

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

RESOLUTION NO. 08-044

A RESOLUTION CALLING FOR AN ELECTION ON A SPECIAL TAX MEASURE IN SPECIAL TRANSIT DISTRICT NUMBER ONE TO EXTEND THE TERM AND TO INCREASE THE LEVY OF AN EXISTING PARCEL TAX, REQUESTING CONSOLIDATION OF THE MEASURE WITH THE GENERAL ELECTION ON NOVEMBER 4, 2008, REQUESTING THE PREPARATION OF AN IMPARTIAL ANALYSIS BY THE ALAMEDA COUNTY COUNSEL AND PROVIDING FOR SUCH OTHER ACTIONS AS MAY BE NECESSARY OR CONVENIENT

WHEREAS, the Alameda-Contra Costa Transit District (the District), as a special transit district organized under the provisions of the Public Utilities Code, is authorized by Section 4 of Article XIII A of the California Constitution, and sections 50075, 50076, 50077 and 53722 et seq. of the Government Code and section 25892.1 of the Public Utilities Code, upon approval of two-thirds of the electorate voting on the measure, to levy a special tax for specified purposes following notice and a public hearing; and

WHEREAS, on November 5, 2002 District voters in Special Transit District Number One (District 1) approved Measure AA, a special parcel tax measure; and

WHEREAS, on November 2, 2004, District voters in District 1 approved Measure BB, a special parcel tax measure to increase the existing parcel tax and to extend the term of the parcel tax to 2013; and

WHEREAS, the District's Board of Directors (the Board) has determined that the extension of the term of and increase to the existing special tax is necessary in District 1 for the purpose of providing for the continued operation and maintenance of bus service within District 1, as a transportation utility, over the next ten years; and

WHEREAS, due to the rising cost of diesel fuel, health care costs and reductions in funding the District would receive from the State, the District faces a budget deficit in the 2008-2009 fiscal year, which is projected to continue in future fiscal years; and

WHEREAS, the Board held a public hearing on May 21, 2008, to consider proposed fare adjustments and the staff has been requested to provide criteria that would be used to recommend service adjustments in light of the District's financial outlook for the 2008-2009 fiscal year and future fiscal years; and

WHEREAS, the Board recognizes that an increase in fares and a reduction in or the absence of bus services can have serious impacts on the lives of the citizens who use the District's service, including school children, seniors and people with disabilities, as well as impact the Bay Area Region's efforts to reduce air pollution and traffic congestion on local streets and freeways; and

WHEREAS, the State budget has not been approved and it is not yet clear how many millions of dollars will be taken and for how many years, but it is projected that the District will lose \$19 million in Fiscal Year 2008-2009; and

WHEREAS, the majority of the District's service is in District 1 and the passage of this special tax measure will help address increased operation and maintenance costs for bus service it provides in District 1 and diminish the need for additional fare increases in District 1 to offset this costs at this time; and

WHEREAS, the Board previously adopted Resolution No. 08-036, requesting the consolidation of the District's Board election with the general election to be held on November 4, 2008; and

WHEREAS, in accordance with Elections Code Section 10400, this ballot measure should be consolidated with the general election to be held on November 4, 2008; and

WHEREAS, the Board held a noticed public hearing on July 23, 2008 in accordance with Government Code Section 50077 prior to the adoption of this Resolution;

NOW, THEREFORE, the Alameda-Contra Costa Transit District Board of Directors does resolve as follows:

SECTION 1. **Special Tax Measure Election.**

The Board of Directors (the Board) is authorized pursuant to Public Utilities Code Section 25892.1 and Government Code Section 50077 to order an election for the adoption of a special tax and, in accordance with that authority, calls and orders to be held in the territory of Special Transit District Number One (District 1), as identified in Exhibit A, within the counties of Alameda and Contra Costa, on Tuesday, November 4, 2008, an election on the special tax measure set forth in Exhibit B, which exhibits are attached to and incorporated into this resolution by reference.

SECTION 2. **Amount and Duration of the Measure**

The special tax, in the amount of \$96 per year for ten years, shall be imposed on the owner(s) of each parcel of taxable land in District 1 because the owners, occupants and visitors to said parcels benefit by having bus services available for them. The owner(s) of a parcel that is exempt from property taxes, that is undeveloped or that is developed but vacant for more than six months in any one year (July 1 through June 30) is exempt from the imposition of said special tax. A request for a refund of the tax must comply with Section 9 of this Resolution.

The parcel tax approved by this measure shall become effective on July 1, 2009 and terminate on June 30, 2019. The intent of this measure is to extend the term of the existing tax and to increase it by an additional \$48 per parcel per year.

A parcel is defined as any unit of land in District 1 that now receives a separate tax bill from the Alameda County Tax Collector or the Contra Costa County Tax Collector.

SECTION 3. **Accounting For the Proceeds of the Measure**

In accordance with Government Code Section 50075.1 the Board specifies and directs:

- a. The purpose of the special tax is to obtain funding for a period of up to ten years, for the operation and maintenance of bus services provided by AC Transit in District 1 for transportation purposes. The terms "operation" and "maintenance" refer to all activities necessary to provide bus service, including, but not limited to, equipment, supplies, fuel and lubricants, personnel, compensation, and payment for and maintenance of facilities in District 1.
- b. The proceeds of the special tax shall be applied only to the operation and maintenance of bus services in District 1.
- c. The General Manager and the Chief Financial Officer are directed to create an account into which the proceeds of the special tax will be deposited.
- d. The Chief Financial Officer shall file a written report with the Board no later than January 1, 2010 and will be required to continue making such reports during each subsequent year the proceeds of the special tax are collected for placement in the account. The annual report shall contain both of the following: (1) the amount of funds collected and expended, and (2) the status of the use of the funds for the operation and maintenance of bus service, as provided in subsection 3.a., above. The Board shall consider the written report at a regular meeting of the Board following the receipt of a recommendation from the appropriate Board Standing Committee.
- e. A separate annual audit of this account shall be prepared by the District's external auditor.

SECTION 4. **Establishment of Independent Fiscal Oversight Committee**

In addition to the reporting requirements set forth in Section 3, an independent fiscal oversight committee of community representatives (The Committee) was created on August 8, 2002, with the adoption of Resolution No. 2067. The Committee membership has been established in Resolution Nos. 2098 and 05-031. The Committee shall review the use of the special account funds and provide its own annual written report at the same regular meeting of the Board that the Chief Financial Officer's report is received by the Board. The Committee's report also shall be referred to the appropriate Board Standing

Committee and subsequently considered by the Board along with the recommendations of the Board Standing Committee.

SECTION 5. **Responsibilities of Registrar of Voters**

This Resolution shall stand as the order to the Registrars of Voters for Alameda County and Contra Costa County (the Counties) to call an election within the boundaries of District 1, as defined in Exhibit A.

The Registrars of Voters for the Counties are requested to perform within their respective county all of the duties applicable to this ballot measure and this election as required by the Elections Code.

SECTION 6. **Requests and Authorizations to the Boards of Supervisors**

- a. The Board requests the Boards of Supervisors of the Counties to consolidate the election of the aforementioned ballot measure with the general statewide and District elections to be held on November 4, 2008, in accordance with California Elections Code Section 10400, et seq.
- b. The Board requests the Boards of Supervisors of the Counties, pursuant to Elections Code Section 10400 et seq., to permit the respective Registrars of Voters for the Counties to render all services necessary for this election as required by the Elections Code, including but not limited to, noticing the election, preparing and distributing election and ballot materials, and holding the election.
- c. The Board authorizes the Boards of Supervisors of the Counties, pursuant to Elections Code Section 10411, to canvass the returns of the election and report the results to the Board.
- d. The District agrees to reimburse the Counties for the actual cost incurred by the Elections Officials for conducting the General Election upon receipt of a bill stating the amount due as determined by the Elections Officials.

SECTION 7. **Preparation of Impartial Analysis**

The Board requests the County Counsel of Alameda County, as the principal county, to prepare an impartial analysis of this measure in accordance with Elections Code Section 9313.

SECTION 8. **Collection and Enforcement**

Pursuant to Public Utilities Code section 25896, the Board, elects to have the respective tax collectors for the Counties collect the special tax imposed by this Resolution. The tax shall be due each year and payable on November 1 and February 1.

The tax shall be delinquent if not received on or before the delinquency date set forth in the notice mailed to the address of the owner(s) of the parcel as shown on the most current assessment roll of the Alameda County or Contra Costa County Tax Collector and shall be collected from the owner(s) in such a manner and at such times as the Board may provide.

The tax shall be collected by the Counties in conjunction with, at the same time, in the same manner, and enforced and subject to the same penalties as each county's collection of county taxes, as provided in Public Utilities Code section 25903.

Section 9. Administration and Refunds

The Board may authorize the General Manager to adopt such administrative regulations as are deemed necessary related to the interpretation and enforcement of this resolution.

Any person claiming a refund of the tax for any reason shall first file a written claim with the District Secretary of the District on a form specified by the District Secretary. Such claim must be filed no later than 100 days after payment of the tax. All claims must be filed by the person who paid the tax, or his or her guardian, conservator, or the executor of his or her estate. No claim may be filed on behalf of other taxpayers or a class of taxpayers. Filing of a claim shall be a condition precedent to legal action against the District for refund of the tax.

Section 10. Miscellaneous

- a. The President of the Board and the Board Officers are hereby authorized and directed, individually and collectively, to do any and all things to execute, deliver, and perform any and all agreements and documents that they deem necessary or advisable in order to effectuate the purposes of this Resolution.
- b. The President of the Board is authorized to consult with others to prepare a written argument in favor of the ballot proposition for each county not to exceed 300 words. The argument may be signed by bona fide associations or by individual voters who are eligible to vote in District 1.
- c. Any action to challenge the tax imposed by this Resolution shall be brought pursuant to Government Code section 50077.5 and Code of Civil Procedure section 860 et seq. If any provision, sentence, clause, section or part of this Resolution is found to be unconstitutional, illegal or invalid, such finding shall affect only such provision, sentence, clause, section or part, and shall not affect or impair any of the remaining parts of the Resolution.

- d. If the full text of the measure exceeds the 75-word limit, the full text of the measure is to be printed in the voter pamphlet.

Section 11. California Environmental Quality Act

- a. The placement of this tax measure on the November 2, 2004 ballot is not a project under the California Environmental Quality Act (CEQA) because the passage or defeat of the measure will result in neither a direct nor a reasonably foreseeable indirect physical change in the environment.
- b. The proposed tax measure is intended to provide funding for the operation and maintenance of the District which would help maintain existing bus services, reduce the need for future service reductions (subject to unforeseen actions at the State or Federal level or the economy which affect the District's financial resources), reduce the present need to increase fares (particularly for youth, seniors and the disabled) and provide funding (along with other sources) that permit further improvements and retention of bus services.
- c. Any service reductions that occur will be subject to their own environmental analysis and any necessary and appropriate environmental document will be prepared at that time.
- d. As a result, the proposed tax measure is not a "project" as defined by CEQA Guidelines section 15378(b)(4). Its approval will result only in making funding for bus service operation and maintenance available; the allocation and spending of the resulting revenue, and any potential future service reductions necessitated by insufficient funding, will involve separate approvals that may require environmental analysis under CEQA. Therefore, review of the measure under CEQA is not necessary.
- e. The General Manager, the General Counsel or their designees are authorized to execute and file any documents necessary to carry out the aforementioned findings.

Section 12. Duties of the District Secretary


The Board directs the District Secretary to transmit an original signed certified copy of this Resolution to the Board of Supervisors of the Counties, and provide a certified copy of the Resolution to the Registrar of Voters for the Counties, no later than noon on August 8, 2008.

The Board of Directors directs the District Secretary to transmit a copy of the aforementioned measure to the County Counsel of Alameda for the preparation of an impartial analysis of the measure as provided in Elections Code Section 9313.

Section 13. Effective Date of the Resolution

This Resolution shall be effective immediately upon its adoption by four affirmative votes of the Board. Notwithstanding the effective date of this Resolution, the tax imposed pursuant to it shall not become effective until approved by a vote of two-thirds of the electors voting on the measure at the November 4, 2008 election.

PASSED AND ADOPTED this 23rd day of July 2008.


H. E. Christian Peeples, President

Attest:


Linda A. Nemeroff, District Secretary

I, Linda A. Nemeroff, District Secretary for the Alameda-Contra Costa Transit District, certify that the foregoing Resolution was passed and adopted at a Regular Meeting of the Board of Directors held on the 23rd day of July 2008, by the following roll call vote:

AYES: VICE PRESIDENT KAPLAN, DIRECTORS WALLACE, ORTIZ,
FERNANDEZ, DAVIS, PRESIDENT PEEPLES

NOES: NONE

ABSENT: DIRECTOR HARPER

ABSTAIN: NONE


Linda A. Nemeroff, District Secretary

Approved as to Form:



Kenneth C. Scheidig, General Counsel

EXHIBIT A

District One

District One is comprised of 11 cities (Wards I through IV) and adjacent unincorporated areas in the East Bay (west of the hills) from El Sobrante and North Richmond through the City of Hayward. The cities are Alameda, Albany, Berkeley, El Cerrito, Emeryville, Hayward, Oakland, Piedmont, Richmond, San Leandro and San Pablo. Present unincorporated areas include Ashland, Castro Valley, Cherryland, El Sobrante, Fairview, Kensington and San Lorenzo. District One also includes the following Ward V, whole and partial census tracts: 437000, 437100, 437200, 437300, 438300, 438400.*

*Subject to further refinement of the boundaries during the term of the measures.

EXHIBIT B

BALLOT MEASURE LANGUAGE

“To preserve affordable local public transportation that allows seniors and people with disabilities to remain independent, takes students to and from school, provides transportation alternatives given skyrocketing gas prices, helps residents commute to work and reduces traffic and greenhouse gas emissions by getting cars off the road shall the Alameda-Contra Costa Transit District (AC Transit) increase its existing parcel tax by \$4 per parcel, per month for ten years with independent oversight and all money staying local?”