

Office of the Mayor

REVISED AGENDA MATERIAL

Meeting Date: July 21, 2020

Item Number: #4

Item Description: Placing a Tax Measure on the November 3, 2020 Ballot to Adopt a Tax on Transportation Network Companies

Supplemental/Revision Submitted By: Mayor Jesse Arreguín

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

Since the release of the proposed TNC tax measure, the Mayor has met with representatives of Transportation Network Companies and Oakland Council President Rebecca Kaplan. In addition, the Council has received correspondence from a number of stakeholder groups raising concerns and suggested amendments. Based on feedback, and with the input of the TNC companies, the Mayor is submitting a revised version of the TNC tax measure. The City Attorney drafted the amendments.

The amendments would:

- Charge a lower tax rate (25 cents) for zero-emission vehicle trips
- Exempt from the tax any Trip for a Government Healthcare Payor or Wheelchair Accessible Vehicle
- Giving Council the ability to amend the tax to adopt further 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, programs to help youth get to or from school, and may adopt regulations and procedures for implementing the tax, including but not limited to the exemptions and tax rate reductions in subsections E and F of this section
- Requiring payment of the tax on a quarterly basis
- Adding a sunset clause expiring the tax in 20 years (January 1, 2041) unless extended by the voters

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

RESOLUTION NO. ##,###-N.S.

SUBMITTING TO THE BERKELEY ELECTORATE, 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 POOLED AND ZERO EMISSION 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, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to impose a general tax on users of Transportation Network Companies (TNCs) at a rate of 50 cents for private trips and 25 cents for pooled and zero emission trips; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services are to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Council hereby authorizes and directs the City Clerk at least 88 days prior to November 3, 2020 to file with the Alameda County Clerk certified copies of this Resolution.

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 Berkeley, the Government Code, and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies, and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that for all City measures and contests for elected office, the consolidated election shall be held and conducted in the manner prescribed in Section 10418 of the California Elections Code.

BE IT FURTHER RESOLVED that pursuant to Elections Code Section 9285(b), the City Council hereby adopts the provisions of Elections Code Section 9285(a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City Clerk and City Manager 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 Manager and City Clerk to prepare and conduct the November 3, 2020 General Municipal Election.

BE IT FURTHER RESOLVED that said proposed ballot measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY GENERAL TAX MEASURE	
Shall an ordinance enacting a tax on users of Transportation Network Companies) for prearranged trips originating in Berkeley, at a rate of 50 cents per trip for private trips and 25 cents per trip for pooled and zero emission trips, regardless of the number of passengers on the trip, which is estimated to generate \$910,000 annually for general municipal services in the City of Berkeley until January 1, 2041 , be adopted?	Yes
	No

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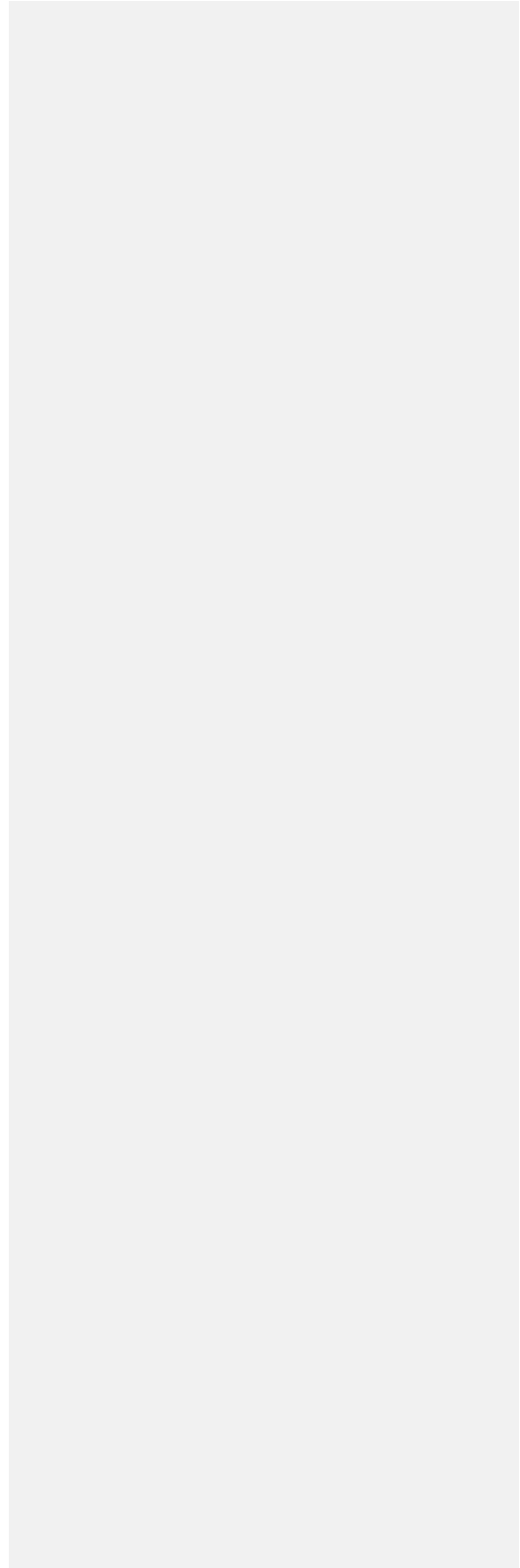
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BE IT FURTHER RESOLVED that the text of the ordinance be shown as Exhibit A, attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that certain sections of the ordinance may be codified into the City of Berkeley Municipal Code at the direction of the City Clerk upon approval by the voters.

ORDINANCE NO. ###-N.S.

Exhibit A



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

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

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. Transportation Network Company (TNC) trips use the public infrastructure of the City of Berkeley, including our streets.

B. Maintaining our streets, sidewalks, and pedestrian crossings is costly, and important to the public.

C. The trips of TNCs contribute to traffic congestion, greenhouse gas emissions, air pollution, and wear and tear on the public infrastructure.

D. Currently, TNC trips do not pay taxes to the City of Berkeley.

E. 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)."

F. 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."

G. 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."

H. The City of Berkeley wishes to ensure tax fairness, and to provide for adequate revenue for public needs.

I. 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.

Section 2. Code Amendment. A new Chapter 7.71 is added to the Berkeley Municipal Code to read as follows:

Chapter 7.71
TRANSPORTATION NETWORK COMPANY USER TAX

7.71.010. Title

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

7.71.020. 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 Berkeley.

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. “EV Trip” means a Prearranged Trip provided in a zero-emission vehicle.~~

~~E. “Exempt Trip” means any Trip for a Government Healthcare Payor or WAV Trip.~~

~~F. “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.~~

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~~G. “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.~~

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~~H. “Pooled Prearranged Trip” means a prearranged trip which, prior to its commencement, a passenger requests through the transportation network company's digital network to share the ride with one or more passengers and each passenger is charged a fare that is calculated, in whole or in part, based on the passenger's request to share all or a part of the ride with one or more passengers, regardless of whether the passenger actually shares all or a part of the ride.~~

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Deleted: 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.

~~J. “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 for which a fee is charged.~~

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J. "Prearranged Transportation Service" means a "Prearranged Trip" or a "Pooled Prearranged Trip."

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K. "Tax", "Transportation Network Company User Tax", or "TNC User Tax" means the tax imposed by this chapter.

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L. "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.

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M. "Trip for a Government Healthcare Payor" means a Prearranged Trip that is paid for or reimbursed by a state, or federal government healthcare payor. The term includes rides paid or reimbursed under the Medi-Cal program.

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N. "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.

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O. "WAV Trip" means a Prearranged Trip that is provided in a wheelchair accessible vehicle.

7.71.030. **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 Berkeley business license fees under Chapter 9.04 of the Berkeley Municipal Code for carrying on the business of being a Driver in the City.

E. No Tax shall be imposed under this section for any Exempt Trip.

F. EV Trips shall be charged a reduced tax of 25 cents per trip.

G. The City Council may by Ordinance adopt further 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, programs to help youth

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get to or from school, and may adopt regulations and procedures for implementing the tax, including but not limited to the exemptions and tax rate reductions in subsections E and F of this section.

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7.71.040. 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 quarterly 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.

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7.71.050. Registration of Transportation Network Company

A. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, every TNC engaged in business in the City must register with the Finance Department of the City, using a form provided by the Director of Finance.

B. 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 Director of Finance 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 Director of Finance 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 non-assignable and nontransferable and shall be surrendered immediately to the Director of Finance upon the cessation of business in the City or upon its sale or transfer.

7.71.060 Duties of the Director of Finance

It shall be the duty of the Director of Finance to collect and receive all taxes imposed by this chapter and to keep an accurate record thereof. Said Director of Finance 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 Director of Finance may make findings of fact in support of decisions, determinations, and rulings enforcing this chapter. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

7.71.070. 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 Director of Finance for each taxable quarter on or before the last day of the month immediately following each respective quarterly period.

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B. Return—Time for Filing. On or before the last day of the month immediately following each quarterly period, a return for the preceding quarterly period must be filed with the Director of Finance, in such form as the Director of Finance may prescribe.

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C. Contents of Return. Returns must show the amount of tax collected for the related period and such other information as required by the Director of Finance. The Director of Finance 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 Director of Finance at the Finance Department on or before the date provided in this chapter.

7.71.080. 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 ten (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 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed

C. Fraud. If the Director of Finance determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalty 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 chapter shall pay interest at the rate of one percent 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.

7.71.090. Deficiency Determinations

A. Recomputation of Tax—Authority to Make—Basis of Recomputation. If the Director of Finance 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 Director of Finance'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 7.71.080 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 Director of Finance 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 Director of Finance's Determination—Service of. The Director of Finance shall give to the TNC written notice of the deficiency determination. The notice may be served personally or by **certified mail, return receipt requested**; if by **certified 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 Director of Finance. 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 last day of the calendar month following the **quarterly** 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 7.71.120.

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7.71.100. Determinations If No Return Made

A. Estimate—Computation of Tax Penalty. If any TNC fails to make a return, the Director of Finance 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 Director of Finance's possession or may come into his or her possession.

B. Penalties and Interest. Penalties and interest under Section 7.71.080 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 Director of Finance 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 Director of Finance 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 Director of Finance may make a determination in accordance with this Section at any time within three 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 7.71.120.

7.71.110. Administrative appeal to the City Manager from Director of Finance decision.

A. Petition for Redetermination. Any TNC against whom a determination is made under this chapter may appeal such decision to the City Manager by filing a verified appeal with the City Manager within thirty (30) days after receipt of service upon the TNC of notice thereof. If a petition for redetermination is not filed in writing with the City Manager, City Hall, 2180 Milvia St. Berkeley, California 94704, 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 City Manager 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 City Manager 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 City Manager or their designee 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 City Manager or their designee at or before the hearing.

D. Finality of Determination. The order or decision of the City Manager, or their designee upon a petition for redetermination becomes final thirty (30) days after service of notice thereof upon the petitioner. There is no appeal of the City Manager's decision (or his or her deputies designated for a redetermination) to the City Council; writs challenging the City Manager'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 7.71.090 or 7.71.100 becoming final or a redetermination under Section 7.71.110 becoming final.

7.71.120. 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 Director of Finance shall have the right to inspect upon notice at a reasonable time.

B. The Director of Finance may conduct an audit no more frequently than once annually, of any TNC engaged in business in the City to ensure compliance with the requirements of this chapter. The Director of Finance shall notify the TNC of the initiation of an audit in writing. The audit period of review shall not exceed three years. Upon completion of the audit, the Director of Finance may make determinations under Section 7.71.090 and/or Section 7.71.100 of any tax determined to be owed.

7.71.130. Refunds

Whenever any tax under this chapter has been paid more than once or has been erroneously or illegally collected or received by the City, it may be refunded only as provided in Chapter 7.20 of the Berkeley Municipal Code. Filing a claim for refund under Chapter 7.20 does not absolve a claimant of the requirement to exhaust the administrative remedies provided in this chapter.

7.71.140. 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 Director of Finance, 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.

7.71.150. Sunset

This tax will sunset in 20 years (on January 1, 2041).

Section 3. 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 4. 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.

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Section 5. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2021 through 2024.

Section 6. 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 and shall remain in effect until January 1, 2041.

Section 7. Council Amendments. The City Council of the City of Berkeley is hereby authorized to amend Chapter 7.71 of the Berkeley 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, including reducing the rate of the tax or even eliminating the tax.