

2009 APR -8 PM 8: 04



CITY OF OAKLAND
CITY COUNCIL

LEGISLATIVE ANALYST MEMORANDUM

To: President Brunner and Members of the City Council
From: Sabrina Landreth, Legislative Analyst
Date: April 21, 2009
Re: Resolution Submitting, On The City Council's Own Motion, To The Electors At A Special Municipal Election That Is Not Less Than 88 Days And No More Than 150 Days After The Date The Council Passes This Resolution, A Proposed Ordinance Imposing A Transactions And Use Tax (Sales Tax) Of [One-Fourth Or One-Half] Cent For Maintenance Of Vital City Services And Facilities, For A Three-Year Period; And Directing The City Clerk To Fix The Date For Submission Of Arguments And Provide For Notice And Publication In Accordance With The Next Municipal Special Election

SUMMARY

A resolution has been prepared authorizing the submission to the voters at the July 21, 2009 special election a proposed ordinance that would implement a temporary local Transactions and Use Tax of .25% or .5% for a period of three years. The revenue generated from the tax would be allocated to the General Purpose Fund.

BACKGROUND

Cities, counties, special districts and countywide authorities are authorized to impose Transactions and Use Tax (TUT) add-ons to the combined state and local sales tax rate. Prior to 2003, the most common TUT measures were for a specific countywide need, most commonly transportation. But since a 2003 change in the law, add-on taxes by cities and counties for general purposes have become more frequent. Every county and every city has the ability to seek voter approval of a local TUT under the following conditions:

- the TUT may be imposed at a rate of 0.25% or a multiple thereof,
- the ordinance proposing the tax must be approved by a two-thirds vote of all members of the governing body,
- if for general purposes, the tax must be approved by a majority vote of the voters in the city or county,
- if for specific purposes, the tax must be approved by a two-thirds vote of the voters in the city or county, and
- the maximum combined rate of TUTs in any location may not exceed 2%.

The TUT is generally imposed on the same goods and merchandise as the local sales and use tax. However, while the sales tax is generally allocated to the jurisdiction where the sale is negotiated or order taken, the TUT is allocated to the jurisdiction where the goods are delivered or placed into use. For "walk-in" retail stores, the state generally assumes that the merchandise will be used within the district where the store is located, unless the retailer is asked to ship the merchandise outside the district as part of the sale. Sellers or lessors of vehicles, vessels or licensed aircraft are required to collect the TUT (if any) only for the district where the vehicle is to be registered. Residents cannot escape the tax by purchasing from a dealer outside the city as dealers statewide are required to collect any TUT for the jurisdiction where the vehicle is registered. For sales contracts that require shipment of the merchandise, the TUT is levied for the district to where the merchandise is shipped if that district has a TUT.

The TUT, particularly when structured as a majority vote tax for general purposes, has become a popular revenue raising tool for cities. In the last few years, the number of approved city TUTs has increased substantially. There are currently 52 general purpose and 23 special purpose city TUTs (see Attachment A).

City Transactions and Use Taxes

Number of currently approved taxes;
effective as of April 1, 2009

| Rate | 0.25% | 0.50% | 0.75% | 1.00% |
|-------------------------|-------|-------|-------|-------|
| General | 8 | 31 | 4 | 9 |
| Special | 4* | 17 | 2 | 0 |
| Special Tax Uses | | | | |
| Police & Fire | 4* | 9 | 2 | |
| Hospital/Medical | | 1 | | |
| Parks/Recreation | | 1 | | |
| Streets/Roads | | 6 | | |

*Clovis' tax is 3/10%

The current sales tax rate for all cities in Alameda County is 9.75%, as of April 1, 2009 when an additional one cent sales tax went into effect as part of the State Budget compromise (see Attachment B for California sales tax rates by County and City). The compromise specifies that the new sales tax rate will remain in effect until July 1, 2011. The increase will be extended by one year if the voters approve Proposition 1A in May.

Alameda County has three ½ cent (0.50%) TUTs that are added to the state and local sales and use tax rate amounting to the combined 9.75%. Specifically, the three TUTs are for Alameda County Essential Health Care Services (ACHC; effective 7/1/04), the Alameda County Transportation Improvement Authority (ACTIA; effective 4/1/02), and the Bay Area Rapid Transit District (BART; effective 4/1/70).

FISCAL IMPACT

The proposed three-year Transactions and Use Tax would generate approximately \$8 million annually for every ¼ cent (.25%) increase.

ACTION REQUESTED OF THE CITY COUNCIL

Approve the attached resolution to place the proposed temporary Transactions and Use Tax on the July 21, 2009 special election ballot.

City Transactions & Use Taxes Currently in Effect

| City | County | Rate | Effective | End Purpose | Authority in State Law | Enabling Legislation |
|-------------------|------------------------|-------|-----------|------------------------------------|--------------------------|-------------------------|
| Arcata | Humboldt County | 0.75% | 4/1/2009 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Arroyo Grande | San Luis Obispo County | 0.50% | 4/1/2007 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Arvin | Kern County | 1.00% | 4/1/2009 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Avalon | Los Angeles County | 0.50% | 10/1/2000 | None Medical | Rev & Tax Code § 7286.25 | SB1365 Beverly 1996 |
| Campbell | Santa Clara County | 0.25% | 4/1/2009 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Capitola | Santa Cruz County | 0.25% | 4/1/2005 | 12/31/2017 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Ceres | Stanislaus County | 0.50% | 4/1/2008 | None Police, fire | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Clearlake | Lake County | 0.50% | 7/1/1995 | None Police, fire | Rev & Tax Code § 7286.45 | SB679 M.Thompson 1994 |
| Clovis | Fresno County | 0.30% | 4/1/2000 | None Police, fire | Rev & Tax Code § 7286.48 | SB1424 Maddy 1996 |
| Davis | Yolo County | 0.50% | 4/1/2004 | 12/31/2010 General | Rev & Tax Code § 7290 | AB7 H.Thomson 2002 |
| Del Rey Oaks | Monterey County | 1.00% | 4/1/2007 | 3/31/2012 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Delano | Kern County | 1.00% | 4/1/2008 | 4/1/2018 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Dinuba | Tulare County | 0.75% | 4/1/2006 | None Police, fire | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| El Cajon | San Diego County | 0.50% | 4/1/2005 | 3/31/2015 Public safety facilities | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| El Cerrito | Contra Costa County | 0.50% | 4/1/2008 | None Roads | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Ej Monte | Los Angeles County | 0.50% | 4/1/2009 | 3/31/2014 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Eureka | Humboldt County | 0.25% | 4/1/2009 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Farmersville | Tulare County | 0.50% | 4/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Fort Bragg | Mendocino County | 0.50% | 1/1/2005 | 12/31/2014 Roads | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| Galt | Sacramento County | 0.50% | 4/1/2009 | None Police, fire, EMS | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| Grover Beach | San Luis Obispo County | 0.50% | 4/1/2007 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Hollister | San Benito County | 1.00% | 4/1/2008 | 4/1/2013 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Inglewood | Los Angeles County | 0.50% | 4/1/2007 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| La Habra | Orange County | 0.50% | 4/1/2009 | 3/31/2029 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| La Mesa | San Diego County | 0.75% | 4/1/2009 | 3/31/2029 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Laguna Beach | Orange County | 0.50% | 7/1/2006 | 6/30/2012 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Lakeport | Lake County | 0.50% | 4/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Los Banos | Merced County | 0.50% | 4/1/2005 | None Police, fire | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| Mammoth Lakes | Mono | 0.50% | 10/1/2008 | None Parks, recr | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| Manteca | San Joaquin County | 0.50% | 4/1/2007 | None Police, fire | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Merced | Merced County | 0.50% | 4/1/2006 | 3/31/2026 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Montclair | San Bernardino County | 0.25% | 4/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Morro Bay | San Luis Obispo County | 0.50% | 4/1/2007 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| National City | San Diego County | 1.00% | 10/1/2006 | 9/30/2016 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Nevada City | Nevada County | 0.50% | 4/1/2007 | 3/31/2023 Roads | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Oxnard | Ventura County | 0.50% | 4/1/2009 | 3/31/2029 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Pacific Grove | Monterey | 1.00% | 10/1/2008 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Pico Rivera | Los Angeles County | 1.00% | 4/1/2009 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Pingole | Contra Costa County | 0.50% | 4/1/2007 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Pismo Beach | San Luis Obispo | 0.50% | 10/1/2008 | 3/31/2015 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Placerville | El Dorado County | 0.25% | 4/1/1999 | None Police | Rev & Tax Code § 7286.70 | SB781 Maddy 1996 |
| Point Arena | Mendocino County | 0.50% | 4/1/2004 | None Roads | Rev & Tax Code § 7286.24 | SB902 Strom-Martin 2002 |
| Port Hueneme | Ventura County | 0.50% | 4/1/2009 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Porterville | Tulare County | 0.50% | 4/1/2008 | None Police, fire | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| Reedley | Fresno County | 0.50% | 7/1/2008 | None Police, fire | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Richmond | Contra Costa County | 0.50% | 4/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Salinas | Monterey County | 0.50% | 4/1/2006 | 3/31/2016 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| San Bernardino | San Bernardino County | 0.25% | 4/1/2007 | 3/31/2022 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| San Juan Bautista | San Benito County | 0.75% | 4/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| San Luis Obispo | San Luis Obispo County | 0.50% | 4/1/2007 | 3/31/2015 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| San Rafael | Marin County | 0.50% | 4/1/2006 | 3/31/2016 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Sand City | Monterey County | 0.50% | 4/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Sanger | Fresno County | 0.75% | 7/1/2008 | None Police, fire | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Santa Cruz | Santa Cruz County | 0.50% | 4/1/2007 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Santa Rosa | Sonoma County | 0.25% | 4/1/2005 | 4/1/2005 Police, fire | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| Scotts Valley | Santa Cruz County | 0.50% | 4/1/2006 | 3/31/2009 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Seaside | Monterey County | 1.00% | 7/1/2008 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Sebastopol | Sonoma County | 0.25% | 4/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Selma | Fresno County | 0.50% | 4/1/2008 | None Police, fire | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Sonora | Tuolumne County | 0.50% | 1/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| South Gate | Los Angeles | 1.00% | 10/1/2008 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| South Lake Tahoe | El Dorado County | 0.50% | 4/1/2005 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Stockton | San Joaquin County | 0.25% | 4/1/2005 | None Police, fire | Rev & Tax Code § 7285.91 | SB566 Scott 2003 |
| Trinidad | Humboldt County | 0.75% | 4/1/2009 | 3/31/2013 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Truckee | Nevada County | 0.50% | 10/1/1998 | 9/30/2010 Roads | Rev & Tax Code § 7286.6 | SB1105 Leslie 1996 |
| | | 0.50% | 10/1/2010 | 9/30/2030 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Tulare | Tulare County | 0.50% | 4/1/2006 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Ukiah | Mendocino County | 0.50% | 10/1/2005 | 9/30/2015 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Visalia | Tulare County | 0.25% | 7/1/2004 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Vista | San Diego County | 0.50% | 4/1/2007 | 3/31/2037 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Watsonville | Santa Cruz County | 0.25% | 4/1/2007 | None General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| West Sacramento | Yolo County | 0.50% | 4/1/2003 | 3/31/2013 General | Rev & Tax Code § 7286.75 | AB863 H.Thomson 2001 |
| | | 0.25% | 4/1/2013 | 3/31/2033 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Williams | Colusa County | 0.50% | 4/1/2007 | 3/31/2013 General | Rev & Tax Code § 7285.9 | SB566 Scott 2003 |
| Willits | Mendocino County | 0.50% | 10/1/2003 | None Roads | Rev & Tax Code § 7286.24 | SB902 Strom-Martin 2002 |
| Woodland | Yolo County | 0.50% | 10/1/2006 | 9/30/2018 General | Rev & Tax Code § 7286.52 | AB1472 H.Thomson 1997 |

California Sales and Use Tax Rates by County and City
Effective April 1, 2009 (includes state, county, local, and district taxes)

| | | | | | |
|------------------------|--------|---------------------------|--------|-------------------------|--------|
| ALAMEDA CO. | 9.75% | MENDOCINO CO. | 8.25% | SAN LUIS OBISPO CO. | 8.25% |
| ALPINE CO. | 8.25% | City of Fort Bragg | 8.75% | City of Arroyo Grande | 8.75% |
| AMADOR CO.* | 8.75% | City of Point Arena | 8.75% | City of Grover Beach | 8.75% |
| BUTTE CO. | 8.25% | City of Ukiah | 8.75% | City of Morro Bay | 8.75% |
| CALAVERAS CO. | 8.25% | City of Willits | 8.75% | City of Pismo Beach | 8.75% |
| COLUSA CO. | 8.25% | MERCED CO. | 8.25% | City of San Luis Obispo | 8.75% |
| City of Williams | 8.75% | City of Los Banos | 8.75% | SAN MATEO CO. | 9.25% |
| CONTRA COSTA CO. | 9.25% | City of Merced | 8.75% | SANTA BARBARA CO. | 8.75% |
| City of Richmond | 9.75% | MODOC CO. | 8.25% | SANTA CLARA CO. | 9.25% |
| City of Pinole | 9.75% | MONO CO. | 8.25% | City of Campbell* | 9.50% |
| City of El Cerrito | 9.75% | Mammoth Lakes | 8.75% | SANTA CRUZ CO. | 9.00% |
| DEL NORTE CO. | 8.25% | MONTEREY CO. | 8.25% | City of Capitola | 9.25% |
| EL DORADO CO. | 8.25% | City of Del Rey Oaks | 9.25% | City of Santa Cruz | 9.50% |
| City of Placerville | 8.50% | City of Pacific Grove | 9.25% | City of Scotts Valley** | 9.25% |
| City of So. Lake Tahoe | 8.75% | City of Salinas | 8.75% | City of Watsonville | 9.25% |
| FRESNO CO. | 8.975% | City of Sand City | 8.75% | SHASTA CO. | 8.25% |
| City of Clovis | 8.975% | City of Seaside | 9.25% | SIERRA CO. | 8.25% |
| City of Reedley | 9.475% | NAPA CO. | 8.75% | SISKIYOU CO. | 8.25% |
| City of Sanger | 9.725% | NEVADA CO. | 8.375% | SOLANO CO. | 8.375% |
| City of Selma | 9.475% | Town of Truckee | 8.875% | SONOMA CO.* | 9.00% |
| GLENN CO. | 8.25% | City of Nevada City | 8.875% | City of Santa Rosa*** | 9.25% |
| HUMBOLDT CO. | 8.25% | ORANGE CO. | 8.75% | City of Sebastopol*** | 9.25% |
| City of Arcata* | 9.00% | City of La Habra* | 9.25% | STANISLAUS CO. | 8.375% |
| City of Eureka* | 8.50% | City of Laguna Beach | 9.25% | City of Ceres | 8.875% |
| City of Trinidad* | 9.00% | PLACER CO. | 8.25% | SUTTER CO. | 8.25% |
| IMPERIAL CO. | 8.75% | PLUMAS CO. | 8.25% | TEHAMA CO. | 8.25% |
| INYO CO. | 8.75% | RIVERSIDE CO. | 8.75% | TRINITY CO. | 8.25% |
| KERN CO. | 8.25% | SACRAMENTO CO. | 8.75% | TULARE CO. | 8.75% |
| City of Arvin* | 9.25% | City of Galt* | 9.25% | City of Dinuba | 9.50% |
| City of Delano | 9.25% | SAN BENITO CO. | 8.25% | City of Farmersville | 9.25% |
| KINGS CO. | 8.25% | City of Hollister | 9.25% | City of Porterville | 9.25% |
| LAKE CO. | 8.25% | City of San Juan Bautista | 9.00% | City of Tulare | 9.25% |
| City of Clearlake | 8.75% | SAN BERNARDINO CO. | 8.75% | City of Visalia | 9.00% |
| City of Lakeport | 8.75% | City of Montclair | 9.00% | TUOLUMNE CO. | 8.25% |
| LASSEN CO. | 8.25% | City of San Bernardino | 9.00% | City of Sonora | 8.75% |
| LOS ANGELES CO. | 9.25% | SAN DIEGO CO. | 8.75% | VENTURA CO. | 8.25% |
| City of Avalon | 9.75% | City of El Cajon* | 9.75% | City of Oxnard* | 8.75% |
| City of El Monte* | 9.75% | City of La Mesa* | 9.50% | City of Port Hueneme* | 8.75% |
| City of Inglewood | 9.75% | City of National City | 9.75% | YOLO CO. | 8.25% |
| Pico Rivera* | 10.25% | City of Vista | 9.25% | City of Davis | 8.75% |
| City of South Gate | 10.25% | SAN FRANCISCO CO. | 9.50% | City of West Sacramento | 8.75% |
| MADERA CO. | 8.75% | SAN JOAQUIN CO. | 8.75% | City of Woodland | 8.75% |
| MARIN CO.* | 9.00% | City of Manteca | 9.25% | YUBA CO. | 8.25% |
| City of San Rafael*** | 9.50% | City of Stockton | 9.00% | | |
| MARIPOSA CO. | 8.75% | | | | |

* The total includes the new voter approved district tax that is effective April 1, 2009. For more information, please see the Special Notice, "New Tax Rates to Take Effect on April 1, 2009."

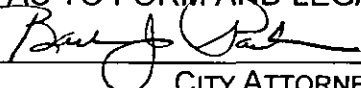
** The total includes the City of Scotts Valley Transactions and Use Tax rate that decreased to 0.25% from 0.50%. For more information, please see the Special Notice, "New Tax Rates to Take Effect on April 1, 2009."

*** City currently has a district tax. The total tax rate in the city will increase by an additional 0.25% due to the new district tax in Sonoma and Marin Counties. All other cities and areas in Sonoma and Marin Counties will have a total tax rate of 9.00%.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

INTRODUCED BY COUNCILMEMBER QUAN
2009 APR 8 PM 8:04

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION SUBMITTING, ON THE CITY COUNCIL'S OWN MOTION, TO THE ELECTORS AT A SPECIAL MUNICIPAL ELECTION THAT IS NOT LESS THAN 88 DAYS AND NO MORE THAN 150 DAYS AFTER THE DATE THE COUNCIL PASSES THIS RESOLUTION, A PROPOSED ORDINANCE IMPOSING A TRANSACTIONS AND USE TAX (SALES TAX) OF ~~[ONE-FOURTH TO ONE-HALF]~~ OF ONE PERCENT FOR THREE YEARS, TO MAINTAIN VITAL CITY SERVICES AND FACILITIES; AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE NEXT MUNICIPAL SPECIAL ELECTION.

WHEREAS, to ensure that the City has the financial resources necessary to preserve the public health, safety, and welfare, the City Council desires to submit a [one-fourth to one-half] of one percent transactions and use tax (sales tax) to the electors at a special municipal election that is not consolidated with an election for a member of the City Council;

NOW, THEREFORE BE IT RESOLVED:

That the City Council of the City of Oakland does hereby submit to the voters at the a special municipal election that is not less than 88 days and no more than 150 days after the date the Council passes this resolution, an ordinance, that would add a new Chapter 4.54 to the Oakland Municipal Code which reads as follows:

CHAPTER 4.54 TRANSACTIONS AND USE TAX

Sections:

- 4.54.010 Title.
- 4.54.020 Definitions.
- 4.54.030 Purpose.
- 4.54.040 Contract with state.
- 4.54.050 Transactions tax rate.
- 4.54.060 Place of sale.
- 4.54.070 Use tax rate.
- 4.54.080 Adoption of provisions of state law.
- 4.54.090 Limitations on adoption of state law and collection of use taxes.
- 4.54.100 Permit not required.
- 4.54.110 Exemptions and exclusions.
- 4.54.120 Permissible uses.
- 4.54.130 Amendments to state law.
- 4.54.140 Enjoining collection forbidden.

- 4.54.150 Refunds and credits; suits and legal proceedings.
- 4.54.160 Penalties.
- 4.54.170 Savings clause.
- 4.54.180 Effective date and submission to voters.
- 4.54.190 Amendment .
- 4.54.200 Termination
- 4.54.210 Declaration.

4.54.010 Title.

This chapter shall be known as the transactions and use tax ordinance of the City.

4.54.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

“City” means the City of Oakland.

“Operative date” means the first day of the first calendar quarter commencing more than one hundred ten days after the date of the special election and is the first day that the tax is imposed and collected.

4.54.030 Purpose.

This chapter is adopted to achieve the following purposes, among others, and directs that its provisions be interpreted 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 the tax ordinance codified in this chapter 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 therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimizing the cost of collecting the transactions and use taxes, and at the same time, minimizing the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

E. To provide financial assistance for the general purposes of the City.

4.54.040 Contract with state.

Prior to the operative date, the city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the city shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

4.54.050 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 ~~[one-fourth to one-half]~~ of one percent 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 the ordinance codified in this chapter.

4.54.060 Place of sale.

For the purposes of the ordinance codified in this chapter, 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 or her agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

4.54.070 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 said ordinance for storage, use or other consumption in said territory at the rate of ~~[one-fourth to one-half]~~ of one percent 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.

4.54.080 Adoption of provisions of state law.

Except as otherwise provided in this chapter 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 chapter as though fully set forth herein.

4.54.090 Limitations on adoption of provisions 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 Board of Control, State Board of Equalization, State Treasury, or the Constitution of the state of California;

2. The result of that substitution would require action to be taken by or against this city or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance.

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

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

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

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

B. The word "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.

4.54.100 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 chapter.

4.54.110 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 the ordinance codified in this chapter.

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 said ordinance.

5. For the purposes of subsections (B)(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 chapter, 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 said 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 said ordinance.

5. For the purposes of subsections (C)(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 subsection (C)(7) of this section, 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 chapter 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.

4.54.120 Permissible uses.

The revenues of the tax shall be deposited in the city's general fund and may be used for any legal municipal purpose including, without limitation, maintenance of vital services and facilities.

4.54.130 Amendments to state law.

All amendments subsequent to the effective date of the ordinance codified in this chapter 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 chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

4.54.140 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.

4.54.150 Refunds and credits; suits and legal proceedings.

A. Refunds of and credits for any tax paid pursuant to this chapter may be made only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

B. Suits and proceedings for the recovery of any amount alleged to have been erroneously or illegally determined or collected pursuant to this chapter may be maintained in any court only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. A judgment shall not be rendered in favor of the plaintiff in any action brought against the State Board of Equalization to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

4.54.160 Penalties.

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than \$500.00 or by imprisonment for a period of not more than six months, or both such fine and punishment.

4.54.170 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof.

4.54.180 Effective date and submission to voters.

This chapter relates to the levying and collecting of city transactions and use taxes and shall take effect immediately. However, no tax imposed by this chapter shall be effective unless that tax has been approved by the voters of the city, at an election held in accordance with the requirements of applicable law.

4.54.190 Amendment .

The City Council may amend this chapter to reduce the rate of the taxes, either permanently or for a set period of time, without a further vote of the people. However, as required by Article XIIC of the California Constitution, no amendment to this chapter may increase the rates of the taxes above what is authorized by this chapter unless such amendment is submitted to and approved by the voters.

4.54.200 Termination.

The authority to levy the tax imposed by this chapter shall expire on the third anniversary of the operative date, unless extended by a majority vote of the voters of the City.

4.54.210 Declaration.

The proceeds of the taxes imposed by this chapter may be used for any lawful purpose of the City, as authorized by ordinance, resolution or action of the city council or by ordinance adopted by the electorate of the city. These taxes do not meet the criteria established by Section 1(d) of Article XIIC of the California Constitution for special taxes, and are general taxes imposed for general government purposes.

and be it:

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby find and determine that pursuant to Article XIIC, section 2(b) of the California Constitution the City Council of the City of Oakland has passed a resolution declaring

an emergency in the City of Oakland that necessitates submission of the proposed transactions and use tax (sales tax) to the voters before the next regular election of the Oakland City Council; and be it

FURTHER RESOLVED: This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation" Public Resources Code section 21065, CEQA Guidelines 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment, and the ordinance makes no commitment to any specific project that may have a potentially significant effect on the environment; and be it

FURTHER RESOLVED: 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, the Government Code and the Elections Code of the State of California; and be it

FURTHER RESOLVED: 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; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to obtain printing, supplies and services as required; and be it

FURTHER RESOLVED: That the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Oakland; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 11 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed ordinance, and said date shall be posted in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

Attest: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California