

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Board of Supervisors

BOARD AGENDA # *A-6a

Urgent Routine

AGENDA DATE June 28, 2011

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Consolidate the City of Oakdale's Municipal Election for their One-Half Cent Transactions and Use Tax with the Consolidated District Election to be Held on November 8, 2011

STAFF RECOMMENDATIONS:

Approve the consolidation of the City of Oakdale's Municipal Election for their One-Half Cent Transactions and Use Tax with the Consolidated District Election to be held on November 8, 2011.

Contact person: Christine Ferraro Tallman, Clerk of the Board Telephone: 525-4494

FISCAL IMPACT:

There is no fiscal impact associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2011-379

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa
and approved by the following vote,
Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) _____ Denied
- 3) _____ Approved as amended
- 4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.



Office of the City Clerk

280 North Third Avenue • Oakdale, CA 95361 • Ph: (209) 845-3571 • Fax: (209) 847-6834

**FINANCE
DEPARTMENT**
280 N. Third Ave.
Oakdale, CA 95361
(209) 845-3571
(209) 847-6834 Fax

**COMMUNITY
DEVELOPMENT &
SERVICES
DEPARTMENT**
120 S. Sierra Ave.
Oakdale, CA 95361
(209) 845-3625

**FIRE
DEPARTMENT**
Station No. 1:
325 East "G" St.
Station No. 2:
450 S. Willowood Dr.
Oakdale, CA 95361
(209) 845-3660
(209) 847-5907 Fax

**RECREATION
DEPARTMENT**
120 S. Sierra Ave.
Oakdale, CA 95361
(209) 845-3625

**PUBLIC WORKS
DEPARTMENT**
455 S. Fifth Ave.
Oakdale, CA 95361
(209) 845-3600
(209) 848-4344

**POLICE
DEPARTMENT**
245 N. Second Ave.
Oakdale, CA 95361
(209) 847-2231
(209) 847-3790 Fax

**CITY OF OAKDALE
WEBSITE**
www.ci.oakdale.ca.us
E-MAIL
information
@ci.oakdale.ca.us

June 16, 2011

Ms. Christine Ferraro-Tallman, Clerk
Board of Supervisors
STANISLAUS COUNTY
1010 Tenth Street
Modesto CA 95354

Dear Ms. Ferraro-Tallman:

The City Council adopted Resolution 2011-65 declaring a fiscal emergency, calling for a municipal election for a one-half cent transactions and use (sales) tax, and requesting consolidation of our municipal election with the November 8, 2011 regular election. Enclosed is a certified copy of the resolution.

Please let me know if you require anything further. Thank you for your assistance.

Sincerely,

Nancy Lilly, CMC
City Clerk

Enc.

BOARD OF SUPERVISORS
2011 JUN 20 A 10:13



IN THE CITY COUNCIL
OF THE CITY OF OAKDALE
STATE OF CALIFORNIA
CITY COUNCIL RESOLUTION 2011-65

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKDALE
DECLARING A FISCAL EMERGENCY; CALLING FOR A MUNICIPAL ELECTION TO SUBMIT
TO THE VOTERS A LOCAL BALLOT MEASURE ADOPTING A ONE-HALF CENT
TRANSACTIONS AND USE (SALES) TAX TO FUND OAKDALE CITY SERVICES
INCLUDING POLICE AND FIRE PROTECTION; SENIOR PROGRAMS; AND OTHER
GENERAL SERVICES AND
REQUESTING THE BOARD OF SUPERVISORS OF STANISLAUS COUNTY
TO CONSOLIDATE A MUNICIPAL ELECTION ON A LOCAL MEASURE
WITH OTHER ELECTIONS TO BE HELD ON THE NOVEMBER 8, 2011
REGULAR ELECTION DATE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OAKDALE AS FOLLOWS:

WHEREAS, the City Council deems it advisable to submit to the voters a ballot measure to approve a one-half cent 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 November 8, 2011 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 OAKDALE:

1. Declaration of Fiscal Emergency. In light of state budget cuts and the current economy, the City has, among other things, had to reduce 25% of its sworn police officers and 29% of its firefighters. Any further cuts to public safety and other vital services will either severely endanger public health and safety, or if paid for without new revenues threaten 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, November 8, 2011 for the purpose of submitting to the voters a ballot measure to approve a one-half cent transactions and use (sales) tax to fund Oakdale city services, including police; fire and emergency services; parks and sports field maintenance; youth, teen and senior services; support services; art programs and other general services. A majority vote is required for the passage of the ballot measure.

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:



**CITY OF OAKDALE
CITY COUNCIL RESOLUTION 2011-65**

To help prevent additional budget cuts and maintain infrastructure and City services, including police and fire protection, senior programs, and other general services, shall the City of Oakdale enact a ½ cent sales tax, expiring in three (3) years, with resident oversight and 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 Oakdale Imposing a Transactions and Use Tax to be Administered by the State Board of Equalization," enacting a one-half cent Transactions and Use (Sales) Tax for three years to fund Oakdale city services will be available at no cost, from the City Clerk's Office or on the City's website: www.ci.oakdale.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 Stanislaus, State of California order the consolidation of the election in the City of Oakdale to be held on November 8, 2011, 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 August 12, 2011, at 5:00 p.m. The provisions of this Section shall apply only to the election to be held on November 8, 2011 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 November 8, 2011 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



**CITY OF OAKDALE
CITY COUNCIL RESOLUTION 2011-65**

Election Official.

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

The foregoing Resolution 2011-65 was adopted by the Oakdale City Council on the 6th day of June 2011, by the following vote:

AYES:	COUNCIL MEMBERS:	Brennan, Dunlop, Howard, Morgan, Paul
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None
ABSTAINED:	COUNCIL MEMBERS:	None

Pat Paul, Mayor

Nancy Lilly, CMC
City Clerk

CERTIFICATION

THE FOREGOING IS A TRUE AND CORRECT COPY
OF CITY COUNCIL RESOLUTION 2011-65 DULY
AND REGULARLY ADOPTED BY THE OAKDALE
CITY COUNCIL IN REGULAR SESSION.

NANCY LILLY, CMC, CITY CLERK
CITY OF OAKDALE, CA

Date: June 14, 2011



IN THE CITY COUNCIL
OF THE CITY OF OAKDALE
STATE OF CALIFORNIA

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF OAKDALE
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

The City Council of the City of Oakdale does ordain as follows:

SECTION 1. AMENDMENT TO THE MUNICIPAL CODE. Current Chapter 11, Article II, is repealed in its entirety and replaced to read as follows:

TRANSACTIONS AND USE TAX

Section 11-7.1. TITLE. This chapter shall be known as the "Oakdale Transactions and Use Tax Ordinance." The City of Oakdale hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the city.

Section 11-7.2. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance and approval by the voters.

Section 11-7.3. 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 Taxations Code and Section 7285.9 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 an additional one-half of one percent of the tax at an election called for that purpose.

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

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires that 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.



CITY OF OAKDALE
City Council Ordinance XXXX

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, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

Section 11-8. CONTACT WITH STATE. Prior to the Operative Date, the City shall contact with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax chapter; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a contract.

Section 11-9. 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 and one-half of one percent (1.5%) 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 chapter.

Section 11.10. PLACE OF SALE. For the purpose 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 State Board of Equalization.

Section 11.11. 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-half of one percent (.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.

Section 11-12. 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.

Section 11-13. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

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



CITY OF OAKDALE
City Council Ordinance XXXX

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 against the State Board of Equalization, 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 substitutions 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 Section 67014, 6702 (except in the last sentence thereof), 6711, 6715, 6767, 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.

Section 11-14. 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.*

Section 11-15. 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.



CITY OF OAKDALE
City Council Ordinance XXXX

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 declarations 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 exempt 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 purchases 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.



CITY OF OAKDALE
City Council Ordinance XXXX

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 obligated pursuant to a contract or lease for any period of time for which any party to the contraction 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 sips or delivers the property into the City or participants 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.

Section 11-16. AMENDMENTS. 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 chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

Section 11-17. ENJOINING COLELCTION 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.

Section 11-18. 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.

Section 11-19. USE OF TAX PROCEEDS. All proceeds of the tax levied and imposed under this chapter shall be paid into the General Fund for use by the City of Oakdale.



CITY OF OAKDALE
City Council Ordinance XXXX

Section 11-20. TERMINATION DATE. The authority to levy the additional one-half of one percent tax imposed by this chapter shall expire three (3) years from the date the tax starts being collected. At that time, the rate shall return to the one percent rate currently provided.

Section 11-21. ANNUAL AUDIT. By no later than December 31st of each year, the City's independent auditors shall complete a financial audit report to include the revenue raised any expended by this tax.

Section 11-22. RESIDENTS' OVERSIGHT COMMITTEE. Although not otherwise required by the law, the City Council shall, no later than March 1, 2012, establish a Residents' Oversight Committee to review the expenditure of the revenue from this transactions and use tax. The Committee shall consist of five members to be appointed by the Mayor and approved by the City Council. The terms of the Committee members and their specific duties shall be established by resolution of the City Council.

Section 11-23. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall not take effect until approved by the majority of the voters at the general municipal election to be held on November 8, 2011.

Section 11-24. 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.

The foregoing Ordinance No. XXXX was introduced at a regular meeting of the Oakdale City Council on the 20th day of June, 2011, and finally adopted on the 5th day of July, 2011, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAINED: COUNCIL MEMBERS:

Pat Paul, Mayor

ATTEST:

Nancy Lilly, City Clerk