales Tax Initiative proposes to amend the Lodi Municipal Code to add new Chapter 3.09 adding an additional one quarter cent transaction and use (sales) tax. The tax would be paid in addition to current State and local sales taxes and would be collected at the same time, in the same manner, and on the same items as existing sales taxes. The sales tax levy must be approved by a two-thirds vote of the qualified voters in the City voting in an election on the issue. If approved, the sales tax levy would become effective July 1, 2005 and would remain in effect for ten years.

The initiative requires that the proceeds of the tax be spent on the following projects in the following priority: 1. Placing paramedics on fire engines in Lodi (up to \$700,000 per year for six years); 2. Design and construction of Fire Station #5 which shall be located in the southeast portion of Lodi (up to \$2,000,000); 3. Construction of the Lodi Aquatics Center (up to \$9,000,000); 4. Design and construction of a replacement for Fire Station #2, which shall be located in the eastern portion of Lodi (up to \$2,000,000); 5. Construction of a downtown indoor sports center (up to \$9,000,000); and 6. Maintenance and operation of the facilities above (up to \$1,500,000). The initiative requires that the proceeds be spent on the above projects and no others.

The initiative also establishes an oversight committee to ensure that the proceeds are spent on the listed projects. The oversight committee would also have the power to, jointly with the City Council, approve proposed changes in the priority or maximum expense of projects based upon changed circumstances.

**EXHIBIT B**



STATE OF CALIFORNIA  
 STATE BOARD OF EQUALIZATION  
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 Acting Member  
 First District, San Francisco

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CLAUDE PARKER  
 Third District, Long Beach

JOHN CHIANG  
 Fourth District, Los Angeles

STEVE WESTLY  
 State Controller, Sacramento

RAMON J. HIRSIG  
 Executive Director

February 9, 2006

Mr. Bruce Soublet  
 Assistant City Attorney  
 City of Richmond  
 1401 Marina Way South, Suite C  
 Richmond, California 94804

Re: [No Permit Number]  
 Initiative to Increase Taxes

Dear Mr. Soublet:

I am responding to your letter dated September 19, 2005, to Acting Assistant Chief Counsel Selvi Stanislaus. You ask for advice regarding the process for enacting transactions and use taxes.

As we understand it, citizens of the City of Richmond placed on the November ballot an initiative to enact a tax ordinance by direct vote of the people. From previous telephone conversations, we understand that the ordinance was intended to enact a city-wide transactions and use tax under the authority of Revenue and Taxation Code section (Section) 7285.90.<sup>1</sup> During our telephone conversation on January 10, 2006, on this issue, you told me that the initiative did not pass, but you still wanted the Legal Department's advice on this matter. Specifically, you ask if the Board will administer and enforce a city transactions and use tax enacted directly through the initiative process with the city council passing an ordinance later or if the tax must be enacted by the city council first and subsequently approved by the voters.

OPINION

A. Local and District Taxes.

1. Generally.

In California, there is a statewide tax rate of 7.25%. This rate is made up from the California Sales and Use Tax (§§ 6051 et seq. & 6201 et seq.) and the Bradley-Burns Uniform Local Sales and Use

<sup>1</sup> All statutory citations are, unless otherwise stated, to the Revenue and Taxation Code.

Mr. Bruce Soublet  
 February 9, 2006  
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**EXHIBIT B** ★

(Local) Tax (§§ 7200-7212). Pursuant to the latter, the counties of California impose a 1¼% tax on all sales within their boundaries. Each city within a county also imposes a local sales tax at rates up to 1%. This tax is offset against the county tax so that the rate within each county is a uniform 1¼%.<sup>2</sup>

In 1969, the Legislature enacted the Transactions and Use (District) Tax Law. (§ 7251 et seq.) Under enabling statutes in various codes, local jurisdictions may impose transactions (sales) and use taxes at varying rates measured by the gross receipts from the sales within the jurisdiction of tangible personal property sold at retail or by the sales price of property whose use, storage, or consumption within the jurisdiction is otherwise subject to tax. (§§ 7261, subd. (a) & 7262, subd. (a).) Although counties and cities may also impose such taxes, all entities imposing such taxes are called "districts." (§§ 7211 & 7252.) No matter where the enabling authority is found, all district taxes are administered by the Board under the District Tax Law.

2. City Authority to Levy District Taxes.

Section 7285.90 was enacted as part of SB 566. (Stats. 2003, ch. 709, § 6 [in effect January 1, 2004].) Under the Local Tax Law, cities that enact local sales and use taxes in addition to the taxes authorized under the Local Tax Law face the possibility of being taken out of the local tax system unless they repeal the offending tax ordinance. (§ 7203.5.) As a result, prior to SB 566, when a city wanted to levy a district tax, it had to get special authority from the Legislature. Beginning in 1990, the Legislature authorized about 25 such city district taxes. Finally, the Legislature enacted Sections 7285.90 through 7285.92 in SB 566 to give cities the same plenary authority to enact district taxes that counties enjoyed under Sections 7285 and 7285.5, so cities did not have to go to the Legislature for special authority for each tax.<sup>3</sup>

Prior to the passage of SB 566, under Section 7285, a county district tax could be enacted in one of two ways: (1) the Board of Supervisors would enact a tax ordinance and submit it to the voters for approval; or (2) the voters would pass a resolution approving the enactment of a tax and the Board of Supervisors would then pass an ordinance actually imposing the tax. On several occasions, however, when the latter method was employed, the Board of Supervisors did not enact the necessary ordinance as a matter of course and had to be prompted numerous times by the Board's Local Revenue and Allocation Section, the Board office responsible for administering local and district taxes. Another purpose of SB 566, therefore, was to delete from Section 7285 the authority to enact a district tax pursuant to voters' resolution prior to the Board of Supervisors passing a tax.<sup>4</sup>

The language of Sections 7285.90 and 7285.91 was derived from the amended versions of Sections 7285 and 7285.5, respectively, as contained in Section 5 of SB 566. SB 566 deleted the authority from section 7285 for the voters to approve the tax prior to the county levying it. SB 566 intended to give the cities no more authority to levy district taxes than the counties had. As a result,

<sup>2</sup> During the period subject to the "Triple Flip," the rates are 1% (county) and 0.75% (city), respectively. (§ 7203.1.)  
<sup>3</sup> Section 7285.92 clarified that the authority to enact a district was tax in addition to any special authority a city might already have had and that such city taxes were subject to the total district tax rate cap contained in Section 7251.1.  
<sup>4</sup> Section 7285.5 (district tax for special purposes) never contained such authority. SB 566 also made amendments to Section 7285.5 not relevant here. (SB 566, § 5.)

Mr. Bruce Soubllet  
February 9, 2006  
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**EXHIBIT B**

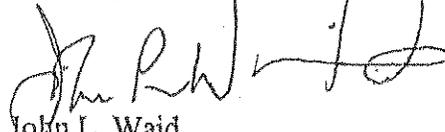
Section 7285.90 does not contain authority for a city to enact a district tax pursuant to action by the voters prior to the governing body of that city enacting a district tax ordinance.<sup>5</sup>

The Board cannot administer a district tax ordinance that is not enacted pursuant to the procedures authorized in the enabling legislation. (76 Ops.Cal.Atty.Gen. 98 (1993).) Attempting to enact the ordinance by having the voters approve a tax through the initiative process prior to action by the City's governing body is not authorized by Section 7285.90. As a result, had the initiative passed, we could not have recommended to the Board that it execute the administration agreement with the city required by Section 7270. A district tax ordinance cannot go into effect until such agreement is executed. (§ 7270, subd. (a).) Therefore, a citywide district tax enacted by initiative cannot become operative if the prior approval of the city's governing body has not been timely obtained.

There is an additional consideration. As an administrative agency, the Board does not have the authority to declare a city ordinance invalid. (See Cal. Const., art. III, § 3.5; §§ 7261, subd. (b) & 7262, subd. (a).) Consequently, had the ordinance passed, it would presumably have been a valid tax ordinance. (See *Rossi v. Brown* (1995) 9 Cal. 4th 688.) It would thus have been an additional local sales and use tax prohibited by Section 7203.5. Under the provisions of that statute, the city would have had to repeal the ordinance or be taken out of the local tax program. Since the tax would have been enacted by initiative, it could only have been repealed by initiative (*Id.* at p. 696, fn. 2). It is thus likely that the city would have been taken out of the local tax program, and local sales and use tax revenue currently being distributed to the city would have been defaulted to the county until the ordinance was repealed in the next election.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,



John L. Waid  
Senior Tax Counsel

JLW:of

cc: Mr. Larry Micheli (MIC:27)  
Ms. Carole Ruwart (MIC:82)

<sup>5</sup> Section 7285.91 specifies that, for a tax for special purposes, voter approval must occur "subsequently" to the enactment of the ordinance. The reason is that, as noted above, the language of Section 7285.91 is derived from Section 7285.5, which never had authority for voters to approve a tax prior to the Board of Supervisors passing the ordinance. As a result, the Legislature specified that voter approval was to occur after the ordinance was enacted. That Section 7285.90 does not contain the word "subsequently" does not create authority to reverse the procedure in the case of a tax for general purposes.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL 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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THE PEOPLE OF THE CITY OF LODI DO 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 City of 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 voters at the November 7, 2006, election, the operative date shall be April 1, 2007.

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 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 7285.91 of Part 1.7 of Division 2, which authorizes the City to adopt this tax chapter, which shall be operative if two-thirds of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax chapter that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- C. To adopt a retail transactions and use tax chapter that imposes a tax and provides 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 a retail transactions and use tax chapter 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 Expenditure Plan

- A. The Expenditure Plan is designed to ensure that the City accomplishes the specific projects listed below with the revenue generated from the transactions and use tax. The revenue from the transactions and use tax shall be expended on these specific projects in the following order of priority:
1. Placing paramedics on fire engines in the City (up to \$700,000 per year for six years);
  2. Design and construction of Fire Station #5, which shall be located in the southeast portion of the City (up to \$2,000,000);
  3. Construction of the Lodi Aquatics Center (up to \$9,000,000);
  4. Design and construction of a replacement for Fire Station #2, which shall be located in the eastern portion of the City (up to \$2,000,000);
  5. Construction of a downtown indoor sports center (up to \$9,000,000); and
  6. Maintenance and operation of the facilities above (up to \$1,500,000).
- B. Once the City has collected revenue from this transactions and use tax in the amount of \$700,000, it shall hire an appropriate number of paramedics and begin providing paramedic services on fire engines in the City within twelve months. Thereafter, subject to its ongoing duty to expend \$700,000 per year to fund paramedics pursuant to this Expenditure Plan, once the City collects the amount listed for each subsequent project it shall begin design or construction of the designated facilities within six months.
- C. The City Council shall appoint an advisory committee to ensure that the revenue from the transactions and use tax is spent in accordance with the actual terms and overall intent of this chapter. The committee shall consist of five individuals and shall, at all times, include one member of Lodi Professional Firefighters Local 1225, one member of the Lodi City Swim Club, one member of the Lodi Sports Foundation, one member of the City Council, and one person selected at large by the City Council in its discretion. Each member of the advisory committee shall serve for a term of two years, which term may be renewed by the City Council. In the event of a vacancy on the committee, the City Council shall appoint an appropriate replacement member.
- D. If the City Council and the advisory committee both determine that the maximum dollar amount to be spent on one or more of these projects is insufficient to achieve the goals of this chapter, the City Council may increase the maximum dollar amount for such project(s), provided that it first holds a noticed public hearing and makes specific findings that the increased expenditures for one or more projects is necessary to complete such project(s) in an effective manner and to fulfill the intent of this chapter.

- E. If the City Council and the advisory committee both determine that the order of priority for these projects should be changed, the City Council may change the order of priority, provided that it first holds a noticed public hearing and makes specific findings that the change in the order of priority is in the best interests of the City and its residents.
- F. Once revenue in the amounts listed above has been spent on the services and facilities included in each of these projects, any remaining revenue raised through this transactions and use tax shall be spent to help maintain such services and facilities.

#### 3.09.050 Contract with 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 chapter; 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.

#### 3.09.060 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% (one quarter of one percent) 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.

#### 3.09.070 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.

#### 3.09.080 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% (one quarter of one percent) 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.

3.09.090 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.

3.09.100 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.

3.09.110 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.

3.09.120 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 ordinance.
  2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
  3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this 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.

3.09.130 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.

3.09.140 Termination of Tax

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

3.09.150 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.

SECTION 3. Effective Date. This chapter is related to the levying and collecting of the City transactions and use tax and shall take effect immediately (see Section 1, 3.09.020, "Operative Date").

SECTION 4. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 6. This ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect immediately after its passage and approval (see Section 1, 3.09.020, "Operative Date").

Attest:

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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JENNIFER M. PERRIN  
Interim City Clerk

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SUSAN HITCHCOCK  
Mayor

State of California  
County of San Joaquin, ss.

I, Jennifer M. Perrin, Interim City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held June 21, 2006, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2006, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

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

JENNIFER M. PERRIN  
Interim City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER  
City Attorney

CITY COUNCIL

SUSAN HITCHCOCK,  
Mayor

BOB JOHNSON,  
Mayor Pro Tempore

JOHN BECKMAN

LARRY D. HANSEN

JOANNE MOUNCE

# CITY OF LODI



BLAIR KING,  
City Manager

JENNIFER M. PERRIN,  
Interim City Clerk

D. STEPHEN SCHWABAUER,  
City Attorney

CITY HALL, 221 WEST PINE STREET / P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6702 / FAX (209) 333-6807 / www.lodi.gov

June 16, 2006

John Johnson  
106 S. Orange Avenue  
Lodi, CA 95240

**JUNE 21, 2006, REGULAR CITY COUNCIL MEETING**  
**Issue relating to the Fire & Facilities Sales Tax Initiative**

This is to notify you that at the City Council meeting of June 21, 2006, at 7:00 p.m., or as soon thereafter as the matter can be heard, in the Council Chamber, at the Carnegie Forum, 305 West Pine Street, Lodi, the Council will consider the following item.

K-1 Introduce ordinance enacting the Fire and Facilities Sales Tax initiative (CA)

Enclosed is a copy of the June 21, 2006, City Council agenda and the staff report related to the above item. Should you wish to speak on this matter, please submit a "Request to Speak" card (*available in the Carnegie Forum*) to the City Clerk prior to the opening of the meeting.

Should you have any questions, please contact me at 333-6702.

  
Jennifer M. Perrin  
Interim City Clerk

JMP

Enclosure