



CONTRA COSTA
transportation
authority

ORDINANCE 16-03

**AN ORDINANCE OF THE CONTRA COSTA TRANSPORTATION AUTHORITY
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

WHEREAS, Chapter 5 of Division 19 of the Public Utilities Code and Part 1.6 of Division 2 of the Revenue and Taxation Code authorize the Contra Costa Transportation Authority to impose a retail transactions and use tax in the incorporated and unincorporated territory of a county if the tax ordinance is adopted by a two-thirds vote of the Authority and imposition of the tax is approved by two-thirds of electors voting on the measure and a transportation expenditure plan is adopted; and

WHEREAS, Section 7291 of Revenue and Taxation Code, as amended by Assembly Bill 1665 (Reg. Sess. 2015-2016), authorizes the Contra Costa Transportation Authority to impose a transactions and use tax for the support of countywide transportation programs at a rate of no more than 0.5 percent that would, in combination with all taxes imposed pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code, exceed the limit established in Section 7251.1;

WHEREAS, the Authority, the Contra Costa County Board of Supervisors, and all of the city/town councils representing both a majority of the cities/towns in the county and a majority of the population residing in the incorporated areas of the county adopted a transportation expenditure plan in accordance with Public Utilities Code section 180206.

**NOW THEREFORE, THE CONTRA COSTA TRANSPORTATION AUTHORITY DOES ORDAIN AS
FOLLOWS:**

Section 1. TITLE. This ordinance shall be known as the 2016 Transactions and Use Tax Ordinance. The Contra Costa Transportation Authority hereinafter shall be called "Authority." This ordinance shall be applicable in the incorporated and unincorporated territory of the County of Contra Costa, which shall be referred to herein as "District."

Section 2. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

APPROVED BY THE
CONTRA COSTA
TRANSPORTATION AUTHORITY

DATE July 20, 2016
CERTIFIED BY
Jeanne Acker
Board Clerk

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 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 Chapter 5 of Division 19 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.

B. 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.

C. 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.

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 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.

E. Nothing in this ordinance is intended to modify, repeal, or alter ordinances previously adopted by the Authority. The provisions of this ordinance shall apply solely to the transactions and use tax adopted herein.

Section 4. CONTRACT WITH STATE. Prior to the operative date, the Authority shall contract with the State Board of Equalization 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 State Board of Equalization 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 District at the rate of an additional one-half of one percent until March 31, 2047, which tax shall be imposed, in part, concurrently with the existing one-half percent tax until the existing tax expires, 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 State Board of Equalization.

Section 7. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the District 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 an additional one-half of one percent until March 31, 2047, which tax shall be imposed, in part, concurrently with the existing one-half percent tax until the existing tax expires, 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, Victim Compensation and Government Claims Board, State Board of Equalization, 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 State Board of Equalization, 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 "District" 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 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 District which is shipped to a point outside the District, 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 District 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-District 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-District 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 District 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 District 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 District or participates within the District 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 district or through any representative, agent, canvasser, solicitor, subsidiary, or person in the District under the authority of the retailer.

7. "A retailer engaged in business in the District" 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 District.

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. BONDING AUTHORITY. This section incorporates by reference the provisions of Public Utilities Code sections 180200 ("Pay-as-you-go" financing) and 180250 through 180264. This ordinance authorizes the Authority to issue limited tax bonds to finance capital outlay expenditures as may be provided for in the adopted Plan, payable from the proceeds of the tax. In accordance with Public Utilities Code section 180250(b), the maximum bonded indebtedness which may be outstanding at any one time shall be an amount equal to the sum of the principal of, and interest on, the bonds, but not to exceed the estimated proceeds of the tax, as determined by the plan. The amount of bonds outstanding at any one time does not include the amount of bonds, refunding bonds, or bond anticipation notes for which funds necessary for the payment thereof have been set aside for that purpose in a trust or escrow account.

Section 13. ANNUAL APPROPRIATIONS LIMIT. Article XIII(B) of the California Constitution requires the establishment of an annual appropriations limit for certain governmental entities. The Authority for fiscal year 2016-2017 has been established as \$126,192,353. The appropriations limit shall be subject to adjustment as provided by law. All expenditures of the tax revenues imposed in this Ordinance are subject to the appropriations limit of the Authority.

Section 14. USE OF PROCEEDS. The proceeds of the transaction and use tax imposed by this ordinance shall be used solely for the projects and purposes set forth in the 2016 Transportation Expenditure Plan, as it may be amended from time to time, and for the administration thereof.

Section 15. 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 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, of any tax or any amount of tax required to be collected.

Section 17. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA"). The Authority finds that the approval of this Ordinance is not a "project" and, alternatively, is exempt from the California Environmental Quality Act ("CEQA"). The ordinance is intended to provide a funding mechanism for future projects and programs related to the Authority's provision of transportation services. The ordinance does not commit the Authority to any particular project, program, or capital improvement. Accordingly, the Authority hereby finds that, under State CEQA Guidelines section 15378(b)(4), adoption of this ordinance is not a project subject to the requirements of CEQA because the ordinance is merely "[t]he creation of [a] government funding mechanism[] or other fiscal activity which do[es] not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment." (Cal. Code Regs., tit. 14, § 15378, subd. (b)(4); see also *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* 179 Cal.App.4th 113, 123.) Further, because the ordinance does not authorize the construction of any projects that may result in any direct or indirect physical change in the environment and is subject to further discretionary approvals, including the pre-conditions found in Public Utilities Code section 180206(b), approving the ordinance is not an approval that "commits the agency to a definite course of action." (State CEQA Guidelines section

15352.) The timing, design, and approval of individual projects to be funded by the ordinance are dependent on funding availability, need, and CEQA review. Thus, the ordinance has no potential for causing a significant effect on the environment and is exempt from further review under CEQA. (State CEQA Guidelines section 15061(b)(3).)

Section 18. REQUEST FOR ELECTION. The Authority hereby requests the Contra Costa County Board of Supervisors to place this ordinance before the voters for approval on the November 8, 2016 ballot. The proposition to be placed on the ballot shall read substantially as follows:

To implement a Transportation Expenditure Plan to continue:

- Repairing potholes/fixing roads;
- Improving BART capacity/reliability;
- Improving Highways 680, 80, 24, and 4;
- Enhancing bus/transit including for seniors and people with disabilities;
- Increasing bicycle/pedestrian safety;
- Improving air quality;
- Reducing traffic;

shall voters adopt the ordinance augmenting the sales tax by ½%, raising ninety-seven million dollars for transportation improvements annually for 30 years with independent oversight, audits, and all money benefitting local residents?

Section 19. 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 20. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the District transactions and use taxes and shall take effect immediately or as soon thereafter as the tax may be lawfully imposed.

Section 21. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire on March 31, 2047.

PASSED AND ADOPTED by the Contra Costa Transportation Authority Board of Directors in Walnut Creek, State of California, on July 20, 2016, by the following vote:

AYES: Chair Hudson, Vice Chair Butt, and Commissioners Abelson, Arnerich, Durant, Glover, Mitchoff, Pierce, Romick, Tatzin, and Taylor
NOES: None
ABSENT: None
ABSTAIN: None


David E. Hudson, Chair

This Ordinance 16-03 was entered into at a special meeting of the Contra Costa Transportation Authority held on July 20, 2016, in Walnut Creek, California, and shall become effective as provided above.

Attest:


Tarien Grover, Board Clerk