

RESOLUTION NO. 2023-__

**A RESOLUTION OF THE CITY OF MERCED,
CALIFORNIA, CALLING FOR AN ELECTION
FOR A VOTE ON A BALLOT MEASURE TO
APPROVE AN EXTENSION OF A HALF-
PERCENT SALES TAX, REQUESTING
CONSOLIDATION OF ITS SPECIAL ELECTION
WITH THE STATEWIDE PRESIDENTIAL
PRIMARY ELECTION, FILING A NOTICE OF
ELECTION WITH THE REGISTRAR OF
VOTERS, AUTHORIZING MERCED COUNTY
ELECTIONS DEPARTMENT TO CONDUCT THE
ELECTION AND CANVASS THE RETURNS, AND
EXPRESSING INTENT TO REIMBURSE
MERCED COUNTY FOR THE ACTUAL COSTS
OF THE ELECTION**

WHEREAS, on March 20, 2023, a notice of intent to circulate an initiative petition entitled the “Merced Vital Services Protection Measure” was filed with the City Clerk of the City of Merced; and

WHEREAS, the City Attorney prepared a ballot title and summary for the proposed measure, as required by law, entitling the measure “A CITIZEN’S INITIATIVE MEASURE PROPOSING AMENDMENTS TO THE CITY OF MERCED MUNICIPAL CODE TO EXTEND THE EXISTING HALF-CENT SALES TAX AND SPECIFY THAT TAX PROCEEDS BE USED ONLY FOR POLICE PROTECTION, FIRE PROTECTION, AND ROAD AND STREET MAINTENANCE AND IMPROVEMENTS” (hereinafter “the Measure”); and

WHEREAS, the proponents of the Measure thereafter published a Notice of Intent to Circulate Petition, circulated their petition for signature, and on August 21, 2023, filed the petition and signatures with the City Clerk; and

WHEREAS, the Merced County Registrar of Voters has examined the signatures and verified that sufficient signatures support placing the Measure on the ballot at a special election; and

WHEREAS, the Merced County Registrar of Voters certified the results of the examination to the Merced City Council on September 19, 2023; and

WHEREAS, pursuant to Elections Code Section 9215 a Notice of Election must be filed with the Merced County Registrar of Voters; and

WHEREAS, Merced County intends to conduct a consolidated election on March 5, 2024; and

WHEREAS, the consolidation of elections may serve to reduce election expenses to taxpayers and may increase voter turnout; and

WHEREAS, the Merced County Registrar of Voters must be authorized to conduct the election and to canvass all returns; and

WHEREAS, Merced County should be reimbursed for the actual costs of the election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE AS FOLLOWS:

1. Pursuant to Article XIII C, section 2(b) of the California Constitution, Government Code section 53724, and applicable provisions of the Elections Code, the City Council of the City of Merced hereby calls and orders an election at which the Measure relating to the maintenance of the City's existing general transaction (sales) and use tax rate shall be submitted to the qualified voters of the City.
2. In accordance with Elections Code sections 13247 and 9051, and in order to submit the Measure described herein to the voters, the City Council hereby approves and orders the following ballot question to be submitted to the qualified voters of the City of Merced at the special municipal election on March 5, 2024:

MERCED VITAL CITY SERVICES PROTECTION	
Shall a measure be adopted to convert an existing sales tax of ½ percent to a special tax to be in effect until March 31, 2044, without raising current tax rates, providing approximately \$8,000,000 annually, with annual audits and citizen oversight, with 95% of tax proceeds to be used only for police protection and fire protection and 5% to be used for road and street maintenance and improvement?	YES
	NO

3. The text of the proposed Ordinance to be submitted to the voters is attached hereto as Exhibit A; the full text of which to be published in the March 5, 2024, Statewide Presidential Primary Election Voters Information Guide.
4. The date for submission for the City Attorney's impartial analysis of said proposition is hereby set for December 1, 2023; the date for submission of primary arguments (for and against) said Measure is hereby set for December 11, 2023; and the date for submission of rebuttal arguments to said primary arguments is hereby set for December 18, 2023.
5. Pursuant to Elections Code section 9280, the City Attorney's impartial analysis shall not exceed five hundred (500) words in length. Pursuant to Election Code section 9282, arguments (for and against) for said proposition shall not exceed three hundred (300) words in length. Pursuant to Election Code section 9167, rebuttal arguments to and said primary arguments shall not exceed two hundred fifty (250) words in length.
6. The City Attorney is directed to prepare all necessary documents and the City Attorney and City Clerk are directed to take all further actions necessary for purposes of this election, including the preparation of an impartial analysis of the Measure showing the effect of the proposition on the existing law and the operation of the proposition.
7. The City Clerk is directed to comply with Elections Code sections 9283 and 9287 to ensure statutory compliance governing the submission of ballot arguments and to further determine priority of the submitted ballot arguments.
8. The City Clerk is authorized, instructed, and directed to cooperate with and provide any necessary materials to the Merced County Registrar of Voters office to conduct the Special Municipal Election in accordance with state law.
9. Pursuant to Elections Code section 10403, the City Council requests the Merced County Board of Supervisors to consolidate the Special Municipal Election for this Measure with the Statewide Presidential Primary on March 5, 2024, such that Election precincts, polling places and officers of election within the City of Merced for said Special Municipal Election hereby called shall be the same as those selected and designated by the Board of Supervisors of the County of Merced for said consolidated election and set forth in the notice of election officers and polling places

for said consolidated election published or to be published by the County Clerk of County of Merced, as required by law, to which notice reference is hereby specifically made for a designation of the precincts, polling places, and election officers of the municipal election hereby called.

10. The City requests that the Merced County Registrar of Voters conduct the election and canvass the returns, and the City agrees to pay the proportionate share of reasonable expenses of said election, said share to consist of all direct costs as determined by the Merced County Clerk to be directly related to the conduct of the City of Merced Special Municipal Election together with the City's proportionate share of the expenses for election services rendered by Merced County that are being shared equally with other jurisdictions, if any, by virtue of the consolidation of the City's Special Municipal Election with the elections being held by other jurisdictions, if any, in the City of Merced on March 5, 2024.
11. All persons qualified to vote at municipal elections in the City of Merced shall be qualified to vote at said Special Municipal Election.
12. The City Clerk is hereby authorized and directed to certify to the adoption of this Resolution and to transmit a copy thereof so certified to the Merced County Board of Supervisors and to file a copy hereof so certified with the Registrar of the County of Merced.

PASSED AND ADOPTED by the (insert district type/name) of the City of Merced at a regular meeting held on the ____ day of October, 2023, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:

STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

 9/26/2023
City Attorney Date

EXHIBIT A

BE IT ORDAINED by the People of the City of Merced as follows:

SECTION 1. Title.

This measure shall be known and may be cited as the "Merced Vital City Services Protection Measure."

SECTION 2. Findings

WHEREAS Merced residents have overwhelmingly indicated strong support for retaining Measure C to provide revenue for public safety services and roads,

WHEREAS the Merced Vital City Services Protection Measure renews Merced's existing half cent sales tax (known as Measure C) earmarked for vital public safety and roads,

WHEREAS the Merced Vital City Services Protection Measure is NOT a new tax or an increased tax,

WHEREAS the Merced Vital City Services Protection Measure is necessary to guarantee Merced emergency services have secure revenue to maintain current public safety services,

WHEREAS, in 2021 Measure C paid for 32 Merced city police and fire officers. Without passage of the Merced Vital City Services Protection Measure, the city will be forced to eliminate most or all these positions,

WHEREAS, since Measure C's adoption, over \$4 million dollars has been spent on road repair and improvements. Without passage of the Merced Vital City Services Protection Measure Merced's roads will decline,

WHEREAS, the Merced Vital City Services Protection Measure allows for public safety programs in Merced to remain consistent, and not be held hostage to other political or budgetary demands,

WHEREAS, the Merced Vital City Services Protection Measure isn't a forever tax. Like Measure C it expires in 20 years. It can only be renewed with voter approval,

WHEREAS, Sacramento and Washington politicians, by law, cannot take this revenue for their own purposes,

WHEREAS, by law, the tax cannot be levied on food or medicine items,

WHEREAS, the Merced Vital City Services Protection Measure contains a community oversight committee, guaranteeing that funds will be expended consistent with the voter approved goals,

WHEREAS, the Merced Vital City Services Protection Measure gives Merced's vital services secure ongoing funding, without imposing new taxes, and

WHEREAS, The Merced Vital City Services Protection Measure maintains current levels of funding for emergency services and guarantees that the revenues raised can only be used for that purpose.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, FOUND AND DECLARED that the People of the City of Merced hereby desire to implement a sales and use tax by initiative which accomplishes the specific purposes of funding public safety and roads.

SECTION 3. Merced Vital City Services Protection Measure.

Chapter 3.38 of the Merced Municipal Code is amended as follows:

3.38.005 Chapter title.

This chapter shall be known as the "Merced Vital City Services Protection Measure" (the "measure" or the "ordinance"). This chapter shall be applicable in the incorporated territory of the city.

3.38.010 Purposes.

A. This ordinance is adopted to achieve the following and directs that the provisions hereof be interpreted in order to achieve those purposes:

1. To adopt a retail transactions and use tax ordinance within the City in the amount of one-half of a cent per dollar as provided herein for the specific purpose of generating funds to be deposited into the Merced Vital City Services Protection Account that may only be used for the purposes specified herein, including, but not limited to, police protection, fire protection, and road and street maintenance and improvements.
2. To impose a retail transaction and use tax in accordance with 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.
3. 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 Tax Code.
4. 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.
5. 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 recordkeeping upon persons subject to taxation under the provisions of this ordinance.

B. It is the intent of the People of the City of Merced in adopting this ordinance that the expenditures made pursuant to this ordinance shall supplement the levels of spending made by the City of Merced in Fiscal Year 2021-2022, as a percentage of the total City budget, in the areas funded by this ordinance and that the additional expenditures funded by this ordinance shall not supplant the 2021-2022 proportional spending levels.

~~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 one hundred ten (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 on July April 1, 202406.~~

3.38.025 Termination date.

The authority to levy the tax imposed by this measure shall expire on March 31, 204426, unless extended by the voters.

3.38.030 Tax suspended if proceeds taken by state.

Upon written notice to the California Department of Tax and Fee Administration ~~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.

3.38.04035. Imposition of tax, deposit into special account and annual accounting.

A. Transactions (sales) tax. For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers in the incorporated territory of the city at the rate of one-half of one (0.50) percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in such territory on and after the operative date of the tax until the tax is terminated under Section 3.38.025 of this chapter.

B. 3.38.040 Use tax. An excise tax is 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 (0.50) percent of the sales price of the property sold on and after the operative date of the tax until the tax is terminated under Section 3.38.025 of this chapter. 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 manager and/or finance officer shall establish a Merced Vital City Services Protection Account and all retain transactions and use tax proceeds generated by this ordinance shall be deposited by the city manager and/or

finance officer into the Merced Vital City Services Protection Account. Such proceeds shall only be used for the specific purposes identified in section 3.38.050. In the event this Paragraph C is rendered inoperable by subsequent amendment to state law, lawsuit, or other legal change or mechanism, the People of the City of Merced understand and desire that the taxes set forth in Paragraphs A and B of Section 3.38.040 shall be levied, collected, and spent as a general tax.

3.38.045 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 of Merced at the rate of one-half of a cent per dollar to be used only for the purposes set forth in section 3.38.050 including, but not limited to, police protection, fire protection, and street and road maintenance and improvement. The Expenditure Plan in section 3.38.050 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 purposes not specifically identified in this ordinance.

3.38.050 Expenditure plan.

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

A. Funds shall be allocated for programs and projects that do one of the following:

1. Obtaining, providing, operating, updating, and maintaining fire and paramedic services, infrastructure, and equipment.
2. Obtaining, providing, operating, updating, and maintaining police services, infrastructure, and equipment.
3. Paying salaries and benefits to firefighters, paramedics, sworn police personnel, and dispatchers.
4. Upgrading technology and safety equipment for firefighters, paramedics sworn police personnel, and dispatchers.
5. Maintaining response times for fire, paramedic, and police services.
6. Maintaining and improving roads.
7. Paying the direct costs in levying this tax.

B. The funds deposited into the Merced Vital City Services Protection Account pursuant to section 3.38.040 shall be expended according to the following schedule:

1. Ninety-five percent (95%) of funds made available from section 3.38.040 shall be dedicated for the funding and improvement of police protection and fire protection, including, but not limited to, the allocations set forth in subsections A.1 through A.5 above.
2. Five percent (5%) of the funds made available from section 3.38.040 shall be dedicated for the maintenance and improvement of street and road

projects including, but not limited to, the allocations set forth in subsection A.6 above.

C. In the event this section is rendered inoperable by subsequent amendment to state law, lawsuit, or other legal change or mechanism, the People of the City of Merced understand and desire that the taxes set forth in Paragraphs A and B of Section 3.38.040 shall be levied, collected, and spent as a general tax.

3.38.05550 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.
 - 1. Pursuant to Section 3.38.180 of this chapter, the composition shall begin transitioning to seven (7) members, one (1) to be appointed from each of the six (6) city council districts plus one (1) at-large member. The transition pursuant to this amendment shall begin upon the effective date of this amendment and shall be completed no later than January 1, 2024. The committee shall also be known as the tax transparency commission.
- 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 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 3.38.0550 of this chapter.

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 therefor 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 California Department of Tax and Fee Administration ~~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 California Department of Tax and Fee Administration ~~State Board of Equalization~~ prior to the operative date of this chapter, the city shall nevertheless 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 (1) 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 California Department of Tax and Fee Administration 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 transactor's ~~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 adopted and made a part of the ordinance codified in this chapter 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 therefor. 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, California Department of Tax and Fee Administration, 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 California Department of Tax and Fee Administration 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 exempted 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 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.
 1. "A retailer engaged in business in the District" 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 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 the regulations thereunder.

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 subsection, 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 subsections (B)(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 subsections (C)(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 subsection (C)(7) of this section, 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 the ordinance codified in 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 as to affect the rate of tax imposed by this chapter.

3.38.160 Nonexclusivity.

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 the event that the collection of The Merced Vital City Services Protection Tax is rendered inoperable by subsequent amendment to state law, litigation, or other legal change or mechanism, and in order to further the purposes and intent of this chapter, the city council, by a vote of at least four members of the city council, is authorized to amend this chapter in order to levy, collect and spend the taxes set forth in Paragraphs A and B of Section 3.38.040 as a general tax. The city council is not authorized to amend this chapter unless and until The Merced Vital City Services Protection Tax is rendered fully inoperable by a Court of Appeal and/or subsequent election. Under this section, the city council is not authorized to amend The Merced Vital City Services Protection Tax if the City of

Merced fails to appeal an adverse judgment against the constitutionality, statutory permissibility, or implementation, of The Merced Vital City Services Protection Measure, whether in whole or in part.

~~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 in this section;~~
- ~~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 4. Effective Date and Operative Date.

This measure shall become effective upon its approval by a simple majority of electors voting on the measure. This measure shall become operative on July 1, 2024.

SECTION 5. Termination Date.

The authority to levy the tax imposed by this measure shall expire on March 31, 2044.

SECTION 6. Severability.

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The People of the City of Merced hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional. The People of the City of Merced further declare their desire that this measure provide funding as described for police protection, for fire protection, and for road and street maintenance and improvement, and that each of these vital city services are independently important of one another.

SECTION 7. Conflicting Measures.

This measure is intended to be comprehensive. It is the intent of the People of the City of Merced that, in the event this measure and one or more measures relating to taxation, including the extension of the half-cent sales tax set forth herein and/or taxation for the purposes of funding police protection, fire protection and/or road and street maintenance and improvement, the provisions

of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters, but does not receive a greater number of affirmative votes than any other measure or measures appearing on the same ballot regarding the extension of the half-cent sales tax set forth herein and/or taxation for the purposes of funding police protection, fire protection and/or road and street maintenance and improvement, then this measure shall take effect to the extent not in conflict with said other measure or measures.

SECTION 8. Liberal Constitution.

This measure is an exercise of the initiative power reserved to the People of the City of Merced for funding police protection, fire protection and/or road and street maintenance, and shall be liberally construed to effectuate that purpose.

SECTION 9. Municipal Affair.

The People of the City of Merced hereby declare that funding police protection, fire protection and/or road and street maintenance, separately and together, constitute municipal affairs. The People of the City of Merced hereby further declare their desire for this measure to coexist with any similar tax measures adopted at the city, county or state levels.

SECTION 10. Legal Defense.

The People of the City of Merced desire that this measure, if approved by a simple majority of voters, and thereafter challenged in court, be defended by the City of Merced. The People of the City of Merced, by approving this measure by a simple majority of voters, hereby declare that the proponent(s) of this Act have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the City of Merced fails to defend this measure, or the City of Merced fails to appeal an adverse judgment against the constitutionality, statutory permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponent(s) shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People of Merced through this measure to act as agents of the People of the City of Merced, and the City of Merced shall indemnify the proponent(s) for reasonable fees, expenses and other losses incurred by the proponent(s), as agent(s) of the City of Merced, in defending the validity and/or implementation of the measure. The rate of indemnification shall be no more than the amount it would cost the City of Merced to perform the defense itself.