

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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AN ORDINANCE PROVIDING FOR THE CONTINUATION OF THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY, THE EXTENSION OF THE ONE-HALF OF ONE PERCENT RETAIL TRANSACTIONS AND USE TAX, THE ISSUANCE OF LIMITED TAX BONDS AND FOR OTHER PURPOSES

The Board of Supervisors of the County of San Mateo, State of California,

ORDAINS as follows:

Article 1. General

SECTION 1. Title.

This ordinance shall be known as the "2004 San Mateo County Transportation Authority Ordinance." Such Authority shall be referred to as "Authority." This ordinance shall be applicable in the incorporated and unincorporated territory of the County of San Mateo, which shall be referred to herein as "County".

SECTION 2. Purpose:

Pursuant to Division 12.5 of the Public Utilities Code, San Mateo County Ordinance No. 03135, passed in 1988 and subsequently approved by the voters, created the San Mateo County Transportation Authority, imposed a one-half of one percent transactions and use tax for a period of twenty years, and authorized issuance of limited tax bonds to finance the transportation improvements set forth in the Transportation Expenditure Plan, and will expire at the end of 2008. This ordinance, if approved, would continue the San Mateo County Transportation Authority, authorize the Authority to extend the one-half of one percent retail transactions and use tax for an additional 25 years and authorize the Authority to issue limited tax bonds to finance the transportation improvements set forth in the 2004 Transportation Expenditure Plan, which has been approved by the Board of Supervisors and all of the Cities in the County. Hence, this ordinance is hereby adopted and should be interpreted so as to achieve the purposes set forth herein:

- a. to continue the San Mateo County Transportation Authority;
- b. to extend the one-half of one percent retail transactions and use tax for

25 years upon the expiration of the tax pursuant to Ordinance No. 03135, in accordance with the provisions of Part 1.6 (commencing with Revenue and Taxation Code section 7251) of Division 2 of the Revenue and Taxation Code and Public Utilities Code section 131100 et seq., which directs the County Board of Supervisors to adopt this tax ordinance for voter approval, exercising the taxing power granted to the San Mateo County Transportation Authority in Public Utilities Code Section 131102 on behalf of said Authority;

c. to adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation code;

d. 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 State Board of Equalization 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 State Board of Equalization in administering and collecting the California State Sales and Use Taxes;

e. to authorize administration of the retail transactions and use tax ordinance in a manner that will, to the degree possible, be consistent with the provisions of Part 1.6 of Division 2 of the 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 upon persons subject to taxation under the provisions of this ordinance;

f. to improve, construct, maintain, and operate certain transportation projects and facilities contained in the 2004 Transportation Expenditure Plan adopted by the Board of Supervisors of San Mateo County and all of the Cities in the County, which Plan is incorporated by this reference as though fully set forth herein, as that Plan may be amended from time to time pursuant to the Plan and applicable law;

g. to set a maximum term of twenty-five (25) years during which time this tax shall be imposed pursuant to the authority granted by section 131102(c) of the Public Utilities Code; and

h. to authorize the Authority to issue limited tax bonds, from time to time, to finance transportation projects in the 2004 Plan, provided that the maximum bonded indebtedness will not exceed the total amount of proceeds of this retail transactions and use tax, estimated to be \$1.5 Billion (2004 dollars).

SECTION 3. Continuance of Authority.

Upon voter approval of this Ordinance, the Authority will continue to serve as the administering agency of the tax; be composed of seven members as specified in the 2004 Transportation Expenditure Plan; have all of the powers set forth in Division 12.5 (commencing with section 131000) of the Public Utilities Code; have all of the powers set forth in the 2004 Transportation Expenditure Plan; and have all the powers incidental or necessary to imposing and collecting the tax and administering the tax proceeds and the 2004 Plan.

SECTION 4. Contract with State.

Prior to the operative date of the tax, the Authority shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this retail transactions and use tax; provided, that if the Authority shall not have contracted with the State Board of Equalization prior to the operative date of the tax, it shall nevertheless so contract and in such a case the operative date of the tax shall be the first day of the first calendar quarter following the execution of such a contract.

SECTION 5. Transactions and Use Tax Rate of One-Half of One Percent.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of this County at the rate of one-half of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this County on and after January 1, 2009. This tax shall be imposed for a maximum period of twenty-five (25) years beginning January 1, 2009 through December 31, 2034.

SECTION 6. 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 to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from 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 State Board of Equalization.

SECTION 7. Use Tax, Rate of One-Half of One Percent, and Term.

An excise tax is hereby imposed on the storage, use or other consumption in this County of tangible personal property purchased from any retailer on and after January 1, 2009 for storage, use or other consumption in this County at the rate of one-half of one percent 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. This tax shall be imposed for a maximum period of twenty-five (25) years beginning January 1, 1009 through December 31, 2034.

SECTION 8. Adoption of Provisions of State Law.

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

SECTION 9. Limitations on Adoption of State Law and Collection of Use Taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing agency, the name of the Authority shall be substituted therefore. The substitution, however, shall not be made when the word "State" is used as part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California; when the result of that substitution would require action to be taken by or against the Authority or any agency, officer or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance; 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 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 remains subject to tax by the state under the said provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or; Impose this 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 provisions of that code; and in sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code. The name of the "County" shall be substituted for the word "state" in the phrase "retailer engaged in business in this state" in section 6203 and in the definition of that phrase in section 6203.

SECTION 10. Permit Not Required.

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

SECTION 11. Exemptions, Exclusions and Credits.

- a. 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 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 gross receipts derived 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 this state, the United States, or any foreign government;

(2) 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 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-County address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his principal place of residence;

(ii) with respect to commercial vehicles by registration to a place of business out-of-county, and a declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address;

(3) 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; and

(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.

For the purposes of subsections (3) and (4), above, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract of lease for any period of time for which any party to the contract or lease has the unconditional

right to terminate the contract upon notice, whether or not such right is exercised.

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

(1) The gross receipts from the sale of which have 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 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 sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California;

(3) 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 ordinance; and

(4) 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 ordinance.

(5) For the purposes of subsections (3) and (4), above, storage, use or other consumption, or possession, 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 during 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.

(6) Except as provided in subparagraph (7), 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 authority of the retailer.

(7) "A retailer engaged in business in the County" shall also include any retailer of any of the following: 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, or

undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. 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.

d. Any person subject to use tax under this ordinance may credit against that tax any transactions or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transaction tax pursuant to Chapter 1.6 of Division 2 of the Revenue and Taxation Code 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.

SECTION 12. Proposition.

There shall be proposed to the voters of San Mateo County the following proposition:

Shall San Mateo County Ordinance No. _____ be approved to repair neighborhood streets; expand senior and paratransit services; improve Caltrain; construct bicycle/pedestrian paths; support the existing BART extension; assist water transport; enhance regional transit and shuttle connections; and reduce congestion by extending the current 1/2-cent sales/use tax for 25 years, enabling the County Transportation Authority to implement the County Transportation Expenditure Plan and issue limited tax bonds not exceeding tax proceeds, with annual audits and citizen participation?

SECTION 13. Authorization and Limitation on Issuance of Bonds.

The Authority is hereby authorized to issue limited tax bonds, from time to time, pursuant to the provisions of Public Utilities Code Sections 131109 et seq. and the 2004 Transportation Expenditure Plan provided that the maximum bonded indebtedness will not exceed the total amount of proceeds of this retail transactions and use tax, estimated to be \$1.5 Billion (2004 Dollars).

SECTION 14. Use of Proceeds.

The proceeds of the tax imposed by this ordinance shall be used in accordance with applicable law and solely for the projects and purposes set forth in the 2004 County Transportation Expenditure Plan, or as that Plan may be amended from time to time, and for the administration thereof.

SECTION 15. Amendments.

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

SECTION 16. 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 Authority, or against any officer of the state or the Authority, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, or any tax or any amount of tax required to be collected.

SECTION 17. Severability.

If any provision of this ordinance 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 circumstance shall not be affected thereby.

SECTION 18. Operative Date; Period of Tax Imposition.

This ordinance relates, in substantial part, to the levying and collecting of the Authority's retail transaction and use taxes and will become effective at the close of the polls on the day of election at which the Proposition in Section 12 is adopted by a two-thirds (2/3) majority vote of the electors voting on the Proposition, except that the tax imposed under this ordinance, which extends the tax imposed under Ordinance 03135, will become operative on January 1, 2009 or upon the first day of the calendar quarter following the execution of a contract with the State Board of Equalization pursuant to Section 4 hereof, whichever last occurs. The maximum period during which the tax will be imposed is the twenty-five (25) year period from January 1, 2009 through December 31, 2034.

PASSED AND ADOPTED by the _____,

State of California, on _____, by the following vote:

AYES:

NOES:

ABSENT:

Chairperson

Attest:

(Signature)

(Title)
