



BEFORE THE PUBLIC UTILITIES COMMISSION OF

STATE OF CALIFORNIA

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Order Instituting Rulemaking on  
Regulations Relating to Passenger  
Carriers, Ridesharing, and New Online-  
Enabled Transportation Services

**R.12-12-011**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND SAN FRANCISCO  
INTERNATIONAL AIRPORT REPLY COMMENTS REGARDING PROPOSED DECISION  
ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE  
ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY**

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## **Introduction**

The San Francisco Municipal Transportation Agency (“SFMTA”) and the San Francisco International Airport (“Airport” or “SFO”) jointly submit these Reply Comments and suggested modifications to the Proposed Decision (“P.D.”). The attached Appendix is intended to substitute for each of the Appendices previously submitted separately by the SFMTA and SFO.

### **A. The Commission Should Amend the Proposed Decision to Clarify the Definition of “TNC”**

While they have different goals, several parties note that the definition of Transportation Network Companies (“TNCs”) in the P.D. should be clarified. We agree. We offer a suggested modification to Conclusion of Law No. 5 that we believe would reflect the Commission’s intended scope of regulation while avoiding duplication with regulations currently applicable to TCP licensees and taxis under state and local law as well as avoiding regulation of carpooling and ride-sharing services legitimately exempt from CPUC jurisdiction.<sup>1</sup> See SFMTA/SFO Appendix, pp. A-3, A-4.

### **B. The Commission Should Amend the Proposed Decision to Clarify Insurance Requirements**

The P.D. seeks to require two layers of insurance protecting TNC customers and members of the public – personal automobile coverage carried by the driver and “excess” coverage carried by the TNC. Yet comments filed on August 19, 2013 and reply comments filed on August 23 by the Personal Insurance Federation of California (“PIFC”) suggest that either or both layers of coverage may be ineffective. To protect consumers and enable them to assess the risk of using TNC services, we urge the Commission to: 1) require TNCs to carry commercial automobile liability insurance covering all incidents involving all TNC vehicles before, during, and after a TNC ride, and 2) treat TNC policies as public records subject to disclosure rather than allowing them to be filed under seal. See SFMTA/SFO Appendix, pp. A-1, A-3.

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<sup>1</sup> The Commission’s intent with respect to Uber and its affiliates may still require further clarification.

**C. The Commission Should Amend the Proposed Decision to Clarify Roles and Tasks for Criminal Background Checks and Vehicle Inspections**

The P.D. appropriately requires TNCs to conduct criminal background checks on drivers; however, comments filed by several TNCs express concern over whether TNCs are qualified to determine what type of criminal conviction should disqualify a driver. We urge the Commission to clarify that: 1) state and federal criminal background checks must be initiated by the submission of fingerprints to the California Department of Justice; and 2) Commission staff will determine whether particular criminal history should disqualify a driver. See SFMTA/SFO Appendix, p. A-1.

Some TNCs objected to the scope of vehicle inspections required by the P.D. or urged the Commission to conduct these inspections itself. Most of the inspection items listed on pages 24-25 of the Proposed Decision simply require confirmation of very basic safety features (operative horns, lights, door and windows). The scope is not onerous. However, we urge the Commission to require these inspections at least be conducted by an independent and properly licensed automotive technician (if not the Commission). See SFMTA/SFO Appendix, p. A-2.

**D. The Commission Should Amend the Proposed Decision to Include the Impact of TNCs on Greenhouse Gas Emissions in Phase 2 Fact Finding.**

SideCar continues to claim that its business model will “reduce congestion” and “reduce greenhouse gas emission.” SideCar comments at p.6. Yet there are no facts or research findings in the record that support these claims. Allowing use of personal vehicles for profit may actually increase vehicle miles traveled, congestion and greenhouse gas emissions. San Francisco policies regarding car-sharing services treat one-way and two-way car sharing services differently because, while research demonstrates that two-way car sharing services reduce vehicle miles traveled, no such research finding yet support this conclusion as to one-way car sharing. As shown in Exhibit 1, U.C. Berkeley Adjunct Professor Susan Shaheen, the leading researcher on the effects of round-trip carsharing, notes that data on the effects of classic carsharing cannot necessarily be directly applied to other shared use transportation service models. The mere fact that SideCar asserts these claims does not make them true. We urge the Commission to investigate these assertions further in the second phase of these proceedings. See SFMTA/SFO Appendix p. A-4.

**E. The Commission Should Amend the Proposed Decision to Include the Impact of TNCs on Underserved Areas and Populations and the Effectiveness of Anti-Discrimination Policies in Phase 2 Fact Finding.**

SideCar also continues to claim that its business model will “increase service to historically underserved communities.” Yet the record is devoid of facts or research supporting this claim. TNC services may expand transportation options only for a few. To the extent that TNCs undermine rate-regulated taxi service for all people – including those who use wheelchairs -- TNC services could dramatically reduce transportation options for many needy passengers. Furthermore, authorizing TNC drivers to “rate” customers could facilitate unlawful discrimination against those in underserved communities.

While we urge the Commission to prohibit rating of customers by drivers, at a minimum, any such rating should be subject to rigorous monitoring and Commission oversight. To address all these concerns, the SFMTA and SFIA urge the Commission to amend the P.D. to: 1) broaden the scope of the plans TNCs must submit to address service access for people with disabilities; 2) prohibit drivers from rating passengers, or, at a minimum, monitor such ratings, remove ratings that show evidence of prohibited bias or discrimination, maintain records of passengers disqualified from service based on driver ratings, and make records available to the Commission for inspection; 3) take public comment on the required TNC service plans, and 4) require TNCs to maintain and submit periodic data to the Commission on service to underserved populations. See SFMTA/SFO Appendix p. A-4.

**F. The Commission Should Amend the Proposed Decision to Eliminate the Erroneous Finding of Fact 22 Regarding SFMTA Taxi Regulations.**

Finding of Fact 22 in the Proposed Decision states that “[t]he regulations that we are adopting for TNCs are similar, if not, identical to what the SFMTA requires of taxicab drivers.” This finding is not accurate. “Similarity” is a matter of degree, but there are myriad and profound differences between the PD’s requirements and the SFMTA’s extensive and detailed regulations governing all aspects of the taxi industry. The portion of SFMTA requirements that is reflected in Article 11 of Division 2 of the City’s Transportation Code can be found at [http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco\\_ca](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca) URL. Additional requirements are not codified. Since nothing in the proposed TNC regulations



# **EXHIBIT 1**



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June 14, 2013

To Whom It May Concern:

There appears to be some confusion regarding results of a 2008 North American carsharing survey that I led, funded by the Mineta Transportation Institute. This study documented that 9 to 13 vehicles are removed from the road due to each carsharing vehicle, and there is approximately a 30% reduction in miles driven of members of all major North American carsharing organizations (6,281 respondents). This study can be accessed at: <http://transweb.sjsu.edu/MTIportal/research/publications/summary/0909.html>. In this study, carsharing (or classic round-trip carsharing) is defined as access to a shared-use fleet by members, which is owned and operated by a third-party organization.

There are several new shared-use vehicle models emerging (e.g., ridematching, ridesharing, one-way carsharing, and personal vehicle sharing). This is an exciting time for shared mobility; however, these newer approaches are not yet well understood. To my knowledge, there has been no third-party study of personal vehicle sharing (also known as peer-to-peer) or one-way carsharing, which documents the social and environmental benefits associated with these approaches in North America. Since differences and similarities among the models are still unclear, existing data on classic carsharing cannot be directly applied to the newer models.

We are enthusiastic about researching these new models and have been funded to examine both one-way carsharing and personal vehicle sharing. Our personal vehicle sharing study will be completed in early Fall 2013, and our one-way carsharing study will begin in Summer 2013, with final results following the two-year evaluation. We are happy to share these results with you once they become available.

Please let me know if I can be of further assistance. You can reach me via email at [sashaheen@trsrc.berkeley.edu](mailto:sashaheen@trsrc.berkeley.edu) and via phone at: 510-665-3483.

Best wishes,

Susan Shaheen  
Associate Adjunct Professor and Co-Director, Transportation Sustainability Research Center  
& Research Associate, Mineta Transportation Institute



# APPENDIX

## SFMTA/SFO APPENDIX

Section 1. The San Francisco Municipal Transportation Agency and the San Francisco International Airport urge the Commission to make the following modifications to the text of the Proposed Decision on pages 22-27. (Additions are underlined and deletions are in ~~strikeout text~~.)

The following rules and regulations shall be applied for all TNCs effective immediately:

### **Safety Requirements**

- a) TNCs shall maintain ~~excess-business automobile~~ liability insurance policies providing a minimum of \$1,000,000 (one million dollars) combined single limit per occurrence coverage for bodily injury and property damage per incident coverage for covering incidents involving TNC vehicles and drivers in transit to or from or during a TNC trip or on the roadway of any publicly owned airport. The insurance coverage shall be available to cover claims regardless of whether a relevant TNC driver maintains insurance adequate to cover any portion of the claim.
- b) TNC drivers shall be required to provide proof of both their personal insurance and the ~~excess~~ liability insurance referenced in paragraph (a) in the case of an accident.
- c) TNCs shall require prospective drivers to submit fingerprints enabling the California Department of Justice or a qualified third party to perform a state and federal criminal background check on each TNC driver before the driver begins offering service. Drivers convicted of felonies or misdemeanors deemed by the Commission to pose a threat to public safety, including but not limited to, driving under the influence, fraud, sexual offenses, and use of a motor vehicle to commit a felony, acts of violence, or acts of terror shall not be permitted to provide TNC services.
- d) TNCs shall institute a zero tolerance intoxicating substance policy with respect to drivers as follows:<sup>1</sup>
- e) TNCs shall obtain each TNC driver's driving record before the driver begins providing service and annually thereafter. Drivers with convictions for reckless driving, driving under the influence, hit and run, or driving with a suspended or revoked license shall not be permitted to provide TNC services. Drivers may have a maximum of two points on their driving records for lesser offenses, e.g., equipment problems or child safety seat violations.
- f) TNCs shall establish a driver training program or mentor program to ensure that all drivers are safely operating the vehicle prior to the driver being able to offer service. This program must be filed with the Commission within 45 days of the adoption of this decision.
- g) 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.
- h) TNCs may only use street-legal coupes, sedans, or light-duty vehicles including vans, minivans, sport utility vehicles (SUVs) and pickup trucks. Hatchbacks and convertibles are acceptable. No vehicle shall provide TNC service after the vehicle has reached 325,000 miles or after eight model years.
- i) TNC vehicles shall not be significantly modified from factory specifications, e.g., no "stretch" vehicles.

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<sup>1</sup> Subsections 1-4 omitted as the SFMTA and SFIA propose no changes.

- j) ~~TNCs must inspect all vehicles and maintain proper documentation of such inspections. TNCs must conduct a 19-point inspection.~~ Before permitting operation of any vehicle for TNC services, and no less than once in every 12 months, TNCs must obtain an independent inspection from an automotive technician licensed by the California Bureau of Automotive Repair certifying that the following systems are in safe working order:<sup>2</sup>

### **Regulatory Requirements**

- a) TNCs (not the drivers) must be licensed by this Commission before operating as a TNC.
- b) TNC drivers may only transport passengers on a prearranged basis. For the purpose of TNC services, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform before the ride commences. TNC drivers are strictly prohibited from accepting street hails.
- c) Within 90 days of concurrence from the California Department of Motor Vehicles, TNCs shall participate in the California Department of Motor Vehicles' Employer Pull Notice Program to obtain timely notice when any of the following are added to a TNC driver's driving record:<sup>3</sup>
- d) TNCs shall obtain proof of insurance from each TNC driver before the driver begins providing service and for as long as the driver remains available to provide service. TNCs shall track the expiration dates of each TNC driver's insurance policy, and shall immediately disqualify a driver from providing TNC services if a TNC driver's insurance expiration date passes and proof of valid insurance is not resubmitted.
- e) TNCs shall allow passengers to indicate whether they require a wheelchair-accessible vehicle or a vehicle otherwise accessible to individuals with disabilities.
- f) One year from the effective date of these rules and annually thereafter for three years, each TNC shall submit to the Safety and Enforcement Division a report detailing the number and percentage of their customers who requested accessible vehicles, and how often the TNC was able to comply with requests for accessible vehicles.
- g) TNC vehicles shall display a decal provided by the Commission that is permanently affixed to the vehicle in a location that is visible at all times. TNC vehicles shall also display consistent trade dress (i.e., distinctive signage or display on the vehicle) when providing TNC services. The trade dress shall be sufficient to allow a passenger, government official, or member of the public to associate a vehicle with a particular TNC (or licensed transportation provider). Acceptable forms of trade dress include, but are not limited to, symbols or signs on vehicle doors, roofs, or grills. Magnetic or removable trade dress is acceptable. TNC shall file a photograph of their trade dress with the Safety and Enforcement Division.
- h) ~~Although~~ TNCs may provide platforms allowing drivers and passengers to "rate" driverseach other, but shall not provide platforms allowing drivers to "rate" passengers. TNCs shall ensure that ~~such ratings are not based on unlawful discrimination, and that~~ drivers do not discriminate against passengers or potential passengers on the basis of geographic endpoints of the ride, race, color, national origin, religion, sex, disability, age, or sexual orientation/identity or any other prohibited characteristic.

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<sup>2</sup> Subsections 1-19 omitted as the SFMTA and SFIA propose no changes.

<sup>3</sup> Subsections i.-v. omitted as the SFMTA and SFIA propose no changes.

To the extent the Commission does not accept the proposed modifications to subsection h) above, the SFMTA and SFIA propose, at a minimum, the following alternate modifications:

Although TNCs may provide platforms allowing drivers and passengers to “rate” each other, TNCs shall ensure that such ratings are not based on unlawful discrimination, and that drivers do not discriminate against passengers or potential passengers on the basis of geographic endpoints of the ride, race, color, national origin, religion, sex, disability, age, or sexual orientation/identity. Any TNC that enables drivers to rate passengers shall maintain a record of all such ratings, shall monitor such ratings daily, shall immediately remove from display to other drivers any rating showing evidence of prohibited bias or discrimination, shall maintain a record of any passenger who is disqualified from service based on any such rating or ratings, and submit records of compliance with all the requirements of this subsection (h) to the Commission on a quarterly basis for at least five years.<sup>4</sup>

Section 2. The SFMTA and SFIA urge the Commission to make the following modifications to the Findings of Fact and Conclusions of Law. (Additions are underlined and deletions are in ~~strikeout text~~.)

### **Findings of Fact:**

20. In this decision we will require each TNC to maintain ~~excess-business automobile~~ liability insurance policies providing a minimum of \$1,000,000 (one million dollars) per incident combined single limit per occurrence coverage for bodily injury and property damage covering coverage for incidents involving TNC vehicles and drivers in transit to or from or during a TNC trip or on the roadway of any publicly owned airport. The insurance coverage shall be available to cover claims regardless of whether a relevant TNC driver maintains insurance adequate to cover any portion of the claim.

22. ~~The regulations that we are adopting for TNCs are similar, if not, identical to what the SFMTA requires of taxicab drivers.~~

### **Conclusions of Law:**

5. We find that TNCs are charter party passenger carriers, and therefore we will exercise our existing jurisdiction pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers’ Act, PU Code §5351 *et seq.* (the Act). In this decision, under the broad grant of authority pursuant to PU Code §5381, we create the category of TNC to accompany the existing category of TCP. A TNC is any membership service, person, corporation, partnership, consortium, or other business entity that: (a) provides an application through a web-based platform on a mobile device that has the ability to match available drivers who are not licensed taxi or limousine drivers with prospective passengers, and (b) (i) receives any revenue whatsoever, directly or indirectly, from the use of its technology application and/or platform and/or (ii) requires passengers to provide the authorization to electronically transfer funds from the passenger’s credit card, debit card or other financial account as a condition of using the application.

Section 3: The SFMTA and the San Francisco International Airport urge the Commission to make the following modifications to the Order. (Additions are underlined and deletions are in ~~strikeout text~~.)

### **IT IS ORDERED** that:

1. Transportation Network Companies shall follow the safety and regulatory requirements

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<sup>4</sup> Subsections i-m omitted as the SFMTA and SFIA propose no changes.

as detailed in Section 2.2.4 of this decision.

2. Each Transportation Network Company must file its insurance policies ~~under seal~~ with the Safety and Enforcement Division as part of applying for a license.
3. A second phase to this proceeding is opened to review the Commission's existing regulations over limousines and other charter party carriers in order to ensure that these rules have kept pace with the needs of today's transportation market, and that the public safety rules for all charter party carriers, including TNCs, are up to date and, where appropriate, consistent.
4. Transportation Network Companies must submit a plan within 90 days of the effective date of this decision to the Safety and Enforcement Division to explain how they plan to ensure that this new form of transportation service does not create a divide between the able and disabled communities or otherwise reflect unlawful discrimination. The Commission will seek public comment on such plans in the second phase of this proceeding.
5. In the second phase of this proceeding, the Commission will identify aggregate data to be reported annually by TNCs to support future incentives or regulations regarding the impact of TNC service on greenhouse gas emissions. Such data elements may include, for example, (1) the number of enrolled vehicles by vehicle model and year; (2) miles driven by vehicle model and year for TNC and non-TNC trips, etc.
5. 6. Within 60 days after the effective date of this Decision, the Commission will post a Transportation Network Company Application Packet on its website, and Transportation Network Companies currently operating in California must file their Transportation Network Company Applications with the Safety and Enforcement Division 60 days thereafter if they wish to continue operating.
6. ~~7. Taxicab Paratransit Association of California's motion to compel production of insurance policies is denied without prejudice.~~
7. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated \_\_\_\_\_ at San Francisco, California