MEMORANDUM

DATE:	March 9, 2006
TO:	CITY/COUNTY PUBLIC SAFETY TASK FORCE
DEPTARTMENT:	LANE COUNTY OFFICE OF LEGAL COUNSEL
PRESENTED BY:	Teresa J. Wilson, County Counsel
AGENDA ITEM TITLE:	Charter Amendment and Ordinance 1-06 – Lane County Public Safety Income Tax

Attached to this document is a revised draft Charter Amendment, which I shall go over below. Jim Johnson provided you with an internet link to the agenda material which was presented to the Board of County Commissioners in January. That included an earlier version of a Charter Amendment, as well as Ordinance 1-06. Here it is again:

http://www.lanecounty.org/BCC_Info/Meeting_Info/2006/Order%20Text/1-4/Ordn1-06.pdf

If you are reading this in paper version, but would like to look at those documents, if you go to the County's website www.lanecounty.org, scroll to the middle of the page where you find a heading for the Board of Commissioners, click on "Meeting Agenda", scroll to and click on the "Week of January 4, 2006", scroll down to the bottom of the page for the agenda item for the 7:00 p.m. hearing, and click on "View Material", you can get to the same material.

A. Highlights of Charter Amendment.

The Charter Amendment, as well as the ordinance, were developed using the general guidance provided by the Board in its meetings on November 29 and 30. Additional work has been done on the Charter Amendment based on the Board's discussions in January and February, and the decision to not place the measure on the May ballot, but to continue working on it in anticipation of a November ballot. There are still decisions to be made by the Board as to some of the details in the Amendment.

1. Subsection 1 – this establishes the dedication of any income tax revenue for public safety purposes. It requires the creation of a Public Safety Dedicated Fund, which will retain any interest earnings. Money to cover the costs for collection and administration and 5% to the General Fund for County services are permitted before the remaining revenues go into the Dedicated Fund. This is the first point where the Board will have a decision to make -- whether to allow some small percent of the revenue stream to go to the General Fund. This stabilization of County services has been a component of what was recommended by the City/County Task Force, and was thus a component of the budget recommended by the Task Force to the Board in November (at about $3.9 million). David Garnick's early projections indicate it may be possible to eliminate this aspect without impairing the stabilization of County services; however, refinement of those is needed before the point will be resolved.

Subsection (a) provides a general definition of public safety programs, and includes the programs and services currently provided by the 3 Public Safety departments, the Sheriff, District Attorney, and Youth Services. These 3 departments are expected to move out of the General Fund and into the Dedicated Fund as part of the goal of stabilizing their services. Subsection (b) describes the initial goals for the first 5 years; it uses the 4 goals created by the Task Force, which were adopted by the Board in November.

2. Subsection 2 – this portion of the Charter Amendment caps the rate for any income taxes at 1.5% of net income, starting January 1, 2007. That maximum rate is set to cover the loss of the federal revenues received under the Secure Rural Schools legislation (PL 106-393), to cover the cost of the property tax relief, to cover the costs of collection and administration and to sustain the projected programs through and beyond the first five years.

3. Subsection 3 – this subsection provides for the property tax relief at $1/1000, and requires a reasonable renter relief credit.

4. Subsection 4 – this subsection describes the Secure Rural Schools Act. It provides in subsection (a) that the maximum tax rate is high enough to replace those revenues for public safety programs if the Act is not renewed; it also acknowledges that it does not replace the federal revenues used for other non-public safety programs. Subsection (b) requires the Board to annually estimate how much it will receive from the federal revenues that can be reasonably used for the public safety programs, and proportionally reduce the income tax rate commensurate with them.

B. Highlights of Ordinance 1-06.

Below is an overview of the Income Tax ordinance that gives you a broad sense of the approach and scope. The Ordinance has not yet been revised from what was presented in January to the Board – as with the Charter Amendment, there are still Board decisions to be made. In addition, there are date revisions to be considered, as it was crafted with an expectation of a May ballot.

1. Broad Outline of the Lane County Public Safety Income Tax.

The Public Safety Income Tax is comprised of 4 components, a Personal Income Tax, a Nonresident Income Tax, a Business Income Tax and General Administration/Collection. Generally, the Public Safety Income Tax is intended to tax all income activity within the County, whether or not the individual resides in the County. Residents of Lane County will have their income taxed; nonresidents who have income derived from activity within the County will have that taxed, and businesses will have the income from business activity within the County taxed. These are designed to spread the tax over the greatest range of income activity occurring in the County as possible, and at the same time, through the use of credits and deductions, attempt to avoid taxing an individual twice on the same income.

2. Personal Income Tax - LC 4.520-.525

The Personal Income Tax is imposed on residents of the County at a rate of 1% of their County taxable income. "County Taxable Income" is defined to be the Oregon taxable income (line 28 on Form 40 (2004)) less deductions. The 1% rate is lower than the maximum rate in the Charter Amendment, in anticipation of receiving revenues under the Secure Rural Schools Act. This rate may change, up to the Charter limitation of 1.5 %, depending on what the Board's best estimate is of those federal revenues.

Who files? Generally, all residents and part-year residents must file. Part-year residents can prorate their income..

What deductions are allowed? Residents who file singly can take a $2,500 deduction; residents who file jointly can take a $5,000 one. Retirees who receive PERS benefits or a federal retirement benefit also can deduct the amount of that retirement income. This deduction is required by state statute (ORS 238.445) for local income taxes; however, the State of Oregon does tax these retirement benefits.

What credits are allowed? Renters are allowed a credit of $30, but only if they are tenants of personal residences and don't have any ownership interest. [This is to accord renters some relief similar to the property tax relief given to property owners under the Charter Amendment.] There is also a credit for a Business Income Tax that was paid in the tax year (note: the first year of the tax, no credit will be available. This "start-up" time lag inevitable, as no Business Income Tax would have been paid in the first year. It is similar to credits for taxes on federal and state income taxes – you actually have to have paid or accrued the credit before you can claim a deduction).

What about withholding by employers or estimated tax payments? The ordinance requires employers who pay wages to residents to withhold these taxes, and to pay them over to the Tax Administrator at the same time they pay over state income tax withholdings. It also requires payment of estimated taxes for anyone whose tax liability beyond the wage withholding will be more than $500.

2. Nonresident Income Tax – LC 4.530-4.535

The Nonresident Income Tax is imposed on nonresidents at the rate of 1% of their taxable income. "Nonresident Taxable Income" is defined to be wages paid to a nonresident for services performed within the County plus "Net County Asset Income." "Net County Asset Income" is further defined as Oregon taxable income resulting from the sale of property located in the County, dividends or other investment income from activity within the County or other net income from assets with sufficient connection ("nexus") to the County that we are legally permitted to tax the income.

Who files? Generally, anyone who has nonresident income over $2500 is required to file a return.

What deductions are allowed? The ordinance provides the same type of deductions as are in the Personal Income Tax.

What credits are allowed? The ordinance provides the same credit for a Business Income Tax paid as is in the Personal Income Tax.

What about withholding by employers or estimated tax payments? Employers of nonresident employees who work in Lane County must withhold these taxes, and pay them over to the Tax Administrator, like the Personal Income Tax. Likewise, anyone whose tax liability beyond the wage withholding will be more than $500 must pay estimated taxes.

3. Business Income Tax – LC 4.540-4.547

The Business Income Tax is imposed on each person doing business within the County at a rate of 1% of the person's taxable business income. "Taxable Business Income" is defined to be "Business Income" less deductions. "Business Income" is a critical definition. It is very broadly written – it covers all net income arising from any business activity before apportionment or net operating loss deductions. It includes interest and dividend income, rental income, and gains on sale of property or investment.

The Business Income Tax is modeled after the Multnomah/Portland model for several reasons, not the least of which is the knowledge that it works, both legally and practically. It also provides a good resource for local businesses to check with their peers up north as to how to apply the tax at a very practical level. Coupled with the Personal and Nonresident Income Tax and their credit for Business Income Tax paid, this approach provides a very broad and even basis for net income taxes, thus spreading the cost across all who will benefit from the increased public safety that is expected as a result of these taxes.

Who files? Anyone who engages in business in the County and who has gross business income over $25,000 must file a return. (Note: filing is based on a gross income level, but the tax is levied on a net income basis.)

What deductions are allowed? The ordinance permits deductions for net operating losses, up to 75% of the business income. The loss can be carried forward for up to five years. There is also a deduction for any business income the County is prohibited from taxing.

Are there any exemptions? The ordinance provides exemptions for governments, and for persons who the County cannot legally tax, as well as the same kinds of exemptions that exist in the Multnomah Business License/Portland Business Income Tax. The Board could decide to make different choices than occurred in the Portland area, but after discussion with the Tax Administrator for the City of Portland, it appears prudent to start with the close similarity, and then modify as experience dictates is necessary to fit our own local circumstances, at least where there are not strong apparent reasons to begin with a deviation. Unlike the Personal or Nonresident Income Tax, the Business Income Tax permits a "low income" exemption for businesses whose gross business income is less than $25,000—essentially a "business incubator" exemption.

What about estimated taxes? Anyone whose tax liability beyond the wage withholding is more than $500 must pay estimated taxes.

What if a business has income from both inside and outside Lane County? A taxfiler in such a case can apportion that income, generally on a percentage basis. This is commonly done on state returns for businesses who have income from two different states, so the concept will be familiar to a lot of businesses. The ordinance allows the Tax Administrator to develop rules for specific apportionment methodologies as needed for certain types of industries or incomes.

4. General Administration and Collection - LC 4.550-4.571

The fourth section of the ordinance relates to general administration and collection. Some basic elements are such things as the rules of construction—basically, tax provisions relating to who or what is taxable are to be construed liberally and provisions relating to exemptions, deductions and credits are to be construed narrowly. The Tax Administrator is vested with the necessary authority to administer, collect and enforce the tax, including settlement authority, and the authority to adopt administrative rules (after notice and an opportunity for comment). Tax returns are due of the 15th day of the fourth month of the tax year (for most of us, on April 15). Estimated payments are generally due the same time they would be due for state income taxes.

The administrative provisions also address confidentiality, the power of the Tax Administrator to review records; to assess deficiencies, penalties and interest; and to pay refunds. They provide taxpayers with the opportunity to protest an action of the Tax Administrator, for the Tax Administrator to revise his/her determination, and then for the taxpayer to appeal the decision to an Appeals Board, which the Board of Commissioners will need to create and appoint.

5. Outstanding issues

a. "Low Income" Option. The Business Income Tax exempts businesses whose gross business income is less than $25,000. The Board has yet to decide whether it wants to exempt individuals from the Personal or Nonresident Income Tax whose income is below a certain amount or to provide a deduction of a certain amount. The difference between an exemption and a deduction involves both an impact on the individual and on the tax rate. If someone makes $1 more than the amount set for an exemption, they will pay the tax on all their County taxable income—the exemption only applies to those whose income is below the amount set. With a deduction, it applies to everyone with respect to the income below the set level. Either affects the amount of revenue that would be collected, and the tax rate for the ordinance would need to take that into account. A deduction is more "costly" in that respect than an exemption and will result in an increase in the tax rate.

b. As mentioned earlier, the Ordinance has not been revised to reflect a starting date of January 1, 2007.

c. Tax Rate implications from the inclusion of Secure Rural Schools in the President's budget. As you may know, the President's budget included reauthorization of Secure Rural Schools, but at a lower and decreasing rate. The implication of this for the ordinance tax rate has not yet been taken into account, but is a future matter the Board will address.

C. ATTACHMENTS

Draft Charter Amendment

Charter Amendment

Section 38. PUBLIC SAFETY INCOME TAX

The Board of County Commissioners may impose income taxes, so long as the taxes are consistent with the following limitations:

(1) Dedication for Public Safety. The revenue from any Lane County income tax is dedicated for public safety purposes as described in this section 38. The County shall create and maintain a Public Safety Dedicated Fund. All revenue collected from any Lane County income tax shall be credited to the Public Safety Dedicated Fund, after payment of expenses of collection and administration and five percent (5%) of collections to County general fund for county services. Interest earned on the Public Safety Dedicated Fund shall be credited to the Public Safety Dedicated Fund. The Public Safety Dedicated Fund shall be a dedicated, special fund, and shall be used only to pay costs and expenses of, and appropriate reserves for, public safety system programs as defined below.

(a) Public safety system programs are defined as programs that are designed to protect citizens from the effects of, or to reduce, criminal activity, in addition to other programs and services provided by the departments of the Sheriff, District Attorney and Youth Services. Public safety system programs include but are not limited to activities that are listed under "Programs and Services to Achieve Goals" in the executive summary of the "Lane County Public Safety Task Force Final Report – October, 2005," and other preventative and reactive public safety services, such as adult and youth corrections, crime prevention, prosecution, detention, supervision, mental health services, alcohol and drug treatment, victim services, drug court, interagency narcotics enforcement, patrol, investigation and arrest, and related support services.

(b) Initial goals. Amounts credited to the Public Safety Dedicated Fund during the first five (5) years shall be used for programs and services of the public safety system programs that were supported through property taxes before the imposition of any Lane County income tax, and towards achieving the following four goals:

(i) Significantly reducing illegal drug production, dealing and use, especially methamphetamine, through targeting illegal drug producers, dealers, users, and property criminals;

(ii) Reducing family violence;

(iii) Enhancing effective treatment programs to help adults and juveniles addicted to drugs and alcohol; and

(iv) Providing effective prevention programs to reduce future crime.

(2) Rate Limitation. The rate for any Lane County income tax shall not exceed one and one-half percent (1.5%) of net income, effective and applicable to tax years beginning on or after January 1, 2007. The Board of Commissioners shall adopt one or more ordinances as necessary to implement this section.

(3) Mandatory Property Tax Relief. The Lane County permanent authorized property tax rate is $1.2793 per $1000 of assessed value.

(a) Beginning in fiscal year 2007-2008, Lane County shall provide property tax relief by refraining from levying at least $1.00 per $1000 of assessed value of that rate, unless a Lane County income tax is not then in effect or being collected near projected levels. The County shall also provide a reasonable credit against personal income taxes for residential renters.

(b) If the legislature or state voters enact laws that reduce the amount or the County's use of the remaining property tax revenues, then after a public hearing, the Board of Commissioners may reduce the property tax relief reasonably commensurate with the impact of the reduction.

(4) Federal Revenue Adjustment. At the time of enactment of this Section 38, Lane County receives substantial revenue under Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106-393. These federal revenues contribute to the support of general county services, including public safety system programs and other programs funded through the County general fund. The last payment to the County under PL 106-393 will occur in October, 2006.

(a) The rate limitation in Subsection (2) is estimated to be sufficient to replace the PL 106-393 revenues that the County has used for funding public safety system programs if this federal law is not renewed or replaced. The maximum rate is not sufficient to replace PL 106-393 revenues used for other non-public safety system purposes.

(b) The Board of Commissioners shall annually estimate the revenues that the County will receive from the federal government under PL106-393 (or any renewal or replacement legislation) and which are reasonably budgeted to be used for public safety system programs. The Board of Commissioners shall proportionally reduce any income tax imposed commensurate with these federal revenues.