

ORDINANCE 2015-01

AN ORDINANCE OF THE MONTEREY-SALINAS TRANSIT DISTRICT IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

WHEREAS, public transit provides a lifeline for senior citizens and people with disabilities. They depend on it for independent living, such as getting to doctor's appointments, the pharmacy, and the grocery store. In fact, Monterey-Salinas Transit District ("MST" or the "District") logged over 1.25 million miles last year alone providing the vital service of transporting seniors and people with disabilities; and

WHEREAS, many military veterans in Monterey County, including disabled veterans, rely on public transit to access health care, housing, and job placement services. Our veterans have sacrificed for our country, and we owe them such basic services as transportation when they need it; and

WHEREAS, in recent years, state government has cut more than 30 million dollars in funding for transit services in Monterey County, and now the federal government is eliminating a number of transit programs dedicated to seniors and the disabled, and a grant program to assist veterans in finding transit services has expired. To continue local transit services for our seniors, veterans and people with disabilities, we must have a local revenue source that cannot be taken away by state or federal government; and

WHEREAS, this measure will require annual performance and financial audits as well as citizen oversight to ensure that the revenue raised is properly used; and

WHEREAS, even with major budget cuts, MST has run an efficient operation and has continued to provide reliable service to the thousands of people who take it every day; and

WHEREAS, California Public Utilities Code Section 106060 authorizes MST to levy a local transactions and use (sales) tax, subject to voter approval; and

WHEREAS, at a public hearing on July 14, 2014, the District Board of Directors considered calling a special election to seek voter approval of a local sales tax to maintain funding for essential programs that provide transit services for senior citizens, veterans and the disabled; and

WHEREAS, after that hearing, the District Board of Directors concluded that all of the information presented indicated that, to create an additional source of revenue to assist with funding for programs that provide transit services for senior citizens, veterans and the disabled, the District Board of Directors should call an election to ask the voters of the District to approve a local transactions and use tax of one-eighth of a cent per dollar (0.125%); and

WHEREAS, consistent with the requirements of Public Utilities Code section 106060, a majority of MST member jurisdictions have expressed concurrence with the District submitting this transactions and use tax measure to the voters for approval; and

WHEREAS, on the basis of the foregoing, the District Board of Directors determined that it was appropriate to place a measure regarding a local sales tax before the voters at the November 4, 2014, election; and

WHEREAS, the tax to be submitted, if approved, would be imposed on the sale of tangible personal property and the storage, use or other consumption of such property. The tax rate would be one-eighth of one percent (0.125%) (one eighth of a penny for each dollar) of the sales price. The tax revenue would be collected by the State Board of Equalization and remitted to the District. The tax shall be approved if the measure receives at least a two-thirds majority of those voting on the measure.

NOW, THEREFORE, the Monterey-Salinas Transit District Board of Directors does ordain as follows:

Section 1. TITLE. This ordinance shall be known as the Local Transit Funding for Senior Citizens, Veterans and People with Disabilities Ordinance. The Monterey-Salinas Transit District hereinafter shall be called "District." This ordinance shall be applicable in the incorporated and unincorporated territory of the County of Monterey, hereinafter called "County."

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.

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 Section 7285.5 of Part 1.7 of Division 2 which authorizes the District to adopt this tax ordinance which shall be operative if two-thirds (2/3) 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.

Section 4. CONTRACT WITH STATE. Prior to the operative date, the District 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 District 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 County at the rate of one-eighth of one percent (0.125%) 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 one-eighth of one percent (0.125%) 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 the District 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 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 District 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 (Article

19 of the Revenue and Taxation Code) 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 the 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 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 county 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 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. 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 15. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the District's transactions and use taxes and shall take effect immediately.

Section 16. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire on the fifteenth anniversary of the operative date.

Section 17. EXPENDITURE PLAN. The expenditure plan required by Revenue and Taxation Code Section 7285.5 for the revenue from the tax approved by this Ordinance is set forth in Attachment 1 to this Ordinance. The District Board may amend this Expenditure Plan from time-to-time provided each amendment is consistent with the purposes of funding transit services for senior citizens, veterans, and the people with disabilities, including the acquisition of necessary specialized equipment and related operating expenses.

Section 18. OVERSIGHT COMMITTEE. There shall be a committee of members of the public to review and report on the revenue and expenditure of funds from the tax adopted by this Ordinance. The membership of the committee shall be appointed by the District Board of Directors and shall consist, at a minimum, of a representative of each the following:

- The Salinas Urbanized Area, to include a representative from the City of Salinas;
- The Seaside-Marina-Monterey Urbanized Area, to include a representative from among the cities of Carmel-by-the-Sea, Monterey, Pacific Grove, Seaside, Del Rey Oaks, Sand City, and Marina;
- The Non-Urbanized Areas, to include a representative from among the cities of Gonzales, Greenfield, Soledad, and King City;
- The County of Monterey, to include a representative from an unincorporated area of Monterey County; and
- A bona fide non-profit organization that represents the interests of taxpayers in the County; and

- The District's existing Mobility Advisory Committee, to include two members of the Mobility Advisory Committee.

The geographical areas referred to above shall have the same meaning as in the District's By-Laws.

Prior to the operative date, the District Board of Directors shall adopt a resolution establishing the composition of the committee, defining the scope of its responsibilities, and setting the term for each member. Also prior to the operative date, the District Board of Directors shall appoint at least a quorum of the members of the committee; the District Board of Directors shall complete the appointment of members of the committee by the end of fiscal year 2015.

Section 19. ANNUAL INDEPENDENT AUDIT. Annually the District shall retain an independent auditor to conduct an audit of and provide audited financial statements for revenue received from the tax approved by this Ordinance and expenditures thereof. The auditor's report shall be presented to the District Board of Directors and the oversight committee created by Section 18 of this Ordinance and shall be made available to the public.

Section 20. AMENDMENT OF THIS ORDINANCE. The following amendments to this Ordinance must be approved by the voters of the District: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of Section 12); or extending the tax. The District Board of Directors may otherwise amend this Ordinance without submitting the amendment to the voters for approval.


Section 21. APPROPRIATIONS LIMIT. Pursuant to Article XIIB of the Constitution of the State of California and applicable laws, the appropriations limit for the District is hereby increased by the aggregate sum authorized to be levied by this special tax for fiscal year 2015-16 and each year thereafter.

Section 22. SUPPORTING ACTION. The District Chief Executive Officer, or his designee, is authorized to complete all acts necessary to implement this measure as approved by the voters of the District.

Section 23. VOTER APPROVAL REQUIRED. This Ordinance shall become effective only if approved by at least a two-third's majority of the eligible voters voting on the Ordinance at the November 4, 2014, election.



Libby Downey
Chairperson



Carl Sedoryk
Secretary

PASSED AND ADOPTED BY THE MONTEREY-SALINAS TRANSIT BOARD OF DIRECTORS THIS 14th day of July, 2014, by the following vote:

AYES: Directors: Barrera, Beach, Clark, Cohen, Downey, Pacheco, O'Connell, Orozco, Pendergrass, Stephens

NOES: None

ABSENT: Directors: Armenta, Hughes, Hurley

ATTEST:



Board Secretary (Deputy)

**MONTEREY-SALINAS TRANSIT DISTRICT
LOCAL TRANSIT FUNDING FOR SENIOR CITIZENS, VETERANS AND
PEOPLE WITH DISABILITIES ORDINANCE
EXPENDITURE PLAN**

After receiving feedback from residents throughout Monterey County on their priorities for the Monterey-Salinas Transit District, the District Board of Directors has determined that the community places a high priority on ensuring that public transit services remain available to senior citizens, people with disabilities and veterans. With federal and state funding and programs that support such services being cut or eliminated, a local source of funds dedicated to serving senior citizens, people with disabilities, and veterans is essential and is addressed with the proceeds from the Local Transit Funding for Senior Citizens, Veterans, and People with Disabilities Ordinance (the “Ordinance”).

Funds from the Local Transit Funding for Senior Citizens, Veterans and People with Disabilities Ordinance will be dedicated solely to services that support transportation planning, specialized equipment and operating expenses required to meet the special mobility needs of veterans, senior citizens and persons with disabilities, including trips required for vital medical appointments and for veterans’ job training/placement services. Funds may also be used to pay for the District’s costs of conducting the election to obtain required voter approval for the Ordinance.