

BEFORE THE BOARD OF THE
FRESNO COUNTY ZOO AUTHORITY
FRESNO COUNTY, CALIFORNIA

In the matter of) Ordinance No. 2004-1
ESTABLISHING A SPECIAL TRANSACTIONS)
AND USE TAX OF ONE-TENTH OF ONE)
PERCENT (0.10%) PURSUANT TO)
CALIFORNIA REVENUE AND TAXATION)
CODE SECTION 7286.43 FOR A PERIOD OF)
TEN YEARS.)

AN ORDINANCE OF THE FRESNO COUNTY ZOO AUTHORITY, IMPOSING A
COUNTYWIDE TRANSACTIONS AND USE TAX FOR THE SUPPORT OF ZOOS,
ZOOLOGICAL FACILITIES, AND RELATED ZOOLOGICAL PURPOSES, TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION.

The Fresno County Zoo Authority ordains as follows:

SECTION 1. TITLE AND SUMMARY

This ordinance shall be known as the "Fresno County Zoo Authority
Transactions and Use Tax Ordinance." If approved by the voters, this ordinance will
impose a transactions and use tax to be applicable in the incorporated and
unincorporated territory of the County, the proceeds of which are to be used exclusively
for zoos, zoological facilities, and related zoological purposes within the County.

**SECTION 2. SUBMISSION TO THE VOTERS; VOTER APPROVAL;
OPERATIVE DATE.**

Upon approval by two-thirds of this Board, the provisions of this ordinance are to
be submitted to the voters of the County for approval in order that the transactions and
use tax can become operative, as provided by Revenue and Taxation Code section
7286.43. The tax submitted to the voters by this ordinance will therefore take effect only

1 if at least two-thirds of the electors voting on the measure at the November 2, 2004
2 election approve. If approved, the provisions of this ordinance authorizing the levy of
3 the one-tenth of one percent (0.10%) transactions and use tax will become operative on
4 the later of April 1, 2005, or the first day of the first calendar quarter following the
5 execution of the State Board of Equalization contract in accordance with Section 5 of
6 this ordinance.

7
8 **SECTION 3. PROVISIONS OF FRESNO COUNTY ZOO AUTHORITY
ORDINANCE.**

9 The ordinance is adopted to read as follows:

10 **FRESNO COUNTY ZOO AUTHORITY
11 TRANSACTIONS AND USE TAX**

12 **Section 1.010. Purpose.**

13 This ordinance is adopted to achieve the following, among other, purposes
14 and directs that its provisions are interpreted to accomplish those purposes:

15 a. To impose a one-tenth of 1 percent (0.10%) retail transactions and
16 use tax according to the provisions of Part 1.6 (commencing with section 7251)
17 of Division 2 of the Revenue and Taxation Code, as specifically authorized by
18 section 7286.43 of Chapter 2.85 of Part 1.7 of Division 2 of the Revenue and
19 Taxation Code;

20
21 b. To adopt a retail transactions and use tax ordinance which
22 incorporates provisions identical to those of the Sales and Use Tax Law of the
23 State of California insofar as those provisions are consistent with the
24 requirements and limitations contained in Part 1.6 of Division 2 of the Revenue
25 and Taxation Code;

26 c. To adopt a retail transactions and use tax ordinance which imposes
27 a tax and provides a measure for it that the State Board of Equalization can
28 administer and collect in a manner that adapts itself as fully as practicable to, and

1 requires the least possible deviation from, the existing statutory and
2 administrative procedures followed by the State Board of Equalization in
3 administering and collecting the California Sales and Use Taxes;

4 d. To adopt a retail transactions and use tax ordinance which can be
5 administered in a manner which, to the greatest degree possible, will be
6 consistent with the provisions of Part 1.6 of Division 2 of the Revenue and
7 Taxation Code, will reduce the cost of collecting the transactions and use taxes,
8 and simultaneously will reduce the burden of record keeping upon persons
9 subject to taxation under the provisions of this ordinance.
10

11 e. To adopt a retail transactions and use tax ordinance that
12 provides funding for zoos, zoological facilities, and related zoological purposes
13 within this County. Such revenues shall be used to supplement existing public
14 funding, defined as the contribution made by the City of Fresno for the support
15 of the Chaffee Zoo in the City of Fresno during the 2003-2004 fiscal year,
16 pursuant to the following schedule:

17	Year 1 of tax	Full amount of existing public funding (approx. \$1.2 million)
18		
19	Year 2 of tax	80% of existing public funding (approx. \$960,000)
20		
21	Year 3 of tax	60% of existing public funding (approx. \$720,000)
22		
23	Year 4 of tax	40% of existing public funding (approx. \$480,000)
24		
25	Year 5 of tax	20% of existing public funding (approx. \$240,000)
26		
27	Year 6 and thereafter	0% of existing public funding

28 The Authority shall have no obligation to transfer any funds to the
Chaffee Zoo to the extent the City of Fresno fails to maintain its support of the
Chaffee Zoo as set forth in this schedule.

1 **Section 1.020. Transactions Tax Rate.**

2 For the privilege of selling tangible personal property at retail, a tax is
3 imposed upon all retailers in the incorporated and unincorporated territory of this
4 County at the rate of one-tenth of one percent (0.10%) of the gross receipts of
5 any retailer from the sale of all tangible personal property sold at retail in the
6 territory of this County on and after the operative date of this ordinance.

7 **Section 1.030. Place of Sale.**

8 For the purposes of this ordinance, all retail sales are consummated at the
9 place of business of the retailer unless the tangible personal property sold is
10 delivered by the retailer or his or her agent to an out-of-state destination or to a
11 common carrier for delivery to an out-of-state destination. The gross receipts
12 from such sales shall include delivery charges, when such charges are subject to
13 the state sales and use tax, despite the place to which delivery is made. In the
14 event a retailer has no permanent place of business in the State, or has more
15 than one place of business, the place or places at which the retail sales are
16 consummated shall be determined under rules and regulations to be prescribed
17 and adopted by the State Board of Equalization.

18 **Section 1.040. Use Tax Rate.**

19 An excise tax is imposed on the storage, use or other consumption in this
20 County of tangible personal property purchased from any retailer on and after the
21 operative date of this ordinance for storage, use or other consumption in the
22 territory of this County at the rate of one-tenth of one percent (0.10%) of the
23 sales price of the property. The sales price shall include delivery charges when
24 such charges are subject to state sales or use tax despite the place to which
25 delivery is made.
26
27
28

1 **Section 1.050. Adoption of Provisions of State Law.**

2 Except as otherwise provided in this ordinance and to the extent that they
3 are not inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue
4 and Taxation Code, all of the provisions of Part 1 (commencing with Section
5 6001) of Division 2 of the Revenue and Taxation Code are adopted and
6 incorporated by this reference.

7 **Section 1.060. Limitations on Adoption of State Law and**
8 **Collection of Use Taxes.**

9 a. In adopting the provisions of Part 1 of Division 2 of the Revenue
10 and Taxation Code, wherever the State of California is named or referred to as
11 the taxing agency, the name of this Authority will be substituted for it. However,
12 the substitution will not be made when:

13 1. The word "State" is used as part of the title of the State
14 Controller, State Treasurer, State Board of Control, State Board of Equalization,
15 State Treasury, or the Constitution of the State of California;

16 2. The result of that substitution would require action to be
17 taken by or against this Authority or any agency, officer, or employee of it rather
18 than by or against the State Board of Equalization, in performing the functions
19 incident to the administration or operation of this ordinance;

20 3. In those sections, including, but not necessarily limited to,
21 sections referring to the exterior boundaries of the State of California, where the
22 substitution would be to:
23

24 (a) Provide an exemption from this tax with respect to
25 certain sales, storage, use or other consumption of tangible personal property
26 which would not otherwise be exempt from this tax while such sales, storage, use
27

1 or other consumption remain subject to tax by the State under the provisions of
2 Part 1 of Division 2 of the Revenue and Taxation Code.

3 (b) Impose this tax with respect to certain sales, storage,
4 use or other consumption of tangible personal property which would not be
5 subject to tax by the State under the provisions of that Code.

6 4. In Sections 6701, 6702 (except in its last sentence), 6711,
7 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

8 b. The word "County" shall be substituted for the word "State" in the
9 phrase "retailer engaged in business in this State" in Section 6203 and in the
10 definition of that phrase in Section 6203.

11 **Section 1.070. Permit Not Required.**

12 If a seller's permit has been issued to a retailer under Section 6067 of the
13 Revenue and Taxation Code, this ordinance shall not require an additional
14 transactor's permit.

15 **Section 1.080. Exemption and Exclusions.**

16 a. There shall be excluded from the measure of the transactions tax
17 and the use tax the amount of any sales tax or use tax imposed by the State of
18 California or by any city, city and county, or county pursuant to the Bradley-Burns
19 Uniform Local Sales and Use Tax Law (Part 1.5 of Division 2 of the Revenue and
20 Taxation Code) or the amount of any State administered transactions or use tax.

21 b. There are exempted from the computation of the amount of the
22 transactions tax the gross receipts from:

23 1. Sales of tangible personal property other than fuel or
24 petroleum products to operators of aircraft to be used or consumed principally
25 outside the County in which the sale is made and directly and exclusively in the
26
27
28

1 use of such aircraft as common carriers of persons or property under the
2 authority of the laws of California, the United States, or any foreign government;

3 2. Sales of property to be used outside this County which is
4 shipped to a point outside this County, pursuant to the contract of sale, by
5 delivery to such a point by the retailer or his or her agent, or by delivery by the
6 retailer to a carrier for shipment to a consignee at such point. For the purposes
7 of this subsection, delivery to a point outside this County will be satisfied:

8 (a) With respect to vehicles (other than commercial
9 vehicles) subject to registration under Chapter 1 (commencing with Section
10 4000) of Division 3 of the Vehicle Code, aircraft licensed according to Section
11 21411 of the Public Utilities Code, and undocumented vessels registered under
12 Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code,
13 by registration to an out-of-County address and by a declaration under penalty of
14 perjury, signed by the buyer, stating that such an address is, in fact, his or her
15 principal place of residence; and
16

17 (b) With respect to commercial vehicles, by registration to
18 a place of business out-of-County and declaration under penalty of perjury,
19 signed by the buyer, stating that the vehicle will be operated from that address.
20

21 3. The sale of tangible personal property if the seller is
22 obligated to furnish the property for a fixed price under a contract entered into
23 before the operative date of this ordinance.

24 4. A lease of tangible personal property which is a continuing
25 sale of such property, for any period of time for which the lessor is obligated to
26 lease the property for an amount fixed by the lease before the operative date of
27 this ordinance.
28

1 5. For the purposes of subsections 3 and 4 of this section, the
2 sale or lease of tangible personal property will be deemed not to be obligated
3 under a contract or lease for any period of time for which any party to the
4 contract or lease has the unconditional right to terminate the contract or lease
5 upon notice, whether or not such right is exercised.

6 c. There are exempted from the use tax imposed by this ordinance,
7 the storage, use or other consumption in this County of tangible personal
8 property:

9 1. The gross receipts from the sale of which have been subject
10 to a tax under any state administered transactions and use tax ordinance;

11 2. Other than fuel or petroleum products purchased by
12 operators of aircraft and used or consumed by such operators directly and
13 exclusively in the use of such aircraft as common carriers of persons or property
14 for hire or compensation under a certificate of public convenience and necessity
15 issued under the laws of California, the United States or any foreign government.

16 This exemption is in addition to the exemptions provided in sections 6366 and
17 6366.1 of the Revenue and Taxation Code;

18 3. If the purchaser is obligated to purchase the property for a
19 fixed price under a contract entered into before the operative date of this
20 ordinance;

21 4. If the possession of, or the exercise of any right or power
22 over, the tangible personal property arises under a lease which is a continuing
23 purchase of such property for any period of time for which the lessee is obligated
24 to lease the property for an amount fixed by a lease entered into before the
25 operative date of this ordinance;

1 5. For the purposes of subsections 3 and 4 of this section,
2 storage, use, or other consumption, or possession of, or exercise of any right or
3 power over, tangible personal property will be deemed not to be obligated under
4 a contract or lease for any period of time for which any party to the contract or
5 lease has the unconditional right to terminate the contract or lease upon notice,
6 whether or not such right is exercised;

7 6. Except as provided in subsection 7, a retailer engaged in
8 business in this County will not be required to collect use tax from the purchaser
9 of tangible personal property, unless the retailer ships or delivers the property
10 into this County or participates within this County in making the sale of the
11 property, including, but not limited to, soliciting or receiving the order, either
12 directly or indirectly, at a place of business of the retailer in this County or
13 through any representative, agent, canvasser, solicitor, subsidiary, or person in
14 this County under the authority of the retailer;

15 7. "A retailer engaged in business in this County" shall also
16 include any retailer of the following: vehicles subject to registration under
17 Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code,
18 aircraft licensed according to Section 21411 of the Public Utilities Code; or
19 undocumented vessels registered under Chapter 2 of Division 3.5 (commencing
20 with Section 9840) of the Vehicle Code. Such a retailer shall be required to
21 collect use tax from any purchaser who registers or licenses the vehicle, vessel
22 or aircraft at an address in this County.

23 d. Any person subject to use tax under this ordinance may credit
24 against that tax any transactions tax or reimbursement for transactions tax paid
25 to a district imposing, or a retailer liable for a transactions tax under Part 1.6 of
26 Division 2 of the Revenue and Taxation Code with respect to the sale to the
27
28

1 person of the property, the storage, use or other consumption of which is subject
2 to the use tax.

3 **Section 1.090. Amendments to the Revenue and Taxation Code.**

4 All amendments to Part 1 of Division 2 of the Revenue and Taxation
5 Code, effective after the date of adoption of this ordinance and relating to sales
6 and use taxes, will automatically become a part of this ordinance to the extent
7 consistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, but no
8 such amendment will operate to affect the rate of tax imposed by this ordinance.
9

10 **Section 1.100. Enjoining Collection Forbidden.**

11 No injunction or writ of mandate or other legal or equitable process will
12 issue in any suit, action or proceeding in any court against the State of California
13 or this Authority, or against any officer of the State of California or this Authority,
14 to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2
15 of the Revenue and Taxation Code, of any tax or any amount of tax required to
16 be collected.

17 **Section 1.110. Use of the Taxes.**

18 The proceeds of any and all transactions and use taxes collected under
19 this ordinance shall be used exclusively for zoos, zoological facilities, and related
20 zoological purposes within this County.
21

22 **SECTION 4. AUTHORITY EXPENDITURE PLAN**

23 **Section 4.010. Purpose of Ordinance**

24 The purpose of this ordinance is to allow the Authority to provide the services
25 and programs authorized hereunder pursuant to Revenue and Taxation Code section
26 7286.43.

27 **Section 4.020. Definitions**

28 The following terms and phrases shall be defined in the manner listed below:

1 a. "Capital facilities" shall mean facilities or animals with a useful life of five
2 years or more.

3 b. "Chaffee Zoo" shall mean the Chaffee Zoo in the City of Fresno, or its
4 successor.

5 c. "Administrative Costs" shall mean actual expenses incurred by the
6 Authority. Apportionment of any overhead and/or accounting of actual costs shall be
7 accomplished in accordance with the standards and procedures found in the United
8 States Office of Management and Budget Circular, OMB A-87, as amended.
9

10 **Section 4.030. Imposition and Distribution Formula for Special Fresno
County Zoo Transaction and Use Tax**

11 Under the authority granted pursuant to this ordinance as approved by the
12 voters, a one-tenth of one percent (0.10%) transaction and use tax is imposed for the
13 special purposes and programs specified hereunder. The proceeds of the special tax
14 shall be distributed in the following manner:
15

16 a. The proceeds of the special tax shall first be applied to reimburse Fresno
17 County for the costs of the election held pursuant to Revenue and Taxation Code
18 section 7286.43. The proceeds of the tax shall also be available to pay the costs of any
19 election for a successor tax.

20 b. Up to 2% of the annual special tax proceeds shall be allocated for
21 administrative costs as defined herein. This administrative allocation shall be made
22 based upon budgeted estimates of administrative costs prior to any distribution made in
23 any fiscal year.

24 c. The remaining annual special tax proceeds shall be distributed to the
25 Chaffee Zoo; provided, however, that the Authority shall have no obligation to distribute
26 funds to the Zoo unless the Authority is satisfied that the Zoo has appropriately spent
27
28

1 the funds already distributed, and provided further that the City of Fresno has
2 maintained its financial support of the Zoo as set forth in this ordinance.

3 **Section 4.040. Tax Revenue Distribution - Standards**

4 The Authority shall require the Chaffee Zoo to agree to spend the special tax
5 revenues as follows:

6 a. A minimum of two-thirds of the funds distributed shall be for capital
7 improvement projects in the Chaffee Zoo approved by the Authority Board based upon
8 preliminary plans submitted by the Chaffee Zoo.

9 b. Up to one-third of the funds distributed may be available for operations
10 and maintenance of the Chaffee Zoo.

11 c. Nothing herein shall prevent the Authority from authorizing multi-year
12 capital projects and/or programs within the time period established for this special tax,
13 or from pledging future annual special tax proceeds as security for loans to fund capital
14 projects.

15 d. The Chaffee Zoo shall provide the Authority with an annual use statement
16 demonstrating the use of said funds authorized by the Authority. The statement shall be
17 made in a form acceptable to the Authority and shall be approved by a certified public
18 accountant prior to its submission to the Authority. The Authority may request status
19 reports on the progress of projects and programs to be submitted to the Authority for
20 public discussion at any Authority meeting from time to time.

21 **Section 4.050. Ineligible Activities**

22 No funds received by the Chaffee Zoo shall be expended for the following
23 ineligible activities:

24 a. Activities normally funded by a city or county through state, federal and/or
25 local revenues such as animal control, health care, criminal justice programs, and social
26 service programs.
27
28

1 b. Programs not open and available on an equal basis to all residents of
2 Fresno County.

3 c. Programs which promote religious or sectarian purposes.

4 d. Scholarships, grants or other payments to individuals for educational
5 purposes.

6 e. Except as herein allowed, programs of local, state or federal governments
7 or their subsidiaries.

8 f. Out-of-state travel expense.

9 g. Programs or policies that discriminate against any individual or group on
10 the basis of race, sex, color, ethnicity, religious preference, or national origin in the
11 operation of facilities or in membership policies.

12
13 **SECTION 5. CONTRACTS WITH STATE BOARD OF EQUALIZATION**

14 The chair of the Authority Board is hereby authorized to sign on behalf of the
15 Board any contracts with the State Board of Equalization to prepare to administer, to
16 administer, or otherwise to implement the tax imposed pursuant to this ordinance,
17 without further authorization by the Board.

18
19 **SECTION 6. SEVERABILITY AND CONSTRUCTION**

20 If any provision of this ordinance, or part thereof, is for any reason held to be
21 invalid or unconstitutional, the remaining sections shall not be affected, but shall remain
22 in full force and effect, and to this end the provisions of this ordinance are severable.
23 The provisions of this ordinance shall be liberally construed to effectuate its main
24 purpose of providing funding to programs and services that support zoos, zoological
25 facilities, and related zoological purposes within Fresno County.

1 **SECTION 6. SUNSET CLAUSE**

2 The transactions and use special tax is imposed hereunder at a rate of one-tenth
3 of one percent (0.10 %) for the period of ten (10) years. Any surplus remaining at the
4 end of the ten-year period shall be utilized in the manner specified hereunder until the
5 funds are fully utilized.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

G:\Support\ofaz\Zoo Tax\Chaffee Zoo only\Final Ordinance.doc

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


THE FOREGOING was PASSED and ADOPTED by the Fresno County Board of Supervisors this 27th day of July 2004, by the following vote, to-wit

AYES: Supervisors Larson, Arambula, Case, Waterston, Anderson
NOES: None
ABSENT: None

Susan B. Anderson

CHAIRMAN, Board of Supervisors

ATTEST
BERNICE E SEIDEL, Clerk
Board of Supervisors

By 

Deputy Clerk

Agenda Item 34
Ordinance 04-014