

TO: City Council
FROM: Iris Yang, City Attorney
SUBJECT: Regulation of Uber
DATE: June 2, 2015

NEEDS: Consider and address the local concerns expressed at the March 17, 2015 City Council meeting regarding the recent emergence of Uber in the City. Monitor developments in State and local law to assess possible future actions.

FACTS:

1. California law recognizes three modes of passenger transportation for compensation: (1) taxi services, (2) charter-party carrier services, and (3) passenger-stage companies. The state delegates authority for regulation of taxi services to cities and counties, as set forth in Government Code section 53075.5. However, the Legislature granted exclusive regulatory authority to the California Public Utilities Commission ("PUC") for charter-party carrier services and passenger-stage companies. (See Pub. Util. Code §§ 5351 et seq. ["Passenger Charter-party Carriers' Act"]; Cal. Const. art. XII, § 8; *Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d 277, 290-91.)
2. In September, 2013, the PUC issued its "Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry" in September 2013. (PUC Decision 13-09-045, Sept. 19, 2013.) The PUC claimed jurisdiction over the internet "ridesharing" industry, classifying Uber and similar companies as "Transportation Network Companies" ("TNCs"), a new subclass of charter-party carriers.
3. In September 2014, the Governor approved AB 2293, which amends the Public Utilities Code to require TNCs and their drivers to carry liability insurance coverage. The new insurance coverage requirements go into effect on July 1, 2015.
4. Currently, the City's Taxi Ordinance requires local taxi drivers and owners to obtain a written permit before operating within the City. The permitting process provides City discretion over permit approval and denial, and imposes fingerprinting and insurance requirements, among other things. The City Taxi Ordinance does not directly address or regulate Uber drivers operating in the City.
5. Uber recently began operating in the City. Local taxi drivers raised their concerns with the City Council in March 2015, stating that Uber is an unregulated business in direct competition with local taxi services. Staff prepared this report to assess possible options for local regulation, if any, of Uber.

**ANALYSIS &
CONCLUSION:**

There is currently little opportunity for local regulation over Uber operations. While cities may regulate taxi services, only the PUC has the right to regulate Uber and other similar "Transportation Network Companies." The PUC defined a TNC "as an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles." (Decision 13-09-045, p. 2.) The two main distinctions between TNCs and traditional taxi services are therefore 1) the application-based platform used to connect riders and drivers, and 2) drivers' use of their personal vehicles to provide the services. These same distinctions are the reason for local concern regarding safety and the desire for discretion over local operations.

The significance of the PUC's decision to separately define TNCs is that it specifically differentiates taxi drivers from Uber drivers, which means that the PUC currently retains exclusive authority over the regulation of Uber and similar companies. However, because of local taxi drivers' concerns regarding Uber as an unregulated taxi service and the related safety concerns, the most pertinent developments in the state regulation of Uber are summarized below:

- Every TNC (*Note: **not** the individual drivers) must apply for and obtain a permit issued by the PUC. The application fee for a new permit is \$1,000 and, if approved, is valid for three years. One third of one percent of a TNC's total revenues from California will be collected by the PUC on a quarterly basis. A TNC's failure to comply with the PUC's rulemaking may result in revocation of the TNC's permit or sanctions.
- TNCs must perform criminal background checks on each TNC driver before the driver begins offering service. The TNCs shall not permit any person to provide services if he or she has been convicted, within the past seven years, of: driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage and/or theft, acts of violence, or acts of terror.
- TNCs must institute a zero tolerance intoxicating substance policy with respect to drivers. Each TNC must include on its website, mobile application, and riders' receipts information about the TNC's zero tolerance policy and the methods for reporting a driver. Promptly after a complaint is filed, the TNC must suspend the driver for further investigation.
- TNCs must establish a driver training program to ensure all drivers are safely operating their vehicles prior to drivers offering service. The driver training program must be filed with the PUC, and TNCs must annually report the number of drivers that became eligible and completed the course.
- TNC drivers must possess a valid California driver's license, be at least 21 years of age, and must provide at least one year of driving history before providing TNC services.

- The app used by a TNC to connect drivers and passengers must display a picture of the driver and a picture of the vehicle the driver is approved to use, including the license plate number to identify the vehicle.
- Prior to allowing a TNC driver to operate a vehicle, and annually thereafter, a TNC must inspect the driver's vehicle, or have the vehicle inspected at a facility licensed by the California Bureau of Automotive Repair, and maintain complete documentation of such inspections. A TNC driver's vehicle must, at minimum, pass a 19-point inspection prior to allowing the driver to operate the vehicle.
- Effective July 1, 2015, AB 2293 requires that TNC insurance shall be primary and in the amount of \$1,000,000 for death, personal injury, and property damage, applicable from the moment a driver accepts a ride request on the TNC's app until the driver completes the transaction or the ride is complete. The bill further requires that TNCs provide for uninsured motorist coverage and underinsured motorist coverage in the amount of \$1,000,000 from the moment a passenger enters a driver's vehicle until the passenger exits the vehicle. While a TNC may meet its insurance obligations through a policy obtained by a driver, the TNC must verify that the policy is specifically written to cover the driver's use of a vehicle in connection with a TNC.

Notably, the PUC's rules and regulations are imposed on the TNC *business*, not the individual drivers. Thus, while local regulation currently appears preempted, or at the very least unclear, both the TNC business model and the law are likely to continue changing in coming years. Other states and countries are simultaneously grappling with regulation of Uber, and there are currently two class action cases pending in California that are brought by Uber and Lyft drivers to challenge the companies' classification of them as independent contractors, rather than employees. As these areas continue to develop, the possibility and likelihood of local regulation will too.

POLICY

REFERENCE: None.

FISCAL

IMPACT: None.

OPTIONS:

- Receive and file this report. Staff will continue to monitor developments in state and local law regarding this issue.
- Amend, modify, or reject the above option.