



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
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

**COMMENTS OF SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY ON PROPOSED DECISION FOR
PHASE III.A: DEFINITION OF PERSONAL VEHICLE**

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INTRODUCTION

These comments are submitted on behalf of the San Francisco Municipal Transportation Agency (SFMTA) in response to the proposed decision of Commissioner Randolph for Phase III.A: Definition of Personal Vehicle.

The SFMTA supports and joins the comments separately submitted by the San Francisco International Airport. As articulated in the San Francisco International Airport's Comments, the SFMTA believes that for enforcement purposes, the Proposed Decision should be modified to require TNC drivers to display certification that a "personal vehicle" used to provide TNC services has passed the 19-point safety inspection required by the Commission in Decision 16-04-041; and that for whatever vehicle is operated by a TNC driver, the transaction is covered by insurance consistent with Pub. Util. Code §§ 5433 and 5434.

In addition, the SFMTA urges the Commission to revisit the regulatory scheme for TNCs and amend it to provide the public the same level of protection provided for limousines. Finally, since the Proposed Decision for Phase III.A interprets AB 2763 to the broadest extent possible by concluding that the phrase "for a term that does not exceed 30 days" only applies to vehicle rentals and not vehicles which are leased, the SFMTA urges the Commission to conduct a complete environmental review before the Commission issues a final decision.

THE REGULATORY SCHEME FOR TNCs

The City submitted prior opening and reply comments regarding the concept of "personal vehicle" as part of the Commission's on-going rulemaking process (R.12-12-011) in order to create a comprehensive framework that ensures public safety, accessibility and environmental sustainability. Further, the City has objected to piecemeal legislative efforts, such as AB 2763, which hamper the Commission's ability to create such a framework in a considered and balanced fashion. Given the passage of AB 2763, which substantially broadens the definition of personal vehicles to include

vehicles that are leased or rented by TNC drivers, the City now urges the Commission to revisit the regulatory scheme created for TNCs and amend it to provide the public with the same level of protection provided for limousines.

In Decision 13-09-045, the Commission created a new category of charter-party carriers – TNCs – and subjected them to less stringent regulations than those applicable to other charter-party carriers on the assumption that all TNC drivers own vehicles purchased for their personal use, and that the commercial use of such vehicles was secondary. Now, if TNC drivers can simply rent or lease a vehicle solely for the purpose of providing for-hire transportation, any distinction that may have existed between TNCs and other charter-party carriers based on the fact that TNC drivers operate vehicles obtained for personal use rather than vehicles obtained solely or primarily for commercial purposes has been eliminated. As a result, the rationale for applying different rules to limousines than are applied to TNCs no longer exists.

For example, limousines, like TNCs, provide for-hire transportation in sedans and sport utility vehicles with a seating capacity not more than ten persons, but the insurance requirements for limousines are in effect 24 hours a day, seven days a week, while TNCs are required to carry the full \$1 million in insurance only when they are transporting a passenger or traveling to pick up a passenger.¹ In addition, limousine drivers are subject to a mandatory controlled substance and alcohol testing program that includes pre-employment, post-accident, reasonable suspicion, and random drug and alcohol testing, while TNCs are never required to test their drivers.² Instead, TNCs are subject to a “zero tolerance intoxicating substance policy” that requires an “investigation,” which does not require testing, upon receipt of a passenger complaint that a TNC driver is driving while intoxicated.³

¹ Decision 13-09-045 at page 30.

² CPUC Gen. Order No. 157-D, Part 10; Decision 13-09-045 at pages 26-27.

³ Decision 13-09-045 at pages 26-27.

Previously, the Commission described its rationale for treating TNCs differently from limousines as follows:

The primary distinction between a TNC and other TCPs is that a TNC connects riders to drivers who drive their personal vehicle, not a vehicle such as a limousine purchased primarily for a commercial purpose.⁴

It can be inferred from this statement that the Commission assumed that all TNC drivers own vehicles purchased for personal use, and that the commercial use of those vehicles is always secondary to their personal use. Although that may have been a valid assumption when the Commission issued Decision 13-09-045 in 2013, the TNC industry has changed dramatically since then, and when AB 2763 takes effect in January, 2017, the definition of a “personal vehicle” which TNC drivers may operate will include a vehicle that is rented or leased solely for the purpose of providing for-hire transportation. In fact, TNCs are already offering this option to its drivers. For example, Uber provides vehicle rentals and leasing options for its drivers.⁵ Lyft now offers an Express Drive Rental Car Program which provides access to rental cars for its drivers.⁶ As a result, there is no longer any distinction between TNCs and other charter-party carriers based on an assumption that TNC drivers operate vehicles obtained for personal use rather than vehicles obtained solely or primarily for commercial purposes. Therefore, SFMTA urges the Commission to revisit the regulatory scheme for TNCs and amend it to provide the public the same level of protection provided for limousines.

NEED FOR FURTHER ENVIRONMENTAL REVIEW

In 2013, the Commission determined that no environmental review under the California Environmental Quality Act (CEQA) was required when the Commission adopted rules and regulations applicable to TNCs because they did not constitute a

⁴ Decision 13-09-045 at page 67.

⁵ https://www.uber.com/a/carousel-vs-1-pp?ip_v=2&exp=61110_t2

⁶ <https://help.lyft.com/hc/en-us/articles/218196557-Express-Drive-Rental-Car-Program->

“project” for purposes of CEQA.⁷ In reaching this determination, the Commission stated that because the limited number of safety regulations adopted by the Commission in Decision 13-09-045, including insurance regulations, driver safety regulations, and other provisions regarding fee payment, discrimination, and identification, were largely “paper” requirements, they had neither a direct physical impact on the environment nor a reasonably foreseeable indirect change to the environment.⁸ The Commission emphasized that its decision “neither encourages nor discourages” TNC operations. The SFMTA disagrees with the Commission’s previous determination and, in any event, the reasoning supporting that determination does not apply to the current rulemaking.

The California Environmental Quality Act (“CEQA”) (Cal. Pub. Resources Code, § 21000 et seq.), and the CEQA Guidelines establish a three-tier process to assure that public agencies consider the environmental impact of their actions and decisions. *Tomlinson v. County of Alameda*, (2012) 54 Cal.4th 281, 285–286. “In the first step, the public agency must determine whether the proposed development is a ‘project,’ that is, ‘an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment’ undertaken, supported, or approved by a public agency. (§21065.) The second step of the process is required if the proposed activity is a ‘project.’ The public agency must then decide whether it is exempt from compliance with CEQA under either a statutory exemption (§21080) or a categorical exemption set forth in the regulations (§21084, subd. (a); Cal.Code Regs., tit. 14, §15300). A categorically exempt project is not subject to CEQA, and no further environmental review is required. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380, 60 Cal.Rptr.3d 247, 160 P.3d 116; *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1373, 44 Cal.Rptr.3d 128.) If

⁷ Decision 14-04-022 at pages 2-4.

⁸ Decision 14-04-022 at page 3-4.

the project is not exempt, the agency must determine whether the project may have a significant effect on the environment. If the agency decides the project will not have such an effect, it must ‘adopt a negative declaration to that effect.’ (§21080, subd. (c); see Cal.Code Regs., tit. 14, §15070; *Muzzy Ranch Co. v. Solano County Airport Land Use Com.*, *supra*, at pp. 380-381, 60 Cal.Rptr.3d 247, 160 P.3d 116.) Otherwise, the agency must proceed to the third step, which entails preparation of an environmental impact report before approval of the project. (§§21100, subd. (a), 21151, subd. (a).)” *Save the Plastic Bag Coalition v. City and County of San Francisco*, (2013) 222 Cal.App.4th 863, 872 (citing *Tomlinson*, *supra*, 54 Cal.4th at p. 286, 142); see Pub. Res. Code § 21065; Guidelines §§15060, subd. (c), 15378, subd. (a)). As the Commission acknowledges, a rulemaking process and the act of adopting regulations can be considered an agency action and a project. *Dunn-Edwards v. Bay Area Air Quality Management District* (1995) 9 Cal.App.4th 644.

The Commission’s prior and current rulemaking process clearly has had a significant environmental impact. For example, in San Francisco alone an estimated number of 45,000 Uber and Lyft drivers now operate in the City.⁹ Since the City sent out notices to identified TNC drivers of their obligation to pay required business registration fees in April, 2016, 20,106 TNC drivers have now registered with the City’s Treasurer/Tax Collector’s Office as a business in the past eight months.¹⁰ This number far surpasses the estimated 1,800 taxis operating in San Francisco. In 2016, San Francisco was rated as having the third worst traffic congestion in the nation. Much of the increase San Francisco has experienced in vehicular traffic can be attributed to the

⁹ <http://www.sfexaminer.com/45000-uber-lyft-drivers-may-now-operate-san-francisco-drivers-continue-multiply/>

¹⁰ NAICS Code 4800-4999 (Transportation and Warehousing)
<https://data.sfgov.org/Economy-and-Community/Registered-Business-Locations-San-Francisco/g8m3-pdis>

huge increase in the number of TNC vehicles operating on city streets.¹¹ In California, transportation constitutes approximately 40 percent of all greenhouse gas emissions. Since the problem posed by TNC vehicles in increasing the level of carbon emissions is so acute, U.C. Berkeley's Transportation Sustainability Research Center and the Natural Resources Defense Council's Urban Solutions program have initiated a study to analyze the climate and environmental impact of Uber and Lyft in San Francisco as well as other cities.¹²

With respect to the Commission's current rulemaking, the Proposed Decision for Phase III.A interprets AB 2763 to the broadest extent possible by concluding that the phrase "for a term that does not exceed 30 days" only applies to vehicle rentals and not vehicles which are leased. This conclusion will encourage the maximum number of TNC vehicles on California streets, causing a reduction in air quality, increased traffic congestion, increase risk to pedestrian safety, and transit delays. These are real and tangible impacts to the physical environment which, pursuant to state law, requires environmental review. As a result, before the Commission issues a final decision, the SFMTA urges the Commission to conduct a complete environmental review.

CONCLUSION

For the reasons set forth herein, the SFMTA respectfully requests that the Commission revise its Conclusion of Law and Order to include the requirement that TNC drivers have the ability, through their smart phones or through production of physical documents, to demonstrate to enforcement personnel at San Francisco International Airport and elsewhere that the vehicle being used to provide TNC services has successfully completed the 19-point vehicle safety inspection and that the vehicle and

¹¹ <http://www.sfchronicle.com/bayarea/nevius/article/More-ride-options-doesn-t-mean-less-traffic-9139929.php>

¹² <http://tsrc.berkeley.edu/taxonomy/term/129>

