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41.26.130 (SALERS)

APPROVED AS TO FORM AND LEGALITY

*Barbara J. Parker*

CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

13833

ORDINANCE NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT NIKKI FORTUNATO BAS AND  
COUNCILMEMBERS KEVIN JENKINS, REBECCA KAPLAN, AND TREVA REID

ORDINANCE 1) SUBMITTING TO THE VOTERS AT A SPECIAL ELECTION TO BE HELD ON APRIL 15, 2025, A PROPOSED ORDINANCE TO IMPOSE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION; 2) REQUESTING CONSOLIDATION OF THE ELECTION WITH ALL SPECIAL MUNICIPAL ELECTIONS TO BE HELD IN THE CITY OF OAKLAND ON APRIL 15, 2025; AND 3) DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE APRIL 15, 2025 SPECIAL MUNICIPAL ELECTION

**WHEREAS**, under the "Transactions and Use Tax Law," Part 1.6 of Division 2 of the Revenue and Taxation Code, the City may adopt a transactions and use tax to be imposed within the City; and

**WHEREAS**, under the limitation in section 7251.1 of the Revenue and Taxation Code, the City may adopt a transactions and use tax with a tax rate of up to 0.5%; and

**WHEREAS**, Oakland City Charter section 1103 provides that all elections and procedures related thereto shall be in accordance with the applicable provisions of state law, except as otherwise may be provided by ordinance or the City Charter; and

**WHEREAS**, Oakland Municipal Code section 3.08.010 provides that except as may be otherwise provided in Chapter 3.08 all city elections and all procedures relating thereto shall be, where practicable, in accordance with the applicable provisions of state law relating to elections in general law cities; and

**WHEREAS**, by separate resolution, the City Council will call a special municipal election to be held on April 15, 2025 for the purposes of filling a vacancy in the office of the Mayor and the office of the District 2 Councilmember; and

**WHEREAS,** California Elections Code sections 10400 through 10403 provide that two or more municipal elections called by the same body may be consolidated upon an order by the county board of supervisors if the local body submits to the county legislation that requests consolidation of the elections

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** That the Oakland City Council finds and determines the forgoing recitals are true and correct and hereby adopts and incorporates them into this Ordinance.

**SECTION 2.** That the Oakland City Council does hereby call for a special election on April 15, 2025 and submits to the voters at the election an Ordinance that reads as follows:

Be it ordained by the People of the City of Oakland:

That a new chapter 4.26 is added to the Oakland Municipal Code to read as follows:

**4.26.010. TITLE.** This ordinance shall be known as the City of Oakland Transactions and Use Tax Ordinance. The city of Oakland hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

**4.26.020. OPERATIVE DATE.** "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance. For purposes of Revenue and Taxation Code section 7265, this ordinance shall be considered adopted on the date of the election in which it is approved by the qualified voters of the City.

**4.26.030. 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 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a 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 therefore 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.

**4.26.040. CONTRACT WITH STATE.** Prior to the operative date, the City 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 City 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.

**4.26.050. TRANSACTIONS TAX RATE.** For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 0.5% 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.

**4.26.060. 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.

**4.26.070. USE TAX RATE.** An excise tax is hereby imposed on the storage, use or other consumption in the City 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 0.5% 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.

**4.26.080. 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.

**4.26.090. 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 City 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 City 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 "City" 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 District" 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.

**4.26.100. 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.

**4.26.110. 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 City which is shipped to a point outside the City, 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 City 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-City 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-City 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 City 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 City 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 City or participates within the City 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 City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" 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 City.

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.

**4.26.120. 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.

**4.26.130. 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 City, or against any officer of the State or the City, 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.

**4.26.140. 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.

**4.26.150. EFFECTIVE DATE.** This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

**4.26.160. TERMINATION DATE.** The authority to levy the tax imposed by this ordinance shall expire ten years after the Operative Date.

**SECTION 3.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption

**SECTION 4.** That each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

Measure _____  Shall the measure providing funding to help maintain City of Oakland programs, services, and facilities such as public safety and police services; neighborhood crime prevention; fire protection; pothole and road repaving; shelter and housing for individuals and families experiencing homelessness; library and recreation services; playground and park maintenance; youth, senior, and cultural programs; by enacting a half-cent (.5%) transaction (sales) and use tax for 10 years, providing approximately \$29,800,000 annually for general government use be adopted?	Yes	
	No	

**SECTION 5.** That the City Council hereby authorizes and directs the City Clerk of the City of Oakland (the "City Clerk") at least 88 days prior to the special election to file with the Alameda County Clerk certified copies of this Ordinance.

**SECTION 6.** That the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots the measure language to be voted on by the voters of the City of Oakland.

**SECTION 7.** That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election.

**SECTION 8.** The City Council does hereby request that the Board of Supervisors of Alameda County order the consolidation of the City of Oakland Special Municipal Elections to be held on Tuesday, April 15, 2025.

**SECTION 9.** That the consolidated Municipal Election shall be held and conducted in the manner required in Section 10418 of the California Elections Code.

**SECTION 10.** That the City Attorney, in accord with the City Attorney's powers and duties is hereby authorized to insert the final ballot question into this Ordinance after adoption by the Council so that the ballot question constitutes a true and impartial synopsis of the final proposed measure; and to make any changes to the texts of the measure as described herein to conform to any legal requirements or requirements of the County Registrar or the California Department of Tax and Fee Administration.

**SECTION 11.** That the City Clerk is hereby directed to cause the posting, publication, and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, Chapter



3.08 of the Oakland Municipal Code, the California Government Code, and the California Elections Code.

**SECTION 12.** That in accordance with the Elections Code and the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Ordinance and rebuttals and said date shall be posted in the Office of the City Clerk.

**SECTION 13.** That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the special election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the special election.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: JAN - 9 2025

AYES – BROWN, FIFE, HOUSTON, KAPLAN, RAMACHANDRAN, UNGER  
PRESIDENT PRO TEMPORE GALLO - 7

NOES –

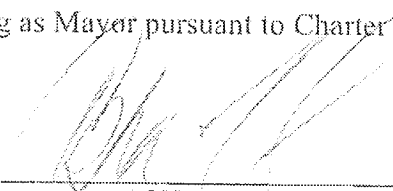
ABSENT – COUNCIL PRESIDENT JENKINS (serving as Mayor pursuant to Charter Section 303)

ABSTENTION –

Introduction Date

DEC 16 2024

ATTEST:

  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Date of Attestation: January 13, 2025

## **NOTICE AND DIGEST**

**ORDINANCE 1) SUBMITTING TO THE VOTERS AT A SPECIAL ELECTION TO BE HELD ON APRIL 15, 2025, A PROPOSED ORDINANCE TO IMPOSE A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION; 2) REQUESTING CONSOLIDATION OF THE ELECTION WITH ALL SPECIAL MUNICIPAL ELECTIONS TO BE HELD IN THE CITY OF OAKLAND ON APRIL 15, 2025; AND 3) DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE APRIL 15, 2025 SPECIAL MUNICIPAL ELECTION**

This ordinance would call a special municipal election to be held on April 15, 2025 for the purpose of submitting to the voters a proposed ordinance to impose a general transactions and use tax at a rate of .5% for ten years, to be administered by the California Department of Tax and Fee Administration. This ordinance would request consolidation of the election with all special municipal elections to be held in the City of Oakland on April 15, 2025 and direct the City Clerk to take all actions necessary to conduct the April 15, 2025 special municipal election.