

BEFORE THE
MADERA COUNTY
2006 TRANSPORTATION AUTHORITY
ORDINANCE NO.: 2006- 01

The Madera County 2006 Transportation Authority (also, "the Authority") ordains as follows:

SECTION 1

Purpose and Intent. The purpose of this Ordinance is to implement State law allowing the voters to decide upon a one-half of one percent (1/2%) county wide transaction and use tax to be used to finance street, road, highway, public transit, and transportation improvements within the incorporated and unincorporated areas of Madera County, California, as further described in this Ordinance.

SECTION 2

Countywide Transaction and Use Tax. There is hereby imposed in the incorporated and unincorporated territory of the County of Madera ("the territory of the Authority"), a transaction and use tax at the rate of one-half of one percent (1/2%) in addition to any existing or future authorized state or local sales tax or transaction and use tax, in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, and as authorized by Section 180206 of the Public Utilities Code.

SECTION 3

Use of Tax Proceeds. Proceeds of the tax imposed by this Ordinance shall be deposited into the general fund of the Madera County 2006 Transportation Authority and shall be used for the following purposes and projects, as described more particularly in the Madera County 20 Year Transportation Sales Tax Measure Investment Plan ("Investment Plan"), which is incorporated herein by this reference as though fully set forth herein, and as that Investment Plan may be amended from time to time pursuant to applicable law:

- A. The revenue from the transaction and use tax shall be allocated by the Authority as follows: for street, road, highway, public transit, and other transportation-related improvements within the incorporated and unincorporated areas of Madera County; for all purposes related to such improvements, including, but not limited to, administration of the transaction and use tax, legal actions relating to the transaction and use tax, planning, design, engineering, environmental review, and construction. The revenue from the transaction and use tax shall also be used to reimburse the County of Madera for the County's costs in conducting an election called by the Board of Supervisors regarding the imposition of the transaction and use tax.
- B. A maximum of one percent (1%) of the revenue from the transaction and use tax in any one year may be allocated to the Authority for salary and benefits of staff to assist with implementation of the Investment Plan.
- C. The Authority shall annually divide the remaining transactions and use tax revenues among the incorporated cities located within the County of Madera, and with the County of Madera (excepting those funds allocated to the Commute Corridors/Farm to Market Program-Regional Streets and Highways Program). The division of funds shall be on the basis of the percentage of total County population residing within the jurisdiction of the respective incorporated cities and within the unincorporated areas of the County of Madera. For purposes of calculating these percentages, the Authority shall rely on the then-current population figures furnished by the State Department of Finance.

The governing bodies of the respective cities, and of the County of Madera, shall designate the particular application of funds allocated to their jurisdiction, for street, road, highway, public transit and other transportation-

related improvement programs, purposes, and projects, subject to the approval of the Authority.

D. Funds allocated for street, road, highway, public transit, and other transportation-related improvement programs, purposes, and projects shall be allocated according to the following formula:

(1) 51 percent – Commute Corridors/Farm to Market Program with 26 percent of that amount to be allocated to the Regional Streets and Highways Program for major capacity increasing street and highway improvement projects including, but not limited to, lane widening, interchange improvements, and new street and highway facilities. The remaining 25 percent to be allocated to the Regional Rehabilitation/Reconstruction/Maintenance Program including pothole repair/maintenance, rehabilitation/resurfacing, and reconstruction projects.

(2) 44 percent – Safe Routes to Schools & Jobs Program to be allocated as follows:

13.00% - to the Street Maintenance Program which includes pothole repair, chip seals, overlays, and slurry seals.

8.75% - to City Street Supplemental Maintenance Program / County Maintenance District & Service Areas established for road maintenance purposes.

21.75% - to the Flexible Program which allows the jurisdictions to program funds for any transportation-related purpose including, but not limited to, capacity increasing street and highway projects, street and highway maintenance, rehabilitation, and reconstruction improvement projects, public transit improvements, bicycle and

pedestrian projects, environmental mitigation related to transportation improvements, or any other purpose directly or indirectly related to transportation in the territory of the Authority.

0.50% to the Americans with Disabilities Act (“ADA”) Compliance Program to address requirements of the ADA including curb cuts and ramps, as well as other special transportation services.

- (3) 2 percent – Transit Enhancement Program with 1.83% of the funds to be allocated, based upon population estimates derived by the State Department of Finance to the City of Chowchilla, the City of Madera, and the County of Madera transit agencies for major new expansions of the express, local and feeder bus services including routes, buses, night and weekend service, safer access to transit services, and car/van pools. The remaining .17% will be allocated to the ADA/Seniors/Paratransit Program to improve mobility for seniors and for persons with disabilities.
- (4) 2 percent – Environmental Enhancement Program to improve air quality and the environment through four programs: the Environmental Mitigation, Air Quality, Bicycle/Pedestrian Facilities, and Car/Van Pools Programs.

E. Transactions and use tax revenues, once divided as set forth in Section 3, Paragraph C., herein, shall thereafter be segregated into separate funds for each of the respective entities: the incorporated cities located within the county of Madera, and the County of Madera.

SECTION 4

Collection of Tax. The Authority shall contract with the State Board of Equalization to perform all functions incidental to the administration and operation of this Ordinance,

including collection of the additional transaction and use tax imposed by this Ordinance.

SECTION 5

Effective and Operative Dates. This Ordinance shall become operative, if approved by a two-thirds majority vote of the electors, on the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance. The provisions of this Ordinance pertaining to the collection of transactions and use taxes will become effective, and such taxes will begin being collected on April 1, 2007.

SECTION 6

Term. The provisions of this Ordinance pertaining to collection of the transactions and use tax shall no longer be of any force and effect on or after twenty years following its operative date unless extended by a vote of a two-thirds majority of the electors voting at an election called for that purpose. This Ordinance may be terminated earlier by a two-thirds majority vote of the Authority members, if the members determine, following a public hearing, that the purposes of the tax have been fulfilled and that an earlier termination is in the public interest.

SECTION 7

Appropriation Limit. The maximum annual appropriation limit for the Authority is \$20,000,000 (twenty million dollars) subject to adjustment or increase as provided by law.

SECTION 8

Implementation. Upon approval of this Ordinance by a two-thirds majority of the voters, the Authority may adopt policies and take such other action for the implementation of the one-half of one percent (1/2%) transaction and use tax authorized by this Ordinance.

SECTION 9

Bonds. The Authority is hereby authorized to issue bonds to finance expenditure to carry out the purposes of this transactions and use tax, in accordance with the terms and

conditions specified in the resolution creating the Authority.

SECTION 10

Interpretation. This Ordinance is to be interpreted to accomplish, among other purposes, the following:

- 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 Section 180206 of the Public Utilities Code.
- B. To adopt a retail transactions and use tax Ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State of California (Part 1 of Division 2 of the Revenue and Taxation Code) provided that 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 which 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 State Sales and Use Taxes.
- D. To adopt a retail transactions and use tax Ordinance which will be administered, to the greatest extent 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 simultaneously minimize the burden of record keeping upon persons subject to taxation under the provisions of this Ordinance.

SECTION 11

Contract with State. Prior to the operative date of this Ordinance, 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 the contract.

SECTION 12

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 Authority at the rate of one-half of one percent (1/2 %) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail on and after the operative date of this Ordinance.

SECTION 13

Place of Sale. For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer (seller) 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. 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 14

Use Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption, in the incorporated and unincorporated territory of the Authority, of tangible personal property purchased from any retailer on and after the operative date of this Ordinance, for storage, use, or other consumption at the rate of one-half of one percent (1/2%) 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 15

Adoption of Provisions of State Law. 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, except as otherwise provided in this Ordinance and except as such provisions are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code.

SECTION 16

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 the Authority shall be substituted therefor. There shall be no such substitution made, however, when:
- (1) 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.
 - (2) 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.

(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 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 provisions of that code;

(4) Appearing 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 "Authority" 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 17

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 seller's permit shall not be required by this Ordinance.

SECTION 18

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 the 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 of Madera in which sale is made 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 incorporated and unincorporated territory of the Authority which is shipped to a point outside the territory of the Authority, pursuant to the contract of sales, 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 purposes of this paragraph, delivery to a point outside the territory of the Authority 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 Chapter 2 (commencing with Section 9840) of Division 3.5 of the Vehicle Code by registration to an address outside the territory of the Authority and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, the buyer's principal place of residence; and

- (b) With respect to commercial vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, by registration to a place of business outside the territory of the Authority and a 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 subsections (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 of lease upon notice, whether or not such right is exercised.

C. There is exempted from the use tax imposed by this Ordinance the storage, use, or other consumption in the territory of the Authority 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 Section 6366 and 6366.1 of the Revenue and Taxation Code.
- (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 subsections (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 subsection (7) of this section, a retailer engaged in business in the territory of the Authority 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 territory of the Authority or participates within the territory of the Authority 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 canvasser, solicitor, subsidiary, or person in the territory of the Authority under the authority of the retailer.

(7) “Retailer engaged in business in the Authority” shall also include any retailer 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 Chapter 2 (commencing with Section 9840) of Division 3.5 of the Vehicle code. That retailer shall be required to collect use tax from any purchaser who registers or licensed the vehicle, aircraft, or vessel at an address in the territory of the Authority.

D. Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for a 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 19

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 of Division 2 of the Revenue and Taxation Code, all amendments to Part 1.6 of Division 2 of the Revenue and Taxation Code, and all amendments to Division 19 of the Public Utilities 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 20

Enjoining Collection Prohibited. No injunction, 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 21

Severability. If any section, part, clause, or phrase of this Ordinance is for any reason held invalid or unconstitutional, the remaining portions shall not be affected but shall remain in full force and effect.

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The foregoing Ordinance was Passed and Adopted this 21 day of June, 2006, by the following vote:

Ayes: Poythress, Gilbert, Mindt, and Ginsburg

Noes: None

Absent: Skeels, Bigelow, and Rodriguez



Chair, Madera County 2006
Transportation Authority

ATTEST:

By 

Secretary of the Authority

Approved as to Legal form
Authority Counsel

By 
