[Urging the District Attorney to Investigate Transportation Network Companies’ Use of “Greyball” Technology as Potential Obstruction of Justice]

Resolution urging the San Francisco District Attorney’s Office to initiate an investigation into whether the use of “greyball” technology by Transportation Network Companies constitutes an intentional obstruction of justice.

WHEREAS, For years, TNCs—namely, Uber—have engaged in a worldwide program to deceive and evade law enforcement and other municipal, state and federal authorities in markets where its low-cost ride-hailing service was resisted by law enforcement or, in some instances, had been banned; and

WHEREAS, Uber in particular developed and employed a tool called “Greyball,” which uses data collected from the Uber app and other sources to identify and circumvent law enforcement and other authorities trying to clamp down on the ride-hailing service; and

WHEREAS, Greyball was part of a larger program called “VTOS,” short for “violation of terms of service,” which Uber created to deceive law enforcement and other authorities who oppose Uber’s operation in cities or are charged with enforcing regulations instituted by government authorities to preserve the public’s health and safety; and

WHEREAS, Greyball allows Uber to “tag” or otherwise label law enforcement and other authorities in the app and deliver to them a fake version of the app, populated with ghost cars, to effectively preclude their use of the for-profit service; and

WHEREAS, By precluding law enforcement and other authorities from using the program, Uber intentionally and successfully avoided being subject to local and state laws aimed at regulating Transportation Network Companies, specifically, and local and state laws aimed at regulating vehicular use, in general; and
WHEREAS, In defending their use of the technology, spokespeople for Uber have argued that it is the company's right and obligation to protect their drivers from harm, even if that harm is in the form of traffic citations or other enforcement of the vehicular traffic code; and

WHEREAS, Use of Greyball and similar technologies hinder the discovery, apprehension, conviction and punishment of individuals or entities that have committed crimes, which may rise to the level of an intentional obstruction of justice; and

WHEREAS, In addition to intentionally obstructing justice, use of Greyball and similar technologies may constitute a violation of the federal Computer Fraud and Abuse Act, which is a criminal law targeting various computer-related acts, including the intentional access of cellphones without authorization or in excess of express authorization; and

WHEREAS, Since settling a lawsuit out of court in 2016 which challenged Uber's classification of its drivers as independent contractors, Uber has been hit with a $20 million settlement over claims it deceived drivers about their prospective earnings and a lawsuit by one of its competitors alleging theft of trade secrets; and

WHEREAS, Recent legal disputes and a series of other recent controversies—including allegations that Uber routinely ignores sexual harassment claims and a video of Uber CEO Travis Kalanick berating one of the company's drivers, who confronted Kalanick about steep cuts in Uber's rates—underscore the lengths to which Uber will go to undercut its competitors and stretch the boundaries of corporate responsibility; now, therefore, be it

RESOLVED, That the San Francisco Board of Supervisors urges the San Francisco District Attorney's Office to initiate an investigation into whether the use of Greyball technology by Uber and other potentially similar programs by other TNCs constitute an obstruction of justice or violation of any other local, state or federal laws aimed at regulating the Transportation Network Company industry or unfair business practices, more broadly.
Resolution urging the San Francisco District Attorney's Office to initiate an investigation into whether the use of "greyball" technology by Transportation Network Companies constitutes an intentional obstruction of justice.

March 14, 2017 Board of Supervisors - ADOPTED
Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

I hereby certify that the foregoing Resolution was ADOPTED on 3/14/2017 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board