

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

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

R.12-12-011

**OPENING COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION  
AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, SAN  
FRANCISCO CITY ATTORNEY'S OFFICE, AND SAN FRANCISCO INTERNATIONAL  
AIRPORT TO PHASE III.C SCOPING MEMO AND RULING OF ASSIGNED  
COMMISSIONER**

**TRACK 3 – TNC DATA**

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In response to the October 25, 2019 Assigned Commissioner’s Scoping Memo, the San Francisco Municipal Transportation Agency (“SFMTA”), the San Francisco City Attorney’s Office (“CAO”), and the San Francisco International Airport (“Airport” or “SFO”), collectively “the City”, and the San Francisco County Transportation Authority (“TA”) (together, the “City and County”) submit these joint comments.

## INTRODUCTION

In the six years since Commission approval of Decision 13-09-045, footnote 42 has obscured from the public essential information about the use, delivery and impacts of TNC services. The footnote’s blanket effects run afoul of the California Public Records Act (“CPRA”) and it has prevented public entities from carrying out their obligations under federal, state, and local law to evaluate and assess impacts of TNCs, to make informed public policy decisions, and to enforce state and local laws applicable to TNCs. Further, while the Commission has received some data from TNCs, the data received has not been guided by clear regulatory goals or statutory requirements and thus lacks key elements essential to analysis of public safety, environmental, and transportation service and equity effects of TNC services. The Commission has also not provided any analysis of the data to the public; meanwhile, the Commission’s confidential treatment of TNC data has deprived the Commission of the value that public entities and researchers around the state, the nation, and the world could provide – entities who are eager and, in many cases, required to study and address the impacts of on-demand passenger vehicle services on transportation choices and costs, street safety, public infrastructure, mobility for different populations, mobility in different environments, and mobility under different regulatory regimes.

State agencies, public transit providers and local governments have a myriad of transportation related duties that are affected by TNC service. The blanket withholding of public data allowed by footnote 42 has deprived every interested public agency of information from which to make informed public policy choices and has compelled us to make extraordinary efforts, at public expense, to understand the impacts of TNCs and to enforce state and local laws applicable to TNCs. Without TNC data and appropriate analysis, public agencies have also been prevented from acting in a timely

manner or meeting our goals and promises. For example, in its November 2018 Progress Report on California’s Sustainable Communities and Climate Protection Act, the California Air Resources Board reported that the state “is not on track to meet GHG reductions expected under SB 375.” In particular, trends for passenger vehicle miles traveled (“VMT”) per capita are going in the wrong direction. At the dawn of the TNC business model, TNCs projected that TNC service would play a significant role in reducing private vehicle ownership, traffic congestion, VMT and GHG.<sup>1</sup> This future has not materialized. In some places, the growth of TNC service has coincided with a decline in use of transit and other sustainable modes, and it is essential for public agencies to document and understand these correlations. California faces a housing, land use and transportation emergency that calls for data-driven public policy at all levels of government. Commission action to eliminate footnote 42 is essential to these efforts and to ensure that the state’s sustainability, equity, accessibility, and other goals are met.

California has begun to address this need through new statutory demands imposed by Senate Bill 1376 (TNC Access for All Act) and Senate Bill 1014 (Clean Miles Standard). In light of these new statutes, as well as the Commission’s ongoing obligation to regulate Transportation Network Companies to protect the safety of the traveling public, it is time for the Commission to update the data reporting obligations of TNCs. In addition, it is a matter of law, and in the best interest of the public, to lift the veil of secrecy that has shrouded public understanding of TNCs and inhibited government entities from attaining goals set both locally and at the state level.

To achieve this, the City and County call for public reporting of all required data and offers a comprehensive proposal for revised TNC data reporting obligations. Our comments to this effect are structured in three sections. Section I provides short summary answers to the specific questions in the Commission’s scoping memo and points to the sections of our comprehensive proposal that address these issues. Section II further expounds on the public interests and purposes served by TNC data disclosure; provides the comprehensive proposal for TNC Data Reporting and Granularity; and recommends a workshop on TNC loading data that could better inform parking and curb management

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<sup>1</sup> J. Zimmer, The Third Transportation Revolution (2016); <https://medium.com/@johnzimmer/the-third-transportation-revolution-27860f05fa91>.

needs. Section III states in detail why none of the legal arguments TNCs have advanced to prevent disclosure have merit and reinforces why the Commission has a legal obligation to disclose existing TNC data.

## **DISCUSSION**

### **I. COMMISSION QUESTIONS AND SHORT ANSWERS**

This section presents the City and County's short answers to questions posed in the amended Phase III.C. Scoping Memo filed on October 25, 2019. The policy arguments supporting the short answers are discussed in Section II. The legal arguments supporting the short answers are presented in Section III.

#### **2.2.1 Data Confidentiality, Collection and Sharing Issues**

The amended Phase III.C Scoping Memo poses the following questions regarding Data Confidentiality, Collection and Sharing Issues (Section 2.2.1):

1. Should the Commission revise D.13-09-045 and eliminate or modify footnote 42, which instructed TNCs to file confidentially the reports required by D.13-09-045?  
*Response: Yes, as discussed in Sections II (Policy Discussion) and III (Legal Argument) below, the City and County believe elimination of footnote 42 is in the public interest and is legally required.*
2. Should the Commission deem that reports the TNCs must file pursuant to D.13-09-045 should not automatically be treated as confidential?  
*Response: Yes, for reasons discussed in Sections II and III below.*
3. Should the Commission deem that reports the TNCs must file pursuant to any decision issued in this proceeding should not automatically be treated as confidential?  
*Response: Yes, for reasons discussed in Sections II and III below.*
4. If a TNC wishes to claim that any reports it is required to file pursuant to a decision issued in this proceeding are protected from public disclosure on the grounds of either trade secrets, privacy, or any other claim of confidentiality, must the TNC file a motion for confidential treatment and comply with the requirements in D.17-09-023 . . . . and General Order 66-D for establishing a claim for confidential treatment?

**Response:** Yes, as discussed in Section III below, the City and County believe that the California Constitution, the Public Records Act and Commission General Order 66-D require disclosure of existing TNC reports to the Commission.

5. State all facts and supporting authorities to support or dispute a TNC’s claim that the contents of any reports that are required to be filed pursuant to a decision issued in this proceeding are protected from public disclosure.

**Response:** Section II (Policy Discussion) outlines the policy reasons disputing TNC claims that required reports should be protected from disclosure and Section III (Legal Argument) outlines the legal reasons the City and County believe public disclosure is legally required.

## **2.2.2 Data Granularity and Disaggregation of Trip Data Collected**

The amended Phase III.C Scoping Memo filed 10/25/2019 poses the following questions regarding Data Granularity and Disaggregation of Trip Data (Section 2.2.2):

1. At what level of granularity and disaggregation should TNCs report trip data ? For example, for each trip taken, should the data be reported as to the exact date and time the trip occurred; day of the week the trip occurred; the hour within which the trip started and ended; the location of a passenger at the time of trip request as well as the locations of a driver at time of trip request, passenger pick-up, and passenger drop-off, by geographic coordinates (*i.e.* latitude and longitude), zip code, or census block; the number of passengers; and/or the trip service category (*e.g.* pooled or nonpooled service)?

**Response:** The City and County present below a Comprehensive Proposal for TNC Data Reporting, Granularity and Disclosure (“Comprehensive Proposal”) that includes detailed data fields for a proposed quarterly Trip Report, Vehicle Segment Report, and Vehicle Report.<sup>2</sup> The Comprehensive Proposal protects passenger privacy

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<sup>2</sup> The use of the term Comprehensive Proposal is not intended to suggest that the reports proposed in Section II.B would be exhaustive. For example, the City and County have submitted

*by avoiding collection of any personally identifiable information and by requiring that trip origin and destination be reported at the census tract level rather than by precise location. The Comprehensive Proposal also avoids mandatory reporting of TNC trade secrets and protects TNC commercial interests by calling for the Commission to consolidate data from all companies before public disclosure. No data would be publicly reported on a company-specific basis. In addition to recommending these specific quarterly reports, the Comprehensive Proposal recommends that the Commission convene a Loading Data Workshop for interested parties to discuss how TNCs could report pick up and drop off locations with precision to support city curb management decisions without compromising personal privacy.*

2. Should the Commission require TNCs to report the miles traveled in Periods 1, 2, and 3 for each trip?

***Response:*** *Yes. This information should be included in the proposed Vehicle Segment Report of our Comprehensive Proposal (Section II.B. of these comments); collection and reporting is essential to fulfill Commission responsibilities under SB 1014 and to address other public interests discussed below.*

3. Should the Commission require TNCs to report additional information about fare charged for each trip including the tip amount of the total amount paid and whether surge pricing was in effect?

***Response:*** *Yes, as discussed in Section II.B. below, the Commission should require TNCs to submit proposed Trip Reports that include the amount of required fare and tip paid to address public interests in consumer protection and labor protection. See Table 1 re Trip Report and proposed FARE and TIP fields.*

4. Should the Commission require TNCs to report when a passenger requests a wheelchair accessible vehicle (WAV) and whether the trip occurred in a WAV?

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comments in Tracks 1 and 2 of R.19-02-012 outlining reporting recommendations related to wheelchair accessible TNC service.

***Response:** Yes, this information should be included in the proposed Trip Reports; it is essential to fulfill Commission responsibilities to ensure the availability of wheelchair accessible service, including new responsibilities under SB 1376, and to address other public interests discussed below. See Table 1 in Section II.B. re: Trip Report and proposed REQUEST\_WAV and ACCEPT fields.*

5. For TNC trip data that is deemed non-confidential, should such information be shared only with interested government entities?

***Response:** No. See the City and County's Comprehensive Proposal presented in Section II.B. below.*

6. If non-confidential trip data should be shared only with interested government entities, how should those entities to be selected? (e.g. metropolitan planning organizations, state and local transportation agencies, and the State Air Resources Board)

***Response:** The data identified in the City and County's Comprehensive Proposal presented in Section II.B. contains neither trade secret information nor personally identifiable information and thus can be shared freely with all requestors.*

7. How should the information be made available to interested government entities? For example, should such information be hosted by a third-party entity (e.g. university, research institution, etc.)?

***Response:** The data identified in the City and County's Comprehensive Proposal presented in Section II.B. contains neither trade secret information nor personally identifiable information and thus can be shared freely with all requestors, eliminating the need for hosting by a third-party entity.*

### **2.2.3 Sharing Exempted Trip Data with Interested Government Entities**

The amended Phase III.C Scoping Memo filed 10/25/2019 poses the following questions regarding Sharing Exempted Trip Data with Interested Government Entities (Section 2.2.3):

1. If the Commission determines that any or all trip data collected from a TNC is exempt from public disclosure . . . should any or all exempted trip data be shared with interested government entities?

**Response:** *As reflected in the City and County's Comprehensive Proposal presented in Section II.B., disclosure to interested government entities should be accomplished through public disclosure in the proposed manner that protects individual privacy rights and avoids company specific reports.*

2. If the answer to Question No. 1 is yes, how should the Commission determine which interested government entities receive the data (e.g. metropolitan planning organizations, state and local transportation agencies, and the State Air Resources Board)?

**Response:** *As reflected in the City and County's Comprehensive Proposal presented in Section II.B., any public agency that has duties related to or affected by the delivery of TNC services should be able to access TNC trip data through public disclosure in the proposed manner that protects individual privacy rights and avoids company specific reports.*

3. If the answer to Question No. 1 is yes, should the exempted trip data be shared with interested government entities in a disaggregated format? If so, what format should disaggregation encompass? For example, for each trip taken, should the data be reported as to the day of the week the trip occurred; the hour within which the trip started and ended; the zip code or census block within which each trip started and ended; the passenger occupancy; and/or the trip service category (e.g. pooled or non-pooled service)?

**Response:** *The Commission should require reporting of disaggregated trip data as reflected in the Proposed Trip Report reflected and discussed in the City and County's Comprehensive Proposal presented in Section II.B. in a proposed manner that protects individual privacy rights and avoids company specific reports.*

4. If any or all trip data collected from TNCs that is exempt from public disclosure is to be shared with interested government entities, should the exempted trip data be provided pursuant to a nondisclosure agreement? If so, what terms should be included in the nondisclosure agreement?

*Response: See response to question 3.*

5. How should exempted trip data be made available to interested government entities?

*Response: See response to question 3.*

6. For example, should such information be hosted by a third-party entity (e.g. university, research institution, etc.)?

*Response: The City and County's Comprehensive Proposal avoids reporting of any personally identifiable information and any potential trade secret information. The Commission can protect the proprietary interests of TNCs by merging the proposed reports so that they are disclosed to the public agencies in a way that is not company specific. This can be accomplished via an automated process that, once established, requires little time and no technical skills. The Commission would not have to determine which agencies may receive the data and would not have to process the data except to consolidate the reports from different companies. We see no need for third party hosting under these circumstances.*

## **II. POLICY DISCUSSION: PUBLIC DISCLOSURE OF TNC DATA SERVES THE PUBLIC INTEREST**

### **A. Public Interests Served by TNC Data Disclosure**

As this Commission has observed, the “burgeoning TNC industry in California is an enormous enterprise, with myriad impacts.”<sup>3</sup> Those impacts vary dramatically by location, by day of the week, by time of day, and by service population.<sup>4</sup> Congestion management agencies, transit agencies, and local governments have myriad responsibilities that are affected by those variations, and public officials responsible for fulfilling those responsibilities hunger for solid information about the scope and extent of TNC service to inform our decisions. Further, consistent with federal investment in

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<sup>3</sup> Decision 16-01-014 at p. 46.

<sup>4</sup> See Schaller Consulting, [The New Automobility: Lyft, Uber and the Future Of American Cities](#); Consumer Protection and Enforcement Division Staff Proposals for Proceeding 19-02-012 (Track 2), Attachments A, B, and C; *San Francisco County Transportation Authority, TNCs Today (2017)*, [https://www.sfcta.org/sites/default/files/2019-02/TNCs\\_Today\\_112917\\_0.pdf](https://www.sfcta.org/sites/default/files/2019-02/TNCs_Today_112917_0.pdf); and *TNCs and Congestion (2018)*, <https://www.sfcta.org/media/27>.

transportation research funded and administered by the U.S. Department of Transportation and the Transportation Research Board,<sup>5</sup> the City and the TA frequently turn to the work of academic and other researchers to support our efforts to make data-driven policy decisions, and if researchers had access to the reports included in the City and County’s Comprehensive Proposal: TNC Trip Reports, Vehicle Segment Reports, and Vehicle Reports, the work of researchers could also be entered into the record of Commission proceedings so as to usefully inform Commission decision-making.

The City and County’s Comprehensive Proposal, discussed more fully in Section II.B, calls for TNC reporting of data that would support CARB in adopting targets for GHG reductions and support the Commission in fulfilling its duties to implement and enforce the new statutory mandates imposed Senate Bill 1014 (Clean Miles Standard). It would also support additional analysis of the overall impacts of TNC service on GHG emissions, as the Clean Miles Standard itself calls for creation of a TNC efficiency standard, not a broader impact standard. The City and County’s Comprehensive Proposal would also support the Commission’s responsibilities to ensure the availability of wheelchair accessible service, including new obligations under Senate Bill 1376 (TNC Access for All Act). Finally, the Comprehensive Proposal would support Commission work to ensure that TNC service is provided in a non-discriminatory manner and that TNC drivers comply with the Federal Motor Carrier Safety Administration’s (FMCSA) hours of service regulations.<sup>6</sup>

The following paragraphs identify specific examples of TA and City responsibilities that would be supported by access to the Trip Reports, Vehicle Segment Reports and Vehicle Reports identified in the City and County’s Comprehensive Proposal.

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<sup>5</sup> The Transportation Research Board is one of seven program units of the National Academies of Sciences, Engineering & Medicine (NASEM). TRB “provides independent and objective analysis and advice to the Nation while conducting other activities to solve complex problems and inform public policy decisions. The TRB’s mission is to promote innovation and progress in transportation by stimulating and conducting research, facilitating the dissemination of information, and encouraging the implementation of research results.” See, [USDOT Federal Highway Administration](#)

<sup>6</sup> <https://www.fmcsa.dot.gov/regulations/title49/part/395>

The TA was created under the California Public Utilities Code.<sup>7</sup> As the Congestion Management Agency for San Francisco County, the TA is charged with developing and administering a congestion management program that includes monitoring congestion on San Francisco roads and preparing deficiency plans when congestion levels surpass critical thresholds. The TA is also required to develop the Countywide Transportation Plan, which considers impacts to congestion, transit operations, and street safety; prepare neighborhood transportation improvement studies that provide targeted improvement roadmaps; and support capital grant programming and planning for multi-million dollar expenditures that affect regional transportation outcomes. Access to detailed trip-level TNC data would support all of these functions.

The veil created by footnote 42 forced the TA to allocate hundreds of professional staff hours and tens of thousands of dollars to find alternative sources of data to inform its recent analysis of the impact of TNC service on traffic congestion in San Francisco.<sup>8</sup> This detailed analysis of the hours and locations of TNC trips in San Francisco based on smart phone data concluded that TNC service caused approximately 50% of the increase in congestion in San Francisco between 2010 and 2016, with job and population growth responsible for most of the remaining increase in congestion between these years. *TNCs and Congestion* built upon the TNC trip data used in the *TNCs Today* report by linking changes in congestion on specific roadway segments with changes in population, employment, network design, and TNC activity.<sup>9</sup> These results are likely already out of date because this data collection in 2016 was “one time only” due to restrictions imposed by TNC companies.<sup>10</sup> The ability to understand how TNC usage changes over time through review of CPUC TNC quarterly reports is essential to fulfilling the TA’s statutorily required congestion monitoring and deficiency planning obligations, long range transportation planning role, and regional transportation investment

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<sup>7</sup> Cal. Pub. Util. Code § 131000 *et seq.* (common referred to as the “Bay Area County Traffic and Transportation Funding Act.”).

<sup>8</sup> <https://www.sfcta.org/emerging-mobility/tncs-and-congestion>. See also City’s Motion for Official Notice.

<sup>9</sup> <https://www.sfcta.org/projects/tncs-today>

<sup>10</sup> As reported in Shaller Consulting, [The New Automobility: Lyft, Uber and the Future Of American Cities](#), TNCs transported 2.61 billion passengers in 2017, a 37 percent increase from 1.90 billion in 2016.

prioritization responsibilities. Access to the data in reflected in the City and County's Comprehensive Proposal would support all of these TA duties, as well as improve the analysis and the efficiency of SFCTA research enormously.

The SFMTA was created by the San Francisco voters in 1999 to consolidate the governance of public transit with the governance of street design for multi-modal use, parking and traffic control, on and off-street parking and regulation of certain transportation services. The SFMTA makes decisions every day about transit routes and frequency, about the location of bus stops used exclusively for Muni service, the location of stops for commuter shuttles, and the location of thousands of passenger and freight loading zones that are available for any appropriate user. SFMTA traffic engineers design San Francisco streets and traffic control devices to support the City's Transit First policy, to support the City's Vision Zero goal to eliminate traffic fatalities, to support the City's Climate Action policies, and to provide a safe and accessible path of travel to all users of City streets. SFMTA enforcement staff issue citations and administrative penalties to drivers, permittees and licensees to enforce traffic laws and permit obligations, and they tow illegally parked vehicles. All of these public functions are guided by efforts to document current conditions, identify hazards and problems, and identify solutions to improve safety and performance. Given the significant documented impact on TNC service on San Francisco streets, all of these public functions would be informed by access to the Trip Report, Vehicle Segment Report and Vehicle Report reflected in the City and County's Comprehensive Proposal. This data will allow the City and County to assess areas with high TNC demand, VMT and the general path of travel, at the neighborhood level and over time. The data will also be used to measure TNCs contribution to VMT, emissions, and congestion, at the neighborhood level and over time. The data will allow the City and County to assess the cost of transportation to inform mode choice studies. Finally, it would allow us to assess equity for WAV trip requests as well as trips requested to or from communities of concern.

The City of San Francisco's Vision Zero 2019 Action Strategy to Eliminate Traffic Deaths in San Francisco identifies specific strategic actions Safe Streets, Safe People and Safe Vehicles.<sup>11</sup> As

reflected in the July 2018 Safe Streets Evaluation Handbook, the SFMTA sets goals for every streetscape project and measures the impact of projects on the behavior of affected drivers, cyclists and pedestrians.<sup>12</sup> The City and County's comprehensive data proposal will provide planners and engineers with data on TNC demand and VMT by neighborhood, as well as changes in TNC demand and VMT over time. This data will be used to inform where specific interventions should be evaluated and inform broader education and enforcement efforts.

The City also owns and operates SFO. Like other airports in the state, SFO has exclusive jurisdiction over its roadways – they are not “public” streets or highways. (*See City of Oakland v. Burns* (1956) 46 Cal.2<sup>nd</sup> 401; *In Re SuperShuttle of San Francisco, Inc.* (Decision No. 96-09-091, Application No. 95-06-015, CPUC, September 20, 1996); *In Re Application of Checkmate Yellow Car* (Decision No. 90675, Application No. 58537, CPUC, August 14, 1979).) As a result of this jurisdiction, the Airport has the authority to collect necessary data and track all commercial vehicle traffic on its roadways. The Airport uses that data to inform decisions on zone allocation by transportation mode. TNC data is important to study traffic impacts and shifts in customer demand that allow transportation planners to improve traffic patterns for all users of the Airport.

Finally, Article XI of the California Constitution recognizes the City's authority to enforce laws of general application via its police power.<sup>13</sup> The City's Charter states the City Attorney must “[r]epresent the City and County in legal proceedings with respect to which it has an interest”<sup>14</sup> () and empowers the City Attorney to commence legal proceedings whenever a cause of action “in favor of the City . . . is within [its] knowledge.”<sup>15</sup> After receiving numerous complaints, and based, among other things, on a San Francisco police department study showing that TNCs accounted for nearly 65 percent of all moving violations for driving in transit lanes and bicycle lanes, obstructing bicycle lanes and traffic lanes, failure to yield to pedestrians, and illegal U-turns in business districts, the City

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<sup>12</sup> SFMTA Safe Streets Evaluation Handbook (2018), [https://www.sfmta.com/sites/default/files/reports-and-documents/2018/10/safestreetsevaluationhandbook\\_july2018.pdf](https://www.sfmta.com/sites/default/files/reports-and-documents/2018/10/safestreetsevaluationhandbook_july2018.pdf)

<sup>13</sup> See Cal. Const., art. XI, § 7.

<sup>14</sup> San Francisco Charter § 6.102.1.

<sup>15</sup> San Francisco Charter § 6.102.3.

Attorney opened an investigation into possible violations by TNCs of California Civil Code Sections 51, et seq. (the Unruh Civil Rights Act); 54, et seq. (right of access for persons with disabilities); and 3479-3480 (public nuisance law); as well as San Francisco Administrative Code Chapter 12V (independent contractor minimum compensation ordinance). The City and County’s Comprehensive Proposal would provide data to support the City Attorney’s efforts to ensure that TNCs comply with these and other state and local laws.

**B. City and County Comprehensive Proposal for TNC Data Reporting and Granularity**

In order to provide information sufficient to support the Commission’s new statutory duties and long-standing responsibilities, as well as the public purposes outlined above addressed by the City and County and other local agencies, the City and County recommend that the Commission require TNCs to submit three quarterly reports: a Trip Report, a Vehicle Segment Report, and a Vehicle Report. Separately and together, the reports provide information on specific regulatory needs and provide key insights on unique aspects of TNC services. The Trip Report would provide insights into the types of rides provided including wheelchair accessible vehicle requests and “deadheading” (vehicle travel with no passengers). The Vehicle Segment Report would provide critical data on “vehicle passenger occupancy” and metrics necessary to implement the Clean Miles Standard goals. The Vehicle Report would provide information about the actual vehicles used to provide TNC trips, which is essential to estimating greenhouse gas and other emissions and understanding the presence and availability of wheelchair accessible vehicles. It would also be important for enforcing hours of service regulations and for avoiding double counting of VMT by TNCs where drivers are using multiple service apps.

**1. Proposed Trip Report**

The proposed Trip Report builds upon the reports already being submitted to the Commission by the TNCs. It would capture user demand and user experience relevant to SB 1376. The Trip Report would contain information about all TNC trip requested and trip accepted (including wheelchair accessible vehicle requests and acceptance), as well as relevant attributes required to fulfill statutory

requirements, enforcement, and planning needs. The Trip Report would contain no personally identifiable information or trade secret information. Table 1 identifies the data items currently reported by TNCs to the Commission, additional data items to support agency needs, and descriptions of these data items.

**TABLE 1. TRIP REPORT**

<b>Current Data Item<sup>16</sup></b>	<b>Proposed Data Item</b>	<b>Description</b>
Date of request / Time of request	REQUEST_DATETIME	Trip request datetime stamp
Zip Code of Requestor	REQUEST_TRACT	Trip requestor census tract
	REQUEST_WAV	Wheelchair access vehicle request indicator
	REQUEST_POOLED	Pooled trip request indicator
	ACCEPT	Trip acceptance indicator
	PERIOD_3_START_DATETIME	Trip start datetime stamp
Reason / explanation for ride not being accepted	NOT_ACCEPT_REASON	The reason the ride was not accepted. This should be a value from a list of valid reasons, or null if the ride was accepted. Valid reasons should include that no driver accepted, the driver cancelled, the passenger cancelled, no match was found, or other reasons relevant to SB 1376
Date that request was not accepted/Time that request was not accepted	NOT_ACCEPT_DATETIME	Timestamp when the ride request ended without being fulfilled
	PERIOD_3_END_DATETIME	Trip end datetime stamp
Zip Code of Where the Ride Began	PERIOD_3_START_TRACT	Trip start location. Currently reported at the zipcode level, proposed to be reported at the census tract level
Zip Code of Where the Ride Ended	PERIOD_3_END_TRACT	Trip end location. Currently reported at the zipcode level, proposed to be reported at the census tract level
Miles Traveled	PERIOD_3_VMT	Trip vehicle miles traveled
	PERIOD_3_VHT	Trip vehicle hours traveled (in minutes)
Amount Paid/Donated	FARE	Required fare paid
	TIP	Additional / optional fare paid
	PASSENGERS	Number of non-driving vehicle passengers
	PERIOD_1_DATETIME	Period 1 start datetime stamp
	PERIOD_1_START_TRACT	Period 1 start location census tract

<sup>16</sup> “Report on Providing Service by Zip Code”. California Public Utilities Commission. Required Reports TNCs Must Provide the CPUC. <https://www.cpuc.ca.gov/General.aspx?id=3989>. Accessed on December 2, 2019.

	PERIOD_1_VMT	Period 1 vehicle miles traveled
	PERIOD_1_VHT	Period 1 vehicle hours traveled (in minutes)
	PERIOD_2_DATETIME	Period 2 start datetime stamp
	PERIOD_2_START_TRACT	Period 2 start location census tract
	PERIOD_2_VMT	Period 2 vehicle miles traveled
	PERIOD_2_VHT	Period 2 vehicle hours traveled (in minutes)
	VIN	Vehicle identification number

The new proposed data items would:

- 1) support the Commission’s enforcement of current and future expectations related to the delivery of wheelchair accessible service as mandated by SB1376 [REQUEST\_WAV];
- 2) provide trip start and end times to support the myriad planning, regulatory and enforcement functions that vary based on time of day and day of week [PERIOD\_3\_START\_DATETIME; PERIOD\_3\_END\_DATETIME];
- 3) by shifting trip start and end locations from the zip code level to the census tract level, would allow for analysis of service according to the many public and academic research resources that rely on census tracts while preserving privacy to the same extent reflect in voluminous census analyses [PERIOD\_3\_START\_TRACT; PERIOD\_3\_END\_TRACT]
- 4) support Commission enforcement of driver hours of service regulations established by the FMCSA [various \*DATETIME fields];
- 5) support CARB and CPUC implementation of the Clean Miles Standard as mandated in Senate Bill 1014 [PERIOD\_1\_VMT, PERIOD\_2\_VMT, PERIOD\_3\_VMT, PASSENGERS, VIN]

None of the proposed data fields contain personally identifiable information and all data could thus be reported to the general public. Further, the City and County propose that the quarterly reports submitted by individual companies be consolidated into a single report so that no company specific information is provided to the public. Public disclosure of this data would support detailed analysis by any interested agency, researcher, or the public, whose analysis could then be verified and/or replicated by others to evaluate any conclusions.

## 2. Proposed Vehicle Segment Report

The Vehicle Segment Report is a proposed new report specifically intended to facilitate the analyses statutorily required under Senate Bill 1014 to implement the Clean Miles Standards, as well as other enforcement and planning needs, including Senate Bill 1376. The vehicle segment report captures the change in period and/or occupancy. Vehicle occupancy is needed to calculate passenger miles traveled (PMT) for CARB to establish the Clean Miles Standard baseline and for the Commission to assess performance against targets to be set at a later date. For pooled rides, occupancy is already collected by TNC companies, but not reported to the Commission. We propose that this information along with occupancy for non-pooled rides be reported. Occupancy data can be reported without the use of personally identifiable information. This would eliminate the need to conduct surveys or additional data collection to inform an occupancy factor, and is the best way to reliably collect comprehensive PMT data.

Each record of the Vehicle Segment Report captures a unique combination of VEHICLE\_ID, SEGMENT\_PERIOD, and SEGMENT\_OCCUPANCY, with information about the datetime, tract, VMT and VHT associated with the segment. A new segment is created by a change in period (ex. a vehicle changes from Period 1 to Period 2) or a change in passenger occupancy (ex. A driver in Period 3 of a pooled ride picks up a second passenger). The Vehicle Segment Report would provide a profile of vehicle activity, and would not include any personally identifiable information, and thus could be shared freely with any requestor seeking this information, eliminating the need for the Commission to make any determination as to which parties may be entitled to receive TNC data, and relieving the Commission of the need for special or third party data distribution tools, portals, or other technologies. Table 2 identifies the data items in the proposed Vehicle Segment Report.

**TABLE 2. VEHICLE SEGMENT REPORT**

<b>Proposed Data Item</b>	<b>Description</b>
VIN	Vehicle identification number
SEGMENT_PERIOD	Segment period (1,2,3)
SEGMENT_START_DATETIME	Datetime stamp when segment starts

SEGMENT _END_DATETIME	Datetime stamp when segment ends
SEGMENT _START_TRACT	Segment start location census tract
SEGMENT _END_TRACT	Segment end location census tract
SEGMENT _OCCUPANCY	Number of non-driving vehicle passengers
SEGMENT _VMT	Segment vehicle miles traveled
SEGMENT _VHT	Segment vehicle hours traveled (in minutes)

Further, the City and County propose that the quarterly reports submitted by individual companies be consolidated into a single report so that no company specific information is provided to the public. Public disclosure of this data would support detailed analysis by any interested researcher, whose analysis could then be verified and/or replicated by others to evaluate any conclusions.

### 3. Proposed Vehicle Report

The third report TNCs should submit to the Commission is a proposed Vehicle Report. The information included in this report can be used to assess the supply side of TNC service, includes vehicle information needed to calculate emissions, and can be used to assess wheelchair accessible vehicle availability. This report would provide the key information necessary to calculate vehicle emissions as statutorily required under Senate Bill 1014 to implement the Clean Miles Standards, the availability of wheelchair accessible vehicles as required by Senate Bill 1376, as well as other enforcement and planning needs. This file would also be used to avoid “double counting” of VMT where drivers may be using the same vehicle for multiple TNC companies simultaneously. The Vehicle Report would contain data items that allow the anonymous vehicle identifiers submitted by the TNCs to be related to specific vehicles and propulsion technologies based on the Vehicle Identification Number (VIN) employed by automotive manufacturers. Table 3 identifies the data items in the proposed Vehicle Report.

**TABLE 3. VEHICLE REPORT**

<b>Proposed Data Item</b>	<b>Description</b>
VIN	Vehicle identification number
VEHICLE_MAKE	Vehicle make
VEHICLE_MODEL	Vehicle model

PROPULSION	Vehicle propulsion type
VEHICLE_WAV	Wheelchair accessible vehicle indicator

Based on the suggested reporting above (the City and County’s Comprehensive Proposal), the Trip Report, Vehicle Segment Report, and Vehicle Report would not include any personally identifiable information or trade secret, and, as a result, could be shared with all requestors. This would eliminate the need for the Commission to make any determination as to which parties may be entitled to receive TNC Data. The absence of potentially personally identifiable information also eliminates the need for a third party to manage the data because all reports submitted to the Commission can be freely shared. The proposed TNC data reports to be shared publicly do not include any company-specific information.

#### **4. Proposed Loading Data Workshop**

In order to protect passenger privacy, the Trip Report and Vehicle Segment Report recommended above call for trip start and end locations to be reported by census tract, rather than by latitude and longitude. There is one critical local function that is not supported by this compromise: parking and curb management. On San Francisco’s dense urban roads, TNCs seeking to pick up or drop off passengers compete against many other uses of the curb. San Francisco, like other major cities, is looking for better ways to manage curb space in order to improve public safety and reduce congestion in high activity areas. Strategies include modifying the size and location of loading zones, clarifying locations where loading is permitted, and reallocating parking spaces for loading use.

In order for cities to make data driven decisions about these curb uses, we need very detailed time and location information about TNC pick-ups and drop-offs. Specifically, we need to know the volume of loading activity at specific locations along a block face so that we can analyze patterns and assess the current configuration of curb space. For these purposes, the key need for cities is to understand detailed location and the volume of loading activity at different times of day and days of the week. We need far greater granularity about loading locations than is proposed for the Trip Report and Vehicle Segment Report. For example, where there are concentrations of passenger pick-ups and drop-offs, we need to know the side of a street segment or block face, as well as approximately where

on the block face the passenger loading activity occurs. Curb regulations are based on time of day and day of week, so detailed time data is needed to properly assess existing and proposed passenger loading zones. Finally, there are large numbers of special events, street closures, construction and other activities that can affect the use of the city's streets and curbs. For this reason, it is important to have data on specific days so cities have the capacity to exclude data driven by unique or unusual events.

Having access to pick-up/drop-off data will enable cities to focus efforts on high-demand areas and times, and could lead to the creation of new loading zones, adjusting loading zone hours, and deploying enforcement and traffic-management resources where they are needed most. We recognize that providing detailed loading location could implicate personal privacy concerns so, in order to ensure that curb management needs are met while also protecting personal privacy, we recommend that the Commission hold a workshop with TNCs, local jurisdictions, and subject matter experts to develop recommendations for an appropriate report format.

### **III. LEGAL ARGUMENT**

For nearly six years, the Commission has allowed the TNCs to submit regulatory information, including annual reports, on a confidential basis. During this time, the City and County have urged the Commission to follow the mandates of the Constitution, and the CPRA, as these reports are regulatory documents, pertaining to the Commission's conduct of its official business. These regulatory reports, including data about TNC rides, can be very useful because they can be used "to evaluate traffic and infrastructure concerns, determine future needs, and assess claims of discriminatory redlining."<sup>17</sup> As regulatory documents, therefore, the records should be available for inspection consistent with the fundamental right of "access to information concerning the conduct of the people's business."<sup>18</sup>

Contrary to these foundational principles, the Commission has withheld TNC data, largely on the basis of a footnote to Decision 13-09-045. In June 2017, when the City Attorney sought access to the TNC's annual reports, staff counsel responded that the requested records "are confidential pursuant

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<sup>17</sup> *Lyft v. City of Seattle* (2018) 190 Wash.2d 769, 793.

<sup>18</sup> Cal. Gov. Code § 6250.

to Commission Decision 13-09-045, ft. 42, p. 33 or General Order (G.O.) 66-c, part 2.2.” Because footnote 42 is inconsistent with the CPRA, and General Order 66-C has been superseded by GO 66-D, the Commission should change the reporting obligation by making public the TNC data already reported, and pursuant to the City and County’s Comprehensive Proposal.

In addition, there have been three important developments since the Commission first sought comment on data confidentiality in 2017. First, following an unsuccessful appeal to the Washington Supreme Court, Lyft and Uber agreed that zip code based ride data does not constitute trade secret. Second, the City successfully enforced a subpoena, in which the Court of Appeal held that sharing regulatory documents such as the TNC Annual Reports does not infringe or interfere with the Commission’s jurisdiction. Third, the Commission updated its own procedures for complying with the CPRA and revised General Order (“GO”) 66-D. Each of these developments supports disclosing the TNC data, and refutes arguments for confidential treatment of records proffered by the TNCs.

**A. The Constitution, and the Public Records Act Mandate Disclosure of TNC Data.**

Under the California Constitution, the public has a “fundamental and necessary” right to access public records.<sup>19</sup> The CPRA presumes the records are public, unless those records are “exempt from disclosure by express provisions of law.”<sup>20</sup> The CPRA favors disclosure and agencies may not delay or obstruct inspection of public records.<sup>21</sup> Public records are “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”<sup>22</sup> Where an agency chooses to withhold a document, that agency bears the burden of proving that an exemption applies and must narrowly construe statutes, rules or other authority if it limits the right of public access.<sup>23</sup> Further, “[t]he fact

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<sup>19</sup> Cal. Const. Art. I, § 3; Gov. Code § 6250.

<sup>20</sup> Cal. Gov. Code § 6253(b).

<sup>21</sup> Cal. Gov. Code § 6253(d).

<sup>22</sup> Cal. Gov. Code § 6252(e).

<sup>23</sup> Cal. Gov. Code § 6255; Cal. Const. Art. I § 3(b)(2) (“A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.”)

that a record may fall within a CPRA exemption does not preclude the agency from disclosing the record if the agency believes disclosure is in the public interest. Unless a record is subject to a law prohibiting disclosure, CPRA exemptions are permissive, not mandatory; they allow nondisclosure but do not prohibit disclosure.”<sup>24</sup> It is common sense, then, that “since records received by a state regulatory agency from regulated entities relate to the agency’s conduct of the people’s regulatory business, the CPRA definition of public records includes records received by, as well as generated by, the agency.”<sup>25</sup> The only question is whether these records should be withheld from public disclosure based on a narrowly construed exception to the CPRA.

Footnote 42 makes no findings at all regarding any potential exemptions. It simply states that “for the requested reporting requirements, TNCs shall file these reports confidentially unless in Phase II of this decision we require public reporting from TCP companies as well.” There is no reference to a particular exemption under the CPRA, “or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.”<sup>26</sup> The footnote, instead, turns the CPRA on its head by allowing the TNC annual reports to be filed confidentially, and then requires a requesting party to show that the documents should not be treated as confidential records.

Not only does footnote 42 lack any legal basis under the CPRA, it was inserted at the eleventh hour, as part of a 4th revision to the proposed decision. The 4th revision was issued only 48 hours prior to the Commission’s consideration of the agenda item on September 19, 2013. Prior to the 4th revision, the proposed decision would have allowed payment information to potentially be filed confidentially, “but all other ride information must be available publicly.”<sup>27</sup> This initial instinct was correct. The Commission should eliminate the footnote, and require that TNC data be disclosed as public records under the CPRA.

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<sup>24</sup> Rulemaking 14-11-001, Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act, at p. 11 (internal citations omitted).

*Id.*, at p. 1.

<sup>26</sup> *Id.*

<sup>27</sup> See Peevey Agenda Dec (Rev 3) Adopting Rules & Regulations to Protect Public Safety While Allowing New Entrants to the Trans. Ind., issued September 16, 2013.

**1. There is No Showing that the TNC Data Should Be Withheld as Trade Secrets Under the CPRA**

One of the recognized exemptions from the CPRA covers documents that are otherwise subject to privilege. Lyft and Uber have argued that the TNC Data is necessarily trade secret and exempt from disclosure.<sup>28</sup> As the City and County has argued previously, the mere fact that some of the data relates to individual trips does not make that information protected as trade secret.

Pursuant to the Evidence Code, “the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” A trade secret is defined as information that “[d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”<sup>29</sup>

Uber and other parties previously argued that all trip data was conclusively trade secret by citing a Washington trial court decision that zip-code based ride data should not be disclosed to the public.<sup>30</sup> On appeal that trial court decision was reversed. And in fact, since the time the Commission issued D.13-09-045, both Lyft and Uber have agreed that ride information, including pick up and drop off information by zip code, submitted to the City of Seattle may be disclosed to the public.<sup>31</sup>

As the City noted in its Motion for Official Notice on December 18, 2018, the Washington Supreme Court held that “[t]he superior court erred ... by accepting [Lyft’s and Uber’s] argument that [Washington precedent] carved out trade secrets from application of the [Washington] PRA,”<sup>32</sup> and “based apparently on its legal error that trade secrets are categorically exempt from disclosure, the

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<sup>28</sup> See generally, Lyft and Uber Opening Comments to April 7, 2017 Phase III.B Memo and Ruling of the Assigned Commissioner.

<sup>29</sup> Cal. Civil Code § 3426.1(d).

<sup>30</sup> See e.g. Rasier-CA LLC Opening Comments to April 7, 2017 Phase III.B Memo and Ruling of the Assigned Commissioner at p. 3, and Reply comments of California Manufacturers & Technology Association to April 7, 2017 Phase III.B Memo and Ruling of the Assigned Commissioner at p. 9.

<sup>31</sup> See generally, December 19, 2018 Joint Motion Of The San Francisco City Attorney’s Office, San Francisco Municipal Transportation Agency, San Francisco International Airport, and San Francisco County Transportation Authority For Official Notice.

<sup>32</sup> Lyft v. City of Seattle (2018) 190 Wash.2d 769, 788.

court reached the circular conclusion that ‘public disclosure of trade secrets under the Public Records Act constitutes irreparable harm because such disclosure ‘destroys the information’s status as a trade secret.’”<sup>33</sup> On remand from the Washington Supreme Court, both Lyft and Uber entered into a stipulated judgment with the City of Seattle dismissing their complaints with prejudice, and ordering zip-code based ride data to be “unsealed.”<sup>34</sup> The City’s motion also attached copies of the stipulated judgments, the Seattle municipal code provisions requiring public reporting, and the forms used by Seattle.

The *Seattle* case teaches that the mere fact that TNC Data includes ride data is not a basis for concluding that the data is trade secret. Similarly, the Commission should reject generalized argument that the records constitute trade secret.

However, even if the Commission finds that TNC data constitutes a trade secret, the trade secret privilege is not absolute. The privilege only applies “if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.”<sup>35</sup> Consistent with the CPRA, this exemption should be construed narrowly so as to favor disclosure. Further, as described above, the TNC data is necessary and important for various City agencies to fulfill their obligations. There are many legitimate local uses of the information, including the enforcement of consumer protection laws. For example, as established in *San Francisco v. Uber*, and described more fully below, the City Attorney’s Office has complementary jurisdiction over laws of general applicability, and some of the data in the TNC Annual Reports could support hypothetical lawsuits that would not be preempted. The TNC data, in the form of the Annual Reports or otherwise, is therefore useful to the City Attorney’s Office to enforce legal obligations against the TNCs. Withholding documents under the trade secret privilege from the City Attorney’s Office would be improper because it could “tend to conceal fraud or otherwise work injustice.”

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<sup>33</sup> *Id.* at p. 794.

<sup>34</sup> See Exhibit B to December 19, 2018 Joint Motion for Official Notice.

<sup>35</sup> Cal. Evid. Code § 1060.

**2. The Proposed Trip Report, Vehicle Segment Report, and Vehicle Report Do Not Contain Any Personally Identifiable Information or Trade Secret And Could Be Shared Publicly.**

Based on the suggested reporting in the City and County’s Comprehensive Proposal, the Trip Report, Vehicle Segment Report, and Vehicle Report would not include any personally identifiable information or trade secret, and, as a result, could be shared with all requestors. This would eliminate the need for the Commission to make any determination as to which parties may be entitled to receive TNC Data. The absence of potentially personally identifiable information also eliminates the need for a third party to manage the data because all reports submitted to the Commission can be freely shared. For all three reports, the proposed TNC data reporting would not need to occur in “real time,” but could instead be submitted quarterly. The proposed TNC data reports to be shared publicly would not include any company-specific information.

**3. There Is No Exemption for Routine Regulatory Secrecy.**

Despite the well-established authorities on public records, Uber proffers a darker, more shadowy view of the CPRA and regulation. In what can only be described as the doctrine of regulatory secrecy, Uber would have the Commission keep its regulatory filings from the public. As stated by Uber:

TNC annual reports were provided to the Commission with the expectation that the Commission would receive this information on a confidential basis and not disclose it to third parties. (Rasier-CA at 6; Lyft at 3.) The purpose for this confidentiality, which is routine across regulated industries, is to ensure a freeflow of information between industry and regulatory officials. This longstanding practice of limiting access to regulatory data to only those with a need to know creates comity between industry and regulatory officials by allowing regulatory officials to easily access sensitive industry information<sup>36</sup>

This is clearly wrong and inconsistent with the Constitution, and the CPRA.

**4. Even if Records Are Considered Exempt from the CPRA, the Commission May Still Share Those Records With Interested Government Agencies Pursuant to Gov. Code 6254(e).**

Under Government Code section 6254.5(e), the Commission may disclose information that is non-public to the City and the County, without waiving any privilege the Commission may be able to

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<sup>36</sup> Uber Reply Comments to April 7, 2017 Phase III.B Memo and Ruling of the Assigned Commissioner, at p. 2.

assert. This provision could allow the Commission to share with local governments broad categories of information related to TNCs. To the extent there is legitimately non-public information included in TNC Data, or the Commission can demonstrate why the annual report documents are not public records subject to disclosure, the Commission should at the very least disclose these documents to the City and TA, or other government entities, pursuant to Section 6254(e).

## **B. Sharing TNC Data Does Not Conflict with the Commission’s Jurisdiction.**

In *City and County of San Francisco v. Uber Technologies*, the City successfully enforced an administrative subpoena requiring Uber to produce the annual reports it has submitted to the Commission.<sup>37</sup> In upholding the trial court’s determination that the City is entitled to the data, the Court of Appeal rejected Uber’s claims that the Commission’s jurisdiction over TNCs preempts actions by local agencies or otherwise shields it from the enforcement of laws, noting that Commission’s jurisdiction, “does not confer upon a company an immunity to civil suits merely because it is regulated under the CPUC’s authority.”<sup>38</sup> The Court of Appeal continued, “we find that the information [in the CPUC Annual reports] covers a wide variety of hypothetical lawsuits, at least some of which might not interfere with the CPUC’s oversight of TNCs.”<sup>39</sup>

The Court’s analysis is significant for two reasons. First, it rejects arguments that the mere submission of information to the Commission somehow shields those documents from being relevant to local governments, or preempts them from being disclosed. Second, it recognizes that local governments may have potential uses of information contained in the TNC’s annual reports, including the enforcement of consumer protection laws that would not be preempted.

*San Francisco v. Uber* also refutes the notion that local governments do not have “a legitimate need for this information and providing it to them would set a dangerous precedent.”<sup>40</sup> In this proceeding, Uber argued that:

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<sup>37</sup> (2019) 35 Cal.App.5th 66 (review denied September 11, 2019).

<sup>38</sup> *Id.* at 77 (quoting *People ex re. Ofloff v. Pacific Bell* (2003) 31 Cal.4th 1132, 1144)).

<sup>39</sup> *Id.* at 81.

<sup>40</sup> Uber Reply Comments to April 7, 2017 Phase III.B Memo and Ruling of the Assigned Commissioner, p. 2.

The San Francisco City Attorney's Office asserts that it needs the information to engage in law enforcement activities... This is not a valid reason that entitles the City Attorney to receive this information.<sup>41</sup>

Uber is wrong. The only dangerous precedent would be to deny local law enforcement agencies data necessary to enforce those laws. Following *San Francisco v. Uber* it should be abundantly clear that using TNC data to enforce local and state laws is a valid reason to receive the information.

Although *San Francisco v. Uber* firmly establishes the right of local governments to obtain the TNC Annual Reports pursuant to an administrative subpoena, this victory took over two years, involving costly and lengthy litigation. The City issued the subpoenas in June 2017, and the California Supreme Court only recently denied Uber's petition for a writ of review on September 11, 2019, with the remittitur issued shortly after the writ was denied. While San Francisco was able to vindicate its rights in court, other jurisdictions may not choose to litigate. Rather than encouraging piecemeal access to TNC data, the Commission should pursue the more efficient way to make the TNC data available to local governments: by complying with the Constitution, CPRA, and the Commission's own General Order 66-D.

**C. Withholding the Reports from Disclosure Is Inconsistent With Public Utilities Code Section 583 and General Order 66-D**

In 2017, for the first time in over 35 years, the Commission updated General Order 66-C, which the Commission staff relied upon as a basis for not providing the TNC annual reports to the City. In Decision 17-09-023, the Commission adopted General Order 66-D, and confirmed its commitment to complying with people's "fundamental and necessary" right to know under the Constitution and CPRA.

"the Legislature has declared that 'access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.' An agency must base a decision to withhold a public record in response to a CPRA request upon the specified exemptions listed in the CPRA, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure. The CPRA favors disclosure, and CPRA exemptions must be narrowly construed. The fact that a record may fall within a CPRA exemption does not preclude the agency from disclosing the record if the agency believes disclosure is in the public interest. Unless a record is subject to a law prohibiting disclosure, CPRA

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<sup>41</sup> *Id.*

exemptions are permissive, not mandatory; they allow nondisclosure but do not prohibit disclosure.”<sup>42</sup>

Informed by these principles, GO 66-D places the burden on the requesting entity to justify confidential treatment. Pursuant to GO 66-D, “[a]n information submitter bears the burden of proving the reasons why the Commission shall withhold any information, or any portion thereof, from the public. To request confidential treatment of information submitted to the Commission, an information submitter must satisfy all of the following requirements.”<sup>43</sup> The submitter must “[s]pecify the basis for the Commission to provide confidential treatment with specific citation to an applicable provision of the CPRA” and support that assertion with a signed declaration.<sup>44</sup> Further, a “citation or general marking of confidentiality, such as ‘GO-66’ and/or ‘Public Utilities Code Section 583’ without additional justification of confidentiality does not satisfy the information submitter’s burden to establish a basis for confidential treatment by the Commission.

It is telling that footnote 42 would not pass muster under General Order 66-D. Decision 13.09-045 does not contain any discussion of the relevant citation or applicable provision of the CPRA that would authorize confidential treatment of TNC data. In fact, it appears to welcome “general marking of confidentiality” which GO 66-D explicitly states does not establish a basis for confidential treatment.

Some parties in the proceeding have attempted to argue that Public Utilities Code Section 583 provides an independent protection for confidential information. For example, Uber argued that “Section 583 of the Public Utilities Code provides that information furnished to the commission by regulated entities should not be disclosed unless required by law or on order of the Commission.”<sup>45</sup> This is incorrect. As stated in Decision 17-09-023, Public Utilities Code Section 583 “does not require the Commission to afford confidential treatment to data that does not satisfy substantive requirements for such treatment created by other statutes and rules,” and that Section 583 and Section 5412.5 (the parallel provision for charter-party carriers) merely provide “a process for dealing with claims of

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<sup>42</sup> Decision 17-09-023, at p. 11 (internal citations omitted).

<sup>43</sup> General Order 66-D Section 3.2

<sup>44</sup> *Id.*

<sup>45</sup> Uber Opening Comments to the April 7, 2017 Scoping Memo.

confidentiality.”<sup>46</sup> To address any claims of confidentiality, the Commission should turn to the CPRA, which favors disclosure of these regulatory documents.

### CONCLUSION

For the reasons set forth herein, we strongly urge the Commission to adopt the City and County’s proposed revisions to existing regulations on TNC data reporting by requiring: (1) disclosure of existing TNC annual reports received by the Commission, and (2) the new three new reports included in our Comprehensive Proposal. The recommendations within are crafted to serve the Commission’s regulatory needs as well as the regulatory needs of many other public agencies, both directly and through the work product of academic researchers who would make wide use of the proposed public reports. They are also crafted to protect legitimate privacy interests of passengers and drivers and are crafted to avoid company-specific public disclosure and thus to protect proprietary interests of TNCs. Finally, adoption of the City and County’s proposed revisions on TNC data reporting will support the efforts of all relevant public agencies, including the Commission, to fulfill our responsibilities to the public.

Dated: December 3, 2020

Respectfully submitted,

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By: \_\_\_\_\_ /s/  
JOHN I. KENNEDY

On behalf of:  
THE, SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AUTHORITY, SAN  
FRANCISCO COUNTY TRANSPORTATION  
AUTHORITY, SAN FRANCISCO CITY  
ATTORNEY’S OFFICE, AND SAN FRANCISCO  
INTERNATIONAL AIRPORT

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<sup>46</sup> Decision 17-09-023 at pp. 12-13.