

Agenda Item: ID#18-0837 (2:00 P.M.-1)

Date: 6/28/18

## FRESNO CITY COUNCIL



REC'D JUN 26 '18 PM 2:53  
FRESNO CITY CLERK

### Supplemental Information Packet

Agenda Related Item(s) – ID#18-0837 (2:00 P.M.-1))

**Contents of Supplement: Updated ordinance for Item 18-0837 adding language to Section 7-1505 (c) "Further, it is the intent of this ordinance that revenues collected hereunder shall supplement, rather than supplant, existing City General Fund expenditures for parks and public safety."**

#### Item(s)

HEARING to Consider a Proposed Parks and Public Safety Transactions and Use Tax:

1. \*\*\*BILL - (For introduction and adoption) - Adding Article 15 to Chapter 7 of the Fresno Municipal Code Relating to a Parks and Public Safety Transactions and Use Tax (Requires 5 affirmative votes) (Subject to Mayor's veto)
2. \*\*\*RESOLUTION - Calling a General Election to be held on November 6, 2018, for a Ballot Measure Proposal to Impose a Parks and Public Safety Transactions and Use Tax; Requesting the County to Conduct the Election; and Requesting Consolidation of the Election with any Other Election held on that Date (Subject to Mayor's veto)

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO,  
CALIFORNIA, ADDING ARTICLE 15 TO CHAPTER 7 OF  
THE FRESNO MUNICIPAL CODE, RELATING TO A  
PARKS AND PUBLIC SAFETY TRANSACTIONS AND USE  
TAX

SECTION 1. Article 15 is added to Chapter 7 of the Fresno Municipal Code to read:

ARTICLE 15

|         |         |                                                                      |
|---------|---------|----------------------------------------------------------------------|
| Section | 7-1501. | Title.                                                               |
| Section | 7-1502. | Purpose.                                                             |
| Section | 7-1503. | Operative Date.                                                      |
| Section | 7-1504. | Deposit into Special Account.                                        |
| Section | 7-1505. | Use and Expenditure of Tax Revenue and<br>Specific Limitations.      |
| Section | 7-1506. | Independent Annual Audit, Report, and<br>Citizen Oversight.          |
| Section | 7-1507. | Contract with State.                                                 |
| Section | 7-1508. | Transaction and Sales Tax Rate.                                      |
| Section | 7-1509. | Place of Sale.                                                       |
| Section | 7-1510. | Use Tax Rate.                                                        |
| Section | 7-1511. | Adoption of Provisions of State Law.                                 |
| Section | 7-1512. | Limitations on Adoption of State Law and<br>Collection of Use Taxes. |
| Section | 7-1513. | Permit Not Required.                                                 |
| Section | 7-1514. | Exemptions and Exclusions.                                           |
| Section | 7-1515. | Amendments.                                                          |
| Section | 7-1516. | Enjoining Collection Forbidden.                                      |
| Section | 7-1517. | Severability.                                                        |
| Section | 7-1518. | Effective Date.                                                      |
| Section | 7-1519. | Termination Date.                                                    |

SECTION 7-1501. TITLE. This article shall be known as the City of  
Fresno Parks and Public Safety Transactions and Use Tax Ordinance.

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: \_\_\_\_\_

Ordinance No.

SECTION 7-1502. PURPOSE. This article is adopted to achieve the following, among other purposes, and directs that the provisions of this article be interpreted in order to accomplish those purposes:

(a) To impose a retail transactions and use tax to be applied throughout the entire territory of the City to the fullest extent permitted by law and in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.91 of Part 1.7 of Division 2 of the Revenue and Taxation Code, which authorizes the city to adopt this article if two-thirds of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

(b) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the sales and use tax law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

(c) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the

State Board of Equalization in administering and collecting the California State sales and use taxes.

(d) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this article.

SECTION 7-1503. OPERATIVE DATE. This article shall be operative on the first day of the first calendar quarter commencing at least 110 days after the effective date of this ordinance, the effective date being set forth below.

SECTION 7-1504. DEPOSIT INTO SPECIAL ACCOUNT. The proceeds of the tax imposed by this Article shall be placed in a special fund and shall be dedicated and used only for City Council approved purposes set forth in this Article. The Controller shall establish and keep such accounts as may be necessary to account for said taxes.

SECTION 7-1505. USE AND EXPENDITURE OF TAX REVENUE AND SPECIFIC LIMITATIONS. All of the taxes collected under this Chapter shall be expended only for the following purposes, which are intended as specific and legally binding and enforceable limitations on how the proceeds of the tax imposed by this Article maybe spent:

(a) Public Safety. Fifty percent (50%) of funds collected under this Chapter shall be dedicated to public safety and expenditures related to: (i) the provision of police and fire services; (ii) improving public safety response times, including 9-1-1 emergency response times, fire and medical response times; (iii) the purchase of equipment for police and fire services; (iv) combatting gang violence; (v) the hiring of new police officers, firefighters, Community Service Officer, Emergency Dispatchers and other non-sworn civilian support necessary to serve the people of Fresno; (vi) capital expenditures such as vehicle and patrol car replacement, communications systems, training facilities and fire stations to aid in the accomplishment of the above aforementioned; and (vii) any other expenditure related to the accomplishment of the aforementioned.

(b) Parks. Fifty percent (50%) of funds collected under this Chapter shall be dedicated to parks and expenditures related to: (i) any project encompassed in the Parks Master Plan, as updated from time to time, including critical, strategic, and visionary improvements; (ii) rehabilitation, maintenance, and improvements to existing park spaces; (iii) bridging the funding gap for the maintenance of existing parks as identified in the December 2017 Parks Master Plan; (iv) acquisition, construction of, and maintenance of new park space and trails; (v) planning and design activities associated with the aforementioned; (vi) funding youth and senior programming; (vii) the hiring of staff, as needed,

to support the aforementioned functions; and (viii) any other expenditure related to the accomplishment of the aforementioned. It is the intent of this ordinance to give precedents whenever possible to projects encompassed in the Parks Master Plan.

(c) Limitation on Use of Revenues. The revenues collected as a result of this tax may not be used for any purpose not specifically identified in this Section 7-1505. Further, it is the intent of this ordinance that revenues collected hereunder shall supplement, rather than supplant, existing City General Fund expenditures for parks and public safety.

#### SECTION 7-1506. INDEPENDENT ANNUAL AUDIT, REPORT, AND CITIZEN OVERSIGHT.

(a) Annual Audit. The revenues from the tax imposed by this Article shall be subject to the annual audit performed by the City's independent auditor of the City's books, records, accounts, and fiscal procedures and which is reported in the City's Comprehensive Annual Financial Report.

(b) Annual Review Report. In addition to the annual audit, an Annual Review Report shall be prepared by the City setting forth the amount of revenues received from the tax imposed by this Article, amount of disbursements, and description of expenditures. The purpose is to assure accountability and the proper disbursement of the proceeds of the taxes collected under this ordinance. The Annual Review Report shall be

filed with the City Clerk's Office no later than January 1 of each fiscal year in which the tax is collected.

(c) Citizen Audit. A Special Sales Tax Audit Committee comprised of nine (9) members, to be comprised of City residents (two (2) appointees of the Mayor and one appointment from each Council District (to be nominated by each Councilmember)) shall be established by the City Council to review the Annual Review Report and related records and to make comments and recommendations to the City Council to ensure compliance with this ordinance. The City Council, by a two-thirds vote, shall have the authority to further define the role and powers of the Commission by resolution as necessary and appropriate from time to time.

SECTION 7-1507. CONTRACT WITH STATE. Prior to the operative date, the city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the city shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such contract.

SECTION 7-1508. TRANSACTIONS AND SALES TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half of one percent (0.50%) of the gross receipts of any retailers for the sale of all

tangible personal property sold at retail in said territory on and after the operative date of this article.

SECTION 7-1509. PLACE OF SALE. For the purposes of this article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

SECTION 7-1510. USE TAX RATE. An excise tax is hereby imposed on the storage, use, or other consumption in the city of tangible personal property purchased from any retailer on and after the operative date of this Article for storage, use, or other consumption in said territory at the rate of one-half of one percent (0.50%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made.

SECTION 7-1511. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this article and except insofar as they are

inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Article as though fully set forth herein.

**SECTION 7-1512. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES.** In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

(a) Wherever the State of California is named or referred to as the taxing agency, the name of this city shall be substituted. The substitution, however, shall not be made when:

(1) The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California.

(2) The result of that substitution would require action to be taken by or against this city or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this article.

(3) In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

(i) Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

(ii) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provision of that Code.

(4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

(b) The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

SECTION 7-1513. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required by this article.

SECTION 7-1514. EXEMPTIONS AND EXCLUSIONS.

(a) There shall be excluded from the measure of the transactions and sales tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any State-administered transactions or use tax.

(b) There are exempted from the computation of the amount of transactions tax the gross receipts from:

(1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

(2) Sales of property to be used outside the city which is shipped to a point outside the city, pursuant to the contract of sale, by delivery to such point by the retailer or his or her agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the city shall be satisfied:

(i) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of

the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of city address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

(ii) With respect to commercial vehicles, by registration to a place of business out-of-city and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance codified in this article.

(4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the ordinance codified in this article.

(5) For the purposes of subsections (B)(3) and (B)(4) of this Section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(c) There are exempted from the use tax imposed by this article, the storage, use or other consumption in this city of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any State-administered transactions and use tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this article.

(4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this article.

(5) For the purposes of Subsections (c)(3) and (c)(4) of this Section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(6) Except as provided in Subsection (c)(7) of this Section, a retailer engaged in business in the city shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the city or participates within the city in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the city

or through any representative, agent, canvasser, solicitor, subsidiary, or person in the city under the authority of the retailer.

(7) "A retailer engaged in business in the city" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the city.

(d) Any person subject to use tax under this article may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

(e) Nothing in this article shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a federal or state statute, the Constitution of the United States, or the Constitution of the State of California.

SECTION 7-1515. AMENDMENTS. All amendments subsequent to the effective date of this article to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this article. The foregoing amendments shall not require voter approval.

SECTION 7-1516. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the state or the city, or against any officer of the State or the City, to prevent or enjoin the collection under this article, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION 7-1517. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 7-1518. EFFECTIVE DATE. This ordinance relates to the levying and collecting of transactions and use taxes and shall take effect immediately upon approval by two-thirds of the voters voting on this ordinance.

SECTION 7-1519. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall continue in effect until June 30, 2034, unless otherwise extended by voter approval.

SECTION 2. The tax imposed by this ordinance is a special tax. This tax shall be effective only if approved by two-thirds of the City's voters voting thereon at the November 6, 2018, statewide election.

SECTION 3. This ordinance relates to the levying and collection of the City's transactions and use taxes and shall take effect immediately.

SECTION 4. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published, in full or in summary form, according to law.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2018  
Mayor Approval/No Return: \_\_\_\_\_, 2018  
Mayor Veto: \_\_\_\_\_, 2018  
Council Override Vote: \_\_\_\_\_, 2018

YVONNE SPENCE, MMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN,  
City Attorney

BY: \_\_\_\_\_  
Raj Singh Badhesha Date  
Senior Deputy City Attorney

RSB:cm [78981cm/rsb]