

**NAPA VALLEY TRANSPORTATION AUTHORITY-TAX
AGENCY (NVTA-TA) ORDINANCE NO. 2024-01**

**NAPA VALLEY TRANSPORTATION IMPROVEMENT ACT
CONTINUING A TRANSACTION AND USE TAX**

The Napa Valley Transportation Authority–Tax Agency (the “Authority”) ordains as follows:

SECTION 1. TITLE AND AUTHORITY: This Ordinance shall be known and may be cited as the Napa Valley Transportation Improvement Act, hereinafter referred to as the Ordinance. This Ordinance continues a retail transactions and use tax for a thirty year period commencing July 1, 2025, authorizing the Authority to continue imposing a one half of one percent sales tax (1/2%) and to issue bonds to finance capital outlay expenditures as provided in the Expenditure Plan.

SECTION 2. EXPENDITURE PLAN PURPOSES: The purpose of this Ordinance is to provide programmatic funding for the implementation of the Napa Valley Transportation Improvement Act Expenditure Plan “Expenditure Plan”. The Expenditure Plan identifies the following:

- A. Projects for Reconstruction or Rehabilitation of Local Streets and Roads**
 - i. Up to five percent (5%) of Local Street and Roads Cities, Town, and County allocations may be used for other transportation projects including roadway capacity projects.
- B. Projects for improvement of Highways**
- C. Transit fare subsidies**

These improvements shall be funded by a one-half of one percent transactions and use tax established for a thirty (30) year period commencing July 1, 2025, replacing Measure T, the Napa Countywide Road Maintenance Act, ordinance no 2012-01 (“Measure T”). The revenues shall be deposited in a special fund, used solely for the identified improvements as provided herein, and made available to the agencies responsible for the improvements in the Expenditure Plan. Notwithstanding any other provision of this Ordinance, identified improvements (the “projects” or “programs”) that are eligible to receive revenues from the tax are described in the Expenditure Plan.

SECTION 3. EXPENDITURE PLAN SUMMARY: The revenues received by the Authority from this Ordinance, after deduction of required California Department of Tax and Fee Administration (the “CDTFA”) costs for performing the functions specified in Section 180204(b) of the Public Utilities Code, reimbursing the County of Napa for its cost in conducting the election if the measure is approved per Section 180203(a) of the Public

Utilities Code, administration (Section 12 A), and the costs of the annual financial and biennial performance audits (Section 11), shall be used to fund the Expenditure Plan set forth herein. In the event the measure does not pass, the costs for conducting the election shall be borne by the Authority. A summary of the Projects and Programs eligible to receive this funding is provided in the following sections. The annual revenues shall be allocated as follows:

A. Local Streets and Roads Maintenance Program: Subject to Paragraph B, of the annual revenues available for local streets and road maintenance shall be allocated pursuant to the formula set forth below, to each city, town, and the county (hereinafter referred to individually as Agency and collectively as Agencies) to provide revenue for such projects and to supplement, but not supplant, other revenues available for the Local Streets and Road Maintenance Program. The revenues allocated to each Agency under this Section 3(A) must be used for maintenance, reconstruction or rehabilitation of local streets, roads, and infrastructure within the public right-of-way. Up to (5%) of allocations distributed to the Cities, Town, and County for Local Streets and Roads may be used on other transportation projects.

The revenue allocated to the Local Streets and Roads Maintenance Program shall be allocated to, and expended by, each Agency pursuant to the following formula, which will be updated by the Authority and become effective on July 1st 2025 and every successive five (5) years. The total revenues distributed to the Agencies for local streets and road maintenance and rehabilitation will be net of costs associated with administration, six million (\$6 million) allocated to the Napa Valley Transportation Authority for the regional program in the first 5 years, and debt service on bonds issued for capital projects administered by the Napa Valley Transportation Authority. The cost of debt service on bonds issued for an individual Agency will be borne by the individual Agency.

The Cities of American Canyon, Calistoga, Napa, and St. Helena, and the Town of Yountville will receive a percentage distribution based on the sales tax generation in their respective jurisdiction, which will be calculated using the average of the three most recent audited years of sales tax generations. The County will receive an amount based on fifty percent (50%) sales tax generation calculated using the average of the three most recent audited years of sales tax generations and fifty percent (50%) lane miles in the unincorporated County. A jurisdiction will receive no less than three percent (3%) of the Local Streets and Roads revenues. Once the percentage distributions are calculated on the above formula, an adjustment will be applied to normalize the total annual program to one hundred percent (100%). Attachment 2 provides an example calculation of the Local Street and Road formula.

Net revenues, plus interest earned on unobligated balances, shall be apportioned to the Agencies' transportation improvement account on a quarterly basis.

- B.** Once this Ordinance becomes operative, in order to receive annual allocations under this Ordinance, the Agencies (collectively) must demonstrate that at least seven percent (7%) of the value of the allocations each year under Section 3(A) has been committed to the project development, construction, and maintenance of Class I and/or Class IV active transportation infrastructure project(s) identified in the adopted Countywide Active Transportation Plan, as that Plan may be amended from time to time, utilizing funding not derived from this ordinance . Up to twenty percent (20%) of the requirement may be met by routine maintenance expenditures. This obligation may be fulfilled by the Agencies collectively and NVTa. Eligible funds sources may include Congestion Mitigation and Air Quality Improvement (CMAQ) funding (or its successor), other local or formula specific funds, including excess funding committed to equivalent fund projects under the Countywide Road Maintenance Act, and revenues under this ordinance set aside for highway improvements included in the Expenditure Plan in an amount that equals 7% over the term of this Ordinance. Funding for Class I and/or Class IV projects that are funded by philanthropy, state discretionary funding or federal discretionary funding shall not count toward the seven percent (7%).
- C.** Regional Capital Improvement Program administered by the Authority not to exceed \$56 million as included in the Expenditure Plan.
- D.** Administration: Actual costs, not to exceed two percent (2.0%) of the annual revenue, may be used for administration of this Ordinance by the Authority.

SECTION 4. REQUEST FOR ELECTION

- A.** The Authority hereby requests the Napa County Board of Supervisors place this Ordinance before the voters for approval on the November 5, 2024 ballot.
- B.** The proposition to be placed on the ballot shall contain a summary of the projects and programs and shall read substantially as follows:

[INSERT BALLOT LANGUAGE]

SECTION 5. IMPOSITION OF RETAIL TRANSACTIONS AND USE TAX: In addition to any other taxes authorized by law, there is hereby imposed in the incorporated and unincorporated territory of the County of Napa, in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, and Sections 7261 and 7262 of the Revenue and Taxation Code 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, and Division 19 of the Public Utilities Code commencing with Section 180000, which provisions are adopted by reference, a retail transactions and use tax at the rate of one-half of one percent (1/2%) for a thirty year period commencing July 1, 2025, which tax shall be in addition to any existing or future authorized state or local transactions and use tax.

SECTION 6. BONDING AUTHORITY: Pay-as-you-go financing is the preferred method of financing transportation improvements and programs under this Ordinance. However, the Authority may decide to use bond financing as an alternative method if the scope of the planned expenditures makes pay-as-you-go financing infeasible.

Upon voter approval of this Ordinance, and upon adoption of resolution by the Authority, the Authority shall have the power to sell or issue, from time to time, on or before the collection of taxes, bonds, or other evidence of indebtedness, in the aggregate principal amount at any one time outstanding of not to exceed the estimated proceeds of the tax, and to secure such indebtedness solely by way of future collection of the tax, for capital outlay expenditures for the purposes set forth in this Ordinance and Expenditure Plan. The authority to issue bonds hereunder shall include the authority to issue bonds on behalf of the Authority or any Agencies listed herein.

SECTION 7. CONTRACT WITH STATE: The Authority shall notify the CDTFA at least 110 days prior to the operative date and shall contract with the California Department of Tax and Fee Administration to perform all functions incidental to the administration and operation of this transactions and use tax Ordinance, provided that if the Authority shall not have contracted with the CDTFA 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 8. EXPENDITURE PLAN PROCEDURES:

- A. Each Agency shall biennially develop and submit to the Authority a five-year list of projects to be funded with revenues made available for the Local Streets and Roads Maintenance Program (Section 3(A)). Each Agency shall conduct a local public meeting and adopt a Resolution in support of the proposed list of projects prior to submitting the project list to the Authority pursuant to Section 8. Agencies will identify in the five-year project list those projects that require funds to be advanced through bonding, borrowing and/or funding exchange.

- B. In the allocation of all revenues made available under Section 3, the Authority shall make every effort to maximize state, federal, and local transportation funding to the Agencies. The Authority may amend the Expenditure Plan in accordance with Section 23 as needed to maximize the transportation funding available throughout the county. It is also the intent of the Authority to encourage the purchase of goods and services for the projects described in Section 3 from suppliers based in Napa County.
- C. The Agencies and the Authority shall fully consider the needs of non-motorized travelers, including pedestrians, bicyclists and persons with disabilities, in all planning, maintenance, construction, operations and project development activities and products. The Agencies and the Authority with projects funded in full or in part with Authority revenues shall endeavor to not remove or reduce existing facilities for bicycling or pedestrians.

SECTION 9. PROJECT PROGRAMMING APPROVAL: Prior to the operative date of this Ordinance, and biennially thereafter, the Authority shall approve a five-year list of projects eligible to be funded with the revenues made available under Section 3 herein, provided that the submittal meets all of the requirements of this Ordinance and funding is, or is estimated to be, available. Prior to Authority approval, the Independent Taxpayer Oversight Committee (ITOC) shall consider each Agency's biennial five-year list of projects and make a finding that such projects are consistent with the intent of this Ordinance, and make a recommendation on which of the items on those project lists should be approved to the Authority.

SECTION 10. COOPERATIVE FUNDING EXCHANGE AGREEMENTS: To maximize the effectiveness of the revenues provided from this Ordinance, the Authority and/or Agency(ies) may loan revenues actually received, allocated or granted to any public agency within the area of jurisdiction of the Authority provided that the percentage of revenues allocated as provided in Section 3 is maintained over the duration of the Ordinance. Any exchange or loan agreement must include detailed repayment provisions, including appropriate interest earnings based upon the current treasury rate of interest. All loans and/or exchanges must be approved by the Authority by a majority vote, and shall be consistent with any and all rules approved by the Authority relating thereto.

SECTION 11. LOCAL STREETS AND ROADS MAINTENANCE OF EFFORT: It is the intent of the Authority that revenues provided from this Ordinance be used to supplement, not supplant, existing local general fund revenues being used for the transportation improvements described in the Expenditure Plan. Each Agency receiving revenues pursuant to Section 3 shall annually maintain, as a minimum, the "maintenance of effort" as defined in Section 11. To meet the Maintenance of Effort requirement, each Agency will expend, at a minimum, the equivalent of twenty (20%) of the Agency's prior year's

local streets and roads sales tax revenue in local general fund revenues for Local Streets and Roads Maintenance and supporting infrastructure within the public right-of-way for pavement sealing, overlays, reconstruction, associated infrastructure, as required, excluding any local revenues expended for the purpose of storm damage repair as verified by an independent auditor. The 20% Maintenance of Effort calculations will be based on the most recent audited fiscal year available at the time of certification. Bond issuances, borrowing, or funding exchanges will not be counted as part of the Agency's prior year local streets and roads sales tax revenue. The Maintenance of Effort amount will be established and approved by the Authority at the beginning of each fiscal year. Prior to the beginning of each fiscal year thereafter, Agencies shall certify to the Authority that the maintenance of effort requirement required by this Section was met and documentation verifying the expenditures shall be provided to the Authority Auditor. Any Agency that does not meet its local maintenance of effort requirement for a three-year average period shall have its funding under Section 3 the following year reduced by the amount the Agency did not meet its required average maintenance of effort level for the three prior years. Any funds not allocated due to failure to meet the maintenance of effort requirement shall be reserved for the Agency until any and all maintenance of effort expenditures are fulfilled.

SECTION 12. PRIVATE SECTOR FUNDING: Revenues provided from this measure shall not be used to replace private developer funding that has been or will be committed for any project to help alleviate the direct traffic impacts of any new or redeveloped residential, commercial or industrial development in Napa County or its cities.

SECTION 13. INDEPENDENT TAXPAYER OVERSIGHT COMMITTEE:

ITOC Goal and Functions: Voter adoption of this transportation retail transactions and use tax Ordinance shall result in creation of the Independent Taxpayer Oversight Committee ("ITOC") upon the operative date of this tax. The ITOC shall remain in existence for so long as the tax herein exists. The ITOC shall review the fiscal and program performance of the retail transactions and use tax transportation program through a biennial performance audit to ensure that all transportation retail transactions and use tax revenues are spent by the Authority in accordance with all provisions of the voter-approved Expenditure Plan and Ordinance. The ITOC's secondary mission is to provide positive, constructive advice to the Authority on how to improve implementation over the thirty year course of the program; this role shall include consideration by the ITOC of the biennial project lists submitted by the Agencies under Section 8. Expenses associated with carrying out the work of the ITOC and ITOC member stipends will be funded from the Authority's 2.0% administration allocation.

A. Audit Requirement: The ITOC shall oversee the independent financial audit of

the Authority and the financial and performance audits of the Agencies, which shall be performed in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States and performance goals adopted by the Authority consistent with Public Utilities Code Section 180000 et seq. The audits shall include the basic financial statements of the Authority as defined by the Governmental Accounting Standard Board and the performance of all aspects of the program based on the specific performance goals adopted by the Authority. The ITOC audit shall not relieve the Authority from performing its auditing obligations as imposed by law. All Audits shall be posted on the Authority's website in a manner that is easily accessible to the public.

1) Role of Fiscal and Performance Audit and the ITOC:

- a. The ITOC shall, under the procurement rules of the Authority, jointly recommend with the active involvement of the Executive Director, an independent California Certified Public Accountant to conduct an annual financial audit of the Authority pursuant to the provisions of this Ordinance, report findings based on the audit to the Authority, and to recommend any additional considerations which the ITOC believes may improve the financial operation while meeting all voter mandates.
- b. The ITOC shall, under the procurement rules of the Authority jointly recommend with the active involvement of the Executive Director and the Authority Auditor, retention of an independent audit firm to conduct a biennial performance audit of the Agencies, pursuant to the provisions of this Ordinance, report findings based on the audits to the Authority, and recommend any additional considerations which the ITOC believes may improve the integrity of program implementation while meeting all voter mandates.
- c. The ITOC shall review each Agency's annual independent financial audit, report relevant findings based on the audits to the Authority, and recommend any changes which the ITOC believes may improve the financial operations while meeting all voter mandates.
- d. Upon request of the ITOC Chair, the Authority may hold a publicly noticed meeting annually, which may be a regular or special Authority Board meeting, with the direct participation of
the ITOC, to consider the findings and recommendations of the audits. A report of the findings and recommendations of each audit by the ITOC shall be made readily available to the public in print and on the Authority's

electronic website.

- e. The Authority shall publish a biennial report to the community to be published at the expense of tax revenues in all local newspapers of general circulation in Napa County.

B. Membership and Selection Process

- 1) The Authority shall develop an open selection process, actively recruit, and appoint seven (7) ITOC members who shall be residents of the County of Napa possessing the following credentials:
 - a. One member who is a professional, retired or active, in the field of municipal audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector.
 - b. One member who is a licensed civil engineer, retired or active, with at least five years of demonstrated experience in the fields of transportation in government and/or the private sector.
 - c. One member who is a Certified Public Accountant (CPA), retired or active, and experienced in financial audits.
 - d. One member shall be a representative of a Napa region Chamber of Commerce.
 - e. One member from a bona fide taxpayers association.
 - f. Two members from the public at-large.
- 2) The Chair and the Executive Director of NVTA, the Chair of the NVTA Technical Advisory Committee, and the County Auditor-Controller shall serve as non-voting ex-officio members of the ITOC.

C. Terms and Conditions for the ITOC

- 1) The voting ITOC members shall serve a two, three, and four year term, determined by the drawing of lots. Thereafter, ITOC members shall serve four-year terms.
- 2) The Authority shall develop by-laws for the operation of the ITOC. The ITOC members shall receive a stipend of \$300 per quarterly meeting and no other payment shall be made for any purpose. This stipend will increase by \$50 per quarterly meeting every five years beginning in the new fiscal year. A position on the ITOC shall become vacant as a result of a member failing to attend two consecutive meetings. Meetings may be canceled or rescheduled in consultation with the Chair of the ITOC. ITOC members are not entitled to a stipend if a meeting is canceled.
- 3) The voting ITOC Committee members cannot be current local elected officials in Napa County or a full-time staff member of any city, town, or county government, a local transit operator, or state transportation agency.
- 4) Non-voting ex-officio ITOC members shall serve only as long as they remain incumbents in their respective positions and shall be automatically replaced by their successors in those positions.
- 5) If and when vacancies on the ITOC occur on the part of voting ITOC members, either due to expiration of term or a vacancy occurring during a term, the Authority shall endeavor to appoint an appropriate replacement within 90 days of the vacancy to fill the remainder of the term pursuant to the provisions of Government Code Sections 54970, *et. seq* (the Maddy Act). If committee member vacancies persist for more than 90 days, and the Authority has failed to identify a qualified member to fill a designated position as stated under Section 13, paragraph B, the Authority may select a community member at large to fill the position.

D. ITOC Operation Protocols

- 1) The ITOC shall be appointed within 180 days prior to the operative date of the retail transactions and use tax and continue as long as retail transactions and use tax revenues from the current voter authorization are available for expenditure.
- 2) The Authority Board and staff shall fully cooperate with and provide necessary financial and staff support to ensure the ITOC successfully carries out its duties

and obligations.

E. Conflict of Interest

- 1) ITOC voting members shall have no legal action pending against the Authority and are prohibited from participating in any commercial activity directly or indirectly involving the Authority, such as being a consultant or vendor to the Authority during their tenure on the ITOC.
- 2) ITOC voting members shall not have direct and/or indirect commercial interest or employment with any public or private entity which receives transportation retail transactions and use tax revenues authorized by this Ordinance.

SECTION 14. ADMINISTRATIVE FUNCTIONS AND EXPENSES:

- A. Revenues may be expended by the Authority necessary to administer the Ordinance; however, in no case shall administrative expenditures exceed two percent (2.0%) of the annual budgeted revenues provided by the Ordinance. No more than one percent (1.0%) of revenues shall be used for salaries, wages, or benefits of Authority staff.
- B. Administrative functions include providing overall program direction and management necessary to implement Authority policy, formulating organizational goals and objectives, coordinating activities and funding exchanges with other agencies and organizations, administering finance and debt issuance, accounting, purchasing, personnel, government and community relations, and legal matters.

SECTION 15. RECEIPT AND ALLOCATION OF TAX REVENUES: The County Auditor-Controller shall receive the tax revenue and shall allocate funds to the Agencies at direction of the Authority on a calendar quarter basis, together with any accrued interest, by the end of the following quarter.

SECTION 16. ESTABLISHMENT OF SEPARATE ACCOUNTING: Each Agency receiving the revenues identified in Section 3 shall have its revenues deposited in a separate interest bearing Special Revenue Transportation Improvement Fund. Interest earned on revenues allocated pursuant to this Ordinance shall be expended only for those purposes permitted by this Ordinance.

SECTION 17. IMPLEMENTING ORDINANCES: Upon approval of this Ordinance by the voters the Authority shall, in addition to the rules required to be provided pursuant to this Ordinance, adopt implementing ordinances, rules, and policies that are not inconsistent with the purpose and intent of this Ordinance and take such other actions as may be

necessary and appropriate to carry out its responsibilities.

SECTION 18. EFFECTIVE AND OPERATIVE DATES: This Ordinance shall be effective on July 1, 2025, if two-thirds of the electors voting on the ballot proposition approving the Ordinance vote to approve the ballot proposition on November 5, 2024. The imposition of the tax authorized by this Ordinance shall be operative on July 1, 2025, and after at least 110 days notice to the CDTFA, at which time Measure T will be repealed in its entirety and replaced by this Ordinance. There shall be no concurrent assessment of Measure T and the tax to be imposed by this Ordinance.

SECTION 17. 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 CDTFA.

SECTION 20. 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:
 - 1) The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, CDTFA, State Treasury, or the Constitution of the State of California;
 - 2) The result of that substitution would require action to be taken by or against this Authority or any agency, officer, or employee thereof rather than by or against the CDTFA, 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.

SECTION 21. 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 22. EXEMPTIONS AND EXCLUSIONS:

- A. There shall be excluded from the computation 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 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 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 23. AMENDMENTS: The Expenditure Plan may be amended to provide for the use of additional federal, state, and local revenues or to account for unexpected revenues by approval of a two-thirds vote of the members of the Authority; the two-thirds must include the City of Napa, the County of Napa, and at least three other jurisdictions. No amendment may, eliminate the Local Street and Roads Maintenance Program funding as outlined in Section 3A.

3. No amendment shall operate so as to affect the rate or duration of tax imposed by this Ordinance. Amendments to the Expenditure Plan shall be effective forty-five (45) days after notice of approval of the amendments is given by the Authority.

Amendments constituting expenditures for new programs or new projects that were not a part of the voter approved Expenditure Plan or referred to in the Local Streets and Roads Maintenance Program may only be approved with the subsequent consent of the electorate.

As required by state law, 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 24. TEN-YEAR PROGRAM REVIEW: After the tax has been in effect for ten years after the operative date, the Authority shall conduct a comprehensive review of all revenues, projects and programs under the Expenditure Plan to evaluate the performance of the overall program over the previous ten-year period and to make revisions to the Expenditure Plan to improve its performance and allow for changed demographic conditions, transportation needs, revenues, and technology over the subsequent ten years. Revisions to the Ordinance and Expenditure Plan required as a result of the ten-year review shall be subject to the amendment process in Section 23.

SECTION 25. DESIGNATION OF FACILITIES: Each project or program receiving in excess of \$250,000 funded in whole or in part by revenues from the Ordinance shall be clearly designated with project signage at the project site during its construction or implementation as being provided by revenues from the Ordinance.

SECTION 26. 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.

SECTION 27. ANNUAL APPROPRIATIONS LIMIT: Article XIII (B) of the California Constitution requires the establishment of an annual appropriations limit for governmental entities. The maximum annual appropriations limit for the Authority is hereby established as \$250 million. The appropriations limit shall be subject to adjustment as provided by law. All expenditures of the retail transactions and use tax revenues imposed by Section 4 are subject to the appropriations limit of the Authority.

SECTION 28. ENJOINING COLLECTION FORBIDDEN: No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or the Authority, or against any officer of the state or the Authority, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION 29. 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 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 30. DEFINITIONS:

- A. *Agency* means those cities, town, and county that lie within the geographic boundaries of the County of Napa.
- B. *Authority* means the Napa Valley Transportation Authority – Tax Agency created by the Napa County Board of Supervisors with the concurrence of a majority of cities having a majority of the incorporated population of the county.
- C. *Napa Valley Transportation Improvement Act Expenditure Plan or Expenditure Plan* means the expenditure plan required by Section 180206 of the Public Utilities Code to be adopted prior to the call of an election on this Ordinance. The Expenditure Plan set forth in Attachment 1, includes the allocation of revenues for each authorized purpose. To the extent the summarized provisions of the expenditures contemplated by this Ordinance cannot be reconciled with the Expenditure Plan, the provisions of Attachment 1 shall prevail.
- D. *Effective Date* means the date the measure was passed by the electorate.
- E. *Highways* means all purposes necessary and convenient to the design, right-of-way acquisition, and construction of highway facilities, including all state highway routes and any other facilities so designated in the Expenditure Plan.

- F. *Infrastructure* means any components within the public right-of-way necessary to support the customary use of a roadway and includes road pavement (including but not limited to asphalt and concrete), sub-grade, excavation, grading, earthwork, retaining walls, guard rails, curb, gutter, sidewalks, curb ramps, surface and subsurface drainage, traffic control devices, replacement roadway lighting, striping, pavement marking and signage, and intelligent transportation systems.

- G. *Maintenance* means repair, reconstruction or rehabilitation, and/or replacement of streets, roadways, and other infrastructure within the public right-of-way.
- H. *Operative Date* means the date the tax begins to collect revenue for this measure.
- I. *Project* is a single effort with a beginning and an end that would cause the construction or maintenance or reconstruction of some tangible portion of a transportation asset owned or operated by public agency that has independent utility. A *project* does not appear without a detailed description as to cost and location in a local agency budget, and it must be included in the agency's five-year project list approved by the agency's governing body.
- J. *Reconstruction* or *Rehabilitation* includes changes to infrastructure, including replacement and/or pavement surface treatments, the placement or replacement of base materials and/or any sub-grade work, the widening of the roadway, if the widening is necessary to conform with the geometric design criteria of the State of California or any local design standards. This includes additions, changes or reconstruction of Infrastructure directly associated with the function of a street or roadway. It also includes additions necessary to incorporate and/or maintain bicycle and/or pedestrian and/or transit facilities called for in the Authority's Countywide Active Transportation Plan or adopted local agency plans , and any improvements or alterations necessary to the roadway and or pedestrian or bicycle travel ways to improve overall circulation and to meet American's with Disabilities Act requirements.
- K. *Capacity* includes any overlay, including the placement or replacement of base materials and any sub-grade work or widening of a local street or road and/or highway. This includes additions, changes, reconstruction of infrastructure directly associated with the function of a local street or road and/or highway. It also includes any additions necessary to incorporate bicycle and/or pedestrian facilities in the Authority's Countywide Active Transportation Plan or any local agency's adopted active transportation plans and any improvements or alternations necessary to the roadway and/or pedestrian or bicycle travel ways to improve overall circulation and meet Americans with Disabilities Act requirements.
- L. *Regional Transportation Improvement Program Submission* means any program of projects sent or otherwise caused to be delivered to the Regional Transportation Planning Agency for Napa County by the entity designated by the Regional Transportation Planning Agency with the submission of that program for the local agencies for consideration by the Regional Transportation Planning Agency for

inclusion in the Regional Transportation Improvement Program or its related documents.

- M. *Local Streets and Roads* means Infrastructure located within the public right of way of any local Agency street or road or highway right-of-way in Napa County.
- N. *Storm damage repair* means repair or reconstruction of local streets and highways and related drainage improvements that have been damaged due to storms and flooding, in those jurisdictions that have been declared disaster areas by the President of the United States and/or by the Governor of California.

- O. *Funding Exchange* means borrowing from or replacing project funding with another funding source to accelerate project delivery.
- P. *Total Revenue* means Total Revenues received by the Authority.
- Q. *Net Revenues* means total sales tax revenue distributed to the Agencies less Authority administration allocation, and debt service payments on bonds for Authority projects.

SECTION 31. PUBLICATION OF ORDINANCE: A summary of this Ordinance shall be published at least five days before its passage in the local newspapers of general circulation published in the County of Napa, and at least once before the expiration of 15 days after its passage together with the names of the Directors voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Napa Valley Transportation Authority, held on February 21, 2024, and passed at a regular meeting of the Napa Valley Transportation Authority held on April 17, 2024, by the following vote:

LIZ ALESSIO, NVTA-TA Chair

Ayes: _____

Noes: _____

Absent: _____

ATTEST:

Laura Sanderlin, NVTA-TA Board Secretary APPROVED:

Osman Mufti, NVTA-TA Legal Counsel

Attachment (1) Napa Valley Transportation Improvement Act Expenditure Plan

ATTACHMENT 1

**NAPA VALLEY TRANSPORTATION IMPROVEMENT ACT EXPENDITURE
PLAN**

Revenues received by the Authority from the proposed transactions and use tax, less the fees charged by the California Tax and Fee Administration to collect sales tax, shall be used to fund the projects and programs described below after paying for the costs of this election, the cost of debt service, and the cost of administering the program. Only two percent (2.0%) of the net revenues may be expended for costs of administration. All funding and revenues are expressed in 2024 dollars over the thirty-year life of the program.

The revenue allocated to each Agency under this Expenditure Plan may be used for any direct costs of design, materials testing, project required environmental reviews, construction management, inspection, and construction of the projects.

Local Streets and Roads Maintenance Program**Description:**

After deductions for capital highway improvement and highway operations and emergency evacuation projects, in an amount not to exceed \$56 million dollars and associated debt service expenses, and the Authority's administration fees of two percent (2.0%), the balance of funds shall be allocated to the Local Streets and Roads Maintenance Program. Under the Ordinance, the funds for the Local Streets and Roads Maintenance Program must be used for maintenance, reconstruction or rehabilitation of local streets, roads, and infrastructure within the public right-of-way as defined. Up to five percent (5%) of Agencies' Local Streets and Road Maintenance Program can be used on other transportation projects, including capacity projects.

No revenues derived from this Ordinance shall be apportioned to regional projects until bonds are sold, except six million (\$6 million) in pay-go funds to Napa Valley Transportation Authority for capital projects in the first five-years of the measure. Local Agency apportionments will be net of debt service payments associated with the bonds issued to fund regional projects. Debt service associated with bonds issued to fund local projects will be deducted from that Agency's annual Local Streets and Roads allocation. If for some reason a regional project or program is infeasible and funds remain in the program, funding from the regional program will be distributed to the Local Street and Road Maintenance Program based on the prescribed formula.

The initial estimated distribution of funding for the Local Streets and Maintenance Program is:

| Project | Percentage Distribution |
|-----------------|-------------------------|
| American Canyon | 8.0% |
| Calistoga | 3.0% |
| City of Napa | 40.2% |
| Napa County | 38.8% |
| St. Helena | 6.6% |
| Yountville | 3.4% |
| | |
| Total | 100.0% |

The percentage distribution and estimated Transaction and Use Tax is based on 2024 values and will be updated when the sales tax becomes operative on July 1, 2025 and every successive five years based on the formula established in Section 3, Paragraph A: Local Streets and Roads Maintenance Program.

Regional Transportation Enhancement Program

Regional funds may be used on any of the Regional Transportation Enhancement programs and/or projects and may not exceed \$56 million, excluding Low-Income Transit Subsidies, which will be paid for out of the Authority's administrative allocation.

| Project Name | Amount |
|--|---|
| <u>SR 29/SR 12 – Intersection Improvements at SR 29 and Jameson Canyon/Airport Road and SR 12/Kelly Road</u> | <u>Costs for capital projects funded by the Napa Valley Transportation Improvement Act may not exceed \$56 million.</u> |
| <u>SR 29-American Canyon – Operational Improvements on SR 29 between Napa Junction and American Canyon Road</u> | |
| <u>SR 29-SR 12/121 – Intersection Improvements at SR 29/Carneros Highway</u> | |
| <u>Highway Operations and Emergency Evacuation– may include highway system adaptive messaging signs and Vine Transit emergency evacuation operations, or other transportation projects related to emergency evacuation routes.</u> | |
| <u>Low Income Transit Subsidies</u> | |
| <u>Fares for Veterans, Persons with Disabilities, Seniors, and Students</u> | <u>Estimated annual cost of \$10,000 and funded from Authority's administrative fees or other Authority revenues.</u> |

Amendments

This Expenditure Plan may be amended to provide for the use of additional federal, state, and local revenues or to account for unexpected revenues by approval of a two-thirds vote of the members of the Authority; the two-thirds must include the City of Napa, the County of Napa, and at least three other jurisdictions. No amendment shall operate so as to affect the rate of tax imposed by this Ordinance.

Amendments constituting expenditures for new programs or new projects that were not a part of the voter approved Expenditure Plan or referred to in the Local Streets and Roads Maintenance Program may only be approved with the subsequent consent of the electorate.

ATTACHMENT 2

Local Street and Road Example Formula

| Column Number | A | B | C | D | E | F | G |
|-----------------|-------------------------|--------|------------|--------|----------------------------------|----------------------|----------|
| Jurisdiction | Return to Source Amount | | Lane Miles | | Sub-total | Final Distribution | 3% Floor |
| | Value (in 1,000s) | % | Value | % | County = (B+D)/2; Cities=B | Normalize to 100% | |
| American Canyon | \$ 3,261 | 8.9% | 112.8 | 7.5% | 8.9% | 8.0% | 8.0% |
| City of Napa | \$ 16,493 | 45.0% | 467.6 | 31.0% | 45.0% | 40.3% | 40.2% |
| Yountville | \$ 1,401 | 3.8% | 16.6 | 1.1% | 3.8% | 3.4% | 3.4% |
| St. Helena | \$ 2,703 | 7.4% | 51.5 | 3.4% | 7.4% | 6.6% | 6.6% |
| County of Napa | \$ 11,665 | 31.8% | 828.7 | 55.0% | 43.4% | 38.9% | 38.8% |
| Calistoga | \$ 1,131 | 3.1% | 30.6 | 2.0% | 3.1% | 2.8% | 3.0% |
| Total | \$ 36,654 | 100.0% | 1,507.8 | 100.0% | 111.6% | 100.0% | 100.0% |

The above Local Streets and Road Formula is an illustrative example of the formula calculation and is subject to change upon the five-year update.