

PBOT

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Chloe Eudaly Commissioner **Chris Warner** Interim Director

May 13, 2019

Chair Nancy Nathanson
House Revenue Committee
900 Court Street NE, Salem OR. 97301

RE: HB 3023-A14

Chair Nathanson and Members of the Committee,

Thank you for your time and the opportunity to share the City of Portland's concerns about HB 3023 and the -A14 amendment. We urge you to oppose this bill.

Five years ago, there were no Transportation Network Company (TNC) trips on Portland streets. Last year, nearly 5% of the trips in and out of our Central City at rush hour were made by TNCs—while trips by bike and transit remained flat. This does not count the traffic created by the many driver trips without passengers, driving to their pickups or waiting for new business.

These trips are part of a transportation revolution, the likes of which has not been seen since the introduction of mass-produced automobiles. In addition to TNCs, we now have shared bicycles and shared electric scooters on our streets. These will likely soon be joined by other things like shared electric mopeds and electric autonomous vehicles.

This revolution is both exciting and disruptive. It brings the potential for more freedom of movement, equitable access, decreased congestion and more sustainable, less polluting transportation options. However, if not carefully managed, it also holds the threat of workforce disruptions, increased congestion, unsafe conditions, discriminatory practices, and revenue shortfalls. Presently, the ability of government to manage the impacts of these transportation companies, like TNCs, is at risk.

The future is uncertain, but one thing is for sure. Our streets belong to all of us. Maintaining this public space and getting the most benefit from the current transportation evolution requires careful cooperation between all levels of government. It will take a thoughtful, dynamic regulatory framework with a role for the state and a role for local jurisdictions together to support the innovation of our private sector partners in a manner that serves the public interest.

The City of Portland has regulated the private-for-hire transportation industry with the aim of protecting consumers and promoting public safety for over 100 years. When Uber and Lyft entered the market a few years ago, we solicited public input and created regulatory rules for this industry as well. Rules that align with the values of Portlanders; ensuring public safety and consumer protections; providing access to low-income communities, communities of



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color, and people with disabilities; gathering data so that we can understand impacts on traffic congestion and climate pollution; and creating a flexible transportation system – one that can respond to a quickly changing and growing industry.

We understand that not all cities are able to craft their own regulations and there is interest in a statewide framework to provide greater access to the benefits of TNC services. We have consistently engaged throughout this process to explore statewide standards for insurance, background checks, and other basic requirements for successful ride-hailing. However, HB 3023-A14 is not the bill to do this. This industry-driven bill sets only minimal regulations in statute and prohibits local innovation to improve service. It leaves too many critical questions unanswered. It is simply not good for Oregonians.

Consumer Safety

Background checks, education and safety practices, and especially the review and enforcement of these regulations is critical to rider and driver safety. The -A14 amendment, while recognizing the need for at least some basic regulation of TNCs, falls far short while also fully preempting local jurisdictions, who have traditionally done this work.

The amendment includes annual background checks and gives ODOT some auditing authority, but it is not clear what the industry would be required to allow. Portland's current program, on the other hand, included 3,500 undercover field audits of TNC and taxi drivers in 2018, which turned up numerous infractions that would otherwise have been undetected or unreported by the companies. Under HB 3023-A14, it is unclear if any agency would be able to do such spot checks to ensure drivers are who they say they are and that the TNCs thoroughly fulfilled their responsibilities.

The prescribed statewide background check process in the bill is still less robust than the City of Portland's current regulations, as well as that of some other jurisdictions. A 2018 CNN investigation found that more than 100 Uber drivers had been accused of sexually assaulting or abusing passengers over four years.ⁱ It is critical that we do our best to ensure the health and safety of the riding public and that they can trust they are getting into a vehicle that is safe.

Under this legislation, drivers will be required to complete an education and safety course annually, but it is unclear who would administer it, who decides the content or how compliance will be ensured.

HB 3023-A14 contains a requirement that TNCs notify drivers they can only remain connected to the app for 14 consecutive hours in any 24-hour period. However, there is no enforcement or compliance mechanism. This regulation is an inadequate attempt to address the long hours that add to unsafe, drowsy driving conditions.

Worker Conditions

Portland's current regulations have allowed for the creation of a Drivers Advisory Committee to discuss issues such as wages, basic worker protections, and a mechanism for impartial dispute resolution. A Drivers Advisory Committee of this kind is considered national best practice and is just getting underway.

Last week, Lyft and Uber drivers went on strike in major cities around the country because of poor worker conditions. Clearly there is a need for programs like local drivers' advisory committees to resolve issues around driver conditions and ongoing support for arbitrated solutions in a fast-changing labor market. Without local permitting authority, cities will be unable to compel TNCs to participate in programs like these. These programs are most appropriate at the local level because worker conditions are not the same statewide; for example, places where Lyft and Uber drivers are able to drive as a full-time (or significant part-time) job is in as large metro areas.

Providing Service to People with Disabilities

There is no requirement in HB 3023-A14 for statewide service standards for wheelchair accessible service. In fact, Lyft is currently fighting a class action lawsuit filed in Westchester County, New York and arguing that it should not be subject to the Americans with Disabilities Act because "it is not in the transportation business." ⁱⁱ Instead, HB 3023-A14 allows some jurisdictions to create a Wheelchair Accessible program like the one that Portland created. However, it is unclear how a successful program can be developed if cities cannot *compel* TNCs to adhere to local program requirements as a requirement of local permitting. For example, if a city requires that TNCs provide wheelchair accessible service within 30 minutes of the request (as Portland does), there is no way of holding TNCs accountable or penalizing them if they do not meet those requirements.

HB 3023-A14 allows for a 10-cent fee to pay for these programs. It is unclear at best how the level of this fee was determined. The success of these programs relies on being responsive to local context and the needs of people with disabilities. This fixed rate curtails local governments' ability to fulfill commitments to communities and develop more accessible programming in the future.

Congestion and Climate

The industry claims that TNCs have no negative impact on congestion, carbon or transit ridership. Early research across the country offers good reason to be doubtful of these claims. A 2018 studyⁱⁱⁱ of TNCs in nine cities found that more than half of TNC users in major cities would have taken transit, biked, walked or not taken the trip if the TNC wasn't available. Portland is just beginning to evaluate the impacts on local congestion and carbon emissions, but initial data that is currently being collected from companies as a condition of local permitting, gives cause for concern.

Early analysis suggests a significant majority of TNC trips to and from the central city during rush hour originate in close-in neighborhoods that are well served by transit and bike infrastructure. In 2017, the Oregon State Legislature recognized Portland area congestion as an issue of statewide concern and invested in roadway, transit and bike improvements to address the problem. Meanwhile, Uber and Lyft send more drivers into congested areas because these peak periods are when they can charge the highest prices and pocket the costs of congestion for company profits.

Even when a TNC ride is simply replacing what would otherwise have been a personal auto trip, it is almost always a longer trip. The TNC driver, after turning the app on, will drive around waiting for a match with a rider. Anecdotally, drivers have shared that this could be anywhere from a few minutes to almost an hour. Then, the driver must drive to the requested location to pick up the passenger and fulfill the rest of the trip. Then, the cycle starts again. Shared

TNC rides may sometimes mean less miles driven than if two or three individual people drove. However, programs like Uber's rewards program discourage people from taking shared rides by providing more reward points for the more expensive individual rides.

HB 3023-A14 prevents local authorities from making data-driven decisions and using pricing and permitting tools to manage the limited space on our roadways. This will make local governments a bystander when it comes to TNCs and their resulting congestion and climate problems—putting the responsibility entirely on the state. HB 3023-A14 recognizes that the Portland International Airport has specific congestions concerns and exempts it from regulatory preemption—but not cities. That just doesn't make sense.

Data Sharing

HB 3023-A14 requires that TNCs share only a very limited set of data with ODOT. No agency can regulate this quickly changing industry, ensure public safety, and manage the impact on our streets with this limited set of data.

Portland currently requires robust data-sharing from the TNCs and taxis, although critical data is still lacking around shared rides and time on the road without passengers. Trip data (not personal passenger information) is critical for evaluating trends in a rapidly-changing transportation system. At the direction of Portland City Council, the Portland Bureau of Transportation is also taking a careful look at the impact of new mobility services like Amazon delivery, TNCs and bikeshare. Their relationship to transit service, overall vehicle miles travelled, and net carbon emissions is critical to the future of transportation planning. Without the ability to license and permit, cities will no longer be able to require industry to share data beyond what is minimally required in HB 3023-A14, which is something that TNCs have refused to do in other markets unless explicitly required by law.

Enforcement and Compliance

In 2016, local regulators found that Lyft was rolling out 50 unpermitted drivers per day on Portland streets. Portland has in place an escalating schedule of penalties depending on the seriousness and recurrence of the violation, which range from \$250 to \$5,000 with potential for permit suspension or revocation. The first version of HB 3023 made the maximum penalty \$100. Under the -A14 amendment, ODOT now has more authority to impose civil penalties, but the details are still to be determined.

While HB 3023-A14 includes provisions protecting passengers against discrimination, it does not provide any indication of how this would be monitored or enforced. Local data collection requirements currently allow cities to see if TNCs are really serving the whole city. Data also helps to quantify how many rides were cancelled by drivers, which is a strong indicator of potential bias or racism against passengers. This data will no longer be accessible to any regulating agency. How can agencies determine if there is discrimination without access to this data?

Electric Vehicles

HB 3023-A14 contains a 2-cent ride fee on non-electric TNC vehicles to fund EV charging stations. It is unclear how two cents was determined and why it was only limited to non-electric vehicles. This seems both administratively burdensome and illogical. Placing the fee on only some rides, under a system where riders cannot choose electric

versus gasoline cars, does nothing to incentivize behavior change. Additionally, electric vehicles are the beneficiaries of the fee and do not presently pay into the state highway fund via the gas tax.

This bill requires ODOT to consult with TNCs and EV charging manufacturers regarding the type and location of charging stations. Why would this industry be involved in determining charging station locations more than any other industries or individuals that regularly pay taxes to fund infrastructure?

This Electric Vehicle fee is also set to expire in 2026. As more and more vehicles become electric we will need more funding for charging stations in the future not less. There should be no expiration date on the per ride fee to fund EV infrastructure.

Conclusion

HB 3023-A14 leaves too many questions unanswered. We understand that other communities are eager for TNC service. In fact, there is nothing prohibiting TNC service throughout the state right now. Uber and Lyft are entering markets based on demand. They have not taken off in many smaller communities in Oregon because of lack of demand, not a regulatory barrier. There are complex policy questions that remain around the appropriate regulations for this quickly evolving industry. The City of Portland urges you not to pass this overly restrictive legislation on behalf of industry when there are unaddressed and varying needs around the state.

The City of Portland looks forward to participating in a thoughtful process to create a framework with basic statewide minimum standards that still allows local cities to manage the complex transportation system and address their specific conditions. On behalf of all Oregonians, let's work together and get this right.

Respectfully,

Noah Seigel
The City of Portland

ⁱ CNN investigation: 103 Uber drivers accused of sexual assault or abuse, CNN, April 30, 2018
<https://money.cnn.com/2018/04/30/technology/uber-driver-sexual-assault/index.html>

ⁱⁱ Lyft Fights to Avoid Americans with Disabilities Act in Federal Court, Politico. May 2, d 2019
<https://www.politico.com/states/new-york/albany/story/2019/05/02/lyft-fights-to-avoid-americans-with-disabilities-act-in-federal-court-1002249>

ⁱⁱⁱ Schaller, B. (2018). *The New Automobility: Lyft, Uber and the Future of American Cities*
<http://www.schallerconsult.com/rideservices/automobility.pdf>