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### Fresno County Transactions and Use Tax: Fresno State Improvement Zone Measure

#### Ballot Question

FRESNO STATE EDUCATION, STUDENT SUCCESS, CAMPUS REPAIR/UPGRADE MEASURE. Shall the measure to expand access and promote excellence in career/educational programs needed in nursing, agriculture, criminology, engineering/STEM; repair/upgrade deteriorating classrooms, campus fire/life safety/public safety systems, women's and men's athletic facilities; provide safe drinking water; provide scholarships for local, low-income students including veterans, by establishing a Fresno County 0.2% sales tax, providing approximately \$36,000,000 annually for 20 years with independent oversight, audits, public disclosure, be adopted?

#### Full Text of Measure

**AN ORDINANCE OF THE COUNTY OF FRESNO ADDING A NEW CHAPTER 4.60 TO TITLE 4 (REVENUE AND FINANCE) OF THE FRESNO COUNTY ORDINANCE CODE IMPOSING A TWO-TENTHS PERCENT (0.2%) TRANSACTIONS AND USE TAX: FRESNO STATE IMPROVEMENT ZONE ORDINANCE TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

#### **THE VOTERS OF THE COUNTY OF FRESNO ORDAINS AS FOLLOWS:**

**SECTION 1.** This ordinance relates to the levying and collecting of the County transactions and use tax, and shall be posted in accordance with the provisions of the Fresno County Ordinance Code and shall take effect immediately following voter approval.

**SECTION 2.** Chapter 4.60 Transaction and Use Tax Ordinance: Fresno State Improvement Zone Ordinance is hereby added to Title 4 (Revenue and Finance) of the Fresno County Ordinance Code to read as follows:

#### **CHAPTER 4.60 – TRANSACTIONS AND USE TAX: FRESNO STATE IMPROVEMENT ZONE ORDINANCE**

- 4.60.010. – Title.
- 4.60.020. – Operative Date.
- 4.60.030. – Purpose.
- 4.60.040. – Contract with State.
- 4.60.050. – Transactions Tax Rate.
- 4.60.060. – Place of Sale.
- 4.60.070. – Use Tax Rate.
- 4.60.080. – Adoption of Provisions of State Law.
- 4.60.090. – Limitations on Adoption of State Law and Collection of Use Taxes.
- 4.60.100. – Permit Not Required.
- 4.60.110. – Exemptions and Exclusions.
- 4.60.120. – Amendments.
- 4.60.130. – Enjoining Collection Forbidden.
- 4.60.140. – Severability.
- 4.60.150. – Effective Date.
- 4.60.160. – Bond Authorization.
- 4.60.170. – Use of Sales Tax Proceeds.
- 4.60.180. – Accountability – Citizens' Oversight Committee.
- 4.60.190. – Termination Date.

#### **4.60.010. – Title.**

This chapter shall be known as the Fresno County Transactions and Use Tax: Fresno State Improvement Zone Ordinance. The County of Fresno hereinafter shall be called "County."

#### **4.60.020. – Operative Date.**

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter, the date of such adoption being as set forth below.

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### **4.60.030. – Purpose.**

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:

- (1) To impose a retail transactions and use tax in accordance with the provisions of Revenue and Taxation Code, Division 2, Part 1.6, which authorizes the County to adopt this tax chapter, which will be operative if a majority of the electors voting on the measure vote to approve the imposition of tax at an election called for that purpose.
- (2) 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 Revenue and Taxation Code, Division 2, Part 1.6.
- (3) To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor 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.
- (4) 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 Revenue and Taxation Code, Division 2, Part 1.6, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

### **4.60.040. – Contract with State.**

Prior to the Operative Date, the County shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the County shall not have contracted with the California Department of Tax and Fee Administration prior to the Operative Date, it shall nevertheless so contract and in such a case the Operative Date shall be the first day of the first calendar quarter following execution of such a contract.

### **4.60.050. – Transactions Tax Rate.**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the County at the rate of 0.2% of the gross receipts, or 0.2 cents for an item that costs one dollar, of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the Operative Date of this chapter. Such tax shall be in addition to any other transactions tax imposed by this Code or applicable state law. For the City of Reedley, the tax imposed shall be at a rate of 0.025% of the gross receipts, or 0.025 cents for an item that costs one dollar.

### **4.60.060. – Place of Sale.**

For purposes of this ordinance, 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 agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts of such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department Tax and Fee Administration.

### **4.60.070. – Use Tax Rate.**

An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the Operative Date of this chapter for storage, use or other consumption in said territory at the rate of 0.2% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. Such tax shall be in addition to any other transactions tax imposed by this Code or applicable state law.

### **4.60.080. – Adoption of Provisions of State Law.**

Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Revenue and Taxation Code, Division 2, Part 1.6, all of the provisions of Revenue and Taxation Code, Division 2, Part 1 (commencing with Section 6001) are adopted and made a part of this chapter as though fully set forth herein.

### **4.60.090. – Limitations on Adoption of State Law and Collection of Use Taxes.**

In adopting the provisions of Revenue and Taxation Code, Division 2, Part 1:

- (1) Wherever the State of California is named or referred to as the taxing agency, the name of this County shall be substituted therefor. However, the substitution shall not be made when:

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- a. 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 Treasury, or the Constitution of the State of California;
  - b. The result of that substitution would require action to be taken by or against this County or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this chapter.
  - c. 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:
    - i. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;
    - ii. Impose this tax with respect to certain sales, storage or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.
  - d. In Revenue and Taxation Code §§ 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828.
- (2) The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Revenue and Taxation Code Section 6203 and in the definition of that phrase in Section 6203.

### **4.60.100. – Permit Not Required.**

If a seller's permit has been issued to a retailer under Revenue and Taxation Code Section 6067, an additional transactor's permit shall not be required by this chapter.

### **4.60.110. – Exemptions and Exclusions.**

- (1) There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- (2) There are exempted from the computation of the amount of transactions tax the gross receipts from:
  - a. 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.
  - b. Sales of property to be used outside the County, which is shipped to a point outside the County, 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 County shall be satisfied:
    - i. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Vehicle Code, Division 3, Chapter 1 (commencing with Section 4000); aircraft licensed in compliance with Public Utilities Code Section 21411; and undocumented vessels registered under Vehicle Code, Division 3.5 (commencing with Section 9840) by registration to an out-of-County 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
    - ii. With respect to commercial vehicles, by registration to a place of business out-of-County and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
  - c. 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 article.
  - d. 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 article.
  - e. For the purposes of subparagraphs (c) and (d) 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.
- (3) There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this County of tangible personal property:
  - a. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
  - b. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such

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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 Revenue and Taxation Code Sections 6366 and 6366.1.

- c. 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.
  - d. 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.
  - e. For the purposes of subparagraphs (c) and (d) 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.
  - f. Except as provided in subparagraph (g), a retailer engaged in business in the County 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 County or participates within the County 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 County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.
  - g. "A retailer engaged in business in the County" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Vehicle Code, Division 3, Chapter 1 (commencing with Section 4000); aircraft licensed in compliance with Public Utilities Code Section 21411; or undocumented vessels registered under Vehicle Code, Division 3.5 (commencing with Section 9840). 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 County.
- (4) 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 Revenue and Taxation Code, Division 2, Part 1.6 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.

### **4.60.120. – Amendments.**

All amendments subsequent to the effective date of this article to Revenue and Taxation Code, Division 2, Part 1 relating to sales and use taxes and which are not inconsistent with Revenue and Taxation Code, Division 2, Parts 1.6 and 1.7, and all amendments to Parts 1.6 and 1.7, shall automatically become a part of this article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

### **4.60.130. – 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 County, or against any officer of the State or the County, to prevent or enjoin the collection under this chapter, or Revenue and Taxation Code, Division 2, Part 1.6, of any tax or any amount of tax required to be collected.

### **4.60.140. – Severability.**

If any provision of this article or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

### **4.60.150. – Effective Date.**

This ordinance relates to the levying and collecting of the County transactions and use tax, and shall be posted in accordance with the provisions of the Fresno County Ordinance Code and shall take effect immediately following voter approval.

### **4.60.160. – Bond Authorization.**

- (1) Upon approval of this measure, the County shall be authorized to issue and sell bonds of up to \$500 million in aggregated principal at interest rates below the legal limit over a 20 year term. Proceeds from the sale of bonds authorized by this measure shall be used only for the design, construction, renovation and/or modernization of facilities owned and/or operated by the California State University Board of Trustees, and the construction, renovation and/or modernization of infrastructure, improvements and facilities within a two-mile radius around the campus's physical boundaries and similar boundaries around any additional locations within Fresno County

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that may be owned, leased or operated by the University during the time this initiative is in effect. This shall include the furnishing and equipping of University facilities or acquisition or lease of real property for use by the University.

- (2) Bond proceeds will be expended to modernize, replace, renovate, construct, equip, furnish, and otherwise improve facilities within and around the campus of California State University, Fresno. The proposed projects will include all related and incidental costs, including costs of architectural and engineering design, and other professional services, site preparation, utilities, landscaping and other project related costs include plan check and permitting costs, and construction management. Bond proceeds may also be expended to acquire real property for future facilities and to acquire and install furniture, fixtures and equipment therein. The scope and nature of any project outlined below may be altered by the Citizens' Oversight Committee or the Joint Powers Authority, whichever is then-empowered to oversee the implementation of this measure, as required by conditions that arise during the course of design and construction.
- (3) Bond proceeds may be spent to for any of the following purposes, depending upon the age, condition and needs of each particular facility:
  - Upgrade electrical, telecommunication, , fire alarm, and similar building systems as well as main power service and distribution, which may include active and passive solar power and heating system acquisition, installation and construction
  - Replace, repair or upgrade plumbing, piping and drainage systems, including water supply, meters, water heating, and wastewater systems, plumbing fixtures and sinks, etc., within buildings and sites and to connect with city supply and drainage systems
  - Replace or modify aging heating, ventilation and air cooling (HVAC) systems with energy-efficient heating and air cooling systems (HVAC), including installation of energy management systems (EMS) and other energy efficient/sustainable measures.
  - Replace, modify, upgrade interior lighting and exterior safety and security lighting systems and fixtures, as necessary
  - Repair, modify and construct structural elements of existing structures as necessary
  - Construct new facilities for use by Fresno State students, faculty and staff, and the surrounding community
  - Upgrade, modify and construct restroom facilities to meet ADA requirements including path of travel
  - Comply, as necessary, with the Americans with Disabilities Act (ADA)
  - Construct, repair, and renovate roadways, walkways, grounds, parking lots and make entrance improvements to meet ADA requirements and pedestrian/vehicular signage for safety and public information
  - Other improvements as expressly authorized by the Citizens Oversight Committee or the Joint Powers Authority, should a Joint Powers Authority be enacted, that serve the voters' intent and purpose of the Fresno State Improvement Zone Ordinance.

### **4.60.170. – Use of Sales Tax Proceeds.**

- (1) The Fresno State Improvement Zone Ordinance will provide a secure, local revenue stream to the County that shall be used entirely to expand access and promote excellence in career/educational programs needed in nursing, agriculture, criminology, engineering/STEM; repair/upgrade deteriorating classrooms, campus fire/life safety/public safety systems, women's and men's athletic facilities; provide safe drinking water; provide scholarships for local, low-income students including veterans. All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a Fresno State Improvement Zone trust fund or account designated for use by the County for such specified purposes.
- (2) The Fresno State Improvement Zone shall be generally bounded by a two-mile radius around the campus's physical boundaries and similar boundaries around any additional locations within Fresno County that may be owned or leased by the University during the time this initiative is effective.
- (3) At least two-thirds of the revenue raised by this measure must be spent on academic programs and facilities and no more than one-third of the funds raised by this measure may be used for athletic facilities.
- (4) Administrative costs for administering the provisions of this Chapter, including County staffing, the Citizens' Oversight Committee, and other related administrative costs, shall be paid for with the revenues raised as a result of this measure. The County shall be entitled to seek recovery its administrative costs by presenting requests for payment and/or invoicing to the Citizens' Oversight Committee or the Joint Powers Authority, should a JPA be formed to administer the Fresno State Improvement Zone.

### **4.60.180. – Accountability – Citizens' Oversight Committee.**

- (1) Purpose. The purpose of the Citizens' Oversight Committee is to ensure the revenue raised through the ordinance is used for the purposes specified herein, and allow citizen participation, open discussion, and accountability

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regarding the use of the revenue generated under the ordinance.

- (2) Establishment. A Citizens' Oversight Committee ("Committee") is hereby established to oversee revenues received by the County from the transactions and use taxes imposed pursuant to this ordinance, and to ensure that tax revenues are used by the County in a manner consistent with the voter approved measure adopting this ordinance.
- (3) Appointment and Composition of Committee Members.
  - a. The Citizens' Oversight Committee shall consist of five (5) members appointed by the Board of Supervisors.
  - b. Upon their appointment and during their incumbency, members of the Committee shall be and remain residents of the County. The Committee members shall not be current County employees, officials, contractors or vendors of the County. Past employees, officials or vendors shall be eligible to serve on the Committee, provided that there are no conflicts of interest as determined by the County Counsel.
  - c. Candidates for Committee membership shall be solicited through an open application process that is promoted through a broad-based recruitment process. Any resident of the County of voting age is eligible to apply for Committee membership, subject to the appointment categories specified herein. All applications will be reviewed by the Board of Supervisors, who will collectively have the authority to make all final decisions on committee membership.
- (4) Terms of Service; Vacancies.
  - a. Members of the Committee shall be appointed for terms of four (4) years. No committee member shall serve more than three (3) consecutive terms.
  - b. Committee members whose terms expire shall continue to serve until their successor is appointed and qualified. If a vacancy occurs other than by expiration of a term, it shall be filled by appointment for the unexpired portion of the term.
  - c. Should a member of the Committee fail to attend two (2) consecutive regular meetings, unless excused for cause by the chairperson, that member's service shall be deemed vacant and the member's term ended. The Committee secretary shall immediately notify the Board of Supervisors of such termination.
  - d. Committee members shall serve at the pleasure of the Board of Supervisors and may be removed in the sole determination, with or without cause, notice, hearing or appeal, by the Board of Supervisors.
  - e. All Committee members' terms will end when the Fresno State Improvement Zone Ordinance terminates pursuant to 4.60.190.
- (5) Meetings; Officers; Rules of Procedure; Quorum.
  - a. The Committee may adopt rules and regulations to govern proceedings and shall set a time for regular meetings which shall be held at least bi-annually
  - b. The Committee shall elect a chairperson, vice-chairperson and secretary. Their respective duties shall be as are usually carried out by such officers. In the chairperson, vice-chairperson or secretary's absence or disability, the Committee may designate a chairperson, vice-chairperson or secretary pro tempore. Officers shall hold office for one year and until their successors are elected.
  - c. A majority of the committee shall constitute a quorum for the transaction of business.
  - d. Committee meetings are subject to all open-meeting laws, and must be noticed and open to the public. Committee minutes and reports are a matter of public record and must be made available to the public in the manner provided by law.
  - e. Orientation and training is mandatory for all new committee members. Each committee member shall attend such orientation and training prior to their first regular committee meeting.
- (6) Powers and Duties.
  - a. The Citizens' Oversight Committee by majority vote shall have the power to direct and control the use of the revenues collected pursuant to this ordinance. The Citizens' Oversight Committee shall provide an audit report on the use of that revenue to the Board of Supervisors at least annually, no later than ninety (90) days following the conclusion of each fiscal year. The Committee shall confine its oversight specifically to revenues generated under this ordinance. The Citizens' Oversight Committee shall oversee the issuance of bonds to accomplish the purposes of the ordinance, which said bonds shall be paid by the revenues collected pursuant to this ordinance.
  - b. The County Administrative Officer or his or her designee shall provide any reasonable administrative or technical assistance required by the Committee to fulfill its responsibilities or publicize its findings.
- (7) Funding.
  - a. The County shall establish a Fresno State Improvement Zone account into which funds raised from the measure are placed.
  - b. The Citizens' Oversight Committee shall make all expenditures, payments, repayments, and pay all costs, including administrative costs, in furtherance of the provisions of this Chapter from the Fresno State Improvement Zone account.

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### (8) Formation of Joint Powers Authority Supersedes Citizens' Oversight Committee.

- a. Should the County enter into a Joint Powers Agreement to further the purposes of the ordinance, the management structure and powers of the JPA shall supersede the powers of the Citizens' Oversight Committee.
- b. The Citizens' Oversight Committee shall remain as an advisory body and shall offer advice and counsel to the Joint Powers Authority to further the purposes of the Fresno State Improvement Zone measure.

### **4.60.190. – Termination Date.**

The authority to levy the tax imposed by this chapter shall expire on the twentieth (20) anniversary of the Operative Date. Nothing contained in this ordinance shall prevent the reenactment of the same or similar ordinance under the laws then existing at the time of reenactment.

**SECTION 3.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional and/or invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The voters hereby declare that they would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.