

ORDINANCE NO. \_\_\_\_\_

**IMPOSING A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 50 CENTS FOR PRIVATE TRIPS AND 25 CENTS FOR POOLED TRIPS**

BE IT ORDAINED by the People of the City of Emeryville as follows:

**Section 1. Code Amendment.** A new Article 8 is added to Chapter 3 (Taxes) in Title 3 (Finance) of the Emeryville Municipal Code to read as follows:

**Article 8  
TRANSPORTATION NETWORK COMPANY USER TAX**

**3-3.801. Title**

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

**3-3.802. Definitions**

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

- A. “City” means the City of Emeryville.
- 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 non-exempt 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 article.
- J. "Tax Administrator" means the City Treasurer of the City of Emeryville or such other person as may be designated by the City Manager.
- 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.

**3-3.803. 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 Emeryville Business Tax under Chapter 1 of Title 3 of the Emeryville Municipal Code for carrying on the business of being a Driver in the City.

**3-3.804. 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.

**3-3.805. 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 article 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.

### **3-3.806.      Duties of the Tax Administrator**

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

### **3-3.807.      Determinations, Returns, and Payments**

- A.    Due Date of Taxes. All taxes imposed by this article 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 last day of the month immediately following each respective monthly period.
- B.    Return—Time for Filing. On or before the last 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 article.

### **3-3.808.      Penalties and Interest**

- A.    Original Delinquency. Any TNC that fails to remit any tax imposed by this article within the time required shall pay a penalty of 10 percent of the amount of the tax in addition to the amount of the tax.
- B.    Continued Delinquency. Any TNC that fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of

10 percent of the amount of the tax in addition to the amount of the tax and the 10 percent penalty first imposed under subdivision A of this section.

- C. Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subdivisions A and B of this section.
- D. Interest. In addition to any penalties imposed, any TNC that fails to remit any tax imposed by this article shall pay interest at the rate of one percent (1.0%) per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. 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.

### **3-3.809. 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 3-3.808 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 article, 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 article 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 last 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 3-3.812.

**3-3.810. 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 3-3.808 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 3-3.812.

### **3-3.811. Petition for Redetermination**

- A. Petition for Redetermination. Any TNC against whom a determination is made under this article may petition the Tax Administrator for a redetermination within ten (10) days after service upon the TNC of notice thereof. If a petition for redetermination is not filed in writing with the Tax Administrator within the 10-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 10-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 five 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 fifteen (15) days after service of notice thereof upon the petitioner and is not appealable to the City Council under Chapter 4 of Title 1 of this Code. A writ 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 article shall be deemed a debt to the City. Any TNC owing money to the City under the provisions of this article 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 3-3.809 or 3-3.810 becoming final or a redetermination under Section 3-3.811 becoming final.

### **3-3.812. 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 article. 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 3-3.809 and/or Section 3-3.810 of any tax determined to be owed.

**3-3.813. 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 article.

**3-3.814. 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 article shall be guilty of a violation of the provisions of this article and punishable as set forth in Chapter 2 of Title 1 of this Code.

**3-3.815. Termination Date**

The authority to levy the tax impose by this ordinance shall continue until repealed by the voters.

**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 and CEQA Guidelines sections 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 pursuant to Public Resources Code section



21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

**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 Emeryville is hereby authorized to amend Article 8 in Chapter 3 (Taxes) in Title 3 (Finance) of the Emeryville 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.

**Section 6. Codification.** Section One of this ordinance shall be codified in the Emeryville Municipal Code. Sections Two, Three, Four, Five, and Six shall not be codified.