



## Legislation Details (With Text)

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**Title:** BILL - (For introduction) 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)  
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Date	Ver.	Action By	Action	Result
3/4/2021	1	City Council	approved as amended	Pass

## REPORT TO THE CITY COUNCIL

**March 4, 2021**

### SUBJECT

BILL - (For introduction) 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)

### RECOMMENDATION

Approve technical amendments to Article 15 of Chapter 7 of the Fresno Municipal Code, the Fresno Clean and Safe Neighborhood Parks Tax Ordinance (Measure P).

### 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 of the clarification of law, on February 18, 2021, the Council certified Measure P as passed.

As the City prepares to submit Measure P to the state for administration of the tax associated therewith, the California Department of Tax and Fee Administration (the CDTFA) has directed the City to make certain technical amendment to Measure P. Further, due to the passage of time between the November 6, 2018, general election and the February 18, 2021, certification of Measure P certain deadlines associated with Measure P require updating. The proposed amendment addresses the required changes.

## BACKGROUND

**Passage of Measure P.** Measure P received 52.17% affirmative votes at the November 6, 2018, general election, and on December 18, 2018, the City declared Measure P failed based upon then existing law. In January 2019, the City asked the court for declaratory relief as to whether Measure P had passed. On December 17, 2020, the California Fifth District Court of Appeal held initiative special taxes require only a simple majority to pass. (*City of Fresno v. Fresno Building Healthy Communities* (2020) 58 Cal.App.5th 884.) The court remanded the matter to the trial court to enter a new judgment declaring Measure P has passed.

On January 26, 2021, the Howard Jarvis Taxpayers Association (a defendant in the case) 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.** The Council certified Measure P as passed on February 18, 2021, in light of the holding in *City of Fresno v. Fresno Building Healthy Communities* (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”).

**Codification Renumbering.** As part of certification, the Council codified Measure P in Article 15 of Chapter 7 of the Fresno Municipal Code (FMC). The original language of Measure P contemplated codification in Article 14 of Chapter 7, however, such codification was not possible due to the unavailability of Article 14.

**Amendments Needed.** The City has been in touch with the State of California and the CDTFA to ensure timely implementation and administration of the special sales tax authorized pursuant to Measure P. The CDTFA has required certain technical changes to the Measure P ordinance to comply with state standard forms. Additionally, due to the long gap between the election where Measure P was approved and the ultimate certification of Measure P following legal action in the matter, there is a need to update the deadlines set forth for certain actions required by Measure P.

Staff recommends that the Council approve the amendments proposed to Article 15 of Chapter 7 and

authorize the Clerk and City Attorney to take all actions necessary to effectuate the changes approved.

## 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. BILL - 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)