

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..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.

..body

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

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

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

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

10 NOW, THEREFORE,

11 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

12 Section 1. Findings

13 A. In order to protect the public health, safety, and welfare, The City of Seattle is granted
14 express authority to regulate for-hire transportation services pursuant to chapter 46.72 RCW.

15 This authority includes regulating entry, requiring a license, controlling rates, establishing safety
16 requirements, and any other requirement to ensure safe and reliable transportation services.

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

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

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

4 D. A 2018 JP Morgan Chase Institute study entitled *The Online Platform Economy in*
5 *2018* reported a decrease in TNC driver earnings nationwide between 2013 and 2017, a 2019
6 Seattle Times report showed a decrease in the percentage of the passenger fares collected by the
7 companies that drivers are paid, and Uber Technology, Inc.’s April 2019 Form S-1 filing with
8 the Securities and Exchange Commission states “we aim to reduce Driver incentives to improve
9 our financial performance.”

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

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

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

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

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

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

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

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

9 **CHAPTER 14.31 TRANSPORTATION NETWORK COMPANY DRIVERS MINIMUM**
10 **COMPENSATION**

11 **14.31.010 Short title**

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

14 **14.31.015 Declaration of policy**

15 It is declared to be the policy of the City, in the exercise of its police powers for the protection of
16 the public health, safety, and general welfare, and for the maintenance of peace and good
17 government, to ensure that TNC drivers can perform their services in a safe and reliable manner
18 by establishing minimum labor standards for the benefit of TNC drivers, including, but not
19 limited to a minimum compensation standard for TNC drivers that is comprised of at least the
20 equivalent of the “hourly minimum wage” established for Schedule 1 employers in Chapter
21 14.19 plus reasonable expenses.

22 **14.31.020 Definitions**

23 For the purposes of this Chapter 14.31:

1 “Agency” means the Department of Finance and Administrative Services and any
2 division therein;

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

7 “Available platform time” means the time a TNC driver is logged in to the driver
8 platform prior to receiving a trip request from a TNC;

9 “City” means the City of Seattle;

10 “Compensation” means payment owed to a TNC driver by reason of providing TNC
11 services;

12 “Director” means the Director of the Department of Finance and Administrative Services;

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

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

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

22 “Passenger platform time” means the period of time commencing when a passenger
23 enters the TNC driver’s vehicle until the time when the passenger exits the TNC driver’s vehicle;

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

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

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

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

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

4 “TNC dispatched trip” or “trip” means the dispatch of a TNC driver to provide
5 transportation to a passenger in a TNC endorsed vehicle through the use of a TNC’s application
6 dispatch system.

7 **14.31.030 TNC driver coverage**

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

10 **14.31.040 TNC coverage**

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

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

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

21 **14.31.050 Minimum compensation**

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

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

4 **14.31.060 Evaluation of TNC driver minimum compensation**

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

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

- 19 1. The “hourly minimum wage” established for Schedule 1 employers in Chapter
20 14.19;
- 21 2. The number of TNC drivers who provide TNC services for more than one TNC
22 and the frequency with which TNC drivers are available to provide TNC services for more than
23 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 mileage driven by TNC drivers in a TNC endorsed vehicle for personal purposes;~~

~~8-7.~~ The average and mean number of hours driven by TNC drivers each week;

~~9-8.~~ Incentives for TNCs to reduce available platform time;

~~10-9.~~ 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;

~~11-10.~~ 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

1 h. License and vehicle registration fees; ~~and~~

2 ~~12-11.~~ The impacts of any proposed minimum compensation standard on TNCs,
3 TNC passengers, and TNC drivers, including TNC driver earnings and work hours;

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

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

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

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

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

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

22 **14.31.250 Severability**

1 The provisions of this Chapter 14.31 are declared to be separate and severable. If any clause,
2 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.31, or the
3 application thereof to any TNC, TNC driver, or circumstance, is held to be invalid, it shall not
4 affect the validity of the remainder of this Chapter 14.31, or the validity of its application to
5 other persons or circumstances.

6 * * *

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

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

4 Passed by the City Council the _____ day of _____, 2019,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2019.

7 _____
8 President _____ of the City Council

9 Approved by me this _____ day of _____, 2019.

10 _____
11 Jenny A. Durkan, Mayor

12 Filed by me this _____ day of _____, 2019.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)