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MEMORANDUM OF LAW

DATE: June 9, 2015

TO: Stacey LoMedico, Assistant Chief Operating Officer

FROM: City Attorney

SUBJECT: Blucar and Zirx and City's Valet Parking Regulations

INTRODUCTION

Blucar and Zirx are businesses that provide parking services to patrons who request or reserve such services through the companies' respective mobile phone apps. You requested a legal opinion on whether Blucar, Zirx, and similar mobile phone app-based businesses providing parking services in areas that are designated by the City of San Diego (City) as valet parking zones are subject to the City's valet parking regulations.

QUESTIONS PRESENTED

Are Blucar and Zirx subject to the City's valet parking regulations?

SHORT ANSWERS

Yes. Blucar and Zirx are subject to the City's valet parking regulations because they provide valet parking services in the City. Accordingly, Blucar and Zirx must obtain a valet parking permit in order to provide valet parking services.

BACKGROUND

Blucar is advertised as "On-demand parking at the drop of a pin/Let the uniformed parking attendant come to you." Blucar (May 8, 2015), <http://blucar.com>. It describes itself as an "end to end reservation service for consumers seeking convenient Valet Parking" and "an end-to-end parking concierge [service] through local parking providers in exchange for a concierge fee of \$5.00 ('Concierge Fee') which is paid directly by you the Blucar user or the Local Parking

Service Provider.” *Id.* Blucar “assist[s] you with securing a reservation at participating third party Local Parking Service Providers.” *Id.*

One obtains Blucar’s services by requesting a reservation through the Blucar mobile phone app. The user is met at his location by a Blucar parking attendant who parks the car at a lot or facility operated by a third party (referred to as the Local Parking Service Provider). The Blucar parking attendant returns the vehicle to the user at the location he specifies in the mobile phone app, which does not need to be the same as that of the drop off. The fee for the service consists of Blucar’s \$5.00 Concierge Fee, the fee charged by the Local Parking Service Provider, and a tip (if any). The user is notified of the total fee prior to confirmation of the reservation. Payment is processed through the form of payment the user specified (e.g. credit or debit card) and saved to the user’s profile on the mobile phone app.

Zirx bills itself as “Smart Parking: The key to having a car in the city/ From parking, to gas, to an oil change: we’ll take care of your car with the tap of a button.” Zirx (May 8, 2015), <http://zirx.com>. Zirx describes itself as catering to persons “who are interested in obtaining vehicle transportation services, commonly referred to as valet parking” and as providing “a platform that allows Members to schedule Parking Services”. *Id.* They define “Parking Services” to “include both (a) the ability to leave your vehicle with an Agent, at a location designated by you, for transportation to and storage in a ZIRX-designated parking spot (‘Drop Off’) and (b) the ability to have your previously Dropped-Off vehicle retrieved by an Agent and transported to a location designated by you in order for you to retrieve your vehicle (‘Pick Up’).” *Id.* Like Blucar, Zirx uses parking/storage facilities operated by third parties. Users are charged a single fee for the Parking Services, which can vary depending on location or duration of storage. Because the fee is variable (for example if the vehicle was left parked overnight), the user is provided only an estimate of the total fee at the time of reservation. Payment is processed similarly as Blucar: through forms of payment the user specifies and saves to the user’s mobile phone app profile.

ANALYSIS

I. IT IS UNLAWFUL TO PROVIDE VALET PARKING SERVICES IN THE CITY WITHOUT A PERMIT

Chapter 8, Article 6, Division 22 of the San Diego Municipal Code (SDMC or Municipal Code) governs valet parking in the City.¹ Section 86.2208(a) of the Municipal Code provides: “It is unlawful and a violation of this division for any person to operate, engage in, conduct,

¹ There may be a question of whether valet parking services are within the jurisdiction of the California Public Utilities Commission (PUC) and outside the regulatory control of the City, due in part to the comparison of Blucar and Zirx with Uber (and similar companies) that provide so-called “ride-sharing” or “ride-hailing” transportation services that are obtained by using a mobile phone app. The PUC determined that Uber, Lyft, Sidecar and similar companies qualify as “charter-party carrier of passengers” (Cal. Pub. Util. Code § 5360) and not taxi cabs and are thus subject to its jurisdiction under section 5381 of the Public Utilities Code. Valet parking services, whether obtained via a mobile phone app or not, do not fall within the definition of “charter-party carrier of passengers” or “public utility” (Cal. Pub. Util. Code § 216), nor bear a resemblance to the other businesses or services covered by the Public Utilities Code.

manage, or cause to be operated on any public street or right-of-way any *valet parking* without a valid *valet parking permit* issued by the City Manager.”²

Valet parking is defined as “parking arrangements provided where patrons leave their cars at the street curb line and attendants park and retrieve them for a fee.” SDMC § 86.2202. A valet parking permit is “a permit issued in accordance with this division for the approved use of *valet parking* in a *valet parking zone*.” *Id.* Valet parking zone is defined as “an area for a standard single passenger vehicle on the public right-of-way which has been set aside by the City Manager for *valet parking*.” *Id.*

Valet parking is also regulated to a lesser extent by Council Policy 200-15 (Council Policy). While mirroring the Municipal Code for the most part³, the Council Policy sets forth additional criteria for the City Manager (the Council Policy specifically names the City Traffic Engineer) to consider when designating valet parking zones and is more specific regarding certain permit requirements. For example, while the Municipal Code requires a permit applicant to maintain liability insurance in an amount satisfactory to the City Manager, the Council Policy specifies coverage of at least \$1,000,000 in general liability insurance. SDMC § 86.2206(i); Council Policy, at 3.

II. BLUCAR AND ZIRX ARE BUSINESSES THAT OPERATE, ENGAGE IN, OR CONDUCT VALET PARKING AS DEFINED UNDER THE MUNICIPAL CODE AND THEREFORE REQUIRE A PERMIT

Blucar and Zirx are similar businesses, both offering parking services that users obtain through a mobile phone app interface. For both services, a user specifies where he wishes to drop off his vehicle and is met by a Blucar or Zirx representative who parks the car at a storage facility until the user requests the vehicle, whereupon the car is driven to the user’s location, which may be other than the site of the drop off. Zirx offers additional services, such as car wash, refueling, or oil change, but these are services are additional and peripheral to that of parking.

The services provided by Blucar and Zirx both fall within the Municipal Code’s definition of valet parking (parking arrangements provided where patrons leave their cars at the street curb line and attendants park and retrieve them for a fee) because Blucar and Zirx representatives pick up users’ vehicles in the public right of way, park them, and then return them, in exchange for a fee. Therefore, in order to conduct their valet parking operations, Blucar and Zirx must obtain City valet parking permits or else will be in violation of Section 86.2208(a) of the Municipal Code.

² Pursuant to San Diego Charter section 260, all executive authority, power, and responsibilities conferred upon the City Manager have been transferred to and assumed by the Mayor.

³ San Diego Ordinance O-19310 (Aug. 10, 2004) added a new division 22 to the Code pertaining to valet parking in order to codify the provisions previously only set forth in the Council Policy: “Currently, curbside valet parking service may be offered on City streets under a permit system outlined in Council Policy 200-15. The proposed ordinance will codify the City Manager’s authority to regulate valet parking and allow for the charging of fees” (Minutes of San Diego City Council Meeting of Monday, July 26, 2004 regarding Item 53 Introduction of Valet Parking Ordinance.)

CONCLUSION

The services provided by Blucar and Zirx constitute valet parking as defined under section 86.2208(a) of the Municipal Code and require a valet parking permit.

JAN I. GOLDSMITH, City Attorney

By /s/ Jeremy A. Jung
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Deputy City Attorney

JAJ:cw
ML-2015-10
Doc. No.: 1019117