



Legislation Details (With Text)

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On agenda:	2/18/2021	Final action:			
Title:	Actions pertaining to the Ordinance Number 2021-005, the Fresno Clean and Safe Neighborhood Parks Tax Ordinance (Measure P): 1. ***RESOLUTION - Certifying and declaring the results of the Consolidated General Election held in the City of Fresno on November 6, 2018, as to Measure P (Subject to Mayor's Veto) 2. RESOLUTION - Authorizing the Controller or his designee to execute agreements with the California Department of Tax and Fee Administration for implementation of a local transactions and use tax 3. RESOLUTION - Authorizing examination of sales or transactions and use taxes records 4. ***RESOLUTION - Adopting the 67th amendment to the Annual Appropriation Resolution No. 2020-159 appropriating up to \$175,000 for State administration of Measure P (Requires 5 affirmative votes) (Subject to Mayor's veto)				
Sponsors:	Office of the City Clerk, Finance Department				
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Attachments:	1. Resolution Certifying Election Results - Measure P 2112021, 2. Resolution Authorizing Agreements with CDTFA 2112021, 3. Resolution Authorizing Examination of Tax Records 2112021, 4. Resolution Adopting the 67th AAR -2112020				

Date	Ver.	Action By	Action	Result
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REPORT TO THE CITY COUNCIL

February 18, 2021

FROM: YVONNE SPENCE, City Clerk
MICHAEL LIMA, Controller

SUBJECT

Actions pertaining to the Ordinance Number 2021-005, the Fresno Clean and Safe Neighborhood Parks Tax Ordinance (Measure P):

1. ***RESOLUTION - Certifying and declaring the results of the Consolidated General Election held in the City of Fresno on November 6, 2018, as to Measure P (Subject to Mayor's Veto)

2. RESOLUTION - Authorizing the Controller or his designee to execute agreements with the California Department of Tax and Fee Administration for implementation of a local transactions and use tax
3. RESOLUTION - Authorizing examination of sales or transactions and use taxes records
4. ***RESOLUTION - Adopting the 67th amendment to the Annual Appropriation Resolution No. 2020-159 appropriating up to \$175,000 for State administration of Measure P (Requires 5 affirmative votes) (Subject to Mayor's veto)

RECOMMENDATION

Certify and declare the election results and authorize resolutions and attendant documents for implementation and administration of Measure P (City of Fresno Ordinance Number 2021-005).

EXECUTIVE SUMMARY

At the general election held in November 6, 2018, the Fresno Clean and Safe Neighborhood Parks Tax Ordinance (Measure P) received 52.17% affirmative votes. On December 18, 2018, in accordance with then-existing law relating to the vote threshold for special tax voter initiatives, the City declared Measure P failed.

Subsequently, out of an abundance of caution, the City filed a declaratory relief action seeking the court's guidance on whether a special tax requires a simple majority or two-thirds vote for passage (the Measure P Litigation). The Measure P Litigation has resulted in the California Fifth District Court of Appeals holding that a special tax voter initiative requires only a majority vote to pass. As a result the Court has directed passage of Measure P, pursuant to which this item has been presented to Council.

This item includes both a resolution certifying the election results (having passed with a majority vote) as well as resolutions required by the California Department of Tax and Fee Administration (CDTFA) for implementation and administration of the tax.

BACKGROUND

Initiative Process. In early 2018, an initiative petition was circulated seeking to place Measure P, the "Fresno Clean and Safe Neighborhood Parks Tax Ordinance," on the ballot. Proponents received the required signatures, and on August 9, 2018, the Council performed its mandatory duty to place the measure on the November 6, 2018, ballot via Resolution No. 2018-188.

Paragraph 9 of Resolution 2018-188 states, "Passage of this measure requires approval by two-thirds vote, unless otherwise required by law." The City Attorney's Office, in consultation with outside counsel and consistent with relevant State Board of Equalization guidance, advised at the time Measure P required a two-thirds vote to pass, unless otherwise required by law (potential new court decision). Because Prop. 218 requires a two-thirds vote threshold for special taxes, and no court had then held an initiative special tax (like Measure P) did not require a two-thirds vote to pass, the state of the law at the time was all special taxes require two-thirds. However, potential ambiguities in the law were created by the Supreme Court's ruling in *California Cannabis Coalition v. City of Upland*

(2017) 3 Cal. 5th 924, which held a special tax could be considered at a special election, rather than a general election as required by Prop 218.

On August 9, 2018, the Council approved the ballot language for Measure P.

Election Results. Measure P received 52.17% affirmative votes, and on December 18, 2018, the City declared Measure P failed based upon then existing law.

Litigation. In January 2019, the City asked the court for declaratory relief as to whether Measure P had passed. The City named Fresno Building Healthy Communities (BHC), (which asserted Measure P should have passed with a majority vote) as defendant in the case, and subsequently Howard Jarvis Taxpayers Association (Howard Jarvis) intervened as a defendant (asserting two-thirds is the legal threshold). BHC also filed a petition for writ of mandate and complaint for declaratory relief, and the two cases were consolidated.

In September 2019, the trial court agreed with Howard Jarvis that the legal vote threshold is two-thirds. The court held a special tax initiative requires two-thirds vote to be passed. BHC appealed.

After BHC filed its appellate brief, the First District Court of Appeal in San Francisco ruled neither Prop. 13 nor Prop. 218 affects the voter's initiative power, and therefore neither impose a two-thirds vote requirement on the passage of initiatives that impose special taxes. While that decision was not binding on the Fifth District Court of Appeal in ruling on Measure P, the Fifth District followed the First District's reasoning in its own ruling.

On December 17, 2020, the appellate court overturned the trial court ruling and held initiative special taxes require only a simple majority to pass. The court remanded the matter to the trial court to enter a new judgment declaring Measure P has passed. On January 26, 2021, Howard Jarvis filed a Petition for Review with the California Supreme Court. At this time, based upon its denial of a similar petition it is unlikely that the Supreme Court will grant the petition for review. No stay on Measure P certification has been requested or imposed.

Certification. In light of the holding in *City of Fresno v. Fresno Building Healthy Communities* (2020) 58 Cal.App.5th 884 (stating "neither Proposition 13 nor Proposition 218 affects the voters' initiative power, and therefore neither imposes a two-thirds voting requirement on the passage of voter initiatives that impose special taxes") and consistent with Article II, section 10, subdivision (a) of the California Constitution [an initiative approved by a majority vote shall become effective], Election Code Section 9217 (noting that "If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city."), and Section 1403 of Charter of the City of Fresno (which state that "The provisions of the Elections Code of the State of California, as the same now exist or hereafter may be amended, governing the initiative...shall apply to the use thereof in the City so far as such provisions of the Elections Code are not in conflict with the provisions of this Charter."), certification at this juncture is appropriate.

Implementation of Tax. Following certification, the City must work with the State of California and the CDTFA to ensure implementation and administration of the special sales tax authorized pursuant to Measure P. The CDTFA requires the above-listed form resolutions and the attached agreements to begin the tax implementation and administration process. Staff seeks to have the CDTFA begin collection of the special tax on July 1, 2021. The CDTFA has represented that this is a realistic start date for collection, under the various timelines which govern imposition of a special sales tax. CDTFA has further recommended making technical amendments to the Measure P ordinance. These technical amendments will be presented to the City Council at a subsequent meeting.

Attached hereto is also an Annual Appropriations Resolution Amendment for costs associated with

the implementation of Measure P, which the City is required to pay to the CDTFA pursuant to state law.

Staff recommends that the Council approve the above resolutions and authorize the Clerk, Controller, City Manager, and City Attorney to take all actions necessary for the implementation of Measure P.

ENVIRONMENTAL FINDINGS

Pursuant to the definition in California Environmental Quality Act Guidelines Section 15378, this action is not a project.

LOCAL PREFERENCE

Local preference was not implemented, as this item does not include a bid or award of a construction or services contract.

FISCAL IMPACT

Implementation of the special sales tax imposed by Measure P is estimated to generate \$37.5 million annually, for a period of 30 years. Proceeds will be segregated from the General Fund and be used as required by Measure P; including, among other purposes, for improving park safety; improving accessibility for persons with disabilities; updating and maintaining playgrounds and restrooms; providing youth and veteran job training; improving after school, arts and recreational programs; beautifying roadways; and creating parks and trails in neighborhoods without access. This item will not impact the General Fund.

Attachment:

1. Resolution certifying and declaring the results of the Consolidated General Election held in the City of Fresno on November 6, 2018, as to Measure P
2. Resolution authorizing the Controller or his designee to execute agreements with the CDTFA for implementation of a local transactions and use tax
3. Resolution authorizing examination of sales or transactions and use taxes records
4. Resolution adopting the 67th amendment to the Annual Appropriation Resolution No. 2020-159 appropriating up to \$175,000 for State administration of Measure P