

ORDINANCE NO. 1925

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 "SPECIAL TRANSACTION
AND USE TAX FOR PARKS REPAIRS, MAINTENANCE,
IMPROVEMENTS, AND UPGRADES" IMPOSING A SPECIAL
ONE-EIGHTH CENT PER DOLLAR (0.125%) TRANSACTIONS AND
USE TAX FOR PARK REPAIRS, MAINTENANCE, IMPROVEMENTS,
AND UPGRADES TO BE COLLECTED AND ADMINISTERED BY THE
STATE BOARD OF EQUALIZATION
SUBJECT TO VOTER APPROVAL

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

A. Additional revenue is necessary to fund park repairs, maintenance, and upgrades, including such items as reconstructing parking lots and roadways at Lodi Lake and other City parks; rehabilitating and building park trails; renovating playgrounds; replacing and installing drinking fountains and park furniture; improving water efficiency and making other park infrastructure improvements.

B. The City's adopted budget for FY2016/17 is only able to provide for minimal funding for the repair and maintenance of City parks, and continues to defer capital investment needs. The City's financial forecast over the next five years continues to reflect a lack of resources available to address park repairs, maintenance, improvements, and upgrades.

C. The City Council may propose that voters approve a special transactions and use tax (sales tax) to raise additional funds for park repairs, maintenance, and upgrades.

D. A special transactions and use tax is a type of special tax that may be imposed by the City Council to achieve these purposes.

E. Pursuant to Section 7285.91 of the Revenue and Tax Code, the City Council may impose a special transactions and use tax for general purposes at a rate of one eighth of one percent (0.125%) or a multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of all members of the City Council and the tax subsequently is approved by a two-thirds vote of qualified voters of the City voting in an election.

F. A special transactions and use tax of one eighth of one percent (0.125%) will generate sufficient revenue to enable the City to begin addressing maintenance and repair work in City parks, and to make improvements, and upgrades to park amenities and park infrastructure throughout the City. The special tax would generate an estimated \$1,400,000 in annual revenue and an estimated \$21,000,000 over fifteen (15) years.

G. Government Code Section 53724(c) requires that an election on a special tax be consolidated with a statewide primary election, a statewide general election, or a regularly scheduled local election at which all of the electors of the local government or district are entitled to vote.

H. November 8, 2016 is the date of the statewide general election, and is the next election date eligible for inclusion of this special 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 "Special Transaction and Use Tax for Parks Repairs, Maintenance, Improvements, and Upgrades" and shall read as follows:

CHAPTER 3.30

SPECIAL TRANSACTIONS AND USE TAX ORDINANCE FOR PARKS REPAIRS,
MAINTENANCE, IMPROVEMENTS, AND UPGRADES

Sections:

3.30.010	Title
3.30.020	Operative Date
3.30.030	Purpose
3.30.040	Contract with State
3.30.050	Transaction Tax Rate
3.30.060	Place of Sale
3.30.070	Use Tax Rate
3.30.080	Termination Date
3.30.090	Adoption of Provisions and State Law
3.30.100	Limitations on Adoption of State Law and Collection of Use Taxes
3.30.110	Permit Not Required
3.30.120	Exemptions and Exclusions
3.30.130	Amendments
3.30.140	Enjoining Collection Forbidden
3.30.150	Refunds and Credits; Suits and Legal Proceedings
3.30.160	Special Fund; Restricted Use of Tax Proceeds and Expenditure Plan
3.30.170	Establishment of Special Parks Sales Tax Oversight Committee
3.30.180	Annual Audit and Report

3.30.010 Title. This ordinance shall be known as the City of Lodi Special Transactions and Use Tax Ordinance for Parks Repairs, Maintenance, Improvements, and Upgrades. 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance 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 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 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 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.

3.40.040 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 ordinance; 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.

3.30.050 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-eighth percent (0.125%) 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 State Board of Equalization.

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-eighth cent (0.125%) 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. Termination Date. The authority to levy the tax imposed by this ordinance shall expire on the fifteenth anniversary of the operative date, unless extended by a two-thirds majority vote of the voters of the City.

3.30.090 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.

3.30.100. 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 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, Victim Compensation and Government Claims Board, 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 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.

3.30.110. 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 ordinance.

3.30.120. 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 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.

3.30.130. Amendments.

A. 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.

B. Pursuant to Elections Code Section 9217 or any successor statute, the City Council may amend or repeal this ordinance and any of its exhibits, but not increase or extend the rate of tax levied herein, without a vote of the people.

3.30.140 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 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.

3.30.150. Refunds and Credits; Suits and Legal Proceedings.

A. Refunds of and credits for any tax paid pursuant to this Chapter may be made only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

B. Suits and proceedings for the recovery of any amount alleged to have been erroneously or illegally determined or collected pursuant to this Chapter may be maintained in any court only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. A judgment shall not be rendered in favor of the plaintiff in any action brought against the State Board of Equalization to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

3.30.160. Special Fund; Restricted Use of Tax Proceeds and Expenditure Plan.

All proceeds of the special tax levied and imposed by this ordinance shall be accounted for and paid into a special fund or account designated for use by the City of Lodi only for parks services as set forth in the Parks Expenditure Plan for the administration and expenditure of the tax revenue, attached to this ordinance as Exhibit 1, and made a part hereof as though fully set forth herein. The Parks Expenditure Plan may be amended from time to time by a majority vote of the City Council, as long as the fund continues to be utilized for parks repairs, maintenance, and upgrades. No revenues collected pursuant to the tax levied by this ordinance may be spent on General Fund operating expenses in effect at the time this ordinance becomes effective, or projects that are not a part of the Parks Expenditure Plan. Revenues collected by this ordinance shall supplement, rather than replace, existing City expenditures for parks services as reflected in the FY 2016/2017 budget.

3.30.170 Establishment of Special Parks Sales Tax Oversight Committee.

A. Committee Established. A Citizens' Oversight Committee is hereby established in the City of Lodi to monitor the expenditures of revenue collected pursuant to this Ordinance only and to report to the People and the City Council.

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. 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 adopted recruiting process. Any resident of Lodi 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 conduct an annual review of expenditures of revenue collected pursuant to this Ordinance to determine whether such funds are expended for the purposes specified in the then current Parks Expenditure Plan. 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 People. 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 contracting, project management, or any other aspect of the parks repairs, maintenance and upgrades funded by this Ordinance. The Committee is not charged with decision-making on spending priorities; schedules; project details; funding source decisions; financing plans, including changes or revisions to the Parks Expenditure Plan; 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 annually 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 a web site provided by the City. 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.

3.30.180 Annual Audit and Report.

- A. The revenue from the tax imposed by this Chapter 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.
- B. In addition to the annual audit, an Annual Review Report shall be prepared by the City, setting forth the amount of revenue received from the tax imposed by this Chapter, amount of disbursements, and description of expenditures. The purpose of the report is to assure accountability and the proper disbursement of the revenue from the tax imposed by this Chapter. The Annual Review Report shall be filed in the Office of the City Clerk not later than January 31st following the fiscal year in which the tax is collected.

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. 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 special sales tax that can be used for any legitimate governmental 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. If this ordinance is approved by two-thirds of the voters voting on the issue at the November 8, 2016 election, pursuant to Elections Code Section 9217, this ordinance shall become effective ten (10) days after the City Council declares the results of the election.

Section 8. 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 State Board of Equalization.

Approved this _____ day of July, 2016

MARK CHANDLER
Mayor

ATTEST:

JENNIFER M. FERRAIOLO
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. 1925 was introduced at a regular meeting of the City Council of the City of Lodi held July 6, 2016, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held July ____, 2016, by the following vote:

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

I further certify that Ordinance No. 1925 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

EXHIBIT 1

**TO ORDINANCE ADDING CHAPTER 3.30 "SPECIAL TRANSACTION
AND USE TAX FOR PARKS REPAIRS, MAINTENANCE,
IMPROVEMENTS, AND UPGRADES"**

PARKS SPENDING PLAN

