

File No. 160759

Committee Item No. _____

Board Item No. 88

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____
Board of Supervisors Meeting

Date: _____
Date: July 19, 2016

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OTHER

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Prepared by: Brent Jalipa
Prepared by: _____

Date: July 7, 2016
Date: _____

1 [Urging the California Public Utilities Commission to Adopt Regulations Requiring Fingerprint-
2 Based Criminal Background Checks of Transportation Network Company Drivers]

3 **Resolution urging the California Public Utilities Commission to adopt new regulations**
4 **of Transportation Network Companies that would require the same criminal**
5 **background checks required of traditional taxi cab companies, recognizing the**
6 **importance of a level regulatory playing field between Transportation Network**
7 **Companies and traditional taxi cab companies, and supporting the California Public**
8 **Utilities Commission's solicitation for comment regarding the current method of**
9 **criminal background checks for Transportation Network Companies.**

10
11 WHEREAS, On June 22, 2016, the California Public Utilities Commission (CPUC)
12 opened solicitation for comments regarding whether the current method of conducting criminal
13 background checks for Transportation Network Company (TNC) drivers is as effective as
14 fingerprint-based criminal background checks; and

15 WHEREAS, The CPUC's current inquiry is in furtherance of an its Order Instituting
16 Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-
17 Enabled Transportation Services, which was issued in December 2012; and

18 WHEREAS, The CPUC has stated that among its goals is "to assess public safety
19 risks, and to ensure that the safety of the public is not compromised" in the operation of so-
20 called "Transportation Network Companies," which include for-hire service providers Uber,
21 Lyft, and other such companies, and to ensure that the services of a regulated utility are
22 provided in a safe manner; and

23 WHEREAS, The CPUC does not have jurisdiction over and cannot regulate traditional
24 taxi cab companies, but has nevertheless asserted jurisdiction over the regulation of TNCs,
25

1 thereby preempting and preventing the City and County of San Francisco from regulating
2 those TNCs; and

3 WHEREAS, By preempting the City and County of San Francisco from regulating
4 TNCs, the CPUC has facilitated the development of a two-tiered and anti-competitive playing
5 field for traditional taxi cab services and TNCs, respectively; and

6 WHEREAS, The City and County of San Francisco recognizes that traditional taxi
7 companies are subject to stricter regulation than TNCs – including limits on the number of
8 taxis on the road, regulation of the prices that taxis can charge passengers, requirements that
9 taxi cab drivers obtain commercial licenses and complete a certified driver training course,
10 mandatory compliance with the Americans with Disabilities Act, and for the provision of basic
11 benefits like workers' compensation for all taxi drivers on the road – which regulations do not
apply to TNCs; and

13 WHEREAS, The City and County of San Francisco further recognizes the merit in the
14 aforementioned regulations and other non-mentioned regulations of traditional taxi cab service
15 providers, and also recognizes the importance of creating a level regulatory playing field for
16 traditional taxi cab companies and TNCs that incorporates existing responsible regulations of
17 the traditional taxi cab industry; and

18 WHEREAS, Taxi regulators in the most populous parts of California, including San
19 Francisco, currently require drivers to undergo fingerprint-based criminal background checks
20 processed by the California Department of Justice (CALDOJ), utilizing fingerprint images to
21 automatically search government criminal record databases maintained by the CALDOJ and
22 the FBI; and

23 WHEREAS, Unlike the regulations governing taxi cabs, there is no current requirement
24 for prospective TNC drivers to undergo fingerprint-based criminal background checks, even
though fingerprint-based criminal background checks are widely considered by law

1 enforcement to be the gold standard for screenings because they can accurately identify
2 applicants who use aliases or lie about their criminal records; and

3 WHEREAS, Because of the unique identifying characteristics of fingerprints, this form
4 of background check provides concrete assurance that the person whose criminal history has
5 been run is, in fact, the applicant who seeks to drive a taxi cab; and

6 WHEREAS, Previous instances of faulty background checks by TNCs in San Francisco
7 have resulted in those TNCs approving drivers with prior convictions for driving under the
8 influence, felony drug distribution, multiple instances of false identities being used to obtain
9 approval to drive a car, and, in one instance, a prior reckless driving conviction that was only
10 revealed after the driver allegedly killed a girl in a San Francisco crosswalk; and

11 WHEREAS, A consumer-protection lawsuit jointly-filed in 2015 by Los Angeles and
12 San Francisco District Attorneys against Uber identified 25 drivers with prior convictions for
13 murder, assault, driving under the influence, identity theft, and other offenses potentially
14 directly-related to the employment in question; and

15 WHEREAS, San Francisco's and Los Angeles' top prosecutors have stated, "The
16 private background check companies employed by Uber do not have access to [California
17 Department of Justice] and federal databases of criminal history repositories," and, "The
18 background check companies employed by Uber search for criminal convictions in
19 commercial databases that do not index their records by unique biometric identifiers;" and

20 WHEREAS, Irrespective of the relative accuracy of various criminal background check
21 procedures, the City and County of San Francisco in 2014 recognized that individuals in San
22 Francisco and across the country are often unnecessarily plagued by old or minor arrest or
23 conviction records that discourage them from applying for jobs that would automatically
24 exclude them from consideration upon disclosure of their criminal history; and

25

1 WHEREAS, In recognition of the health and safety benefits to increasing access to
2 employment for people with arrest or conviction records, in order for them to reintegrate into
3 their communities, in 2014 the City and County of San Francisco adopted the "Fair Chance
4 Ordinance," which limits an employer's use of any criminal history information in the hiring
5 process and specifically prohibits any consideration of arrests not leading to conviction,
6 participation in diversion or deferral of judgment programs, expunged convictions, juvenile
7 convictions, convictions more than 7 years old, and criminal offenses other than felonies or
8 misdemeanors; and

9 WHEREAS, The 2014 Fair Chance Ordinance also restricts consideration of prior
10 conviction histories to those convictions that directly relate to the job in question and which
11 have a specific negative bearing on the person's ability to perform the duties of the job in
12 question; and

13 WHEREAS, The City and County of San Francisco recognizes that the requirement for
14 fingerprint-based criminal background checks for traditional taxi cab drivers and the
15 comparative absence of that requirement for TNC drivers also contributes to a grossly
16 unequal regulatory framework; and

17 WHEREAS, Supporting the CPUC's current proposal for requiring fingerprint-based
18 criminal background checks furthers the dual goals of ensuring thorough and accurate
19 criminal background checks for TNC drivers, on the one hand, and eliminating the two-tiered
20 regulatory system for traditional taxi cab services and TNCs, on the other; now, therefore, be
21 it

22 RESOLVED, That the City and County of San Francisco appreciates and hereby
23 responds to the California Public Utilities Commission's solicitation for comment regarding
24 whether the current method of conducting criminal background checks for TNC drivers is as
25 effective as fingerprint-based criminal background checks; and, be it

1 FURTHER RESOLVED, That the City and County of San Francisco urges the
2 California Public Utilities Commission to adopt regulations that would require TNC drivers to
3 submit to the same criminal background checks that are required of traditional taxi cab
4 drivers; and, be it

5 FURTHER RESOLVED, The use of any information obtained through a criminal
6 background check, regardless of form, should be restricted in accordance with the 2014 Fair
7 Chance Ordinance, which, among other restrictions, prohibits consideration of arrests not
8 leading to a conviction, participation in or completion of diversion or deferral of judgment
9 programs, expunged or inoperative convictions, juvenile convictions, convictions over 7 years
10 old, criminal offenses other than felonies or misdemeanors, and convictions not directly-
11 related to the employment in question.

BOS-11 : 2 pages

From: Alyssa Kies <akies@spur.org>
Sent: Thursday, July 07, 2016 5:59 PM
To: Board of Supervisors, (BOS)
Cc: Avalos, John (BOS); Kim, Jane (BOS); Cohen, Malia (BOS); Yee, Norman (BOS); Mar, Eric (BOS); Peskin, Aaron (BOS); Breed, London (BOS); Campos, David (BOS); Tang, Katy (BOS); Farrell, Mark (BOS); Wiener, Scott
Subject: SPUR letter regarding Resolution 160759 (TNCs)
Attachments: SPUR ltr to BoS re 160759 7.7.16 .pdf

Dear Board President Breed and Supervisors:

Please find attached a letter from SPUR President & CEO Gabriel Metcalf, in opposition to Resolution 160759.

Thank you.

—
Alyssa Kies
Executive Assistant + Board Liaison
SPUR • Ideas + Action for a Better City
☎ 644-4286
akies@spur.org

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SPUR

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July 7, 2016

Supervisor John Avalos
President of the Board of Supervisors London Breed
Supervisor David Campos
Supervisor Malia Cohen
Supervisor Mark Farrell
Supervisor Jane Kim
Supervisor Eric Mar
Supervisor Aaron Peskin
Supervisor Katy Tang
Supervisor Scott Wiener
Supervisor Norman Yee

San Francisco Board of Supervisors
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

Re: Opposition to Resolution 160759

Dear President Breed and Supervisors:

I'm writing to express our concerns about the proposed resolution about fingerprinting and background checks for TNC drivers.

We are living through a time of extraordinary change in our transportation system, perhaps more dramatic than anything we have seen since mass adoption of the automobile a century ago. The new technologies and the cultural changes that go along with them will require us to develop the right rules and regulations. So it is entirely appropriate for elected officials to be thinking about what we need as a regulatory framework for new mobility services.

Unfortunately, the proposal to add fingerprinting and background checks would be a step in the wrong direction. Ridesharing companies already require drivers to undergo background checks, in-person screenings and vehicle inspections, all of which are requirements enforced by the CPUC. The CPUC already subjects ride-sharing companies to continuing review, requiring these companies to report annual on accidents, service levels and other criteria.

The main effect of the proposed resolution is not going to be to increase the safety of passengers, but rather to reduce the ability of people to go to work as a TNC driver. By introducing the duplicative and intrusive process, we expect part time drivers, in particular to be deterred from joining the driving platforms. (The average TNC driver drives around 15 hours per month.)

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

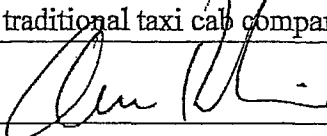
eskin

Subject:

Urging the California Public Utilities Commission to Adopt Regulations Requiring Fingerprint-Based Criminal background Checks of TNC Drivers

The text is listed below or attached:

Resolution supporting the California Public Utilities Commission's solicitation for comment regarding the current method of criminal background checks for Transportation Network Companies and urging the California Public Utilities Commission to adopt new regulations of Transportation Network Companies that would require the same fingerprint-based criminal background checks currently required of traditional taxi cab companies.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

