

RESOLUTION NO. 2022-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, CALLING FOR A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 8, 2022, TO PRESENT TO VOTERS A MEASURE KNOWN AS THE MERCED VITAL CITY SERVICES PROTECTION MEASURE TO CONTINUE THE CITY'S GENERAL TRANSACTION (SALES) AND USE TAX AT THE RATE OF ONE-HALF PERCENT (0.50%) UNTIL ENDED BY THE VOTERS; AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED, CALIFORNIA, TO PROVIDE FOR THE CONSOLIDATION OF A GENERAL MUNICIPAL ELECTION WITH THE GUBERNATORIAL GENERAL ELECTION ON NOVEMBER 8, 2022, AND TO AUTHORIZE THE COUNTY ELECTION SERVICES TO RENDER SPECIFIC SERVICES TO THE CITY OF MERCED RELATING TO THE GENERAL MUNICIPAL ELECTION.

WHEREAS, Continued local funding is needed to enhance community safety, crime prevention and intervention, including training police in partnering with non-police emergency first-responders like mental health professionals, substance abuse counselors, and psychiatric social workers; and

WHEREAS, continued funding is needed to maintain and improve local streets, address potholes, maintenance, and repaving, and help traffic congestion citywide; and

WHEREAS, renewing the Merced Vital City Services Protection Measure would continue an existing sales and use tax, allowing the City of Merced to control its own funds locally and continue providing vital City services without raising current tax rates; and

WHEREAS, the City wishes to use continued local funding on services its residents prioritize, including; responding quickly to neighborhood fires, protecting and maintaining police 911 emergency response times, preventing gang activity, addressing homelessness, and creating job training and opportunities for young people; and

WHEREAS, annual independent audits and a tax transparency commission will continue to ensure responsible, efficient spending, and by law funds from the Merced Vital City Services Protection Measure can only be spent in Merced; and

WHEREAS, the City Council desires to submit a ballot measure on a general transaction (sales) and use tax proposition, known as the Merced Vital City Services Protection Measure, to the qualified voters of the City of Merced at a regularly scheduled General Municipal Election to be held in the City of Merced on November 8, 2022; and

WHEREAS, Senate Bill 566, which added Revenue and Taxation Code section 7285.9, authorized all cities to levy, increase, or extend a transactions and use tax for general purposes, at a rate of one-quarter percent (0.25%) or a multiple thereof, subject to approval of two-thirds (2/3) of the City Council and a majority of qualified voters voting on the issue; and

WHEREAS, on November 8, 2005, voters approved the City's Measure C ("Measure"), which adopted the City's Ordinance No. 2222 to add Chapter 3.38 to the Merced Municipal Code to be operative on April 1, 2006, hereby increasing the City's sales tax by adding a general transaction (sales) and use tax at the rate of one-half percent (0.50%), the equivalent of ½¢ per dollar, for twenty years with a sunset date of March 31, 2026; and

WHEREAS, the Measure provided additional revenue for ensuring adequate funding for vital City services, such as police protection, fire protection, and road and street maintenance and improvements; and

WHEREAS, in June 2022, consultants to the City conducted and completed a community survey of current resident perspectives on community services priorities, which indicated strong community support for a renewal of the Measure with no sunset date; and

WHEREAS, City staff presented said community survey results to City Council at a regular meeting on June 21, 2022, with the recommendation for City Council to consider a placement of a proposed ballot measure to renew the Measure and maintain the City's general transaction (sales) and use tax at the rate of one-half percent (0.50%), and for the Measure to be in effect until ended by the voters; and

WHEREAS, on June 21, 2022, City Council directed City staff to prepare materials for consideration of a proposed ballot measure placement to renew the Measure and maintaining the City's general transaction (sales) and use tax at the rate of one-half percent (0.50%) without a sunset date, and for the Measure to be in effect until ended by the voters; and

WHEREAS, if the renewed Measure receives voter approval, the general transaction (sales) and use tax will continue to be a general tax with revenues that will be placed in a separate revenue fund for tracking purposes but will continue to be used to pay for any general City services; and

WHEREAS, the general transaction (sales) and use tax at the rate of one-half percent (0.50%) without a sunset date required by the Measure cannot be imposed without voter approval; and

WHEREAS, voter approval of the renewed Measure maintaining the City's general transaction (sales) and use tax at the rate of one-half percent (0.50%) without a sunset date will require an ordinance to amend Chapter 3.38 to the Merced Municipal Code, which shall be prepared by the City Attorney so as to be enacted if the Measure is approved by the voters; and

WHEREAS, if the renewed Measure receives voter approval, the existing version of Chapter 3.38 to the Merced Municipal Code will remain operative until March 31, 2023, and the ordinance amending Chapter 3.38 to the Merced Municipal Code to continue the Measure without a sunset date will become operative on April 1, 2023; and

WHEREAS, it is the intent of the City that the existing version of Chapter 3.38 to the Merced Municipal Code remain operative through March 31, 2023, and the ordinance amending Chapter 3.38 to the Merced Municipal Code become operative on April 1, 2023, to ensure continuity of the imposition and collection of the one-half percent (0.50%) general transactions (sales) tax and use tax authorized thereunder and that no gap exist between the imposition of such taxes; and

WHEREAS, Elections Code section 9280 authorizes the filing of an impartial analysis, Elections Code sections 9162 and 9163 authorizes the filing of arguments for or against any ballot proposition, and Elections Code section 9167 authorizes the filing of rebuttal arguments; and

WHEREAS, the City of Merced desires the Board of Supervisors in the County of Merced to consolidate the City's General Municipal Election with the Gubernatorial General Election on Tuesday, November 8, 2022, pursuant to Part 3, Division 10 of the Elections Code (commencing with Section 10400) to be held on the same date, and that, within the City of Merced, the precincts, vote center locations, ballot drop box locations, and election officers of the two (2) elections be the same; the Registrar of Voters canvass the returns of the General Municipal Election; and the election be held in all respects as if it were only one (1) election; and

WHEREAS, it is the desire of the Merced City Council to adopt a Resolution requesting the Board of Supervisors of the County of Merced to render specified services to the City of Merced relating to the conduct of a General Municipal Election pursuant to Elections Code section 10002; and

WHEREAS, Elections Code section 10002 requires the City of Merced to reimburse the County of Merced in full for the services performed upon the County's presentation of a bill to the City.

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

SECTION 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 shall be submitted to the qualified voters of the City.

SECTION 2. Said proposition shall appear on the ballot for said election as set forth on Exhibit "A".

SECTION 3. The text of the proposed Ordinance to be submitted to the voters is attached hereto as Exhibit "B"; the full text to be published in the November 8, 2022 General Municipal Election Voters Information Guide is SECTION 1 of Exhibit "B".

SECTION 4. The object and purpose of the proposition to maintain the existing general transaction (sales) and use tax is to continue providing revenue for ensuring adequate funding for vital City services, such as police protection, fire protection, and road and street maintenance and improvements.

SECTION 5. The City's sales tax imposed on the sale of tangible personal properties shall be maintained by the existing general transaction (sales) tax, levied at the rate of one-half percent (0.50%) without a sunset date, if more than a majority of the qualified voters voting on the position vote in favor thereof. To ensure continuity of the imposition and collection of the one-half percent (0.50%) general transaction (sales) tax, the existing version of Chapter 3.38 to the Merced Municipal Code will remain operative through March 31, 2023, and the ordinance amending Chapter 3.38 to the Merced Municipal Code to maintain the transaction (sales) tax without a sunset date will become operative on April 1, 2023.

SECTION 6. The City's use tax imposed on the storage, use, or other consumption in the City of tangible personal properties purchased from any retailer shall be maintained by the existing general use tax, levied at the rate of one-half percent (0.50%), if more than a majority of the qualified voters voting on the proposition vote in favor thereof. To ensure continuity of the imposition and collection of the one-half percent (0.50%) general use tax, the existing version of Chapter 3.38 to the Merced Municipal Code will remain operative through March 31, 2023, and the ordinance amending Chapter 3.38 to the Merced Municipal Code to maintain the general use tax without a sunset date will become operative on April 1, 2023.

SECTION 7. The date for submission for the City Attorney's impartial analysis of said proposition is hereby set for August 5, 2022; the date for submission of primary arguments (for and against) for said proposition is hereby set for August 15, 2022; and the date for submission of rebuttal arguments to said primary arguments is hereby set for August 22, 2022.

SECTION 8. 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.

SECTION 9. 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 proposition showing the effect of the proposition on the existing law and the operation of the proposition.

SECTION 10. 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.

SECTION 11. 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 General Municipal Election in accordance with state law.

SECTION 12. Pursuant to Elections Code section 10403, the City Council requests the Merced County Board of Supervisors to consolidate the General Municipal Election for this Measure with the Gubernatorial General Election on November 8, 2022, such that Election precincts, polling places and officers of election within the City of Merced for said General 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 General Municipal Election hereby called.

SECTION 13. 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 General 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 General Municipal Election with the elections being held by other jurisdictions, if any, in the City of Merced on November 8, 2022.

SECTION 14. All persons qualified to vote at municipal elections in the City of Merced shall be qualified to vote at said General Municipal Election.

SECTION 15. The polls for the election shall be open at seven o'clock of the morning (7:00 a.m.) of the day of the election and shall remain open continuously from that time until eight o'clock of the evening (8:00 p.m.) of the same date when the polls shall be closed, and the election officers shall thereupon proceed to canvass the ballots cast thereat.

SECTION 16. In all particulars not recited in this Resolution, the General Municipal Election shall be held and conducted as provided by law for holding regularly scheduled Gubernatorial General Election.

SECTION 17. At the next regular meeting of this City Council occurring after the returns of said General Municipal Election have been canvassed by the Board of Supervisors of the County of Merced, and the certification of the results thereof to this City Council, or at a special meeting called thereafter for such purpose, this City Council shall cause to be spread upon its minutes a statement of the results of said General Municipal Election as ascertained by said canvass.

SECTION 18. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions and take other appropriate

actions necessary to ensure the placement of said General Municipal Election before the voters of the City of Merced at said regularly scheduled Gubernatorial General Election.

SECTION 19. The City Clerk is hereby authorized and directed to certify to the due 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 City Council of the City of Merced at a regular meeting held on the 5th day of July 2022, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:


APPROVED:

Matthew Serratto, Mayor

ATTEST:

Jennifer Levesque, City Clerk

APPROVE AS TO FORM:



Travis E. Cochran, City Attorney



EXHIBIT “A”

MEASURES SUBMITTED TO THE VOTERS	
CITY	
City of Merced	
<p>MERCED VITAL CITY SERVICES PROTECTION MEASURE</p> <p>Shall a measure to maintain local services—without raising current tax rates—such as 911 fire/police/medical/ natural disaster response; community policing/gang prevention programs; youth services/job training; pothole repair; housing/homeless services; and other general city services, by renewing an existing voter-approved ½¢ sales tax, until ended by voters, providing approximately \$6,500,000 annually, with transparency, independent audits, all funds local, be adopted?</p>	YES
	NO

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ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MERCED, CALIFORNIA, AMENDING TITLE 3, "REVENUE AND FINANCE," OF THE MERCED MUNICIPAL CODE BY AMENDING CHAPTER 3.38, "MERCED VITAL CITY 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 revision 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	Purpose.
3.38.020	Operative Date.
3.38.025	Termination By Voters.
3.38.030	Tax Suspended if Proceeds Taken by State.
3.38.035	Transactions (Sales) Tax.
3.38.040	Use Tax.
3.38.050	Tax Transparency 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.

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3.38.005 Chapter Title. This Chapter shall be known as the “Merced Vital City Services Protection Measure” (“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 effective 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, but shall not become operative until April 1, 2023. 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, 2022 election, the Operative Date for the general transactions (sales) and use tax imposed hereunder shall be April 1, 2023.

3.38.025 Termination By Voters. The authority to levy the tax imposed by this Measure shall not expire and shall continue until ended 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 (0.50) percent 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 (0.50) percent 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.

3.38.50 Tax Transparency 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 Tax Transparency Committee (“Tax Transparency Committee”), to review the revenues and expenditures generated and spent under this Chapter.

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B. The Tax Transparency Committee shall consist of a total of seven (7) voting members, comprised of one (1) voting member from each of the six (6) Council Districts, and one (1) voting member At-Large.

C. Initial voting members of the Tax Transparency 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, or from nominees submitted by individual City Council members.

a. The remainder of any unfilled positions on the Tax Transparency 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 Tax Transparency Committee shall be filled by having the Tax Transparency 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 Tax Transparency Committee, or from nominees submitted by individual City Council members.

a. The remainder of any unfilled positions on the Tax Transparency Committee shall be returned to the Tax Transparency 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 Tax Transparency 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 Tax Transparency Committee to serve when the ex-officio is unable to attend.

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F. Voting members of the Tax Transparency 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 Tax Transparency Committee.

G All voting members so appointed shall serve without compensation for a term of four (4) years. The term for the voting member of Council District 4 expires in 2022, and every four (4) years thereafter. The terms for the voting members of Council Districts 2 and 3, and the voting member At-Large, expire in 2023, and every four (4) years thereafter. The terms for the voting members of Council Districts 1, 5, and 6 expire in 2024, and every four (4) years thereafter.

H. The Tax Transparency 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 Tax Transparency Committee shall provide its findings to the City Council. Unless modified by City Council Resolution, the Tax Transparency Committee shall not have any function, power, or authority other than as expressly provided herein.

The Tax Transparency 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 Tax Transparency 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

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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:

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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 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

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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.

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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 I (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 I 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.

EXHIBIT B

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 Tax Transparency 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 tax authorized hereunder; and
- D. 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 of the City of Merced.

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, but shall not become operative until April 1, 2023.

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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EXHIBIT B

The foregoing Ordinance was approved by the voters of the City of Merced at a General Municipal Election held on the 8th day of November 2022, by the following vote tally:

YES:

NOES:

OTHER:

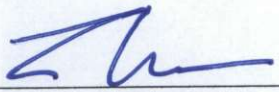
APPROVED:

Matthew Serratto, Mayor

ATTEST:

Jennifer Levesque, City Clerk

APPROVE AS TO FORM:



Travis E. Cochran, City Attorney

