

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF SONOMA IMPOSING A
TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
FOR PROTECTING THE PUBLIC WITH IMPROVED WILDFIRE
PREVENTION AND RESPONSE, EMERGENCY ALERTS,
VEGETATION MANAGEMENT AND; AND INCREASING THE
APPROPRIATIONS LIMIT FOR THE COUNTY TO ALLOW
EXPENDITURE OF THE PROCEEDS OF THE PROPOSED TAX**

Section 1. TITLE. This Ordinance shall be known as the Sonoma County Wildfire Prevention, Emergency Alert and Response Transactions and Use Tax Ordinance. The County of Sonoma hereinafter shall be called "County." This Ordinance shall be applicable in the incorporated and unincorporated territory of the County.

Section 2. SUMMARY. If approved by the voters, this Ordinance will impose a one half of one percent (1/2%) transactions and use tax to be used exclusively to supplement existing funding for disaster alerts, vegetation management, fire suppression and fire-fighting services and wildfire prevention provided by the County of Sonoma and thirty-eight fire agencies, included in attachments to the draft Expenditure Plan, throughout the incorporated and unincorporated territory of the County.

Section 3. EFFECTIVE DATE; OPERATIVE DATE. This Ordinance shall become effective upon its approval by a two-thirds majority of the electors of the County voting on the measure, at an election called for that purpose, and the date of such approval hereafter shall be called the "Effective 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 4. 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 County to adopt this tax Ordinance which shall be operative if a (2/3) 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 California Department of Tax and

Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

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. To establish a local funding source for emergency alerts, vegetation management, fire suppression and fire-fighting services and wildfire prevention provided by the County of Sonoma and the fire agencies throughout the incorporated and unincorporated territory of the County as set out in detail in the expenditure plan ("Expenditure Plan") adopted as part of this Ordinance.

F. To increase the appropriations limit for the County to ensure that the proceeds of the proposed special tax may be expended for their intended purposes.

G. To authorize issuance of limited tax bonds to finance projects in accordance with the Expenditure Plan.

Section 5. CONTRACT WITH STATE. Prior to the Operative Date, the County shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax Ordinance; provided, that if the County shall not have contracted with the California Department of Tax and Fee Administration prior to the Operative Date, it shall nevertheless so contract and in such a case the Operative Date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 6. 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 half of one percent (1/2%) 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 7. PLACE OF SALE. For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

Section 8. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of 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 9. 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 10. 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 County shall be substituted therefor. However, the substitution shall not be made when:

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

2. The result of that substitution would require action to be taken by or against this County or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

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

B. The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

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

Section 11. 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 12. 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 County, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the County shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-County address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-County and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this County of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the County shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the County or participates within the County in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

7. "A retailer engaged in business in the County" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5

(commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the County.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 13. 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 14. 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 County, or against any officer of the State or the County, 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 15. 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. The County declares that it would have adopted each part of this Ordinance irrespective of the validity of any other part.

Section 16. ADOPTION OF EXPENDITURE PLAN AND ACCOUNTABILITY FOR EXPENDITURE OF PROCEEDS OF THE TAX. The Board of Supervisors hereby adopts the Expenditure Plan attached hereto and incorporated into this ordinance by reference. Proceeds of the tax imposed by this Ordinance shall be allocated to each of the fire agencies and the County of Sonoma, and shall be spent only to implement the projects set forth in the Expenditure Plan, including planning, engineering, environmental review, administrative costs and construction of such projects.

Section 17. ESTABLISHMENT OF BONDING AUTHORITY. The cities and fire agencies are authorized to issue bonds for the purposes of advancing the commencement of or expediting the delivery of programs or projects in accordance with the Expenditure Plan. Pursuant to Government Code Sections 55800 et seq., or any successor statute, the cities and fire agencies may issue limited tax bonds, from time to time, secured by and payable from all or any portion of the transactions and use tax imposed by this Ordinance to finance any program or project in the Expenditure Plan. The maximum bonded indebtedness, including issuance costs, interest, reserve requirements, and bond insurance, if any, shall not exceed the total amount of the proceeds anticipated to be collected by the imposition of this transactions and use tax. All costs associated with the issuance of such bonds shall be accounted for within the program category in which the bond proceeds are used. The bonds may be issued any time throughout the duration of this tax.

Nothing herein shall limit or restrict in any way the power and authority of the County, the cities or any fire suppression agency to issue bonds, notes or other obligations, to enter into loan agreements, leases, reimbursement agreements, standby bond purchase agreements or derivative contracts or to engage in any other transaction under the Government Code or any other law.

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

Section 19. ACCOUNTABILITY REQUIREMENTS.

(a) Independent Citizens' Oversight Committee. The Board of Supervisors shall establish a seven-member Citizens' Oversight Committee to provide transparency and ensure fiscal accountability. The Committee shall review the receipt and expenditures of the revenue from the transactions and use tax, including the independent audit of each agency's use of the tax. The Board shall adopt a resolution regarding the appointment of seven Committee members, and any additional duties of the Committee. The Board of Supervisors shall appoint two members of the Board of Supervisors to sit on the Oversight Committee. Two of the Committee members will be selected from a list of names submitted by the Mayors of Sonoma County Cities. The Sonoma County Fire Chiefs Association will appoint three members, at least one of which is a representative of an independent fire district. Committee Members will serve a three-year term and are eligible to be reappointed by their appointing body. To preserve the integrity and independence of the oversight process, the Committee's responsibilities shall not include decision making on spending priorities, financing plans or tax rate projections or assumptions and the Committee shall have no authority to direct, nor shall it direct, County staff or officials or Fire Agency staff or officials.

(b) Performance Audit. Every three years, the County shall require that an independent performance audit be conducted of each agency's use of the proceeds. The audit shall be conducted by an independent certified public accountancy firm retained by the County and shall ensure that the tax proceeds have been expended in full compliance with the voter-approved expenditure plan.

Section 20. APPROPRIATIONS LIMIT. The appropriations limit for the County shall be increased for the maximum period permitted by law (four years) to allow for the use of all proceeds raised by the special tax imposed by this Ordinance.

PASSED AND ADOPTED by the _____,
State of California, on _____, by the following vote:

AYES: NOES: ABSENT:

Chairperson