

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: December 4, 2019

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso *Sharon M. Tso* Council File No.: 18-0449
Chief Legislative Analyst Assignment No.: 19-11-1054

SUBJECT: Regulatory Oversight of Transportation Charter-Party Carriers (TCP) and Transportation Network Company (TNC) operators.

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SUMMARY

On April 10, 2019, the Transportation Committee considered a report from the Department of Transportation (LADOT) relative to the legal authority of the City to implement a registration and permit program for drivers employed as TCPs (limousine and shuttles), and TNCs, such as Uber and Lyft, and to identify any State legislation needed for the City to fully implement such a regulatory program. After extensive discussion, the Committee recommended various actions, including an instruction for this Office, in consultation with LADOT, to report with options for sponsoring state legislation to improve regulatory oversight of TNCs.

Background

The California Public Utilities Commission (CPUC) was established by the state Constitution that conferred upon it certain powers and allows for the Legislature to authorize additional ones. The CPUC's regulation of vehicle carriers began in 1917. Since then, the CPUC has regulated the following two major categories of passenger carriers:

- Passenger stage corporations that are intercity bus operators and shuttle services.
- Charter Party Carriers "TCPs," which are services that do not operate fixed-routes and are prearranged (limousine services).

Both of these categories are primarily regional transportation services. Taxicab service rendered wholly within the corporate limits of a single city or city and county were exempted from CPUC regulation nearly a century ago.

After the introduction of "ridesharing" services provided by Uber, Lyft, and other companies, confusion ensued regarding appropriate rules and regulatory authority. The CPUC initiated a rulemaking process, and issued, in 2013, Decision 13-09-045, which established its regulatory authority over TNCs. The Commission's jurisdiction over TNCs was eventually confirmed by the passage of AB 2293 (Bonilla), which was signed into law on September 17, 2014. Subsequent

actions by the CPUC in their rulemaking process have addressed additional operational issues, as well as the specific status of various operators. Based on these decisions, local regulation of TNCs is limited to business registration, airport permit requirements, parking, and other curb management policies. This situation results in a confusing array of regulations that produce suboptimal outcomes in terms of equity, mobility, and the environment.

Effect of TNCs on Transportation and Mobility

Numerous studies over the past few years show the growth of TNCs and impacts on the urban landscape, including:

- Seventy percent of Uber and Lyft trips are in nine large, densely-populated metropolitan areas (Boston, Chicago, Los Angeles, Miami, New York, Philadelphia, San Francisco, Seattle and Washington D.C.).
- The City of Los Angeles hosts an estimated 250,000 TNC drivers.
- TNCs mainly compete with existing taxicab service, public transportation, walking and biking.
- In the nation's biggest cities, up to 60 percent of those riding with Uber and Lyft-like services would have taken transit, biked, walked or would not have made the trip at all. Since many TNC users don't own a car, the services are not taking other vehicles off the road.
- TNCs drive an estimated 2.8 new miles for every one mile saved by passengers not using their own car.
- In San Francisco, TNCs operate in the most congested areas of the city at the most congested times.
- While Lyft and Uber may be improving transportation access and providing more options for many people, they are worsening traffic congestion in these urban areas, adding 5.7 billion miles of driving.

It is clear that TNCs have fundamentally transformed the market for “point-to-point” transportation, which, prior to the arrival of e-hailing transportation technology, was limited to taxicab service. New mobility has much to offer cities: convenience, flexibility, on-demand technology and a nimbleness to search for the fit between new services and inadequately served markets. TNCs and microtransit can be valuable extensions of, but not replacements for, fixed-route public transit. The unstudied impacts of TNC trips are of critical concern to local agencies tasked with regulating congestion, safety, mobility, infrastructure, and other key areas. Development of ride services must take place within a public policy framework that harnesses their potential to serve the goals of mobility, safety, equity and environmental sustainability. The ability to address these impacts begins with an analysis of data collected by TNCs or by the CPUC, while subsequent analysis may require longitudinal study of how TNCs affect transportation patterns as the industry matures. Although the CPUC initiated its rulemaking process to regulate TNCs in 2012, it has yet to make decisions on data sharing, accessibility, transport of minors, or emission standards.

Consensus to date is that only state legislation that gives local jurisdictions explicit authority to regulate TNC operations. LADOT is unaware of any California city that has taken on the regulatory authority to permit TNC vehicles or drivers. The City Attorney is reviewing the City's legal authority and will provide their opinion under a separate cover.

TNC Regulatory Framework in other Jurisdictions

Most states now have TNC regulatory frameworks in place, but the extent of the rules and regulations vary widely. In most cases, states with major metropolitan centers allow those jurisdictions to establish more specific regulations or provide financial support from state fees to mitigate local impacts. Most state constitutions permit local jurisdictions to develop their own regulatory ordinances in areas where state and federal governments have not explicitly established exclusive regulatory power, provided that those ordinances do not conflict with state or federal laws.

As of June 2017, 48 states and the District of Columbia have passed TNC legislation to regulate TNCs in some form. The majority of states have established state-wide regulatory frameworks that preempt local control where local regulation would be less strict. The following are several local ordinances that employ a wide range of approaches to regulating TNC operators, drivers, and vehicles:

- New York City - TNCs operate under the jurisdiction of the New York City Taxi & Limousine Commission. TNCs pay a \$500 fee per company for a three-year e-hail app provider license and all drivers are required to be licensed by the Commission. They are subject to a set of regulations, including transparent pricing and trip data reporting. The State of New York regulates TNCs through the TNC Act, which gives certain local governments the ability to opt out of statewide regulation.
- Philadelphia Parking Authority - has long held the authority to regulate taxicabs and limousines in Philadelphia and also has jurisdiction over TNCs within the city under legislation adopted by the Pennsylvania General Assembly in 2016. The same legislation granted the Pennsylvania Public Utility Commission jurisdiction over TNCs that operate in the rest of the state.
- Chicago, Illinois - In June 2016, the Chicago City Council passed rules on ridesharing platforms that require TNCs to be licensed with the City and pay an annual fee of \$10,000. TNC drivers must acquire either a public chauffeur license or a City of Chicago TNC chauffeur license. The Illinois Transportation Network Providers Act sets minimum regulations, however, cities have the authority to implement more restrictive rules.
- Austin, Texas - In December 2015, the Austin City Council approved an ordinance regulating TNCs within the city limits to address safety and congestion concerns. At the time, no state regulation existed in Texas. In May 2016, Austin voters overwhelmingly defeated a ballot measure backed by ridesharing operators that would have reinstated less restrictive regulations. As a result of the vote, Uber and Lyft left the Austin market for approximately a year. Ten small TNCs, however, were operating in the City by December 2016. Six months later, the Texas State Legislature passed a law that nullified Austin's ordinance, along with those of 19 other Texas cities. Under the new state law, TNCs must have a permit from the Texas Department of Licensing and Regulation and pay an annual fee of \$5,000 to operate throughout the state. Uber and Lyft subsequently returned to Austin.
- Seattle, Washington - In July 2014, the Seattle City Council enacted an ordinance that

established a \$0.10/ride surcharge on all non-accessible taxicab, for-hire, and TNC rides originating in the City of Seattle, to be placed in a Wheelchair Accessible Services Fund. The City also prioritizes three-minute curbside loading zones. The State's role in the regulation of TNCs is limited to insurance requirements and driver's license requirements. It is important to note that Seattle/King County has adopted a program where they dual regulate: King County oversees licensing and the City of Seattle has aligned their rules to align with the County. King County also has developed agreements with sixteen other cities to manage regulatory oversight to ensure a seamless regional system.

- City of Toronto – two years after approving laws that require licenses for TNC drivers, new rules will come into effect on January 1, 2020 to address concerns over growing traffic congestion. Amendments to the Vehicle-for-Hire Bylaw will include the creation of an Accessibility Fund Program, data requirements, mandatory training for all drivers and improvements in the licensing and enforcement of vehicles-for-hire.

Los Angeles County Regional Efforts:

As part of Metro's Vision 2028 Strategic Plan's effort to double the percent usage of transportation modes other than solo driving, Metro has committed to a variety of goals, including looking at possible legislative and regulatory strategies around TNCs for leveling the playing field to preserve competition (with other public and private mobility operators), reduce negative impacts, and ensure access to a variety of transportation options for everyone. Internal and external stakeholder conversations and consultation began in July 2019. It is anticipated that the procurement process to hire consultant services for facilitation and regulatory cost-benefit analysis will begin in December 2019. A series of working groups will convene between December 2019 and summer 2020 with a report to the Board on a roadmap in fall 2020.

As part of Metro's 2020 State Legislative Program, they anticipate working with statewide partners on any efforts to develop new transportation-related fees or taxes to fund mobility improvements in Los Angeles County.

There are other relevant parallel initiatives in the Los Angeles area. Through a grant-funded project awarded by California Department of Transportation (Caltrans), the San Diego Association of Governments (SANDAG) has partnered with the Southern California Association of Government (SCAG) and the Metropolitan Transportation Commission (MTC) to conduct a large scale multi-jurisdictional survey of ride-hailing users, non-users, and drivers. They are incorporating questions about TNCs to their travel surveys in order to achieve representative TNC passenger behavior datasets for future transportation modeling and planning purposes. SCAG's current timeline to complete passenger data collection is January 2020. Metro is expected to leverage the regional work conducted by SCAG and include them in the collaborative working groups.

Taxicab Regulation in the City of Los Angeles

On January 1, 2019, new laws were enacted that changed taxicab regulation by local agencies. Prior to the enactment of AB 2019 and AB 939, taxicabs were regulated by each of the cities or counties where they conducted business. In the Los Angeles region, this meant that taxi companies obtained individual permits in the City of Los Angeles, as well as the cities of Santa Monica,

Beverly Hills, Long Beach, West Hollywood, Burbank, Pasadena or any other city where they operated. Under the new law, taxicabs need to obtain permits from jurisdictions in which they are “substantially located,” defined as its primary business address or the jurisdiction where its largest share of trips originate. The new law also permits any city or county to form a joint powers agreement to regulate taxicab companies. Numerous cities in Los Angeles County are working with LADOT to develop an agreement to regulate driver and vehicle permitting for their jurisdiction. Combined with the advent of other new mobility products regulated and permitted by the City, this change has substantially increased the geographical reach of LADOT’s jurisdiction over for-hire vehicles throughout the County and greatly increased the overall workload.

Given the recent disruption of the taxi industry by the arrival of TNCs and the need to significantly modernize the taxi service to better meet current customer expectations, on November 12, 2019, the Council approved the replacement of the existing franchise system with a streamlined permitting system (C.F. 10-0996-S1). The goal of a streamlined and flexible permit structure is to enable a more open market to allow new businesses to enter the City as long as they meet various qualifications. The open market system works in other jurisdictions to increase competition and incentivize service improvements because the entitlement to operate disappears when the business can be replaced by a better performing company. This new framework could easily be scalable to include TNC regulation. Moreover, the number of City investigative staff currently exceeds the CPUC’s statewide enforcement capacity, thereby ensuring robust oversight.

In addition to the new permitting system, LADOT has submitted several proposals for the City’s 2019-2020 legislative program, including authorization for a local pilot TNC permit program. This report will be considered under a separate cover.

Labor and Employment Status

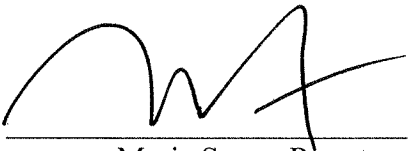
Governor Newsom signed Assembly Bill (AB) 5 in September 2019, which will require many workers classified as independent contractors to become company employees. Employees would then be entitled to greater labor protections, such as minimum wage laws, sick leave, and unemployment and workers’ compensation benefits, which do not apply to independent contractors. After its passage in the legislature, Uber and Lyft both said they planned to keep drivers classified as contractors, saying they could pass the stricter test. The TNC companies have also pledged to spend \$30 million each on a 2020 ballot initiative to reverse AB 5.

As instructed by the City Council on October 15, 2019, this Office is procuring an independent study of average wages earned and business-related expenses incurred by TNC drivers in the City, as well as a review of other TNC minimum wage policies across the nation and recommendations on how to establish an hourly minimum wage in the City (C.F. 19-1214).

LEGISLATIVE OPTIONS

It seems logical that regulatory standards for TNCs and traditional taxis should be identical, as they are transportation substitutes for one another, and in fact, are often the same vehicle working for different companies at different times of the day. Per the Council instruction to provide options for sponsoring state legislation to improve regulatory oversight over TNCs, the following is a list of options that the Committee may want to consider:

1. Transfer full regulatory oversight to local jurisdictions.
2. Transfer full regulatory oversight to the City of Los Angeles as a pilot program.
3. Transfer full regulatory oversight to regional transportation agencies, such as Metro or SCAG;
4. Provide explicit authority for local jurisdictions to regulate TNC drivers.
5. Require the CPUC to provide trip data to local jurisdictions to allow a full understanding of the impact of TNCs on mobility and other City goals.
6. Authorize local jurisdictions to implement more stringent regulations than those established by the CPUC.
7. Require a Statewide fee on TNC trips to help fund public transportation and other transportation improvements that will entice riders to other modes.



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