UCLA LABOR CENTER

Date: August 23, 2021

To: Los Angeles City Council Transportation Committee
The Honorable Mayor Eric Garcetti
Los Angeles Department of Transportation

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Impact on Income and Earnings of Los Angeles Taxi Drivers by Proposed Open Market Permitting System

Introduction

The taxicab industry in Los Angeles stands at a crossroads. On one side, the industry faces crushing competition from Transportation Network Companies (TNCs or rideshare companies) like Uber and Lyft, that have, over the years, flooded the transportation industry with cheap, on-demand rides available with a few swipes of an app. On the other side, are the Los Angeles City Council and California's state government, which face massive political and financial pressure to "modernize" the transportation industry and embrace the full shift to rideshare apps. The most recent demonstration of this pressure is the proposed ordinance put forward by the Los Angeles Department of Transportation to replace the current franchise regulatory system with an open market permitting system, essentially deregulating the Los Angeles taxicab industry.

The City's move to deregulate the taxicab industry would force taxicab drivers into more intense competition with drivers for rideshare companies on terms that are nominally the same, but functionally heavily in favor of the TNCs. Because TNCs are subsidizing customer rides[1]

[1] *See*, *e.g.*, Yves Smith Can Uber Ever Deliver? Part One – Understanding Uber's Bleak Operating Economics (November 30, 2016) (Uber passengers were paying only 41% of the actual cost of their trips; Uber was using these massive subsidies to undercut the fares and provide more capacity than the competitors who had to cover 100% of their costs out of passenger fares)

with venture capital funding, operate with relatively little regulation[2] at the state level and no regulation at the local level, and avoid paying into worker protections by widespread misclassification of drivers as independent contractors, TNCs are able to set the market rate for personal transportation much lower from which taxicab companies can afford to operate.[3] In accordance with AB 1069, taxicab companies may set fares or charge a flat rate; however, local jurisdictions (city or county) are allowed to only set maximum fare rates.[4] Prior to this state legislation, taxicab companies have been regulated by a number of local laws[5] that set minimum fare rates for all taxicab drivers, capped the number of taxis that could be permitted at any time, and otherwise regulated how, when, and where taxicab drivers were allowed to work.[6] These regulations, while not perfect and in need of improvement, provided some stability to the wages that taxicab drivers could earn, and provided mechanisms by which the City could intervene in case of misconduct either by customers, companies, or drivers. In fact, the taxicab franchise agreements typically run for five years, and are normally extended for another five years, thereby providing stability and an opportunity for a return on the investment.

Rather than seeking ways to bring TNCs under better control of the City or to raise the level of worker protections afforded to taxicab drivers, the City is instead abolishing the ability of City Council and Mayor's office to have any oversight of the industry by removing the requirement that the rates set by Taxi Commission and charged by taxis be based on time and distance, and indexed based on gas prices and other costs, which can then be used to determine taxi drivers' income and wages. This policy proposal would add an unlimited number of vehicles determined by market forces and minor cosmetic changes to regulations which do not reduce regulatory burden or cost. In essence, the City would be creating an open market permitting system that heavily favors TNCs, to the detriment of taxicab drivers. By promoting this approach, the City is giving the green light for a "race to the bottom" between cab companies and TNCs, which will result in decreased wages and income and deteriorating working conditions for taxicab drivers in particular.

At the request of the Transportation Committee, we are submitting this report to discuss and analyze this "race to the bottom." Part I discusses the impact on the taxicab industry in Los Angeles of the current City Council's open market permitting system proposal. Part II then describes the current state of the taxicab industry in Los Angeles. Part III then provides an in-depth analysis of the "race to the bottom" effect that an open market permitting system would

[2] The CPUC has an extremely limited number of safety enforcement investigators, which is clearly not enough to enforce their new rules and regulations. Without proper local regulatory oversight, rules are rendered meaningless. *See* Council file 13-1353, Motion by Councilmember Paul Koretz.
[3] *See* IRS issues standard mileage rates for 2021 [https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for2021 (2021](https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for2021) - $0.56, down from $057.5 in 2020); AAA 2020-Your-Driving-Costs-Brochure-Interactive-FINAL-12-9-20 (AAA cost of to drive a new car in 2021: Average - $0.637 Small sedan - $0.50)
[4] Ca. Gov. Code § 53075.5 (b)(2)(A)
[5] *See* Ordinance 181745, Council File 11-0732. Taxi rates are established by the Taxi Commission under Municipal Code Section 71.25 with Council and Mayoral approval.
[6] The Taxi Cost Index (TCI) is comprised of various Consumer Price Index factors related to the cost of providing taxicab service such as fuel, labor (wages), vehicle insurance, vehicle maintenance, etc. *See also* LOS ANGELES TAXICAB REVIEW AND PERFORMANCE REPORT – LADOT 2014-2015 Annual Review (January 2017) (56% based on wages, the rest on operating expenses as reflected by the formula based on Taxi Cab Index)

initiate and the negative effects that taxicab drivers would suffer from this situation. This analysis also draws on experiences in other low-wage industries, including the garment industry and the car wash industry, to demonstrate that these negative effects of deregulation are far more than baseless fears, but rather near inevitabilities. Part IV discusses possible preemption conflicts with AB 1069. The discussion will focus on the provision of this state law that allow taxi companies to set rates passengers are charged, which raises unaddressed legal questions or possible conflict with AB5. Moreover, LADOT's FHV study seeks to integrate TNC vehicles into the new framework with taxicabs, which may conflict with CPUC regulation.[7] Finally, the report concludes with possible recommendations for the City Council as it moves forward with considering a policy to replace the current Taxicab Franchise system.

I. Impact of City Proposal to Eliminate the Taxicab Franchise System

The ordinance under consideration by the Transportation Committee would amend Article 1, Chapter VII of the Los Angeles Municipal Code to replace the existing franchise regulatory framework with an open market permitting system. This is the result of a number of years of work forwarded primarily by the LADOT. In 2017, City Council approved moving forward with hiring a consultant to examine the existing Taxicab Franchise system and replace it with "the best framework for regulating taxis, TNCs, micro transit, and all forms of for-hire transportation services according to a single for-hire vehicle framework."[8] In a report released on August 23, 2019, LADOT put forward a 172-page report proposing to "transition from the Franchise System to an Open Market with Entry Requirements system as a primary step to level the playing field between the incumbent taxicab industry and TNCs."[9] On June 30, 2020, the City Council extended the existing franchises until February 28, 2021 "to allow staff to complete the steps necessary to implement the new taxicab permit system and develop a new permit fee program," in part because of the challenges to the City and taxicab industry caused by the ongoing coronavirus pandemic.[10] On February 11, 2021, the City Attorney provided a draft ordinance to replace the City's franchise framework with an open market permitting system, and a few days later, the City Council's Transportation Committee discussed the ordinance in detail, and ultimately recommended that "Council extend the terms of the existing franchise agreements for an additional six months . . . . [and] request the [Taxicab Commission] prepare . . . new rules and regulations" within 90 days so that the Transportation Committee can further discuss the "impact of the rules on operations and on taxicab drivers."[11]

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[7] *See* CPUC General Order 158-A (3.02) TAXI TRANSPORTATION SERVICE NOT AUTHORIZED (A carrier is not authorized to engage in taxicab transportation service licensed and regulated by a city or county. Carriers are prohibited from using vehicles which have top lights and/or taxi meters).
[8] Transportation Committee Report (October 11, 2017). Council File 10-0996-S1.
[9] LOS ANGELES DEPARTMENT OF TRANSPORTATION, TAXI AND FOR-HIRE VEHICLE STUDY 24 (2019) https://ladot.lacity.org/sites/default/files/documents/ladot-taxi-and-fhv-final-report-draft-fordistribution_0.pdf [hereinafter, LADOT REPORT].
[10] TRANSPORTATION COMMITTEE MOTION, Paul Koretz & Paul Krekorian, Dec. 9, 2020.
[11] TRANSPORTATION COMMITTEE REPORT, File No. 10-0996-S1, Feb. 18, 2021 (https://clkrep.lacity.org/onlinedocs/2010/10-0996-s1_rpt_tran_3-29-21.pdf).

In this heavily market-oriented report, the department lays out various goals that guide the new policy, including: improving transportation equity and accessibility; decreasing or mitigating congestion and achieving emissions reductions, expanding economic opportunities and fostering innovation, enhancing openness and flexibility to new technology, and leveling the playing field among the various for-hire vehicle sectors.[12] Indicators of success include things like providing diverse payment options for riders, better coverage of underserved areas, accessible vehicles, compliance with data sharing requirements, and participation in a universal booking system.[13] In the full LADOT report, there are only a few explicit mentions of driver income or wages. The most direct mention is listed as a risk of not changing the system at all: "With the rise of the gig economy, protections may be needed to ensure that drivers can earn a living wage and have access to other benefits."[14]

This lack of worker prioritization is also apparent in the ordinance introduced at the Transportation Committee. The stated goals of this change are to (1) expand economic opportunities for taxi companies and drivers, (2) allow flexibility for the use of new technology to improve rider experiences, (3) create a framework that could easily be used for multiple for-hire models, (4) improve transportation equity and accessibility for riders, and (5) achieve departmental operational improvements and removal of market barriers.[15] The ordinance also notes that simplifying regulations and lowering barriers for new entrants is another aim of the changes,[16] even though the type of deregulatory move in the past has resulted in "market failures" according to LADOT's own report.[17] Finally, the early findings section of the ordinance incorrectly notes that LADOT's research points to successful open marketing systems in other jurisdictions.[18] In fact, none of the examples LADOT cites in their reports have open market systems, unless cities or states control TNC rates/wages and/or require TNC drivers to be licensed as taxi drivers. There are no comparable open market system anywhere. While some elements may be in use by some, none are as broad as the current LADOT proposal.

There are a number of changes that the ordinance makes to the existing LAMC Chapter. The most significant change is deleting Sections 71.12 and 71.13 from the code completely.[19] These sections currently lay out the requirements for public convenience and necessity findings that the City Council must make before granting franchise license to any taxicab company that

[12] *See* LADOT REPORT, *supra* note 1 at 8–10.
[13] *Id.*
[14] *Id.* at 47.
[15] LOS ANGELES CITY ATTORNEY, REPORT AND ORDINANCE AMENDING ART. 1, CH. VII OF THE LOS ANGELES MUNICIPAL CODE TO REPLACE THE CITY'S EXISTING TAXICAB FRANCHISE REGULATORY FRAMEWORK WITH AN OPEN MARKET PERMITTING SYSTEM (Feb. 11, 2021) [hereinafter DRAFT ORDINANCE]
[16] *Id.*
[17] These market failures include an oversupply of vehicles and poor customer service. LADOT REPORT, *supra* note 1 at 49. *See also* UCLA IRLE, MORE THAN A GIG, *supra* note 58 at 10.
[18] DRAFT ORDINANCE, *supra* note 7 at 1. The improvements to competition ultimately are likely to result from the increase in the number of cabs on the streets, and the potential for smaller companies to be pushed out of the market by larger, better funded peer companies.
[19] *Id.* at §§ 8–9.

has applied. Functionally this required establishing that operating a vehicle in the city was required by "public convenience and necessity" and having to get approval from City Council before beginning operation. There are also corresponding changes to language throughout the current ordinance that remove mentions of the franchise system. Instead, a permit from the City is required to operate a vehicle as a taxicab, rather than operation under one of the approved franchise companies. There are no criteria or rules for new entrants, other than a minimum number of vehicles (100). There are also various changes to information required to be listed on signage and on websites or web applications about rates, disclosure of information on taximeters and on cars.[20]

While the details of the ordinance merit some close analysis, the significance of the ordinance and its impacts on drivers can be understood at a high level. This approach overall is worthy of criticism because it doubles down on the existing "hands off" approach that the City has adopted when dealing with driver issues. Rather than stepping in to truly level the playing field by ensuring a higher level of treatment and payment for taxicab drivers, the City instead proposes to drop the taxicab industry to the level of the TNC market, and throw taxicab drivers—who provide a citywide essential service,[21] no less—into the open market with no support, no recourse for harassment or bad customer behavior, no assurance of earning a proper income for their work in difficult conditions, and no arbitration agreements or class action waivers to protect from legal liabilities.

II. The Current State of the Los Angeles Taxicab Industry

Taxicab drivers on average work about seventy-two hours per week, sometimes putting in eighteen to twenty hour days.[22] They are also subject to a number of occupational health and safety hazards including back and leg problems, exceptionally high stress levels, and racially discriminatory harassment and physical threats from some customers.[23] In addition, taxicab drivers are independent contractors, and therefore exempt from state and federal minimum wage, overtime, and worker compensation laws. Some studies have reported the median wage for taxicab drivers as low as $8.39 an hour,[24] and others estimate that they earn between $12 and $15 per hour.[25] Cab drivers also do not receive health insurance from the companies they work for, and since many are immigrants with families, their families similarly suffer this loss of health coverage.[26] Analysis of the taxi industry in Los Angeles reveals one thing for certain: taxicab drivers are easily considered to be among the working poor, even with the protections

[20] *See Id.* §§ 12, 13 (amending Sections 71.20 and 71.22 of the LAMC, respectively).
[21] *See* Transportation Committee Report (October 11, 2017). Council File 10-0996-S1 ("Taxis are an essential service and even a life line for some residents of Los Angeles. The City, through its regulation of taxicabs, has been able to set service and equity standards while also helping the environment by requiring vehicles that meet certain dean air standards.").
[22] Jacqueline Leavitt and Gary Blasi, *The Los Angeles Taxi Workers Alliance in* Working for Justice: The L.A. Model of Organizing and Advocacy 109, 111 (eds., Ruth Milkman, Joshua Bloom & Victor Narro 2010).
[23] Gary Blasi & Jacqueline Leavitt, *Driving Poor: Taxi Drivers and the Regulation of the Taxi Industry in Los Angeles* 5 (2006).
[24] *Id*.
[25] 2009 Reports for Council by LADOT and outside research firm.
[26] Blasi & Leavitt, *Driving Poor*, 26.

provided by their membership in "cooperative" style taxi companies and the city's current regulatory scheme.

Despite the ambiguity and arbitrariness of the current regulatory scheme, cooperative taxi franchises do at least help to ensure better working conditions for taxicab drivers than for their counterparts in the rideshare industry.[27] In addition, the current regulatory scheme at least creates a clear mechanism for an opportunity for self-governance; City oversight over taxicab companies treatment of member and lease drivers; and its own bylaws and rate and fleet size regulations grounded in livable wages and objective criteria. An open market permitting system leaves out all of these factors.

Most of the last major studies of the taxicab industry happened before the explosion of gig rideshare companies. When TNCs started operating illegally in the City around 2012, taxi drivers saw a decrease in earnings of 65 to 80 percent "[a]almost overnight."[28] A 2019 LADOT report showed that since TNCs began operating in Los Angeles in 2013, taxi ridership declined by 51% between March 2013 and March 2017, and by an astounding 77% from March 2013 to November 2018.[29] The number of taxi drivers also decreased by 22% between 2013 and 2017, suggesting that drivers are either being lured to gig rideshare companies (with even fewer worker protections than they have at their taxi coops), or being forced out of the market altogether.[30] For the 2012 to 2013 performance period, the taxicab industry maintained a taxicab driver count of approximately 4,100. In 2014, the driver count was reduced to approximately 3,900. The number continued to drop in following years with a level of 3,600 drivers permitted in 2015, and as of November 2016, the count was at approximately 3,200 permitted taxicab drivers.[31]

During the coronavirus pandemic, both TNC and taxi ridership numbers have plummeted, further accelerating the declines in earnings, riders, and drivers. By early 2019 the number of active taxi drivers fell to 2,124 in the City of LA. By April of 2020 only 780 were still active and by April 2021 it rose to 1,580.[32] In terms of number of trips, taxicabs by April 2020 were making only 2,622 monthly trips from Los Angeles International Airport (LAX), a result of being relocated to the "LAXit lot" in October 2019 to accommodate congestion and major construction at the airport, and having the taxi stands at the Central Terminal Area eliminated. In October of 2015, before TNC were allowed to legally operate at the airport, the number of taxi trips at LAX peaked at 249,327. As Uber and Lyft expanded their operations at the airport, the number of taxi trips plummeted to 128,376 in October of 2019 prior to relocation to LAXit lot.

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[27] UCLA LAB. CTR. & SEIU–UNITED HEALTHCARE WORKERS WEST, WORKER OWNERSHIP, COVID-19, AND
THE FUTURE OF THE GIG ECONOMY 26 (2020). https://www.labor.ucla.edu/wp-content/uploads/2020/10/UCLA_coop_report_Final-1.pdf
[28] Veena Dubal, A Brief History of the Gig, LOGIC (May 4, 2020)
[29] *See* LADOT REPORT, *supra* note 1.
[30] Id. at 27.
[31] LOS ANGELES TAXICAB REVIEW AND PERFORMANCE REPORT – LADOT 2014-2015 Annual Review (January 2017)
[32] Email from Jarvis Murray to Victor Narro (April 6, 2021) (on file with authors).

Because of the pandemic, changes at the airport, and primarily intense competition from TNCs, the Los Angeles Taxicab industry is on life support where one company has closed down and another is operating with only a handful of taxicabs. The rest of the industry is operating at about one-half of the authorized taxicabs. Taxicab drivers are in desperate need of intervention by the City.

III. The Race to the Bottom

Low wage workers are particularly susceptible to reductions in pay or employment protections as companies try to stay competitive and profitable. The open market permitting system proposed by LADOT will have devastating effects on taxi drivers' income and working conditions, and has the potential to drive hundreds of drivers out of the industry, to TNC companies with even less protections, or ultimately into poverty.

While taxi drivers have been in a precarious position since the 1970s, their vulnerability has only increased as gig rideshare companies have gained more political and financial power over the years. By choosing to remove regulations in the taxi industry, rather than proposing a system that would put taxi driver protections and fair treatment at the center of the taxicab regulatory system, the City is proposing to put the drivers in an even more vulnerable position, by forcing them to compete on unequal ground with companies like Uber and Lyft. This would give the green light to gig companies and taxi companies to start a devastating "race to the bottom" that will result in even worse working conditions, lower income, and greater precarity of work for taxicab drivers than they already face. Without the protection of City Council involvement and an established regulatory framework to ensure fair working conditions, taxicab drivers will be caught in the middle between cab companies and gig rideshare companies trying to out-compete each other to provide the cheapest, quickest rides to consumers.

In the taxicab industry, this race to the bottom will result from taxicab companies and their drivers competing directly with companies like Uber and Lyft on terms that are nominally the same but functionally quite different. This two-tiered regulatory system consistently disadvantages taxicab drivers. The TNCs benefit from the business model of dense local networks connecting riders and drivers directly, upfront fixed pricing, an easy payment system, and quick response times. They support this model with considerable venture capital, where they aggressively use incentives to attract drivers and passengers. But once they achieve a critical network density, the marginal cost of expanding service declines sharply. They then rely on their drivers to maintain the low cost of further expansion. The drivers are obligated to supply their own vehicles and finance their operation. This reliance on their drivers enable the TNCs to increase its profit margins by spreading their fixed costs over more revenue-generating trips. This dynamic as well as the profit-disrupting effects of price cuts provide strong incentives to compete on the basis of market share rather than on price.[33]

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[33] *See* James Parrot and Michael Reich. *A Minimum Compensation Standard for Seattle TNC Drivers.* The New School, Center for New York City Affairs (July 2020). https://irle.berkeley.edu/files/2020/07/Parrott-Reich-Seattle-Report_July-2020.pdf

The TNC open market puts no limit on the number of vehicles on the road—and indeed this is something that keeps wait times low for customers. One advantage of the current franchising system is the cap on the number of vehicles in the market to stabilize the income for drivers. TNCs currently have no limit to the number of vehicles they can have on the road, which is a major contributing factor to the deterioration of earnings for taxicab drivers. By removing the cap, the City's new ordinance seeks to increase competition as a way to drive service improvements for customers, primarily through removing market barriers and allowing a larger number of vehicles to operate in the market.[34] However, this open market will only lead to an oversupply of vehicles and roughly the same amount of revenue spread over an ever-growing number of drivers, driving the compensation for each driver further and further down.[35] In fact, LADOT estimates that the total number of drivers to participate in this open market will be approximately 8,785 with the total number of vehicles at approximately 8,000, and they expect these numbers to grow.[36]

Ostensibly, this puts taxicabs on the same field as rideshare vehicles. TNCs though are able to cope with this oversaturation of vehicles in ways that taxicab companies are not. They do this by subsidizing the cost of rides for consumers, entice drivers with flexible schedules and low overhead costs,[37] and offer aggressive incentives like discounts, free rides, and promotions explicitly designed to outprice the competition to riders and drivers alike, all of which they can do by leveraging venture capital investments and funding.[38] In this scenario, flexibility becomes illusory because it is often only profitable to work during high demand periods, when the rates are higher. Often during low demand periods, the rates are below cost of operating a vehicle ($0.32/mi vs IRS mileage deduction in 2021 is $0.56/mi)

Critically, gig economy companies like Uber and Lyft have "capitalized on misclassifying their workers as independent contractors in order to evade many of the employment protections workers rely on."[39] They also have an incredibly high churn rate of drivers, meaning that wages stay down and benefits are minimal because of the large number of people who are willing to become drivers to make fast but unpredictable and unstable money.[40] Even though taxi drivers are also independent contractors, taxicab companies lack the financial

[34] *See* DRAFT ORDINANCE, *supra* note 7.

[35] UCLA IRLE, MORE THAN A GIG, *supra* note 58 at 9.

[36] Los Angeles City Council Transportation Committee Meeting, February 20, 2020 https://www.lacity.org/government/follow-meetings/council-committee-meetings

[37] Despite low regulatory cost, because of low wages and misleading promises of earnings, drivers cannot cover overhead cost. *See* Johana Bhuiyan. *Uber will pay $20 million to settle FTC charges that it misled drivers on their pay.* Vox (January 19, 2017) https://www.vox.com/2017/1/19/14330042/uber-20-million-settlement-ftc-driver-pay-false-advertising

[38] *See, e.g.*, Veena Dubal, *A Brief History of the Gig*, LOGIC (May 4, 2020), https://logicmag.io/security/a-briefhistory-of-the-gig/ [hereinafter, Dubal, *Brief History*] ("The startups quickly created a loyal rider base by offering investor-subsidized prices and deceptively marketing themselves as a safer and more community oriented service than regulated taxis.").

[39] UCLA LAB. CTR. & SEIU, *supra* note 18 at 7.

[40] *Id*. at 21.

backing to operate at a loss for long periods of time as gig companies do, and have to keep fares at least relatively higher in order to stay afloat.[41]

The only place to cut, then, even with fewer local regulations as the City now proposes, will be taxi drivers' income. In fact, the new LADOT Taxicab Rules Booklet has not reduced regulatory burden or cost, and the plan calls for more than tripling insurance coverage, from $100K/$300K to $1 million. During the pandemic the requirement has been lowered to $50,000. And with the passage of Proposition 22 in 2020, which allowed gig companies to continue misclassifying their workers as independent contractors so long as they made minimal assurances of some protections, other industries and companies are starting to replace employee and staff delivery drivers and workers with independent contractors working for gig companies, as a way to save money and avoid adhering to employee protections.[42] Taxicab drivers are right to be worried that they might be next as gig companies continue to outcompete the only way they know how: by cutting protections and income for their drivers.

The current City Council proposal to deregulate, however, is not the answer, and will only compound the negative financial and health effects that taxicab drivers currently experience. Experts who have studied the gig economy in its various iterations have used the term "race to the bottom" to describe the downward pressure on wages, working conditions, and other quality of life metrics for workers that often follows moves to deregulate industries in favor of more individualized contracting relationships between workers and the companies they work for. The "race to the bottom" scenario facing taxicab drivers and TNC drivers is highly analogous to the situation in low-wage industries in Los Angeles.

In 2010, the UCLA Labor Center conducted a landmark survey of workers in 26 low-wage industries throughout Los Angeles to document the prevalence of the wage theft crisis.[43] In a given week, an estimated 654,914 workers in Los Angeles suffer at least one pay-based violation. Front-line workers in low-wage industries lose more than $26.2 million *per week* as a result of employment and labor violations, or $1.4 billion per year.[44] Wage theft in Los Angeles alone costs the local and state governments $103,300,000 - $153,000,000 annually in lost tax revenue.[45] Los Angeles, in essence, became "the wage theft capital" of the country. In response

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[41] *See* Amir Efrati, *How Uber Will Combat Rising Driver Churn.* amir@theinformation.com (April 20, 2017) (Uber's single biggest operating expense is money it spends marketing to attract drivers globally, and giving existing drivers bonuses to keep going—a metric that's often driven by competition. In 2014, that figure, which includes marketing to riders, was more than $320 million globally and grew to about $1 billion in 2015, according to prior financials. Based on that growth trajectory, the figure would have reached at least $2 billion last year).

[42] Veena Dubal & Juliet B. Schor, *Gig Workers are Employees. Start Treating Them That Way.*, N.Y. TIMES (Jan 18, 2021) https://www.nytimes.com/2021/01/18/opinion/proposition-22-california-biden.html.

[43] Ruth Milkman, Ana Luz Gonzalez, and Victor Narro, *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers*. Institute for Research on Labor and Employment University of California, Los Angeles (2010) [hereinafter L.A. Wage Theft Report]

[44] *Id.* at 53. *See also,* Celine McNicholas, Zane Mokhiber, and Adam Chaikof. *Two Billion Dollars in Stolen Wages Were Recovered for Workers in 2015 and 2016—and That's Just a Drop in the Bucket*. Economic Policy Institute. (December 13, 2017)

[45] *Id.* at 54. To calculate the tax impact, we relied on the methodology proposed in the 2014 study "Wage Nonpayment in Colorado: Workers Lose $750 million per year" by the Colorado Fiscal Institute. See http://www.coloradofiscal.org/wp-content/uploads/2014/03/Wage-Nonpayment-in-Colorado-Final-1.pdf

to this crisis, L.A. City Council adopted a policy in 2015 to create a living wage in Los Angeles of $15/hour by July 2021, and create the Office of Wage Standards (OWS)[46] to enforce this new law. The City Council took this crisis head on, and made the important decision to invest city resources to address it. Today, low-wage workers in Los Angeles can file a claim with OWS against their employer for any wage theft violation.[47]

For purposes of this report, two low-wage industries that offer striking similarities to the situation facing taxicab drivers are the car wash industry[48] and the garment industry.[49] The car wash industry offers an example of what happens when there is no regulation of an industry whatsoever. Without any oversight of the industry, there was rampant wage theft and violation of worker laws in the 1990s, in an industry with fast paced and sometimes dangerous work.[50] Workers in this industry also faced routine health and safety violations, meal and rest period violations, and nonpayment or underpayment of wages.[51] In fact, prior to a grassroots organizing effort that resulted in state and local laws governing the car wash industry, many car wash workers—a majority of whom were immigrants—were not paid a wage at all, forced to survive on tips alone.[52] We established a pattern of significant reported violations, including workers who were earning as little as three or four dollars per hour, or not being paid for all of the time they worked. Other workers reported not receiving any wages at all: "propineros" or "tip workers" received no compensation other than tips. We estimated that at least 25% of the industry workers were propineros.[53] Additionally, the Department of Labor Standards Enforcement (DLSE), the state labor enforcement agency, had no process for documenting violations at car washes even though the carwash industry was characterized by a near total lack of meaningful regulation and rampant wage theft.[54]

To address this crisis in the carwash industry, AB 1688 ("The Car Wash Worker Law") was passed by the legislature and signed into law by Governor Davis on October 10, 2003.[55] The key provisions of the AB 1688 required car washes to register with the state, pay a fee, establish a surety bond, and keep certain records; created the Car Wash Worker Restitution Fund and Car Wash Worker Fund; and imposed a successorship provision that holds successor

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[46] *See* RAISE THE WAGE LA https://wagesla.lacity.org/

[47] *Id.*

[48] *See generally* Victor Narro, *Finding the Synergy Between Law and Organizing: Experiences from the Streets of Los Angeles*, 35 FORDHAM URB. L.J. 339, 360 (2008) (describing how a lack of regulation led to rampant wage and hour and working condition violations, brought on in part by highly competitive market and a large number of car washes all competing for limited business).

[49] *See generally*, Scott Cummings, *Hemmed In: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement*, 30 BERKELEY J. EMP. & LAB. L. 101, 109 (showing that in the garment industry, retailers determine the price they are willing to pay manufacturers, who in turn control the prices paid to contract shops, who then are under immense pressure to reduce labor costs, often through "illegal labor abuses committed against the workforce").

[50] Narro, *supra* note 34.

[51] *Id.* at 359–60.

[52] *Id*.

[53] *Id.*

[54] *Id.* at 360. *See also* Victor H. Narro, *The Role of Labor Research and Education in the Labor Movement of the Twenty-First Century: The UCLA Labor Center and the Clean Carwash Campaign* in The Cambridge Handbook of U.S. Labor Law for the Twenty-First Century 402, 404 (eds. Richard Bales & Charlotte Garden 2020)

[55] *Id.* at 364.

employers liable for wages and penalties owed by the former employer if the successor is essentially running the same business.[56] Working with DSLE at the state level and OWS at the City level, we have been able to eliminate egregious wage theft in this industry. Today, the practice of using tip workers has all but dissipated from the industry.

The garment industry is another well-documented and high-profile industry where wage theft and deplorable working conditions are the norm. Of the 26 low-wage industries that we covered in this report, the garment industry was the one where we documented the highest level of wage theft violations. Garment workers in Los Angeles regularly work more than 12 hours per day and 60-70 hours per week while receiving only $3-4 per hour -- far below California's $12 minimum wage -- with no overtime pay.[57] Many of the smaller factories, when they are found guilty of wage theft, close their doors, declare bankruptcy, or otherwise avoid paying their workers. A further example of the prevalence of wage theft in this industry is the 2016 U.S. Department of Labor study where DOL announced it conducted 77 investigations at randomly selected garment contractors in Southern California and found violations in 85 percent of them, resulting in $1.3 million in back wages for 865 workers.[58]

The garment industry bears some similarities to the taxi industry, even though they have vastly different products. In the garment industry, retailers can determine the price of goods that they are willing to pay the manufacturer, who in turn controls the price they pay to contract shops to make the garments; these contractors are frequently staffed with immigrant laborers. Then, because contractors compete for bids and face stiff competition, they "are under intense pressure to cut costs, which they must achieve by reducing wages."[59] This often results in illegal labor practices and significantly reduced wages. Moreover, the dominance of a few large retailers in the market "confer[s] greater power to set prices, which allow[s] the retailers to drive a harder bargain with manufacturers," which again leads to even more downward pressure to cut costs through reducing wages, again raising the likelihood of illegal labor practices and exploitation.[60] The City of Los Angeles has enacted policies to address the labor exploitation and sweatshop conditions in the garment industry. In 2005, the L.A. City Council enacted an ordinance establishing a sweat-free procurement policy for equipment, materials, goods, and supplies, as well as compliance procedures for the City's Contractor Code of Conduct.[61] The ordinance requires that a "procurement living wage" be paid to workers on garment contracts.[62] Last year, the Mayor's Office launched Mayor Eric Garcetti announced a new public-private partnership named L.A Protects to engage manufacturers in the creation of protective gear and other COVID-19 PPE equipment.[63] On a state level, garment worker advocates are working

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[56] CAL. LAB. CODE §§ 2050-2053 (West 2004).
[57] L.A. Wage Theft Report, *supra* note 29 at 31-36.
[58] *Department of Labor's Wage and Hour Division Continues Fight Against Worker Abuse in LA Garment Industry*. Department of Labor. https://www.dol.gov/newsroom/releases/20160224-4
[59] Cummings, *supra* note 35 at 109.
[60] *Id*. at 115.
[61] *See* L.A. Cal., Admin. Code div. 10, art. 17, §§ 10.43 - 10.43.7 (2005)
[62] *Id.* at § 10.43.3(d).
[63] *See* Mayor Garcetti forms 'L.A. Protects' to spur new production of urgently-needed supplies in fight against COVID-19 (March 27, 2020) https://www.lamayor.org/mayor-garcetti-forms-la-protects-spur-new-production-urgently-needed-supplies-fight-against-covid

with State Senator Maria Elena Durazo to pass SB 62 (Garment Worker Protection Act) that would create stronger joint liability and eliminate the piece-rate system in the garment industry.[64]

For the taxi industry, market giants Uber and Lyft can determine a low market price for rides, thanks in part to their investor capital. The taxicab companies then are forced to compete but are very limited in what they are able to change due to the city's regulations (which in theory protect taxi drivers) and the lack of additional capital to subsidize rides in the same way. However, even removing the regulations—as the City now proposes—will only force taxicab companies to either increase fares on customers or lower income. In fact, the current version of the LADOT Taxi Cab Rules Booklet provides minimal, if any, decreases in regulatory costs. [65] Taxicab companies are very likely to choose to lower income because an increase in fares for customers would make the lower cost of an Uber or Lyft ride even more attractive, and they do not have the same means to artificially keep the cost of rides low. Taxicab companies will have to cut costs the only way possible: by focusing on the drivers' income. This means that throwing taxicab drivers into the same market as TNC drivers will put them in the position where they are susceptible not only to diminishing income, but also to competing companies that are willing and able to do whatever is necessary to keep costs down and wait times short.[66] There is no accountability for these TNC companies to invest in their drivers or ensure stability in their income or working conditions.

These fears are not merely speculation—gig rideshare companies have already accelerated their attacks on worker protections, spurred on by the passage of California's Proposition 22 in 2020. Prop 22 essentially carved out an exemption for gig companies to continue to classify their drivers as independent contractors in exchange for assurances of "limited versions of some benefits such as a health subsidy and a minimum wage for engaged driving time," which essentially created a new employment category for workers.[67] Critics of the ballot measure—which eventually passed by a wide margin—were concerned that allowing app-based companies to continue to misclassify their workers as independent contractors could spell doom for employment relationships, and put workers at risk in a number of different industries. Even before the ballot measure passed, executives at Uber, Lyft, DoorDash, and Instacart were touting their companies' efforts to "engage with legislators" in states around the country to introduce "new benefits structures that are portable, proportional and flexible."[68] Investors in Uber have also written that Prop 22 should be a model that "extend[s] to other industries, such as education, health care, and computer programming," an approach that many fear would "increase the number of Americans who toil without a safety net or predictable

[64] *See* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB62

[65] *See* LADOT Taxi Cab Rules Booklet https://ladot.lacity.org/docs/taxi-cab-rules-booklet

[66] *See* James Parrot and Michael Reich. *A Minimum Compensation Standard for Seattle TNC Drivers, supra* note 29 (Current Uber rates are at $0.32/mile, IRS deduction for vehicle mileage rate is $0.56/mile. The report argues that the City of Seattle include $1.17 per mile for drivers' expenses of acquiring, maintaining, and operating vehicles used to transport passengers)

[67] UCLA LAB. CTR. & SEIU, *supra* note 16 at 6 (Oct. 2020). Other commentary has called this new type of work "independent contractor-plus," including Uber's CEO. Levi Sumagaysay, *Uber Brands Gig Companies' Efforts to Reshape Labor Laws As "IC+*," MARKETWATCH (Nov. 11, 2020 6:51 PM) https://www.marketwatch.com/story/uber-brands-gig-companies-efforts-to-reshape-labor-laws-as-ic11605138662.

[68] *Id.*

earnings."[69] It is not unrealistic to see how low-wage workers—including taxi drivers—could easily be put in a situation where they are forced to work long hours for little pay and unable to afford things like health care, while also unable to rely on state benefit systems like unemployment insurance or government-provided assistance because the companies they work for have avoided paying into those systems for years.[70]

Also troubling is the fact that Uber and Lyft have begun to reduce mileage rates from LAX, removed drivers' ability to set their own prices, and introduced additional incentive packages to entice new drivers to join—rather than supporting their current drivers.[71] Some of these elements, including the "multiplier" for airport pickups and the ability for drivers to set their own prices, were introduced in January 2020 (during the campaign season for Prop 22), as an attempt to "prove drivers are independent contractors by granting them more flexibility" during the run up to the Prop 22 vote and as Uber and other gig companies were fighting for exemptions from AB 5, the California law that created a presumption of employee status for all California workers.[72] A survey of 500 drivers also showed that 86% of them were ineligible for the Prop 22-required healthcare benefits, because of the "type of their insurance."[73] This renders a key concession to drivers essentially moot.

The City of Los Angeles hosts an estimated 250,000 TNC drivers.[74] The UC Berkeley Labor Center launched a recent report on the wage and hour conditions of Uber and Lyft drivers. They estimate that the pay guarantees for these drivers is actually the equivalent of a wage of $5.64 per hour.[75] In 2018, the UCLA Labor Center published *More Than a Gig: A Survey of Ride-hailing Drivers in Los Angeles*. This report highlights the lived experiences and job conditions of drivers working in the gig economy. It is the first comprehensive study of drivers working for transportation networking companies (TNCs) in Los Angeles.[76] Among the key findings from this report are the following:

- For many Uber/Lyft drivers, driving is their full-time, primary work. 2 out of 3 ride-hailing drivers in Los Angeles rely on driving as their main source of income. 1 in 2 drivers say that driving is their only job.

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[69] Dubal & Schor, *supra* note 28.
[70] *See, e.g.*, Chris Opfer, *Uber Hit With $650 Million Employment Tax Bill in New Jersey*, Bloomberg Law (Nov. 14, 2019, 6:55 AM)
[71] *See, e.g.*, Michael Sainato, *'A Slap in the Face': California Uber and Lyft Drivers Criticize Pay Cuts Under Prop 22*, GUARDIAN (May 16, 2021, 5:00 AM), https://www.theguardian.com/us-news/2021/may/16/uber-lyftdrivers-california-prop-22.
[72] *Id.*
[73] *Id.*
[74] REPORT OF THE CHIEF LEGISLATIVE ANALYST. *Regulatory Oversight of Transportation Charter-Party Carriers (TCP) and Transportation Network Company (TNC) Operators* (December 2019).
[75] UC Berkeley Labor Center. *The Uber/Lyft Ballot Initiative Guarantees only $5.64 an Hour* (October 2019) https://laborcenter.berkeley.edu/the-uber-lyft-ballot-initiative-guarantees-only-5-64-an-hour-2/
[76] UCLA Institute for Research on Labor and Employment, *More Than a Gig: A Survey of Ride-hailing Drivers in Los Angeles* (May 2018). https://www.labor.ucla.edu/wp-content/uploads/2018/06/Final-Report.-UCLA-More-than-a-Gig.pdf

- Aside from supporting themselves, these drivers are supporting families and children. More than half support one other person in their family, and 35% support families with at least one child present.
- Uber/Lyft drivers are facing financial hardship. 44% of drivers report difficulty paying for work expenses such as gas, insurance, and car maintenance.
- Some drivers rely on public assistance to sustain themselves. Close to 1 in 5 receive some form of public assistance, such as food stamps or subsidized medical programs.[77]

While cities and municipalities cap the number of taxis allowed to operate in each market to control supply and demand, rideshare vehicles can have an unlimited number of drivers on the street at any time. The large number of rideshare vehicles can flood the market, making it impossible for any driver to earn a viable, family-supporting income. Based on a cooperative model, Taxicab companies depend on drivers' income for their operational costs. Unlike TNCs, they cannot operate under negative profit margins. The only place to cut, then, even with fewer local regulations as the City now proposes, will be the drivers' income.

In 2012, the average trip length (paid miles) was reported at 6.5 miles and approximately $22.54 base fare. In 2013, the average trip length reported was 6.9 miles at a $22.96 cost. In 2014, the average trip length was reported at 7.4 miles and $25.34 in the base fare. This makes sense as the generally longer and more lucrative airport trips have increased in number (20% to 25% increase) and have moved into a higher percentage count of the total trips (19% of total trips in 2012, and now at approximately 30% of total trip count).[78]

Assuming a total number of 2,361 authorized taxicab vehicles, this means there were 1.77 drivers per cab in 2013. By 2019 that number dropped to 0.3 drivers per cab and rose to 0.67 drivers per cab by April 2021. Last quarter of 2012 revenue was $47.9M (prior to the onset of TNC competitors), last quarter of 2014 was $42.7M. The decline in total revenue is mainly attributed to competition from TNCs. At the same time, the fact that the revenues change is less than the loss in overall trip count allowed fewer drivers to maintain similar income levels.[79]

Between 2013 and 2014, taxi cab companies' revenue dropped by 9 percent and total completed trips dropped by 18 percent. Los Angeles taxi cabs logged 1.4 million trips less than the previous year, resulting in $17.1 million revenue losses. The impact to the Los Angeles economy is $32.6 million dollars in losses. In tax revenue, this represents $1.7 million in state and local taxes lost, and $2.9 million on federal taxes lost. Combined, the total estimated tax impact is approximately $4.6 million.[80]

Finally, COVID-19 pandemic has impacted Los Angeles' taxi industry greatly, and has put its continued existence in peril. During the pandemic, both TNC and taxi ridership numbers

[77] *Id.*
[78] LADOT Reports
[79] LADOT Reports
[80] LADOT Reports

have plummeted, further accelerating the declines in earnings, riders, and drivers. By early 2019 the number of active taxi drivers fell to 2,124 in the City of LA. By April of 2020 only 780 were still active and by April 2021 it rose to 1,580.[81]

IV. Preemption by AB 1069

In addition to the serious concerns about taxicab driver income and working conditions, the City's attempts at deregulation may be preempted by state law, enacted through AB 1069 and effective in January 2019. AB 1069 "modernized" the taxi industry by creating various avenues and allowances for taxicabs to operate like gig rideshare companies, removing some of the cross-jurisdictional boundaries process for cities and counties throughout California, and limiting the need for cab drivers to obtain permits in multiple counties or cities.[82] While there is no specific section of the state law that prevents localities from enacting additional regulations or guidelines for taxicabs, it is unclear precisely how the proposed open permitting system would interact with the new state regulations. Specifically, it is not clear if the California Legislature contemplated such a complete re-writing of any city's regulatory structure for taxicabs.

The most pressing concern is whether the proposed move to an open permitting system would fulfill the legislative priorities set by the state in passing AB 1069. The committee reports and analysis done in the lead up to AB 1069 demonstrate a serious concern by the author--and by the legislature in general, inferred by the bill's near unanimous passage[83]--with the ability of taxicab companies to compete with the relatively lightly regulated TNCs, and with remedying the devastating effects that TNC entrance into the market has had on taxi companies.[84] There, the bill's author notes that taxicab companies are at a "competitive disadvantage" thanks in part to the state rather than local regulation that TNCs are subject to.[85] The author also notes that loosening taxi regulations in the past has had "questionable results, including increases in the supply of taxicabs, increases in fares, increases in trip refusal, a decline in service and vehicle quality, and aggressive solicitation of customers."[86] As such, AB 1069 was aimed at shifting the regulatory responsibility away from cities and toward counties, so that taxicab companies and their drivers would have fewer conflicting or onerous sets of regulations to comply with, ostensibly putting them on par with TNC companies which are only regulated at the state level.

Based on what we know about low-wage industries, and the already significant impacts on taxicab drivers due to an oversaturation of TNC vehicles and an inability to compete due to factors other than regulation, it is unclear how the City's proposed open market permitting system will stack up against the goals of AB 1069, and whether they are in conflict. The City Council should be highly skeptical of this proposal which purports to increase "competition" by

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[81] LADOT Reports. *See also* Email from Jarvis Murray, supra note 31.
[82] CA Gov. Code § 53075.5.a (2017). *See also* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1069
[83] Assemb. B. 1069 (2019), Concurrence in Senate Amendments, May 30, 2017 (showing a vote in the state Assembly of 75 to 1 in favor and a unanimous vote in the state State).
[84] Assemb. B. 1069 (2019), Assembly Committee on Communications and Conveyance (April 26, 2017).
[85] Id at 3.
[86] Id at 3-4.

creating a situation in which the only competition will be for who reaches the highest number of drivers at the cheapest compensation rate first. This seems antithetical to the goals of the state legislature and the author of AB 1069 to strengthen the way that taxicab companies can compete with TNC companies. It is highly unlikely that they envisioned any city proposing a structure that forces cash-strapped taxi companies into unregulated competition with well-funded, venture capital-backed TNC companies.

V. Recommendations

- **Living Wage for Taxicab Drivers -** Any new L.A. City policy must be based on a $15/hour net wage income for taxicab drivers in accordance with the City's current minimum wage beginning July 1, 2021.[87] The City should work with all the key stakeholders to come up with a method for calculating taxi driver work hours for purposes of measuring whether earnings and income are on par with the Los Angeles living wage.

- **Policy Oversight by City Council** – Any new L.A. City policy must have oversight by City Council to ensure proper implementation and regular assessment of the policy's impact on taxicab drivers in order to comply with the City's current living wage. As part of their annual taxi rate review, LA DOT should continue to provide, as currently implemented through rate ordinance, biannual report on taxi driver wages and income. Additionally, there should be regular audits of the operating expenses to ensure that proper staffing and resources are devoted to carry out the goals of the policy.

- **Creation of Task Force** - L.A. City Council should create a taskforce that will work on monitoring and oversight of the new policy. This task force will include representation from City Council, LADOT, taxicab drivers, taxicab companies, and other key stakeholders.

- **Proper Access to LAX Terminals** – As highlighted in this report, proper access to pick up and drop off at LAX terminals is indispensable for taxi drivers to have the adequate amount of fares to insure a quality income. City Council should work with LADOT and LAWA on a LAX policy that ensures proper access to the terminals.

VI. Conclusion

The City of Los Angeles' move to deregulate the taxicab industry would force taxicab drivers into more intense competition with drivers for rideshare companies on terms that are nominally the same, but functionally heavily in favor of the TNCs. Because TNCs are subsidizing customer rides with venture capital funding, operate with relatively little regulation at the state level and no regulation at the local level, and avoid paying into worker protections by widespread misclassification of drivers as independent contractors, TNCs are able to set the market rate for personal transportation much lower from which taxicab companies can afford to

[87] See https://wagesla.lacity.org/

operate. The City needs to find ways to bring TNCs under better control of the City and to raise the level of protections for taxicab drivers. The City must have oversight and control any open market permitting system that heavily favors TNCs, to the detriment of taxicab drivers. The City needs to put in place the mechanism to avoid a “race to the bottom” between cab companies and TNCs, which will result in decreased wages and income and deteriorating working conditions for taxicab drivers in particular. The minimum threshold of a new City policy must be to guarantee that the income of taxi drivers is the equivalent of the Los Angeles living wage.