

In the Matter of:

AN ORDINANCE AMENDING TITLE 3)
- REVENUE AND TAXATION ,)
CHAPTER 3.14, TRANSACTIONS) ORDINANCE NO. 20-##
AND USE TAX, OF THE CITY OF)
ORINDA MUNICIPAL CODE)

WHEREAS, as a City incorporated in 1985 after the enactment of Proposition 13, the City receives only a small share of the property tax (approximately 7 cents of each property tax dollar), which limits the City resources to provide essential municipal services including addressing critical capital needs; and

WHEREAS, without additional revenues, the lack of spending on important programs may jeopardize the public health, safety and general welfare of residents and visitors as well as curtail funding for maintenance, construction and other improvements including those to address wildfire mitigation, emergency planning, drainage, and street maintenance; and

WHEREAS, all funds from a local revenue measure must stay in the City of Orinda and cannot be taken by the State; and

WHEREAS, the voters of the City of Orinda approved Measure L on November 6, 2012 which added a local Transactions and Use Tax (TUT) of 0.5% to remain in place for 10 years unless approved for extension by the voters; and

WHEREAS, the City Council has determined that given the critical needs for City funding, placement of a measure for a Transactions and Use Tax before the voters at the November 3, 2020 election is appropriate. The tax would be a one percent (1.0%) tax on the sale of tangible personal property and the storage, use, or other consumption of such property for a period of twenty (20) years. The tax revenue would be collected by the California Department of Tax and Fee Administration and remitted to the City; and

WHEREAS, if the proposed tax is approved by a majority of the voters, the 0.5% Transactions and Use Tax approved by the voters as Measure L in November 2012, would be rescinded and replaced; and

WHEREAS, the Transactions and Use Tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular actions or purposes, and the specific purposes recited in the ballot measure are non-restricted and non-exclusive examples only.

SECTION 1. Amendment to Municipal Code

1. Chapter 3.14 Transactions and Use Tax of the Orinda Municipal Code is hereby deleted in its entirety and replaced with the following text:

"Chapter 3.14. Transactions and Use Tax

3.14.010. Imposition.

A Transactions and Use Tax is hereby imposed as a general tax on the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City for a period of twenty (20) years, and upon the sales price of tangible personal property stored, used or otherwise consumed in the City as further set forth below. The proceeds from this Transactions and Use Tax shall be for general governmental purposes of the City and shall be received into the general fund of the City.

3.14.020. Operative Date.

The transactions and use tax imposed herein shall be operative the first day of the first calendar quarter commencing more than 110 days after the adoption of this Ordinance. Based upon a November 3, 2020 election, the Operative Date for the transactions and use tax imposed hereunder shall be April 1, 2021, or the start of the earliest quarter thereafter that is consistent with CDTFA requirements.

3.14.030. Purpose.

This Ordinance is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish these 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, and which authorizes the City to adopt this tax Ordinance, which shall be operative if a majority of the electors voting on the measure approve the imposition of the tax at an election called for that purpose. The tax is a general tax whose proceeds shall be deposited in the City's general fund and expended for any lawful purpose of the City.
- B. To adopt a retail transactions and use tax 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 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 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.

3.14.040. 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; 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.

3.14.050. Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated area of the City at the rate of one percent (1.0%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this Ordinance for a period of twenty (20) years following the effective date of the tax and shall then be terminated.

3.14.060. 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.

3.14.070. 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 the City at the rate of one percent (1.0%) of the sales price of the property for a period of twenty (20) years following the effective date of the tax, and shall then be terminated. The sales price shall include delivery charges when such charges are subject to sales or use tax regardless of the place to which delivery is made.

3.14.080. 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 Taxations Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxations Code are hereby adopted by reference and made a part of this Ordinance as if fully set forth herein.

3.14.090. 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 Taxations Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of City shall be substituted therefore. 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 the 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 the 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.

3.14.100. 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 Section.

3.14.110. 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 productions, 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 Taxations Code.
 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 person of the property the storage, use or other consumption of which is subject to the use tax.

3.14.120. Amendments.

- A. 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.
- B. The City Council may amend this chapter without voter approval only to make minor technical adjustments consistent with the purposes set forth in this ordinance or as necessary to comply with the law.

3.14.130. 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.

3.14.140. Fiscal Accountability Provisions

- A. Annual Audit and Public Report.
Annually the City Council retains an independent auditor to conduct an audit of and provide audited financial statements for all of the City's financial activities. The auditor shall include an accounting of the revenue received from the tax and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the Council and made available to the public. Additionally, the City Manager shall annually prepare and present to the Council and the public a report in conjunction with the audit that reviews the status and performance of the programs and services funded wholly or partially with proceeds of the tax.
- B. Independent Oversight.
No later than April 1, 2021, the City Council shall establish a Citizens' Oversight Commission to review the expenditures of tax revenues under the authority of this Ordinance, or shall assign these duties to an existing City committee or commission. The terms, composition, and specific duties of any new Citizens'

Oversight Commission, or the assignment of these duties to an existing City committee or commission, shall be established by resolution of the City Council.

3.14.150. Termination Date.

The authority to levy the taxes imposed by this Ordinance shall expire twenty (20) years from the Operative Date, unless extended by the voters.

SECTION 2. Repeal of Measure L.

Upon the Operative Date of this Ordinance, the 0.5% transactions and use tax authorized by Measure L, approved by the electorate of the City of Orinda on November 6, 2012, will be repealed, terminated and of no further force or effect.

SECTION 3. Effective Date.

This Ordinance relates to the levying and collecting of transactions and use taxes and shall be in full force and effect ten (10) days after the certification by the City Council of the election returns indicating passage of the Ordinance by a majority of voters casting votes in the election; however, the collection of the transactions and use tax shall be in accordance with Section 3.14.020 as the Operative Date.

SECTION 4. Severability.

If any sections, subsections, sentences, clauses, phrases or portions of this Ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The People hereby declare that they would have passed this and each section, subsection, phrase or clause of this Ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

SECTION 5. Publication.

The City Clerk is directed to publish this Ordinance as required by State law.

PASSED AND ADOPTED BY THE ELECTORATE OF THE CITY ORINDA

This _____ day of _____ 2020, by the following vote of the People

AYES:

NOES:

ATTEST:

Sheri Marie Smith, City Clerk