

**OFFICIAL MINUTES OF THE CITY COUNCIL  
CITY OF THIBODAUX  
CITY HALL  
THIBODAUX, LOUISIANA  
DECEMBER 2, 2008**

The City Council of the City of Thibodaux assembled in regular session at its regular meeting place, City Hall, 310 West 2<sup>nd</sup> Street, Thibodaux, Louisiana, on Tuesday, December 2, 2008 at 5:00 o'clock P.M.

There were present: Councilmen Hebert, Richard, Taylor, Badeaux and Mire.

There were also present: Mayor Charles Caillouet and Germaine Jackson.

The minutes of the November 18, 2008 Council Meeting were approved as written.

Councilman Hebert introduced an ordinance authorizing the Mayor to execute a Sales Tax Agreement with the Lafourche Parish School Board. The Public Hearing for this ordinance will be held at the Council Meeting on Tuesday, December 16, 2008.

Councilman Taylor introduced an ordinance to amend Ordinance No. 2363 "Appropriation Ordinance for the Year 2008" (Supplemental Appropriation). The Public Hearing for this ordinance will be held at the Council Meeting on Tuesday, December 16, 2008.

The Public Works Director informed the Council Administrator that it is necessary to consider the adoption of a resolution approving Change Order No. 1 for the Menard Street and Blake Court Drainage Improvement Project.

This change order is being proposed in order to balance the plan quantities with the actual field quantities and to extend the contract time an additional 54 days due to bad weather at the beginning of the job and the two September Hurricanes.

The proposed Change Order will decrease the contract price by \$24,318.81 thereby making the final contract price \$622,528.44.

Councilman Richard asked for an explanation in the decrease of the contract price.

Jimmy Ledet of T. Baker Smith Inc. attributed the savings to cooperation on the part of everyone involved in the project due to the many conflicts during the time frame of the project.

On motion of Councilman Richard, seconded by Councilman Badeaux, the Council voted to adopt a resolution authorizing the Mayor to sign Change Order No. 1 with Byron E. Talbot Contractors for the Menard Street and Blake Court Drainage Improvement Project. Upon roll call the vote was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire  
NAYS: None  
ABSTAINED: None  
ABSENT: None**

RESOLUTION NO. 1399

***A RESOLUTION AUTHORIZING THE MAYOR TO SIGN  
CHANGE ORDER #1 WITH BYRON E. TALBOT  
CONTRACTORS, INC FOR THE MENARD STREET AND  
BLAKE COURT DRAINAGE IMPROVEMENT PROJECT***

***BE IT RESOLVED*** by the City Council of the City of Thibodaux in regular session assembled, that:

***WHEREAS***, the City entered into a contract with Byron E. Talbot Contractor, Inc. for the Menard Street and Blake Court Drainage Improvement Project; and

***WHEREAS***, due to the reconciliation of all contract quantities, the execution of a change order is required; and

***WHEREAS***, the proposed change order decreases the contract price in the amount of \$24,318.81 from the original contract bid for a final contract price of \$622,528.44.

***NOW, THEREFORE BE IT RESOLVED*** by the City Council that the Mayor be and is hereby authorized to execute Change Order No. 1 with Byron E. Talbot Contractors, Inc. in the amount mentioned above.

***BE IT FURTHER RESOLVED*** that a copy of the said change order is attached hereto as "Exhibit A" and thereby made a part hereof.

The above resolution having been submitted to a vote, the vote thereon was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**

**NAYS: None**

**ABSTAINED: None**

**ABSENT: None**

And the above resolution was declared adopted this 2<sup>nd</sup> day of December 2008.

**/s/ Jennifer Morvant  
Jennifer Morvant, Council Adm.**

**/s/ Chad J. Mire  
Chad J. Mire, President**

The Public Works Director advised the Council Administrator that the Menard Street and Blake Court Drainage Improvement Project is substantially complete in accordance with all contract documents and specifications. The project engineer for this project is T. Baker Smith.

Therefore, it is necessary for the Council to consider the adoption of a resolution of substantial completion which will commence the 45 day lien period on this contract.

On motion of Councilman Richard, seconded by Councilman Hebert, the Council voted to adopt a resolution of substantial completion for the Menard Street and Blake Court Drainage Improvement Project. Upon roll call the vote was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**

**NAYS: None**

**ABSTAINED: None**

**ABSENT: None**

*RESOLUTION NO. 1400*

***BE IT RESOLVED*** by the City Council of the City of Thibodaux in regular session assembled, that:

***WHEREAS***, the City of Thibodaux entered into a contract with Byron E. Talbot Contractor, Inc. dated April 30, 2008 for the Menard Street and Blake Court Drainage Improvement Project; and

***WHEREAS***, the work under the aforementioned contract was substantially complete in accordance with the plans and specifications by the contractor on November 19, 2008; and

***WHEREAS***, a final inspection was conducted by representatives of the City and the Project Engineer; and

***WHEREAS***, all work was found to be satisfactory for acceptance with respect to the application for payment by the contractor less and except any items included on a punch list.

***NOW, THEREFORE BE IT RESOLVED*** by the City Council of the City of Thibodaux in regular session on December 2, 2008 that the work under the aforementioned project be and is hereby accepted as substantially complete on the date hereinbefore specified.

***BE IT FURTHER RESOLVED*** that the Council Administrator is hereby authorized to file with the Clerk of Court of the Parish of Lafourche, a certified copy of this resolution in order to commence the 45 day lien period.

***BE IT FURTHER RESOLVED*** that certified copies of this resolution be forwarded to T. Barker Smith, Inc, 315 East 2<sup>nd</sup> Street, Thibodaux, LA 70301, and to Byron E. Talbot Contractors, Inc., PO Box 5658, Thibodaux, LA 70302.

The above resolution having been submitted to a vote, the vote thereon was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**

**NAYS: None**

**ABSENT: None**

**ABSTAIN: None**

And the above resolution was declared adopted this 2<sup>nd</sup> day of December 2008.

**/s/ Jennifer Morvant**  
Jennifer Morvant, Council Adm.

**/s/ Chad J. Mire**  
Chad J. Mire, President

A discussion was held concerning the renewal of the 2009 Health Insurance coverage with Blue Cross Blue Shield.

Mr. Byron Landry addressed questions from the Council Members in regards to the renewal of City's Health Insurance Coverage for the year 2009. He also explained to Councilman Badeaux that regardless of the agent, the quotes from all of the insurance companies would remain the same.

The Mayor also explained that the City uses a variety of agents throughout the area for the different insurance policies that the City needs for coverage.

The Zoning Administrator informed the Council Administrator that the Planning and Zoning Commission has recommended that the City Council consider the adoption of an ordinance approving the acceptance of the final plat for Rienzi Village Townhomes, Addendum 3 located on the south side of Arlington Drive approximately 85 feet east of the intersection of Harkey Drive and Arlington Drive. The approval of the final plat of this subdivision is required in order to comply with the provisions of Section 18-53 of the Thibodaux City Code of Ordinances.

Gary Lebouef of Duplantis Design Group explained to the Council that all of the improvements are now in place and that the final plat is ready for approval.

On motion of Councilman Hebert, seconded by Councilman Richard, the Council voted to adopt an ordinance approving the final plat of the Rienzi Village Townhomes Addendum 3. Upon roll call the vote was as follows:

**YEAS: Councilman Hebert, Richard, Taylor, Badeaux, Mire**

**NAYS: None**

**ABSTAINED: None**

**ABSENT: None**

***ORDINANCE NO. 2427***

***AN ORDINANCE APPROVING THE FINAL PLAT OF  
THE RIENZI VILLAGE TOWNHOMES ADDENDUM 3***

***BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled, that:

***WHEREAS***, the Planning and Zoning Commission of the City of Thibodaux has reviewed a request by J.B. Levert land Company concerning the approval of the final plat of Rienzi Village Townhomes, Addendum 3 located on the south side of Arlington Drive approximately eighty-five (85') feet east of the intersection of Harkey Drive; and

***WHEREAS***, the said commission has approved the aforesaid request and is recommending that the City Council concur with their recommendation; and

***WHEREAS***, in accordance with the provisions of Section 18-53 of the Thibodaux Subdivision Regulations, the final plat of this subdivision should be accepted by the adoption of an appropriate ordinance.

***NOW, THEREFORE BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled, that the final plat of the Rienzi Village Townhomes, Addendum 3 as recommended by the Planning and Zoning Commission is hereby accepted and approved as requested.

The above ordinance having been submitted to a vote the vote thereon was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**

**NAYS: None**

**ABSENT: None**

**ABSTAINED: None**

And the above ordinance was declared adopted this 2nd day of December 2008.

/s/ Jennifer Morvant  
Jennifer Morvant, Council Adm.

/s/ Chad J. Mire  
Chad J. Mire, President

The Zoning Administrator informed the Council Administrator that the Planning and Zoning Commission has recommended that the City Council consider the adoption of an ordinance approving the acceptance of the final plat for Plantation Ridge Townhome Subdivision located on the northeast corner of the intersection of Lynn Avenue and Plantation Road. The approval of the final plat of this subdivision is required in order to comply with the provisions of Section 18-53 of the Thibodaux City Code of Ordinances.

On motion of Councilman Hebert, seconded by Councilman Taylor, the Council voted to adopt an ordinance approving the final plat of the Plantation Ridge Townhome Subdivision Phase I and II. Upon roll call the vote was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**  
**NAYS: None**  
**ABSTAINED: None**  
**ABSENT: None**

***ORDINANCE NO. 2428***

***AN ORDINANCE APPROVING THE FINAL PLAT OF  
THE PLANTATION RIDGE TOWNHOME SUBDIVISION PHASE I  
AND II***

***BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled, that:

***WHEREAS***, the Planning and Zoning Commission of the City of Thibodaux has reviewed a request by Gravois Development, L.L.C. concerning the approval of the final plat of Plantation Ridge Townhome Subdivision, Phase I and II located on the northeast corner of the intersection of Lynn Avenue and Plantation Road; and

***WHEREAS***, the said commission has approved the aforesaid request and is recommending that the City Council concur with their recommendation; and

***WHEREAS***, in accordance with the provisions of Section 18-53 of the Thibodaux Subdivision Regulations, the final plat of this subdivision should be accepted by the adoption of an appropriate ordinance.

***NOW, THEREFORE BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled, that the final plat of the Plantation Ridge Townhome Subdivision, Phase I and II as recommended by the Planning and Zoning Commission is hereby accepted and approved as requested.

The above ordinance having been submitted to a vote the vote thereon was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**  
**NAYS: None**  
**ABSENT: None**  
**ABSTAINED: None**

And the above ordinance was declared adopted this 2nd day of December 2008.

/s/ Jennifer Morvant  
Jennifer Morvant, Council Adm.

/s/ Chad J. Mire  
Chad J. Mire, President

The Zoning Administrator informed the Council Administrator that the Planning and Zoning Commission has recommended that the City Council consider the adoption of an ordinance approving the acceptance of the final plat for Lots 1 thru 40 of Sucre Estates Subdivision located on the south side of Bobby street east of the intersection of Bobby Street and South Barbier Drive. The approval of the final plat of this subdivision is required in order to comply with the provisions of section 18-53 of the Thibodaux City Code of Ordinances.

On motion of Councilman Taylor, seconded by Councilman Hebert, the Council voted to adopt an ordinance approving the final plat of Lots 1 thru 40 of Sucre Estates Subdivision. Upon roll call the vote was as follows:

**YEAS:** Councilmen Hebert, Richard, Taylor, Badeaux, Mire  
**NAYS:** None  
**ABSTAINED:** None  
**ABSENT:** None

*ORDINANCE NO. 2429*

*AN ORDINANCE APPROVING THE FINAL PLAT OF  
LOTS 1 THRU 40 OF SUCRE ESTATES SUBDIVISION*

*BE IT ORDAINED* by the City Council of the City of Thibodaux in regular session assembled, that:

*WHEREAS*, the Planning and Zoning Commission of the City of Thibodaux has reviewed a request by Sucre Estates Partnership concerning the approval of the final plat of Lots 1 thru 40 of Sucre Estates Subdivision located on the south side of Bobby Street east of the intersection of Bobby Street and South Barbier Drive; and

*WHEREAS*, the said commission has approved the aforesaid request and is recommending that the City Council concur with their recommendation; and

*WHEREAS*, in accordance with the provisions of Section 18-53 of the Thibodaux Subdivision Regulations, the final plat of this subdivision should be accepted by the adoption of an appropriate ordinance.

*NOW, THEREFORE BE IT ORDAINED* by the City Council of the City of Thibodaux in regular session assembled, that the final plat of Lots 1 thru 40 of Sucre Estates Subdivision as recommended by the Planning and Zoning Commission is hereby accepted and approved as requested.

The above ordinance having been submitted to a vote the vote thereon was as follows:

**YEAS:** Councilmen Hebert, Richard, Taylor, Badeaux, Mire  
**NAYS:** None  
**ABSENT:** None  
**ABSTAINED:** None

And the above ordinance was declared adopted this 2<sup>nd</sup> day of December 2008.

/s/ Jennifer Morvant  
Jennifer Morvant, Council Adm.

/s/ Chad J. Mire  
Chad J. Mire, President

The Zoning Administrator informed the Council Administrator that the Planning and Zoning Commission has recommended that the City Council consider the adoption of an ordinance approving the acceptance of the final plat for the reduction of a twenty-five (25) foot drainage servitude to a ten (10) foot servitude along Lots 18 & 19 of Block 4, Acadia Woods Subdivision, Addendum 3, including the installation of subsurface drainage in the existing ditch. The approval of the final plat is required in order to comply with the provisions of Section 18-53 of the Thibodaux City Code of Ordinances.

Councilman Badeaux questioned the change of the servitude.

Kermit Kraemer stated that the change would not interfere with the City's maintenance to the area in question.

On motion of Councilman Richard, seconded by Councilman Taylor, the Council voted to adopt an ordinance approving the reduction of drainage servitude along Lots 18 and 19 of Block 4, Acadia Woods Subdivision, Addendum 3. Upon roll call the vote was as follows:

**YEAS:** Councilmen Hebert, Richard, Taylor, Badeaux, Mire

**NAYS:** None

**ABSTAINED:** None

**ABSENT:** None

*ORDINANCE NO. 2430*

*AN ORDINANCE APPROVING THE REDUCTION OF DRAINAGE SERVITUDE ALONG LOTS 18 AND 19 OF BLOCK 4, ACADIA WOODS SUBDIVISION, ADDENDUM 3*

***BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled, that:

***WHEREAS***, the Planning and Zoning Commission of the City of Thibodaux has reviewed a request by David A. Waitz Engineering on behalf of Brian and Lori Babin and Blain and Anna Arthurs concerning the approval of the final plat of a proposed reduction of drainage servitude along Lots 18 & 19 of Block 4, Acadia Woods Subdivision, Addendum 3 located in Sections 135 & 151, T15S-R16E, City of Thibodaux, Lafourche Parish, Louisiana; and

***WHEREAS***, the proposed improvements calls for the reduction of a twenty-five (25) foot drainage servitude to a ten (10) foot drainage servitude, and for the approval of subsurface drainage to be installed in the existing ditch; and

***WHEREAS***, the said commission has approved the aforesaid request and is recommending that the City Council concur with their recommendation; and

***WHEREAS***, in accordance with the provisions of Section 18-53 of the Thibodaux Subdivision Regulations, the final plat should be accepted by the adoption of an appropriate ordinance.

***NOW, THEREFORE BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled, that the final plat of the reduction of drainage servitude and installation of subsurface drainage along Lots 18 & 19 of Block 4, Acadia Woods Subdivision, Addendum 3 as recommended by the Planning and Zoning Commission is hereby accepted and approved as requested.

The above ordinance having been submitted to a vote the vote thereon was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**  
**NAYS: None**  
**ABSENT: None**  
**ABSTAINED:**

And the above ordinance was declared adopted this 2<sup>nd</sup> day of December 2008.

/s/ Jennifer Morvant  
Jennifer Morvant, Council Adm.

/s/ Chad J. Mire  
Chad J. Mire, President

The Caldwell Family donated a parcel of property on St. Mary Highway on the batture of Bayou Lafourche for the purpose of locating a vehicular bridge over Bayou Lafourche near Alwes Street.

The Act of Donation executed on January 3, 1984 with John V. and Nancy L. Caldwell, and Albert B. and Claudette C. Caldwell contained a reversion clause which provided that the ownership of the property would revert back to them if the City did not utilize the property for the intended purpose within three (3) years.

The said three-year period has elapsed, and the attorney for the Caldwell Family has contacted the City and has offered to prepare a Renunciation of Donation Instrument which will convey the ownership of the property back to his client. The Mayor has agreed with this process and asked the City Council to consider the adoption of an ordinance executing a Renunciation of Donation.

Councilman Taylor asked for an explanation for returning the property.

The Mayor explained that the land was originally donated to the city for the possibility of installing a bridge. The land has not been used for that purpose so it is being returned to the owners.

On motion of Councilman Taylor, seconded by Councilman Hebert, the Council voted to adopt an ordinance authorizing the Mayor to execute a Renunciation of Donation with John V. and Nancy L. Caldwell, and Albert B. and Claudette C. Caldwell. Upon roll call the vote was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**  
**NAYS: None**  
**ABSTAINED: None**  
**ABSENT: None**

**ORDINANCE NO. 2431**

***AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A RENUNCIATION OF DONATION WITH JOHN V. AND NANCY L. CALDWELL, AND ALBERT B. AND CLAUDETTE C. CALDWELL***

***BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled, that:

***WHEREAS***, the City executed an Act of Donation with John V. and Nancy L. Caldwell, and Albert B. and Claudette C. Caldwell dated January 3, 1984 for a parcel of property located on the batture of Bayou Lafourche; and

***WHEREAS***, the purpose of acquiring the said property was to provide road access for a proposed bridge near Alwes Street; and

**WHEREAS**, the said donation contained a reversion clause which stipulated that the donation would be dissolved should the City not use the property for the proposed bridge location within three (3) years; and

**WHEREAS**, both the City and Donor agree that the donation should be revoked due to the non-use of the property for its intended purpose within the allotted period of time.

**NOW, THEREFORE BE IT ORDAINED** that the Mayor be and is hereby authorized to execute a Renunciation of Donation with the Caldwell family for the property hereinabove described.

**BE IT FURTHER ORDAINED** that a copy of the revocation is attached hereto and thereby made a part hereof.

The above ordinance having been submitted to a vote, the vote thereon was as follows:

**YEAS:** Councilmen Hebert, Richard, Taylor, Badeaux, Mire

**NAYS:** None

**ABSTAINED:** None

**ABSENT:** None

And the above ordinance was declared adopted this 2<sup>nd</sup> day of December 2008.

/s/ Jennifer Morvant  
Jennifer Morvant, Council Adm.

/s/ Chad J. Mire  
Chad J. Mire, President

The Finance Director informed the Council Administrator that she received correspondence from Patrick Amedee, Attorney at Law, concerning the sales and use tax ordinances adopted by the various political subdivisions of the Parish. He has compiled an updated ordinance to include the laws and rights available to each local political subdivision based on the Uniform Tax Code adopted by the Legislature in 2003.

Mr. Amedee has submitted the updated collection ordinance to each of the taxing authorities of the Parish, and ask that they consider the adoption of an ordinance so that each political subdivision of the Parish will be operating under a common set of ordinances.

Patrick Amedee gave a brief overview and explanation of the Sales Tax Ordinance. He explained that this ordinance is not about any new taxes. It is being put in place to clear up inconsistencies in the ordinance that is in place at this time.

On motion of Councilman Hebert, seconded by Councilman Richard, the Council voted to adopt an ordinance levying a sales and use tax upon the sale at retail, the use, the lease or rental, the consumption of tangible personal property and on the sales of services, levying and providing for the assessment, collection, payment and dedication of such tax and the purpose for which the proceeds of said tax may be expended, such tax having been authorized at a special election held in the Parish on the dates specified. Upon roll call the vote was as follows:

**YEAS:** Councilmen Hebert, Richard, Taylor, Badeaux, Mire

**NAYS:** None

**ABSTAINED:** None

**ABSENT:** None

**ORDINANCE NO. 2432**

***AN ORDINANCE LEVYING A SALES AND USE TAX UPON THE SALE AT RETAIL, THE USE, THE LEASE OR RENTAL, THE CONSUMPTION AND THE STORAGE FOR USE OR CONSUMPTION, OF TANGIBLE PERSONAL PROPERTY AND ON THE SALES OF SERVICES, LEVYING AND PROVIDING FOR THE ASSESSMENT, COLLECTION, PAYMENT AND DEDICATION OF SUCH TAX AND THE PURPOSE FOR WHICH THE PROCEEDS OF SAID TAX MAY BE EXPENDED, SUCH TAX HAVING BEEN AUTHORIZED AT A SPECIAL ELECTION HELD IN THE PARISH ON THE DATES SPECIFIED***

***BE IT ORDAINED*** by the City Council of the City of Thibodaux in regular session assembled, that:

**SALES AND USE TAX ORDINANCE**

**Preface**

The Lafourche Parish School Board is the sole collector of sales and use tax for all of the taxing authorities located in Lafourche Parish, by means of a contract negotiated with the local taxing authorities every two years as indicated below.

The taxes are collected in accordance with the Ordinances adopted and passed by the taxing authorities as follows:

**LAW ENFORCEMENT:** A sales and use tax of one-half of one (1/2%) per cent is collected for Sales Tax District No. 1 as provided for by the special election of May 17, 1980 and adopted on Jul 17, 1980 by Ordinance No. 1317 on July 17, 1980 and recorded on July 18, 1980 in Mortgage Book 363, Folio 502 under Entry No. 524279. A renewal of the one-half of one (1/2) per cent collected for the Lafourche Law Enforcement Sub-District No. 1 One as provided for by a special election of January 20, 1990 and adopted by Ordinance (unnumbered) on April 12, 1990 and recorded on April 23, 1990 in Mortgage Book 579, Folio 146 under Entry No. 711205. A renewal by a special election of November 20, 1999, wherein the voters authorized the levying within Law Enforcement Sub-District No. 1 One of the Parish of Lafourche, State of Louisiana (the "Authority") a sales and use tax of one-half of one per cent (1/2%) for law enforcement, which was adopted by Ordinance (unnumbered) on June 16, 2000 and recorded on June 20, 2000 in Mortgage Book 853, Folio 408 under Entry No. 874581. An additional one half of one percent (1/2%) was authorized by voters on January 18, 1997, with both taxes being applied to the entire area within Lafourche Parish except the areas in the municipalities of Thibodaux, Lockport and Golden Meadow. An Ordinance (unnumbered) was adopted on March 5, 1997 and recorded March 19, 1997 in Mortgage Book 736, Folio 836 under Entry No. 811491, for a total of one (1%) per cent.

**SOLID WASTE:** A sales and use tax of one (1%) per cent as provided for by the special election of September 27, 1986 and adopted on October 28, 1986 by Ordinance Number 1717, and recorded on October 29, 1986 in Mortgage Book 506, Folio 561 under Entry No. 656129 and amended by Ordinance Number 2455 adopted on September 10, 1996 and recorded on September 17, 1996 in Mortgage Book 724, Folio 218 under Entry No. 803370. Said ordinance to take effect on October 1, 1996 reducing the one (1%) per cent to seven tenths (.7%) of one percent, created by the Parish Governing Council authorizing the levying within Sales Tax District No. One of the Parishes of Lafourche, State of Louisiana, said tax for solid waste disposal.

The Sales Tax District One includes the entire area of Lafourche Parish except the municipality of Thibodaux.

**ROAD SALES TAX DISTRICT NO. 2:** A sales and use tax of one (1%) percent, created by the Government (the Lafourche Parish Council) by virtue of a special election which was held on November 15, 1997 and adopted on December 16, 1997 by Ordinance Number 2576 and recorded on December 19, 1997 in Mortgage Book 761, Folio 826 under Entry No. 825513, authorizing the levying within Road Sales Tax District No. Two (2) of the Parish of Lafourche, State of Louisiana effective January 1, 1998 and not to exceed ten (10) years. A Re-Dedication and continuation of a one-half (1/2%) percent tax created by the Government (the Lafourche Parish Council) by virtue of a special election which was held on March 31, 2007 and adopted July 20, 2007 by Ordinance No. 4089 and recorded on August 9, 2007 in Mortgage Book 1274, Folio 397 under Entry No. 1031935, authorizing the levying within Road Sales Tax District No. Two (2) of the Parish of Lafourche, State of Louisiana, effective January 1, 2008 and not to exceed twenty (20) years.

**SALES TAX DISTRICT A:** A sales and use tax of one (1%) per cent created by the Consolidated Sales Tax District A by virtue of a special election which was held on March 31, 2007 and adopted on July 10, 2007 by Ordinance No. 4088 and recorded on August 9, 2007 in Mortgage Book 1274, Folio 403 under Entry No. 1031936, effective October 1, 2007. This tax replaces those taxes listed below in Ordinance Nos. 2678, 2787 and 2788.

**ROAD SALES TAX DISTRICT 3:** A sales and use tax of one (1%) percent, created by the Government (the Lafourche Parish Council) by virtue of a special election which was held on October 3, 1998 and adopted on November 10, 1998 by Ordinance Number 2678 recorded on November 24, 1998 in Mortgage Book 794, Folio 679 under Entry No. 843639, authorizing the levying within Road Sales Tax District No. Three (3) of the Parish of Lafourche, State of Louisiana, effective January 1, 1999.

**ROAD SALES TAX DISTRICT 5:** A sales and use tax of one (1%) percent, created by the Government (the Lafourche Parish Council) by virtue of a special election which was held on July 17, 1999 and adopted on August 10, 1999 by Ordinance Number 2787, recorded on October 6, 1999 in Mortgage Book 828, Folio 13, under Entry No. 860780 authorizing the levying within Road Sales Tax District No. Five (5) of the Parish of Lafourche, State of Louisiana, effective October 7, 1999.

**ROAD SALES TAX DISTRICT 6:** A sales and use tax of one (1%) percent, created by the Government (the Lafourche Parish Council) by virtue of a special election which was held on July 17, 1999 and adopted on August 10, 1999 by Ordinance Number 2788 recorded on October 6, 1999 in Mortgage Book 828, Folio 38, under Entry No. 860781 authorizing the levying within Road Sales Tax District No. Six (6) of the Parish of Lafourche, State of Louisiana, effective October 7, 1999.

**TOWN OF GOLDEN MEADOW:** A sales and use tax of one (1%) per cent created by the Town Council of Golden Meadow by virtue of a special election which was held on September 27, 1975 and adopted on October 6, 1975 by Ordinance Number 185, levying a sales and use tax within the Town of Golden Meadow, State of Louisiana.

**CITY OF THIBODAUX:** A sales and use tax of one (1%) per cent created by Ordinance No. 667 by virtue of a special election held on May 2, 1967 and adopted on May 9, 1967, authorizing the levying of a sales and use tax within the City of Thibodaux and went into effect on May 9, 1967; and an additional tax of one (1%) per cent by Ordinance No. 1127 by virtue of a special election held on January 17, 1981 and adopted on February 3, 1981 and made effective on March 1, 1981, authorizing the levying of a sales and use tax within the City of Thibodaux, State of Louisiana.

**TOWN OF LOCKPORT:** A sales and use tax of one (1%) per cent created by Ordinance No. 110 by virtue of a special election held on February 11, 1967 and

adopted on April 4, 1967 by the Town Board of Aldermen authorizing the levying of a tax within the Town of Lockport, State of Louisiana. An Amendment to the above ordinance was adopted on July 7, 1992. An additional sales and use tax of three tenths of one per cent (0.3%), created by Ordinance No. 240 by virtue of a special election held on April 7, 2001 by the Town Board of Aldermen and adopted on May 15, 2001, and recorded on May 23, 2001 in Mortgage Book 890, Folio 816 under Entry No. 893692, authorizing the levying of a sales and use tax within the Town of Lockport, State of Louisiana, effective July 1, 2001.

**LAFOURCHE PARISH SCHOOL BOARD:** A sales and use tax of one (1%) per cent created by the Lafourche Parish School Board by virtue of a special election which was held on March 6, 1965 and adopted on April 29, 1965 and recorded on May 1, 1965 in Mortgage Book 125, Folio 445 under Entry No. 245169 and effective June 1, 1965. A Sales Tax Ordinance increasing the sales tax by an additional one (1%) per cent by virtue of special election held on April 29, 1995 adopted on May 3, 1995 and recorded on May 8, 1995 in Mortgage Book 691, Folio 375 under Entry No. 781275.

**HOTEL/MOTEL:** A sales and use tax of two (2%) per cent created by Ordinance No. 1411 by the Government (Lafourche Parish Council) adopted on July 22, 1982, amended by Ordinance No. 1419 enacted September 8, 1982 to increase the tax to three (3%) per cent on hotels/motels located within the entire area of Lafourche Parish, State of Louisiana to take effect approximately on October 11, 1982.

**SOUTH LAFOURCHE LEVEE DISTRICT:** A sales and use tax of one (1%) per cent created by the South Lafourche Levee District by virtue of a special election which was held on November 7, 2006 and adopted on November 13, 2006 by Ordinance levying a sales and use tax for construction of, maintaining of necessary levees, levee drainage, flood protection and for all other purposes incidental thereto effective January 1, 2007.

## SALES AND USE TAX ORDINANCE

An Ordinance levying a sales and use tax upon the sale at retail, the use, the lease or rental, the consumption and the storage for use or consumption, of tangible personal property and on the sales of services, levying and providing for the assessment, collection, payment and dedication of such tax and the purpose for which the proceeds of said tax may be expended, such tax having been authorized at a special election held in the parish on the dates specified.

WHEREAS under the provisions of Article VI, Section 29 of the Constitution of the State of Louisiana of 1974, and other constitutional and Statutory authority supplemental thereto, and a special election held in the Parish of Lafourche, State of Louisiana, on (dates as enumerated) the taxing authority named acting as the governing authority of the Parish, for school purposes; the Sheriff, for Lafourche Law Enforcement District One purposes; the Mayor, for Town of Lockport purposes; the Board of Aldermen for Town of Golden Meadow purposes; the Council for City of Thibodaux purposes; the Council President for Solid Waste, Road Tax District purposes; the Commissioner for Tourist tax purposes, and the President for South Lafourche Levee District purposes, for now desires to levy a sales and use tax as enumerated and authorized at said elections by virtue of the favorable passage of the proposition as outlined.

NOW THEREFORE, BE IT ORDAINED by the Parish School Board of the Parish of Lafourche, State of Louisiana, acting as the collection authority for each of the taxing authorities of Lafourche, that

### 1. DEFINITIONS

**SECTION 1.1 GENERAL:** As used in the ordinance, the words, terms and phrases "business", "cost price", "dealer", "gross sales", "hotel", "lease or rental", "person", "purchaser", "retail sale", "sale at retail",

"retailer", "sale", "sales price", "sales of services", "storage", "tangible personal property", "off-road vehicle", "use", "use tax" and "drugs" have the meaning ascribed to them in La. R.S. 47:301, unless the context clearly indicates a different meaning, in addition, the following words have the meanings as hereinafter set forth unless the context clearly indicates a different meaning, to-wit:

- (1) "Agricultural Commodity" means horticultural, viticulture, poultry, farm and livestock and livestock products.
- (2) "Authority" means the Parish School Board of the Parish Lafourche, State of Louisiana, as is appropriate in the context used and with the understanding that the tax will be levied throughout the Parish (for School Board purposes); in the unincorporated areas for law enforcement and road tax purposes; in the corporate limits only for City of Thibodaux, Town of Lockport and Town of Golden Meadow purposes; and throughout the parish excluding City of Thibodaux for solid waste purpose.
- (3) "Collector" means and includes the Secretary of this Governing body or his duly authorized assistant or assistants or such other person or persons, agency or instrumentality designated by this Governing Body to handle and accomplish the collection, enforcement and administration of sales and use tax on behalf of the Authority.

**SECTION 1.2** The levy, collection or administration of any sale and/or use tax by the taxing authority herein shall be governed by the provision of the Uniform Local Sales Tax Code (Act 73) as enacted or thereafter amended. The Uniform Local Sales Tax Code is herein incorporated into these ordinances.

## **2. IMPOSITION OF TAX AND TREATMENT OF TAX BY DEALER**

**SECTION 2.1 LEVYING OF TAX:** For the purpose of the enforcement of the local ordinance and the collection of the tax levied therein, it is presumed that all tangible personal property imported or held in the taxing jurisdiction by any dealer is to be sold at retail, used or consumed, or stored for use or consumption in the taxing jurisdiction, or leased or rented within the taxing jurisdiction, and is subject to the tax herein levied. This presumption shall be prima facie only, and subject to proof furnished to the collector. Accordingly, there is hereby levied from and after (effective date) for the purposes state in the proposition(s) attached hereto as Exhibits A, an additional tax upon the sale at retail, the use, the lease or rental, the consumption, and the storage for use or consumption of tangible personal property and upon the sale of services within the Parish of Lafourche as defined herein, and the levy of such tax shall be as follows.

- (1) At the rate of one per cent (1%) (or effective rate) of the sales prices of each item or article of tangible personal property when sold at retail in the Authority (or boundaries) the tax to be computed on gross sales for the purpose of remitting the amount of tax due the Authority and to include each and every retail sale.
- (2) At the rate of one per cent (1%) (or effective rate) of the cost price of each item or article of tangible personal property when the same is not sold, but is used, consumed, distributed or stored for use or consumption in the Authority (or boundary) provided there shall be no duplication of the tax.

- (3) At the rate of one per cent (1%) (or effective rate) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein where the lease or rental of such property is an established business, or part of an established business or the same is incidental or germane to the said business.
- (4) At the rate of one percent (1%) (or effective rate) of the monthly lease rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee to the owner of the tangible personal property.
- (5) At the rate of one per cent (1%) (or effective rate) of the gross proceeds derived from the sale of services, as defined herein.

**SECTION 2.2 EXCEPTIONS:** A dealer in the Authority who ordinarily purchases personal property for sale and who withdraws a piece of property from stock for rentals is not liable for a sales or use tax on the purchase price of the property when withdrawn from stock. Such person is liable only for the tax applicable on the rental income.

Any sales tax paid on any maintenance or operation expenses of a rental business is not deductible as a credit against the tax due on rental income. Such expenses are part of the cost of doing business and do not constitute a part of the cost of the identical property being rented.

**SECTION 2.3 COLLECTION OF TAX BY DEALER:** The tax shall be collected from the dealer, as defined herein, and paid at the time and in the manner hereinafter provided.

**SECTION 2.3.1** The tax levied by local ordinance shall be collected by the dealer from the purchaser or consumer, except as provided for the collection of tax on motor vehicles in R.S. 47:337.15(B) and the collection of tax on property leased or rented for use offshore in R.S. 47:301(4)(d)(ii). The dealer shall collect the sales tax on off-road vehicles and remit them directly to the Department of Public Safety and Corrections upon application for certificate of title and registration as required for the registration and licensing of other vehicles under the provisions of Subsection B of this Section. The dealer shall collect the sales taxes on off-road vehicles from out-of-state residents who purchase off-road vehicles in this state and remit the sales taxes due directly to the collector.

**SECTION 2.3.2** The dealer shall have the same right in respect to collecting the tax from the purchaser, or in respect to nonpayment of the tax by the purchaser, as if the tax were a part of the purchase price of the property, or charges for services, and payable at the time of sale.

**SECTION 2.3.3** The taxing authority may be joined as a party in any action or proceeding brought by the dealer to collect the tax.

**SECTION 2.3.4** Where the purchaser has failed to pay and a dealer has all other rights, obligations, and remedies provided, such tax shall be payable by the purchaser directly to the taxing authority, and it shall be the duty of this purchaser to file a return thereof with the collector and pay the tax imposed thereon to the collector on the first day of the month after such sale was made or rendered, to be transmitted on or before the twentieth day of such month.

**SECTION 2.4 OBLIGATION OF DEALER OUTSIDE OF THE TAXING JURISDICTION:** Every dealer located outside the taxing jurisdiction making sales of tangible personal property for distribution, storage, use, or other consumption, in the taxing jurisdiction, shall at the time of making sales collect the tax imposed by the local ordinance from the purchaser.

**SECTION 2.5 LIABILITY OF DEALER:** Dealers shall, as far as practicable, add the amount of the tax imposed under the local ordinance in conformity with the schedule or schedules to be prescribed by the secretary of the Department of Revenue pursuant to authority conferred herein, to the sale price or charge, which shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts. Any dealer who neglects, fails, or refuses to collect the tax herein provided shall be liable for and pay the tax himself.

**SECTION 2.6 REMITTANCE OF EXCESS TAX COLLECTED:** Where the tax collected for any period is in excess of the tax rate provided by the local ordinance, the total local tax collected must be paid over to the collector less the compensation to be allowed the dealer as provided by the local ordinance. This provision shall be construed with other provisions of the local ordinance and given effect so as to result in the payment to the collector of the total local tax collected if in excess of the tax rate provided.

**SECTION 2.7 CRIMINAL PENALTY:** Any dealer who fails, neglects, or refuses to collect the tax herein provided, either by himself or through his agents or employees, shall, in addition to the penalty of being liable for and paying the tax himself, be fined not more than one hundred dollars, or imprisoned for not more than three months, or both.

**SECTION 2.8. PROHIBITED ADVERTISEMENT:** No dealer shall advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or part of the tax or that he will relieve the purchaser from the payment of all or any part of the tax unless:

- (A) The dealer includes in the advertisement that any portion of the tax not paid by the purchaser will be remitted on his behalf by the dealer.
- (B) The dealer furnishes the purchaser with written evidence that the dealer will be liable for and pay any tax the purchaser was relieved from paying under this Paragraph himself.

**SECTION 2.8.1** If a dealer advertises that any portion of the tax not paid by the purchaser will be remitted on his behalf by the dealer, the purchaser shall not be liable for the payment of that portion of the tax.

**SECTION 2.8.2** Whoever violates this provision with respect to advertising shall be fined not less than twenty-five dollars or more than two hundred fifty dollars, or imprisoned for not more than three months, or both. For a second or subsequent offense, the penalty shall be double.

**SECTION 2.9 DEALER TO COLLECT TAX SEPARATELY FROM PRICE:** The dealer or seller is permitted and required to state and collect the tax separately from the price paid by the purchaser.

**SECTION 2.10 TOKENS:** The use of tokens is forbidden. The collector shall rely upon regulations promulgated by the secretary of the Department of Revenue that prescribe the method and the schedule of the amounts to be collected from the purchasers, lessees, or consumers in respect to any receipt upon which a tax is imposed. The amount of tax to be collected by the dealer and paid by the purchaser shall in each transaction comply with the schedule so provided.

**SECTION 2.11 TAXES HELD IN TRUST BY DEALER:** The sums of money collected by the dealer for payment of sales and use taxes imposed by the taxing authority shall be and remain the property of the taxing authority and deemed held in trust for the taxing authority.

### **3. EXEMPTION AND EXCLUSIONS FROM TAX**

**SECTION 3.1. GENERAL:** The levy of the tax imposed by this ordinance shall not apply to those transactions which are exempted or excluded from the levy of local sales and use taxes pursuant to the provisions of Chapter 2 of Title 47 of the Louisiana Revised Statutes of 1950, as amended, and other applicable statutory authority.

**SECTION 3.2. EXPORT, INTERSTATE COMMERCE:** It is not the intention of this ordinance to levy tax upon articles of tangible personal property imported into the Authority or produced or manufactured in the Authority for export; nor is it the intention of this ordinance to levy tax on a bona fide transaction in interstate commerce; however, nothing herein shall prevent the collection of the tax imposed by the use of catalogs and other means of sales promotion and for which federal legislation or federal jurisprudence enables the enforcement of this ordinance upon the conduct of such business. It is, however, the intention of this ordinance to levy tax on the sale at retail, the use, the consumption, the distribution and the storage to be used or consumed in the Authority of tangible personal property after it has come to rest in the Authority, and has become a part of the mass of property in the Authority. At such time as federal legislation or federal jurisprudence as to sales in interstate commerce promoted through the use of catalogs and other means of sale promotions enables the enforcement of this ordinance against vendors that have no nexus to the State of Louisiana or the Authority, the provisions of this ordinance shall apply to such sales on which sales and use tax would not otherwise be collected.

**SECTION 3.3. TAXING LIMITS:** No tax shall be due under this ordinance on the sale of any goods or personal tangible property delivered or services performed outside the territorial limits of the Authority.

**SECTION 3.4. USE OUTSIDE TAXING AUTHORITY; EXEMPTION CERTIFICATE:** No tax shall be levied or collected on the storage of property which has been documented for use outside the Authority although the property may be stored within the Authority if the owners of such property which is to be stored for exclusive use outside the Authority have acquired a tax exemption certificate from the local tax collector. When a vendor is presented with a copy of a tax exemption certificate from a vendor, the vendor shall be relieved from liability for the collection of use tax on such property. If the property is

removed from storage and is used within the Authority, the property shall be subject to taxation.

**SECTION 3.5 APPROVAL OF DISCRETIONARY EXEMPTIONS:** Exemptions which are permissible under statute but not mandatory at the local level must first be approved and passed by ordinance to have effect.

#### **4. COLLECTION OF TAX BY DEALER**

**SECTION 4.1. DEALER TO COLLECT TAXES, EXCEPTIONS:** The tax levied by this ordinance shall be collected by the dealer from the purchaser or consumer, except as provided for the collection of the tax on motor vehicles in Section 4:6.1-4 of this ordinance. The dealer shall have the same right in respect to collecting the tax from the purchaser, or in respect to non-payment of the tax by the purchaser, as if the tax were a part of the purchase price of the property, or charges for services and payable at the time of the sale; provided, however, that this Governing Body shall be joined as a party plaintiff in any action or proceeding brought by the dealer to collect the tax.

**SECTION 4.1.1 COLLECTION FROM DEALERS:** The tax imposed under the local ordinance shall be collectible from all persons, as herein defined, engaged as dealers, as herein defined.

**SECTION 4.1.2 TANGIBLE PERSONAL PROPERTY; USE TAX:** On all tangible personal property imported, or caused to be imported, from other taxing jurisdictions, states or foreign countries, and used by him, the "dealer", as herein defined, shall pay the tax imposed by the local ordinance on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in the taxing jurisdiction. For the purposes of the local ordinance, the use, or consumption, or distribution, or storage to be used or consumed in the taxing jurisdiction of tangible personal property shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.

**SECTION 4.1.3.1 CREDIT FOR TAXES PREVIOUSLY PAID:** A credit against the use tax imposed by the local ordinance shall be granted to taxpayers who have paid a similar tax upon the sale or use of the same tangible personal property in another taxing jurisdiction, whether in this state or in another state. The credit provided herein shall be granted only in the case where the taxing authority to which a similar tax has been paid grants a similar credit as provided herein, provided that members of the armed forces who are citizens of this state and whose orders or enlistment contracts stipulate a period of active duty of two years or more and who purchase automobiles outside of the state of Louisiana while on such tour of active duty shall be granted such credit in connection with the purchase of such automobiles whether or not the state to which such tax thereon has been paid grants a similar credit as herein provided.

**SECTION 4.1.3.2 CALCULATION OF CREDIT:** The amount of the credit shall be calculated as provided in R.S. 47:337.86. In no event shall the credit be greater than the tax imposed in the other taxing jurisdiction upon the particular tangible personal property which is subject to the tax imposed by local ordinances.

**SECTION 4.2.1 COLLECTION OF TAX ON VEHICLES:** The tax imposed by the local ordinance on the sale or use of any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semitrailer, motor bus, house trailer, or any other vehicle subject to the vehicle registration license tax may be collected as provided in R.S. 47:303(B).

**SECTION 4.2.2 SALE OF VEHICLE NOT OCCASIONAL SALE:** However, the provision contained in R.S. 47:301(10) (c) (ii) (bb) which excludes isolated or occasional sales from the definition of a sale at retail shall not apply to the sale of vehicles which are the subject of this Subsection. Isolated or occasional sales of vehicles are hereby defined to be sales at retail and as such are subject to tax by local ordinance.

**SECTION 4.3 AUCTIONEERS:** All auctioneers shall register as dealers and shall display their registration to the public as a condition of doing business in the taxing jurisdiction. Such auctioneers, or the company which they represent, shall be responsible for the collection of all local taxes on articles sold by them and shall report and remit to the collector as provided in the local ordinance.

**SECTION 4.4 COLLECTION OF TAX ON MEMBERSHIP IN HEALTH AND PHYSICAL FITNESS CLUBS:** The sales tax due under the provisions of the local ordinance on contracts for membership in a health and physical fitness club shall be assessed and shall be due and payable on a monthly basis computed on the amount paid each month less any actual or imputed interest or collection fees or unpaid reserve amounts not received by the health and fitness club.

**SECTION 4.5 DIRECT PAYMENT NUMBERS:** Notwithstanding any provision of law to the contrary, a Louisiana taxpayer who obtains a DP Number as provided in R.S. 47:303.1 shall remit sales and use taxes due on purchases and rentals of tangible personal property and taxable services directly to the state and local taxing authorities to whom the sales and use taxes are due, and shall not be liable to remit the tax to the vendor or lessor of the tangible personal property and taxable services, as provided in R.S. 47:303.1.

**SECTION 4.6 DIRECT PAY AUTHORIZATION:** In the event a taxpayer has average taxable purchases, leases, or services less than the amount prescribed by R.S. 47:303.1(B) (1) (c), and both the taxpayer and the collector for the taxing authorities desire to establish a direct pay authorization, the taxing authorities by local ordinance or the collector by rule, may establish such policies and procedures necessary to implement the authorization. Said local ordinance or rule shall in no way interfere or otherwise render ineffective all other provisions of R.S. 47:303.1 as they relate to the state sales and use tax.

**SECTION 4.7** For the time period July 1, 1998 to July 1, 2000, the contractor's direct pay number provision as found in R.S. 33:2716(B) shall be applicable.

**SECTION 4.8 MANDATORY PAYMENT:** Where the tax collected for any period is in excess of one percent (1 %), the total collected must be paid over to the Collector, less the commission to be allowed the dealer as hereinafter set forth.

**SECTION 4.9. PURCHASER'S DUTY TO PAY TAX:** Where the purchaser has failed to pay and a dealer has failed to collect a tax upon a sale, as imposed by this ordinance, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the purchaser directly to this Governing Body, and it shall be the duty of this purchaser to file a return thereof with the Collector and to pay the tax imposed thereon to this Governing Body within fifteen (15) days after such sale was made or rendered.

**SECTION 4.10. DEALER COMMISSION:** For the purpose of compensating the dealer in accounting for and remitting the tax levied by this ordinance, each dealer shall be allowed a discount of one and one-tenth (1.1 %) per cent of the amount of tax due and accounted for and remitted to the Collector in the form of a deduction in submitting his report and paying the amount due by him if the amount due was not delinquent at the time of payment.

5. **CALCULATION AND ASSESSMENT OF TAX, PROTEST AND APPEAL**

**SECTION 5.1.1 FAILURE TO FILE TAXES, PENALTIES,**

**INTEREST:** If a taxpayer fails to make and file any return or report required by the provisions of the local ordinance and this Chapter, the collector shall determine the tax, penalty, and interest due by estimate or otherwise. Having determined the amount of tax, penalty, and interest due, the collector shall send by mail a notice to the taxpayer at the address given in the last report filed by him pursuant to the provisions of this Chapter, or to any address that may be obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the U.S. Postal Service or from U.S. Postal Service certified software, setting out his determination and informing the person of his purpose to assess the amount so determined against him after fifteen calendar days from the date of the notice.

**SECTION 5.1.2 AUDIT PERMITTED:** If a return or report made and filed does not correctly compute the liability of the taxpayer, the collector shall cause an audit, investigation, or examination, as provided for by R.S. 47:337.35, to be made to determine the tax, penalty, and interest due. Having determined the amount of tax, penalty, and interest due, the collector shall send by mail a notice to the taxpayer at the address given in the last report filed by him pursuant to the provisions of this Chapter, or to any address that may be obtainable from the U.S. Postal Service or from U.S. Postal Service certified software, setting out his determination and informing the person of his purpose to assess the amount so determined against him after thirty calendar days from the date of the notice.

**SECTION 5.2 TAXPAYER'S RIGHT TO PROTEST PROPOSED**

**ASSESSED AMOUNT:** The taxpayer, within fifteen calendar days from the date of the notice provided in SECTION 5.1.1 or within thirty calendar days from the date of the notice provided in SECTION 5.1.2, may protest thereto. This protest must be in writing and should fully disclose the reasons, together with facts and figures in substantiation thereof, for objecting to the collector's determination. The collector shall consider the protest, and shall grant a hearing thereon, before making a final determination of tax, penalty, and interest due.

**SECTION 5.3.1 ASSESSMENT OF TAX, PENALTY AND**

**INTEREST:** At the expiration of fifteen calendar days from the date of the collector's notice provided in SECTION 5.1.1, or at the expiration

of such time as may be necessary for the collector to consider any protest filed to such notice, the collector shall proceed to assess the tax, penalty, and interest that he determines to be due under the provisions of the local ordinance and this Chapter. The assessment shall be evidenced by a writing in any form suitable to the collector, which sets forth the name of the taxpayer, the amount determined to be due, the kind of tax, and the taxable period for which it is due. This writing shall be retained as a part of the collector's official records. The assessment may confirm or modify the collector's originally proposed assessment.

**SECTION 5.3.2 ASSESSMENT CONTINUED:** At the expiration of thirty calendar days from the date of the collector's notice provided in SECTION 5.1.2, or at the expiration of such time as may be necessary for the collector to consider any protest filed to such notice, the collector shall proceed to assess the tax, penalty, and interest that he determines to be due under the provisions of the local ordinance and this Chapter. The assessment shall be evidenced by a writing in any form suitable to the collector, which sets forth the name of the taxpayer, the amount determined to be due, the kind of tax, and the taxable period for which it is due. This writing shall be retained as a part of the collector's official records. The assessment may confirm or modify the collector's originally proposed assessment.

**SECTION 5.4.1 NOTICE OF ASSESSMENT:** Having assessed the amount determined to be due, the collector shall send a notice by certified mail to the taxpayer against whom the assessment is imposed at the address given in the last report filed by said taxpayer, or to any address obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from the United States Postal Service certified software. If no report has been timely filed, the collector shall send a notice by certified mail to the taxpayer against whom the assessment is imposed at any address obtainable from any private entity which will provide such address free of charge or from any federal, state, or local government entity, including but not limited to the United States Postal Service or from the United States Postal service certified software. This notice shall inform the taxpayer of the assessment and that he has sixty calendar days from the date of the notice to (a) pay the amount of the assessment; (b) request a hearing with the collector or; (c) pay under protest in accordance with R.S. 47:337.63.

**SECTION 5.4.2 PROTEST HEARING BEFORE COLLECTOR:** If any dealer shall be aggrieved by any findings or assessment of the collector, he may, within thirty days of the receipt of notice of the assessment or finding, file a protest with the collector in writing, signed by himself or his duly authorized agent, which shall be under oath and shall set forth the reason therefore, and may request a hearing. Thereafter, the collector shall grant a hearing to said dealer, if a hearing has been requested, and may make any order confirming, modifying or vacating any such finding or assessment. The filing of any such protest shall not abate any penalty for nonpayment, nor shall it stay the right of the taxing authority to collect the tax in any manner herein provided. Appeals from the decision of the collector shall be directed to any state, city or federal court of competent jurisdiction. This Section shall afford a legal remedy and right of action in any state, city or federal court having jurisdiction of the parties and subject matter for a full and complete adjudication of any and all questions arising in the enforcement of the local ordinance and this Chapter as to

the legality of any tax accrued or accruing or the method of enforcement thereof.

**SECTION 5.4.3 ERRORS OF FACT OR LAW:** No assessment made by the collector shall be final if it is determined that the assessment was based on an error of fact or of law. An "error of fact" for this purpose means facts material to the assessment assumed by the collector at the time of the assessment to be true but which subsequently are determined by the collector to be false. "Error of law" for this purpose means that in making the assessment the collector applied the law contrary to the construction followed by the collector in making other assessments.

**SECTION 5.4.4 COLLECTOR TO CORRECT MANIFEST ERRORS:** The determination of an error of fact or of law under this Subsection shall be solely that of the collector, and no action against the collector with respect to the determination shall be brought in any court, and no court shall have jurisdiction of any such action, it being the intent of this Subsection only to permit the collector to correct manifest errors of fact or in the application of the law made by the collector in making the assessment; however, all reductions of assessments based on such errors, except estimated assessments made due to the failure of the taxpayer to file a proper tax return, must be approved and signed by the collector. Estimated assessments made due to the failure of the taxpayer to file a proper tax return may be corrected by the acceptance of the proper tax return and must be approved by the collector or his designee.

**SECTION 5.5 PAYMENT UNDER PROTEST; SUIT FOR RECOVERY OF TAXES PAID UNDER PROTEST:** Any taxpayer protesting the payment of any amount found due by the collector or the enforcement of any provision of law in relation thereto shall remit to the collector the amount due and at that time shall give notice of intention to file suit for the recovery of such tax.

**SECTION 5.5.1 PURCHASER'S RIGHT TO PAY UNDER PROTEST:** In the case of sales or use taxes that are required to be collected and remitted by a selling dealer as provided for in R.S. 47:337.17, the purchaser, in order to avail himself of the alternative remedy provided by this Section, shall remit protested sales or use tax to the selling dealer, and shall retain copies of documentation evidencing the amount of the sales or use tax paid to the dealer on the transactions. On or before the twentieth day of the month following the month of the transactions on which the selling dealer charged the tax, the purchaser shall inform the collector by certified mail or other reasonable means of the dates and amounts of the protested taxes that were charged by the selling dealer, and shall give notice of the purchaser's intention to file suit for recovery of the tax. Upon receipt of this notice, the amount remitted to the collector or the amount of protested taxes that have been paid to the selling dealer shall be placed in an escrow account and held by the collector or his duly authorized representative for a period of thirty days. If suit is filed for recovery of the tax within the thirty-day period, the funds in the escrow account shall be further held pending the outcome of the suit. If the taxpayer prevails, the collector shall refund the amount to the claimant, with interest at the rate established pursuant to R.S. 47:337.80.

**SECTION 5.5.2 LEGAL REMEDY; JURISDICTION:** This Section shall afford a legal remedy and right of action in any state court having

jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of the sales and use tax of a taxing authority as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the collector shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit. Additionally, this Section shall be construed to provide a legal remedy in the state courts in case such taxes are claimed to be an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act of Congress or the United States Constitution, or the Constitution of Louisiana.

**SECTION 5.5.3 PENDING CONTROLLING LITIGATION:** Upon request of a taxpayer and upon proper showing by such taxpayer that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the courts, may remit the additional assessment under protest, but need not file an additional suit. In such cases, the tax so paid under protest shall be placed in an escrow account and held by the collector until the question of law involved has been determined by the courts and shall then be disposed of as therein provided.

**SECTION 5.4 POSTING OF SECURITY BY DEALER OR TAXPAYER:** Any taxpayer who has received a final notice of assessment for sales and use taxes from the collector and whose remedy is to make a payment under protest may alternatively post a commercial bond or other security, as provided in this Section, rather than making a payment under protest.

**SECTION 5.4.1 RULE TO SET BOND:** In order to post commercial bond or other security rather than make a payment under protest, the taxpayer, within thirty days of receipt of the notice of assessment, shall file suit in any state court of competent jurisdiction contesting the final assessment. In connection with the filing of such suit, the taxpayer shall file a rule to set bond, which shall be set for hearing within thirty days of the filing of the rule to set bond and shall attach to the petition evidence of the taxpayer's ability to post bond or other security.

**SECTION 5.4.2 RULE TO SET BOND, GROUNDS:** The court shall authorize the posting of a commercial bond or other security in lieu of a payment under protest if the taxpayer establishes that it does not have the resources to pay the taxes, penalties, and interest under protest or that a payment under protest of the taxes, interest, and penalties would seriously disrupt the ability of the taxpayer to manage its business affairs. The court may either order the posting of commercial bond or other security in an amount determined by the court not to be less than the amount of unpaid taxes, interest, and penalties demanded in the assessment or may order the taxpayer to make a payment under protest pursuant to the provisions of state law and this Chapter in the amount of such unpaid taxes, interest, and penalties. The court may order that a portion of the unpaid taxes, interest, and penalties be paid under protest and the balance secured by the posting of a bond or other security as provided herein.

**SECTION 5.4.3 TIMING FOR POSTING OF BOND:** The posting of such bond or other security or the payment under protest shall be made no later than thirty days after the mailing of the notice of the

decision of the court authorizing the posting of bond or other security or requiring that a payment under protest be made.

**SECTION 5.4.4 FILING OF SUIT UNDER PROTEST, AFFECT:** If the taxpayer timely files the suit referred to herein, no collection action shall be taken in connection with the assessment of taxes, interest, and penalties, which are the subject of the taxpayer's suit, unless the taxpayer fails to post bond or other security or make the payment under protest required by the court.

**SECTION 5.4.5 NATURE AND AMOUNT OF BOND:** To the extent not inconsistent with this Section, the nature and amount of the bond or security and the procedures for posting bond or providing other security shall be consistent with the provisions for providing security in connection with a suspensive appeal under the Code of Civil Procedure.

**6. COLLECTION OF TAX FROM DEALER**

**SECTION 6.1. COLLECTOR PROPER PARTY TO BRING SUIT; JURISDICTION AND VENUE:** The tax imposed by this ordinance shall be collectible by the Collector on behalf of this Governing Body from all persons engaged as dealers. The Collector shall be the proper party to bring suits in his official capacity for the collection of such taxes. Any action to enforce the collection of a sales or use tax, including any applicable interest, penalties, or other charges, levied by the Authority shall be brought in the 17<sup>th</sup> Judicial District Court for the Parish of Lafourche.

**SECTION 6.1.1 POWERS OF COLLECTOR:** The Collector is duly authorized and empowered to carry into effect the provisions of this ordinance, and in pursuance thereof to make and enforce such rules as he may deem necessary. Such regulations when promulgated shall have the full force and effect of law. Promulgation shall be accomplished by publication at least one time in the official journal of the Authority.

**SECTION 6.1.2 LEGAL COUNSEL:** The Collector may employ such personnel, including legal counsel on a fee or salary basis, as are necessary to assist in the collection of the tax imposed hereunder.

**SECTION 6.1.3 AUTHORIZED REPRESENTATIVES:** Any duly authorized representative or deputy of the Collector, when acting under his authority and direction, shall have the same power as is conferred upon the Collector by this ordinance .

**SECTION 6.14 ADDITIONAL POWERS OF COLLECTOR:** The Collector may conduct hearings and administer oaths, and examine under oath, any dealer and the directors, officers, agents and employees of any dealer and any other witness, relative to the business of such dealer in respect to any matter incident to the administration of this ordinance .

**SECTION 6.1.5 SUBPOENA POWER OF COLLECTOR:** The collector or any of his authorized assistants may by subpoena compel the attendance of witnesses and production of any books, records, papers, vouchers, or accounts of any taxpayer or any person who the collector has reason to believe has information pertinent to any matter under investigation by the collector at any hearing held pursuant to the provisions of this Part. The fees of witnesses required to attend any such hearing shall be the same as those allowed to witnesses appearing in the district courts. These fees shall be paid in the manner provided

for the payment of other expenses incident to the administration of these ordinances. The notice or subpoena requiring a person to attend a hearing herein authorized, to be examined, or to answer any questions or to produce any books, records, papers, vouchers, accounts, or documents shall be given by the collector or any of his authorized assistants, either through personal service on the person and endorsement of such service on the reverse of a copy of such notice, or by sending a notice by registered or certified mail to the last known address of such person. The mailing of the notice shall be presumptive evidence of its receipt by the person to whom it was addressed. If a person subpoenaed to attend any hearing under this Part refuses to appear, be examined, or answer any questions, or produce any books, records, papers, vouchers, accounts, or documents, pertinent to the matter of inquiry, when subpoenaed so to do by the collector, or any of his authorized assistants, the collector or such assistant, in term time or vacation, may apply to any district court, upon proof by affidavit of such refusal, to make an order returnable in not less than two nor more than ten days, directing such person to show cause before the court why he should not obey the demand of the subpoena. Upon the return of such order, the court before whom the matter comes shall examine the person under oath, and the person shall be given an opportunity to be heard, and if the court determines that he has refused, without legal excuse, to obey the command of the subpoena, or to be examined, or to answer any question, or to produce any books, papers, vouchers, records, accounts, or documents, pertinent to the matter of inquiry, which he was by subpoena commanded to answer or produce, the court may order such person to comply forthwith with such subpoena or order, or to submit to such examination or to answer any such question, and any failure to obey such order of the court may be punished by the court as a contempt of the court.

**SECTION 6.2 USE TAX:** On all tangible personal property imported, or caused to be imported, from other states or other political subdivisions of this State, or any foreign country, and used by him, the dealer shall pay the tax imposed by this ordinance on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption, in the authority. For the purpose of this ordinance, use or consumption, or distribution, or storage to be used or consumed in the Authority of tangible personal property, shall each be equivalent to a sale at retail, and the tax shall thereupon immediately be levied and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event,

**SECTION 6.3 CREDIT FOR USE TAX/SALES TAX PREVIOUSLY PAID:** A credit against the use tax imposed by this ordinance shall be granted to taxpayers who have paid a similar tax upon the sale or use of the same tangible personal property in another city or parish in the State of Louisiana, or city or county in a state other than Louisiana. The credit provided herein shall be granted only in the case where the city or parish in the State of Louisiana, or the city or county in a state other than Louisiana, to which a similar tax has been paid, grants a similar credit as provided herein. The proof of payment of the similar tax to another city or parish in the State of Louisiana, or to a city or county in a state other than Louisiana, shall be made according to rules and regulations promulgated by the Collector. In no event shall the credit be greater than the tax imposed by this Governing Body upon the said tangible personal property which is the subject of the use tax imposed by this ordinance.

**SECTION 6.4.1 CONTRACT POWERS OF COLLECTOR:** Within the limits provided for in Article VII, Section 3(B) of the Constitution of Louisiana, the Authority may contract with the sheriff, the Louisiana Department of Revenue, any political subdivision of this state, or any other agency, whether public or private, for the examination or investigation of the place of business, if any; the tangible personal property; and the books, records, papers, vouchers, accounts, and documents of any taxpayer for the purposes of enforcement and collection of any tax imposed by that taxing authority.

**SECTION 6.4.2 PRIVATE AUDITS PERMISSABLE:** Within the limits provided for in Article VII, Section 3(B) of the Constitution of Louisiana, for the purpose of auditing for compliance with local sales and use tax ordinances, the Authority may enter into a contract with a private auditing firm and, when so authorized by such contract, such firm may examine or investigate the place of business, if any; the tangible personal property; and the books, records, papers, vouchers, accounts, and documents of any taxpayer. The rate of compensation shall be on an hourly basis, plus reasonable expenses. In addition, all such contracts shall be approved by the majority of the affected taxing authorities. Any private agency hired for the purposes of this Section and any employee of such private agency shall be governed by the provisions of R.S. 47:1508 et seq.

**SECTION 6.4.3 NOTICE OF AUDIT:** Prior to initiating an examination or audit of a taxpayer, a taxing authority shall provide notice of the taxing authority's intent to audit by certified mail to the taxpayer at the taxpayer's last known address. Such notice shall:

- (A) Reasonably describe the nature of the audit.
- (B) Identify the name, office, address, and office telephone number of the firm or individual who will initiate the audit.
- (C) Advise the taxpayer of the right to review and copy the audit contract if the audit will be conducted by a private auditing firm.
- (D) Summarize the remedies available to the taxpayer if the taxpayer should choose to contest the audit findings.

(E) Describe the interest, penalties, and costs, including audit costs, for which the taxpayer may be liable if taxes are determined to be due.

During the course of the audit, the taxpayer shall be notified of the name, office address, and office telephone number of each auditor assigned to the audit. Private auditing firms shall provide any taxpayer subject to an audit with access to an original or a copy of the audit contract specifying the terms under which the audit firm was engaged, which may be reviewed and copied by the taxpayer.

**SECTION 6.4.4 COST OF AUDIT TO TAXPAYER:** If the cost of a sales tax compliance audit is to be borne by the taxpayer, pursuant to R.S. 47:337.75, the cost to the taxpayer shall not exceed thirty percent of the amount of the additional taxes determined to be due as the result of the audit.

## **7. RETURNS AND PAYMENT OF TAX**

**SECTION 7.1 TAXES, WHEN DUE:** Except as hereafter provided, the taxes levied by the local ordinance shall be due and shall be payable monthly on the first day of the month.

**SECTION 7.2 RETURNS, WHEN DUE:** For the purpose of ascertaining the amount of tax payable, all dealers shall transmit, on or before the twentieth day of the month following the month in which this tax becomes effective, to the collector, upon forms prescribed, prepared, and furnished by him, except as provided in R.S. 47:337.22 and 337.23, returns showing the gross sales, purchases, gross proceeds from lease or rental, gross payments for lease or rental, gross proceeds derived from sales of services, or gross payments for services, as the case may be, arising from all taxable transactions during the preceding calendar month. Thereafter, like returns shall be prepared and transmitted to the collector by all dealers on or before the twentieth day of each month for the preceding calendar month. These returns shall show any further information the collector may require to enable him to correctly compute and collect the tax levied. Every dealer, at the time of making the return required hereunder, shall compute and remit to the collector the required tax due for the preceding calendar month, and failure to so remit such tax shall cause said tax to become delinquent.

**SECTION 7.3 QUARTERLY RETURNS, WHEN PERMISSABLE:** However, whenever the taxes due hereunder from a dealer average less than thirty dollars per month, the taxes hereunder shall be due and payable quarterly on the first day of the month, and the return required from the dealer for the quarter shall be filed on or before the twentieth day of the first month of the next succeeding quarter. The collector shall provide by regulation for the period and method of determining, under this proviso, the average taxes due from a dealer. Any dealer who is required to file his sales tax return on a quarterly basis, as provided above, may file his returns and pay the tax on a monthly basis after first having received written approval from the collector to do so. Application to file monthly must be furnished to the collector in writing and will set forth complete justification for the shorter reporting period.

**SECTION 7.4 SUSPENSION OF FILING: CIRCUMSTANCES:** When any person or other entity with annual taxable gross receipts from sales of property or services of one hundred fifty thousand dollars or less makes no taxable sales of tangible personal property or services

for three calendar months in a parish in which he does not have a business location, such taxpayer shall not be required to file thereafter either monthly or quarterly returns with any political subdivision in the parish until he has more than one such sale in the parish during a three-month period. In lieu of such returns, the taxpayer may send a letter to the collector for the parish on or before the twentieth of the month following the sale, describing the sale, the buyer, and the price, and remitting the tax due.

**SECTION 7.5 RENTALS OR LEASES:** Gross proceeds from rentals or leases shall be reported and the tax shall be paid with respect thereto, in accordance with rules and regulations for reporting as established by the collector following the month in which the payment for the lease or rental is actually collected by lessor.

**SECTION 7.6 EXEMPTION:** Notwithstanding any other provisions of law to the contrary, lessors of property to be used offshore as provided for in R.S. 47:301(4)(d)(ii) shall not be required to collect or otherwise pay rental taxes on the gross proceeds from such leases and rentals.

**SECTION 7.7 DEALER COMPENSATION:** For the purpose of compensating the dealer in accounting for and remitting the tax levied by the local ordinance, each dealer shall be allowed compensation at the rate specified in the local ordinance in the form of a deduction in submitting his report and paying the amount due by him, provided the amount due was not delinquent at the time of payment. The amount of any credit claimed for taxes already paid to a wholesaler, as authorized by Subsection B of this Section, shall not be deducted in computing the compensation allowed the dealer.

**SECTION 7.8 EXTENSION TO FILE:** The collector, for good cause, may extend, for not to exceed thirty days, the time for making any returns required under the provisions of this Chapter.

**SECTION 7.9 DEALER AS AGENT:** For the purpose of collecting and remitting to the taxing authority the tax imposed by the local ordinance, the dealer is hereby declared to be the agent of the taxing authority.

**NOTE:** SECTION 7.9 as enacted by Acts 2007, No. 393, §2, eff. Jan. 1, 2009.

**SECTION 7.10 CREDITS ALLOWED:** In making their returns to the collector, dealers who have paid advance sales tax on purchases of tangible personal property for resale during periods when the collection of such tax was required by law shall deduct from the total tax collected by them upon the retail sale of the commodity the amount of tax paid by them to manufacturers, wholesalers, jobbers and suppliers during the period reported, provided tax paid invoices evidencing the payment are retained by the dealer claiming the refund or credit. If the amount so paid during any reporting period amounts to more than the tax collected by him for the period reported, the excess so paid shall be allowed as refund or credit against the tax collected by the dealer during the succeeding period or periods.

§2.

NOTE: SECTION 7.10 eff. until Jan. 1, 2009. See Acts 2007, No. 393,

**SECTION 7.11 COLLECTION BY WHOLESALERS:** Except as hereinafter set forth, the Authority is hereby prohibited from requiring manufacturers, wholesalers, jobbers, or suppliers to collect such sales taxes in advance from dealers to whom they sell.

NOTE: Paragraph 7.11.1 as amended by Acts 2007, No. 393, §2, eff. Jan. 1, 2009.

**7.11.1 COLLECTION BY WHOLESALER:**. (1) Parishes, municipalities, school boards and other tax authorities which levy a sales tax are hereby prohibited from requiring manufacturers, wholesalers, jobbers, suppliers, or any other taxpayer to collect such sales taxes in advance from dealers to whom they sell for the purposes of resale.

**SECTION 7.12 REGISTRATION BY NONRESIDENT PRIME CONTRACTOR:** Prior to commencing work on any construction contract in the Parish of Lafourche which in the aggregate exceeds three thousand dollars, any nonresident prime contractor, as defined in R.S. 47:9(A)(2), shall:

(A) Register the contract with the Department of Revenue in accordance with the provisions of R.S. 47:9(A)(1) and obtain a certificate in a form to be determined by the secretary, which certificate shall identify the construction project registered and recite the total amount of the contract.

(B) File with the department a surety bond or a blanket surety bond for all contracts, sufficient to cover all taxes due on the contract or contracts, in accordance with the provisions of R.S. 47:9(B)(1).

(C) Register the contract with the collector of sales and use taxes. The collector shall issue a certificate in a form determined by the secretary, following the requirements in Subparagraph (a) of this Paragraph, certifying that all requirements for surety bonds established by R.S. 47:306(D) applicable to the location of the project have been met.

No state entity, including but not limited to the office of the state fire marshal, or local governing authority charged with the responsibility of issuing any permit, license, or certificate necessary for the lawful commencement of any construction contract subject to the provisions of this Subsection, shall issue such permit, license, or certificate until sufficient proof of possession of the certificates obtained as provided in this Subsection for that project is shown by the applicant.

**SECTION 7.13 PAYMENT OF TAX BY A LICENSED VEHICLE DEALER:** Notwithstanding any other provision of law to the contrary, including the provisions of Subsection A of this Section, every vehicle dealer licensed pursuant to Title 32 of the Louisiana Revised Statutes of 1950 who sells a vehicle at retail shall remit all taxes collected pursuant to R.S. 47:303(B) no later than forty days from the date of sale. The secretary, for good cause shown, may extend the time for remitting the

taxes for these licensed vehicle dealers for a period not to exceed ninety days.

## **8. RECORDS AND INSPECTION THEREOF**

### **SECTION 8.1 DEALER TO KEEP AND PRESERVE RECORDS:**

Every dealer required to make a report and pay any tax under this Chapter shall keep and preserve suitable records of the sales, purchases, or leases taxable pursuant to this Chapter, and such other books of accounts as may be necessary to determine the amount of tax due hereunder, and other information as may be required by the collector; and each dealer shall secure, maintain and keep until the taxes to which they relate have prescribed, a complete record of tangible personal property received, used, sold at retail, distributed, or stored, leased or rented, within the taxing jurisdiction by the said dealer, together with invoices, bills of lading, and other pertinent records and papers as may be required by the collector for the reasonable administration of the tax, and a complete record of all sales or purchases of services taxable as provided in this Chapter until the taxes to which they relate have prescribed. These records shall be open for inspection to the collector at all reasonable hours. The collector is authorized to require all dealers who take deductions on their sales tax returns for total sales under the minimum taxable bracket prescribed pursuant to R.S. 47:304 to support their deductions by keeping written or printed detailed records of said sales in addition to their usual books and accounts.

Any dealer subject to the provisions of this Chapter who violates the provisions of this Section shall be fined not more than five hundred dollars or imprisoned for not more than sixty days, or both, for any such offense.

**SECTION 8.2 WHOLESALE DEALERS TO KEEP RECORDS:** All wholesale dealers and jobbers in the taxing jurisdiction shall keep a record of all sales of tangible personal property made in the taxing jurisdiction whether such sales be for cash or on terms of credit. These records shall contain and include the name and address of the purchaser, the date of the purchase, the article purchased and the price at which the article is sold to the purchaser. These records shall be kept until the taxes to which they relate have prescribed and shall be open to the inspection of the collector at all reasonable hours.

Whoever violates the provisions of this Section shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned for not less than ten days nor more than thirty days, or both, for the first offense. For the second or each subsequent offense, the penalty shall be double.

### **SECTION 8.3 COLLECTOR'S RIGHT TO EXAMINE RECORDS OF TRANSPORTATION COMPANIES, ETC.:**

The collector is specifically authorized to examine at all reasonable hours, the books, records and other documents of all transportation companies, agencies, or firms operating in the taxing jurisdiction, whether they conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or are otherwise shipping articles of tangible personal property subject to the tax levied by the local ordinance. When any such transportation company refuses to permit the examination of its records, as provided in this Section, the collector may proceed by rule against it, in term time or in vacation, in any court

of competent jurisdiction in the parish where such refusals occurred, to show cause why the collector should not be permitted to examine its books, records or other documents. This rule may be tried in open court or in chambers, and in case the rule is made absolute, the same shall be considered a judgment of the court, and every violation thereof shall be considered as a contempt of court and punished according to law.

**SECTION 8.4 COLLECTOR'S RIGHT TO EXAMINE PREMISES, RECORDS:** For the purpose of administering the provisions of the local ordinance, the collector, whenever he deems it expedient, may make or cause to be made by any of his authorized assistants, an examination or investigation of the place of business, if any, the tangible personal property, and the books, records, papers, vouchers, accounts, and documents of any taxpayer. Every taxpayer and every director, officer, agent, or employee of every taxpayer, shall exhibit to the collector or to any of his authorized assistants, the place of business, the tangible personal property and all of the books, records, papers, vouchers, accounts, and documents of the taxpayer and to facilitate any such examination or investigation so far as it may be in his or their power so to do.

**SECTION 8.5 TAXPAYER TO RETAIN RECORDS:** Notwithstanding any other provision of this Chapter, any document or record which a taxpayer is required to maintain in regard to a tax levied pursuant to the local ordinance, shall be retained by the taxpayer until the tax to which they relate have prescribed.

**SECTION 8.6 COLLECTOR TO KEEP OFFICIAL RECORD:** he Collector shall keep a record of all of his official acts and shall preserve copies of all rules, decisions and orders made by him or by any deputy of his department in charge of the collection of the tax imposed by this ordinance. Copies of such rules, decisions or orders and of any paper or papers filed in any office maintained by him in the administration of this ordinance may be authenticated under his official signature, and when so authenticated, shall be evidence in all courts of the state of the same weight and force as the original thereof.

**SECTION 8.7 CONFIDENTIALITY OF RECORDS:** The records and files of the Collector respecting the administration of this ordinance shall be considered confidential and privileged and neither the Collector nor any employee engaged in the administration thereof or charged with the custody of any such records or files shall divulge or disclose any information obtained from such records or files or from any examination or inspection of the premises or property of any dealer except in the administration and enforcement of this ordinance and applicable tax laws, all as provided in R.S. 47:1508. Neither the Collector nor any employee engaged in such administration or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceeding except: (a) in an action or proceeding under the provisions of this ordinance; and (b) when the records or files or the facts shown thereby are directly involved in such action or proceedings.

**SECTION 8.8 CONFIDENTIALTY; EXCEPTIONS:** Nothing contained in this ordinance shall be construed to prevent:

- (1) The delivery to a dealer or his duly authorized representatives of a copy of any return, report or other paper filed by him pursuant to the provisions of this ordinance.

- (2) The publication of statistics so classified as to prevent the identification of any return or report and the items thereof;
- (3) The inspection by the legal representative of this Governing Body of the returns, reports or files relating to the claim of any dealer who shall have brought an action to review or set aside any tax imposed under this ordinance or against whom an action or proceeding has been instituted in accordance with the provisions hereof;
- (4) The examination of the records and files by the Collector; or
- (5) The furnishing, in the discretion of the Collector, of any information disclosed by the records or files to any official person or body of any other state or of the United States who shall be concerned with the administration of any similar tax by that state or the United States.

**9. IMPORTED GOODS - PERMITS**

**SECTION 9.1 POWER TO PERMIT IMPORTED GOODS:** In order to prevent the illegal importation into the authority of tangible personal property which is subject to the tax, and to strengthen and make more effective the manner and method of enforcing payment of the tax imposed by this ordinance, the Collector is hereby authorized and empowered to put into operation a system of permits whereby any person, or dealer, may import tangible personal property by truck, automobile, or other means of transportation other than a common carrier, without having said truck, automobile or other means of transportation seized and subjected to legal proceedings for its forfeiture. Such system of permits shall require the person, or dealer, who desires to import tangible personal property into the Authority, which property is subject to tax imposed by this ordinance, to apply to the Collector for a permit stating the kind of vehicle, to be used, the name of the driver, the license number of the vehicle, the kind or character of tangible personal property to be imported, the date, the name and address of the consignee, and such other information as the Collector may deem proper or necessary. Such permits shall be free of cost to the applicant and may be obtained at the office of the Collector.

**10. REMEDIES FOR COLLECTION, INCLUDING INTEREST PENALTIES, PARTIES, ETC.**

**SECTION 10.1 REMEDIES GENERALLY:** In addition to following any of the special remedies provided for in the Uniform Local Tax Code, the collector may, in his discretion, proceed to enforce the collection of any taxes due under the local ordinance by means of any of the following alternative remedies or procedures:

- (A) Assessment and distraint, as provided in R.S. 47:337.48 through 337.60.
- (B) Summary court proceeding, as provided in R.S. 47:337.61 and 47:337.33.
- (C) Ordinary suit under the provisions of the general laws regulating actions for the enforcement of obligations.

The collector may choose which of these procedures he will pursue in each case, and the counter-remedies and delays to which the taxpayer will be entitled will be only those which are not inconsistent with the proceeding initiated by the collector, provided that in every case the taxpayer shall be entitled to proceed under R.S. 47:337.63 except (a) when an assessment for the tax in question has become final or (b) when

a suit involving the same tax obligation is pending against him; and provided further, that the fact that the collector has initiated proceedings under the assessment and distraint procedure will not preclude him from thereafter proceeding by summary or ordinary court proceedings for the enforcement of the same tax obligation.

**SECTION 10.2 SUIT FOR COLLECTION BY SUMMARY**

**PROCEEDING:** In addition to any other procedure provided herein or elsewhere in the laws of this state, and for the purpose of facilitating and expediting the determination and trial of all claims for taxes, penalties, interest, attorney fees, or other costs and charges arising, there is hereby provided a summary proceeding for the hearing and determination of all claims by or on behalf of the taxing authority, or by or on behalf of the collector, for taxes and for the penalties, interest, attorney fees, costs or other charges due thereon, by preference in all courts, all as follows:

(A) All such proceedings, whether original or by intervention or third opposition or otherwise, brought by or on behalf of the taxing authority, or by or on behalf of the collector, for the determination or collection of any tax, interest, penalty, attorney fees, costs or other charge claimed to be due shall be summary and shall always be tried or heard by preference, in all courts, original and appellate, whether in or out of term time, and either in open court or chambers, at such time as may be fixed by the court, which shall be not less than two nor more than ten days after notice to the defendant or opposing party.

(B) All defenses, whether by exception or to the merits, made or intended to be made to any such claim, must be presented at one time and filed in the court of original jurisdiction prior to the time fixed for the hearing, and no court shall consider any defense unless so presented and filed. This provision shall be construed to deny to any court the right to extend the time for pleading defenses, and no continuance shall be granted by any court to any defendant except for legal grounds set forth in the Louisiana Code of Civil Procedure.

(C) That all matters involving any such claim shall be decided within forty-eight hours after submission, whether in term time or in vacation, and whether in the court of first instance or in an appellate court, and all judgments sustaining any such claim shall be rendered and signed the same day, and shall become final and executory on the fifth calendar day after rendition. No new trial, rehearing or devolutive appeal shall be allowed. Suspensive appeals may be granted, but must be perfected within five calendar days from the rendition of the judgment by giving of bond, with good and solvent security, in a sum double that of the total amount of the judgment, including costs. Such appeals, whether to a court of appeal or to the supreme court, shall be made returnable in not more than fifteen calendar days from the rendition of the judgment.

(D) Whenever the pleadings filed on behalf of the taxing authority, or on behalf of the collector, shall be accompanied by an affidavit of the collector or of one of his assistants or representatives or of the counsel or attorney filing the same, that the facts as alleged are true to the best of the affiant's knowledge or belief, all of the facts alleged in said pleadings shall be accepted as prima facie true and as

constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the defendant or opposing party.

**SECTION 10.2.1 SUIT FOR CLOSURE:** In addition to any other procedure provided herein, on motion in a court of competent jurisdiction, the collector may take a rule on a taxpayer, to show cause in not less than two or more than ten days, exclusive of holidays, why the taxpayer should not be ordered to cease from further pursuit of his business for failure to pay to the taxing authority amounts collected from others by his business as sales and use tax, along with any interest, penalty, and costs related to such tax. Such rule may be taken only for amounts due as a result of assessments or judgments which have become final and nonappealable.

**SECTION 10.2.2** The rule may be tried out of term and in chambers, and shall always be tried by preference. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the taxing authority, and the court shall enjoin and prohibit the taxpayer from the further pursuit of his business until such time as he has paid the delinquent tax, interest, penalties, and all costs or has entered into an agreement with the collector to do so.

**SECTION 10.2.3** If the collector files a subsequent motion with the court alleging a violation of the injunction, the court shall hold a hearing in not less than two days or more than ten days, exclusive of holidays, to determine whether such violation has occurred. Upon a showing by the collector that there has been a violation of the injunction, the court shall consider the violation to be a contempt of the court and shall punish the violator in accordance with law, and every violation of the injunction shall be considered as a contempt of court.

**SECTION 10.2.4** Whenever the pleadings filed on behalf of the collector shall be accompanied by an affidavit of the collector or of one of his assistants or representatives or of the attorney filing the same, that the facts as alleged are true to the best of the affiant's knowledge or belief, all of the facts alleged in the pleadings shall be accepted as prima facie true and as constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the taxpayer.

**SECTION 10.2.5** Failure to pay any tax due as provided in the local ordinance shall, without demand or putting in default, cause the tax, interest, penalties, and costs to become immediately delinquent and the collector has the authority, on motion in a court of competent jurisdiction, to take a rule on such person, to show cause in not less than two or more than ten days, exclusive of holidays, why such person should not be ordered to cease from further pursuit of business. This rule may be tried out of term and in chambers and shall always be tried by preference. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the taxing authority, prohibiting the person from the further pursuit of said business until he has paid the delinquent tax, interest, penalties, and costs, and every violation of the injunction shall be considered as a contempt of court and punished according to law.

**SECTION 10.2.6** The provisions of this Section shall not apply if the person has entered into an installment agreement for the payment of

delinquent taxes with the collector and is in compliance with the terms of the agreement.

**SECTION 10.3 DISTRAINT:** When any taxpayer fails to pay any tax, penalty, and interest assessed, the collector may proceed to enforce the collection thereof by distraint and sale. The words "distrain" or "distrain" as used herein shall be construed to mean the right to levy upon and seize and sell, or the levying upon or seizing and selling, of any property or rights to property of the taxpayer including goods, chattels, effects, stocks, securities, bank accounts, evidences of debt, wages, real estate and other forms of property, by the collector or his authorized assistants, for the purpose of satisfying any assessment of tax, penalty or interest due. Property exempt from seizure as provided by law is exempt from distraint and sale herein.

**SECTION 10.3.1** Whenever the collector or his authorized assistants shall distraint any property of a taxpayer, he shall cause to be made a list of the property or effects distrained, a copy of which signed by the collector or his authorized assistants shall be sent by certified mail or registered mail to the taxpayer at his last known residence or business address, or served on the taxpayer in person. This list shall be accompanied with a note of the sum demanded and a notice of the time and place where the property will be sold. Thereafter, the collector shall cause a notice to be published in the official journal of the parish wherein the distraint is made, specifying the property distrained, and the time and place of sale. The sale shall be held not less than fifteen calendar days from the date of the notice mailed or served on the taxpayer or the date of publication in the official journal, whichever is later. The collector may postpone such sale from time to time, if he deems it advisable, but not for a time to exceed thirty calendar days in all. If the sale is continued to a new date, it shall be readvertised.

**SECTION 10.3.2** Any person subject to distraint, or upon whom a levy has been served, shall, upon demand by the collector or his authorized assistants making such levy, surrender such property, or rights to property of which he is in possession, or which he subsequently comes into possession, until such time as the levy is recalled, subject to distraint, to the collector or his authorized assistant, unless such property or right is, at the time of demand, subject to an attachment or execution under any judicial process. Any such person failing or refusing to surrender any such property or rights shall be liable to the taxing authority in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes, penalties, and interest and other costs and charges which are due.

**SECTION 10.4 OTHER REMEDIES:** Whenever the collector finds that any person has failed to file or refuses to file any return required by any provision of this Chapter, the collector may institute against that person:

- A) A rule to show cause why the return should not be filed, and
- (B) A rule to examine a judgment debtor, as provided for in Articles 2452 through 2456, Louisiana Code of Civil Procedure where the tax due has been duly and finally assessed as otherwise provided.

The proceedings outlined herein shall be consistent with Article 2592 of Louisiana Code of Civil Procedure.

**SECTION 10.5 OFFICERS, DIRECTORS, MANAGERS LIABILITY:**

Notwithstanding any other provision of law to the contrary, if any corporation, limited liability company, or limited partnership fails to file returns or to remit the sales and use taxes collected from purchasers or consumers under the local ordinance, the collector is authorized, as an alternative means of enforcing collection, to hold those officers or directors, or those managers or members as defined in R.S.

12:1301(A)(12) and (13), having direct control or supervision of such taxes or charged with the responsibility of filing such returns and remitting such taxes and who willfully fail to remit or account for such taxes collected, personally liable for the total amount of such taxes collected, and not accounted for or not remitted, together with any interest, penalties, and fees accruing thereon. Collection of the total amount due may be made from any one or any combination of such officers or directors, or managers or members as defined in R.S.

12:1301(A) (12) and (13), who willfully fail to remit or account for such taxes collected, by use of any of the alternative remedies for the collection of taxes as provided in R.S. 47:337.45. A corporation, limited liability company, or limited partnership by resolution of the board of directors or members may designate an officer or director, or a manager or member as defined in R.S. 12:1301(A) (12) and (13) having direct control or supervision of such taxes or charged with the responsibility of filing such returns and remitting such taxes, and such resolution shall be filed with the secretary of state.

**SECTION 10.6 PAYMENT OF TAXES BY RECEIVERS, REFEREES, TRUSTEES OR LIQUIDATORS; LIABILITY:**

All receivers, referees, trustees, or other officers appointed by any court, both state and federal, to administer or conduct any business in this state, or liquidators, whether judicial or extrajudicial, shall be subject to all local taxes applicable to such business the same as if such business were conducted by an individual or corporation, and before deducting or paying any salaries, fees or compensation to themselves or to any employees or agents, they shall pay all taxes owed by the said individual, partnership, association or corporation for whom they act to the taxing authority. Such receivers, referees, trustees, or liquidators, upon assuming their official duties, shall immediately ascertain from the proper authority the amount of taxes owed by said individual, partnership, association or corporation, whose estate they are administering, and in the event of their failure to so ascertain or pay all such taxes, shall be personally responsible for the unpaid taxes. If the assets of any partnership, association, or corporation are disposed of through liquidation by the officers or directors thereof without clearance from the collector of all unpaid taxes first being obtained, such officers or directors who disposed of such assets shall be personally liable, in solido, for the full amount of such taxes and any penalty and interest due thereon.

**SECTION 10.7 SUCCESSOR LIABILITY:** If any dealer liable for any tax, interest, or penalty levied hereunder sells his business or stock of goods or quits the business, he shall make a final return and payment within fifteen days after the date of selling or quitting the business. His successor, successors, or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, interest, and penalties due and unpaid until such time as the former owner shall produce a receipt from the collector showing that they have been paid, or a certificate stating that no taxes, interest, or penalties are due. If the purchaser of a business or stock of goods fails to withhold purchase money as above provided, he shall be personally liable for the payment

of the taxes, interest, and penalties accrued and unpaid on account of the operation of the business by any former owner, owners, or assigns.

**SECTION 10.8 REOPENING OR RESUMPTION OF BUSINESS:** In the case of a dealer who has quit a business, and who subsequently opens another similar business under the same ownership, whether that ownership is individual, partnership, corporation, or other, that dealer shall be liable for any tax, interest, or penalty owed by the original business.

**SECTION 10.9 LIEN AND PRIVILEGE OF TAX, PENALTY, INTEREST, ETC., DUE:** Except as is specifically provided in the laws regulating building and loan associations, any tax, penalty, interest, attorney fees, or other costs due shall operate as a lien, privilege and mortgage on all of the property of the tax debtor, both movable and immovable, which said lien, privilege and mortgage shall be enforceable in any court of competent jurisdiction in an action, at law, or may be enforced as otherwise provided by this Chapter. The collector may cause notice of such lien, privilege and mortgage to be recorded at any time after the tax becomes due, whether assessed or not, and regardless of whether or not then payable, in the mortgage records of any parish wherein the collector has reason to believe the tax debtor owns property. The lien, privilege and mortgage created by this Section shall affect third parties only from the date of recordation and shall take their respective ranks by virtue of recordation.

**11. POWER OF COLLECTOR TO ASSESS INTEREST, PENALTIES AND COSTS**

**SECTION 11.1 INTEREST:** When any taxpayer fails to pay a tax, or any portion thereof, on or before the day where it is required to be paid under the provisions of this ordinance, interest shall be added to the amount of tax due. Such interest shall be computed from the due date until the tax is paid. The interest shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due and can be enforced in a separate action or in the same action for collection of the tax and shall not be waived or remitted. The interest on any amount of tax outstanding on a specific date shall be computed at the rate applicable on such date.

**SECTION 11.2 PENALTY FOR FAILURE TO MAKE TIMELY RETURN:** When any taxpayer fails to make and file any return required to be made under the provisions of this ordinance before the time that the return becomes delinquent or when any taxpayer fails to timely remit to the collector the total amount of tax that is due on a return which he has filed, there shall be imposed, in addition to any other penalties provided, a specific penalty to be added to the tax.

**SECTION 11.2.1** In the case of the filing of a return without remittance of the full amount due, the specific penalty imposed by this Paragraph for each thirty-day period shall be calculated only on the additional amount due from the taxpayer after the deduction of payments timely submitted, or submitted during any preceding thirty-day period. The penalty provided by this Paragraph shall not be imposed for any thirty-day period for which a penalty for failure to file a tax return or for filing after the return becomes delinquent is assessed.

**SECTION 11.2.2** The penalties provided for in this Subsection (shall be five percent (5%) for each thirty-day period) but shall not be imposed

for more than five thirty-day periods in total for each tax return required to be filed.

**SECTION 11.2.3** The penalties provided for by this Section shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax due, and can be enforced either in a separate action or in the same action for the collection of the tax.

**SECTION 11.3 WAIVER OF PENALTY:** If the failure to make any return at the time such return becomes due or the filing of a return without remittance of the full amount due is attributable not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the collector, the collector may remit or waive payment of the whole or any part of the specific penalty provided for such failure.

**SECTION 11.4 PENALTY FOR FALSE OR FRAUDELENT RETURN:** When the taxpayer files a return that is false or fraudulent or grossly incorrect and the circumstances indicate that the taxpayer had intent to defraud the taxing authority of any tax due under the local ordinance and this Chapter, there shall be imposed, in addition to any other penalties provided, a specific penalty on the tax found to be due. *(The penalty under this Section shall be twenty-five (25%) percent in addition to any other penalties provided.)* This specific penalty shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due, and can be enforced either in a separate action or in the same action for the collection of the tax.

**SECTION 11.5 NEGLIGENCE PENALTY:** If any taxpayer fails to make any return required by this Chapter or makes an incorrect return, and the circumstances indicate willful negligence or intentional disregard of rules and regulations, but no intent to defraud, there shall be imposed, in addition to any other penalties provided, a specific penalty. *(The penalty under this Section shall be ten (10%) percent in addition to any other penalties provided.)* This specific penalty shall be an obligation to be collected and accounted for in the same manner as if it were a part of the tax due, and can be enforced either in a separate action or in the same action for the collection of the tax.

**SECTION 11.6 NSF CHECKS IN PAYMENT OF TAXES; PENALTY:** In the event a check used to make payment of a tax, interest, penalty, or other charges due is returned unpaid by the bank on which it is drawn for any reason related to the account on which the check is written, such shall constitute a failure to pay the tax, interest, penalty, or other charges due and a specific penalty shall be imposed on the taxpayer in addition to all other penalties provided by law; however, upon sufficient proof being furnished to the collector by the bank that the bank was at fault for the nonpayment of the check, the collector shall waive the penalty provided for in this Section. *(The penalty under this Section shall be ten (10%) percent in addition to any other penalties provided.)* This specific penalty shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax, interest, penalty, or other charges that is due in payment of which the check was given and may be enforced in a separate action or in any action instituted for the collection of the tax, interest, penalty, or other charges. After receipt of three insufficient fund checks during any two-year period, the collector may require payment of the taxes, interest, penalties, or other charges due by the taxpayer to be paid by certified check, money order, or cash.

**SECTION 11.7. EXAMINATION AND HEARING COSTS:** If any taxpayer fails to make any return required by this ordinance, or makes a grossly incorrect report, or a false or fraudulent report, and the collector, in performance of his duty to ascertain the amount of tax due, makes an examination of books, records, or documents, or an audit thereof, or conducts a hearing, or subpoenas witnesses, then there may be added to the amount of tax found to be due, a specific penalty, in addition to any other penalty provided, in an amount as itemized by the collector to compensate for all costs incurred in making such examination or audit, or in holding such hearing, or in subpoenaing and compensating witnesses. *(The penalty under this Section shall be ten (10%) percent in addition to any other penalties provided.)* This specific penalty shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax due, and can be enforced either in a separate action or in the same action for the collection of the tax.

**SECTION 11.7.1** For the purposes of Section 11.7.1, the following terms shall have the following meanings:

(A) "Grossly incorrect report" means any report filed where there is a substantial understatement of tax for any taxable period. The understatement is substantial if it exceeds the greater of:

(1) Ten percent of the tax required to be shown on the return for the taxable period, or

(2) Ten thousand dollars.

(B) "False or fraudulent report" means any report filed with the intent to evade taxes, or a willful attempt to defraud or evade taxes that are due.

**SECTION 11.7.2** Notwithstanding any other provision of law to the contrary, no penalty shall be imposed under this Section with respect to any portion of an underpayment when a taxpayer has made a grossly incorrect report if the taxpayer shows that there was a reasonable cause for the underpayment of such portion and that the taxpayer acted in good faith with respect to such portion. Notwithstanding the provisions of this Section, in the event the examination or audit was conducted by a private auditing firm the limitations provided in R.S. 47:337.26 shall apply. The amount of specific penalty due pursuant to this Section shall be the same as is provided by law on July 1, 2003, until such laws are amended or provisions of this Chapter are amended to provide with respect thereto.

**SECTION 11.8 DISTRAINT COST PENALTY:** Whenever the collector uses the distraint procedure to enforce the collection of any tax, there shall be imposed with respect to the tax for the collection of which the distraint procedure is used, a specific penalty of ten dollars to compensate for the costs of the distraint procedure. This specific penalty shall be in addition to any penalty assessed as provided by law and shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax due, and may be enforced either in a separate action or in the same action for the collection of the tax.

## **12. REFUNDS AND REIMBURSEMENTS**

**12.1 REFUNDS AND OVERPAYMENTS AUTHORIZED:** For the purpose of this Section, "overpayment" means a payment of tax,

penalty or interest when none was due; the excess of the amount of tax, penalty or interest paid over the amount due; or the payment of a penalty that is later waived or remitted by the collector, provided that the power of the collector to refund overpayments shall be as prescribed and limited in this Section.

**SECTION 12.2  GROUNDS FOR REFUND:** The collector shall make a refund of each overpayment where it is determined that:

- (A) The tax was overpaid because of an error on the part of the taxpayer in mathematical computation on the face of the return or on any of the supporting documents.
- (B) The tax was overpaid because of a construction of the law on the part of the taxpayer contrary to the collector's construction of the law at the time of payment.
- (C) The overpayment was the result of an error, omission, or a mistake of fact of consequence to the determination of the tax liability, whether on the part of the taxpayer or the collector.
- (D) The overpayment resulted from a change made by the collector in an assessment, notice, or billing issued under the provisions of this ordinance.
- (E) The overpayment resulted from a subsequent determination that the taxpayer was entitled to pay a tax at a reduced tax rate.
- (F) The overpayment was the result of a payment that exceeded either the amount shown on the face of the return or voucher, or which would have been shown on the face of the return or voucher if a return or voucher were required.

**SECTION 12.3  CLEAR AND CONVINCING EVIDENCE:** Notwithstanding the provisions of Section 12.2, where it is determined that there is clear and convincing evidence that an overpayment has been made, the collector shall make a refund, subject to conditions or limitations provided by this Chapter.

**SECTION 12.4  INCREMENTAL REFUND ALLOWED:** refunds shall be made out of any current collections of the particular tax which was overpaid. If a taxpayer has overpaid a particular tax for more than one taxable year and seeks a refund of the total amount, the collector may issue the refund incrementally. The number of increments shall not exceed the total number of years the tax was overpaid.

**SECTION 12.5  RECOVERY OF REFUNDED AMOUNTS:** The collector may recover any refunded amount determined not to be an overpayment through any collection remedy authorized by R.S. 47: 337.45 within two years from December thirty-first of the year in which the refund was paid. Any refunded amount determined not to be an overpayment shall bear interest at the rate provided for in this Chapter, which shall be computed from the date the refund was issued to the date payment is received by the collector.

**SECTION 12.6  REFUND NOT ALTERNATIVE REMEDY TO SUIT UNDER PROTEST:** This Section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from the misinterpretation by the collector of the provisions of any law or of any rules and regulations. In the event a taxpayer believes that the collector

has misinterpreted the law or rules and regulations contrary therewith, his remedy is by payment under protest and suit to recover.

**SECTION 12.7 OFFSET:** Before refunding any overpayment, the collector may first determine whether the taxpayer who made the overpayment owes any other liability under any ordinance administered by him. If such be the case, the collector may credit the overpayment against such liability and notify the taxpayer of the action taken.

**SECTION 12.8 PRESCRIPTION OF REFUNDS OR CREDITS:** After three years from the thirty-first day of December of the year in which the tax became due or after one year from the date the tax was paid, whichever is the later, no refund or credit for an overpayment shall be made unless a claim for credit or refund has been received by the collector from the taxpayer claiming such credit or refund before the expiration of said three-year or one-year period. The maximum amount, which shall be refunded or credited, shall be the amount paid within said three-year or one-year period. The collector shall prescribe the manner of filing claims for refund or credit. Provided that in any case where a taxpayer and the collector have consented in writing to an extension of the period during which an assessment of tax may be made, the period of prescription for refunding or crediting overpayments as provided in this Section shall be extended in accordance with the terms of the agreement between the taxpayer and the collector.

**SECTION 12.9 INTEREST ON REFUNDS OR CREDITS:** The collector shall compute on all refunds or credits and allow interest as part of the refund or credit as follows:

- (A) From date of payment of the taxes, but prior to submission by the taxpayer of a claim for refund, interest shall be computed at a rate of not less than two percent per annum;
- (B) From date of submission by the taxpayer of a claim for refund, or from payment under protest, or from the date that the taxpayer gave the political subdivision notice of the taxpayer's intention to file suit for the recovery of any taxes paid, interest shall be at the average prime or reference rate as computed by the commissioner of financial institutions pursuant to R.S. 13:4202(B), per year, but without the addition of one percentage point to the average prime or reference rate and without regard to the limitations contained in R.S. 13:4202(B).
- (C) The interest rate provided for in Paragraph (2) of this Subsection shall not be applicable for a sixty-day period from the date the taxpayer makes a claim for refund, if a refund is the result of the taxpayer's administrative error; however, the interest for this sixty-day period shall be computed under the provisions of Paragraph (1) of this Section.

**SECTION 12.10 DELIBERATE OVERPAYMENT OF TAX:** No interest on refunds or credits shall be allowed if it is determined that a person has deliberately overpaid a tax in order to derive the benefit of the interest allowed by this Section. Payments of interest authorized by this Section shall be made from funds derived from current collections of the tax to be refunded or credited. As of the date a person files a petition for relief under the uniform bankruptcy laws of the United States as provided in Title 11 USC 101 et seq., no interest shall be allowed to accrue as a part of any refund or credit which relates to a pre-petition tax period.

**SECTION 12.11 APPEALS FROM THE COLLECTOR'S DISALLOWANCE OF REFUND CLAIM:** If the collector fails to act on a properly filed claim for refund or credit within one year from the date received by him or if the collector denies the claim in whole or in part, the taxpayer claiming such refund or credit may within thirty days of the notice of disallowance of the claim request a hearing with the collector for redetermination. The collector shall render a decision within thirty days of the request by the taxpayer. The taxpayer may appeal to a court of competent jurisdiction. No appeal may be filed before the expiration of one year from the date of filing such claim unless the collector renders a decision thereon within that time, nor after the expiration of ninety days from the date of mailing by certified or registered mail by the collector to the taxpayer of a notice of the disallowance of the part of the claim to which such appeal relates. Any consideration, reconsideration, or action by the collector with respect to such claim following the mailing of a notice by certified or registered mail of disallowance shall not operate to extend the period within which an appeal may be taken. In answering any such appeal, the collector is authorized to assert a demand for any tax and additions thereto that he may deem is due for the period involved in the claim for refund or credit.

**13. OTHER ADMINISTRATIVE PROVISIONS**

**SECTION 13.1.1 COLLECTOR'S AUTHORITY TO DETERMINE THE TAX IN CERTAIN CASES:** In the event any dealer fails to make a report and pay the tax as provided in this ordinance or in case the dealer makes a grossly incorrect report or a report that is false or fraudulent, the collector shall make an estimate of the retail sales of such dealer for the taxable period, of the gross proceeds from rentals or leases of tangible personal property by the dealer, or the cost price of all articles of tangible personal property imported by the dealer for use or consumption or distribution or storage to be used or consumed in the taxing jurisdiction, and of the gross amounts paid or charged for services taxable; and it shall be the duty of the collector to assess and collect the tax together with any interest and penalty that may have accrued thereon, which assessment shall be considered prima facie correct and the burden to show the contrary shall rest upon the dealer.

**SECTION 13.1.2 COLLECTOR TO ESTABLISH COST PRICE WHERE APPLICABLE:** In the event the dealer has imported tangible personal property and he fails to produce an invoice showing the cost price of the articles which are subject to tax, or the invoice does not reflect the true or actual cost, then the collector shall ascertain in any manner feasible the true cost price and shall assess and collect the tax, together with any interest and penalties that may have accrued, on the basis of the true cost as assessed by him. The assessment so made shall be considered prima facie correct and the burden shall be on the dealer to show the contrary.

**SECTION 13.1.3 COLLECTOR TO ESTABLISH TRUE CONSIDERATION OF LEASE OR RENTAL WHERE APPLICABLE:** In the case of the lease or rental of tangible personal property, if the consideration given or reported by the dealer does not, in the judgment of the collector, represent the true or actual consideration, then the collector is authorized to ascertain in any manner feasible the true or actual consideration and assess and collect the tax thereon together with any interest and penalties that may have accrued. The assessment so made shall be considered prima facie correct and the burden shall be on the dealer to show the contrary.

**SECTION 13.1.4 COST OF ESTIMATE:** In the event such estimate and assessment requires an examination of books, records, or documents, or an audit thereof, then the collector may add to the assessment the cost of such examination, together with any penalties accruing thereon.

**14. DISPOSITION OF TAX PROCEEDS AND REVENUES**

**SECTION 14.1 MAINTENANCE OF FUNDS COLLECTED:** All tax, revenues, funds, assessments, moneys, penalties, fees or other income which may be collected or come into possession of the Collector as an agent of this Governing Body under any provision or provisions of this ordinance shall be promptly deposited by the Collector for the account of this Governing Body in a special fund designated the 1 % Sales Tax Account, which funds shall be established and maintained as sacred funds of this Governing Body, provided, however, any amount which is paid under protest or which is subject to litigation may be transferred to another account established by the Collector pending final determination of the protest or litigation.

**SECTION 14.2 COLLECTOR TO PAY ALL REASONABLE AND NECESSARY EXPENSES:** Out of the funds on deposit in said Sales Tax Account, the Collector shall first pay all reasonable and necessary expenses of collecting and administering the respective tax levied hereby and administering the provisions of this ordinance as well as the various administrative procedures established herein.

**15. MISCELLANEOUS**

**SECTION 15.1 UNIFORM LOCAL TAX CODE TO APPLY AS AMENDED:** The provisions of the Uniform Local Tax Code, Chapter 2, Title 17 of the Louisiana Revised Statutes, as amended, and any other statutory authority are hereby made applicable to the levy and collection of sale and use tax levied by this ordinance, and to the extent if any, that the provisions set forth herein conflict with any statutory authority, the statutory authority shall be controlling.

**SECTION 15.2 SEVERANCE CLAUSE:** If any section, subsection, sentence, clause, or phrase of this ordinance be held invalid, such decisions shall not affect the validity of the remaining portions of this ordinance. This Governing Body hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases may be so declared invalid.

**SECTION 15.3** The tax levied herein is declared to be supplemental and in addition to all other tax levied by and under the authority of this Governing Body of any kind and nature.

**SECTION 15.4** It is hereby recognized that the tax herein levied are being levied by and on behalf of this Governing Body as herein provided and the Collector is acting as agent for this Governing Body for the purpose of administration and collection of the tax.

**SECTION 15.5** This ordinance shall be published in one issue of the official journal of this Governing Body as soon as possible and shall be in full force and effect immediately upon its adoption.

**SECTION 15.6** A certified copy of this ordinance shall be recorded as soon as possible in the Mortgage Records of the Parish of Lafourche, State of Louisiana.

**SECTION 15.7** This ordinance shall be published in full in one issue of the official journal of the Parish School Board.

**SECTION 15.8** This ordinance shall be in full force and effect immediately upon its adoption, being an ordinance affecting the public peace, health and safety.

## **16. CRIMINAL PENALTIES**

**SECTION 16.1 CRIMINAL PENALTY FOR FAILING TO ACCOUNT FOR LOCAL TAX MONIES:** Any person required under the local ordinance and state statute to collect, account for, or pay over any tax, penalty, or interest who willfully fails to collect or truthfully account for or pay over such tax, penalty, or interest shall in addition to other penalties provided by law, be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both.

**SECTION 16.2 CRIMINAL PENALTY FOR EVASION OF TAX:** Any person who willfully fails to file any return or report required to be filed by the provisions of the local ordinance or state statute, or who willfully files or causes to be filed, with the collector, any false or fraudulent return, report or statement, or who willfully aids or abets another in the filing with the collector of any false or fraudulent return, report or statement, with the intent to defraud the taxing authority or evade the payment of any tax, fee, penalty or interest, or any part thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both.

**SECTION 16.3 RUNNING OF TIME LIMITATIONS FOR CRIMINAL OFFENSES:** No person shall be prosecuted, tried or punished for a criminal offense under this ordinance unless the prosecution is instituted within a period of four years after the offense has been committed.

The above ordinance having been submitted to a vote, the vote thereon was as follows:

**YEAS: Councilmen Hebert, Richard, Taylor, Badeaux, Mire**

**NAYS: None**

**ABSTAIN: None**

**ABSENT: None**

And the above ordinance was declared adopted this 2<sup>nd</sup> day of December 2008.

/s/ Jennifer Morvant  
Jennifer Morvant, Council Adm.

/s/ Chad J. Mire  
Chad J. Mire, President

The Zoning Administrator informed the Council Administrator that the Planning and Zoning Commission has reviewed all of the regulations for each zoning district within the City. The Commission has approved revisions to all of the zoning districts and they are recommending that the City Council amend Article V of the Thibodaux Zoning Ordinance in order to adopt the new zoning district regulations.

Councilman Badeaux questioned the issue involving signs.

Kermit Kraemer addressed the Council and explained that this will not affect the contractors in regards to putting signs because they are required by State Law to do so.

On motion of Councilman Hebert, seconded by Councilman Richard, the Council voted to adopt an ordinance to amend and re-enact Article V of the Thibodaux Zoning Ordinance. Upon roll call the vote was as follows:

**YEAS:** Councilmen Hebert, Richard, Taylor, Badeaux, Mire

**NAYS:** None

**ABSTAINED:** None

**ABSENT:** None

**ORDINANCE NO. 2433**

**AN ORDINANCE TO AMEND AND RE-ENACT  
ARTICLE V OF THE THIBODAUX ZONING ORDINANCE**

**BE IT ORDAINED** by the City Council of the City of Thibodaux in regular session assembled, that

**WHEREAS**, Article V of the Thibodaux Zoning Ordinance provides for the district regulations for each individual zoning district; and

**WHEREAS**, upon review of the current district regulations, revisions to the uses and regulations were proposed and approved by the Planning and Zoning Commission to the R-1, R-2, R-3, R-4, C-1, C-2, C-3, M-1 and M-2 Zoning Districts

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Thibodaux that Article V of the Thibodaux Zoning Ordinance is hereby amended and re-enacted in accordance with the recommendations of the Planning and Zoning Commission

**BE IT FURTHER ORDAINED** that revised copies of the District regulations for R-1, R-2, R-3, R-4, C-1, C-2, C-3, M-1 and M-2 Zoning Districts are hereby attached as exhibit "A" and thereby made a part hereof

The above ordinance having been submitted to a vote, the vote thereon was as follows:

**YEAS:** Councilmen Hebert, Richard, Taylor, Badeaux, Mire

**NAYS:** None

**ABSTAINED:** None

**ABSENT:** None

And the above ordinance was declared adopted this 2<sup>nd</sup> day of December 2008.

/s/ Jennifer Morvant  
Jennifer Morvant, Council Adm.

/s/ Chad J. Mire  
Chad J. Mire, President

There being no further business the meeting was adjourned.

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Jennifer Morvant, Council Adm.

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Chad J. Mire, President



