



BURLINGTON CITY COUNCIL ORDINANCE & LICENSE COMMITTEES 6/17/2015

City Council Special Joint Ordinance and License Committee

Tuesday, June 17, 2015

CR Room 12

MINUTES

Attendance

Committee: Councilor Chip Mason (CM) (chair), Councilor Sharon Bushor (SB), Councilor Tom Ayers (TA), Councilor Max Tracy (MT), Councilor Adam Roof (AR).

Other City personnel: Lori Olberg (LO), Asst. City Attorney Gregg Meyer (GM)

Public: See list in file

CM convened the meeting at 7:02PM pm

1. Agenda

SB moved approval of the agenda and the adoption was unanimous (5-0).

CM made opening remarks prior to the public forum, explaining that the purpose of the meeting tonight was to consider the proposed interim operating agreement (the agreement) between the City and Uber. CM further indicated that following the meeting (and possibly another meeting prior to referral date of June 29), the Joint Committee (the Committee) would provide the City Council (the CC) with a recommendation to adopt or reject the agreement. CM lastly explained that if the agreement was adopted, the second phase of the Committee's work would commence. This would be to review and revise the City's current Vehicle for Hire Ordinance (the Ordinance).

2. Public Forum:



BURLINGTON CITY COUNCIL ORDINANCE & LICENSE COMMITTEES 6/17/2015

Bill Keogh, former City Councilor and current member of the Airport Commission and Taxi Licensing Board, was the first speaker. Mr. Keogh stated that he supported the agreement with Uber but that he felt Uber drivers were operating vehicles for hire in any event. He suggested the agreement include a time definite for its end and completion of the Ordinance rewrite. He further stated that the agreement should include requirements for handicapped assistance as well as baggage handling capabilities for Uber vehicles and used the example of people with skis needing a ride. If the Uber vehicle did not have ski racks, the driver would not be able to provide the service. Mr. Keogh completed his comments by stating that he thought there should be a level playing field between Uber and other vehicle for hire providers in the City, and that regulating the taxi business in Burlington was the City's responsibility, not Uber's. Uber's claim of proprietary information regarding the names and numbers of drivers in town was therefore improper.

Charlie Herrick, owner of Green Cab in Burlington, was the next speaker. Mr. Herrick reminded the Committee of his various emails and comments previously provided on the subject of Uber and the agreement, and further stated that he hoped the meeting would include a back and forth between the participants as opposed to everyone making sales pitches. He then went on to state that no matter how rigorous Uber's background check processes were, if the City was not involved then the City was ultimately liable for any harm resulting from a failed check. He further stated that he does not believe a private company should be responsible for background checks. Mr. Herrick then stated Eileen Blackwood had previously concluded Uber was subject to the Ordinance but was now saying it is a technology company not subject to the Ordinance. Mr. Herrick concluded by saying that interpretation was fine, but that with regard to the drivers themselves, he was expecting the City to regulate them just as all others operating vehicles for hire in the City.

Greg Davis, an Uber driver, was the next speaker. He stated that he was a recent transplant to Burlington, also hoped the meeting would include healthy interaction between the Committee and those other present, and urged the Committee to recommend adoption of the agreement. Mr. Davis stated that he loves driving for Uber, has done so since February 2015, that people and passengers are glad Uber is operating in Burlington, and that the company merely provides a platform that allows 2 people to connect and arrange transportation. Mr. Davis stated that all the Uber drivers he knows, himself included, do their jobs in a safe and efficient manner and have fun doing so. He stated that having Uber in Burlington is a reflection of the City's progress and a component of City's connection to the rest of the country and world. He said that Uber exists because people want Uber. The business model is different than taxis and is not intending to compete with taxis.

Alan Bordeaux, another Uber driver, was the next speaker. Mr. Bordeaux stated that he has been driving for Uber for 6 months and does so to supplement his income as a retiree. He came to the meeting to urge the Committee to recommend adoption of the agreement. He stated that Uber's platform allows him to operate freely and independently, and that he is definitely not an employee of the company. Driving for Uber has allowed him to raise sufficient funds to regularly visit his grandchildren and he hopes to continue driving into the future.

Nicholas Schieldrop, a taxi driver from Shelburne who is not licensed in Burlington, was the next speaker. Mr. Schieldrop came to the meeting to express opposition to the agreement and to Uber in general. He stated that the company was destroying small taxi companies and the communities they serve, and further stated that if Burlington was going to collect a fee from Uber pursuant to the agreement, that some of those funds should be shared with neighboring towns where Uber operates as well. Mr. Schieldrop stated that Uber, and any agreement with the company, undermines his and other peoples' taxi businesses and that rather than the City regulating taxis or Uber, the State of Vermont should be the entity



BURLINGTON CITY COUNCIL ORDINANCE & LICENSE COMMITTEES 6/17/2015

regulating all taxis and vehicles for hire. Mr. Schieldrop then stated that in his view the Ordinance was illegal and that he had organized the Vermont Independent Taxi Alliance to take action against Uber.

Jeff Munger, Chair of the Airport Commission (the Commission) and Chair of the Taxi Licensing Board (the Board), was the next speaker. Mr. Munger stated that enforcement of taxis and vehicles for hire in general has been his main concern as chair of the Board. He was involved in the previous rewrite of the Ordinance and recognizes that only taxi operations at the airport have any real supervision due to the fact ambassadors are able to keep an eye on vehicles coming and going. Uber operating outside the airport along with other vehicles for hire was therefore a concern to him. Mr. Munger also stated that he is against self-regulation with regard to Uber being responsible for doing background checks of drivers. Mr. Munger stated that Uber drivers should be required to get City licenses and go through City procedures, including insurance requirements. Mr. Munger lastly stated that he did not believe the payment of \$5000 to the City from Uber pursuant to the agreement, was a sufficient sum.

Matt Durum, an Uber driver, was the next speaker. Mr. Durum came to the meeting to ask the Committee to recommend adoption of the agreement. He stated that he appreciated Uber's business model and technology platform as it gave him the ability to work flexible hours, earn income, and help other people in the community in need of transportation. He also questioned whether the City intended to regulate other ride sharing activities in and around the City, such as ride share boards up at UVM, if it was trying to regulate Uber as well.

Jaqueline Hartman, an Uber driver, was the next speaker. Ms. Hartman came to the meeting to urge the Committee to recommend adoption of the agreement. She explained that Uber did an excellent job screening potential drivers, and that it took her nearly 3 weeks to go through the background check process before she was able to start providing service. She said that once she was approved and granted access to the platform, she has had only positive experiences earning money and providing a much needed service to the community. She said that Uber is an outstanding company and all the drivers are proud to represent it.

Greg Davis asked for (and was granted) permission to make an additional comment to the Committee. He said that Uber's rating system was publicly generated and thus, a transparent method of insuring good service. Charlie Herrick then asks for additional time to speak, which was granted. Mr. Herrick stated that Uber's rating system was an after the fact review of a driver's competence and does not replace proper pre-operations screening of drivers. He also stated that ride sharing at UVM and other places was for free, and therefore, was nothing like Uber's ridesharing model that is subject to regulation.

Goshed _____, an additional Uber driver, then spoke prior to the close of the public forum. He urged the Committee to recommend adoption of the agreement and stated that he was able to supplement his income from another job by driving Uber in his free time. He felt that he was providing a great service to the community and gave examples of giving a girl a ride when she felt threatened walking on the street and another where he provided rides to people when it was very cold outside. He stated that Uber saves lives and that he was truly helping people get home safely and affordably.



BURLINGTON CITY COUNCIL ORDINANCE & LICENSE COMMITTEES 6/17/2015

The public forum was then closed.

3. Communication from Assistant City Attorney

Prior to the meeting, the City Attorney's office provided the Committee with various documents related to the agreement. CM called GM from the City Attorney's office to discuss the documents and agreement, as well as to answer questions from Committee members. As a preliminary matter, CM asked GM if the agreement was a product of a negotiation between Uber and the City and GM stated yes. CM also asked if Uber was prepared to sign the agreement as in current form. The answer was yes.

GM then provided an overview of the agreement. The key points were that agreement would be an interim agreement that would last no longer than 12 months, and most likely shorter if the Committee recommended its adoption and then got to work to revise the Ordinance in its entirety to address Uber and other similar operations (in addition to any other changes to the Ordinance deemed appropriate). Additionally, GM stated that the agreement could be terminated at any time by either party.

GM then went on to say the agreement required that Uber follow essentially the same background check standards that the City currently follows for all taxi and contract vehicle license applicants. GM stated that Uber's business model was to do the checks themselves and that this was a key for Uber as far as its willingness to enter the agreement with the City. CM asked and GM confirmed that there were some minor discrepancies between the agreement and the Ordinance such as the driving age – 18 vs. 19 – but GM stated there was no substantive changes.

GM then pointed out there were some additions to the agreement beyond what Uber typically agreed to with other communities including checking Vermont's specific state criminal and sex offender data bases (as opposed to just national) since Vermont does not submit its info to the national databases. Moreover, the agreement requires insurance coverage at the time Uber drivers are summoned to pick up a passenger (as opposed to when the passenger gets in the vehicle). GM explained that Uber maintained the names of the drivers operating on the system as proprietary so the City did not have access to their names or the number of drivers in order to confirm whether Uber's background checks were proper, but that the agreement required that Uber provide the City with the ability to audit 10 drivers on a biannual basis to see if they were properly screened. Committee members asked why Uber could not provide the names and the question was later directed to the Uber representative who testified at the meeting.

GM then went on to note that the agreement provided that all Uber pick ups and drop offs would cost Uber 2 dollars each, and that the money would be automatically paid by Uber to City with the City having the ability to audit whether proper fees are paid. The determination of when drivers would enter the airport would be made via a geo fence technology shared with the airport. AR asked why Uber would be paying more than other taxi drivers for pick up and drop off at the airport (who only pay \$1 per) and GM stated that there was no specific reason other than it being another way to compensate the City beyond the \$5000 payment called for in the agreement.



BURLINGTON CITY COUNCIL ORDINANCE & LICENSE COMMITTEES 6/17/2015

Regarding the \$5000 agreement, MT and TA and other Committee members asked where that amount came from and why it was so low. GM explained it was the result of a negotiation with the Uber and as far as we could see, it was the highest amount Uber paid for an interim agreement regardless of the size of the community. GM also pointed out that the payment was pursuant to an interim agreement and that if the agreement only lasted a few months because the Committee is able to pass a new ordinance, the sum would be significant. GM also stated there is a provision in the agreement to require an additional payment if the City determines after a few months that more money is required.

GM the pointed to the remaining standard contract provisions and SB asked about the non-discrimination clause. Why was it not applicable to drivers picking up riders? GM adknowldged this was a good question and would look into it. But as noted below, Uber's representative explained that the agreement between Uber and its drivers had a non-discrimination clause similar to the one between the City and Uber.

MT then asked why Uber was driving the bargain regarding the fees paid and their position about not allowing the City to perform background checks. GM explained that the agreement was the result of tough and lengthy negotiations in an effort to get Uber's operations normalized pending a revision of the ordinance to more formally and fully address issues such as driver screening and fees. GM stated that Uber was not driving the bargain, but that they have a business model that calls for certain procedures the City – at least at that state of negotiations – could not get past.

4. Commucation from Uber

CM called Lauren Shen from Uber to discuss the proposed agreement and answer questions from the Committee. Ms. Shen started by noting that Burlington and Uber are aligned regarding the need to protect the public and that the agreement includes background checks and insurance requirements to meet that goal. She further stated that the agreement was temporary and more definte terms and conditions and fees regarding Uber's relationship with the City would come after Ordinance revision process.

Ms. Shen then explained how Uber does background checks for Vermont drivers and how drivers are rated by passengers. She said drivers must maintain a 4.6 rating or higher in order to remain on the platform. If not, drivers are giving warnings and an opportunity to take an online course on how to get better ratings and improve service. If they fail to improve, they are removed from the system. MT asked if any Burlington drivers were taken off the system as a result of low ratings. Ms. Shen stated yes.

AR asked if drivers get copies of their background checks. Ms. Shen stated that some request copies and they are provided. AR asked if the City required the drivers to provide the checks to the City, would that violate Uber's proprietary information disclosure policies. Ms. Shen stated she did not know the answer and would have to get back to the Committee.

CM asked if Uber provides to any other municipalities or local governments driver background checks and other information. Ms. Shen stated she did not know.

SB ased if Uber interviews drivers, and what, if anything, the company knows about the drivers using the platform. Ms. Shen stated that there is a process in place that requires potential drivers to consent to a background check and to provide other information to Uber such as vehicle registration, insurance information, drivers' license information, and social



BURLINGTON CITY COUNCIL ORDINANCE & LICENSE COMMITTEES 6/17/2015

security numbers. Uber uses this information to confirm who the applicant is before providing them access to the platform.

Ms. Shen further explained that once drivers are on the system, passengers know who they are by looking at their app. A name, photo, and vehicle type are provided. Ms. Shen said this process enables Uber to facilitate relationships between drivers and passengers, as opposed to facilitating relationships between Uber and the drivers.

TA asked about Uber's proprietary information disclosure policies and why the company could not tell the city the names of the drivers and numbers of drivers operating in the City. Ms. Shen stated that it was hard to track since different people are operating at any given time. The flexibility of the system is such that some people drive for minimal time per day or week while others drive more. She also said in general, the size of an actual business – in Uber's case the number of drivers operating – is proprietary and something businesses do not disclose.

MT asked how it is possible Uber does not know how many people are on the system. Ms. Shen did not answer the question but responded that simply knowing who is operating or the numbers of operators does not insure public safety.

CM commented that knowing the number of drivers and therefore, how much to charge Uber for operating in the City, is an issue of fairness vis a vis other vehicle for hire operations. He further commented that the negotiations for the agreement may have resulted in the \$5000 fee, but that the City would need more information going forward to determine if the fee is fair and should be continued. This is based on among other things, what the administrative burden is on the City regarding Uber operations in the City.

AR asked what the formula would be for determining fees in the long term? Is it wear and tear of City roads? He asked Ms. Shen whether Uber could track the total distance travelled by Uber drivers in a given time frame since they are unwilling to provide the names and numbers of drivers. Ms. Shen did not answer the questions, but stated that Uber has the capacity to lessen the number of cars on the road and therefore lessen the amount of wear and tear on City streets.

CM asked how the City can be assured by Uber that people are not slipping through the cracks of their background checks, as has been reported in the news around the country. Ms. Shen stated that Uber does a thorough job in their background checks, and that unfortunately, in any place of work there are going to be circumstances where people get through and do bad things.

MT noted that the Committee received a letter from a Vermont labor organization that raised concerns about the employee/independent contractor question as well as the issue of workers compensation and unemployment insurance. MT then asked what Uber's position was on this issue.

Ms. Shen stated that Uber believed it was operating within Vermont law and that drivers are independent contractors. MT asked how Uber was addressing workers' rights and insuring their needs were met. Ms. Shen again stated drivers were not workers of Uber but independent contractors in the company's view. TA followed up and asked how Uber drivers were compensated. Ms. Shen stated they receive 80 percent of the fees with 20 percent going to Uber for processing. Ms. Shen further stated that Uber sends drivers 1099 tax forms at the end of the year.

SB asked what the policy was for cancellation if someone decided, after calling an Uber, that they didn't need the ride any longer. Ms. Shen explained that Uber is an on demand service and that if someone cancels after a driver arrives and waits 5 minutes or more there is a \$5 cancellation fee charged to the passenger's account. SB asked about discrimination regarding drivers denying rides to passengers. Ms. Shen explained that Uber drivers do not know who they are picking up – passengers know the drivers but not vice versa – so there is no basis for drivers to not pick up someone. Moreover, Ms. Shen explained that the agreement between Uber and their drivers has various provisions and conditions including a non-discrimination policy.

AR asked what business advice, if any, does Uber give to drivers since a driver noted in Public Forum that Uber offered such help. Ms. Shen answered that Uber has a video explaining good customer service practices as well as a website with



BURLINGTON CITY COUNCIL ORDINANCE & LICENSE COMMITTEES 6/17/2015

ongoing information that all drivers have access to. She said there was no more specific business advice provided.

MT followed up on the anti-discrimination discussion and asked how Uber could insure service to traditionally underserved areas in the City. Ms. Shen explained that Uber requires drivers to accept passengers when they are nearby. If acceptance rates are low, drivers are at risk of being terminated from the system. This policy insures that wherever people are, they will get picked up by an Uber driver if the driver is nearby.

5. Any other business: Next Meetings & Items to Review

CM set up the next meeting to be held on Tuesday June 23 at 530PM. All members of the Special Joint Committee will be available. Lauren Shen from Uber will provide the members with supplemental answers and information that she did not have tonight prior to the next meeting.

6. Adjourned: 9:05 pm