

Regular Council Meeting
July 21, 2022

RECEIVED

2022 JUL 20 P 2:06

CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Information Packet

ITEM(S)

10:10 A.M. (File ID 22-1183)

Actions pertaining to Fresno Veterans Support Revenue Enhancement Ordinance.

Contents of Supplement:

Draft Resolution approving the Fresno Veterans Support Revenue Enhancement Ordinance

Item(s)

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.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA APPROVING THE FRESNO VETERANS SUPPORT REVENUE ENHANCEMENT ORDINANCE, A TRANSACTIONS AND USE TAX FOR VETERANS FACILITIES AND SERVICES, ORDERING THE SUBMISSION OF THE MEASURE TO CITY VOTERS AT A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2022; REQUESTING THE COUNTY CONDUCT THE SPECIAL MUNICIPAL ELECTION; AND REQUESTING CONSOLIDATION WITH THE STATEWIDE ELECTION TO BE HELD ON THAT DATE

WHEREAS, there are approximately 20,000 veterans living within the City of Fresno (the City) and approximately 40,000 within the County of Fresno (the County); and

WHEREAS, many veterans in the City suffer from some service-related disability and/or homelessness, joblessness, or being low income; and

WHEREAS, veterans facilities like the Fresno Memorial Auditorium and the various veterans of foreign wars posts in the City need significant rehabilitation and updating to better serve veterans and their families; and

WHEREAS, City desires to assist veterans residing within the City of Fresno directly; and the City needs a specified revenue source to provide and fund comprehensive programs, capital 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) the ordinance proposing that tax is approved by a 2/3 vote of the City Council and

1 of 7

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



Resolution No. _____

a 2/3 vote of the electorate; (b) the tax conforms to the Transactions and Use Tax Law (constituting Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code); and (c) the ordinance proposing that tax includes an expenditure plan describing the specific projects for which the revenues from the tax may be expended; and

WHEREAS, the City Council desires to submit to the voters at the Special Municipal Election on November 8, 2022, a ballot measure to consider adopting a proposed ordinance to impose a 1/8 cent transactions and use tax to raise revenues to be used for acquisition, maintenance, and operations of veterans facilities, and related veterans activities and services in the City, for a total maximum rate of 1/8 cent (the Measure); and

WHEREAS, the revenues generated by the additional 1/8 cent transactions and use tax would be restricted for the maintenance, operation, and acquisition of veterans' facilities, and related veterans activities and services in the City only; and

WHEREAS, approving the Measure requires approval of 2/3 of voters at either a general or special municipal election; and

WHEREAS, the City Council wishes to have the voters consider the Measure and consolidate the election with the Statewide general election to be held on November 8, 2022.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The City Council hereby finds and determines that the foregoing recitals are true and correct.

2. There is hereby called and ordered to be held in the City of Fresno, California, a Special Municipal Election for Tuesday November 8, 2022, (the Election) for the purpose of submitting a ballot measure to the City voters.

3. The question to be submitted to the voters with respect to the ballot measure shall be printed on the election ballot in the form set forth as follows:

CITY OF FRESNO VETERANS SUPPORT MEASURE Shall the measure establishing a 1/8 percent sales tax providing approximately \$19.5 million annually for 20 years to improve facilities and services for Fresno veterans, including affordable housing, job training/placement, and mental/physical healthcare; reduce veteran homelessness; rehabilitate deteriorating Fresno Veterans Memorial Auditorium, VFW/American Legion halls (by removing asbestos and providing disabled accessibility), requiring local use of funds, public spending disclosure, citizen oversight and audits, be adopted?	YES
	NO

4. The following constitutes the synopsis of the Measure to be voted on for purposes of meeting the publication requirements of Elections Code Section 12111:

MEASURE TO BE VOTED ON

Notice is hereby given that the following measure is to be voted on at the special municipal election to be held in the City of Fresno, on Tuesday, the 8th of November, 2022.

APPROVAL OF FRESNO VETERANS SUPPORT REVENUE ENHANCEMENT ORDINANCE

The proposed ordinance would impose a 1/8 percent sales and use tax within the City of Fresno for a period of 20 years, which is estimated to raise approximately \$19.5 million annually. Proceeds would be utilized to fund capital projects and services for veterans, including (a) the construction, improvement, maintenance, acquisition, and operations of capital projects like the Fresno Veterans Memorial Auditorium and veterans' of foreign wars posts, (b) providing housing, health care, job training and other support service assistance to veterans and their families. The ordinance would require funds to be expended for

capital projects and services for veterans, including housing assistance. The proposed ordinance would also have accountability measures and require the City of Fresno to create a new Veterans Commission to audit expenditures.

5. The full text of the ordinance submitted to the voters is attached as Exhibit A and by this reference incorporated herein. The full text of the Measure is not required to be printed in the Sample Ballot and Voters Pamphlet. However, the full text of the Measure shall be made available at the Office of the Fresno County Clerk/Registrar of Voters and the Office of the Fresno City Clerk.

6. The City of Fresno requests that the Fresno County Clerk/Registrar of Voters conduct the Election and canvass the returns, and the City consents to reimburse the Registrar of Voters for all costs incurred by said services. Pursuant to Section 10400 et seq. of the Elections Code, the Board of Supervisors of Fresno County is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

7. In all particulars not recited in this resolution, the Election shall be held and conducted as provided by law for holding municipal elections.

8. Arguments in favor or against the proposed measure are permissible and shall be filed with the Fresno County Clerk/Registrar in accordance with Elections Code Section 9281 or as provided for the consolidated election. Councilmembers voting in the majority for this resolution and the Mayor are authorized, but not required, to file arguments in favor of the proposed measure. They are also authorized to provide input to the Fresno County Clerk/Registrar in determining a letter designation for this Measure. Rebuttal arguments shall be permitted pursuant to applicable law.

9. Passage of this Measure requires approval by 2/3 vote, unless otherwise required by law.

10. The Fresno County Clerk/Registrar of Voters shall give the appropriate notices for the Election and shall conduct the Election and the City hereby acknowledges that pursuant to Elections Code Section 10403(a)(3) that the consolidated election will be held and conducted in the manner prescribed in Election Code Section 10418.

11. The City Attorney shall prepare an impartial analysis of the Measure in accordance with Elections Code Section 9280 and file with the Fresno County Clerk/Registrar of Voters.

12. The City Clerk shall file a certified copy of this Resolution with the Fresno County Clerk/Registrar of Voters by August 12, 2022, to ensure the requisite timeframes for holding the special election as required by applicable law.

13. The City Clerk and the City Attorney are authorized to make any typographical, clerical, non-substantive corrections to this Resolution as may be deemed necessary by the Fresno County Clerk/Registrar of Voters.

14. That the City recognizes that additional costs will be incurred by Fresno County by reason of this consolidation and agrees to reimburse Fresno County for any costs. The City Manager of the City of Fresno is authorized and directed to pay for the expenses incurred after receiving a statement from the County of Fresno.

15. This Resolution shall be effective immediately upon adoption.

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

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution 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:
RINA M. GONZALES
Interim City Attorney

By: _____
Raj Singh Badhesha Date
Assistant City Attorney

Attachment: Exhibit A - Ordinance

Exhibit A
Ordinance

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 PERCENT TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX & FEE ADMINISTRATION TO RAISE REVENUES TO BE USED FOR THE MAINTENANCE, REHABILITATION AND OPERATION OF VETERANS FACILITIES AND FOR ACTIVITIES AND SERVICES FOR VETERANS IN THE CITY OF FRESNO.

WHEREAS, there are approximately 20,000 veterans living within the City of Fresno (the City) and approximately 40,000 within the County of Fresno (the County); and

WHEREAS, many veterans suffer from some service-related disability and/or face homelessness, joblessness, and being low income; and

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

WHEREAS, the City currently has limited direct means to assist veterans who have insufficient resources to address these problems and desires to assist veterans residing within the City of Fresno; and

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

1 of 23

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: _____

Ordinance No.

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 (constituting Part 1.6 (commencing with Section 7251) of Division 2 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 by a _____ vote of the Council; and

WHEREAS, the measure 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 deposited in a special fund and be used to fund projects, programs and services for veterans as set forth in the Ordinance.

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; TERM.
7-1606.	EXPENDITURE PLAN.
7-1607.	VETERANS COMMISSION.
7-1608.	CONTRACT WITH THE STATE.
7-1609.	PLACE OF SALE.
7-1610.	ADOPTION OF PROVISIONS OF STATE LAW.
7-1611.	LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF TAXES
7-1612.	PERMIT NOT REQUIRED.
7-1613.	EXEMPTIONS AND EXCLUSIONS.
7-1614.	STATE LAW AMENDMENTS.
7-1615.	AMENDMENT OF ORDINANCE.
7-1616.	ENJOINING COLLECTION FORBIDDEN.
7-1617.	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 2/3 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 1/8 of a cent per dollar (a rate of 0.125%) as provided herein for the specific purpose of generating funds to be deposited into a

fund to be created entitled the "Veterans Support Fund" 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 and/or honoring veterans (as defined in Section 7-1606), and support, services and activities for veterans in Fresno (collectively, 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 2/3 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 1/8 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 perpetually 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 1/8 of a cent per dollar of the

sale price of the property (a rate of 0.125%) perpetually 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 Fund" and all retail transactions and use tax proceeds generated and received from this Ordinance shall be deposited by the City Controller into the Veterans Support Fund. Within the fund, the City Controller may create accounts and subaccounts, including for reserves, to effectuate the purposes of this Ordinance. The proceeds of the tax shall only be used for the specific purposes identified in Section 7-1606.

(d) The City Controller and appropriate City staff shall provide an annual report to the City Council of (a) the amount of funds collected and expended and (b) the status of projects being 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; TERM. This Ordinance enacts a transactions and use tax in the City at the rate of 1/8 of a cent per dollar for a duration of 20 years following the operative date 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.

(a) Definitions. The following terms and phrases shall be defined in the manner listed below.

(1) “Administrative Costs” means actual expenses incurred by the City in levying, collecting, auditing, and administering the tax. Apportionment of any overhead and/or actual accounting of actual costs shall be in accordance with generally accepted accounting principles (GAAP), federal or state grant practices, Government Accounting Standards Board standards (GASB) or other appropriate standards. Administrative Costs shall also include costs associated with putting the Ordinance on the ballot and with renewing or proposing any new transactions and use tax.

(2) “Veteran” means a person who has served in the active United States military, naval, or air service or similar public military service recognized under the laws of the United States, 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.

(b) Capital Projects. A minimum of 1/3 of the revenues generated and collected by the retail transactions and use tax shall be allocated to and expended on Capital Projects. Capital Projects shall mean acquisition, rehabilitation, maintenance, operation or improvement projects for facilities

with a useful life of five years or more, or similar costs for a lesser useful life, which are capitalized under generally accepted accounting principles (GAAP); Capital Projects shall include, but not be limited to:

- (1) improvements to the Fresno Memorial Auditorium;
- (2) improvements to and rehabilitation of the Veterans of Foreign War Posts in Fresno and the American Legions Hall;
- (3) acquisition, improvement, or rehabilitation of affordable housing for veterans and their families;
- (4) acquisition or improvement to facilities or equipment to be used by veterans;
- (5) construction of memorials;
- (6) other Capital Projects within the purposes of this Ordinance; and
- (7) maintenance of any of the above.

All costs of the acquisition, rehabilitation, construction, maintenance, and operation of Capital Projects and/or current facilities for Veterans shall be considered Capital Projects. Veterans' facilities may incidentally or purposely benefit the general public in that the public may use such facilities e.g., use a veterans' hall for a wedding or attend and honor the memorial for veterans.

(c) Services. A minimum of 1/3 of the revenues generated and collected by the retail transactions and use tax shall be allocated to and

expended on Services.

Services means support, services, programs, and activities for veterans in Fresno. Services shall include, but not be limited to: (1) any activity for veterans that is not a Capital Project; (2) Administrative Costs and/or costs of hiring personnel, contractors, or others to assist veterans with activities; (3) providing assistance with affordable housing, job training and job placement, mental health, physical healthcare, and/or other activity, including loans and grants therefor; and (4) reducing veteran homelessness. All the costs associated with Services shall be considered Services.

(d) Allocation of Revenues. Notwithstanding Subsections (b) and (c) of this Section 7-1606, the City Council may adjust the minimum allocation and expenditure requirement for revenues (between Capital Projects and Services) by resolution, approved by a majority vote of the Council; such adjustment shall be effective at the beginning of the subsequent fiscal year.

(e) Permitted Expenditure Authority. In carrying out Veteran's Support Activities, the City Council (or its designee or delegee) may take any actions deemed desirable and which are permissible under law, including but not limited to: (1) pledging funds and/or making payments from the tax and/or the Veterans Support Fund or account therein, to the payment of loans, bonds, leases, installment agreements or other forms of

indebtedness or obligations for the acquisition, construction, and/or rehabilitation of Capital Projects; (2) funding programs from without or within Fresno which assist veterans in Fresno; (3) 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; (4) providing loans, grants, health care, mental health care, housing or other assistance for veterans, their families and organizations assisting veterans and their families; (5) providing funding for a veterans memorial district if created in the City by law, special legislation or initiative within the purposes of such district; (6) funding reserves for operations, maintenance, improvements and/or services for veterans; and (7) taking such other actions as may be permitted by law.

This Section 7-1606 shall be construed liberally by the Council to support Veteran's Support Activities. Any pledge or commitment of the transactions and use tax over a period of years to fund a Capital Project as provided in Subsection (a) must be approved by a majority of the City Council.

(e) Delegation of Authority. The City Council shall create a Veterans Commission to annually review audits of expenditures under this Ordinance for compliance with the Expenditure Plan. The City Council may provide for an independent audit of expenditures annually. The City Council may delegate its duties under this Ordinance to fund Veteran's Support

Activities to: (1) a Veterans' Commission; (2) a veterans memorial district, duly formed pursuant to Sections 1170 through 1259 of the Military and Veterans Code, if created in the City; and/or (3) another entity as permitted by law. To the extent the City Council delegates any of its duties hereunder, it shall do so via resolution, unless otherwise required by law, and provide for appropriate oversight of the performance of such entity and the expenditure of the funds.

SECTION 7-1607 – VETERANS COMMISSION

(a) A new Veterans Commission consisting of seven members is hereby created.

(b) The Commission shall include one member from each City district as nominated by the Councilmember of the respective district; the membership of the Commission shall be comprised of veterans of the United States armed forces.

(c) Unless otherwise set forth in this Ordinance, the City Council shall appoint all members of the Commission in accordance with Article IX of the Fresno City Charter.

(d) The Commission shall have primary authority on behalf of the City to annually review audits of expenditures under this Ordinance for compliance with the Expenditure Plan and any independently prepared audits thereof, provide related recommendations to the City Council, and such other duties delegated by the Council pursuant to a Subsection (e)

below.

(e) The City Council shall have the authority to further define the role and powers of the Commission or assign additional authority by adopting implementing ordinances or resolutions.

(f) In consultation with the City Attorney, City Clerk, and appropriate City staff, the Commission shall have authority to determine operating procedures consistent with the City Charter and the Municipal Code, including the other provisions of this Ordinance.

(g) The Commission shall hold public meetings and operate pursuant to California Government Code Section 54950.

(h) The Commission members shall be governed by and comply with State conflict of interest laws (e.g., Government Code Section 87000 et seq. and Section 1090 et seq.) and the City's conflict of interest policies.

SECTION 7-1608 – 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 7-1609 – 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 7-1610 - 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 7-1611 – 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.

(c) "A retailer engaged in business in the City" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

SECTION 7-1612 – 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 7-1613 – 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 7-1614 – 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 7-1615 – 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 7-1614), 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 7-1616 – 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 7-1617 - 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 herein 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 Section 7-1606 hereof.
- (c) The City shall establish an account or accounts into which the proceeds of such Special Tax shall be deposited.
- (d) The Controller 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 2/3 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 7-1612.

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:
RINA M. GONZALES
Interim City Attorney

By: _____
Raj Singh Badhesha Date
Assistant City Attorney