

ORDINANCE NO. 2222

**AN ORDINANCE OF THE PEOPLE OF THE
CITY OF MERCED, CALIFORNIA,
AMENDING TITLE 3, "REVENUE AND
FINANCE," OF THE MERCED MUNICIPAL
CODE BY ADDING CHAPTER 3.38,
"MERCED VITAL SERVICES
PROTECTION MEASURE GENERAL
TRANSACTIONS (SALES) AND USE TAX,"
TO THE MERCED MUNICIPAL CODE**

**THE PEOPLE OF THE CITY OF MERCED DO ORDAIN AS
FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Title 3, "Revenue and Finance," of the Merced Municipal Code is hereby amended by the addition of Chapter 3.38, "Merced Vital City Services Protection Measure General Transactions (Sales) and Use Tax," to read as follows:

"CHAPTER 3.38

**Merced Vital City Services Protection Measure
General Transactions (Sales) and Use Tax**

Sections:

- 3.38.005 Chapter Title.
- 3.38.010 Purposes.
- 3.38.020 Operative Date.
- 3.38.025 Termination Date.
- 3.38.030 Tax Suspended If Proceeds Taken By State.
- 3.38.035 Transactions (Sales) Tax.
- 3.38.040 Use Tax.
- 3.38.050 Citizens Oversight Committee.
- 3.38.060 Accounting and Report.
- 3.38.070 Independent Audit.
- 3.38.080 State Requirements.
- 3.38.090 Contract with State.
- 3.38.100 Place of Sale.
- 3.38.110 Additional Permits Not Required.

- 3.38.120 Adoption of Provisions of State Law -Generally.
- 3.38.130 Adoption of Provisions of State Law - Limitations.
- 3.38.140 Exemptions and Exclusions.
- 3.38.150 Amendments to State Law.
- 3.38.160 Non-Exclusivity.
- 3.38.170 Enjoining Collection Forbidden.
- 3.38.180 Authority to Amend.

3.38.005 Chapter Title. This Chapter shall be known as the 'Merced Vital City Services Protection Measure' (the 'Measure'). This Chapter shall be applicable in the incorporated territory of the City.

3.38.010 Purposes.

The People of the City of Merced declare that this Chapter, pursuant to the Measure, is adopted as a general tax to ensure adequate funding for vital City services which are funded by the City's General Fund. Among the vital services funded by the General Fund are police protection, fire protection, and road and street maintenance and improvements.

3.38.020 Operative Date. This Chapter shall be operative ten (10) days after certification by the City Council of the returns of the election indicating approval by a majority of the voters voting in the election of the Measure enacting this Chapter. The general transactions (sales) and use tax imposed hereunder shall be operative the first day of the first calendar quarter commencing more than 110 days after the adoption of this Chapter ('Operative Date'). Based on a November 8, 2005 election, the Operative Date for the general transactions (sales) and use tax imposed hereunder shall be April 1, 2006.

3.38.025 Termination Date. The authority to levy the tax imposed by this Measure shall expire March 31, 2026, unless extended by the voters.

3.38.030 Tax Suspended If Proceeds Taken By State.

Upon written notice to the State Board of Equalization as required, this Chapter shall be automatically suspended, and all funding related thereto stopped, if the revenue generated under this Chapter is diverted by the State of California.

3.38.035 Transactions (Sales) Tax. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one-half of one percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the Operative Date of said tax until said tax is terminated under Section 3.38.025.

3.38.040 Use Tax. An excise tax is hereby imposed on the storage, use, or other consumption in the City of tangible personal property purchased from any retailer for storage, use, or other consumption in the City at the rate of one-half of one percent (0.50%) of the sales price of the property sold on and after the Operative Date of said tax until said tax is terminated under Section 3.38.025. 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.

3.38.050 Citizens Oversight Committee.

A. Pursuant to the Measure, and Sections 200 and 706 of the City Charter, there is hereby created a Merced Vital City Services Protection Measure Citizens Oversight Committee ('Citizens Oversight Committee') to review the revenues and expenditures generated and spent under this Chapter.

B. The Citizens Oversight Committee shall consist of three (3) voting members from each of the existing three (3) Policing Districts of the City, as these Policing Districts exist on the effective date of this Chapter, for a total of nine (9) voting members.

C. Initial voting members of the Citizens Oversight Committee shall be nominated to the City Council by the Citizens Revenue Task Force.

1. The City Council shall first consider the nominations from the Citizens Revenue Task Force as a whole and either affirmatively vote to appoint or not appoint the nominees as a whole.
2. In the event a majority of the City Council fails to appoint the nominees as a whole, the City Council may make individual appointments from the nominations from the Citizens Revenue Task Force.
 - (a) The remainder of any unfilled positions on the Citizens Oversight Committee shall be returned to the Citizens Revenue Task Force for further nominations.
3. The City Council shall consider those nominations by following the same procedure as set forth in Subsections C.1 and 2 above.

D. Any vacancy for a voting member on the Citizens Oversight Committee shall be filled by having the Citizens Oversight Committee make nominations to the City Council for consideration as a whole.

1. The City Council shall first consider the nominations as a whole and either affirmatively vote to appoint or not appoint the nominees as a whole.
2. In the event the City Council fails to affirmatively appoint the nominees as a whole, the City Council may make individual appointments from the nominees submitted by the Citizens Oversight Committee.

(a) The remainder of any unfilled positions on the Citizens Oversight Committee shall be returned to the Citizens Oversight Committee for further nominations.

3. The City Council shall consider these nominations by following the same procedure as set forth in Subsections D.1 and 2 above.

E. In addition to the voting members, there shall be made available to each employee association and unrepresented employees, a non-voting ex-officio member of the Committee from each employee association, including unrepresented employees. Each employee association, including unrepresented employees, shall determine the selection process and term for their ex-officio member. In addition, each association shall have the right to designate an alternate ex-officio member to the Committee to serve when the ex-officio is unable to attend.

F. Voting members of the Committee shall be restricted to individuals who are registered voters within the City of Merced. Elected officials at any level of government and employees of the City of Merced and the dependents of each are ineligible to serve as voting members of the Committee.

G All voting members so appointed shall serve without compensation for a term of four (4) years. The voting members first appointed to the Committee shall classify themselves by lot so that by the following City Council election the term of one (1) of the voting members in each Policing District shall expire. Said lot shall provide for the grouping of terms to such an extent as is necessary in order that the term of at least three (3) voting members, one (1) from each Policing District, shall expire on each succeeding City Council election.

H. The Committee shall review the projected revenues and recommended expenditures for the funds generated by this Chapter and shall make their recommendations to the City Council on the same as a part of the City's budget process. After a review of the independent audit required by Section 3.38.070 hereof, the Citizens Oversight Committee shall provide its findings to the City Council. Unless modified by City Council Resolution, the Citizens Oversight Committee shall not have any function, power, or authority other than as expressly provided herein.

The Citizens Oversight Committee shall meet quarterly or as often as it deems necessary to accomplish the objectives stated in this Section.

3.38.060 Accounting and Report. Prior to the adoption of the City budget in June of each year, the City Manager and the Finance Officer shall present to the City Council an accounting of the tax revenues received and expenditures made under this Chapter.

3.38.070 Independent Audit. After the close of every fiscal year in which the tax imposed hereunder is levied, the City shall cause an independent audit to be conducted as to the revenue generated as a result of this Measure and to ensure the proper expenditure thereof consistent with the purposes of this Chapter. The report and any findings of the independent auditor shall be transmitted to the Mayor, City Council, City Manager, City Attorney, Finance Officer, and the Citizens Oversight Committee established by Section 3.38.050 hereof.

3.38.080 State Requirements. Pursuant to the requirements of the State Board of Equalization, this Chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions (sales) 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 7285.9 of Part 1.7 of Division 2, and which authorizes the City to adopt this tax ordinance, which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions (sales) 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.

C. To adopt a retail transactions (sales) and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization 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 Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions (sales) 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 (sales) and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this Chapter.

3.38.090 Contract with State. Prior to the Operative Date of this Chapter, as required by State law, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and

operation of the transactions (sales) and use tax imposed under this Chapter; provided, however, that if the City shall not have contracted with the State Board of Equalization prior to the Operative Date of this Chapter, the City shall nevertheless so contract and in such case the operative date of the transaction (sales) and use tax shall be the first day of the first calendar quarter following the execution of such contract.

3.38.100 Place of Sale. For the purposes of this Chapter, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer, or his or her 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 retail sales are consummated shall be determined under the rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.38.110 Additional 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 seller's permit shall not be required by this Chapter.

3.38.120 Adoption of Provisions of State Law - Generally. Except as otherwise provided in this Chapter 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.

3.38.130 Adoption of Provisions of State Law - Limitations. 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 therefore. However, the substitution shall not be made when:

1. The word 'State' is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
2. 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 Board of Equalization, in performing the functions incident to the administration or operation of this Chapter.
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 transaction (sales) and use 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 and in the definition of that phrase in Section 6203 of the Revenue and Taxation Code.

3.38.140 Exemptions and Exclusions.

A. There shall be excluded from the measure of the transactions (sales) and 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 the transactions (sales) 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 such 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 is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his 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 such 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 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 Chapter.
 4. A lease of tangible personal property which is a continuing sale of such 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 Chapter.
 5. For the 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 such right is exercised.

- C. There are exempted from the use tax imposed by this Chapter, 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 such operators directly and exclusively in the use of such 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 of the State of California.
 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 Chapter.
 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 such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Chapter.

5. For the purposes of subparagraphs (3) and (4) of this Section, 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 such right is exercised.
 6. Except as provided in subparagraph (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 Chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant

to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.38.150 Amendments to State Law. All amendments subsequent to the effective date of this Chapter 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 Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this Chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Chapter.

3.38.160 Non-Exclusivity. The sales tax levied under this Chapter is in addition to, not in lieu of, any and all other applicable taxes already in existence.

3.38.170 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 Chapter, of any tax or any amount of tax required to be collected hereunder.

3.38.180 Authority to Amend. In order to further the purposes and intent of this Chapter, the City Council is authorized to amend this Chapter in the following areas without a further vote of the People:

- A. The composition of the Citizens Oversight Committee;
- B. The suspension or reactivation of this Chapter if the revenue generated under this Chapter is diverted by the State of California for purposes other than those specifically enumerated herein;

C. Any change required by the State of California as a precondition to the collection of the special tax authorized hereunder.

Notwithstanding any provision to the contrary, any proposed change to the tax rate imposed under this Chapter shall be submitted to the vote of the People."

SECTION 2 EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the City transactions (sales) and use tax shall be in full force and effect ten (10) days after the certification by the City Council of the election returns indicating passage of the Ordinance by a majority of the voters casting votes in the election.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Merced hereby declare that they would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its approval by the voters.

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The foregoing Ordinance was approved by the voters of the City of Merced at a special election held on the 8th day of November 2005, by the following vote tally:

YES: 7,200

NOES: 3,991


OTHER: NONE

APPROVED:



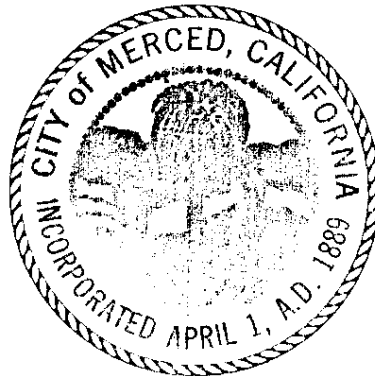
Mayor

ATTEST:
JAMES G. MARSHALL, CITY CLERK

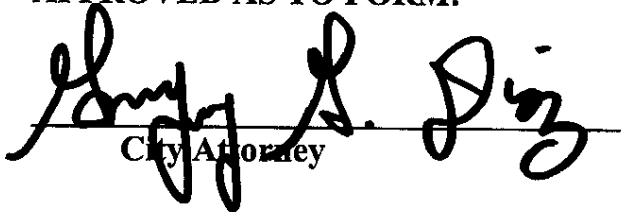
BY: 

Deputy City Clerk

(SEAL)



APPROVED AS TO FORM:



City Attorney

Davidson, Dana

From: midvalleypub@aol.com
Sent: Monday, December 05, 2005 9:10 AM
To: Davidson, Dana
Subject: Re: Ordinance No. 2222 (Attn: Ruth)

I have received your notice and will publish it accordingly.

Thanks,
Ruth

-----Original Message-----

From: Davidson, Dana <DavidsonD@cityofmerced.org>
To: Merced County Times (E-mail) <midvalleypub@aol.com>
Sent: Fri, 2 Dec 2005 14:49:54 -0800
Subject: Ordinance No. 2222 (Attn: Ruth)

Please publish the attached ordinance in the legal section of the County Times on Thursday, December 8, 2005.
Please reference purchase order #73563 and verify receipt by replying to this e-mail.

<<Ordinance 2222_20051202144844.pdf>>

Dana Davidson
Deputy City Clerk
City of Merced
209-385-6838

PROOF OF PUBLICATION
(2015.5 C.C.P)
Proof of Publication of

STATE OF CALIFORNIA)

)ss.

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COUNTY OF MERCED

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the printer foreman or principal clerk of The Merced County Times, a newspaper of general circulation, printed and published in the City of Merced, County of Merced, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Merced, State of California, under the date of December 14, 1999, Case Number 143600; that the notice, of which the annexed is a printed copy has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

December 8, 2005.

Ordinance No. 2222.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Ruth Reyes

Date: December 9, 2005

This space is for the County Clerk's Filing Stamp

Copy of notice here

LEGAL# 6987
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PEOPLE OF THE CITY OF
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and Use Tax," to read as follows:
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General Transactions (Sales)
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