

ORIGINAL

ORDINANCE NO. 373

AN ORDINANCE OF THE CITY OF LODI IMPOSING A LICENSE TAX FOR THE PRIVILEGE OF SELLING TANGIBLE PERSONAL PROPERTY AT RETAIL, PROVIDING FOR PERMITS TO RETAILERS, PROVIDING FOR THE COLLECTING AND PAYING OF SUCH TAX, AND PRESCRIBING PENALTIES FOR VIOLATIONS OF THE PROVISIONS HEREOF.

The City Council of the City of Lodi does ordain as follows:

Section 1. IMPOSITION AND RATE OF TAX. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 1/2 of 1% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City of Lodi on or after July 1, 1948. The license tax imposed by the provisions of this ordinance is in addition to any and all other taxes imposed by any other ordinance of the City of Lodi.

Section 2. TAX LEVIED IN SAME MANNER AS STATE TAX. The tax hereby levied, except as otherwise herein provided, is levied in the same manner, to the same extent and under the same conditions as sale taxes are levied pursuant to Part 1 of Division 2 of the California Revenue and Taxation Code, known as the "Sales and Use Tax Law," as amended and in force and effect on July 1, 1948.

Section 3. ADOPTION OF STATE SALES TAX LAW BY REFERENCE. EXCEPTIONS. All of the provisions of the "Sales and Use Tax Law," as amended and in force and effect on July 1, 1948 (except the provisions thereof pertaining solely to the "Use Tax" and Sections 6051, 6052, 6053, 6066, 6067, 6068, 6069, 6070, 6071, 6451, 7052, 7056, 7101, 7102, 7151, 7152, 7153, applicable to sales of property at retail), are hereby adopted and made a part of this ordinance as though fully set forth herein, and all provisions of any other

ordinance in conflict therewith are inapplicable to this ordinance and the tax hereby imposed; provided, however, the term "gross receipts", as used herein, does not include the amount of any tax imposed by the State of California upon or with respect to retail sales whether imposed upon the retailer or upon the consumer.

All of the provisions of the "Sales and Use Tax Law" hereby adopted, providing for the adoption of rules and regulations and for hearings on the part of the State Board of Equalization, shall be performed by the City Council of the City of Lodi. All other provisions of the "Sales and Use Tax Law" hereby adopted, providing for the performance of official action on the part of the State Board of Equalization, shall be performed by the City Treasurer.

The City of Lodi shall be deemed substituted for the State of California whenever the State is referred to in said "Sales and Use Tax Law."

The City Attorney of the City of Lodi shall be deemed substituted for the Attorney General whenever the Attorney General is referred to in said "Sales and Use Tax Law."

The City Treasurer shall be deemed substituted for the State Controller whenever the State Controller or State Board of Control are referred to in said "Sales and Use Tax Law."

The County of San Joaquin shall be deemed substituted for the County of Sacramento whenever the County of Sacramento is referred to in said "Sales and Use Tax Law."

Section 4. EXEMPTIONS. (a) In addition to those exemptions contained in Part 1 of Division 2 of the Revenue and Taxation Code of the State of California, included in this ordinance by reference, there shall be excluded from the computation of the tax, gross receipts from:

(i) Sales made to or by the State of California or any agency, department, political subdivision, district or municipal corporation thereof:

(ii) Sales of property to be consumed in, or incorporated into the erection, Construction, repair or alteration of either public works or buildings belonging to or being constructed by or on behalf of, or for the use of the United States Government, the State of California or any agency, department, political subdivision, district or public or municipal corporation of the State;

(iii) Sales made pursuant to contracts actually executed in good faith prior to the effective date of this ordinance;

(iv) Sales of meals, food and drinks sold or served on common carriers operating into, through or out of the City from or to points outside' this City.

(b) No tax shall be due hereunder if a sales tax, purchase tax, use tax, or purchase and use tax imposed by any other city of the State of California has been paid on the same transaction.

(c) Sales tax does not apply to sales to purchasers solely for use or consumption in the conduct of their business outside the City Limits of the City of Lodi.

(d) The exemptions set forth in Section 4 and its subsections of this ordinance shall not be applicable unless the seller secures from the purchaser, the signed certificate described in the next paragraph below. This certificate shall be held by the seller, or delivered to the City Treasurer as the City Treasurer may direct. If all of a seller's sales to a particular purchaser are exempt from this tax, the seller need not secure a certificate signed by the purchaser for each purchase, but, with the permission of the City Treasurer, may secure the exemption with one certificate covering multiple sales. It is impractical for a particular seller to obtain the required certificates from purchasers by reason of the volume and type of sales, the City Treasurer may, after inspection of the books

of the seller, agree to recognize a fixed percentage of the sales of the seller as tax exempt under Section 4 and subsections thereof without the requirement of certificates signed by the purchasers. This percentage shall be computed according to an analysis of the percentage of sales made by the seller during the six (6) months period prior to the agreement, which fall into the category of tax-exempt sales under Section 4 and its subsections. The agreement shall be effected by a letter from the City Treasurer to the seller and it is revocable at the discretion of the City Treasurer. In the absence of fraud by the seller, no such revocation shall have retroactive effect.

(i) The certificate shall be in a form to be prescribed by the City Treasurer.

(ii) Any person signing such a form, knowing that it contains a false information shall be guilty on a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed Two Hundred Fifty Dollars (\$250.00) or by imprisonment in the County Jail for a period not to exceed ninety (90) days, or both.

Section 5. ADOPTION OF RULES AND REGULATIONS BY REFERENCE INTERPRETATIONS. The rules and regulations of the State Board of Equalization as amended and in force and effect July 1, 1948, pertaining to the interpretation, administration and enforcement of the "Sales and Use Tax Law" , insofar as applicable, except Rule No. 55 (Section 2015, Title 18, California Administrative Code, Sales & Use Tax) shall apply in the interpretation of this ordinance until specifically abandoned by the rules and regulations adopted by the City Council of Lodi pursuant to this ordinance. The word "City" shall be deemed substituted for the word "State" whenever the word "State" appears in said rules and regulations.

In lieu of Rule No. 55, specifically excepted above, the following interpretations shall apply in the administration of this ordinance:

(A) The sales tax does not apply to sales of property which is:

(i) Imported into this City from a foreign country and sold by the importer in the original package in which imported.

(ii) Sold to foreign purchasers for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad and actually carried to a foreign destination, title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property being used or consumed in the United States. Copies of U. S. Customs Shippers' export declarations filed with the Collector of Customs must be obtained and retained by retailers to support deductions taken under this paragraph. The tax applies to the transaction if the property is diverted in transit or for any reason not actually delivered outside the City pursuant to the contract of sale or not shipped abroad by a foreign purchaser, regardless of documentary evidence held by the retailer of delivery of the property to a carrier for shipment outside the City, or to a foreign purchaser for shipment abroad.

(iii) Mailed by the seller, pursuant to the contract of sale, to persons in the armed forces at points outside continental United States, notwithstanding the property is addressed in care of the Postmaster and forwarded by him to the addressee. When mail is addressed to Army Post Offices (A/P/O's) in care of the Postmaster or to naval forces addressed in care of the Postmaster, it will be presumed that it is forwarded outside California. The seller must keep records showing the names and addresses as they appear on the mailed matter and should keep evidence that the mailing was done by him.

(iv) Shipped to a point outside the City pursuant to the contract of sale when the property is marked for export and delivered by the retailer to the "contracting officer," "officer in charge," "port quartermaster," or other officer of the United States for transportation and delivery to the purchaser at such a point.

(B) The sales tax does not apply to sales of airplanes, and parts

and equipment for airplanes, transported to a point outside this City pursuant to the contract of sale when such property is delivered to the United States Army Corps or any other agency or instrumentality of the United States for transportation and delivery to the purchaser or someone designated by him at that point.

(C) The sales tax does not apply (either in interstate or intrastate commerce) to sales of property shipped from a point outside the City of Lodi to a purchaser inside the City of Lodi, or to the retailer's agent in the City of Lodi, for delivery to the purchaser, if none of the elements of sale, other than such delivery, takes place in the City of Lodi.

The sales tax does apply (either in interstate or intrastate commerce) to sales of property shipped from a point outside of the City of Lodi to a purchaser inside the City of Lodi, or to the retailer's agent in the City of Lodi, for delivery to the purchaser where any element of the sale, in addition to such delivery, takes place in the City of Lodi.

The sales tax does apply to that portion of the gross receipts from the sale of **an** entire business operated by the holder of a Lodi Sales Permit, as represents a fair retail value of the personal property used in the conduct of the business and not held for re-sale. This includes such items as showcases, bars, furniture, equipment, office machines, trucks and automobiles used in the conduct of the business.

"Element of Sale" is hereby defined to include solicitation of an order, the acceptance of an order, the giving of an order, whether such order is given in person, by telephone or by mail, or the payment of the purchase price.

Section 6. VERBATIM EXCERPTS SHALL NOT EXCLUDE BALANCE

The inclusion of any clause, portion or part of the "State Sales and Use Tax Law," Part 1, Division 2 of the Revenue and Taxation Code of the State of California, or the rules and regulations of the State Board of Equalization, verbatim in this ordinance shall not in or of itself be deemed to exclude **any** of the remaining provisions of said "Sales and Use Tax Law" or rules and regulations that are made a part hereof by reference **only**.

Section 7. APPLICATION FOR PERMIT. Every person desiring to engage in or conduct business as a seller within the City of Lodi shall file with the City Treasurer an application for a permit for each place of business from which taxable sales will be made. Every application for a permit shall be made upon a form prescribed by the City Treasurer and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place, or places of business, and such other information as the City Treasurer may require. The application shall be signed by the owner, if a natural person; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

Section 8. ISSUANCE AND DISPLAY OF PERMIT. After compliance with Section 7 of this ordinance by the applicant, the City Treasurer shall grant and issue to each applicant a separate permit for each place of business from which taxable sales will be made. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The permit shall at all times be conspicuously displayed at the place for which issued.

Section 9. PERMIT FEES. At the time of making an application for a permit, the applicant for a permit shall pay to the City Treasurer a fee of \$1.00.

Section 10. REVOCATION OF PERMIT. Whenever any person fails to comply with any of the provisions of this ordinance or any rule or regulation adopted pursuant hereto, the City Council of the City of Lodi, upon hearing, after giving the person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by mail in the manner prescribed for the service of notice of a deficiency determination under the "Sales and Use Tax Law." The City Treasurer shall not issue a new permit after the revocation of a permit unless the City Council of the

City of Lodi is satisfied that the former holder of a permit will comply with the provisions of this ordinance and the rules and regulations adopted pursuant hereto and directs the City Treasurer to issue such permit.

Section 11. RENEWAL OF PERMIT. A seller whose permit has been previously suspended or revoked shall pay the City Treasurer a fee of \$1.00 for the renewal or issuance of a permit.

Section 12. UNLAWFUL ACIS. A person who engages in business as a seller in the City of Lodi without a permit or permits, or after a permit has been suspended or revoked and before the renewal or issuance of a permit, and each officer of any corporation which so engages in business, is guilty of a misdemeanor.

Section 13. DUE DATE. The taxes imposed by this ordinance are due and payable to the City Treasurer on or before the last day of the month next succeeding each quarterly period, the first quarterly payment to be due and payable under this ordinance on the 31st day of October, 1948. The City Treasurer may require returns and payment of the amount of taxes for quarterly periods other than calendar quarters depending upon the principal place of or the nature of the business of the seller or retailer or may require returns and payment of the amount of taxes for other than quarterly periods.

Section 14. REIMBURSEMENT. The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done.

Section 15. UNLAWFUL ADVERTISING. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of property sold or that, if added, it or any part thereof will be refunded, Any person violating any provisions of this section is guilty of a misdemeanor.

Section 16. SUIT FOR TAX. All taxes hereby levied shall be payable to the City Treasurer and any civil suit for the collection thereof may be

filed in *any* court of competent jurisdiction in the State of California, and the **City** Attorney of said City shall prosecute the action.

Section 17. **RESALE CERTIFICATE.** The City Treasurer may at his option accept a State of California Resale Certificate as evidence that any sale is not a sale at retail, or he may in his discretion require **an** affidavit from the seller setting forth such information respecting such sale as he deems necessary to **determine** the nature of such sale.

Section 18. **EXTENSION OF TIME. WAIVER OR COMPROMISE.** The City Treasurer shall have power, **for** good cause shown, to extend for a period of not to exceed **30** days the time for making any return or paying any amount required to be paid under this ordinance, when requested so to do in writing, before the **same** becomes delinquent. The City Treasurer may, with the written approval of the City Attorney, waive **or** compromise any penalty or interest that would **otherwise** accrue under the provisions of this ordinance. The City Treasurer shall make and transmit to the city Council quarterly, a detailed report of **any** sums so waived or compromised **with** the reasons therefor.

Section 19. **DISPOSITION OF PROCEEDS.** All monies collected under and pursuant to the provisions of this ordinance shall be deposited and paid into the General Fund of the City of Lodi.

Section 20. **DIVULGING OF INFORMATION FORBIDDEN.** It is unlawful **for** any officer or employee of the City of Lodi having an administrative duty under this ordinance to make **known** in any manner whatever the business affairs, operations, **or** information obtained by **an** investigation of records and equipment of any retailer **or** any other person visited or examined in the discharge of official duty, or the amount or **source** of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed **in** any return, or to **permit** any return or copy thereof **or** any book containing any abstract or particulars thereof to be seen **or** examined by **any** person. **However,** the City Council, **may,** by resolution, authorize examination **of** the returns by Federal or State officers or employees **or by** the tax officers of this or any other city if a reciprocal arrangement exists. Successors,

receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amount of tax required to be collected, interest and penalties.

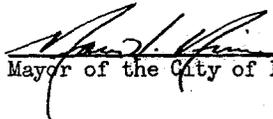
Section 21. PENALTIES. Any person required to make, render, sign or verify any report under the provisions of this ordinance, who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due and required to be paid hereunder, is guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

Section 22. SAME. Any person, firm or corporation violating any of the terms of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

Section 23. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Council of this City hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

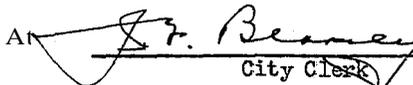
Section 24. EFFECTIVE DATE. This ordinance, inasmuch as it provides for a tax levy for the usual current expenses of the City, shall, under the provisions of Section 1 of Article IV of the Constitution, and under the provisions of Section 861 (d) of the Municipal Corporations Act (Statutes 1883, page 93), take effect immediately.

I hereby approve and sign the foregoing Ordinance No. 373.



Mayor of the City of Lodi

Dated: June 30, 1948.

At 

City Clerk
City C

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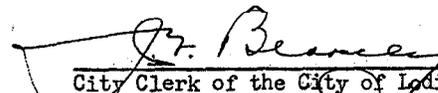
I, J. F. **BLAKELY**, City Clerk of the City of Lodi do hereby certify that the foregoing Ordinance No. **373** was regularly introduced in the City Council of said City at an adjourned regular meeting thereof held June **23**, 1948, and was thereafter, at a subsequent adjourned regular meeting, passed, adopted and ordered to print on June **30, 1948, by** the following vote:

AYES: Councilmen, Bull, Haskell, Lytle, Tolliver, and Rinn.

NOES: Councilmen, None.

ABSENT: Councilmen, None.

I further certify that **said** Ordinance was approved and signed by the Mayor on the date of its final passage and was published according to law.



City Clerk of the City of Lodi

June 30, 1948.