SEATTLE CITY COUNCIL

Legislative Summary

CB 119687

Record No.: CB 119687 **Type:** Ordinance (Ord) **Status:** Passed

Version: 2 **Ord. no:** Ord 125977 **In Control:** City Clerk

File Created: 09/19/2019

Final Action: 12/02/2019

Title: AN ORDINANCE relating to transportation network company driver labor standards; concerning minimum compensation standards for transportation network company drivers; and adding a new Chapter 14.31 to the Seattle Municipal Code.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Bagshaw

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Uploaded By: adam.schaefer@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	09/25/2019	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	10/14/2019	sent for review	Council President's Office			
1	City Council	10/21/2019	referred	Select Budget Committee			
1	Select Budget Committee	10/31/2019					
1	Select Budget Committee	11/06/2019					
1	Select Budget Committee	11/19/2019	pass as amended				Pass
	Action Text:	The Committee recommends that City Council pass as amended the Council Bill (CB).					
		In Favor: 8	Chair Bagshaw, Member González , Member Harrell, Member Herbold, Member Juarez, Member O'Brien, Member Pacheco, Member Sawant				
		Opposed: 0					
2	City Council	11/25/2019	passed				Pass

Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:

In Favor: 9 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Juarez, Councilmember Mosqueda, Councilmember O'Brien, Councilmember Pacheco, Councilmember Sawant

Opposed: 0

2	City Clerk	11/25/2019	submitted for Mayor's signature	Mayor

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor

2	Mayor	11/26/2019	Signed	

Action Text: The Council Bill (CB) was Signed.

2	Mayor	12/02/2019	returned	City Clerk

Action Text: The Council Bill (CB) was returned. to the City Clerk

2	City Clerk	12/02/2019	attested by City Clerk

Action Text: The Ordinance (Ord) was attested by City Clerk.

CITY OF SEATTLE

ORDINANCE 125977

COUNCIL BILL 119687

AN ORDINANCE relating to transportation network company driver labor standards; concerning minimum compensation standards for transportation network company drivers; and adding a new Chapter 14.31 to the Seattle Municipal Code.

WHEREAS, the Washington Constitution provides in Article XI, Section 11 that "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws"; and

WHEREAS, the state of Washington, in Revised Code of Washington (RCW) 46.72.001, has authorized political subdivisions of the state to regulate for-hire drivers and for-hire transportation services, which terms encompass the regulation of transportation network company (TNC) drivers, TNCs, and TNC services, to ensure safe and reliable TNC services; and

WHEREAS, TNCs provide application dispatch services that allow passengers to directly request the dispatch of drivers via the internet using mobile interfaces such as smartphone applications; and

WHEREAS, in 2018, the two largest TNCs accounted for over 24 million trips in the City; and

WHEREAS, at their peak in 2012, taxicabs in Seattle and King County provided about 5.2 million trips; and

WHEREAS, these two companies are also major hiring entities, accounting for most of the 31,676 TNC drivers issued permits by King County in 2018 as recorded by the King County Department of Licensing; and

WHEREAS, the City, TNC drivers, TNCs, and the public agree that TNC drivers should be compensated fairly and earn at least the equivalent of the "hourly minimum wage" established for Schedule 1 employers in Chapter 14.19 plus reasonable expenses; and

WHEREAS, the establishment of a minimum compensation standard better ensures that drivers can perform their services in a safe and reliable manner and thereby promotes the welfare of the people and is thus a fundamental governmental function; and

WHEREAS, the establishment of a minimum compensation standard for TNC drivers is a subject of vital and imminent concern to the people of this City and requires appropriate action by City Council to establish a minimum compensation standard within the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Findings

A. In order to protect the public health, safety, and welfare, The City of Seattle is granted express authority to regulate for-hire transportation services pursuant to chapter 46.72 RCW. This authority includes regulating entry, requiring a license, controlling rates, establishing safety requirements, and any other requirement to ensure safe and reliable transportation services.

B. In the pursuit of economic opportunity, many transportation network company (TNC) drivers are immigrants and people of color who have taken on debt or invested their savings to purchase and/or lease vehicles to provide TNC services.

C. Studies around the nation, including a 2018 study commissioned by the New York City Taxi and Limousine Commission (NYC TLC) entitled *An Earnings Standard for New York City's App-based Drivers: Economic Analysis and Policy Assessment* and a 2018 nationwide study by the Economic Policy Institute entitled *Uber and the Labor Market: Uber Drivers'*

Compensation, Wages, and the Scale of Uber and the Gig Economy (Economic Policy Institute Study), have shown that many TNC drivers earn below the equivalent of the hourly minimum wage rate established by Chapter 14.19 of the Seattle Municipal Code for Schedule 1 employers.

D. A 2018 JP Morgan Chase Institute study entitled *The Online Platform Economy in 2018* reported a decrease in TNC driver earnings nationwide between 2013 and 2017, a 2019 Seattle Times report showed a decrease in the percentage of the passenger fares collected by the companies that drivers are paid, and Uber Technology, Inc.'s April 2019 Form S-1 filing with the Securities and Exchange Commission states "we aim to reduce Driver incentives to improve our financial performance."

E. The TNCs represent that their business models rely on TNC drivers being classified as independent contractors and that they are exempt from minimum labor standards established by federal, state, and local law.

F. TNC drivers receive unpredictable income due to the high variability of the rates of compensation paid by TNCs.

G. The City of New York recently enacted an ordinance authorizing the NYC TLC to study and set minimum driver pay, as well as transparency and data reporting standards, and the NYC TLC promulgated rules establishing such standards.

H. There is a lack of localized research regarding TNC driver pay, working conditions, reasonable expenses, and work hours.

I. Establishing a minimum compensation standard will help ensure that the compensation that thousands of drivers who provide vital transportation services in Seattle every day receive for their services is sufficient to alleviate undue financial pressure to provide transportation in an unsafe manner by working longer hours than is safe, skipping needed breaks, or operating

vehicles at unsafe speeds in order to maximize the number of trips completed or to ignore maintenance necessary to the safe and reliable operation of their vehicles.

J. TNC drivers who have the protection of a minimum compensation standard will be more likely to remain in their positions over time, and to devote more time to their work as TNC drivers. Such experienced drivers will improve the safety and reliability of the TNC services provided by the TNCs to passengers and thus reduce safety and reliability problems created by frequent turnover in the TNC services industry.

Section 2. A new Chapter 14.31 is added to the Seattle Municipal Code as follows:

CHAPTER 14.31 TRANSPORTATION NETWORK COMPANY DRIVERS MINIMUM COMPENSATION

14.31.010 Short title

This Chapter 14.31 shall constitute the "Transportation Network Company Driver Minimum Compensation Ordinance" and may be cited as such.

14.31.015 Declaration of policy

It is declared to be the policy of the City, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to ensure that TNC drivers can perform their services in a safe and reliable manner by establishing minimum labor standards for the benefit of TNC drivers, including, but not limited to a minimum compensation standard for TNC drivers that is comprised of at least the equivalent of the "hourly minimum wage" established for Schedule 1 employers in Chapter 14.19 plus reasonable expenses.

14.31.020 Definitions

For the purposes of this Chapter 14.31:

"Agency" means the Department of Finance and Administrative Services and any division therein;

"Application dispatch" means technology that allows consumers to directly request dispatch of TNC drivers for trips and/or allows TNC drivers or TNCs to accept trip requests and payments for trips via the internet using mobile interfaces such as, but not limited to, smartphone and tablet applications;

"Available platform time" means the time a TNC driver is logged in to the driver platform prior to receiving a trip request from a TNC;

"City" means the City of Seattle;

"Compensation" means payment owed to a TNC driver by reason of providing TNC services;

"Director" means the Director of the Department of Finance and Administrative Services;

"Dispatch platform time" means the time a TNC driver spends traveling from dispatch location to passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip, fails to appear for a trip, or enters the TNC driver's vehicle;

"Driver platform" means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a TNC driver, that enables the prearrangement of passenger trips for compensation;

"Operating in Seattle" means, with respect to a TNC, providing application dispatch services to any affiliated driver at any time for the transport of any passenger for compensation from or to a point within the geographical confines of the City;

"Passenger platform time" means the period of time commencing when a passenger enters the TNC driver's vehicle until the time when the passenger exits the TNC driver's vehicle;

"Reasonable expenses" means (1) the per mile cost of operating a vehicle for purposes of providing TNC services as determined by the Agency's evaluation pursuant to Section 14.31.060 and (2) the non-mileage expenses incurred by TNC drivers to provide TNC services as determined by the Agency's evaluation pursuant to Section 14.31.060, which may include, but are not limited to:

1. The amount of employer-side payroll taxes that TNC drivers must pay;
2. Business license fees that TNC drivers must pay;
3. Compensation for meal periods and rest breaks;
4. Compensation for paid sick and safe time;
5. Cost of worker's compensation insurance;
6. Cost of unemployment insurance;
7. Cost of paid family medical leave insurance; and
8. Cost of medical, dental, and vision insurance;

"TNC services" means services related to the transportation of passengers that are provided by a TNC driver while logged in to the driver platform, including services provided during available platform time, dispatch platform time, and passenger platform time;

"Transportation network company" or "TNC" means an organization whether a corporation, partnership, sole proprietor, or other form, licensed or required to be licensed under Chapter 6.310, operating in Seattle that offers prearranged transportation services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect passengers with drivers using a "transportation network company (TNC) endorsed vehicle," as defined in Chapter 6.310;

"Transportation network company driver" or "TNC driver" means a licensed for-hire driver, as defined in Chapter 6.310, affiliated with and accepting trips from a licensed transportation network company;

"TNC dispatched trip" or "trip" means the dispatch of a TNC driver to provide transportation to a passenger in a TNC endorsed vehicle through the use of a TNC's application dispatch system.

14.31.030 TNC driver coverage

A TNC driver is covered by this Chapter 14.31 if the TNC driver provides TNC services within the geographic boundaries of the City for a TNC covered by this Chapter 14.31.

14.31.040 TNC coverage

A. TNCs that report greater than 1,000,000 trips that originate in the City per the most recent quarterly report under Section 6.310.540 are covered under this Chapter 14.31.

B. Separate entities that form an integrated enterprise shall be considered a single TNC under this Chapter 14.31. Separate entities will be considered an integrated enterprise and a single TNC under this Chapter 14.31 where a separate entity controls the operation of another entity. The factors to consider include, but are not limited to:

1. Degree of interrelation between the operations of multiple entities;
2. Degree to which the entities share common management;
3. Centralized control of labor relations; and
4. Degree of common ownership or financial control over the entities.

14.31.050 Minimum compensation

Following the completion of the evaluation by the Agency required in subsection 14.31.060.A and upon the effective date of the ordinance referenced in 14.31.060.E, TNCs shall pay TNC

drivers a minimum compensation standard that is comprised of at least the equivalent of the "hourly minimum wage" established for Schedule 1 employers in Chapter 14.19 plus reasonable expenses.

14.31.060 Evaluation of TNC driver minimum compensation

A. The Agency, in coordination with the Office of Labor Standards, shall conduct an evaluation to determine a minimum compensation standard for TNC drivers that is comprised of at least the equivalent of the "hourly minimum wage" established for Schedule 1 employers in Chapter 14.19 plus reasonable expenses. The Agency is authorized to consider a minimum compensation standard that provides compensation for available platform time, dispatch platform time, passenger platform time, and reasonable expenses.

B. In conducting its evaluation, the Agency shall consider the best available sources of data, which may include, but are not limited to: TNC driver surveys or interviews, data provided by TNCs, data provided by TNC drivers, data provided by passengers, data from other jurisdictions, data available through academic, policy, or community based organizations, public forums, academic research, and stakeholder interviews. The Agency shall coordinate with the Office of Labor Standards to determine the best available sources of data as well as to conduct outreach with and elicit input from relevant stakeholders. Areas of evaluation may include, but are not limited to:

1. The "hourly minimum wage" established for Schedule 1 employers in Chapter 14.19;

2. The number of TNC drivers who provide TNC services for more than one TNC and the frequency with which TNC drivers are available to provide TNC services for more than one TNC at the same time;

3. The average and mean number of trips per hour driven by TNC drivers;

4. The average and mean number of pick-ups per hour completed by TNC drivers;

5. The average and mean amount of available platform time, dispatch platform time, and passenger platform time for TNC drivers;

6. The average and mean mileage driven by TNC drivers during available platform time, dispatch platform time, and passenger platform;

7. The average and mean number of hours driven by TNC drivers each week;

8. Incentives for TNCs to reduce available platform time;

9. The impact of TNC drivers providing shared or pooled trips on TNC driver earnings, work hours, or working conditions under any proposed minimum compensation standard;

10. The reasonable expenses incurred by TNC drivers to provide TNC services, including non-mileage expenses and mileage expenses. Mileage expenses may include, but are not limited to:

a. Depreciation;

b. Lease payments;

c. Maintenance and repairs;

d. Tires;

e. Gasoline (including all taxes thereon);

f. Oil;

g. Insurance; and

h. License and vehicle registration fees;

11. The impacts of any proposed minimum compensation standard on TNCs, TNC passengers, and TNC drivers, including TNC driver earnings and work hours;

12. The average and mean percentage of the passenger price that is retained by TNCs on each trip, as compared to the percentage of passenger price that is retained by TNC drivers on each trip; and

13. Access to benefits, such as medical, disability, and life insurance, retirement benefits, paid leave, and other benefits for TNC drivers.

C. In conjunction with its evaluation, the Agency, in coordination with the Office of Labor Standards, is authorized to contract with academic and/or policy researchers to conduct an evaluation to recommend a minimum compensation standard for TNC drivers that is comprised of at least the equivalent of the "hourly minimum wage" established for Schedule 1 employers in Chapter 14.19 plus reasonable expenses.

D. The Agency shall complete its evaluation and, along with the Office of Labor Standards, present its recommendations to the Mayor and Council by March 31, 2020.

E. After receipt of the Agency's recommendation, the Mayor shall transmit to Council proposed legislation implementing a minimum compensation standard for TNC drivers no later than May 1, 2020.

F. If elements of the minimum compensation standard, considered and adopted by the Council, are mandated for a TNC driver through federal or state law, or other applicable City policy, the City intends to consider adjustments to the minimum compensation standard.

14.31.250 Severability

The provisions of this Chapter 14.31 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.31, or the

application thereof to any TNC, TNC driver, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 14.31, or the validity of its application to other persons or circumstances.

* * *

Section 3. No provision of this ordinance shall be construed as providing any determination regarding the legal status of TNC drivers as employees or independent contractors.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 25th day of NOVEMBER, 2019, and signed by me in open session in authentication of its passage this 25th day of NOVEMBER, 2019.

President _____ of the City Council

Approved by me this 26th day of November, 2019.

Jenny A. Durkan, Mayor

Filed by me this 2nd day of December, 2019.

Monica Martinez Simmons, City Clerk

(Seal)