

**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

**COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
AND SAN FRANCISCO INTERNATIONAL AIRPORT IN RESPONSE TO JUNE 9, 2020,
SECOND AMENDED PHASE III.C. SCOPING MEMO**

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Dated: July 24, 2020

The San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco International Airport (SFO) (collectively, “the City”)¹ submit these joint comments on Section 3.2, “Application of AB 5 to TNCs,” of the June 9, 2020, Second Amended Phase III.C Scoping Memo and Ruling of Assigned Commissioner.

As the City noted in its February 28, 2020, comments in response to the December 19, 2019, order of Administrative Law Judge (ALJ) Robert M. Mason III, the application of AB 5 to TNCs ultimately will be a question for the courts. The City, in partnership with the California Attorney General and other cities, is actively pursuing litigation to resolve that question with respect to Uber and Lyft. *See People v. Uber*, Cal. Sup. Ct., Case No. CGC-20-584402 (filed May 5, 2020). Rulemaking may be best deferred until the courts resolve this question.

Nevertheless, if the Commission moves forward with rulemaking, the presumption that TNC drivers are employees is appropriate under state law. *See* AB 5 § 2, adding Labor Code § 2750.3(a); *id.* § 4, adding Unemployment Insur. Code § 606.5. By its plain text, Labor Code section 2750.3 applies expansively to “the provisions of this [the Labor] code and the Unemployment Insurance Code, and for the wage orders of the Industrial Welfare Commission.” *Id.* § 2750.3(a)(1).

Any rulemaking should recognize the role of the California Labor and Workforce Development Agency (LWDA)—and local agencies enforcing analogous employee protections—in determining what obligations the TNCs, as employers, owe their driver-employees under generally applicable laws. The LWDA has begun issuing guidance on the application of AB 5, *see* <https://www.labor.ca.gov/employmentstatus>, and any Commission action should be consistent with this and any other relevant guidance. Further, any Commission action should expressly clarify that TNCs must comply with orders issued by LWDA components and other state and local agencies with jurisdiction over generally applicable employment laws, and that any action by the Commission cannot preclude, preempt, or delay related activity that falls within the jurisdictions of these entities. *See Orange County Air Pollution Control Dist.* (1971) 4 Cal.3d 945, 951-52 (holding that CPUC-

¹ Both the SFMTA and SFO are constituent departments of the City and County of San Francisco established by and operating under the City’s Charter.

regulated entities must comply with the orders of LWDA components the IWC and Division of Industrial Safety); *see also* 37 Ops. Cal. Atty. Gen. 31, 36 (1961). The Commission should reinforce this requirement by integrating it into its licensing regulations and by suspending TNC licenses to operate upon notice from LWDA or another agency with jurisdiction over employment laws that a TNC is failing to comply with an order or determination of that agency.

Beyond these general parameters, the City and County has no view presently regarding what additional requirements the Commission should impose on TNCs and what amendments, if any, the Commission should make to General Order 157-E. The City and County requests the opportunity to provide comments on any specific proposals for additional requirements or amendments to General Order 157-E that may be proposed in the future.

Dated: July 24, 2020

Respectfully submitted,

By: _____
/s/
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