

ORDINANCE NO. 1953

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE TITLE 3 – REVENUE AND FINANCE – BY ADDING CHAPTER 3.30, “2018 GENERAL RETAIL TRANSACTIONS AND USE TAX,” BY IMPOSING AN ONGOING ONE-HALF (0.50) CENT PER DOLLAR TRANSACTIONS AND USE TAX FOR UNRESTRICTED GENERAL REVENUE PURPOSES, TO REMAIN IN EFFECT UNTIL THE VOTERS AMEND OR REPEAL IT, TO BE COLLECTED AND ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, SUBJECT TO VOTER APPROVAL

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The City Council of the City of Lodi hereby finds as follows:

A. The City is a full service city that provides vital municipal services and facilities; however, additional revenue is necessary to fund these services, including:

1. Maintaining and enhancing rapid police and fire response times by restoring firefighter and adding police positions;
2. Maintaining neighborhood police patrols and fire stations;
3. Maintaining library hours;
4. Repairing potholes and local streets;
5. Maintaining recreation facilities and programs;
6. Addressing homelessness; and
7. Other essential services.

B. The City's current and projected revenues are insufficient to fully provide these municipal services and facilities at the level our residents need and expect.

C. This tax measure provides local funding for local needs, cannot be taken by the State of California or Washington, D.C., and includes strict accountability requirements, including independent oversight by a citizens' committee that must meet in public, full disclosure of public spending available on the City's website and at other public locations in the City; annual financial audits; and a requirement that all funds raised be spent locally.

D. This tax measure invests in our community. Enhancing rapid police and fire response times by restoring firefighter and adding police positions and maintaining neighborhood police patrols and fire stations are an investment in public safety that strengthen local property values and make our community a more desirable place to live, do business and raise a family.

E. Approximately 25% of the City's sales tax dollars are paid by tourists and visitors from the surrounding area. This tax measure will help to make sure that tourists and visitors are paying their fair share to maintain our community and not place the cost exclusively on City residents.

F. The funding made available by this measure will enable the City to restore and improve its general municipal services and facilities, including public safety. Nothing in this measure allows tax revenue to be directed into a special fund or for a special purpose.

G. The tax revenue generated by this measure can be spent for unrestricted general revenue purposes.

H. November 6, 2018 is the date of the statewide general election, and is the next election date eligible for inclusion of this general tax measure.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF LODI:

Section 1. Lodi Municipal Code Title 3 - Revenue and Finance is hereby amended by adding Chapter 3.30 "2018 General Retail Transactions and Use Tax" and shall read as follows:

CHAPTER 3.30

2018 GENERAL RETAIL TRANSACTIONS AND USE TAX

Sections:

3.30.010	Title
3.30.020	Operative Date
3.30.030	Purpose
3.30.040	Contract with State
3.30.050	Transactions Tax Rate
3.30.060	Place of Sale
3.30.070	Use Tax Rate
3.30.080	Adoption of Provisions of State Law
3.30.090	Limitations on Adoption of State Law and Collection of Use Taxes
3.30.100	Permit Not Required
3.30.110	Exemptions and Exclusions
3.30.120	Amendments to State Law
3.30.130	Enjoining Collection Forbidden
3.30.140	Annual Accountability Report
3.30.150	Establishment of Citizens' Oversight Committee
3.30.160	Annual Audit and Report

3.30.010 Title. This ordinance shall be known as the City of Lodi 2018 General Retail Transactions and Use Tax Ordinance. The City of Lodi hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.30.020 Operative Date. "Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

3.30.030 Purpose. This ordinance is adopted to achieve the following, among other purposes, and 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 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance 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 a retail transactions and use tax ordinance 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 ordinance that imposes a tax and provides a measure therefore that can be administered and collected by California Department of Tax and Fee Administration 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 California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance 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 ordinance.

E. To adopt a retail transactions and use tax for unrestricted general revenue purposes, to remain in effect until the voters amend or repeal it.

3.40.040 Contract with State. Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration 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.

3.30.050 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 one-half percent (0.50%) 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 ordinance.

3.30.060 Place of Sale. For the purposes of this ordinance, 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 California Department of Tax and Fee Administration.

3.30.070 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 ordinance for storage, use or other consumption in said territory at the rate of one-half cent (0.50%) 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.

3.30.080 Adoption of Provisions of State Law. Except as otherwise provided in this ordinance 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 ordinance as though fully set forth herein.

3.30.090. 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 therefore. 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 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 California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance.

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.

3.30.100. 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 ordinance.

3.30.110. 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 levied 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 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 Chapter 2 of 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 ordinance.

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 ordinance.

5. For the purposes of subsections (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 levied by this ordinance, 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 ordinance.

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 ordinance.

5. For the purposes of subsections (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 Chapter 2 of 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 ordinance 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.

3.30.120. Amendments to State Law. All amendments subsequent to the effective date of this ordinance 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 ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

3.30.130 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 ordinance, 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.

3.30.140 Annual Accountability Report. The City Council shall cause preparation of an annual accountability report for the benefit of the citizens of the City and in order to assure accountability in the expenditure of tax revenues received pursuant to this ordinance. The annual accountability performance report shall be posted on the City's website and shall include the following information:

A. The amount of revenue collected pursuant to the transactions and use tax imposed by this ordinance;

B. The amount and general purposes of the expenditures made possible by this ordinance including, where feasible, a categorization of the nature and purpose of the expenditures. These categories may include, among other things:

1. A listing of general fund service expenditures (such as police, fire, parks and recreation, library, youth and senior programs, and other general fund services).
2. A listing of capital facility expenditures (such as streets, police and fire facilities, emergency communication systems, and other general fund capital expenditures).
3. Such other categories of general fund services or capital expenditures as the City Council may from time to time deem necessary and desirable.

3.30.150 Establishment of Citizens' Oversight Committee.

A. Committee Established. A Citizens' Oversight Committee is hereby established in the City of Lodi which shall have the duty and responsibility to review the annual accountability performance report and report its findings to the City Council and the citizens of the City.

B. Selection of Members. Members of the Citizens' Oversight Committee shall be appointed by the City Council. The Committee shall consist of five members. Members of the Citizens' Oversight Committee shall not be current City of Lodi employees, officials, contractors, or vendors of the City. Past employees, officials, contractors, and vendors shall be eligible to serve on the Committee, provided that there are no conflicts of interest as determined by the City Attorney. To the extent possible at least two members of the Committee shall be certified public accountants or equivalent. Of the members of the Committee first appointed, three members shall be appointed for terms of two years and two members shall be appointed for terms of three years. Their successors shall be appointed for terms of three years. No member may serve more than two consecutive three-year terms. The City Council shall solicit members of the Citizens' Oversight Committee, through an open application process that is promoted through the City's recruiting process for boards and commissions. Any resident of the City is eligible to apply for Committee membership, subject to the restrictions specified above. All applications will be reviewed by the City Council, which will have the authority to make final decisions regarding Committee composition, subject to the guidelines in this ordinance.

C. Purposes and Jurisdiction. The Citizens' Oversight Committee shall meet a minimum of three times per year, including conducting an annual review of expenditures of revenue collected pursuant to this ordinance to determine whether such funds are expended for the purposes set forth in this ordinance. Committee members may review the annual financial audit performed by an independent auditor during the review process. The Citizens' Oversight Committee shall issue an annual report on their findings to the City Council and to the citizens of Lodi. The Citizens' Oversight Committee annual report is subject to review and approval of the City Council. The Committee shall confine its review specifically to revenues generated pursuant to this ordinance and the expenditure of those revenues. The Committee shall serve in an advisory-only role to the City Council. Committee members shall not play a formal or informal role in the expenditure of the funds raised by this ordinance. The Committee is not charged with decision-making on spending priorities; schedules; project details; funding source decisions; financing plans; or tax rate assumptions. The Committee shall have no jurisdiction other than

that delegated to it by the People pursuant to this ordinance. The Lodi City Manager or the City Manager's designee shall provide reasonable administrative or technical assistance required by the Committee to fulfill its responsibilities or publicize its findings.

D. Meetings. The Citizens' Oversight Committee shall meet a minimum of three times per year with specific meeting dates to be determined by Committee members. Citizens' Oversight Committee meetings are subject to the Brown Act. Meetings must be noticed and open to the public. Committee minutes and reports are a matter of public record, and must be posted on the City's web site. Additional meetings may be scheduled by the Committee as necessary. All Committee members shall attend a training and orientation session prior to the first regular Committee meeting. Committee members are expected to attend all regular meetings. Failure to attend two consecutive meetings may result in removal from the Committee at the discretion of the City Council.

E. Committee Operations. The Citizens' Oversight Committee will select members to serve as Chair and Vice Chair of the Committee. A City staff person will be appointed by the City Manager, or the City Manager's designee, to serve as Secretary. The Secretary will be responsible for preparing, posting, and distributing agendas and taking minutes at each meeting. Approved minutes shall be made available to the public. Committee decisions, positions, findings, and procedures shall require a simple majority vote of those Committee members in attendance. The quorum requirement for any meeting shall be a minimum of three (3) members.

F. Vacancies. Committee members may be removed from the Committee only by the City Council for repeated absences at committee meetings, malfeasance, failure to meet the qualifications set forth in this Section, or for inability or unwillingness to fulfill the duties of a Committee member. In the event of removal, resignation, or death, the City Council shall appoint a person to fill the vacant seat.

G. Miscellaneous. Subject to the restrictions specifically addressed in this Section, the Committee may draft and adopt its own standard procedures and by-laws by majority vote. All Citizens' Oversight Committee procedures and by-laws remain subject to review and approval of the City Council.

3.40.160 Annual Audit and Review. The revenue from the tax imposed by this ordinance, as well as the expenditure thereof, shall be subject to the annual audit performed by the City's independent auditor of the City's books, records, accounts, and fiscal procedures and which is reported in the City's Comprehensive Annual Financial Report. The audit results may be combined with the audit of other City funds, so long as the proceeds from this ordinance are reported separately. The City Council shall discuss the results of such audit at a meeting of the City Council that is open to the public. The report of such audit shall be posted on the City's website.

Section 2. 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 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council of the City of Lodi hereby declares that they would have

adopted each and every provision of this ordinance regardless of the invalidity of any other provision.

Section 4. Conflicts. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. Compliance with the California Environmental Quality Act. The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000, et seq., "CEQA" and 14 Cal. Code of Regs. Sections 15000 et seq., "CEQA Guidelines"). This ordinance imposes a general sales tax that can be used for unrestricted general revenue purposes as specified in this ordinance. It is not a commitment to any specific project that may result in a potentially significant physical impact on the environment.


Section 6. Codification. Subject to the voter approval, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this ordinance in the Lodi Municipal Code.

Section 7. Effective Date and Submission to Voters. This ordinance relates to the levying and collecting of the City transactions and use tax and shall take effect immediately upon the approval of a majority of the voters of the City as required by Section 2(b) of Article XIII C of the California Constitution and applicable law.

Section 8. Termination, Amendment, Repeal. The authority to levy the tax imposed by this ordinance shall be in effect until and unless this ordinance is amended or repealed.

Section 9. Certification and Publication. The City Clerk shall certify the final approval of this ordinance, publish the same as required by law, and forward a certified copy of the adopted ordinance to the California Department of Tax and Fee Administration.

Approved this 18th day of July, 2018



ALAN NAKANISHI
Mayor

ATTEST:



JENNIFER M. FERRAILOLO
City Clerk

State of California
County of San Joaquin, ss.

I, Jennifer M. Ferraiolo, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1953 was introduced at a regular meeting of the City Council of the City of Lodi held June 20, 2018, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held July 18, 2018, by the following vote:

AYES: COUNCIL MEMBERS – Chandler, Kuehne, Mounce, and Mayor Nakanishi


NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Johnson

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1953 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.


JENNIFER M. FERRAIOLO
City Clerk

Approved to Form:

JANICE D. MAGDICH
City Attorney