

THE TRANSPORTATION MONOPOLY GAME: WHY TAXICABS ARE LOSING AND WHY TEXAS SHOULD LET TRANSPORTATION NETWORK COMPANY TOKENS PLAY

Comment

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“Calling a taxi in Texas is like calling a rabbi in Iraq.”¹

Imagine you are finally on your long-awaited family vacation to the Rocky Mountains. Upon landing in Denver from Dallas, you discover that the airline lost your checked luggage. It is January, and you must make do with your Texas-appropriate winter attire during your family’s scheduled dog-sledding excursion. By the end of the long, freezing day, everyone is ready to defrost in the hotel. On the drive towards your hotel, traffic stops suddenly as the snow falls, and the car you are in, unable to stop on the slick pavement, collides with a neighboring car. No one is injured, but the car must be towed. Once the police arrive to assess the damage, they call a taxicab to drive you to the hotel, which is located only four miles away. As nighttime approaches, the police officers give you and your family a ride to a nearby gas station, where you wait in the warmth. The police remain outside in their vehicles to confirm that your taxicab arrives. As everyone waits, however, you cannot help but notice the abundance of empty taxicabs that pass by, some even stopping to wait on the street corner. After two hours, your assigned taxicab is still a no-show.² Eventually, the police give up on the taxicab and personally escort you to your hotel. In a time of dire need for transportation, the taxicab company left you stranded. As a result, the police

1. FRAN LEBOWITZ, *THE FRAN LEBOWITZ READER* 282 (1994).

2. In 2013, there were almost 1,300 taxicabs available at one time in the Denver area. Cathy Proctor, *SuperTaxi Proposing to Supersize Its Denver Taxi Operations*, DENVER BUS. J. (Aug. 9, 2013, 1:29 PM), http://www.bizjournals.com/denver/blog/earth_to_power/2013/08/supertaxi-proposing-to-super-size-its.html.

were obliged to deviate from their duties to ensure that an unfortunate group of tourists was not stranded indefinitely.³

Next, imagine you are traveling home from a weekend getaway in Las Vegas. A storm rolls in right as the plane attempts to land, causing a scene straight out of actor Denzel Washington's hit movie, *Flight*. After twenty minutes of unbearable turbulence and forty mile per hour wind gusts, the plane diverts to your hometown rather than the neighboring airport where you parked your car. You feel relieved to earn a free flight home until you realize your car is still two hours away at the other airport.⁴ Feeling defeated, you deplane, exit the terminal, and search for a taxicab to drive you home. With no taxicabs in sight, you decide to try the new Transportation Network Company (TNC) application, UberX, for the first time.⁵ In ten minutes, your Uber driver calls to inform you that he has arrived. You head towards home while everybody else waits for their taxicab. After a long, exhausting weekend, Uber has saved the day.

Car-share service applications, owned by TNCs such as Uber and Lyft, offer convenient smartphone applications that link people who need a ride with community drivers who offer vehicles-for-hire.⁶ Many differences exist between TNCs and taxicabs. For instance, TNCs do not claim to provide transportation services; TNCs claim only to provide a method for connecting riders and drivers.⁷ As a result, TNCs do not require their drivers to hold a commercial driver's license.⁸ In addition, TNC customers "e-hail" a ride through the TNC application downloaded on their smartphones, instead of the traditional, in-person taxicab hail.⁹ TNC drivers then locate their passengers through their smartphone's Global Positioning System (GPS),

3. This was the author's experience in January 2012.

4. This happened to the author in October 2014. When the flights were full from Lubbock, Texas, the group bought flights from the neighboring city of Amarillo, Texas. The returning flight ironically diverted to Lubbock, with the author's car stranded in Amarillo.

5. Importantly, this airport is in a much smaller town than Denver, with only one taxicab company operating in the city. See Adam D. Young, *Yellow Cab of Lubbock to Re-Open Under New Ownership Pending Permit Process*, LUBBOCK AVALANCHE-J. (Nov. 6, 2014, 4:49 PM), <http://lubbockonline.com/local-news/2014-11-06/yellow-cab-lubbock-re-open-under-new-ownership-pending-permit-process#VM0Q5EvxWfQ>.

6. See Ravi Mahesh, *From Jitney Buses to App-Based Ridesharing: Understanding California's 'Third Way' Approach to Ride-for-Hire Regulation*, 88 S. CAL. L. REV. (forthcoming Spring 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474452; see also Lisa Rayle et al., *App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco* 1–2 (Univ. of Cal. Transp. Ctr., Working Paper No. UCTC-FR-2014-08, 2014), available at <http://www.uctc.net/research/papers/UCTC-FR-2014-08.pdf> (noting that TNCs are colloquially referred to as ridesharing companies and have many other names, such as parataxis and app-based rides).

7. E.g., Defendant Lyft, Inc.'s Corrected Motion to Dismiss Plaintiff's Original Complaint at 2, *Greater Hous. Transp. Co. v. Uber Techs., Inc.*, No. 4:14-CV-00941 (S.D. Tex. May 5, 2014) [hereinafter Defendant Lyft's Corrected Motion]; Defendant Uber Techs.' Declaration of Andrew MacDonald at 2, *Greater Hous. Transp. Co.*, No. 4:14-CV-00941.

8. Rayle et al., *supra* note 6, at 2.

9. E.g., *A Ride Whenever You Need One*, LYFT, <https://www.lyft.com/> (last visited Mar. 2, 2015) ("Request a ride in the Lyft app, and get picked up by a reliable community driver in minutes.").

which allows them to easily locate and pick up passengers wherever they are.¹⁰ In contrast, taxicab drivers pick up passengers at cabstands or by a wave of the hand.¹¹ Many TNC applications also send passengers the drivers' GPS location, along with a picture of the driver so passengers know whom to expect.¹²

Another difference is the way the two services collect their service fees. TNC riders agree on an estimated price for the ride ahead of time.¹³ This "contract service" differs from the traditional taxicab service, in which drivers use taximeters that dictate a predetermined rate on a per-mile basis.¹⁴ Unlike TNC services, taxicab passengers do not know the fee until they reach their destination.¹⁵ TNCs also incorporate "surge pricing" in times of fluctuating demand.¹⁶ This surge pricing "increase[s] fare rates during times of high demand to incentivize drivers and decrease[s] rates during times of low demand to incentivize riders."¹⁷ Approximately 80% of the payment goes directly to the driver; the remainder goes to the TNC.¹⁸ Other states have decided to regulate the two services separately based on this difference in service fee calculation.¹⁹

10. See Mahesh, *supra* note 6; Rayle et al., *supra* note 6, at 2.

11. E.g., *Taxicab Industry Defined*, IRS (Apr. 2010), http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Cash-Intensive-Businesses-Audit-Techniques-Guide-Chapter-17#_Toc307217049.

12. See *Reliable Pickups*, UBER, <https://www.uber.com> (last visited May 16, 2015); *How Lyft Works*, LYFT, <https://www.lyft.com> (last visited Apr. 8, 2015). Once the ride is complete, the TNC application also sends the trip information via email, including a GPS map of the route taken. E.g., Email from Uber Receipts, Uber Techs., to author (Oct. 12, 2014, 19:57 CST) (on file with author).

13. See *Fare Estimates*, UBER, <https://www.uber.com/features> (last visited Apr. 8, 2015) ("[T]he app will calculate an approximate amount based on the expected time and distance, so there are never any surprises on your receipt."). But see Defendant Lyft's Corrected Motion, *supra* note 7, at 2 ("Although the Lyft platform provides users . . . with a suggested donation amount for each ride, the rider—in his or her sole discretion—decides whether and how much to donate.")

14. E.g., *Joe Sanfelippo Cabs Inc. v. City of Milwaukee*, No. 14-CV-1036, 2014 WL 4546782, at *2 (E.D. Wis. Sept. 12, 2014).

15. E.g., *id.*

16. E.g., Mike Isaac, *Uber Flunks the Better Business Bureau Test*, N.Y. TIMES BITS BLOG (Oct. 9, 2014, 3:57 PM), <http://bits.blogs.nytimes.com/2014/10/09/uber-flunks-the-better-business-bureau-test> (noting public complaints about TNC application surge pricing and the TNCs' failure to adequately inform the public of such price surges); Tyler Whitson, *Long Road Ahead for TNCs Ordinance*, AUSTIN MONITOR (Nov. 12, 2014), <http://www.austinmonitor.com/stories/2014/11/long-road-ahead-rideshare-ordinance/>.

17. Whitson, *supra* note 16.

18. Rayle et al., *supra* note 6, at 2. In an interview with a Lubbock, Texas UberX driver, also a college graduate, the driver revealed that he makes three times more working as a driver for UberX than he made while driving for a local trucking company. Interview with Anthony, UberX driver, Uber Techs., in Lubbock, Tex. (Oct. 12, 2014).

19. See *Joe Sanfelippo Cabs Inc.*, 2014 WL 4546782, at *2. The court in *Joe Sanfelippo Cabs* also pointed out that taxicabs could technically adopt this contract service and potentially operate as a TNC-taxicab hybrid. See *id.* But see HOUSTON, TEX., CODE OF ORDINANCES § 46-512(d) (2014) (noting that if a vehicle meets the requirements of another type of vehicle-for-hire, it cannot operate as a TNC); City of Hous., *Frequently Asked Questions, Chapter 46 Related to Vehicles-for-Hire Amendments Approved 8/6/2014*, 3 (2014), available at https://www.houstontx.gov/ara/chapter46docs/vehicle_for_hire-faqs.pdf (stating that, for taxicabs to operate part-time as a TNC, the taxicab driver must first remove all taxicab lettering and equipment).

Further, carrying cash is not necessary when using TNC applications because riders pay drivers with the credit card already linked to the application.²⁰ Some TNCs even offer multiple riders the opportunity to split the fare evenly among all riders who opt in through the application.²¹ Finally, most TNC applications prompt both riders and drivers to rate each other once the trip has completed to ensure a mutually positive experience—a feature that taxicab companies do not provide.²² Despite these differences, taxicab companies urge local governments to regulate TNCs as they do taxicabs.²³ In contrast, TNCs contend that they provide a separate service, and thus deserve separate, less stringent regulations.²⁴

The friction between TNCs and taxicab companies is the basis of this Comment. Although the regulation of TNCs is a global issue, this Comment focuses on vehicle-for-hire legislation in Texas and how the emergence of TNCs generates the possibility for a major change in Texas transportation industry legislation. Part I introduces TNCs to the transportation game by explaining how they operate in relation to taxicab services.²⁵ Part II discusses the issues surrounding the emergence of TNCs and provides a historical overview of vehicle-for-hire regulation in the United States.²⁶ With an understanding of how Texas regulates vehicles-for-hire, as provided in Part III, Part IV weighs the arguments of taxicab companies and TNCs to better understand both perspectives on why and how these players think the transportation industry should evolve.²⁷ Part V then compares and contrasts the varying approaches of Houston, San Antonio, Austin, and Dallas in regulating TNCs, with an emphasis on how these rules will affect taxicab companies.²⁸ This analysis paves the way for Part VI to recommend that Texas municipalities provide minimal guidelines in a deregulated taxicab

20. Rayle et al., *supra* note 6, at 2. TNC applications prompt new riders to insert personal and credit card information into the account before using the service. See *Driver Safety*, UBER, <https://www.uber.com/safety> (last visited May 16, 2015) (“Before riding with Uber, customers are required to create an account with their personal and payment information—and rides can only be requested through the app, so there’s a detailed record of every customer and every trip.”); *Passenger Ratings*, LYFT, <https://www.lyft.com/drivers> (last visited May 16, 2015) (“We . . . require passengers to provide valid credit card information for identity verification purposes.”).

21. *Split Your Fare*, UBER, <https://www.uber.com> (last visited May 16, 2015).

22. E.g., Nairi, *Feedback Is a Two-Way Street*, UBER BLOG, <https://blog.uber.com/feedback> (Apr. 23, 2014); *Two-Way Ratings*, LYFT, <https://www.lyft.com> (last visited May 16, 2015) (“Passengers and drivers rate each other . . . [i]f you rate someone 3 stars or below, you’ll never be matched with them again.”); Rayle et al., *supra* note 6, at 2; see also David Streitfeld, *Ratings Now Cut Both Ways, So Don’t Sass Your Uber Driver*, N.Y. TIMES, Jan. 30, 2015, <http://www.nytimes.com/2015/01/31/technology/companies-are-rating-customers.html> (noting that Lyft informs users that “anything lower than 5 indicates that you were somehow unhappy with the ride”). This system is similar to those of other consumer-driven technology services, such as TripAdvisor, OpenTable, and eBay. See Streitfeld, *supra*.

23. See *infra* Part IV.

24. See *infra* Part IV.

25. See *supra* Part I.

26. See *infra* Part II.

27. See *infra* Parts III–IV.

28. See *infra* Part V.

market by using the Austin–Dallas hybrid approach to vehicle-for-hire regulation.²⁹ This approach will create the natural market conditions necessary for Texas cities to gather crucial data on how TNCs and taxicab companies correspond in a consumer-driven market.³⁰ After cities take these much-needed steps, Texas will have a better understanding of how to regulate this rapidly advancing industry.³¹ Part VII concludes by reiterating that, with proper local TNC and taxicab ordinances, TNCs allow for an overhaul in vehicle-for-hire regulation, which will benefit TNCs, taxicabs, and consumers alike.³²

II. CHEATS OR BEGINNER’S LUCK? A BACKGROUND ON TRANSPORTATION COMPANIES’ TUMULTUOUS RELATIONSHIP WITH REGULATION

“Competition is not only the basis of protection to the consumer but is the incentive to progress.”³³

A. Why the Community Chest Is Not So Sure About TNCs

With the stratospheric growth of TNCs, a bombardment of negative headlines has followed.³⁴ From lawsuits to customer complaints and the battle among TNCs, this section describes the major issues keeping TNCs in the national and international headlines.³⁵

Horror stories about radical TNC customer bills have reached an international level in the media.³⁶ TNCs’ surge pricing routinely causes outrage due to Uber’s and Lyft’s high fees during times of high demand.³⁷

29. See *infra* Part VI.

30. See *infra* Part VI.

31. See *infra* Part VI.

32. See *infra* Part VII.

33. Gerhard Peters & John T. Woolley, *Herbert Hoover: Annual Message to the Congress on the State of the Union, December 2, 1930*, AM. PRESIDENCY PROJECT, available at <http://www.presidency.ucsb.edu/ws/?pid=22458>.

34. See Keith Wagstaff, *Uber’s Wild 2014: Can Lawsuits and Protests Bring It Down?*, NBC NEWS (Dec. 15, 2014, 10:21 AM), <http://www.nbcnews.com/tech/innovation/ubers-wild-2014-can-lawsuits-protests-bring-it-down-n265536>. Although TNCs face many challenges, investors suggest the companies are worth billions. See *id.*

35. See *infra* Part II.A.

36. See Virginia Harrison, *Anger at Uber as Fares Soar During Sydney Cafe Siege*, CNNMONEY (Dec. 15, 2014, 7:08 AM), <http://www.money.cnn.com/2014/12/15/news/uber-sydney-cafe-siege-fares/>; Joanna Prisco, *Woman Crowdfunds to Pay for \$362 Uber Ride, Evidently Turns a Profit*, ABC NEWS (Nov. 3, 2014, 4:10 PM), <http://www.abcnnews.com/Lifestyle/woman-crowdfunds-pay-362-uber-ride-evidently-turns/story?id=26659350>.

37. See Wagstaff, *supra* note 34; see also Nicky Woolf, *Uber Ride for Sleepy New Year’s Eve Partygoer Ends in \$900 Bill*, GUARDIAN (Jan. 6, 2015), <http://www.theguardian.com/technology/2015/jan/06/uber-900-bill-atlanta-new-years-eve-partygoer> (stating that after attending the Peach Bowl, an Ole Miss fan in Atlanta woke up in a hotel the next day with a \$908 bill due to surge pricing on New Year’s Eve); Prisco, *supra* note 36 (noting that Uber allegedly ruined a Baltimore woman’s twenty-sixth birthday by charging her \$362—more than her rent—for a twenty minute ride on Halloween).

Uber is known to increase the price of a ride by up to eight times the normal amount, whereas Lyft increases prices up to twice the normal amount and all additional fees go straight to the Lyft driver.³⁸ In 2014, TNCs also received a lot of media attention for an embarrassing series of articles that discussed the lengths to which TNCs go to destroy one another.³⁹ Specifically, Uber and Lyft accused each other of requesting and then canceling rides to prevent rival TNC vehicles from picking up actual customers.⁴⁰

Tragically, in January 2014, an UberX driver ran over a six-year-old girl while she was crossing the street with her family in San Francisco, which prompted the first wrongful death suit against a TNC, *Liu v. Uber Technologies*.⁴¹ This case also raised the question of whether TNCs insure their drivers with adequate insurance.⁴² In *Liu*, the driver's Uber application was on, but the driver had no rider in his vehicle and was not en route to pick up another rider.⁴³ Uber denied that its infamous \$1 million liability insurance covered the driver in this circumstance because the driver was between services.⁴⁴ Within weeks, Uber, Lyft, and Sidecar—risking major consumer backlash—updated their insurance policies to provide “gap insurance” for when the driver's application is on, but the driver is not yet en route to pick up a passenger.⁴⁵

38. See Jessi Hempel, *Lyft's 'Nice Guy' Approach to Surge Pricing: Happy Hour*, FORTUNE (Mar. 18, 2014, 5:00 PM), <http://www.fortune.com/2014/03/18/lyfts-nice-guy-approach-to-surge-pricing-happy-hour/>; Alyson Shontell, *Uber Asked Customers — Including TV Host Michelle Beadle — to Pay 8 Times More Than Usual Last Night*, BUS. INSIDER (Dec. 15, 2014, 10:55 AM), <http://www.businessinsider.com/uber-surge-pricing-7-to-8-times-higher-than-usual-2013-12>.

39. See Mike Isaac, *Accusations Fly Between Uber and Lyft*, N.Y. TIMES BITS BLOG (Aug. 12, 2014, 3:36 PM), http://www.bits.blogs.nytimes.com/2014/08/12/accusations-fly-between-uber-and-lyft/?_php=true&_type=blogs&ref=technology&_r=0; Ryan Lawler, *Uber Strikes Back, Claiming Lyft Drivers and Employees Canceled Nearly 13,000 Rides*, TECH CRUNCH (Aug. 12, 2014), <http://www.techcrunch.com/2014/08/12/uber-lyft-slap-fight/>.

40. Isaac, *supra* note 39; Lawler, *supra* note 39. Taxicabs have also had their fair share of fighting each other: In 2012, small taxicab companies sued the larger taxicab companies in Dallas, alleging the Dallas taxicab market was a monopoly. See Eric Nicholson, *Cabbies Say There's a Taxi Monopoly in Dallas, and They're Fighting to Break it Up*, DALL. OBSERVER (Nov. 9, 2012, 12:12 PM), http://blogs.dallasobserver.com/unfairpark/2012/11/cab_drivers_still_fighting_cab.php.

41. See Complaint for Damages and Demand for Trial by Jury, *Liu v. Uber Techs., Inc.*, No. CGC-14-536979, 2014 WL 285058 (Cal. Super. Jan. 27, 2014); David Streitfeld, *Rough Patch For Uber Service's Challenge to Taxis*, N.Y. TIMES, Jan. 26, 2014, <http://www.nytimes.com/2014/01/27/technology/rough-patch-for-uber-services-challenge-to-taxis.html>.

42. Complaint for Damages and Demand for Trial by Jury, *supra* note 41.

43. Answer and Affirmative Defenses of Defendants, *Liu*, No. CGC-14-536979, at *6–7 (Cal. Super. May 1, 2014).

44. *Id.* TNCs voluntarily carry \$1 million of liability insurance, whereas most cities require taxicab companies to carry insurance that only covers a fraction of that amount. *E.g.*, Iris Dimmick, *Uber, Lyft Concerned With More Than Insurance*, RIVARD REP. (Feb. 23, 2015, 12:03 AM), <http://www.therivardreport.com/uber-lyft-concerned-insurance/> (noting that the city of San Antonio requires taxicab companies to carry insurance that covers just \$30,000).

45. See *Insurance*, SIDECAR, <http://www.side.cr/policies/insurance/> (last visited May 16, 2015); *Lyft Insurance Protection Plan*, LYFT, <https://www.lyft.com/safety> (last visited May 16, 2015); Nairi, *Insurance for UberX with Ridesharing*, UBER (Feb. 10, 2014), <http://www.blog.uber.com/ridesharing-insurance>.

Another issue causing bad press for TNCs is the Better Business Bureau's (BBB) "F" rating for Uber and Lyft.⁴⁶ Customers filed over 200 complaints against Uber, the largest TNC, over 190 of which were filed in the last twelve months.⁴⁷ At the same time, customers filed fifteen complaints against Uber's smaller competitor, Lyft, and both companies received the majority of complaints about billing and collection issues, especially unauthorized credit card charges.⁴⁸ The two major factors contributing to the "F" ratings are the corporations' unanswered complaints and the corporations' status as new businesses.⁴⁹ Of the 205 complaints filed against Uber nationwide, the company failed to respond to fifteen, and did not respond to the BBB's request for a response to this pattern of complaints.⁵⁰ Lyft failed to respond to twelve of its fifteen complaints, but responded to the BBB with an explanation: the pre-authorization charges complained of are temporary and "are only used to check the validity of a user's credit card."⁵¹ Even the smallest TNC, Sidecar, has a "D-" rating with the BBB because of the company's new-business status and its failure to

46. See Mike Isaac, *Uber Flunks the Better Business Bureau Test*, N.Y. TIMES (Oct. 9, 2014, 3:57 PM), <http://www.bits.blogs.nytimes.com/2014/10/09/uber-flunks-the-better-business-bureau-test/>; *Lyft BBB Business Review*, BETTER BUS. BUREAU, <http://www.bbb.org/greater-san-francisco/business-reviews/car-service/lyft-in-san-francisco-ca-379827> (last visited May 17, 2015); *Uber Technologies BBB Business Review*, BETTER BUS. BUREAU, <http://www.bbb.org/greater-san-francisco/business-reviews/transportation-services/uber-technologies-in-san-francisco-ca-438996> (last visited May 17, 2015). Unsurprisingly, an interest group affiliated with the taxi industry alerted the media about the "F" rating to keep the bad press coming. Isaac, *supra*.

47. *Uber Technologies BBB Business Review*, *supra* note 46. Significantly, though, many taxicab companies also receive poor public reviews. See Emily Badger, *Taxi Medallions Have Been The Best Investment in America for Years. Now Uber May Be Changing That*, WASH. POST (June 20, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/06/20/taxi-medallions-have-been-the-best-investment-in-america-for-years-now-uber-may-be-changing-that/?hpid=z4> (stating that Chicago sees an average of 12,000 complaints about taxicab services every year); Isaac, *supra* note 46 (noting that "taxi organizations saw upward of 1,700 service complaints about driver behavior and the state of taxi cabs" in 2013 alone). The Better Business Bureau also gave several Dallas taxicab companies "F" ratings. *City Shuttle BBB Business Review*, BETTER BUS. BUREAU, <http://www.bbb.org/dallas/business-reviews/taxicabs/city-shuttle-in-dallas-tx-90010642> (last visited May 17, 2015); *Metro Cab BBB Business Review*, BETTER BUS. BUREAU, <http://www.bbb.org/dallas/business-reviews/taxicabs/metro-cab-in-dallas-tx-90270328> (last visited Jan. 7, 2015); *Taxi Dallas BBB Business Review*, BETTER BUS. BUREAU, <http://www.bbb.org/dallas/business-reviews/taxicabs/taxi-dallas-in-dallas-tx-21001046> (last visited Jan. 7, 2015); *Yellow Cab BBB Business Review*, BETTER BUS. BUREAU, <http://www.bbb.org/dallas/business-reviews/taxicabs/yellow-cab-in-dallas-tx-90403687> (last visited Jan. 7, 2015).

48. See *Lyft BBB Business Review*, *supra* note 46; *Uber Technologies BBB Business Review*, *supra* note 46.

49. *Lyft BBB Business Review*, *supra* note 46; *Uber Technologies BBB Business Review*, *supra* note 46. Thus, a major reason for the low ratings is the length of time they have been operating, which is a factor they cannot control. See *Overview of BBB Rating*, BETTER BUS. BUREAU, <http://www.bbb.org/council/overview-of-bbb-grade/> (last visited May 17, 2015) ("A business's BBB rating is based, in part, on the length of time the business has been operating.").

50. *Uber Technologies BBB Business Review*, *supra* note 46.

51. *Lyft BBB Business Review*, *supra* note 46; see also *supra* note 20 (noting that TNCs pre-approve application users before they can use the services).

respond to one complaint.⁵² Accordingly, TNCs' low ratings are largely a result of misunderstood application features and circumstances beyond their control.

Several TNC customers have even accused their drivers of breaking the law.⁵³ One TNC driver in Oklahoma allegedly punched his customer during an altercation.⁵⁴ In Los Angeles, a TNC rider accused her driver of kidnapping and taking her to a motel after picking her up late at night from a bar.⁵⁵ Other TNC riders have alleged that their driver sexually harassed them, which creates doubts about the effectiveness of TNC background checks and raises concerns about public safety.⁵⁶ All of these issues became direct concerns in Texas once TNCs emerged in the Lone Star State. In addition to the known TNC issues in Texas, understanding the historical issues surrounding vehicle-for-hire regulation helps one better analyze the possible implications of similar TNC regulations.

B. How Did We Get Here? An Overview of Vehicle-for-Hire Regulation

1. Starting at "Go": The Origin of Vehicles-for-Hire

In the United States, cities have regulated vehicles-for-hire since the 1920s.⁵⁷ The vehicle-for-hire industry started with "jitneys," which came about during the Great Depression when "bored and unemployed men scraped together what little savings they had [to] obtain[] automobiles

52. See *Sidecar Technologies, Inc. BBB Business Review*, BETTER BUS. BUREAU, <http://www.bbb.org/greater-san-francisco/business-reviews/transportation-services/sidecar-in-san-francisco-ca-439165> (last visited May 17, 2015); *Our Story*, SIDECAR, <http://www.side.cr/about/> (last visited May 17, 2015) (noting that although Sidecar was founded in 2012, it did not begin offering services until May 2014).

53. Wagstaff, *supra* note 34.

54. See *Mazaheri v. Doe*, No. CIV-14-225-M, 2014 WL 2155049, at *1 (W.D. Okla. May 22, 2014).

55. Wagstaff, *supra* note 34.

56. See Complaint at 4–8, *Ho v. Uber Techs., Inc.*, No. 2014-L-003219, 2014 WL 1084528 (Ill. Cir. Ct. Mar. 19, 2014); Olivia Nuzzi, *Uber's Biggest Problem Isn't Surge Pricing. What If It's Sexual Harassment By Drivers?*, DAILY BEAST (Mar. 28, 2014, 1:49 PM), <http://www.thedailybeast.com/articles/2014/03/28/uber-s-biggest-problem-isn-t-surge-pricing-what-if-it-s-sexual-harassment-by-drivers.html>; *Uber Didn't OK Chicago Driver Charged with Assault*, SEATTLE TIMES (Dec. 31, 2014, 9:32 AM), <http://www.seattletimes.com/nation-world/uber-didnt-ok-chicago-driver-charged-with-assault/>. For comparison, taxicab companies have dealt with similar allegations over the years. See *Fort Worth Cab & Baggage Co. v. Salinas*, 735 S.W.2d 303 (Tex. App.—Fort Worth 1987, no writ); *Dart v. Yellow Cab, Inc.*, 401 S.W.2d 874 (Tex. App.—Amarillo 1966, writ ref'd n.r.e.); Amanda Batchelor, *Fort Lauderdale Cab Driver Accused of Raping Woman in Parking Lot*, LOC. 10 (Nov. 26, 2014, 10:15 AM), <http://www.local10.com/news/fort-lauderdale-cab-driver-accused-of-rape/29941056>; Patrick George, *Cab Driver Charged With Sexually Assaulting UT Student*, AUSTIN-AM. STATESMAN (May 17, 2012, 7:47 PM), http://www.statesman.com/news/news/local/cab-driver-charged-with-sexually-assaulting-ut-s-1/nRnpK/#_federated=1; Andrea Noble, *Police: Woman Sexually Assaulted By D.C. Taxicab Driver*, WASH. TIMES (Oct. 13, 2014), <http://www.washingtontimes.com/news/2014/oct/13/police-woman-sexually-assaulted-dc-taxicab-driver/>.

57. See Paul Stephen Dempsey, *Taxi Industry Regulation, Deregulation & Reregulation: The Paradox of Market Failure*, 24 TRANSP. L.J. 73, 75 (1996).

(usually Ford Model Ts)” and offer rides to anybody “willing to pay a five-cent fee.”⁵⁸

Cities started regulating vehicles-for-hire for several reasons. Most importantly, other transportation providers—railway operators, for example—viewed jitneys as a financial threat.⁵⁹ In fact, pressure from the transportation industry, rather than economic or social necessity, was the key reason cities began regulating vehicles-for-hire.⁶⁰ The emergence of this new industry also created cutthroat competition.⁶¹ Drivers worked up to sixteen hours per day for little pay.⁶² In addition, drivers became notorious for driving dangerously, “running their cars up onto curbs and street corners in order to get as close as possible to potential fares,” which increased accident rates.⁶³ Cities did not provide a mandate for drivers to carry insurance; thus, drivers could avoid financial responsibility and leave injured riders with no compensation.⁶⁴ Similarly, vehicles regularly operated without proper repairs, which exacerbated the problem with dangerous road and service conditions.⁶⁵

Eventually, most cities regulated jitneys into nonexistence, and the heavily regulated taxicab industry emerged as the chief mode of vehicle-for-hire transportation.⁶⁶ “As decades passed, though, local . . . regulators became overgrown and corrupt, and Americans grew disgusted with taxi cartels that rarely seemed to prioritize consumer interests.”⁶⁷ With customers

58. Mahesh, *supra* note 6, at 3. Jitneys are “free-lance” operators that are not subject to taxes or operation fees, whereas taxicabs are owned and operated by private firms that are subject to heavy licensing fees and taxes. *See id.* In the historical context, jitneys and taxicabs are often referred to interchangeably because their origins are identical. *Compare id.* at 3–28 (providing a historical overview of taxicabs, starting with jitneys), with Steve Oxenhandler, Comment, *Taxicab Licenses: In Search of a Fifth Amendment, Compensable Property Interest*, 27 *TRANSP. L.J.* 113, 118–20 (2000) (providing the same historical overview for taxicabs). The City of Houston defines a “jitney” as “a motorized passenger vehicle . . . that is operated upon a closed loop route following specified streets and highways in a specified direction, and is operated without a fixed schedule.” *HOUSTON, TEX., CODE OF ORDINANCES* § 46-321 (2014). Other Texas city codes do not mention jitneys at all. *E.g.*, *AUSTIN, TEX., CITY CODE* (2014); *SAN ANTONIO, TEX., CODE OF ORDINANCES* (2014).

59. Mahesh, *supra* note 6, at 12 (noting that railway operators were the dominant source of transportation in the jitney era); *see also* Robert M. Hardaway, *Taxis and Limousines: The Last Bastion of Economic Regulation*, 21 *HAMLIN J. PUB. L. & POL’Y* 319, 331 (2000) (“The introduction of regulations in the taxicab business was not stimulated by the public interest, but by limited self-interest. Pressure came from the American Transit Association, public transit firms, established taxi fleets and the National Association of Taxicab Owners. . . .” (footnote omitted)).

60. Mahesh, *supra* note 6, at 15; *see* Hardaway, *supra* note 59, at 331.

61. *See* Dempsey, *supra* note 57, at 77.

62. *See* Catherine Rampell, *The Familiar Cycle of the Taxi Industry Wars*, *WASH. POST* (Dec. 8, 2014), http://www.washingtonpost.com/opinions/catherine-rampell-thoughtful-taxi-regulations-should-consider-the-consumer/2014/12/08/d742cd76-7f19-11e4-8882-03cf08410beb_story.html; Mahesh, *supra* note 6, at 9–10 (noting that high overhead costs caused jitney drivers to profit only two dollars per day).

63. Mahesh, *supra* note 6, at 18; *see* Dempsey, *supra* note 57, at 77.

64. Dempsey, *supra* note 57, at 77; Mahesh, *supra* note 6, at 19–20.

65. Dempsey, *supra* note 57, at 77.

66. *See* Mahesh, *supra* note 6, at 41–42.

67. Rampell, *supra* note 62.

so unsatisfied, it is important to understand why taxicab companies thrived anyway.

2. *Why Taxicabs Became the Last Standing Monopolies in Transportation*

Prior to TNCs, taxicab companies enjoyed a relatively competition-free market.⁶⁸ One reason for this is that taxicab services operate in contrast to most service industries because, with taxicabs, the customer is in the fixed position, rather than the service provider.⁶⁹ As a result, most passengers choose the first taxicab that becomes available, giving taxicab companies the power to set the price of the ride.⁷⁰ Further, passengers cannot easily “shop around” for a taxicab with the best rate, and many passengers likely do not know the local rate to do so.⁷¹ This situation makes price competition among taxicabs less probable because passengers would likely not notice if one taxicab reduced its price below others.⁷² Thus, no incentive exists for taxicabs to compete with each other.⁷³ Additionally, studies show that taxicabs do not compete with other modes of public transportation.⁷⁴ In fact, some contend that taxicabs “act as a complement” to other modes of public transportation by allowing the flexibility of one-way trips.⁷⁵ Without competition, taxicab companies create an “upward pressure” on the price of their services, making the price of a taxicab highly unpredictable without regulations.⁷⁶ Additionally, consumers who are concerned about cost and less concerned about time may simply opt to take alternative methods of public transportation.⁷⁷

Because passengers usually choose taxicabs based only on convenience, taxicab drivers are generally unconcerned with the quality of their services

68. Compare Dempsey, *supra* note 57, at 91 (“[I]t is not at all clear that a competitive market for taxi services either exists or can be created.”), with Jacob Davidson, *Uber Has Pretty Much Destroyed Regular Taxis in San Francisco*, TIME (Sept. 18, 2014), <http://www.time.com/money/3397919/uber-taxis-san-francisco/> (noting a 65% drop in average monthly taxicab trips from 2012—when TNCs began operating—to July 2014).

69. See Dempsey, *supra* note 57, at 92. Usually, customers approach a service provider, who is in the fixed position: For example, customers usually call an electric company, approach a real estate broker, or hire an attorney, rather than these service providers coming to the customer. See *id.*

70. See *id.* Today, most local ordinances regulate taxicab rates, likely for this reason. See *infra* Part III.B.

71. See Julian Sanchez, *How Tech Can Render Regulations Uber Obsolete*, CATO INST. (Apr. 17, 2012, 8:55 AM), <http://www.cato.org/blog/how-tech-can-render-regulations-uber-obsolete>; Dempsey, *supra* note 57, at 91.

72. See Dempsey, *supra* note 57, at 92; Sanchez, *supra* note 71.

73. See Dempsey, *supra* note 57, at 92.

74. See Farhad Manjoo, *With Uber, Less Reason to Own a Car*, N.Y. TIMES, June 11, 2014, http://www.nytimes.com/2014/06/12/technology/personaltech/with-ubers-cars-maybe-we-dont-need-our-own.html?_r=0.

75. *Id.* (internal quotation omitted).

76. Dempsey, *supra* note 57, at 92–93 (quoting Chanoch Shreiber, *The Economic Reasons for Price and Entry Regulation of Taxicabs*, 9 J. TRANSP. ECON. & POL’Y 268, 271 (1975)).

77. See Rampell, *supra* note 62.

unless the quality falls outside of regulation standards.⁷⁸ Further, a passenger cannot assess the comfort or quality of the service until after the passenger chooses his or her taxicab. This fact, coupled with the low probability of repeat service, makes it unlikely that passengers would discontinue the service, even if they are unhappy with the quality.⁷⁹ Accordingly, the taxicab industry's monopolistic behavior is likely the reason taxicab regulation "is the last great bulwark of government transportation regulation to survive" after "deregulation in the airline, trucking, and railroad industries."⁸⁰

The Federal Trade Commission explained the reasoning for this deregulation trend when it stated: "There is virtually unanimous agreement among economists that existing combinations of restrictions on entry into the taxi market, minimum fares, and ride sharing are inefficient and the source of significant welfare loss, including consumer injury."⁸¹ Further, "studies . . . have universally condemned the monopolistic policy of those jurisdictions that have restricted [vehicle-for-hire] entry."⁸² Equipped with this attitude towards deregulation, many cities across the United States deregulated taxicabs from the 1960s to the 1980s.⁸³ Taxicab deregulation caused an increase in the number of taxicabs, but it also resulted in a decline in operational efficiency, an increase in rates, and deterioration in overall taxicab service.⁸⁴ Prices rose in every city that experienced taxicab deregulation because "[g]overnment regulations, it turns out, had been capping prices below market value."⁸⁵ Some researchers found that the taxicab market showed signs of stabilizing on its own, but most cities rushed to re-regulate before such stabilization occurred.⁸⁶ Out of the twenty-one cities that deregulated taxicabs prior to 1993, only four small cities kept taxicabs unregulated.⁸⁷ Legislators also worried that citizens in rural areas would not have adequate service because longer trips away from the city are

78. See Dempsey, *supra* note 57, at 91–94.

79. See *id.*

80. See Hardaway, *supra* note 59, at 324.

81. MARK W. FRANKENA & PAUL A. PAUTLER, FED. TRADE COMM'N, AN ECONOMIC ANALYSIS OF TAXICAB REGULATION 99 (1984), available at <http://www.ftc.gov/sites/default/files/documents/reports/economic-analysis-taxicab-regulation/233832.pdf>.

82. Hardaway, *supra* note 59, at 323.

83. See Badger, *supra* note 47; Dempsey, *supra* note 57, at 87.

84. See Badger, *supra* note 47; Dempsey, *supra* note 57, at 102. "Experiences in taxicab deregulation show that cities with open entry have more than three times the number of cabs per capita than regulated cities." Hardaway, *supra* note 59, at 332.

85. See Dempsey, *supra* note 57, at 115; Rampell, *supra* note 62; see also Hardaway, *supra* note 59, at 322 n.5 (noting a 25% increase in the cost of a taxicab compared to the price in an unregulated market).

86. See Lee A. Harris, Note, *Taxicab Economics: The Freedom to Contract for a Ride*, 1 GEO. J.L. & PUB. POL'Y 195, 206 (2002).

87. See Dempsey, *supra* note 57, at 115. The smaller cities likely received less pressure to re-regulate the industry because small cities tend to have smaller transportation industries with less political power. See Nancy Scola, *Dallas Mayor: City Botched Uber Crackdown*, NEXT CITY (Oct. 24, 2013), <http://nextcity.org/daily/entry/dallas-mayor-city-botched-uber-crackdown>.

considered less profitable.⁸⁸ And even though the number of taxicabs increased, analysts found that “[p]utting more taxis on the streets rarely produce[d] more patrons.”⁸⁹ Notably, back then there was no Internet technology capable of connecting riders and drivers in real time, and, of course, no TNCs.⁹⁰

One factor that does add more patrons to the transportation market is the “vast increase in the number of miles people travel,” which is substantially higher today in comparison to the taxicab deregulation era.⁹¹ This change, combined with the heavily restricted taxicab industry and the public’s shifting viewpoint away from personal car ownership, paved the way for the introduction of TNCs.⁹² The emergence of TNCs gives local municipalities a chance to revisit the possibility of taxicab deregulation in a market that is now more prepared to handle the results.⁹³ To evaluate the modification of taxicab regulations that better cooperate with future TNC regulations, one must first understand how Texas regulates vehicles-for-hire.

III. GAME STRATEGY: TEXAS’S APPROACH TO VEHICLE-FOR-HIRE REGULATION

*“Maps Are Small, Texas Is Big.”*⁹⁴

Texas is 268,601 square miles, borders Mexico, and is home to six of the top twenty most populated cities in the United States.⁹⁵ As a result, Texas cities widely vary in culture, political views, and geography.⁹⁶ Thus, Texas follows the most common approach to regulating vehicles-for-hire in the United States: regulation through local municipal ordinances.⁹⁷ This approach is fitting for Texas because local city regulators understand their

88. Harris, *supra* note 86, at 207. These trips are considered less profitable because drivers are less likely to find a passenger to pay for their services back into the city. See Dempsey, *supra* note 57, at 89–90.

89. See Dempsey, *supra* note 57, at 105; see also Badger, *supra* note 47 (“[I]f anyone can do this job part-time, no one will make a full-time living at it.”).

90. See Badger, *supra* note 47.

91. See Manjoo, *supra* note 74.

92. See *id.*

93. See *id.* One transportation analyst found that the largest problem with taxicabs today is that “there just aren’t enough of them.” *Id.*

94. Peter Sanders, *Road Trip From Hell*, TEX. MONTHLY (May 2002), <http://www.texasmonthly.com/content/road-trip-hell>.

95. See *Interactive Population Map*, U.S. CENSUS BUREAU, <https://www.census.gov/2010census/popmap/> (last visited May 18, 2015); *The Geography of Texas*, NETSTATE, http://www.netstate.com/states/geography/tx_geography.htm (last updated Mar. 29, 2015).

96. See generally SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS: DEMOGRAPHICS (Jan. 2008), available at http://comptroller.texas.gov/specialrpt/tif/03_Demographics.pdf (noting Texas’s diversity in relation to the rest of the United States).

97. See *infra* Part III.B. The less common approach that is followed by a handful of states is regulation through statewide rules set by state agencies—usually the state’s public utility commission (PUC). See FRANKENA & PAUTLER, *supra* note 81, at 15.

city's specific needs and can create knowledgeable rules to fit their transportation market.⁹⁸ This Section discusses the Texas method for regulating vehicles-for-hire by introducing relevant statutory schemes, statutes, and local ordinances.⁹⁹

A. Relevant Texas Vehicle-for-Hire Statutes

Texas municipalities obtain state governmental authority to regulate vehicles-for-hire under the Texas Local Government Code (the Code).¹⁰⁰ In fact, the Code *requires* local municipalities to regulate taxicabs.¹⁰¹ The Code gives local municipalities total authority over how to regulate taxicabs that operate within the municipality's jurisdiction, on property owned by the municipality, or on property in which the municipality has an interest or ownership in.¹⁰² In addition, a municipality may establish regulations for new entry into the taxicab market.¹⁰³ Such regulations include "controls, limits, or other restrictions on the total number of persons providing the services," rate regulations, safety and insurance requirements, and "any other requirement adopted to ensure safe and reliable passenger transportation service[s]."¹⁰⁴ Thus, the vehicle caps and restrictions to entry common in local taxicab ordinances are well within the municipal authority under the Code.¹⁰⁵

In addition to § 215.004, Texas also passed a statute that grants Texas municipalities full discretion to regulate other vehicles-for-hire.¹⁰⁶ Section 215.073 codifies prior Texas case law on the subject of regulating vehicles-for-hire, which dates back to 1915.¹⁰⁷ Under this statute, Texas cities "may license, fix the charges or fares made by, or otherwise regulate any person who owns, operates, or controls any type of vehicle used on the

98. See Dempsey, *supra* note 57, at 120.

99. See *infra* Part III.A–C.

100. TEX. LOCAL GOV'T CODE ANN. §§ 215.004, 215.073 (West 2015).

101. LOCAL GOV'T CODE § 215.004(a)(1). Texas first passed this statute in 1989. *Id.*

102. *Id.* § 215.004(a-1)(1)–(4).

103. *Id.* § 215.004(b)(1)–(4).

104. *Id.*

105. See *id.*; *infra* Part III.B.

106. See TEX. LOCAL GOV'T CODE ANN. § 215.073 (West 2008). Interestingly, Texas enacted this statute two years prior to ratifying § 215.004, in 1987. *Id.*

107. See *Ex parte* Sullivan, 178 S.W. 537, 550–51 (Tex. Crim. App. 1915) (upholding a Fort Worth ordinance that regulated vehicles-for-hire); see also *Payne v. Massey*, 196 S.W.2d 493, 496 (Tex. 1946) (allowing municipalities to regulate vehicles-for-hire as long as municipalities do not profit from the licenses); *Ex parte* Parr, 200 S.W. 404, 406 (Tex. Crim. App. 1918) ("The city of San Antonio [has] authority to pass reasonable regulations governing automobiles operated upon its streets for hire, [and] we would not be authorized to declare its provisions unreasonable unless it clearly appeared that they were so."); *City of San Antonio v. Stokes*, 246 S.W. 706, 707 (Tex. Civ. App.—San Antonio Dec. 6, 1922, no writ) ("[T]he city of San Antonio has the absolute control over its streets and has the constitutional power to regulate the use of the streets and to absolutely deny the use of them for the prosecution of such a business as that of a public carrier for hire.").

public streets or alleys of the municipality for carrying passengers . . . for compensation.”¹⁰⁸ Although the statute gives municipalities the option to regulate TNCs, it does not *require* municipalities to regulate them.¹⁰⁹ Thus, under current Texas law, each municipality may decide whether or not, and how, to regulate TNCs.¹¹⁰

B. Taxicab Regulation in the Lone Star State

As required by the Texas Local Government Code, all major cities in Texas regulate taxicabs.¹¹¹ “In general, the extent of [taxicab] regulation increases with city size.”¹¹² This increase in regulation, however, “may not be motivated primarily by concern for market failures and achievement of an efficient resource allocation.”¹¹³ Instead, taxicab regulations have often been designed to protect “public transit systems and existing taxi firms from competition.”¹¹⁴ Taxicab regulations in Texas are no exception.

Texas cities, like most municipalities, use a “public convenience and necessity” standard to permit newly licensed taxicab entrants.¹¹⁵ Under this standard, some local governments will automatically deny new franchise permits unless the population-to-taxicab ratio has increased to a specified level as determined by the municipality.¹¹⁶ To illustrate, Austin will increase or decrease the annual allotment of taxicab franchise permits depending upon the percent change in population and the percent change in the number of taxicab departures from the Austin airport.¹¹⁷ In San Antonio, the number of permits the city allots is “determined by a ratio of one taxicab per 1,700” San Antonio citizens.¹¹⁸ This population-to-taxicab ratio creates a “vehicle cap” on the number of taxicabs allowed to operate in the city, and “in many cities the number of taxis has not been increased substantially in decades.”¹¹⁹

In some cities, like Houston, new vehicle-for-hire applicants, if any, are chosen at random from an applicant pool.¹²⁰ Other municipalities require a new applicant to prove that public convenience and necessity demand the

108. LOCAL GOV'T CODE § 215.073.

109. *See id.*

110. *See id.*

111. *See supra* Part III.A; e.g., HOUSTON, TEX., CODE OF ORDINANCES § 46 (2014).

112. FRANKENA & PAUTLER, *supra* note 81, at 15.

113. *See id.* at 68.

114. *Id.*

115. *See, e.g.*, HOUSTON, TEX., CODE OF ORDINANCES § 46-61 (2014); Dempsey, *supra* note 57, at 79–80; *see also* Hardaway, *supra* note 59, at 333–35 (noting how stringent this standard is in cities such as Las Vegas).

116. Dempsey, *supra* note 57, at 80; *see, e.g.*, AUSTIN, TEX., CITY CODE § 13-2-322 (2014).

117. AUSTIN, TEX., CITY CODE § 13-2-322(A).

118. San Antonio, Tex., Ordinance 2014-12-11-1002 § 33-929 (Dec. 11, 2014) [hereinafter S.A. TNC Ordinance], available at <https://sanantonio.legistar.com/LegislationDetail.aspx?ID=2078222&GUID=3C6BCD99-4274-427D-ACB2-836095B87E66&Options=&Search=> (Ordinance 2014-12-11-1002).

119. Manjoo, *supra* note 74; e.g., AUSTIN, TEX., CITY CODE § 13-2-322.

120. *See* HOUSTON, TEX., CODE OF ORDINANCES § 46-66 (2014).

new applicant's services; only then will the city council consider allowing new taxicab entrants into the city's taxicab market.¹²¹ Approval of new entry, however, is still within the discretion of the city council.¹²²

Local rules may require new applicants to wait months, or even years, before the applicants receive a definitive answer on whether or not the city has approved their application. In Houston, for example, the population-to-taxicab ratio is only computed every three years, whereas Austin follows a similar protocol but considers new entrants once per year.¹²³ In contrast, the Dallas city council considers permits on a rolling basis, but only after the director completes a separate investigation, which has no time requirement.¹²⁴ Consequently, a new taxicab applicant cannot begin operating immediately without violating local ordinances.

The local taxicab ordinances also regulate the price of taxicab fares by fixing the service rate computed by the taxicab drivers' taximeters.¹²⁵ This "price cap" provision compels taxicab drivers to charge a predetermined rate, even when the market fluctuates and the service rate becomes inconsistent with market conditions.¹²⁶ Additional examples of the requirements that taxicabs must comply with in some cities include regulating fare rates, paying for permits and other operation fees, filing insurance and financial responsibility documentation, transporting the elderly at a discounted rate, providing wheelchair-accessible vehicles, and operating at all hours of the day throughout the city—not just in profitable "hot spots."¹²⁷ These heavy restrictions on taxicabs may explain why taxicab operators became outraged when TNCs began operating immediately without approval from local governments.¹²⁸

121. See, e.g., DALLAS, TEX., CITY CODE §§ 45-2.3, 45-2.5(b) (2014). The FTC noted: "even where such provisions exist, regulatory authorities have commonly denied all applications for additional licenses." FRANKENA & PAUTLER, *supra* note 81, at 16.

122. E.g., DALLAS CITY CODE § 45-2.3(a).

123. See AUSTIN, TEX., CITY CODE § 13-2-322; HOUSTON, TEX., CODE OF ORDINANCES § 46-63 (2014) (stating that the city considers issuing new taxicab permits only during the "permit computation year" by using the "permit adjustment factor," or population-to-taxicab ratio).

124. See DALLAS CITY CODE § 45-2.5. A new ordinance will eliminate this process in April 2015. See *infra* note 311.

125. E.g., AUSTIN, TEX., CITY CODE § 13-2-191 (2014); HOUSTON, TEX., CODE OF ORDINANCES § 46-31 (2014); SAN ANTONIO, TEX., CODE OF ORDINANCES § 33-981 (2014).

126. See AUSTIN CITY CODE § 13-2-191; HOUSTON CODE OF ORDINANCES § 46-31; SAN ANTONIO, CODE OF ORDINANCES § 33-981. Undoubtedly, the price cap on taxicab services is a direct result of taxicab companies' tendency towards creating an upward pressure on the price. See *supra* Part II.B.2. In December 2014, the Dallas City Council passed a new ordinance that will allow taxicab companies to set their own fare rate, as long as the rate is below the maximum rate listed in the statute. See *infra* Part V.C.

127. See Plaintiff's Original Complaint at 4, Greater Hous. Transp. Co. v. Uber Techs., Inc., No. 4:14CV00941, 2014 WL 1509273 (S.D. Tex. Apr. 8, 2014); Badger, *supra* note 47.

128. See Joe Nocera, *Uber's Rough Ride*, N.Y. TIMES, Nov. 21, 2014, http://www.nytimes.com/2014/11/22/opinion/joe-nocera-ubers-rough-ride.html?_r=0.

C. Chance Card: TNCs in Texas

In early 2014, TNCs first expanded into major Texas cities, such as Dallas, Houston, Corpus Christi, Austin, and San Antonio.¹²⁹ By the summer of 2014, UberX became the first TNC application in West Texas and throughout many Texas college towns; Uber now serves Lubbock, Amarillo, and El Paso, as well as the college towns of Waco and College Station.¹³⁰ This rapid expansion resulted in a quickly outdated regulatory framework that did not encompass TNCs.¹³¹ Because TNCs operate differently than taxicabs, TNCs were not compliant with local taxicab ordinances and operated without regulatory authority for months.¹³² Local police departments began issuing citations to TNC drivers, and in some cases, impounding TNC drivers' vehicles for not complying with local taxicab regulations.¹³³ Dallas, Houston, and San Antonio even issued cease and desist orders to TNCs.¹³⁴

129. See Aman Batheja, *Uber, Lyft Rolling Forward, but Uncertainty Lingers*, TEX. TRIB. (June 10, 2014), <https://www.texastribune.org/2014/06/10/uber-lyft-target-texas-cities-despite-unfriendly-r/> (noting that TNCs now operate in Corpus Christi, Houston, San Antonio, Austin, and Dallas).

130. See Dave, *Uber Launching Amarillo with Free Rides for Two Weeks*, UBER BLOG (July 16, 2014), <http://www.blog.uber.com/AmarilloLaunch>; Lori, *Uber Is in Session*, UBER BLOG (Aug. 28, 2014), <http://www.blog.uber.com/ubercollege>; Ryan, *Uber Lands in Lubbock with Two Weeks of Free Rides*, UBER BLOG (June 26, 2014), <http://www.blog.uber.com/lubbocklaunch>; Ryan, *Uber Launching El Paso with Free Rides for Two Weeks*, UBER BLOG (June 26, 2014), <http://www.blog.uber.com/elplaunch>.

131. See Batheja, *supra* note 129.

132. *Id.*; Jason Puckett, *Lubbock Building Case to Crackdown on Uber*, EVERYTHING LUBBOCK (July 21, 2014, 2:50 PM), <http://www.everythinglubbock.com/story/d/story/lubbock-building-case-to-crack-down-on-uber/83735/e0GZynDcIE2X4CeMcljqog>. In fact, TNCs have popped up so quickly across the United States that up to twenty state legislatures during the 2015 state legislative sessions will consider statewide TNC legislation. Jonathan Drew, *North Carolina Could Be The Newest Legal Battleground for Uber and Lyft*, HUFFINGTON POST (Nov. 23, 2014, 6:05 PM), http://www.huffingtonpost.com/2014/11/23/north-carolina-uber_n_6208646.html. The Texas Legislature is now among them as it considers House Bill 2440. Tex. H.B. 2440, 84th Leg., R.S. (2015) (proposing statewide legislation for TNCs).

133. See Batheja, *supra* note 129; Dug Begley, *City's Ticketing of Uber, Lyft Increases Because of Paid Rides*, HOUS. CHRON. (Apr. 4, 2014), <http://blog.chron.com/thehighwayman/2014/04/citys-ticketing-of-uber-lyft-increases-because-of-paid-rides/>; Brantley Hargrove, *Dallas' Unfair Fight to Crush Uber*, DALL. OBSERVER (Sept. 19, 2013), <http://www.dallasobserver.com/2013-09-19/news/dallas-unfair-fight-to-crush-uber/full/>. Taxicab companies take full advantage of this technicality by ordering TNC services and then reporting TNC drivers to the local police. See Hargrove, *supra*. Some municipalities in other states take even more extreme measures, such as arresting noncompliant TNC drivers, to stop TNC drivers from operating. See Barry Donegan, *Tuscaloosa, AL to Uber Drivers: Stop Driving or Face Arrest*, TRUTH MEDIA (Oct. 13, 2014), <http://www.truthinmedia.com/tuscaloosa-al-to-uber-drivers-stop-driving-or-face-arrest/>.

134. Plaintiff's Original Complaint, *supra* note 127, at 2; Press Release, Limousine Indus. Blog, Regulators Join Rising National Trend Prohibiting Bogus Ridesharing and Rogue Smartphone Apps (July 17, 2013), available at <http://www.limousine-ny.blogspot.com/2013/07/regulators-join-rising-national-trend.html>; see also Mark Reagan, *SAPD Warms to Ride-Sharing*, SAN ANTONIO CURRENT (Aug. 19, 2014), <http://www.sacurrent.com/sanantonio/sapd-warms-to-ride-sharing/Content?oid=2324417> (noting San Antonio's discussions to bring TNCs into compliance with city ordinances four months after the issuance of cease and desist letters).

Now, “Texas cities are at varying stages of re-evaluating city regulations,” leaving TNCs, their drivers, and customers in a state of uncertainty.¹³⁵ In August 2014, Houston became the first Texas city to reform its vehicle-for-hire ordinance to include TNCs.¹³⁶ Austin followed in October 2014 by introducing a provisional city ordinance that moderately regulates TNCs and focuses on data collection to better understand this new service.¹³⁷ In December 2014, Dallas and San Antonio enacted city ordinances that will take effect in Spring 2015.¹³⁸ For now, TNC drivers “continu[e] to operate in a legal gray zone in” other Texas cities.¹³⁹ Houston, Austin, San Antonio, and Dallas took varying approaches to regulating this new transportation-for-hire option, which raises questions about which approach will best serve consumers, and how the rest of Texas will decide to regulate both TNCs and taxicabs.¹⁴⁰ Accordingly, the best starting point for determining whether and how to regulate all vehicles-for-hire is assessing the regulatory suggestions offered by taxicab companies and TNCs themselves.

135. Batheja, *supra* note 129.

136. HOUSTON, TEX., CODE OF ORDINANCES §§ 46-501 to -516 (2014); Dug Begley, *Houston Approves New Regulations, Allowing Uber and Lyft*, HOUS. CHRON. (Aug. 6, 2014), <http://blog.chron.com/thehighwayman/2014/08/houston-approves-new-regulations-allowing-uber-and-lyft/#25524103=0&25694101=0>. This ordinance regulates TNCs similarly to taxicabs, although it does include some TNC-specific rules. *See infra* Part V.B.

137. Austin, Tex., Ordinance 20141016-038, pt. 1(C) (Oct. 16, 2014) [hereinafter Austin TNC Ordinance], available at https://www.municode.com/library/tx/austin/ordinances/code_of_ordinances?nodeId=679698; Jordan Ferguson, *Recent Transportation Network Company Ordinances in Austin, Houston and Washington, D.C. Display Variety of Regulatory Approaches*, BEST & KRIEGER LLP (Oct. 30, 2014), <http://www.bbknowledge.com/california-public-utilities-commission-epuc/recent-transportation-network-company-ordinances-in-austin-houston-and-washington-d-c-display-variety-of-regulatory-approaches/>.

138. *See* Dallas, Tex., Ordinance 29596 § 47A-2.5.2(a)(2) (Dec. 10, 2014) [hereinafter Dallas Ordinance], available at <http://www.ci.dallas.tx.us/cso/resolutions/2014/12-10-14/14-2203.pdf>; Tom Benning, *Dallas Council Approves New Car-for-Hire Rules; Uber and Lyft to be able to Operate Legally*, DALL. MORNING NEWS (Dec. 10, 2014, 2:02 PM), <http://cityhallblog.dallasnews.com/2014/12/dallas-council-approves-new-car-for-hire-rules-uber-and-lyft-to-be-able-to-operate-legally.html/>; Iris Dimmick, *San Antonio Imposes Strict Rideshare Rules*, RIVARD REP. (Dec. 12, 2014, 9:33 AM), <http://therivardreport.com/san-antonio-rideshare-vote/>; S.A. TNC Ordinance, *supra* note 118, at 2. San Antonio’s ordinance is similar to Houston’s, whereas the Dallas City Council took a novel approach by reconstructing the transportation-for-hire chapter of the Dallas City Code to regulate all vehicles-for-hire similarly. *See infra* Parts V.B–C.

139. Aman Batheja, *Austin Mulls Regulations for Uber, Lyft*, TEX. TRIB. (Oct. 1, 2014), <http://www.texastribune.org/2014/10/01/austin-mulls-regulations-for-uber-lyft/>.

140. *See infra* Part V.

IV. HOW CAN THESE PLAYERS STAY OUT OF JAIL?

*“Technology breaks the laws and makes the laws.”*¹⁴¹

A. *Looking for a Bail Out or Just Visiting? The Taxicab–TNC Dichotomy*

One debate among TNCs and taxicab companies is how local legislatures should, if at all, regulate TNCs.¹⁴² Importantly, the people complaining the most about TNCs are not the consumers, but are those from the taxicab industry.¹⁴³ TNCs, while backed by a social movement towards eco-friendliness and technological efficiency, say they offer unique services that, if regulated, should be controlled differently than traditional taxicab services.¹⁴⁴ Meanwhile, taxicab companies beg local municipalities—and federal courts—to save their troubled industry from the big, bad TNCs.¹⁴⁵

Taxicab companies often contend that unregulated TNCs hold serious health and safety risks.¹⁴⁶ For example, most municipalities require taxicab companies to hold company and driver permits to ensure that they provide safe and reliable service.¹⁴⁷ Unregulated TNCs, says the taxicab industry, are comparable to unlicensed doctors.¹⁴⁸ Further, taxicab supporters have fueled doubt in consumers by using negative media to scare customers away from using the new services.¹⁴⁹ In reality, however, taxicab companies have undergone similar critiques for decades.¹⁵⁰ In fact, “taxi drivers work in the most dangerous vocation in the world.”¹⁵¹ Studies show that payments in cash, working in high-crime areas, and serving unknown patrons contribute to the job’s dangerous predisposition.¹⁵² Thus, while taxicab companies

141. FRANK OGDEN, OGDENISMS: THE FRANK OGDEN QUOTE BOOK (Hounslow Press 1994).

142. *E.g.*, Defendant Lyft, Inc.’s Reply in Support of Lyft’s Motion to Dismiss Plaintiffs’ Amended Complaint at 1, Greater Hous. Transp. Co. v. Uber Techs., No. 4:14-CV-00941 (S.D. Tex. May 5, 2014) (noting that this lawsuit fundamentally concerns the “scope and fairness of municipal ordinances” and local “policy questions concerning the appropriateness of regulating transportation network platforms”).

143. Wagstaff, *supra* note 34.

144. *See, e.g.*, Whitson, *supra* note 16 (noting that Lyft is unhappy with the new Houston TNC ordinance because it regulates TNCs too much like taxicabs).

145. *See* Plaintiff’s Original Complaint, *supra* note 127, at 4–5; *see also* Badger, *supra* note 47 (noting that taxicab companies have filed lawsuits against cities for allowing TNCs to operate unregulated).

146. *See* Stephanie Francis Ward, *Internet Car Companies Offer Convenience, but Lawyers See Caution Signs*, A.B.A. J. (Jan. 1, 2014, 10:00 AM), available at http://www.abajournal.com/magazine/article/internet_car_companies_offer_convenience_but_lawyers_see_caution_signs.

147. *See infra* note 212 and accompanying text.

148. *See* Ward, *supra* note 146.

149. *See supra* note 46 (noting that taxicab companies alerted the media to the BBB’s “F” rating of TNCs).

150. *See supra* note 56.

151. Gerry Manly, *Taxi Drivers’ Workplace Violence and Occupational Risks*, TAXI DRIVERS ASS’N AUSTIN, available at http://www.austintaxidriver.org/downloads/Taxi_Drivers_Workplace_Violence_and_Occupational_Risks.pdf.

152. *Id.*

declare media war on TNCs, they conveniently overlook how TNCs could improve the safety of their own employees.¹⁵³

Taxicab companies next argue that city legislators should regulate TNCs like taxicabs to protect against unfair competition: if taxicab services are the only stringently regulated vehicle-for-hire service, taxicab companies will not profit.¹⁵⁴ In other words, TNCs that function without restrictions will “severely limit the profits that licensed carriers need to sustain other required services” demanded by taxicab regulations.¹⁵⁵ Complying with these taxicab requirements is costly; thus, it seems unfair for cities to allow TNCs to operate freely while taxicab regulations remain unchanged.¹⁵⁶ Taxicab companies assert that they will be forced into either noncompliance with city ordinances or bankruptcy if cities do not update their transportation regulations to include TNCs.¹⁵⁷

While taxicab companies regard TNCs as rogue criminals for not adhering to taxicab regulations, TNCs reason that the real issue is municipalities’ outdated regulatory frameworks that do not accommodate TNCs.¹⁵⁸ Hence, TNCs do not operate illegally, as taxicabs contend, but operate freely because there is no legislation in place to regulate their services.¹⁵⁹ Recent communications suggest that TNCs have conceded to the fact that legislatures wish to regulate TNCs.¹⁶⁰ As a result, TNCs now focus on establishing why local legislatures should regulate TNCs differently than they have in the past with taxicab companies.¹⁶¹

TNCs argue that their unique business model differentiates TNCs from taxicabs, and thus requires distinct methods of regulation.¹⁶² The use of TNC

153. See Carolyn Said, *Why Do Women Like Driving for Lyft, Sidecar and Uber?*, SFGATE (Oct. 17, 2014, 7:16 PM), <http://www.sfgate.com/business/article/Why-do-women-like-driving-for-Lyft-Sidecar-and-5830862.php> (noting that female TNC drivers feel safer with the TNCs’ application features that prevent anonymity) *supra* note 46. This possibility is discussed, *infra*, at notes 360–63.

154. See Plaintiff’s Original Complaint, *supra* note 127, at 4–5; see also Badger, *supra* note 47 (explaining the numerous fees taxicab drivers are required to cover before turning a profit).

155. See GORMAN GILBERT & ROBERT SAMUELS, *THE TAXICAB* 153 (1982); *supra* Part III.B (noting the stringent regulations taxicab companies must adhere to).

156. See Hardaway, *supra* note 59, at 335; Badger, *supra* note 47.

157. See Plaintiff’s Original Complaint, *supra* note 127, at 4–5 (“Why pay for a license if it means nothing?”).

158. See Deven R. Desai, *The New Steam: On Digitization, Decentralization, and Disruption*, 65 HASTINGS L.J. 1469, 1477 (2014).

159. See *id.*; see also Austin TNC Ordinance, *supra* note 137, at pt. 1(J) (“TNCs do not currently fit into the conventional transportation regulatory framework and are operating outside of the regulatory framework in many U.S. cities . . .”).

160. See, e.g., Letter from Leandre Johns, Uber Gen. Manager, to San Antonio Mayor Ivy Taylor and City Councilmembers (Dec. 7, 2014) [hereinafter Letter from Leandre Johns to Ivy Taylor], available at <http://www.mysanantonio.com/file/961/961-Letter%20to%20San%20Antonio%20Council.pdf> (noting the importance of “compromise ordinances that work for both TNCs and taxis alike”).

161. See, e.g., *id.*

162. *Id.* (“Simply put, there is virtually no comparison between taxis and TNCs. . . .”); see also Badger, *supra* note 47 (“[TNCs] argue that regulations intended for taxis don’t apply to a service no one could have envisioned when the laws were written.”).

smartphone applications to connect riders and drivers, TNCs contend, warrants separate, less stringent regulation in comparison to taxicab companies.¹⁶³ For instance, taxicab drivers pick up riders through street hails, whereas customers request TNC services through e-hails.¹⁶⁴ In addition, TNC customers agree to the service fee—at least an estimated fee—through the TNC application prior to pickup, while taxicabs charge fees set by regulated rates that riders pay at the conclusion of the service.¹⁶⁵ TNCs also participate in surge pricing, whereas taxicabs charge a standard service fee set by regulation.¹⁶⁶ Distinctively, TNCs offer a platform for riders and drivers to rate each other, offering quality assurance that taxicab companies do not.¹⁶⁷ This rating system is important—considering TNC drivers use their personal vehicles—because it promotes mutual respect between riders and drivers, which leads to a higher level of customer service.¹⁶⁸ These differences are niche features that aid the consumer in deciding which service to choose.¹⁶⁹ Therefore, regulating TNCs differently to safeguard these distinctions will provide consumers with a meaningful choice in vehicle-for-hire service that was not available before TNCs.¹⁷⁰

Some TNCs also state that they aim to compliment existing public transportation companies rather than directly compete with them.¹⁷¹ In fact, some experts offer that TNCs create an opportunity and an incentive for people to eventually cease from owning personal vehicles altogether.¹⁷² For example, “[i]n its long-established markets, like San Francisco, using Uber every day is already arguably cheaper than owning a private car.”¹⁷³ For comparison, studies show that consumers commonly use taxicab services as a supplement to other modes of public transportation, rather than as a replacement.¹⁷⁴ Another study in San Francisco found that people would actually use taxicabs more often if they were more readily available.¹⁷⁵ Thus, like taxicabs, TNCs may also supplement public transportation and may not directly compete with other transportation companies, suggesting that TNCs

163. See Badger, *supra* note 47; Letter from Leandre Johns to Ivy Taylor, *supra* note 160.

164. See *supra* note 9 and accompanying text.

165. See *supra* notes 13–15 and accompanying text. In fact, the way TNCs and taxicabs collect service fees is the distinguishing factor for other states who decided to regulate TNCs differently from taxicab companies. See *supra* note 19 and accompanying text.

166. See *supra* notes 16–17 and accompanying text.

167. See *supra* note 22 and accompanying text.

168. See *supra* note 22.

169. See *supra* notes 6–22 and accompanying text.

170. See *supra* notes 6–22 and accompanying text.

171. E.g., Erica Chayes, *To Lyft or Not to Lyft*, PRINCETON SUN (Jan. 15, 2015, 4:35 PM), <http://theprincetonsun.com/2015/01/15/lyft-lyft/>.

172. See Manjoo, *supra* note 74. Studies show that taxicabs also create this incentive, and the biggest problem with taxicabs is that “there just aren’t enough of them.” *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

could actually create more business for all public transportation options.¹⁷⁶ Accordingly, if taxicabs and TNCs remain distinct, viable options, they could cover a wider customer base and encourage the use of a better-integrated mass public transit system.¹⁷⁷

One challenge with this theory is the impossibility of evaluating it because the results that TNCs claim to produce remain to be seen.¹⁷⁸ Even if the public does become less dependent on personal vehicles as a result of TNC services, this change will likely take years to verify.¹⁷⁹ Moreover, TNCs and taxicabs provide similar services; thus, more than likely, at least some overlap exists between their customer-base.¹⁸⁰ Competition for industry drivers is also likely because TNCs put pressure on taxicab companies to pay their drivers well, or risk losing them to TNCs.¹⁸¹ Transportation analysts have seen car-ownership reduction in similar services, suggesting that, in time, TNCs could also significantly affect the private car industry.¹⁸² Other studies, however, indicate that TNCs compete directly with taxicab companies, noting a drop in taxicab industry pickups since TNCs began operating.¹⁸³ These conflicting results suggest that TNCs and taxicabs likely compete with each other, at least while TNCs find their place in the vehicle-for-hire industry and taxicabs remain heavily regulated.¹⁸⁴ But, over time, these studies also show that TNCs and taxicab companies could grow to compliment each other like other modes of public transportation.¹⁸⁵ While regulators catch up to TNCs, taxicab companies must now determine how to compete with these newcomers and earn their position in the transportation market.

B. Rolling for Doubles: How Taxicabs Can Avoid Bankruptcy

The taxicab industry must admit that the overall success of TNCs strongly suggests that the taxicab industry was, and is, flawed.¹⁸⁶

176. *See id.*

177. *See id.*

178. *See id.* (noting that transportation scholars are just beginning to research the results of TNCs); *see also* Austin TNC Ordinance, *supra* note 137, at pt. 1(U) (“TNCs have . . . begun operating outside of the regulatory framework . . . and are allegedly carrying thousands of riders each week . . . without sharing any of the information that could be helpful . . . in understanding where the gaps are in our current transportation network, and how this new transportation mode relates to the existing modes.”).

179. *See* Manjoo, *supra* note 74.

180. *See supra* Part I.

181. *Cf.* Harris, *supra* note 86, at 213 (explaining that drivers may start their own firms if they are not paid competitive wages).

182. *See id.*

183. *See* Davidson, *supra* note 68 (noting a 65% drop in average monthly taxicab trips from 2012, when TNCs began operating, to July 2014).

184. *See supra* Parts I, III.B.

185. *See infra* Part VI.

186. *See* Brad Stone, *Invasion of the Taxi Snatchers: Uber Leads an Industry's Disruption*, BLOOMBERG BUS. (Feb. 20, 2014), <http://www.bloomberg.com/bw/articles/2014-02-20/uber-leads-taxi->

Undeniably, TNCs provide a solution for the taxicab industry's inability to fulfill customer demand.¹⁸⁷ Prior to TNCs, taxicab drivers lacked incentives to keep working when demand was high, causing long wait times and overall inefficiency.¹⁸⁸ Although consumers dislike surge pricing, experts agree that the TNC price model creates an incentive to keep drivers on the road and provide consumers with quicker service.¹⁸⁹

This reality does not, however, necessarily mean that the taxicab industry is doomed.¹⁹⁰ Instead, taxicab companies and regulators should adapt to the new technology introduced by TNCs.¹⁹¹ Some economists believe that the digitization of the taxicab industry parallels other forms of technological advances, such as the transformation of the music industry; although technology changed the way people buy music, the market was not destroyed.¹⁹² Another example of an evolving transportation industry is the partial deregulation of the airline industry, which involved removing price caps and deregulating service routes.¹⁹³ After this partial deregulation, "airlines reconfigured their routes and equipment, making possible improvements in capacity utilization."¹⁹⁴ This increase in efficiency "democratized air travel, making it more accessible to the general public."¹⁹⁵ In fact, "[a]s prices have decreased, air travel has exploded. The total number of passengers that fly annually has more than doubled since

industry-disruption-amid-fight-for-riders-drivers ("The taxi industry has been ripe for disruption for decades. But only technology has allowed it to really kick in." (quoting Uber CEO Travis Kalanick)). This reality also highlights the disadvantage that heavy regulation places on the taxicab industry now that TNCs are operative. *See supra* Part III.B.

187. *See* Stone, *supra* note 186. In fact, a Seattle study showed a 10% decrease in DWI-related offenses in the city since TNCs began operating less than two years ago, showing that TNCs bridge a customer gap not previously covered by taxicabs. *See* Jen, *Seattle, Your UberX Is Arriving Now!*, UBER BLOG (Apr. 11, 2013), <http://blog.uber.com/2013/04/11/seattle-your-uberx-is-arriving-now/> (noting that Uber has been operating in Seattle since April 2013); Letter from Leandre Johns to Ivy Taylor, *supra* note 160. In addition, a new study shows that with TNCs in California, "an estimated total of 1,800 [DWI-related] crashes [have been] prevented since July 2012." *See* Michael, *Making Our Roads Safer—For Everyone*, UBER BLOG (Jan. 27, 2015), <http://blog.uber.com/uber-madd> (noting that Uber recently partnered with Mothers Against Drunk Driving (MADD) to conduct this research and launch a safety campaign).

188. *See* Stone, *supra* note 186 (noting that a study in Manhattan found that taxicab drivers, without incentives to keep working when demand is high, go home once they meet their daily quota).

189. *See id.*

190. *See* Desai, *supra* note 158, at 1469.

191. *See id.* at 1471; *see also* Benning, *supra* note 138 ("We have to accept that it's time for change," said [Dallas City] [C]ouncil member Jennifer Staubach Gates. "All industries have been affected by technology, and transportation now has been affected.").

192. *See* Desai, *supra* note 158, at 1472.

193. *See* Fred L. Smith Jr. & Braden Cox, *Airline Deregulation*, LIBR. ECON. & LIBERTY, <http://www.econlib.org/library/Enc/AirlineDeregulation.html> (last visited May 20, 2015). This deregulation occurred after the "enraged American public," who had learned that "regulated fares were 84% higher than what competitive rates would be . . . demanded deregulation of the airline industry." Hardaway, *supra* note 59, at 327.

194. Smith Jr. & Cox, *supra* note 193; *see* Hardaway, *supra* note 59, at 327.

195. Smith Jr. & Cox, *supra* note 193; *see* Hardaway, *supra* note 59, at 327.

1978”—when the airline industry was deregulated.¹⁹⁶ Today, the airline industry functions in a competitively priced market that better serves its consumers.¹⁹⁷ This partial deregulation benefitted consumers and airlines alike by lowering costs and broadening the industry’s customer base.¹⁹⁸

Therefore, this new TNC technology may not be the issue; perhaps the way legislatures regulate the vehicle-for-hire market is.¹⁹⁹ For example, experts believe that once incumbents begin making legal arguments against new players (TNCs), claiming they “are scofflaws for not paying taxes and complying with regulations,” the only thing that law and policy makers should take seriously is the fact that the industry has changed.²⁰⁰ And although this digitization has shaken up the market and temporarily increased the number of players (vehicles-for-hire), history tells us that the market will eventually stabilize, and a few concentrated winners will once again emerge in a more stable and consumer-based market.²⁰¹ Thus, for taxicab companies to evolve with technology, they should accept this new form of digitization, and lawmakers should revisit taxicab legislation to include provisions that allow taxicab companies to do so.²⁰² The next section explores this possibility by comparing how Texas municipalities have approached regulating TNCs and how the varying approaches may affect taxicab legislation.²⁰³

V. TNCs ARE HERE TO PLAY: THE FIRST TNC REGULATIONS IN TEXAS

*“I think it’s wrong that only one company makes the game Monopoly.”*²⁰⁴

Currently, legislatures must invent their own rules to regulate TNCs because—due to their abrupt entry into the transportation market—TNC regulations are not yet standardized.²⁰⁵ As a result, TNC regulations vary widely from city to city across the country.²⁰⁶ In 2014, Texas municipalities joined these cities by passing TNC regulations that vary in approach and

196. Smith Jr. & Cox, *supra* note 193.

197. *See id.*

198. *See id.* The ability for the airline industry to broaden its customer base supports TNCs’ contention that they also expand the vehicle-for-hire customer base and do not—exclusively at least—compete with taxicabs. *See supra* text accompanying notes 171–77.

199. *See* Desai, *supra* note 158, at 1474; Harris, *supra* note 86, at 222 (noting that the taxicab industry “has been hamstrung by heavy regulation and a lack of thoughtful analysis” for decades).

200. *See* Desai, *supra* note 158, at 1478 (“The outcries of incumbents matter not because lawmakers ought to heed the cries. The outcries let people know something has changed.”).

201. *See* Desai, *supra* note 158, at 1469; Smith Jr. & Cox, *supra* note 193; *supra* Part II.B.

202. *See* Rafi Mohammed, *Regulation Is Hurting Cabs and Helping Uber*, HARV. BUS. REV. (July 9, 2014), <https://hbr.org/2014/07/regulation-is-hurting-cabs-and-helping-uber/>; Desai, *supra* note 158, at 1469.

203. *See infra* Part V.

204. Steven Wright, *quoted in* JAMES RYAN, HA! 54 (2011).

205. Whitson, *supra* note 16.

206. *Id.*

stringency.²⁰⁷ This section evaluates the TNC ordinances in Houston, San Antonio, Austin, and Dallas to provide a recommendation for the most effective and consumer-friendly vehicle-for-hire regulations possible.²⁰⁸ First, Part V.A discusses the similarities among the four ordinances, followed by an analysis of Houston and San Antonio's traditional approach to TNC legislation in Part V.B.²⁰⁹ Part V.C then concludes with a discussion about the novel approaches taken by Austin and Dallas.²¹⁰

A. Similarities: Provisions All Four Cities Can Agree On, and for Good Reason

The similarities among the Texas TNC ordinances are basic, common sense requirements that benefit the public.²¹¹ In particular, each city requires TNCs to hold an operating permit, and each TNC driver must hold a separate driver's permit to operate legally.²¹² TNCs and drivers must qualify separately for these permits, but that is where the similarities end; the qualifications for these permits differ from city to city.²¹³

Next, TNCs must show proof of commercial liability insurance, including gap coverage, before the cities will grant operating permits.²¹⁴ This insurance requirement benefits the public—and prevents dangers similar to those that occurred in the jitney era—by ensuring that people will be adequately compensated for accidents caused by negligent TNC drivers.²¹⁵ This provision is not burdensome because current TNCs already provide gap insurance for their drivers.²¹⁶ Hence, the ordinances guarantee that future TNCs also meet these high standards.²¹⁷ Another common provision requires all TNC driver applicants to undergo and pass a criminal background check,

207. See *infra* Part V.A–C.

208. See *infra* Part V.

209. See *infra* Part V.A–B.

210. See *infra* Part V.C.

211. See *infra* Part V.A.

212. See HOUSTON, TEX., CODE OF ORDINANCES §§ 46-506, 46-510 (2014); Dallas Ordinance, *supra* note 138, at §§ 47A-2.1.1, 47A-2.2.1; S.A. TNC Ordinance, *supra* note 118, at §§ 33-983, 33-985; see also Austin TNC Ordinance, *supra* note 137, at pts. 3(b)(5)–(7) (explaining that the agreement between the City of Austin and each TNC functions as both permits).

213. See *infra* Part V.B–C (discussing the different requirements TNCs must meet to operate legally in each city).

214. See HOUSTON, TEX., CODE OF ORDINANCES § 46-508(b) (2011); Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(1)–(2); Dallas Ordinance, *supra* note 138, at § 47A-2.5.2; S.A. TNC Ordinance, *supra* note 118, at § 33-983(i); see also text accompanying note 45 (discussing gap coverage). Dallas requires liability insurance up to \$500,000 in contrast to other ordinances' mandatory \$1 million policy requirement for TNCs. See Dallas Ordinance, *supra* note 138, at § 47A-2.5.2(a)(2). This difference is likely because Dallas incorporates the same regulations for both TNCs and taxicabs in one ordinance. See *supra* Part III.B.2.

215. See *supra* text accompanying note 64.

216. See *supra* note 45 and accompanying text.

217. See *supra* note 45 and accompanying text.

which provides a safer environment for riders.²¹⁸ Because TNCs already conduct their own background checks before hiring their drivers, this requirement ensures that present and future TNCs always inspect an applicant's criminal history without burdening TNCs.²¹⁹ Most importantly, with these provisions, TNC riders will be more trusting of their TNC drivers, and thus more likely to opt for using the service.²²⁰

Further, TNC drivers must accommodate handicapped riders, which prevents discrimination and assures that all members of the community have efficient transportation options.²²¹ This requirement also balances the costs of such accommodation among all TNCs so that operating costs are equalized.²²² TNCs must also indicate their rate information on the smartphone application, which benefits consumers by informing them of the service fee before they accept the service.²²³ As a result, consumers can compare rates to find the best deal and avoid surprise fees, which eliminates the need for regulations to control service prices.²²⁴ This is likely the reason why—unlike taxicab ordinances, which are still capped in all Texas cities—Texas TNC ordinances do not standardize, cap, or otherwise control TNC service fee rates.²²⁵

Another common departure from traditional vehicle-for-hire regulations is that no Texas TNC ordinance limits the number of TNC vehicles allowed to

218. HOUSTON, TEX., CODE OF ORDINANCES §§ 1-10, 46-15.1, 46-510 (2014); Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(7); Dallas Ordinance, *supra* note 138, at § 47A-2.2.4; S.A. TNC Ordinance, *supra* note 118, at §§ 33-010, 33-983(m), 33-985(b)(3).

219. *See Background & DMV Checks*, LYFT, <http://www.lyft.com/safety> (last visited May 20, 2015); *Rider Safety*, UBER, <http://www.uber.com/safety> (last visited May 20, 2015).

220. *Cf. supra* notes 146–49 and accompanying text (discussing health and safety risks).

221. *See* HOUSTON, TEX., CODE OF ORDINANCES § 46-516(j) (2014); Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(13); Dallas Ordinance, *supra* note 138, at § 47A-2.4.4; S.A. TNC Ordinance, *supra* note 118, at § 33-030. Each city set different standards for meeting this requirement. *See* HOUSTON, CODE OF ORDINANCES § 46-516(j); Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(13); Dallas Ordinance, *supra* note 138, at § 47A-2.4.4; S.A. TNC Ordinance, *supra* note 118, at § 33-030. In Houston, by August 6, 2015, 3% of all vehicles-for-hire must be wheelchair accessible. City of Hous., *supra* note 19. Similarly, in Austin, TNCs must set aside ten cents for every ride to accommodate handicapped TNC riders, with the goal of making wait times for riders who require accommodations under the Americans with Disabilities Act (ADA) equivalent to those of all other TNC riders. Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(12). In contrast, San Antonio and Dallas do not demand TNCs or taxicabs to operate wheelchair accessible vehicles at all, although the ordinances do require all vehicles-for-hire to comply with the ADA. *See* Dallas Ordinance, *supra* note 138, at § 47A-1.6(c); S.A. TNC Ordinance, *supra* note 118, at § 33-030.

222. *Cf. supra* text accompanying notes 155–57 (describing how taxicab companies have to comply with costly regulations that TNCs are not currently required to adhere to).

223. HOUSTON, TEX., CODE OF ORDINANCES § 46-509 (2014); Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(10); Dallas Ordinance, *supra* note 138, at § 47A-2.4.8(c); S.A. TNC Ordinance, *supra* note 118, at § 33-933.

224. *See supra* Part II.B.2.

225. *See* AUSTIN, TEX., CITY CODE § 13-2-461 (2014); HOUSTON, TEX., CODE OF ORDINANCES § 46-31 (2014); Dallas Ordinance, *supra* note 138, at § 47A-2.4.8(f); S.A. TNC Ordinance, *supra* note 118, at § 33-981. Though each city still caps the rate for taxicabs, Dallas allows taxicab companies more flexibility in setting service rates than in other cities. *See infra* note 319.

operate in the city.²²⁶ The absence of vehicle caps allows consumers, through natural market conditions—not speculative regulatory frameworks—to control the number of TNC vehicles that operate.²²⁷ If the number of taxicabs remains capped, however, TNCs could gain an unfair advantage by bridging a gap in the transportation industry that is partially set by regulations.²²⁸ The next section discusses additional challenges with regulating TNCs: specifically, regulating TNCs like traditional taxicabs.²²⁹

B. *Playing Hardball: The Houston and San Antonio TNC Ordinances*

Houston and San Antonio enacted TNC ordinances that compare to conventional taxicab legislation found across Texas.²³⁰ As a result, these ordinances provide a long list of regulations for TNCs that TNC representatives call some of the most onerous and burdensome regulations in the nation.²³¹ In fact, Lyft decided to suspend its services in Houston as a result of these new ordinances, and Uber and Lyft have both threatened to leave San Antonio once the ordinance takes effect in April 2015.²³² According to their city councils, Houston and San Antonio added TNC regulations to protect public safety, improve customer service, and allow new, innovative transportation services to operate legally.²³³ Their conventional approach, however, may frustrate these goals.

226. See HOUSTON, TEX., CODE OF ORDINANCES § 46-505(c) (2014); Austin TNC Ordinance, *supra* note 137 (lacking a rule that limits the number of TNCs that may operate); Dallas Ordinance, *supra* note 138, at § 47A-2.2.4; S.A. TNC Ordinance, *supra* note 118, at § 33-991.

227. See *supra* note 119 and accompanying text.

228. See *supra* notes 187–89 and accompanying text; cf. Mohammed, *supra* note 202 (“The longer local governments delay taxi price regulation, the bigger advantage Uber gains in dominating the private car transportation market.”). This possibility is discussed further, *infra* at notes 311–18.

229. See *infra* Part V.B.

230. See *supra* Part III.B. The San Antonio City Council looked to its Houston neighbors when drafting the San Antonio TNC ordinance, which explains the similarities between the two ordinances. See S.A. TNC Ordinance, *supra* note 118 (PowerPoint presentation, slides 15 and 16) (comparing the San Antonio proposed ordinance with Houston’s TNC ordinance).

231. See Dimmick, *supra* note 138; Whitson, *supra* note 16.

232. Mark Reagan, *Uber, Lyft Threat to Leave SA if Regulations Approved*, SAN ANTONIO CURRENT (Dec. 10, 2014), <http://www.sacurrent.com/sanantonio/uber-lyft-threaten-to-leave-sa-if-regulations-approved/Content?oid=2354125>; Whitson, *supra* note 16. In fact, “[i]n a last minute attempt to keep [TNCs] such as Uber and Lyft from abandoning San Antonio, city officials are now working to draft an alternative to the restrictive rideshare ordinance they previously passed.” Greg Harrison, *San Antonio Revisiting Restrictive Rideshare Ordinance*, TEX. SCORECARD (Feb. 17, 2015), <http://www.empower-texans.com/around-texas/san-antonio-revisiting-restrictive-rideshare-ordinance/>. This attempt failed; as of April 1, 2015 (which was ironically Uber’s one-year anniversary for operating in San Antonio), Uber suspended all services in San Antonio due to the stringent requirements in San Antonio’s TNC ordinance. Alison Griswold, *Uber Just Showed Us It’s Trump Card: Leaving Town*, SLATE (Apr. 2, 2015, 4:15 PM), http://www.slate.com/blogs/moneybox/2015/04/02/uber_leaves_san_antonio_to_protest_regulations_it_wasn_t_an_empty_threat.html.

233. See S.A. TNC Ordinance, *supra* note 118 (introductory material on pages 1 and 2); City of Hous., *supra* note 19.

Both city councils constructed TNC ordinances with the same overall structure: the cities regulate taxicabs and TNCs in different articles within each code's vehicle-for-hire chapter.²³⁴ The taxicab regulations in both cities remain substantively unchanged.²³⁵ Like taxicabs, TNC vehicles must meet annual quality inspections, including a list of stringent safety and cleanliness guidelines.²³⁶ The ordinances even provide age restrictions on TNC vehicles.²³⁷ In San Antonio, TNCs must remove a TNC vehicle from service once it reaches eight years old.²³⁸ In Houston, a TNC vehicle cannot be more than seven years old or have traveled more than 150,000 miles.²³⁹ These restrictions are unnecessary because the state already requires all Texas vehicles to undergo annual inspections to ensure operational quality and safety.²⁴⁰ Moreover, the regulations burden transportation companies by forcing them to spend unnecessary funds to undergo these inspections, creating more overhead costs that they must offset by increasing service prices.²⁴¹ Further, quality is now more self-regulated because the TNC-application rating feature incentivizes drivers to provide high quality services, avoid complaints, and acquire repeat customers.²⁴²

Next, the ordinances require drivers to complete a drug examination by a certified physician before obtaining a driver's permit.²⁴³ The Houston ordinance also requires TNC driver applicants to undergo a medical examination and ten-finger fingerprinting.²⁴⁴ These regulations overly burden driver applicants because TNCs already enforce a strict, zero-tolerance drug and alcohol policy and conduct criminal background

234. Compare S.A. TNC Ordinance, *supra* note 118, with HOUSTON, TEX., CODE OF ORDINANCES § 46 (2014) (noting their similarity in structure and organization).

235. See HOUSTON, TEX., CODE OF ORDINANCES ch. 46, art. II (2014); SAN ANTONIO, TEX., CODE OF ORDINANCES ch. 33, art. VIII (2014).

236. HOUSTON, TEX., CODE OF ORDINANCES § 46-514 (2014); S.A. TNC Ordinance, *supra* note 118, at § 33-987. Section 46-414 also includes a more detailed, non-exhaustive list of items that must be checked during the inspection. HOUSTON, CODE OF ORDINANCES § 46-514.

237. See HOUSTON, TEX., CODE OF ORDINANCES § 46-513 (2014); S.A. TNC Ordinance, *supra* note 118, at § 33-990(j).

238. S.A. TNC Ordinance, *supra* note 118, at § 33-990(j).

239. HOUSTON, CODE OF ORDINANCES § 46-513.

240. See 37 TEX. ADMIN. CODE § 23.11-.14 (2015); TEX. TRANSP. CODE ANN. §§ 548.051, 548.101 (West 2013). In addition, some TNCs also enforce their own age restrictions and inspection requirements. See *Vehicle Inspections*, LYFT, <https://www.lyft.com/safety> (last visited May 20, 2015) ("Cars must be no more than 12 years old[] (based on model year) and must pass inspection before hitting the road.").

241. See *supra* notes 154–57.

242. See *supra* notes 22, 167–68 and accompanying text.

243. HOUSTON, TEX., CODE OF ORDINANCES §§ 46-15.1(4), 46-510 (2014); S.A. TNC Ordinance, *supra* note 118, at § 33-985(b)(3).

244. HOUSTON, CODE OF ORDINANCES §§ 46-15.1(4), 46-510. In a last minute amendment, the San Antonio City Council struck down additional prerequisites that would demand TNC drivers to undergo an eye exam and defensive driving course, regulations that taxicab drivers must still adhere to. Dimmick, *supra* note 138. By eliminating these conditions, the city council voted the ordinance into legislation in December 2014. See *id.* But see Harrison, *supra* note 232 (noting that the city council may amend the ordinance before it takes effect in April 2015).

checks.²⁴⁵ TNCs will not hire applicants with a criminal history of drinking and driving pursuant to the qualifications for a driver's permit, and drivers reported and found guilty of driving under the influence are immediately fired.²⁴⁶ Furthermore, if a rider suspects the TNC driver of being intoxicated, the rider can immediately contact the TNC directly to resolve the issue.²⁴⁷ Thus, customer feedback has become a legitimate source of quality and safety control.²⁴⁸

The San Antonio ordinance further requires TNCs to provide a lengthy management plan, including a vehicle maintenance plan and driver training program, before receiving an operating permit.²⁴⁹ The driver training program must include curriculum on customer service, applicable San Antonio law, and “[l]ocal sights and location orientation,” among other requirements.²⁵⁰ These outdated requirements—which likely were intended to enhance customer service before the modernization of the transportation industry—are no longer necessary.²⁵¹ Now, customers hold drivers accountable through the rating system on the smartphone application, and drivers can learn the quickest route with the touch of a button through the TNC application's GPS.²⁵² Thus, these requirements appear more like barriers to entry than regulations to ensure consumer health and safety.

Despite these more traditional requirements, the ordinances depart from conventional taxicab regulations with a handful of TNC-specific rules that enhance consumer experience and differentiate TNCs from taxicabs. Specifically, once a rider accepts a ride, TNCs must include for their customers: “(1) a picture of the [TNC] driver and (2) a picture of the [TNC] vehicle the driver is approved to use, including the license plate number of the driver's . . . vehicle.”²⁵³ In Houston, all TNC vehicles must display consistent, distinctive signage or an emblem that shows association with a

245. See Letter from Leandre Johns to Ivy Taylor, *supra* note 160; *supra* note 218.

246. See *Background & DMV Checks*, *supra* note 219; *Rider Safety*, *supra* note 219; *supra* note 218.

247. *Background & DMV Checks*, *supra* note 219 (“Lyft maintains a zero-tolerance drug and alcohol policy. To report suspicions of intoxicant use, email us[] or call (855) 865-9553.”); *Rider Safety*, *supra* note 219; see also Email from Uber Receipts to author, *supra* note 12 (“Contact us with questions about your trip. Leave something behind? Track it down.”) (providing hyperlinks to inquire about these issues). The application also allows riders to file a complaint about the quality, the driver, or issues with payment directly from the smartphone application. *E.g.*, *Feedback Matters*, UBER, <https://www.uber.com> (last visited May 20, 2015) (“Drivers not only meet Uber’s standards, they meet your standards. After your trip, you can rate your experience and leave additional feedback about your driver.”).

248. See *supra* notes 243–47 and accompanying text.

249. S.A. TNC Ordinance, *supra* note 118, at § 33-983(h).

250. *Id.* § 33-983(h)(3)e.

251. *Cf. supra* notes 10–12 and accompanying text (highlighting TNCs’ use of modern technology, such as GPS).

252. See Badger, *supra* note 47; *supra* notes 10–12 and accompanying text.

253. HOUSTON, TEX., CODE OF ORDINANCES § 46-516(f) (2014); see S.A. TNC Ordinance, *supra* note 118, at § 33-990(b). Austin’s preliminary TNC ordinance includes a similar provision. Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(110).

particular TNC and is visible from at least fifty feet away.²⁵⁴ These provisions ensure that customers know whom to expect and create difficulties for imposter TNC drivers to defraud TNC passengers.²⁵⁵

Next, TNC drivers may only pick up passengers through their TNC application, and street hails are expressly forbidden.²⁵⁶ The San Antonio ordinance further prohibits the use of flat or hourly rates utilized by taxicabs, and TNC drivers may only collect fares through the TNC application, disallowing any cash payments.²⁵⁷ These restrictions depart from traditional taxicab service regulations, making it easier to differentiate between the two services.²⁵⁸ This differentiation may grow in importance as taxicab companies adopt smartphone applications similar to those used by TNCs and both services rely on their niches to best serve consumers.²⁵⁹

Unfortunately, the Houston and San Antonio ordinances stifle the potential for growth and innovation in the transportation industry as TNCs question whether or not they will remain in these cities at all.²⁶⁰ With the public's current frustration toward taxicab legislation, regulating TNCs with traditional rules similar to those that regulate taxicabs further frustrates the ability to create more efficient transportation services.²⁶¹ The ordinances do, however, provide some meaningful distinctions between TNCs and taxicabs that may prove to be important as the transportation industry evolves.²⁶² The next section discusses the Austin and Dallas ordinances, which both approach the regulation of TNCs in novel, yet vastly different ways.²⁶³

254. HOUSTON, TEX., CODE OF ORDINANCES § 46-515 (2014). For example, Lyft drivers display a pink mustache on the grill of their vehicle when providing their TNC services. *See How It Works, LYFT*, <https://www.lyft.com/how> (last visited Dec. 27, 2014) (“[O]ur pink car mustaches make us pretty hard to miss.”).

255. *See* Jennifer Lindgren, *Beware of Imposter Uber Drivers*, CBS DFW (Oct. 21, 2014, 9:00 PM), <http://dfw.cbslocal.com/2014/10/21/beware-of-imposter-uber-drivers/>. This restriction could prove to be important because TNC customers are already reporting faux TNC services operating in Texas. *See id.*

256. *See* HOUSTON, CODE OF ORDINANCES § 46-516(c)–(d); S.A. TNC Ordinance, *supra* note 118, at § 33-994. Austin's preliminary TNC ordinance includes a similar provision. Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(14).

257. S.A. TNC Ordinance, *supra* note 118, at §§ 33-993(b), 33-998(e).

258. *See id.* §§ 33-993(b), 33-994, 33-998(e); HOUSTON, CODE OF ORDINANCES § 46-516(c)–(d) (2014). Houston's code is also the only one in Texas that expressly excludes taxicabs from the definition of a TNC vehicle, disallowing taxicabs to also operate as TNCs. HOUSTON, TEX., CODE OF ORDINANCES § 46-502 (2014). It is unclear whether this purpose is to enhance the transportation industry, or protect taxicab companies.

259. *See supra* note 174 and accompanying text.

260. *See supra* note 232.

261. *See supra* text accompanying note 67.

262. *See supra* notes 253–59 and accompanying text.

263. *See infra* Part V.C.

C. *Game Changers: The Austin and Dallas TNC Ordinances*

The city governments in Austin and Dallas agree that TNCs bridge a major service gap in their city's transportation industry.²⁶⁴ As a result, they have constructed TNC ordinances with a more innovative approach than Houston and San Antonio to ensure that TNCs become significant players in their city.²⁶⁵ In the Austin ordinance's findings, the Austin City Council notes that Austinites do not have reliable transportation alternatives, particularly on weekends and during special events such as festivals.²⁶⁶ This deficit in taxicabs, the council found, contributes to Austin's drunk-driving epidemic.²⁶⁷ The council also states that TNCs respond more efficiently than taxicabs to passenger needs due to the technology of their applications.²⁶⁸ Likewise, the Dallas City Council candidly stated that its new ordinance aims to allow TNCs and taxicabs to directly compete and give consumers the power to choose their vehicle-for-hire services.²⁶⁹ These findings help explain Austin's and Dallas's welcoming attitudes toward—and relaxed legislation of—TNCs. This section first discusses the preliminary TNC ordinance in Austin, followed by the Dallas City Council's unique approach to vehicle-for-hire legislation.²⁷⁰

Unlike Houston and San Antonio, Austin has received strong approval from TNCs.²⁷¹ To compare, the Lyft representative who opposes the Houston ordinance stated that Austin's TNC ordinance consists of “common sense rules that allow ride-sharing to grow while protecting public safety.”²⁷² The Austin City Council drafted its temporary TNC ordinance with a focus on better understanding how TNCs and taxicabs work together through data collection.²⁷³ At least one TNC “keeps a GPS trace of every ride in every neighborhood, of every driver and passenger.”²⁷⁴ This means that TNCs have detailed, comprehensive information about transportation markets that has

264. See Austin TNC Ordinance, *supra* note 137, at pt. 1(C); Dallas Ordinance, *supra* note 138 (introductory material on pages 1 and 2).

265. Compare *infra* Part V.B (noting the many similarities between the TNC ordinances and conventional taxicab ordinances), with *infra* Part V.C (describing the novel approaches Austin and Dallas took to update transportation industry regulations).

266. Austin TNC Ordinance, *supra* note 137, at pt. 1(C).

267. *Id.* at pt. 1(D)–(E). In Austin, over 6,000 DWIs occurred in 2013 alone. *Id.* at pt. 1(D).

268. *Id.* at pt. 1(H). Other studies support this finding. See *supra* note 187. In fact, one TNC recently partnered with Breathometer—a fellow technology company that offers a phone application that functions as a breathalyzer—to promote alternatives to drunk driving by automatically requesting a TNC or phoning a sober friend for pick up. See Ellen Huet, *Uber Partners with Breathometer to Suggest Drunken-Driving Alternatives*, FORBES (Feb. 18, 2015, 11:00 AM), <http://www.forbes.com/sites/ellenhuet/2015/02/18/uber-partners-with-breathometer-drunken-driving/>.

269. See Dallas Ordinance, *supra* note 138, at § 47A-1.1.

270. See *infra* Part V.C.

271. See Whitson, *supra* note 16.

272. *Id.* (quoting a Lyft letter to its Houston passengers).

273. See *id.*

274. Badger, *supra* note 47.

never been available, which could be very helpful for cities in order to better understand how to regulate.²⁷⁵ The Austin ordinance allows continuous evaluation of Austin's transportation industry before the city implements a more permanent regulatory framework in the future.²⁷⁶ In addition, "[t]he City Manager is directed to seek equity in the treatment of taxis, TNCs, and other vehicles for hire" to work towards a harmonized transportation system.²⁷⁷

The Austin City Council styled its temporary regulation differently from other Texas cities by providing a method for TNCs to contract with Austin, allowing TNCs to operate legally.²⁷⁸ In an unprecedented agreement between TNCs and municipalities, TNCs agreed to work with the City of Austin by providing quarterly data reports "on [TNCs'] effectiveness in addressing transportation gaps in the city."²⁷⁹ TNCs will send these data reports to a third party for Austin's review to keep the data private.²⁸⁰ The city plans to "get information on rider pickup and drop-off locations, peak ridership times, trip costs, the amount of time in surge pricing, trip lengths and how service for people with disabilities compares with other service."²⁸¹ This data will provide much needed information about the state of Austin's transportation industry.²⁸² Yet, one aspect that would add even more value is information regarding the relationship between TNCs and taxicabs in a naturally regulated market.²⁸³

The Austin ordinance enforces minimalistic rules aimed solely at consumer health and safety. For example, Austin simply requires TNC drivers to "use a vehicle that is in compliance with Texas' inspection requirements and possess proof of a successful inspection."²⁸⁴ TNCs must also uphold a zero-tolerance drug policy, but the ordinance does not require TNC drivers to undergo drug testing before obtaining a driver's permit.²⁸⁵ These provisions are much more relaxed than their Houston and San Antonio

275. *See id.*

276. *See* Austin TNC Ordinance, *supra* note 137, at pts. 1(W), 1(Y), 7.

277. *See id.* at pt. 13.

278. *Id.* at pt. 3(B)(25); *see* City of Austin, *Application for Transportation Network Company Agreement Now Available*, AUSTINTEXAS.GOV (Nov. 4, 2014), <http://www.austintexas.gov/article/application-transportation-network-company-agreement-now-available>. This type of preliminary contractual agreement also exists in Detroit and Virginia. Austin TNC Ordinance, *supra* note 137, at pt. 1(Y). The contract "must be for a minimum of one year and be cancellable at any time by either party if the requirements of the agreement are not upheld, a public safety issue becomes apparent, or if Council adopts code amendments to regulate TNCs." *Id.* at pt. 6.

279. Whitson, *supra* note 16; *see* Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(21).

280. Whitson, *supra* note 16. The data is sent to a third party because if it was sent straight to the city, the data would become public, which TNCs do not want. *Id.*

281. *Id.* (quoting Austin City Council member Chris Riley).

282. *See id.*

283. *See infra* Part VI.B.1.

284. Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(6).

285. *See id.* at pt. 3(B)(17). The Dallas ordinance includes a similar provision. Dallas Ordinance, *supra* note 138, at § 47A-2.4.4.

counterparts, but they still protect consumers by requiring TNCs to hold their drivers accountable.²⁸⁶ Additionally, TNCs must conduct various outreach events regarding ADA-compliant vehicles and lower social-economic groups to educate consumers on the new vehicle-for-hire option.²⁸⁷ This rule provides a great resource for marketing TNC services and reassures dubious members of the community with an explanation of TNCs' built-in safety features, which will likely result in more people utilizing the services.²⁸⁸

Another innovative feature in Austin's ordinance requires TNCs that participate in surge pricing to meet some basic requirements, such as: providing a "clear and visible indication that dynamic pricing is in effect prior to requesting a ride," and requiring riders to confirm that they understand they are accepting a ride during a surge pricing period.²⁸⁹ These provisions will help avoid situations where TNCs charge unsuspecting consumers with elevated service fees.²⁹⁰ The requirement also ensures that consumers understand the terms of the service agreement before the ride is accepted, avoiding possible future contract litigation.²⁹¹ Further, the Austin ordinance prohibits TNCs from increasing the price of a ride "during periods of abnormal market disruptions," including war, natural disasters, loss of electricity, and local emergencies.²⁹² This clause prevents a repeat of events similar to what recently occurred in Sydney, Australia during a hostage crisis, when Uber prices surged to four times the normal price of a ride.²⁹³ By restricting surge pricing under these conditions, the city likely avoids consumer backlash and quite possibly prevents lawsuits.²⁹⁴

With the intent to revisit vehicle-for-hire legislation once the city better understands TNCs, Austin's step-by-step approach is practicable. The Dallas City Council, however, took an additional step by also modifying the way it regulates taxicabs.²⁹⁵

The Dallas City Council took longer than all other Texas cities—over two years since TNCs began operating in the city—to research and debate how to best regulate TNCs.²⁹⁶ After reviewing the major revision of Dallas's

286. See Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(17); Dallas Ordinance, *supra* note 138, at § 47A-2.4.4.

287. Austin TNC Ordinance, *supra* note 137, at pt. 3(B)(18)–(19).

288. See *id.*

289. *Id.* at pt. 3(B)(20)(a)–(b).

290. *Id.*

291. See *id.*

292. *Id.* at pt. 3(B)(20)(d)–(e).

293. See Harrison, *supra* note 36. In an effort to mollify angry consumers, TNCs have already committed to capping surge pricing during similar public emergencies. See Davey Alba, *Uber Pressured Into Capping Surge Pricing During the East Coast Snowstorm*, WIRED (Jan. 26, 2015, 4:58 PM), <http://www.wired.com/2015/01/uber-cap-surge-pricing-east-coast-snowstorm/>.

294. See Harrison, *supra* note 36.

295. See Dallas Ordinance, *supra* note 138 (introductory material on pages 1 and 2).

296. See Ryan Lawler, *On-Demand Car Service Uber Launches in Dallas and Strikes a Partnership Deal with Virgin America*, TECH CRUNCH (Sept. 14, 2012), <http://techcrunch.com/2012/09/14/uber-dallas-virgin-america/> (noting that Dallas was the 18th city to acquire this new TNC service).

transportation laws, this timeline is well understood. The ordinance groups all comparable services, such as taxicab and TNC services, into one broad category: transportation-for-hire services.²⁹⁷ While most provisions include all transportation-for-hire services, a few provisions specific to “hailable vehicles,” like taxicabs, still exist.²⁹⁸ In addition to public health, safety, and convenience, Chapter 47A intends to ensure that vehicles-for-hire are a viable component of the public transportation system and “allow consumers to select the type of transportation-for-hire they prefer to use.”²⁹⁹

This ordinance blends the traditional approach of regulating vehicles-for-hire by cherry-picking some conventional regulations and combining them with innovative rules that accommodate TNCs.³⁰⁰ To illustrate, the Dallas ordinance requires all vehicle-for-hire companies to hold three separate permits before they can operate legally: a company-specific operating permit, a driver’s permit, and a vehicle permit.³⁰¹ This differs from the usual two-permit requirement that exists in other TNC-regulated Texas cities.³⁰² The City of Dallas will only issue a vehicle permit if the interior and exterior “appear[s] new or substantially like new” and meets a detailed list of quality standards; the vehicle must also hold a valid registration and safety inspection.³⁰³ These provisions parallel the regulations in San Antonio and Houston, and depart from the lax regulations found in Austin.³⁰⁴

Additionally, “[a] driver must take the most direct and expeditious route available, unless otherwise directed by the passenger.”³⁰⁵ Consumers will benefit from this provision by avoiding unnecessary fees from long-winded service and the use of inefficient routes.³⁰⁶ Further, this rule is easily enforceable—at least in regards to TNCs—because TNC applications automatically save the route and email it to riders once the trip is completed.³⁰⁷

Like traditional taxicab ordinances, a driver may deny a rider only if “the person is disorderly,” the driver has already accepted a previous request for service, the driver reasonably believes that the rider is engaged in

297. See Dallas Ordinance, *supra* note 138, at § 47A-1.5(25) (“Transportation-for-hire service means the business of offering or providing transportation of persons for compensation.”).

298. See *id.* § 47A-2.4.9 (describing additional requirements for hailable vehicles). In Dallas, a “hailable vehicle” is “a transportation-for-hire vehicle that can be immediately summoned by a passenger without the use of dispatch.” *Id.* § 47A-1.5(12). One example of an additional restriction that applies to hailable vehicles is that they must charge a service fee below the maximum limit set out in the ordinance. See *infra* note 319.

299. Dallas Ordinance, *supra* note 138, at §§ 47A-1.1(a)(3), (a)(6).

300. See *id.*

301. *Id.* §§ 47A-2.1.1, 47A-2.2.1, 47A-2.3.1.

302. See *supra* note 212 and accompanying text.

303. Dallas Ordinance, *supra* note 138, at §§ 47A-2.3.2 to -2.3.3.

304. See *supra* text accompanying note 236.

305. Dallas Ordinance, *supra* note 138, at § 47A-2.4.5(a).

306. See *id.*

307. See *supra* note 12.

unlawful activity, or the driver reasonably fears for his own safety.³⁰⁸ Noticeably missing, however, is the ability to deny a rider with poor ratings.³⁰⁹ Part of TNCs' novelty is the ability of riders and drivers to rate each other; thus, requiring TNC drivers to accept all riders frustrates the goals of the TNCs' rating systems.³¹⁰

The Dallas ordinance also incorporates many unique qualities that depart from other TNC regulations in Texas. Most importantly, Dallas is the only Texas city that does not limit the number of TNCs or taxicabs that may operate in the city, effectively removing vehicle caps on all vehicles-for-hire.³¹¹ This benefits the transportation market because the population-to-taxicab ratio is an inaccurate method of imitating market conditions.³¹² Many Texas cities host a regular stream of tourists that do not contribute to the population-to-taxicab ratio.³¹³ As a result, removing the population-to-taxicab ratio altogether allows natural market conditions to control the number of vehicles that operate within the city.³¹⁴ In time, the number of vehicles-for-hire will likely cap naturally because, as simple economics suggests, transportation companies will not offer their services unless they turn a profit.³¹⁵ Thus, eventually, the market will stabilize, and the transportation industry will finally hold an accurate number of transportation-for-hire vehicles to sustain the needs of consumers.³¹⁶ Although other Texas cities do not cap the number of TNC vehicles, truly natural market conditions exist only if TNCs and taxicabs can both operate without limits.³¹⁷ Otherwise, cities will not fully understand the relationship between TNCs and taxicabs because taxicabs will remain operating under artificial market conditions set by regulations.³¹⁸

The Dallas ordinance also includes a price cap for the amount taxicab drivers may charge as a service fee, but, unlike other ordinances, it allows all taxicab companies to set their own service fees as long as the price is below

308. Dallas Ordinance, *supra* note 138, at § 47A-2.4.3(c)(1).

309. *See id.*

310. *See supra* note 22 and accompanying text.

311. Compare *supra* note 124 and accompanying text (describing the process for approving new vehicle-for-hire applicants), with Dallas Ordinance, *supra* note 138 (removing the approval process for new entrants).

312. *See supra* notes 91–93 and accompanying text.

313. *See supra* notes 91–93; *see also* *Interesting Texas Facts*, TEX. PROUD, <http://texasproud.com/facts/interesting-texas-facts> (last visited May 20, 2015) (noting that tourism is one of Texas's top industries).

314. *Cf. supra* notes 193–201 and accompanying text (explaining how deregulation, in part, led to the rise of TNCs in Texas).

315. *Cf. supra* notes 193–201; *see also* note 86 (noting that some studies suggest that market conditions were beginning to stabilize during the era of taxicab deregulation).

316. *See supra* note 201.

317. *See infra* Part VI.B.1.

318. *See infra* Part VI.B.1.

the maximum limit.³¹⁹ This flexibility allows taxicabs to lower fares to correspond with fluctuating TNC rates.³²⁰ Permitting taxicab companies to set the price for their service will help taxicab companies remain competitive in the market, creating a downward pressure on the price for their services.³²¹

Another stark contrast from other TNC ordinances is that all vehicle-for-hire drivers may solicit services from “the driver’s compartment or the immediate vicinity of the driver’s transportation-for-hire vehicle.”³²² This regulation is markedly different from all other Texas TNC ordinances, which expressly prohibit TNCs from soliciting in person.³²³ Without a clear explanation about which vehicles-for-hire may utilize this provision, it creates a gray area for TNC drivers, or imitation TNC drivers, to solicit customers outside the TNC application.³²⁴ Thus, in comparison to other Texas cities, the Dallas ordinance technically allows TNCs to operate more like a traditional taxicab, which poses the possibility of consumers confusing the two services.³²⁵

Noticeably, the Austin and Dallas City Councils saw more than just a new company enter their cities; they saw the potential for innovation and progress after years of unsatisfied transportation customers and industry workers.³²⁶ Equipped with this overview of the methods local Texas municipalities have utilized to regulate vehicles-for-hire, one can now understand the best approach for regulating Texas’s changing transportation industry.

319. Dallas Ordinance, *supra* note 138, at § 47A-2.4.8(f), (j). San Antonio also allows taxicab companies to lower the price of their service fee up to 20% below the standard rate, but they are not allowed to advertise the lower rate. S.A. TNC Ordinance, *supra* note 118, at § 33-981(b).

320. *See supra* notes 16–17 and accompanying text.

321. *Cf. supra* note 76 and accompanying text (discussing the upward pressure taxicab companies exert on the market).

322. Dallas Ordinance, *supra* note 138, at § 47A-2.4.1(1).

323. *See supra* note 256 and accompanying text.

324. *See* Dallas Ordinance, *supra* note 138, at § 47A-2.4.1.

325. *See id.*; *see also infra* Part VI.B.2 (discussing the importance for cities to differentiate between TNCs and taxicab companies).

326. *See supra* Part III.B.

VI. VICTORY FOR ALL VEHICLES-FOR-HIRE: HOW TNCs, TAXICABS, AND CONSUMERS CAN ALL WIN

“[T]he solution to bad regulation is not no regulation.”³²⁷

A. *Passing Go: How to Regulate TNCs and Collect (Maybe More than) \$200*

1. *Should TNCs Be Regulated, Banned, or Ignored?*

Moderately regulating, not banning or ignoring, TNCs is the best answer. TNCs have quickly become a wildly popular service among city-goers, and are backed by a powerful social movement.³²⁸ In addition, TNCs have already demonstrated that if legislators do not regulate TNCs, they will continue to operate, profit, and grow in popularity, causing strain on other regulated vehicle-for-hire services.³²⁹ This suggests that legislators would meet public disapproval and retaliation if they ban TNCs, and TNCs will likely continue to operate anyway.³³⁰ Further, as city legislators strive to satisfy their community members, legislators must adhere to the fact that TNCs have won the approval of many consumers.³³¹ Thus, banning TNCs is not favorable.

Allowing TNCs to operate unregulated, while taxicab companies endure heavy and costly regulations, is unfair because taxicab companies have higher overhead costs—and thus lower profits—than TNCs.³³² TNCs provide much needed innovation to all vehicle-for-hire platforms, including the taxicab industry.³³³ In fact, taxicab companies have already begun implementing the new technology brought into the industry by TNCs.³³⁴ Similarly, allowing taxicabs to evolve to better service their customers, without legitimizing the companies that made this evolution possible, is equally unfair.³³⁵ Hence, ignoring TNCs is not the solution.

The long history of vehicle-for-hire regulation across the country makes the eventual regulation of TNCs, in some form or another, inevitable.³³⁶ More specifically—with Texas’s long history of allowing municipalities to

327. Rampell, *supra* note 62.

328. *See supra* note 34.

329. *See supra* Part III.C.

330. *Cf. supra* Part III.C (discussing the popularity of TNCs within Texas).

331. *Cf. supra* note 193 and accompanying text (discussing how legislators adhered to public demands to deregulate the airline industry).

332. *See supra* text accompanying notes 154–57.

333. *See supra* Part I.

334. *See* Leah Yamshon, *Taxi! Five Free Apps for Hailing a Legit Cab*, TECHHIVE (Dec. 31, 2013, 3:30 AM), <http://www.techhive.com/article/2082965/taxi-five-free-apps-for-hailing-a-legit-cab.html>.

335. *See supra* Part I.

336. *See supra* Part II.B.1.

regulate their transportation industries—local municipalities will likely continue to regulate vehicles-for-hire, including TNCs.³³⁷ TNCs require minimal regulations because, in many ways, they offer a service that is generally self-regulated.³³⁸ TNCs give more power to the consumer by providing a method for consumers to shop around for a service, which creates vehicle-for-hire functionality comparable to conventional service industries.³³⁹ In addition, the convenience of built-in rating systems for riders and drivers enhances the ability for both parties to enjoy a mutually positive experience.³⁴⁰ By operating as a business that succeeds through consumer choice, quality and pricing become more normalized and allow for less regulation overall.³⁴¹

Nevertheless, with the history of the jitneys in mind, legislators should set some guidelines to prevent potentially dangerous conditions.³⁴² TNC regulations should still require TNCs to meet basic requirements, such as insurance and quality standards, to ensure the health and safety of its consumers and fairness to other vehicle-for-hire options.³⁴³ As a result, it is best for legislators to find a balance between accepting new players into the market and supporting the cities' existing transportation companies with a new regulatory framework that incorporates both services.³⁴⁴ With the understanding of how to regulate TNCs, one must next understand how these regulations will affect the regulation of taxicab companies.

2. *Free Parking and Beyond: What TNCs Bring to the Gameboard*

Taxicab companies have spent a lot of time requesting legislators to regulate TNCs within the existing regulatory framework.³⁴⁵ But while they were busy “hailing” TNCs to court, they missed the superior argument that, instead, TNCs create an opportunity for relaxed regulations for taxicab companies.³⁴⁶ In fact, TNCs allow for the much-anticipated deregulation of the taxicab industry.³⁴⁷

337. See *supra* note 107 and accompanying text; see also text accompanying notes 95–98 (explaining the benefits of allowing municipalities to regulate vehicles-for-hire). For reasons explained, *infra*, passing House Bill 2440, which promotes the statewide regulation of TNCs, would be premature because it would only partly solve Texas's transportation industry issues. See *infra* Part VI.B; see also Tex. H.B. 2440, 84th Leg., R.S. (2015) (calling for unified, statewide legislation on all TNCs operating in Texas).

338. See *supra* Part I.

339. Cf. *supra* notes 69–74 (discussing the fact that taxicabs rarely compete with prices and have little incentive to do so).

340. See *supra* note 22.

341. See *supra* Part II.B.2.

342. See *supra* Part II.B.1.

343. See *supra* Part IV.A.

344. See *infra* Part VI.B.

345. See *supra* Part IV.A.

346. See *supra* Part IV.B.

347. See *supra* Part II.B.1; see also Mohammed, *supra* note 202 (“As has occurred in a variety of markets including airlines and telecommunications, it’s time for governments to deregulate the prices of

Although results are unclear as to how much TNCs and taxicab companies directly compete, the services TNCs offer will prevent an upward pressure on the price of taxicab services, eliminating the need to cap the price for taxicab services.³⁴⁸ This is because TNCs allow consumers to shop around for the best price through their smartphones; thus, consumers are no longer in the fixed position, and TNC services act more like a traditional service.³⁴⁹ As taxicabs develop their own technology, consumers will soon—if they do not already—have the ability to compare prices directly between the two service options, providing an incentive for competitive pricing.³⁵⁰ With this technology, consumers are now more likely to notice when a vehicle-for-hire driver lowers the service price below all others, creating a downward pressure on the price of transportation services.³⁵¹ For instance, during high traffic times—when TNCs utilize surge pricing—taxicab companies' flat fare rates may become the better option for money-conscious consumers.³⁵² TNCs also provide incentives for taxicab companies to enhance driver fees and lower prices to avoid losing both drivers and customers to TNCs.³⁵³ This motivation will encourage taxicab companies to operate more efficiently.³⁵⁴ Thus, with TNCs, present price capping is unnecessary.³⁵⁵

TNCs also provide technological improvements for the transportation industry as a whole that will enhance the quality and safety of transportation services.³⁵⁶ For example, allowing riders and drivers to provide feedback on each other keeps both parties accountable and provides quality assurance.³⁵⁷ This feature is also one reason why significantly more women opt to drive for TNCs in comparison to taxicab companies.³⁵⁸ Now, consumers can look at customer reviews to assess the service quality prior to entering the vehicle-for-hire.³⁵⁹ Perhaps most importantly, TNC technology achieves

taxis to generate fair competition and truly allow the best service win.”); Sanchez, *supra* note 71 (“What even many of Uber’s defenders seem slow to recognize . . . is that the company’s business model doesn’t just require regulators to catch up with the tech and the times: It eliminates the rationale for *having* a regulator.”).

348. See Stone, *supra* note 186; *supra* Part II.B.2; *supra* text accompanying notes 319–21.

349. See *supra* notes 71–73; text accompanying notes 319–21.

350. See *supra* note 334.

351. Cf. *supra* Part II.B.2 (explaining that taxicab customers are often stuck with the fare quoted to them, without the benefit of market prices and competition).

352. See *supra* notes 16–17. This theory is currently untested, but this is the type of information that cities could collect data on to better understand their transportation markets. See *infra* Part VI.B.

353. See *supra* text accompanying notes 180–81.

354. See *supra* text accompanying notes 180–81.

355. Cf. *supra* note 73 and accompanying text (discussing the market forces present within the taxicab and TNC industry).

356. See Stone, *supra* note 186; *supra* Part IV.B.

357. See *supra* note 22.

358. See Said, *supra* note 153 (noting that women make up 33%–40% of TNC drivers, whereas only 3% of taxicab drivers are female).

359. See *supra* note 22.

safer conditions for drivers and customers alike.³⁶⁰ By eliminating cash-only service, requiring riders and drivers to sign up through the application with personal information, and providing a direct point of contact through the application, riders and drivers are no longer anonymous.³⁶¹ These means of identification will limit the number of people who get away with the crimes they commit, removing the incentive to commit crimes to begin with.³⁶² Accordingly, the transportation-for-hire industry will become safer.³⁶³

In addition, TNCs hold their drivers to their own high standards, which creates a self-regulating, high-quality service—perhaps of greater quality than regulations could enforce.³⁶⁴ Without unnecessary restrictions that lead to high operation fees and narrow profits, TNCs have had the flexibility to focus their energy on providing a higher quality service than taxicabs currently provide.³⁶⁵ Likewise, if taxicabs operate with fewer restrictions, taxicab companies could refocus their energy towards improving their services to provide a safer, higher quality service that will enhance the vehicle-for-hire market.³⁶⁶

Finally, taxicab companies can imitate TNCs' cashless e-hail services, creating a more efficient transportation network to match their evolving, technology-savvy consumer base.³⁶⁷ By finally having the technology that gives consumers the choice of their vehicle-for-hire service, the vehicle-for-hire market no longer needs regulations to cap vehicles and deny new taxicab entrants.³⁶⁸ Developers have already created a number of “find a taxicab” applications that customers may use to request a taxicab, allowing customers to appreciate shorter wait times and more effective taxicab service.³⁶⁹ With greater efficiency, taxicab companies can better predict the number of taxicabs needed to meet consumer demand, streamlining taxicab services and

360. *Cf. supra* notes 151–53 and accompanying text (discussing why driving taxis is a dangerous profession).

361. *Cf. supra* note 152 and accompanying text (listing interactions with unknown patrons as a contributing factor in making taxi driving a dangerous job).

362. *Cf. supra* note 153 and accompanying text (discussing how TNCs can improve safety for taxi drivers).

363. *Cf. supra* notes 151–53 and accompanying text (discussing various safety issues that exist for taxi drivers).

364. *See supra* notes 219, 246–47 and accompanying text (noting that TNCs require drivers to undergo a background check and enforce a zero-tolerance drug and alcohol policy).

365. *Cf. supra* notes 194–98 and accompanying text (discussing deregulation in the airline industry).

366. *Cf. supra* notes 193–98 and accompanying text (explaining how deregulation made the airline industry more efficient).

367. *See supra* note 334. In fact, besides taxicabs, other modes of public transportation now incorporate smartphone applications in connection with their services. *E.g.*, *GoPass Mobile Ticketing Application*, DART, <http://www.dart.org/gopass/> (last visited May 20, 2015) (noting that the DART rail in Dallas now offers mobile ticketing).

368. *Cf. supra* note 126 and accompanying text (discussing how municipal taxicab ordinances place price caps on taxicab drivers).

369. *See supra* note 334.

dropping overhead costs.³⁷⁰ Further, the market will be controlled by more natural market conditions, eliminating the taxicab companies' monopolistic behavior.³⁷¹ For these reasons, the vehicle-for-hire market is finally able to regulate itself, and stringent municipal regulations are no longer necessary. The next section discusses the best approach for deregulating the taxicab industry with provisions that also work for TNCs.³⁷²

B. The Winning Strategy to Regulating Both TNCs and Taxicabs

1. The Austin–Dallas Hybrid Approach

While in its stages of infancy, the new transportation industry should undergo a steady, step-by-step deregulation process of the taxicab industry.³⁷³ The purpose of this gradual deregulation is to enhance a steady flow of change for taxicab companies and provide a chance for cities to evaluate these changes as they occur.³⁷⁴ If cities deregulate the industry gradually, cities can avoid the consequences of the massive deregulation of the 1960s, which resulted in a hurried, overzealous re-regulation after a few undesirable outcomes.³⁷⁵ Although the deregulated taxicab industry of the 1960s would have likely stabilized on its own, decelerating the process this time around will alleviate the friction between vehicles-for-hire and ill-informed regulators.³⁷⁶ Accordingly, policy makers will have a better understanding of the evolving market conditions, and will be less likely to rush into re-regulating the taxicab market at the first sign of unwanted results.³⁷⁷

A combination of the Austin and Dallas approaches will best serve TNCs, taxicab companies, and consumers during this deregulation process. Austin's data-collection approach will provide invaluable information about how TNCs and taxicab companies interact with consumers and with each other.³⁷⁸ This information, however, would become significantly more valuable if—as in Dallas—taxicabs were also allowed to function without price or vehicle caps restricting their operations.³⁷⁹ Taxicab industry regulations have remained unchanged for decades, even with the emergence

370. *Cf. supra* notes 193–98 and accompanying text (illustrating how deregulation in the airline industry made the industry more profitable).

371. *Cf. supra* Part II.B.2 (discussing the taxicab monopoly).

372. *See infra* Part VI.B.

373. *See supra* Part VI.A.2.

374. *Cf. supra* Parts II.B.2, V.C (discussing the current monopoly of taxicab companies and how Austin and Dallas have created innovative ordinances to gradually regulate TNCs).

375. *See supra* Part II.B.1.

376. *See supra* Part IV.B.

377. *Cf. supra* Part II.B.2 (describing the initial deregulation of the taxicab industry and the subsequent rush to re-regulate).

378. *See supra* notes 279–83 and accompanying text.

379. *See supra* note 319. Prices are still technically capped in Dallas; thus, the ideal approach would completely deregulate the prices taxicab companies charge for their services. *See supra* Part IV.B.

of rapidly developing technology and an increase in the number of miles people travel.³⁸⁰ In fact, no accurate way exists to depict prices and keep current market prices up to date; therefore, the market itself should control service fees.³⁸¹ Thus, regulators are out of touch with how taxicabs function in a deregulated market, and especially ill-informed about how taxicabs, TNCs, and consumers function together.

While Houston and San Antonio rushed to regulate TNCs largely within their existing regulatory framework, Austin developed a new regulatory framework that allows the city to understand how TNCs and taxicabs function together.³⁸² Austin is halfway to fully understanding the new transportation market in its natural state, but a significant player is left out: the taxicab.³⁸³ Adopting an approach similar to that in Dallas, which eliminates vehicle caps and gives taxicab companies flexibility in setting fare rates, provides a more natural transportation market that will result in more accurate data on market conditions.³⁸⁴ The information collected from this data can then be used to prepare new rules that better suit the developing industry.³⁸⁵ Hence, if the transportation market conditions in Dallas are combined with the data-collecting approach in Austin, cities will have a new, well-informed approach to appropriately regulate both TNCs and taxicab companies.

2. *A Play-by-Play: Specific Provisions that Cities Should Adopt*

While municipalities work toward better understanding the transportation industry in their cities, it is important for cities to regulate TNCs and taxicabs similarly, but with meaningful distinctions to avoid useless or confusing data.³⁸⁶ This data should provide distinctions for legislators to better understand their cities' consumer demand and preferences, price alterations, and operation gaps.³⁸⁷ The distinctions should include only the inherent differences between the two services: (1) taxicab hails versus TNC e-hails; (2) the difference in service fee collection, including price surges; and (3) TNCs' mutual rating system for riders and drivers.³⁸⁸ Keeping these distinctions will also ensure that the companies maintain the benefits of their niche services by appealing to the consumers who prefer those options.³⁸⁹

380. *See supra* note 119 and accompanying text.

381. *Cf. Harris, supra* note 86, at 214 (discussing the flaws in regulatory agencies' attempts to control the taxicab market).

382. *See supra* Part V.C.

383. *See supra* Part V.C.

384. *See supra* note 319.

385. *See supra* notes 281–83 and accompanying text.

386. *See supra* Part VI.B.1.

387. *See supra* Part V.C.

388. *See supra* Part IV.A.

389. *See supra* note 174 and accompanying text.

For example, disallowing TNCs to accept street hails ensures that consumers can differentiate the two services, which provides a better sample for data collection in understanding consumer preferences.³⁹⁰ In addition, allowing TNCs to utilize surge pricing and permitting taxicab companies to set their own service fees, like in Dallas, creates optimal market conditions to better understand how the two services function within the same transportation market.³⁹¹ This provision would continue to provide consumers who prefer taxicabs' traditional taximeters, rather than TNCs' surge pricing, with that option.³⁹²

The Dallas provision that disallows drivers from rejecting a rider with a poor rating renders TNCs' two-way rating system useless, at least for drivers.³⁹³ Accordingly, the ideal ordinance will allow parties to deny a poorly rated rider or driver.³⁹⁴ TNC drivers use personal vehicles to provide their services; thus, cities should allow drivers to hold their riders accountable for poor behavior.³⁹⁵ Further, because many TNC drivers are women, drivers should have the ability to deny a rider who makes them feel uncomfortable.³⁹⁶ Instead, other transportation options will likely accommodate a rejected rider because some drivers are willing to tolerate more to profit, which provides even poorly rated riders with transportation options.³⁹⁷ Even if poorly rated riders have difficulty finding a willing driver, this consequence gives riders an incentive to act appropriately in the future, enhancing the experiences of all involved.³⁹⁸ In addition, "the requirement that taxicabs pick up everyone is the most flouted" and poorly enforced regulation of all taxicab regulations; drivers seemingly reject unwanted riders despite these provisions.³⁹⁹ By collecting data on how the industry handles this situation, and on the reliability of the rating system, cities will gain insight into whether and how to include this provision in a future, long-term regulation.⁴⁰⁰ For now, regulators should first understand how the rating system affects riders and drivers by discarding this provision until cities understand any consequences.⁴⁰¹

390. See *supra* Part IV.A.

391. See *supra* Part V.C.

392. See *supra* note 319.

393. See *supra* notes 322–25 and accompanying text.

394. See *supra* notes 322–25 and accompanying text. Although there are likely some inherent flaws with this new rating system, collecting data on how the systems work to improve their functionality will create more efficient services for the future. See Streitfeld, *supra* note 22.

395. See *supra* notes 308–10 and accompanying text.

396. See *supra* notes 153, 360–63.

397. Cf. *supra* note 22 and accompanying text (highlighting the ability of drivers and riders to rate each other through TNC applications).

398. See *supra* note 22 and accompanying text.

399. Harris, *supra* note 86, at 209.

400. See *id.*; see also Streitfeld, *supra* note 22 (noting that researchers are just beginning to explore these "bilateral review systems").

401. See *supra* Part VI.B.1.

Other vehicle-for-hire provisions should be similar in stringency and substance to equalize industry costs.⁴⁰² Specifically, cities should enforce only minimalistic requirements that ensure consumer health and safety to imitate natural market conditions.⁴⁰³ These requirements include: conducting criminal background checks on all drivers; enforcing a zero-tolerance drug and alcohol policy; providing proof of commercial liability insurance, including gap insurance; and providing annual proof of Texas vehicle inspection and registration.⁴⁰⁴ These provisions will give transportation companies more flexibility in deciding how to improve their services and ensure fair competition in the transportation market.⁴⁰⁵ Like the airline industry, this deregulation could improve the entire transportation industry by allowing transportation companies to focus their energy on fewer requirements and independently increase safety and quality standards that correspond with market conditions.⁴⁰⁶

A few additional provisions may be added to ensure consumer safety, based on particular issues that have arisen in other cities. For instance, Austin's surge pricing restriction during periods of abnormal market disruptions limits TNCs from exploiting consumers during emergency situations.⁴⁰⁷ Further, requiring drivers to take "the most direct and expeditious route available" ensures that customers receive economically efficient and competent service.⁴⁰⁸ Lastly, a provision that requires TNC applications to show pictures of the driver, the driver's vehicle, and the vehicle's license plate enhances consumer safety by guaranteeing that riders only accept services from city-approved drivers.⁴⁰⁹

Importantly, Texas should continue to allow cities to explore options tailored to their unique set of issues surrounding the regulation of vehicles-for-hire.⁴¹⁰ Thus far, city experimentation has led to many innovative ideas for better understanding and regulating the transportation industry.⁴¹¹ It is

402. See *supra* notes 154–57.

403. Cf. *supra* Part IV.B (arguing that taxicab companies should adapt to new industry technology and that legislators should implement minimal regulations to permit taxicab companies to use new technology).

404. See *supra* Part V.

405. See *supra* Part IV.B.

406. See Harris, *supra* note 86, at 210; *supra* Part IV.B.

407. See *supra* text accompanying notes 289–94.

408. See *supra* notes 305–07.

409. See *supra* notes 253, 255 and accompanying text.

410. Recently, many states, including Texas, have proposed statewide TNC ordinances to regulate TNCs. See *supra* note 132. While statewide legislation would provide uniform functionality across the state, for a large, diverse state like Texas, vehicle-for-hire legislation is arguably still "best tailored by local governments based on their unique populations, spatial densities, road congestion, air pollution, and airport and hotel traffic." Dempsey, *supra* note 57, at 120; see *supra* notes 95–98. But after several municipalities gain information about how taxicabs and TNCs function together within their unique transportation networks, Texas will be in a much better position to pass a meaningful statewide bill that incorporates all the challenges that municipalities—and the State as a whole—face.

411. See *supra* Part V.

too early to tell what the best regulations are for these services in the long term, but Texas cities will be ahead of the curve if they remain receptive to the digitization of the transportation industry.⁴¹² If Texas municipalities implement these rules under the Dallas–Austin hybrid regulatory approach, they will soon understand the transportation market better than anybody has in years—perhaps ever.⁴¹³ With these guidelines, cities will acquire meaningful data that will educate legislators on how best to implement a permanent change in their transportation industry regulations. In return, cities—or perhaps eventually, the Texas Legislature—will finally have the information necessary to create well-informed, long-lasting regulations that balance the needs of TNCs, taxicab companies, and consumers.⁴¹⁴

VII. WITH EVERYONE PAYING THEIR TAXES, THE GAME ROLLS ON

TNCs' explosive introduction into the transportation industry created a legislative nightmare and media frenzy in cities around the world.⁴¹⁵ The result in Texas was no different, where cities have struggled to incorporate TNCs into their vehicle-for-hire regulations to appease taxicab companies, TNCs, and consumers.⁴¹⁶ While taxicab companies were quick to blame TNCs for the disruption of their industry, TNCs may be a blessing in disguise; the introduction of TNCs gave Texas municipalities a reason to revisit the deregulation of the taxicab industry.⁴¹⁷ In fact, Austin and Dallas are already taking steps to do just that.⁴¹⁸

Texas municipalities should combine the regulatory approaches of Austin and Dallas by imposing minimal regulations on taxicab companies and TNCs to ensure consumer safety, differentiate between the two services, and equalize operation costs.⁴¹⁹ By taking these steps to harmonize transportation regulations, Texas cities can gather useful data that will guide the formation of future, long-term regulations in a more realistic and stabilized market.⁴²⁰ At this time, there are no clear winners just yet.⁴²¹ But in a game that started out with one lackluster, sluggish player, one thing is

412. See *supra* Part IV.B. For this reason, Texas House Bill 2440 alone will not fix the transportation industry problems that Texas currently faces. See *supra* Part II.

413. See *supra* Part VI.B.1.

414. Importantly, the Texas Legislature should only enact a bill that incorporates the critical information necessary to create a stabilized transportation industry. Collecting and understanding this information will take time; hurriedly enacting a statewide bill that regulates TNCs without considering how the taxicab industry, technology, and consumers influence their operations is no better a reaction than the overly aggressive regulation and re-regulation of the taxicab industry, *supra* Part II.

415. See *supra* Part II.A.

416. See *supra* Part III.C.

417. See *supra* Part IV.

418. See *supra* Part V.C.

419. See *supra* Part VI.B.

420. See *supra* Part VI.B.

421. See *supra* note 412 and accompanying text.

certain: the revolution in vehicle-for-hire regulation is sure to provide a lively matchup that audiences will be sure to witness.