



Kriss Worthington

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CONSENT CALENDAR

July 24, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington
Subject: Adopt a resolution creating a ballot measure which establishes a 50-cents per ride tax on Transportation Network Companies

RECOMMENDATION:

City Council submit to the voters of the City, at the November 6, 2018 election, the ordinance and ballot measure set forth in this item. This ordinance proposes to adopt a tax of up to 50 cents per ride on passengers of Transportation Network Company (TNCs) trips originating in the City of Berkeley, if a majority of all qualified voters voting on the ballot measure vote in favor thereof.

BACKGROUND:

With their growing popularity, TNCs have proved beneficial to many Berkeley community members by providing efficient and convenient transportation at a low cost. The ridesharing apps have also shown to be effective in reducing the amount of DUIs across the country. While we acknowledge the benefits of these ridesharing services, we must also look at the impact that TNCs have had. In recent years, a growing number of jurisdictions have grappled with the issue of rising vehicle traffic from trips provided by TNCs, which use the public infrastructure, including our streets. Maintaining our streets, sidewalks, and pedestrian crossings is costly, and important to the public; since the trips of TNCs contribute to traffic congestion, air pollution, and wear and tear on the public infrastructure, they should appropriately contribute to maintenance. As it stands, TNCs do not pay taxes to the City of Berkeley, resulting in the loss of useful revenue. The use of a "new technology," such as a smartphone app, to order a good or service, should not be a justification for tax evasion. It is unfair for other businesses, such as tax paying taxi services and to the public who lack public funding. Although new technologies are being implemented everyday, it is imperative that all businesses in Berkeley pay fair taxes.

Other jurisdictions have begun to impose fees and or taxes on the trips of TNCs, and the City of Berkeley should follow suit. The City of Chicago imposed 50-cent fee for all rides starting in Chicago, and generated \$39 million in 2016. We propose a 50-cent per pickup charge on all TNC trips originating within the City of Berkeley, and authorize City Council to adopt, by Ordinance, reductions in the rate, such as for "pool" (multi-user) trips, and low-income passengers.

FINANCIAL IMPLICATIONS: Minimal

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

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Shaheer Sandhu, Intern, shaheersandhu17@gmail.com

ATTACHMENTS:

1. Resolution

Attachment 1



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

ESTABLISH 50-CENTS PER RIDE TAX ON TRANSPORTATION NETWORK COMPANIES

WHEREAS, Transportation Network Companies (TNCs) have become increasingly popular in the City of Berkeley; and

WHEREAS, TNCs have provided an innovative ridesharing service that is beneficial to the community; and

WHEREAS, TNCs and their passengers do not pay taxes to the City of Berkeley; and

WHEREAS, other jurisdictions, including the City of Chicago, the States of Massachusetts, Alabama, and Nevada, impose either a trip tax or an excise tax on TNC services; and

WHEREAS, TNC use takes money away from public transportation as less residents utilize them; and

WHEREAS, a tax on TNCs would provide the City with a valuable new source of revenue, which would contribute towards keeping the City budget balanced; and

WHEREAS, the 50-cent TNC tax adopted by the City of Portland has yielded over \$8 million to help pay for city enforcement efforts, including spot inspections of cars and incentives to companies and drivers to choose wheelchair accessible cars; and

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

NOW THEREFORE, BE IT RESOLVED that a 50-cents per ride tax on TNC passengers be added as a ballot measure to the November 6th, 2018 election. ballot measure ("The Measure") establishing a 50-cents per ride tax on TNC passengers for rides originating in the City of Berkeley, shall be placed before the voters at the election on November 6th, 2018. The Measure reads as follows:

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

Section 1. Code Amendment. That a new Chapter 14.634.26 is added to the Berkeley Municipal Code to read as follows:

Chapter 14.634.26 TRANSPORTATION NETWORK COMPANY USER TAX

14.634.26.010. Title

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

14.634.26.020. Definitions

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

1. "City" means the City of Berkeley.
2. "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 Passengers.
3. "Driver" means a person who receives connections to potential Passengers through a Digital Network and uses a vehicle to offer or provide Prearranged Transportation Services to those Passengers.
4. "Passenger" or "user" means a person who uses a Digital Network to connect with a Driver to request and pay for Prearranged Transportation Service.

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5. "Person" or "people" means 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.
6. "Prearranged Transportation Service" or "Prearranged Ride" means the transportation of a Passenger or Passengers by a Driver, arranged through a Digital Network.
7. "Tax", "Transportation Network Company User Tax", or "TNC User Tax" means the tax imposed by this chapter.
8. "Finance Department Tax Administrator" means the Director of Finance of the City of Berkeley or such other person as may be designated by the City Manager.
9. "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 an Digital Network to connect Passengers with Drivers.

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14.634.26.030. **Imposition and Rate of Tax**

Subject to the provisions of this chapter, for each Prearranged Ride that originates in the City there is imposed a tax of 50 cents. Said tax constitutes a debt owed by the Passenger to the City, which is extinguished only by payment to the TNC at the time of payment for the Prearranged Ride.

14.634.26.040. **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 Ride originating in the City, collect the tax from the Passenger 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 ride for a Passenger that originates in the City.

14.634.26.050. **Registration of Transportation Network Company**

1. 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 Finance Department Tax Administrator.
2. 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 Finance Department Tax Administrator.
3. 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 Finance Department 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 Finance Department 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 the passenger. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Finance Department Tax Administrator upon the cessation of business in the city or upon its sale or transfer.

14.634.26.060 Duties of the Finance Department Tax Administrator

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

14.634.26.070. Determinations, Returns, and Payments

1. 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 Finance Department Tax Administrator for each taxable month on or before the fifteenth day of the month immediately following each respective monthly period.
2. 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 Finance Department Tax Administrator, in such form as the Finance Department Tax Administrator may prescribe.
3. Contents of Return. Returns must show the amount of tax collected for the related period and such other information as required by the Finance Department Tax Administrator. The Finance Department Tax Administrator may require returns to show the total Prearranged Rides originating within the City upon which tax was collected or otherwise due, the total number of Prearranged Rides originating in the City for such period, and an explanation in detail of any discrepancy between the amounts.
4. Delivery for Return and Remittance. The return shall be transmitted with the remittance of the amount of the tax due to the Finance Department Tax Administrator at the Finance Department on or before the date provided in this chapter.
5. Extension of Time for Filing a Return and Paying Tax. For good cause, the Finance Department 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 14.634.26.080.

14.634.26.080. Penalties and Interest

1. 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.
2. Fraud. If the Finance Department 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 penalties stated in subdivision 1 of this section.
3. Interest. In addition to the 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

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the amount of the tax, inclusive of penalties, from the date on which the remittance first became delinquent until paid.

4. 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.

14.634-26.090. Deficiency Determinations

1. Recomputation of Tax—Authority to Make—Basis of Recomputation. If the Finance Department 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 Finance Department 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.
2. Interest on Deficiency. The amount of the determination, inclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof, from the sixteenth day of the month following the close of the monthly period for which the amount or any portion thereof should have been paid until the date of payment.
3. Offsetting of Overpayments. In making a determination, the Finance Department 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. The interest on underpayments shall be computed in the manner as set forth in Section 14.634-26.080(3).
4. Penalty—Negligence or Disregard of Rules and Regulations. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this chapter or authorized rules or regulations, a penalty of 25 percent of the amount required to be paid by the TNC, inclusive of interest shall be added thereto.
5. Penalty for Fraud or Intent to Evade. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this chapter or authorized rules and regulations, a penalty of 50 percent of the amount, inclusive of the interest and penalty as provided in Section 14.634-26.080, must be paid.
6. Notice of Finance Department Tax Administrator's Determination—Service of. The Finance Department Tax Administrator shall give to the TNC written notice of the 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 Finance Department 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.
7. 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.

14.634-26.100. Determinations If No Return Made

1. Estimate—Computation of Tax Penalty. If any TNC fails to make a return, the Finance Department Tax Administrator shall estimate the number of Prearranged Rides 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 Finance Department Tax Administrator's possession or may come into his or her possession. Upon the basis of this estimate, the Finance Department Tax Administrator shall compute and determine the amount required to be paid to the City, adding to the sum

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computed a penalty equal to 25 percent thereof. One or more determinations may be made for one or more periods.

2. Manner of Computation—Offsets—Interest. In making a determination, the Finance Department 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. The interest on underpayments shall be computed in the manner as set forth in Section 14.634.26.080(3).

3. Interest on Amount Determined Due. The amount of the determination, inclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof, from the sixteenth day of the month following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

4. Penalty for Fraud or Intent to Evade. If the failure of any TNC to file a return is due to fraud or an intent to evade this chapter or rules and regulations, a penalty of 50 percent of the amount, inclusive of the interest and penalty as provided in Section 14.634.26.080, must be paid.

5. Giving Notice—Manner of Service. After making the determination, the Finance Department 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.

6. Time to Make a Determination. The Finance Department Tax Administrator may make a determination in accordance with this Section at any time within five years of a return being due.

14.634.26.110. Appeal of Finance Department Tax Administrator's Determination

1. Petition for Redetermination. Any TNC against whom a determination is made under this chapter may petition the Finance Department 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 Finance Department Tax Administrator, City Hall, Berkeley, California 94704612, within the 30-day period, the determination becomes final at the expiration of the period.

2. Consideration of Petition—Hearing. If a petition for redetermination is filed within the 30-day period, the Finance Department 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 Finance Department 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.

3. Determination of Petition. The Finance Department 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 Finance Department Tax Administrator at or before the hearing.

4. Finality of Determination. The order or decision of the Finance Department 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 Finance Department Tax Administrator's decision (or his or her deputies designated for a redetermination) to the City Council; writs challenging the Finance Department 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.)

5. 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

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the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

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14.634.26.120. Records

It shall be the duty of every TNC engaged in business in the City to keep and preserve, for a period of four years, all records as may be necessary to determine the amount of tax it may have been liable for the collection of and payment to the City, which records the Finance Department Tax Administrator shall have the right to inspect upon issuance of a subpoena therefore pursuant to Berkeley Municipal Code Section 5.34.050.

14.634.26.130. Refunds

A passenger 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 Finance Department Tax Administrator within one year of the date of payment. The claim shall be on forms furnished by the Finance Department 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 Finance Department Tax Administrator his or her right thereto by written records showing entitlement thereto.

14.634.26.140. 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 Finance Department 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., 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, 2019.

Section 5. Council Amendments. The City Council of the City of Berkeley is hereby authorized to amend Chapter 14.634.26 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

The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

BE IT FURTHER RESOLVED that this Resolution shall take effect from and after the date of its passage and adoption.

BE IT FURTHER RESOLVED that the City Clerk shall certify to the passage and adoption thereof.

The foregoing Resolution was adopted by the Berkeley City Council on July 24, 2018 by the following vote

Ayes

Noes

Absent

Attest

Mark Numainville, City Clerk

Jesse Arreguin, Mayor

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