

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING ARTICLE 16 TO CHAPTER 7 OF THE FRESNO MUNICIPAL CODE, IMPOSING A 1/8 CENT TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX & FEE ADMINISTRATION TO RAISE REVENUES TO BE USED FOR ACQUISITION, MAINTENANCE, AND OPERATIONS OF VETERANS FACILITIES, AND RELATED VETERANS ACTIVITIES AND SERVICES IN THE CITY OF FRESNO.

WHEREAS, according to data from the latest U.S. Census, there are approximately 19,302 veterans living within the City of Fresno (the City) and 40,000 within the County of Fresno (the County); and

WHEREAS, many veterans in the County have some service-related disability; and

WHEREAS, homelessness and being low income is not uncommon among veterans; and

WHEREAS, the City currently has limited direct means to assists veterans insufficient resources to address those problems; and

WHEREAS, facilities like the Fresno Veterans Memorial Auditorium and the various veterans' posts in the City need significant rehabilitation and updating to better service veterans and their families; and

WHEREAS, the Clovis Veterans Memorial District does not fund improvements for veterans within the City and significantly underserves Fresno veterans even though it receives significant property taxes from City residents; and

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Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: _____

Ordinance No.

WHEREAS, City desires to assist veterans residing within the City of Fresno directly and with a dedicated source of funding; and

WHEREAS, the City needs a specified revenue source to provide and fund comprehensive programs, projects, and services for veterans in line with the aforementioned; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7285.91, the City has the authority to levy a transaction and use tax for specific purposes so long as (a) this Ordinance is approved by a 2/3 vote of the City Council and a 2/3 vote of the electorate; (b) the tax conforms to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251 of the California Revenue and Taxation Code); and (c) this Ordinance includes an expenditure plan describing the specific projects for which the revenues from the tax may be expended; and

WHEREAS, on _____ this Ordinance was approved [unanimously][by a 2/3 vote] of the Council;

WHEREAS, Measure V providing for the Veterans Support Revenue Enhancement Ordinance was approved by more than a 2/3 vote of the electorate at the November 8, 2022, statewide election, as certified by the City Clerk on _____; and

WHEREAS, revenues from the Ordinance will be used to fund programs, projects and services for veterans and be deposited in a special fund as provided herein.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 16 is hereby added to Chapter 7 of the Fresno Municipal Code to read:

ARTICLE 16

FRESNO VETERANS SUPPORT REVENUE ENHANCEMENT ORDINANCE

Section	7-1601.	TITLE.
	7-1602.	OPERATIVE DATE.
	7-1603.	PURPOSE.
	7-1604.	IMPOSITION OF TAX, DEPOSIT INTO SPECIAL ACCOUNT AND ANNUAL ACCOUNTING.
	7-1605.	SEPARATE SECTION WITH TRUE AND IMPARTIAL STATEMENT OF FACTS IDENTIFYING THE TAX AND SPECIFIC LIMITATIONS ON HOW THE REVENUE CAN BE SPENT.
	7-1606.	EXPENDITURE PLAN.
	7-1607.	CONTRACT WITH THE STATE.
	7-1608.	PLACE OF SALE.
	7-1609.	ADOPTION OF PROVISIONS OF STATE LAW.
	7-1610.	LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF TAXES.
	7-1611.	PERMIT NOT REQUIRED.
	7-1612.	EXEMPTIONS AND EXCLUSIONS.
	7-1613.	STATE LAW AMENDMENTS.
	7-1614.	AMENDMENT OF ORDINANCE.
	7-1615.	ENJOINING COLLECTION FORBIDDEN.
	7-1616.	ACCOUNTABILITY MEASURES.

SECTION 7-1601. - TITLE. This ordinance shall be known as the Fresno Veterans Support Revenue Enhancement Ordinance (the Ordinance). This Ordinance shall be applicable in the incorporated territory of the City.

SECTION 7-1602. – OPERATIVE DATE. Operative date means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being certification by the City Clerk that this measure has received approval by two-thirds of those voting in the election.

SECTION 7-1603. – PURPOSE. This ordinance is adopted to achieve the

following and directs that the provisions hereof be interpreted to achieve those purposes:

(a) To adopt a retail transactions and use tax ordinance within the City in the amount of one-eighth of a cent per dollar (a rate of 0.125%) as provided herein for the specific purpose of generating funds to be deposited into an account to be created entitled the "Veterans Support Account" that may only be used for the purposes specified in Section 7-1606 hereof, including, but not limited to acquisition, maintenance, and operations of facilities serving veterans (as defined in section 7-106) and the public, and support, services and activities for veterans in Fresno (Veteran's Support Activities).

(b) To impose a retail transactions and use tax 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 tax ordinance provided that two thirds of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

(c) 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.

(d) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure that can be administered and collected by the State Department of Tax and Fee Administration 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 Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

(e) 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 ordinance.

SECTION 7-1604. – IMPOSITION OF TAX, DEPOSIT INTO SPECIAL ACCOUNT AND ANNUAL ACCOUNTING. The following provisions shall govern the imposition of the transactions and use tax and the deposit and use of revenues generated by this ordinance.

(a) For the privilege of selling tangible personal property at retail, a transactions tax is hereby imposed upon all retailers in the City at the rate of one-eighth of a cent per dollar of the gross receipts of any retailer (a rate of 0.125%) from the sales of all tangible personal property sold at retail in

the City on or after the operative date of this ordinance for a period of 30 years beginning on and after the operative date of this ordinance.

(b) A use tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on or after the operative date of this ordinance for storage, use or other consumption in said city at the rate of one-eighth of a cent per dollar of the sale price of the property (a rate of 0.125%) for a period of 30 years beginning on and after the operative date of this ordinance. The sales price shall include delivery charges when such charges are subject to the State sales or use tax regardless of the place to which delivery is made.

(c) The [City Controller] shall establish the “Veterans Support Account” and all retail transactions and use tax proceeds [generated][received] by this ordinance shall be deposited by the City Controller into the Veterans Support Account. Such proceeds shall only be used for the specific purposes identified in Section 7-1606.

(d) The City Controller shall provide an annual report to the City Council of (a) the amount of funds collected and expended and (b) the status of any project required or authorized to be funded by the tax.

SECTION 7-1605. – SEPARATE SECTION WITH TRUE AND IMPARTIAL STATEMENT OF FACTS IDENTIFYING THE TAX AND SPECIFIC LIMITATIONS ON HOW THE REVENUE CAN BE SPENT. This ordinance enacts a transactions and use tax in the City at the rate of one-eighth of a cent per dollar to be used only

for the purposes in Section 7-1606. The Expenditure Plan in Section 7-1606 is intended as a specific and legally binding and enforceable limitation on how the proceeds of the transactions and use tax imposed by this ordinance may be spent.

SECTION 7-1606. – EXPENDITURE PLAN. The revenues generated by the retail transactions and use tax shall be expended on improvements and services for the benefit of veterans and the public, including but not limited to the acquisition, rehabilitation, maintenance, and operations of facilities, improvements, memorials, and other projects serving veterans and the public, and support, services, and activities for veterans in Fresno. In carrying out its Veterans Support Activities, the City Council (or its designee or delegee) may take any actions it deems desirable, including but not limited to (a) pledging funds and/or making payments from the tax and/or the Veterans Support Account to the payment of loans, bonds, leases, installment agreements or other forms of indebtedness for the acquisition, construction, and/or rehabilitation of Veteran's facilities and memorials like the veterans' posts and the memorial hall in the City of Fresno, (b) funding programs from without or within Fresno which assist veterans in Fresno, (c) funding the operation and maintenance of facilities in Fresno and/or renting such Facilities for use by other parties to raise funds for assisting veterans, (d) providing loans, grants, health care, housing or other assistance for veterans, their families and organizations assisting veterans and their families,(e) providing funding for a veterans memorial district if created in the City by law, special legislation or initiative within the purposes of such district, (f) funding reserves for

operations, maintenance, improvements and/or services for veterans and (g) taking such other actions as may be permitted by law.

The City Council shall provide for oversight of the funds expended hereunder. The City Council and may delegate funding and expenditures or other duties to a veterans' commission, a memorial district if created in the city and/or another entity to the full extent permitted by law.

The term "veteran" for the purposes hereof means a person who has served in the active United States military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. Veterans shall include members of the National Guard who are considered veterans under the laws of the United States.

SECTION 7-1607. – CONTRACT WITH THE STATE. Prior to the operative date, the City shall contract with the State Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this retail transactions and use tax ordinance; provided, that if the city shall not have contracted with the State Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

SECTION 7-1608. – PLACE OF SALE. For the purpose of this ordinance, all retail transactions are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his 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, for the purposes of this ordinance, shall be determined under rules and regulations to be prescribed and adopted by the State Department of Tax and Fee Administration.

SECTION 7-1609. - ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance 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 ordinance as though fully set forth herein.

SECTION 7-1610. – LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF 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 therefor.

However, the substitution shall not be made:

(1) When the word “State” is used as part of the title of the State Controller, State Treasurer, State Department of Tax and Fee

Administration, State Treasury, or the Constitution of the State of California;

(2) Where 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 Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance.

(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:

(A) 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;

(B) 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 of the Revenue and Taxation Code, and in the definition of that phrase in section 6203.

SECTION 7-1611. – 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 transactor’s permit shall not be required by this ordinance.

SECTION. 7-1612 – EXEMPTIONS AND EXCLUSIONS.

(a) There shall be excluded from the measure of the transactions 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 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 are shipped to a point outside the City, pursuant to the contract of sale, by delivery to that 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:

(A) 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 the address is, in fact, his or her principal place of residence; and

(B) With respect to commercial vehicles, by registration to a place of business out-of-City and a 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 this ordinance.

(4) A lease of tangible personal property which is a continuing sale of that 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 this ordinance.

(5) For purposes of subparagraphs (3) and (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 that right is exercised.

(c) There are exempted from the use tax imposed by this ordinance, 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 the operators directly and exclusively in the use of the 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.

(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 ordinance.

(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 the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to the operative date of this ordinance.

(5) For the purposes of subparagraphs (3) and (4) of this section, the 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 the right is exercised.

(6) Except as provided in paragraph (7), 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 ordinance shall be entitled to credit against that tax or any transactions tax or reimbursement for transactions tax, paid to the city or retailer in the city liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code.

SECTION 7-1613. – STATE LAW AMENDMENTS. All amendments subsequent to the effective date of this ordinance 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 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

SECTION 7-1614. – AMENDMENT OF ORDINANCE. Except for amendments that would increase the tax rate, impose the tax on transactions and uses not previously subject to the tax (unless the amendment occurs pursuant to Section 7-1613), extend the tax, allow expenditures other than those provided in Section 7-1606, or be inconsistent with the purposes of this ordinance, the City Council may amend this ordinance without submitting the amendment to the voters for approval.

SECTION 7-1615. – 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 ordinance, 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 7-1616. -ACCOUNTABILITY MEASURES. Pursuant to and in compliance with the provisions of Government Code Section 50075.1, the Council hereby establishes the following accountability measures pertaining to the levy by

the District of the Special Tax described in Section 7 above:

(a) Such Special Tax shall be levied for the specific purposes set forth in Section 7-1606 hereof.

(b) The proceeds of the levy of such Special Tax shall be applied only to the specific purposes set forth in 7-1606 hereof.

(c) The District shall establish an account or accounts into which the proceeds of such Special Tax shall be deposited.

(d) The Controller or Chief Fiscal Officer shall annually file a report with the Council as required pursuant to Government Code Section 50075.3.

SECTION 2. 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 3. MEASURE EFFECTIVE UPON RATIFICATION BY VOTERS. This Measure shall be effective upon determination of the City Clerk that it has been approved by two thirds of the electorate voting in an election on this ordinance, the Clerk shall certify the passage of this ordinance, publish the same as required by law, and forward a copy of the ordinance to the Department of Tax and Fee Administration. Officers and employees of the City shall take all actions necessary to implement this ordinance, including execution of the contract required by Section 7-1611.

SECTION 4. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

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

I, TODD STERMER, 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 _____ 2022.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2022
Mayor Approval/No Return: _____, 2022
Mayor Veto: _____, 2022
Council Override Vote: _____, 2022

TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Raj Singh Badhesha Date
Assistant City Attorney