City of Las Cruces®

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Council Action and Executive Summary

Item # 22 **Ordinance/Resolution#** 2694

For Meeting of August 19, 2013 (Ordinance First Reading Date) **For Meeting of** September 3, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: **AN ORDINANCE ADOPTING A MUNICIPAL HOLD HARMLESS GROSS RECEIPTS TAX OF THREE-EIGHTHS OF ONE PERCENT (3/8%).**

PURPOSE(S) OF ACTION:

To adopt a Hold Harmless Gross Receipts Tax.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Robert A. Cabello	**Department/Section:** Legal/City Attorney	**Phone:** (575) 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The New Mexico Legislature enacted HB 641 which mandated the phase-out over a fifteen year period of certain Hold Harmless provisions, which provided the City of Las Cruces with revenue of approximately eight to ten million dollars ($8,000,000.00 to $10,000,000.00) per year. Elimination of the Hold Harmless revenue is an undue financial burden to the City Las Cruces because it would have to eliminate or reduce essential services. To off-set the burden, the New Mexico Legislature in HB 641 provided certain municipalities with a population over 10,000 the authority to impose a Hold Harmless Gross Receipts Tax equal to three-eighths of one percent (3/8%) by ordinance. Since the reduction of necessary services is unacceptable, the City of Las Cruces is resolved to impose a Hold Harmless Gross Receipts Tax.

The Municipal Gross Receipts Tax will impose on any person engaging in business in the City of Las Cruces an excise tax equal to three-eighths of one percent (3/8%) of the gross receipts reported pursuant to the New Mexico Gross Receipts Taxes Act. Therefore the Municipal Gross Receipts Tax will be equal to the product of three-eighths of one percent (3/8%) of the sum of gross receipts from all business locations attributable to the municipality less any gross receipts exempted by law.

In accordance with all applicable State law, the City of Las Cruces' Municipal Gross Receipts Tax shall exempt gross receipts from: transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within Las Cruces to another point

(Continue on additional sheets as required)

outside Las Cruces; a business located outside the boundaries of Las Cruces on land owned by Las Cruces for which gross receipts tax distribution is made pursuant to NMSA 1978, Section 7-1-6.4 C; from the sale of food at a retail food store as defined by NMSA 1978, Section 7-9-92 A; or from payments by health care provider services as defined by NMSA 1978, Section 7-9-93.

Revenue from the Municipal Hold Harmless Gross Receipts Tax will be used for any specific purpose or area of municipal government services, including but not limited to police protection, fire protection, public transportation or street repair and maintenance.

SUPPORT INFORMATION:

1. Ordinance.
2. Attachment "A", Table showing Projected Revenue of 3/8% of 1% Gross Receipt Tax from FY 2014 through FY 2030.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☒	Funds will be deposited into this fund: 1000 (General) in the amount of to be determined for FY 14.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

Proposed revenue and expenditure for the first year (FY14) is to be determined by the effective date of the Hold Harmless Gross Receipts Tax ordinance. For example, the projected revenue based on the effective date of January 1, 2014 would be $4,487,336.00, which is based on the balance of the fiscal year (FY14).

(Continue on additional sheets as required)

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
To be determined	To be determined	To be determined	To be determined	To be determined	To be determined

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the implementation of the Hold Harmless Gross Receipts Tax equal to 3/8% and will maintain the existing necessary services within the City.
2. Vote "No"; this will not approve the implementation of the Hold Harmless Gross Receipts Tax equal to 3/8% and will eliminate or reduce necessary services within the City.
3. Vote to "Amend"; this would allow the Council to modify the ordinance.
4. Vote to "Table"; this could allow the Council to postpone consideration of the ordinance.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 14-009
ORDINANCE NO. 2694

AN ORDINANCE ADOPTING A MUNICIPAL HOLD HARMLESS GROSS RECEIPTS TAX OF THREE-EIGHTHS OF ONE PERCENT (3/8%).

The City Council is informed that:

WHEREAS, the New Mexico Legislature is under budgetary constraints from reduced taxation, it mandated the phase-out over a fifteen year period of certain Hold Harmless provisions, which include the food and medical expense exemptions, which provided the City of Las Cruces with revenue of approximately eight to ten million dollars per year; and

WHEREAS, the New Mexico Legislature acknowledged that the elimination of the Hold Harmless revenue could be an undue financial burden to local governments, it authorized certain local governments to impose a Hold Harmless Gross Receipts Tax ("GRT") equal to three-eighths of one percent (3/8%) by ordinance; and the City of Las Cruces is a municipality, which the New Mexico Legislature authorized to enact such an ordinance; and

WHEREAS, the elimination of the Hold Harmless revenue from the State unduly burdens the City of Las Cruces, the governing body of the City of Las Cruces must choose between eliminating or reducing necessary services or imposing a Hold Harmless GRT as authorized by the New Mexico Legislature; and

WHEREAS, the reduction of necessary services is unacceptable, the governing body of the City of Las Cruces is resolved to maintain the existing level of services to the public; and

WHEREAS, the adoption of a Hold Harmless GRT would allow the City of

Las Cruces to provide for specific purposes or for any area of municipal government services, including, but not limited to the payment of debt service; and

WHEREAS, the City Council is aware of the possibility of changes to the Hold Harmless GRT statute and distribution thereunder; and City Council is aware of its obligation to promote City infrastructure and policies; therefore City Council may reconsider or repeal the imposition of the Hold Harmless GRT provided that the overall change in distribution of the Municipal GRT from the State makes the City whole at City Council's discretion; and

WHEREAS, the governing body of the City of Las Cruces will impose a Hold Harmless GRT equal to three eighths of one percent (3/8%) as authorized by the New Mexico Legislature.

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

(I)

THAT there is imposed on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to three eighths of one percent (3/8%) of the gross receipts reported or to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Act as it now exists or as it may be amended. The tax imposed under this ordinance is pursuant to the Municipal Local Option Gross Receipts Taxes Act as it now exists or as it may be amended and shall be known as the "municipal hold harmless gross receipts tax."

Section 1. General Provisions. This ordinance hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and

Compensating Tax Act as it now exists or as it may be amended.

Section 2. Exemptions. No municipal hold harmless gross receipts tax shall be imposed on the gross receipts arising from:

A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality;

B. a business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to NMSA 1978, Section 7-1-6.4 - Subsection C;

C. the sale of food at a retail food store as defined by NMSA 1978, Section 7-9-92(A);

D. payments by health care provider services as defined by NMSA 1978, Section 7-9-93.

Section 3. Calculation. Revenue from the municipal hold harmless gross receipts tax will equal the product of three eighths of one percent (3/8%) of the sum of gross receipts from all business locations attributable to the municipality less any gross receipts exempted by law. For purposes of this ordinance business locations attributable to the municipality are defined by NMSA 1978, Section 7-1-6.4.

Section 4. Dedication. Revenue from the municipal hold harmless gross receipts tax will be used for any specific purpose or area of municipal government services, including but not limited to police protection, fire protection, public transportation or street repair and maintenance.

Section 5. Effective Date. Pursuant to NMSA 1978, Section 7-19D-3, the

effective date of the municipal hold harmless gross receipts tax shall be July 1, 2013 or January 1, 2014 whichever date occurs first after the expiration of three months from the date the adopted ordinance is delivered or mailed to the Taxation and Revenue Department.

(II)

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

DONE AND APPROVED this _____ day of _____ 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Thomas: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

Projected Revenue of 3/8% of 1% Gross Receipt Tax*

Fiscal Year (FY)	3/8% of 1% GRT Revenue ($)
FY 2014**	$4,487,336
FY 2015	$9,237,253
FY 2016	$9,951,678
FY 2017	$9,974,683
FY 2018	$10,378,295
FY 2019	$10,824,610
FY 2020	$11,279,218
FY 2021	$11,752,830
FY 2022	$12,246,234
FY 2023	$12,760,252
FY 2024	$13,295,741
FY 2025	$13,827,027
FY 2026	$14,379,428
FY 2027	$14,953,777
FY 2028	$15,550,940
FY 2029	$16,171,817
FY 2030	$16,801,189

**Does Not Reflect Scheduled Losses From Hold Harmless Phase Out*

***Increase Effective January 1, 2014 (6 month increase)*