

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRESNO, CALIFORNIA AMENDING ARTICLE 15 OF CHAPTER 7 OF THE FRESNO MUNICIPAL CODE, RELATING TO CERTAIN TECHNICAL AMENDMENTS REQUIRED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION AND AS REQUIRED DUE TO THE PASSAGE TIME OF THE FRESNO CLEAN AND SAFE NEIGHBORHOOD PARKS TAX ORDINANCE (MEASURE P)

WHEREAS, on November 6, 2018, a general election was held in the City of Fresno and Measure P, regarding a proposed Fresno Clean and Safe Neighborhood Parks Tax Ordinance, received 52.17% affirmative votes; and

WHEREAS, on December 13, 2018, the Council, via Resolution 2018-302 certified that Measure P failed because it received less than two-thirds of the votes cast; and

WHEREAS, Council provided in Paragraph 9 of Resolution 2018-188, pursuant to which Measure P was placed on the November 6, 2018, general election ballot, that: "Passage of this measure requires approval by two-thirds (2/3) vote, unless otherwise required by law"; and

WHEREAS, subsequent to the City's certification of Measure P election results via Resolution 2018-302, the City filed a complaint for declaratory relief in the Fresno County Superior Court requesting a determination of the voter threshold required for passage of a special tax brought by voter initiative (the Measure P Litigation); and

WHEREAS, the Measure P Litigation has resulted in the Fifth District Court of Appeal determining that, as a matter of law, the vote threshold for passage of a voter

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: _____

Ordinance No.

initiated special sales tax is a simple majority, and the Fifth District Court of Appeal has ordered the City to declare Measure P passed; and

WHEREAS, on February 18, 2021, pursuant to the Fifth District Court of Appeal's determination that voter-initiated special sales tax measures require only a simple majority vote to pass, Council certified and declared via Resolution No. 2021-_____ that Measure P passed; and

WHEREAS, pursuant to Resolution No. _____, Measure P was codified in Article 15 of Chapter 7 of the Fresno Municipal Code, having been renumbered as necessary; and

WHEREAS, because of the passage of time and requirements of the California Department of Tax and Fee Administration, certain technical amendments are required; and

WHEREAS, Section 7-1518 of the Fresno Municipal Code authorizes Council to make such technical amendments.

THE COUNCIL OF THE CITY FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals set forth above are incorporated herein by this reference.

SECTION 2. Section 7-1502 of the Fresno Municipal Code is amended to read as follows:

SECTION 7-1502. 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~~ [a majority] of those voting in the election.

SECTION 3. Section 7-1503 of the Fresno Municipal Code is amended to read as follows:

SECTION 7-1503. PURPOSE. This ordinance is adopted to achieve the following and directs that the provisions hereof be interpreted in order to achieve those purposes:

(a) To adopt a retail transactions and use tax ordinance within the City in the amount of three-eighths of a cent per dollar (a rate of 0.375%) as provided herein for the specific purpose of generating funds to be deposited into the Clean and Safe Neighborhood Parks Account that may only be used for the purposes specified herein including, but not limited to, clean and safe parks; new parks and recreation facilities; youth and senior recreation and after-school facilities and job training; improved walking and biking trails; the San Joaquin River Parkway; beautification of streets; and expanded access to arts and culture.

(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~~ [a majority] 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~~ [California] 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~~ [California] 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.

(f) It is the intent of the voters in adopting this ordinance that the expenditures made pursuant to this ordinance shall supplement the levels of spending made by the City of Fresno in Fiscal Year 2017-2018 in the areas funded by this ordinance and that the additional expenditures shall not supplant the 2017-2018 spending levels.

SECTION 4. Section 7-1508(e)(1) of the Fresno Municipal Code is amended to read as follows:

(1) Up to and including December 31, ~~2019~~ [2021], the City, in conjunction with the Commission, shall define the highest-need neighborhoods

as those areas that are located within census tracts that rank within the top twenty-five percent (25%) of Fresno census tracts as identified in the State's CalEnviroScreen 3.0; and whose nearest park is identified as being in poor condition, according to the Plan, or is located within a priority zone for new parks, as defined by the Plan.

SECTION 5. Section 7-1508(e)(2) of the Fresno Municipal Code is amended to read as follows:

(2) No later than January 1, ~~2020~~ [2022], the City, in conjunction with the Commission, shall adopt a new definition of highest-needs neighborhoods, after conducting a public process, to be updated every three years and included in subsequent updates to the Plan. The City and Commission shall create a weighted index incorporating the following data in developing the definition:

(A) Existing conditions of parks and facilities based on needs assessment data in the Plan;

(B) The proportion of the population that lives within walking distance (1/2 mile) to a park;

(C) Park acreage per 1,000 residents;

(D) Population density;

(E) Neighborhood youth and senior population;

(F) Neighborhood safety;

(G) Neighborhoods of concentrated poverty;

(H) Pollution burden, as defined by CalEnviroScreens 3.0, or subsequent updates;

(I) Pre-term birth rates;

(J) Years of potential life lost;

(K) Neighborhood composite mortality rate.

SECTION 6. Section 7-1509(b) of the Fresno Municipal Code is amended to read as follows:

(b) The Mayor and City Council shall appoint all members of the Commission no later than June 30, 2019 [2021].

SECTION 7. Section 7-1511 of the Fresno Municipal Code is amended to read as follows:

SECTION 7-1511. CONTRACT WITH THE STATE. Prior to the operative date, the City shall contract with the ~~State~~ [California] 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~~ [California] 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 8. Section 7-1512 of the Fresno Municipal Code is amended to read as follows:

SECTION 7-1512. 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~~ [California] Department of Tax and Fee Administration.

SECTION 9. Section 7-1514(a)(1) of the Fresno Municipal Code is amended to read as follows:

(1) When the word "State" is used as part of the title of the State Controller, State Treasurer, ~~State~~ [California] Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California;

SECTION 10. Section 7-1514(a)(2) of the Fresno Municipal Code is amended to read as follows:

(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~~ [California] Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this ordinance.

SECTION 11. Paragraph 1 is added to Subsection (b) of Section 7-1514 of the Fresno Municipal Code to read as follows:

[(1) "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 the 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 regulations thereunder.]

SECTION 12. 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, 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 _____ 2021.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2021
Mayor Approval/No Return: _____, 2021
Mayor Veto: _____, 2021
Council Override Vote: _____, 2021

YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy Date

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

By: _____
Raj Singh Badhesha Date
Supervising Deputy City Attorney