

**Lindsay City Council Agenda**  
**Special Meeting**  
**Council Chambers**  
**251 E. Honolulu, Lindsay, California**  
**Thursday, February 9, 2017**  
**7 a.m.**

1. a) Call to Order: 7:00 a.m.  
b) Roll Call: Council members VELASQUEZ, WATSON, CORTES, Mayor Pro Tem SALINAS, Mayor KIMBALL  
c) Flag Salute: Council member CORTES
2. Public Comment: The public is invited to comment on any subject under the jurisdiction of the Lindsay City Council, including agenda items, other than noticed public hearings. Comments shall be limited to (3) minutes per person, with 30 minutes overall for the entire comment period, unless otherwise indicated by the Mayor.
3. DISCUSSION AND POSSIBLE ADOPTION OF RESOLUTION 17-04 CALLING FOR AN ELECTION TO CONSIDER A LOCAL TRANSACTIONS AND USE TAX AND DECLARATION OF FISCAL EMERGENCY. (pg 1-10)  
Presented by Bill Zigler, City Manager
4. ADJOURN. The next Regular meeting is scheduled for TUESDAY, FEBRUARY 14, 2017 at 6:00p.m. in the Council Chambers at City Hall, 251 E. Honolulu, Lindsay, Ca. 93247.

Materials related to an Agenda item submitted to the legislative body after distribution of the Agenda Packet are available for public inspection in the office of the City Clerk during normal business hours. Complete agenda is available at [www.lindsay.ca.us](http://www.lindsay.ca.us) In compliance with the Americans with Disabilities Act & Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the office of the City Clerk at (559) 562-7102 ext 8031. Notification 48 hours prior to the meeting will enable the City to ensure accessibility to this meeting and/or provision of an alternative format of the agenda and documents in the agenda packet.



## CITY COUNCIL STAFF REPORT

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Date: February 9, 2017  
To: Mayor and City Council  
From: Bill Zigler, City Manager  
Subject: Consideration of Transactions and Use Tax (Sales Tax) Ballot Measure

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### I. BACKGROUND

In order to potentially alleviate further reductions in city services, Council asked staff and a citizen Ad Hoc Committee to consider the viability of a local sales tax measure.

### II. DISCUSSION

Over the course of the last several years, the City has taken several actions to address the City's structural deficit. These actions included, among other things, staff reductions, delaying needed infrastructure repairs, and delaying needed public safety equipment replacements. However, state budget actions and the current economy compound the challenge to the City in addressing its structural budget deficit.

Since this is not an election year for the City, the Council must unanimously vote to place the measure on the ballot based upon a fiscal emergency. The findings for an emergency can be made based upon the draconian nature of further cuts to city services, particularly public safety.

An ordinance implementing the measure and details regarding the submission of arguments will be presented at the next City Council meeting if the attached resolution is approved.

### III. FISCAL IMPACTS

The County Elections office has estimated the City's costs for the election to be between \$23,366.50 and \$25,428.25. (Any funds to advocate for the passage of the measure must come from private/non-city funds.)

### IV. RECOMMENDATION

That the City Council adopt the attached resolution declaring a fiscal emergency, calling for a municipal election to submit to the voters a local ballot measure adopting a one-percent transactions and use (sales) tax to fund Lindsay city services including police and fire protection, emergency response, infrastructure repair and maintenance, and other general services, and requesting the County Board of Supervisors consolidate the election with other elections to be held on the June 6, 2017 regular election date.

### V. IV. ATTACHMENTS

Attachment A: City Council Resolution & Ordinance

**IN THE CITY COUNCIL  
OF THE CITY OF LINDSAY  
STATE OF CALIFORNIA  
CITY COUNCIL RESOLUTION 2017-04**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY  
DECLARING A FISCAL EMERGENCY; CALLING FOR A MUNICIPAL ELECTION TO SUBMIT  
TO THE VOTERS A LOCAL BALLOT MEASURE ADOPTING A ONE PERCENT  
TRANSACTIONS AND USE (SALES) TAX TO FUND LINDSAY CITY SERVICES  
INCLUDING POLICE AND FIRE PROTECTION; STREETS; AND OTHER  
GENERAL SERVICES AND  
REQUESTING THE BOARD OF SUPERVISORS OF TULARE COUNTY  
TO CONSOLIDATE A MUNICIPAL ELECTION ON A LOCAL MEASURE  
WITH OTHER ELECTIONS TO BE HELD ON THE JUNE 6, 2017  
REGULAR ELECTION DATE**

At a special meeting of the City Council of the City of Lindsay, held February 9, 2017, at the hour of 7:00 a.m. in the Council Chambers at City Hall, Lindsay, California 93247, the following resolution was adopted:

**WHEREAS**, the City Council deems it advisable to submit to the voters a ballot measure to approve a one-percent (1.00%) transactions and use (sales) tax to fund city services, including police and fire protection, senior programs, and other general services; and

**WHEREAS**, the City Council is authorized to request an order that the ballot measure election be consolidated with other elections to be held on the same day and in the same territory (California Elections Code 10400 et seq.); and

**WHEREAS**, it is desirable that said ballot measure election be consolidated with the June 6, 2017 general election; that within the City, the precincts, polling places, and election officers for the two elections be the same; that the Board of Supervisors canvass the returns of the City ballot measure election; and said City ballot measure election be held in all respects as if there were only one election;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINDSAY:**

1. **Declaration of Fiscal Emergency.** Due to cuts in state funding, erosion of the sales tax base and insufficient revenues to maintain an adequate public safety force, aging fire trucks and other public safety vehicles and despite the intense frugality of all city departments, the City cannot postpone action until the November 2018 election to create an economically sustainable revenue base. Without action now, the City is at risk of endangering public health and safety, or threatening the fiscal solvency of the City. Accordingly, the City Council hereby declares that a fiscal emergency exists.

2. **Call for Election.** The City Council hereby calls a municipal election on Tuesday, June 6, 2017 for the purpose of submitting to the voters a ballot measure to approve a one-percent (1.00%) transactions and use (sales) tax to fund Lindsay city services, including police, fire and emergency services; streets maintenance; support services; and other general services. A majority vote is required for the passage of the ballot measure.

CITY OF LINDSAY  
CITY COUNCIL RESOLUTION 2017-04

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3. Form of Measure. The text of the proposed ordinance to be submitted to the voters is attached as Exhibit A to this resolution. The exact form of the measure to be voted upon shall appear on the ballot as follows:

To help prevent the loss of vital public safety services, to maintain essential infrastructure and streets, and to protect other general services, shall the City of Lindsay enact a general-purpose, one-percent sales tax, expected to generate \$908,000 annually, with annual independent audits?	Yes
	No

The measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Election Code Section 13116.

4. Transmission to the City Attorney. The City Clerk is directed, pursuant to Elections Code Section 9280, to transmit a copy of the measure to the City Attorney for the purpose of preparing an impartial analysis of the measure.

5. Full Text of the Measure. The full text of the "Ordinance of the City of Lindsay Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization," enacting a one-percent Transactions and Use (Sales) Tax to fund Lindsay city services will be available at no cost, from the City Clerk's Office or on the City's website: [www.lindsay.ca.us](http://www.lindsay.ca.us). A statement about how to obtain the full text of the Ordinance will be included in the Voter Information Pamphlet below the Impartial Analysis.

6. Consolidation of Election. The City Council requests that the Board of Supervisors of the County of Tulare, State of California order the consolidation of the election in the City of Lindsay to be held on June 6, 2017, with any other election(s) to be held on the same regular election date, under California Election Code Sections 10400 et seq.

7. Deadline for Submittal of Arguments. Pursuant to Section 9282 of the Elections Code of the State of California the deadline for the submitting arguments not to exceed 250 words for and against the measure to the City Clerk for transmittal to the Registrar of Voters is hereby set for Friday, March 10, 2017 at 3:00 p.m. The provisions of this Section shall apply only to the election to be held on June 6, 2017 and shall then be repealed.

8. Conduct of the Election. The consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, and all other proceedings incidental to and connected with the election shall be regulated and done by the County Clerk in accordance with the provisions of law regulating a regularly scheduled election. The Board of Supervisors is hereby requested to issue all officers of the County charged with duties pertaining to the June 6, 2017 election instructions to take any and all steps necessary for the holding of such consolidated election. (California Elections Code 10418.)

9. Costs. The City will reimburse the County for the actual cost incurred in conducting the election upon receipt of a bill stating the amount due as determined by the Election Official.

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10. Filing with County. The City Clerk is directed to file with the Board of Supervisors and the County Clerk of Tulare County certified copies of this resolution.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Lindsay this 9th day of February, 2017.

AYES:  
NOES:  
ABSENT:  
ABSTAINED:

**ATTEST:**

CITY COUNCIL OF THE CITY OF LINDSAY

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Carmela Wilson, City Clerk

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Pamela Kimball, Mayor

**ORDINANCE NO. 560**  
**AN ORDINANCE ADDING CHAPTER 3.13 TO TITLE 3 OF THE LINDSAY MUNICIPAL CODE TO PROVIDE FOR AN ADDITIONAL ONE-PERCENT TRANSACTIONS AND USE TAX FOR GENERAL PURPOSES.**

At the June 6, 2017 election, the following ordinance was adopted by a majority of the votes cast.

**BE IT ORDAINED BY THE COUNCIL AND THE PEOPLE OF THE CITY OF LINDSAY:**

**SECTION I. AMENDMENT OF CODE.**

Lindsay Municipal Code Title 3 is hereby amended by the addition of a new Chapter to read as follows:

**CHAPTER 3.13 TRANSACTIONS AND USE TAX FOR GENERAL PURPOSES**

<b>3.13.010</b>	<b>Purpose/Title.</b>
<b>3.13.020</b>	<b>Operative Date.</b>
<b>3.13.030</b>	<b>Contract with State.</b>
<b>3.13.040</b>	<b>Transactions Tax Rate.</b>
<b>3.13.050</b>	<b>Place of Sale.</b>
<b>3.13.060</b>	<b>Use Tax Rate.</b>
<b>3.13.070</b>	<b>Adoption of Certain Sections of California Revenue &amp; Taxation Code by Reference.</b>
<b>3.13.080</b>	<b>Limitations on Adoption of State Law and Collection of Use Taxes.</b>
<b>3.13.090</b>	<b>Permit Not Required.</b>
<b>3.13.100</b>	<b>Exemptions and Exclusions.</b>
<b>3.13.110</b>	<b>Amendments.</b>
<b>3.13.120</b>	<b>Enjoining Collection Prohibited.</b>

**Sec. 3.13.010 Purpose/Title:**

This Ordinance shall be known as the City of Lindsay Transactions and Use Tax for General Purposes ordinance. The City of Lindsay shall hereinafter be called "City." This ordinance shall be applicable in the incorporated territory of the City. This Ordinance of the Lindsay Municipal Code has been adopted for the following 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 therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes;

statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes;

(d) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will, to the greatest degree possible consistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the said 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 thereof.

(e) To provide a source of revenue to be used by the City for general purposes. There shall be no legal obligation created by this Chapter for use of the funds for specific purposes.

**Sec. 3.13.020. Operative Date.**

"Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance, October 1, 2017.

**Sec. 3.13.030. Contract with State.**

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation hereof. If the City has not contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract. The Council may make any technical amendments to this Ordinance required by the State Board of Equalization, except for any changes affecting the tax rate, its manner of collection, or the purpose for which the revenue from the tax may be used.

**Sec. 3.13.040. 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 percent (1.00%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City of Lindsay on and after the operative date of this Ordinance. This tax is imposed in addition to the tax imposed pursuant to Chapter 3.12 of this Code.

**Sec. 3.13.050 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 Board of Equalization.

**Sec. 3.13.060. 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 or after the operative date of this Ordinance for storage, use or other consumption in said territory, at the rate of one percent (1.00%) 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. The tax imposed is in addition to the tax imposed pursuant to Chapter 3.12 of this Code.

**Sec. 3.13.070. Adoption of Certain Sections of California Revenue & Taxation Code by Reference.**

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 said Code, as amended and in force and effect on the operative date of this Ordinance, applicable to use taxes are hereby adopted and made a part of this section as though fully set forth herein.

**Sec. 3.13.080. 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 Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

(2) The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

(3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

(A) Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

(B) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

(4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

(a) 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.

**Sec. 3.13.090. 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.

**Sec. 3.13.100. 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 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 continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.

(5) For the purposes of subsections (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party

to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(6) Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

(7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

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

**Sec. 3.13.110. Amendments/Severability:**

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

**Sec. 3.13.120 Enjoining Collection Prohibited:**

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 this City, or against any officer of the State or this City, to prevent or enjoin the collection hereunder, or Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**SECTION II: STATUTORY AUTHORITY FOR TAX.**

This ordinance is adopted pursuant to Revenue and Taxation Code section 7285.9.

**SECTION III: ELECTION REQUIRED.**

This ordinance shall not become operative unless and until at least a majority of the electors voting on this measure vote to approve the imposition of the tax at the election to be held on June 6, 2017.

**SECTION IV: ANNUAL AUDIT.**

By no later than December 31<sup>st</sup> of each year, the City's independent auditors shall complete a financial audit report to include the revenue raised and expended by this tax.

This ordinance shall take effect on October 1, 2017, if approval by a majority of voters at the general election to be held on June 6, 2017.

**SECTION VI: CERTIFICATION; PUBLICATION.**

Upon approval by the voters, the City Clerk shall verify to the passage and adoption of this ordinance and shall cause it to be published according to law and transmitted to the Board of Equalization.

**ATTEST:**

CITY COUNCIL OF THE CITY OF LINDSAY

\_\_\_\_\_  
Carmela Wilson, City Clerk

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Pamela Kimball, Mayor