



City of Lemon Grove
City Council Regular Meeting Agenda

Tuesday, July 17, 2018, 6:00 p.m.

Lemon Grove Community Center
3146 School Lane, Lemon Grove, CA

The City Council also sits as the Lemon Grove Housing Authority, Lemon Grove Sanitation District Board, Lemon Grove Roadway Lighting District Board, and Lemon Grove Successor Agency

Call to Order

Pledge of Allegiance

Changes to the Agenda

Presentations:

Boy Scout Merit Badge Certificate to Stevie Burgueno

Public Comment

(Note: In accordance with State Law, the general public may bring forward an item not scheduled on the agenda; however, the City Council may not take any action at this meeting. If appropriate, the item will be referred to staff or placed on a future agenda.)

1. Consent Calendar

(Note: The items listed on the Consent Calendar will be enacted in one motion unless removed from the Consent Calendar by Council, staff, or the public.)

A. Waive Full Text Reading of All Ordinances on the Agenda

Reference: James P. Lough, City Attorney

Recommendation: Waive the full text reading of all ordinances included in this agenda; ordinances shall be introduced and adopted by title only.

B. City of Lemon Grove Payment Demands

Reference: Molly Brennan, Finance Manager

Recommendation: Ratify Demands

C. Community Advisory Commission Status Update

Reference: Miranda Evans, Management Analyst

Recommendation: Adopt a Resolution appointing Angeles Nelson to a three-year term, appointing Tom Clabby as a Commissioner with a one-year term and permitting staff to contact 2017 former Commission applicants to participate in the ad-hoc committee.

2. Participation in the Pension Rate Stabilization Program to Pre-Fund Pension Obligations

Reference: Lydia Romero, City Manager, Mike James, Assistant City Manager/Public Works Director, and Molly Brennan, Finance Manager

Recommendation: Adopt a Resolution authorizing participation in the Pension Rate Stabilization Program administered by Public Agency Retirement Services to pre-fund pension obligations.

3. Separation Findings for Discretionary Permits

Reference: David De Vries, Development Services Director

Recommendation: Discuss and advise on the alternatives for separation findings for discretionary permits.

4. Placement of .5% Transactions and Use Tax (Sales Tax) and Business License Tax, Including a 5% Marijuana Business Gross Receipts Tax on the November Ballot (Four-Fifths Vote Required)

Reference: Lydia Romero, City Manager; James P. Lough, City Attorney; and Molly Brennan, Finance Manager

Recommendation: i) Adopt Resolution Amending the Resolution requesting consolidation of the 2018 General Municipal Election with the Statewide General Election, allowing Rebuttal Arguments, and an Impartial Analysis by the City Attorney; ii) Introduce, by Title, an Ordinance Establishing a .5% Transaction and Use Tax, subject to a vote of the People, with an Oversight Board and Annual Independent Audit for a period of twenty years (Four-Fifths Vote Required); and iii) Introduce, by Title an Ordinance Raising Business License Taxes and Establishing a 5% Gross Receipts Tax on Marijuana Businesses (Four-Fifths Vote Required).

City Council Oral Comments and Reports on Meetings Attended at the Expense of the City. (GC 53232.3 (d)) (53232.3.(d) states that members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.)

City Manager and Department Director Reports (Non-Action Items)

Closed Session

Adjournment

In compliance with the Americans with Disabilities Act (ADA), the City of Lemon Grove will provide special accommodations for persons who require assistance to access, attend and/or participate in meetings of the City Council. If you require such assistance, please contact the City Clerk at (619) 825-3800 or email lromero@lemongrove.ca.gov. A full agenda packet is available for public review at City Hall.

AFFIDAVIT OF NOTIFICATION AND POSTING

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) SS
CITY OF LEMON GROVE)

A. Kay Vinson, being first duly sworn, depose and state: That I am the duly appointed and qualified Interim City Clerk of the City of Lemon Grove and that a copy of the above Agenda of the Regular Meeting of the City Council of the City of Lemon Grove, California, was delivered and/or notice by email not less than 72 hours before the hour of 5:30 p.m. on July 13, 2018, to the members of the governing agency, and caused the agenda to be posted on the City’s website at www.lemongrove.ca.gov and at Lemon Grove City Hall 3232 Main Street Lemon Grove, CA 91945.

A. Kay Vinson, Interim City Clerk

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.A
Dept. City Attorney

Item Title: Waive Full Text Reading of All Ordinances on the Agenda.

Staff Contact: James P. Lough, City Attorney

Recommendation:

Waive the full text reading of all ordinances included in this agenda. Ordinances shall be introduced and adopted by title only.

Fiscal Impact:

None.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

None.

City of Lemon Grove Demands Summary

Approved as Submitted:

Molly Brennan, Finance Manager
 For Council Meeting: 07/17/18

ACH/AP Checks 06/26/18-07/06/18	1,456,497.40
Payroll - 07/03/18	154,196.50
Total Demands	1,610,693.90

CHECK NO	INVOICE NO	VENDOR NAME	CHECK DATE	Description	INVOICE AMOUNT	CHECK AMOUNT
ACH	June19 18	US Treasury	06/26/2018	Federal Taxes 6/19/18	29,102.66	29,102.66
ACH	2017/18	California Public Empl Retirement System	06/27/2018	1959 Survivor Benefit FY 2017/18	3,832.40	3,832.40
ACH	54655205	WEX Bank	06/27/2018	Fuel - Fire Dept - May'18	654.21	654.21
ACH	8468080	LEAF	06/27/2018	Ricoh C3502 Copier System-PW Yard - Jun'18	160.51	160.51
ACH	May23-Jun19	California Public Empl Retirement System	06/28/2018	Pers Retirement 5/23/18-6/19/18	66,901.56	66,901.56
ACH	Jun18	Wage Works	06/30/2018	FSA Reimbursement - Jun'18	142.08	142.08
ACH	Jun18	Power Pay Biz/Evo	07/02/2018	Online Credit Card Processing - Jun'18	89.43	89.43
ACH	Jun18	Dharma Merchant Services	07/02/2018	Merchant Fees - Jun'18	15.00	15.00
ACH	May18	San Diego County Sheriff's Department	07/02/2018	Law Enforcement Services - May'18	460,262.88	460,262.88
ACH	Jul18	Pers Health	07/03/2018	Pers Health Insurance - Jul'18	57,856.87	57,856.87
ACH	Jun18	Authorize Net	07/03/2018	Merchant Fees In-Store & Online - Jun'18	49.50	49.50
ACH	105049	Aflac	07/06/2018	Aflac Insurance 07/04/18	660.24	660.24
9713	16283L/16284L 31952	Aztec Landscaping Inc.	06/27/2018	CUPCCA #2018-20 Federal Channel Vegetation Abatement Landscape Mgmt Svc - May'18	20,358.00 9,629.00	29,987.00
9714	865794-9 866702-9 867314-9	BJ's Rentals	06/27/2018	Propane Propane Propane	16.70 16.97 16.97	50.64
9715	18725730	Canon Financial Services Inc.	06/27/2018	Canon Plotter Contract Charge 6/20/18-7/19/18	144.00	144.00
9716	4026021374	Canon Solutions America, Inc.	06/27/2018	Canon Maintenance-Copier Usage 2/26/18-5/25/18	75.37	75.37
9717	694493345 694508495	Cintas Corporation #694	06/27/2018	Janitorial Supplies - 5/17/18 Janitorial Supplies - 6/21/18	213.06 574.89	787.95
9718	1931 2035 2036 2037 2091 2157 2158	Clothing International, Inc.	06/27/2018	Protective Clothing/PW Staff - Headwear Protective Clothing/PW Staff - Logo Added Protective Clothing - PW Orange Shirts & Pants Protective Clothing - PW-Streets- Orange Shirts & Pants Protective Clothing - PW-Streets- Orange Shirts & Pants Protective Clothing - PW- Park Ranger - Work Shirts & Pants Day Camp T-Shirts	477.70 103.18 230.33 203.43 224.98 146.37 2,136.68	3,522.67
9719	81893562	Corelogic Solutions, LLC.	06/27/2018	RealQuest Graphics Package - May'18	300.00	300.00
9720	6/19/2018 6/10/2018	Cox Communications	06/27/2018	Phone/PW Yard/2873 Skyline- 6/19/18-7/18/18 Calsense Modem Line:8235 Mt Vernon 6/9/18-7/8/18	212.03 94.39	306.42
9721	14776 14777	Custom Auto Wrap Inc.	06/27/2018	Movie Banner Update Concerts in the Park/Date Changes	70.04 70.04	140.08
9722	4340	D- Max Engineering Inc.	06/27/2018	D-Max Stormwater Prof Svcs thru 5/31/18	22,125.84	22,125.84
9723	0518.15.1869	Dexter Wilson Engineering, Inc.	06/27/2018	Metro JPA Wastewater Issues - May'18	10,082.50	10,082.50
9724	6/11-14/18	Esgil Corporation	06/27/2018	75% Building Fees- 6/11/18-6/14/18	1,820.58	1,820.58
9725	Reimb-6/20/18	Govea, Garrett	06/27/2018	Reimb: Tuition Reimb- BS Mgmt/HR Mgmt Course/Govea 6/1/18	190.00	190.00
9726	AR009527	Grossmont Union High School District	06/27/2018	Summer Daycamp Flyers/Concerts in the Park Flyers	1,380.75	1,380.75
9727	73157001	Hawthorne Machinery Co	06/27/2018	Equipment Rental-Loader & Skid Steer/Annual Abatement 6/12-18/18	2,859.46	2,859.46

9728	00053308	Hudson Safe-T- Lite Rentals	06/27/2018	Hi-Reflective 36" Sign - Sweetwater Rd	84.44	84.44
9729	10792	Infrastructure Engineering Corporation	06/27/2018	Prof Svc: LGA Realignment 4/28/18-5/25/18	5,232.45	5,232.45
9730	May 18 May 18 May 18 May 18 May 18 May 18 May 18	Lounsbery Ferguson Altona & Peak LLP	06/27/2018	General 01163-00002 - May '18 Code Enforcement 01163-00003 - May '18 01163-00028 - May '18 Sanitation Dist 01163-00036 - May '18 01163-00040 - May '18 01163-00041 - May '18 01163-00042 - May '18 01163-00004 - May '18	13,303.60 1,278.20 6,752.70 747.00 1,932.40 2,343.59 1,425.09 2.89	27,785.47
9731	4465883	Mallory Safety and Supply, LLC	06/27/2018	Nitrile Gloves/Drivers Gloves/Disp Respirators/Coveralls	501.59	501.59
9732	473154	Mason's Saw & Lawnmower Service Inc.	06/27/2018	Pole Saw Kit & Blade	286.79	286.79
9733	161529	MJC Construction	06/27/2018	CIP #2018-02 Concrete Repair/Upgrades, Ped Ramps	42,570.00	42,570.00
9734	54195	Modern Septic Service Inc.	06/27/2018	Sewer Pump Station Main -6794 1/2 Central Ave 5/29/18	445.00	445.00
9735	0128777-IN	Municipal Maintenance Equipment Inc.	06/27/2018	Sanitation- Bulldog Sewer Cleaning Nozzle	3,132.30	3,132.30
9736	147930	Pacific Sweeping	06/27/2018	Street Sweeping/Parking Lot - May'18	6,655.15	6,655.15
9737	1007568478	Pitney Bowes Global Financial Services LLC	06/27/2018	Postage Machine Supplies - Ink Cartridges	274.73	274.73
9738	Jun2018	PLIC- SBD Grand Island	06/27/2018	Dental Insurance -Jun18	3,828.72	3,828.72
9739	PD-38602	Plumbers Depot Inc.	06/27/2018	Debris Catchers & Scoops/Covers & Pole Hookups/Horseshoe Grabber	775.80	775.80
9740	912	Richard Thome Consulting	06/27/2018	Prof Svcs: Priority Setting Workshop 4/24/18	2,500.00	2,500.00
9741	17546D(11) 17546F(3) 17546F(4)	Rick Engineering Company	06/27/2018	Prof Svc: City Engineer 4/28/18-5/25/18 Prof Svc: 2017/18 CIP Sewer Proj- 8 Locations 3/31/18-4/27/18 Prof Svc: 2017/18 CIP Sewer Proj- 8 Locations 4/28/18-5/25/18	11,035.09 4,640.29 4,896.29	20,571.67
9742	6/21/2018	SDG&E	06/27/2018	3500 1/2 Main- 5/20/18-6/19/18	244.73	244.73
9743	7/2/18	Sea World Parks & Entertainment	06/27/2018	140 Aquatica Tickets for Daycamp- 7/2/18	5,140.00	5,140.00
9744	86161226	SiteOne Landscape Supply, LLC	06/27/2018	Herbicide/Roundup Promax	177.11	177.11
9745	FY18	State Controller	06/27/2018	FY18 Payment Listing/Audit Request	150.00	150.00
9746	6/28/18	Torres, Tawnya	06/27/2018	Concerts in the Park - Suspicious Minds 6/28/18	700.00	700.00
9747	3346242-CA 3346242-CA 3346242-CA	US HealthWorks Medical Group,PC	06/27/2018	Medical Exam - 6/1/18 Medical Exam - 6/7/18 Medical Exam - 6/12/18	37.00 172.00 172.00	381.00
9748	9808982799	Verizon Wireless	06/27/2018	Mobile Broadband Access- 5/13/18-6/12/18	76.02	76.02
9749	71758829 71786247 71831122	Vulcan Materials Company	06/27/2018	Asphalt Asphalt/SS1H 4.5 Gallon Bucket Asphalt - Citrus St Resurfacing 5/25/18	96.98 190.56 14,968.31	15,255.85
9750	2016.04-023	West Coast General Corporation	06/27/2018	LGA Realignment Proj- 5/1/18-5/31/18	325,138.06	325,138.06
9751	12571	AAA Imaging	07/03/2018	Summer Concerts/Movies Flyers for Community Distribution	172.40	172.40
9752	694511453	Cintas Corporation #694	07/03/2018	Janitorial Supplies - 6/28/18	213.06	213.06
9753	ACSERV-May18 ACSERV-May18	City of Chula Vista	07/03/2018	After Hours Calls- May '18 Credit/Impound Fees/Animal Control Services- May '18	710.37 -700.00	10.37
9754	20096	City of La Mesa	07/03/2018	Household Hazardous Waste Event- 6/9/18	666.00	666.00
9755	6/17/2018	Cox Communications	07/03/2018	Copy Room/City Manager Fax Line- 6/18/18-7/17/18	3.45	3.45
9756	209415	Dell Awards	07/03/2018	Engraving/Scissors - Ribbon-Cutting	53.88	53.88
9757	6/18-21/18	Esgil Corporation	07/03/2018	75% Building Fees- 6/18/18-6/21/18	3,947.35	3,947.35
9758	Reimb 6/25/18	Gonzalez, Monica	07/03/2018	Reimbursement - Summer Daycamp Supplies	82.34	82.34
9759	4/19/18-6/20/18	Helix Water District	07/03/2018	Water Services- 4/19/18-6/20/18	29,027.18	29,027.18
9760	1473	Janazz, LLC SD	07/03/2018	IT Services- City Hall- Jun '18	2,500.00	2,500.00
9761	Reimb 6/29/18	Medina, Travis	07/03/2018	Reimb: iPhone 7/Damaged/Stolen Work Phone	224.68	224.68
9762	1515	Miller Spatial Services, LLC	07/03/2018	GIS Developer/Consulting Services- thru 6/27/18	6,863.00	6,863.00

9763	IN1240088	Municipal Emergency Services Inc.	07/03/2018	SCBA Fit Test	300.00	300.00
9764	Piscopo	Piscopo, Phil	07/03/2018	Refund/Piscopo Family Trust/Partial Planning Pre-App Review Fee	89.45	89.45
9765	LG06082018	SD Sports Medicine and Family Health Center	07/03/2018	Medical Fitness Evaluations - 6/8/18	1,736.44	1,736.44
9766	6/21/2018	SDG&E	07/03/2018	3225 Olive- 5/20/18-6/19/18	104.16	104.16
9767	319376783	Sharp Rees-Stealy Medical Centers	07/03/2018	Medical Exam - FR 3/20/18	118.00	118.00
9768	FAUD-00001285	State Controller	07/03/2018	Annual Street Report 7/1/17-6/30/18	3,000.00	3,000.00
9769	00066145 00066238	The East County Californian	07/03/2018	Ordinance No. 29 - Sewer Service Fee 6/14/18 Public Hearing Notice - Admin Appeal ARDU RLM 6/14/18	126.00 133.00	259.00
9770	620180382	Underground Service Alert of Southern Ca	07/03/2018	53 New Ticket Charges - Jun'18	97.45	97.45
9771	3349815-CA	US HealthWorks Medical Group,PC	07/03/2018	Medical Exams - Jun'18	1,028.00	1,028.00
9772	9808982217 9808982218	Verizon Wireless	07/03/2018	City Phone Charges- 5/13/18-6/12/18 PW Tablets- 5/13/18-6/12/18	463.37 188.78	652.15
9773	Jul-Dec 18	Adams Robert	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	998.04	998.04
9774	11194	AdminSure	07/03/2018	Workers' Compensation Claims Administration - Jul'18	427.50	427.50
9775	Jul-Dec 18	Anderson, Curtis	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9776	Jul-Dec 18	Anderson, Edith	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	998.04	998.04
9777	Jul-Dec 18	Brackmann, Bruce	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	998.04	998.04
9778	7/6/18	Burke, Patrick J	07/03/2018	Pre-Movie in the Park/Music Performance 7/6/18	150.00	150.00
9779	CaliVenture7/6	Cali Venture Party Rentals	07/03/2018	Laser Tag - Movie in the Park 7/6/18	375.00	375.00
9780	Jul-Dec 18	Chamberlain, Dale	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9781	19100087	CSAC Excess Insurance Authority	07/03/2018	Excess Workers' Comp 7/1/18-6/30/19	128,861.00	128,861.00
9782	Jul-Dec 18	Davisson, William	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9783	Jul-Dec 18	Harper, Raymond	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	998.04	998.04
9784	Jul-Dec 18	Laff, Timothy	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9785	7/12/18	Loftis, Steve	07/03/2018	Concerts in the Park - The Catillacs 7/12/18	850.00	850.00
9786	Jul-Dec 18	Maciejewski, Frank	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9787	Jul-Dec 18	Marcon, Romeo	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9788	7/5/18EM	Markowitz, Elizabeth	07/03/2018	Concerts in the Park - Three Chord Justice 7/5/18	600.00	600.00
9789	Jul-Dec 18	McBride, Thomas	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9790	Jul-Dec 18	McReynolds, Mildred	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9791	Jul-Dec 18	Mullins, Karl	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9792	Jul-Dec 18	Norvell, Teresa	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,084.56	1,084.56
9793	Jul-Dec 18	Ott, Manie	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	998.04	998.04
9794	Jul-Dec 18	Ott, Mike	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9795	Jul2018	PLIC- SBD Grand Island	07/03/2018	Dental Insurance - Jul18	4,450.41	4,450.41
9796	79069	PNC Equipment Finance, LLC	07/03/2018	New Engine Lease Payment - FY19	86,688.44	86,688.44
9797	2018-243	Quality Code Publishing LLC	07/03/2018	Internet Website Updating- LG Municipal Code 7/1/18-12/31/18	240.00	240.00
9798	Jul-Dec 18	Schmidtman, Warren	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9799	Jul-Dec 18	Smith, Timothy	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9800	Jul-18	Standard Insurance Company	07/03/2018	Long Term Disability Insurance - Jul18	1,964.41	1,964.41
9801	Jul-Dec 18	Taff, Jon	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	1,200.00	1,200.00
9802	5031828	US Bank	07/03/2018	Admin Fees - 2007 Bonds 6/1/18-5/31/19	2,662.00	2,662.00
9803	Jul-Dec 18	Wright, Nancy	07/03/2018	Retiree Health Benefit - Jul'18-Dec'18	998.04	998.04

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1 C
Mtg. Date July 17, 2018
Dept. City Manager's Office

Item Title: **FY 2017-18 Community Advisory Commission Status Update**

Staff Contact: **Miranda Evans, Management Analyst**

Recommendation:

Adopt a resolution (**Attachment B**) appointing Angeles Nelson to a three-year-term, appointing Tom Clabby as a Commissioner with a one-year-term and permitting staff to contact 2017 former Commission applicants to participate in the ad hoc committee.

Item Summary:

At the May 15, 2018 City Council meeting, the City Council unanimously agreed that the first topic for the Community Advisory Commission (“CAC”) to address will be a review of the City’s Housing Element to determine appropriate zoning for a homeless shelter. To complete this directive, staff must address a few necessary changes to the CAC. Changes in the Commission body occurred within the last year due to the expiring of a term for Angeles Nelson and James Davis’ resignation.

Staff has prepared a Resolution (**Attachment B**) for the City Council’s consideration appointing Angeles Nelson to a three-year-term, appointing Tom Clabby as a Commissioner with a one-year-term and permitting staff to contact 2017 former Commission applicants to participate in the ad hoc positions.

Fiscal Impact:

There is no fiscal impact.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Tribal Government Consultation Request |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Notice to property owners within 500 ft. | |

Attachments:

- A. Staff Report
- B. Resolution 2018-

Attachment A

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1 C

Mtg. Date July 17, 2018

Item Title: **FY 2017-18 Community Advisory Commission Status Update**

Staff Contact: Miranda Evans, Management Analyst

Background:

On September 15, 2015, the City Council adopted Ordinance 431 to establish the Community Advisory Commission (“CAC”). CAC’s role is to serve as a resident-led Commission with three permanent members serving in the leadership positions for the Committee (i.e. Chair and Vice Chair of the overall committee or focus group and chairs of any sub-groups formed). The purpose is to provide more stability to the Committee/Group with less reliance on staff to assume a leadership role.

On April 19, 2016, the City Council authorized staff to solicit interested residents in serving on the CAC. The application process to apply for a position on the CAC occurred from December 21, 2016 – January 9, 2017. Throughout the application process, a total of 16 completed applications were received. A total of 14 interviews were scheduled for June 13, 2017 – one former candidate withdrew their application and one former candidate serves in an incompatible office.

On June 13, 2017, the City Council interviewed fourteen CAC applicants. Following the interviews, they deliberated on the candidates and came to a unanimous vote for the three permanent CAC appointees and two alternates. Following the interviews, on June 20, 2017, the City Council affirmed the appointment of three permanent and two alternate Community Advisory Commission members. The City Council unanimously voted to appoint James Davis, Angeles Nelson and Yajaira Preciado as the three permanent CAC members. During this deliberation process, the City Council determined the need to also appoint two alternate members to each serve a one-year term and unanimously voted to appoint Tom Clabby as first alternate and Walter Oliwa as second alternate. Since that time, James Davis has resigned from the Commission and Angeles Nelson’s term has ended.

Following their June 20, 2017 appointments, the CAC convened for the first and only time on Monday, July 10, 2017 to hold an introductory, organizational meeting. During this meeting, the City Manager provided an overview of the CAC to the three new members and two alternate members and explained the requirements and responsibilities of their new positions. The terms of office for the Commissioners were established at this meeting through the drawing of straws. The results were: Yajaira Preciado was selected to serve a three-year term (July 2017 – July 2020), James Davis was selected to serve a two-year term (July 2017 – July 2019) and Angeles Nelson was selected to serve a one-year term (July 2017 – July 2018). Tom Clabby and Walter Oliwa were appointed as alternates on the Commission to each serve a one-year term (July 2017 – July 2018).

Discussion:

Commission Terms of Office

Since the July 10, 2017 meeting, James Davis resigned from the CAC after obtaining residency in another jurisdiction. Also, the Commissioners and alternates serving a one-year position have now reached the end of their terms. Specifically, Angeles Nelson’s one-year-term is up in July 2018 as is the alternate status of Tom Clabby (first alternate) and Walt Oliwa (second alternate).

Attachment A

To remedy this and move forward with the work plan in FY 2018-19, staff recommends the City Council appoint Angeles Nelson to a three-year-term and change Tom Clabby's status from alternate to take the third Commission position in which he would serve a one-year-term. Walt Oliwa would then be moved to first alternate serving a one-year-term.

At the July meeting, after establishing the terms of office, the Commission agreed to have the Chair and Vice-Chair serve fixed terms of one year each. Through the process of nominations and a vote, Yajaira Preciado was appointed as Chair of the CAC and Angeles Nelson was appointed as Vice Chair. Staff recommends that the Commission discuss and vote on the Chair and Vice Chair appointments for this year at their next meeting.

Ad Hoc Commission Positions

In the enabling ordinance, ad hoc members can be appointed to the CAC to assist the permanent members in the study of issues assigned to the CAC by the City Council. The number and makeup of the temporary membership would change based upon the need for members as determined on an issue-by-issue basis by the City Council. Staff seeks permission from the City Council to contact former applicants to inquire if they would be interested in serving the Commission in an ad hoc capacity. Consistent with best voting practices, the total number of Commission and ad hoc members should be an odd number. Staff recommends adding a total of four ad hoc members to the Commission at this time, bringing the total composition of the CAC to seven members to study the assigned issue.

The Work Plan

Per the feedback received at the May 15, 2018 City Council meeting, the first topic for the CAC to address will be a review of the City's Housing Element to determine and recommend appropriate zoning for a homeless shelter. |

Conclusion:

| Adopt a resolution (**Attachment B**) appointing Angeles Nelson to a three-year-term, appointing Tom Clabby as a Commissioner with a one-year-term and permitting staff to contact 2017 former Commission applicants to participate in the ad hoc committee. |

Attachment B

RESOLUTION NO. 2018

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPOINTING ANGELES NELSON TO A THREE-YEAR-TERM, APPOINTING TOM CLABBY AS A COMMISSIONER WITH A ONE-YEAR-TERM AND PERMITTING STAFF TO CONTACT 2017 FORMER COMMISSION APPLICANTS TO PARTICIPATE IN THE AD HOC COMMITTEE

WHEREAS, on September 15, 2015, the Lemon Grove City Council adopted an Ordinance establishing the Community Advisory Commission; and

WHEREAS, on April 19, 2016, the City Council authorized staff to solicit interested residents in serving on the Community Advisory Commission; and

WHEREAS, the application process to apply for a position on the Community Advisory Commission occurred from December 21, 2016 – January 9, 2017; and

WHEREAS, through the recruitment process, sixteen residents expressed interest in serving on the Community Advisory Commission; and

WHEREAS, on June 13, 2017, the City Council interviewed the fourteen available candidates; and

WHEREAS, through a nomination process at the conclusion of the June 13, 2017 interviews, the City Council voted unanimously to appoint three permanent members: James Davis, Angeles Nelson and Yajaira Preciado and two alternate members: Tom Clabby and Walter Oliwa to the Community Advisory Commission.

WHEREAS, the City Council established procedures to begin the Community Advisory Commission process; and

WHEREAS, the establishment of the one, two and three-year terms of office for the three permanent Community Advisory Commission members will be determined through the process of drawing straws; and

WHEREAS, the first and second alternates shall each serve a one-year term; and

WHEREAS, changes in the Commission body occurred within the last year and the terms of appointments of the appointed Vice-Chair and First Alternate require updating in the interest of fostering cohesion on the Commission, such that Angeles Nelson will serve a three-year-term, Tom Clabby will serve a one-year-term as a Commissioner and Walt Oliwa will move from second-alternate to first-alternate.

WHEREAS, the Community Advisory Commission will operate under the spirit of the Brown Act and the three permanent members shall file the Fair Political Practices Commission (FPPC) Form 700 and complete ethics training; and

NOW, THEREFORE, the City Council of the City of Lemon Grove, California hereby ordains as follows:

SECTION ONE:

The findings listed above are true and correct.

SECTION TWO:

Approves the appointment of the following three permanent Community Advisory Commission members:

Attachment A

1. Yajaira Preciado;
2. Angeles Nelson; and
3. Tom Clabby.

SECTION THREE:

Establishes the appointment of one alternate Community Advisory Commission member for a one-year period:

1. Walter Oliwa as first alternate.

SECTION FOUR:

Authorizes the three permanent Community Advisory Commission members to meet and confirm the appointments to Chair and Vice Chair.

SECTION FIVE:

Authorizes staff to secure a total of four qualified ad hoc members from the previous applicant pool of Commission members to join the Community Advisory Commission for the task of reviewing the City of Lemon Grove's Housing Element to determine and recommend the appropriate zoning for a homeless shelter. This will bring the CAC to a total of seven members to review the assigned task.

/////
////|

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 2
Mtg. Date July 17, 2018
Dept. Public Works

Item Title: **Participation in the Pension Rate Stabilization Program to Pre-Fund Pension Obligations**

Staff Contact: Lydia Romero, City Manager, Mike James, Assistant City Manager/Public Works Director, and Molly Brennan, Finance Manager

Recommendation:

Adopt a resolution (**Attachment B**) authorizing participation in the Pension Rate Stabilization Program administered by Public Agency Retirement Services to pre-fund pension obligations.

Item Summary:

At a City Council workshop on November 8, 2017, Bartel Associates, LLC, presented the actuarial valuation of the City's pension plan with CalPERS. The presentation outlined the City's pension Unfunded Actuarial Liability (UAL) as of June 30, 2016 that totaled approximately \$7.4 million. The presentation also outlined options that the City Council may consider to pre-fund the UAL.

As directed by the City Council, staff performed an initial analysis (**Attachment A**), conducted interviews with three firms, researched the benefits and drawbacks of participating in a pre-fund pension program, and concludes with a recommendation to partner with Public Agency Retirement Services (PARS) to support ongoing financing to pre-fund the City's UAL debt.

Fiscal Impact:

[None.]

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Resolution
- C. PARS Private Letter Ruling from IRS
- D. PARS Investment Portfolios
- E. PARS Background Information

Attachment A

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 2

Mtg. Date July 17, 2018

Item Title: Participation in the Pension Rate Stabilization Program to Pre-Fund Pension Obligations

Staff Contact: Lydia Romero, City Manager, Mike James, Assistant City Manager and Molly Brennan, Finance Manager

Background:

At a City Council workshop on November 14, 2017, Bartel Associates, LLC, presented the actuarial valuation of the City's pension plan with CalPERS. The presentation outlined the City's pension Unfunded Actuarial Liability (UAL) as of June 30, 2016, which is \$2.0 million for the Safety Plan and \$5.4 million for the Miscellaneous Plans, totaling \$7.4 million. Cost projections for the pension plan over a 30-year horizon were also detailed. These amounts are further compounded with the anticipated discount rate reducing during the next three-year period:

CalPERS Discount Rate			
	Rate	Initial	Full
June 30, 2016 Valuation	7.375%	FY 2018-19	FY 2022-23
June 30, 2017 Valuation	7.25%	FY 2019-20	FY 2023-24
June 30, 2018 Valuation	7.00%	FY 2020-21	FY 2024-25

A variety of options were discussed, including participating in a Section 115 Trust Program, to potentially mitigate the City's pension cost increases over time. Subsequently, the City Council reviewed the benefits offered by a Section 115 Trust Program to pre-fund pension liabilities. Below is a summary of the potential benefits of a Section 115 Trust Program:

1. Local Control over Assets,
2. Pension Rate Stabilization,
3. Investment Flexibility,
4. Addresses Unfunded Pension Liabilities, and
5. Improved Credit Rating.

The City Council directed staff to gather additional information from the three vendors Keenan & Associates, Public Agency Retirement Services (PARS), and Public Financial Management Group (PFM) discussed in the report provided by Bartel Associates, LLC. Staff conducted interviews with all three vendors, and at the completion of the selection process recommends PARS as the best program that will fit the City's needs at this time.

Attachment A

Discussion:

A Section 115 irrevocable trust designed for agencies to pre-fund rising pension costs and address pension liabilities. This program is a relatively newer method for local governments in California. As previously mentioned, three vendors were recommended by Bartel Associates, LLC for staff to contract to determine what type of program each has.

To date, the most widely adopted Section 115 Trust Program to pre-fund pension liabilities for government agencies has been the plan administered by PARS's Pension Rate Stabilization Program (PRSP). PARS provides the security of a private letter of ruling (PLR) from the IRS that assures participants of the tax-exempt status of their investments. PARS also allows the flexibility of the City's participation in selecting the investment strategies and portfolios for its funds, giving the City control on target yield and level of risks on its investments. In addition, PARS has partnered with U.S. Bank to serve as trustee for this program.

Although Keenan and PFM are options to provide a Section 115 Trust Program for the City, staff is recommending PARS be designated as the City's Section 115 Trust Program provider at this time. The core business and retirement programs administered by PARS are more appropriate to the needs of the City. PARS offers a successful track record of investment experience serving public agencies, flexible investment options with five investment strategies, and the ability to diversify and customize investments in a prudent fashion.

Most importantly, PARS provides full services to administer the City's Section 115 Trust Program with a dedicated Senior Consultant to ensure superior client satisfaction; a Client Services Coordinator to monitor contributions, process disbursements and coordinate annual reviews; and an Investment Management Team to assist with developing an Investment Policy Statement and conduct periodic onsite review of investment performance and market conditions.

PARS's Investment Portfolios

PARS's PRSP has five investment portfolios: Capital Appreciation, Balanced, Moderate, Moderately Conservative, and Conservative. Each portfolio has different risk profiles with different amounts invested in equities and other instruments. The investment portfolios range from "Capital Appreciation" with 72 percent of funds invested in equities to "Conservative" with 15 percent of funds invested in equities. It is important to note that as the amount of equities increases, risk and volatility increases. In contrast, as the amount of equities decreases, risk and volatility decreases.

Approximately 31 percent of public agencies participating in the PARS's PRSP have selected the "Moderately Conservative" portfolio which is the second most conservative portfolio with 30 percent of funds invested in equities. Returns as of March 2018 in the "Moderately Conservative" portfolio were as follows:

- 1-Year Returns 5.73%
- 3-Year Returns 3.83%
- 5-Year Returns 4.47%

Through the deposit of funds into the PRSP, the City could expect to earn a rate of return greater than what would be attained through the City's investment with the State's Local Agency Investment Fund. The higher return is made possible because the Section 115 Trust Program is not prohibited by the State law from making purchases of higher yield equities.

Attachment A

The table below compares investment returns from:

1. PARS/HighMark Capital Management,
2. Local Agency Investment Fund, and
3. San Diego County Investment Pool.

PARS/HighMark Capital Management Returns as of 3/31/2018				
Risk Tolerance Portfolios	% Equity	1-Year Returns	3-Year Returns	5-Year Returns
Capital Appreciation	65-85%	11.28%	7.18%	8.77%
Balanced	50-70%	9.98%	6.11%	7.22%
Moderate	40-60%	8.34%	5.37%	6.28%
Moderately Conservative	20-40%	5.73%	3.83%	4.47%
Conservative	5-20%	3.69%	2.72%	3.71%

Local Agency Investment Fund (LAIF), State of California			
	2017	2016	2015
1-Year Earning Rates ending December 31st	0.754%	0.434%	0.269%

San Diego County Investment Pool			
	2017	2016	2015
1-Year Earning Rates ending December 31st	1.29%	0.85%	0.588%

Fiscal Impact

Establishing the PRSP to pre-fund Pension liabilities has no direct fiscal impact. Funding the Trust will restrict the use of funds that are transferred to the irrevocable trust account. Based on estimates for year-end closing results of Fiscal Year 2017-2018, there is no excess revenue for transfer to the Section 115 Trust Program to pre-fund Pension obligations. Future contributions to the Section 115 Trust Program will depend on the year-end closing results in subsequent fiscal years and any one-time monies that the City Council would like to allocate to the PRSP. Other sample funding policies that PRSP participants used include:

Attachment A

- Contribute 50 percent of a given year's realized year end surplus to address pension liability,
- Contribute amount equal to or less than the annual PERS employer contribution in order to allow full access to trust assets at all times,
- "One equals five plan" – contribute \$1 million per year for five years based on the premise that every contribution will save taxpayers \$5 million over 25 years,
- Contribute employer contribution amount equal to the 2.8 percent discount rate (as opposed to the 7.5% rate), with difference going into the Section 115 Trust,
- Maintains a 15 percent general fund reserve and is targeting to make contributions over and above that threshold into the Trust, or
- Use one time revenue source and lower the minimum general fund reserve level.

Total combined administrative, trustee and investment management fees for PARS, U.S. Bank and HighMark Capital Management start at 0.60% for assets under \$5 million and will decrease as assets in the Trust increase. The fees will be paid from the Trust assets.

Alternatives:

As two alternatives to staff recommendation, the City Council may direct staff to contact and negotiate an agreement with one of the other two firms recommended by Bartel Associates, LLC or to not participate in the 115 Trust Program at this time.

Conclusion:

Staff recommends that the City Council adopts a resolution (**Attachment B**) authorizing participation in the Pension Rate Stabilization Program administered by Public Agency Retirement Services to pre-fund pension obligations. |

Attachment B

RESOLUTION NO. 2018 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA AUTHORIZING PARTICIPATION IN THE PENSION RATE STABILIZATION PROGRAM ADMINISTERED BY PUBLIC AGENCY RETIREMENTS SERVICES TO PRE-FUND PENSION OBLIGATIONS

WHEREAS, the City of Lemon Grove participates in a pension plan with CalPERS; and

WHEREAS, as of June 30, 2016, the unfunded actuarial liability (UAL) for the City totaled \$7.4 million; and

WHEREAS, the costs related to the UAL are anticipated to increase in the next three year period; and

WHEREAS, a Section 115 Trust program will help pre-fund the City's rising pension costs and address pension liabilities; and

WHEREAS, staff interviewed three possible firms that provide Section 115 Trust programs and concluded that the Pensions Rate Stabilization Program (PRSP) managed by Public Agency Retirement Services (PARS) is the best fit for the city to utilize; and

WHEREAS, various funding methods may be used to supplement PARS's PRSP program with the City; and

WHEREAS, each fiscal year the City Council will review its funding method to determine if it is the most appropriate method based on the City's fiscal status. |

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Authorizes the City's participation in the PARS Post-Employment Benefits Trust administered by public agency retirement services to pre-fund pension obligations; and
2. Appoints the City Manager or her designee as Plan Administrator to manage and execute all required documentation. |

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Attachment C

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 115.00-00

Third Party Communication: None
Date of Communication: Not Applicable

U.S. Bank National Association
c/o Susan Hughes, Vice President
3121 Michelson Drive (Suite 300)
Irvine, CA 92612

Person To Contact:
Robin J. Ehrenberg, ID No. 1000219292
Telephone Number:
(202) 317-5800
Refer Reply To:
CC:TEGE:EOEG:EO3
PLR-146796-14
Date: June 5, 2015

Legend

Trust = Public Agencies Post-Employment Benefits Trust
Trust Agreement = Public Agencies Post-Employment Benefits Trust Agreement
Trustee = U.S. Bank National Association

Dear Ms. Hughes:

This letter responds to a letter from your authorized representative dated December 22, 2014, requesting rulings that (1) the Trust's income is excludable from gross income under section 115 of the Internal Revenue Code (IRC) and (2) the Trust is not required to file annual federal income tax returns under IRC section 6012(a)(4). The Trust represents the facts as follows:

FACTS

The Trust is a multiple employer trust established to enable public-agency employers to fund post-retirement employee benefits. Each participating employer must be a public agency that is a state, political subdivision of a state, or an entity the income of which is excludable from gross income under IRC section 115. The employer's governing body must authorize in writing the adoption of the Trust and the employer must execute the adoption agreement, which approves the Trust's administrator and provides that the agency adopts and agrees to be bound by the Trust Agreement. In the adoption agreement, the employer elects to fund obligations to provide benefits under a post-employment health care plan and contribute to a defined-benefit pension plan maintained by the employer that is qualified under IRC section 401(a). The employer may elect to fund either or both obligations.

Attachment C

PLR-146796-14

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The Trust Agreement provides that assets are held by the Trust for the exclusive purpose of funding participating employers' benefit obligations and defraying the reasonable expenses of the Trust. The Trust's assets may not be used for any other purpose. Each employer's contributions to the Trust, together with any allocable investment earnings and losses, are held in a separate account for that employer. Assets allocated to satisfy an employer's health and welfare benefit obligation or the employer's pension obligation may only be used for purposes of satisfying that particular obligation. The assets held in an employer's account are not available to pay any obligations incurred by any other employer.

The employers appoint the Trustee and the Trust's administrator and may remove the Trustee or the administrator by a two-thirds vote of all employers. The employers may amend the Trust Agreement with the approval of two-thirds of all employers then participating in the Trust. The employers may terminate the Trust by unanimous agreement of all employers.

Upon termination of the Trust, any assets remaining in an employer's account, after satisfaction of benefit and the Trust's obligations are returned to the employer to the extent permitted by law and consistent with the requirements of IRC section 115.

LAW AND ANALYSIS

Issue 1 - IRC section 115(1)

IRC section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision thereof.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC section 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under IRC section 115(1), because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excludable from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

Through the Trust, participating public agency employers fund health and welfare and pension obligations for retired employees. Each of the Trust's participating employers is required to be a state, political subdivision of a state or an entity the income of which is excludable from gross income under IRC section 115. Providing health, welfare and pension benefits to current and former employees constitutes the performance of an essential government function within the meaning of IRC section 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

The Trust's income accrues to its participating employers, all of which are political subdivisions of a state or entities the income of which is excludable from gross income under IRC section 115. No private interests will participate in, or benefit from, the operation of Trust, other than as providers of goods or services. The benefit to employees is incidental to the public benefit. See Rev. Rul. 90-74.

In no event, including dissolution, will the Trust's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or entity the income of which is excludable from its gross income by application of IRC section 115(1).

Issue 2- IRC section 6012(a)(4)

Section 301.7701-1(b) of the Procedure and Administration Regulations (Regulations) provides that the classification of organizations that are recognized as separate entities is determined under sections 301.7701-2, 301.7701-3, and 301.7701-4, unless a provision of the IRC provides for special treatment of that organization.

Section 301.7701-4(a) of the Regulations provides that, in general, an arrangement will be treated as if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

The Trust enables public-agency employers to set aside funds to be used to satisfy each employer's separate pension and health and welfare benefit obligations. The

Attachment C

PLR-146796-14

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Trustee is charged with the responsibility of the protection and conservation of the Trust property for the benefit of the beneficiaries of the Trust. The beneficiaries of the Trust cannot share in the discharge of the Trustee's responsibility for the protection and conservation of property and, therefore, are not associates in a joint enterprise for the conduct of business for profit. IRC section 6012(a)(4) provides that every trust having for the taxable year any taxable income or having gross income of \$600 or more, regardless of the amount of taxable income, shall make returns with respect to income taxes under Subtitle A.

Based solely on the facts and representations submitted by the Trust, we conclude that:

1. Because the income of the Trust derives from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, the Trust's income is excludable from gross income under IRC section 115(1).
2. The Trust is classified as a trust within the meaning of IRC section 7701(a) and section 301.7701-4(a) of the Regulations. Because Trust's income is excludable from gross income under IRC section 115, the Trust is not required by IRC section 6012(a)(4) to file an annual income tax return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling concerns only the federal tax treatment of the Trust's income and may not be cited or relied upon by any taxpayer, including the Trust, employers participating in the Trust, and any recipients of benefits paid under the terms of the Trust, as to any matter relating to the taxation of accident or health contributions or benefits.

This ruling is directed only to the taxpayer who requested it. IRC section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

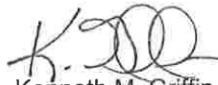
A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

PLR-146796-14

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The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,



Kenneth M. Griffin
Branch Chief, Exempt Organizations Branch 3
(Tax Exempt and Government Entities)

cc: Marcus Wu
Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300
San Diego, CA 92130-4088

Paul Marmolejo
Director, Office of Federal, State and Local Governments
SE:T:GE:FSL



PARS DIVERSIFIED PORTFOLIOS CONSERVATIVE

Q1 2018

WHY THE PARS DIVERSIFIED CONSERVATIVE PORTFOLIO?

Comprehensive Investment Solution

HighMark® Capital Management, Inc.'s (HighMark) diversified investment portfolios are designed to balance return expectations with risk tolerance. Key features include: sophisticated asset allocation and optimization techniques, four layers of diversification (asset class, style, manager, and security), access to rigorously screened, top tier money managers, flexible investment options, and experienced investment management.

Rigorous Manager Due Diligence

Our manager review committee utilizes a rigorous screening process that searches for investment managers and styles that have not only produced above-average returns within acceptable risk parameters, but have the resources and commitment to continue to deliver these results. We have set high standards for our investment managers and funds. This is a highly specialized, time consuming approach dedicated to one goal: competitive and consistent performance.

Flexible Investment Options

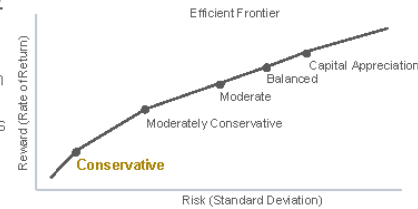
In order to meet the unique needs of our clients, we offer access to flexible implementation strategies: HighMark Plus utilizes actively managed mutual funds while Index Plus utilizes index-based securities, including exchange-traded funds. Both investment options leverage HighMark's active asset allocation approach.

Risk Management

The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

To provide a consistent level of inflation-protected income over the long-term. The major portion of the assets will be fixed income related. Equity securities are utilized to provide inflation protection.



ASSET ALLOCATION — CONSERVATIVE PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	5 – 20%	15%	16%
Fixed Income	60 – 95%	80%	78%
Cash	0 – 20%	5%	6%

ANNUALIZED TOTAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus (Active)		Index Plus (Passive)	
Current Quarter*	-1.02%	Current Quarter*	-1.17%
Blended Benchmark**	-0.89%	Blended Benchmark**	-0.89%
Year To Date	-1.02%	Year To Date	-1.17%
Blended Benchmark	-0.89%	Blended Benchmark	-0.89%
1 Year	3.69%	1 Year	2.81%
Blended Benchmark	2.83%	Blended Benchmark	2.83%
3 Year	2.72%	3 Year	2.19%
Blended Benchmark	2.33%	Blended Benchmark	2.33%
5 Year	3.17%	5 Year	2.84%
Blended Benchmark	2.99%	Blended Benchmark	2.99%
10 Year	4.23%	10 Year	3.66%
Blended Benchmark	3.59%	Blended Benchmark	3.59%

* Returns less than 1-year are not annualized. **Breakdown for Blended Benchmark: 7.6% S&P500, 1.5% Russell Mid Cap, 2.6% Russell2000, 1% MSCI EM FREE, 2% MSCI EAFE, 52.26% BC US Agg, 25.75% ML 1-3 Yr US Corp/ Govt, 2% US High Yield Master II, 0.5% Wilshire REIT, and 5% Cit 1 Mth T-Bill. Prior to October 2012, the blended benchmarks were 12% S&P 500, 1% Russell2000, 2% MSCI EAFE, 40% ML 1-3 Year Corp./Govt, 40% BC Agg, 5% Cit 1 Mth T-Bill. Prior to April 2007, the blended benchmarks were 15% S&P 500, 40% ML 1-3Yr Corp/ Gov, 40% BC Agg, and 5% Cit 1 Mth T-Bill.

ANNUAL RETURNS

HighMark Plus (Active)		Index Plus (Passive)	
2008	-9.04%	2008	-6.70%
2009	15.59%	2009	10.49%
2010	8.68%	2010	7.67%
2011	2.19%	2011	3.70%
2012	8.45%	2012	6.22%
2013	3.69%	2013	3.40%
2014	3.88%	2014	4.32%
2015	0.29%	2015	0.06%
2016	4.18%	2016	3.75%
2017	6.73%	2017	5.52%

PORTFOLIO FACTS

HighMark Plus (Active)		Index Plus (Passive)	
Inception Date	07/2004	Inception Date	07/2004
No of Funds in Portfolio	19	No of Funds in Portfolio	12

Attachment D

HOLDINGS

HighMark Plus (Active)

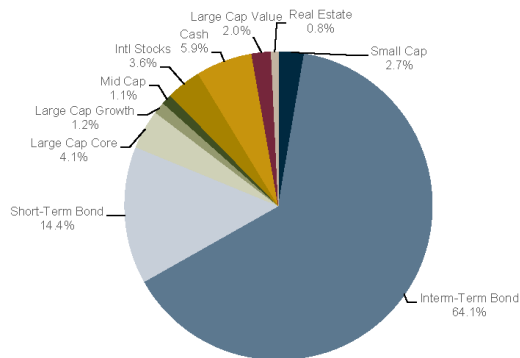
Columbia Contrarian Core Z
 Vanguard Growth & Income Adm
 Dodge & Cox Stock Fund
 Harbor Capital Appreciation
 T. Rowe Price Growth Stock
 iShares Russell Mid-Cap ETF
 Vanguard REIT ETF
 Undiscovered Managers Behavioral Value
 T. Rowe Price New Horizons
 Nationwide Baird International Equities
 Dodge & Cox International Stock
 MFS International Growth I
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO Total Return
 Prudential Total Return
 Nationwide Loomis Bond
 DoubleLine Core Fixed Income
 First American Government Obligations Z

Index Plus (Passive)

iShares Core S&P 500 ETF
 iShares S&P 500/Value
 iShares S&P 500/Growth
 iShares Russell Mid-Cap ETF
 Vanguard REIT ETF
 iShares Russell 2000 Value
 iShares Russell 2000 Growth
 iShares MSCI EAFE
 Vanguard FTSE Emerging Markets ETF
 Vanguard Short-Term Invest-Grade Adm
 iShares Core U.S. Aggregate
 First American Government Obligations Z

Holdings are subject to change at the discretion of the investment manager.

STYLE



The performance records shown represent size-weighted composites of tax exempt accounts that meet the following criteria: Composites are managed by HighMark's HighMark Capital Advisors (HCA) with full investment authority according to the PARS Conservative active and passive objectives and do not have equity concentration of 25% or more in one common stock security.

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Blended benchmarks represent HighMark's strategic allocations between equity, fixed income, and cash and are rebalanced monthly. Benchmark returns do not reflect the deduction of advisory fees or other expenses of investing but assumes the reinvestment of dividends and other earnings. An investor cannot invest directly in an index. The unmanaged S&P 500 Index is representative of the performance of large companies in the U.S. stock market. The MSCI EAFE Index is a free float-adjusted market capitalization index designed to measure developed market equity performance, excluding the U.S. and Canada. The MSCI Emerging Markets Free Index is a free float-adjusted market capitalization index that is designed to measure equity market performance in the global emerging markets. The Russell Midcap Index measures the performance of the mid-cap segment of the U.S. equity universe. The Russell 2000 Index measures the performance of the small-cap segment of the U.S. equity universe. The US High Yield Master II Index tracks the performance of below investment grade U.S. dollar-denominated corporate bonds publicly issued in the U.S. domestic market. iShares REIT index measures U.S. publicly traded Real Estate Investment Trusts. The unmanaged Bloomberg Barclays Capital (BC) U.S. Aggregate Bond Index is generally representative of the U.S. taxable bond market as a whole. The Merrill Lynch (ML) 1-3 Year U.S. Corporate & Government Index tracks the bond performance of The ML U.S. Corporate & Government Index, with a remaining term to final maturity less than 3 years. The unmanaged Citigroup 1-Month Treasury Bill Index tracks the yield of the 1-month U.S. Treasury Bill.

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Asset Allocation Committee

Number of Members: 16
 Average Years of Experience: 27
 Average Tenure (Years): 14

Manager Review Group

Number of Members: 6
 Average Years of Experience: 19
 Average Tenure (Years): 7



PARS DIVERSIFIED PORTFOLIOS MODERATELY CONSERVATIVE

Q1 2018

WHY THE PARS DIVERSIFIED MODERATELY CONSERVATIVE PORTFOLIO?

Comprehensive Investment Solution

HighMark® Capital Management, Inc.'s (HighMark) diversified investment portfolios are designed to balance return expectations with risk tolerance. Key features include: sophisticated asset allocation and optimization techniques, four layers of diversification (asset class, style, manager, and security), access to rigorously screened, top tier money managers, flexible investment options, and experienced investment management.

Rigorous Manager Due Diligence

Our manager review committee utilizes a rigorous screening process that searches for investment managers and styles that have not only produced above-average returns within acceptable risk parameters, but have the resources and commitment to continue to deliver these results. We have set high standards for our investment managers and funds. This is a highly specialized, time consuming approach dedicated to one goal: competitive and consistent performance.

Flexible Investment Options

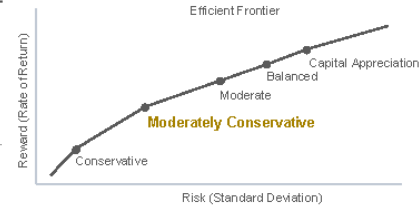
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Risk Management

The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

To provide current income and moderate capital appreciation. The major portion of the assets is committed to income-producing securities. Market fluctuations should be expected.



ASSET ALLOCATION — MODERATELY CONSERVATIVE PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	20 - 40%	30%	31%
Fixed Income	50 - 80%	65%	66%
Cash	0 - 20%	5%	3%

ANNUALIZED TOTAL RETURNS

(Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus (Active)		Index Plus (Passive)	
Current Quarter*	-0.91%	Current Quarter*	-1.13%
Blended Benchmark**	-0.93%	Blended Benchmark**	-0.93%
Year To Date	-0.91%	Year To Date	-1.13%
Blended Benchmark	-0.93%	Blended Benchmark	-0.93%
1 Year	5.73%	1 Year	4.61%
Blended Benchmark	4.78%	Blended Benchmark	4.78%
3 Year	3.83%	3 Year	3.39%
Blended Benchmark	3.59%	Blended Benchmark	3.59%
5 Year	4.47%	5 Year	4.26%
Blended Benchmark	4.53%	Blended Benchmark	4.53%
10 Year	5.06%	10 Year	4.50%
Blended Benchmark	4.67%	Blended Benchmark	4.67%

* Returns less than 1-year are not annualized. ** Breakdown for Blended Benchmark: 15.5% S&P500, 3% Russell Mid Cap, 4.5% Russell2000, 2% MSCI EM FREE, 4% MSCI EAFE, 49.25% BC US Agg, 14% ML 1-3Yr US Corp/Govt, 1.75% US High Yield Master II, 1% iShares REIT, and 5% Citi 1 Mth T-Bill. Prior to October 2012, the blended benchmarks were 25% S&P 500, 1.5% Russell2000, 3.5% MSCI EAFE, 25% ML 1-3 Year Corp/Govt, 40% BC Agg, 5% Citi 1 Mth T-Bill. Prior to April 2007, the blended benchmarks were 30% S&P 500, 25% ML 1-3Yr Corp/Govt, 40% BC Agg, and 5% Citi 1 Mth T-Bill.

ANNUAL RETURNS

HighMark Plus (Active)		Index Plus (Passive)	
2008	-15.37%	2008	-12.40%
2009	18.71%	2009	11.92%
2010	10.46%	2010	9.72%
2011	1.75%	2011	3.24%
2012	10.88%	2012	8.24%
2013	7.30%	2013	6.78%
2014	4.41%	2014	5.40%
2015	0.32%	2015	-0.18%
2016	4.93%	2016	5.42%
2017	9.56%	2017	8.08%

PORTFOLIO FACTS

HighMark Plus (Active)		Index Plus (Passive)	
Inception Date	08/2004	Inception Date	05/2005
No of Funds in Portfolio	19	No of Funds in Portfolio	12

Attachment D

HOLDINGS

HighMark Plus (Active)

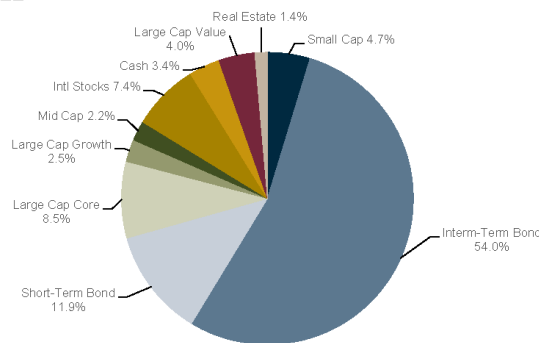
Columbia Contrarian Core Z
 Vanguard Growth & Income Adm
 Dodge & Cox Stock Fund
 Harbor Capital Appreciation
 T. Rowe Price Growth Stock
 iShares Russell Mid-Cap ETF
 Vanguard REIT ETF
 Undiscovered Managers Behavioral Value
 T. Rowe Price New Horizons
 Nationwide Baird International Equities
 Dodge & Cox International Stock
 MFS International Growth I
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO Total Return
 Prudential Total Return
 Nationwide Loomis Bond
 DoubleLine Core Fixed Income
 First American Government Obligations Z

Index Plus (Passive)

iShares Core S&P 500 ETF
 iShares S&P 500/Value
 iShares S&P 500/Growth
 iShares Russell Mid-Cap ETF
 Vanguard REIT ETF
 iShares Russell 2000 Value
 iShares Russell 2000 Growth
 iShares MSCI EAFE
 Vanguard FTSE Emerging Markets ETF
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PARS DIVERSIFIED PORTFOLIOS MODERATE

Q1 2018

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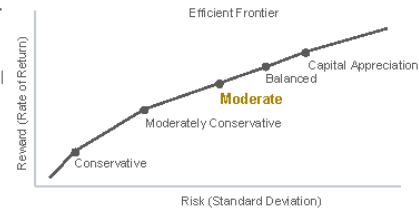
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The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

To provide growth of principal and income. It is expected that dividend and interest income will comprise a significant portion of total return, although growth through capital appreciation is equally important.



ASSET ALLOCATION — MODERATE PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	40 - 60%	50%	51%
Fixed Income	40 - 60%	45%	46%
Cash	0 - 20%	5%	3%

ANNUALIZED TOTAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus (Active)		Index Plus (Passive)	
Current Quarter*	-0.73%	Current Quarter*	-1.02%
Blended Benchmark**	-0.84%	Blended Benchmark**	-0.84%
Year To Date	-0.73%	Year To Date	-1.02%
Blended Benchmark	-0.84%	Blended Benchmark	-0.84%
1 Year	8.34%	1 Year	7.15%
Blended Benchmark	7.29%	Blended Benchmark	7.29%
3 Year	5.37%	3 Year	4.92%
Blended Benchmark	5.23%	Blended Benchmark	5.23%
5 Year	6.28%	5 Year	6.07%
Blended Benchmark	6.52%	Blended Benchmark	6.52%
10 Year	5.87%	10 Year	5.68%
Blended Benchmark	5.86%	Blended Benchmark	5.86%

* Returns less than 1-year are not annualized. ** Breakdown for Blended Benchmark: 26.5% S&P500, 5% Russell Mid Cap, 7.5% Russell 2000, 3.25% MSCI EM FREE, 6% MSCI EAFE, 33.50% BC US Agg, 10% ML 1-3 Yr US Corp/Govt, 1.50% US High Yield Master II, 1.75% Wilshire REIT, and 5% Cit 1 Mth T-Bill. Prior to October 2012, the blended benchmarks were 43% S&P 500, 2% Russell 2000, 5% MSCI EAFE, 15% ML 1-3 Year Corp/Govt, 30% BC Agg, 5% Cit 1 Mth T-Bill. Prior to April 2007, the blended benchmarks were 50% S&P 500, 15% ML 1-3 Yr Corp/Govt, 30% BC Agg, and 5% Cit 1 Mth T-Bill.

ANNUAL RETURNS

HighMark Plus (Active)		Index Plus (Passive)	
2008	-22.88%	2008	-18.14%
2009	21.47%	2009	16.05%
2010	12.42%	2010	11.77%
2011	0.55%	2011	2.29%
2012	12.25%	2012	10.91%
2013	13.06%	2013	12.79%
2014	4.84%	2014	5.72%
2015	0.14%	2015	-0.52%
2016	6.44%	2016	7.23%
2017	13.19%	2017	11.59%

PORTFOLIO FACTS

HighMark Plus (Active)		Index Plus (Passive)	
Inception Date	10/2004	Inception Date	05/2006
No of Funds in Portfolio	19	No of Funds in Portfolio	12

Attachment D

HOLDINGS

HighMark Plus (Active)

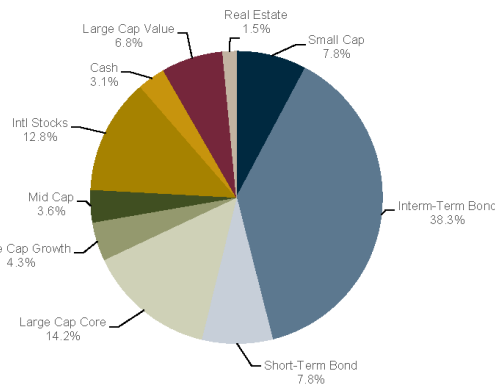
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 Harbor Capital Appreciation
 T. Rowe Price Growth Stock
 iShares Russell Mid-Cap ETF
 Vanguard REIT ETF
 Undiscovered Managers Behavioral Value
 T. Rowe Price New Horizons
 Nationwide Baird International Equities
 Dodge & Cox International Stock
 MFS International Growth I
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO Total Return
 Prudential Total Return
 Nationwide Loomis Bond
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Index Plus (Passive)

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PARS DIVERSIFIED PORTFOLIOS BALANCED

Q1 2018

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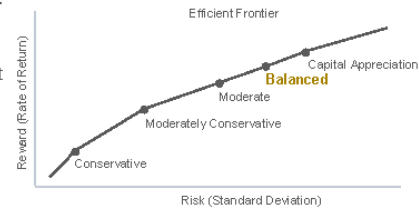
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INVESTMENT OBJECTIVE

To provide growth of principal and income. While dividend and interest income are an important component of the objective's total return, it is expected that capital appreciation will comprise a larger portion of the total return.



ASSET ALLOCATION — BALANCED PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	50 – 70%	80%	81%
Fixed Income	30 – 50%	35%	36%
Cash	0 – 20%	5%	3%

ANNUALIZED TOTAL RETURNS

(Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus (Active)		Index Plus (Passive)	
Current Quarter*	-0.61%	Current Quarter*	-1.04%
Blended Benchmark**	-0.81%	Blended Benchmark**	-0.81%
Year To Date	-0.61%	Year To Date	-1.04%
Blended Benchmark	-0.81%	Blended Benchmark	-0.81%
1 Year	9.98%	1 Year	8.35%
Blended Benchmark	8.59%	Blended Benchmark	8.59%
3 Year	6.11%	3 Year	5.69%
Blended Benchmark	6.05%	Blended Benchmark	6.05%
5 Year	7.22%	5 Year	6.97%
Blended Benchmark	7.52%	Blended Benchmark	7.52%
10 Year	6.27%	10 Year	6.10%
Blended Benchmark	6.51%	Blended Benchmark	6.51%

* Returns less than 1-year are not annualized. ** Breakdown for Blended Benchmark: 32% S&P500, 6% Russell Mid Cap, 9% Russell 2000, 4% MSCI EM FREE, 7% MSCI EAFE, 27% BC US Agg, 6.75% ML 1-3 Yr US Corp/Govt, 1.25% US High Yield Master II, 2% Wilshire REIT, and 5% Citi 1 Mth T-Bill. Prior to October 2012, the blended benchmarks were 51% S&P500, 3% Russell 2000, 6% MSCI EAFE, 5% ML 1-3 Year Corp/Govt, 30% BC Agg, 5% Citi 1 Mth T-Bill. Prior to April 2007, the blended benchmarks were 60% S&P 500, 5% ML 1-3Yr Corp/Govt, 30% BC Agg, and 5% Citi 1 Mth T-Bill.

ANNUAL RETURNS

HighMark Plus (Active)		Index Plus (Passive)	
2008	-25.72%	2008	-23.22%
2009	21.36%	2009	17.62%
2010	14.11%	2010	12.76%
2011	-0.46%	2011	1.60%
2012	13.25%	2012	11.93%
2013	16.61%	2013	15.63%
2014	4.70%	2014	6.08%
2015	0.04%	2015	-0.81%
2016	6.82%	2016	8.26%
2017	15.46%	2017	13.39%

PORTFOLIO FACTS

HighMark Plus (Active)		Index Plus (Passive)	
Inception Date	10/2006	Inception Date	10/2007
No of Funds in Portfolio	19	No of Funds in Portfolio	12

Attachment D

HOLDINGS

HighMark Plus (Active)

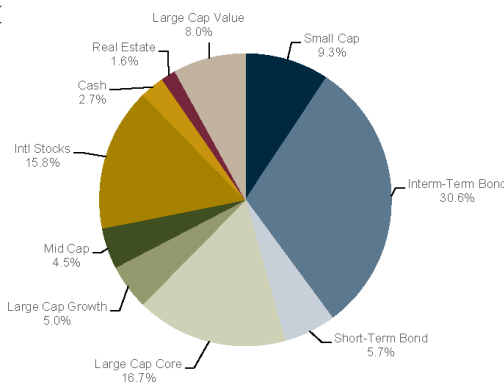
Columbia Contrarian Core Z
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 Harbor Capital Appreciation
 T. Rowe Price Growth Stock
 iShares Russell Mid-Cap ETF
 Vanguard REIT ETF
 Undiscovered Managers Behavioral Value
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 Nationwide Baidard International Equities
 Dodge & Cox International Stock
 MFS International Growth I
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO Total Return
 Prudential Total Return
 Nationwide Loomis Bond
 DoubleLine Core Fixed Income
 First American Government Obligations Z

Index Plus (Passive)

iShares Core S&P 500 ETF
 iShares S&P 500/Value
 iShares S&P 500/Growth
 iShares Russell Mid-Cap ETF
 Vanguard REIT ETF
 iShares Russell 2000 Value
 iShares Russell 2000 Growth
 iShares MSCI EAFE
 Vanguard FTSE Emerging Markets ETF
 Vanguard Short-Term Invest-Grade Adm
 iShares Core U.S. Aggregate
 First American Government Obligations Z

Holdings are subject to change at the discretion of the investment manager.

STYLE



The performance records shown represent size-weighted composites of tax exempt accounts that meet the following criteria: Composites are managed by HighMark's HighMark Capital Advisors (HCA) with full investment authority according to the PARS Balanced active and passive objectives and do not have equity concentration of 25% or more in one common stock security.

The composite name has been changed from PARS Balanced/Moderately Aggressive to PARS Balanced on 5/11/2013. The adviser to the PARS portfolios is US Bank, and HighMark serves as sub-adviser to US Bank to manage these portfolios. US Bank may charge clients as much as 0.80% annual management fee based on a sliding scale. As of March 31, 2018, the blended rate is 0.58%. US Bank pays HighMark 60% of the annual management fee for assets sub-advised by HighMark under its sub-advisory agreement with US Bank. The 36 basis points paid to HighMark, as well as other expenses that may be incurred in the management of the portfolio, will reduce the portfolio returns. Assuming an investment for five years, a 5% annual total return, and an annual sub-advisory fee rate of 0.36% deducted from the assets at market at the end of each year, a 10 million initial value would grow to \$12.54 million after fees (Net-of-Fees) and \$12.76 million before fees (Gross-of-Fees). Additional information regarding the firm's policies and procedures for calculating and reporting performance results is available upon request. In Q1 2010, the PARS Composite definition was changed from \$750,000 minimum to no minimum. Performance results are calculated and presented in U.S. dollars and do not reflect the deduction of investment advisory fees, custody fees, or taxes but do reflect the deduction of trading expenses. Returns are calculated based on trade-date accounting.

Blended benchmarks represent HighMark's strategic allocations between equity, fixed income, and cash and are rebalanced monthly. Benchmark returns do not reflect the deduction of advisory fees or other expenses of investing but assumes the reinvestment of dividends and other earnings. An investor cannot invest directly in an index. The unmanaged S&P 500 Index is representative of the performance of large companies in the U.S. stock market. The MSCI EAFE Index is a free float-adjusted market capitalization index designed to measure developed market equity performance, excluding the U.S. and Canada. The MSCI Emerging Markets Free Index is a free float-adjusted market capitalization index that is designed to measure equity market performance in the global emerging markets. The Russell Midcap Index measures the performance of the mid-cap segment of the U.S. equity universe. The Russell 2000 Index measures the performance of the small-cap segment of the U.S. equity universe. The US High Yield Master II Index tracks the performance of below investment grade U.S. dollar-denominated corporate bonds publicly issued in the U.S. domestic market. Wilshire REIT Index measures U.S. publicly traded Real Estate Investment Trusts. The unmanaged Bloomberg Barclays Capital (BC) U.S. Aggregate Bond Index is generally representative of the U.S. taxable bond market as a whole. The Merrill Lynch (ML) 1-3 Year U.S. Corporate & Government Index tracks the bond performance of The ML U.S. Corporate & Government Index, with a remaining term to final maturity less than 3 years. The unmanaged Citigroup 1-Month Treasury Bill Index tracks the yield of the 1-month U.S. Treasury Bill.

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HIGHMARK CAPITAL MANAGEMENT

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ABOUT THE ADVISER

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 HighMark Tenure: since 2010
 Education: BA, International Christian University, Tokyo

Anne Wimmer, CFA®

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 HighMark Tenure: since 2007
 Education: BA, University of California, Santa Barbara

Randy Yurchak, CFA®

Senior Portfolio Manager
 Investment Experience: since 2002
 HighMark Tenure: since 2017
 Education: MBA, Arizona State University; BS, University of Washington

Asset Allocation Committee

Number of Members: 16
 Average Years of Experience: 27
 Average Tenure (Years): 14

Manager Review Group

Number of Members: 6
 Average Years of Experience: 19
 Average Tenure (Years): 7



PARS DIVERSIFIED PORTFOLIOS CAPITAL APPRECIATION

Q1 2018

WHY THE PARS DIVERSIFIED CAPITAL APPRECIATION PORTFOLIO?

Comprehensive Investment Solution

HighMark® Capital Management, Inc.'s (HighMark) diversified investment portfolios are designed to balance return expectations with risk tolerance. Key features include: sophisticated asset allocation and optimization techniques, four layers of diversification (asset class, style, manager, and security), access to rigorously screened, top tier money managers, flexible investment options, and experienced investment management.

Rigorous Manager Due Diligence

Our manager review committee utilizes a rigorous screening process that searches for investment managers and styles that have not only produced above-average returns within acceptable risk parameters, but have the resources and commitment to continue to deliver these results. We have set high standards for our investment managers and funds. This is a highly specialized, time consuming approach dedicated to one goal: competitive and consistent performance.

Flexible Investment Options

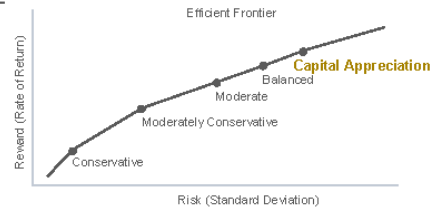
In order to meet the unique needs of our clients, we offer access to flexible implementation strategies: HighMark Plus utilizes actively managed mutual funds while Index Plus utilizes index-based securities, including exchange-traded funds. Both investment options leverage HighMark's active asset allocation approach.

Risk Management

The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

The primary goal of the Capital Appreciation objective is growth of principal. The major portion of the assets are invested in equity securities and market fluctuations are expected.



ASSET ALLOCATION — CAPITAL APPRECIATION PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	65 - 85%	75%	78%
Fixed Income	10 - 30%	20%	22%
Cash	0 - 20%	5%	2%

ANNUALIZED TOTAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

Current Quarter*	-0.38%
Blended Benchmark**	-0.75%
Year To Date	-0.38%
Blended Benchmark	-0.75%
1 Year	11.28%
Blended Benchmark	10.65%
3 Year	7.18%
Blended Benchmark	7.22%
5 Year	8.77%
Blended Benchmark	8.91%
Inception to Date (111-Mos.)	10.55%
Blended Benchmark	11.22%

* Returns less than 1-year are not annualized. ** Breakdown for Blended Benchmark: 39.5% S&P500, 7.5% Russell Mid Cap, 10.5% Russell 2000, 5.25% MSCI EM FREE, 10.25% MSCI EAFE, 16% BC US Agg, 3% ML 1-3 Yr US Corp Gov't, 1% US High Yield Master II, 2% Wilshire REIT, and 5% Citi 1 Mth T-Bill.

ANNUAL RETURNS

2008	N/A%
2009	23.77%
2010	12.95%
2011	-1.35%
2012	13.87%
2013	20.33%
2014	6.05%
2015	-0.27%
2016	8.81%
2017	16.72%

PORTFOLIO FACTS

HighMark Plus (Active)		Index Plus (Passive)	
Inception Date	01/2009	Inception Date	N/A
No of Funds in Portfolio	19	No of Funds in Portfolio	12

Attachment D

HOLDINGS

HighMark Plus (Active)

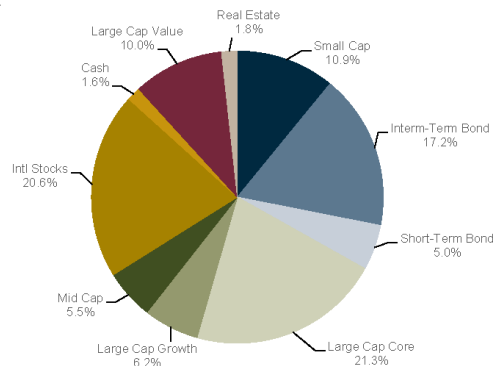
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 Average Years of Experience: 27
 Average Tenure (Years): 14

Manager Review Group

Number of Members: 6
 Average Years of Experience: 19
 Average Tenure (Years): 7

Attachment E

Public Agency Retirement Services	
Founded in	1984
Headquarters	Newport Beach
Office Locations in California	Newport Beach – PARS San Francisco – HighMark
Core Business	Administration of 115 Trust for prefunding OPEB/Pension
Programs	Section 115 Trust for Pensions & OPEB, supplemental defined benefits programs, alternate retirements systems for part-time employees, customized defined contribution programs to supplement CalPERS
IRS Private Letter Ruling	Yes; multiple employer
Investment Manager	HighMark Capital Management
Trustee	US Bank (Los Angeles)
Plans Under Administration	1,400+ plans for 800+ public agencies only
Section 115 Pension & OPEB Trust Clients	250+, including 147 for pension prefunding (such as Coronado, Imperial County, La Mesa, Lemon Grove School District, National City, and Solana Beach)
Annual Fees for Assets under \$5 million	Approx. \$26,500
Investment Assets Under Administration	Approx. \$2.8 billion (PARS) Approx. \$14 billion (HighMark)
Investment Options	5 risk tolerance levels (active or passive), and custom option
Minimums	No minimum contribution, fee, start up fees, or trade/transactions fees;

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 3
Mtg. Date July 17, 2018
Dept. Development Services Department

Item Title: Separation Findings for Discretionary Permits

Staff Contact: David De Vries, Development Services Director

Recommendation:

Discuss and advise on the alternatives for separation findings for discretionary permits.

Item Summary:

For discretionary permits for large family daycares, medical marijuana dispensaries (MMDs), beekeeping, alcoholic beverage related businesses requiring a conditional use permit and adult entertainment uses, the land use cannot be established unless it is separated from specifically listed land uses. A separation finding is required to be made by the decision body at the time of final decision. At the April 17, 2018 City Council meeting, the City Council directed staff to present alternatives for making separation findings prior to final decision by the Development Services Director, Planning Commission and City Council. This may allow an applicant to obtain the required separation finding prior to preparing costly plans and reports and prior to final decision. Land uses established after this finding is made would not restrict an applicant from obtaining a permit. The staff report (**Attachment A**) provides alternatives for Council's consideration.

Fiscal Impact:

 Unknown at this time.

Environmental Review:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Lemon Grove Municipal Code Excerpts

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 3

Mtg. Date July 17, 2018

Item Title: **[Separation Findings for Discretionary Permits]**

Staff Contact: **[David De Vries, Development Services Director]**

Background

At the April 17, 2018 City Council meeting, the City Council directed staff to present alternatives for making separation findings prior to final decision by the Development Services Director, Planning Commission and City Council.

The following background and discussion provides a general overview of applicable separation regulations in the Lemon Grove Municipal Code (LGMC) and a comparison of alternatives for early separation findings. It also describes noticing and permit requirements and alternatives for early separation findings.

Regulatory Background

The LGMC requires separation findings be made for large family daycares, medical marijuana dispensaries (MMDs), beekeeping, alcoholic beverage related businesses requiring a conditional use permit and adult entertainment uses as follows:

1. Large Family Daycares (LGMC Section 17.24.060(D)(3) Accessory buildings and uses - Daycares):
 - a. A facility shall not be established within one thousand feet of another such facility.
 - b. Requires a minor use permit conditionally approved by the Development Services Director with a \$500.00 deposit.
2. Medical Marijuana Dispensaries (LGMC Chapter 17.32 Medical Marijuana Regulations):
 - a. MMDs shall be 1,000 feet from regulated and protected uses inside and outside city limits. Regulated uses include MMDs and protected uses include public parks, playgrounds, licensed day care facilities, schools and alcohol and substance abuse treatment centers. The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.
 - b. Requires a zoning clearance and \$1,090.00 fee to review and approve separation requirements and application materials and requires a conditional use permit with City Council conditional approval and \$1,500.00 deposit.

Attachment A

3. Beekeeping (LGMC Section 18.16.060 Exotic animals and beekeeping):
 - a. Up to four beehives may be permitted. Beehives shall be placed at least twenty-five feet from the exterior line of the traveled way of any public streets, at least twenty-five feet from the exterior line of any private access easement, at least fifteen feet from any side or rear lot line, and at least twenty-five feet from neighboring dwellings.
 - b. For three to four hives, a one-hundred-foot separation from neighboring dwellings is required.
 - c. Beehives shall be placed at least one hundred feet from the border of sensitive areas. Sensitive areas include areas where people, such as the elderly, small children, individuals with medical conditions or confined animals inhabit or frequent that are more at risk if stinging incidents were to occur. Sensitive areas are characterized by a demonstrated need for a greater safety buffer. These areas include, but are not limited to, schools, playgrounds, picnic areas, outdoor sports facilities, daycare centers, senior care facilities, medical facilities, and animal-boarding facilities. Property operators, owners, or residents who have medical reasons may apply to have their locations designated as sensitive sites. Businesses and facilities with employees who have medical reasons or where bees could cause a nuisance during normal work activities may also apply to have their locations designated as sensitive sites. The development services director may approve sites or remove sites previously approved or designated as sensitive sites upon request. Upon appeal, the city council has final discretion to approve designation of locations as sensitive sites upon review of supportive documentation.
 - d. Requires a beekeeping permit with \$35.00 fee similar to a Zoning Clearance approved by the Development Services Director.
4. Alcoholic Beverage related Businesses Requiring a Conditional Use Permit including Convenience Markets, Bars, Nightclubs and Liquor Stores (LGMC Chapter 18.27 – Alcoholic Beverage Sales):
 - a. Businesses engaged in the sale or distribution of alcoholic beverages for off-site consumption shall maintain a minimum separation of 500 feet from any other business required to have a conditional use permit for the sale of alcoholic beverages. This subdivision shall not apply to incidental alcoholic beverage sales and warehouses, and distribution facilities.
 - b. Businesses engaged in the sale or service of alcoholic beverages for on-site consumption shall maintain a minimum separation of 1,000 feet from another business selling or serving alcoholic beverages requiring a conditional use permit for on-site consumption and a minimum of 500 feet from any other business requiring a conditional use permit for the on-site or off-site sale or service of alcoholic beverages; any church or other place of worship; any public or private preschool, elementary school or high school; any public park or playground; any hospital, clinic, or other health care facility; any residential unit other than a caretaker's dwelling on a commercial or industrial property; and any property zoned for residential use. Based upon the particular circumstances involved, the

Attachment A

city council shall determine the appropriate separation between private clubs and lodges operated by recognized national, state or regional religious or fraternal order and appropriate distances between such clubs and lodges and other types of land use.

- c. Requires a conditional use permit with City Council conditional approval and \$1,500.00 deposit.
5. Adult Entertainment including (LGMC Chapter 18.28 – Adult Entertainment):
 - a. Adult entertainment establishments include adult arcade, adult bookstore, adult cabaret, adult drive-in theater, adult mini-motion picture theater, adult model studio, adult motel, adult motion picture theater, adult theater, body painting studio, sexual encounter establishment and any other business which involves specified sexual activities or the display of specified anatomical areas. No adult entertainment establishment shall be permitted within 1,000 feet of another such business, within five hundred feet of any area zoned for residential use, or within six hundred feet of any church, school, public playground, park or recreational area.
 - b. Adult entertainment establishments are currently prohibited in all zones, but were previously allowed in the General Commercial zone.

Decisions of the Development Services Director can be appealed to the Planning Commission and decisions of the Planning Commission can be appealed to the City Council.

Discussion

The land uses subject to separation requirements cannot be established unless it is separated from specifically listed land uses as described above. Current LGMC regulations require a separation finding to be made by the decision body at the time of final decision. This requires an applicant to prepare all necessary plans and studies with staff approval prior to obtaining a final decision.

The City Council may consider a variety of alternatives for making separation findings including, but not limited to:

1. At time of initial notice of complete or incomplete and within 30 day of initial application submittal.
2. At time of application being deemed complete which requires all architectural and engineering drawings and required reports and studies to be complete and approved by City staff.
3. At time of conditional approval by the Development Services Director, Planning Commission or City Council.
4. As a part of a separate zoning clearance, minor use permit or conditional use permit for the specific purpose of making an early separation finding. A zoning clearance would include no public noticing with appeal rights by the applicant. A minor use permit would require a 500 foot radius public notice to property owners with conditional approval by the Development Services Director and appeal rights by the applicant and any member of the public. A conditional use permit would require a 500 foot radius public notice to

Attachment A

property owners, a sign posted on the property and conditional approval by the Planning Commission and appeal rights by the applicant and any member of the public.

The Development Services Director inquired to all California jurisdictions through an email listserve for related sample ordinances. Only the City of Simi Valley responded who allows the separation finding to be made after a project application has been deemed complete. The project will not be subjected to any further application of the distance requirements. Any conflicting use, such as a church, hospital, or school, which commences after the CUP application is "deemed complete" date, does not affect the establishment. Most other jurisdictions make this finding at the time of conditional approval by the Development Services Director, Planning Commission or City Council.

An important factor to consider is public noticing. For MMDs, the daycare lists are only requested once per year due to the approximate \$500 request cost charged by the State daycare licensing division. Small family daycares which are protected uses in accordance with LGMC Chapter 17.32 (Measure V) do not require any permit or business license from the City and their location will not be known unless the list is requested by the City at the requested cost. The LGMC requires a 500 foot public notice to property owners, not renters, radius notice for public notifications associated with minor use permits, conditional uses permits, planned development permits, tentative maps and tentative subdivision maps. Measure V requires that a MMD shall not be established within 1,000 feet of protected uses like daycares. If an early finding option could be made, the City Council could require public noticing to reflect the same distance as the separation requirement to give all effected properties an opportunity to appeal the decision or attend the public hearing. Also, a sign could be required to be posted on the property for a specific duration (e.g., 30 days) prior to the early finding being made. A public notice in the East County Californian could also be required.

Staff's primary concern with any alternative is public noticing. To ensure appropriate noticing, staff recommends that the minor use permit be required which will allow for a 500 foot radius notice to property owners. Staff also recommends that the "sign posted on property" requirement be codified for all discretionary permits including minor use permits, conditional uses permits, planned development permits, tentative maps and tentative subdivision maps. This will ensure appropriate public noticing is provided for early findings and allows members of the public to appeal to the Planning Commission and further to the City Council.

Conclusion:

Staff recommends that the City Council discuss the contents of this report and provide comments to staff in preparation for an ordinance affecting when the separation finding is made and the public noticing required.

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LGMC Section 17.24.060(D)(3) - Accessory Buildings and Uses

3. Day Care. A facility licensed and equipped as required by law, which provides nonmedical care or supervision for periods of less than twenty-four hours, is allowed as follows:
 - a. Small family day care is permitted in single-family dwellings in all residential zones according to the following standards:
 - i. Day care is provided in a single-family dwelling for one to eight people, depending on ages, including children under the age of ten residing in the home.
 - ii. The day care provider shall reside in the home.
 - b. Large family day care is permitted in single-family dwellings in the RL, RL/M and RM zones according to the following standards:
 - i. Day care is provided in a single-family dwelling for up to fourteen people, depending on ages, including children under the age of ten residing in the home.
 - ii. The day care provider shall reside in the home.
 - iii. Obtain a minor use permit according to Section 17.28.050.
 - iv. Play areas shall be situated in such a manner as to minimize the impact of noise on surrounding properties. The development services director may require the installation of six-foot high masonry walls, landscaping, and/or other noise attenuating devices.
 - v. Adequate street capacity and an area sufficient for dropping off and picking up persons shall be provided to the satisfaction of the development services director and the public works director in a manner consistent with traffic safety requirements.
 - vi. A facility shall not be established within one thousand feet of another such facility. The distance between any two large family day cares shall be measured in a straight line, without regard to intervening properties or structures, from the closest exterior wall of each dwelling.
 - vii. Additional conditions shall be limited to reasonable traffic, parking, and noise control and compliance with the development standards of the zoning district.

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LGMC Chapter 17.32 – Medical Marijuana Regulations

17.32.010. Purpose.

This Chapter establishes the regulations for the use of *medical marijuana*, to the extent allowed by State

Law, in a way that will minimize the impacts on the community and help pay for costs associated with the usage of a controlled substance. This Ordinance does not authorize or permit any conduct not allowed by state law.

17.32.020. Applicability.

A. The intent of this section is to regulate the cultivation, processing and dispensing of *medical marijuana* in a manner that protects the health, safety and welfare of the community. This section is not intended to interfere with a *qualified patient* or *Primary caregiver's* right to *Medical marijuana*, as provided for in California Health & Safety Code Section 11362, nor criminalize the same.

B. *Medical marijuana* for personal use shall be in conformance with the standards set forth in this Title.

17.32.030. Release of Liability and Hold Harmless. The owner and permittee of a *Medical Marijuana Dispensary* or cultivation facility shall release the City of Lemon Grove, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cooperative or collective or cultivation owners, operators, employees, *Primary caregiver* or *Qualified patients* for violation of state or federal laws in a form satisfactory to the Director of Development Services. In addition, the business owner and permittee of each *Medical marijuana* cooperative, collective or cultivation facility shall indemnify and hold harmless the City of Lemon Grove and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cooperative, collective or cultivation facility, and for any claims brought by any of their *Qualified patients* for problems, injuries, damages, or liabilities of any kind that may arise from the distribution, cultivation and/or on- or off-site use of *Medical marijuana* provided at the cooperative, collective or cultivation facility in a form satisfactory to the Director of Development Services.

17.32.040. Application. *Medical marijuana Dispensary* which dispense, process and cultivate medicinal marijuana shall be required to obtain a Conditional Use Permit consistent with 17.28.050 prior to operation. The fact that an applicant possesses other types of state or City permits or Licenses does not exempt the applicant from the requirement of obtaining a Conditional Use Permit to operate a *Medical marijuana Dispensary*.

17.32.050. Definitions. The following words and phrases are italicized throughout this title and shall have the meanings found in this section.

"Director" means a corporate officer, corporate board member, or employee with supervisory responsibilities of an authorized *Dispensary* business that dispenses *medical marijuana*.

"Licensed Physician" means a person educated, clinically experienced, and licensed by the Medical Board of California, or the Osteopathic Medical Board of California to practice medicine.

"Medical Marijuana" means marijuana product used for the treatment of pain and suffering caused by diseases and ailments. *Medical marijuana* does not include recreational use.

"Medical Marijuana Dispensary" (*Dispensary*) means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, as defined by Section 19300.5 of the California Business and Professions Code.

"Medical Marijuana Identification Card" (*MMIC*) A document provided by the San Diego County *Medical Marijuana Identification Card (MMIC)* Program pursuant to the State Department of Health Services that identifies a *Qualified patient* authorized to engage in the medical use of marijuana and the person's designated *Primary caregiver*, if any as per California Health and Safety Code §11362.7, and as may be amended.

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"Operations Manual" a manual that each *Dispensary* shall develop, implement and maintain on the *Premises* which contains requirements outlined in Section 17.32.090.C.6.

"Person with an Identification Card" means an individual who is a *Qualified patient* who has applied for and received a valid identification card pursuant to this article and the California Health and Safety Code §11362.7, and as may be amended.

"Premises" means a lot, parcel, tract or plot of land, together with the buildings, structures and appurtenances thereon.

"Primary caregiver" means the individual or individuals designated by a *qualified patient* who has consistently assumed responsibility for the housing, health or safety of that *qualified patient*. As used herein, a *Primary caregiver* may only grow, administer, transport, or engage in the activities regulated hereunder on behalf of the *qualified patient* for whom they have consistently assumed responsibility for the housing, health or safety of that *qualified patient*. A *primary caregiver* may engage in other activities as specifically enumerated herein.

"Protected Uses" are for purposes of computing distance separations from any public or private preschools and schools, licensed daycare facilities, any park or playground, alcohol and substance abuse treatment centers.

"Qualified patient" means a person who has obtained a written recommendation or approval from a *licensed physician* to use marijuana for personal medical purposes.

"Regulated uses" are for purposes of computing distance separations for *medical marijuana* Cooperative or Collective businesses (with or without accessory cultivation uses) but excluding individual residential cultivation sites operated by *qualified patients* or *primary caregiver* and located solely in Single Family Residential Zones.

17.32.060. General Provisions

The following information must be submitted with an application to request *medical marijuana* use in conformance to this section and the City of Lemon Grove. All documents which relate to the general provisions and the requirements listed in the submittal requirements must be included in the *Operations Manual*.

A. Physician/Patient Confidentiality.

All processes and reviews conducted pursuant to this Ordinance shall preserve to the maximum extent possible all legal protection and privileges. Disclosure of any member information shall not be deemed a waiver of confidentiality of those records under any provision of state law.

B. Medical marijuana Cultivation Permitted by Compassionate Use Act.

All cultivation of marijuana for medical purposes shall not be declared unlawful by the City of Lemon Grove when said cultivation is conducted solely for the personal medical purposes of *qualified patients*, in accordance with the Compassionate Use Act of 1996. Such cultivation may include the cultivation and possession of both male and female plants in all stages of growth, clones, seedlings and seeds and related cultivation equipment and supplies. *Qualified patients* and/or their *primary caregivers* may cultivate individually and/or collectively as permitted by the State of California and as outlined in the following sections.

17.32.080. Findings

In addition to the findings required for the granting of a Conditional Use Permit by Section 17.28.050 of this Title, the decision making authority shall consider the following:

A. Whether the approval of the proposed use will violate the minimum requirements set forth in this chapter for distance separations between establishments which dispense, process or cultivate *Medical marijuana*; and separations between establishments which dispense, process or cultivate *Medical marijuana* and other specific regulated or protected land uses as set forth in this chapter.

B. Whether the proposed use complies with Title 17 of the Lemon Grove Municipal Code.

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17.32.090. Medical marijuana Dispensary Regulations

A. Zones:

Dispensaries may be established by Conditional Use Permit in the Heavy Commercial (HC), Limited Commercial (LC), General Commercial (GC) and Light Industrial (LI) Zones and subject to the distance requirements. *Dispensaries* are prohibited in Mixed-Use Zones (Downtown Village Specific Plan and Central Commercial) and all residential zones (RLM, RL, RM, RMH).

B. Distance Requirements

An application may be submitted provided the proposed facility meets the required distance measurements. For purposes of measurements, all *Dispensaries* are considered *Regulated uses* and public parks as defined at Section 12.20.030 of Lemon Grove Municipal Code, playgrounds as defined at Section 18.28.020, subdivision (v), of the Lemon Grove Municipal Code, licensed day care facilities as defined at Section 17.08.030 of Lemon Grove Municipal Code, schools as defined at California Health and Safety Code section 11362.768, subdivision (h), and alcohol and substance abuse treatment centers are considered *Protected Uses*. Measurement is made between the closest property lines of the *Premises* in which the *Regulated uses* and *Protected Uses* are located. A regulated use must not be:

1. Within 1000 feet of any other regulated use which is located either inside or outside the jurisdiction of the City,
2. Within 1000 feet from any protected use which is located either inside or outside the jurisdiction of the City.

The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.

C. Standards

1. **Background Check Required for *Directors* and *Employees*.** The *Director* and employees of a *Dispensary* must obtain a Live Scan background check through the California Department of Justice or the San Diego County Sheriff's Department prior to employment. *Directors* convicted of a serious felony, as defined in California Penal Code section 1192.7, subdivision (c), and Health & Safety Code Section 11359 (Possession for sale) within the previous ten years shall not be eligible for a license. Other potential collective employees and volunteers convicted of the crimes identified in this section in the previous five years are ineligible for employment or participation. If during employment with the *Dispensary*, a *Director* or employee is convicted of a crime identified in this section shall be immediately dismissed from employment or required to resign as a corporate board member or officer. For purposes of this section, a conviction in another state that would have been a conviction equivalent under California law to those convictions specified in this section will disqualify the person from employment or volunteering at the *Dispensary*.
2. **Security Personnel Required.** *Dispensaries* shall have at least one uniformed security guard on duty during operating hours that possess a valid Department of Consumer Affairs "Security Guard Card."
3. **Community Relations Liaison Required.** *Dispensaries* shall designate a community relations liaison (liaison) who shall be at least 18 years of age. The liaison may also be the *Director* of the *Dispensary*. To address community complaints or operational problems with the *Dispensaries*, the individual designated as the community relations liaison shall provide his or her name, phone number and email address to the following:
 - a. Lemon Grove City Manager,
 - b. San Diego County Sheriff's Department personnel supervising law enforcement activity in Lemon Grove

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- c. All neighbors within one hundred feet of the *Dispensary*.
4. **Inspection of Premises.** City Code Enforcement Officers, San Diego Sheriff's Department staff, and any other employee of the City requesting admission for the purpose of determining compliance with the standards set forth in this section shall be given access to the premise. City and Sheriff Staff shall not retain information pertaining to individual patient records viewed during an inspection, and information related to individual patients shall not be made public. Inspectors will give reasonable notice of a scheduled inspection. Unannounced inspections of a *Dispensary* may occur if City or Sheriff Department staff have probable cause that the collective is violating the law.
5. **Inspection Requirements.** In order to facilitate verification that a *Dispensary* operates pursuant to State and local laws, the following records must be maintained at the *Premises* at all times and available for inspection by City Code Enforcement Officers, San Diego Sheriff's Department staff, and any other employee of the City:
 - a. Client Records - The *Dispensary* shall keep a record of its clients. The record shall include the following and shall be maintained for a two-year period:
 - i. *Qualified patient* member's name, name of *primary caregiver* when appropriate, and name of *Licensed Physician* recommending use of *medical marijuana* for the member.
 - b. *Medical Marijuana* Records - *Dispensary* shall keep a record of its *medical marijuana* transactions. The following records shall be maintained for a two-year period and labeling shall occur as specified:
 - i. A record identifying the source or sources of all *Medical marijuana* currently on the *Premises* or that has been on the *Premises* during the two-year period preceding the current date. The record shall include the name of the cultivator or manufacturer and the address of the cultivation or manufacturing location.
 - ii. All *Medical marijuana* at the *Premises* must at all times be physically labeled with information that will allow for identification of the source of the *Medical marijuana*.
 - iii. All *Medical marijuana* at the *Premises* shall be physically labeled with the monetary amount to be charged.
 - c. Financial Records - *Dispensary* shall maintain records of all transactions involving money and/or *Medical marijuana* occurring at the *Premises*. Records shall be maintained for a two-year period preceding the current date.
 - d. Employee Records - *Dispensary* shall maintain a record of each employee/volunteer and *Director*. The record shall include name and background check verification. Records shall be maintained for a two- year period following the end of an employee's employment or *Director's* relationship with the *Dispensary*.
6. **Operations Manual.** The application for a Conditional Use Permit shall include a detailed *Operations Manual* including but not necessarily limited to the following information:
 - a. Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
 - b. A description of the staff screening process including appropriate background checks;
 - c. The hours and days of the week the *Dispensary* will be open;
 - d. Text and graphic materials showing the site, floor plan and facilities of the *Dispensary*. The material shall also show adjacent structures and land use;
 - e. A description of the security measures located on the *Premises*, including but not limited to, lighting, alarms, and automatic law enforcement notification;

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- f. A description of the screening, registration and validation process for *qualified patients*;
- g. A description of *qualified patient* records acquisition and retention procedures;
- h. The process for tracking *Medical marijuana* quantities and inventory controls employed, including the source of *Medical marijuana* (on-site cultivation, processing, or plant material, or processed products, received from outside sources);
- i. Procedures to ensure accurate record keeping, including protocols to ensure that quantities purchased do not suggest re-distribution;
- j. Other information required by the Development Services Director.

7. Operating Standards. *Dispensaries* shall comply with all of the following operating standards. In addition to these standards, the *Dispensaries* shall comply at all times with conditions outlined in the approved Conditional Use Permit and the Operational Manual.

- a. Dispensing *Medical marijuana* to an individual *qualified patient* or *primary caregiver* more than once a day is prohibited;
- b. *Dispensaries* shall only dispense *Medical marijuana* to an individual *qualified patient* or *primary caregiver* who has a valid, verified *Licensed Physician's* recommendation, and if appropriate, a valid *Primary caregiver* designation. The *Dispensary* shall verify that the *Licensed Physician's* recommendation is current and valid;
- c. On-site evaluation by a *Licensed Physician* for the purposes of obtaining a qualified status is prohibited;
- d. *Dispensaries* shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the *Dispensary*. The client rules and/or regulations shall include, but are not limited to:
 - i. Each building entrance to a *Dispensary* shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming *Medical marijuana* on the *Premises* or in the vicinity of the *Dispensary* is prohibited unless specifically authorized within the governing Conditional Use Permit.
 - ii. The building entrance to a *Dispensary* shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the *Premises*.
 - iii. The hours of operation for an authorized *Dispensary* shall be limited to between 8:00 a.m. to 8:00 p.m. or as specified within the Conditional Use Permit.
 - iv. *Dispensaries* shall not permit the use or consumption of *medical marijuana* on-site unless specifically authorized under the Conditional Use Permit.
 - v. *Dispensaries* shall not permit the on-site display of unprocessed marijuana plants or representations of marijuana plants in any areas visible to the public;
 - vi. All signage for *Dispensaries* shall require a sign permit from the City prior to installation. Signage shall not include any terminology (including slang) or symbols for marijuana.
 - vii. *Dispensaries* shall only permit the distribution of *medical marijuana* plant material and *medical marijuana* manufactured products from licensed sources as allowed by the approved Conditional Use Permit. Such distribution shall be limited to *qualified patients* or *primary caregiver*,
- e. *Dispensaries* shall maintain on the *Premises* an on-site training curriculum capable of meeting employee, agents and volunteer training needs. The minimum training curriculum shall include professional conduct, ethics, and state and federal laws regarding patient confidentiality; specific procedural instructions for responding to an

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- emergency, including robbery or violent incident.
- f. *Dispensaries* shall maintain all necessary permits, and pay all appropriate taxes. *Dispensaries* shall also provide invoices to cultivators and manufacturers to ensure tax liability responsibility;
 - g. *Dispensaries* shall implement procedures as outlined in their approved *Operations Manual*;
 - h. *Dispensaries* shall submit an "Annual Performance Review Report" for review and approval by the Development Services Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Conditional Use Permit, *Operations Manual*, and Conditions of Approval, as well as any proposed modification to procedures as deemed necessary. The Development Services Director may review and approve amendments to the approved "*Operations Manual*"; and the frequency of the "Annual Performance Review Report." *Medical marijuana* cultivation and dispensing monitoring review fees pursuant to the current Master Fee Schedule shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
 - i. *Dispensaries* shall maintain 24-hour recorded video surveillance of the *Premises*. Recordings shall be retained for 30-days for inspection by City staff. City staff must provide valid cause for viewing video surveillance. City staff must ensure that patient privacy is safeguarded. Video surveillance will not be shared with law enforcement except when formally requested as part of a law enforcement investigation directly involving the *Dispensary*.
 - j. Sales of alcoholic beverages are prohibited.
 - k. Sales of tobacco and tobacco products are prohibited.
 - l. Sales of drug paraphernalia are prohibited.
 - m. The location of the *Dispensary* shall include the installation of a centrally monitored alarm system
 - n. Lighting shall be installed to adequately light the exterior and interior of the *Dispensary Premises* while in conformance with 17.24.080£.2.
8. **Source of Medical Marijuana.** A *Dispensary* shall only dispense marijuana from the following sources and this information shall be included in the *Operations Manual*:
- a. On-site Cultivation for Authorized *dispensary*. If the Conditional Use Permit authorizes limited, on-site *Medical marijuana* cultivation at the *dispensary*, on-site cultivation shall be considered an accessory use and shall not exceed twenty-five (25) percent of the *dispensaries'* total floor area and in no case exceed 1,500 square feet. In addition to these area limitations, the accessory use shall conform to the specific zone regulations, Section 17.24.060 Accessory Buildings and Uses, Section 17.32.100 of this Title, and applicable Building and Fire Codes. The *Operations Manual* shall include information regarding the on-site cultivation including, but not limited to:
 - i. Description of measures taken to minimize or offset energy use from the cultivation or processing of *medical marijuana* on-site; and
 - ii. Description of chemicals stored or used; and
 - iii. Description of any effluent discharged into the City's wastewater and/or stormwater system;
 - a. **Licensed External Source.** Until one year following the date when the California State Bureau of Medical Marijuana Regulation begins accepting applications for licenses, or sooner, if such a deadline is set by the Bureau, *Dispensaries* shall source their *medical*

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marijuana from cultivators and manufacturers that have obtained a local business license or equivalent document showing that the organization is operating in zoning and regulatory compliance from another jurisdiction for the *Medical marijuana* cultivation or manufacturing. One year from the date that the California State Bureau of Medical Marijuana Regulation begins accepting applications for licenses, or sooner, if such a deadline is set by the Bureau, all sources of *medical marijuana* or *medical marijuana* products sold in a *dispensary* must also have a state license for their *medical marijuana* activities.

17.32.100. Medical Marijuana Cultivating Regulations.

The cultivation of *medical marijuana* for personal use by a *qualified patient* shall be permitted in connection with a residence owned or leased by a *qualified patient* and meeting the minimum standards noted below.

A. Medical Marijuana Cultivation for Personal Use

1. An individual *qualified patient* shall be allowed to cultivate *Medical marijuana* within his/her private residence. If the private residence is leased or rented, a notarized authorization from the property owner must be filed with the City. A *primary caregiver* shall only cultivate *Medical marijuana* at the residence of a *qualified patient* for whom he/she is the *primary caregiver*.
- B. **Zones.** Cultivating *medical marijuana* is allowed in conforming Residential Low (RL) and Residential Medium/Low (RLIM) zones where there is an existing single family development subject to the following standards and authorized by a Zoning Clearance.

C. Standards

1. Cultivation shall only occur within an enclosed structure that can be secured and locked including the residence, new or remodeled addition to a residence, residential accessory building or a legally converted garage.
2. Garage conversions shall require a replacement in kind prior to authorizing a cultivation area.
3. The grow area shall be within a self-contained structure, with a 1-hour firewall assembly made of green board, and shall be ventilated with odor control, and shall not create a humidity or mold problem
4. The *Qualified patient* shall reside in the residence where the *Medical marijuana* cultivation occurs;
5. The interior area dedicated to the cultivation of marijuana in an existing residence or within a proposed addition to the residence shall not exceed 50 square feet.
6. An accessory structure containing a *Medical marijuana* cultivation area shall not exceed 50 square feet and shall be consistent with the accessory structure requirements of the residential zone and Section 17.24.060.
7. *Medical marijuana* cultivation lighting shall not exceed 1200 watts;
8. Evidence of *medical marijuana* cultivation either within or outside the residence shall not be visible from outside the *Premises*.
9. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and shall not be displaced by *Medical marijuana* cultivation.
10. The *medical marijuana* cultivation area shall be in compliance with the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)).
11. The *medical marijuana* personal cultivation and processing shall comply with stormwater, wastewater, and applicable greenhouse gas reduction requirements;

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12. Personal *medical marijuana* cultivation and processing shall not be visible from the exterior of the *Premises*;
13. A *Qualified patient* or *Primary caregiver* shall participate in *Medical marijuana* cultivation in only one residential location within the City of Lemon Grove.

D. Prohibitions

1. The cultivation of *medical marijuana* shall not be authorized by or considered a Home Occupation and no Home Occupation permit shall be issued.
2. The use of gas products (C02, butane, etc.) for *medical marijuana* cultivation or processing for personal use.
3. Sale or dispensing of *medical marijuana* from a residential zoned property.
4. Signage identifying any uses related to *medical marijuana* in a residential zone.

E. Deviations

1. Any proposed *medical marijuana* cultivation for personal use by an individual *qualified patient* or *primary caregiver* that does not meet the grow area standard of Section 17.32.090.8 shall require review and approval by the director of Development Services or designee. The proposed deviation from the cultivation area limitations shall be processed as a Zoning Clearance. The director of Development Services or designee shall review the submitted information and make an interpretation of need. A complete application shall include the following documentation:
 - a. *Licensed Physician's* recommendation or verification of more than one *qualified patient* living in the residence shall be submitted with the request showing why the cultivation area standard is not feasible.
 - b. Written permission from the property owner.
 - c. Show conformance to the residential zone and accessory building regulation.
 - d. The Building Official and Fire Chief may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
 - e. *Medical marijuana* cultivation area shall be enclosed in a structure with a 1-hour firewall assembly of green board.
 - f. The *medical marijuana* cultivation area shall not exceed 100 square feet.

17.32.110. Transportation of *Medical Marijuana*.

All activities involving the transportation of marijuana for personal patient use, to the extent permitted by The Compassionate Use Act of 1996, shall be conducted by *Qualified patients* and/or the authorized *Primary caregiver* of the *Qualified patient*, where the quantity transported and the method, timing and distance of the transportation are reasonably related to the medical needs of the *Qualified patient*. All personal transportation shall be conducted in accordance with state law.

All activities involving the transportation of marijuana for a *Dispensary* shall comply with California State Regulations, restrictions and guidelines, as enumerated in Division 8, Chapter 3.5 of the California Business and Professions Code, and established by the Bureau of Medical Marijuana Regulations.

17.32.120. Procedures

A. Administrative Citation and Revocation.

1. Any violation of this ordinance occurs the City has the authority to immediately cite a *Dispensary* for the violation. The *Dispensary* is given one warning and if not corrected

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within seven calendar days, the City may issue an administrative citation of \$500 per violation. The citations may escalate according to the schedules identified in Section 1.12.012 until and unless the violations have been corrected.

2. A use permit may be revoked according to Section 17.28.020, subdivision (n) (Revocation of Permits and Approval). Revocation proceedings may occur for non-compliance with the governing Condition Use Permit or Zoning Clearance and any of the standards in this Chapter.
- B. **Transfer of Use Permit.** The rights of an approved Use Permit to operate a *Dispensary* may be transferred to another *Dispensary* as a Use Permit modification according to Section 17.28.020, subdivision (m).
- C. **Appeals.** Any applicant or other interested person may appeal a decision by the Development Services Director according to Section 17.28.0201.
- D. **Fees.** Applications filed under this Ordinance shall be reviewed and processed on a full cost recovery basis pursuant to the current Master Fee Schedule. The City Council may amend the Master Fee Schedule from time to time to ensure for full cost recovery of administration of any Permit issued under this Ordinance.
- E. **Amendments.** Amendments to this Chapter shall conform to the process identified in Section 17.28.080. (Ord. 443 § 1, 2016)

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18.16.060 Exotic animals and beekeeping.

A. The keeping of animals considered to be members of a rare and endangered species, exotic or wild animals, including dangerous or poisonous reptiles, shall not be permitted within the city, except as provided in Section 6.04.420 of the Lemon Grove Municipal Code.

B. Beehives may be kept within the residential low and low/medium zoning districts subject to the following:

1. The beekeeper shall apply for a beekeeping permit. The permit application shall be filed on a form available from the development services department and shall be accompanied with a nonrefundable fee as established by resolution of the city council.

2. Up to four beehives may be permitted. Beehives shall be placed at least twenty-five feet from the exterior line of the traveled way of any public streets, at least twenty-five feet from the exterior line of any private access easement, at least fifteen feet from any side or rear lot line, and at least twenty-five feet from neighboring dwellings. For three to four hives, a one-hundred-foot **separation** from neighboring dwellings is required.

3. Beekeepers shall keep sufficient open water available near the beehives during hot and dry weather in compliance with vector control regulations.

4. Beehives shall be well maintained at all times.

5. A beehive shall be no larger than fifteen cubic feet in volume.

6. Only docile bee species may be permitted.

7. Registration with the county of San Diego Department of Agriculture, Weights, and Measures is required prior to beekeeping activities.

8. The following firefighting materials shall be maintained, in good working condition, at all times when the beehive is attended by the keeper, sufficiently near the beehive so as immediately to be available in case of fire:

a. A shovel; and

b. Either a fire extinguisher of the two and one-half-gallon water-under-pressure type or the five-gallon back-pump type or its equivalent; or a garden hose connected to a source of water.

9. Beehives shall be placed at least one hundred feet from the border of sensitive areas. Sensitive areas include areas where people, such as the elderly, small children, individuals with medical conditions or confined animals inhabit or frequent that are more at risk if stinging incidents were to occur. Sensitive areas are characterized by a demonstrated need for a greater safety buffer. These areas include, but are not limited to, schools, playgrounds, picnic areas, outdoor sports facilities, daycare centers, senior care facilities, medical facilities, and animal-boarding facilities.

10. Property operators, owners, or residents who have medical reasons may apply to have their locations designated as sensitive sites. Businesses and facilities with employees who have medical reasons or where bees could cause a nuisance during normal work activities may also apply to have their locations designated as sensitive sites. The development services director may approve sites or remove sites previously approved or designated as sensitive sites upon request. Upon appeal, the city council has final discretion to approve designation of locations as sensitive sites upon review of supportive documentation. (Ord. 439 § 2, 2016)

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LGMC Chapter 18.27 - Alcoholic Beverage Sales

18.27.010 Statement of necessity.

A. The city council finds and determines that the sale and use of alcoholic beverages contributes to problems encountered by residents, businesses, property owners, visitors and workers of the city of Lemon Grove. Documented problems include: (1) debilitating and life-threatening medical conditions such as those related to the dysfunction of the heart and circulatory system, stroke and diseases of the liver; (2) social problems such as child and family neglect and abuse, public drunkenness, and lost productivity; (3) public safety issues relating to drunk driving and related automobile traffic and pedestrian accidents, violence and crime.

B. The city council finds and determines that, without the appropriate regulation, the sale, service and use of alcoholic beverages may adversely and seriously affect the peace, health, safety and welfare of residents of the community and may specifically affect the safety of children and of visitors to the city, may contribute to the deterioration of neighborhoods, cause devaluation of property, erode community values and lower the quality of life.

C. The city council finds that relatively high densities of alcohol outlets are associated with relatively higher rates of related medical disorders, relatively higher rates of social problems and alcohol-related traffic casualties. (Ord. 446 § 2, 2017)

18.27.020 Purpose.

A. To deal with and ameliorate problems and adverse conditions associated with establishments which sell, serve or give away alcoholic beverages by restricting the location of such uses in relation to one another, and their proximity to facilities primarily devoted to use by children and families and the general public, and through the denial of a conditional use permit or through the imposition of conditions on a case-by-case basis, thereby preventing undue concentration and undesirable community impact of such uses, and by the imposition of reasonable conditions upon the operation of all such uses both existing and in the future.

B. To implement the purposes, policies, and programs of the general plan. (Ord. 446 § 2, 2017)

18.27.030 Definitions.

The following words and phrases are specifically defined to apply to the regulations of this chapter. Where words are not defined here or elsewhere in this municipal code, their common meaning shall apply.

A. "Alcoholic beverage" means and includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

B. Alcoholic Beverage Sales, Incidental.

1. Alcoholic beverage sales in restaurants shall be considered incidental if all of the following conditions exist:

- a. Alcoholic beverages are sold for consumption on the premises only;
- b. The primary purpose of the establishment is sit-down dining with table service;
- c. The restaurant contains a fully equipped kitchen, which is utilized each day of business operation for preparation of meals to be served to patrons;
- d. Full food service is available in the restaurant for all hours that the facility, including the bar or cocktail lounge, is open;

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e. Take-out food service, if any, is only incidental to the primary use, sit-down food service;

f. The restaurant offers no drive-up or drive-through service and does not have a take-out window;

g. A separate bar or cocktail lounge may be located on the premises;

h. No alcoholic beverage is served in conjunction with any form of adult entertainment in accordance with Chapter 18.28.

2. Alcoholic beverage sales in food stores other than convenience markets shall be considered incidental when the shelving or display area allocated to alcoholic beverages does not exceed more than ten percent of the total shelf and display area within the store.

3. Alcoholic beverage sales in drug stores with a floor area greater than ten thousand square feet, with or without the sale of household merchandise, beauty supplies, toiletries, and packaged food products, shall be considered incidental when the shelving or display area allocated to alcoholic beverages does not exceed six percent of the total shelf and display area within the store.

4. Brewpubs, wine bars, rectifiers, and alcoholic beverage manufacturers with accessory on- and off-sale alcoholic beverage sales, including, but not limited to, tasting rooms and off-sale alcoholic beverages that are manufactured on-site with catering permitted on-site shall be considered incidental provided performance standards in Section 17.24.080(E) are adhered to.

5. Accessory indoor music and outdoor consumption of alcoholic beverages within a private fenced area shall be considered incidental provided noise regulations within Section 9.24.080(B) are adhered to during the hours between seven p.m. to seven a.m.

C. "Brewpub" means a small primary or accessory beer manufacturer, which may include a restaurant, where the alcohol is produced exclusively at its own premises and sold for on- and/or off-site consumption. This operation allows the sale of other supplier's alcohol for consumption on its own premises.

D. "Convenience markets" means, for purposes of this chapter, any store selling food and household merchandise to the public, which has a floor area less than ten thousand square feet.

E. "Establishment" means a place of business with its furnishings and staff which may be regarded as the smallest unit conveyable by sale, rent or lease.

F. "Notice and order" means the community development director's written notice and order to a business or facility owner or operator which directs such owner or operator to comply with city regulations and the specific requirements of the conditional use permit or zoning clearance authorizing the operation of the business or facility which sells, serves or gives away alcoholic beverages.

G. "Off-sale liquor establishment" means any establishment wherein alcoholic beverages are sold or given away for consumption off the premises, including, but not limited to, any establishment which is applying for or has obtained a liquor license from the California Department of Alcoholic Beverage Control, including types 20 and 21.

H. "On-sale liquor establishment" means any establishment wherein alcoholic beverages are sold, served or given away for consumption on the premises, including, but not limited to, any establishment which is applying for or has obtained a California Department of Alcoholic Beverage Control license types 41, 42, 47, 48, 51, 52 and 63.

I. "Rectifier" means to cut, blend, rectify, mix, flavor and color distilled spirits and wine upon which excise tax has been paid and, whether rectified by the licensee or another person, to package, label, export and sell the products to persons holding licenses authorizing the sale

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of distilled spirits.

J. "Tasting room" means an area used for accessory alcoholic beverage retail consumption on the premises where the alcoholic beverages are produced.

K. "Wine bar" means a small primary or accessory wine beverage manufacturer, which may include a restaurant, where the wine is produced exclusively at its own premises and sold for on- and/or off-site consumption. This operation allows the sale of other supplier's alcohol for consumption on its own premises.

L. Substantial Change in Mode or Character of Operation. Any of the following actions or situations will constitute a "substantial change in mode or character of operation" for purposes of this chapter:

1. The establishment changes its type of retail liquor license within a license classification; or

2. The establishment ceases operation for a period of thirty-one days. The suspension of business during the diligent prosecution of building repairs or remodeling undertaken under the authority of a valid building permit shall not be considered a substantial change in the mode or character of operation if the repairs or remodeling do not change the nature of the licensed premises and do not increase the square footage of the area which constitutes the establishment;

3. Any addition exceeding ten percent of the existing floor area is made to the building or portion of a building occupied exclusively by a business which sells or serves alcoholic beverages and which would be subject to approval by conditional use permit, if being established as a new use;

4. Any modification, remodeling or renovation of an existing building, or portion thereof, occupied exclusively by a business or facility which sells or serves alcoholic beverages, when the value of such modification, remodeling, or renovation exceeds fifty percent of the replacement value of the subject premises as determined by the building official;

5. The establishment is found to be a public nuisance by the city council;

6. The California Department of Alcoholic Beverage Control has held a formal hearing regarding accusations of violations, by the establishment, of ABC rules and has determined that such violations have occurred.

M. Timely Compliance.

1. For all violations involving the unauthorized enlargement or physical modification to the existing building, facility or outdoor service area, timely compliance means complete removal of the physical modifications which constitute the violation or submittal of detailed working drawings sufficient for an application for building permit and a complete application for modification of the conditional use permit or zoning clearance which authorizes the business or facility. Evidence of the complete removal of unauthorized work, or the working drawings and complete application shall be filed in the office of the development services department within fifteen calendar days following the receipt of the development services director's notice and order by the owner, operator or employee-in-charge of the business or facility.

2. For all violations, other than those described in subsection L of this section, such as, but not limited to, the sale or display of unauthorized fortified wines, the display of unauthorized advertising signs, exceeding shelf area limitations; "timely compliance" means full compliance within twenty-four hours following receipt of the development services director's notice and order by the owner, operator or employee-in-charge of the business or facility. (Ord. 446 § 2, 2017)

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18.27.040 General provisions.

A. Alcoholic Beverage Sales or Service, New and Substantial Changes. Except as otherwise stated herein, on and after the effective date of the ordinance creating this chapter, no place, facility or business wherein alcoholic beverages are sold, served or given away for on-site or off-site consumption, shall be established or shall affect a “substantial change” in mode or character of operation as defined in Section 18.27.030(G) without first obtaining a conditional use permit, or modification of an existing conditional use permit, pursuant to Section 17.28.050 of the zoning ordinance. A zoning clearance shall be required if alcoholic beverage sales or services are “incidental” as defined in Section 18.27.030(B).

B. Alcoholic Beverage Sales or Service, Not Authorized by CUP or zoning clearance. Except for those places, businesses and facilities described in subsection A of this section as an establishment having a conditional use permit or zoning clearance and being in full or substantial compliance with current requirements, on and after the effective date of the ordinance creating this chapter, all existing places wherein alcoholic beverages are sold, served, or given away for on-site or off-site consumption shall be considered nonconforming uses. Elimination of nonconforming status may be achieved by filing the appropriate application, receiving a conditional use permit or zoning clearance as required by this chapter, and complying with conditions of approval which shall be limited to the minimum conditions of approval as set forth in Section 18.27.060(A) and (B). These requirements shall be enforced according to the provisions of subsection C of this section. For existing businesses selling alcoholic beverages, the requirements of this chapter relating to minimum separations between the existing business, similar establishments and other specific land uses shall be waived.

C. Alcoholic Beverage Sales or Service—Enforcement. The alcoholic beverage sales ordinance shall be enforced according to the provisions of Section 18.27.120 of the development code and Section 17.28.020 of the zoning ordinance. (Ord. 446 § 2, 2017; Ord. 386 § 3, 2009)

18.27.050 Findings.

In addition to the findings required for the granting of conditional use permits by Section 17.28.050 of the zoning ordinance, the decision making authority shall consider the following:

A. Whether the proposed use will result in an undue concentration of establishments selling alcoholic beverages as defined by the state Alcoholic Beverage Control Department (ABC) or by city ordinance, resolution, or policy.

B. Whether the approval of the proposed use will violate the minimum requirements, set forth in this chapter, for distance separations between establishments which sell, serve or give away alcoholic beverages; and separations between establishments which sell, serve or give away alcoholic beverages and other specific land uses.

C. Whether the proposed use will be located in an area which, based on the most recent yearly compilation by the San Diego County sheriff’s department or other appropriate law enforcement agency, has experienced a greater than average number of reported crimes and arrests, including those reported as alcohol-related, as well as, criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, motor vehicle theft combined with all arrests for other crimes, felonies and misdemeanors, except traffic citations. (Ord. 446 § 2, 2017; Ord. 386 § 3, 2009)

18.27.060 Minimum conditions of approval.

A. Businesses or facilities providing alcoholic beverages for off-site consumption shall

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comply with the following minimum conditions of approval. However, the city council may impose such additional conditions and restrictions as found necessary or desirable to achieve the purposes of this chapter.

1. No alcoholic beverages shall be consumed on the premises under the control of the business owner or the property owner, excepting when alcoholic beverages are manufactured on the premises.
2. Adequate litter receptacles shall be provided.
3. All display of alcoholic beverages shall be located a minimum of five feet from the store entrance.
4. For establishments which sell or give away alcoholic beverages and also sell gasoline, no signs advertising alcoholic beverages may be visible from the exterior of the building. Except for liquor stores, the signage for which shall be governed by conditional use permit and the city sign ordinance, signage advertising alcoholic beverages for all other establishments selling alcoholic beverages for off-premises consumption shall be limited to no more than fifty percent of the temporary window display permitted by the sign ordinance (twelve and one-half percent of total window area). Not more than two neon signs which hang on the inside of a window may be permitted subject to, and deducted from, the area limitations established in this subsection. No reference to liquor, any alcoholic beverage or product, or alcoholic beverage brand name may be included in any permanent signage for any establishment selling alcoholic beverages for off-site consumption other than that displayed by liquor stores or alcoholic beverage manufacturers when they are on the premises.
5. No wine shall be displayed, sold or given away in containers of less than seven hundred ml, except multipack containers of wine and wine coolers containing no more than fifteen percent alcohol by volume.
6. No distilled spirits shall be displayed, sold or given away in containers of less than two hundred fifty ml, except two hundred ml pre-mixed cocktails.
7. The display, sale or distribution of fifty ml "airport bottles" and three hundred seventy-five ml "hip flask" containers is prohibited.
8. No single serve beer, ale or malt liquor shall be offered for sale in a container with a volume equal to or greater than thirty-two ounces, excepting off-sale alcoholic beverages from manufacturers on the premises. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings.
9. No wine with an alcoholic content greater than fifteen percent by volume shall be displayed, sold or given away unless the following conditions are met:
 - a. The alcohol content is solely the result of the natural fermentation process; or
 - b. If the alcohol content resulting from natural fermentation has been increased by the addition of wine spirits, brandy, or other alcohol, the wine must be sealed and capped by cork closure and aged for two or more years.
10. All litter shall be removed from the exterior areas around the building as required and no less frequently than once each day this business is open.
11. The operation of the business shall comply fully with all the rules, regulations and orders of the state Alcoholic Beverage Control Department. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit or zoning clearance.
12. The business shall comply with all of the conditions of the conditional use permit or zoning clearance which authorizes its operation.

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13. For all businesses other than liquor stores, brewpubs, wine bars, rectifiers and manufacturing, warehouse, and distribution facilities, the display, sale and distribution of alcoholic beverages shall be accessory to other permitted activities. Except where Section 18.27.030(B)(3) requires a greater limitation, shelving or other display area allocated to the display of alcoholic beverages shall not exceed ten percent of the total shelf or display area within the premises.

14. No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.

15. No display, sale or distribution of beer or wine, wine coolers or similar alcoholic beverages shall be made from an ice tub or similar container.

16. Employees engaged in the sale or distribution of alcoholic beverages shall be at least twenty-one years old, or at least one salesperson twenty-one years old or older must be on the premises during all times when alcoholic beverages are sold.

17. Businesses engaged in the sale or distribution of alcoholic beverages for off-site consumption shall maintain a minimum separation of five hundred feet from any other business required to have a conditional use permit for the sale of alcoholic beverages. This subdivision shall not apply to incidental alcoholic beverage sales and warehouses, and distribution facilities.

B. Businesses providing the sale or service of alcoholic beverages for on-site consumption shall comply with the following minimum conditions of approval. However, the city council may impose such additional conditions and restrictions as are found necessary or desirable to achieve the purposes of this chapter.

1. Except within city-approved outdoor places which are adequately separated from direct public access via a fence or other means, no alcoholic beverages shall be consumed outside of an enclosed building.

2. For restaurants, bars, taverns and cocktail lounges, signs advertising alcoholic beverages shall be limited to no more than fifty percent of the temporary window display permitted by the sign ordinance (twelve and one-half percent of total window area). Not more than two neon signs which hang on the inside of a window may be permitted subject to, and deducted from, the area limitations established in this subsection.

3. Except for manufacturers, brewpubs, wine bars and rectifiers, no reference to liquor, any alcoholic beverage or product, or alcoholic beverage brand name may be included in any permanent signage for any establishment selling alcoholic beverages for on-site consumption other than that displayed by bars, taverns and cocktail lounges.

No wine with an alcoholic content greater than fifteen percent by volume shall be displayed, sold or served unless the following conditions are met:

a. The alcohol content is solely the result of the natural fermentation process; or

b. If the alcohol content resulting from natural fermentation has been increased by the addition of wine spirits, brandy, or other alcohol, the wine must be sealed and capped by cork closure and aged for two or more years.

4. All litter shall be removed from the exterior of the building as required and no less frequently than once each day the business is open.

5. The operation of the business or facility shall comply fully with all the rules, regulations and orders of the state Alcoholic Beverage Control Department. Failure to comply with these requirements shall constitute grounds for revocation of a conditional use permit or zoning clearance.

6. For all businesses and other facilities engaged in the sale or service of alcoholic beverages for on-site consumption other than bars and taverns, the sale of alcoholic

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beverages shall be incidental and accessory to other permitted activities.

7. Employees engaged in the sale or service of alcoholic beverages for on-site consumption shall be at least twenty-one years old.

8. Except for incidental alcoholic beverage sales businesses, businesses engaged in the sale or service of alcoholic beverages for on-site consumption shall maintain a minimum separation of one thousand feet from another business selling or serving alcoholic beverages for on-site consumption and a minimum of five hundred feet from any other business requiring a conditional use permit for the on-site or off-site sale or service of alcoholic beverages; any church or other place of worship; any public or private preschool, elementary school or high school; any public park or playground; any hospital, clinic, or other health care facility; any residential unit other than a caretaker's dwelling on a commercial or industrial property; and any property zoned for residential use. Except that existing businesses that serve alcohol and that were located closer than five hundred feet or one thousand feet from another business serving alcohol prior to adoption of the ordinance codified in this chapter shall be allowed to expand their business as long as the expansion does not violate the distance requirements from any of the designated sensitive uses identified in this section above. Based upon the particular circumstances involved, the city council shall determine the appropriate separation between private clubs and lodges operated by recognized national, state or regional religious or fraternal order and appropriate distances between such clubs and lodges and other types of land use. (Ord. 446 § 2, 2017)

18.27.070 Measurement of distance.

A. Types of Uses.

1. "Regulated uses" are those businesses and facilities which sell, serve or give away alcoholic beverages and which have been identified in Sections 18.27.060(A)(16) and 18.27.060(B)(8).

2. "Protected uses" are churches or other places of worship; any public or private preschool, elementary school or high school; any park or playground; any hospital, clinic, or other health care facility; any residential unit other than a caretaker's dwelling on a commercial or industrial property; and any property zoned for residential use.

B. Distance Computation.

1. When a physical separation is required between two regulated uses, the distance of such separation is measured along a straight line extending between the closest exterior structural walls of each use.

2. When a physical separation is required between a regulated use and a protected use, the distance of such separation is measured along a straight line extending between the closest exterior structural wall of the regulated use and the closest property line of the protected use. (Ord. 446 § 2, 2017)

18.27.080 Notification to alcoholic beverage control department.

A. Within five days following the city's approval of a conditional use permit or zoning clearance for a business proposing to sell, serve or give away alcoholic beverages, the city will send a written notice of such approval to the local office of the State Alcoholic Beverage Control Department.

1. The notice shall include a copy of the resolution or notice of approval and will state that city approval of the business or other facility proposing to sell, serve or give away alcoholic beverages has been granted subject to compliance, by the business or facility,

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with certain specific conditions.

2. The notice shall indicate the final date for the filing of any appeals from the decision or conditions of approval.

3. The notice shall state clearly in its heading and text that formal city approval of the business or facility which proposes to sell, serve or give away alcoholic beverages will be withheld until the business has complied with all appropriate conditions of approval.

B. Within three working days of the city's determination that a business proposing to sell alcoholic beverages has fully complied with all appropriate conditions of approval of a conditional use permit or zoning clearance, a notice regarding such full compliance will be sent to the local ABC office. (Ord. 446 § 2, 2017)

18.27.090 Notification regarding violations.

Each time the development services director determines that a business or other facility which sells, serves or gives away alcoholic beverages has violated any provision or condition of its conditional use permit, zoning clearance, other city law or regulation, or any requirement of the state Alcoholic Beverage Control Department, it shall issue a written notice and order to the owner of the business or facility. The notice and order shall include the following:

A. A requirement that the business owner or facility operator correct all violations immediately.

B. A statement that a violation of the alcoholic beverage sales ordinance constitutes a misdemeanor subject to the general penalty provisions of this code, that conviction of a misdemeanor shall be punishable by fine or imprisonment or both such fine and imprisonment, and that each day a violation is committed or continued constitutes a separate offense.

C. A statement that, in addition to the penalties stated in Section 18.27.080, failure to comply in a timely manner or repeated violations may result in a revocation of the conditional use permit or zoning clearance which authorizes the maintenance of an establishment selling, serving or giving away alcoholic beverages.

D. A notification that a written report of such violation or violations has been transmitted to both the owner of the property where the business or facility is being conducted or operated and to the local office of the Alcoholic Beverage Control Department. (Ord. 446 § 2, 2017)

18.27.100 Justification for revocation of approvals.

Any business establishment which has been authorized by the city to sell, serve or give away alcoholic beverages shall comply fully with all city zoning and sign regulations, with all conditions attached to the approval of its conditional use permit or zoning clearance, and with all rules, regulations and orders of the State Alcoholic Beverage Control Department. Failure to comply with any of these requirements shall constitute grounds for revocation of a conditional use permit or zoning clearance. (Ord. 446 § 2, 2017)

18.27.110 Hearing regarding alleged violations.

If a business or other facility which sells, serves or gives away alcoholic beverages has been declared a public nuisance; if it has been found, by the California Department of Alcoholic Beverage Control, to be in violation of ABC rules; if its owner or operator fails to comply or refuses to comply with a notice and order to correct a violation in a timely manner; or if the development services director, on three separate occasions within any twelve-month period has issued a written notice and order to the owner of said business or operator of the facility, pursuant to Section 18.27.080, requiring the correction of specific violations of its conditional

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use permit or zoning clearance, the city council will schedule a public hearing, consistent with the requirements of Section 17.28.020 of the zoning ordinance to consider these matters. Following such public hearing, the city council may make any findings which it believes to be supported by the facts presented in the hearing, including the following:

A. It may find that the alleged violation(s) did not occur, were beyond the control of the business owner or facility operator, or were insignificant.

B. It may find that the alleged violation(s) did occur, that they were the responsibility of the business owner or facility operator, and were significant. As part of its determination regarding the appropriate action to be taken, the city council may consider whether the violations were corrected immediately after being brought to the owner's or facility operator's attention, whether such violations constitute a minor or major violation of this chapter and its purpose and intent, and whether such violations appear to constitute a pattern of disregard for the city's laws and the standards of the community. (Ord. 446 § 2, 2017; Ord. 386 § 3, 2009)

18.27.120 City actions in response to violations.

If, after a public hearing and full examination of the evidence regarding alleged violations of the city's regulations governing the sale, service or distribution of alcoholic beverages, the city council makes findings similar to those stated in Section 18.27.110(A) it may choose to take no action against the owner of the subject business or operator of the subject facility. However, if the evidence submitted in the public hearing convinces the city council that a significant violation has occurred, it may take one or more of the following actions:

A. Imposition of additional conditions governing the physical design of the building or property where the business is conducted or the facility is operated.

B. Attachment of additional conditions or limitations affecting the operations of the business or facility.

C. The city council may determine that the business or facility, and its manner of operation, constitutes a serious threat to the preservation of the public health, safety and welfare and may take one or both of the following actions:

1. It may revoke the conditional use permit or zoning clearance which authorizes the business or facility to sell, serve or give away alcoholic beverages.

2. It may recommend that the city council declare that the business or facility is a public nuisance subject to abatement or enjoinder in the manner provided by law. (Ord. 446 § 2, 2017)

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LGMC Chapter 18.28 – Adult Entertainment

18.28.010 Purpose.

It is the purpose of this chapter to establish reasonable and uniform regulations to prevent the concentration of adult entertainment establishments, as defined in this chapter, within the city of Lemon Grove. These regulations are intended to prevent problems of blight and deterioration which accompany and are brought about by the concentration of adult entertainment establishments.

18.28.020 Definitions.

The following words and phrases are specifically defined to apply to the regulations of this chapter. Where words are not defined here or elsewhere in the municipal code, their common meanings shall apply.

A. “Adult bookstore” means an establishment that devotes more than fifteen percent of the total floor area utilized for the display of books and periodicals to the display and sale of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specific sexual activities or specified anatomical areas; or
2. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

An adult bookstore does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock-in-trade and does not devote more than fifteen percent of the total floor area of the establishment to the sale of books and periodicals.

B. “Adult cabaret” means a nightclub, bar, theater, restaurant or similar establishment which regularly features live performances which are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas and/or which regularly features films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

C. “Adult drive-in theater” means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

D. “Adult hotel or motel” means a hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

E. “Adult mini-motion picture theater” means an establishment, with a capacity of more than five but less than fifty persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

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F. "Adult model studio" means any establishment open to the public where, for any form of consideration or gratuity, figure models who display specified anatomical areas are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the Education Code of the state of California for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma.

G. "Adult motion picture arcade" means any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

H. "Adult motion picture theater" means an establishment, with a capacity of fifty or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons.

I. "Adult theater" means a theater, concert hall, auditorium or similar establishment, either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area for observation by patrons.

J. Anatomical areas. See "Specified anatomical areas" (Section 18.28.030(A)).

K. "Body painting studio" means any establishment or business which provides the services of applying paint or other substances, whether transparent or nontransparent to or on the human body when such body is wholly or partially nude in terms of specified anatomical areas.

L. Bookstore. See "Adult bookstore" and "General bookstore."

M. Cabaret. See "Adult cabaret."

N. "Church" means an institution which people regularly attend to participate in or hold religious services, meetings and other activities. The term "church" shall not carry a secular connotation, and shall include buildings in which the religious services of any denomination are held.

O. Drive-In Theater. See "Adult drive-in theater."

P. "General bookstore" means an establishment engaged in the buying, selling and/or trading of new and/or used books, manuscripts and periodicals of general interest. A general bookstore does not include an establishment that is encompassed by the definition of adult bookstore.

Q. "General motion picture theater" means a building or part of a building intended to be used for the specific purposes of presenting entertainment as defined herein, or displaying motion pictures, slides, or closed circuit television pictures before an individual or assemblage of persons, whether such assemblage be of a public, restricted or private nature, except a home or private dwelling; where no fee, by way of an admission charge, is charged; provided, however, that any such presentations are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical area in that any such depiction or description is only incidental to the plot or story line. A general motion picture

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theater does not include any establishment that is defined by adult motion picture theater, adult mini-motion picture theater, adult motion picture arcade, or adult drive-in theater.

R. “Legitimate or live theater” means a theater, concert hall, auditorium or similar establishment which, for any fee or consideration, regularly features live performances which are not distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas in that any such depiction or description is only incidental to the primary purpose of the performance.

S. “Massage parlor” means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the state of California. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

T. Motion Picture Theater. See “General motion picture theater.”

U. Parlor. See “Massage parlor.”

V. “Public playground/park/recreational area” means an area to which the public and particularly children, come to participate in athletic or recreational activities whether or not such activities are supervised or organized. Such areas include, but are not limited to, publicly owned and maintained parks, community gardens, athletic fields, playgrounds, and picnic areas.

W. Rap parlor. See “Massage parlor.”

X. “School” means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

Y. “Sexual encounter establishment” means an establishment, other than a hotel, motel or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or persons may congregate, associate or consort in connection with specified sexual activities or the exposure of specified anatomical areas. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state of California engages in sexual therapy. For the purposes of these regulations, sexual encounter establishment shall include massage or rap parlor or other similar establishments.

Z. Sexual activities. See “Specified sexual activities” (Section 18.28.030(B)). (Ord. 422, 2014)

18.28.030 Special phrases.

The following expressions shall be interpreted according to the specific and detailed meanings provided.

A. “Specified anatomical areas” means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the aureole;
or

Attachment B

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

B. "Specified sexual activities" means:

1. The fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts; or

2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or

3. Masturbation, actual or simulated; or

4. Excretory function as part of or in connection with any of the activities set forth in subsections (B)(1) through (3) of this section.

C. "Establishing an adult entertainment establishment" means:

1. The opening or commencement of any such establishment as a new establishment; or

2. The conversion of an existing establishment, whether or not an adult entertainment establishment, to any of the adult entertainment establishments defined herein; or

3. The addition of any of the adult entertainment establishments defined herein to any other existing adult entertainment establishment; or

4. The relocation of any such establishment.

D. "Transfer of ownership or control" means:

1. The sale, lease or sublease of such establishment; or

2. The transfer of securities which constitute a controlling interest in such establishment, whether by sale, exchange or similar means; or

3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of such establishment, except for transfer by bequest or other operation of law upon the death of the person possessing such ownership or control.

18.28.040 Activities regulated.

For the purpose of this chapter, the following activities as defined in this chapter shall be deemed adult entertainment: adult arcade; adult bookstore; adult cabaret; adult drive-in theater; adult mini-motion picture theater; adult model studio; adult motel; adult motion picture theater; adult theater; body painting studio; massage parlor; sexual encounter establishment; plus any other business which involves specified sexual activities or the display of specified anatomical areas.

18.28.050 Permitted locations.

A. Zone. Adult entertainment establishments which are enumerated in Section 18.28.040 may be established only within the general commercial zone.

B. Site. No adult entertainment establishment shall be permitted within one thousand feet of another such business, within five hundred feet of any area zoned for residential use, or within six hundred feet of any church, school, public playground, park or recreational area.

18.28.060 Measure of distance.

Distance without regard to intervening structures, shall be:

Attachment B

A. A straight line measured from the closest exterior structural wall of any two adult entertainment establishments.

B. A straight line measured from the closest exterior structural wall of the adult entertainment establishment to the closest property line of a church, school, public playground, park, recreational area, or residential zone.

18.28.070 Permit.

No person shall cause or permit the establishment, substantial enlargement or transfer of ownership or control of any adult entertainment establishment without first obtaining an administrative permit therefor pursuant to the administrative permit procedure from the chief of police for the city of Lemon Grove or other person or agency designated by the Lemon Grove city council as the administering agency. An application for such permit may be made where authorized by the applicable use regulations and shall be acted upon in accordance with the standards for location as specified in Section 18.28.050.

18.28.080 Development and maintenance standards.

The premises of all adult entertainment businesses hereafter commenced shall, in addition to compliance with all other applicable requirements of the city of Lemon Grove zoning ordinance, be required to comply with the following specific requirements.

A. Signs. Except for theater marquee signs, changeable copy signs, temporary signs and small permanent signs are not permitted. All signs shall be subject to review and approval by the planning commission.

B. Exterior Painting. Buildings and structures shall not be painted or surfaced with garish colors or textures or any design that would simulate a sign or advertising message.

C. Advertisements, displays of merchandise, signs, or any other exhibit depicting adult entertainment activities placed within the interior of buildings or premises shall be arranged or screened to prevent public viewing from outside such buildings or premises.

D. No outdoor loudspeakers or other outdoor sound equipment advertising or directing attention to an adult entertainment use is allowed.

E. Upon order of the city manager, graffiti appearing on any exterior surface of a building or premises, which graffiti is in public view, shall be removed and the surface shall be restored within seventy-two hours of notification to the owner or person in charge of the premises.

18.28.090 Exceptions.

A. A person possessing ownership or control of an adult entertainment establishment which does not comply with the standards for location pursuant to Section 18.28.050 on the effective date of the ordinance codified in this chapter, shall be permitted to transfer such ownership or control before January 1, 1983. The person acquiring such ownership or control, however, shall be required to discontinue the adult entertainment business within five years from the date of the transfer of ownership or control if such establishment does not comply with Section 18.28.050, Permitted locations.

B. A person possessing ownership or control of an adult entertainment establishment which meets the standards for location as specified in Section 18.28.050, shall be subject to the provisions of subsection A of this section when a church, school, public playground, park or recreation area, as defined by this chapter is established within six hundred feet of such adult entertainment establishment. Two years shall be permitted to utilize the transfer provisions of subsection A of this section, beginning on the date on which the church, school, public

Attachment B

playground, park or recreational area begins operation.

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 4
Mtg. Date July 17, 2018
Dept. City Manager's Office

Item Title: PLACEMENT OF .5% TRANSACTIONS AND USE TAX (SALES TAX) AND BUSINESS LICENSE TAX, INCLUDING A 5% MARIJUANA BUSINESS GROSS RECEIPTS TAX ON THE NOVEMBER BALLOT (FOUR-FIFTHS VOTE REQUIRED)

Staff Contact: Lydia Romero, City Manager; James P. Lough, City Attorney; and Molly Brennan, Finance Manager

Recommendation:

- 1) Adopt Resolution (Attachment "B") Amending the Resolution requesting consolidation of the 2018 General Municipal Election with the Statewide General Election, allowing Rebuttal Arguments, and an Impartial Analysis by the City Attorney;
- 2) Introduce, by Title, (Attachment "C") an Ordinance Establishing a .5% Transaction and Use Tax, subject to a vote of the People, with an Oversight Board and Annual Independent Audit for a period of twenty years (Four-Fifths Vote Required); and
- 3) Introduce, by Title, (Attachment "D") an Ordinance Raising Business License Taxes and Establishing a 5% Gross Receipts Tax on Marijuana Businesses (Four-Fifths Vote Required).

Item Summary:

This item amends the General Municipal Election Consolidation to add two Measures to the November ballot. If each is approved by a 4/5ths vote of the Council, a .5% Transactions and Use Tax (Sales Tax) and a Business License Tax Increase with a 5% Gross Receipts Tax on Marijuana Businesses will be placed before the Voters.

Fiscal Impact:

Approximately \$13,000 in new election costs for printing the two tax measures, ballot arguments, rebuttals and impartial analysis added to the ballot and ballot materials, along with administrative costs.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
|--|---|---|

Notice published in local newspaper

Neighborhood meeting

Attachments:

- A. Staff Report
- B. Resolution Calling Election
- C. Ordinance Establishing - Transaction and Use Tax (Local Sales Tax)
- D. Ordinance Amending Business License Tax
- E. July 3, 2018 Staff Report-Revenue Options Requiring Voter Approval- w/ Attachments

**LEMON GROVE CITY COUNCIL
STAFF REPORT**

Item No. 4

Mtg. Date July 17, 2018

Item Title: **PLACEMENT OF .5% TRANSACTIONS AND USE TAX (SALES TAX) AND BUSINESS LICENSE TAX, INCLUDING A 5% MARIJUANA BUSINESS GROSS RECEIPTS TAX ON THE NOVEMBER BALLOT (FOUR-FIFTHS VOTE REQUIRED)**

Staff Contacts: Lydia Romero, City Manager and James P Lough, City Attorney and Molly Brennan, Finance Manager

Background:

On July 3, 2018, the City Council gave direction to Staff to bring back legislation to place two Tax Measures on the November ballot. The July 3rd discussion was a continued discussion item from the June 19, 2018 meeting. The matter is also related to multiple discussions over the last year regarding factors contributing to the long term structural budget deficit. The General Fund revenue picture was mentioned in the budget message last year and at the prior two Priority Setting Workshops in 2017 and 2018. During the April 24, 2018 workshop the City Council requested that staff present revenue raising concepts to include voter approved and non-voter approved.

A Budget Workshop on May 15, 2018 to consider overall budgetary issues including the City's structural budget deficit caused, in large part, by costs increasing faster the current revenue sources.

On November 11, 2017, a City Council Pension Workshop to consider options to fund the increasing costs caused by CALPERS failure to meet its investment and funding targets under CALPERS' faulty past long-term assumptions, which will cause the City to substantially increase annual funding of pensions even though the City has the lowest pension benefits among CALPERS cities in the County of San Diego.

The City Council held three budget hearings to discuss its funding priorities and its structural deficit before approving this Ordinance for consideration by the voters.

The Constitution, and California Revenue and Taxation Code Section 7285.9, gives the City has the authority to enact a local transaction and use tax (sales tax) for general purposes with the approval of the majority of voters in the City voting in an election on the issue. Under Proposition 62, the City Council must approve any tax increase ordinance by a four-fifths vote to be able to place it on the ballot. This law was followed up by a constitutional amendment, Proposition 218 (The Right to Vote on Taxes Act), that applied the voter authority to all cities.

Analysis:

General Fund Status Quo: 5 Year Projection

Current revenue sources are growing approximately 1.5%-2% a year, while expenditures are growing about 4% a year in the General Fund. Expenditure growth is mainly due to increases in the Sheriff's contract, increases the animal control contract, and the impact of general inflation on the cost of doing business.

If no new revenue is generated, the City will see compounding General Fund budget deficits year after year. By the end of five years, the City will have depleted all but approximately 12% of General Fund reserves and the following year would likely run out of money altogether (2023/2024). These projections

Attachment A

assume a continued rate of revenue growth between 1.5-2% and continued expenditure growth between 3-4%. It does not include the potential for unanticipated significant expenditures or an economic depression, possibilities that would further increase expenditures, reduce revenue, and push the City towards bankruptcy.

Staus Quo 5 Year General Fund Projection							
	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Beginning Fund Balance	4,856,149	5,297,118	5,581,110	5,259,106	4,755,329	3,984,383	3,004,081
Revenue	13,512,841	14,157,713	13,479,536	13,712,868	13,935,916	14,162,919	14,393,950
Expenditures	13,071,872	13,873,721	13,801,540	14,216,646	14,706,861	15,143,221	15,533,945
Annual Bottom Line	440,969	283,992	(322,004)	(503,777)	(770,946)	(980,302)	(1,139,995)
Ending Fund Balance	5,297,118	5,581,110	5,259,106	4,755,329	3,984,383	3,004,081	1,864,085
Reserves as % of GF Exp	41%	40%	38%	33%	27%	20%	12%

Transactions and Use Tax

This item is brought back at the request of the City Council. Approving the recommended action asks the voters to assist the City Council in determining an approach to the City’s long-term structural budget issue. Regardless of the results of the voters, the outcome will help the Council determine the will of the People on issues of general service priorities.

The Transaction and Use Tax (“Sales Tax”) will not cause a loss of business to neighboring cities in that the neighboring cities of San Diego, La Mesa, El Cajon, National City and Chula Vista all have equal or higher rates of tax as the one proposed by this Ordinance. The rate will be consistent with La Mesa and El Cajon. It will not affect the rates of Sales Tax for non-residents who purchase autos in Lemon Grove or other “big ticket” items.

The Sales Tax measure has several safeguards built in to segregate the proceeds from the Sales Tax from the rest of the General Fund. If adopted, the City Council will be required to engage an independent auditing firm to review the impact of this Ordinance and report back to the Council and the Public. The City Council will be assisted by a Citizen’s Oversight Board (Community Advisory Commission) that will review the implementation of this Ordinance and makes its findings public. The Citizens’ Oversight Board shall review the implementation of this Ordinance including a Five-Year Plan Identifying Critical General Fund Needs on an annual basis to assist in long-term budget planning.

This Ordinance will require separate accounting of revenues received under this Ordinance. The proceeds from this Ordinance cannot be used to subsidize user fees of non-general fund programs. This Transaction and Use Tax, under this Ordinance can only be increased by a vote of the People. This Ordinance shall have a twenty-year sunset clause that will require this Measure expire at the end of the term unless extended by the vote of the People.

The enactment of a general local transactions and use tax (commonly known as a “sales tax”) would allow the City to significantly address the critical public safety staffing needs as the City has had to

Attachment A

reduce law enforcement presence in the City as County law enforcement costs continue to increase faster than the City's revenue increases.

According to the City's sales tax consultants (HdL), the additional of a one-half cent transactions and use tax (TUT) would generate an additional \$1,947,000 a year. If placed on the November 2018 ballot and passed, the tax would be effective beginning April 2019. The addition of \$1.9M in revenue a year would be enough funding to pay for the current level of services, as well as improve the City's future by providing the opportunity to invest in economic development and unfunded priorities for residents and City Council, such as public safety and homelessness.

Financial projections beyond a five year horizon must be taken with a grain of salt as a lot can change over that much time. However, if expenditures stay at 3-4% growth per year and the economy stays strong, this half cent TUT should provide financial stability to the City for at least 10 years.

Additional 1/2 Cent Sales Tax Rev: 5 Year General Fund Projection							
	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Beginning Fund Balance	4,856,149	5,297,118	5,581,110	5,818,356	7,431,579	8,827,633	10,064,331
Revenue	13,512,841	14,157,713	14,038,786	15,829,868	16,102,916	16,379,919	16,610,950
Expenditures	13,071,872	13,873,721	13,801,540	14,216,646	14,706,861	15,143,221	15,533,945
Annual Bottom Line	440,969	283,992	237,246	1,613,223	1,396,054	1,236,698	1,077,005
Ending Fund Balance	5,297,118	5,581,110	5,818,356	7,431,579	8,827,633	10,064,331	11,141,335
Reserves as % of GF Exp	41%	40%	42%	52%	60%	66%	72%

Business License Tax

The failure to raise General Business License Taxes since they were adopted in 1978 has shifted the costs of city services unfairly towards residential uses. The addition of a cost of living adjustment to General Business Licenses will assist in bringing about long-term equity in the fair distribution of tax burdens. The marijuana business is a highly regulated industry that requires more city resources than general businesses that requires taxation that reflects this burden on the City's General Fund services such as law enforcement.

The numbers in the table below reflect the additional revenue generated if the ordinance amendment to increase business license fees, including a tax of 5% of gross receipts for marijuana product sales, is placed on the ballot and passed by voters in November 2018. This is a rough estimate of an additional \$120,000 a year in business license fees and \$50,000 a year for each marijuana business in the City. The projection anticipates three marijuana businesses by the end of the next five years.

While the additional revenue generated from a business license tax increase will certainly help the City's finances, it does not generate enough additional revenue to cover the known deficits the City is facing over the next five years. At the end five years, the City will have approximately \$1M more left in reserves than the current status quo.

Attachment A

Additional Business License Rev: 5 Year General Fund Projection							
	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Beginning Fund Balance	4,856,149	5,297,118	5,581,110	5,331,606	4,997,829	4,446,883	3,736,581
Revenue	13,512,841	14,157,713	13,552,036	13,882,868	14,155,916	14,432,919	14,663,950
Expenditures	13,071,872	13,873,721	13,801,540	14,216,646	14,706,861	15,143,221	15,533,945
Annual Bottom Line	440,969	283,992	(249,504)	(333,777)	(550,946)	(710,302)	(869,995)
Ending Fund Balance	5,297,118	5,581,110	5,331,606	4,997,829	4,446,883	3,736,581	2,866,585
Reserves as % of GF Exp	41%	40%	39%	35%	30%	25%	18%

Environmental Impact:

This Ordinance is not a project as defined under the California Environmental Quality Act. There are no physical changes made to the environment by this Agenda item.

Costs

Approximately \$13,000 in new election costs for printing the two tax measures, ballot arguments, rebuttals and impartial analysis added to the ballot and ballot materials, along with administrative costs |

Conclusion:

Staff recommends that the City Council:

- 1) Adopt Resolution (Attachment “B”) Amending the Resolution requesting consolidation of the 2018 General Municipal Election with the Statewide General Election, allowing Rebuttal Arguments, and an Impartial Analysis by the City Attorney;
- 2) Introduce, by Title, (Attachment “C”) an Ordinance Establishing a .5% Transaction and Use Tax, subject to a vote of the People, with an Oversight Board and Annual Independent Audit for a period of twenty years (Four-Fifths Vote Required); and
- 3) Introduce, by Title, (Attachment “D”) an Ordinance Raising Business License Taxes and Establishing a 5% Gross Receipts Tax on Marijuana Businesses (Four-Fifths Vote Required).

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE: (A) AMENDING RESOLUTION NO. 2018-3580 CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018; (B) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY, A MEASURE RELATING TO THE ESTABLISHMENT OF A ONE-HALF CENT GENERAL TRANSACTIONS AND USE TAX; (C) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY, A MEASURE RELATING TO THE AMENDMENT OF BUSINESS LICENSE FEES AND TAXES; (D) AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURES; AND (E) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURES

WHEREAS, in accordance with the provisions of the Lemon Grove Municipal Code and State law, a General Municipal Election was called by the City Council pursuant to Resolution No. 2018-3580 , to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desires to amend that Resolution to add the Sales Tax Measure to the November 6, 2018 ballot; and

WHEREAS, the City has adopted an ordinance adding Chapter 3.18 to the Lemon Grove Municipal Code, entitled "Lemon Grove One-Half Cent Transactions and Use Tax" (the "Sales Tax Ordinance") for general purposes subject to the approval of the majority of voters in the City; and

WHEREAS, Chapter 3.18 of the Lemon Grove Municipal Code establishes a general one-half cent transaction and use tax to be administered by the California Department of Tax and Fee Administration (the "Sales Tax"); and

WHEREAS, the City Council has included in the Sales Tax Ordinance the requirement of a Citizen's Oversight Committee who shall be composed of members of the Lemon Grove Citizen's Advisory Commission to annually monitor the implementation of the Sales Tax Ordinance; and

WHEREAS, the Sales Tax Ordinance, attached hereto and incorporated herein as Exhibit "A", would implement the Sales Tax which, if approved by voters, would take effect no earlier than April 1, 2019; and

WHEREAS, the City of Lemon Grove ("City") may amend its business license fees and taxes (Lemon Grove Municipal Code Section 5.04.200-5.04.420; "Business License Tax Ordinance") for general purposes with the approval of the majority of voters in the City; and

WHEREAS, the City of Lemon Grove ("City") may impose a local transaction and use tax increase for general purposes with the approval of the majority of voters in the City; and

WHEREAS, the City has adopted an ordinance amending the Business License Tax Ordinance for general purposes subject to the approval of the majority of voters in the City; and

WHEREAS, the Business License Tax Ordinance, attached hereto and incorporated herein as Exhibit “B”, would implement Business License Tax Ordinance amendments which, if approved by voters, would take effect on January 1, 2019; and

WHEREAS, the City Council finds that the proposed activity is in compliance with the California Environmental Quality Act (CEQA) and it has determined that this activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because it is a financing decision without commitment to a specific project which may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA;

WHEREAS, pursuant to Revenue and Taxation Code Section 7285.9 and California Elections Code Section 9222, the City Council desires to submit the Sales Tax Ordinance to the electorate at the General Municipal Election to be held on Tuesday, November 6, 2018; and

WHEREAS, pursuant to California Elections Code Section 9222, the City Council desires to submit the Business License Tax Ordinance to the electorate at the General Municipal Election to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desire to authorize the City Clerk to carry-out all actions necessary to ensure placement of the Sales Tax Ordinance and the Business License Tax Ordinance on the General Municipal Election ballot that has been consolidated with the Statewide General Election Ballot; and

WHEREAS, the City Council also desires to authorize the Mayor and Members of the City Council to submit ballot arguments in favor of the measure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lemon Grove as follows:

SECTION 1. All of the foregoing recitals are true and correct.

SECTION 2. That the City Council pursuant to its right and authority, does hereby order submitted to the voters at the General Municipal Election on November 6, 2018, the following question:

Lemon Grove City Services Funding Measure. To maintain Lemon Grove’s public safety and prevent cuts to neighborhood law enforcement officers; gang/drug prevention; 911 emergency response; fire protection and firefighters; graffiti	YES
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removal; street/pothole repair; senior/youth programs; and other City services, shall a voter-approved one-half percent (.5%) transaction and use (sales) tax for 20 years, with Citizen’s Oversight, annual independent audits and all money kept in Lemon Grove, be adopted?	NO
--	----

This question requires the approval of a simple majority (50% plus 1) of those voting.

SECTION 3. That the City Council pursuant to its right and authority, does hereby order submitted to the voters at the General Municipal Election on November 6, 2018, the following question:

Shall the measure to amend the Business License Tax Ordinance, which has not been increased since 1978, to increase business license fees and establish a cost of living adjustment to have local businesses pay for a share of police, fire and general costs benefitting commercial areas and that marijuana-related businesses pay 5% of their gross receipts to pay for public safety and other general services, be adopted?	YES
	NO

This question requires the approval of a simple majority (50% plus 1) of those voting.

SECTION 4. That the proposed Ordinances to be submitted to the voters is attached as Exhibits "A" and "B" and incorporated into this resolution by this reference.

SECTION 5. That Resolution No. 2018-3580 is hereby amended accordingly and the City Clerk is authorized, instructed, and directed to take all actions necessary to add the Sales Tax and Business License measures to the November 6, 2018 ballot.

SECTION 6. Pursuant to California Elections Code Section 9282, the City Council hereby acknowledges its authority, and the authority of any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, to submit a written argument, not to exceed 300 words, for or against the measure, and authorizes the Mayor to submit arguments in favor of the measures, on behalf of the City Council. Arguments must be submitted to the City Clerk and may be changed until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted, withdrawn or changed.

SECTION 7. Pursuant Elections Code section 9285, rebuttal arguments will be allowed. The rebuttal arguments may not exceed 250 words. Rebuttal arguments must be submitted

to the City Clerk and may be changed until and including the date fixed by the City Clerk, after which no rebuttal arguments for or against the proposed measure may be submitted to the City Clerk. This Section 7 is applicable only to the November 6, 2018 general election called by this resolution and, after that election, shall expire.

SECTION 8. Pursuant to California Elections Code Section 9280, the City Clerk is directed to transmit a copy of the measure to the City Attorney. The City Attorney is directed to prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analyses to the City Clerk by the date fixed by the City Clerk.

SECTION 9. The City Clerk is hereby directed to forthwith file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of San Diego and to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the election.

SECTION 10. The City Clerk shall certify to the passage and adoption of this resolution by a two-thirds vote of all members of the City Council, as required by Revenue & Taxation Code section 7285.9 and Government Code Section 53724, and file it with the City's original resolutions.

PASSED AND ADOPTED by the City Council of the City of Lemon Grove, State of California, on July 17, 2018 by the following vote:

AYES:

NOES:

ABSENT:

Racquel Vasquez, Mayor

Attest: _____

Shelly Chapel, City Clerk

Approved as to form:

James P. Lough, City Attorney

ORDINANCE NO. ____**ORDINANCE OF THE CITY OF LEMON GROVE ADDING CHAPTER 3.18 TO TITLE 3 OF THE LEMON GROVE MUNICIPAL CODE TO ESTABLISH A ONE- HALF CENT GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION INCLUDING PROVISIONS FOR CITIZENS' OVERSIGHT AND ACCOUNTABILITY**

WHEREAS, at the July 17, 2018 Lemon Grove City Council meeting, the City Council approved, by a four-fifths vote, an amendment to the Resolution consolidating the Regular Municipal Election with the State General Election on November 6, 2018 to include this Ordinance if approved by the City Council with a four-fifths vote; and

WHEREAS, current revenue sources are growing approximately 1.5%-2% a year, while expenditures are growing about 4% a year. Expenditure growth is mainly due to increases in the Sheriff's contract, increases the animal control contract, and the impact of general inflation on the cost of doing business; and

WHEREAS, if no new revenue is generated, the City will see compounding General Fund budget deficits year after year. By the end of five years, the City will have depleted all but approximately 12% of General Fund reserves and the following year would likely run out of money altogether (2023/2024); and

WHEREAS, City Council has held numerous meetings and study sessions in the last year to consider service and funding issues, including, but not limited to:

- At a Budget Workshop on May 15, 2018 to consider overall budgetary issues including the City's structural budget deficit caused, in large part, by costs increasing faster the current revenue sources
- On November 14, 2017, a City Council Pension Workshop to consider options to fund the increasing budget costs caused by CALPERS failure to meet its investment and funding targets under CALPERS' faulty past long-term assumptions, which will cause the City to substantially increase annual funding of pensions even though the City has the lowest pension benefits among CALPERS cities in the County of San Diego
- On October 18, 2017, the City Council considered these budgetary issues at a community services/recreation workshop where discussion of expanded recreational programs could not ultimately be considered due to structural deficit issues
- On May 23, 2017, at a streets workshop, the City Council considered these budgetary issues when discussion of expanded street maintenance programs could not ultimately be considered due to structural deficit issues
- The City Council held three budget hearings to discuss its funding priorities and its structural deficit before approving this Ordinance for consideration by the

voters The City Council finds that asking the public to determine an approach to the City's long-term structural budget issue will help the Council determine the will of the People on issues of general service priorities

- The City Council finds that this Transaction and Use Tax will not cause a loss of business to neighboring cities in that the neighboring cities of San Diego, La Mesa, El Cajon, National City and Chula Vista all have equal or higher rates of tax as the one proposed by this Ordinance
- If adopted, the City Council will be required to engage an independent auditing firm to review the impact of this Ordinance and report back to the Council and the Public
- If adopted, the City Council will be assisted by a Citizen's Oversight Board that will review the implementation of this Ordinance and makes its findings public
- The Citizens' Oversight Board shall review the implementation of this Ordinance including a Five-Year Plan Identifying Critical General Fund Needs on an annual basis to assist in long-term budget planning
- This Ordinance will require separate accounting of revenues received under this Ordinance
- The proceeds from this Ordinance cannot be used to subsidize user fees of non-general fund programs
- This Transaction and Use Tax, under this Ordinance can only be increased by a vote of the People
- This Ordinance shall have a twenty-year sunset clause that will require this Measure expire at the end of the term unless extended by the vote of the People; and

WHEREAS, the City has determined that the enactment of a general local transactions and use tax (commonly known as a "sales tax") would allow the City to significantly address the critical public safety staffing needs as the City has had to reduce law enforcement presence to minimum staffing in the City as County law enforcement costs continue to increase faster than the City's revenue increases; and

WHEREAS, according to the City's sales tax consultants, the additional of a one-half cent transactions and use tax (TUT) would generate an additional \$1,947,000 a year. If placed on the November 2018 ballot and passed, the tax would be effective beginning April 2019. The addition of \$1.9M in revenue a year would be enough funding to pay for the current level of services, as well as improve the City's future by providing the opportunity to invest in economic development and unfunded priorities for residents and City Council, such as public safety and homelessness; and

WHEREAS, pursuant to Article XIII C of the California Constitution, and California Revenue and Taxation Code Section 7285.9, the City has the authority to enact a local

transaction and use tax (sales tax) for general purposes with the approval of the majority of voters in the City voting in an election on the issue; and

WHEREAS, the City Council directed staff to prepare for submittal to the voters an ordinance enacting a one-half cent sales tax consistent with all applicable general-purpose tax laws, including measures providing for citizens' oversight, separate accounting and independent audits; and

WHEREAS, proposed Chapter 3.18 of the Lemon Grove Municipal Code, set forth below, establishes a transactions and use tax to be administered by the California Department of Tax and Fee Administration consistent with City Council direction and state law; and

NOW, THEREFORE, subject to approval by an affirmative, simple majority vote of the people as required by law, the People of the City of Lemon Grove do ordain as follows:

SECTION 1: The Lemon Grove Municipal Code is hereby revised to add Chapter 3.18 as set forth below, thereby enacting a general local transactions and use tax within the City of Lemon Grove, to be administered by the California Department of Tax and Fee Administration:

CHAPTER 3.18: LEMON GROVE ONE -HALF CENT TRANSACTIONS AND USE TAX

Sections:

3.18.010 Title.

3.18.020 Operative date.

3.18.030 Purpose.

3.18.040 Contract with state.

3.18.050 Transactions tax rate.

3.18.060 Place of sale.

3.18.070 Use tax rate.

3.18.080 Adoption of provisions of state law.

3.18.090 Limitations on adoption of state law and collection of use taxes.

3.18.100 Permit not required.

3.18.110 Exemptions and Exclusions.

3.18.120 Amendments of Revenue and Taxation Code.

3.18.130 Enjoining collection forbidden.

3.18.140 Amendments by City Council.

3.18.150 Use of proceeds.

3.18.160 Citizens' oversight and accountability.

3.18.170 Severability.

3.18.010 TITLE.

This ordinance shall be known as the Lemon Grove One-Half Cent Transaction and Use Tax Ordinance. The City of Lemon Grove hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

3.18.020 OPERATIVE DATE.

"Operative Date" means the first day of the first calendar quarter commencing on or after the adoption of this ordinance, the date of such adoption being as set forth below. The Operative Date shall be no sooner than April 1, 2019.

3.18.030. 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 general 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 vote 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 general 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 general retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the 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 general 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.

3.18.040 CONTRACT WITH STATE.

Prior to the Operative Date, 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 effective date of such a contract.

3.18.050 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 of one percent (0.5%) 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.

3.18.060 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.

3.18.070 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 of one percent (0.5%) 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.

3.18.080 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.

3.18.090 LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as 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 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.

3.18.100 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.

3.18.110 EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under 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 imposed 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 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 Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a City 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 consumptions of which is subject to the use tax.

3.18.120 AMENDMENTS OF REVENUE AND TAXATION CODE.

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.

3.18.130 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.

3.18.140 AMENDMENTS BY CITY COUNCIL.

The following amendments to this Ordinance must be approved by the voters of the City: increasing the tax rate; revising the methodology for calculating the tax, such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of law); or terminating the tax. The City Council may otherwise amend this Ordinance without submitting the amendment to the voters for approval in any manner which does not constitute a tax “increase” as that term is defined in Government Code section 53750(h).

3.18.150 USE OF PROCEEDS.

The proceeds from the tax imposed by this Ordinance shall be for unrestricted general revenue purposes of the City and shall be received into the general fund of the City. Nothing in this Ordinance shall constitute the tax imposed under this Ordinance as a special tax, or bind the City to use the proceeds for any specific purpose or function; the City Council shall retain discretion to expend the proceeds of the tax for any lawful purpose of the City.

3.18.160 CITIZENS’ OVERSIGHT AND ACCOUNTABILITY.

In order to provide for citizens’ oversight, transparency and accountability in connection with expenditures of tax revenues generated under the terms of this Ordinance, the City shall do the following:

A. Line Item Accounting. All revenue generated by the tax (“Measure ‘LG’ Revenues”) shall be accounted in the General Fund as a separate line item entitled “Local Transactions and Use Tax – Measure ‘LG’ Revenues.” Measure ‘LG’ Revenues and expenditures will be tracked and accounted for by City Finance Department staff in accordance with Generally Accepted Accounting Principles (GAAP), and presented annually in a report (the “Finance Department Report”) to the Citizens’ Oversight Committee (“COC”) created pursuant to subdivision D., below

B. Annual Submittal of Measure ‘LG’ Expenditure Plan. If Measure ‘LG’ is approved by the Voters, beginning in Fiscal Year 2019-20, and for each subsequent year, prior to the City Council consideration of the City’s annual budget, City staff will prepare and present to the COC for its review a spending plan for the Measure ‘LG’ Revenues. Such plan (the “Measure ‘LG’ Spending Plan”) shall be (1) spent on Lemon Grove projects that use general fund monies within the boundaries of the City of Lemon Grove; (2) include specific proposals for near term

expenditures; and (3) a plan for expenditures for the next five-years to address the Critical General Future Fund Needs described therein. After review by the COC, the Measure 'LG' Spending Plan for the upcoming Fiscal Year shall be incorporated into the City Manager's proposed budget, and then presented to the City Council for its consideration and action, in its discretion, as part of the City's annual budget process. The City Council must consider for approval the expenditure of projected Measure 'LG' Revenues as a separate line item category in each year's budget. The COC's duties under this section shall continue until and unless the City Council appoints another commission, committee, or group to be responsible for reporting to the City Council, pursuant to section D., below.

C. Annual, Independent Audit. Beginning with the fiscal year 2018-2019, the City's independent auditors shall, as part of their annual audit of the City's financial statements, review the collection and expenditure of Measure 'LG' Revenues.

D. Measure 'LG' Oversight Committee. Prior to the Operative Date, the City shall create and convene a Citizens' Oversight Committee ("COC"). The City Council shall initially designate the Community Advisory Commission, established under Chapter 2.08 of the Lemon Grove Municipal Code, as the COC with either five or seven members to be determined on a regular basis by the City Council. If the Community Advisory Commission is no longer operational, the City Council shall create and convene a new Citizens' Oversight Committee by Resolution.

E. Citizens' Oversight Committee Operation. The function of the COC shall be to review and report on City compliance with the terms of this Ordinance and each annual 'LG' Measure Spending Plan presented to and approved by the City Council thereafter. The COC shall operate in accordance with the Ralph M. Brown Act, which includes requirements that meetings be noticed in advance and held in public. The COC shall be created by City Council ordinance consistent with the terms of this Section adopted no later than 150 days following the date of the election at which this Ordinance is approved by the voters.

F. No Subsidy of User Fees or Charges. Measure 'LG' Funds shall not be used to subsidize user fees or charges levied for non-General Fund purposes. As many fee based general fund programs contain a partial subsidy by the General Fund, no Measure 'LG' funds may be used to increase the general fund subsidy of any fee or charge for a program that relies on user fees or charges.

3.18.170 SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This People of the City of Lemon Grove hereby declare that they

would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intend that the invalid portions should be severed, and the balance of the Ordinance be enforced.

SECTION 2:

The City Clerk shall be authorized to replace the term "Measure 'LG'" wherever it appears in this Ordinance with the respective ballot designation determined by the County Registrar before this Ordinance is codified.

SECTION 3:

Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

SECTION 4:

This Ordinance authorizes City of Lemon Grove officers and employees to take all steps necessary to implement this Ordinance in the manner required by law, including any applicable amendments to the laws of the State of California.

It is hereby certified that this Ordinance was duly adopted by the voters at the November 6, 2018 election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on [INSERT DATE]: by the following vote (four-fifths required):

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Racquel Vasquez

ATTEST:

CITY CLERK

Approved as to form by:

City Attorney

ORDINANCE NO. ____

ORDINANCE OF THE CITY OF LEMON GROVE TO AMEND LEMON GROVE MUNICIPAL CODE CHAPTER 5.04 (ARTICLE II) OF TITLE 5 (BUSINESS PERMITS IN GENERAL) SECTIONS 5.04.200-5.04.420 TO INCREASE GENERAL BUSINESS LICENSE TAXES (ESTABLISHED IN 1978), INCLUDING THE ADDITION OF AN ANNUAL COST OF LIVING ADJUSTMENT AND TO ESTABLISH A 5% GROSS RECEIPTS TAX ON MARIJUANA PRODUCT SALES

WHEREAS, at the July 17, 2018 Lemon Grove City Council meeting, the City Council approved, by a four-fifths vote, an amendment to the Resolution consolidating the Regular Municipal Election with the State General Election on November 6, 2018 to include this Ordinance if approved by the City Council with a four-fifths vote; and

WHEREAS, City Council has held numerous meetings and study sessions in the last year to consider service and funding issues, including, but not limited to:

- A Budget Workshop on May 15, 2018 to consider overall budgetary issues including the City's structural budget deficit caused, in large part, by costs increasing faster the current revenue sources
- On November 14, 2017, a City Council Pension Workshop to consider options to fund the increasing budget costs caused by CALPERS failure to meet its investment and funding targets under CALPERS' faulty past long-term assumptions, which will cause the City to substantially increase annual funding of pensions even though the City has the lowest pension benefits among CALPERS cities in the County of San Diego
- The City Council held three budget hearings to discuss its funding priorities and its structural deficit before approving this Ordinance for consideration by the voters
- The City Council finds that asking the public to determine an approach to the City's long-term structural budget issue will help the Council determine the will of the People on issues of general service priorities
- The City Council finds that the failure to raise General Business License Taxes since they were adopted in 1978 has shifted the costs of city services unfairly towards residential uses
- The City Council finds that the addition of a cost of living adjustment to General Business Licenses will assist in bringing about long-term equity in the fair distribution of tax burdens
- The City Council finds that the marijuana business is a highly regulated industry that requires more city resources than general businesses that requires taxation that reflects this burden on the City's General Fund services such as law enforcement; and

NOW, THEREFORE, subject to approval by an affirmative, simple majority vote of the people as required by law, the People of the City of Lemon Grove do ordain as follows:

SECTION 1:

The Lemon Grove Municipal Code is hereby revised to amend Article II of Chapter 5.04 (Section 5.04.200-5.04.420) as set forth below, thereby enacting changes to the Business License Taxes, with the stricken language to be removed from the Code and the highlighted language to be added, as follows:

Chapter 5.04: Business Permits in General

Article II. Fees

Sections:

5.04.200 Amounts designated.

5.04.215 Business permit processing fees.

5.04.220 Business permit tax.

5.04.230 Governing conditions.

5.04.240 Inspection of books and records may be required—Failure to comply.

5.04.250 Professional persons.

5.04.260 Real estate broker.

5.04.270 Auction room and auctioneer.

5.04.280 Vehicles.

5.04.290 For-hire vehicles--Business in city.

5.04.300 For-hire vehicles--Business outside city.

5.04.310 Peddler, solicitor and transient merchant.

5.04.320 Trailer parks.

5.04.330 Pool hall.

5.04.340 Bowling alley.

5.04.350 Billboard.

5.04.360 Pawnbroker.

5.04.370 Shooting gallery or arcade.

5.04.380 Circus.

5.04.390 Vending machines.

5.04.400 Music machine.

5.04.410 Amusement machine.

5.04.420 Apartment rental.

5.04.200 Amounts designated.

The amount or rate of permit fees to be paid to the city by any person for transacting, engaging in, conducting or carrying on any business, show, exhibition or game as specified in this chapter shall be as provided in the sections set forth in this article.

5.04.220 Business permit tax.

Every person transacting, engaging in, conducting or carrying on any business within the city, and said business has a fixed location in and is upon the tax rolls of the city, shall pay a business permit tax as follows:

A. Base Fee. Except as otherwise provided in this article and specifically enumerated, the tax shall be an amount per year equal to a base fee of twenty –five dollars plus three dollars per person for the average number of persons employed in the scope of the employer’s business in the city during the year for which said permit is issued.

B. Out-of-Town Business-With Vehicles. Every person not having a fixed place of business within the city of Lemon Grove who delivers goods, wares, or merchandise of any kind by vehicle or who provides any service for the use of vehicles in the city shall pay a permit fee of sixty dollars per vehicle, except wholesale delivery vehicles for which the permit fee shall be thirty dollars per vehicle per year.

C. Out-of-Town Business-Other. Except as provided in subdivision 1 of this subsection, every person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of subsections A and B of this section shall pay a permit fee of sixty dollars plus three dollars per employee per year.

1. Any contractor permitted pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code shall pay a permit fee of forty dollars plus three dollars per employee per year, to and including a maximum of fifty employees.

D. Notwithstanding any other provision to the contrary, a marijuana business, regardless of its corporate or association structure that is engaged in any type of marijuana business authorized by state and local law, shall be subject to the following license permit taxes:

1. A gross receipts tax of five (5%) percent on all gross receipts of the business establishment doing business in Lemon Grove.

2. Payments under subsection (D)(1), shall be made on a quarterly basis to the finance department of the city of Lemon Grove. The city shall have the right to audit the records of any dispensary in the same manner and under the same procedures found in Lemon Grove Municipal Code Chapter 3.20 (Transient Occupancy Tax).

3. For purposes of this section, the following terms have the following meanings:

“Gross receipts” has the meaning as defined under subsection (D)(4), below, as it pertains to the marijuana business’ reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

“Marijuana” has the same meaning as “cannabis” as defined in California Business and Professions Code section 19300.5.

“Marijuana business” means a business activity including, but not limited to, transporting, storing, packaging, providing, or selling wholesale and/or retail sales of marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent, or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with California Health and Safety Code section 11362.5 and article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7). A marijuana business includes medical marijuana “cooperatives” and “collectives” that are established as not- for profit businesses and for-profit businesses.

4. “Gross receipts,” means the gross receipts of the preceding calendar year or part thereof or such other fiscal year approved by the administrator, and is defined as follows:

The total amount actually received or receivable from all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other emoluments, however designated. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as “gross receipts”;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;

(e) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;

(f) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the administrator with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee;

(g) Cash value of sales, trades or transactions between departments or units of the same business.

As to any person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the city which does not generate gross receipts as defined herein within the city, gross receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the city for payroll, utilities, depreciation, and/or rent.

As to any person engaged in the business of operating an administrative headquarters at a fixed place of business within the city who does not have gross receipts as defined herein within the city, gross receipts shall be deemed to include the total gross payroll of all persons employed at such administrative headquarters.

5.04.230 Governing conditions.

In each and every instance where a permit fee is required, the following conditions shall govern:

- A. All permits shall be payable in advance.
- B. If any person commences a new business during the calendar year, his or her permit shall be prorated on a quarterly pro rata basis for the balance of said calendar year.
- C. For any business, classified under Section 5.04.240, which is applying for a renewal of permit, said permittee shall when applying pay a permit fee based upon the average number of persons employed during the previous year.

5.04.240 Inspection of books and records may be required—Failure to comply.

A. In each and every instance where the amount of permit fee to be paid by any person is based upon the number of employees or the amount or number of admissions, the permittee therein named shall and will on the request of the city finance manager, designated by the City Manager, then and there submit for inspection to the city finance manager any and all books, papers, accounts, and records including state and federal income tax returns, social security returns and state sales tax returns pertaining to the business. The permit as required in this chapter may be based upon the amounts indicated in said books, papers, accounts and records.

B. In the event a permittee fails to comply with the provisions of this section, such permittee shall then be liable to the penal provisions of this chapter and shall be liable for and shall pay an additional sum in an amount equal to one hundred percent of the correct permit fee, together with the correct amount of said permit fee as based upon the actual number of employees for said business during the calendar year for which said permit was issued.

5.04.250 Professional persons.

A. Every person conducting, managing, carrying on or engaged in any business enumerated as follows shall pay a permit fee of twenty -five dollars per year, plus three dollars for the average number of employees acting within the scope of the employer's business in the city during the calendar year for which said permit is issued:

1. Accountant;
2. Architect;
3. Assayer;
4. Attorney at law;
5. Auditor;
6. Bonds (fidelity, indemnity, faithful performance or bail);
7. Chemist;
8. Chiropodist;
9. Chiropractor;
10. Dentist;
11. Engineer (civil, electrical, chemical or mechanical);
12. Insurance salesman or broker;
13. Optometrist;
14. Oculist;
15. Optician;
16. Osteopath and osteopathist;

17. Physician;

18. Stocks and bonds (federal, state, county or municipal stocks or bonds, or stocks or bonds of incorporated companies or evidences of indebtedness of private persons or of incorporated companies);

19. Surgeon;

20. Veterinarian.

B. Each professional person mentioned above who is required to be permitted as such on his profession shall, each individually, whether or not operating as an individual, partnership or associate, pay said permit fee. (Ord. 25 § 18, 1978)

5.04.260 Real estate broker.

Every person carrying on or engaged in or conducting the business of real estate broker shall pay the sum of forty dollars per year, plus an additional sum of twenty dollars per year for every salesman or broker acting as salesman employed in or acting in any capacity as part of said business.

5.04.270 Auction room and auctioneer.

A. Every person carrying on the business of conducting an auction room or store where auctions are held shall pay a permit fee of five hundred fifty dollars per year. Every person carrying on the business of an auctioneer shall pay a permit fee of one hundred dollars per month or any fraction thereof.

B. The auctioneer permit fee shall not be applicable if the auctioneer is associated with and carrying on his trade in an auction room or store permitted under this section.

5.04.280 Vehicles.

Every person conducting, managing or operating a business in which non-motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of one hundred dollars per year per cart, wagon or vending vehicle, payable quarterly. Every person conducting, managing or operating a business in which motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of five hundred dollars per year per motorized cart, wagon or vending vehicle, payable quarterly.

5.04.290 For-hire vehicles--Business in city.

Every person conducting, managing or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is in the city, shall pay a permit fee of fifty dollars for each such taxi cab or for-hire vehicle.

5.04.300 For-hire vehicles--Business outside city.

Every person conducting, managing, or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is outside the city, shall pay a permit fee of one hundred dollars for each such taxi cab or for-hire vehicle.

5.04.310 Peddler, solicitor and transient merchant.

A. Every peddler, solicitor or transient merchant as defined in this chapter who owns real or personal property located within the city used primarily for the business for which permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, or who is an agent or representative of a person, firm or corporation who owns property located within the city used primarily for the business for which the permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, shall pay a permit fee of ten dollars per year.

B. Every applicant for a permit under this chapter who does not own real or personal property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, or who is an agent or representative of a person, firm or corporation who does not own property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, shall pay a permit fee of fifty dollars per year.

C. Each peddler, solicitor, or transient merchant must secure a personal permit. No permit shall be used at any time by any person other than the one to whom it is issued.

5.04.320 Trailer parks.

Every person conducting, managing or operating any trailer court or mobile home park shall pay a permit fee as follows: forty dollars per year plus three dollars for each trailer space or unit.

5.04.330 Pool hall.

Every person conducting, managing or carrying on the business of a pool hall or billiard hall shall pay a permit fee of five hundred dollars per year, and in addition thereto, shall pay the sum of twenty-five dollars per year for each and every pool table or billiard table.

5.04.340 Bowling alley.

Every person conducting, managing or carrying on the business of a bowling alley shall pay a permit fee of five hundred dollars per year, and in addition thereto, shall pay the sum of twenty dollars per year for each and every alley therein.

5.04.350 Billboard.

Every person conducting, carrying on or operating the business of billposting or sign advertising by means of billboards or advertising signboards, or advertising by means of posting, hanging or otherwise affixing or displaying bills, signs or other advertisements in the city, shall pay a fee of two hundred dollars per year, plus fifty dollars for each additional billboard exceeding two in number, located within the city; provided, that nothing contained in this section shall be deemed or construed to apply to owners of real estate, or other agents in advertising the property for sale or lease by means of billboards or advertising signboards located upon the property advertised for sale or lease by such billboards or advertising signboards.

5.04.360 Pawnbroker.

A. Every person conducting, managing, or carrying on the business of pawnbroker shall pay the sum of two hundred dollars per year. For the purpose of this section the term pawnbroker shall be construed to mean and include every person conducting, managing or carrying on the business of loaning money, either for him or herself or for any other person, upon any personal property or personal security or purchasing personal property and reselling, or agreeing to resell, such articles to the vendor or other assignees at prices previously agreed upon.

B. Nothing contained in this section shall be deemed or construed to apply to the loaning of money on personal property or personal security by any bank authorized to do so under the law of the state.

5.04.370 Shooting gallery or arcade.

A. Every person conducting, managing or carrying on the businesses of shooting galleries or arcades shall pay the sum of one thousand dollars per year.

B. For the purpose of this section, the term "arcade" means one general enclosure in which is conducted the business of operating or exhibiting any phonograph, gramophone, marble and pinball games, talking machine, kinoscope, biograph, projectscope, or any other instrument or machine of like character, for the use of which a compensation or fee is charged, and exhibiting, showing, or letting the use of any microscope lung tester, muscle tester, galvanic battery, weighing machine, or machine of like character, for a money consideration.

5.04.380 Circus.

A. Every person conducting, managing, carrying on or operating a circus or other similar exhibition shall pay a permit fee of one thousand dollars per day.

B. The permit fee provided in this section shall be in addition to all other permits due and payable to the city.

5.04.390 Vending machines.

Every person owning, operating, managing, or controlling any vending machine, not in conjunction with any business, the property of which is on the tax rolls of the city, and which is coin-operated or slug-operated, shall pay a permit fee of fifty dollars per year, plus five dollars for each machine (machine is defined as a single apparatus receiving a coin and dispensing a product) located in the city.

5.04.400 Music machine.

Every person owning, operating, managing or controlling any music device, operated by coin or slug, shall pay forty dollars per year for each such device.

5.04.410 Amusement machine.

A. Every person owning, operating, managing or controlling any mechanical play or amusement machine which is used, or permitted to be used, by the deposit of a coin in any slot, crevice or other opening, or by the deposit of any plate, disk or slug therein, which said slug, disk or plate may be acquired or purchased from any source whatsoever, shall pay forty dollars per year for each such amusement machine.

B. The city finance manager shall issue a separate receipt for each such amusement machine, which shall be attached and maintained thereon for the full term for which the receipt is issued.

5.04.420 Apartment rental.

Any person conducting the business of apartment rental shall pay a permit fee of three dollars per unit. "Apartment" means any multiple housing rental property containing three or more housing units. The minimum fee under this section is twenty dollars.

SECTION 2:

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. Such invalidity shall not affect other

provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This People of the City of Lemon Grove hereby declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intend that the invalid portions should be severed, and the balance of the Ordinance be enforced.

SECTION 3:

Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

SECTION 4:

This Ordinance authorizes City of Lemon Grove officers and employees to take all steps necessary to implement this Ordinance in the manner required by law, including any applicable amendments to the laws of the State of California.

It is hereby certified that this Ordinance was duly adopted by the voters at the [INSERT DATE] election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on [INSERT DATE]: by the following vote (four-fifths required):

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Racquel Vasquez

ATTEST:

Shelly, Chapel, CITY CLERK

Approved as to form by:

City Attorney

LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY

ATTACHMENT E

Item No. 3
Mtg. Date July 3, 2018
Dept. City Manager

Item Title: Revenue Options Requiring Voter Approval

Staff Contact: Lydia Romero, City Manager and James Lough, City Attorney

Recommendation:

Review and Discuss options for revenue options to place on the November ballot

Item Summary:

During the pre-budget discussions and draft budget discussions staff presented several concepts to raise revenue to diversify our revenue stream for the general fund. The staff report goes into more detail on these options. All the options discussed do require voter approval.

Fiscal Impact:

None.

Environmental Review:

- Not subject to review
- Negative Declaration
- Categorical Exemption, Section
- Mitigated Negative Declaration

Public Information:

- None
- Newsletter article
- Notice to property owners within 300 ft.
- Notice published in local newspaper
- Neighborhood meeting

Attachments:

- A. Staff Report
- B. Sample Resolution – Business License
- C. Sample Resolution - Transaction and Use Tax (Local Sales Tax)
- D. Sample Resolution Utility Users Tax
- E. Staff Report from June 19, 2018
- F. HDL TUT Estimate

LEMON GROVE CITY COUNCIL
STAFF REPORT

Item No. 3

Mtg. Date July 3, 2018

Item Title: **Revenue Options Requiring Voter Approval**

Staff Contact: Lydia Romero, City Manager

Discussion:

During the pre-budget discussions and draft budget discussions staff presented several concepts to raise revenue to diversify our revenue stream for the general fund. Below describes the options in which the City Council requested further information. Attachment E, to this report is the June 19, 2018 staff report that explains each one of the proposed revenue measures in depth. This report will add any additional information that was not included in the previous staff report.

Business License Tax Proposal

The current business license tax has not changed since it was adopted after City incorporation. The basic fee for most businesses is \$15.00 per business with a \$2.00 per employee charge for up to fifty employees. It is recommended that the fee be increased \$45.00 per business with a \$3.00 per employee charge with no per employee limit. All add-on fees will be collapsed into the flat rate. In order to keep up with inflation, it is recommended that the Business License Taxes have a cost of living adjustment built in so that businesses would continue to pay the same proportional amount of the City's tax burden on residents and businesses. Additionally, it is further recommended that the Business License Tax on marijuana businesses be based on the gross receipts of each business, with the recommended amount of 5% gross receipts tax.

Attachment B, is the sample resolution and ordinance for the recommended changes in the business licenses structure.

One half cent Sales Tax increase

In law, this type of local levy is actually called a Transaction and Use Tax (TUT). The difference between a "Transactions and Use Tax" versus "Sales and Use Tax" is a TUT may be approved locally and added to the combined state and local sales and use tax rate. A citizen's oversight committee and annual independent audits would be included to ensure that all the new revenue is used for the intended purpose to stabilize, sustain and strengthen all services funded by the City's General Fund.

In the June 19, 2018 staff report, staff received a more refined estimate from the City's Sales Tax financial consultant, HDL. In attachment, "F" the estimate is \$1.9 million for a ½ cent sales tax and \$3.9 million for a one cent sales tax. Staff is still recommending only the ½ cent sales tax as an option for the November ballot.

Attachment C, is the sample resolution and ordinance for the implantation of a Transaction and Use Tax.

Attachment A

Utility User Tax (UUT)

One hundred fifty-seven (157) cities in California and four (4) Counties impose utility user taxes. UUT's is a tax on the consumption of utility services such as electricity, gas, water, sewer, telephone (including mobile phone and long distance), sanitation and cable television. Staff would recommends a 4 percent UUT on electricity, gas, water, telephone, including cell phones and long distance services and cable television with an exemption for seniors over 62, disabled and blind. The estimated revenue would be approximately \$500,000.

Attachment D, is the sample resolution and ordinance for implementation of a Utility Users tax.

Conclusion:

Staff requests that the City Council discuss the options and direct staff to prepare draft ballot language for consideration at either the July 19th City Council Meeting.

In order to proceed with any of these revenue options, pursuant to Section 7285.9 and other applicable law, the City Council would first enact an ordinance amending the Municipal Code. This adoption would require a 4/5th vote of the City Council.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE: (A) AMENDING RESOLUTION NO. _____ CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018; (B) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY, A MEASURE RELATING TO THE AMENDMENT OF BUSINESS LICENSE FEES AND TAXES; (C) AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURES; AND (D) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURES

WHEREAS, the City of Lemon Grove ("City") may amend its business license fees and taxes (Lemon Grove Municipal Code Section 5.04.200-5.04.420; "Business License Tax Ordinance") for general purposes with the approval of the majority of voters in the City; and

WHEREAS, the City has adopted an ordinance amending the Business License Tax Ordinance for general purposes subject to the approval of the majority of voters in the City; and

WHEREAS, the Business License Tax Ordinance, attached hereto and incorporated herein as Exhibit A, would implement Business License Tax Ordinance amendments which, if approved by voters, would take effect on January 1, 2019; and

WHEREAS, in accordance with the provisions of and State law, a General Municipal Election was called by the City Council pursuant to Resolution No. _____, to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council finds that the proposed activity is in compliance with the California Environmental Quality Act (CEQA) and it has determined that this activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it is a financing decision without commitment to a specific project which may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA;

WHEREAS, pursuant to California Elections Code Section 9222, the City Council desires to submit the Business License Tax Ordinance to the electorate at the General Municipal Election to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desire to authorize the City Clerk to carry-out all actions necessary to ensure placement of the Sales Tax Ordinance and the Business License Tax Ordinance on the General Municipal Election ballot that has been consolidated with the Statewide General Election Ballot; and

WHEREAS, the City Council also desires to authorize the Mayor to submit ballot arguments in favor of the measure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lemon Grove as follows:

SECTION 1. All of the foregoing recitals are true and correct.

SECTION 2. That the City Council pursuant to its right and authority, does hereby order

submitted to the voters at the General Municipal Election on November 6, 2018, the following question:

Shall the measure to amend the Business License Tax Ordinance that has not been increased since 1978 and related fees established thereafter be amended to have local businesses pay for a share of costs of police and fire service in commercial areas and that marijuana-related businesses pay 5% of their gross receipts to pay for public safety and other general services be adopted?	YES
	NO

This question requires the approval of a simple majority (50% plus 1) of those voting.

SECTION 3. That the proposed Ordinances to be submitted to the voters is attached as Exhibits "A" and incorporated into this resolution by this reference.

SECTION 4. Pursuant to California Elections Code Section 9282, the City Council hereby acknowledges its authority, and the authority of any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, to submit a written argument, not to exceed 300 words, for or against the measure, and authorizes the Mayor to submit arguments in favor of the measures, on behalf of the City Council. Arguments must be submitted to the City Clerk, and may be changed until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted, withdrawn or changed.

SECTION 5. Pursuant Elections Code section 9285, rebuttal arguments will be allowed. The rebuttal arguments may not exceed 250 words. Rebuttal arguments must be submitted to the City Clerk and may be changed until and including the date fixed by the City Clerk, after which no rebuttal arguments for or against the proposed measure may be submitted to the City Clerk. This Section 7 is applicable only to the November 6, 2018 general election called by this resolution and, after that election, shall expire.

SECTION 6. Pursuant to California Elections Code Section 9280, the City Clerk is directed to transmit a copy of the measure to the City Attorney. The City Attorney is directed to prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analyses to the City Clerk by the date fixed by the City Clerk.

SECTION 8. The City Clerk is hereby directed to forthwith file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of San Diego and to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the election.

SECTION 9. The City Clerk shall certify to the passage and adoption of this resolution by a two-thirds vote of all members of the City Council, as required by Revenue & Taxation Code section 7285.9 and Government Code Section 53724, and file it with the City's original resolutions.

Article II. Fees

5.04.200 Amounts designated.

The amount or rate of permit fees to be paid to the city by any person for transacting, engaging in, conducting or carrying on any business, show, exhibition or game as specified in this chapter shall be as provided in the sections set forth in this article. (Ord. 25 §14, 1978)

5.04.215 Business permit processing fees.

~~Every person who applies for a business permit in the city of Lemon Grove shall pay an annual business permit processing fee. Said fee shall be due and payable upon filing of the initial business permit application, and each subsequent year at the same time as the annual business permit renewal. Said fee shall be non-refundable and shall be separate from and in addition to the annual business permit tax provided for in this chapter. The initial fee shall be established at thirty (\$30.00) dollars per Business License and may be adjusted by Resolution as part of the master fee schedule in the manner set forth below.~~

~~The amount of the business permit processing fee shall be established in the master fee schedule and adjusted in accordance with the most current United States Department of Labor, or future equivalent measurement, Cost of Living Index (San Diego Region) as needed for the cost recovery of processing each business permit, in accordance with the annual update process of the master fee schedule. (Ord. 384 § 1, 2009; Ord. 198, 1991)~~

5.04.220 Business permit tax.

Every person transacting, engaging in, conducting or carrying on any business within the city, and said business has a fixed location in and is upon the tax rolls of the city, shall pay a business permit tax as follows:

A. Base Fee. Except as otherwise provided in this article and specifically enumerated, the tax shall be an amount per year equal to a base fee of forty-five~~forty~~ fifteen~~five~~ dollars plus thre~~two~~ two~~one~~ dollars per person, ~~to and including a maximum of fifty persons,~~ for the average number of persons employed in the scope of the employer's business in the city during the year for which said permit is issued.

B. Out-of-Town Business-With Vehicles. Every person not having a fixed place of business within the city of Lemon Grove who delivers goods, wares, or merchandise of any kind by vehicle or who provides any service for the use of vehicles in the city shall pay a permit fee of ~~sixtyfourty~~ dollars per vehicle, except wholesale delivery vehicles for which the permit fee shall be ~~thirtyfifteen~~ dollars per vehicle per year.

C. Out-of-Town Business-Other. Except as provided in subdivision 1 of this subsection, every person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of subsections A and B of this section shall pay a permit fee of ~~sixtyfourty~~ dollars plus ~~threectwo~~ dollars per employee per year.

1. Any contractor permitted pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code shall pay a permit fee of ~~fortyfifteen~~ dollars plus ~~twothree~~ dollars per employee per year, to and including a maximum of fifty employees.

D. Notwithstanding any other provision to the contrary, a ~~medical marijuana business~~dispensary, as defined in ~~Lemon Grove Municipal Code Section 17.32.050~~, regardless of its corporate or association structure that is engaged in any type of marijuana business authorized by state and local law, shall be subject to the following license permit ~~taxesfees and charges~~:

1. ~~A per member charge for an annual business license shall be fifteen dollars per year based on the number of members of the dispensary, as determined on a quarterly basis established by the tax collector (director of the department of finance). A gross receipts tax of five (5%) percent on all gross receipts of the business establishment doing business in Lemon Grove.~~

2. Payments under subsection (D)(1), shall be made on a quarterly basis to the finance department of the city of Lemon Grove. The city shall have the right to audit the records of any dispensary in the same manner and under the same procedures found in Lemon Grove Municipal Code Chapter 3.20 (Transient Occupancy Tax). (Ord. 443 § 2, 2016; Ord. 96 § 1, 1983; Ord. 25 § 15, 1978)

3. For purposes of this section, the following terms have the following meanings:

“Gross receipts” has the meaning as defined under subsection (D)(4), below, as it pertains to the marijuana business’ reporting period, and includes receipts

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from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

“Marijuana” has the same meaning as “cannabis” as defined in California Business and Professions Code section 19300.5.

“Marijuana business” means a business activity including, but not limited to, transporting, storing, packaging, providing, or selling wholesale and/or retail sales of marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent, or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with California Health and Safety Code section 11362.5 and article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7). A marijuana business includes medical marijuana “cooperatives” and “collectives” that are established as not- for profit businesses and for-profit businesses.

4. “Gross receipts,” means the gross receipts of the preceding calendar year or part thereof or such other fiscal year approved by the administrator, and is defined as follows:

The total amount actually received or receivable from all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other emoluments, however designated. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as “gross receipts”;
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;

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(e) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;

(f) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the administrator with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee;

(g) Cash value of sales, trades or transactions between departments or units of the same business.

As to any person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the city which does not generate gross receipts as defined herein within the city, gross receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the city for payroll, utilities, depreciation, and/or rent.

As to any person engaged in the business of operating an administrative headquarters at a fixed place of business within the city who does not have gross receipts as defined herein within the city, gross receipts shall be deemed to include the total gross payroll of all persons employed at such administrative headquarters.

5.04.230 Governing conditions.

In each and every instance where a permit fee is required, the following conditions shall govern:

- A. All permits shall be payable in advance.
- B. If any person commences a new business during the calendar year, his or her permit shall be prorated on a quarterly pro rata basis for the balance of said calendar year.
- C. For any business, classified under Section 5.04.240, which is applying for a renewal of permit, said permittee shall when applying pay a permit fee based

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upon the average number of persons employed during the previous year. (Ord. 25-§ 16, 1978)

5.04.240 Inspection of books and records may be required—Failure to comply.

A. In each and every instance where the amount of permit fee to be paid by any person is based upon the number of employees or the amount or number of admissions, the permittee therein named shall and will on the request of the city ~~financetreasurer~~ manager, designated by the City Manager, then and there submit for inspection to the city finance manager~~treasurer~~ any and all books, papers, accounts, and records including state and federal income tax returns, social security returns and state sales tax returns pertaining to the business. The permit as required in this chapter may be based upon the amounts indicated in said books, papers, accounts and records.

B. In the event a permittee fails to comply with the provisions of this section, such permittee shall then be liable to the penal provisions of this chapter and shall be liable for and shall pay an additional

sum in an amount equal to one hundred percent of the correct permit fee, together with the correct amount of said permit fee as based upon the actual number of employees for said business during the calendar year for which said permit was issued. (Ord. 25-§ 17, 1978)

5.04.250 Professional persons.

A. Every person conducting, managing, carrying on or engaged in any business enumerated as follows shall pay a permit fee of ~~fiftytwenty-five~~ threectwo dollars per year, plus ~~threectwo~~ threectwo dollars for the average number of employees acting within the scope of the employer's business in the city during the calendar year for which said permit is issued:

1. Accountant;
2. Architect;
3. Assayer;

4. Attorney at law;
5. Auditor;
6. Bonds (fidelity, indemnity, faithful performance or bail);
7. Chemist;
8. Chiropodist;
9. Chiropractor;
10. Dentist;
11. Engineer (civil, electrical, chemical or mechanical);
12. Insurance salesman or broker;
13. Optometrist;
14. Oculist;
15. Optician;
16. Osteopath and osteopathist;
17. Physician;
18. Stocks and bonds (federal, state, county or municipal stocks or bonds, or stocks or bonds of incorporated companies or evidences of indebtedness of private persons or of incorporated companies);
19. Surgeon;
20. Veterinarian.

B. Each professional person mentioned above who is required to be permitted as such on his profession shall, each individually, whether or not operating as an individual, partnership or associate, pay said permit fee. (Ord. 25 § 18, 1978)

5.04.260 Real estate broker.

Every person carrying on or engaged in or conducting the business of real estate broker shall pay the sum of ~~forty~~fifteen dollars per year, plus an additional sum of ~~twenty~~ten dollars per year for every salesman or broker acting as salesman employed in or acting in any capacity as part of said business. (~~Ord. 25 § 19, 1978~~)

5.04.270 Auction room and auctioneer.

A. Every person carrying on the business of conducting an auction room or store where auctions are held shall pay a permit fee of ~~five~~one hundred fifty dollars per year. Every person carrying on the business of an auctioneer shall pay a permit fee of ~~one hundred~~seventy-five dollars per month or any fraction thereof.

B. The auctioneer permit fee shall not be applicable if the auctioneer is associated with and carrying on his trade in an auction room or store permitted under this section. (~~Ord. 25 § 20, 1978~~)

5.04.280 Vehicles.

Every person conducting, managing or operating a business in which non-motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of ~~two~~one hundred dollars per year per cart, wagon or vending vehicle, payable quarterly. (~~Ord. 25 § 21, 1978~~) Every person conducting, managing or operating a business in which motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of five hundred dollars per year per motorized cart, wagon or vending vehicle, payable quarterly.

5.04.290 For-hire vehicles--Business in city.

Every person conducting, managing or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is in the city, shall pay a permit fee of fifty dollars for each such taxi cab or for-hire vehicle. (~~Ord. 25 § 22, 1978~~)

5.04.300 For-hire vehicles--Business outside city.

Every person conducting, managing, or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is outside the city, shall pay a permit fee of one hundred dollars for each such taxi cab or for-hire vehicle. (~~Ord. 25 § 23, 1978~~)

5.04.310 Peddler, solicitor and transient merchant.

A. Every peddler, solicitor or transient merchant as defined in this chapter who owns real or personal property located within the city used primarily for the business for which permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, or who is an agent or representative of a person, firm or corporation who owns property located within the city used primarily for the business for which the permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, shall pay a permit fee of ten dollars per year.

B. Every applicant for a permit under this chapter who does not own real or personal property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, or who is an agent or representative of a person, firm or corporation who does not own property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, shall pay a permit fee of fifty dollars per year.

C. Each peddler, solicitor, or transient merchant must secure a personal permit. No permit shall be used at any time by any person other than the one to whom it is issued. (~~Ord. 25 § 24, 1978~~)

5.04.320 Trailer parks.

Every person conducting, managing or operating any trailer court or mobile home park shall pay a permit fee as follows: ~~forty~~fortyfive dollars per year plus ~~three~~two dollars for each trailer space or unit. (~~Ord. 25 § 25, 1978~~)

5.04.330 Pool hall.

Every person conducting, managing or carrying on the business of a pool hall or billiard hall shall pay a permit fee of ~~five hundredfifteen~~ dollars per year, and in addition thereto, shall pay the sum of ~~twenty-fiveten~~ dollars per year for each and every pool table or billiard table. (~~Ord. 25 § 26, 1978~~)

5.04.340 Bowling alley.

Every person conducting, managing or carrying on the business of a bowling alley shall pay a permit fee of ~~five hundredfifteen~~ dollars per year, and in addition thereto, shall pay the sum of ~~twentyten~~ dollars per year for each and every alley therein. (~~Ord. 25 § 27, 1978~~)

5.04.350 Billboard.

Every person conducting, carrying on or operating the business of billposting or sign advertising by means of billboards or advertising signboards, or advertising by means of posting, hanging or otherwise affixing or displaying bills, signs or other advertisements in the city, shall pay a fee of ~~twoone~~ hundred dollars per year, plus ~~fiftyten~~ dollars for each additional billboard exceeding two in number, located within the city; provided, that nothing contained in this section shall be deemed or construed to apply to owners of real estate, or other agents in advertising the property for sale or lease by means of billboards or advertising signboards located upon the property advertised for sale or lease by such billboards or advertising signboards. (~~Ord. 25 § 28, 1978~~)

5.04.360 Pawnbroker.

A. Every person conducting, managing, or carrying on the business of pawnbroker shall pay the sum of ~~twoone~~ hundred dollars per year. For the purpose of this section the term pawnbroker shall be construed to mean and include every person conducting, managing or carrying on the business of loaning money, either for him or herself or for any other person, upon any personal

property or personal security or purchasing personal property and reselling, or agreeing to resell, such articles to the vendor or other assignees at prices previously agreed upon.

B. Nothing contained in this section shall be deemed or construed to apply to the loaning of money on personal property or personal security by any bank authorized to do so under the law of the state. (~~Ord. 25 § 29, 1978~~)

5.04.370 Shooting gallery or arcade.

A. Every person conducting, managing or carrying on the businesses of shooting galleries or arcades shall pay the sum of one ~~thousand~~hundred dollars per year.

B. For the purpose of this section, the term "arcade" means one general enclosure in which is conducted the business of operating or exhibiting any phonograph, gramophone, marble and pinball games, talking machine, kinoscope, biograph, projectoscope, or any other instrument or machine of like character, for the use of which a compensation or fee is charged, and exhibiting, showing, or letting the use of any microscope lung tester, muscle tester, galvanic battery, weighing machine, or machine of like character, for a money consideration. (~~Ord. 25 § 30, 1978~~)

5.04.380 Circus.

A. Every person conducting, managing, carrying on or operating a circus or other similar exhibition shall pay a permit fee of ~~one thousand~~two hundred fifty dollars per day.

B. The permit fee provided in this section shall be in addition to all other permits due and payable to the city. (~~Ord. 25 § 31, 1978~~)

5.04.390 Vending machines.

Every person owning, operating, managing, or controlling any vending machine, not in conjunction with any business, the property of which is on the tax

FOR DISCUSSION PURPOSES ONLY

rolls of the city, and which is coin-operated or slug-operated, shall pay a permit fee of ~~fiftytwo~~ ~~five~~ dollars per year, plus ~~five~~ ~~two~~ dollars for each machine (machine is defined as a single apparatus receiving a coin and dispensing a product) located in the city. (Ord. 25 § 32, 1978)

5.04.400 Music machine.

Every person owning, operating, managing or controlling any music device, operated by coin or slug, shall pay ~~fortytwo~~ ~~five~~ dollars per year for each such device. (Ord. 25 § 33, 1978)

5.04.410 Amusement machine.

A. Every person owning, operating, managing or controlling any mechanical play or amusement machine which is used, or permitted to be used, by the deposit of a coin in any slot, crevice or other opening, or by the deposit of any plate, disk or slug therein, which said slug, disk or plate may be acquired or purchased from any source whatsoever, shall pay ~~fortytwo~~ ~~five~~ dollars per year for each such amusement machine.

B. The city ~~finance manager~~ ~~treasurer~~ shall issue a separate receipt for each such amusement machine, which shall be attached and maintained thereon for the full term for which the receipt is issued. (Ord. 25 § 34, 1978)

5.04.420 Apartment rental.

Any person conducting the business of apartment rental shall pay a permit fee of three dollars per unit. "Apartment" means any multiple housing rental property containing three or more housing units. The minimum fee under this section is ~~twenty~~ ~~ten~~ dollars. (Ord. 25 § 35, 1978)

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE ORDERING THE SUBMISSION OF A MEASURE TO LEVY A TRANSACTIONS AND USE TAX (A SALES TAX) IN THE AMOUNT OF ONE HALF-PERCENT (.50%) TO THE QUALIFIED VOTERS OF THE CITY AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018.

WHEREAS, section 7285.9 of the California Revenue and Taxation Code authorizes cities to levy, increase, or extend a transactions and use tax ("sales tax" or "sales and use tax") at a rate of 0.25% (or any multiple thereof) to be extended for general purposes, which transactions and use tax is subject to the approval by a two-thirds majority vote of all the members of the City Council and by a majority vote of the qualified voters of the City voting in an election on the issue; and

WHEREAS, Article XIII C, section 2 of the California Constitution requires that a general tax must be approved by a majority vote of the qualified voters of the City voting in an election on the issue, and that said election shall be consolidated with regularly scheduled general election for members of the governing body of the local government ; and

WHEREAS, local funding that cannot be taken by the State ensures adequate funding for parks, libraries, and other City services; and

WHEREAS, the City Council desires to submit a ballot measure levying one-half percent (.050%) transactions and use tax to the qualified voters of the City of Lemon Grove at a Regular Municipal Election to be consolidated with the Statewide General Election to be held on November 6, 2015 (the "Consolidated Election."); and

THE PEOPLE OF LEMON GROVE DO ORDAIN AS FOLLOWS:

SECTION 1. At the consolidated statewide general election to be held on November 6, 2018, there shall be submitted to the qualified voters the following measure to approve an ordinance extending the previously voter approved one-half (.50%) transactions and use tax for general purposes:

<p>Lemon Grove City Services Funding Measure. To maintain Lemon Grove's public safety and prevent cuts to neighborhood police patrols and officers; gang/drug prevention; 911 emergency response; fire protection and firefighters; graffiti removal; street/pothole repair; senior/youth programs; and other City services; shall Lemon Grove implement a voter-approved one-half percent (.50%) sales tax for 20 years with Citizens' Oversight, annual independent audits, all money kept in Lemon Grove?</p>	YES
	NO

SECTION 2. The measure shall be submitted to the voters of Lemon Grove as required by Section 53720, et seq., of the California Government Code, approved by the voters of California in 1986 as Proposition 62, as required by Article XIII C of the California Constitution, approved by the voters of California in 1996 as Proposition 218, and as required by Section 7285.9 of the California Revenue and Taxation Code.

SECTION 3. The proposed extension of transactions and use tax shall remain at the rate of one-half percent (.50%) and shall expire twenty years from September 2018 (the current expiration date), unless the City Council finds the levy and collection of the tax is no longer necessary for the City's fiscal stability and sustainability, in which case the City Council has the authority to reduce the rate of tax, or to terminate the imposition of the tax.

SECTION 4. This ordinance shall take effect immediately as an ordinance relating to an election, pursuant to California Government Code Section 36937 (a).

DRAFT PURPOSE

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE: (A) AMENDING RESOLUTION NO. _____ CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018; (B) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY, A MEASURE RELATING TO THE IMPLEMENTING A UTILITY USERS FEES AND TAXES; (C) AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURES; AND (D) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURES

WHEREAS, the City of Lemon Grove ("City") may impose a utility users tax for general purposes with the approval of the majority of voters in the City; and

WHEREAS, the City has adopted an ordinance adding Chapter 3.28 to the Lemon Grove Municipal Code for general purposes subject to the approval of the majority of voters in the City; and

WHEREAS, Chapter 3.28 of the Lemon Grove Municipal Code establishes a Utility User Tax; and

WHEREAS, the attached hereto and incorporated herein as Exhibit A, would implement Ordinance amendments which, if approved by voters, would take effect on January 1, 2019; and

WHEREAS, in accordance with the provisions of the Lemon Grove Charter and State law, a General Municipal Election was called by the City Council pursuant to Resolution No. _____, to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desires to amend that Resolution to add the Utility Users Tax to the November 6, 2018 ballot; and

WHEREAS, the City Council finds that the proposed activity is in compliance with the California Environmental Quality Act (CEQA) and it has determined that this activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it is a financing decision without commitment to a specific project which may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA;

WHEREAS, pursuant to California Elections Code Section 9222, the City Council desires to submit the Utility Users Tax Ordinance to the electorate at the General Municipal Election to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desire to authorize the City Clerk to carry-out all actions necessary to ensure placement of the Utility Users Tax Ordinance on the General Municipal Election ballot that has been consolidated with the Statewide General Election Ballot; and

WHEREAS, the City Council also desires to authorize the Mayor to submit ballot arguments in favor of the measure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lemon Grove

as follows:

SECTION 1. All of the foregoing recitals are true and correct.

SECTION 2: That the City Council pursuant to its right and authority, does hereby order submitted to the voters at the General Municipal Election on November 6, 2018, the following question:

<p>Lemon Grove City Services Funding Measure. To maintain Lemon Grove's public safety and prevent cuts to neighborhood police patrols and officers; gang/drug prevention; 911 emergency response; fire protection and firefighters; graffiti removal; street/pothole repair; senior/youth programs; and other City services; shall Lemon Grove implement a Utility User Tax?</p>	<p>YES</p>
	<p>NO</p>

This question requires the approval of a simple majority (50% plus 1) of those voting.

SECTION 3. That the proposed Ordinances to be submitted to the voters are attached as Exhibit "A" and incorporated into this resolution by this reference.

SECTION 4. That Resolution No. _____ is hereby amended accordingly and the City Clerk is authorized, instructed, and directed to take all actions necessary to add the Utility Users Tax measure to the November 6, 2018 ballot.

SECTION 5. Pursuant to California Elections Code Section 9282, the City Council hereby acknowledges its authority, and the authority of any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, to submit a written argument, not to exceed 300 words, for or against the measure, and authorizes the Mayor to submit arguments in favor of the measures, on behalf of the City Council. Arguments must be submitted to the City Clerk, and may be changed until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted, withdrawn or changed.

SECTION 6. Pursuant Elections Code section 9285, rebuttal arguments will be allowed. The rebuttal arguments may not exceed 250 words. Rebuttal arguments must be submitted to the City Clerk and may be changed until and including the date fixed by the City Clerk, after which no rebuttal arguments for or against the proposed measure may be submitted to the City Clerk. This Section 7 is applicable only to the November 6, 2018 general election called by this resolution and, after that election, shall expire.

SECTION 7. Pursuant to California Elections Code Section 9280, the City Clerk is directed to transmit a copy of the measure to the City Attorney. The City Attorney is directed to prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit

such impartial analyses to the City Clerk by the date fixed by the City Clerk.

SECTION 8. The City Clerk is hereby directed to forthwith file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of San Diego and to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the election.

SECTION 9. The City Clerk shall certify to the passage and adoption of this resolution by a two-thirds vote of all members of the City Council, as required by Revenue & Taxation Code section 7285.9 and Government Code Section 53724, and file it with the City's original resolutions.

SINGLE SUBJECT - FOR DISCUSSION PURPOSES ONLY

ATTACHMENT E

Chapter 3.28. UTILITY USERS TAX

3.28.010. Title.

This chapter shall be known as the “Utility Users Tax Ordinance of the City of Lemon Grove.”

3.28.020. Adoption—Legal authority.

This chapter is adopted pursuant to the powers of the city of Lemon Grove as a charter city as provided in California Government Code Sections 37100.5 and 53723, and as authorized by Section 7.5 of Article XI of the Constitution of the State of California.

3.28.030. Definitions.

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter. The word “may” is always directory and discretionary and not mandatory; the word “shall” is always mandatory and not directory or discretionary.

(1) “Ancillary telecommunications services” Ancillary telecommunication services shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including, but not limited to, the following services:

(a) “Conference bridging service” shall mean an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(b) “Detailed telecommunications billing service” shall mean an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

(c) “Directory assistance” shall mean an ancillary service of providing telephone number information, and/or address information.

(d) “Vertical service” shall mean an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced

calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(e) "Voice mail service" shall mean an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(2) "Billing address" shall mean the mailing address of the service user where the service provider submits invoices or bills for payment by the service users.

(3) "City" means the city of Lemon Grove, California, including all of the territory and jurisdiction thereof as presently constituted, and any and all of the same which shall later come into existence by any manner or means whatsoever.

(4) "Collector" means the Finance Manager or designee appointed by the City Manager of the city of Lemon Grove.

(5) "Finance Manager" means the person designated by the City Manager of the City of Lemon Grove to supervise city financial matters.

(6) "Large commercial/agricultural ratepayer" shall mean electric customers who have a maximum peak demand equal to or greater than twenty kilowatts.

(7) "Person" means any natural person, firm, all domestic, nonprofit and foreign corporation; firm; association; syndicate; joint venture; joint stock company; club; trust; Massachusetts or common law trust; estate; partnership of any kind; limited liability company; cooperative; society; and any officer, agent, receiver, trustee, guardian or other appointed representative thereof; joint power agency, municipal district or municipal corporation, other than the city.

(8) "Place of primary use" shall mean the street address representative of where the customer's use of the telecommunications or video service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(9) "Post-paid telecommunication service" shall mean the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

(10) "Prepaid telecommunication service" shall mean the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and shall include "prepaid mobile telephony services" as defined in Revenue and Taxation Code Section 42004(k).

(11) "Private telecommunication service" shall mean a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the communications).

(28) "Residential/small commercial ratepayer" shall mean electric customers who have a maximum peak demand of less than twenty kilowatts.

(13) Service address shall mean the residential street address or the business street address of the service user. For a telecommunications or video service user, "service address" means either:

(a) The location of the service user's telecommunication or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or

(b) If the location in paragraph a. of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user's place of primary use.

For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the city, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

(14) "Service supplier" means any person including the city, who provides or sells telecommunication, electric, or gas service to a user of such services within the city. The term shall include any person required to collect, or self-collect under

this chapter, and remit a tax as imposed by this chapter, including its billing agent in the case of electric or gas suppliers.

(15) “Service user” means a person required to pay a tax imposed under the provisions of this chapter.

(16) “Tax administrator” means the Finance Manager or designee of the City of Lemon Grove.

(17) “Telecommunication services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used, and includes broadband service (e.g., digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH) to the extent federal and/or state law permits taxation of such broadband services, now or in the future. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over internet protocol (VoIP) services or is classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data service that is functionally integrated with “telecommunication services.” Telecommunications services include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate and international telecommunication services; all forms of VoIP service; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to prerecorded or live service).

(18) “VoIP (Voice Over Internet Protocol)” means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(19) “800 Service” means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free

calling, and any subsequent numbers designated by the Federal Communications Commission.

(20) "900 Service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

3.28.040. Exemptions.

(a) The taxes imposed by this chapter shall not apply to:

(1) Any person or service if imposition of such tax upon that person or service would be in violation of a federal or state statute or the Constitution of the state of California, or the Constitution of the United States; or

(2) The city, and the state of California and its subdivisions.

(b) Any service user that is exempt from the tax imposed by this chapter pursuant to subsection (a) of this section shall file an application with the tax administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the tax administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the tax administrator, such service user shall give the tax administrator timely written notice of any change in service suppliers so that the tax administrator can properly notify the new service supplier of the service user's tax-exempt status. A service user that fails to apply and obtain an exemption pursuant to this section shall not be entitled to a refund of a user's tax collected and remitted to the tax administrator from such service user as a result of such noncompliance.

(c) The decision of the tax administrator may be appealed pursuant to Section 3.28.210 (Appeals) of this chapter. Filing an application with the tax administrator

and appeal to the City Manager, or designee, pursuant to Section 3.28.210 is a prerequisite to a suit thereon.

(d) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

3.28.050. Taxes—Effective date.

The taxes at the rate of two percent imposed by this chapter shall become operative as of July 1, 2019.

3.28.060. Telecommunication users tax.

(a) There is hereby imposed a tax upon every person in the city using telecommunication services in the city. The tax imposed by this section shall be at the rate of two percent of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent, or as otherwise provided by law. There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the city, are used, in whole or in part, within the city's boundaries, and such services are subject to taxation under this section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are primarily used, in whole or in part, within the city and are therefore subject to taxation under this section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

(b) "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 284). The tax administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this section, sourcing rules for the taxation of other telecommunication services, including, but not limited to, post-paid

telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

(c) The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those telecommunication services, or charges for such services, that are subject to taxation under this chapter. These administrative rulings shall implement the intent of the city council that the telecommunications users tax be imposed on any person who initiates or receives telecommunications without regard to the type of technology that exists on the effective date of this section of which may be developed in the future. The administrative rules shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California law.

(d) As used in this section, the term “telecommunication services” shall include, but is not limited to, charges for: connection, reconnection, termination or early termination charges; movement or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including, but not limited to, call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory or administrative fees, charges or surcharges, including charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. “Telecommunication services” shall not include digital downloads that are not “ancillary telecommunication services,” such as music, ringtones, games, and similar digital products.

(e) To prevent actual multi-jurisdictional taxation of telecommunication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another state or city on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the city under this section.

(f) The tax on telecommunication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the tax administrator and must be received by the tax administrator on or before the twentieth day of the following month.

3.28.070. Electricity users tax—Imposition—Rate.

There is hereby imposed a tax upon every person in the city, other than an electrical corporation or a gas corporation, using electrical energy in the city. The tax imposed by this section and Sections 3.28.080 and 3.28.090 shall be at the rate of two percent of the charges made for such energy, including minimum charges for service but excluding charges for electrical energy supplied to street lights, and shall be paid by the person paying for such energy unless the city council by ordinance increases the rates to offset decreased charges resulting from electrical rate deregulation to no more than the amounts specified below, with an overall rate cap for all ratepayers of three percent.

3.28.080. Electricity users tax—Exclusions.

As used in Sections 3.28.070 and 3.28.090, the words “using electrical energy” do not mean:

(a) The storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; or

(b) The mere receiving of such energy by an electrical corporation or a governmental agency at a point within the city for resale to service users. (Ord. 3102-16 § 1).

3.28.090. Electricity users tax—Collection.

The tax imposed in this section, Sections 3.28.070 and 3.28.080 shall be collected from the service user by the person selling such electrical energy. The

amount of tax collected in one month shall be remitted to the collector on or before the last day of the following month.

3.28.100. Gas users tax—Imposition—Rate.

There is hereby imposed a tax upon every person in the city, other than a gas corporation or an electric corporation, using gas in the city which is delivered through mains or pipes. The tax imposed by this section and Sections 3.28.110 and 3.28.280 shall be at the rate of two percent of the charges made for such gas, including minimum charges for service but excluding charges for gas service to street lights, and shall be paid by the person paying for such gas.

3.28.110. Gas users tax—Exclusions.

As used in Sections 3.28.100 and 3.28.280, the term “charges” shall not:

- (a) Include charges made for gas used in the generation of electrical energy by a public utility or a governmental agency; or
- (b) Be construed to mean the mere receiving of such gas by a gas corporation or governmental agency at a point within the city for resale to service users.

3.28.280. Gas users tax—Collection.

The tax imposed in this section, Sections 3.28.100 and 3.28.110 shall be collected from the service user by the person selling the gas. The amount collected in one month shall be remitted to the collector on or before the last day of the following month.

3.28.130. Effect of commingling taxable items with nontaxable items.

If any non-taxable service charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier is able to establish reasonable values for the portions of the combined charge that are nontaxable and taxable. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, the service supplier

shall assign reasonable values for the taxable and non-taxable services. In assigning reasonable values for taxable and non-taxable services under this section, the service supplier may use reasonable and verifiable standards such as: (1) the books and records kept in the regular course of business and in accordance with generally accepted accounting principles (not created and maintained for tax purposes); (2) the market value of such taxable and non-taxable services when offered on a stand-alone basis by the supplier or its competitors; or (3) other similar evidence of value. The service supplier has the burden of proving to the satisfaction of the tax administrator the reasonable valuation and proper apportionment of taxable and non-taxable charges under this section.

3.28.140. Substantial nexus/minimum contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this chapter, “substantial nexus,” “substantial economic presence,” and “minimum contacts” shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the city shall be subject to a rebuttable presumption that “substantial nexus/minimum contacts” exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the city for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the city, directly or through an agent, affiliate or subsidiary, a place of business of any nature; solicits business in the city by employees, independent contractors, resellers, agents, affiliates or other representatives; solicits business in the city on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the city or distributed from a location with the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail; or if there are activities performed in the city on behalf of the service supplier that are significantly associated with the service supplier’s ability to establish and maintain a market in the city for the provision of utility services that are subject to a tax under this chapter (e.g., an affiliated person or independent contractor engaging in activities in the city that inure to the

benefit of the service supplier in its development or maintenance of a market for its services in the city, including by directly or indirectly referring potential customers, whether by a link on an Internet website or otherwise, to the service supplier).

3.28.150. Collection of tax—Duty—Procedures.

(a) Collection by Service Suppliers. The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax that was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.28.190 (Administrative remedy—Nonpaying service users) shall apply.

(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(b) Filing Return and Payment. Each person required by this chapter to remit a tax shall file a return to the tax administrator, on forms approved by the tax administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the tax administrator. The tax administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the tax administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the California Public Records Act.

3.28.160. Collection penalties—Service suppliers or self-collectors.

(a) Taxes collected from a service user are delinquent if not received by the tax administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the tax administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this section shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the city's account on the following business day.

(b) If the person required to collect and/or remit the utility users tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the tax administrator shall attach a penalty for such delinquencies or deficiencies at the rate of up to fifteen percent of the total tax that is delinquent or deficient in the remittance and interest at the rate of up to seventy-five one hundredths percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

(c) The tax administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of up to fifteen percent of the amount of the tax collected and/or required to be remitted, or as recomputed by the tax administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

(e) Notwithstanding the foregoing, the tax administrator may, in his or her discretion, modify the due dates and/or penalty and interest provisions of this section to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

3.28.170. Additional powers and duties of the tax administrator.

- (a) The tax administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.
- (b) The tax administrator may adopt administrative rules and regulations consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this chapter, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2). A copy of such administrative rules and regulations shall be on file in the tax administrator's office. To the extent that the tax administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the tax administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The tax administrator is not authorized to amend the city's methodology for purposes of Government Code Section 53750 and the city does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.
- (c) Upon a proper showing of good cause, the tax administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the tax administrator's office and are voidable by the tax administrator or the city at any time.
- (d) The tax administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The tax administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period or review shall not exceed a period of three years next preceding the date of receipt of the written notice by said person from the tax administrator. Upon completion of the audit, the tax administrator may make a

deficiency determination pursuant to Section 3.28.180 (Deficiency determination and assessment—Tax application errors) for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the tax administrator. If said person is unable or unwilling to provide sufficient records to enable the tax administrator to verify compliance with this chapter, the tax administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to be a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the tax administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed forty-five days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of seventy-five one hundredths percent per month, prorated for any portion thereof.

(f) The tax administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.

(g) The tax administrator, with the written approval of the city attorney, may compromise a claim pursuant to this chapter where the portion of the claim proposed to be released is equal to or less than four thousand nine hundred ninety-nine dollars; and, with the approval of the city attorney and the city council, may compromise such a claim where the portion proposed to be released is greater than four thousand nine hundred ninety-nine dollars.

(h) Notwithstanding any provision in this chapter to the contrary, the tax administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the tax administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The tax administrator may also participate with other utility users tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and on-going cooperation on tax collection and remittance, the tax administrator, and its agents, may enter into

agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the tax administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

3.28.180. Deficiency determination and assessment—Tax application errors.

(a) The tax administrator may make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the tax administrator institute proceedings under this section if, in the opinion of the tax administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The tax administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of up to seventy-five one hundredths percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the city. Within fourteen calendar days after the date of service of such notice, the person may request in writing to the tax administrator for a hearing on the matter.

(c) If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment and shall immediately be due and owing to the city. If the person requests a hearing, the tax administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the tax administrator to such person at least ten calendar days prior to the hearing, and, if the tax administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

(d) At the time fixed for the hearing, the tax administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the tax administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the tax administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the tax administrator may be appealed pursuant to Section 3.28.210 (Appeals). Filing an application with the tax administrator and appeal to the city manager, or designee, pursuant to Section 3.28.210 (Appeals) is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the tax administrator on or before the thirtieth day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be up to fifteen percent on the total amount of the assessment, along with interest at the rate of up to seventy-five one hundredths percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the city seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection (e).

(f) All notices under this chapter may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.28.190. Administrative remedy—Non-paying service users.

(a) Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the tax administrator deems it in the best interest of the city, he or she may relieve such person of the obligation to collect the taxes due under this section from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the city with the names and addresses of such service users and the amounts of taxes owed under the provisions of this section.

Nothing herein shall require that the tax administrator institute proceedings under this section if, in the opinion of the tax administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of up to fifteen percent of the total tax that is owed, and shall pay interest at the rate of up to seventy-five one hundredths percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

(c) The tax administrator shall notify the nonpaying service user that the tax administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

(d) If the service user fails to remit the tax to the tax administrator within thirty days from the date of the service of the notice upon him or her, the tax administrator may impose an additional penalty of fifteen percent of the amount of the total tax that is owed. (Ord. 3102-16 § 1).

3.28.200. Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has not been remitted to the tax administrator shall be deemed a debt owed to the city by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the city as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorney's fees. In the event that a service user or service supplier owing a tax under this chapter files bankruptcy, then such debt to the city shall be deemed an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes

due the city for those services, unless the tax administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3.28.210. Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.28.230 (Refunds/credits)), deficiency determination, assessment, or administrative ruling of the tax administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.28.230), deficiency determination, assessment, or administrative ruling of the tax administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. (See Government Code Section 935(b)). To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.28.230), deficiency determination, assessment, or administrative ruling of the tax administrator; he or she may appeal to the city manager by filing a notice of appeal with the city clerk within fourteen days of the date of the decision, deficiency determination, assessment, or administrative ruling of the tax administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the city manager, or designee, no more than thirty days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the tax administrator, the city manager, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the city's files, the independent hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that

the decision is final and that any petition for judicial review shall be filed within ninety days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

(e) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.28.220. Records—Retention period—Access.

(a) It shall be the duty of every person required to collect and/or remit to the city any tax imposed by this chapter to keep and preserve, for a period of at least three years, all records as may be necessary to determine the amount of such tax that such person may have been liable for the collection of and remittance to the tax administrator, which records the tax administrator shall have the right to inspect at a reasonable time.

(b) The tax administrator may issue an administrative subpoena to compel a person to deliver, to the tax administrator, copies of all records deemed necessary by the tax administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the tax administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the city on or before the due date, provided that such person shall reimburse the city for all reasonable travel expenses incurred by the city to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the city to conduct the inspection.

(c) The tax administrator is authorized to execute a nondisclosure agreement approved by the city attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The tax administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the city, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the city pursuant to Section 6354(e) of the California Public Utilities Code.

(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the tax administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the city; and (2) upon request of the tax administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the tax administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the city.

(e) If any person subject to record-keeping under this chapter unreasonably denies the tax administrator, or the tax administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the tax administrator may impose a penalty of five hundred dollars on such person for each day following: (1) the initial date that the person refuses to provide such access; or (2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

3.28.230. Refunds/credits.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded or credited as provided in this section:

(a) The tax administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the tax administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this section.

(b) The submission of a written claim, which is acted upon by the city council, shall be a prerequisite to a suit thereon. (See Section 935 of the California

Government Code). The tax administrator, or the city council where the claim is in excess of four thousand nine hundred ninety-five dollars shall act upon the refund claim within the time period set forth in Government Code Section 928.4. If the city council fails or refuses to act on a refund claim within the time prescribed by Government Section 928.4, the claim shall be deemed to have been rejected by the city council on the last day of the period within which the city council was required to act upon the claim as provided in Government Code Section 928.4. The tax administrator shall give notice of the action in a form that substantially complies with that set forth in Government Code Section 913.

(c) Notwithstanding the notice provisions of subsection (a) of this section, the tax administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this chapter, to claim credit for such overpayment against the amount of tax which is due the city upon a subsequent monthly return(s) to the tax administrator, provided that, prior to taking such credit by the service supplier: (1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; (2) the tax administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and (3) in the case of an overpayment by a service user to the service supplier that has been remitted to the city, the tax administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.28.240. No injunction/writ of mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this city or against any officer of the city to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected and/or remitted.

3.28.250. Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including, but not limited to, the California False Claims Act (Government Code Section 28650 et seq.) and the

California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.28.260. Notice of changes to ordinance.

If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, the tax administrator shall follow the notice requirements of Public Utilities Code Section 799.

3.28.270. Future amendment to cited statute.

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time. To the extent that the city's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of an amendment or new enactment of a state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

3.28.280. Annual rate review and independent audit of tax collection, exemption, remittance and expenditure.

The city shall annually verify that the taxes owed under this section have been properly applied, exempted, collected, and remitted in accordance with this section, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.28.290. No increase in tax percentage or change in methodology without voter approval—Amendment or repeal.

Discussion Purposes only

This chapter of the Lemon Grove Municipal Code may be repealed or amended by the city council without a vote of the People. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this chapter; provided, however, the following actions shall not constitute an increase of the rate of a tax:

- (a) The restoration of the rate of the tax to a rate that is no higher than that set by this chapter, if the city council has acted to reduce the rate of the tax;
- (b) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;
- (c) The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); and
- (d) The collection of the tax imposed by this chapter, even if the city had, for some period of time, failed to collect the tax.

ATTACHMENT E

LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY

ATTACHMENT E

Item No. 5
Mtg. Date June 19, 2018
Dept. City Manager

Item Title: Revenue Options Requiring Voter Approval

Staff Contact: Lydia Romero, City Manager

Recommendation:

Review and Discuss options for revenue options to place on the November ballot.

Item Summary:

During the pre-budget discussions and draft budget discussions staff presented several concepts to raise revenue to diversify our revenue stream for the general fund. The staff report goes into more detail on these options. All the options discussed do require voter approval.

Fiscal Impact:

None.

Environmental Review:

-
- | | |
|---|---|
| <input type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Current Business License
- C. Transaction and Use Tax (Local Sales Tax) White Paper
- D. Utility Users Tax White Paper

LEMON GROVE CITY COUNCIL
STAFF REPORT

Item No. 5

Mtg. Date June 19, 2018

Item Title: **Revenue Options Requiring Voter Approval**

Staff Contact: Lydia Romero, City Manager

Discussion:

During the pre-budget discussions and draft budget discussions staff presented several concepts to raise revenue to diversify our revenue stream for the general fund. Below describes the options in which the City Council requested further information.

Business License Tax Proposal

The current business license tax has not changed since it was adopted after City incorporation. The basic fee for most businesses is \$15.00 per business with a \$2.00 per employee charge for up to fifty employees. The Lemon Grove Business License Tax, even if related fees are included, is the lowest in East County. It is recommended that the fee be increased \$45.00 per business with a \$3.00 per employee charge with no per employee limit. Individual business license categories (See Attachment B, Chart on Business License Application) would also increase by the same dollar amount; thirty dollars plus one dollar per employee.

In order to keep up with inflation, it is recommended that the Business License Taxes have a cost of living adjustment built in so that businesses would continue to pay the same proportional amount of the City's tax burden on residents and businesses. The cost of living adjustment would be based on the U.S. Department of Labor's cost of living calculations for the San Diego Metropolitan Region annually.

It is further recommended that the Business License Tax on marijuana businesses be based on ~~the gross receipts of each business. This will allow the cost of the extra General Fund services to be borne by the businesses that generate the City workload. Consistent with other cities in the State that have sought this funding approach, it is recommended that a 5% gross receipts tax be placed on all marijuana businesses.~~

One half cent Sales Tax increase

In law, this type of local levy is actually called a transaction and use tax (TUT). The difference between a "Transactions and Use Tax" versus "Sales and Use Tax" is a transactions and use tax may be approved locally and added to the combined state and local sales and use tax rate. The base statewide sales and use tax is currently at 7.25 percent, which includes portions that go to the state general fund, several specific state funds including some for local allocation and use and to the cities and counties essentially based on the location of the purchase. Transactions and Use Taxes generally apply to merchandise that is delivered in a jurisdiction which imposes such a tax. In practice the tax application and allocation for most retail sales will not differ from the sales and use tax. But there are some differences. Importantly, in the case of

Attachment A

a sale or lease of a vehicle, vessel, or aircraft, a transactions and use tax is charged and allocated base on the location in which the property will be registered. Currently, there are 176 cities and 32 counties with voter approved transaction and use taxes. A majority of the cities TUT is for general purposes. Attachment C is a white paper on TUT's by the League of California Cities Finance expert.

In Lemon Grove residents are currently paying a ½ percent TUT for transportation purposes, this tax is often referred to as TransNet. The following cities in San Diego County have levied a ½ percent to 1 percent TUT for general purposes – Chula Vista, Del Mar, El Cajon, La Mesa, National City and Vista.

It is estimated that a ½ percent TUT could generate about \$1.2 million. Staff recommends that the City Council place a ½ percent TUT on the November ballot.

Utility User Tax (UUT)

One hundred fifty-seven (157) cities in California and four (4) Counties impose utility user taxes. UUT's is a tax on the consumption of utility services such as electricity, gas, water, sewer, telephone (including mobile phone and long distance), sanitation and cable television. The majority of the UUT's are levied between 2 percent and 6 percent with the revenue going to the levying city's general fund. Attachment D is a white paper on UUT's by the League of California Cities Finance expert.

Utility companies usually collect utility user's taxes from their customers as part of their regular billing procedures and remit the funds collected to the city or county which imposed the tax. Most UUT ordinances provide for an exemption for individuals that are on the lifeline program; seniors, disabled, blind, or individuals below a certain income level.

As the report states, a city of a similar size projected revenue at \$250,000 for a 2 percent UUT. Should the City Council approve this option, staff would recommend a 4 percent UUT on electricity, gas, water, telephone, including cell phones and long distance services and cable television with an exemption for seniors over 62, disabled and blind.

Conclusion:

Staff requests that the City Council discuss the options and direct staff to prepare draft ballot language for consideration at either the July 3rd or the July 19th City Council Meeting. Any ballot measure needs to be to the County Register of Voters by August 10, 2018.



City of Lemon Grove

Estimate for Transactions Tax/District Add-on Sales Tax – 6/19/2018

While sales tax is generally allocated to the jurisdiction where the sale is negotiated or the order taken, revenues from an 'add-on' transactions tax are allocated to the place of purchase and/or place of first use. The City of Lemon Grove can expect to receive transactions tax revenue from normal sales tax generating businesses like retail stores and restaurants. Both residents and visitors alike will pay the transactions tax on purchases that they consume or take possession of at the place of business in the City of Lemon Grove. In addition, any purchases shipped or delivered into the City from other places (business, medical and industrial supplies, construction materials, catalog and internet purchases, furniture, appliances, etc.) will generate additional transaction tax revenue.

However, as the transaction tax relates to registered vehicles purchases the tax will only be paid by City of Lemon Grove residents and businesses regardless of where the purchase is made. Therefore, if a Lemon Grove resident purchases a vehicle from an auto dealer inside or outside the City of Lemon Grove, the auto dealer will collect and remit the transaction tax.

Conversely, if a non-Lemon Grove resident purchases a vehicle from an auto within the City of Lemon Grove, the transaction tax will not be applicable. The same concept applies to building and construction outlets. If goods purchased within the City are then shipped to the end user outside the City of Lemon Grove, the retailer will not be applicable. Given Thompson Building Materials, Roof Supply By G&F, Home Depot, and the new auto dealers within the city limits, there is a strong probability that many of the purchases are made by non-Lemon Grove residents. The overall transaction tax estimate for a full 1.0 cent is nearly three-quarters of the annual Bradley-Burns sales tax revenue amount.

As there is no historical database to track purchases in a specific jurisdiction, the following estimate is based on a review of sales/transactions tax ratios in other agencies levying a transactions tax that have similar economic characteristics to the City of Lemon Grove.

	FY 19/20 Estimated 1.0 Cent Transaction Tax	FY 19/20 Estimated 0.5 Cent Transaction Tax
Autos & Transportation	\$880,000	\$440,000
Building & Construction	\$990,000	\$495,000
Business & Industry	\$163,000	\$82,000
Food & Drugs	\$461,000	\$230,000
Fuel & Service Stations	\$413,000	\$207,000
General Consumer Goods	\$612,000	\$306,000
Restaurants & Hotels	\$500,000	\$250,000
2% Deduction for first year start up issues	-\$80,500	-\$40,000
Admin Fees	-\$23,000	-\$23,000
Total	\$3,915,500	\$1,947,000



City of Lemon Grove

Estimate for Transactions Tax/District Add-on Sales Tax – 6/19/2018

A timeline has been provided to better understand the implementation process of a new transaction tax measure by the Board of Equalization (BOE) and the fiscal impacts.

Month tax measure on ballot	November 2018	June 2019
Date approved measure effective	April 1, 2019	October 1, 2019
Month of first advance from BOE	June 2019	December 2019
Fiscal impact for annual budget process	Approx. 1/4 year in FY 18-19, first full year FY 19-20	Approx. 3/4 year in FY 19-20, first full year FY 20-21

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 4

Mtg. Date July 17, 2018 Continued to Regular Meeting Friday, July 20, 2018

Dept. City Manager's Office

Item Title: **PLACEMENT OF .5% TRANSACTIONS AND USE TAX (SALES TAX) AND BUSINESS LICENSE TAX, INCLUDING A 5% MARIJUANA BUSINESS GROSS RECEIPTS TAX ON THE NOVEMBER BALLOT (FOUR-FIFTHS VOTE REQUIRED)**

Staff Contact: Lydia Romero, City Manager; James P. Lough, City Attorney; and Molly Brennan, Finance Manager

Recommendation:

- 1) Adopt Resolution (Attachment "B") Amending the Resolution requesting consolidation of the 2018 General Municipal Election with the Statewide General Election, allowing Rebuttal Arguments, and an Impartial Analysis by the City Attorney;
- 2) Introduce, by Title, (Attachment "C") an Ordinance Establishing a .5% Transaction and Use Tax, subject to a vote of the People, with an Oversight Board and Annual Independent Audit for a period of twenty years (Four-Fifths Vote Required); and
- 3) Introduce, by Title, (Attachment "D") an Ordinance Raising Business License Taxes and Establishing a 5% Gross Receipts Tax on Marijuana Businesses (Four-Fifths Vote Required).

Item Summary:

This item amends the General Municipal Election Consolidation to add two Measures to the November ballot. If each is approved by a 4/5ths vote of the Council, a .5% Transactions and Use Tax (Sales Tax) and a Business License Tax Increase with a 5% Gross Receipts Tax on Marijuana Businesses will be placed before the Voters.

Fiscal Impact:

Approximately \$13,000 in new election costs for printing the two tax measures, ballot arguments, rebuttals and impartial analysis added to the ballot and ballot materials, along with administrative costs.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Resolution Calling Election
- C. Ordinance Establishing - Transaction and Use Tax (Local Sales Tax)
- D. Ordinance Amending Business License Tax
- E. July 3, 2018 Staff Report-Revenue Options Requiring Voter Approval- w/ Attachments

**LEMON GROVE CITY COUNCIL
STAFF REPORT**

Item No. 4

Mtg. Date July 17, 2018

Item Title: PLACEMENT OF .5% TRANSACTIONS AND USE TAX (SALES TAX) AND BUSINESS LICENSE TAX, INCLUDING A 5% MARIJUANA BUSINESS GROSS RECEIPTS TAX ON THE NOVEMBER BALLOT (FOUR-FIFTHS VOTE REQUIRED)

Staff Contacts: Lydia Romero, City Manager and James P Lough, City Attorney and Molly Brennan, Finance Manager

Background:

On July 3, 2018, the City Council gave direction to Staff to bring back legislation to place two Tax Measures on the November ballot. The July 3rd discussion was a continued discussion item from the June 19, 2018 meeting. The matter is also related to multiple discussions over the last year regarding factors contributing to the long term structural budget deficit. The General Fund revenue picture was mentioned in the budget message last year and at the prior two Priority Setting Workshops in 2017 and 2018. During the April 24, 2018 workshop the City Council requested that staff present revenue raising concepts to include voter approved and non-voter approved.

A Budget Workshop on May 15, 2018 to consider overall budgetary issues including the City's structural budget deficit caused, in large part, by costs increasing faster the current revenue sources.

On November 11, 2017, a City Council Pension Workshop to consider options to fund the increasing costs caused by CALPERS failure to meet its investment and funding targets under CALPERS' faulty past long-term assumptions, which will cause the City to substantially increase annual funding of pensions even though the City has the lowest pension benefits among CALPERS cities in the County of San Diego.

The City Council held three budget hearings to discuss its funding priorities and its structural deficit before approving this Ordinance for consideration by the voters.

The Constitution, and California Revenue and Taxation Code Section 7285.9, gives the City has the authority to enact a local transaction and use tax (sales tax) for general purposes with the approval of the majority of voters in the City voting in an election on the issue. Under Proposition 62, the City Council must approve any tax increase ordinance by a four-fifths vote to be able to place it on the ballot. This law was followed up by a constitutional amendment, Proposition 218 (The Right to Vote on Taxes Act), that applied the voter authority to all cities.

Analysis:

General Fund Status Quo: 5 Year Projection

Current revenue sources are growing approximately 1.5%-2% a year, while expenditures are growing about 4% a year in the General Fund. Expenditure growth is mainly due to increases in the Sheriff's contract, increases the animal control contract, and the impact of general inflation on the cost of doing business.

If no new revenue is generated, the City will see compounding General Fund budget deficits year after year. By the end of five years, the City will have depleted all but approximately 12% of General Fund reserves and the following year would likely run out of money altogether (2023/2024). These projections

Attachment A

assume a continued rate of revenue growth between 1.5-2% and continued expenditure growth between 3-4%. It does not include the potential for unanticipated significant expenditures or an economic depression, possibilities that would further increase expenditures, reduce revenue, and push the City towards bankruptcy.

Staus Quo 5 Year General Fund Projection

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Beginning Fund Balance	4,856,149	5,297,118	5,581,110	5,259,106	4,755,329	3,984,383	3,004,081
Revenue	13,512,841	14,157,713	13,479,536	13,712,868	13,935,916	14,162,919	14,393,950
Expenditures	13,071,872	13,873,721	13,801,540	14,216,646	14,706,861	15,143,221	15,533,945
Annual Bottom Line	440,969	283,992	(322,004)	(503,777)	(770,946)	(980,302)	(1,139,995)
Ending Fund Balance	5,297,118	5,581,110	5,259,106	4,755,329	3,984,383	3,004,081	1,864,085
Reserves as % of GF Exp	41%	40%	38%	33%	27%	20%	12%

Transactions and Use Tax

This item is brought back at the request of the City Council. Approving the recommended action asks the voters to assist the City Council in determining an approach to the City's long-term structural budget issue. Regardless of the results of the voters, the outcome will help the Council determine the will of the People on issues of general service priorities.

The Transaction and Use Tax ("Sales Tax") will not cause a loss of business to neighboring cities in that the neighboring cities of San Diego, La Mesa, El Cajon, National City and Chula Vista all have equal or higher rates of tax as the one proposed by this Ordinance. The rate will be consistent with La Mesa and El Cajon. It will not affect the rates of Sales Tax for non-residents who purchase autos in Lemon Grove or other "big ticket" items.

The Sales Tax measure has several safeguards built in to segregate the proceeds from the Sales Tax from the rest of the General Fund. If adopted, the City Council will be required to engage an independent auditing firm to review the impact of this Ordinance and report back to the Council and the Public. The City Council will be assisted by a Citizen's Oversight Board (Community Advisory Commission) that will review the implementation of this Ordinance and makes its findings public. The Citizens' Oversight Board shall review the implementation of this Ordinance including a Five-Year Plan Identifying Critical General Fund Needs on an annual basis to assist in long-term budget planning.

This Ordinance will require separate accounting of revenues received under this Ordinance. The proceeds from this Ordinance cannot be used to subsidize user fees of non-general fund programs. This Transaction and Use Tax, under this Ordinance can only be increased by a vote of the People. This Ordinance shall have a twenty-year sunset clause that will require this Measure expire at the end of the term unless extended by the vote of the People.

The enactment of a general local transactions and use tax (commonly known as a "sales tax") would allow the City to significantly address the critical public safety staffing needs as the City has had to

Attachment A

reduce law enforcement presence in the City as County law enforcement costs continue to increase faster than the City's revenue increases.

According to the City's sales tax consultants (HdL), the additional of a one-half cent transactions and use tax (TUT) would generate an additional \$1,947,000 a year. If placed on the November 2018 ballot and passed, the tax would be effective beginning April 2019. The addition of \$1.9M in revenue a year would be enough funding to pay for the current level of services, as well as improve the City's future by providing the opportunity to invest in economic development and unfunded priorities for residents and City Council, such as public safety and homelessness.

Financial projections beyond a five year horizon must be taken with a grain of salt as a lot can change over that much time. However, if expenditures stay at 3-4% growth per year and the economy stays strong, this half cent TUT should provide financial stability to the City for at least 10 years.

Additional 1/2 Cent Sales Tax Rev: 5 Year General Fund Projection

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Beginning Fund Balance	4,856,149	5,297,118	5,581,110	5,818,356	7,431,579	8,827,633	10,064,331
Revenue	13,512,841	14,157,713	14,038,786	15,829,868	16,102,916	16,379,919	16,610,950
Expenditures	13,071,872	13,873,721	13,801,540	14,216,646	14,706,861	15,143,221	15,533,945
Annual Bottom Line	440,969	283,992	237,246	1,613,223	1,396,054	1,236,698	1,077,005
Ending Fund Balance	5,297,118	5,581,110	5,818,356	7,431,579	8,827,633	10,064,331	11,141,335
Reserves as % of GF Exp	41%	40%	42%	52%	60%	66%	72%

Business License Tax

The failure to raise General Business License Taxes since they were adopted in 1978 has shifted the costs of city services unfairly towards residential uses. The addition of a cost of living adjustment to General Business Licenses will assist in bringing about long-term equity in the fair distribution of tax burdens. The marijuana business is a highly regulated industry that requires more city resources than general businesses that requires taxation that reflects this burden on the City's General Fund services such as law enforcement.

The numbers in the table below reflect the additional revenue generated if the ordinance amendment to increase business license fees, including a tax of 5% of gross receipts for marijuana product sales, is placed on the ballot and passed by voters in November 2018. This is a rough estimate of an additional \$120,000 a year in business license fees and \$50,000 a year for each marijuana business in the City. The projection anticipates three marijuana businesses by the end of the next five years.

While the additional revenue generated from a business license tax increase will certainly help the City's finances, it does not generate enough additional revenue to cover the known deficits the City is facing over the next five years. At the end five years, the City will have approximately \$1M more left in reserves than the current status quo.

Attachment A

Additional Business License Rev: 5 Year General Fund Projection

	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Beginning Fund Balance	4,856,149	5,297,118	5,581,110	5,331,606	4,997,829	4,446,883	3,736,581
Revenue	13,512,841	14,157,713	13,552,036	13,882,868	14,155,916	14,432,919	14,663,950
Expenditures	13,071,872	13,873,721	13,801,540	14,216,646	14,706,861	15,143,221	15,533,945
Annual Bottom Line	440,969	283,992	(249,504)	(333,777)	(550,946)	(710,302)	(869,995)
Ending Fund Balance	5,297,118	5,581,110	5,331,606	4,997,829	4,446,883	3,736,581	2,866,585
Reserves as % of GF Exp	41%	40%	39%	35%	30%	25%	18%

Environmental Impact:

This Ordinance is not a project as defined under the California Environmental Quality Act. There are no physical changes made to the environment by this Agenda item.

Costs

Approximately \$13,000 in new election costs for printing the two tax measures, ballot arguments, rebuttals and impartial analysis added to the ballot and ballot materials, along with administrative costs

Conclusion:

Staff recommends that the City Council:

- 1) Adopt Resolution (Attachment "B") Amending the Resolution requesting consolidation of the 2018 General Municipal Election with the Statewide General Election, allowing Rebuttal Arguments, and an Impartial Analysis by the City Attorney;
- 2) Introduce, by Title, (Attachment "C") an Ordinance Establishing a .5% Transaction and Use Tax, subject to a vote of the People, with an Oversight Board and Annual Independent Audit for a period of twenty years (Four-Fifths Vote Required); and
- 3) Introduce, by Title, (Attachment "D") an Ordinance Raising Business License Taxes and Establishing a 5% Gross Receipts Tax on Marijuana Businesses (Four-Fifths Vote Required).

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE: (A) AMENDING RESOLUTION NO. 2018-3580 CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018; (B) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY, A MEASURE RELATING TO THE ESTABLISHMENT OF A ONE-HALF CENT GENERAL TRANSACTIONS AND USE TAX; (C) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY, A MEASURE RELATING TO THE AMENDMENT OF BUSINESS LICENSE FEES AND TAXES; (D) AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURES; AND (E) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURES

WHEREAS, in accordance with the provisions of the Lemon Grove Municipal Code and State law, a General Municipal Election was called by the City Council pursuant to Resolution No. 2018-3580 , to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desires to amend that Resolution to add the Sales Tax Measure to the November 6, 2018 ballot; and

WHEREAS, the City has adopted an ordinance adding Chapter 3.18 to the Lemon Grove Municipal Code, entitled "Lemon Grove One-Half Cent Transactions and Use Tax" (the "Sales Tax Ordinance") for general purposes subject to the approval of the majority of voters in the City; and

WHEREAS, Chapter 3.18 of the Lemon Grove Municipal Code establishes a general one-half cent transaction and use tax to be administered by the California Department of Tax and Fee Administration (the "Sales Tax"); and

WHEREAS, the City Council has included in the Sales Tax Ordinance the requirement of a Citizen's Oversight Committee who shall be composed of members of the Lemon Grove Citizen's Advisory Commission to annually monitor the implementation of the Sales Tax Ordinance; and

WHEREAS, the Sales Tax Ordinance, attached hereto and incorporated herein as Exhibit "A", would implement the Sales Tax which, if approved by voters, would take effect no earlier than April 1, 2019; and

WHEREAS, the City of Lemon Grove ("City") may amend its business license fees and taxes (Lemon Grove Municipal Code Section 5.04.200-5.04.420; "Business License Tax Ordinance") for general purposes with the approval of the majority of voters in the City; and

WHEREAS, the City of Lemon Grove ("City") may impose a local transaction and use tax increase for general purposes with the approval of the majority of voters in the City; and

WHEREAS, the City has adopted an ordinance amending the Business License Tax Ordinance for general purposes subject to the approval of the majority of voters in the City; and

WHEREAS, the Business License Tax Ordinance, attached hereto and incorporated herein as Exhibit "B", would implement Business License Tax Ordinance amendments which, if approved by voters, would take effect on January 1, 2019; and

WHEREAS, the City Council finds that the proposed activity is in compliance with the California Environmental Quality Act (CEQA) and it has determined that this activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it is a financing decision without commitment to a specific project which may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA;

WHEREAS, pursuant to Revenue and Taxation Code Section 7285.9 and California Elections Code Section 9222, the City Council desires to submit the Sales Tax Ordinance to the electorate at the General Municipal Election to be held on Tuesday, November 6, 2018; and

WHEREAS, pursuant to California Elections Code Section 9222, the City Council desires to submit the Business License Tax Ordinance to the electorate at the General Municipal Election to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desire to authorize the City Clerk to carry-out all actions necessary to ensure placement of the Sales Tax Ordinance and the Business License Tax Ordinance on the General Municipal Election ballot that has been consolidated with the Statewide General Election Ballot; and

WHEREAS, the City Council also desires to authorize the Mayor and Members of the City Council to submit ballot arguments in favor of the measure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lemon Grove as follows:

SECTION 1. All of the foregoing recitals are true and correct.

SECTION 2. That the City Council pursuant to its right and authority, does hereby order submitted to the voters at the General Municipal Election on November 6, 2018, the following question:

<p>City of Lemon Grove Funding Measure. To maintain public safety including neighborhood law enforcement officers; gang/drug prevention; 911 emergency response; fire protection; graffiti removal; street/pothole repair; senior/youth programs and other general City services; shall voters approve one-half percent (.5%) transaction and use (sales) tax, generating an estimated \$1.9 million annually, for 20 years, with Citizen’s Oversight, annual independent audits and keeping all money in City of Lemon Grove, be adopted?</p>	YES
	NO

This question requires the approval of a simple majority (50% plus 1) of those voting.

SECTION 3. That the City Council pursuant to its right and authority, does hereby order submitted to the voters at the General Municipal Election on November 6, 2018, the following question:

<p>Shall the measure to amend the Business License Tax Ordinance, which has not been increased since 1978, to increase business license fees and establish a cost of living adjustment to have local businesses pay for a share of police, fire and general costs benefitting commercial areas and that marijuana-related businesses pay 5% of their gross receipts to pay for public safety and other general services, generating an estimated \$200,000 annually, be adopted?</p>	YES
	NO

This question requires the approval of a simple majority (50% plus 1) of those voting.

SECTION 4. That the proposed Ordinances to be submitted to the voters is attached as Exhibits "A" and "B" and incorporated into this resolution by this reference.

SECTION 5. That Resolution No. 2018-3580 is hereby amended accordingly and the City Clerk is authorized, instructed, and directed to take all actions necessary to add the Sales Tax and Business License measures to the November 6, 2018 ballot.

SECTION 6. Pursuant to California Elections Code Section 9282, the City Council hereby acknowledges its authority, and the authority of any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, to submit a written argument, not to exceed 300 words, for or against the measure, and authorizes the Mayor to submit arguments in favor of the measures, on behalf of the City Council. Arguments must be submitted to the City Clerk

and may be changed until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted, withdrawn or changed.

SECTION 7. Pursuant Elections Code section 9285, rebuttal arguments will be allowed. The rebuttal arguments may not exceed 250 words. Rebuttal arguments must be submitted to the City Clerk and may be changed until and including the date fixed by the City Clerk, after which no rebuttal arguments for or against the proposed measure may be submitted to the City Clerk. This Section 7 is applicable only to the November 6, 2018 general election called by this resolution and, after that election, shall expire.

SECTION 8. Pursuant to California Elections Code Section 9280, the City Clerk is directed to transmit a copy of the measure to the City Attorney. The City Attorney is directed to prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analyses to the City Clerk by the date fixed by the City Clerk.

SECTION 9. The City Clerk is hereby directed to forthwith file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of San Diego and to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the election.

SECTION 10. The City Clerk shall certify to the passage and adoption of this resolution by a two-thirds vote of all members of the City Council, as required by Revenue & Taxation Code section 7285.9 and Government Code Section 53724, and file it with the City's original resolutions.

PASSED AND ADOPTED by the City Council of the City of Lemon Grove, State of California, on July 17, 2018 by the following vote:

AYES:

NOES:

ABSENT:

Racquel Vasquez, Mayor

Attest: _____

Shelly Chapel, City Clerk

Approved as to form:

James P. Lough, City Attorney

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF LEMON GROVE ADDING CHAPTER 3.18 TO TITLE 3 OF THE LEMON GROVE MUNICIPAL CODE TO ESTABLISH A ONE- HALF CENT GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION INCLUDING PROVISIONS FOR CITIZENS' OVERSIGHT AND ACCOUNTABILITY

WHEREAS, at the July 17, 2018 Lemon Grove City Council meeting, the City Council approved, by a four-fifths vote, an amendment to the Resolution consolidating the Regular Municipal Election with the State General Election on November 6, 2018 to include this Ordinance if approved by the City Council with a four-fifths vote; and

WHEREAS, current revenue sources are growing approximately 1.5%-2% a year, while expenditures are growing about 4% a year. Expenditure growth is mainly due to increases in the Sheriff's contract, increases the animal control contract, and the impact of general inflation on the cost of doing business; and

WHEREAS, if no new revenue is generated, the City will see compounding General Fund budget deficits year after year. By the end of five years, the City will have depleted all but approximately 12% of General Fund reserves and the following year would likely run out of money altogether (2023/2024); and

WHEREAS, City Council has held numerous meetings and study sessions in the last year to consider service and funding issues, including, but not limited to:

- At a Budget Workshop on May 15, 2018 to consider overall budgetary issues including the City's structural budget deficit caused, in large part, by costs increasing faster the current revenue sources
- On November 14, 2017, a City Council Pension Workshop to consider options to fund the increasing budget costs caused by CALPERS failure to meet its investment and funding targets under CALPERS' faulty past long-term assumptions, which will cause the City to substantially increase annual funding of pensions even though the City has the lowest pension benefits among CALPERS cities in the County of San Diego
- On October 18, 2017, the City Council considered these budgetary issues at a community services/recreation workshop where discussion of expanded recreational programs could not ultimately be considered due to structural deficit issues
- On May 23, 2017, at a streets workshop, the City Council considered these budgetary issues when discussion of expanded street maintenance programs could not ultimately be considered due to structural deficit issues
- The City Council held three budget hearings to discuss its funding priorities and its structural deficit before approving this Ordinance for consideration by the

voters The City Council finds that asking the public to determine an approach to the City's long-term structural budget issue will help the Council determine the will of the People on issues of general service priorities

- The City Council finds that this Transaction and Use Tax will not cause a loss of business to neighboring cities in that the neighboring cities of San Diego, La Mesa, El Cajon, National City and Chula Vista all have equal or higher rates of tax as the one proposed by this Ordinance
- If adopted, the City Council will be required to engage an independent auditing firm to review the impact of this Ordinance and report back to the Council and the Public
- If adopted, the City Council will be assisted by a Citizen's Oversight Board that will review the implementation of this Ordinance and makes its findings public
- The Citizens' Oversight Board shall review the implementation of this Ordinance including a Five-Year Plan Identifying Critical General Fund Needs on an annual basis to assist in long-term budget planning
- This Ordinance will require separate accounting of revenues received under this Ordinance
- The proceeds from this Ordinance cannot be used to subsidize user fees of non-general fund programs
- This Transaction and Use Tax, under this Ordinance can only be increased by a vote of the People
- This Ordinance shall have a twenty-year sunset clause that will require this Measure expire at the end of the term unless extended by the vote of the People; and

WHEREAS, the City has determined that the enactment of a general local transactions and use tax (commonly known as a "sales tax") would allow the City to significantly address the critical public safety staffing needs as the City has had to reduce law enforcement presence to minimum staffing in the City as County law enforcement costs continue to increase faster than the City's revenue increases; and

WHEREAS, according to the City's sales tax consultants, the additional of a one-half cent transactions and use tax (TUT) would generate an additional \$1,947,000 a year. If placed on the November 2018 ballot and passed, the tax would be effective beginning April 2019. The addition of \$1.9M in revenue a year would be enough funding to pay for the current level of services, as well as improve the City's future by providing the opportunity to invest in economic development and unfunded priorities for residents and City Council, such as public safety and homelessness; and

WHEREAS, pursuant to Article XIII C of the California Constitution, and California Revenue and Taxation Code Section 7285.9, the City has the authority to enact a local

transaction and use tax (sales tax) for general purposes with the approval of the majority of voters in the City voting in an election on the issue; and

WHEREAS, the City Council directed staff to prepare for submittal to the voters an ordinance enacting a one-half cent sales tax consistent with all applicable general-purpose tax laws, including measures providing for citizens' oversight, separate accounting and independent audits; and

WHEREAS, proposed Chapter 3.18 of the Lemon Grove Municipal Code, set forth below, establishes a transactions and use tax to be administered by the California Department of Tax and Fee Administration consistent with City Council direction and state law; and

NOW, THEREFORE, subject to approval by an affirmative, simple majority vote of the people as required by law, the People of the City of Lemon Grove do ordain as follows:

SECTION 1: The Lemon Grove Municipal Code is hereby revised to add Chapter 3.18 as set forth below, thereby enacting a general local transactions and use tax within the City of Lemon Grove, to be administered by the California Department of Tax and Fee Administration:

CHAPTER 3.18: LEMON GROVE ONE -HALF CENT TRANSACTIONS AND USE TAX

Sections:

3.18.010 Title.

3.18.020 Operative date.

3.18.030 Purpose.

3.18.040 Contract with state.

3.18.050 Transactions tax rate.

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3.18.170 Severability.

3.18.010 TITLE.

This ordinance shall be known as the Lemon Grove One-Half Cent Transaction and Use Tax Ordinance. The City of Lemon Grove hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

3.18.020 OPERATIVE DATE.

"Operative Date" means the first day of the first calendar quarter commencing on or after the adoption of this ordinance, the date of such adoption being as set forth below. The Operative Date shall be no sooner than April 1, 2019.

3.18.030. 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 general 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 vote 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 general 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 general retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the 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 general 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.

3.18.040 CONTRACT WITH STATE.

Prior to the Operative Date, 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 effective date of such a contract.

3.18.050 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 of one percent (0.5%) 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.

3.18.060 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.

3.18.070 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 of one percent (0.5%) 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.

3.18.080 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.

3.18.090 LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as 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 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.

3.18.100 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.

3.18.110 EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under 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 imposed 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 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 Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a City 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 consumptions of which is subject to the use tax.

3.18.120 AMENDMENTS OF REVENUE AND TAXATION CODE.

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.

3.18.130 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.

3.18.140 AMENDMENTS BY CITY COUNCIL.

The following amendments to this Ordinance must be approved by the voters of the City: increasing the tax rate; revising the methodology for calculating the tax, such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of law); or terminating the tax. The City Council may otherwise amend this Ordinance without submitting the amendment to the voters for approval in any manner which does not constitute a tax "increase" as that term is defined in Government Code section 53750(h).

3.18.150 USE OF PROCEEDS.

The proceeds from the tax imposed by this Ordinance shall be for unrestricted general revenue purposes of the City and shall be received into the general fund of the City. Nothing in this Ordinance shall constitute the tax imposed under this Ordinance as a special tax, or bind the City to use the proceeds for any specific purpose or function; the City Council shall retain discretion to expend the proceeds of the tax for any lawful purpose of the City.

3.18.160 CITIZENS' OVERSIGHT AND ACCOUNTABILITY.

In order to provide for citizens' oversight, transparency and accountability in connection with expenditures of tax revenues generated under the terms of this Ordinance, the City shall do the following:

A. Line Item Accounting. All revenue generated by the tax ("Measure 'LG' Revenues") shall be accounted in the General Fund as a separate line item entitled "Local Transactions and Use Tax – Measure 'LG' Revenues." Measure 'LG' Revenues and expenditures will be tracked and accounted for by City Finance Department staff in accordance with Generally Accepted Accounting Principles (GAAP), and presented annually in a report (the "Finance Department Report") to the Citizens' Oversight Committee ("COC") created pursuant to subdivision D., below

B. Annual Submittal of Measure 'LG' Expenditure Plan. If Measure 'LG' is approved by the Voters, beginning in Fiscal Year 2019-20, and for each subsequent year, prior to the City Council consideration of the City's annual budget, City staff will prepare and present to the COC for its review a spending plan for the Measure 'LG' Revenues. Such plan (the "Measure 'LG' Spending Plan") shall be (1) spent on Lemon Grove projects that use general fund monies within the boundaries of the City of Lemon Grove; (2) include specific proposals for near term

expenditures; and (3) a plan for expenditures for the next five-years to address the Critical General Future Fund Needs described therein. After review by the COC, the Measure 'LG' Spending Plan for the upcoming Fiscal Year shall be incorporated into the City Manager's proposed budget, and then presented to the City Council for its consideration and action, in its discretion, as part of the City's annual budget process. The City Council must consider for approval the expenditure of projected Measure 'LG' Revenues as a separate line item category in each year's budget. The COC's duties under this section shall continue until and unless the City Council appoints another commission, committee, or group to be responsible for reporting to the City Council, pursuant to section D., below.

C. Annual, Independent Audit. Beginning with the fiscal year 2018-2019, the City's independent auditors shall, as part of their annual audit of the City's financial statements, review the collection and expenditure of Measure 'LG' Revenues.

D. Measure 'LG' Oversight Committee. Prior to the Operative Date, the City shall create and convene a Citizens' Oversight Committee ("COC"). The City Council shall initially designate the Community Advisory Commission, established under Chapter 2.08 of the Lemon Grove Municipal Code, as the COC with either five or seven members to be determined on a regular basis by the City Council. If the Community Advisory Commission is no longer operational, the City Council shall create and convene a new Citizens' Oversight Committee by Resolution.

E. Citizens' Oversight Committee Operation. The function of the COC shall be to review and report on City compliance with the terms of this Ordinance and each annual 'LG' Measure Spending Plan presented to and approved by the City Council thereafter. The COC shall operate in accordance with the Ralph M. Brown Act, which includes requirements that meetings be noticed in advance and held in public. The COC shall be created by City Council ordinance consistent with the terms of this Section adopted no later than 150 days following the date of the election at which this Ordinance is approved by the voters.

F. No Subsidy of User Fees or Charges. Measure 'LG' Funds shall not be used to subsidize user fees or charges levied for non-General Fund purposes. As many fee based general fund programs contain a partial subsidy by the General Fund, no Measure 'LG' funds may be used to increase the general fund subsidy of any fee or charge for a program that relies on user fees or charges.

3.18.170 SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This People of the City of Lemon Grove hereby declare that they

would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intend that the invalid portions should be severed, and the balance of the Ordinance be enforced.

SECTION 2:

The City Clerk shall be authorized to replace the term "Measure 'LG'" wherever it appears in this Ordinance with the respective ballot designation determined by the County Registrar before this Ordinance is codified.

SECTION 3:

Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

SECTION 4:

This Ordinance authorizes City of Lemon Grove officers and employees to take all steps necessary to implement this Ordinance in the manner required by law, including any applicable amendments to the laws of the State of California.

It is hereby certified that this Ordinance was duly adopted by the voters at the November 6, 2018 election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on [INSERT DATE]: by the following vote (four-fifths required):

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Racquel Vasquez

ATTEST:

CITY CLERK

Approved as to form by:

City Attorney

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF LEMON GROVE TO AMEND LEMON GROVE MUNICIPAL CODE CHAPTER 5.04 (ARTICLE II) OF TITLE 5 (BUSINESS PERMITS IN GENERAL) SECTIONS 5.04.200-5.04.420 TO INCREASE GENERAL BUSINESS LICENSE TAXES (ESTABLISHED IN 1978), INCLUDING THE ADDITION OF AN ANNUAL COST OF LIVING ADJUSTMENT AND TO ESTABLISH A 5% GROSS RECEIPTS TAX ON MARIJUANA PRODUCT SALES

WHEREAS, at the July 17, 2018 Lemon Grove City Council meeting, the City Council approved, by a four-fifths vote, an amendment to the Resolution consolidating the Regular Municipal Election with the State General Election on November 6, 2018 to include this Ordinance if approved by the City Council with a four-fifths vote; and

WHEREAS, City Council has held numerous meetings and study sessions in the last year to consider service and funding issues, including, but not limited to:

- A Budget Workshop on May 15, 2018 to consider overall budgetary issues including the City's structural budget deficit caused, in large part, by costs increasing faster the current revenue sources
- On November 14, 2017, a City Council Pension Workshop to consider options to fund the increasing budget costs caused by CALPERS failure to meet its investment and funding targets under CALPERS' faulty past long-term assumptions, which will cause the City to substantially increase annual funding of pensions even though the City has the lowest pension benefits among CALPERS cities in the County of San Diego
- The City Council held three budget hearings to discuss its funding priorities and its structural deficit before approving this Ordinance for consideration by the voters
- The City Council finds that asking the public to determine an approach to the City's long-term structural budget issue will help the Council determine the will of the People on issues of general service priorities
- The City Council finds that the failure to raise General Business License Taxes since they were adopted in 1978 has shifted the costs of city services unfairly towards residential uses
- The City Council finds that the addition of a cost of living adjustment to General Business Licenses will assist in bringing about long-term equity in the fair distribution of tax burdens
- The City Council finds that the marijuana business is a highly regulated industry that requires more city resources than general businesses that requires taxation that reflects this burden on the City's General Fund services such as law enforcement; and

NOW, THEREFORE, subject to approval by an affirmative, simple majority vote of the people as required by law, the People of the City of Lemon Grove do ordain as follows:

SECTION 1:

The Lemon Grove Municipal Code is hereby revised to amend Article II of Chapter 5.04 (Section 5.04.200-5.04.420) as set forth below, thereby enacting changes to the Business License Taxes, with the stricken language to be removed from the Code and the highlighted language to be added, as follows:

Chapter 5.04: Business Permits in General

Article II. Fees

Sections:

5.04.200 Amounts designated.

5.04.215 Business permit processing fees.

5.04.220 Business permit tax.

5.04.230 Governing conditions.

5.04.240 Inspection of books and records may be required—Failure to comply.

5.04.250 Professional persons.

5.04.260 Real estate broker.

5.04.270 Auction room and auctioneer.

5.04.280 Vehicles.

5.04.290 For-hire vehicles--Business in city.

5.04.300 For-hire vehicles--Business outside city.

5.04.310 Peddler, solicitor and transient merchant.

5.04.320 Trailer parks.

5.04.330 Pool hall.

5.04.340 Bowling alley.

5.04.350 Billboard.

5.04.360 Pawnbroker.

5.04.370 Shooting gallery or arcade.

5.04.380 Circus.

5.04.390 Vending machines.

5.04.400 Music machine.

5.04.410 Amusement machine.

5.04.420 Apartment rental.

5.04.200 Amounts designated.

The amount or rate of permit fees to be paid to the city by any person for transacting, engaging in, conducting or carrying on any business, show, exhibition or game as specified in this chapter shall be as provided in the sections set forth in this article.

5.04.215 Business permit processing fees.

Every person who applies for a business license permit in the City of Lemon Grove shall pay an annual business license processing fee of thirty (\$30.00) dollars.

5.04.220 Business permit tax.

Every person transacting, engaging in, conducting or carrying on any business within the city, and said business has a fixed location in and is upon the tax rolls of the city, shall pay a business permit tax as follows:

A. Base Fee. Except as otherwise provided in this article and specifically enumerated, the tax shall be an amount per year equal to a base fee of twenty-five dollars plus three dollars per person for the average number of persons employed in the scope of the employer's business in the city during the year for which said permit is issued. Beginning in 2020, the amount of the Base Fee of each Business License Tax, excluding those calculated by using gross receipts, shall be adjusted annually using the United States Department of Labor, or future equivalent, Cost of Living Index (San Diego Region).

B. Out-of-Town Business-With Vehicles. Every person not having a fixed place of business within the city of Lemon Grove who delivers goods, wares, or merchandise of any kind by vehicle or who provides any service for the use of vehicles in the city shall pay a permit fee of sixty dollars per vehicle, except wholesale delivery vehicles for which the permit fee shall be thirty dollars per vehicle per year.

C. Out-of-Town Business-Other. Except as provided in subdivision 1 of this subsection, every person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of subsections A and B of this section shall pay a permit fee of sixty dollars plus three dollars per employee per year.

1. Any contractor permitted pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code shall pay a permit fee of forty dollars plus three dollars per employee per year, to and including a maximum of fifty employees.

D. Notwithstanding any other provision to the contrary, a marijuana business, regardless of its corporate or association structure that is engaged in any type of marijuana business authorized by state and local law, shall be subject to the following license permit

taxes:

1. A gross receipts tax of five (5%) percent on all gross receipts of the business establishment doing business in Lemon Grove.
2. Payments under subsection (D)(1), shall be made on a quarterly basis to the finance department of the city of Lemon Grove. The city shall have the right to audit the records of any dispensary in the same manner and under the same procedures found in Lemon Grove Municipal Code Chapter 3.20 (Transient Occupancy Tax).

3. For purposes of this section, the following terms have the following meanings: "Gross receipts" has the meaning as defined under subsection (D)(4), below, as it pertains to the marijuana business' reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

"Marijuana" has the same meaning as "cannabis" as defined in California Business and Professions Code section 19300.5.

"Marijuana business" means a business activity including, but not limited to, transporting, storing, packaging, providing, or selling wholesale and/or retail sales of marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent, or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with California Health and Safety Code section 11362.5 and article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7). A marijuana business includes medical marijuana "cooperatives" and "collectives" that are established as not- for profit businesses and for-profit businesses.

4. "Gross receipts," means the gross receipts of the preceding calendar year or part thereof or such other fiscal year approved by the administrator, and is defined as follows:

The total amount actually received or receivable from all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other emoluments, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;

(e) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;

(f) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the administrator with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee;

(g) Cash value of sales, trades or transactions between departments or units of the same business.

As to any person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the city which does not generate gross receipts as defined herein within the city, gross receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the city for payroll, utilities, depreciation, and/or rent.

As to any person engaged in the business of operating an administrative headquarters at a fixed place of business within the city who does not have gross receipts as defined herein within the city, gross receipts shall be deemed to include the total gross payroll of all persons employed at such administrative headquarters.

5.04.230 Governing conditions.

In each and every instance where a permit fee is required, the following conditions shall govern:

A. All permits shall be payable in advance.

B. If any person commences a new business during the calendar year, his or her permit shall be prorated on a quarterly pro rata basis for the balance of said calendar year.

C. For any business, classified under Section 5.04.240, which is applying for a renewal of permit, said permittee shall when applying pay a permit fee based upon the average number of persons employed during the previous year.

5.04.240 Inspection of books and records may be required—Failure to comply.

A. In each and every instance where the amount of permit fee to be paid by any person is based upon the number of employees or the amount or number of admissions, the permittee therein named shall and will on the request of the city finance manager, designated by the City Manager, then and there submit for inspection to the city finance manager any and all books, papers, accounts, and records including state and federal income tax returns, social security returns and state sales tax returns pertaining to the business. The permit as required in this chapter may be based upon the amounts indicated in said books, papers, accounts and records.

B. In the event a permittee fails to comply with the provisions of this section, such permittee shall then be liable to the penal provisions of this chapter and shall be liable for and shall pay an additional sum in an amount equal to one hundred percent of the correct permit fee, together with the correct amount of said permit fee as based upon the actual number of employees for said business during the calendar year for which said permit was issued.

5.04.250 Professional persons.

A. Every person conducting, managing, carrying on or engaged in any business enumerated as follows shall pay a permit fee of twenty -five dollars per year, plus three dollars for the average number of employees acting within the scope of the employer's business in the city during the calendar year for which said permit is issued:

1. Accountant;
2. Architect;
3. Assayer;
4. Attorney at law;
5. Auditor;
6. Bonds (fidelity, indemnity, faithful performance or bail);
7. Chemist;
8. Chiropodist;
9. Chiropractor;
10. Dentist;
11. Engineer (civil, electrical, chemical or mechanical);
12. Insurance salesman or broker;
13. Optometrist;
14. Oculist;
15. Optician;
16. Osteopath and osteopathist;

17. Physician;

18. Stocks and bonds (federal, state, county or municipal stocks or bonds, or stocks or bonds of incorporated companies or evidences of indebtedness of private persons or of incorporated companies);

19. Surgeon;

20. Veterinarian.

B. Each professional person mentioned above who is required to be permitted as such on his profession shall, each individually, whether or not operating as an individual, partnership or associate, pay said permit fee. (Ord. 25 § 18, 1978)

5.04.260 Real estate broker.

Every person carrying on or engaged in or conducting the business of real estate broker shall pay the sum of forty dollars per year, plus an additional sum of twenty dollars per year for every salesman or broker acting as salesman employed in or acting in any capacity as part of said business.

5.04.270 Auction room and auctioneer.

A. Every person carrying on the business of conducting an auction room or store where auctions are held shall pay a permit fee of five hundred fifty dollars per year. Every person carrying on the business of an auctioneer shall pay a permit fee of one hundred dollars per month or any fraction thereof.

B. The auctioneer permit fee shall not be applicable if the auctioneer is associated with and carrying on his trade in an auction room or store permitted under this section.

5.04.280 Vehicles.

Every person conducting, managing or operating a business in which non-motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of one hundred dollars per year per cart, wagon or vending vehicle, payable quarterly. Every person conducting, managing or operating a business in which motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of five hundred dollars per year per motorized cart, wagon or vending vehicle, payable quarterly.

5.04.290 For-hire vehicles--Business in city.

Every person conducting, managing or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is in the city, shall pay a permit fee of fifty dollars for each such taxi cab or for-hire vehicle.

5.04.300 For-hire vehicles--Business outside city.

Every person conducting, managing, or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is outside the city, shall pay a permit fee of one hundred dollars for each such taxi cab or for-hire vehicle.

5.04.310 Peddler, solicitor and transient merchant.

A. Every peddler, solicitor or transient merchant as defined in this chapter who owns real or personal property located within the city used primarily for the business for which permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, or who is an agent or representative of a person, firm or corporation who owns property located within the city used primarily for the business for which the permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, shall pay a permit fee of ten dollars per year.

B. Every applicant for a permit under this chapter who does not own real or personal property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, or who is an agent or representative of a person, firm or corporation who does not own property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, shall pay a permit fee of fifty dollars per year.

C. Each peddler, solicitor, or transient merchant must secure a personal permit. No permit shall be used at any time by any person other than the one to whom it is issued.

5.04.320 Trailer parks.

Every person conducting, managing or operating any trailer court or mobile home park shall pay a permit fee as follows: forty dollars per year plus three dollars for each trailer space or unit.

5.04.330 Pool hall.

Every person conducting, managing or carrying on the business of a pool hall or billiard hall shall pay a permit fee of five hundred dollars per year, and in addition thereto, shall pay the sum of twenty-five dollars per year for each and every pool table or billiard table.

5.04.340 Bowling alley.

Every person conducting, managing or carrying on the business of a bowling alley shall pay a permit fee of five hundred dollars per year, and in addition thereto, shall pay the sum of twenty dollars per year for each and every alley therein.

5.04.350 Billboard.

Every person conducting, carrying on or operating the business of billposting or sign advertising by means of billboards or advertising signboards, or advertising by means of posting, hanging or otherwise affixing or displaying bills, signs or other advertisements in the city, shall pay a fee of two hundred dollars per year, plus fifty dollars for each additional billboard exceeding two in number, located within the city; provided, that nothing contained in this section shall be deemed or construed to apply to owners of real estate, or other agents in advertising the property for sale or lease by means of billboards or advertising signboards located upon the property advertised for sale or lease by such billboards or advertising signboards.

5.04.360 Pawnbroker.

A. Every person conducting, managing, or carrying on the business of pawnbroker shall pay the sum of two hundred dollars per year. For the purpose of this section the term pawnbroker shall be construed to mean and include every person conducting, managing or carrying on the business of loaning money, either for him or herself or for any other person, upon any personal property or personal security or purchasing personal property and reselling, or agreeing to resell, such articles to the vendor or other assignees at prices previously agreed upon.

B. Nothing contained in this section shall be deemed or construed to apply to the loaning of money on personal property or personal security by any bank authorized to do so under the law of the state.

5.04.370 Shooting gallery or arcade.

A. Every person conducting, managing or carrying on the businesses of shooting galleries or arcades shall pay the sum of one thousand dollars per year.

B. For the purpose of this section, the term "arcade" means one general enclosure in which is conducted the business of operating or exhibiting any phonograph, gramophone, marble and pinball games, talking machine, kinoscope, biograph, projectoscope, or any other instrument or machine of like character, for the use of which a compensation or fee is charged, and exhibiting, showing, or letting the use of any microscope lung tester, muscle tester, galvanic battery, weighing machine, or machine of like character, for a money consideration.

5.04.380 Circus.

A. Every person conducting, managing, carrying on or operating a circus or other similar exhibition shall pay a permit fee of one thousand dollars per day.

B. The permit fee provided in this section shall be in addition to all other permits due and payable to the city.

5.04.390 Vending machines.

Every person owning, operating, managing, or controlling any vending machine, not in conjunction with any business, the property of which is on the tax rolls of the city, and which is coin-operated or slug-operated, shall pay a permit fee of fifty dollars per year, plus five dollars for each machine (machine is defined as a single apparatus receiving a coin and dispensing a product) located in the city.

5.04.400 Music machine.

Every person owning, operating, managing or controlling any music device, operated by coin or slug, shall pay forty dollars per year for each such device.

5.04.410 Amusement machine.

A. Every person owning, operating, managing or controlling any mechanical play or amusement machine which is used, or permitted to be used, by the deposit of a coin in any slot, crevice or other opening, or by the deposit of any plate, disk or slug therein, which said slug, disk or plate may be acquired or purchased from any source whatsoever, shall pay forty dollars per year for each such amusement machine.

B. The city finance manager shall issue a separate receipt for each such amusement machine, which shall be attached and maintained thereon for the full term for which the receipt is issued.

5.04.420 Apartment rental.

Any person conducting the business of apartment rental shall pay a permit fee of three dollars per unit. "Apartment" means any multiple housing rental property containing three or more housing units. The minimum fee under this section is twenty dollars.

SECTION 2:

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. Such invalidity shall not affect other

provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This People of the City of Lemon Grove hereby declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intend that the invalid portions should be severed, and the balance of the Ordinance be enforced.

SECTION 3:

Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

SECTION 4:

This Ordinance authorizes City of Lemon Grove officers and employees to take all steps necessary to implement this Ordinance in the manner required by law, including any applicable amendments to the laws of the State of California.

It is hereby certified that this Ordinance was duly adopted by the voters at the [INSERT DATE] election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on [INSERT DATE]: by the following vote (four-fifths required):

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Racquel Vasquez

ATTEST:

Shelly, Chapel, CITY CLERK

Approved as to form by:

City Attorney

LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY

ATTACHMENT E

Item No. 3
Mtg. Date July 3, 2018
Dept. City Manager

Item Title: Revenue Options Requiring Voter Approval

Staff Contact: Lydia Romero, City Manager and James Lough, City Attorney

Recommendation:

Review and Discuss options for revenue options to place on the November ballot

Item Summary:

During the pre-budget discussions and draft budget discussions staff presented several concepts to raise revenue to diversify our revenue stream for the general fund. The staff report goes into more detail on these options. All the options discussed do require voter approval.

Fiscal Impact:

None.

Environmental Review:

- | | |
|---|---|
| <input type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- | | |
|--|------------------------------------|
| A. Staff Report | E. Staff Report from June 19, 2018 |
| B. Sample Resolution – Business License | F. HDL TUT Estimate |
| C. Sample Resolution - Transaction and Use Tax (Local Sales Tax) | |
| D. Sample Resolution Utility Users Tax | |

LEMON GROVE CITY COUNCIL
STAFF REPORT

Item No. 3

Mtg. Date July 3, 2018

Item Title: **Revenue Options Requiring Voter Approval**

Staff Contact: Lydia Romero, City Manager

Discussion:

During the pre-budget discussions and draft budget discussions staff presented several concepts to raise revenue to diversify our revenue stream for the general fund. Below describes the options in which the City Council requested further information. Attachment E, to this report is the June 19, 2018 staff report that explains each one of the proposed revenue measures in depth. This report will add any additional information that was not included in the previous staff report.

Business License Tax Proposal

The current business license tax has not changed since it was adopted after City incorporation. The basic fee for most businesses is \$15.00 per business with a \$2.00 per employee charge for up to fifty employees. It is recommended that the fee be increased \$45.00 per business with a \$3.00 per employee charge with no per employee limit. All add-on fees will be collapsed into the flat rate. In order to keep up with inflation, it is recommended that the Business License Taxes have a cost of living adjustment built in so that businesses would continue to pay the same proportional amount of the City's tax burden on residents and businesses. Additionally, it is further recommended that the Business License Tax on marijuana businesses be based on the gross receipts of each business, with the recommended amount of 5% gross receipts tax.

Attachment B, is the sample resolution and ordinance for the recommended changes in the business licenses structure.

One half cent Sales Tax increase

In law, this type of local levy is actually called a Transaction and Use Tax (TUT). The difference between a "Transactions and Use Tax" versus "Sales and Use Tax" is a TUT may be approved locally and added to the combined state and local sales and use tax rate. A citizen's oversight committee and annual independent audits would be included to ensure that all the new revenue is used for the intended purpose to stabilize, sustain and strengthen all services funded by the City's General Fund.

In the June 19, 2018 staff report, staff received a more refined estimate from the City's Sales Tax financial consultant, HDL. In attachment, "F" the estimate is \$1.9 million for a ½ cent sales tax and \$3.9 million for a one cent sales tax. Staff is still recommending only the ½ cent sales tax as an option for the November ballot.

Attachment C, is the sample resolution and ordinance for the implantation of a Transaction and Use Tax.

Attachment A

Utility User Tax (UUT)

One hundred fifty-seven (157) cities in California and four (4) Counties impose utility user taxes. UUT's is a tax on the consumption of utility services such as electricity, gas, water, sewer, telephone (including mobile phone and long distance), sanitation and cable television. Staff would recommend a 4 percent UUT on electricity, gas, water, telephone, including cell phones and long distance services and cable television with an exemption for seniors over 62, disabled and blind. The estimated revenue would be approximately \$500,000.

Attachment D, is the sample resolution and ordinance for implementation of a Utility Users tax.

Conclusion:

Staff requests that the City Council discuss the options and direct staff to prepare draft ballot language for consideration at either the July 19th City Council Meeting.

In order to proceed with any of these revenue options, pursuant to Section 7285.9 and other applicable law, the City Council would first enact an ordinance amending the Municipal Code. This adoption would require a 4/5th vote of the City Council.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE: (A) AMENDING RESOLUTION NO. _____ CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018; (B) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY, A MEASURE RELATING TO THE AMENDMENT OF BUSINESS LICENSE FEES AND TAXES; (C) AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURES; AND (D) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURES

WHEREAS, the City of Lemon Grove ("City") may amend its business license fees and taxes (Lemon Grove Municipal Code Section 5.04.200-5.04.420; "Business License Tax Ordinance") for general purposes with the approval of the majority of voters in the City; and

WHEREAS, the City has adopted an ordinance amending the Business License Tax Ordinance for general purposes subject to the approval of the majority of voters in the City; and

WHEREAS, the Business License Tax Ordinance, attached hereto and incorporated herein as Exhibit A, would implement Business License Tax Ordinance amendments which, if approved by voters, would take effect on January 1, 2019; and

WHEREAS, in accordance with the provisions of and State law, a General Municipal Election was called by the City Council pursuant to Resolution No. _____, to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council finds that the proposed activity is in compliance with the California Environmental Quality Act (CEQA) and it has determined that this activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it is a financing decision without commitment to a specific project which may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA;

WHEREAS, pursuant to California Elections Code Section 9222, the City Council desires to submit the Business License Tax Ordinance to the electorate at the General Municipal Election to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desire to authorize the City Clerk to carry-out all actions necessary to ensure placement of the Sales Tax Ordinance and the Business License Tax Ordinance on the General Municipal Election ballot that has been consolidated with the Statewide General Election Ballot; and

WHEREAS, the City Council also desires to authorize the Mayor to submit ballot arguments in favor of the measure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lemon Grove as follows:

SECTION 1. All of the foregoing recitals are true and correct.

SECTION 2. That the City Council pursuant to its right and authority, does hereby order

ATTACHMENT E

submitted to the voters at the General Municipal Election on November 6, 2018, the following question:

Shall the measure to amend the Business License Tax Ordinance that has not been increased since 1978 and related fees established thereafter be amended to have local businesses pay for a share of costs of police and fire service in commercial areas and that marijuana-related businesses pay 5% of their gross receipts to pay for public safety and other general services be adopted?	YES
	NO

This question requires the approval of a simple majority (50% plus 1) of those voting.

SECTION 3. That the proposed Ordinances to be submitted to the voters is attached as Exhibits "A" and incorporated into this resolution by this reference.

SECTION 4. Pursuant to California Elections Code Section 9282, the City Council hereby acknowledges its authority, and the authority of any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, to submit a written argument, not to exceed 300 words, for or against the measure, and authorizes the Mayor to submit arguments in favor of the measures, on behalf of the City Council. Arguments must be submitted to the City Clerk, and may be changed until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted, withdrawn or changed.

SECTION 5. Pursuant Elections Code section 9285, rebuttal arguments will be allowed. The rebuttal arguments may not exceed 250 words. Rebuttal arguments must be submitted to the City Clerk and may be changed until and including the date fixed by the City Clerk, after which no rebuttal arguments for or against the proposed measure may be submitted to the City Clerk. This Section 7 is applicable only to the November 6, 2018 general election called by this resolution and, after that election, shall expire.

SECTION 6. Pursuant to California Elections Code Section 9280, the City Clerk is directed to transmit a copy of the measure to the City Attorney. The City Attorney is directed to prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analyses to the City Clerk by the date fixed by the City Clerk.

SECTION 8. The City Clerk is hereby directed to forthwith file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of San Diego and to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the election.

SECTION 9. The City Clerk shall certify to the passage and adoption of this resolution by a two-thirds vote of all members of the City Council, as required by Revenue & Taxation Code section 7285.9 and Government Code Section 53724, and file it with the City's original resolutions.

Article II. Fees

5.04.200 Amounts designated.

The amount or rate of permit fees to be paid to the city by any person for transacting, engaging in, conducting or carrying on any business, show, exhibition or game as specified in this chapter shall be as provided in the sections set forth in this article. (Ord. 25814, 1978)

The amount of the fee for a business permit shall be as provided in the following table: (Ord. 25814, 1978)

The amount of the business permit-processing fee shall be established by the amount of the fee designated in the following table: (Ord. 25814, 1978)

5.04.220 Business permit tax.

Every person transacting, engaging in, conducting or carrying on any business within the city, and said business has a fixed location in and is upon the tax rolls of the city, shall pay a business permit tax as follows:

- A. Base Fee. Except as otherwise provided in this article and specifically enumerated, the tax shall be an amount per year equal to a base fee of forty-five dollars plus three dollars per person, to and including a maximum of fifty persons, for the average number of persons employed in the scope of the employer's business in the city during the year for which said permit is issued.

B. ~~Out-of-Town Business-With Vehicles.~~ Every person not having a fixed place of business within the city of Lemon Grove who delivers goods, wares, or merchandise of any kind by vehicle or who provides any service for the use of vehicles in the city shall pay a permit fee of ~~sixty~~forty dollars per vehicle, except wholesale delivery vehicles for which the permit fee shall be ~~thirty~~thirteen dollars per vehicle per year.

C. ~~Out-of-Town Business-Other.~~ Except as provided in subdivision 1 of this subsection, every person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of subsections A and B of this section shall pay a permit fee of ~~sixty~~forty dollars plus ~~three~~two dollars per employee per year.

1. Any contractor permitted pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code shall pay a permit fee of ~~forty~~thirty dollars plus ~~two~~three dollars per employee per year, to and including a maximum of fifty employees.

D. Notwithstanding any other provision to the contrary, a medical marijuana business dispensary, as defined in Lemon Grove Municipal Code Section 17-32-050, regardless of its corporate or association structure that is engaged in any type of marijuana business authorized by state and local law, shall be subject to the following license permit ~~taxes, fees, and charges:~~

1. ~~A per-member charge for an annual business license shall be fifteen dollars per year based on the number of members of the dispensary, as determined on a quarterly basis established by the tax collector (director of the department of finance). A gross receipts tax of five (5%) percent on all gross receipts of the business establishment doing business in Lemon Grove.~~

2. Payments under subsection (D)(1), shall be made on a quarterly basis to the finance department of the city of Lemon Grove. The city shall have the right to audit the records of any dispensary in the same manner and under the same procedures found in Lemon Grove Municipal Code Chapter 3.20 (Transient Occupancy Tax). (Ord. 413 § 2, 2016; Ord. 96 § 1, 1983; Ord. 25 § 15, 1978)

3. For purposes of this section, the following terms have the following meanings:

"Gross receipts" has the meaning as defined under subsection (D)(4), below, as it pertains to the marijuana business' reporting period, and includes receipts

from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

"Marijuana" has the same meaning as "cannabis" as defined in California Business and Professions Code section 19300.5.

"Marijuana business" means a business activity including, but not limited to, transporting, storing, packaging, providing, or selling wholesale and/or retail sales of marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent, or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with California Health and Safety Code section 11362.5 and article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7). A marijuana business includes medical marijuana "cooperatives" and "collectives" that are established as not-for-profit businesses and for-profit businesses.

4. "Gross receipts," means the gross receipts of the preceding calendar year or part thereof or such other fiscal year approved by the administrator, and is defined as follows:

The total amount actually received or receivable from all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other emoluments, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;

(c) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;

(d) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the administrator with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee;

(g) Cash value of sales, trades or transactions between departments or units of the same business.

As to any person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the city which does not generate gross receipts as defined herein within the city, gross receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the city for payroll, utilities, depreciation, and/or rent.

As to any person engaged in the business of operating an administrative headquarters at a fixed place of business within the city who does not have gross receipts as defined herein within the city, gross receipts shall be deemed to include the total gross payroll of all persons employed at such administrative headquarters.

5.04.230 Governing conditions.

In each and every instance where a permit fee is required, the following conditions shall govern:

A. All permits shall be payable in advance.

B. If any person commences a new business during the calendar year, his or her permit shall be prorated on a quarterly pro rata basis for the balance of said calendar year.

C. For any business, classified under Section 5.04.240, which is applying for a renewal of permit, said permittee shall when applying pay a permit fee based

upon the average number of persons employed during the previous year. (~~Ord. 25 § 16, 1978~~)

5.04.240 Inspection of books and records may be required—Failure to comply.

A. In each and every instance where the amount of permit fee to be paid by any person is based upon the number of employees or the amount or number of admissions, the permittee therein named shall and will on the request of the city ~~finance manager~~ ~~manager~~, designated by the City Manager, then and there submit for inspection to the city ~~finance manager~~ ~~treasurer~~ any and all books, papers, accounts, and records including state and federal income tax returns, social security returns and state sales tax returns pertaining to the business. The permit as required in this chapter may be based upon the amounts indicated in said books, papers, accounts and records.

B. In the event a permittee fails to comply with the provisions of this section, such permittee shall then be liable to the penal provisions of this chapter and shall be liable for and shall pay an additional

sum in an amount equal to one hundred percent of the correct permit fee, together with the correct amount of said permit fee as based upon the actual number of employees for said business during the calendar year for which said permit was issued. (~~Ord. 25 § 17, 1978~~)

5.04.250 Professional persons.

A. Every person conducting, managing, carrying on or engaged in any business enumerated as follows shall pay a permit fee of ~~fifty~~ ~~twenty-five~~ dollars per year, plus ~~three~~ ~~two~~ dollars for the average number of employees acting within the scope of the employer's business in the city during the calendar year for which said permit is issued:

1. Accountant;
2. Architect;
3. Assayer;

4. Attorney at law;
5. Auditor;
6. Bonds (fidelity, indemnity, faithful performance or bail);
7. Chemist;
8. Chiropodist;
9. Chiropractor;
10. Dentist;
11. Engineer (civil, electrical, chemical or mechanical);
12. Insurance salesman or broker;
13. Optometrist;
14. Oculist;
15. Optician;
16. Osteopath and osteopathist;
17. Physician;
18. Stocks and bonds (federal, state, county or municipal stocks or bonds, or stocks or bonds of incorporated companies or evidences of indebtedness of private persons or of incorporated companies);
19. Surgeon;
20. Veterinarian.

B. Each professional person mentioned above who is required to be permitted as such on his profession shall, each individually, whether or not operating as an individual, partnership or associate, pay said permit fee. (Ord. 25 § 18, 1978)

5.04.260 Real estate broker.

Every person carrying on or engaged in or conducting the business of real estate broker shall pay the sum of ~~fortyfive~~ dollars per year, plus an additional sum of ~~twentyten~~ dollars per year for every salesman or broker acting as salesman employed in or acting in any capacity as part of said business. (~~Ord. 25 § 19, 1978~~)

5.04.270 Auction room and auctioneer.

A. Every person carrying on the business of conducting an auction room or store where auctions are held shall pay a permit fee of ~~fiveone~~ hundred fifty dollars per year. Every person carrying on the business of an auctioneer shall pay a permit fee of ~~one hundredseventy-five~~ dollars per month or any fraction thereof.

B. The auctioneer permit fee shall not be applicable if the auctioneer is associated with and carrying on his trade in an auction room or store permitted under this section. (~~Ord. 25 § 20, 1978~~)

5.04.280 Vehicles.

Every person conducting, managing or operating a business in which non motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of ~~twoone~~ hundred dollars per year per cart, wagon or vending vehicle, payable quarterly. (~~Ord. 25 § 21, 1978~~) Every person conducting, managing or operating a business in which motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of five hundred dollars per year per motorized cart, wagon or vending vehicle, payable quarterly.

5.04.290 For-hire vehicles--Business in city.

Every person conducting, managing or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is in the city, shall pay a permit fee of fifty dollars for each such taxi cab or for-hire vehicle. (~~Ord. 25 § 22, 1978~~)

5.04.300 For-hire vehicles--Business outside city.

Every person conducting, managing, or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is outside the city, shall pay a permit fee of one hundred dollars for each such taxi cab or for-hire vehicle. (Ord. 25 § 23, 1978)

5.04.310 Peddler, solicitor and transient merchant.

A. Every peddler, solicitor or transient merchant as defined in this chapter who owns real or personal property located within the city used primarily for the business for which permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, or who is an agent or representative of a person, firm or corporation who owns property located within the city used primarily for the business for which the permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, shall pay a permit fee of ten dollars per year.

B. Every applicant for a permit under this chapter who does not own real or personal property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, or who is an agent or representative of a person, firm or corporation who does not own property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, shall pay a permit fee of fifty dollars per year.

C. Each peddler, solicitor, or transient merchant must secure a personal permit. No permit shall be used at any time by any person other than the one to whom it is issued. (Ord. 25 § 24, 1978)

5.04.320 Trailer parks.

Every person conducting, managing or operating any trailer court or mobile home park shall pay a permit fee as follows: ~~forty~~ fifteen dollars per year plus ~~three~~ two dollars for each trailer space or unit. (Ord. 25 § 25, 1978)

5.04.330 Pool hall.

Every person conducting, managing or carrying on the business of a pool hall or billiard hall shall pay a permit fee of ~~five hundred fifteen~~ dollars per year, and in addition thereto, shall pay the sum of ~~twenty five ten~~ dollars per year for each and every pool table or billiard table. (~~Ord. 25 § 26, 1978~~)

5.04.340 Bowling alley.

Every person conducting, managing or carrying on the business of a bowling alley shall pay a permit fee of ~~five hundred fifteen~~ dollars per year, and in addition thereto, shall pay the sum of ~~twenty ten~~ dollars per year for each and every alley therein. (~~Ord. 25 § 27, 1978~~)

5.04.350 Billboard.

Every person conducting, carrying on or operating the business of billposting or sign advertising by means of billboards or advertising signboards, or advertising by means of posting, hanging or otherwise affixing or displaying bills, signs or other advertisements in the city, shall pay a fee of ~~two one~~ hundred dollars per year, plus ~~fifty ten~~ dollars for each additional billboard exceeding two in number, located within the city; provided, that nothing contained in this section shall be deemed or construed to apply to owners of real estate, or other agents in advertising the property for sale or lease by means of billboards or advertising signboards located upon the property advertised for sale or lease by such billboards or advertising signboards. (~~Ord. 25 § 28, 1978~~)

5.04.360 Pawnbroker.

A. Every person conducting, managing, or carrying on the business of pawnbroker shall pay the sum of ~~two one~~ hundred dollars per year. For the purpose of this section the term pawnbroker shall be construed to mean and include every person conducting, managing or carrying on the business of loaning money, either for him or herself or for any other person, upon any personal

property or personal security or purchasing personal property and reselling, or agreeing to resell, such articles to the vendor or other assignees at prices previously agreed upon.

B. Nothing contained in this section shall be deemed or construed to apply to the loaning of money on personal property or personal security by any bank authorized to do so under the law of the state. (Ord. 25 § 29, 1978)

5.04.370 Shooting gallery or arcade.

A. Every person conducting, managing or carrying on the businesses of shooting galleries or arcades shall pay the sum of one thousand hundred dollars per year.

B. For the purpose of this section, the term "arcade" means one general enclosure in which is conducted the business of operating or exhibiting any phonograph, gramophone, marble and pinball games, talking machine, kinoscope, biograph, projectoscope, or any other instrument or machine of like character, for the use of which a compensation or fee is charged, and exhibiting, showing, or letting the use of any microscope lung tester, muscle tester, galvanic battery, weighing machine, or machine of like character, for a money consideration. (Ord. 25 § 30, 1978)

5.04.380 Circus.

A. Every person conducting, managing, carrying on or operating a circus or other similar exhibition shall pay a permit fee of one thousand two hundred fifty dollars per day.

B. The permit fee provided in this section shall be in addition to all other permits due and payable to the city. (Ord. 25 § 31, 1978)

5.04.390 Vending machines.

Every person owning, operating, managing, or controlling any vending machine, not in conjunction with any business, the property of which is on the tax

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rolls of the city, and which is coin-operated or slug-operated, shall pay a permit fee of ~~fifty-two~~ ~~five~~ dollars per year, plus ~~two~~ dollars for each machine (machine is defined as a single apparatus receiving a coin and dispensing a product) located in the city. (Ord. 25 § 33, 1978)

5.04.400 Music machine.

Every person owning, operating, managing or controlling any music device, operated by coin or slug, shall pay ~~forty-two~~ ~~five~~ dollars per year for each such device. (~~Ord. 25 § 33, 1978~~)

5.04.410 Amusement machine.

A. Every person owning, operating, managing or controlling any mechanical play or amusement machine which is used, or permitted to be used, by the deposit of a coin in any slot, crevice or other opening, or by the deposit of any plate, disk or slug therein, which said slug, disk or plate may be acquired or purchased from any source whatsoever, shall pay ~~forty-two~~ ~~five~~ dollars per year for each such amusement machine.

B. The city ~~finance manager~~ ~~treasurer~~ shall issue a separate receipt for each such amusement machine, which shall be attached and maintained thereon for the full term for which the receipt is issued. (Ord. 25 § 34, 1978)

5.04.420 Apartment rental.

Any person conducting the business of apartment rental shall pay a permit fee of three dollars per unit. "Apartment" means any multiple housing rental property containing three or more housing units. The minimum fee under this section is ~~twenty~~ ~~ten~~ dollars. (~~Ord. 25 § 35, 1978~~)

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SECTION 3. The proposed extension of transactions and use tax shall remain at the rate of one-half percent (.50%) and shall expire twenty years from September 2018 (the current expiration date), unless the City Council finds the levy and collection of the tax is no longer necessary for the City's fiscal stability and sustainability, in which case the City Council has the authority to reduce the rate of tax, or to terminate the imposition of the tax.

SECTION 4. This ordinance shall take effect immediately as an ordinance relating to an election, pursuant to California Government Code Section 36937 (a).

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE: (A) AMENDING RESOLUTION NO. _____ CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018; (B) ORDERING SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY, A MEASURE RELATING TO THE IMPLEMENTING A UTILITY USERS FEES AND TAXES; (C) AUTHORIZING THE MAYOR TO SUBMIT BALLOT ARGUMENTS IN FAVOR OF THE MEASURES; AND (D) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURES

WHEREAS, the City of Lemon Grove ("City") may impose a utility users tax for general purposes with the approval of the majority of voters in the City; and

WHEREAS, the City has adopted an ordinance adding Chapter 3.28 to the Lemon Grove Municipal Code for general purposes subject to the approval of the majority of voters in the City; and

WHEREAS, Chapter 3.28 of the Lemon Grove Municipal Code establishes a Utility User Tax; and

WHEREAS, the attached hereto and incorporated herein as Exhibit A, would implement Ordinance amendments which, if approved by voters, would take effect on January 1, 2019; and

WHEREAS, in accordance with the provisions of the Lemon Grove Charter and State law, a General Municipal Election was called by the City Council pursuant to Resolution No. _____, to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desires to amend that Resolution to add the Utility Users Tax to the November 6, 2018 ballot; and

WHEREAS, the City Council finds that the proposed activity is in compliance with the California Environmental Quality Act (CEQA) and it has determined that this activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it is a financing decision without commitment to a specific project which may result in a potentially significant physical impact on the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the actions proposed are not subject to CEQA;

WHEREAS, pursuant to California Elections Code Section 9222, the City Council desires to submit the Utility Users Tax Ordinance to the electorate at the General Municipal Election to be held on Tuesday, November 6, 2018; and

WHEREAS, the City Council desire to authorize the City Clerk to carry-out all actions necessary to ensure placement of the Utility Users Tax Ordinance on the General Municipal Election ballot that has been consolidated with the Statewide General Election Ballot; and

WHEREAS, the City Council also desires to authorize the Mayor to submit ballot arguments in favor of the measure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lemon Grove

as follows:

SECTION 1. All of the foregoing recitals are true and correct.

SECTION 2: That the City Council pursuant to its right and authority, does hereby order submitted to the voters at the General Municipal Election on November 6, 2018, the following question:

Lemon Grove City Services Funding Measure. To maintain Lemon Grove's public safety and prevent cuts to neighborhood police patrols and officers; gang/drug prevention; 911 emergency response; fire protection and firefighters; graffiti removal; street/pothole repair; senior/youth programs; and other City services; shall Lemon Grove implement a Utility User Tax?	YES
	NO

This question requires the approval of a simple majority (50% plus 1) of those voting.

SECTION 3. That the proposed Ordinances to be submitted to the voters are attached as Exhibit "A" and incorporated into this resolution by this reference.

SECTION 4. That Resolution No. _____ is hereby amended accordingly and the City Clerk is authorized, instructed, and directed to take all actions necessary to add the Utility Users Tax measure to the November 6, 2018 ballot.

SECTION 5. Pursuant to California Elections Code Section 9282, the City Council hereby acknowledges its authority, and the authority of any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, to submit a written argument, not to exceed 300 words, for or against the measure, and authorizes the Mayor to submit arguments in favor of the measures, on behalf of the City Council. Arguments must be submitted to the City Clerk, and may be changed until and including the date fixed by the City Clerk, after which no arguments for or against the measure may be submitted, withdrawn or changed.

SECTION 6. Pursuant Elections Code section 9285, rebuttal arguments will be allowed. The rebuttal arguments may not exceed 250 words. Rebuttal arguments must be submitted to the City Clerk and may be changed until and including the date fixed by the City Clerk, after which no rebuttal arguments for or against the proposed measure may be submitted to the City Clerk. This Section 7 is applicable only to the November 6, 2018 general election called by this resolution and, after that election, shall expire.

SECTION 7. Pursuant to California Elections Code Section 9280, the City Clerk is directed to transmit a copy of the measure to the City Attorney. The City Attorney is directed to prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit

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such impartial analyses to the City Clerk by the date fixed by the City Clerk.

SECTION 8. The City Clerk is hereby directed to forthwith file a certified copy of this resolution with the Board of Supervisors and the Registrar of Voters of the County of San Diego and to issue instructions to the Registrar of Voters to take any and all steps necessary for the holding of the election.

SECTION 9. The City Clerk shall certify to the passage and adoption of this resolution by a two-thirds vote of all members of the City Council, as required by Revenue & Taxation Code section 7285.9 and Government Code Section 53724, and file it with the City's original resolutions.

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Chapter 3.28. UTILITY USERS TAX

3.28.010. Title.

This chapter shall be known as the “Utility Users Tax Ordinance of the City of Lemon Grove.”

3.28.020. Adoption—Legal authority.

This chapter is adopted pursuant to the powers of the city of Lemon Grove as a charter city as provided in California Government Code Sections 37100.5 and 53723, and as authorized by Section 7.5 of Article XI of the Constitution of the State of California.

3.28.030. Definitions.

Except where the context otherwise requires, the definitions contained in this section shall govern the construction of this chapter. The word “may” is always directory and discretionary and not mandatory; the word “shall” is always mandatory and not directory or discretionary.

(1) “Ancillary telecommunications services” Ancillary telecommunication services shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including, but not limited to, the following services:

(a) “Conference bridging service” shall mean an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(b) “Detailed telecommunications billing service” shall mean an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

(c) “Directory assistance” shall mean an ancillary service of providing telephone number information, and/or address information.

(d) “Vertical service” shall mean an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced

calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(e) "Voice mail service" shall mean an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(2) "Billing address" shall mean the mailing address of the service user where the service provider submits invoices or bills for payment by the service users.

(3) "City" means the city of Lemon Grove, California, including all of the territory and jurisdiction thereof as presently constituted, and any and all of the same which shall later come into existence by any manner or means whatsoever.

(4) "Collector" means the Finance Manager or designee appointed by the City Manager of the city of Lemon Grove.

(5) "Finance Manager" means the person designated by the City Manager of the City of Lemon Grove to supervise city financial matters.

(6) "Large commercial/agricultural ratepayer" shall mean electric customers who have a maximum peak demand equal to or greater than twenty kilowatts.

(7) "Person" means any natural person, firm, all domestic, nonprofit and foreign corporation; firm; association; syndicate; joint venture; joint stock company; club; trust; Massachusetts or common law trust; estate; partnership of any kind; limited liability company; cooperative; society; and any officer, agent, receiver, trustee, guardian or other appointed representative thereof; joint power agency, municipal district or municipal corporation, other than the city.

(8) "Place of primary use" shall mean the street address representative of where the customer's use of the telecommunications or video service primarily occurs, which must be the residential street address or the primary business street address of the customer.

(9) "Post-paid telecommunication service" shall mean the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telecommunication service.

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(10) "Prepaid telecommunication service" shall mean the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and shall include "prepaid mobile telephony services" as defined in Revenue and Taxation Code Section 42004(k).

(11) "Private telecommunication service" shall mean a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the communications).

(28) "Residential/small commercial ratepayer" shall mean electric customers who have a maximum peak demand of less than twenty kilowatts.

(13) Service address shall mean the residential street address or the business street address of the service user. For a telecommunications or video service user, "service address" means either:

(a) The location of the service user's telecommunication or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or

(b) If the location in paragraph a. of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user's place of primary use.

For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the city, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

(14) "Service supplier" means any person including the city, who provides or sells telecommunication, electric, or gas service to a user of such services within the city. The term shall include any person required to collect, or self-collect under

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this chapter, and remit a tax as imposed by this chapter, including its billing agent in the case of electric or gas suppliers.

(15) "Service user" means a person required to pay a tax imposed under the provisions of this chapter.

(16) "Tax administrator" means the Finance Manager or designee of the City of Lemon Grove.

(17) "Telecommunication services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used, and includes broadband service (e.g., digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH) to the extent federal and/or state law permits taxation of such broadband services, now or in the future. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over internet protocol (VoIP) services or is classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data service that is functionally integrated with "telecommunication services." Telecommunications services include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate and international telecommunication services; all forms of VoIP service; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to prerecorded or live service).

(18) "VoIP (Voice Over Internet Protocol)" means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

(19) "800 Service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free

calling, and any subsequent numbers designated by the Federal Communications Commission.

(20) "900 Service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

3.28.040. Exemptions.

(a) The taxes imposed by this chapter shall not apply to:

(1) Any person or service if imposition of such tax upon that person or service would be in violation of a federal or state statute or the Constitution of the state of California, or the Constitution of the United States; or

(2) The city, and the state of California and its subdivisions.

(b) Any service user that is exempt from the tax imposed by this chapter pursuant to subsection (a) of this section shall file an application with the tax administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the tax administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the tax administrator, such service user shall give the tax administrator timely written notice of any change in service suppliers so that the tax administrator can properly notify the new service supplier of the service user's tax-exempt status. A service user that fails to apply and obtain an exemption pursuant to this section shall not be entitled to a refund of a user's tax collected and remitted to the tax administrator from such service user as a result of such noncompliance.

(c) The decision of the tax administrator may be appealed pursuant to Section 3.28.210 (Appeals) of this chapter. Filing an application with the tax administrator

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and appeal to the City Manager, or designee, pursuant to Section 3.28.210 is a prerequisite to a suit thereon.

(d) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this chapter and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

3.28.050. Taxes—Effective date.

The taxes at the rate of two percent imposed by this chapter shall become operative as of July 1, 2019.

3.28.060. Telecommunication users' tax.

(a) There is hereby imposed a tax upon every person in the city using telecommunication services in the city. The tax imposed by this section shall be at the rate of two percent of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent, or as otherwise provided by law. There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the city, are used, in whole or in part, within the city's boundaries, and such services are subject to taxation under this section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are primarily used, in whole or in part, within the city and are therefore subject to taxation under this section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services.

(b) "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 284). The tax administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this section, sourcing rules for the taxation of other telecommunication services, including, but not limited to, post-paid

telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

(c) The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those telecommunication services, or charges for such services, that are subject to taxation under this chapter. These administrative rulings shall implement the intent of the city council that the telecommunications users tax be imposed on any person who initiates or receives telecommunications without regard to the type of technology that exists on the effective date of this section of which may be developed in the future. The administrative rules shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California law.

(d) As used in this section, the term "telecommunication services" shall include, but is not limited to, charges for: connection, reconnection, termination or early termination charges; movement or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including, but not limited to, call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory or administrative fees, charges or surcharges, including charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. "Telecommunication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

(e) To prevent actual multi-jurisdictional taxation of telecommunication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another state or city on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the city under this section.

(f) The tax on telecommunication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the tax administrator and must be received by the tax administrator on or before the twentieth day of the following month.

3.28.070. Electricity users tax—Imposition—Rate.

There is hereby imposed a tax upon every person in the city, other than an electrical corporation or a gas corporation, using electrical energy in the city. The tax imposed by this section and Sections 3.28.080 and 3.28.090 shall be at the rate of two percent of the charges made for such energy, including minimum charges for service but excluding charges for electrical energy supplied to street lights, and shall be paid by the person paying for such energy unless the city council by ordinance increases the rates to offset decreased charges resulting from electrical rate deregulation to no more than the amounts specified below, with an overall rate cap for all ratepayers of three percent.

3.28.080. Electricity users tax—Exclusions.

As used in Sections 3.28.070 and 3.28.090, the words “using electrical energy” do not mean:

(a) The storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; or

(b) The mere receiving of such energy by an electrical corporation or a governmental agency at a point within the city for resale to service users. (Ord. 3102-16 § 1).

3.28.090. Electricity users tax—Collection.

The tax imposed in this section, Sections 3.28.070 and 3.28.080 shall be collected from the service user by the person selling such electrical energy. The

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amount of tax collected in one month shall be remitted to the collector on or before the last day of the following month.

3.28.100. Gas users tax—Imposition—Rate.

There is hereby imposed a tax upon every person in the city, other than a gas corporation or an electric corporation, using gas in the city which is delivered through mains or pipes. The tax imposed by this section and Sections 3.28.110 and 3.28.280 shall be at the rate of two percent of the charges made for such gas, including minimum charges for service but excluding charges for gas service to street lights, and shall be paid by the person paying for such gas.

3.28.110. Gas users tax—Exclusions.

As used in Sections 3.28.100 and 3.28.280, the term “charges” shall not:

- (a) Include charges made for gas used in the generation of electrical energy by a public utility or a governmental agency; or
- (b) Be construed to mean the mere receiving of such gas by a gas corporation or governmental agency at a point within the city for resale to service users.

3.28.280. Gas users tax—Collection.

The tax imposed in this section, Sections 3.28.100 and 3.28.110 shall be collected from the service user by the person selling the gas. The amount collected in one month shall be remitted to the collector on or before the last day of the following month.

3.28.130. Effect of commingling taxable items with nontaxable items.

If any non-taxable service charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier is able to establish reasonable values for the portions of the combined charge that are nontaxable and taxable. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, the service supplier

shall assign reasonable values for the taxable and non-taxable services. In assigning reasonable values for taxable and non-taxable services under this section, the service supplier may use reasonable and verifiable standards such as: (1) the books and records kept in the regular course of business and in accordance with generally accepted accounting principles (not created and maintained for tax purposes); (2) the market value of such taxable and non-taxable services when offered on a stand-alone basis by the supplier or its competitors; or (3) other similar evidence of value. The service supplier has the burden of proving to the satisfaction of the tax administrator the reasonable valuation and proper apportionment of taxable and non-taxable charges under this section.

3.28.140. Substantial nexus/minimum contacts.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this chapter, "substantial nexus," "substantial economic presence," and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the city shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the city for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the city, directly or through an agent, affiliate or subsidiary, a place of business of any nature; solicits business in the city by employees, independent contractors, resellers, agents, affiliates or other representatives; solicits business in the city on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the city or distributed from a location with the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail; or if there are activities performed in the city on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the city for the provision of utility services that are subject to a tax under this chapter (e.g., an affiliated person or independent contractor engaging in activities in the city that inure to the

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benefit of the service supplier in its development or maintenance of a market for its services in the city, including by directly or indirectly referring potential customers, whether by a link on an Internet website or otherwise, to the service supplier).

3.28.150. Collection of tax--Duty--Procedures.

(a) Collection by Service Suppliers. The duty of service suppliers to collect and remit the taxes imposed by the provisions of this chapter shall be performed as follows:

(1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax that was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 3.28.190 (Administrative remedy—Nonpaying service users) shall apply.

(2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

(b) Filing Return and Payment. Each person required by this chapter to remit a tax shall file a return to the tax administrator, on forms approved by the tax administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the tax administrator. The tax administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the tax administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the California Public Records Act.

3.28.160. Collection penalties—Service suppliers or self-collectors.

(a) Taxes collected from a service user are delinquent if not received by the tax administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the tax administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this section shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the city's account on the following business day.

(b) If the person required to collect and/or remit the utility users tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the tax administrator shall attach a penalty for such delinquencies or deficiencies at the rate of up to fifteen percent of the total tax that is delinquent or deficient in the remittance and interest at the rate of up to seventy-five one hundredths percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

(c) The tax administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this chapter for fraud or gross negligence in reporting or remitting at the rate of up to fifteen percent of the amount of the tax collected and/or required to be remitted, or as recomputed by the tax administrator.

(d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

(e) Notwithstanding the foregoing, the tax administrator may, in his or her discretion, modify the due dates and/or penalty and interest provisions of this section to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

3.28.170. Additional powers and duties of the tax administrator.

- (a) The tax administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.
- (b) The tax administrator may adopt administrative rules and regulations consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this chapter, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2). A copy of such administrative rules and regulations shall be on file in the tax administrator's office. To the extent that the tax administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the tax administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750 or otherwise. The tax administrator is not authorized to amend the city's methodology for purposes of Government Code Section 53750 and the city does not waive or abrogate its ability to impose the utility users tax in full as a result of promulgating administrative rulings or entering into agreements.
- (c) Upon a proper showing of good cause, the tax administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the tax administrator's office and are voidable by the tax administrator or the city at any time.
- (d) The tax administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any person required to collect and/or remit a tax pursuant to this chapter. The tax administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period or review shall not exceed a period of three years next preceding the date of receipt of the written notice by said person from the tax administrator. Upon completion of the audit, the tax administrator may make a

deficiency determination pursuant to Section 3.28.180 (Deficiency determination and assessment—Tax application errors) for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the tax administrator. If said person is unable or unwilling to provide sufficient records to enable the tax administrator to verify compliance with this chapter, the tax administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to be a rebuttable presumption of correctness.

(e) Upon receipt of a written request of a taxpayer, and for good cause, the tax administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed forty-five days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of seventy-five one hundredths percent per month, prorated for any portion thereof.

(f) The tax administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.

(g) The tax administrator, with the written approval of the city attorney, may compromise a claim pursuant to this chapter where the portion of the claim proposed to be released is equal to or less than four thousand nine hundred ninety-nine dollars; and, with the approval of the city attorney and the city council, may compromise such a claim where the portion proposed to be released is greater than four thousand nine hundred ninety-nine dollars.

(h) Notwithstanding any provision in this chapter to the contrary, the tax administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the tax administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, or whether the person offers to voluntarily disclose its tax liability. The tax administrator may also participate with other utility users tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage voluntary full disclosure and on-going cooperation on tax collection and remittance, the tax administrator, and its agents, may enter into

Discussion Purposes only

agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the tax administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence, and whether the disclosure was voluntarily made by the service provider or its agent.

3.28.180. Deficiency determination and assessment—Tax application errors.

(a) The tax administrator may make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this chapter has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the tax administrator institute proceedings under this section if, in the opinion of the tax administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) The tax administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of up to seventy-five one hundredths percent per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the city. Within fourteen calendar days after the date of service of such notice, the person may request in writing to the tax administrator for a hearing on the matter.

(c) If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment and shall immediately be due and owing to the city. If the person requests a hearing, the tax administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the tax administrator to such person at least ten calendar days prior to the hearing, and, if the tax administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

Discussion Purposes only

(d) At the time fixed for the hearing, the tax administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the tax administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the tax administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to person owing the tax. The decision of the tax administrator may be appealed pursuant to Section 3.28.210 (Appeals). Filing an application with the tax administrator and appeal to the city manager, or designee, pursuant to Section 3.28.210 (Appeals) is a prerequisite to a suit thereon.

(e) Payment of the final assessment shall become delinquent if not received by the tax administrator on or before the thirtieth day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be up to fifteen percent on the total amount of the assessment, along with interest at the rate of up to seventy-five one hundredths percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the city seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection (e).

(f) All notices under this chapter may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.28.190. Administrative remedy—Non-paying service users.

(a) Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the tax administrator deems it in the best interest of the city, he or she may relieve such person of the obligation to collect the taxes due under this section from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the city with the names and addresses of such service users and the amounts of taxes owed under the provisions of this section.

Discussion Purposes only

Nothing herein shall require that the tax administrator institute proceedings under this section if, in the opinion of the tax administrator, the cost of collection or enforcement likely outweighs the tax benefit.

(b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of up to fifteen percent of the total tax that is owed, and shall pay interest at the rate of up to seventy-five one hundredths percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.

(c) The tax administrator shall notify the nonpaying service user that the tax administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

(d) If the service user fails to remit the tax to the tax administrator within thirty days from the date of the service of the notice upon him or her, the tax administrator may impose an additional penalty of fifteen percent of the amount of the total tax that is owed. (Ord. 3102-16 § 1).

3.28.200. Actions to collect.

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has not been remitted to the tax administrator shall be deemed a debt owed to the city by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the city as a result of the person's noncompliance with this chapter, including, but not limited to, reasonable attorney's fees. In the event that a service user or service supplier owing a tax under this chapter files bankruptcy, then such debt to the city shall be deemed an unsecured priority excise tax obligation under 11 U.S.C.A. Section 507(a)(8)(C). Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes

Discussion Purposes only

due the city for those services, unless the tax administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

3.28.210. Appeals.

(a) The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section 3.28.230 (Refunds/credits)), deficiency determination, assessment, or administrative ruling of the tax administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.28.230), deficiency determination, assessment, or administrative ruling of the tax administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. (See Government Code Section 935(b)). To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

(b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 3.28.230), deficiency determination, assessment, or administrative ruling of the tax administrator; he or she may appeal to the city manager by filing a notice of appeal with the city clerk within fourteen days of the date of the decision, deficiency determination, assessment, or administrative ruling of the tax administrator which aggrieved the service user or service supplier.

(c) The matter shall be scheduled for hearing before an independent hearing officer selected by the city manager, or designee, no more than thirty days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the tax administrator, the city manager, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

(d) Based upon the submission of such evidence and the review of the city's files, the independent hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that

Discussion Purposes only

the decision is final and that any petition for judicial review shall be filed within ninety days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

(e) All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

3.28.220. Records—Retention period—Access.

(a) It shall be the duty of every person required to collect and/or remit to the city any tax imposed by this chapter to keep and preserve, for a period of at least three years, all records as may be necessary to determine the amount of such tax that such person may have been liable for the collection of and remittance to the tax administrator, which records the tax administrator shall have the right to inspect at a reasonable time.

(b) The tax administrator may issue an administrative subpoena to compel a person to deliver, to the tax administrator, copies of all records deemed necessary by the tax administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the tax administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the city on or before the due date, provided that such person shall reimburse the city for all reasonable travel expenses incurred by the city to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the city to conduct the inspection.

(c) The tax administrator is authorized to execute a nondisclosure agreement approved by the city attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The tax administrator may request from a person providing transportation or distribution services of gas or electricity to service users within the city, a list of the names, billing and service addresses, quantities of gas or electricity delivered, and other pertinent information, of its transportation customers within the city pursuant to Section 6354(e) of the California Public Utilities Code.

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(d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: (1) provide to the tax administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the city; and (2) upon request of the tax administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the tax administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the city.

(e) If any person subject to record-keeping under this chapter unreasonably denies the tax administrator, or the tax administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, the tax administrator may impose a penalty of five hundred dollars on such person for each day following: (1) the initial date that the person refuses to provide such access; or (2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.

3.28.230. Refunds/credits.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded or credited as provided in this section:

(a) The tax administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the tax administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this section.

(b) The submission of a written claim, which is acted upon by the city council, shall be a prerequisite to a suit thereon. (See Section 935 of the California

Discussion Purposes only

Government Code). The tax administrator, or the city council where the claim is in excess of four thousand nine hundred ninety-five dollars shall act upon the refund claim within the time period set forth in Government Code Section 928.4. If the city council fails or refuses to act on a refund claim within the time prescribed by Government Section 928.4, the claim shall be deemed to have been rejected by the city council on the last day of the period within which the city council was required to act upon the claim as provided in Government Code Section 928.4. The tax administrator shall give notice of the action in a form that substantially complies with that set forth in Government Code Section 913.

(c) Notwithstanding the notice provisions of subsection (a) of this section, the tax administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this chapter, to claim credit for such overpayment against the amount of tax which is due the city upon a subsequent monthly return(s) to the tax administrator, provided that, prior to taking such credit by the service supplier: (1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; (2) the tax administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and (3) in the case of an overpayment by a service user to the service supplier that has been remitted to the city, the tax administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

3.28.240. No injunction/writ of mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this city or against any officer of the city to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected and/or remitted.

3.28.250. Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including, but not limited to, the California False Claims Act (Government Code Section 28650 et seq.) and the

Discussion Purposes only

California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.28.260. Notice of changes to ordinance.

If a tax under this chapter is added, repealed, increased, reduced, or the tax base is changed, the tax administrator shall follow the notice requirements of Public Utilities Code Section 799.

3.28.270. Future amendment to cited statute.

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time. To the extent that the city's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of an amendment or new enactment of a state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

3.28.280. Annual rate review and independent audit of tax collection, exemption, remittance and expenditure.

The city shall annually verify that the taxes owed under this section have been properly applied, exempted, collected, and remitted in accordance with this section, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

3.28.290. No increase in tax percentage or change in methodology without voter approval—Amendment or repeal.

Discussion Purposes only

This chapter of the Lemon Grove Municipal Code may be repealed or amended by the city council without a vote of the People. However, as required by Chapter XIIIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this chapter; provided, however, the following actions shall not constitute an increase of the rate of a tax:

- (a) The restoration of the rate of the tax to a rate that is no higher than that set by this chapter, if the city council has acted to reduce the rate of the tax;
- (b) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;
- (c) The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); and
- (d) The collection of the tax imposed by this chapter, even if the city had, for some period of time, failed to collect the tax.

ATTACHMENT E

LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY

ATTACHMENT E

Item No. 5
Mtg. Date June 19, 2018
Dept. City Manager

Item Title: Revenue Options Requiring Voter Approval

Staff Contact: Lydia Romero, City Manager

Recommendation:

Review and Discuss options for revenue options to place on the November ballot.

Item Summary:

During the pre-budget discussions and draft budget discussions staff presented several concepts to raise revenue to diversify our revenue stream for the general fund. The staff report goes into more detail on these options. All the options discussed do require voter approval.

Fiscal Impact:

None.

Environmental Review:

- | | |
|---|---|
| <input type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Current Business License
- C. Transaction and Use Tax (Local Sales Tax) White Paper
- D. Utility Users Tax White Paper

ATTACHMENT E Attachment A

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 5

Mtg. Date June 19, 2018

Item Title: Revenue Options Requiring Voter Approval

Staff Contact: Lydia Romero, City Manager

Discussion:

During the pre-budget discussions and draft budget discussions staff presented several concepts to raise revenue to diversify our revenue stream for the general fund. Below describes the options in which the City Council requested further information.

Business License Tax Proposal

The current business license tax has not changed since it was adopted after City incorporation. The basic fee for most businesses is \$15.00 per business with a \$2.00 per employee charge for up to fifty employees. The Lemon Grove Business License Tax, even if related fees are included, is the lowest in East County. It is recommended that the fee be increased \$45.00 per business with a \$3.00 per employee charge with no per employee limit. Individual business license categories (See Attachment B, Chart on Business License Application) would also increase by the same dollar amount; thirty dollars plus one dollar per employee.

In order to keep up with inflation, it is recommended that the Business License Taxes have a cost of living adjustment built in so that businesses would continue to pay the same proportional amount of the City's tax burden on residents and businesses. The cost of living adjustment would be based on the U.S. Department of Labor's cost of living calculations for the San Diego Metropolitan Region annually.

It is further recommended that the Business License Tax on marijuana businesses be based on the gross receipts of each business. This will allow the cost of the extra General Fund services to be borne by the businesses that generate the City workload. Consistent with other cities in the State that have sought this funding approach, it is recommended that a 5% gross receipts tax be placed on all marijuana businesses.

One half cent Sales Tax increase

In law, this type of local levy is actually called a transaction and use tax (TUT). The difference between a "Transactions and Use Tax" versus "Sales and Use Tax" is a transactions and use tax may be approved locally and added to the combined state and local sales and use tax rate. The base statewide sales and use tax is currently at 7.25 percent, which includes portions that go to the state general fund, several specific state funds including some for local allocation and use and to the cities and counties essentially based on the location of the purchase.

Transactions and Use Taxes generally apply to merchandise that is delivered in a jurisdiction which imposes such a tax. In practice the tax application and allocation for most retail sales will not differ from the sales and use tax. But there are some differences. Importantly, in the case of

Attachment A

a sale or lease of a vehicle, vessel, or aircraft, a transactions and use tax is charged and allocated base on the location in which the property will be registered. Currently, there are 176 cities and 32 counties with voter approved transaction and use taxes. A majority of the cities TUT is for general purposes. Attachment C is a white paper on TUT's by the League of California Cities Finance expert.

In Lemon Grove residents are currently paying a ½ percent TUT for transportation purposes, this tax is often referred to as TransNet. The following cities in San Diego County have levied a ½ percent to 1 percent TUT for general purposes – Chula Vista, Del Mar, El Cajon, La Mesa, National City and Vista.

It is estimated that a ½ percent TUT could generate about \$1.2 million. Staff recommends that the City Council place a ½ percent TUT on the November ballot.

Utility User Tax (UUT)

One hundred fifty-seven (157) cities in California and four (4) Counties impose utility user taxes. UUT's is a tax on the consumption of utility services such as electricity, gas, water, sewer, telephone (including mobile phone and long distance), sanitation and cable television. The majority of the UUT's are levied between 2 percent and 6 percent with the revenue going to the levying city's general fund. Attachment D is a white paper on UUT's by the League of California Cities Finance expert.

Utility companies usually collect utility user's taxes from their customers as part of their regular billing procedures and remit the funds collected to the city or county which imposed the tax. Most UUT ordinances provide for an exemption for individuals that are on the lifeline program; seniors, disabled, blind, or individuals below a certain income level.

As the report states, a city of a similar size projected revenue at \$250,000 for a 2 percent UUT. Should the City Council approve this option, staff would recommend a 4 percent UUT on electricity, gas, water, telephone, including cell phones and long distance services and cable television with an exemption for seniors over 62, disabled and blind.

Conclusion:

Staff requests that the City Council discuss the options and direct staff to prepare draft ballot language for consideration at either the July 3rd or the July 19th City Council Meeting. Any ballot measure needs to be to the County Register of Voters by August 10, 2018.

City of Lemon Grove

Estimate for Transactions Tax/District Add-on Sales Tax – 6/19/2018

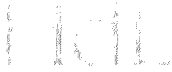
While sales tax is generally allocated to the jurisdiction where the sale is negotiated or the order taken, revenues from an 'add-on' transactions tax are allocated to the place of purchase and/or place of first use. The City of Lemon Grove can expect to receive transactions tax revenue from normal sales tax generating businesses like retail stores and restaurants. Both residents and visitors alike will pay the transactions tax on purchases that they consume or take possession of at the place of business in the City of Lemon Grove. In addition, any purchases shipped or delivered into the City from other places (business, medical and industrial supplies, construction materials, catalog and internet purchases, furniture, appliances, etc.) will generate additional transaction tax revenue.

However, as the transaction tax relates to registered vehicles purchases the tax will only be paid by City of Lemon Grove residents and businesses regardless of where the purchase is made. Therefore, if a Lemon Grove resident purchases a vehicle from an auto dealer inside or outside the City of Lemon Grove, the auto dealer will collect and remit the transaction tax.

Conversely, if a non-Lemon Grove resident purchases a vehicle from an auto within the City of Lemon Grove, the transaction tax will not be applicable. The same concept applies to building and construction outlets. If goods purchased within the City are then shipped to the end user outside the City of Lemon Grove, the retailer will not be applicable. Given Thompson Building Materials, Roof Supply By G&F, Home Depot, and the new auto dealers within the city limits, there is a strong probability that many of the purchases are made by non-Lemon Grove residents. The overall transaction tax estimate for a full 1.0 cent is nearly three-quarters of the annual Bradley-Burns sales tax revenue amount.

As there is no historical database to track purchases in a specific jurisdiction, the following estimate is based on a review of sales/transactions tax ratios in other agencies levying a transactions tax that have similar economic characteristics to the City of Lemon Grove.

	FY 19/20 Estimated 1.0 Cent Transaction Tax	FY 19/20 Estimated 0.5 Cent Transaction Tax
Autos & Transportation	\$880,000	\$440,000
Building & Construction	\$990,000	\$495,000
Business & Industry	\$163,000	\$82,000
Food & Drugs	\$461,000	\$230,000
Fuel & Service Stations	\$413,000	\$207,000
General Consumer Goods	\$612,000	\$306,000
Restaurants & Hotels	\$500,000	\$250,000
2% Deduction for first year start up issues	-\$80,500	-\$40,000
Admin Fees	-\$23,000	-\$23,000
Total	\$3,915,500	\$1,947,000



City of Lemon Grove

Estimate for Transactions Tax/District Add-on Sales Tax – 6/19/2018

A timeline has been provided to better understand the implementation process of a new transaction tax measure by the Board of Equalization (BOE) and the fiscal impacts.

Month tax measure on ballot	November 2018	June 2019
Date approved measure effective	April 1, 2019	October 1, 2019
Month of first advance from BOE	June 2019	December 2019
Fiscal impact for annual budget process	Approx. 1/4 year in FY 18-19, first full year FY 19-20	Approx. 3/4 year in FY 19-20, first full year FY 20-21

ORDINANCE NO.

ORDINANCE OF THE CITY OF LEMON GROVE TO AMEND LEMON GROVE MUNICIPAL CODE CHAPTER 5.04 (ARTICLE II) OF TITLE 5 (BUSINESS PERMITS IN GENERAL) SECTIONS 5.04.200-5.04.420 TO INCREASE GENERAL BUSINESS LICENSE TAXES (ESTABLISHED IN 1978), INCLUDING THE ADDITION OF AN ANNUAL COST OF LIVING ADJUSTMENT AND TO ESTABLISH A 5% GROSS RECEIPTS TAX ON MARIJUANA PRODUCT SALES

WHEREAS, at the July 17, 2018 Lemon Grove City Council meeting, the City Council approved, by a four-fifths vote, an amendment to the Resolution consolidating the Regular Municipal Election with the State General Election on November 6, 2018 to include this Ordinance if approved by the City Council with a four-fifths vote; and

WHEREAS, City Council has held numerous meetings and study sessions in the last year to consider service and funding issues, including, but not limited to:

- A Budget Workshop on May 15, 2018 to consider overall budgetary issues including the City's structural budget deficit caused, in large part, by costs increasing faster the current revenue sources
- On November 14, 2017, a City Council Pension Workshop to consider options to fund the increasing budget costs caused by CALPERS failure to meet its investment and funding targets under CALPERS' faulty past long-term assumptions, which will cause the City to substantially increase annual funding of pensions even though the City has the lowest pension benefits among CALPERS cities in the County of San Diego
- The City Council held three budget hearings to discuss its funding priorities and its structural deficit before approving this Ordinance for consideration by the voters
- The City Council finds that asking the public to determine an approach to the City's long-term structural budget issue will help the Council determine the will of the People on issues of general service priorities
- The City Council finds that the failure to raise General Business License Taxes since they were adopted in 1978 has shifted the costs of city services unfairly towards residential uses

- The City Council finds that the addition of a cost of living adjustment to General Business Licenses will assist in bringing about long-term equity in the fair distribution of tax burdens

- The City Council finds that the marijuana business is a highly regulated industry that requires more city resources than general businesses that requires taxation that reflects this burden on the City's General Fund services such as law enforcement; and

NOW, THEREFORE, subject to approval by an affirmative, simple majority vote of the people as required by law, the People of the City of Lemon Grove do ordain as follows:

SECTION 1:

The Lemon Grove Municipal Code is hereby revised to amend Article II of Chapter 5.04 (Section 5.04.200-5.04.420) as set forth below, thereby enacting changes to the Business License Taxes, with the stricken language to be removed from the Code and the highlighted language to be added, as follows:

Article II. Fees

5.04.200 Amounts designated.

The amount or rate of permit fees to be paid to the city by any person for transacting, engaging in, conducting or carrying on any business, show, exhibition or game as specified in this chapter shall be as provided in the sections set forth in this article. (~~Ord. 25 § 14, 1978~~)

5.04.215 Business permit processing fees.

Every person who applies for a business license permit in the City of Lemon Grove shall pay an annual business license processing fee of thirty (\$30.00) dollars.

(~~Ord. 384 § 1, 2009; Ord. 198, 1991~~)

5.04.220 Business permit tax.

Every person transacting, engaging in, conducting or carrying on any business within the city, and said business has a fixed location in and is upon the tax rolls of the city, shall pay a business permit tax as follows:

A. Base Fee. Except as otherwise provided in this article and specifically enumerated, the tax shall be an amount per year equal to a base fee of ~~forty-five~~ fifteen dollars plus ~~threewe~~ two dollars per person, ~~to and including a maximum of fifty persons,~~ for the average number of persons employed in the scope of the employer's business in the city during the year for which said permit is issued. Beginning in 2020, the amount of the Base Fee of each Business License Tax, excluding those calculated by using gross receipts, shall be adjusted annually using the United States Department of Labor, or future equivalent, Cost of Living Index (San Diego Region).

B. Out-of-Town Business-With Vehicles. Every person not having a fixed place of business within the city of Lemon Grove who delivers goods, wares, or merchandise of any kind by vehicle or who provides any service for the use of vehicles in the city shall pay a permit fee of ~~sixtyforty~~ sixty dollars per vehicle, except wholesale delivery vehicles for which the permit fee shall be ~~thirtyfifteen~~ thirty dollars per vehicle per year.

C. Out-of-Town Business-Other. Except as provided in subdivision 1 of this subsection, every person not having a fixed place of business within the city who engages in business within the city and is not subject to the provisions of subsections A and B of this section shall pay a permit fee of ~~sixtyforty~~ sixty dollars plus ~~threewe~~ two dollars per employee per year.

1. Any contractor permitted pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the California Business and Professions Code shall pay a permit fee of ~~fortyfifteen~~ forty dollars plus ~~twothree~~ two dollars per employee per year, to and including a maximum of fifty employees.

D. Notwithstanding any other provision to the contrary, a ~~medical marijuana business~~ medical marijuana dispensary, as defined in Lemon Grove Municipal Code Section 17.32.050, regardless of its corporate or association structure ~~that is engaged in any type of marijuana business authorized by state and local law,~~ shall be subject to the following license permit ~~taxesfees and charges:~~

1. ~~A per member charge for an annual business license shall be fifteen dollars per year based on the number of members of the dispensary, as determined on a quarterly basis established by the tax collector (director of the department of~~

finance). A gross receipts tax of five (5%) percent on all gross receipts of the business establishment doing business in Lemon Grove.

2. Payments under subsection (D)(1), shall be made on a quarterly basis to the finance department of the city of Lemon Grove. The city shall have the right to audit the records of any dispensary in the same manner and under the same procedures found in Lemon Grove Municipal Code Chapter 3.20 (Transient Occupancy Tax). (~~Ord. 443 § 2, 2016; Ord. 96 § 1, 1983; Ord. 25 § 15, 1978~~)

3. For purposes of this section, the following terms have the following meanings:

“Gross receipts” has the meaning as defined under subsection (D)(4), below, as it pertains to the marijuana business’ reporting period, and includes receipts from the sale of marijuana and from the sale of paraphernalia used for consuming marijuana and any other products, goods, or services sold or provided by the marijuana business.

“Marijuana” has the same meaning as “cannabis” as defined in California Business and Professions Code section 19300.5.

“Marijuana business” means a business activity including, but not limited to, transporting, storing, packaging, providing, or selling wholesale and/or retail sales of marijuana. A marijuana business includes any facility, building, structure or location, whether fixed, mobile, permanent, or temporary, where marijuana is made available, sold, given, distributed, or otherwise provided in accordance with California Health and Safety Code section 11362.5 and article 2.5 of chapter 6 of division 10 of the California Health and Safety Code (commencing with section 11362.7). A marijuana business includes medical marijuana “cooperatives” and “collectives” that are established as not- for profit businesses and for-profit businesses.

4. “Gross receipts,” means the gross receipts of the preceding calendar year or part thereof or such other fiscal year approved by the administrator, and is defined as follows:

The total amount actually received or receivable from all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions,

dividends, or other emoluments, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (a) Cash discounts allowed and taken on sales;
- (b) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";
- (c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (d) Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
- (e) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;
- (f) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the administrator with the names and addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustee;
- (g) Cash value of sales, trades or transactions between departments or units of the same business.

As to any person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the city which does not generate gross receipts as defined herein within the city, gross receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the city for payroll, utilities, depreciation, and/or rent.

As to any person engaged in the business of operating an administrative headquarters at a fixed place of business within the city who does not have gross receipts as defined herein within the city, gross receipts shall be deemed to include the total gross payroll of all persons employed at such administrative headquarters.

5.04.230 Governing conditions.

In each and every instance where a permit fee is required, the following conditions shall govern:

A. All permits shall be payable in advance.

B. If any person commences a new business during the calendar year, his or her permit shall be prorated on a quarterly pro rata basis for the balance of said calendar year.

C. For any business, classified under Section 5.04.240, which is applying for a renewal of permit, said permittee shall when applying pay a permit fee based upon the average number of persons employed during the previous year. (~~Ord. 25 § 16, 1978~~)

5.04.240 Inspection of books and records may be required—Failure to comply.

A. In each and every instance where the amount of permit fee to be paid by any person is based upon the number of employees or the amount or number of admissions, the permittee therein named shall and will on the request of the city ~~finance treasurer~~ manager, designated by the City Manager, then and there submit for inspection to the city ~~finance manager~~ treasurer any and all books, papers, accounts, and records including state and federal income tax returns, social security returns and state sales tax returns pertaining to the business. The permit as required in this chapter may be based upon the amounts indicated in said books, papers, accounts and records.

B. In the event a permittee fails to comply with the provisions of this section, such permittee shall then be liable to the penal provisions of this chapter and shall be liable for and shall pay an additional

sum in an amount equal to one hundred percent of the correct permit fee, together with the correct amount of said permit fee as based upon the actual number of employees for said business during the calendar year for which said permit was issued. (~~Ord. 25 § 17, 1978~~)

5.04.250 Professional persons.

A. Every person conducting, managing, carrying on or engaged in any business enumerated as follows shall pay a permit fee of ~~fifty~~^{twenty-five} dollars per year, plus ~~three~~^{two} dollars for the average number of employees acting within the scope of the employer's business in the city during the calendar year for which said permit is issued:

1. Accountant;
2. Architect;
3. Assayer;
4. Attorney at law;
5. Auditor;
6. Bonds (fidelity, indemnity, faithful performance or bail);
7. Chemist;
8. Chiropodist;
9. Chiropractor;
10. Dentist;
11. Engineer (civil, electrical, chemical or mechanical);
12. Insurance salesman or broker;
13. Optometrist;
14. Oculist;
15. Optician;
16. Osteopath and osteopathist;
17. Physician;

18. Stocks and bonds (federal, state, county or municipal stocks or bonds, or stocks or bonds of incorporated companies or evidences of indebtedness of private persons or of incorporated companies);

19. Surgeon;

20. Veterinarian.

B. Each professional person mentioned above who is required to be permitted as such on his profession shall, each individually, whether or not operating as an individual, partnership or associate, pay said permit fee. (Ord. 25 § 18, 1978)

5.04.260 Real estate broker.

Every person carrying on or engaged in or conducting the business of real estate broker shall pay the sum of ~~forty~~fortyfive dollars per year, plus an additional sum of ~~twenty~~ten dollars per year for every salesman or broker acting as salesman employed in or acting in any capacity as part of said business. (~~Ord. 25 § 19, 1978~~)

5.04.270 Auction room and auctioneer.

A. Every person carrying on the business of conducting an auction room or store where auctions are held shall pay a permit fee of ~~five~~one hundred fifty dollars per year. Every person carrying on the business of an auctioneer shall pay a permit fee of ~~one hundred~~seventy-five dollars per month or any fraction thereof.

B. The auctioneer permit fee shall not be applicable if the auctioneer is associated with and carrying on his trade in an auction room or store permitted under this section. (~~Ord. 25 § 20, 1978~~)

5.04.280 Vehicles.

Every person conducting, managing or operating a business in which non-motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of ~~two~~one hundred dollars per year per cart, wagon or vending vehicle, payable

quarterly. (~~Ord. 25 § 21, 1978~~) Every person conducting, managing or operating a business in which motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of five hundred dollars per year per motorized cart, wagon or vending vehicle, payable quarterly.

5.04.290 For-hire vehicles--Business in city.

Every person conducting, managing or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is in the city, shall pay a permit fee of fifty dollars for each such taxi cab or for-hire vehicle. (~~Ord. 25 § 22, 1978~~)

5.04.300 For-hire vehicles--Business outside city.

Every person conducting, managing, or operating a business in which taxi cabs or for-hire vehicles are used, whose principal place of business is outside the city, shall pay a permit fee of one hundred dollars for each such taxi cab or for-hire vehicle. (~~Ord. 25 § 23, 1978~~)

5.04.310 Peddler, solicitor and transient merchant.

A. Every peddler, solicitor or transient merchant as defined in this chapter who owns real or personal property located within the city used primarily for the business for which permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, or who is an agent or representative of a person, firm or corporation who owns property located within the city used primarily for the business for which the permit application is made and which property is on the tax rolls of the city, or is subject to such taxation, shall pay a permit fee of ten dollars per year.

B. Every applicant for a permit under this chapter who does not own real or personal property located within the city used primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, or who is an agent or representative of a person, firm or corporation who does not own property located within the city used

primarily for the business for which permit application is made and which property is not on the tax rolls of the city, or subject to such taxation, shall pay a permit fee of fifty dollars per year.

C. Each peddler, solicitor, or transient merchant must secure a personal permit. No permit shall be used at any time by any person other than the one to whom it is issued. (~~Ord. 25 § 24, 1978~~)

5.04.320 Trailer parks.

Every person conducting, managing or operating any trailer court or mobile home park shall pay a permit fee as follows: ~~fortyfive~~ fifteen dollars per year plus ~~threewo~~ three dollars for each trailer space or unit. (~~Ord. 25 § 25, 1978~~)

5.04.330 Pool hall.

Every person conducting, managing or carrying on the business of a pool hall or billiard hall shall pay a permit fee of ~~five hundredfifteen~~ fifteen dollars per year, and in addition thereto, shall pay the sum of ~~twenty-five~~ ten dollars per year for each and every pool table or billiard table. (~~Ord. 25 § 26, 1978~~)

5.04.340 Bowling alley.

Every person conducting, managing or carrying on the business of a bowling alley shall pay a permit fee of ~~five hundredfifteen~~ fifteen dollars per year, and in addition thereto, shall pay the sum of ~~twenty~~ ten dollars per year for each and every alley therein. (~~Ord. 25 § 27, 1978~~)

5.04.350 Billboard.

Every person conducting, carrying on or operating the business of billposting or sign advertising by means of billboards or advertising signboards, or advertising by means of posting, hanging or otherwise affixing or displaying bills, signs or other advertisements in the city, shall pay a fee of ~~twoone~~ two hundred dollars

per year, plus ~~fifty~~ten dollars for each additional billboard exceeding two in number, located within the city; provided, that nothing contained in this section shall be deemed or construed to apply to owners of real estate, or other agents in advertising the property for sale or lease by means of billboards or advertising signboards located upon the property advertised for sale or lease by such billboards or advertising signboards. (~~Ord. 25 § 28, 1978~~)

5.04.360 Pawnbroker.

A. Every person conducting, managing, or carrying on the business of pawnbroker shall pay the sum of ~~two~~one hundred dollars per year. For the purpose of this section the term pawnbroker shall be construed to mean and include every person conducting, managing or carrying on the business of loaning money, either for him or herself or for any other person, upon any personal property or personal security or purchasing personal property and reselling, or agreeing to resell, such articles to the vendor or other assignees at prices previously agreed upon.

B. Nothing contained in this section shall be deemed or construed to apply to the loaning of money on personal property or personal security by any bank authorized to do so under the law of the state. (~~Ord. 25 § 29, 1978~~)

5.04.370 Shooting gallery or arcade.

A. Every person conducting, managing or carrying on the businesses of shooting galleries or arcades shall pay the sum of one ~~thousand~~hundred dollars per year.

B. For the purpose of this section, the term "arcade" means one general enclosure in which is conducted the business of operating or exhibiting any phonograph, gramophone, marble and pinball games, talking machine, kinoscope, biograph, projectoscope, or any other instrument or machine of like character, for the use of which a compensation or fee is charged, and exhibiting, showing, or letting the use of any microscope lung tester, muscle tester, galvanic battery, weighing machine, or machine of like character, for a money consideration. (~~Ord. 25 § 30, 1978~~)

5.04.380 Circus.

A. Every person conducting, managing, carrying on or operating a circus or other similar exhibition shall pay a permit fee of one thousand two hundred fifty dollars per day.

B. The permit fee provided in this section shall be in addition to all other permits due and payable to the city. (~~Ord. 25 § 31, 1978~~)

5.04.390 Vending machines.

Every person owning, operating, managing, or controlling any vending machine, not in conjunction with any business, the property of which is on the tax rolls of the city, and which is coin-operated or slug-operated, shall pay a permit fee of fifty dollars per year, plus five dollars for each machine (machine is defined as a single apparatus receiving a coin and dispensing a product) located in the city. (~~Ord. 25 § 32, 1978~~)

5.04.400 Music machine.

Every person owning, operating, managing or controlling any music device, operated by coin or slug, shall pay forty dollars per year for each such device. (~~Ord. 25 § 33, 1978~~)

5.04.410 Amusement machine.

A. Every person owning, operating, managing or controlling any mechanical play or amusement machine which is used, or permitted to be used, by the deposit of a coin in any slot, crevice or other opening, or by the deposit of any plate, disk or slug therein, which said slug, disk or plate may be acquired or purchased from any source whatsoever, shall pay forty dollars per year for each such amusement machine.

B. The city ~~finance manager~~ ~~treasurer~~ shall issue a separate receipt for each such amusement machine, which shall be attached and maintained thereon for the full term for which the receipt is issued. (~~Ord. 25 § 34, 1978~~)

5.04.420 Apartment rental.

Any person conducting the business of apartment rental shall pay a permit fee of three dollars per unit. "Apartment" means any multiple housing rental property containing three or more housing units. The minimum fee under this section is ~~twenty~~ ten dollars. (~~Ord. 25 § 35, 1978~~)

July 16, 2018

MEMO TO: Mayor and City Council Members -City of Lemon Grove

FROM: Mary England – Council Member 2000-2012 – Retired
Leadership of the Lemon Grove Chamber of Commerce from 1994 to
2004 – The 2000-2004 timeframe were as a volunteer fund raiser
Lemon Grove Property Owner
Represent several Lemon Grove businesses 2008 –present
Through their membership in the La Mesa Chamber of Commerce
as their President & CEO

Re: Your Current Tax Increase & Business License Proposal

Mayor and City Council Members:

The need for funds to operate the City of Lemon Grove did not just happen overnight. The dynamics of the retail mix, the statistics of the population, the Lemon Grove economy, the staffing costs to manage the 3.7 square miles of the city with a 4-day work week and other factors have shifted since this city incorporated. The city has continued to struggle to survive.

CASE IN POINT: City Council Meeting - November 17, 2009 - Agenda Item 5. Item Title: Lemon Grove Community Survey. This agenda item discussed the opportunity to negotiate a contract with True North Research to compete a scope of work to facilitate a survey for the city. This survey would determine if the voters would support a tax increase. The cost of \$27,482 was important and provided the leadership team with the information that was needed. The results were negative. The voters surveyed by True North in 2009 stated they would NOT support a tax increase. **Attachment B**, which is the Resolution approving the agreement for professional services states in summary, ***“Whereas on May 5, 2009 the City Council received a long-range budget analysis that anticipated a General Fund budget shortfall of approximately \$2.8 million by 2019, and the Resolution continues.*** I suggest that each of you ask staff to provide you that agenda item to verify the financial challenge that this city identified 9 years ago.

It is obvious the economic engine of the city cannot support the city’s expenses. The loss of revenue through closed businesses that are not being replaced is creating numerous vacant storefronts. The lack of cleanliness and safety in the downtown corridor and the absence of a strong retail component within the city, also fail to make Lemon Grove a destination. With the shortage of significant retail shops to bring consumers to the city, the bottom line is negatively impacted. Items that people need and wear such as: men’s suits, men’s ties, belts, women’s suits, belts, jeans, blouses, sweaters, jeans, men’s shoes, shirts, sports clothing for both men and women, purses, women’s underwear, pajamas, men’s slacks, women’s and men’s robes, men’s underwear, wallets, most leather goods, designer make up, everyday jewelry, designer and high end jewelry, special occasion clothing, pots, pans, dishes, silverware, china, cook books, cooking supplies, knives most small appliances and more are NOT available in Lemon Grove.

Due to the lack of significant retail offerings, the consumer will shop elsewhere. A sales tax increase will not be changing those facts. Also, to then consider a 20-year tax increase is a disservice to the residents you serve. 13.6% of people in Lemon Grove live BELOW the poverty level. These people spend their income/funds on necessities to survive and cannot afford the tax increase. The U.S. Bureau of Labor statistic several years ago, stated that Lemon Grove had the 4th highest unemployment rate in San Diego County.

How does a sales tax increase help with the city's meager retail environment.? I submit to you that the City of Lemon Grove does NOT have the retail mix and retail infrastructure, no matter how you tax it, to support the current expenses. It appears that the economic engine of this city has been "asleep at the wheel" in spite of the obvious telltale financial signs that have been evident for years.

What strategy/plan are you putting in place to address the city's woeful financial situation, other than placing the financial burden on the taxpayer and the business community through a 20-year tax measure? The business mix of the city has only 10.7% retail businesses. How can that small percentage provide the increased sales tax dollars needed? What is the plan to improve the retail base of this city? Why do businesses not move to Lemon Grove? When AAA Imaging opened their business 26 years ago, there were 3 printers in Lemon Grove. Today they are the only printer left standing.

The city does NOT have the financial retail base, places to shop and consumer purchasing base to sustain the ongoing expenses to support the city's expenses. The salaries are the lion's share of the budget with no significant budget modifications. Options to decrease the staffing at city hall could be explored: Remove the position of Assistant City Manager (which was done in the past to reduce budget). With the "combined" salary of \$158,933 plus additional perks it would be prudent to explore the removal of the Assistant City Manager title/position/tasks, which comes with the added salary and pension liability. This strategy worked in the past and had a positive impact the city's "bottom line.". Outsourcing the HR department/tasks, as other small cities do is a viable option. With such a small workforce at city hall 39-40 full-time employees and part-time employees of 26 plus the city council of 5, it seems that the HR position at \$103,856 a year (plus perks) could be handled by outsourcing on a case-by-case basis when needed. Other cities within California outsource this task and it works well and alleviates a pension liability. With the pending retirement of the Community Services employee at a \$108,109 annual salary plus pension, there could be a possibility to outsource some of those tasks, including the planning and execution of the Bon Fire, the Concerts in The Park, and other community events.

There are other options that can be explored to consolidate tasks and reduce salaries. The city is only open 4 days a week and possibly a keen understanding of the needs of each department are now necessary, to make appropriate modifications to the work force and accommodate the work load. I suggest a "time in motion" study by department. There is no cost for this study, as it is done "in house." This study provides an understanding of the needs of staff and departments on a daily/weekly/monthly basis. How many people visit the counter for assistance?

How many calls are received by staff? What days of the week are the busiest? How much time does it take a department to facilitate a task, a permit, code enforcement tasks? How many code enforcement complaints are received? What is the category of the complaints? This type of information is vital when looking at your resources and how to best deploy them. This type of study does not take a great amount of extra time, as tasks/ calls are stroke tallied and provide vital information by department on staffing needs and where tasks may be consolidated or eliminated/modified. This study was done in the past and proved to be enlightening as we made decisions on staffing modifications.

Lemon Grove can't be compared to other small cities within the region – based on population and size. Why? Because many of those small cities have tourism, beaches, hotels, shopping malls, high-end restaurants, night clubs, a high degree of retail options and are a destination. Unfortunately, Lemon Grove is not a destination. So, when reviewing statistics and comparisons as you make financial decisions, taxation decisions, increasing fees, staffing decisions and more, please consider those facts.

Comments/questions on the proposed business license fee Increase.

Lemon Grove has created partnerships with the few large businesses we have within the city. These businesses support community activities/events via sponsorship dollars in various community events: The Bonfire, Concerts in the Park and other activities. It appears that since there are so few of these large businesses within the city, that the proposed increase to \$3.00 per employee, with no employee limit, actually penalizes those large businesses that support the city. It appears to be a double-edged sword. I do not know the amount that the City of Lemon Grove now receives from these large business partners for sponsorships, so it is possible that this proposal will not jeopardize those sponsorship dollars. Regarding the annual projected revenue of \$120,000 for this proposed license fee ballot measure– I am curious - how much of this proposed annual income is derived from the \$3.00 per employee fee, versus the increase per business license fee of \$30.00 per license? How many business licenses are currently in the City of Lemon Grove data base? Of those business licenses, what is the total income of the large businesses that pay per employee (currently the \$2.00 fee per employee up to 50 employees?) What portion of the \$120,000 projected income will the \$3.00 per employee - if approved by the voter bring to the city? Basically, how did staff arrive at the projected \$120,000 increase per year regarding this proposed ballot measure?

Finally, I also suggest that you direct staff to research disincorporation. Information is power. The subject has come up in public meetings, in the press, among your constituents and even from some of you on the dais. Due to the fact of having limited information on this subject, it can't be construed as a negative because all of the facts are not known. It is possible that the citizens of Lemon Grove could be better served by this option. No one knows at this time. Also, based on the current dire financial situation of the city, several options and plans should be researched in preparation for the financial path forward.

THE CITY OF
LEMON GROVE
Lemon Grove
INC. 1977

PUBLIC
AGENCY
RETIREMENT
SERVICES

TRUSTED SOLUTIONS. LASTING RESULTS.

CITY OF LEMON GROVE

PARS Pension Rate Stabilization Program (PRSP)

July 17, 2018

PARS TRUST TEAM



Trust Administrator & Consultant

- Recordkeeping/sub-trust accounting
- Actuarial coordination
- Monitor contributions/process disbursements
- Monitor plan compliance
- Ongoing client liaison

Trustee

- Safeguard plan assets
- Oversight protection
- Plan fiduciary
- Custodian of assets

Investment Manager

- Investment sub-advisor to U.S. Bank
- Open architecture
- Investment strategy and asset allocation development
- Investment policy assistance

34 years (1984 – 2018)

155 years (1863 – 2018)

99 years (1919 – 2018)

Corporate Experience

Plans Under Administration

1,600+ plans, 850+ public agencies, 400,000+ participants

Dollars under Administration

Over \$2.8 billion

Over \$4 trillion

Over \$14 billion under management



PARS CLIENT LIST – SAN DIEGO AREA (800+ PUBLIC AGENCY CLIENTS)

CITIES & TOWNS

City of Chula Vista
City of Coronado
City of Del Mar
City of Escondido
City of Imperial Beach
City of La Mesa
City of National City
City of Oceanside
City of Poway
City of San Marcos
City of Santee
City of Solana Beach

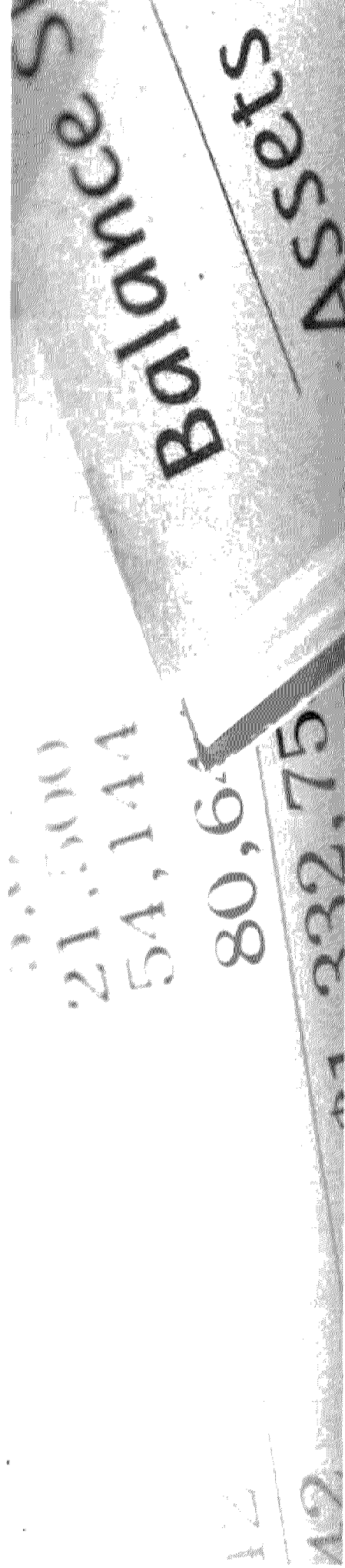
SPECIAL DISTRICTS

Fallbrook Public Utility District
San Diego Association of Governments
San Diego Trolley, Inc.
Sweetwater Authority

EDUCATIONAL DISTRICTS

Chula Vista Elementary School District
Coronado Unified School District
Lakeside Union School District
Lemon Grove School District
Poway Unified School District
Ramona Unified School District
Vista Unified School District

Grossmont-Cuyamaca Comm College Dist
MiraCosta Community College District
San Diego County Office of Education



PENSION FUNDING STATUS

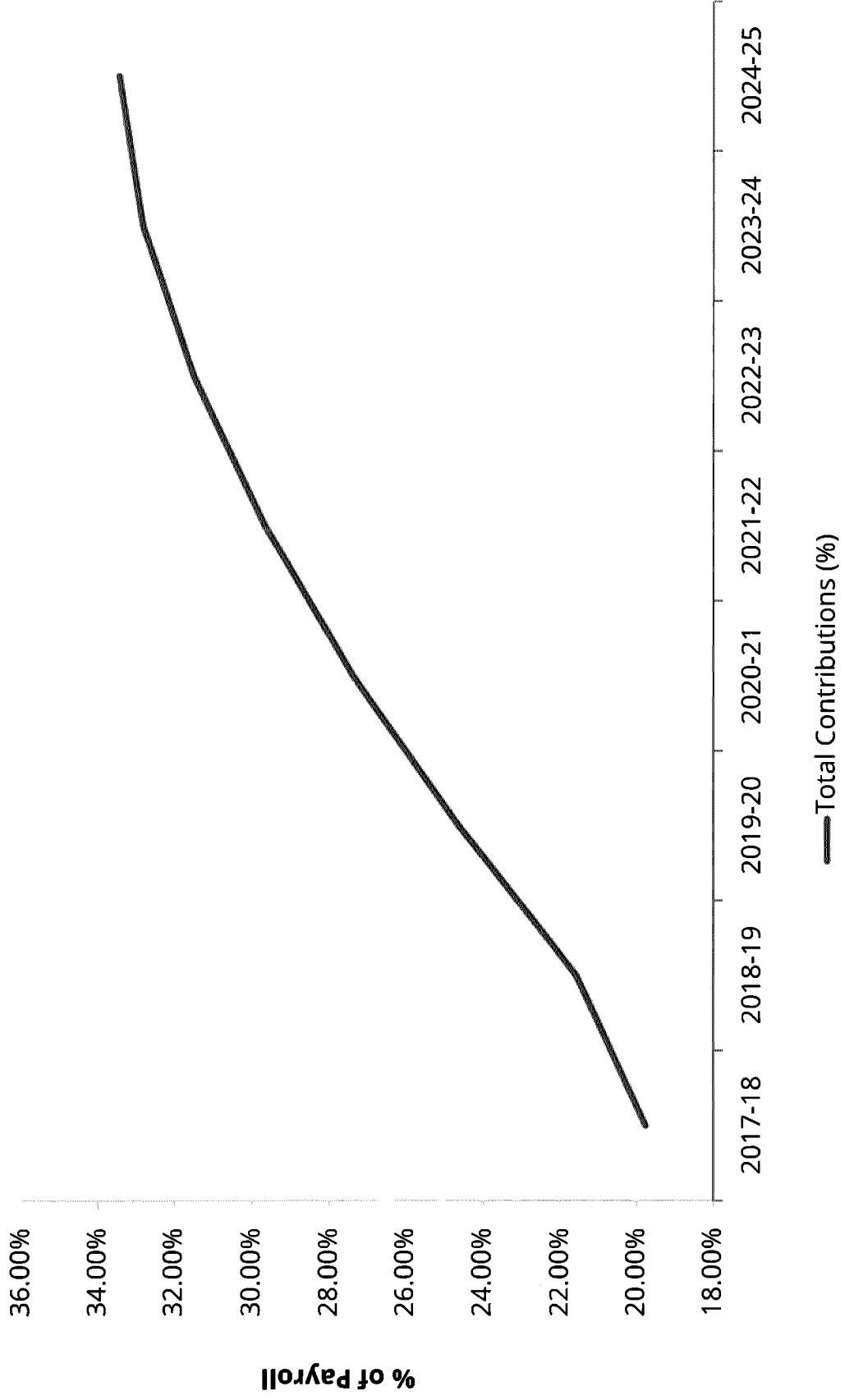
As of June 30, 2016, City of Lemon Grove's CalPERS pension plan is funded as follows*:

Actuarial Liability	\$30.1 M
Assets	\$22.7 M
Unfunded Liability	\$7.4 M
Funded Ratio	75.3%
Employer Contribution Amount (FY 17-18)	\$923,194
Projected Employer Contribution Amount (FY 24-25)	\$1.7 M (86.6% ↑)

* Data from Agency's 2015-16 CalPERS actuarial valuation

PROJECTED EMPLOYER CONTRIBUTIONS (MISC.)

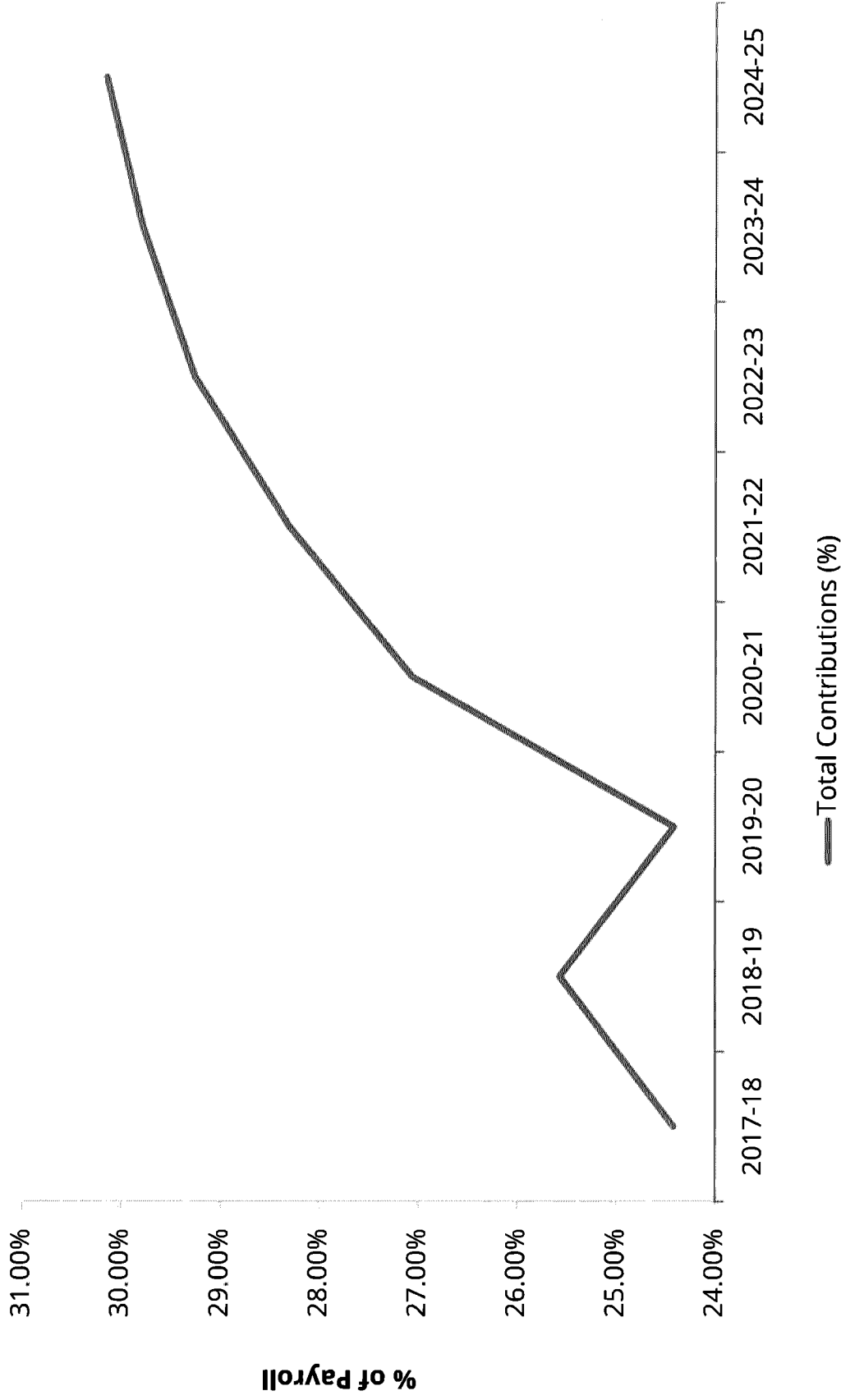
Projected misc. contributions increase from \$0.4M to \$1.0M* (114.4% ↑)



* Data from Agency's 2015-16 CalPERS actuarial valuation

PROJECTED EMPLOYER CONTRIBUTIONS (SAFETY)

Projected safety contributions increase from \$0.5M to \$0.8M* (60.3% ↑)



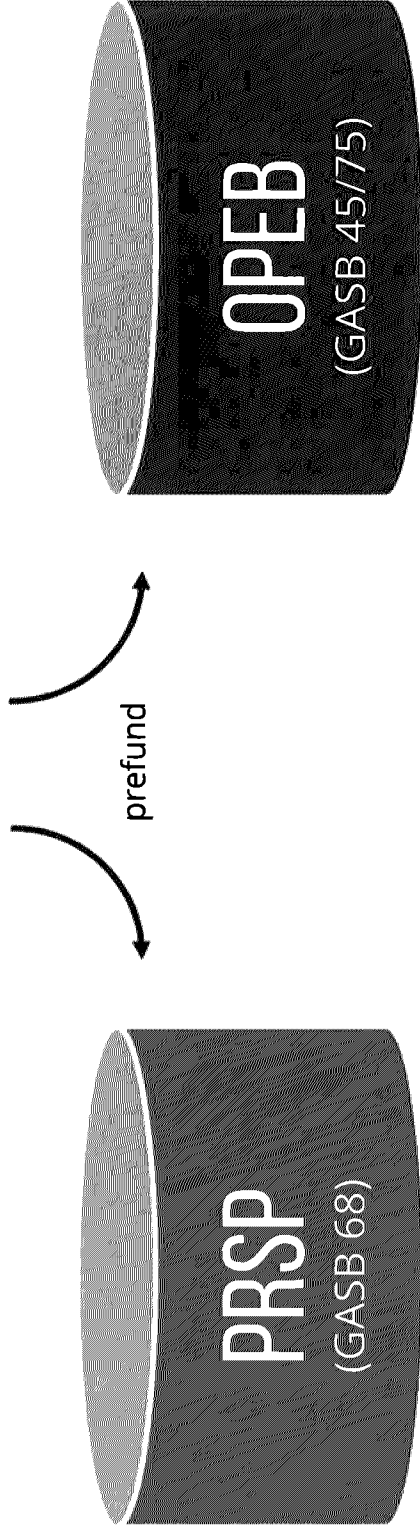
* Data from Agency's 2015-16 CalPERS actuarial valuation

SECTION 115 TRUST BACKGROUND

- Section 115 Trusts are used by local governments to fund essential governmental functions (i.e., pension benefits) into an irrevocable trust
- The PARS Trust received the first IRS Private Letter Ruling (PLR) in June 2015 to fund both OPEB and Pension Liabilities for a multiple-employer trust
- Any income derived from a Section 115 Trust is tax exempt
- Contributions
 - City has full flexibility in regard to its contribution amounts and timing
 - Funds can be transferred into the trust at any time
- Once contributions are placed into The PARS Trust, assets from the Trust can be used for specific benefit plan purposes including:
 - Reimbursing the City for retirement system contributions
 - Transferring assets directly to the retirement system
 - Paying plan expenses (actuarial valuation or audit)

THE PARS SECTION 115 TRUST

THE PARS IRS-APPROVED COMBINATION 115 TRUST



- **Multiple employer trust** structure brings investment and administration economies of scale with no risk sharing
- Pension and OPEB assets are segregated through sub-accounting
- PRSP can also subaccount by CalPERS Plan
- Address liabilities for Pension (GASB 68) and/or OPEB (GASB 45/75)
- Can choose different investment risk tolerance levels for each sub-account
- Lower fees due to aggregation of assets (Pension and OPEB) on tiered fee schedule

INVESTMENT FLEXIBILITY

- City maintains oversight of the investment manager and the portfolio's risk tolerance level
- Investment restrictions that apply to the general fund (CA Government Code 53601) are not applicable to assets held in The PARS Section 115 Irrevocable Trust
- Assets held in the Trust can be diversified unlike assets held within the general fund
- Assets held in The PARS Section 115 Irrevocable Trust can be invested per Government Code Section 53216 and 53620
- Investments can be diversified and invested in a prudent fashion
- Investments can be tailored to the City's unique demographics and needs
- Increased risk diversification
- Investments can be changed at any time

HIGHMARK CAPITAL MANAGEMENT RETURNS

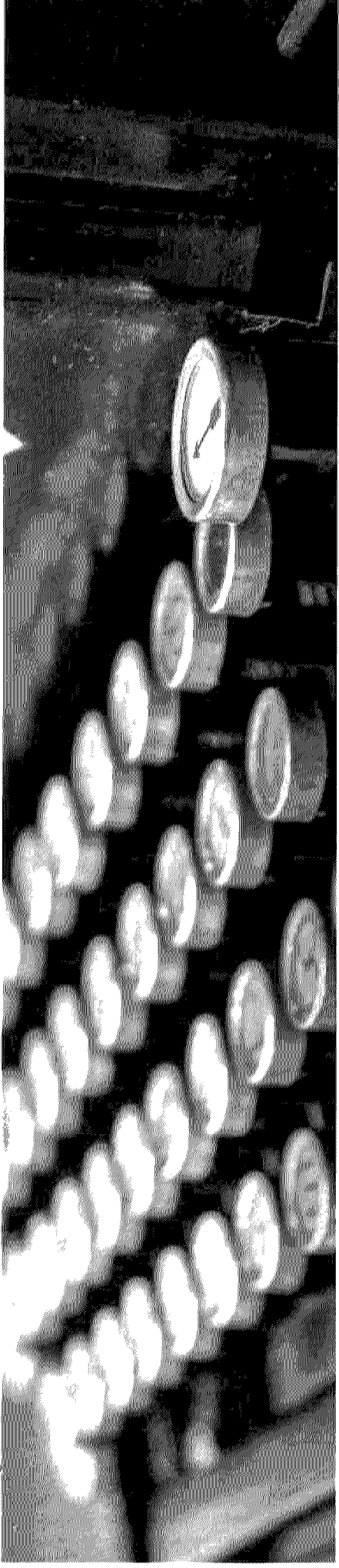
RETURNS AS OF MARCH 31, 2018

	Equity (%)	1 Year	3 Years	5 Years
Capital Appreciation	65-85%	11.28%	7.18%	8.77%
Balanced	50-70%	9.98%	6.11%	7.22%
Moderate	40-60%	8.34%	5.37%	6.28%
Moderately Conservative	20-40%	5.73%	3.83%	4.47%
Conservative	5-20%	3.69%	2.72%	3.17%

* Past performance does not guarantee future results

SAMPLE FUNDING POLICIES

- 1 Contribute 50% of a given year's realized year end surplus to address pension liability
- 2 "One equals five plan" - Contribute \$1 million per year for 5 years based on premise that every contribution will save taxpayers \$5 million over 25 years
- 3 Contribute Employer contribution equal to the 2.8% discount rate (as opposed to the standard 7.5% rate), with difference going into the Section 115 Trust
- 4 Maintains a 15% general fund reserve and is targeting to make contributions over and above that threshold into the Trust
- 5 Earmarked a portion of a recently approved local sales tax measure to be set aside for unfunded pension liabilities
- 6 Using on-going savings from CalPERS unfunded liability pre-payment
- 7 Using unanticipated one-time revenue sources from the sale of land or other projects
- 8 Using one-time revenue source and lowering the minimum General Fund Reserve level from 30% to 20%



Questions?