



Memorandum

TO: RULES & OPEN
GOVERNMENT COMMITTEE

FROM: Mayor Sam Liccardo

SUBJECT: SEE BELOW

DATE: December 1, 2022

Approved:

Date: 12-1-2022

SUBJECT: Protecting the Public from Sexual Assaults Associated With Uber, Lyft, and Taxi's

RECOMMENDATION

Direct the City Attorney and City Manager to:

1. After consultation and outreach with local survivor support organizations and law enforcement agencies, return to Council for consideration of a proposed ordinance that would require all taxi companies and ride-share companies (aka, "transportation network companies," or TNC's) made aware of the occurrence of a sexual assault associated with their operations, to immediately:
 - a. Inform survivors in clear, simple language, of
 - (1) contact information for survivor support organizations in their area;
 - (2) the phone number, email, and any other information that will expedite reporting of the incident to the sexual assault investigations unit (SAIU) of the San Jose Police Department;
 - (3) a description of their rights as survivors, including their right to choose whether or not to respond to questions from police investigators;
 - (4) the fact that there cannot be any criminal investigation, arrest, adjudication, restraining order, or sanction of the assailant without the survivor's independent communication with law enforcement;
 - (5) their eligibility for a free SART medical examination of their injuries; and
 - (6) an explanation that the timing of the SART exam is critical to preserve evidence of assault, and to protect their health.
 - b. Notify law enforcement of the assault allegation, and of contact information of the survivor, alleged assailant, and non-victim witnesses.

2. Determine whether state law wholly or partly preempts the enactment of an ordinance consistent with the requirements of Paragraph 1, *supra*, to generally apply to all transportation carriers, including taxis, transit agencies, and TNC's.
 - a. Specifically, determine whether the City could impose such requirements pursuant to its existing police powers to regulate TNC's and other transportation carriers to protect public safety, as it does routinely in regulating airport operations and access, parking, traffic violations, or vehicular assaults. For example, in 2017, [a Superior Court upheld the San Francisco Tax Collector's right to subpoena information from TNC's to assess compliance with the city's registration requirement.](#)
 - b. Further explore whether any specific legislative enactment or court decision makes explicit whether a TNC's reporting obligations of sexual assaults to law enforcement would constitute, under Article XII of the California Constitution, "matters over which the Legislature grant[] regulatory power to the Commission," particularly in light of the fact that [CPUC's regulatory authority emerged merely through a settlement of an enforcement action with TNC's in 2013](#), rather than through legislative action.
3. If an undue risk of preemption exists, then:
 - a. Evaluate and return to Council to determine whether the City should formally seek the California Public Utilities Commission (CPUC) to issue regulations, (within 3.1(D) of the [Third Amended Phase III](#), or in an additional phase of Rulemaking 12-12-011), to require all ridesharing companies, aka transportation network companies (TNC's), when notified of a sexual assault, to immediately report to local law enforcement.
 - b. Collaborate with District Attorney Jeff Rosen, the City Council, the Santa Clara County Chiefs of Police, and the County Board of Supervisors to determine whether other cities or counties may wish to join San Jose in a CPUC action.

Discussion

Sexual Assault and Ridesharing

As with taxis and shuttles, safety risks loom for users of ride-hailing services. The very nature of the activity leaves both drivers and passengers vulnerable through their physical isolation with an assailant. [In the United States, Uber reported receiving 3,824 reports of sexual assault and harassment relating to users on its U.S. platform in 2019 and 2020](#), with drivers accused in 56% of the cases, and riders in the remainder. Lyft received 1,800 such reports in 2019. More than half of Lyft's complaints involved the "non-consensual touching of a sexual body part," and another 156 involved non-consensual sexual penetration, and four resulted in death.

It is not known—and unlikely—that either company reported a single one of those sexual assaults to the local police. [As the Washington Post reported in 2019, hundreds of allegations of rape on rideshare platforms go unreported by rideshare companies to local police](#) departments. Instead, of reporting to the local police, the companies engage in their own privately-conducted inquiries. According to that *Post* investigation, [Uber employees revealed they are prohibited](#)

from reporting such sexual assault allegations to local law enforcement, or even from encouraging survivors to make such reports—even when the company’s investigation yields an assailant’s confession of felony conduct.

As a result, SJPd will never learn of the sexual assault in our city. The companies’ intervention will result in no rapist being investigated, arrested, or prosecuted in the criminal justice system. Even worse, *the companies’ “investigation” likely implicitly misleads rape survivors to believe otherwise*—that is, she may believe that her disclosure to Uber will somehow result in the arrest of the perpetrator. It won’t.

It’s difficult to know how many sexual assaults occur involving the use of Lyft or Uber in San Jose. Yet the data suggests that nearly all of them go unreported to the police, and unprosecuted. When Santa Clara County Assistant District Attorney Terry Harman looked at 2017-2018 data reported by Uber to the CPUC, she extrapolated (based upon 1,243 of sexual assault and harassment allegations by users of Uber’s platform in California, and Santa Clara County’s population share (5%) in the state of California) that roughly 62 incidents occurred in Santa Clara County. Yet District Attorney Jeff Rosen’s office received and filed only one Uber-related case that year—for which a defendant received a life sentence for severely predatory conduct. Uber believes that number (62) to be inflated, because some of those reports include non-criminal sexual harassment complaints (e.g., for obnoxious comments) that would never be prosecutable. Uber might be correct, but even at a fraction of those 62 allegations annually--combined with any assaults associated with Lyft --a significant number of predators in our community will evade accountability.

More troubling, that conduct will not be prevented in the future, either. Predatory drivers and passengers *may or may not* be evicted from the TNC platform, but will still lurk in the community. Why “may not”? TNC drivers engaging in inappropriate sexual behavior have been allowed to continue driving in San Jose—with tragic consequences. In *People v. Hernandez* (C1802813), Santa Clara County Deputy District Attorney Carolyn Malinsky obtained a guilty jury verdict of an Uber driver who sodomized a drunk male passenger in 2017. A search warrant of the company’s records revealed that the defendant had a prior complaint involving inappropriate sex talk with a rider, yet Uber never removed him from their platform. Prosecution only resulted because the victim independently reported the incident to SJPd.

Uber insists that its practices and protocols have improved dramatically since 2017. They may well have, but the public can only verify that through objective investigation and adjudication in the criminal justice system, and Uber’s protocols won’t allow for that.

Privacy and Autonomy of Survivors: Convenient Untruths

In the discussions that I’ve had with various Lyft and Uber representatives—usually joined by members of our District Attorney’s office--the companies repeatedly insist that their policy of non-disclosure protects the privacy and autonomy of assault survivors.

Survivors absolutely have a right to privacy, and to decline to report any assault. Yet these survivors *are already reporting their victimization*—they’re simply doing so to a stranger employed by a large multinational corporation. Survivors already have incurred whatever trauma arises from sharing their account, and they already have compromised some part of their privacy by doing so.¹ Most worrisome, they may mistakenly believe that their report to Uber or Lyft will somehow activate the criminal justice system to respond.

¹ It’s worth noting that Cal. Penal Code § 293(a) and (b) requires SJPd to document in writing that they have informed reporting sexual assault survivors that their name remain confidential and omitted from the public

It won't. As noted earlier, there will be *no* investigation, arrest, or prosecution. Nothing will result from a report to Lyft or Uber that will protect the survivor nor any future victim.

Even worse, *the companies don't appear to inform survivors of that fact*. Our review of the companies' "talking points" used to guide conversations with reporting survivors reveals no information about what is required to commence a criminal investigation, arrest, or conviction. Nor does either company offer any information about the consequences of the survivors' decision about reporting, or not reporting to the police.

In era of mandated reporting and broad pronouncements of corporate social responsibility, some significant number of sexual assault survivors likely assume that their report to the company will result in a report to law enforcement. It won't, and the fact that survivors aren't told of that fact is implicitly but utterly deceiving. This deception contrasts sharply with the companies' self-serving pronouncements of respect for survivors' agency.

After multiple meetings, the companies appear unwilling to change their reporting policy, or even to participate in any pilot program with the County of Santa Clara or the City of San Jose to report sexual assaults. This leaves us to advocate through regulatory channels or to enact local rules to will better protect our community from sexual predators.

It is revealing that Lyft and Uber do not explain why they cannot even report the identity of the alleged *assailant* to law enforcement. After all, doing so would not compromise the *survivor's* identity in any way. This is particularly inexplicable since the companies *already share the identity of assailants* with each other—*just not with the police*. The companies [launched a shared assailant database in 2021, according to news reports](#). This inconsistency exposes the motivation behind the industry's recalcitrance: not to protect survivors--and certainly not to protect the community--but to protect the corporations. And they're "all in" on their collective silence.

Universities and Public Transit: A Study in Contrasts

Unremarkably, any sexual assault—and any other serious or violent crime--occurring on a Valley Transportation Authority bus or shuttle, or on a college campus, is reported to local law enforcement. Protocols at VTA have immediate notification of the County Sheriff, while Section 67383 California Education Code requires officials at San Jose State, Santa Clara, or Stanford officials to notify the "responsible police agency" of any such crime. A Memorandum of Understanding between the District Attorney's office and these universities requires that the police must "conduct a trauma-informed criminal investigation as appropriate," in coordination with the college authorities.

This begs the question: why are Uber and Lyft treated differently than the VTA or Stanford University? Would we tolerate any other organization, such as the Catholic Church or the Boy Scouts, to decline reporting sexual abuse to the police, asserting "don't worry, we've been talking to advocacy groups, and we've got people specially trained for that?"

Corporate Alliance with Sexual Assault Survivor Advocates

The companies' contention that they merely heed the urging of well-respected sexual assault survivors' groups, such as the Rape, Abuse, Incest National Network (RAINN), appears fraught. RAINN and other advocacy groups understandably insist on doing whatever reduces additional trauma to the survivor, opposing any risk that survivors will feel pressured to report to

record, and the reporting party's response shall also be recorded. Contrary to the perception of some, these and other privacy protections are afforded to survivors within the criminal justice process.

the police. A natural institutional tension arises vis-à-vis law enforcement, prosecutors, and courts, since the criminal justice system depends upon survivor testimony to take predators off the street and prevent future victimization.

Uber and Lyft eagerly proclaim that they side with the survivor advocates as the “experts,” but brush over the convenience of this choice: the companies have little incentive to enable criminal investigations of their contractors or employees. Such investigations might reveal, for example, negligent or reckless behavior by the company that makes victims more vulnerable, such as inadequate screening of drivers that could be rectified by biometric verification, or the failure to exclude an assailant from using the platform. Criminal investigations of assailants could hurt corporate pocketbooks, such as by giving rise to corporate civil or criminal liability—[dozens of lawsuits from survivors have already been filed throughout the country](#)--and diminished consumer trust and demand for their business.

Instead of affirmatively supporting survivors who might be willing to report their victimization and take rapists off the street, Uber and Lyft contribute several millions of dollars to sexual assault survivor organizations, and wash their hands of it. A cursory internet search revealed [three such public announcements](#), exceeding \$ 9 million in corporate donations to survivor advocacy groups.

Naturally, public agencies must carefully balance that need to protect survivor autonomy and the imperative to protect public safety—particularly where it involves a sexual predator. But that is a decision best made by public institutions that are democratically accountable--not by private corporations—because the decision affects everyone’s safety.

The Need for Local Regulation—and Local Law Enforcement

The CPUC has been anything but aggressive in regulating rideshare companies for safety. In 2017, the CPUC declined to require TNCs to conduct biometric criminal background checks for its drivers. The next year, in what one account described as “an extraordinary grant of secrecy” to the industry, the CPUC [agreed not to disclose any of the data regarding annual safety reports the companies were required to make to the agency](#), data that media only obtained by litigating a Public Records Act request. It more recently reconsidered that decision. There has been plenty of need for robust regulation, of course; in 2017, the agency learned that [Uber failed to promptly suspend drivers and/or investigate 151 out of 154 complaints received from members of the public about driver use of alcohol and drugs](#), violating the agency’s “zero tolerance” requirements.

In the most recent tepid exercise of regulatory might, the CPUC considered rulemaking on how TNC’s should investigate complaints of sexual assault -- a process that begs the question about why the state would authorize TNC’s to investigate at all. Any experienced police detective or criminal prosecutor will assert that *no one* should interview victims or witnesses about the incident before law enforcement does so; doing so can severely undermine the investigation and the prosecution of the culprit. Any mistake--failing to ask a traumatized survivor a critical question, or asking a question ambiguously, or writing an incomplete report of the interview--can unfairly mislead a jury into questioning a survivor’s credibility.

After the [CPUC threatened to fine Uber \\$59 million for its failure to produce sexual assault reports that the agency required in 2020](#), Uber’s response was telling. [The company urged the agency to reconsider](#), asserting the “need for properly-conducted investigations for sexual assault incidents. *The Commission is not a law enforcement agency* that is trained to handle and investigate sexual assault reports, and *the Commission must not allow untrained*

individuals to conduct investigations into individual incidents of sexual assault.” [emphasis added]

Uber’s argument, if followed to its logical extent, is instructive. Uber asserts that its “Incident Response Team safety support agents,” for example, “receive 6 weeks of expert-informed training on how to review, document, and recommend appropriate action to help ensure safety on the platform.” Contrast that with the years of formal training and on-the-job experience that any SJPd SAIU detective would incur before she commenced interviewing traumatized witnesses, securing evanescent evidence outside of Uber’s possession, or performing additional investigation necessary to corroborate the victim’s account.

Second, as noted above, TNCs have strong incentives to avoid investigating some cases. Some allegations may expose the company to civil or criminal liability. They may cast the company in a poor light to consumers. In no other context do we defer to companies to exclusively investigate criminal conduct involving their own employees or contractors. That’s the role of law enforcement, headed by a publicly accountable Police Chief. While both companies [proudly proclaim their cooperation with law enforcement upon receipt of a subpoena or other court order](#), police can’t possibly get a subpoena to investigate a crime they know nothing about.

Third, and most importantly, virtually no one will be safer as a result of an exclusively TNC-led investigation of sexual assault. It’s likely that we’re all less so. TNC’s won’t take an assailant off the streets. TNC’s won’t subject him to probationary supervision, nor to PC290 registration. Uber’s proposed sanction of an assailant--“temporary or permanent deactivation from the app,” in the company’s words-- merely reduces Uber’s future liability.

Protecting the community after a sexual assault requires the involvement of law enforcement. To the extent that Uber’s and Lyft’s go-it-alone approach makes the intervention of law enforcement less likely, *then the community will be less safe*. We must demand better, and require more of TNC’s.