



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** July 7, 2020

**TO:** Mayor Patz and City Councilmembers

**FROM:** Michael Guina, City Attorney

**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Submitting To The Qualified Electors Of The City Of Emeryville 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 Trips; Requesting The Alameda County Board Of Supervisors Permit Consolidation Of Said Ordinance With Statewide General Election To Be Held On The Same Date; Requesting That The County Registrar Perform Certain Election Services In Connection With Said Consolidated Election; And Authorizing The City To Reimburse The County Registrar Of Voters For Election Services Performed; Setting City Council Priority For Filing Written Argument; Directing The City Attorney To Prepare An Impartial Analysis; Authorizing The Filing Of Rebuttal Argument; CEQA Determination: Exempt Pursuant To CEQA Guidelines 15378(b)(4) And 15061(b)(3)**

## RECOMMENDATION

Staff recommends the City Council consider the staff report and presentation and provide comment on the proposed tax measure. Staff also recommends that the City Council continue this matter to its July 21, 2020 meeting to consider whether to adopt the resolution to place the measure on the November 3, 2020 ballot. The proposed ordinance codifying the measure is attached as Exhibit A to the resolution.

## BACKGROUND

A Transportation Network Company (TNC) provides prearranged transportation services using an online application or platform, such as smart phone apps, to connect drivers with passengers. Passengers can arrange for a private prearranged trip, in which the passengers are transported by a single vehicle at the same time for a single fare; or passengers can also arrange for a pooled trip, in which two or more passengers are transported by a single vehicle a prearranged ride at the same time for which separate fares are charged. All fares and tips are charged and collected by the TNC through the online application and not by the driver. The TNC then distributes compensation to the driver in a separate transaction.

TNC trips in Emeryville use the public streets and roads, and contribute to the wear and tear of the public infrastructure. TNC trips also contribute to traffic congestion and air pollution within the City. Currently TNC trips do not pay taxes to the City to offset their impacts on the City.

Staff understands that the cities of Oakland and Berkeley are likely to be considering measures for the November 2020 ballot that would impose a general tax on users of TNCs at a rate of 50 cents (\$.50) per trip for private trips and 25 cents (\$.25) per trip for pooled trips. At the June 16, 2020 City Council meeting, Councilmember Medina requested and received majority support for staff to prepare a ballot measure that creates a tax on trips of users of Transportation Network Companies in substantially similar form as the anticipated Oakland and Berkeley measures for the November 2020 ballot. This item responds to that direction. Staff understands that the cities of Berkeley and Oakland will not be considering their similar measures until their special city council meetings on July 21, 2020. In order for the Emeryville City Council to have the ability to review the language of those measures prior to considering whether to place its own measure on the November ballot, staff recommends that the City Council continue this item to its July 21, 2020 meeting.

## **DISCUSSION**

If approved by the voters, the measure would adopt an ordinance adding a new Article 8, "Transportation Network Company User Tax," to Chapter 3 of Title 3 of the Emeryville Municipal Code. If approved, the proposed measure imposes a tax on TNC trips originating in Emeryville. TNC Users are taxed at a rate of 50 cents per trip for private trips, and 25 cents per trip for pooled trips which start in the City. The tax is collected by the TNC through the online platform and remitted to the City on a monthly basis. The ordinance is attached as Exhibit A to the resolution.

The proposed measure is a general tax that requires a majority of voter support for passage. As a general tax, the revenues may be used to fund general municipal services. Staff is still researching how to project the revenues that this measure would generate. If adopted, the tax would take effect on January 1, 2021 and would continue until it is repealed by the voters.

## **Proposed Ballot Question**

If the City Council decides to place the measure on the November 3, 2020 ballot, staff recommends the Council consider authorizing the following language for the ballot question. Staff believes the proposed language is generally consistent with the language likely to be considered by the cities of Oakland and Berkeley, particularly regarding the subject of the tax, the tax rate, and that it is a general tax.

*Ballot Question:*

**Shall an ordinance to enact a general tax on the trips of users of Transportation Network Companies for prearranged trips originating in Emeryville, at a rate of 50 cents per trip for private trips and 25 cents per trip for pooled trips, regardless of the number of passengers in the trip, which is estimated to generate \$\_\_\_ annually to fund general municipal services for the City of Emeryville until repealed by the voters, be adopted?**

Other Actions Taken by Resolution

In addition to calling the General Election and authorizing the Ballot Question above, the resolution authorizes several other actions:

1. Requests the Alameda County Board of Supervisors consolidates the election of the proposed measure with the statewide election and commits the City to reimburse the County for expenses incurred for conducting the election;
2. Directs the City Clerk to forward the proposed measure to the City Attorney to prepare an impartial analysis, which may not exceed 500 words and must be submitted to the City Clerk by August 5, 2020.
3. Authorizes the City Council to author a single ballot argument in favor of the proposed measure. All arguments, either for or against, may not exceed 300 words and must be submitted to the City Clerk by July 17, 2020.
4. Authorizes the filing of rebuttal arguments, not to exceed 250 words, which must be submitted to the City Clerk by July 27, 2020.

Should the Council continue the matter to its July 21, 2020 meeting, the submittal dates shown above for arguments and rebuttals will be revised accordingly.

**FISCAL IMPACT**

Staff is still researching how to estimate the projected revenues from this measure. As a general tax, the revenues would not be tied to any specific program, but could be used to fund municipal services generally.

## **ENVIRONMENTAL REVIEW**

The proposed measure involves the creation of a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment and this is not a “project” subject to the California Environmental Quality Act (Public Resources Code section 21000, et seq.) (CEQA), pursuant to CEQA Guidelines section 15378(b)(4). Additionally, it can be seen with certainty that there is no possibility the adoption and implementation of the ordinance may have a significant effect on the environment, and accordingly the adoption of the resolution and ordinance are exempt from the provisions of CEQA pursuant to the “general rule” at CEQA Guidelines section 15061(b)(3).

## **STAFF COMMUNICATION WITH THE PUBLIC**

Staff has had communication with representatives of the cities of Oakland and Berkeley.

## **CONCLUSION**

Staff recommends the City Council receive this report, provide feedback on the proposed ballot question and measure, and thereafter continue this matter to the July 21, 2020 meeting.

**PREPARED BY:** Michael Guina, City Attorney

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

## **ATTACHMENTS**

- Draft Resolution
- Exhibit A – Proposed Tax Measure