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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 13 Ordinance/Resolution# 10-176 Council District: \_\_\_\_\_

For Meeting of January 4, 2010  
 (Adoption Date)

**TITLE:**

**A RESOLUTION OPPOSING LEGISLATION GRANTING REPEALING THE HOLD HARMLESS PROVISION.**

**PURPOSE(S) OF ACTION:** Oppose Legislation repealing the hold harmless provision that protected tax revenue of municipalities from the gross receipts tax exemption created by the State for sales of food and certain medical services.

<b>Name of Drafter:</b> Gloria Podruchny		<b>Department:</b> Finance		<b>Phone:</b> 541-2050	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Finance (Originator)		541-2050	Budget		2300
			Assistant City Manager		2271
Legal		541-2128	City Manager		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

New Mexico House Bill 625, which became effective January 1, 2005, removed the gross receipts tax on qualifying food sales and certain medical services. The bill contained a hold harmless provision that provided for a new distribution formula to offset the revenue loss municipalities would incur; this provision was incorporated in New Mexico State statutes as Section 7-1-6.46.

Currently, the State of New Mexico is experiencing a serious shortfall of revenues resulting in a deficit estimated to be in the range of \$500 to \$600 million dollars for FY 2010. The upcoming Legislative Session will address financial issues including the shortfall of revenues for the State budget in the current and upcoming fiscal years.

The Legislature may be considering repealing the food and medical hold harmless provision for local governments as part of their efforts at addressing the deficit.

If the Legislature did repeal the hold harmless provision, the City would receive approximately \$7.5 million less in tax distributions annually. This action would have a crippling impact on future City general government operations and acquisition of capital equipment and projects, uses authorized by the residents of the City when they authorized the imposition of gross receipt taxes.

It is therefore in the best interest of the City to oppose any effort to balance the State's budget on the back of local government including any proposal to repeal the hold harmless provision.

**SUPPORT INFORMATION:**

<b>Fund Name / Account Number</b>	<b>Amount of Expenditure</b>	<b>Budget Amount</b>
N/A	N/A	N/A

1. Resolution
2. New Mexico State Statute Section 7-1-6.46, Distribution to Municipalities—Offset for Food Deduction and Health Care Practitioner Services Deduction

**OPTIONS / ALTERNATIVES:**

1. Approve the Resolution to oppose Legislation granting repealing the hold harmless provision.
2. Modify the Resolution.
3. Do Not Approve the Resolution and provide staff with alternative direction.

(Continue on additional sheets as required)

**RESOLUTION NO. 10-176****A RESOLUTION OPPOSING LEGISLATION GRANTING REPEALING THE HOLD HARMLESS PROVISION.**

The City Council of the City of Las Cruces is informed that:

**WHEREAS**, New Mexico House Bill 625 removed the gross receipts tax from sales of food and certain health care services; and

**WHEREAS**, to offset the revenue loss municipalities would incur due to this removal, HB 625 contained a hold harmless provision that provided for a new distribution formula; and

**WHEREAS**, the hold harmless provision was incorporated in New Mexico State statutes as section 7-1-6.46; and

**WHEREAS**, the State of New Mexico is currently experiencing a serious shortfall of revenues resulting in a deficit estimated in the range of \$500 to \$600 million dollars for FY 2010; and

**WHEREAS**, the upcoming Legislative Session will address financial issues including the shortfall of revenues for the state budget; and

**WHEREAS**, the Legislature may be considering repealing the food and medical hold harmless provision for local governments as part of their efforts to address the deficit; and

**WHEREAS**, if the Legislature does repeal the hold harmless provision, the City would receive approximately \$7.5 million less in tax distributions annually; and

**WHEREAS**, said action would have a crippling impact on future City general government operations and acquisition of capital equipment and projects.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT**, we hereby oppose any effort to balance the State's budget on the back of local government including any proposal to repeal the hold harmless provision.

**(II)**

**THAT**, the City Clerk is hereby requested to distribute a certified copy of this Resolution to our local state legislative officials.

**(III)**

**THAT**, City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this \_\_\_\_\_ of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk  
(SEAL)

VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Connor: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Approved as to Form:

  
City Attorney

**7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--**

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

(1) for a municipality having a population of less than ten thousand according to the most recent federal decennial census and having per capita taxable gross receipts for the previous calendar year that are less than the average per capita taxable gross receipts for all municipalities for that same calendar year:

(a) the total deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality for the month plus one and two hundred twenty-five thousandths percent; and

(b) the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality for the month plus one and two hundred twenty-five thousandths percent; or

(2) for a municipality not described in Paragraph (1) of this subsection:

(a) the total deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2007 plus one and two hundred twenty-five thousandths percent; and

(b) the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2007 plus one and two hundred twenty-five thousandths percent.

B. The distribution pursuant to Subsection A of this section is in lieu of revenue that would have been received by the municipality but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall be considered gross receipts tax revenue and shall be used by the municipality in the same manner as gross receipts tax revenue, including payment of gross receipts tax revenue bonds.

C. For the purposes of this section, "business locations attributable to the municipality" means business locations:

(1) within the municipality;

(2) on land owned by the state, commonly known as the "state

fairgrounds", within the exterior boundaries of the municipality;

(3) outside the boundaries of the municipality on land owned by the municipality; and

(4) on an Indian reservation or pueblo grant in an area that is contiguous to the municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(b) the governing body of the municipality has submitted a copy of the contract to the secretary.

D. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act.

(Laws 2007, Chapter 331, Section 2)