

ORDINANCE NO. 5

AN ORDINANCE OF THE SONOMA COUNTY TRANSPORTATION AUTHORITY
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION; ADOPTING AN EXPENDITURE PLAN APPROVED BY THE CITIES
OF SONOMA COUNTY AND THE COUNTY OF SONOMA; AUTHORIZING THE
ISSUANCE OF BONDS TO FINANCE PROJECTS LISTED IN THE EXPENDITURE PLAN;
AND SETTING AN ANNUAL APPROPRIATIONS LIMIT

BACKGROUND FINDINGS.

New transportation investment is needed in our community. Without it, we will experience more traffic, increased greenhouse gas emissions and poorly maintained streets that leads to time away from our family and friends, bad air quality, increased costs for car maintenance and impacts to our climate.

Go Sonoma, benefits everyone who lives and works in Sonoma County. Through a public process, we have developed a plan that shows how we will fix local streets, improve transportation corridors, increase bus transit service, and improve safety for cyclists, pedestrians and drivers. Without increasing the current tax rate, more than twice as much money will be dedicated to local roads, bus service and bike projects and cannot be taken away for any other purposes.

Sonoma became a self-help county in 2004 when it passed the Traffic Relief Act known as Measure M. In order to maintain our status as a self-help county and deliver critical transportation projects, we need Go Sonoma to be in place now so we can get projects ready and before we lose our standing. As a self-help county with a reliable revenue source the Sonoma County Transportation Authority (SCTA) leveraged other funding at a ratio of 5:1 to widen the Highway 101 corridor. With a secure local funding source the SCTA has been able to secure highly competitive State and federal funds that would not have been possible without a local commitment that gets projects shovel ready.

Go Sonoma Act will provide the local funding commitment to our Comprehensive Transportation Plan referred to as Moving Forward 2050, supporting our transportation system goals:

1. Connected and Reliable
2. Safe and Well Maintained
3. Community Oriented and Place-Based
4. Zero Emissions

Section 1. TITLE. This ordinance shall be known as the Go Sonoma Act. The Sonoma County Transportation Authority hereinafter shall be called "Authority." This ordinance shall be applicable in the incorporated and unincorporated territory of the County of Sonoma, which shall be referred to herein as "County."

Section 2. EFFECTIVE AND OPERATIVE DATES. This ordinance shall be effective upon the close of polls on November 3, 2020, if the measure is approved by two-thirds of the electors voting on the measure at the election held that day. The imposition of the tax authorized by this ordinance shall be operative on April 1, 2025, provided that the Authority gives at least 110 days notice to the California Department of Tax and Fee Administration ("Operative Date").

There shall be no coincidental assessment of the existing Measure M retail transactions and use tax approved by the voters on November 2, 2004, which expires on March 31, 2025, and the retail transactions and use tax to be imposed pursuant to this ordinance.

Section 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To establish a dedicated local funding source to fix roads, fill potholes, improve traffic, get people out of their cars and fight climate change set out in detail in the Expenditure Plan.

B. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 180050 et.seq. of the Public Utilities Code which authorizes the Authority to adopt this tax ordinance which shall be operative if a two-thirds majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

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 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.

E. 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 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 adopt an expenditure plan setting forth the purposes for the tax pursuant to this ordinance may be used.

G. To authorize the issuance of bonds to finance projects included in the expenditure plan adopted as part of this ordinance.

Section 4. CONTRACT WITH STATE. Prior to the operative date, the Authority 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 Authority 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 the execution of such a contract.

Section 5. TRANSACTIONS TAX RATE. 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 the County at the rate of ¼ of 1 percent (0.25%) of the gross receipts 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 ordinance.

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 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 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 California Department of Tax and Fee Administration.

Section 7. 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 ordinance for storage, use or other consumption in said territory at the rate of ¼ of 1 percent (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.

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:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this Authority shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this Authority 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 Ordinance.

3. 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:

a. 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;

b. 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 provision of that code.

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

B. The word "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.

1. "A retailer engaged in business in the County" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

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 AND EXCLUSIONS.

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 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 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:

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-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

b. 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.

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 subparagraphs (3) and (4) 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.

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.

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 subparagraphs (3) and (4) 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.

6. Except as provided in subparagraph (7), 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.

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

Section 12. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales 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 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 13. 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, of any tax or any amount of tax required to be collected.

Section 14. APPROPRIATIONS LIMIT. The appropriations limit for the Authority for fiscal year 2019-2020 shall be \$52,743,652, unless that amount should be amended pursuant to applicable law.

Section 15. ADOPTION OF EXPENDITURE PLAN AND ACCOUNTABILITY FOR EXPENDITURE OF PROCEEDS OF THE TAX. The Board hereby adopts the Expenditure Plan attached hereto and incorporated into this ordinance by reference. Proceeds of the tax imposed by this ordinance shall be placed into a special account, and shall be spent only to implement the projects set forth in the Expenditure Plan, including planning, engineering, environmental review, and construction of such projects.

Section 16. ESTABLISHMENT OF BONDING AUTHORITY. The Authority is authorized to issue bonds for the purposes of advancing the commencement of or expediting the delivery of

transportation programs or projects set forth in the Expenditure Plan. The Authority may issue limited tax bonds, from time to time, to finance any program or project in the Plan. The maximum bonded indebtedness, including issuance costs, interest, reserve requirements, and insurance, shall not exceed the total amount of the proceeds anticipated to be collected by imposition of this transactions and use tax. All costs associated with the issuance of such bonds shall be accounted for within the program category in which the bond proceeds are used. The bonds shall be payable solely from the proceeds of the retail transactions and use tax, and may be issued any time before expiration of the tax.

Section 17. ANNUAL REPORT. The Chief Fiscal Officer of the Authority shall annually cause to be prepared a report setting forth (a) the amount of funds collected and expended; and (b) the status of any projects authorized to be funded in the Expenditure Plan adopted by the Authority in Section 15 herein.

Section 18. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). Pursuant to the State CEQA Guidelines Section 15378(b)(4), adoption of this retail transactions and use tax ordinance and Expenditure Plan is not a “project” subject to the requirements of CEQA. Prior to the commencement of any project included in the Expenditure Plan, any necessary environmental review required by CEQA shall be completed. Estimated costs in the Expenditure Plan include the cost of such environmental review.

Section 19. REQUEST TO CALL ELECTION. The Authority requests the Board of Supervisors to call an election for the approval of this ordinance, consolidated with the general election of November 3, 2020. The question to appear on the ballot shall read:

Without raising taxes, shall the Sonoma County Transportation Authority implement the Go Sonoma Act to repair potholes; reduce congestion; make biking and walking safer; expand local bus service; reduce greenhouse gas emissions; improve evacuation routes; and enhance transportation services for students and seniors by continuing, for 20 years, the current ¼-cent sales tax dedicated to transportation, providing approximately \$26 million annually?

Section 20. 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 circumstances shall not be affected thereby.

Section 21. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire twenty (20) years from the operative date of this ordinance.

PASSED AND ADOPTED by the Sonoma County Transportation Authority, in the County of Sonoma, in the State of California, on _____, by the following vote:

AYES:

NOES:

ABSENT:

Susan Gorin, Chairperson

Attest:

Suzanne Smith, Clerk of the Board