

**RESOLUTION NO. 22-143**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, CALLING FOR THE PLACEMENT OF A SPECIAL TAX MEASURE ON THE BALLOT AT THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF A PROPOSED ORDINANCE ADDING ARTICLE XIII TO CHAPTER 50 (TAXATION) OF THE POMONA MUNICIPAL CODE TO ESTABLISH A SPECIAL PARCEL TAX UPON INDUSTRIAL PROPERTY WITHIN THE CITY OF POMONA, TO FUND LOCAL STREET, ROAD, SIDEWALK AND RIGHT OF WAY MAINTENANCE AND IMPROVEMENTS.**

**WHEREAS**, industrial uses occupy approximately 8% of the City, however they have damaging impacts on City streets and infrastructure greater than the percentage of territory they occupy; and

**WHEREAS**, an industrial parcel tax is one mechanism that may raise funds to offset these impacts and create a revenue source to improve local road and street maintenance and implement right-of-way improvements; and

**WHEREAS**, the City Council desires to submit to the voters a \$0.15 per gross square foot special tax on taxable parcels within the City that are either zoned by the City of Pomona as industrial, have an industrial use code assigned to them by the Los Angeles County Assessor, or both , to provide funding for the capital improvement, operation, maintenance, repair and/or restoration of Pomona public streets, roadways, sidewalks, roadway lighting, traffic signals and implementation of Complete Streets plans to meet anticipated future demands for such services; and

**WHEREAS**, the parcel tax will be a special tax the proceeds of which are to be deposited into a special City account, created and maintained by the City, and used only for the specific purposes identified above; and

**WHEREAS**, pursuant to California Constitution, Articles XIII A §4, XIII C §2(d), XIII D, §3(a), and California Government Code sections 50077, 53722, and 53724, the City may not impose any new, or extend or increase any existing special parcel tax unless and until that tax is submitted to the electorate and approved by an affirmative vote of two-thirds of the qualified electors voting in the election; and

**WHEREAS**, pursuant to California Elections Code §9222, the City Council has authority to place measures on the ballot to be considered at a Municipal Election; and

**WHEREAS**, pursuant to Proposition 62 (California Government Code §53724(c) and (d)), a local tax election may be consolidated with a statewide primary election, a statewide general election, or a regularly scheduled local election at which all of the

electors of the local government are entitled to vote, or held on any other election date permitted by law; and

**WHEREAS**, the Statewide General Election for Governor of the State of California and for other Federal, State and local offices, and the City's General Municipal Election are all scheduled for November 8, 2022; and

**WHEREAS**, the ballot measure and the terms of approval, and collection and use of the special parcel tax are described and provided for in the ballot measure/ordinance to be considered by the qualified voters and in accordance with all applicable laws; and

**WHEREAS**, on August 1, 2022, the City Council held a public hearing after due notice regarding calling for an election on a ballot measure/ordinance approving a new special parcel tax; and

**WHEREAS**, if approved, the special parcel tax will be established starting on July 1, 2023 and may be imposed each year thereafter until ended by voters; and

**WHEREAS**, the Measure and the terms of approval, and the collection and use of the revenues of the special parcel tax are described and provided for in the ordinance to be considered by the qualified voters, attached hereto as Exhibit "A" (the "Measure") and by this reference made an operative part hereof, and in accordance with all applicable laws.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

SECTION 1. Findings. The City Council finds that all of the preceding recitals are true and correct and are hereby incorporated and adopted as findings and determinations by the City Council as if fully set forth herein.

SECTION 2. Submission of Measure. Pursuant to California Constitution, Articles XIII A §4, XIII C §2(d), XIII D, §3(a), California Government Code §§ 50077, 53722, and 53724, California Elections Code §9222 and any other applicable requirements of the laws of the State of California relating to charter cities, the City Council, **by a majority vote**, hereby orders the following proposed Measure/ordinance to be submitted to the voters of the City at the General Municipal Election to be held on Tuesday, November 8, 2022.

SECTION 3. The ballot question for the Measure shall be presented and printed upon the ballot submitted to the voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the City General Municipal Election to be held on Tuesday, November 8, 2022, in addition to any other matters required by law, there shall be printed substantially the following:

<p>“Shall the City of Pomona adopt the measure enacting a \$0.15 per gross square foot special tax on industrial parcels located within the City, subject to annual CPI adjustment, generating approximately \$14,000,000 annually in dedicated revenue that may be used solely for the capital improvement, operation, maintenance, repair and/or restoration of Pomona public streets, roadways, sidewalks, roadway lighting, traffic signals or other right of way improvements that implement a Complete Streets plan, until ended by voters?”</p>	<p>YES</p>
	<p>NO</p>

**SECTION 4.** Conduct of Election. The City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

**SECTION 5.** Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

**SECTION 6.** Impartial Analysis. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Measure as set forth herein to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk not later than the deadline for primary arguments. The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, or in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **“The above statement is an impartial analysis of Ordinance or Measure “\_\_\_”. If you desire a copy of the ordinance or measure, please call the election official’s office at (909) 620-2341 and a copy will be mailed at no cost to you.”**

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

**SECTION 8.** Placement on the Ballot. The full text of the Measure shall not be printed in the voter information guide, and a statement shall be printed in the ballot pursuant

to Elections Code §9223 advising voters that they may obtain a copy of this Resolution and the Measure, at no cost, upon request made to the City Clerk.

SECTION 9. Filing with County. The City Clerk shall, not later than the 88th day prior to the General Municipal Election to be held on Tuesday, November 8, 2022, file with the Board of Supervisors and the County Clerk – Registrar of Voters of the County of Los Angeles, State of California, a certified copy of this Resolution.

SECTION 10. Public Examination. Pursuant to California Elections Code Section 9295, this measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The Clerk shall post notice in the Clerk's office of the specific dates that the examination period will run.

**PASSED, APPROVED and ADOPTED** this 1<sup>st</sup> day of August, 2022.

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Tim Sandoval, Mayor

ATTEST:

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Rosalia Butler, City Clerk

APPROVED AS TO FORM:

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Sonia Carvalho, City Attorney  
Best Best & Krieger

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss.  
CITY OF POMONA )

**I HEREBY CERTIFY** that the foregoing Resolution No. 22-143 was duly adopted by the City Council of the City of Pomona at a regular meeting thereof, held on the 1<sup>st</sup> day of August, 2022, by the following vote of Council:

AYES: COUNCILMEMBERS:  
NOES: COUNCILMEMBERS:  
ABSENT: COUNCILMEMBERS:  
ABSTAIN: COUNCILMEMBERS:

City Clerk

Exhibit “A”

ORDINANCE NO. \_\_\_\_\_

MEASURE “\_\_\_\_\_”

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF POMONA, CALIFORNIA, ADDING ARTICLE XIII TO CHAPTER 50 (TAXATION) OF THE POMONA MUNICIPAL CODE TO ESTABLISH A SPECIAL PARCEL TAX UPON INDUSTRIAL PROPERTY WITHIN THE CITY OF POMONA, TO FUND STREET, ROAD, SIDEWALK AND RIGHT OF WAY MAINTENANCE AND IMPROVEMENTS.**

**THE PEOPLE OF THE CITY OF POMONA, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. Article XIII is hereby added to Chapter 50 (Taxation) of the Pomona Municipal Code to read as follows:

**“CHAPTER 50 - TAXATION.**

**ARTICLE XIII – SPECIAL PARCEL TAX ON INDUSTRIAL PROPERTY**

**Sec. 50-701 – Special parcel tax on industrial property - Established.**

A. Pursuant to authority of Article XIIC of the California Constitution and Government Code Sections 50075 et seq., there is hereby levied and assessed a special tax by the City of Pomona on each parcel of industrial property located within the City’s limits, as hereinafter defined. The special tax shall be levied and assessed each year, commencing in the year 2023 and continuing until modification or repeal in a manner provided by law.

B. As used in this article, the following terms have the meanings or limitations indicated:

1. “Assessor’s parcel map” means an official map of the assessor of the County of Los Angeles designating parcels by assessor’s parcel number.
2. “Maximum special tax” means the maximum special tax, determined in accordance with this section, that can be levied by the City of Pomona in any fiscal year on a parcel of industrial property, as hereinafter defined.
3. “Parcel” means any lot or parcel which lies wholly or partially within the boundaries of the City of Pomona, shown on the current applicable assessor’s parcel map with an assigned assessor’s parcel number.

4. “Parcel of Industrial Property” means a parcel that either:

a. has been zoned by the City of Pomona as any of the following (i) Commercial Industrial (C-IND), (ii) General Industrial (M2), (iii) Light Industrial (M1), (iv) Special Industrial (M) or (v) Mission 71 Specific Plan; or

b. notwithstanding its zoning classification, has been assigned an “industrial” use code classification by the Office of the Los Angeles County Assessor.

C. The maximum special tax commencing in fiscal year 2023, shall be \$0.15 per gross square foot of land area of a taxable parcel of industrial property. This maximum special tax shall apply to both vacant and improved parcels of industrial property, unless otherwise exempted by this article.

D. Adjustment of Parcel Tax Rate.

1. The tax rate established by subsection (C) is a maximum rate, and the City Council, by resolution or ordinance, may levy a tax at any rate or amount that is equal to or less than the maximum rate, and may later restore the rate up to the maximum rate provided herein without another vote of the People.

2. The maximum rate established by subsection (C) shall be revised annually based upon changes in the Consumer Price Index for All Urban Consumers (CPI-U), All Items Index, Los Angeles-Anaheim—Riverside Area (1982-84=100) (hereinafter “CPI”) published by the United States Department of Labor, Bureau of Labor Statistics. The resulting adjusted maximum tax rate shall then be the maximum tax rate for the fiscal year commencing the next July 1st. There shall be no reduction in rates by operation of this provision. If, in the future, said CPI shall be changed so that the base year differs from that used as of the effective date of this article, it shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. The Finance Director shall submit a written report to the City Council setting forth the adjustments to the maximum tax rate required by this subsection, which the City Council shall approve by resolution.

3. Periodically, the Finance Director may submit to the City Council a recommendation for revising the rate to be employed in levying the tax, provided, that the recommended tax rate shall not exceed the maximum tax rate authorized by this article.

[THE STAFF REPORT PROVIDES FOR THE OPTION OF CAPPING THE TAX AT \$3,000 for parcels that are less than an acre—if the Council decides to do so the following should be added:]

4. For parcels that are less than one acre the Tax shall be capped at the maximum rate of \$3,000.

E. The City Council is authorized to determine for each fiscal year, by ordinance or resolution, the special tax to be imposed on each parcel subject to this article. The special tax shall not exceed the maximum special tax rate established in this section, but it may be imposed at a lower rate. The ordinance or resolution shall also list, by assessor's parcel number, all parcels subject to the tax. The ordinance or resolution shall constitute the official record of the assessment of the special tax, and a copy thereof, together with any other pertinent data, shall be transmitted to the appropriate County or City officials to facilitate collection of the special tax.

F. The special tax shall be due in two equal installments in accordance with the collection procedures of the Los Angeles County Treasurer and Tax Collector, with the first installment due November 1, and the second installment due the next succeeding February 1. The owner of the parcel, at the time set forth in California Revenue and Taxation Code Sections 405 and 2192 for each fiscal year, shall have a personal obligation to the City of Pomona until the tax is paid.

G. The Finance Director may prepare a questionnaire to be served on the owner of a parcel subject to the tax imposed by this article. The questionnaire may request information which would be useful to the Finance Director in the enforcement or administration of this article. The failure by an owner to provide the information requested within 30 days of receipt of the request, or the act of an owner in knowingly providing false information, shall be a misdemeanor.

H. In determining the gross square footage of a parcel, the Finance Director may use County Auditor/Assessor's-Tax Collector's records, City planning, engineering, building and other records, questionnaires and any other records the Finance Director deems reliable.

I. The Finance Director or designee is authorized to issue administrative regulations consistent with this article for the implementation and interpretation of this article. J. The special parcel tax imposed by this article shall be collected in the same manner as *ad valorem* property taxes are collected and shall be subject to the same procedure, sale and lien priority in case of delinquency as is provided by *ad valorem* taxes (which such procedures include the exercise of all rights and remedies permitted by law to make corrections, including, but not limited to, the issuance of amended or supplemental tax bills), as such procedure may be modified by law or by the Board of Supervisors of the County of Los Angeles from time to time; provided that the City Council shall have authority to provide, by ordinance or resolution, for a different method of collection of said taxes as it shall determine to be in the best interest of the City of Pomona. The Board of Supervisors, the Auditor-Controller, the Treasurer-Tax Collector and the Assessor of the County of Los Angeles shall perform the duties of assessment of property for the special tax, the correction of any assessment, the collection, payment, and enforcement of the special tax, including delinquent taxes, and the redemption of property from sale or other penalty for nonpayment of the special tax.



K. The special tax imposed by this section shall be a tax upon the gross floor area of each taxable parcel of industrial property, and the tax shall not be measured by the value of the property or the size or value of improvements located thereon.

L. Nothing in this article shall be construed as requiring the payment of a tax or the doing of an act which would constitute an unlawful burden upon or an unlawful interference with interstate or foreign commerce or which would be in violation of the Constitution or the laws of the United States or the Constitution or the laws of the State of California.

M. The penalties provided for in this Code shall apply to the tax imposed by this article; provided, that should said tax be collected by the County of Los Angeles, the delinquency date shall be the same date *ad valorem* property taxes become delinquent.

#### **50-702 – Specific Purpose of Special Parcel Tax Proceeds.**

A. The proceeds of the special parcel tax shall only be used for the specific purpose of funding the City's costs of improving, maintaining and operating public streets, roads and sidewalks, as well as the costs of administering the special parcel tax, including, but not limited to, the costs of the election, and the costs of tax collection, the costs of issuing bonds, contracts or debt instruments secured by the proceeds from this tax, to the extent permitted by law, and for no other purposes.

B. For the purposes of this article, the "City's costs of improving, maintaining and operating public streets, roads and sidewalks" as set forth in subsection (A) above include, but are not limited to, the following: All costs of capital improvement, operation, maintenance, repair and/or restoration of Pomona public streets, roadways, sidewalks, roadway lighting, traffic signals or any other public right-of-way improvements that implement a City-adopted Complete Streets plan; including the salaries, benefits, training, and all other personnel costs for City employees dedicated to the purposes above, the cost of contracting with providers of architectural, engineering, design, demolition, operation, construction, repair, restoration, maintenance or construction management services dedicated to the purposes above, whether through a duly bid public contract, request for proposal process, or other lawful procedure, as well as the costs of acquiring or leasing, operating, and maintaining real property, vehicles, equipment and apparatus used for the purposes above.

**50-703 – Special Account.** The proceeds of the special parcel tax shall be deposited in a special account, created and maintained by the City, and used only for the specific purpose identified in Section 50-702 of this article.

**50-704 – Accountability Measures.** The Finance Director shall cause a report (the "Report") to be prepared by an independent auditor and to be filed with the City Council no later than June 30 of each year. The Report shall state: (a) a description of each parcel of industrial property subject to the special parcel tax, (b) the amount of the special parcel

tax for each such parcel for each fiscal year, (c) the basis and schedule for the special parcel tax authorized pursuant to this article, (d) the amount of special parcel tax proceeds collected and expended in such year; and (e) the status of any projects or description of any programs funded from proceeds of the special parcel tax. The Report may relate to the calendar year, fiscal year, or other appropriate annual period, as the Finance Director shall determine, and may be incorporated into or filed with the annual budget, audit, or other appropriate routine report to the City Council. For the purposes of this Ordinance, “fiscal year” means the City’s fiscal year which begins on July 1 and ends on June 30 of each year.

**50-705 – Application of Special Parcel Tax - Exemptions.** The special parcel tax shall be assessed to the owner of each taxable parcel of industrial property within the City, unless the owner is by law exempt from taxation as herein provided. The special parcel tax shall not apply to:

A. any person, entity, parcel, or property as to whom or which it is beyond the power of the City to impose the parcel tax herein provided; and

B. any parcel of industrial property owned by the City of Pomona or by any other Federal, State or local public agency; and

C. any parcel of industrial property that is being used as a legally permitted or legal non-conforming single-family or multiple-family residential use, as provided in the City’s Zoning Code; and

D. The City Council, by resolution or ordinance, may create additional classifications of exempt parcels of industrial property, and may amend, suspend or repeal those exemptions, by later resolution or ordinance; provided that the exemptions set forth in subsections (A) through (C) may not be repealed or amended without another vote of the People.

**50-706 – No Injunction/Writ of Mandate.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this article of any tax or any amount of tax required to be collected and/or remitted.

**50-707 – Future Amendment to Cited Statute.**

A. Unless specifically provided otherwise, any reference to a state or federal statute in this article shall mean such statute as it may be amended from time to time; provided, that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would

result in a tax decrease. Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable. For any application or situation that would not require voter approval or would not result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent. To the extent that the City's authorization to collect or impose any tax imposed under this article is expanded or limited as a result of changes in state or federal law, no amendment or modification of this article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this article."

- B. If approved by the voters this Ordinance shall be codified in the City's Municipal Code and notwithstanding the fact that it is adopted by the voters the voters authorize the City Council to make amendments to this ordinance without further voter approval, except that this ordinance may not be repealed in its entirety without voter approval.

**SECTION 2. Effective Date.** Pursuant to California Constitution Article XIIC §(2)(d) and California Elections Code §9217, if two-thirds of the qualified voters voting in the election on Measure "\_\_\_\_" vote in favor of the adoption of such Measure, this ordinance shall be deemed valid and binding and shall be considered as adopted upon the date that the vote is declared by the City Council, and shall go into effect ten (10) days after that date.

**SECTION 3. Severability.** If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The People of the City of Pomona hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 4. Certification/Summary.** Following the City Clerk's certification that the citizens of Pomona have approved this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause the same to be entered in the book of original ordinances of said City; and shall cause the same, or a summary thereof, to be published as required by law.

**PASSED, APPROVED and ADOPTED** this 8<sup>th</sup> day of November, 2022.

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Tim Sandoval, Mayor

ATTEST:

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Rosalia Butler, City Clerk

APPROVED AS TO FORM:

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Sonia Carvalho, City Attorney  
Best Best & Krieger