

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

## **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 ONE-QUARTER PERCENT (0.25%) 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 ORDAIN 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.
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- 4.60.170. – Accountability – Citizens’ Oversight Committee.
- 4.60.180. – 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.

#### **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 (commencing with Section 7251) and section 7285.5 of Part 1.7 of Division 2, which authorizes the County to adopt this ordinance 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, or if the Fresno County Board of Supervisors adopts this ordinance prior to an election pursuant to California Elections Code section 9118, subdivision (a).

- (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 of this ordinance 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 0.25% of the gross receipts, or 0.25 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.

The transactions and use tax would not be collected in certain jurisdictions of the county when collection of the tax in those areas would cause the combined rate of transactions and use taxes to exceed the maximum rate limit set by the State of California in Section 7251.1 of the Revenue and Taxation Code.

When contracting with the California Department of Tax and Fee Administration (CDTFA) to administer the tax imposed by this ordinance, it shall be the County's intent, and any agreement shall ensure, that the combined rate limit specified in Revenue and Taxation Code section 7251.1 is not exceeded in any district within the County that has imposed a transactions and use tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code in effect on or before the effective date of this ordinance. The agreement shall include that appropriate steps are taken by CDTFA to ensure that the County tax imposed by this ordinance, when aggregated with all other transactions and use taxes imposed pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code within that district, will 1) not cause the rate of the transactions and use tax within the district to exceed the combined rate limit; 2) not cause any person subject to the tax imposed by this ordinance to pay more than the legally permissible combined rate; and 3) have no impact on the revenue received by each district within the County as the result of any transactions and use tax imposed by the district on or prior to the effective date of this ordinance.

**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 0.25% 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:
  - 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 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. – Use of Tax Proceeds.**

- (1) The Fresno State Improvement Zone Ordinance will provide a secure, local revenue stream to the County that shall be used entirely for expanding access in nursing, agriculture, criminology, science, engineering and other fields; repairing and upgrading deteriorating classrooms and laboratories, and fire, life safety and security systems; providing safe drinking water; removing asbestos, lead paint and mold, providing scholarships for deserving local students and veterans; and other uses necessary for Fresno State to help our students and community reach their full potential. 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 administered by the Citizens' Oversight Committee and designated for use by Fresno State, with the approval of the Citizens' Oversight Committee, for such specified purposes.
- (2) The Fresno State Improvement Zone shall be 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 California State University during the time this ordinance is effective. Projects funded by this ordinance that are within the Fresno State Improvement Zone but not on Fresno State property must be in furtherance of any required off-site mitigation.
- (3) Except as otherwise provided in this ordinance, proceeds of the tax levied and imposed hereunder shall be used for the design, construction, renovation or modernization of facilities owned or operated by the California State University ("CSU") Board of Trustees, and the construction, renovation or modernization of infrastructure, improvements and facilities within the Fresno State Improvement Zone. This shall include the furnishing and equipping of University facilities and acquisition or lease of real property for use by the University.

- (4) Proceeds of the tax levied and imposed hereunder will be expended to modernize, replace, renovate, construct, equip, furnish, and otherwise improve facilities within and around the campus of California State University, Fresno ("Fresno State"). 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. Such tax revenues may also be expended to acquire real property for future facilities and to acquire and install furniture, fixtures, and equipment therein.
- (5) It is the intent of the voters that there shall be created two endowments of approximately \$50 million each. One endowment shall be used for funding scholarships for local, low-income students including veterans enrolled in and attending Fresno State. The other endowment shall be used for funding deferred maintenance and other campus program support identified herein. It is the further intent of the voters that the corpus to establish these endowments be preserved and not spent during the 25-year pendency of the measure, and that the interest accrued in the respective endowments shall be transferred to Fresno State annually for funding the two uses prescribed herein, estimated to be between \$5 million and \$10 million a year. Upon the sunset of this ordinance, and unless renewed by a subsequent measure, any remaining endowment funds shall be provided to Fresno State for use in furtherance of the purposes of this ordinance.
- (6) On an annual basis, up to 1% of the proceeds of the tax deposited in the Fund shall be appropriated to the County for the costs of administering the provisions of this Chapter, including County staffing or staffing retained by the Citizens' Oversight Committee and other related administrative costs.
- (7) Projects approved under this ordinance are expected to be constructed in accordance with CSU policies and procedures for Major Capital Outlay projects, which policies allow for various construction delivery methods including design, bid, build, design/build, and CM Risk. Each delivery method has specific CSU procurement requirements to ensure a fair and equitable, transparent and competitive process. Projects under this ordinance shall comply, as necessary, with all applicable building standards including the Americans with Disabilities Act (ADA).

**4.60.170. – 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, input from Fresno State and California State University, open discussion, and accountability 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, to ensure that tax revenues are used by the County and California State University in a manner consistent with the voter approved measure adopting this ordinance, and to provide transparency to the public regarding the use of such tax revenues.
- (3) Appointment and Composition of Committee Members.
  - a. The Citizens' Oversight Committee shall consist of seven (7) members who shall be appointed as follows:
    - i. The Fresno County Board of Supervisors: Five (5) appointments.
    - ii. California State University, Office of the Chancellor (or designee thereof): One (1) appointment.
    - iii. Fresno State, Office of the University President (or designee thereof): One (1) appointment.
  - 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. This Ordinance does not preclude past employees, officials or vendors of the County from serving on the Committee.
  - 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 five (5) 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 appointed by the Board of Supervisors may be removed for good cause established, and thereafter by a majority vote of the Board of Supervisors. Committee members appointed by the California State University, Office of the Chancellor and Fresno State, Office of the University President may be removed for good cause established by their appointing authority.
  - e. All Committee members' terms will end when the Fresno State Improvement Zone Ordinance terminates pursuant to 4.60.180.
- (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 quarterly.

- 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.
- f. Members of and staff to the Citizens' Oversight Committee shall comply with Government Code section 1090 (governing conflicts of interest in contracting), the Political Reform Act (Government Code sections 81000-91014), and common law conflicts of interest doctrines.

(6) Powers and Duties.

- a. The Citizens' Oversight Committee by majority vote shall have the power to direct 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.
- 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.
- c. The Citizens' Oversight Committee is empowered to retain staff and set the compensation amounts of any staff retained, which amounts shall be paid pursuant to (8)(b) herein.
- d. The Citizens' Oversight Committee is empowered to recommend reasonable requirements for bidders to hire and employ locally-based workers for projects approved under this ordinance.

(7) Compensation

- a. Members of the Citizens' Oversight Committee, at their discretion, and unless precluded by law, shall be entitled to receive a per diem or monthly stipend in an amount set by majority vote of the Committee at a publicly noticed meeting. In no case may the total per diem or stipend exceed the established compensation of the Fresno County Senior Board Member Assistant to the Board of Supervisors, or an equivalent position within County employment.

(8) 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 authorize 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.
- c. The Citizens' Oversight Committee shall allocate and transfer to Fresno State funding for an entire project cost (design and construction and FF&E) provided such funds are available for the proposed project(s) consistent with the purposes set forth herein, and the Committee determines by majority vote that such funding is the best course of action for the project to accomplish the purposes of this ordinance. Fresno State campus personnel, at their discretion, may request project funding be allocated in phases, where appropriate, to correspond with various stages of a planned project. Upon agreement with the Citizens Oversight Committee, funds allocated and transferred for a specific project that remain unused as of the completion of the project shall be retained by Fresno State and shall be used for any purpose consistent with the purposes of this ordinance. In any year in which funds are allocated pursuant to this ordinance, Fresno State shall prepare and submit an annual report to the Citizens' Oversight Committee reporting on Fresno State's use of the funds allocated, including how said funds were expended, and whether Fresno State has met cost estimates presented to the Citizens' Oversight Committee.
- d. Once project funding is approved by the Citizens' Oversight Committee and allocated to the Fresno State campus, campus personnel will implement the project(s) according to California State University policy and Education Code 66606 for any projects built on CSU-owned land.

**4.60.180. – Termination Date.**

The authority to levy the tax imposed by this chapter shall expire on the twenty-fifth (25) 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 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.