



Office of the City Manager

WORKSESSION
January 19, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: David White, Deputy City Manager
Subject: 2020 Adopted Ballot Measures

INTRODUCTION

In 2020, the City Council placed eight (8) Measures on the November 3, 2020 ballot. Of the eight (8) Measures, seven (7) were adopted by Berkeley voters. The purpose of the work session is to provide an overview of what city staff has accomplished to date implementing three (3) of the seven (7) Measures. In so doing, City Council will be asked to provide input and direction to guide the work of city staff over the course of the calendar year. This input is also critical to help city staff operationalize these Measures for the FY 22 budget.

CURRENT SITUATION AND ITS EFFECTS

On November 3, 2020, Berkeley voters adopted the following ballot measures:

- Measure FF: Fire, Emergency Services and Wildfire Prevention Tax
- Measure GG: Tax on Transportation Network Company Trips
- Measure II: Police Accountability Charter Amendment
- Measure JJ: Charter Amendment: Mayor and Council Compensation
- Measure KK: Charter Amendment: Administrative Provisions and City Attorney
- Measure LL: GANN Limit Spending Authority
- Measure MM: Rent Stabilization Ordinance

At the work session, city staff will discuss the work that has been performed to implement three (3) of the seven (7) Measures listed above – Measure FF, Measure GG, and Measure II.

The Fire Department has organized a departmental team to operationalize Measure FF and will be seeking input and direction from City Council on the initial plan that has been developed to deploy resources generated by Measure FF to address existing deficits, emergency medical services, training, priority dispatching, and wildfire prevention and preparedness.

Subsequent to the adoption of Measure GG, the Finance Department quickly mobilized staff to implement the tax, which included coordination with the state, outreach to Transportation Network Companies, development of a page on the City's website, and all of the necessary forms and procedures to properly administer and collect the tax. The Finance Department will provide an overview of its accomplishments to date.

With respect to Measure II, the City Manager's Office has established an interdepartmental team that consists of representatives from the City Clerk's Office, Human Resources Department, and Police Review Commission. Initial work has focused on developing a plan that will be presented to City Council to guide implementation activities over the next six (6) to twelve (12) months. The plan provides a roadmap to establish the Police Accountability and the Director of Accountability.

BACKGROUND

The following provides a high level overview of the three Measures that will be discussed at the work session:

Measure FF

Measure FF is a special tax special tax of \$0.1047 per square foot of improvements in the City of Berkeley. The City Council may increase the tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state. At the time that City Council placed the item on the November 2020 ballot, city staff estimated that the tax had the potential to generate approximately \$8.5 million in annual revenues. The Measure indicates that proceeds of the tax shall be placed in a special fund for the purpose of enhancing public safety by funding the following:

- Local firefighter and emergency medical response including hiring and training personnel and upgrading safety equipment and facilities.
- Upgrading and modernizing the 9-1-1 dispatch system to implement and maintain a system to provide emergency medical dispatching.
- Wildfire prevention and preparedness activities including, but not limited to, vegetation management, hazard mitigation, public education, evacuation planning, and an emergency alert system.

The effective date of the Measure FF is January 1, 2021, however, since FY 21 property tax bills have already been issued, the City will not realize revenues from Measure FF until FY 22. Similar to other parcel taxes, the City will receive the funds in roughly two installments – one in December and one in April. It is important to note that the City does have the ability to collect the revenues that would have been generated from Measure FF from January 1, 2021 to June 30, 2021 by placing an additional one-time parcel tax on the FY 22 property tax bill. If City Council wanted to collect these revenues they could be used for certain one-time capital items related to upgrading and modernizing the 9-1-1 dispatch system or implementing the emergency alert system.

Measure FF does not have a sunset date, however, the City Council may repeal the tax, or amend it in any manner that does not result in an increase in the tax. Further, on September 22, 2020, the City Council adopted Resolution No. 69,575–N.S. that designated the Disaster and Fire Safety Commission as the citizens' oversight committee for Measure FF. In this capacity, the Disaster and Fire Safety Commission may:

- Request detailed expenditure plans for tax proceeds annually, which shall be provided to it as early in the budget process as feasible;
- Make recommendations to the City Manager and the City Council on the expenditure of tax proceeds; and
- Obtain a report on actual expenditures.

Measure GG

Measure GG is a tax on users of Transportation Network Companies (TNC)¹ for prearranged trips originating in Berkeley, at a rate of 50 cents per trip for private trips and 25 cents per trip for pooled trips. The City Council may increase the tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state. Measure GG is a general tax and revenues generated by Measure GG will be deposited into the General Fund. At the time that City Council placed the item on the November 2020 ballot, city staff estimated that the tax had the potential to generate \$910,000 in revenues. However, given that the City has no history collecting this tax, the limited number of cities that have adopted a TNC tax, and the effects of COVID-19 on the local economy, it is premature to determine if the City will realize the revenues estimated to be generated by Measure GG.

The effective date of the Measure GG is January 1, 2021 and, unless extended by the voters of Berkeley, the tax will sunset in 20 years (on January 1, 2041). Since the tax was adopted, the Finance Department has been working to expeditiously implement the tax including reaching out to representatives of TNC's and developing a [comprehensive website](#) that includes an overview of the tax and all of the necessary forms required of TNC's that operate in the City of Berkeley.

Measure II

Measure II established a Police Accountability Board consisting of nine (9) members and also established the position of Director of Police Accountability. The purpose of the Police Accountability Board and Director of Police Accountability is to promote public trust through independent, objective, civilian oversight of the Berkeley Police

¹ "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

Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. Both the Police Accountability Board and Director of Police Accountability are independent of the City Manager, except for administrative purposes, and report to the Mayor and City Council.

Once seated, the Police Accountability Board will replace the existing Police Review Commission. Measure II indicates that the Police Review Commission shall continue in existence until its functions are transferred to the Police Accountability Board, but no later than January 3, 2022. On July 28, 2020, City Council adopted Resolution 69,531-N.S. that provided direction to accomplish the following by July 1, 2020:

- Establish and convene the Police Accountability Board with all investigatory, policy and other authorities; and
- To assist in an orderly transition between the Police Review Commission and the Police Accountability Board, Police Review Commission staff shall serve as interim Police Accountability Board staff until the City hires a Director of Police Accountability.

The City Clerk's Office has developed an application for the Police Accountability Board and anticipates making it available to the community by the end of January 2021. City staff are evaluating what actions will be needed to be taken, if any, by the City Council to ensure that Police Review Commission staff can serve as staff for the Police Accountability Board.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

At the work session, city staff will be seeking City Council direction on the implementation of Measures FF, GG, and II.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Revenues generated by Measures FF and GG are identified in the staff report. With respect to Measure II, for the FY 22 budget, city staff are identifying the resources needed for the Police Accountability Board that will reflect the salary and benefits for the Director of Police Accountability, expanded training requirements and stipends for members of the Police Accountability Board, as well as resources needed to address technology and office space requirements.

CONTACT PERSON

David White, Deputy City Manager, City Manager's Office, 510 981-7012

Attachments:

1: Measure FF- Ballot Question and Text -

<https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/Berkeley - Fire-OES-Wildfire Tax - Question and Text.pdf>

2: Measure GG – Ballot Question and Text -

<https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/Berkeley - Tax Measure - TNC Tax - Question and Text.pdf>

3: Measure II – Ballot Question and Text -

<https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/Police Charter Question and Text.pdf>

Attachment 1

Shall an ordinance enacting a tax at a rate of \$0.1047 per square foot of improvements, which is estimated to generate \$8.5 million annually for firefighting, emergency medical response, 9-1-1 communications services, hazard mitigation, and wildfire prevention and preparedness, until repealed by the voters, be adopted?

ORDINANCE NO. #,###-N.S.

IMPOSING A SPECIAL TAX AT A RATE OF \$0.1047 PER SQUARE FOOT OF IMPROVEMENTS TO PAY FOR FIREFIGHTING, EMERGENCY MEDICAL RESPONSE, 9-1-1 COMMUNICATIONS SERVICES, HAZARD MITIGATION, AND WILDFIRE PREVENTION AND PREPAREDNESS

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. On June 16, 2020, the City Council adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not have adequate resources to maintain existing staffing levels, fill vacant positions, adequately train firefighters and paramedics, maintain and replace equipment and facilities, prepare and plan for wildfires, and upgrade and modernize its 9-1-1 dispatch system.

B. Over the years, the Fire Department has experienced a significant increase in calls-for-service, rising from approximately 6,300 in 1995 to approximately 16,000 in 2017 without adequate increases in staffing levels. Over the years, this has resulted in increasing response times.

C. An increasing number of calls in the Fire Department are dedicated to addressing the needs of vulnerable populations including individuals experiencing homelessness and mental health crises and the Fire Department does not have resources dedicated to addressing these vital community needs.

D. The City's 9-1-1 dispatch center does not have the resources to ensure adequate staffing levels, upgrade its systems, and modernize to include emergency medical dispatching to ensure that the appropriate emergency response services are deployed to 9-1-1 calls-for-service.

E. The City is vulnerable to wildfires that could impact significant portions of the City and without a consistent source of funding, the City does not have the resources to address wildfire prevention activities such as vegetation management, hazard mitigation, evacuation planning, public education, and an emergency alert system.

Section 2. Code Amendment. A new Chapter 7.83 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 7.83

Fire, Emergency Medical Response, 9-1-1 Communications Services, Hazard Mitigation, and Wildfire Prevention and Preparedness Tax

7.83.010 Special Tax.

A. A special tax for the purpose of funding firefighter and emergency medical response including, but not limited to, training, hiring, maintaining and upgrading facilities and equipment, upgrades to the 9-1-1 communication system, and wildfire prevention and preparedness activities is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter.

B. The City Council may impose the tax authorized by this Chapter at the rate and subject to the inflation adjustments, set forth in Section 7.83.020.

C. This special tax is imposed under Article XIII A, Section 4, of the California Constitution and the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purpose of enhancing public safety by funding the following:

1. Local firefighter and emergency medical response including hiring and training personnel and upgrading safety equipment and facilities.
2. Upgrading and modernizing the 9-1-1 dispatch system to implement and maintain a system to provide emergency medical dispatching.
3. Wildfire prevention and preparedness activities including, but not limited to, vegetation management, hazard mitigation, public education, evacuation planning, and an emergency alert system.

7.83.020 Tax Authorized – Tax rate – Adjustments for Inflation

A. The City Council is hereby authorized to impose a special tax of \$0.1047 per square foot of improvements in the City of Berkeley.

B. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

7.83.030 Definitions.

For purposes of this chapter, the following terms shall be defined as set forth below:

A. "Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."

B. "Improvements" shall mean all buildings or structures erected or affixed to the land.

C. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.

D. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

E. "Parcel" shall mean a unit of real estate in one ownership as shown on the most current official assessment roll of the Alameda County Assessor.

7.83.040 Exemptions.

A. The tax imposed by this Chapter shall not apply to parcels and improvements exempt from taxation by the City pursuant to the laws or constitutions of the United States and the State of California.

B. The tax imposed by this Chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually

by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

C. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought

7.83.050 Duties and Authority of the City Manager.

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

7.83.060 Collection with Property Tax – Penalties and Interest.

The special tax imposed by this Chapter shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

7.83.070 Collection.

The amount of any tax, penalty, or interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money 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. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

7.83.080 Refunds.

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in Chapter 7.20 of the Berkeley Municipal Code or any such successor chapter.

7.83.090 Savings clause – Severability.

The provisions of this chapter shall not apply to any person, association, corporation, entity, or property as to whom or which it is beyond the power of the City of Berkeley to impose the tax herein provided. If any sentence, clause, section, or part of this chapter, or any tax against any individual or any of the several groups specified herein

is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part shall be severable and such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the City Council and the People of the City of Berkeley that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

7.83.100 Violation – Penalty.

Any person who fails to perform any duty or obligation imposed by this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. The penalties provided in this section are in addition to the several remedies provided in this chapter.

Section 3. 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 4. Effective date. The tax imposed by this Chapter shall be operative on January 1, 2021.

Section 5. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 6. 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 7. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax for restricted general revenue purposes and shall be effective only if approved by two-thirds of the voters voting thereon.

ORDINANCE NO. #,###-N.S.

IMPOSING A SPECIAL TAX AT A RATE OF \$0.1047 PER SQUARE FOOT OF IMPROVEMENTS TO PAY FOR FIREFIGHTING, EMERGENCY MEDICAL RESPONSE, 9-1-1 COMMUNICATIONS SERVICES, HAZARD MITIGATION, AND WILDFIRE PREVENTION AND PREPAREDNESS

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B. Over the years, the Fire Department has experienced a significant increase in calls-for-service, rising from approximately 6,300 in 1995 to approximately 16,000 in 2017 without adequate increases in staffing levels. Over the years, this has resulted in increasing response times.

C. An increasing number of calls in the Fire Department are dedicated to addressing the needs of vulnerable populations including individuals experiencing homelessness and mental health crises and the Fire Department does not have resources dedicated to addressing these vital community needs.

D. The City's 9-1-1 dispatch center does not have the resources to ensure adequate staffing levels, upgrade its systems, and modernize to include emergency medical dispatching to ensure that the appropriate emergency response services are deployed to 9-1-1 calls-for-service.

E. The City is vulnerable to wildfires that could impact significant portions of the City and without a consistent source of funding, the City does not have the resources to address wildfire prevention activities such as vegetation management, hazard mitigation, evacuation planning, public education, and an emergency alert system.

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B. The City Council may impose the tax authorized by this Chapter at the rate and subject to the inflation adjustments, set forth in Section 7.83.020.

C. This special tax is imposed under Article XIII A, Section 4, of the California Constitution and the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purpose of enhancing public safety by funding the following:

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For purposes of this chapter, the following terms shall be defined as set forth below:

A. "Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."

B. "Improvements" shall mean all buildings or structures erected or affixed to the land.

C. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.
2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.
3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.

D. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

E. "Parcel" shall mean a unit of real estate in one ownership as shown on the most current official assessment roll of the Alameda County Assessor.

7.83.040 Exemptions.

A. The tax imposed by this Chapter shall not apply to parcels and improvements exempt from taxation by the City pursuant to the laws or constitutions of the United States and the State of California.

B. The tax imposed by this Chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually

by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

C. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought

7.83.050 Duties and Authority of the City Manager.

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

7.83.060 Collection with Property Tax – Penalties and Interest.

The special tax imposed by this Chapter shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

7.83.070 Collection.

The amount of any tax, penalty, or interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money 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. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

7.83.080 Refunds.

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in Chapter 7.20 of the Berkeley Municipal Code or any such successor chapter.

7.83.090 Savings clause – Severability.

The provisions of this chapter shall not apply to any person, association, corporation, entity, or property as to whom or which it is beyond the power of the City of Berkeley to impose the tax herein provided. If any sentence, clause, section, or part of this chapter, or any tax against any individual or any of the several groups specified herein

is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part shall be severable and such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the City Council and the People of the City of Berkeley that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

7.83.100 Violation – Penalty.

Any person who fails to perform any duty or obligation imposed by this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. The penalties provided in this section are in addition to the several remedies provided in this chapter.

Section 3. 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 4. Effective date. The tax imposed by this Chapter shall be operative on January 1, 2021.

Section 5. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 6. 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 7. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax for restricted general revenue purposes and shall be effective only if approved by two-thirds of the voters voting thereon.

Attachment 2

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 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?

ORDINANCE NO. #,###-N.S.

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 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. “Exempt Trip” means any Trip for a Government Healthcare Payor or WAV Trip.
- E. “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.
- F. “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.
- G. “Pooled Prearranged Trip” means a prearranged trip which, prior to its commencement, a User requests through the transportation network company's digital network to share the ride with one or more passenger for whom a separate fare will be charged and for which the fare is calculated, in whole or in part, based on the User's request for the ride to be shared with other passengers, regardless of whether other passengers actually share all or a part of the ride.
- H. “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.

- I. “Prearranged Transportation Service” means a “Prearranged Trip” or a “Pooled Prearranged Trip.”
- J. “Tax”, “Transportation Network Company User Tax”, or “TNC User Tax” means the tax imposed by this chapter.
- 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. “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 trips paid or reimbursed under the Medi-Cal program.
- M. “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.
- N. “WAV Trip” means a Prearranged Trip that is provided in a wheelchair accessible vehicle as defined in section 5431.5 of the Public Utilities Code.

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. 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 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 subsection E of this section.

G. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

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.

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.

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.

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.

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.

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 general 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, except pursuant to the inflation factor described in section 7.71.030, 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.

Attachment 3

Shall the measure amending the Berkeley City Charter to create an independent Berkeley Police Accountability Board and Director of Police Accountability to provide oversight of the Berkeley Police Department (Department) policies, practices, and procedures; obtain access to records; investigate complaints filed by members of the public against sworn employees of the Department; and recommend discipline of sworn employees of the Department, based upon a preponderance of the evidence, be adopted?

CHARTER AMENDMENT TO ESTABLISH A POLICE ACCOUNTABILITY BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY

The People of the City of Berkeley hereby amend the Charter of the City of Berkeley to read as follows:

Section 1. The Charter of the City of Berkeley is amended to add Article XVIII, to read as follows:

Article XVIII. POLICE ACCOUNTABILITY BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY

Section 1. Establishment and purpose.

A Police Accountability Board is hereby established in the City of Berkeley. The purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

The Office of the Director of Police Accountability is hereby established. The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assist the Board in carrying out the duties prescribed herein.

Section 2. Definitions.

The following definitions apply to this Article:

(a) "Commissioners' Manual" refers to the most current manual adopted by the City Council that consists of the policies and procedures regarding the service of board members and commissioners, board and commission procedures, and conduct of meetings.

(b) "Complainant" shall refer to a member of the public that files a complaint with either the Director of Police Accountability, Police Accountability Board, or the Police Department.

(c) "Director of Police Accountability" or "DPA" refers to an individual fulfilling the police oversight role established pursuant to section 1 of this Article.

(d) "Effective Date" shall be the date that the Secretary of State accepts and files this Article.

(e) "Police Accountability Board" or "Board" refers to the Police Accountability Board established in Section 1 of this Article, which shall be the successor agency to the Berkeley Police Review Commission in accordance with Section 27.

(f) Except as otherwise specifically provided, all references in this Article to California code sections shall refer to such Code sections as they may be amended or re-codified from time to time.

Section 3. Police Accountability Board powers and duties.

(a) The Police Accountability Board has the following powers and duties:

(1) To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department;

(2) Review and recommend for City Council approval all agreements, letters, memoranda of understanding, or policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the Berkeley Police Department and all other local, state and federal law enforcement, intelligence, and military agencies or private security organizations;

(3) To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department and to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct;

(4) To participate in the hiring of the Chief of Police as set forth in Section 22;

(5) To access records of City Departments, compel attendance of sworn employees of the Police Department, and exercise the power of subpoena as necessary to carry out its functions;

(6) To adopt rules and regulations necessary for the conduct of its business; and

(7) Any other powers and duties as the City Council may assign it by Ordinance.

(b) Nothing in this chapter granting powers and duties to the Police Accountability Board shall limit the City Council's, Chief of Police's or City Manager's authority derived from other provisions of this Charter to act on policing matters, unless explicitly stated.

(c) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall have no authority to restrict, modify, supersede, negate, supplant or contravene the authority granted to the City Manager and/or Chief of Police by way of the City Charter or operation of state or federal law to engage in collective bargaining activities or enter into

agreements or understandings with the designated bargaining unit representative or representatives of the sworn employees of the Police Department unless such agreements or understandings contravene this Article.

(d) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall not undertake nor sanction any actions which would:

(1) Restrict, violate, or abridge the collective bargaining rights of the designated bargaining unit representative of the sworn employees of the Police Department or their individual members;

(2) Restrict, violate or abridge the terms and conditions of a collective bargaining agreement, understanding or practice with the designated bargaining unit representative of the sworn employees of the Police Department, except for those provisions provided for in this Article; and

(3) Restrict, violate or abridge any legal rights of individual sworn employees of the Police Department, including but not limited to those set forth in the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"), Government Code section 3300 et seq., and sworn employees' right to maintain the confidentiality of their personnel file information (including, but not limited to Penal Code §§ 832.7, 832.8.), except as required under Section 20 of Article XVIII of the City Charter.

Section 4. Independent agency; budget authority and allocation.

(a) Notwithstanding Article VII of the Charter, and except as provided in section 14(b), 14(i) or 14(k), the Police Accountability Board, its staff and the Director of Police Accountability shall be independent of the City Manager.

(b) The Board is authorized to propose a budget to the City Council for its operations, and the City Council may allocate to the Police Accountability Board and Director of Police Accountability, as the City Council determines resources allow, a budget sufficient to provide for a process that protects the rights of complainants and sworn employees of the Police Department, for the Board and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Board.

Section 5. Composition of Police Accountability Board; eligibility.

(a) The Police Accountability Board shall be composed of nine (9) Board members selected by the Mayor and City Council. Each member of the Board must:

(1) Be a resident of the City;

(2) Be at least 18 years old;

(3) Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers; and

(4) Be fair minded and objective with a demonstrated commitment to community service.

(b) Desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations.

(c) All appointees to the Board shall be subject to background checks before final appointment.

Section 6. Board member selection.

(a) Candidates for the Board must complete and file with the City Clerk an application form and an affidavit of residency required by Berkeley Municipal Code Section 2.04.145. Board vacancies shall be widely advertised and publicly posted. The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council. Each individual nominee must be approved by a majority vote of the City Council.

(b) The City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for the position of Board member, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.

Section 7. Terms; term limits.

(a) Board member terms end four years after appointment, or upon the expiration of the nominating City Councilmember's term, whichever is earlier. Board members are limited to serving eight consecutive years and may be reappointed following a break in service of at least two years.

(b) To the extent not in conflict with subsection (a) above, the provisions of Berkeley Municipal Code Section 3.02.040, regarding Board member term limits and the effect of interruption in service, apply.

Section 8. Conflicts of interest and Avoiding Bias.

(a) Board members shall be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

(b) Board members shall maintain basic standards of fair play, impartiality, and avoid bias and the appearance of bias. In instances where the Board acts in a quasi-judicial capacity, as in a confidential personnel hearing, as described below, Board members have the responsibility to hear all viewpoints. To ensure that all parties are afforded an opportunity to be heard, Board members shall observe the following:

(1) Board members recused for a conflict of interest must do so immediately when an item is taken up.

(2) Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing. Board members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts include, but are not limited to, any contact between a Board member and any party involved in the complaint prior to the public hearing.

(3) Board members shall be recused from taking any action on or participating in a matter before the Police Accountability Board if they are related to a party to, advocate for, or represent a member of the public who has a pending or anticipated claim of any kind arising out of alleged misconduct of a sworn employee of the Police Department. For the purpose of this subsection, "related to" shall include a spouse, child, sibling, parent or other person related to the complainant or the complainant's spouse within the third degree of relationship.

Section 9. Expiration of term; termination; leaves of absence; removal.

(a) A Board member whose term has expired may continue to serve until a successor Board member is appointed, unless the sitting Board member's term expires due to term limits, as provided in Section 7.

(b) The term of a Board member who fails to remain eligible to serve on the Board (e.g., by moving out of the City of Berkeley, or becoming an employee of the City) expires automatically as of the date the reason for ineligibility arises.

(c) The provisions of Berkeley Municipal Code Section 3.02.020, establishing a termination procedure for absence from meetings, Section 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate Board members, apply to the Police Accountability Board.

(d) A Board member may either be replaced by the City Council if their term has expired or may be removed during their term as provided in Section 12.

Section 10. Board Chairperson and Vice-Chairperson.

(a) The Board shall elect one of its members as chairperson and one as vice-chairperson, whose terms shall be one year each, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof.

(b) Following election of the initial chairperson and vice-chairperson, the Board shall elect subsequent officers each January.

Section 11. Board member stipends.

(a) Each Board member is entitled to receive a stipend of \$100.00 for each regular and special Board meeting attended, and \$20.00 per hour for each hour of training attended as provided in Section 12 and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300.00 per month per Board member.

(b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.

Section 12. Board member training; At will Status; Oath of Maintaining Confidentiality.

(a) The Director of Police Accountability shall establish mandatory training requirements for Board members. Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
 - (2) Constitutional rights and civil liberties;
 - (3) Fundamentals of procedure, evidence and due process;
 - (4) The Public Safety Officers Procedural Bill of Rights Act;
 - (5) Police Department operations, policies, practices, and procedures;
- and
- (6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Director of Police Accountability shall develop training provided to Board members. The Chief of Police and a representative from the Berkeley Police Association shall have input on training provided to Board members and shall have the opportunity to attend all training provided.

(b) All Board members shall serve at the pleasure of the City Council and may be removed by a two-thirds vote of the City Council for any reason, including but not limited to misconduct or violations of state and federal confidentiality laws.

(c) Board members shall, upon appointment, take an oath to abide by and maintain the confidentiality of the personnel files of sworn employees of the Police Department and all other matters that are confidential pursuant to state and federal law.

Section 13. Board meetings; quorum; rules of procedure; subcommittees.

(a) At the beginning of each calendar year, the Board shall establish a regular meeting schedule consisting of at least eighteen (18) meetings. Special meetings may be called by the chairperson of the Board or by a majority of the Board.

(b) A majority of appointed Board members constitutes a quorum to conduct business and take any action.

(c) The Board shall establish rules of procedure governing the conduct of its

business, which shall be subject to ratification by the City Council.

(d) The Board may establish policy subcommittees that it deems necessary to carry out its functions. The Chairperson shall appoint policy subcommittee members at a Board meeting. Policy subcommittees may include non-voting members of the public who express an interest in the business of the subcommittee. Members of the public that are appointed to a policy subcommittee shall serve in an advisory capacity without compensation. The Board may establish further rules and procedures for the appointment and removal of members of the public to policy subcommittees. Policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

(e) Unless otherwise specified in this Article, rules of procedure governing the conduct of the Board, or Ordinance, the Board shall comply with the Commissioners' Manual.

Section 14. Office of the Director of Police Accountability.

(a) To the extent possible, the City Manager shall recommend three (3) candidates for consideration by the City Council. The City Council shall appoint the Director of Police Accountability at a noticed public meeting.

(b) The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing City of Berkeley employees.

(c) Within the first six (6) months of appointment, the Director of Police Accountability shall receive training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
 - (2) Constitutional rights and civil liberties;
 - (3) Fundamentals of procedure, evidence and due process;
 - (4) The Public Safety Officers Procedural Bill of Rights;
 - (5) Police Department operations, policies, practices, and procedures;
- and
- (6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

(d) By majority vote, the Police Accountability Board may recommend removal for cause of the Director of Police Accountability to the City Council.

(e) The City Council may remove the Director of Police Accountability by a two-thirds vote either on its own motion or based on the recommendation of the Police Accountability Board.

(f) In addition to the duties prescribed, upon receipt of a complaint by the

Police Accountability Board, the Director of Police Accountability shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

(g) The Director of Police Accountability shall assess the conduct of the sworn employee of the Police Department in light of the facts discovered through the investigation, state and federal law, and the policies, practices, procedures, and personnel rules of the City and Berkeley Police Department.

(h) The Director of Police Accountability shall present the results of their investigative findings and recommendations to the Police Accountability Board who shall make a recommendation to the Chief of Police regarding the specific complaint.

(i) The Director of Police Accountability may hire a Chief Investigator and, when there is a conflict of interest pursuant to Section 15, outside legal counsel, subject to receiving budgetary authority from the City Council.

(j) Subject to the budgetary authority of the City Council, the provisions of the City's charter related to personnel, the City's personnel rules, state and federal law, the Director of Police Accountability shall have the authority to hire and dismiss consultants and additional investigators. Subject to City Council approval, the Director of Police Accountability may also enter into contracts for investigative services, provided, however, that with respect to the procurement of supplies and services, the Director of Police Accountability shall comply with the Charter and City purchasing policies and procedures

(k) The powers in this Section 14 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of this Charter.

(l) The Board and Director of Police Accountability shall use the City's Human Resources Department for all human resource matters including, but not limited to hiring, performance evaluation, discipline, and removal of employees.

(m) The Director of Police Accountability shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, and solicit from them input regarding the work of the Police Accountability Board and the Office of the Director of Police Accountability.

Section 15. Legal counsel.

(a) The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.

(b) In the event the City Attorney has a prohibited conflict of interest under the California Rules of Professional Conduct with regard to a specified matter, the City Attorney shall provide the Director of Police Accountability with separate legal counsel. Pursuant to Section 14, when the City Attorney has determined that a conflict of interest exists, the Director of Police Accountability may engage legal counsel other than the City Attorney for legal advice regarding a specific case or matter.

Section 16. Board reports.

(a) All Board reports shall maintain the confidentiality of personnel file information and other confidential information as required by state and federal law.

(b) The Director of Police Accountability shall prepare an annual report to the public, including but not limited to the following:

(1) A description of the Board's activities during the year, including:

- i. A summary of the number, type, and disposition of complaints filed with the Board;
- ii. A summary of the number, type, and disposition of complaints filed with the Police Department by members of the public;
- iii. Policy complaints undertaken; and
- iv. Other such information that the Board or City Council has requested.

(2) The Department's and the Board's processes and procedures for investigating alleged misconduct, and for determining whether or not discipline is warranted and / or the level of discipline, for sustained findings of misconduct.

(3) Training and education, and any early warning system utilized by the Department.

(4) Training and/or policy issues that arise during the investigations of complaints by the Department, Director of Police Accountability, or Police Accountability Board.

(5) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department. Statistical data shall include the demographics of the complainant, reason for the stop, purpose of the stop and disposition, and location of stop, in compliance with policies, practices, and procedures of the City and Police Department, and the Police Department General Order on Fair and Impartial Policing.

(6) Trends and patterns regarding use of force and officer-involved shootings.

(c) This annual report shall be presented to the Board for approval. Upon adoption by the Board, it shall be presented to the Mayor and City Council, City Manager, and the Chief of Police at a City Council meeting, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

(d) Prior to being made available to any member of the public, all Board reports shall be subject to the review of the City Attorney to ensure compliance with all applicable state and federal confidentiality laws.

Section 17. Policy review and approval.

(a) The Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. The Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.

(b) If the Police Department and the Board are unable to reconcile their differences about a policy within sixty (60) days from the date that the Chief of Police submits a policy to the Director of Police Accountability, the policy shall be sent to the City Manager for a final decision which shall be reported to the City Council. Nothing in this section shall limit the authority of the City Council under this Charter to enact legislation within its Charter authority or direct the City Manager to implement adopted City Council policy.

Section 18. Complaints filed with the Director of Police Accountability.

(a) The Director of Police Accountability and Board shall adopt regulations for handling complaints filed with the Director of Police Accountability by any member of the public alleging misconduct by sworn employees of the Police Department and undertake investigations of complaints as they deem warranted. The regulations shall include the following:

- (1) What constitutes a complaint; and
- (2) A provision for voluntary mediation of complaints in lieu of an investigation.

(b) The Police Accountability Board shall hear and decide findings on allegations of misconduct, at which subject sworn employees of the Police Department must appear to testify and answer questions consistent with their rights pursuant to state and federal law.

(c) In determining whether a sworn employee of the Police Department has committed misconduct, the standard of proof for the Board shall be "preponderance of the evidence". The investigation and decision on findings shall be fair, unbiased, and evidence based.

(d) The time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(e) Investigation of all complaints filed with the Director of Police Accountability shall begin immediately and proceed as expeditiously as possible. The time limit for completion of an investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(f) No City employee, officer, official or member of the Police Accountability

Board shall attempt to interfere or undermine the work of the Director of Police Accountability or any employee of the Office of the Director of Police Accountability in the performance of the duties and responsibilities set forth in this Charter or by Ordinance.

(g) Complaints accepted by the Director of Police Accountability shall be sent in hard copy or electronically to the Chief of Police and Police Department Internal Affairs, members of the Police Accountability Board, and to each identified sworn employee of the Police Department against whom the complaint has been filed.

(h) For complaints being investigated by the Police Department, the Director of Police Accountability shall not participate in the Police Department's Board of Review or any subsequent internal process established by the Police Department to review a complaint filed by any member of the public.

(i) Within sixty (60) days of completing the investigation into allegations of misconduct by sworn employees of the Police Department, the Director of Police Accountability shall submit and present investigative findings to the Police Accountability Board and, if warranted, the Board may agree to hold a personnel hearing which shall be confidential. The Director of Police Accountability shall provide the Board with all evidence and documentation obtained or produced during the course of the investigation to enable its review of the complaint. At said meeting, both the sworn employee of the Police Department who is the subject of the investigation and the complainant shall be present to answer questions from Board members, subject to applicable state and federal law. In addition to submitting and presenting investigative findings to the Police Accountability Board in a confidential personnel hearing, the Director of Police Accountability shall include a recommendation of whether disciplinary action is warranted. For only those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, and any other classes of police conduct added in any subsequent amendment to, or successor provision, the Director of Police Accountability shall recommend the level of discipline, if warranted.

(j) Within fifteen (15) days of the confidential personnel hearing, the Board may affirm, modify or reject the findings and recommendation of the Director of Police Accountability.

(1) Should the Police Accountability Board agree with the findings and recommendation of the Director of Police Accountability, the Director of Police Accountability's findings and recommendations shall be submitted to the Chief of Police.

(2) If the Board modifies or rejects the findings and recommendations of the Director of Police Accountability, it shall issue a written explanation for its decision and shall forward it to the Chief of Police.

(k) Within ten (10) days of receiving the findings and recommendation of the Director of Police Accountability or Police Accountability Board, if the Chief of

Police and Director of Police Accountability or Police Accountability Board are in accord, the Chief of Police shall issue a final decision. If the Chief of Police disagrees with the findings and/or recommendation of the Director of Police Accountability or the Police Accountability Board, the Chief of Police shall issue a tentative decision, which shall be forwarded to the Director of Police Accountability and Police Accountability Board. Within ten (10) days of receipt of that tentative determination, the Director of Police Accountability may request that the Chief of Police submit the decision to the City Manager or City Manager's Designee who shall make the final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police within twenty-five (25) days.

(l) In any conflict between the provisions of this Article and the disciplinary appeal process in an applicable collective bargaining agreement, the collective bargaining agreement shall prevail; provided, however, that no City official is authorized to enter into a collective bargaining agreement or an extension of a collective bargaining agreement that contains provisions contrary to this Article after its Effective Date. Except as expressly provided herein, nothing shall limit the authority of the Chief of Police or City Manager to conduct investigations, make findings, and impose discipline or corrective action, or of an arbitrator charged with adjudicating disciplinary appeals, based upon such standards as each may apply consistent with and subject to the Charter, Ordinance, and personnel rules, the collective bargaining agreement, due process requirements, state labor laws, and Police Department policies and procedures.

(m) Except for the time limit set forth in Section 18(d), the timelines set forth in this section are advisory, and may be adjusted by the Director of Police Accountability after consulting with the City Manager and Chief of Police, to ensure that all investigations and notifications are completed in accordance with the limits of Section 18(d). In the event that the timeline set forth in Section 18(e) is extended, it shall not exceed 195 days.

Section 19. Review of complaints filed with the Berkeley Police Department.

(a) The Police Department shall ensure that any member of the public that files a complaint with the Police Department shall be provided written information and instructions on how to file a complaint with the Director of Police Accountability and Board.

(b) For all complaints filed with the Police Department by any member of the public, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(c) Investigation of all complaints filed with the Police Department shall begin immediately and proceed as expeditiously as possible. The time limit for completion of the initial investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception

applies.

(d) Upon completion of the Chief of Police's investigation, the Chief of Police shall issue a letter of disposition to the sworn employee of the Police Department. On all complaints initiated by a member of the public, at the conclusion of the Department's internal affairs investigation, the Chief of Police shall also notify the Director of Police Accountability in writing of the disposition. In addition, the Chief of Police shall notify the complainant of the disposition of the complaint in accordance with the Penal Code.

(e) In cases where the finding is "not sustained", "unfounded" or "exonerated", within twenty (20) days after notification to the complainant is mailed or provided by other reasonable means as specified by complainant, the complainant shall have the option to contest the Chief of Police's determination to the Director of Police Accountability.

(1) If a complainant contests the Chief of Police's determination, the Director of Police Accountability, if appropriate, may request to review all files, transcripts and records related to the complaint. Within fifteen (15) days of either receiving an objection from a complainant or notice from the Chief of Police that a complainant has filed an objection, the Director of Police Accountability may, in the exercise of the Director of Police Accountability's discretion:

i. Notify the complainant that the objection has been accepted and that the Police Accountability Board will convene to conduct a review based upon the investigative record provided by the Department; or

ii. Notify the complainant that the objection has been dismissed. If the Director of Police Accountability dismisses an objection filed by a complainant, the Director of Police Accountability must provide written notice to the Board within thirty (30) days following the Director of Police Accountability's notification to complainant that the objection was dismissed.

(f) Within forty five (45) days of when the Director of Police Accountability notifies the complainant that the objection has been accepted, the Board may dismiss the complainant's objection, issue a report agreeing with the Chief of Police's determination or issue a report disagreeing with the Chief of Police's determination if (1) the Department failed to proceed in a manner required by state and federal law, or (2) the Chief of Police's decision is not supported by the evidence in the record.

(g) If the Police Accountability Board disagrees with the Chief of Police's determination, it shall submit its report to the Chief of Police and the City Manager. The Chief of Police may prepare a report for the City Manager within fifteen (15) days of receiving the Police Accountability Board's recommendation addressing any concerns or objections. Within twenty five (25) days of receiving the report from the Chief of Police, the City Manager or City Manager's Designee, considering the reports of both the Board and Chief of Police, shall make a final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police.

(h) The Chief of Police's determination shall not become final, and no discipline shall be administered in any case in which the complainant has contested the Chief of Police's determination until the objection is dismissed or otherwise concluded; provided, however, that a final determination in all cases shall be rendered by the Chief of Police or City Manager not later than two hundred and forty days (240) days, unless a Government Code section 3304(d) exception applies.

(i) Except for the time limit set forth in Sections 19(b) and 19(c), the timelines set forth in this section are advisory, and may be adjusted to ensure that all investigations are completed in accordance with the limits of Section 19(b) and 19(c), and by mutual agreement between the City Manager, Director of Police Accountability, and the Chief of Police, as applicable.

Section 20. Access to records of City departments; compelling testimony and attendance.

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Director of Police Accountability, Police Accountability Board and its staff and, unless prohibited by state or federal law, produce all records and written and unwritten information, documents, materials and evidence the Board or its staff requests for the purpose of carrying out its duties and functions. Unless otherwise required by state and federal law, the records and information include without redaction or limitation:

- (1) Records relevant to Police Department policies, practices, or procedures;
- (2) Personnel and disciplinary records of sworn employees of the Police Department; and
- (3) Police Department investigative records.

Responding departments or employees of the City shall maintain the confidentiality of any records and information provided consistent with state or federal law governing such records or information and comply promptly, but in no event later than ten (10) business days from the date of request, unless additional time is needed to locate or review records. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for delay in producing the necessary records and information.

(b) The Director of Police Accountability, Police Accountability Board and its staff, and their agents and representatives shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

(c) The Director of Police Accountability and Police Accountability Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out its duties and functions. The testimony of any sworn employee of the Police Department is subject to the due process and confidentiality provisions of applicable state and federal law.

Section 21. Advice regarding Police Department budget.

The Board is empowered to review and make recommendations to the City Council regarding the Police Department budget. The Chief of Police shall submit a final budget proposal to the Board for review and recommendations, but the Board's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.

Section 22. Hiring of Chief of Police.

Notwithstanding Article VII, Section 28 of this Charter, upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Accountability Board (or subcommittee of the Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.

Section 23. Chief of Police or command staff to attend Board meetings.

To the maximum extent possible, the Chief of Police shall attend at least one regular Board meeting per month, for each month a regular meeting is held and attend a minimum of twelve (12) meetings per year. The Chief of Police shall send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police does not attend.

Section 24. Berkeley Police Department written reports to the Board.

The Chief of Police shall submit reports to the Board on such subjects and at such intervals as the Board, in consultation with the Chief of Police, may prescribe. At least one report per year shall provide information on all use of force statistics, and the number of complaints filed with Internal Affairs, the allegations in each complaint, and the disposition of closed complaints, including any discipline imposed.

Section 25. Contract negotiations.

The City Manager shall inform the Police Accountability Board of any changes agreed in contract negotiations and adopted by City Council that may directly affect the work, duties, or responsibilities of the Board.

Section 26. Commendation program.

The Board shall establish a regular means of recognizing sworn employees of the Police Department for instances of outstanding service to members of the public, the community at large, or the Department.

Section 27. Transition from Police Review Commission to Police Accountability Board.

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred

to the Police Accountability Board, but no later than January 3, 2022.

(b) To assist in an orderly transition between the Police Review Commission and the Police Accountability Board established by this Article, Police Review Commission staff shall serve as interim Police Accountability Board staff until the City hires a Director of Police Accountability.

(c) The Police Review Commission staff shall transfer all Police Review Commission files, records, books, publications, and documents of whatever kind to, and for the use and benefit of, the newly created Police Accountability Board.

Section 28. Review of processes.

The Board shall conduct a review of its processes every two years after the Effective Date in order to ascertain the efficacy of its processes.

Section 29. Enabling Legislation.

The Board may make recommendations to the City Council for enacting legislation or regulations that will further the goals and purposes of Article XVIII of this Charter. The City Council may, based on such recommendations or on its own initiative, enact ordinances that will further the goals and purpose of this Article.

The Board shall have forty-five (45) business days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

Section 30. Repeal of Ordinance No. 4,644-N.S., as amended.

Ordinance No. 4,644-N.S., all amendments thereto, and all rules and regulations promulgated pursuant thereto, shall cease to be operative and are repealed as of the date of the first meeting of the Police Accountability Board established by this Article.

Section 31. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley declare that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Article, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.