

ORDINANCE 2019-02

FRESNO COUNTY CLERK

By _____

DEPUTY

THE CITY OF PARLIER TRANSACTION AND USE TAX ORDINANCE OF 2019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PARLIER ENACTING A TRANSACTION AND USE (SALES) TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION; SUBJECT TO ADOPTION BY THE ELECTORATE, TO PROVIDE FUNDS TO MAINTAIN AND IMPROVE ESSENTIAL CITY SERVICES INCLUDING POLICE, FIRE, 9-1-1 EMERGENCY, MEDICAL AID RESPONSE, GANG PREVENTION PROGRAMS, NEIGHBORHOOD POLICE PATROLS, MAINTAIN STREETS, REDUCE CRIMINAL STREET ACTIVITY, ATTRACT AND RETAIN BUSINESSES AND JOBS, MAINTAIN YOUTH, SENIOR PROGRAMS AND OTHER SERVICES

WHEREAS, the City of Parlier has primary responsibility to protect the public safety, maintain fiscal stability, and provide a high quality of life for its residents; and

WHEREAS, over the last five years, revenues accruing to the City of Parlier and used to provide essential City services including police and fire, 9-1-1 emergency responses, maintain gang prevention efforts, maintain and attract business and jobs and streets and to maintain programs for youth and seniors, among other services have been consistently insufficient as demonstrated by the fact that the City of Parlier has maintained a deficit position for at least the last five years with the deficit for the immediately preceding fiscal year being above \$200,000; and

WHEREAS, sales and other tax revenues which are the primary source of locally controlled funds available to pay for essential City services have been declining due to changing consumer habits, unaffordability of housing, and other economic forces beyond the control of the City of Parlier; and

WHEREAS, a local funding measure would provide a protected, local revenue source to limit or prevent further reduction in essential, necessary and appropriate City services; and

WHEREAS, this measure will give the City of Parlier local control over local funds for local needs.

NOW, THEREFORE, the City Council of the City of Parlier does ordain as follows:

Section 1. Chapter 16 of Title 3 of the Parlier Municipal Code, adopted in 1959, providing for a sales tax, but which was never implemented and is ineffectual, is hereby repealed and amended to read as follows:

“Section 3.16.010. Title

This ordinance shall be known as the City of Parlier Transactions and Use Tax Ordinance of 2019.

Section 3.16.020. Definitions

The following words and phrases shall be defined as set forth in this Ordinance, except that any term or phrase not defined in this ordinance shall have the same meaning as that term or phrase is defined in Parts 1.6 and 1.7 of the State of California Revenue and Taxation Code:

(A) “City” means the City of Parlier.

(B) “Operative Date” means the first date of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance by vote of the electorate on June 4, 2109.

(C) “Ordinance” means the City of Parlier Transactions and Use Tax Ordinance of 2019.

(D) “State” means the State of California.

Section 3.16.030

This Ordinance is adopted to achieve the following, among other purposes, and the Ordinance shall be interpreted liberally in order to accomplish all of its lawful purposes.

(A) To impose a retail transactions and use tax to be applied throughout the entire territory of the City to the fullest extent permitted by law in accordance with the provisions of the California Revenue and Taxation Code §§7251 et seq., and 7285.9, of Part 1.6 of Division 2 which authorizes the City to adopt this Ordinance 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 and use tax ordinance that incorporates provisions identical to those of sales and use tax law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the California Revenue and Taxation Code.

(C) To adopt a retail transactions and use tax ordinance that imposes a tax that can 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 lest 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.

(D) To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the California Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping of persons subject to taxation under this ordinance.

(E) To provide Transactions and Use Tax revenue to the City to be used for the general governmental purposes of the City and with any Transactions and Use Tax Revenue received being placed into the City's General Fund.

Section 3.16.040. Contract with State

Prior to the Operative Date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this ordinance; provided, that if the City 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 case the Operative Date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 3.16.050. Transactions Tax Rate

For the privilege of selling tangible personal property at retail a transaction tax a transactions tax is imposed upon all retailers in the incorporated territory of the City at the rate of one percent (1% or \$0.01) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail within the territory of the City on and after the Operative Date of this Ordinance.

Section 3.16.060. Place of Sale

For the 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 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 the 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 of Tax and Fee Administration.

Section 3.16.070. Use Tax Rate

An excise tax is hereby imposed on the storage, use or other consumption of the City of tangible personal property purchased from a retailer on or after the Operative Date of this Ordinance for storage, use or other consumption of the territory of the City at the rate of one percent (1% or \$0.01) 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.

Section 3.16.080. Adoption of Provisions of State Law Except as Otherwise

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

Section 3.16.090. Limitations on Adoption of State Law and Collection of Use Taxes

In adopting the provisions of Part I of Division 2 of the California Revenue and Taxation Code:

A. Whenever the State of California is named or referred to as the taxing agency, the name of the City of Parlier shall be substituted. However the substitution shall not be made when:

1. The word "State" is used as part of the title of the State Controller, State Treasurer, California Department of Tax and Fee Administration, State Treasury or the Constitution of the State of California;

2. The result of the substitution would require action to be taken by or against the City or any agency, officer or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to administration or operation of this Ordinance.

3. In those sections, including but not limited to sections referring to exterior boundaries of the State of California, where the result of this substitution would be to:

(a) Provide an exemption from this tax imposed by this Ordinance with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from the tax while such sales, storage, use or other consumption remains subject to tax by the state or under the provisions of Part I of Division 2 of the Revenue and Taxation Code, or;

(b) Imposed as 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 Section 6701, 6702 (except the last sentence thereof) 6711, 6715, 6737, 6797, or 6828 of the California Revenue and Taxation Code:

(a) The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State", in Sections 6203 and in the definition of that phrase in Section 6203.

Section 3.16.100. Permit Not Required

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

Section 3.16.110. Exemptions and Exclusions

A. There shall be excluded from the measure of the Transactions Tax and the Use Tax the amount of any sales 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 transactions tax the gross receipts from:

1. Sales of tangible personal property other than fuel or petroleum products to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of the 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 a 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 principle place of residence; and

(b) With respect to commercial vehicles by registration to a place of business out of city and a 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 Ordinance.

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 Ordinance.

5. For the purposes of subdivision (3) and (4) of this section, the sale 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 this ordinance, the storage, use, or other consumption in the City of tangible personal property:

1. The gross receipts from the sale of which had 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 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 §§6366 and 6366.1 of the Revenue and Taxation Code by the State of California.

3. If the purchaser is obliged to purchase the property for a fixed price pursuant to a contract entered into prior to the Operative Date of this Ordinance;

4. If the possession of, or 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 the lease prior to the Operative Date of this Ordinance;

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption or possession of or the 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 an 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, included 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 a representative, agent, canvasser, solicitor, subsidiary or person in the City under the authority of the retailer.

7. A "retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with §4000 of Division 3 of the Vehicle Code, aircraft licensed in compliance with §21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with §9840 of the Vehicle Code). That retailer shall be required to collect and 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 Ordinance may credit against that tax any transactions or reimbursement for a 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 the person of the property, the storage, use or other consumption of which is subject to the use tax.

Section 3.16.120. Amendments

All amendments subsequent to the effective date of this Ordinance to Part I of Division 2 of the Revenue and Taxation Code relating to sale 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 adopted and a part of this Ordinance without further action of the City Council of the City or the City's electorate, provided however that no amendment shall operate so as to affect the rate of tax imposed by this Ordinance. The City Council may amend this Ordinance to comply with applicable law or as may be otherwise necessary in order to further the Ordinance's stated purposes.

Section 3.16.130. Prohibition on Enjoining Collection

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 Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected under this Ordinance.

Section 3.16.140. Severability

If any provision of this Ordinance or the application of it 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.

Section 3.16.150. Effective Date

This ordinance relates to the levying and collection of the City's transactions and use taxes and shall become effective only if approved by a majority of the voters voting on the measure at the June 4, 2019, Special Municipal Election. The Operative Date of this Ordinance shall then be as defined in Section 13.16.020(b).

Section 3.16.160. Effective Period

The authority to levy the tax authorized by this ordinance shall not expire; however, such authority shall be suspended, and no tax levied thereafter, upon the adoption of a resolution directing such suspension by the City Council, by a four-fifths vote. The Council shall receive a report no later than eight years following the Operative Date, and every eight years thereafter, regarding the continuing need for the tax imposed by this Ordinance, and upon receiving such report may either take no action, in which case the authority to impose the tax shall continue uninterrupted, or adopt a resolution to suspend this Ordinance by a four-fifths vote. The tax collection would end at the next available quarter, except for residual payments. In any event that this ordinance is suspended, such authority shall remain suspended unless and until the Council approves a resolution by a four-fifths vote, which it may consider at any time, to instate the authority to levy the tax authorized by this ordinance, which if so adopted

shall be effective without submission to the electorate. The collection would resume at the beginning of the next available quarter.

Section 3.16.170.

Any provision of the Parlier Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistency and no further, are hereby repealed or modified to the extent necessary to effect the provisions of this Ordinance, except that any existing, duly adopted sales and use tax existing over debate of the adoption of this Ordinance shall be remain in effect and the sale and use tax imposed by this Ordinance shall be additive thereto.

Section 2. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in an official newspaper within 15 days after its adoption.

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ADOPTED by the City Council and signed by the Mayor and attested by the City Clerk this 7th day of March 2019.

Alma Beltran, Mayor, City of Parlier

ATTEST:

Bertha Augustine, Deputy City Clerk

I, Bertha Augustine, City Clerk of the City of Parlier, do hereby certify that the foregoing Ordinance was introduced at the February 7, 2019, regular City Council meeting and was passed and adopted at a regular meeting of the City Council of the City of Parlier on the 18th day of July 2019, by the following vote, to wit:

AYES: Mayor Beltran, Mayor Pro tem Pimentel, Council member Maldonado,
Council member Escoto, Council member Rodriguez

NOES: None

ABSENT: None



Deputy City Clerk of the City of Parlier