

From: CLK Council Info
Sent: Tuesday, July 19, 2016 9:07 AM

Subject: Budget Speaker Registration/Testimony
Attachments: 20160719090707_720BudgetCommitteeTabathaChowUber.pdf

Name	Tabatha Chow
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Meeting Date	07-20-2016
Council/PH Committee	Budget
Agenda Item	Bill 36
Your position on the matter	Oppose
Representing	Organization
Organization	Uber Technologies Inc
Do you wish to speak at the hearing?	No
Written Testimony	
Testimony Attachment	20160719090707_720BudgetCommitteeTabathaChowUber.pdf
Accept Terms and Agreement	1

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TESTIMONY OF TABATHA CHOW ON BEHALF OF UBER TECHNOLOGIES IN OPPOSITION
OF BILL 36, PROPOSED CD2

July 20, 2016

Thank you Chair Kobayashi, Vice Chair Manahan, and Committee Members for allowing me to provide testimony on Bill 36, proposed CD2. I am offering testimony in opposition of Bill 36, proposed CD2 in its current form, but look forward to collaborating further on this matter.

We urge this committee to put consumers first and competitors second. If this committee is willing to consider TNC regulations independent of current Honolulu taxicab company regulations, the result can be a simple, effective, and easily enforceable TNC framework that meets the primary goals of this committee - to ensure consumer protection and public safety. Unfortunately, Bill 36, proposed CD2 does not do that. The draft instead mirrors the current framework for Honolulu taxicab companies - a framework established more than 30 years ago. This approach seeks to fit a square peg into a round hole -- the proposed framework does nothing to recognize that taxis and ridesharing companies have different business models -- a distinction which more than 40 other jurisdictions in the U.S. have embraced.

In this current proposed draft, only Honolulu taxicab companies win. These companies would be able to operate largely in the same way they've operated for the past 30 years, with no incentive to improve or innovate on behalf of consumers. TNCs, on the other hand, would not be able to operate under many of the restrictive measures of the draft, as they are tailored to a taxicab company business model.

Thank you for allowing me to provide testimony on Bill 36, proposed CD2. Today, I will keep my testimony brief, because my hope is to continue working with you individually to discuss the ways in which TNCs could be regulated in Honolulu. To that end, please find below proposed TNC regulations for Honolulu. Attached is a regulatory framework that has been customized for Honolulu, but resembles the TNC framework adopted by more than 31 states and several municipalities across the country.

CHAPTER 12A REGULATIONS OF TRANSPORTATION NETWORK COMPANIES

BE IT ORDAINED by the People of the City and County of Honolulu:

The purpose of this Chapter is to ensure the safety, reliability and cost-effectiveness of rides provided by Transportation Network Company Drivers within the City and County of Honolulu and to preserve and enhance access to these important transportation options for residents and visitors.

The Revised Ordinances of Honolulu 1990, is amended by adding a new Chapter 12A to read as follows:

SECTION 1. DEFINITIONS. As used in this Chapter: "*Personal Vehicle*" means a vehicle that is used by a Transportation Network Company Driver and is: (a) Owned, leased or otherwise authorized for use by the Transportation Network Company Driver; and (b) Not a taxicab, limousine, or vehicle for hire.

"*Digital Network*" means any online-enabled technology application service, website or system offered or utilized by a Transportation Network Company that enables the prearrangement of rides with Transportation Network Company Drivers.

"*Transportation Network Company*" or "*TNC*" means a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this Chapter and operating in the City and County of Honolulu that uses a Digital Network to connect Transportation Network Company Riders to Transportation Network Company Drivers who provide Prearranged Rides. A Transportation Network Company shall not be deemed to control, direct or manage the Personal Vehicles or Transportation Network Company Drivers that connect to its Digital Network, except where agreed to by written contract.

"*Transportation Network Company Driver*" or "*TNC Driver*" means an individual who: (a) Receives connections to potential passengers and related services from a Transportation Network Company in exchange for payment of a fee to the Transportation Network Company; and (b) Uses a Personal Vehicle to offer or provide a Prearranged Ride to riders upon connection through a Digital Network controlled by a Transportation Network Company in return for compensation.

"*Transportation Network Company Rider*" or "*rider*" means an individual or persons who use a Transportation Network Company's Digital Network to connect with a Transportation Network Company Driver who provides Prearranged Rides to the rider in the TNC Driver's Personal Vehicle between points chosen by the rider.

"*Prearranged Ride*" means the provision of transportation by a TNC Driver to a rider, beginning when a TNC Driver accepts a ride requested by a rider through a Digital Network controlled by a Transportation Network Company, continuing while the TNC Driver transports a requesting rider, and ending when the last requesting rider departs from the Personal Vehicle. A Prearranged Ride does not include transportation provided using a taxicab, limousine, or other vehicle for hire. A prearranged ride does not include a shared expense carpool or vanpool arrangement or service, or any other type of arrangement or service in which the driver receives a fee that does not exceed the driver's costs associated with providing the ride.

SECTION 2. NOT OTHER CARRIERS. TNCs or TNC Drivers are not common carriers, contract carriers or motor carriers, nor do they provide taxicab or vehicle for hire service.

SECTION 3. TNC PERMIT REQUIRED. (a) A person shall not operate a TNC in the City and County of Honolulu without first having obtained a permit from the Department of Customer Services ("Department"); provided that, any TNC operating in the City and County of Honolulu before the effective date of this Chapter may continue operating until the Department creates a permit process and sets a registration deadline.

In addition,

(a) TNC Driver shall not be required to register the vehicle such TNC Driver uses to provide prearranged rides as a commercial or for-hire vehicle.

(b) The Department shall issue a permit to each applicant that meets the requirements for a TNC set forth in this Chapter, and pays an annual permit fee of \$1,000 to the Department.

SECTION 4. AGENT. The TNC must maintain an agent for service of process in the City and County of Honolulu.

SECTION 5. FARE COLLECTED FOR SERVICES. On behalf of a TNC Driver, a TNC may charge a fare for the services provided to riders; provided that, if a fare is collected from a rider, the TNC shall disclose to the rider the fare or fare calculation method on its website or within the software application service. The TNC shall also provide riders with the applicable rates being charged and the option to receive an estimated fare before the rider enters the TNC Driver's vehicle.

SECTION 6. IDENTIFICATION OF TNC VEHICLES AND DRIVERS. The TNC's software application or website shall display a picture of the TNC Driver, and the license plate number of the motor vehicle utilized for providing the prearranged ride before the rider enters the TNC Driver's vehicle.

TNC Drivers shall display City approved vehicle trade dress, consisting of recognizable TNC emblems, which will allow the City to identify TNC Vehicles at a reasonable distance at all times when such vehicles are active on Operator's TNC Software Application network. Such trade dress, which may be removable, shall be a visual indicator that indicates the driver is affiliated with a specific TNC.

SECTION 7. ELECTRONIC RECEIPT. Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the rider on behalf of the TNC Driver that lists: (a) The origin and destination of the trip; (b) The total time and distance of the trip;; and (c) An itemization of the total fare paid, if any.

SECTION 8. LIMITATION ON TNCs. TNC Drivers shall be independent contractors and not employees of the TNC if all of the following conditions are met:

(a) The TNC does not prescribe specific hours during which a TNC Driver must be logged into the TNC's digital platform;

(b) The TNC imposes no restrictions on the TNC Driver's ability to utilize digital platforms from other TNCs;

(c) The TNC does not assign a TNC Driver a particular territory in which to operate;

(d) The TNC does not restrict a TNC Driver from engaging in any other occupation or business; and

(e) The TNC and TNC Driver agree in writing that the TNC Driver is an independent contractor of the TNC.

SECTION 9. TNC DRIVER REQUIREMENTS. (a) Before allowing an individual to accept trip requests through a TNC's digital platform:

(1) The individual shall submit an application to the TNC, which includes information regarding his or her address, age, driver's license, motor vehicle registration, automobile liability insurance, and other information required by the TNC; (2) The TNC shall conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include review of:

(A) multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and (B) U.S. Department of Justice National Sex Offender Public Website; (3) The TNC shall obtain and review, or have a third party obtain and review, a driving history research report for such individual.

(b) The TNC shall not permit an individual to act as a TNC Driver on its digital platform who:

(1) Has had more than three moving violations in the prior three-year period, or one of the following major violations in the prior three-year period:

- (A) Attempting to evade the police,
- (B) Reckless driving, or
- (C) Driving on a suspended or revoked license;

(2) Has been convicted, within the past seven years, of

- (A) Any felony;
- (B) Misdemeanor driving under the influence, reckless driving, hit and run, or any other driving-related offense or any misdemeanor violent offense or sexual offense;

(3) Is a match in the U.S. Department of Justice National Sex Offender Public Website;

(4) Does not possess a valid driver's license from any U.S. state;

- (5) Does not possess proof of registration for the motor vehicle(s) used to provide prearranged rides;
- (6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide prearranged rides; or
- (7) Is not at least 19 years of age.

SECTION 10. NO CASH TRIPS. The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments for the fares charged to riders for prearranged rides and notify TNC Drivers of such policy.

SECTION 11. NO DISCRIMINATION; ACCESSIBILITY.

(a) The TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to riders and potential riders and notify TNC Drivers of such policy.

(b) TNC Drivers shall comply with all applicable laws regarding non-discrimination against riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.

(c) TNC Drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

SECTION 12. RECORDS. A TNC shall maintain the following records: (a) individual trip records for at least one (1) year from the date each trip was provided; and (b) individual records of TNC Drivers at least until the one year anniversary of the date on which a TNC Driver's relationship with the TNC has ended.

SECTION 13. AUDIT PROCEDURES; CONFIDENTIALITY OF RECORDS.

(a) For the sole purpose of verifying that a TNC is in compliance with the requirements of this Chapter and no more than annually, the Department of Customer Services ("Department") shall have the right to visually inspect a sample of records that the TNC is required to maintain. The sample shall be chosen randomly by the Department in a manner agreeable to both parties. The audit shall take place at a mutually agreed location in the City and County of Honolulu. Any record furnished to the Department may exclude information that would tend to identify specific drivers or riders.

(b) In response to a specific complaint against any TNC Driver or TNC, the Department is authorized to inspect records held by the TNC that are necessary to investigate and resolve the complaint. The TNC and agency shall endeavor to have the inspection take place at a mutually agreed location in the City and County of Honolulu. Any record furnished to the Department may

exclude information that would tend to identify specific drivers or riders, unless the identity of a driver or rider is relevant to the complaint.

(c) Any records inspected by the Department under this Chapter are designated confidential, are not subject to disclosure to a third party by the Department without prior written consent of the transportation network company, and are exempt from disclosure under the Hawaii Uniform Information Practices Act ("UIPA"). Nothing in this Section shall be construed as limiting the applicability of any other exemptions under the UIPA.