



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

August 1, 2012

Kevin C. Conroy  
Foley & Hoag, LLP  
155 Seaport Boulevard  
Boston, MA 02210

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF STANDARDS**

One Ashburton Place, Room 1115 Boston, MA 02108  
(617) 727-3480 FAX (617) 727-5705  
www.mass.gov/standards

**GREGORY BIALECKI**  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

**BARBARA ANTHONY**  
UNDERSECRETARY OF CONSUMER  
AFFAIRS AND BUSINESS REGULATION

**CHARLES H. CARROLL**  
DEPUTY DIRECTOR

**RE: Hearing Decision Civil Citation NO. 4576 Issued  
By City of Cambridge**

The hearing was held on July 9, 2012. Present representing the appellant were Kevin Conroy and Tad Huer of Foley Hoag and Michael Pao of Uber. Representing the City of Cambridge were Elizabeth A. Lashway, Esq., James Cassidy, Sealer of Weights and Measures and Corey Pilz. Conducting the Hearing Charles H. Carroll DOS.

**Narrative:** Uber Technology Inc. operates a transportation business in major metropolitan areas including Boston and Cambridge. Users are required to download the application to their Smartphone, create an account, and store their credit card information. When a user wishes to arrange for a pick-up, the user turns the application on the phone's GPS app and Uber's traffic models tell the passenger how close the nearest car is, and if the user is agreeable, the user then selects the vehicle to arrange for a pick-up. A text message is sent directly to the passenger's phone notifying them when the selected vehicle arrives. The driver then takes the customer where they want to go for as long as the customer wishes to utilize the vehicle. Billing is automated via the information the customer already provided to set up the account and receipts are e-mailed directly to the customer's phone. Once the passenger(s) is in the vehicle the driver begins the billing process which is based on time and mileage by activating the GPS application programmed into the iPhone issued to the driver by Uber Technologies Inc. On May 25, 2012, Mr. Corey Pilz of the Cambridge Consumer Division arranged for a pick-up at 806 Mass Avenue in Cambridge. Mr. Pilz and Sealer Cassidy were passengers and observed Mr. Gelaye, the driver of the vehicle, activate the GPS billing sequence programmed into the Smartphone issued to him by Uber Technologies, Inc. After traveling a short distance the driver was told to pull over where Cambridge Police Officer Szeto was waiting as pre-arranged. At that time the passengers identified themselves as City of Cambridge officials and the driver was issued citations for operating an unlicensed livery service and for using a measuring device not conforming to standards, subsequently, the citation for the non-conforming device was appealed. The Division is only concerned with the citation regarding the non-conforming device as the Division does not have enforcement authority pertaining to operating an unlicensed livery service. The Hearing officer heard no objections to the facts regarding the events that led up to the issuance of the citation and appeal as outlined above.



**Testimony:** the appellants attorneys argued that the citation should be quashed as Global Positioning Service (GPS) has been in use since 1978, and available to civilian users since 1983. Since 2008, the Department of Defense's Global Positioning System Standard Positioning System Accuracy Standard has required that the government's GPS satellites be accurate to equal or less than 7.8 meters (25.59 Feet) 95 percent of the time. Since that time GPS has been a proven and accurate system of measurement as certified by the United States government. In addition, the attorneys for the appellant claim that the cell phone is not a measuring instrument and in addition, there is no applicable code in NIST Handbook 44 that would apply as the taximeter and odometer code do not apply to GPS systems.

The City of Cambridge attorney argued that the fact that there is no applicable code does not allow an unapproved measurement system such as the GPS to be used in lieu of approved technology and that the city officials acted responsibly regarding the issuance of the citation pertaining to using a non-approved device and operating an unlicensed livery service.

**Hearing Decision:** Global Positioning Services (GPS) technology is not an issue as it is and has been widely used in non-commercial applications for a number of years. However, GPS has not been used in commercial applications for assessing transportation charges until Uber Technologies, Inc. introduced its use for this purpose. The major problem at this time is the fact that there are no established measurement standards for its current application and use in determining transportation costs similar to that of approved measurement systems for taximeters and odometers. Massachusetts law does not sanction unapproved devices for use in commercial transactions. The argument that the cell phone is not a measuring device is perhaps true but the fact is the confiscated cell phone's GPS application when activated is the first indication of the final quantity relayed to the user's I phone once the trip is completed. If the Uber provided cell phone is not activated at the time of hire than no charges could be assessed and whereas it is the first indication of the final quantity it is an integral component relaying the required GPS information to UBER's main computer during the entire duration of the trip relating distance and time information to Uber's main computer.. If the time and total distance traveled on which the final charges are based are not relayed to Uber Technology's main computer system via the Uber Technology's I phone the final charges could not be calculated.

Based on the information entered into the hearing record and the fact that the Commonwealth's Division of Standards rules and regulations requires that only approved devices can be used in commercial transactions it is the decision of the hearing officer to uphold the issuance of the Civil Citation No. 4576 issued by the City of Cambridge to the livery operator for use of an unapproved device. Further, the use of the unapproved GPS system to assess transportation charges must be discontinued until such time as the standards for its use are established by the NCWM and published in NIST Handbook 44.

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The Division also requires that commercial devices must receive type approval under the National Type Evaluation Program (NTEP) prior to being placed into commercial use.

The fine is due and payable to the City of Cambridge thirty days from the date of this decision entered into the record this 1<sup>st</sup> day of August 2012.

Very truly yours,



Charles H. Carroll  
Director of Standards

Cc/ Elizabeth A Lashman, Esq. City of Cambridge  
James Cassidy, Cambridge Sealer