



City of Lemon Grove
City Council Regular Meeting Agenda

Friday, July 20, 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

1. 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 Manager and Department Director Reports (Non-Action Items)

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 schapel@lemongrove.ca.gov. A full agenda packet is available for public review at City Hall.

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.

Public Written Communication Item #4
Distributed at the City Council Meeting 7/17/2018

From: Jack / Helen Ofield [<mailto:ofieldjackhelen@gmail.com>]
Sent: Tuesday, July 17, 2018 2:40 PM
To: Cassandra Mendenhall <cmendenhall@lemongrove.ca.gov>
Subject: Sales Tax

Dear Cassandra,

Would you please circulate the following message to Mayor Vasquez and Council members, and City Manager Lydia Romero (sorry this comes almost at the 11th hour before tonight's meeting).

Dear Mayor Vasquez, Council Members and Ms. Romero,

A four-fifths vote is a mountain to climb. For that reason, go all the way in 2020 -- we think you should go for the entire penny as a half-cent only means you will be back for the other half sooner than later. We think you should emphasize Sheriff and Fire and the always-looming pension issue rather than feel-good items like Parks & Rec. This is because a lot of angry people will show up tonight and talk about dirty, unpaved, pot-holed streets, current sales tax in the state, Lemon Grove and adjacent communities, and what are they getting for their money.

You need to talk practicalities with citizens, how to make our City more attractive (that means cleanliness, paving, etc.). Talk about disincorporation and what it means, how long it takes to do, and the long term financial prognosis of returning to the county. Talk about what the recession did to push the City five to seven years behind the curve and what you did, and must continue to do, to make up the lost revenues.

We think the 5% tax on marijuana products should be a separate ballot issue. Co-mingling will not help the vote. We think 5% is too low and should be 8% to 10%. Like those who smoke cigarettes and now pay \$2 tax per pack, MJ addicts will pay to get what they want. Your purpose is raise revenues, so don't start low. But, these questions arise with pot shops: They are all cash because of federal regs on banks and pot, so what's the mechanism for knowing how much cash is made each quarter in each shop? Do the shops pay the City in cash? This should be spelled out for the voters.

You have about \$5 mil in reserves and that should get you to 2020. Ask residents to email their cost-cutting suggestions.

Best of luck,

Jack and Helen

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Jack and Helen Ofield
<https://www.newpacificproductions.com>

**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.

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.

5.04.215 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, kinetoscope, 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:

- 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 threetwo~~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.

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

FOR DISCUSSION PURPOSES ONLY

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 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

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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.

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

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 ~~thre~~~~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 ~~sixty~~~~forty~~ dollars per vehicle, except wholesale delivery vehicles for which the permit fee shall be ~~thirty~~~~fifteen~~ 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 ~~thre~~~~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~~~~fifteen~~ 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. 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 ~~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 ~~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~~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 ~~five~~fiveone hundred fifty dollars per year. Every person carrying on the business of an auctioneer shall pay a permit fee of ~~one hundred~~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-~~non-~~motorized~~motorized ice cream carts, wagons or vending vehicles are used, shall pay a permit fee of ~~two~~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~~fortyfive dollars per year plus ~~three~~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 hundred~~five hundred dollars per year, and in addition thereto, shall pay the sum of ~~twenty~~twenty 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~~five hundred dollars per year, and in addition thereto, shall pay the sum of ~~twenty~~twenty 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~~two 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 ~~thousandhundred~~ 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 ~~fiftytwo~~ dollars per year, plus ~~fivetwo~~ 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~~ 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~~ 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~~)



City of Lemon Grove
City Council Regular Meeting Agenda

Friday, July 20, 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

1. 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 Manager and Department Director Reports (Non-Action Items)

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 schapel@lemongrove.ca.gov. A full agenda packet is available for public review at City Hall.

**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.

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.

5.04.215 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:

- 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 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~~)

~~... shall be as provided in the sections set forth in this article. (~~Ord. 25814, 1978~~)~~

~~... shall be as provided in the sections set forth in this article. (~~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 ~~forty~~ ~~fifteen~~ dollars plus three ~~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.

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~~^{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~~^{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~~^{forty} 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

FOR DISCUSSION PURPOSES ONLY

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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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 (.50%) 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>	<p>YES</p> <p>NO</p>
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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.

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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.

(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

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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:

- 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. 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

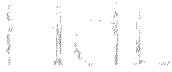
While sales tax is generally allocated to the jurisdiction where the sale is negotiated or the order taken, revenues from an 'add-on' transactions tax are allocated to the place of purchase and/or place of first use. The City of Lemon Grove can expect to receive transactions tax revenue from normal sales 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 ~~sixtyfourty~~ sixtyfourty dollars per vehicle, except wholesale delivery vehicles for which the permit fee shall be ~~thirtyfifteen~~ 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~~ sixtyfourty 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~~ fortyfifteen dollars plus ~~twothree~~ 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~~ 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: ~~forty~~forty-five dollars per year plus ~~three~~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 hundred~~five hundred dollars per year, and in addition thereto, shall pay the sum of ~~twenty-five~~twenty-five 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~~five hundred dollars per year, and in addition thereto, shall pay the sum of ~~twenty~~twenty 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~~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.



NOTICE OF ADJOURNMENT OF A REGULAR CITY COUNCIL MEETING

**City of Lemon Grove
City Council Meeting**

*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*

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

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

Has been adjourned to

**Friday, July 20, 2018
6:00 p.m.**

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

Lydia Romero

From: Racquel Vasquez
Sent: Friday, July 20, 2018 4:02 PM
To: Lydia Romero
Subject: Fwd: Your Current Tax Increase & Business License Proposal

From: Allan <8allanarthur@gmail.com>
Date: July 20, 2018 at 2:36:58 PM PDT
To: <rvasquez@lemongrove.ca.gov>, <jjones@lemongrove.ca.gov>, <jmendoza@lemongrove.ca.gov>, <darambula@lemongrove.ca.gov>, <mmendoza@lemongrove.ca.gov>
Subject: Your Current Tax Increase & Business License Proposal

Dear Mayor, and City Council,

Leadership is hard! isn't it. pull together you will win. a house divided shall fall.

I am a Project Manager, and Realtor®, Native of San Diego County. I have lived in unincorporated Lemon Grove, Spring Valley, and La Mesa, as well as incorporated San Diego, La Mesa, El Cajon. As a project manager, I have completed Tenant Improvement projects, buildings, and remodeling, dealing with the County, and with many of the incorporated Cities, throughout San Diego County so I hope you hear me.

From My perspective, for the sake of your constituency, please do everything you can not to unincorporated. We in Casa De Oro are working on a specific plan within the jurisdiction of the county, we are told it can take up to 5 years to accomplish this. Much of it will need to be approved by people who live outside of our community. We will have to fight for everything you have accomplished as a City, and have no autonomy in enforcement of codes and ordinances' Giving it up will be catastrophic for your constituency and the development of your community.

The problem is way too big and the consequences severe not to ask for additional funds to pursue an answer. A temporary increase to evaluate an answer, for a prosperous Lemon Grove or to unincorporate, there is a price to pay either way. Funding must be found for either route. the right solution is not often easy, but thing that are worthwhile are often not easy.

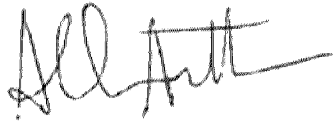
It took the county almost 20 years to complete the current general plan. there was "0" consideration for the future in land use, traffic, and population.

San Diego County is too diverse and large to have a general plan for the entire area... it is not practical and the General Plan is a P.O.S. ... no Vision, this you want no part of.

Don't Give up! Go Back to your why!

Do you have a vision for Lemon Grove Share it , you will find a common thread, combine the thread to make it a cord, then make the hard decision to move forward. or... roll over and die... it is all a choice isn't it!

IHH's !



Allan Arthur
Casa de Oro Alliance
619-820-5131

CASA DE ORO
A L L I A N C E

July 20, 2018

Mayor Vasquez
3232 Main Street
Lemon Grove, CA 91945

Dear Mayor Vasquez and Council Members:

As the Council considers placing a tax on the November ballot I'd like to offer an alternative to bundling a general sales tax, business license tax, and a marijuana tax of 5% based on gross receipts. The marijuana industry is still a cash-based industry. Records are not necessarily accurately maintained to reflect the true gross receipts of marijuana sold. The State of California has fallen far short of projected tax revenue resulting from Adult Use of Marijuana Act (Prop 64). In addition, a provision of that measure eliminated the state sales tax on medical marijuana, leaving cities at the mercy of voters to tax the product.

The city spent considerable time and resources to implement the poorly drafted citizens' measure (Prop V) and have invested significant law enforcement resources to address illegal marijuana retail operations.

If the city is going to consider a gross receipts tax rate on marijuana products, please increase from 5% to at least 10% of gross receipts of marijuana product sales. Alternatively, consider a flat tax fee structure (minimum \$15/square foot) that would result in a consistent (and known) revenue stream from one year to the next. Additionally, a combination tax structure could include both a base-rate calculated on the square footage of the facility (<\$15) with a lower gross receipts rate (2-3%).

We recognize the hefty burden that marijuana commercialization has on a community, and we support the city's consideration of a tax on this industry. The marijuana industry sold a package of lies to the voters of Lemon Grove and must now pay the cost for the impact it imposes.

Respectfully,



Dana Stevens
Executive Director

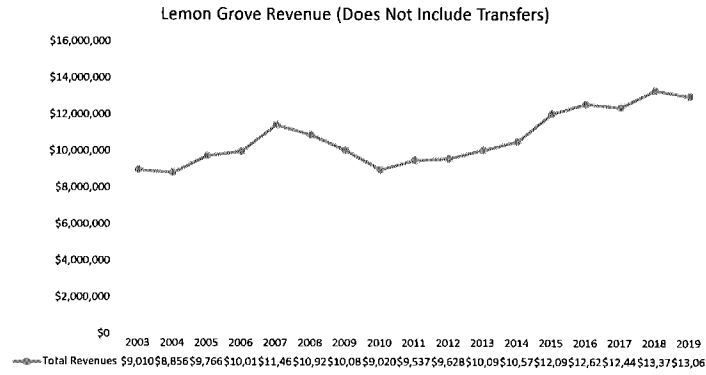
Lydia Romero

From: Bob Hodges <mnhodges@cox.net>
Sent: Friday, July 20, 2018 11:57 AM
To: Lydia Romero
Subject: Tax

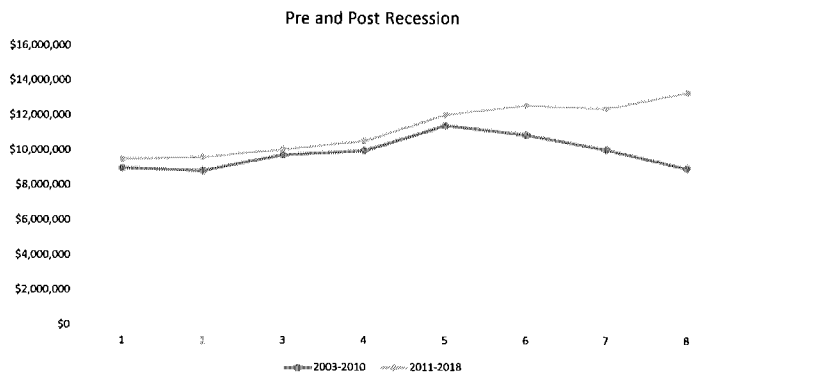
As a resident of Lemon Grove since 1970 I strongly appose the Tax measure to be voted on at the next council meeting . Robert Hodges

provided by
Council member Jones
(Mayor pro-tem)

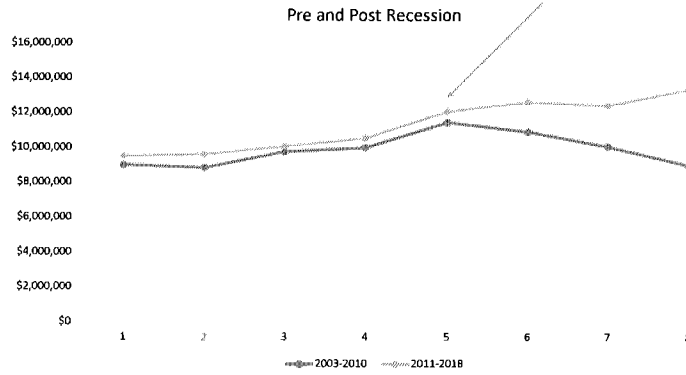
Lemon Grove Revenue 2003-2019



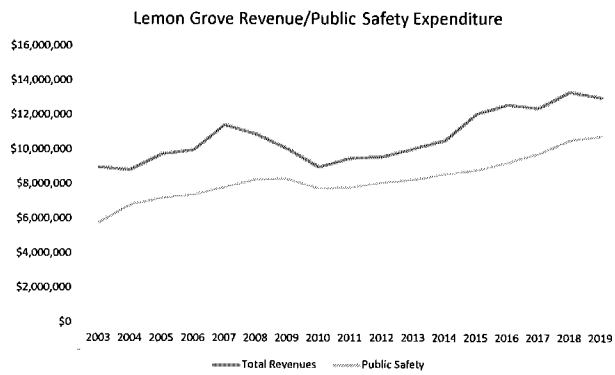
Revenues step back in time seven years while expenses continue to climb.



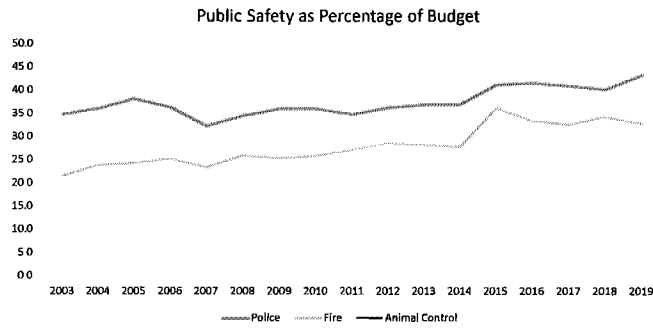
Revenues after recovery took until 2015 to match 2007 revenues.



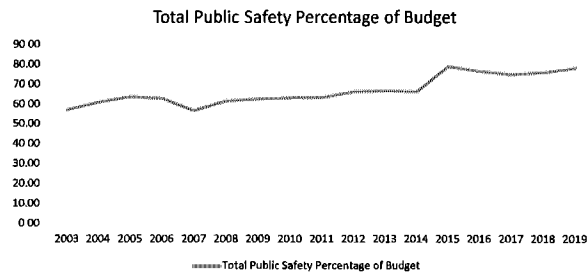
Public Safety (Sheriff, Fire and Animal Control) make up the bulk of city expenditures



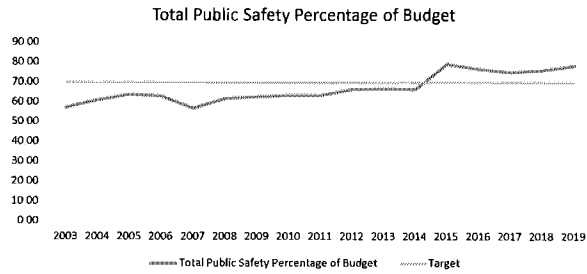
Public Safety expenditures have historically climbed faster than revenues



Public Safety has climbed as a percentage of budget from 57.5% in 2003 to 78.5% in 2019

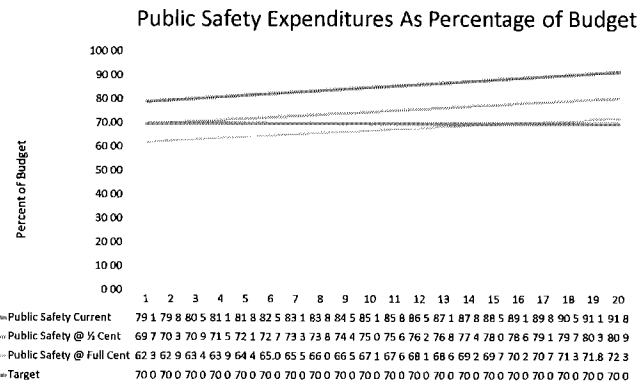


Public Safety as a percentage of budget with 70% target



- What is a sustainable percentage of budget for Public Safety?
- Can we control public safety expenditures?
- Have we asked the proper questions and tried to control these expenditures?
- If we can't control Public Safety expenditures then what are our options?

If it takes a sales tax to sustain Public Safety and City services then ½ cent is not enough.



My Conclusions

- Due to the Great Recession our revenues are seven years behind our expenses.
- Public Safety expenditures drive our budget, more so today than ever before.
- Public Safety expenditures have historically increased at a higher rate than revenues.
- Due to pension increases beyond our control that trend will only get worse.
- Any tax proposal must address the structural sustainability issue.
- We cannot continue as a city on our current path. When the only services we provide are fire and police we are no longer a city.
- Voters have hard choices to make in the near future.

Questions

- Have we discussed all of the options available to us?
- Does the public have confidence in this council to spend a general tax? How would we know without a survey?
- Will any of the tax options before us make the budget sustainable?
- If a sales tax is answer, is ½ cent enough to make the budget sustainable?
- Have we done the work necessary to pass a sales tax?
- What happens if we got to ballot in 2018 and the measure fails?
- Do we have time and resources to properly prepare for a 2020 tax election?

Next Steps

- Stop all increases in spending and review the budget for all possible savings.
- With 5.2 million in reserves there is no need to rush a sales tax to ballot. By resolution and council policy, emergency reserves are defined as 25% of budget or around 3.4 million. Staff report estimates that at current rate we can subsidize the budget through 2021 without dropping below that emergency level.
- Separate out the Marijuana Tax as the low hanging fruit for a 2018 ballot measure at a maximum rate of 10% with provisions for Council to set a lower rate depending on the market.
- Direct staff to return with impacts and options for bankruptcy and disincorporation. The public has a right to know what that looks like.
- Use Reserve money for a survey and requisite staff time to review and plan for a tax measure in 2020.
- Based on the survey, develop a spending plan so the public knows what they are paying for when they go the ballot box
- Conduct outreach to the business community in conjunction with development of the spending plan.
- Conduct outreach to the public with as far a reach as possible in conjunction with development of the spending plan.
- Mayor and Council work with the community to form an independent coalition to support and pass a full cent tax measure.
- Plan for ballot measure in 2020 if surveys show public support.

Jerry Jones 11