

Ordinance No. 1672(19)

**An Ordinance of the City Council of the City of Lompoc,
County of Santa Barbara, State of California,
Adding Chapter 3.52 to the Lompoc Municipal Code
Imposing a Temporary Transactions and Use Tax to be
Administered by the California Department of Tax and
Fee Administration, Subject to Approval of a Majority of the Electors
Voting on the Tax Measure at the Special Municipal Election to be
Held on Tuesday, March 3, 2020**

WHEREAS, Lompoc residents strongly prioritize maintaining and protecting essential services that enhance public safety, maintain property values, prevent violent crimes and gangs, assist at-risk youth, support fire protection services, prevent graffiti and vandalism, improve 9-1-1 medical response times, address homelessness, and provide additional police officers and neighborhood patrols; and

WHEREAS, the City of Lompoc (City) has also heard a great deal from the community about their desire for improved streets, pothole repair, and the betterment of parks, library and recreational services. City streets in particular have suffered as a result of substantially increasing costs and unfunded liabilities imposed upon the City in recent years. City streets are underfunded and they are continuing to deteriorate; and

WHEREAS, in recent years, significant increases in staffing costs, programmatic costs, and unfunded liabilities have severely impacted the City's general fund budget. The most recent biennial budget projected deficit was calculated to be \$3.6 million after all expenditures and revenue estimates were analyzed. The contractual obligations for unfunded accrued liabilities (UAL) pursuant to the California Public Employees Retirement System (CalPERS) have particularly placed severe pressure on the City's general fund budget and, as a State-mandate, are not within the City's control. Lompoc's UAL just for CalPERS obligations is currently \$93 million—a 163% increase (from \$35M) over last 7 years. Further, total annual CalPERS payments are projected to grow from \$9M (2020) to \$13M by 2025; and

WHEREAS, the structural deficit in the City's general fund has resulted in the reduction of vital City services and programs that are a priority for Lompoc's citizens, such as the elimination and suspension of positions and programs in police, fire services, code enforcement, parks, recreation and general City staffing levels. The City's structural budget deficit has thus already impacted essential City services, and such vital City services—like police, fire and street maintenance—will only continue to be reduced or eliminated if the City is unable to secure a new, fiscally-sustainable revenue stream; and

WHEREAS, the City has exhausted efforts to balance its general fund by reducing expenditures without a tax measure, but such efforts are unable to resolve the fiscal crisis given current market conditions, the extreme deficits and rising costs relating to UAL, growing capital improvement program needs and other fiscal conditions outside the City's control. Despite the City's sound management and disciplined control of its financial

health, the City's ability to sustain local services and maintain streets, roads and other vital infrastructure has been seriously eroded. On September 17, 2019, the City Council unanimously declared a Fiscal Emergency with regard to the City's structural budget deficit; and

WHEREAS, in order to preserve vital City services the City must identify a reliable source of locally-controlled funding. To this end, the City Council proposed this Ordinance to the electorate for a one cent per dollar (1%) transactions and use tax to preserve City services; and

WHEREAS, Article XIII C, Section 2 of the California Constitution authorizes a city to impose a general tax if approved by a majority vote of the qualified electors; and

WHEREAS, Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code, and Section 7285.9 of the California Revenue and Taxation Code, authorizes a city to adopt a transactions and use (sales) tax ordinance, which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose; and

WHEREAS, if approved by the voters, this Ordinance would provide the City with locally-controlled funding for City services, including, without limitation, street maintenance, maintaining 9-1-1 emergency response times, fighting gangs and drugs, maintaining programs that attract businesses and create jobs, maintaining emergency communication systems, fixing City streets, addressing homelessness and providing additional police officers and neighborhood patrols. Proceeds from the Ordinance would also be available to the City for purposes of the City paying-down its State-mandated CalPERS obligations, thus freeing City general fund revenues for use towards the City services prioritized by Lompoc citizens; and

WHEREAS, funds from this proposed measure are subject to strict fiscal accountability and transparency provisions, including annual independent audits, and review by the City Council serving as an oversight committee to confirm that funds are spent efficiently and effectively; and

WHEREAS, California Constitution Article XIII C, Section 2, provides that an election regarding a general tax must be consolidated with a regularly-scheduled general municipal election for members of the City Council unless a Fiscal Emergency is unanimously declared by the City Council. On September 17, 2019, the City Council did unanimously declare a Fiscal Emergency as a prerequisite to the holding of a special election on a general tax; and

WHEREAS, a special municipal election on Tuesday, March 3, 2020, was called by the City Council on September 17, 2019, and consolidated with the Statewide Primary Election.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING, THE PEOPLE OF THE CITY OF LOMPOC AT THE MARCH 3, 2020, SPECIAL MUNICIPAL ELECTION DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 3.52 is hereby added to the Lompoc Municipal Code to read as follows:

"Chapter 3.52
LOMPOC PRESERVATION OF CITYCITY SERVICES
TEMPORARY TRANSACTIONS AND USE TAX

3.52.010 Title.

This ordinance shall be known as the Lompoc Preservation of City Services Temporary Transactions and Use Tax Ordinance. The City of Lompoc hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

3.52.020 Operative Date.

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

3.52.030 Purpose.

This Chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by 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 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 Chapter.

3.52.040 Contract with State.

Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3.52.050 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 cent per dollar (1%) 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 Chapter.

3.52.060 Place of Sale.

For the purposes of this Chapter, 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.

3.52.070. 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 Chapter for storage, use or other consumption in said territory at the rate of one cent per dollar (1%) 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.

3.52.080 Proceeds of Tax.

The proceeds of the transactions and use tax imposed by this Chapter shall be deposited into the General Fund of the City to be used for any general government purposes which may include, but are not limited to, fire and police protection, street and sidewalk repair and maintenance, pension and employee retirement system obligations, library services, park repair and maintenance, recreational programs, planning and zoning services, capital equipment requirements, public infrastructure, utilities and sewer systems, repair and replacement of City facilities, capital improvement projects, operational expenses, fiduciary responsibilities, administration, indebtedness and general obligations of the City. The tax imposed by this Chapter is intended to be and is, a general tax, the proceeds of which are to be spent as the City Council shall in its discretion, from time to time, determine.

3.52.090 Adoption of Provisions of State Law.

Except as otherwise provided in this Chapter 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 Chapter as though fully set forth herein.

3.52.100 Limitations on Adoption of State Law and Collection of Use Taxes.

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

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

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Chapter.

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.

1. "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3.52.110 Permit Not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Chapter.

3.52.120 Exemptions and Exclusions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax 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 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 Chapter.

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 Chapter.

5. For the purposes of subparagraphs (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 Chapter, 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 Chapter.

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 Chapter.

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 Chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.52.130 Changes in Law; County Tax Limits.

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

In the event that Santa Barbara County voters approve a future measure after the effective date of this Chapter or otherwise enacts a new transactions and use tax that, when aggregated with the City's transactions and use taxes under this Chapter, causes the combined rate limit set forth in Revenue and Taxation Code Section 7152.1 to be exceeded, such future County measure shall not have any effect on the City's ability to levy and collect transactions and use taxes at the rates set forth herein. Unless State law is amended to increase the combined rate limit under Revenue and Taxation Code section 7251.1 or this ordinance is later repealed or amended to reduce its tax rates, Santa Barbara County shall not levy nor collect any transactions and use taxes within the territory of Lompoc which were approved by Santa Barbara County voters after the effective date of this Chapter.

3.52.140 Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this

Chapter, 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.

3.52.150 Annual Audit.

The proceeds resulting from the Transactions and Use Tax established in this Chapter shall be deposited into the City's General Fund and become subject to the same independent annual audit requirements as other General Fund revenues.

3.52.160 Oversight Committee.

The City Council shall serve as an oversight committee to review the expenditures of revenues generated by the tax imposed by this Chapter and make the results of such review publicly available. Such committee shall meet and be subject to all provisions of the Ralph M. Brown Act, Government Code Sections 54950 *et seq.*

3.52.170 Effective Date.

This Chapter levying the tax described herein shall be effective ten (10) days after the date on which the City Council has declared that the voters of the City of Lompoc have approved the Chapter by a vote of no less than a majority of the votes cast by the electors voting on the tax measure set forth in this Chapter at that special municipal election consolidated with the Statewide Primary Election to be held on Tuesday, March 3, 2020.

3.52.180 Termination Date.

The authority to levy the tax imposed by this Chapter shall expire fifteen (15) years from the operative date.

3.52.190 Penalties.

Without limiting any remedies available at law or equity, any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor.

3.52.190 Ability to Lower Rate.

The tax rate in this Chapter may only be increased by a vote of the people of the City of Lompoc; provided, however, that the City Council may amend this Chapter to reduce the amount of the tax authorized herein or to otherwise implement or advance the purpose and intent of this Chapter.”

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this ordinance or the application thereof to any person or circumstance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The People of the City of Lompoc hereby declared that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

SECTION 3. CEQA Exemption. The adoption of this ordinance is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section §§ 21000 et seq.). CEQA Guideline 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

PASSED AND ADOPTED by the City Council of the City of Lompoc, State of California, of ___[*date of election certification*]_____ by the following electronic vote:

AYES: Council Member(s):

NOES: Council Member(s):

ABSENT: Council Member(s):

Jenelle Osborne, Mayor
City of Lompoc

Attest:

Stacey Haddon, City Clerk
City of Lompoc

Ordinance No. 1672(19) was submitted to the People of the City of Lompoc at the March 3, 2020, special municipal election. It was approved by the following vote of the electors:

YES: _____

NO: _____