

## **ARTICLE 15 FRESNO CLEAN AND SAFE NEIGHBORHOOD PARKS TRANSACTIONS AND USE TAX**

### **SEC. 7-1501. TITLE.**

This ordinance shall be known as the Fresno Clean and Safe Neighborhood Parks Tax Ordinance.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

### **SEC. 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 a majority of those voting in the election. The Operative date is expected to be July 1, 2021.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 2, eff. 4-22-21).

### **SEC. 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 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 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 California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

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- (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 2017-18 in the areas funded by this ordinance and that the additional expenditures shall not supplant the 2017-18 spending levels.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 3, eff. 4-22-21).

#### **SEC. 7-1504. 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 three-eighths of a cent per dollar of the gross receipts of any retailer (a rate of 0.375%) 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 three-eighths of a cent per dollar of the sale price of the property (a rate of 0.375%) 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 a Clean and Safe Neighborhood Parks Account and all retail transactions and use tax proceeds generated by this ordinance shall be deposited by the City Controller into the Clean and Safe Neighborhood Parks Account. Such proceeds shall only be used for the specific purposes identified in Section 7-1506.
- (d) For so long as any proceeds of the retail transactions and use tax remain unexpended, the City Controller shall cause a report to be prepared by an independent auditor and filed with the City Council no later than December 31st of each year, stating: (i) the amount of retail transactions and use tax proceeds collected and expended in the prior fiscal year; and (ii) the status of any projects or description of any programs or services funded from proceeds of the retail transactions and use tax.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

#### **SEC. 7-1505. 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 three-eighths of a cent per dollar to be used only for the purposes in Section 7-1506 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

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biking trails; the San Joaquin River Parkway; beautification of streets; and expanded access to arts and culture. The Expenditure Plan in Section 7-1506 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. The revenues collected as a result of this tax may not be used for any purpose not specifically identified in this ordinance.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

## **SEC. 7-1506. EXPENDITURE PLAN.**

The revenues generated by the retail transactions and use tax imposed by this ordinance shall be allocated by the City of Fresno on an annual basis with additional independent oversight provided by the Commission to ensure expenditures are consistent with this Section.

- (a) Funds shall be allocated for programs and projects that do one of the following:
  - (1) Provide clean, safe neighborhoods parks for all Fresno residents;
  - (2) Reduce crime and homelessness in parks;
  - (3) Update and maintain park bathrooms and playgrounds;
  - (4) Reduce graffiti and vandalism in parks;
  - (5) Maintain and improve after-school, youth, and senior recreational programs;
  - (6) Provide job training for at-risk youth and veterans;
  - (7) Beautify landscaping and remove weeds and litter along major roads and highways;
  - (8) Create parks in neighborhoods that don't have good park access, including soccer and sports fields;
  - (9) Improve walking and biking access to parks and trails, including the San Joaquin River Parkway; and
  - (10) Expand access to local arts and cultural programs.
- (b) The funds deposited in to the Clean and Safe Neighborhood Parks Account pursuant to Section 7-1504 shall be expended according to the following schedule:
  - (1) **Improving and Maintaining Safe, Clean Neighborhood Parks and Playgrounds.**
    - (A) Forty-six percent (46%) percent of funds made available from Section 7-1504 shall be dedicated as described in this paragraph.
    - (B) Funds in this paragraph shall be made available for the improvement, restoration, rehabilitation, operations, and maintenance of projects and programs including, but not limited to, the following:
      - i. Park rehabilitation and other capital improvements in existing parks, including lighting;
      - ii. Facility upgrades to improve efficiency and safety;
      - iii. Playgrounds and picnic areas;
      - iv. New restrooms and restroom improvements;
      - v. Park access for individuals with disabilities;
      - vi. Improved maintenance and operations of existing parks;

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- vii. A park ranger program to improve safety in and around park facilities;
  - viii. Publicly owned sport facilities and swimming pools;
  - ix. City-owned arts, cultural, and recreational facilities located in parks, including Storyland/Playland and the Veterans Memorial Auditorium;
  - x. Other projects consistent with the Parks Master Plan, and subsequent updates;
  - xi. The planning, designing, engineering, and permitting activities associated with the above improvements.
- (C) Of the funds available pursuant to this paragraph, no less than fifty percent (50%) shall be made available for highest-need neighborhoods as defined in Section 7-1508.
  - (D) Except for projects funded pursuant to subparagraph (C), projects that leverage state, federal, or philanthropic funding shall receive funding priority.
  - (E) Of the funds available pursuant to this paragraph, no less than five million dollars (\$5,000,000) annually shall be designated for improving operations and maintenance of existing parks and facilities.
  - (F) Projects funded pursuant to this paragraph shall attempt to provide multiple benefits, including water conservation, air quality improvements, climate pollution reductions, habitat protection, and public health improvements.
- (2) **New Neighborhood Parks; Senior and Youth Recreation Facilities.**
- (A) Twenty-one point five (21.5%) of the funds made available from Section 7-1504 shall be made available on an annual basis to improve the park system by investing in new park development and recreational facilities consistent with the Plan.
  - (B) Funds in this paragraph shall be made available for acquisition, development, operations, maintenance and improvement projects including, but not limited to, the following:
    - i. New neighborhood parks, pocket parks, and community gardens;
    - ii. Public restrooms in new parks;
    - iii. New senior and community centers associated with the park system;
    - iv. New regional parks located in the City of Fresno;
    - v. Playgrounds and picnic areas in new parks;
    - vi. New public sport facilities and swimming pools;
    - vii. The planning, designing, engineering, and permitting activities associated with the above improvements.
  - (C) Of the funds available pursuant to this paragraph, no less than fifty percent (50%) shall be made available for highest-need neighborhoods as defined in Section 7-1508.
  - (D) Except for projects funded pursuant to subparagraph (C), projects that leverage state, federal or private funding shall receive funding priority.
  - (E) Projects funded pursuant to this paragraph shall attempt to provide multiple benefits, including water conservation, air quality improvements, climate pollution reductions, habitat protection, and community health improvements that result in reduced health burdens.

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(3) **Youth and Senior Recreation Programs; After School Programs; and Job Training for Youth and Veterans.**

- (A) Eight point five percent (8.5%) of the funds made available from Section 7-1504 shall be dedicated as described in this paragraph.
- (B) Funds in this paragraph shall be available for the planning and delivery of projects and programs including, but not limited to, the following:
  - i. Physical activity programming that promotes recreation and accessibility to recreational facilities;
  - ii. Sports, arts and active programs;
  - iii. Community and senior recreation center programs;
  - iv. Swimming and water-oriented recreation programs;
  - v. Junior lifeguard, science and education, summer day camps, and other youth-oriented programs;
  - vi. After-school programs for youth;
  - vii. Job-training and employment opportunities for youth, young adults, and veterans.
- (C) Of the funds made available from this paragraph, not less than fifty percent (50%) shall be made available on an annual basis for programs that provide job training, career development, or both, to youth, young adults and veterans, including education and/or certification for jobs within the conservation, science, arts, green technology, and parks and recreation fields.
- (D) Programs funded pursuant to this paragraph shall prioritize service for at-risk youth and seniors as defined by the PARCS Department, in conjunction with the Commission.

(4) **Expanded Access to Arts and Culture.**

- (A) Twelve percent (12%) percent of the funds made available from Section 7-1504 shall be made available on an annual basis to invest in competitive grants for nonprofit organizations that support and expand access to arts and cultural programming.
- (B) Grants funded pursuant to this paragraph shall be implemented by the Commission in partnership with the Fresno Arts Council, or its successor local arts agency, using multiple solicitations that allow for a diverse set of programs, with different program sizes and reach, including core operating and project-support grants, to be funded. The Commission shall ensure that grant applications are reviewed in a transparent, competitive process.
- (C) Prior to the implementation of subparagraph (B), the Commission shall work in partnership with the Fresno Arts Council, and local arts and cultural stakeholders, to develop a Cultural Arts Plan for the City of Fresno that would identify needs in the arts and cultural community; prioritize outcomes and investments; and develop a vision and goals for the future of Fresno arts and cultural programs that are reflective of the cultural, demographic, and geographic diversity of Fresno. This process shall include a robust community engagement process, including multiple public meetings. The Cultural Arts Plan shall be updated every five years by the Commission.
- (D) Funding for operating support distributed pursuant to this paragraph shall support organizational stability for arts and cultural organizations that reflect the cultural, geographic and demographic diversity of the City of Fresno; and reflect the proportion of

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each grantee's overall operations that serves residents within, or visitors to, the City of Fresno sphere of influence.

(E) Grants funded pursuant to subparagraph (B) shall prioritize organizations and programs that support and expand diverse public or youth engagement and equity.

(5) **Safe Walking and Biking Trails; Street Beautification and Litter Removal; and the San Joaquin River Parkway.**

(A) Eleven point twenty-five percent (11.25%) of the funds made available from Section 7-1504 shall be dedicated as described in this paragraph.

(B) Of the funds made available pursuant to this paragraph, forty-seven percent (47%) shall be made available for acquisition, development, improvement, restoration, operations, maintenance, or rehabilitation projects including:

- i. Trail development, including bike, pedestrian and equestrian trails, as identified in the Active Transportation Plan, including trails that support safe routes to schools;
- ii. Urban greening and tree planting along designated trails in the Active Transportation Plan;
- iii. The planning, designing, engineering, and permitting activities associated with the above improvements.

(C) Of the funds made available pursuant to subparagraph (B), no more than twenty percent (20%) of the funds shall be made available for operations and maintenance of trails.

(D) Of the funds made available pursuant to subparagraph (B), no less than twenty-five percent (25%) of the funds shall be prioritized for Class I and Class IV pedestrian and bicycle pathways along the "Priority Network" as identified in the Active Transportation Plan.

(E) Of the funds made available pursuant to this paragraph, eighteen percent (18%) shall be made available for operations and projects consistent with the San Joaquin River Parkway Master Plan, in coordination with the San Joaquin River Conservancy and the San Joaquin River Parkway Trust.

(F) Of the funds made available pursuant to this paragraph, thirty-five percent (35%) shall be made available for development, improvement, restoration, maintenance, or rehabilitation of projects including, but not limited to, the following:

- i. Litter and debris removal along major roads and streets within the City of Fresno, and along highways within the City of Fresno and its county islands;
- ii. Landscape beautification and restoration projects along major roads and streets within the City of Fresno, and along highways within the City of Fresno and its county islands;
- iii. The planning, designing, engineering, and permitting of activities associated with the above improvements.

(G) Of the funds made available pursuant to subparagraph (F), prioritization shall be given to projects that

- i. Reduce overall water usage or include drought-tolerant plantings in landscaping;
- ii. Leverage local, state, federal and private funding.

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- (H) Where appropriate, projects funded pursuant to subparagraph (F) shall be coordinated with Caltrans.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

## **SEC. 7-1507. DEFINITIONS.**

The following definitions shall apply to this Measure:

- (a) "Active Transportation Plan" means the City of Fresno's currently adopted Active Transportation Plan, or any subsequent update.
- (b) "City" means the City of Fresno.
- (c) "Department" means the City of Fresno Parks, After School, Recreation, and Community Services Department.
- (d) "Commission" means the Parks, Arts and Recreation Commission established in Section 7-1509.
- (e) "Council" means the City of Fresno's City Council.
- (f) "Cultural Facility" means a building owned and/or operated by the City of Fresno which shall be used for the programming, production, presentation, and/or exhibition of natural history and any of the arts and/or cultural disciplines. These disciplines include music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography, crafts, media arts, and visual arts.
- (g) "Highest-need neighborhoods" means those communities as defined pursuant to Section 7-1508.
- (h) "Interpretation" means, a visitor serving amenity that enhances the ability to understand and appreciate the significance and value of natural, historical, cultural and recreational resources that may utilize educational materials in multiple languages, digital information, and the expertise of a naturalist or other skilled specialist.
- (i) "Forest or Forestry" means the cultivation and management of trees in an urban area for their present and potential contribution to the economic, physiological, sociological, and ecological well-being of urban society.
- (j) "The Fresno Arts Council" means the current partnering organization of the City and County of Fresno that is tasked to promote the arts industry, or its successor.
- (k) "Plan" means the Fresno City Master Parks Plan as adopted in 2018 or any subsequently adopted amendments or updates.
- (l) "Joint-use" means shared management of facilities, land, utilities, programs, or other common elements between two or more parties, especially schools and flood control facilities.
- (m) "Multi-benefit project" means a project that maximizes or enhances recreation opportunities and one or more of the following: protection or enhancement of the natural environment, stormwater capture, water and air quality improvements, greenhouse gas emission reductions, carbon sequestration, heat-island reductions; habitat protection and biodiversity, community health improvements that reduce health burdens, or any combination thereof.
- (n) "Nonprofit Organization" means any charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which has among its purposes the provision of park, recreation or community services or facilities; art appreciation; trail development or management; gang prevention, intervention, and services for at-risk youth; conservation corps; environmental education and interpretation; or tree-planting.

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- (o) "Park" means those facilities described in the Plan or subsequently added to the City's public park system.
  - (p) "State" means the State of California, except as otherwise provided herein.
  - (q) "Veterans" means any person who served in the United States armed forces as defined by Title 38 of the Code of Federal Regulations.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

## **SEC. 7-1508. PROGRAM IMPLEMENTATION AND FISCAL CONTROLS.**

- (a) Authority to expend funds, issue grants, or enter into contracts or memoranda of understanding relating to the revenues deposited into the Clean and Safe Neighborhood Parks Account pursuant to Section 7-1504 is delegated to the City of Fresno, provided that no expenditures may be made from the Account except as provided in this ordinance.
- (b) In an effort to provide efficient administration and implementation of the program and project funding pursuant to this ordinance, the City may enter into interagency agreements with city departments, local agencies, county and/or state agencies, and provide grants to nonprofit organizations.
- (c) Of the funds made available pursuant to this ordinance, the City may periodically dedicate a portion of funds to competitive grant solicitations for local education agencies, public agencies, and nonprofit organizations to develop and implement projects and programs.
- (d) Of the funds made available pursuant to this ordinance, the City shall promote the use of the local conservation corps and other local youth and veteran training programs in the implementation of programs and projects funded.
- (e) Identification of highest-needs neighborhoods:
  - (1) Up to and including December 31, 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.
  - (2) No later than January 1, 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;



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- (J) Years of potential life lost;
  - (K) Neighborhood composite mortality rate.
- (3) In making the expenditures provided in Section 7-1506, the City shall be permitted to use no more than two percent (2%) of the funds allocated pursuant to each paragraph of that Section on an annual basis for administrative costs associated with the delivery of programs and projects pursuant to each paragraph.
  - (4) Starting with the 2029-30 fiscal year, the City may adjust the percentage funding allocations within each paragraph of Section 7-1506(b) by up to two percentage points each year, and between paragraphs of Section 7-1506(b) by up to one-half percentage point each year.
  - (5) Up to zero point seventy-five percent (0.75%) of the total funds made available pursuant to this Measure shall be made available on an annual basis to invest in program implementation, planning and plan updates, program and project innovation, and audit and oversight support to ensure the investments made by the citizens of Fresno create a world class set of facilities and programs and that funds are spent in accordance with the voters' will, including, but not limited to the following:
    - (A) Technology, community outreach, and technical assistance for program implementation;
    - (B) Interpretation and special language needs;
    - (C) Strategic planning and updates to the Parks Master Plan and Cultural Arts Plan;
    - (D) Costs associated with program oversight and accountability, including audits.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , §§ 4, 5, eff. 4-22-21).

## **SEC. 7-1509. FISCAL OVERSIGHT AND BUDGET ACCOUNTABILITY.**

- (a) A new Parks, Recreation and Arts Commission consisting of nine (9) members is hereby created, to be appointed by the Mayor with approval by the City Council in accordance with Article IX of the Fresno City Charter.
- (b) The Mayor and City Council shall appoint all members of the Commission no later than June 30, 2021.
- (c) The membership of the Commission shall reflect the cultural, demographic, and geographic diversity of the City of Fresno, with at least one-third of the Commissioners residing in highest-need neighborhoods, as defined in Section 7-1508.
- (d) The Commission shall include members with the following areas of demonstrated expertise:
  - (1) Community parks and open space management;
  - (2) Youth development or recreation programs;
  - (3) Trails and San Joaquin River Parkway development and programming;
  - (4) Arts and culture programming;
- (e) The Commission shall have primary authority on behalf of the City to:
  - (1) Conduct hearings and receive public input on allocations related to this ordinance, updates to the Parks Master Plan and Cultural Arts Plan, and annual PARCS Department Budget and Capital Improvement Plans; make recommendations to the City Council;
  - (2) Review City staff recommendations for budget allocations related to this ordinance to ensure consistency with the ordinance and Expenditure Plan; make recommendations to the City Council for adoption of expenditures in connection with annual budget process and any amendments thereto;

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- (3) Review and recommend for City adoption guidelines for competitive grant programs established with funds from this Measure;
  - (4) Oversee development and recommend City Council adoption of the Cultural Arts Plan and subsequent updates;
  - (5) Review and make recommendations to the Mayor and City Council on fees related to parks, trails, and open space;
  - (6) Review the Controller's annual independent audit of the Clean and Safe Neighborhood Parks Account; ensure that a complete accounting of all expenditures each year is published and posted on a publicly accessible website;
  - (7) Every five years, submit an evaluation of the program to the public and the City of Fresno;
  - (8) Provide input on an annual report prepared by City staff that includes:
    - (A) Update on the percentage of Fresnoans that live within ½ mile of a park;
    - (B) Update on the number and percentage of Fresnoans accessing PARCS programs;
    - (C) Update on the implementation of the Parks Master Plan;
    - (D) Update on the implementation of the Active Transportation Plan;
    - (E) Update on the implementation of deferred maintenance and improvements to existing parks and recreational facilities in the City.
  - (f) The City Council shall have the authority to further define the role and powers of the Commission by adopting implementing ordinances and revising them over time.
  - (g) 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.
  - (h) The Commission shall hold public meetings and operate pursuant to California Government Code section 54950.
  - (i) 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.
- (Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 6, eff. 4-22-21).

## **SEC. 7-1510. MISCELLANEOUS PROVISIONS.**

- (a) Parks or other public facilities acquired, developed, rehabilitated or maintained with funds from this Measure shall be open, accessible, and affordable to the public without discrimination as to race, color, sex, sexual orientation, age, religious belief, national origin, marital status, physical or medical handicap, medical condition or place of residence.
- (b) The department shall not sell bonds secured by any revenues made available by this ordinance.
- (c) The City shall not use funds generated from this resolution to develop facilities on existing or former landfills or waste refuse facilities.
- (d) No provision of this ordinance shall be construed as authorizing the condemnation of privately-owned lands. Acquisition of property through eminent domain shall be strictly prohibited with the funds generated by this ordinance.

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- (e) Reasonable public access to lands acquired in fee simple with funds made available pursuant to this ordinance shall be provided except where that access may interfere with resource protection or to ensure public safety. For purposes of this ordinance, reasonable public access shall include parking and public restrooms.
  - (f) All real property acquired pursuant to this ordinance shall be acquired in compliance with Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the California Government Code. Public Agencies and Nonprofit Organizations receiving funds pursuant to this resolution shall certify compliance to the City. Funds disbursed to a Public Agency in accordance with this ordinance may be expended by that agency pursuant to an agreement, or by an entity, authorized or established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

#### **SEC. 7-1511. CONTRACT WITH THE STATE.**

Prior to the operative date, the City shall contract with the 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 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.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 7, eff. 4-22-21).

#### **SEC. 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 California Department of Tax and Fee Administration.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , § 8, eff. 4-22-21).

#### **SEC. 7-1513. 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.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

#### **SEC. 7-1514. 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:

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- (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, California 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 California 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.
    - (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.

(Added Ord. 2021-005 , § 1, eff. 2-18-21; Am. Ord. 2021-010 , §§ 9—11, eff. 4-22-21).

### **SEC. 7-1515. 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.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

### **SEC. 7-1516. 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:

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- (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

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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.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

#### **SEC. 7-1517. 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.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

#### **SEC. 7-1518. 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 7-1517), extend the tax, allow expenditures other than those provided in Section 7-1506, 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.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).

#### **SEC. 7-1519. 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.

(Added Ord. 2021-005 , § 1, eff. 2-18-21).