

ORDINANCE No. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____, TEXAS, AMENDING CHAPTER _____, ARTICLE _____ OF THE CODE OF ORDINANCES OF THE CITY OF _____, TEXAS, BY ADDING A NEW SECTION _____, ENTITLED “TAXATION OF TANGIBLE PERSONAL PROPERTY IN TRANSIT”; PROVIDING FOR THE AD VALOREM TAXATION OF TANGIBLE PERSONAL PROPERTY IN TRANSIT OR “SUPER FREEPORT” GOODS PURSUANT TO SECTION 11.253 OF THE TEXAS TAX CODE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR SAID ORDINANCE TO TAKE IMMEDIATE EFFECT.

WHEREAS, in 2001, the Texas Legislature approved Senate Joint Resolution 6, which was subsequently approved by the eligible voters of the State of Texas authorizing a “super freeport” property tax exemption for certain tangible personal property; and

WHEREAS, the Texas Legislature in the 80th Legislative Session approved House Bill 621 (hereinafter referred to as “HB 621”), as the enabling statute for the “super freeport” property tax exemption approved by the voters in 2001; and

WHEREAS, HB 621 adds section 11.253 to the Texas Tax Code and exempts from property taxes any tangible personal property (other than oil and gas, aircraft, dealer’s motor vehicle inventory, dealer’s boat inventory, dealer’s heavy equipment inventory, and retail manufactured housing) that is located at a site for less than 175 days and is not under the control of the property owner; and

WHEREAS, Section 11.253(j) of the Texas Tax Code provides that the City Council of the City of _____, Texas, may in the manner required for official action by the governing body, provide for the taxation of goods-in-transit otherwise exempt pursuant to Section 11.253(b) of the Texas Tax Code, and not exempt under other law. Moreover, the official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the City Council of the City of _____, Texas, proposes to tax goods-in-transit; and

WHEREAS, Section 11.253(j) of the Texas Tax Code also provides that “before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit, or

otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit”; and

WHEREAS, Section 11.253 (j) of the Texas Tax Code also provides that a decision to continue taxing super freeport goods can be reversed for a future tax year; and

WHEREAS, the City Council of the City of _____, Texas, held a public hearing prior to the passage of this Ordinance, consistent with HB 621 and Section 11.253 of the Texas Tax Code; and

WHEREAS, the City Council of the City of _____, Texas, find and determines that the super freeport exemption as authorized by Section 11.253 of the Texas Tax Code is not in the best interest of the City of _____, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, TEXAS:

Section 1. FINDINGS INCORPORATED

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. That Chapter _____, Article _____, of the Code of Ordinances of the City of _____, Texas, is amended by adding a new Section _____, entitled “Taxation of tangible personal property in transit” which shall read as follows:

“Sec. _____ . Taxation of tangible personal property in transit.

(a) *Definitions.* The following terms have the same meaning as defined in section 11.253 of the Texas Tax Code, as amended.

(1) The terms “Dealer's motor vehicle inventory,” “dealer's vessel and outboard motor inventory,” “dealer's heavy equipment inventory,” and “retail manufactured housing inventory” have the meanings assigned by Subchapter B, Chapter 23 of the Texas Tax Code, as amended.

(2) The term “Goods-in-transit” is defined to mean tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is detained at a location in this state in which the owner of the property does not have a direct or indirect ownership interest for assembling, storing, manufacturing, processing, or fabricating purposes by the person who acquired or imported the property;

- (C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and
 - (D) does not include oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory.
- (3) The term "Location" means a physical address.
 - (4) The term "Petroleum product" means a liquid or gaseous material that is an immediate derivative of the refining of oil or natural gas.
- (b) A person is not entitled to an exemption from taxation of the appraised value of that portion of the person's property that consists of goods-in-transit. A person's property consisting of goods-in-transit is hereby subject to ad valorem taxation pursuant to Section 11.253 of the Texas Tax Code, as amended."

Section 3. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 4. REPEALER CLAUSE

Any provision of any prior ordinance of the City whether codified or uncodified, which are in conflict with any provision of the Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City whether codified or uncodified, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section 5. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage.

PASSED AND APPROVED by the City Council of the City of _____, Texas, on this the ____ day of _____, 2007.

 Mayor
 City of

ATTEST:

City Secretary
City of