

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
261-9157**

Date: March 17, 2014

MEMORANDUM

TO: Keith Pollock, Traffic Engineering

FROM: Adriana Peguero, Assistant City Attorney
Andre Scott, Law Clerk

RE: Legality of Rideshare Applications

Question Presented

- I. Do other municipalities regulate ride share applications/companies? If so, in what manner? How do other municipalities enforce ride share regulations?
- II. What solutions exist for the ride sharing industry in the City of Madison?

Introduction

The advancement of technology has revolutionized the transportation industry and influenced entrepreneurs to establish new transportation businesses. But transportation innovators now face unique challenges from local governments. Local governments are concerned with several new technology start-up companies offering ride-sharing services via applications that can be accessed from smartphones. Similar to traditional taxi-cab services, the companies provide transportation services using an online-enabled platform to connect passengers with drivers using their personal, non-commercial vehicles. While each company advances their own unique rationale as to why their service differs from traditional taxi-cab service, most companies offer the service on a “donation” basis which is aimed at circumventing

any laws relating to the transportation of persons for compensation. Realizing the need for public safety, local governments are beginning to take notice of these new start-up technology companies and implement regulations to govern their operations.

Discussion

I. Municipalities & Ridesharing

A. California Ridesharing

California ridesharing is regulated by the Public Utility Commission (PUC), a regulatory agency that also regulates charter party passenger carriers and privately owned public utilities including electric power, telecommunications, natural gas and water companies. The Public Utility Commission derives the authority to regulate these activities from Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, PU Code §5351. The Public Utility Commission Code §5360 defines charter-party carrier of passengers as "every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway . . ." ¹ Additionally, transportation charter-party carriers (TCP) of passengers are required to operate on a prearranged basis, which means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone. ²

The Public Utility Commission defines "ridesharing" as "two or more persons traveling by any mode, including, but not limited to, carpooling, vanpooling, buspooling, taxipooling, jitney, and public transit". ³ Ridesharing is a highly contested issue in San Francisco where the Public Utility Commission recently issued cease-and-desist orders against the ridesharing

¹ Cal. Pub. Util. §5360.

² Cal. Pub. Util. §5360.5

³ Cal. Veh. Code §522.

companies Lyft, SideCar, Tickengo and Uber.⁴ The companies enable individuals to find rides via a mobile application from regular citizens who have a car nearby and a mobile phone. The companies operate in a niche market with the services designed to be cheaper than traditional taxis. Ridesharing companies assert that customers are not technically hiring a driver because there is no required fee and customers leave a “donation” for services rendered. Additionally, since ridesharing companies operate on a pre-arranged basis rather than picking up passenger via street hails, they are distinct from traditional taxi services.

B. Ridesharing Regulation & Enforcement

Amongst growing contention between the PUC and ridesharing companies, the PUC decided to re-evaluate their position and issued a proposed decision enabling ride-sharing companies to continue operations. Recognizing the need to ensure public safety and adopt regulations that reflect changing technology, the proposed decision creates a new “transportation network company” (TNC) regulating ridesharing companies to accompany the existing category of transportation charter-party carriers (TCP) regulating traditional taxi-cab service. The PUC defines transportation network company as “a company or organization, operating in California that provides transportation services using an online-enabled platform to connect passengers with drivers using their personal, non-commercial, vehicles”.⁵

If adopted by the PUC, the proposed decision would become law and make ridesharing services legal in California. Among the key findings in the proposed decision include the determination that a “donation” for passenger transportation service is equivalent to direct compensation for the service provided and that TNCs operate on a prearranged basis because: 1)

⁴ See Ride-Sharing Startups Get California Cease-And-Desist Letters available at <http://www.forbes.com/sites/tomiogeron/2012/10/08/ride-sharing-startups-get-california-cease-and-desist-letters/>

⁵ Cal. Pub. Util. Proposed Decision Conclusion of Law #7.

before a passenger can request a ride, the passenger must download the app and agree to the TNC service agreement; 2) for a particular trip, the passenger must input information regarding current location and trip destination and 3) a TNC driver cannot be hailed on the street similar to a taxicab where no information is shared until the passenger enters the vehicle.⁶ Additionally, as a regulatory agency that attempts to strike the proper balance between safety and innovation, the PUC adopted the following TNC regulations: a license for each TNC, implementation of a zero-tolerance policy on drugs and alcohol, a criminal background check to be completed for each driver, establishment of a driver training program for each TNC and liability insurance policies providing a minimum of \$1,000,000 per-incident coverage for incidents involving TNC vehicles and drivers in transit to or during a TNC trip.⁷

While ridesharing is regulated by the PUC in San Francisco with cease and desist orders being the primary enforcement mechanism, the City of Austin, Texas enforces ridesharing via local ordinance in addition to issuing cease and desist orders. Local ordinance §13-2-3 Operating Authority or Taxicab Franchise Required states that “a person may not provide or operate a ground transportation service that picks up passengers within the city or represent the person's business to the public as a ground transportation service unless that person obtains an authority to operate the ground transportation service under Section 13-2-161 (Operating Authority Application Required) or a taxicab franchise to operate a taxicab service under Section 13-2-303 (Franchise Application Required)”.⁸ Violators of the ordinance are subject to having their vehicles impounded per §13-2-13(C), citation per §13-2-14(A) and an ultimate penalty of a Class C misdemeanor per §13-2-19(A). The City of Austin ensures compliance with ordinance

⁶ Cal. Pub. Util. Proposed Decision Conclusion of Law #12.

⁷ Cal. Pub. Util. Proposed Decision 7.1 Discussion.

⁸ Austin City Ordinance §13-2-3.

violations by employing a Code Compliance Enforcement Team that investigates reports and ensures that the standards required by City codes are met.

II. Solutions for the City of Madison

The City of Madison's license and regulation of public passenger vehicles is governed by Madison General Ordinance §11.06. This ordinance defines a "public passenger vehicle as "any self-propelled vehicle, pedal-cab, or horse-drawn vehicle which is used for the transportation of passengers for hire." Companies such as Lyft and Uber, and their drivers, fall under the definition of a public passenger vehicle and are required to be licensed to operate in the City of Madison. Because the ordinance states that transporting passengers for hire includes taking any tip or gratuity for the service, rideshare companies that charge a standard fare or those that use a "donation only" or "tip only" system would be subject to the ordinance, and required to be licensed.

The ordinance requires that the taxicab business, the individual driver, and the vehicle all be separately licensed. As the ordinance is currently written, these companies would likely have difficulty meeting the requirements for licensure if they maintain their current business model. The ordinance requires that taxicab services operate adequate 24-hour service, and provide service throughout the entire City. The vehicles they drive must have uniform color-schemes and markings, and they must provide accessible taxicab service or contract with another licensed operator to do so. Taxicabs also must meet certain insurance requirements in order to be licensed.

If Lyft and Uber drivers are transporting passengers within the City of Madison, they are in violation of numerous sections of Madison General Ordinance §11.06, and are subject to the penalties provided there.