

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT KAPLAN

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 3, 2020, A PROPOSED ORDINANCE TO IMPOSE A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 50 CENTS FOR PRIVATE TRIPS AND 25 CENTS FOR POOL TRIPS; AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 3, 2020 GENERAL MUNICIPAL ELECTION

WHEREAS, Transportation Network Company (TNC) trips use the public infrastructure of the City of Oakland, including our streets; and

WHEREAS, Maintaining our streets, sidewalks, and pedestrian crossings is costly, and important to the public; and

WHEREAS, The trips of TNCs contribute to traffic congestion, air pollution, and wear and tear on the public infrastructure; and

WHEREAS, Currently, TNC trips do not pay taxes to the City of Oakland; and

WHEREAS, A 2017 study from the *University of California Davis, Institute of Transportation Studies*, stated, "Directionally, based on mode substitution and ride-hailing frequency of use data, we conclude that ride-hailing is currently likely to contribute to growth in vehicle miles traveled (VMT)"; and

WHEREAS, A report by the *San Francisco County Transportation Authority*, states: "TNCs drive approximately 570,000 vehicle miles within San Francisco on a typical weekday. This accounts for 20% of all local daily vehicle miles traveled (VMT) and includes both in-service and out-of-service mileage"; and

WHEREAS, A report by former NYCDOT staffer Bruce Schaller on TNC use in New York City stated that, "As a result of growing trip volumes, TNCs added 600 million miles of driving to city streets in 2016. The growth of on-demand ride services is also

working to undercut the essential role of mass transit in absorbing growth in residents, workers and visitors”; and

WHEREAS, The City of Oakland wishes to ensure tax fairness, and to provide for adequate revenue for public needs; and

WHEREAS, Multiple other jurisdictions, including the City of Chicago, and the State of Massachusetts, have adopted and implemented per-trip charges for the trips taken via Transportation Network Companies; now, therefore, be it

RESOLVED: That the Oakland City Council finds and determines the forgoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That the Oakland City Council does hereby call for a general municipal election and submit to the voters, at the November 3, 2020, Statewide General Election, an Ordinance that reads as follows:

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

Section 1. Code Amendment. That a new Chapter 4.26 is added to the Oakland Municipal Code to read as follows:

Chapter 4.26 TRANSPORTATION NETWORK COMPANY USER TAX

4.26.010. Title

This chapter shall be known as the “Transportation Network Company User Tax Ordinance.”

4.26.020. Definitions

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

- A. “City” means the City of Oakland.
- B. “Digital Network” means an online-enabled application software, website, or system offered, utilized, or controlled by a Transportation Network Company that enables the prearrangement of transportation services by Drivers with Users.
- C. “Driver” means a person who receives connections to potential Users through a Digital Network and uses a vehicle to offer or provide Prearranged Transportation Services to those Users.

- D. “Originate” refers to the location where a passenger of a Prearranged Transportation Service is picked up by a Driver. It does not refer to the location of the User who arranges the Prearranged Transportation Service, if different.
- E. “Person” or “people” mean any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- F. “Pooled Prearranged Trip” means the transportation of multiple passengers in two or more Prearranged Trips in a single vehicle at the same time for which separate fares are charged. The Prearranged Trips that comprise a Pooled Prearranged Trip may Originate or terminate in different locations.
- G. “Prearranged Trip” means the transportation of one or more passengers in a single vehicle at the same time by a Driver that is arranged through a Digital Network.
- H. “Prearranged Transportation Service” means a “Prearranged Trip” or a “Pooled Prearranged Trip.”
- I. “Tax”, “Transportation Network Company User Tax”, or “TNC User Tax” means the tax imposed by this chapter.
- J. “Tax Administrator” means the Director of Finance of the City of Oakland or such other person as may be designated by the City Administrator.
- K. “Transportation Network Company” or “TNC” means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, that provides Prearranged Transportation Services for compensation using a Digital Network to connect Users with Drivers.
- L. “User” means a person who uses a Digital Network to connect with a Driver to request and pay for Prearranged Transportation Service. A User may or may not be a passenger.

4.26.030. Imposition and Rate of Tax

- A. For each Prearranged Trip that Originates in the City that is not part of a Pooled Prearranged Trip there is imposed a tax of 50 cents on the User. There is no additional tax on guests of a User who arranges a Prearranged Trip.
- B. For each Pooled Prearranged Trip there is imposed a tax of 25 cents on each User who arranges each Prearranged Trip that Originates in the City

and which comprises part of the Pooled Prearranged Trip. There is no additional tax on guests of a User who arranges a Prearranged Trip that comprises part of a Pooled Prearranged Trip.

- C. The tax constitutes a debt owed by the User to the City, which is extinguished only by payment to the TNC at the time of payment for the Prearranged Transportation Service.
- D. While the tax imposed by this section is in effect, Drivers shall not be required to pay Oakland Business Tax under Chapter 5.04 of the Oakland Municipal Code for carrying on the business of being a Driver in the City.
- E. The City Council may by Ordinance adopt exemptions, waivers, discounts, or rebates for the tax, including, but not limited to, exemptions, waivers, discounts, or rebates for low-income discount programs or free donated trips.

4.26.040. Collection and Remittance of Tax by Transportation Network Company

Every TNC engaged in business in the City shall, at the time of collecting payment for a Prearranged Transportation Service originating in the City, collect the tax from the User and remit the tax to the City on a monthly basis. In all cases in which the tax is not collected by the TNC, the TNC shall be liable to the City for the amount of tax due. A TNC is engaged in business in the City if it facilitates a trip for a User that Originates in the City.

4.26.050. Registration of Transportation Network Company

- A. Every TNC must register with the Finance Department of the City within thirty (30) days of first engaging in business in the City, using a form provided by the Tax Administrator.
- B. Every TNC engaged in business in the City on the effective date of this chapter must register with the Finance Department of the City within thirty (30) days, using a form provided by the Tax Administrator.
- C. Each TNC registration shall set forth the name under which the TNC transacts or intends to transact business, the location of its primary place or places of business, and such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The Tax Administrator shall within thirty (30) days after such registration issue without charge a certificate of authority to each registrant to collect the tax from a User. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to

the Tax Administrator upon the cessation of business in the city or upon its sale or transfer.

4.26.060 Duties of the Tax Administrator

It shall be the duty of the Tax Administrator to collect and receive all taxes imposed by this chapter and to keep an accurate record thereof. Said Tax Administrator is charged with the enforcement of this chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce those rules and regulations necessary or advisable to effectuate the purposes of this chapter, including provisions for the re-examination and correction of declarations, returns, and payments; the exclusive discretionary authority to waive penalties; and the authority to defer the payment due dates as prescribed herein. In individual cases, the Tax Administrator may make findings of fact in support of decisions, determinations, and rulings enforcing this chapter. The Tax Administrator may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

4.26.070. Determinations, Returns, and Payments

- A. Due Date of Taxes. All taxes imposed by this chapter and collected by any TNC or required to be collected by any TNC are due and payable to the Tax Administrator for each taxable month on or before the fifteenth day of the month immediately following each respective monthly period.
- B. Return—Time for Filing. On or before the fifteenth day of the month immediately following each monthly period, a return for the preceding monthly period must be filed with the Tax Administrator, in such form as the Tax Administrator may prescribe.
- C. Contents of Return. Returns must show the amount of tax collected for the related period and such other information as required by the Tax Administrator. The Tax Administrator may require returns to show the total number of Prearranged Trips and Pooled Prearranged Trips originating within the City upon which tax was collected or otherwise due, the total number of Prearranged Trips and Pooled Prearranged Trips originating in the City for such period, and an explanation in detail of any discrepancy between the amounts.
- D. Delivery for Return and Remittance. The return shall be transmitted with the remittance of the amount of the tax due to the Tax Administrator at the Finance Department on or before the date provided in this chapter.
- E. Extension of Time for Filing a Return and Paying Tax. For good cause, the Tax Administrator may extend, for a period not to exceed thirty (30) days, the deadline for making any return or payment of tax. When an extension is granted, any TNC that makes a return and pays the tax within the period of such extension must pay, in addition to the tax, interest on the amount thereof at the rate of one percent per month, or fraction thereof, for the

period of such extension to the time of return and payment. If the tax is not paid within the extension period or periods, a penalty will be assessed as if no extension was granted, as provided in Section 4.26.080.

4.26.080. Penalties and Interest

- A. Original Delinquency. Any TNC that fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 25 percent of the amount of the tax in addition to the amount of the tax.
- B. Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 50 percent of the amount of the tax shall be added thereto in addition to the penalty stated in subdivision A of this section.
- C. Interest. In addition to any penalties imposed, any TNC that fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, inclusive of penalties, from the date on which the remittance first became delinquent until paid.
- D. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

4.26.090. Deficiency Determinations

- A. Recomputation of Tax—Authority to Make—Basis of Recomputation. If the Tax Administrator is not satisfied with the return or returns of the tax or the amount of the tax paid to the City by a TNC, he or she may compute and determine the amount required to be paid based upon the facts contained in the return or returns or upon any information within the Tax Administrator's possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or more periods.
- B. Penalties and Interest on Deficiency. Penalties and interest under Section 4.26.080 shall be applied to any additional amount of tax determined to be due in a deficiency determination under subdivision A of this section. Interest shall be calculated from the original due date of the additional amount of tax determined to be due.
- C. Offsetting of Overpayments. In making a deficiency determination, the Tax Administrator may offset overpayments for a period or periods against underpayments for another period or periods or against penalties and interest on the underpayments.

- D. Notice of Tax Administrator's Determination—Service of. The Tax Administrator shall give to the TNC written notice of the deficiency determination. The notice may be served personally or by mail; if by mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the TNC at its business address as it appears in the records of the Tax Administrator. In case of service by mail or any notice required by this chapter, the service is complete at the time of the deposit of the notice in the United States Post Office, without extension of time for any reason.
- E. Time Within Which Notice of Deficiency Determination Is to Be Mailed. Except in the case of fraud, intent to evade this chapter or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the fifteenth day of the calendar month following the monthly period for which the deficiency determination applies or within three years after the return for the period to which the deficiency determination applies was filed, whichever period expires later. The time to issue a notice of deficiency determination under this section shall be tolled during the pendency of an audit of a TNC under Section 4.26.120.

4.26.100. Determinations If No Return Made

- A. Estimate—Computation of Tax Penalty. If any TNC fails to make a return, the Tax Administrator shall estimate the number of Prearranged Trips and Pooled Prearranged Trips originating in the City subject to the tax. The estimate shall be made for the period or periods for which the TNC failed to make a return and shall be based upon any information that is in the Tax Administrator's possession or may come into his or her possession.
- B. Penalties and Interest. Penalties and interest under Section 4.26.080 shall be applied to the tax determined to be due in subdivision A of this section. Interest shall be calculated from the original due date of the amount of tax determined to be due.
- C. Manner of Computation—Offsets—Interest. In making a determination, the Tax Administrator may offset overpayments for a period or periods against underpayments for another period or periods or against penalties and interest on the underpayments.
- D. Giving Notice—Manner of Service. After making the determination, the Tax Administrator shall give the TNC written notice of the estimate, determination, penalty, and interest. The notice shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

- E. Time to Make a Determination. The Tax Administrator may make a determination in accordance with this Section at any time within five years of a return being due. The time to issue a determination under this section shall be tolled during the pendency of an audit of a TNC under Section 4.26.120.

4.26.110. Petition for Redetermination

- A. Petition for Redetermination. Any TNC against whom a determination is made under this chapter may petition the Tax Administrator for a redetermination within thirty (30) days after service upon the TNC of notice thereof. If a petition for redetermination is not filed in writing with the Tax Administrator, City Hall, Oakland, California 94612, within the 30-day period, the determination becomes final at the expiration of the period.
- B. Consideration of Petition—Hearing. If a petition for redetermination is filed within the 30-day period, the Tax Administrator shall reconsider the determination and, if the TNC has so requested in its petition, shall grant the TNC an oral hearing, and shall give the TNC at least ten days notice of the time and place of hearing. The Tax Administrator may designate one or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary.
- C. Determination of Petition. The Tax Administrator may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Administrator at or before the hearing.
- D. Finality of Determination. The order or decision of the Tax Administrator upon a petition for redetermination becomes final thirty (30) days after service of notice thereof upon the petitioner. There is no appeal of the Tax Administrator's decision (or his or her deputies designated for a redetermination) to the City Council; writs challenging the Tax Administrator's decision must be filed with the appropriate court within ninety (90) days of the final date of such redetermination. (California Code of Civil Procedure § 1094.6.)
- E. Tax a Debt. The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any TNC owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount. Such action must be filed within three years of a determination under Sections 4.26.090 or 4.26.100 becoming final or a redetermination under Section 4.26.110 becoming final.

4.26.120. Records and Audits

- A. It shall be the duty of every TNC engaged in business in the City to keep and preserve, for a period of five years, all records as may be necessary to determine the amount of tax the TNC may have been liable for the collection of and payment to the City, which records the Tax Administrator shall have the right to inspect upon notice at a reasonable time.
- B. The Tax Administrator may conduct an audit of any TNC engaged in business in the City to ensure compliance with the requirements of this Chapter. The Tax Administrator shall notify the TNC of the initiation of an audit in writing. The audit period of review shall not exceed five years. Upon completion of the audit, the Tax Administrator may make determinations under Section 4.26.090 and/or Section 4.26.100 of any tax determined to be owed.

4.26.130. Refunds

A User may claim a refund of any amount overpaid, or erroneously or illegally collected or received by the City by filing a written claim therefor with the Tax Administrator within one year of the date of payment. The claim shall be on forms furnished by the Tax Administrator and must state under penalty of perjury the specific grounds upon which the claim is founded. No refund shall be paid unless the claimant establishes to the satisfaction of the Tax Administrator his or her right thereto by written records showing entitlement thereto. Filing a claim for refund under this section does not absolve a claimant of the requirement to exhaust the administrative remedies provided in this chapter.

4.26.140. Violations

Any TNC which fails or refuses to register as required herein, or to furnish any return required to be made or which fails or refuses to furnish any other data required by the Tax Administrator, or which renders a false or fraudulent return or claim, or which fails to meet the substantive requirements of any other provision of this chapter may be charged with a civil penalty or an infraction.

Section 2. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 3. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, 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.

Section 4. General Tax; Majority Approval; Effective Date. This Ordinance enacts a general tax for unrestricted general revenue purposes. Tax revenue collected pursuant to the Ordinance may be used by the City for any municipal governmental purpose. The Ordinance shall be effective only if approved by a majority of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be January 1, 2021.

Section 5. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Chapter 4.26 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the rate of the Transportation Network Company User Tax, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

; and be it

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

MEASURE_____ TO ENACT A TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES FOR EACH TRIP ORIGINATING IN OAKLAND.

<p>Measure ___. Shall the Measure to enact a general tax on users of Transportation Network Companies (as defined in the measure) for prearranged trips originating in Oakland, at a rate of 50 cents per trip for private trips and 25 cents per trip for pooled trips, regardless of the number of passengers on the trip, which is estimated to generate \$2 million annually for the City of Oakland until repealed by the voters, be adopted?</p> <p>[FINAL QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]</p>	<p>Yes</p>	
	<p>No</p>	

; and be it

FURTHER RESOLVED: 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 November 3, 2020 to file with the Alameda County Clerk certified copies of this Resolution; and be it

FURTHER RESOLVED: That the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots the

recitals and the measure language to be voted on by the voters of the qualified electors of the City of Oakland; 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 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 Government Code, and the Elections Code of the State of California; and be it

FURTHER RESOLVED: 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; and be it

FURTHER RESOLVED: 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 2020 general municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the November 3, 2020 general municipal election; and be it

FURTHER RESOLVED: That certain sections of this Ordinance may be codified into the City of Oakland Municipal Code at the direction of the City Clerk upon approval by the voters; and be it

FURTHER RESOLVED: That this resolution shall be effective immediately upon approval by five members of the Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
ASHA REED
Acting City Clerk and Clerk of the Council of the
City of Oakland, California