

### **REPORT TO COUNCIL**

#### **SUBJECT**

Discussion and Direction on Study Issue and Report Related to Car/Ride Share Impacts on Taxicab Franchises and Review of Taxicab Franchise Regulations (Study Issue DPS 15-0102)

#### **REPORT IN BRIEF**

At the Study Issues Workshop on February 19, 2015, Council directed staff to conduct a study, on car and ride share impacts on taxicab franchises and review of taxicab franchise regulations (DPS 15-0102). The necessity for the study stemmed from the increased presence and popularity of car/ride share businesses, known as Transportation Network Companies ("TNCs"), and concerns raised by local taxicab franchises that City regulation of taxicabs is more stringent than rules imposed on TNCs, giving TNCs an unfair business advantage.

Sunnyvale Municipal Code (SMC) Section 5.36. Taxicabs regulates taxicab franchises, seeking to achieve reasonable assurance of driver, passenger safety and risk reduction, and a predictable fee structure. TNCs are regulated at the State level by the Public Utilities Commission (PUC).

The firm Harvey M. Rose Associates, LLC (Consultant) was selected to conduct the study based on their experience analyzing municipal transportation issues, studying the effect of regulatory requirements, and analyzing the impact of "sharing economy" innovations on local businesses, residents, and government agencies. Recently, the Consultant conducted policy analysis of the impact of transportation network companies (TNCs) in the City and County of San Francisco.

The primary objectives of the study were to: 1) compare the profiles of the Sunnyvale taxicab franchises with those of car/rideshare businesses, including the differences, benefits and challenges and risks; 2) assess the impact of car/rideshare businesses on Sunnyvale taxicab franchise businesses; 3) review and compare the City's current taxicab franchise requirements with those of neighboring cities; and 4) review and compare regulatory developments related to taxicabs that have taken place in other jurisdictions.

The purpose of this Report to Council is to summarize the key findings and policy options of the study (Attachment 1), and to provide staff recommendations and receive direction from the Council for future action.

#### **BACKGROUND**

As early as 2007, rideshare companies were forming across the United States, the original model being an online service for people travelling long distances and pooling resources to save costs. Car/ride share businesses rapidly evolved as the use of smart phones provided a platform for passengers to connect with potential drivers. Two of the more commonly known rideshare providers, Uber and Lyft, have their headquarters in San Francisco and launched their smartphone application-

based services in 2011 and 2012, respectively.

Uber has recently established an Uber Activation Station in Sunnyvale. The activation station, located on the corner of Mathilda and San Aleso, provides prospective Uber drivers with “one stop” services for completing the process of becoming an Uber driver. Uber employees at the site perform background checks, a 19-point vehicle inspection, and assist new drivers with installation of Uber applications/products on their phones and in their vehicles.

In 2013, the California Public Utilities Commission (PUC) classified ride sharing services as charter-party carriers and asserted jurisdiction over them as Transportation Network Companies (“TNCs”). Thus, the PUC regulates these businesses in California. Cities and municipalities cannot regulate TNCs but continue to regulate local taxicab franchises.

Sunnyvale, like other cities in the area, has a long history of regulating taxicab franchises. Franchises are granted to companies by City Council while the Department of Public Safety (DPS) administers the issuance of biennial franchise permits, performs criminal background investigations and annual vehicle inspections, and evaluates driver proficiency. If a franchisee is not in compliance with the provisions of the Municipal Code, DPS staff takes appropriate action to ensure compliance or revoke the franchise license.

Taxicab franchises in Sunnyvale are an important component of the transportation network that serves the community and continue to provide advantages to the public, including:

- Safety of vehicles. The annual vehicle inspection provided by DPS is a 32-point inspection performed by an experienced traffic officer. TNCs generally require a less rigorous inspection. Taxicab franchises must provide proof of insurance that meets requirements established by the City of Sunnyvale Risk Manager: currently, the liability limit must be \$1 million and the insurance carrier must be rated A-VII.
- Uniform Fares. Taxicab franchises are required to conform to fares that are on file with DPS. TNCs have a fare model known as “surge fares”, where the cost of a ride could escalate from the time the ride is booked, depending on weather and traffic conditions, and with no set limits.
- Driver proficiency/background. The driver test that is administered by DPS validates the driver’s knowledge of traffic laws, familiarity with the streets of Sunnyvale, and ability to properly and safely operate a taxicab. The background investigation performed by DPS provides information shared by law enforcement agencies not readily available to private companies such as TNCs, and could identify a potential risk to the public;.

There are currently six operating taxicab franchises in the City of Sunnyvale, although in recent years there have been as many as eight. At last count, those six companies employed seventy one drivers and vehicles. Revenue from Taxicab Franchise operations in the past two fiscal years (FY 2013/14 and FY 2014/15) was \$32,622 and \$9,550, respectively (taxicab franchise licenses fees are assessed every two years).

Local taxicab franchise owners expressed concerns that the City’s requirements are much more rigorous than other cities and PUC requirements for TNCs, and that the current economic climate makes it difficult for them to retain drivers in the City, which they believe could eventually force them

to cease operation in Sunnyvale.

Some of the key findings of the study completed by the Consultant are highlighted below:

- 1) There have been some downtrends in the City's taxi industry since the introduction of TNC service; however, there is no empirical evidence to support a direct causal relationship between the establishment of TNC services and a drop in taxicab fee revenues.
- 2) There are more barriers and costs to becoming a taxi driver than there are to becoming a TNC driver, including passing a proficiency test, submitting fingerprints for a criminal background check, and paying the cost of a driver application fee.
- 3) To operate in more than one city, taxicab franchises must be licensed by multiple jurisdictions; the various barriers and costs associated with that requirement result in a greater regulatory burden on taxicab franchisees.
- 4) A comparison of the City's taxicab fees and regulations with neighboring jurisdictions indicated some inconsistency in certain areas, particularly with regard to vehicle inspection fees. Sunnyvale has higher fees than neighboring jurisdictions.
- 5) Sunnyvale also appears to have more burdensome regulations than the five other surveyed jurisdictions (Cupertino, Mountain View, Palo Alto, San Jose, and Santa Clara) in two areas: the process for award of franchises, and the policy governing the term of driver permits.
- 6) Other local jurisdictions in California either have conducted or are continuing to conduct a review of their taxicab rules and regulations in response to the impact of the TNC industry.

## **EXISTING POLICY**

### **General Plan**

Chapter 6: Safety and Noise (SN):

#### **Goal SN-3 Safe and Secure City**

Ensure a safe and secure environment for people and property in the community by providing effective Public Safety response and prevention and education services.

Chapter 3: Land Use and Transportation (LT):

#### **Goal LT-5 Effective, Safe Pleasant and Convenient Transportation**

Attain a transportation system that is effective, safe, pleasant and convenient

#### **Policy LT-5.5**

Support a variety of transportation modes

## **ENVIRONMENTAL REVIEW**

Environmental review does not apply because this study only evaluates current conditions and no formal action is being proposed at this time.

## **DISCUSSION**

Consultant findings include nine policy options for consideration by City Council, discussed below. Overall, staff agrees that the City should consider and implement changes to maintain a reasonable and stable regulatory environment that does not compromise the safety and security of the community.

- 1) *The City Council could consider lowering the vehicle inspection fee charged to taxicab franchises to an amount that is closer to the average or median of the surveyed neighboring jurisdictions.*

- 2) *The City Council could consider revising the schedule of vehicle inspection charges from the current charge of \$116 per quarter to an annual fee, which could be prorated. Shifting this charge from a quarterly payment to an annual fee would reduce the regulatory burden on taxicab franchises and provide an opportunity for greater administrative efficiency for the Department of Public Safety.*
- 3) *The City Council could consider extending the length of the driver's permit from one year to two years, which would be consistent with four of the five neighboring jurisdictions that we surveyed. This revision would reduce the regulatory burden on taxicab franchises and drivers.*

**Staff Response:** Recommendations 1- 3 would require analysis of the current fee schedule with respect to cost recovery for activities associated with vehicle inspections and driver permitting. Staff conducts periodic analysis and audit of fees during the course of standard operations, so this activity would not place an undue burden on staff or require additional resources to complete.

An initial review of the cost basis for this fee indicates that minor changes to the current process could likely create efficiencies and result in lower fees to franchise holders. For example, collecting inspection fees annually instead of quarterly and extending the length of a driver's City-issued permit from one to two years, so long as sufficient controls exist to ensure that drivers remain in compliance with code requirements throughout the longer periods.

Staff does not recommend lowering the standard for taxi safety inspections, which is currently a 32-point safety inspection by a DPS Traffic Officer. The standards of safety should remain intact to protect the public and conform to the citywide goal of a safe and secure environment; neighboring cities perform similar inspections to ours.

The table below is a sample of some of the data collected by Consultant and staff. It illustrates the existing fees and standards of surrounding cities as compared to current regulations in Sunnyvale. Although insurance requirements were not included in the Consultant's policy recommendations, they are included here to address questions that arose as a result of communications from taxi franchise owners. With regard to insurance requirements, it should be noted that effective July 1, 2015, California law (AB 2293) mandates that all TNC companies/drivers maintain liability insurance coverage in the amount of \$1 million.

Regulation	Sunnyvale	Cupertino	Mountain View	Palo Alto	San Jose	Santa Clara
<b>Driver Permit Term</b>	1 year	2 years	2 years	1 year	2 years	2 years
<b>Vehicle Inspection Fee/Taxicab Permit Fee</b>	\$ 464/ Vehicle/ year	\$ 126/ Vehicle/ year	\$ 205/ Vehicle/ 2 year permit	\$ 33/ Vehicle/ year	\$ 98/ per inspection	\$ 58/ per inspection
<b>Frequency of Vehicle Inspections</b>	Annual - On or before March 1	No Inspection Requirement Specified	Annual Mechanical Safety Inspection by Certified 3rd Party	Annual by City	Annual by City plus Mechanic Certification	Annual by City plus Mechanic certification

<b>Driver's Test Required</b>	(1) Proficient knowledge of traffic laws of City & State, (2) Proficient knowledge of streets of Sunnyvale; (3) ability to read, understand, & communicate in English; and (4) ability to properly and safely operate a taxi	(1) Evidence a proficient knowledge of traffic laws of City & State	None	None (Palo Alto Police indicated in a phone conversation that they wished there was a driver's test)	(1) Proficient knowledge of traffic laws of City & State, (2) Proficient knowledge of streets of San Jose; (3) ability to read, understand, & communicate in English; and (4) ability to properly and safely operate a taxi	(1) Demonstrate proficient knowledge of State & City Traffic Laws (2) Map test (per Santa Clara City Police Department
<b>Minimum Insurance Requirement</b>	AM Best Rating of at least A:VII; Owner & all drivers insured against liability for property and bodily injury/death; Not less than \$1 million combined per incident for each vehicle	\$100k for injury/death of 1 person; \$300k for injury death of more than 1 person; \$50k for property per incident	Insurers w/current Best Rating of A:VII Commercial general liability/auto liability of \$1 million per occurrence; Worker's Comp insurance of \$1 million per accident	Best's Key Rating of not less than A:VII; Minimum \$600k combined single limit per occurrence	Rating is at the discretion of the City Risk Manager: requires monitoring. A:VII or greater rated carrier is not flagged for review. Airport: TNC's and taxis are required to maintain \$1 million liability, plus a Code 10 endorsement Citywide: \$750k liability	AM Best rating of at least A:VII Minimum \$1 million per incident for each vehicle

- 4) *The City Council could consider requesting the Director of Public Safety and the City Manager to participate in a regional effort to establish a single set of regulatory requirements in the area by advocating for the County of Santa Clara to regionalize taxicab franchise regulatory requirements. This would reduce the regulatory burden on taxicabs, and increase efficiencies across the County.*

**Staff Response:** DPS has participated in regional collaboration on many issues related to emergency response and law enforcement activities and would support any effort initiated by the County of Santa Clara, or a partnership of County cities, to regionalize regulatory taxicab requirements. A primary factor that would influence participation in any future local collaboration would be the cost of staff time and resources that would be required, weighed against the long term benefits to the City.

- 5) *The City Council could consider revising the City's process for awarding and transferring taxicab franchises by extending the length of franchise awards and delegating renewal authority to the Director of Public Safety. Delegating responsibility for pre-determined renewal periods would make the City's process for awarding taxicab franchises consistent with other cities in Santa Clara County, could reduce the regulatory burden on prospective taxicab franchisees, and reduce administrative costs associated with work performed by City staff and City Council when reviewing applications for taxicab franchises that have expired.*

**Staff Response:** Sunnyvale City Charter Sections 1600-1604 require Council approval by ordinance to operate a franchise, including taxicab franchises. Under the Charter, the City Council cannot delegate the authority to grant franchises, but Council could lengthen the term of franchises with appropriate periodic administrative review.

SMC Section 5.36 establishes the current process for granting taxicab franchises, which includes a public hearing for the initial taxicab franchise as required by the charter, which may be granted for up to two years, and a public hearing for each renewal term of that permit, also for periods of two years per renewal. Chapter 5.36 could be amended to extend franchise terms.

Extending the length of the franchise would impact revenue from taxicab fees; however, staff anticipates that the overall fiscal impact would be balanced by the reduced operational cost for processing applications and renewals. Sufficient controls should be put in place to ensure that franchisees remain in compliance with all requirements of SMC Chapter 5.36 during the entire term of any franchise award and renewal period.

- 6) *The City Council could consider requesting the City Finance Director or City Manager or City Attorney to investigate whether TNCs and TNC drivers based in Sunnyvale meet the requirements to pay business license tax in the City of Sunnyvale.*

**Staff Response:** Whether an individual is subject to the City's business license tax depends in part on employment status, which is currently an unresolved issue statewide for TNCs. There are pending lawsuits in the state of California that dispute the classification of TNC drivers as independent contractors and argue that they are employees. Further, TNCs are classified as charter-party carriers along with limousine services, and Public Utility Code §5371.4 exempts limousine services from paying business license tax unless they are domiciled or maintain a business office in the city. Staff will continue to monitor this issue, but immediate changes are unlikely until the employment classification issues for TNC drivers are closer to resolution.

- 7) *The City Council could consider directing staff to study or consider the allotment of downtown curb space for all for-hire vehicles including TNCs and whether vehicles regulated by the City should receive priority spaces. As part of this study, the City Council could direct staff to also contact Caltrain to determine if additional enforcement is necessary for the taxi stand at the two Sunnyvale Caltrain stations.*

**Staff Response:** The Caltrain parking lot, a key area for for-hire transportation, is not under the City's jurisdiction. A review of the Sunnyvale Downtown Parking District map does not indicate that there are any current or planned priority spaces for for-hire vehicles. Staff does not recommend any action related to this option at this time, as there is currently no area in the City, aside from the Caltrain station, where for-hire vehicles compete for parking spaces.

- 8) *The City Council could consider lowering the minimum number of taxicabs required to be maintained by each franchisee from five vehicles to lower the barrier to entry into the market for prospective taxicab franchisees.*

**Staff Response:** Taxicab franchise owners have asserted throughout the course of this study that the five driver/vehicle minimum in Sunnyvale Municipal Code 5.36.050(a)(7) is becoming increasingly difficult to maintain. Franchise owners inform us that entry into the market as a TNC driver is far easier and less costly than obtaining a taxicab driver permit. Additionally, loss of one driver could result in revocation of the franchise.

This is one area where a change in the Municipal Code might help to equalize market conditions that have created external pressure on a long standing business enterprise (taxicab franchises).

Further analysis of the minimum driver requirement could be conducted by staff to determine if it is possible to maintain the level of services currently available to the community with regard to available transportation, and at the same time provide some relief from the regulatory burden for taxicab franchises.

- 9) *The City Council could consider other revisions to the City's taxicab code to reflect current technologies and cultural norms, including:*
- a. Revising the requirement for operable transmitters and receivers for contact with the driver's dispatch to include mobile phones and/or smart phone applications.*
  - b. Advising that the daily trip manifest could be kept in an electronic or online format.*
  - c. Removing the requirement that a uniform be worn by the drivers of taxicabs.*

**Staff Response:** Updates to permit use of current technology, including mobile phones as an option for communication with dispatch and electronic trip manifests, makes sense and would help close some of the gaps that currently exist between taxicabs and TNCs. Neighboring cities do not require taxicab drivers to wear a uniform, and this is a reasonable requirement to eliminate.

In summary, staff review of Consultant study findings concludes that there is sufficient cause for further evaluation and amendment of Sunnyvale Municipal Code, Section 5.36 (Taxicabs), as it relates to policy options 1, 2, 3, 5, 8 and 9 presented in this report.

### **FISCAL IMPACT**

Revisions to the SMC Chapter 5.36 (Taxicabs) will prompt analysis and revision of the City Fee Schedule as it pertains to Taxicab Franchise licenses, vehicle inspections, and driver permits. Some of the proposed policy revisions will result in reduced revenue; however, since all fees are calculated on a cost-recovery basis, the net impact to the General Fund will be negligible.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Direct staff to prepare an ordinance amending Sunnyvale Municipal Code, Section 5.36 Taxicabs, in consideration of Consultant study findings and policy options 1, 2, 3, 5, 8 and 9 as presented in this report.
2. Other actions as identified by Council.

### **STAFF RECOMMENDATION**

Alternative 1: Direct staff to prepare an ordinance amending Sunnyvale Municipal Code, Section 5.36 Taxicabs, in consideration of Consultant study findings and policy options 1, 2, 3, 5, 8 and 9 as presented in this report.

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Reviewed by: Kent Steffens, Assistant City Manager  
Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Study of Car/Ride Share Impacts on Taxicab Franchises and Review of Taxicab Franchise Regulations
2. Study Issue DPS 15-0102