

FULL TEXT OF MEASURE _____
ORDINANCE NO. 2019-01

EXTENSION OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT'S EXISTING ONE-QUARTER OF ONE CENT RETAIL TRANSACTION AND USE TAX

PREAMBLE:

The voters of Sonoma and Marin County are requested to approve and extend the retail transaction and use tax (Measure Q) at the same rate of one-quarter of one cent (¼-cent) to:

Continue relieving traffic congestion, reducing greenhouse gas emissions (having carried 1.5-million passengers by providing quality transportation alternatives to Highway 101).

Continue to implement, construct, operate and maintain the SMART rail transit system and pathways; build additional rail lines, bicycle and pedestrian pathways, enhance local and regional transportation options.

Keep the rail transportation and pathways systems safe; build, rebuild and retrofit bridges, trestles, railroad crossings and intersections and keep the transportation system in safe and good working condition.

Embrace technology and safety innovation; incorporate modern technology, new advancements and emerging innovations in the rail transportation system.

Make public transportation more accessible, convenient, and affordable for seniors, students, and the people with disabilities and provide better mobility options for our ageing population.

Create jobs, help reduce pollution, and generate local economic benefits;

Provide accountability; protect and monitor the public's investments through independent audits and oversight while maintaining the flexibility needed to respond to emerging needs.

SMART FINDS AND ORDAINS AS FOLLOWS:

- I. On November 4, 2008, the voters of Sonoma and Marin Counties approved Measure Q at the General election, and authorized the SMART District be given the responsibility to administer the proceeds from a one-quarter of one percent retail transactions and use tax.
- II. On October 16, 2019, the District approved a Sales Tax Expenditure Plan ("Expenditure Plan"). The SMART District can now adopt a retail transactions and use tax ordinance and request to have the Registrar of Voters of the Counties of Sonoma and Marin place a one-quarter of one cent (¼-cent) retail transactions and use tax measure to finance the Sales Tax Expenditure Plan on the March 3, 2020 ballot for consideration by the Marin and Sonoma electorate. The ballot measure would require 2/3-voter approval in order to pass.

- III. The Sales Tax Expenditure Plan outlines a program for utilizing the proceeds of a one-quarter of one cent retail transactions and use tax extension, which can only be spent on transportation purposes in Marin and Sonoma County. The Sales Tax Expenditure Plan consists of four implementation categories, and is designed to maintain and improve rail transportation infrastructure, refinance and restructure construction debt and provide high quality transportation options for people of all ages who live, work and travel in Sonoma and Marin Counties. The Sales Tax Expenditure Plan provides a high degree of accountability, while maintaining the flexibility needed to respond to emerging needs.
- IV. Upon approval of the tax measure by the voters of Sonoma and Marin Counties, the existing tax will be extended, for an additional thirty year period through April 1, 2059 with the expenditure plan setting forth transportation services, operations, projects, programs and other improvements eligible to be funded, specifying eligibility and other conditions and criteria under which such revenues shall be expended, and making provisions for the adoption of future Sales Tax Expenditure Plan amendments.

SECTION 1. TITLE.

This ordinance shall be known as the "Extension of SMART existing one-quarter of one cent (¼-cent) Retail Transaction and Use Tax". The Sonoma-Marin Area Rail Transit District hereinafter shall be called "District." This ordinance shall be applicable in the incorporated and unincorporated territory of the Counties of Sonoma and Marin, which shall be referred to herein as "District."

SECTION 2. OPERATIVE DATE/ADOPTION

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the effective date of this ordinance, as set forth below.

Continuation of retail transactions and use tax: This Ordinance will extend and renew the retail transaction and use tax (Measure Q) at the same rate of one-quarter of one cent (¼-cent) within Sonoma and Marin County immediately upon the expiration of the Tax imposed by Ordinance No. 2008-01 of the Sonoma-Marin Area Rail Transit District (Measure Q). There shall be no concurrent assessment of the existing tax and the tax to be imposed pursuant to this Ordinance. Nothing in this ordinance is intended to modify, repeal, or alter ordinance 2008-01 previously adopted by the District other than to amend and extend the period of collection for an additional 30-years.

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 maintain a local funding source for the design, construction, implementation, operation, financing, maintenance and management of a passenger railroad transportation system and a bicycle/pedestrian pathways connecting stations.

- B. To impose and extend 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 105115 of the Public Utilities Code which authorizes the District 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 transaction 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 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.

SECTION 4. CONTRACT WITH STATE.

District shall contract with the California Department of Tax and Fee Administration CDTFA to perform all functions incident to the administration and operation of this transactions and use tax.

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 one-quarter of one percent 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. This shall extend the tax to be imposed for an additional period of thirty years.

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 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 District of tangible personal property purchased from any retailer on and after the operative tax date for storage, use or other consumption in said territory at the rate of one-quarter 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 shall extend the tax to be imposed for an additional period of thirty years.

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 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 I 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 District 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, California Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California if the 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 CDTFA, as successor to the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance. The substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior borders 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 that code. The substitution shall not be made 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 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. 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 authority of the retailer. "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 I (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 of 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.

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, 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-Bums 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. 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, and all amendments to Part 1.6 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 District, or against any officer of the State or the District, 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. ANNUAL APPROPRIATIONS LIMIT.

Taking into account the proceeds of taxes available to the District, including tax revenue that would become available upon approval of this ordinance, the appropriations limit of the Sonoma-Marin Area Rail Transit District for fiscal year 2019-2020 was established at \$142,288,336 million, 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 District Board of Directors hereby adopts the Expenditure Plan attached hereto and incorporated into this ordinance by reference. Proceeds of the tax imposed by this ordinance shall be spent on uses set forth in the Expenditure Plan, including; operation, design, construction, financing, maintenance and management of the rail system and bicycle/pedestrian pathway. The District may propose and amend the expenditure Plan to provide for the use of additional federal, state and local funds, to account for unexpected revenues, to add or delete a project or program or to take into consideration unforeseen circumstances.

SECTION 16. ANNUAL REPORT.

The Chief Financial Officer of the Sonoma-Marin Area Rail Transit District shall annually cause to be prepared a report setting forth the amount of funds collected and expended; and the status of operations and any use authorized to be funded in the Expenditure Plan adopted by the District.

SECTION 17. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

Pursuant to the State CEQA Guidelines section 15378(b)(4), adoption of this retail transactions and use

tax ordinance as a government funding mechanism is not a project subject to the requirements of CEQA. Pursuant to State CEQA Guidelines section 15276, CEQA does not apply to the expenditure plan. This ordinance creates a government funding mechanism that does not involve a commitment to a specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax is used for a purpose that has such effect, the District will have reviewed or would undertake the required environmental review prior to that particular project implementation.

SECTION 18. SEVERABILITY.

If any terms, provision or portions of this ordinance or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the ordinance or portions of this ordinance and the application of such provision to other persons or circumstances shall not be affected thereby and remain in full force and effect unless amended or modified by the District.

SECTION 19. PROPOSITION

There shall be proposed to the voters of Sonoma and Marin Counties the following proposition:

To continue relieving traffic congestion, reducing greenhouse gas emissions (having carried 1.5-million passengers by providing quality transportation alternatives to Highway 101), connecting stations with pathways, expanding rail service to Healdsburg/Cloverdale as grants become available, shall an extension of the existing Sonoma-Marin Area Rail Transit District 1/4-cent voter approved sales tax, at the same rate, generating approximately \$40,000,000 annually for an additional 30 years, subject to audits and citizens' oversight, that the State cannot take away, be adopted?

SECTION 20. EFFECTIVE DATE AND POSTING.

This ordinance shall be, and is hereby declared to be, in full force and effect at the close of the polls on the day of election at which the proposition is adopted by two-thirds vote of the electors voting on the measure. Although this ordinance shall be deemed to be effective once adopted by two-thirds vote of the electors voting, the new term and related tax and fiscal provisions of this ordinance shall not be in effect until April 1, 2029, except as modified below in the case of new bond issuance. To the extent that the District may desire prior to April 1, 2029 to issue bonds secured by future revenues from the extension of the tax provisions adopted herein, the provisions of this ordinance shall be operative at said earlier date for application to said revenues and bonds, allocations of any funds derived from said bonds, development of guidelines for use of said bond revenues, administration of the Expenditure Plan adopted hereunder. A summary of the Ordinance shall be posted within 15 days after its passage in a prominent location at the District Office with the names of the Directors voting for and against same.

SECTION 21. TERMINATION DATE.

The authority to levy the tax imposed by this ordinance shall expire on April 1, 2059.

PASSED AND ADOPTED by the Board of Directors of the Sonoma-Marín Area Rail Transit District on November 6, 2019 by the following vote:

DIRECTORS:

AYES: Arnold, Connolly, Fudge, Garbarino, Hillmer, Lucan, Naujokas, Pahre, Phillips, Rabbitt, Rogers and Zane

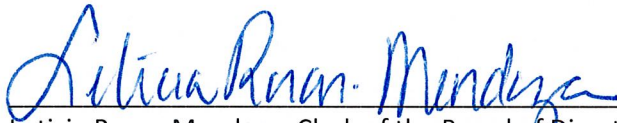
NOES:

ABSENT:

ABSTAIN:



Gary Phillips, Chair Board of Directors
Sonoma-Marín Area Rail Transit District



Leticia Rosas-Mendoza, Clerk of the Board of Directors
Sonoma-Marín Area Rail Transit District