



# SEATTLE CITY COUNCIL

## Public Safety and Human Services Committee

### Agenda

Thursday, May 5, 2022

2:00 PM

### Special Meeting - Public Hearing

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or  
Seattle Channel online.

Lisa Herbold, Chair  
Andrew J. Lewis, Vice-Chair  
Teresa Mosqueda, Member  
Sara Nelson, Member  
Alex Pedersen, Member

Chair Info: 206-684-8801; [Lisa.Herbold@seattle.gov](mailto:Lisa.Herbold@seattle.gov)

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<http://seattle.gov/cityclerk/accommodations>.



**SEATTLE CITY COUNCIL**  
**Public Safety and Human Services Committee**  
**Agenda**  
**May 5, 2022 - 2:00 PM**  
**Special Meeting - Public Hearing**

**Meeting Location:**

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**Committee Website:**

<http://www.seattle.gov/council/committees/public-safety-and-human-services>

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This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

*Pursuant to Washington State Governor's Proclamation No. 20-28.15 and Senate Concurrent Resolution 8402, this public meeting will be held remotely. Meeting participation is limited to access by the telephone number provided on the meeting agenda, and the meeting is accessible via telephone and Seattle Channel online.*

Register online to speak during the Public Hearing period at the 2:00 p.m. Special Public Safety and Human Services Committee meeting at <http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the Special Public Safety and Human Services Committee meeting will begin two hours before the 2:00 p.m. meeting start time, and registration will end at the conclusion of the Public Hearing period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to Councilmember Herbold at [Lisa.Herbold@seattle.gov](mailto:Lisa.Herbold@seattle.gov)

Sign-up to provide Public Comment at the meeting at <http://www.seattle.gov/council/committees/public-comment>

Watch live streaming video of the meeting at <http://www.seattle.gov/council/watch-council-live>

Listen to the meeting by calling the Council Chamber Listen Line at 253-215-8782 Meeting ID: 586 416 9164

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*Please Note: Times listed are estimated*

**A. Call To Order**

**B. Approval of the Agenda**

**C. Items of Business**

1. [CB 120294](#) **AN ORDINANCE relating to app-based worker labor standards; establishing a compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility; amending Sections 3.02.125, 3.15.000, and 6.208.020 of the Seattle Municipal Code; and adding a new Title 8 and Chapter 8.37 to the Seattle Municipal Code.**

*Supporting  
Documents:*

[Summary and Fiscal Note](#)

[Presentation \(4/12/2022\)](#)

[Central Staff Memo \(4/12/2022\)](#)

[Central Staff Memo \(4/26/2022\)](#)

**Public Hearing, Briefing, and Discussion**

Register online to speak at the Public Safety and Human Services Committee meeting at

<http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the Public Hearing during the Public Safety and Human Services Committee meeting will begin two hours before the 2:00 p.m. meeting start time, and registration will end at the conclusion of the Public Hearing during the meeting. Speakers must be registered in order to be recognized by the Chair. If you are unable to attend the remote meeting, please submit written comments to Councilmember Herbold at [Lisa.Herbold@seattle.gov](mailto:Lisa.Herbold@seattle.gov)

**D. Adjournment**



Legislation Text

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**File #:** CB 120294, **Version:** 1

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**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

AN ORDINANCE relating to app-based worker labor standards; establishing a compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility; amending Sections 3.02.125, 3.15.000, and 6.208.020 of the Seattle Municipal Code; and adding a new Title 8 and Chapter 8.37 to the Seattle Municipal Code.

WHEREAS, an estimated 40,000 app-based workers work in Seattle, including those who are Black,

Indigenous, and other People of Color (BIPOC), immigrants, workers with disabilities, LGBTQ+ workers, and single parents; and

WHEREAS, the community depends on app-based workers to provide valuable services, but network companies often pay app-based workers subminimum wages despite the promise of good wages, flexibility, and accessibility; and

WHEREAS, the definitions of “employee” and “employer” in local, state, and federal laws are broad, but network companies rely on business models that treat app-based workers as “independent contractors,” thereby creating barriers for app-based workers to access employee protections such as minimum wage, unemployment benefits, workers’ compensation, and paid family and medical leave; and

WHEREAS, the U.S. Bureau of Labor Statistics (BLS) data show that Black workers account for 23 percent of app-based workers performing in-person work, higher than their overall share of employment (12 percent), and Latinx workers account for 19 percent of app-based workers performing in-person work, higher than their overall share of employment (17 percent); and

WHEREAS, Black and Latinx workers are overrepresented among app-based workers, comprising almost 42

percent of app-based workers but less than 29 percent of the overall labor force, and are disproportionately deprived of core employee protections when network companies treat them as independent contractors; and

WHEREAS, BIPOC workers face unique barriers to economic insecurity and disproportionately must accept low-wage, unsafe, and insecure working conditions; and

WHEREAS, BIPOC workers have long been heavily concentrated in exploitative industries; and

WHEREAS, the City is committed to ending racial disparities and achieving racial equity in Seattle; and

WHEREAS, the City intends to address the inequities of app-based work by ensuring that such workers earn at least the City’s minimum wage plus reasonable expenses, receive transparent information on job offers and pay, and exercise the flexibility promised by network companies; and

WHEREAS, the City intends to retain the current definitions of worker classification under Seattle’s labor standards and does not intend to create a new classification of workers distinct from employees or independent contractors; and

WHEREAS, the City intends to ensure that all workers can benefit from the protections of Seattle’s labor standards; and

WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers’ lives, support economic security, and contribute to a fair, healthy, and vibrant economy; and

WHEREAS, the Office of Labor Standards will consult with and consider input from stakeholders, including network companies, app-based workers, and worker organizations in the rulemaking process.; and

WHEREAS, establishing labor standards for app-based workers requires appropriate action by the City Council; NOW, THEREFORE,

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

Section 1. The City Council (“Council”) finds and declares that:

A. App-based work is a growing source of income for workers in Seattle and across the country.

B. In the exercise of The City of Seattle’s police powers, the City is granted authority to pass regulations designed to protect and promote public health, safety, and welfare.

C. This ordinance protects and promotes public health, safety, and welfare by establishing a compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility.

D. Numerous studies, including but not limited to studies by the Economic Policy Institute, Center for American Progress, and the Brookings Institution, show that minimum payment and other labor standards benefit employers and hiring entities by improving worker performance, reducing worker turnover, and thereby improving productivity and the quality of the services provided by workers, including app-based workers.

E. Many Seattle workers, including app-based workers, cannot fully participate in the community’s dynamic civic life or pursue its myriad educational, cultural, and recreational opportunities because they struggle to meet their households’ most basic needs.

F. The National Employment Law Project reports that instituting minimum pay requirements can confer critical income gains for workers and begin to reverse decades of growing pay inequality between the most underpaid workers and workers receiving close to the median wage, particularly along racial and gender lines.

G. Transparent information on job opportunities, along with the flexibility to determine hours of availability and which offers to accept, reject, or cancel with cause, allows workers to make informed decisions on how and when to earn their income without fear of financial penalty or other adverse actions.

H. Requiring disclosure of information and records on worker compensation and the nature of network company charges supports efforts to verify compliance with pay requirements.

I. Establishing minimum pay and pay-related labor standards promotes the general welfare, health, and prosperity of Seattle by ensuring that workers have stable incomes and can better support and care for their families and fully participate in Seattle’s civic, cultural, and economic life.

J. These labor standards also benefit the Seattle economy by increasing app-based worker earnings and

thereby boosting consumer spending in Seattle and benefiting the economy overall.

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

## **TITLE 8 LABOR STANDARDS**

Section 3. A new Chapter 8.37 is added to the Seattle Municipal Code as follows:

### **Chapter 8.37 APP-BASED WORKER MINIMUM PAYMENT**

#### **8.37.010 Short title**

This Chapter 8.37 shall constitute the “App-Based Worker Minimum Payment Ordinance” and may be cited as such.

#### **8.37.020 Definitions**

For purposes of this Chapter 8.37:

“Acceptance” means the initial communication from an app-based worker to a network company that the app-based worker intends to perform services in furtherance of an offer, including but not limited to indicating acceptance through the worker platform.

“Adverse action” means reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair immigration-related practices; filing a false report with a government agency; or otherwise discriminating against any person for any reason prohibited by Section 8.37.120. “Adverse action” for an app-based worker may involve any aspect of the app-based worker’s work, including compensation, work hours, volume, and frequency of offers made available, desirability and compensation rates of offers made available, responsibilities, or other material change in the terms and conditions of work or in the ability of an app-based worker to perform work. “Adverse action” also includes any action by the network company or a person acting on the network company’s behalf that would dissuade a reasonable person from exercising any right afforded by this Chapter 8.37.

“Agency” means the Office of Labor Standards and any division therein.

“Aggrieved party” means an app-based worker or other person who suffers tangible or intangible harm due to a network company’s or other person’s violation of this Chapter 8.37.

“App-based worker” means a person who has entered into an agreement with a network company governing the terms and conditions of use of the network company’s worker platform or a person affiliated with and accepting offers to perform services for compensation via a network company’s worker platform. For purposes of this Chapter 8.37, at any time, but not limited to, when an app-based worker is logged into the network company’s worker platform, the worker is considered an app-based worker.

“Application dispatch” means technology that allows customers to directly request dispatch of app-based workers for provision of services and/or allows app-based workers or network companies to accept offers to perform services for compensation and payments for services via the internet using interfaces, including but not limited to website, smartphone, and tablet applications.

“Associated cost factor” means the additional percentage of the minimum wage equivalent rate that reasonably compensates app-based workers for the non-mileage expenses that are necessary to conduct app-based work, which include but are not limited to the following:

1. Employer-side payroll taxes that app-based workers must pay;
2. Cost of paid family and medical leave insurance;
3. Cost of state-provided unemployment insurance;
4. Cost of workers’ compensation insurance;
5. Business taxes that app-based workers must pay;
6. Business licensing fees that app-based workers must pay; and
7. Cost of miscellaneous expenses such as purchase of cellular phones, data plans, and other

equipment required for work.

“Associated mileage factor” means the additional percentage of the mileage rate that reasonably compensates app-based workers for miles traveled without compensation that are necessary to conduct app-



based work, which may include but is not limited to the following:

1. Miles traveled after completing performance of an offer, to relocate to locations where additional offers are likely to be available or to return to the starting location; and/or
2. Miles traveled to locations for rest breaks, meal breaks, restroom access, and administrative needs.

“Associated time factor” means the additional percentage of the minimum wage equivalent rate that reasonably compensates app-based workers for the time that app-based workers spend working or engaged to wait for work without compensation to perform app-based work, including but not limited to the following:

1. Reviewing offers;
2. Communicating with network companies and customers;
3. Relocating in anticipation of future offers;
4. Conducting administrative tasks; and
5. Taking rest breaks.

“Cancellation with cause” means cancellation of a previously accepted offer by an app-based worker for reasons identified in subsection 8.37.080.C.

“City” means The City of Seattle.

“Compensation” means the total amount of payment owed to an app-based worker by reason of performing work facilitated or presented by the network company, including but not limited to network company payments, bonuses, incentives, and tips earned from customers.

“Creative services or works” means labor that results in or contributes to the creation of original works, as well as the works resulting from such labor. The term “creative services or works” includes but is not limited to fiction and non-fiction writing, art, photography, graphic design, marketing, and related consulting services.

“Customer” means a paying customer and/or recipient of an online order.

“Director” means the Director of the Office of Labor Standards or the Director’s designee.

“Engaged miles” means miles traveled during engaged time in a vehicle that the network company does not own and maintain, or miles traveled during engaged time in a vehicle leased by the network company or its agent to the app-based worker. Engaged miles do not include any miles that may be traveled in furtherance of an offer facilitated by a marketplace network company.

“Engaged time” means the period of time in which an app-based worker performs services in furtherance of an offer facilitated or presented by a network company or participates in any training program required by a network company. Engaged time begins and ends as described below:

1. If an offer is being facilitated or presented by an on-demand network company, or is an on-demand offer, “engaged time” begins upon the app-based worker’s acceptance of the offer and ends upon the app-based worker’s completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker’s acceptance of the offer pursuant to subsection 8.37.080.C.

2. If an offer is being facilitated or presented by a marketplace network company, “engaged time” is the reasonable estimate of engaged time required to perform the offer as mutually agreed by the marketplace network company or customer and the app-based worker when the offer is accepted. Engaged time may be non-consecutive and/or performed flexibly during an agreed upon range of time and is subject to rulemaking regarding offers that are cancelled with cause. .

3. In all other circumstances, “engaged time” begins when the app-based worker begins performance of the offer or when the app-based worker reports to a location designated in the offer. Engaged time ends upon the app-based worker’s completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker’s acceptance of the offer pursuant to subsection 8.37.080.C.

The Director may issue rules on “engaged time” for (a) offers with non-compensable time, such as sleep time or other periods of off-duty time; or (b) offers with periods of time when the worker is not completely

relieved of the duty to perform services and cannot use the time effectively for their own purposes.

“Eating and drinking establishment” means “eating and drinking establishment” as defined in Section 23.84A.010.

“Food processing” means “food processing” as defined in Section 23.84A.012.

“Franchise” means an agreement by which:

1. A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;
2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designated, owned by, or licensed by the grantor or its affiliate; and
3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

“Front pay” means the compensation an app-based worker would earn or would have earned if reinstated to their former position.

“Hearing Examiner” means the official appointed by the City Council and designated as the Hearing Examiner under Chapter 3.02 or that person’s designee (e.g., Deputy Hearing Examiner or Hearing Examiner Pro Tem).

“Incentive” means a sum of money paid to an app-based worker upon completion of services, including but not limited to completing performance of a certain number of offers, completing performance of a certain number of consecutive offers, completing performance of an offer subject to a price multiplier or variable pricing policy, making oneself available to accept offers in a particular geographic location during a specified period of time, or recruiting new app-based workers.

“Marketplace network company” means a network company that (1) is exclusively engaged in facilitating pre-scheduled offers in which the prospective customer and worker exchange information

regarding the scope and details of services to be performed prior to the customer placing the online order for those services or the app-based worker accepting the offer, and (2) exclusively facilitates services performed without the network company monitoring offers by geographic location, mileage, or time. On-demand network companies and companies that primarily provide delivery services are not marketplace network companies.

“Minimum wage equivalent rate” means the per-minute equivalent of the “hourly minimum wage” established for Schedule 1 employers in Chapter 14.19. In 2022, the “hourly minimum wage” established for Schedule 1 employers in Chapter 14.19 is \$17.27 and the resultant minimum wage equivalent rate is \$0.288.

“Network company” means an organization, whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that uses an online-enabled application or platform, such as an application dispatch system, to connect customers with app-based workers, present offers to app-based workers through a worker platform, and/or facilitate the provision of services for compensation by app-based workers.

1. The term “network company” includes any such entity or person acting directly or indirectly in the interest of a network company in relation to the app-based worker.

2. The term “network company” excludes:

a. An entity offering services that enable individuals to schedule appointments with and/or process payments to users, when the entity neither engages in additional intermediation of the relationships between parties to such transactions nor engages in any oversight of service provision; or

b. An entity operating digital advertising and/or messaging platforms, when the entity neither engages in intermediation of the payments or relationships between parties to resulting transactions nor engages in any oversight of service provision.

c. An entity that meets the definition of “transportation network company” as defined by RCW 46.04.652 <<http://app.leg.wa.gov/RCW/default.aspx?cite=46.04.652>>.

d. An entity that meets the definition of “for hire vehicle company” or “taxicab association” as defined in Section 6.310.110.

A company that meets the definition of network company in this subsection and does not fall within any of the exclusions contained in this subsection is subject to this Chapter 8.37.

“Network company payment” means the amount owed to an app-based worker by reason of performing services in furtherance of an offer facilitated or presented by the network company, including but not limited to payment for providing services and/or commissions, or participating in any training program required by a network company.

“Offer” means one or more online orders presented to an app-based worker as one opportunity to perform services for compensation that the app-based worker may accept or reject.

1. An opportunity to perform services for compensation includes but is not limited to an opportunity described via a worker platform as a shift, a period of time to be spent engaged in service provision, a continuous period of time in which the app-based worker must make themselves available to perform services, or any other continuous period of time when the worker is not completely relieved of the duty to perform the service(s), and such a period of time shall be considered as one offer.

2. The term “offer” includes pre-scheduled offers and on-demand offers.

“On-demand network company” means a network company that is primarily engaged in facilitating or presenting on-demand offers to app-based workers.

1. The term “on-demand network company” includes but is not limited to a network company operating in Seattle that is primarily engaged in facilitating or presenting on-demand offers to app-based workers for delivery services from one or more of the following: (a) eating and drinking establishments, (b) food processing establishments, (c) grocery stores, or (d) any facility supplying groceries or prepared food and beverages for an online order.

2. When determining whether a network company is “primarily engaged in facilitating or presenting on-demand offers to app-based workers,” the Agency may consider any number of factors, including but not limited to the following examples: number of on-demand offers relative to the network company’s

overall offers; information from app-based workers; marketing or promotional materials from the network company; or other public statements from representatives of the network company.

“On-demand offer” means an offer facilitated or presented by a network company to an app-based worker that requires performance to be initiated within two hours of acceptance (i.e., an offer that is not a prescheduled offer).

“Online order” means an order for services that is placed through an online-enabled application or platform, such as an application dispatch system, and that is facilitated by a network company or presented by a network company for its own benefit. The Director may issue rules further defining the definition of “online order” and the types of transactions excluded from this definition. The term “online order” does not include the following transactions:

1. Sale or rental of products or real estate;
2. Payment in exchange for a service subject to professional licensure that has been listed by the

Director pursuant to this Section 8.37.020;

3. Payment in exchange for services wholly provided digitally;
4. Payment in exchange for creative services or works;

5. Transportation Network Company (TNC) dispatched trips. For purposes of this subsection, “TNC dispatched trips” mean the provision of transportation by a driver for a passenger through the use of a transportation network company's application dispatch system ; and

6. Transportation provided by taxicabs or for-hire vehicles, as defined in Chapter 6.310.

“Operating in Seattle” means, with respect to a network company, facilitating or presenting offers to provide services for compensation using an online-enabled application or platform, such as an application dispatch system, to any app-based worker, where such services are performed in Seattle.

“Paying customer” means a person or entity placing an online order via a network company’s online-enabled application or platform.

“Perform services in Seattle” means activities, conducted by an app-based worker in furtherance of an offer, that occur within the geographic boundaries of Seattle.

1. The term “perform services in Seattle” includes any time spent on a commercial stop in Seattle that is related to the provision of delivery or other services associated with an offer.

2. The term “perform services in Seattle” does not include stopping for refueling, stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle with no commercial stops in Seattle. For offers made by a marketplace network company, the term “perform services in Seattle” shall be determined based on the address where services are to be performed per the terms agreed upon as part of the offer.

“Pre-scheduled offer” means an offer that is facilitated or presented by a network company to an app-based worker at least two hours prior to when the app-based worker is required to initiate performance.

“Rate of inflation” means 100 percent of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and Clerical Workers, termed CPI-W, for the 12-month period ending in August; provided that the percentage increase shall not be less than zero.

“Respondent” means the network company or any person who is alleged or found to have committed a violation of this Chapter 8.37.

“Service subject to professional licensure” means a service that legally requires authorization or certification for a regulatory purpose for an individual to engage in the service as an occupation, trade, or business. The Director shall issue rules that establish a list of professional licenses indicative of occupations or trades in which workers possess significant bargaining power and influence over their compensation and conditions of work. In establishing this list, the Director shall consider, at a minimum, the licensing requirements of the Washington State Department of Licensing, the Washington State Bar Association, and the Washington Medical Commission.

“Standard mileage rate” means the current standard mileage rate established by the United States

Internal Revenue Service (IRS) for calculation of the costs of operating an automobile. This mileage rate is adjusted annually by the IRS. For example, the 2022 mileage rate is \$0.585.

“Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the app-based worker receiving the tip.

“Unsealed” means unpackaged, visible within packaging, and/or in packaging that is not designed to withstand shipment. The term “unsealed” includes but is not limited to bags, boxes, or containers designed to allow customers to transport hot food or groceries to their homes.

“Worker platform” means the worker-facing application dispatch system software or any online-enabled application service, website, or system, used by an app-based worker, that enables the arrangement of services for compensation.

“Written” or “in writing” means a printed or printable communication in physical or electronic format including a communication that is transmitted through email, text message, or a computer system, or is otherwise sent or maintained electronically, including via the worker platform.

### **8.37.030 App-based worker coverage**

A. An app-based worker is covered by this Chapter 8.37 if the app-based worker performs services in Seattle facilitated or presented by a network company covered by this Chapter 8.37.

1. If an app-based worker begins engaged time in Seattle, the requirements of this Chapter 8.37 apply, regardless of where the app-based worker terminates performance of the offer.

2. If an app-based worker begins engaged time outside of Seattle, the requirements of this Chapter 8.37 apply only for the portion of services that occur within Seattle.

B. An app-based worker who is a covered employee under Chapter 14.19 for a covered network company, or a covered employee under Chapter 14.19 for a customer of an online order, is not a covered app-based worker under this Chapter 8.37.

### **8.37.040 Network company coverage**



A. For the purposes of this Chapter 8.37, covered network companies are limited to those that facilitate work performed by 250 or more app-based workers worldwide regardless of where those workers perform work, including but not limited to chains, integrated enterprises, or franchises associated with a franchise or network of franchises that facilitate work performed by 250 or more app-based workers worldwide in aggregate.

B. To determine the number of app-based workers performing work for the current calendar year:

1. The calculation is based upon the average number per calendar week of app-based workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one app-based worker worked for compensation. For network companies that did not have any app-based workers during the preceding calendar year, the number of app-based workers counted for the current calendar year is calculated based upon the average number per calendar week of app-based workers who worked for compensation during the first 90 calendar days of the current year in which the network company engaged in business.

2. All app-based workers who worked for compensation shall be counted, including but not limited to:

- a. App-based workers who are not covered by this Chapter 8.37;
- b. App-based workers who worked in Seattle; and
- c. App-based workers who worked outside Seattle.

C. Separate entities that form an integrated enterprise shall be considered a single network company under this Chapter 8.37. Separate entities will be considered an integrated enterprise and a single network company under this Chapter 8.37 where a separate entity controls the operation of another entity. The factors to consider in making this assessment 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;
4. Degree of common ownership or financial control over the entities; and
5. Use of a common brand, trade, business, or operating name.

### **8.37.050 Minimum network company payment**

A. For each offer resulting in engaged time or engaged miles, a network company shall compensate app-based workers, and/or ensure app-based workers receive, at least the equivalent of a minimum network company payment that is the greater of either:

1. The minimum per-minute amount for engaged time under subsection 8.37.050.B.1 plus the minimum per-mile amount for engaged miles under subsection 8.37.050.B.2; or
2. The minimum per-offer amount under subsection 8.37.050.B.4.

#### B. Minimum network company payment calculation

1. Per-minute amount. For each minute of engaged time, a network company shall compensate app-based workers, and/or ensure that app-based workers receive, at least the equivalent of the total of the minimum wage equivalent rate multiplied by the associated cost factor multiplied by the associated time factor. In 2022, the per-minute amount is \$0.39. On the effective date of this Chapter 8.37, and on January 1 of each year thereafter, the per-minute amount shall be increased to reflect any adjustment(s) to the minimum wage equivalent rate, associated cost factor, or associated time factor. The Agency shall determine the per-minute amount and file a schedule of such amount with the City Clerk.

- a. Associated cost factor. The associated cost factor is 1.13.
- b. Associated time factor. The associated time factor is 1.21.

2. Per-mile amount. For each engaged mile traveled, a network company shall compensate app-based workers, and/or ensure that app-based workers receive, at least the equivalent of the standard mileage rate multiplied by the associated mileage factor, which is 1.25. In 2022, the per-mile amount is \$0.73. On the effective date of this Chapter 8.37, and on January 1 of each year thereafter, the per-mile amount shall be

increased annually to reflect any adjustment(s) to the standard mileage rate or associated mileage factor. The Agency shall determine the per-mile amount and file a schedule of such amount with the City Clerk.

3. The calculations described in this subsection 8.37.050.B are expressed in equation form as:

$$\begin{aligned} & (\text{Engaged minutes} \times \text{minimum wage equivalent rate} \\ & \quad \times \text{associated cost factor} \times \text{associated time factor}) \\ & + (\text{engaged miles} \times \text{standard mileage rate} \times \text{associated mileage factor}) \\ & = \text{minimum network company payment per offer.} \end{aligned}$$

The established current rates and factors result in the following calculation for the required minimum network company payment:

$$\begin{aligned} & (\text{Engaged minutes} \times \$0.288 \times 1.13 \times 1.21) \\ & + (\text{Engaged miles} \times \$0.585 \text{ per} \times 1.25) \\ & = \$0.39/\text{minute} + \$0.73/\text{mile.} \end{aligned}$$

4. Per-offer amount. For each offer resulting in engaged time or engaged miles, a network company shall compensate app-based workers a minimum per-offer amount of at least \$5. The Director may issue rules excluding certain offers from payment of the minimum per-offer amount under subsection 8.37.050.B.4, including but not limited to on-demand offers cancelled by the customer within a grace period of not more than five minutes after acceptance.

a. Effective January 1, 2024, the minimum per-offer amount paid to an app-based worker shall be increased on a percentage basis to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amount and file a schedule of such amount with the City Clerk.

5. The Director shall issue rules establishing the minimum network payment for marketplace offers that are based on estimated engaged time and are cancelled before completion of the performance of the offer.

6. Application of minimum network company payment requirements.

a. A marketplace network company may fulfill the requirements of this subsection 8.37.050.B by ensuring that the app-based worker is paid the minimum network payment calculated based on the reasonable estimate of engaged time as mutually agreed upon by the marketplace network company or customer and the app-based worker when the offer was accepted.

b. A minimum network company payment shall be provided for any offer resulting in engaged time and engaged miles by the app-based worker, offers cancelled by a customer or the network company, and offers for which acceptance was cancelled with cause by the app-based worker pursuant to subsection 8.37.080.C.

c. If an app-based worker accepts a new offer during performance of a previously accepted offer, and both offers are facilitated or presented by the same network company, engaged time and engaged miles accrued during any period of time in which performance of the offers overlaps shall be subject to the minimum compensation requirements for a single offer under this subsection 8.37.050.B.

C. Adjustment of the associated cost factor and associated time factor.

1. Adjustment of the associated cost factor. Beginning three years after the effective date of this Chapter 8.37, the Director by rule may adjust the associated cost factor annually; provided, that this adjustment shall not result in reduction of the associated cost factor below 1.13. In adjusting the associated cost factor, the Director shall consider relevant and available sources of data, which may include but are not limited to: app-based worker surveys; data provided by network companies; data provided by app-based workers; data provided by customers; data from other jurisdictions; data available through academic, policy, or community-based organizations; public testimony; and stakeholder interviews. The Director may consider the non-exhaustive list of factors that comprise the “associated cost factor” as defined in Section 8.37.020, as well as any other factor the Director determines is necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the associated cost factor with the City Clerk.

2. Adjustment to the associated time factor. Beginning three years after the effective date of this Chapter 8.37, the Director by rule may adjust the associated time factor annually; provided, that this adjustment shall not result in reduction of the associated time factor below 1.21. In adjusting the associated time factor, the Director shall consider relevant and available sources of data, which may include but are not limited to: app-based worker surveys; data provided by network companies; data provided by app-based workers; data provided by customers; data from other jurisdictions; data available through academic, policy, or community-based organizations; public testimony provided; and stakeholder interviews. The Director may consider the non-exhaustive list of factors that comprise the “associated time factor” as defined in Section 8.37.020, as well as any other factor the Director determines is necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the associated time factor with the City Clerk.

#### D. Deductions

1. A network company may only deduct compensation when the app-based worker expressly authorizes the deduction in writing and does so in advance for a lawful purpose for the benefit of the app-based worker. Any such authorization by an app-based worker must be voluntary and knowing.

2. Neither the network company nor any person acting in the interest of the network company may derive any financial profit or benefit from any of the deductions under this subsection 8.37.050.D. For the purposes of this subsection 8.37.050.D, reasonable interest charged by the network company, or any person acting in the interest of a network company, for a loan or credit extended to the app-based worker is not considered to be of financial benefit to the network company, or any person acting in the interest of a network company.

### **8.37.060 Tip and incentive compensation**

#### A. Tips

1. A network company shall pay to its app-based workers all tips and gratuities.
2. Tips paid to an app-based worker are in addition to, and may not count towards:

- a. The app-based worker's minimum network company payment under Section 8.37.050;
- b. A guaranteed minimum amount of network company payment for an offer, as described in Section 8.37.070, regardless of whether the guaranteed minimum amount exceeds the minimum network company payment owed to the app-based worker;
- c. Any incentive presented to the app-based worker; or
- d. Any amount of compensation presented to the app-based worker in exchange for the performance of services.

B. Incentives paid to an app-based worker are in addition to, and may not count towards, the app-based worker's minimum network company payment under Section 8.37.050.

### **8.37.070 Network company transparency**

#### A. Right to up-front information regarding offers

1. A network company shall provide, and/or ensure a customer provides, an app-based worker the following information when facilitating or presenting an offer:

- a. A reasonable estimate of the engaged time required to complete performance of the offer and, if applicable, the range of time in which the offer can be completed;
- b. A reasonable estimate of the engaged miles required to complete performance of the offer and the approximate geographic location or locations where work in furtherance of the offer will occur, including pick-up and drop-off locations for offers involving deliveries;
- c. A guaranteed minimum amount of network company payment for the offer; provided, that it does not fall below the minimum network company payment requirements established in Section 8.37.050 for an offer requiring the amount of engaged time and engaged miles provided in the estimate;
- d. The amount of any tip that each customer has indicated they will provide, if the network company's online-enabled application or platform enables customers to tip in advance of completion of an online order;

e. When performance of an offer requires a stop or stops at business establishments, the names of such businesses;

f. To the extent it is reasonably ascertainable, information regarding physical labor required to perform services in furtherance of the offer and accessibility at locations where work will be performed, including but not limited to weights of any goods to be handled; numbers of flights of stairs; and availability of elevators, ramps, and other conditions affecting accessibility. The Director shall issue rules regarding the types of information required to be disclosed, the format of provision of the information, and efforts to ascertain the information that would be considered reasonable; and

g. To the extent it is reasonably ascertainable, the network company shall make available to the app-based worker information that it has about the unsealed contents of each online order.

2. A network company shall not be held responsible for a violation of subsection 8.37.070.A.1 that is attributable solely to incomplete or inaccurate information provided by another party, provided that the network company made a reasonable effort to obtain complete and accurate information.

3. An on-demand offer shall be made available for at least two minutes after the app-based worker has been provided the information described in subsection 8.37.070.A.1.

4. If an offer entails fulfillment of multiple individual online orders, and the network company lacks advance notice of each online order to provide the information in subsections 8.37.070.A.1.f and 8.37.070.A.1.g, the network company shall provide the app-based worker with such information prior to assigning them work in furtherance of each online order, to the extent it is reasonably ascertainable.

B. Within 24 hours of each offer's performance or cancellation with cause, a network company shall transmit an electronic receipt to the app-based worker that contains the following information for each unique offer covered by this Chapter 8.37:

1. The app-based worker's total amount of engaged time;

2. The app-based worker's total amount of engaged miles;
3. The app-based worker's compensation, itemized by:
  - a. Gross network company payment, as well as the method used to calculate payment, including but not limited to amount per minute or amount per mile;
  - b. Total incentive(s) and the basis for calculating the incentive(s), if applicable;
  - c. Total amount of compensation from tips;
  - d. Total amount of any deductions, itemized by deduction type; and
  - e. Net compensation.
4. Itemized fees collected from the app-based worker to access the network company's online-enabled application or platform;
5. The approximate geographic location or locations of the app-based worker's engaged time and engaged miles, including pick-up and drop-off locations for offers involving deliveries; and
6. Pursuant to rules that the Director may issue, other information that is material and necessary to effectuate the terms of this Chapter 8.37.

C. On a weekly basis, the network company shall provide written notice to the app-based worker that contains the following information for offers covered by this Chapter 8.37 and which were performed or cancelled with cause, as well as other engagement with the worker platform, during the prior week:

1. The app-based worker's total amount of engaged time;
2. The app-based worker's total amount of engaged miles;
3. The app-based worker's compensation, itemized by:
  - a. Gross network company payment, as well as the method used to calculate payment, including but not limited to amount per minute or amount per mile;
  - b. Total incentives and the basis for calculating the incentives, if applicable;
  - c. Total amount of compensation from tips;



d. Total amount of any deductions, itemized by deduction type;

e. Net compensation

4. Total amount of itemized fees collected from the app-based worker to access the network company's online-enabled application or platform;

5. Pursuant to rules that the Director may issue, other information that is material and necessary to effectuate the terms of this Chapter 8.37.

D. Within 24 hours of an online order's performance or cancellation with cause, a network company shall transmit an electronic receipt to a paying customer that lists:

1. The date and time of completion of the online order;

2. The total amount paid to the network company, itemizing all charges, fees, and customer-paid tips. The network company shall clearly designate the amount of tips paid directly to the app-based worker and the amount of charges and fees retained by the company; and

3. Pursuant to rules that the Director may issue, other information that is material and necessary to effectuate the terms of this Chapter 8.37.

E. A network company shall ensure that its customer-facing websites, applications, and platforms do not describe any fees or non-tip charges in a manner that might be reasonably misconstrued as a tip, gratuity, or other payment to the app-based worker. Any interface for accepting customer orders shall clearly reflect the amount of any tip paid to the app-based worker.

F. A network company shall ensure that all app-based workers have access to the company's tip policy, including but not limited to whether the network company's online-enabled application or platform allows customers to tip in advance of completion of an online order and whether the network company permits customers to modify or remove tips after performance.

G. A network company shall routinely and affirmatively transmit to the Agency such records as required by rules issued by the Director. The Director shall have the authority to require such aggregated or

disaggregated records deemed necessary, appropriate, or convenient to administer, evaluate, and enforce the provisions of this Chapter 8.37. The Director may issue rules requiring that aggregated records be produced as a distribution at defined percentiles. The Director may issue data production rules of general applicability as well as rules specific to on-demand companies. In issuing data production rules, the Director shall consider, among other factors, methods to provide workers with information to make informed choices about platforms on which they may seek work and to provide the public with information to assess the impact of network companies.

1. Records for production may include, but are not limited to:

- a. Records regarding the availability of offers facilitated via the network company platform;
- b. Records regarding the amount of engaged time and engaged miles;
- c. The amount of time that app-based workers must spend working or engaged to wait for work without compensation to perform app-based work;
- d. Records regarding the number of app-based workers who logged onto the worker platform, logged on for the first time in the reporting period, or accepted an offer;
- e. Per-offer or aggregated app-based worker compensation, including but not limited to network company payments, bonuses, incentives, and tips earned from customers; and
- f. Any other records that the Director determines are material and necessary to effectuate the purposes of this Chapter 8.37.

2. The Director shall issue rules governing the submission format, security, and privacy protocols relating to the submission of network company records, to the extent permitted by law.

H. A network company shall notify app-based workers at least 14 days prior to making a material change to how network company payment will be calculated.

### **8.37.080 Flexibility**

A. An app-based worker has the right to decide when to make themselves available to work and which

offers to accept or reject. A network company shall not subject an app-based worker to an adverse action, nor institute a policy subjecting an app-based worker to an adverse action, for engaging in the following activities:

1. Limiting hours of availability, including but not limited to being logged into the worker platform for limited hours, only at certain hours of the day, or during certain days of the week.

2. Accepting or rejecting any individual offer, any types of offers, or any number or proportion of offers. An app-based worker may indicate rejection of an offer by declining to respond to the offer. A network company shall ensure that its worker platform enables an app-based worker to communicate a rejection of each offer.

B. A network company shall allow an app-based worker to be logged into the network company's worker platform at any date, time of day, or for any amount of time, except in the following circumstances:

1. Certain instances of deactivation as defined in rules, or other applicable law.

2. Limitations on a maximum amount of consecutive work time to protect worker and public safety.

C. A network company shall not subject an app-based worker to an adverse action, nor institute a policy subjecting an app-based worker to an adverse action, for cancelling their acceptance of an offer with cause. An app-based worker may cancel their acceptance of an offer with cause (i.e., "cancellation with cause") when any of the following conditions occur:

1. Information provided pursuant to subsection 8.37.070.A.1 was substantially inaccurate; provided, that a customer's alteration of a tip amount shall not constitute grounds for cancellation with cause;

2. The app-based worker cannot complete performance of the offer because the customer is not present or fails to respond to communications from the app-based worker, the customer's presence or response is required for the app-based work to complete performance of the offer, and the app-based worker has made attempts to contact and/or wait for the customer in accordance with an applicable network company policy, provided that the no-contact or limited-contact deliveries are not considered to require the end customer's

presence;

3. Timely completion of the offer has become impracticable due to an unforeseen obstacle or occurrence; or

4. The app-based worker makes a good faith complaint regarding sexual harassment or discrimination that is alleged to have occurred during performance of the offer.

D. For all cancelled offers, network companies shall allow the app-based worker to communicate the reason for cancellation, including at least all reasons included in subsection 8.37.080.C, via the worker platform. The network company shall review the stated reason for cancellation for a reasonable time of no less than three days before taking any action.

### **8.37.100 Notice of rights**

A. Network companies shall provide each app-based worker with a written notice of rights established by this Chapter 8.37. The Agency may create and distribute a model notice of rights in English and other languages. However, upon the effective date of this Chapter 8.37, and subsequently upon an initial offer to a new app-based worker, network companies are responsible for providing app-based workers with the notice of rights required by subsection 8.37.100.B, in a form and manner sufficient to inform app-based workers of their rights under this Chapter 8.37, regardless of whether the Agency has created and distributed a model notice of rights.

B. The notice of rights shall provide information on:

1. The right to the applicable minimum per-minute amount, per-mile amount, and per-offer amount guaranteed by this Chapter 8.37, including a clear statement of the current applicable amounts;

2. The right to receive the information required to be disclosed by this Chapter 8.37 before accepting an offer and performing services in furtherance of an offer;

3. The right to flexibility in making themselves available for work and accepting, rejecting, or cancelling offers under this Chapter 8.37;

4. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.37; and

5. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 8.37, including but not limited to a network company's or any person's failure to pay the minimum per-minute amount, per-mile amount, or per-offer amount, and a network company's or other person's retaliation against an app-based worker or other person for engaging in an activity protected by this Chapter 8.37.

6. The right to a clear statement of the network company's tip policy, including but not limited to whether the network company's online-enabled application or platform allows customers to tip in advance of completion of an online order and whether the network company permits customers to modify or remove tips after performance.

C. Network companies shall provide the notice of rights required by subsection 8.37.100.B in an electronic format that is readily accessible to the app-based worker. The notice of rights shall be made available to the app-based worker via smartphone application, email, or online web portal, in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The Director may issue rules governing the form and content of the notice of rights, the manner of its distribution, and required languages for its translation.

### **8.37.110 Network company records**

A. Network companies shall retain records that document compliance with this Chapter 8.37 for each app-based worker.

B. Network companies shall retain the records required by subsection 8.37.110.A for a period of three years.

C. If a network company fails to retain adequate records required under subsection 8.37.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this

Chapter 8.37 for the relevant periods and for each app-based worker for whom records were not retained.

**8.37.120 Retaliation prohibited**

A. No network company or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 8.37.

B. No network company or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter 8.37. Such rights include, but are not limited to, the right to make inquiries about the rights protected under this Chapter 8.37; the right to inform others about their rights under this Chapter 8.37; the right to inform the person's network company, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this Chapter 8.37; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 8.37; the right to cooperate with the Agency in its investigations of this Chapter 8.37; the right to testify in a proceeding under or related to this Chapter 8.37; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 8.37.

C. No network company or any other person shall communicate to a person exercising rights protected in this Section 8.37.120, directly or indirectly, the willingness to inform a government worker that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an app-based worker or family member of an app-based worker to a federal, state, or local agency because the app-based worker has exercised a right under this Chapter 8.37.

D. It shall be a rebuttable presumption of retaliation if a network company or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 8.37.120. The network company may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this Section 8.37.120 shall be sufficient upon a showing that a network company or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 8.37.120 was a motivating factor in the adverse action, unless the network company can prove that the action would have been taken in the absence of such protected activity.

F. The protections afforded under this Section 8.37.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 8.37.

G. A complaint or other communication by any person triggers the protections of this Section 8.37.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 8.37.

#### **8.37.125 Rulemaking authority**

The Director is authorized to administer and enforce this Chapter 8.37. The Director is authorized to promulgate, revise, or rescind rules and regulations deemed necessary, appropriate, or convenient to administer, evaluate and enforce the provisions of this Chapter 8.37 pursuant to Chapter 3.02, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 8.37. Any rules promulgated by the Director shall have the force and effect of law and may be relied on by network companies, app-based workers, and other parties to determine their rights and responsibilities under this Chapter 8.37.

#### **8.37.130 Enforcement power and duties**

The Agency shall have the power to administer and enforce this Chapter 8.37 and shall have such powers and duties in the performance of these functions as are defined in this Chapter 8.37 and otherwise necessary and proper in the performance of the same and provided for by law.

#### **8.37.140 Violation**

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 8.37 is a violation.

#### **8.37.150 Investigation**

A. The Agency shall have the power to investigate any violations of this Chapter 8.37 by any respondent. The Agency may prioritize investigations of workforces that are vulnerable to violations of this Chapter 8.37. The Agency may initiate an investigation pursuant to Director’s Rules, including but not limited to situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of network companies or businesses because the workforce contains significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.37 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an app-based worker or other person.

B. An app-based worker or other person may report to the Agency any suspected violation of this Chapter 8.37. The Agency shall encourage reporting pursuant to this Section 8.37.150 by taking the following measures:

1. The Agency shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the app-based worker or person reporting the violation. However, with the authorization of such person, the Agency may disclose the app-based worker’s or person’s name and identifying information as necessary to enforce this Chapter 8.37 or for other appropriate purposes.

2. The Agency may require the network company to post or otherwise notify other app-based workers working for the network company that the Agency is conducting an investigation. The network company shall provide the notice of investigation in a form, place, and manner designated by the Agency. The Agency shall create the notice of investigation in English and other languages.

3. The Agency may certify the eligibility of eligible persons for “U” Visas under the provisions of 8 U.S.C. § 1184(p) and 8 U.S.C. § 1101(a)(15)(U). This certification is subject to applicable federal law and regulations, and Director’s Rules.

C. The Agency’s investigation shall commence within three years of the alleged violation. To the extent



permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this Chapter 8.37 and any administrative enforcement proceeding under this Chapter 8.37 based upon the same facts. For purposes of this Chapter 8.37:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 8.37, or when the Agency provides notice to the respondent that an investigation has commenced under this Chapter 8.37.

2. The Agency's investigation ends when the Agency issues a final order concluding the matter and any appeals have been exhausted; the time to file any appeal has expired; or the Agency notifies the respondent in writing that the investigation has been otherwise resolved.

D. The Agency's investigation shall be conducted in an objective and impartial manner.

E. The Director may apply by affidavit or declaration in the form allowed under RCW 5.50.050 to the Hearing Examiner for the issuance of subpoenas requiring a network company to produce the records required by Section 8.37.110, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under Section 8.37.110, or any other document relevant to the issue of whether any app-based worker or group of app-based workers received the information or other benefits required by this Chapter 8.37, and/or to whether a network company has violated any provision of this Chapter 8.37. The Hearing Examiner shall conduct the review without hearing as soon as practicable and shall issue subpoenas upon a showing that there is reason to believe that: a violation has occurred; a complaint has been filed with the Agency; or circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.37, the workforce is unlikely to volunteer information regarding such violations, or the Agency has gathered preliminary information indicating that a violation may have occurred.

F. A network company that fails to comply with the terms of any subpoena issued under subsection 8.37.150.E in an investigation by the Agency under this Chapter 8.37 before the issuance of a Director's Order

issued pursuant to subsection 8.37.160.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of liability, damages owed, or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 8.37.150.E to the City Attorney to seek a court order to enforce any subpoena.

H. Where the Director has reason to believe that a violation has occurred, the Director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good faith estimate of compensation, interest, damages, and penalties due. A respondent may appeal any such order in accordance with Section 8.37.180.

### **8.37.160 Findings of fact and determination**

A. Except when there is an agreed-upon settlement, the Director shall issue a written determination with findings of fact resulting from the investigation and statement of whether a violation of this Chapter 8.37 has or has not occurred based on a preponderance of the evidence before the Director.

B. If the Director determines that there is no violation of this Chapter 8.37, the Director shall issue a “Determination of No Violation” with notice of an app-based worker’s or other person’s right to appeal the decision, pursuant to Director’s Rules.

C. If the Director determines that a violation of this Chapter 8.37 has occurred, the Director shall issue a “Director’s Order” that shall include a notice of violation identifying the violation or violations.

1. The Director’s Order shall state with specificity the amounts due under this Chapter 8.37 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 8.37.170.

2. The Director’s Order may specify that civil penalties and fines due to the Agency can be mitigated for respondent’s timely payment of remedy due to an aggrieved party pursuant to subsection 8.37.170.A.4.

3. The Director's Order may specify that civil penalties and fines are due to the aggrieved party rather than due to the Agency.

4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this Chapter 8.37, including but not limited to monitored compliance for a reasonable time period.

5. The Director's Order shall include notice of the respondent's right to appeal the decision pursuant to Section 8.37.180.

### **8.37.165 Complaint procedure**

A. The Agency shall have the power to respond to any violations of this Chapter 8.37 with a complaint procedure.

B. The Agency may initiate a complaint procedure as an alternative enforcement method to an investigation for responding to a report or complaint by any person of a violation of this Chapter 8.37. The Director may issue rules for the complaint procedure, including but not limited to rules to establish the timeline for sending the information required by subsection 8.37.165.D, determine the nature and content of information requested from the complainant and network company, and indicate when the Agency may prioritize use of a complaint procedure prior to an investigation or in lieu of an investigation. The Director may also establish other enforcement methods to efficiently resolve violations of this Chapter 8.37.

C. The Agency may request the complainant to provide information pursuant to the complaint procedure, including but not limited to:

1. Contact information for the app-based worker and network company; and
2. A statement describing the alleged violations of this Chapter 8.37.

D. The Agency may send notices to the network company and complainant, including but not limited to:

1. Notice of the alleged violation(s). The Agency may send notice to the network company of the alleged violation(s) of this Chapter 8.37. The Agency shall bear any cost of sending such notice by certified

mail or by other means incurring a cost to the Agency. This notice may include but not be limited to:

- a. Statement of the alleged violation(s) of this Chapter 8.37; and
- b. Description of the remedies available to an app-based worker for violation(s) of this

Chapter 8.37;

2. Response from the network company. The Agency may request the network company to send the Agency relevant information to respond to the alleged violation(s) within an identified timeframe.

3. Notice to the complainant of the response from the network company. The Agency may send a notice to the complainant of the response from the network company. This notice to the complainant may include but not be limited to:

- a. The response from the network company, including any enclosures;
- b. Information on the right to bring a civil action in a court of competent jurisdiction;
- c. Any other information about the status of the complaint; and
- d. Information about the navigation program pursuant to Section 8.37.167.

4. Notice of no response. If the Agency receives no response from the network company within the identified timeframe pursuant to subsection 8.37.165.D.2, the Agency may send a notice of no response to the complainant and the network company and may include proof that the Agency previously sent notice of the alleged violation(s) to the network company.

5. Notice of closure. The Agency may send the complainant and network company notice of the Agency's completion of the complaint procedure and/or closure of the case.

E. Upon satisfying the requirements of subsections 8.37.165.C and 8.37.165.D, the Agency may close the case.

### **8.37.167 Navigation program**

A. The Agency may establish a navigation program that provides intake and information relating to the provisions of this Chapter 8.37.

1. The navigation program may provide a range of information, including but not limited to:
  - a. Information on the provisions and procedures of this Chapter 8.37;
  - b. General court information, including but not limited to:
    - 1) Information on court procedures for filing civil actions in small claims, district court, and superior court; and
    - 2) Information on obtaining translation and interpretation services, and other courtroom services;
  - c. A list of organizations that can be used to identify attorneys;
  - d. Organizations providing outreach and education, and/or legal assistance, to app-based workers;
  - e. Information about classifying workers as employees or independent contractors; and
  - f. As determined by the Director, additional information related to the provisions of this Chapter 8.37, other workplace protections, or other resources for resolving workplace issues.

2. The navigation program may include outreach and education to the public on the provisions and procedures of this Chapter 8.37.

3. The navigation program shall not include legal advice from the Agency. However, if the Agency provides information to an app-based worker about a community organization through the navigation program, the community organization is not precluded from providing legal advice.

### **8.37.170 Remedies**

A. The payment of unpaid compensation, liquidated damages of up to twice the amount of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 8.37 is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. The amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained

in this Section 8.37.170 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. If a violation is ongoing when the Agency receives a complaint or opens an investigation, the Director may order payment of unpaid compensation plus interest that accrues after receipt of the complaint or after the investigation opens and before the date of the Director's Order.

3. Interest shall accrue from the date the unpaid compensation was first due at 12 percent annum, or the maximum rate permitted under RCW 19.52.020.

4. If there is a remedy due to an aggrieved party, the Director may waive part or all civil penalties and fines due to the Agency based on timely payment of the full remedy due to the aggrieved party.

a. The Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order.

b. The Director may waive half the amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within 15 days of service of the Director's Order.

c. The Director shall not waive any amount of civil penalties and fines due to the Agency if the Director determines that the respondent has not paid the full remedy due to the aggrieved party after 15 days of service of the Director's Order.

5. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 8.37.170 for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties and fines due to the Agency for timely payment of remedy due to an aggrieved party under subsection 8.37.170.A.4, the Director may consider:

a. The total amount of unpaid compensation, liquidated damages, penalties, fines, and

interest due;

- b. The nature and persistence of the violations;
- c. The extent of the respondent's culpability;
- d. The substantive or technical nature of the violations;
- e. The size, revenue, and human resources capacity of the respondent;
- f. The circumstances of each situation;
- g. The amount of penalties in similar situations; and
- h. Pursuant to rules that the Director may issue, other factors that are material and

necessary to effectuate the terms of this Chapter 8.37.

B. A respondent found to be in violation of this Chapter 8.37 shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this Chapter 8.37, and other equitable relief. If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may designate a daily amount for unpaid compensation plus interest in favor of the aggrieved party. The daily amount of unpaid compensation shall be at least the equivalent of payment for eight hours of work at the "hourly minimum wage" rate for Schedule 1 employers under Chapter 14.19. For any violation of this Chapter 8.37, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

C. A respondent found to be in violation of this Chapter 8.37 for retaliation under Section 8.37.120 shall be subject to any appropriate relief at law or equity including, but not limited to, reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 8.37, and liquidated damages in an additional amount of up to twice the unpaid compensation. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to \$5,755.31.

D. The Director is authorized to assess civil penalties for a violation of this Chapter 8.37 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

1. For a first violation of this Chapter 8.37, the Director may assess a civil penalty of up to \$575.31 per aggrieved party.

2. For a second violation of this Chapter 8.37, the Director shall assess a civil penalty of up to \$1,150.63 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

3. For a third or any subsequent violation of this Chapter 8.37, the Director shall assess a civil penalty of up to \$5,755.31 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

4. For purposes of this subsection 8.37.170.D, a violation is a second, third, or subsequent violation if the respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than two Director’s Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

E. The Director is authorized to assess fines for a violation of this Chapter 8.37 and may specify that fines are due to the aggrieved party rather than due to the Agency. The Director is authorized to assess fines as follows:

<b>Violation</b>	<b>Fine</b>
Failure to provide app-based worker with up-front information regarding offers under subsection 8.37.070.A	Up to \$575.31 per aggrieved party
Failure to provide app-based worker with electronic receipts within 24 hours of each offer’s performance or cancellation with cause under subsection 8.37.070.B	Up to \$575.31 per aggrieved party
Failure to provide app-based worker with weekly statements under subsection 8.37.070.C	Up to \$575.31 per aggrieved party
Failure to provide the Agency with records required under subsection 8.37.070.G	Up to \$575.31 per missing record



Failure to provide app-based worker with at least 14 days of notice of a material change to the network company payment calculation under subsection 8.37.070.H	Up to \$575.31 per aggrieved party
Failure to comply with requirements for app-based worker’s right to decide when to work and which offers to accept or reject under subsection 8.37.080.A	Up to \$575.31 per aggrieved party
Failure to comply with requirements for app-based worker’s right to be logged into the network company’s worker platform under subsection 8.37.080.B	Up to \$575.31 per aggrieved party
Failure to comply with requirements for app-based worker’s cancellation of acceptance of an offer with cause under subsection 8.37.080.C	Up to \$575.31 per aggrieved party
Failure to provide written notice of rights under Section 8.37.100	Up to \$575.31 per aggrieved party
Failure to retain network company records for three years under subsections 8.37.110.A and 8.37.110.B	Up to \$575.31 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 8.37.120	Up to \$1,150.63 per aggrieved party
Failure to provide notice of investigation to app-based workers under subsection 8.37.150.B.2	Up to \$575.31 per aggrieved party
Failure to post or distribute public notice of failure to comply with final order under subsection 8.37.210.A.1	Up to \$575.31 per aggrieved party

For each app-based worker who performs services in Seattle for the network company and for each missing record, the maximum amount that may be imposed in fines in a one-year period for each type of violation for each app-based worker listed above is \$5,755.31. For each app-based worker who performs services in Seattle for the network company, if a fine for retaliation is issued, the maximum amount that may be imposed for each app-based worker in a one-year period is \$23,020.

F. A respondent that willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 8.37 shall be subject to a civil penalty of not less than \$1,150.63 and not more than \$5,755.31.

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter 8.37, including but not limited to reasonable attorneys’ fees.

H. A respondent that is the subject of a settlement agreement stipulating that a violation has occurred shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be

permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the respondent is the subject of a final order two times or more within a five-year period, the network company shall not be allowed to bid on any City contract for two years. This subsection 8.37.170.H shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and shall not be governed by that chapter; provided, that nothing in this subsection 8.37.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all respondents subject to debarment under this subsection 8.37.170.H.

**8.37.180 Appeal period and failure to respond**

A. An app-based worker or other person who claims an injury as a result of an alleged violation of this Chapter 8.37 may appeal the Determination of No Violation, pursuant to Director’s Rules.

B. A respondent may appeal the Director’s Order, including all remedies issued pursuant to Section 8.37.170, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service of the Director’s Order. If a respondent fails to appeal the Director’s Order within 15 days of service, the Director’s Order shall be final. If the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run until 5 p.m. on the next business day.

**8.37.190 Appeal procedure and failure to appear**

A. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases. The hearing shall be conducted de novo and the Director shall have the burden of proving by a preponderance of the evidence that the violation or violations occurred. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear for a contested hearing shall result in an order being entered finding that the respondent committed the violation stated in the Director’s Order. For good cause shown and upon terms the Hearing Examiner deems just, the

Hearing Examiner may set aside an order entered upon a failure to appear.

B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying, or reversing the Director's Order, consistent with Ordinance 126068.

### **8.37.200 Appeal from Hearing Examiner order**

A. The respondent may obtain judicial review of the decision of the Hearing Examiner by applying for a Writ of Review in the King County Superior Court within 30 days from the date of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable law, and court rules.

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 8.37.200.

### **8.37.210 Failure to comply with final order**

A. If a respondent fails to comply within 30 days of service of any settlement agreement with the Agency, or with any final order issued by the Director or the Hearing Examiner for which all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following measures to secure compliance:

1. The Director may require the respondent to post or distribute public notice of the respondent's failure to comply in a form and manner determined by the Agency.

2. The Director may refer the matter to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the amounts due.

3. The Director may refer the matter to the City Attorney for the filing of a civil action in King County Superior Court, the Seattle Municipal Court, or any other court of competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under Section 8.37.190.

4. The Director may request that the City's Department of Finance and Administrative Services deny, suspend, refuse to renew, or revoke any business license held or requested by the network company or

person until such time as the network company complies with the remedy as defined in the settlement agreement or final order. The City's Department of Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke any business license in accordance with this subsection 8.37.210.A.4.

B. No respondent that is the subject of a final order issued under this Chapter 8.37 shall quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock of goods without first notifying the Agency and without first notifying the respondent's successor of the amounts owed under the final order at least three business days before such transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined in a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the final order is not paid by respondent within ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment of the amount due; provided, that the successor has actual knowledge of the order and the amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact and amount of the order and the amounts due. The successor shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes such payment, that payment shall be deemed a payment upon the purchase price in the amount paid, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the network company.

#### **8.37.220 Debt owed The City of Seattle**

A. All monetary amounts due under the Director's Order shall be a debt owed to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies; provided, that amounts collected by the City for unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay shall be held in trust by the City for the aggrieved party and,

once collected by the City, shall be paid by the City to the aggrieved party.

B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 8.37.180.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the Director's Order by entering judgment in favor of the City finding that the respondent has failed to exhaust its administrative remedies and that all amounts and relief contained in the order are due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 5.50.050 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 8.37.180.B, and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner within the time period set forth in subsection 8.37.200.A, the order of the Hearing Examiner shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City for all amounts and relief due under the order of the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence that the violations contained therein occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to avail itself of judicial review in accordance with subsection 8.37.200.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 8.37.220.B and 8.37.220.C, the Seattle Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this

Chapter 8.37.

**8.37.230 Private right of action**

A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 8.37, or is the subject of prohibited retaliation under Section 8.37.120, may bring a civil action in a court of competent jurisdiction against the network company or other person violating this Chapter 8.37 and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to \$5,755.31 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of this Section 8.37.230, “person” includes any entity a member of which has suffered an injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered an injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 8.37.230, two or more app-based workers are similarly situated if they:

1. Performed services in Seattle for the same network company or network companies, whether concurrently or otherwise, at some point during the applicable statute of limitations period,
2. Allege one or more violations that raise similar questions as to liability, and
3. Seek similar forms of relief.

D. For purposes of subsection 8.37.230.C, app-based workers shall not be considered dissimilar solely because:

1. The app-based workers’ claims seek damages that differ in amount, or
2. The job titles of or other means of classifying the app-based workers differ in ways that are

unrelated to their claims.

E. An order issued by the court may include a requirement for a network company to submit a compliance report to the court and to the Agency.

### **8.37.233 Waiver**

Any waiver by an individual of any provisions of this Chapter 8.37 shall be deemed contrary to public policy and shall be void and unenforceable.

### **8.37.235 Encouragement of more generous policies**

A. Nothing in this Chapter 8.37 shall be construed to discourage or prohibit a network company from the adoption or retention of minimum labor and compensation standards more generous than the one required by this Chapter 8.37.

B. Nothing in this Chapter 8.37 shall be construed as diminishing the obligation of the network company to comply with any contract, or other agreement providing more generous minimum labor and compensation standards to an app-based worker than required by this Chapter 8.37.

### **8.37.240 Other legal requirements-Effect on other laws**

A. The provisions of this Chapter 8.37:

1. Supplement and do not diminish or replace any other basis of liability or requirement established by statute or common law;
2. Shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard for minimum labor and compensation requirements, or which extends other protections to app-based workers; and
3. Shall not be interpreted or applied so as to create any power or duty in conflict with federal or state law.

B. This Chapter 8.37 shall not be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 8.37 affecting such person.

Nothing in this Section 8.37.240 shall be construed as restricting an app-based worker’s right to pursue any other remedies at law or equity for violation of the contractor’s rights.

C. A network company’s failure to comply with the provisions of this Chapter 8.37 shall not render any contract between the network company and an app-based worker void or voidable.

D. No provision of this Chapter 8.37 shall be construed as providing a determination about the legal classification of any individual as an employee or independent contractor.

**8.37.250 Severability**

The provisions of this Chapter 8.37 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 8.37, or the application thereof to any network company, app-based worker, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 8.37, or the validity of its application to other persons or circumstances.

Section 4. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance 126283, is amended as follows:

**3.02.125 Hearing Examiner filing fees**

A. The filing fee for a case before the City Hearing Examiner is \$85, with the following exceptions:

<b>Basis for Case</b>	<b>Fee in dollars</b>
* * *	
All-Gender Restroom Notice of Violation (Section 14.07.040)	No fee
App-Based Worker Minimum Payment Ordinance (Chapter 8.37)	No fee
Cable Communications (Chapter 21.60)	No fee
* * *	

\* \* \*

Section 5. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance 126189, is amended as follows:



### **3.15.000 Office of Labor Standards created-Functions**

There is created within the Executive Department an Office of Labor Standards, under the direction of the Mayor. The mission of the Office of Labor Standards is to advance labor standards through thoughtful community and business engagement, strategic enforcement, and innovative policy development, with a commitment to race and social justice. The Office of Labor Standards seeks to promote greater economic opportunity and further the health, safety, and welfare of employees; support employers in their implementation of labor standards requirements; and end barriers to workplace equity for women, communities of color, immigrants and refugees, and other vulnerable workers.

The functions of the Office of Labor Standards are as follows:

- A. Promoting labor standards through outreach, education, technical assistance, and training for employees and employers;
- B. Collecting and analyzing data on labor standards enforcement;
- C. Partnering with community, businesses, and workers for stakeholder input and collaboration;
- D. Developing innovative labor standards policy;
- E. Administering and enforcing labor standards (Title 8), City of Seattle ordinances relating to paid sick and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17), minimum wage and minimum compensation (Chapter 14.19), wage and tip compensation requirements (Chapter 14.20), secure scheduling (Chapter 14.22), domestic workers (Chapter 14.23), hotel employees safety protections (Chapter 14.26), protecting hotel employees from injury (Chapter 14.27), improving access to medical care for hotel employees (Chapter 14.28), hotel employees job retention (Chapter 14.29), commuter benefits (Chapter 14.30), transportation network company driver deactivation protections (Chapter 14.32), transportation network company driver minimum compensation (Chapter 14.33), and other labor standards ordinances that may be enacted in the future.

Section 6. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by

Ordinance 126274, is amended as follows:

**6.208.020 Denial, revocation of, or refusal to renew business license**

A. In addition to any other powers and authority provided under this Title 6, the Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license issued under the provisions of this Chapter 6.208. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or refusal to renew the license and on what grounds such a decision was based. The Director may deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this Chapter 6.208.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.38, 5.39, 5.40, 5.45, 5.46, 5.47, 5.48, 5.50, or 5.52.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.
5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in Chapter 10.09.
6. The applicant or licensee has been convicted of theft under subsection 12A.08.060.A.4 within the last ten years.
7. The applicant or licensee is a person subject within the last ten years to a court order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of either:
  - a. The expiration of the time for filing an appeal from the final judgment order under the court rules in effect at the time of the final judgment order; or
  - b. If a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial affirmation of the findings of violations of chapters 49.46, 49.48,

or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

8. The applicant or licensee is a person subject within the last ten years to a final and binding citation and notice of assessment from the Washington Department of Labor and Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and penalties assessed therewith were not satisfied within 30 days of the date the citation became final and binding.

9. Pursuant to relevant provisions in Title 8, subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4, 14.20.080.A.4, 14.22.115.A.4, 14.23.115.A.4, 14.26.210.A.4, 14.27.210.A.4, 14.28.210.A.4, 14.30.180.A.4, and 14.33.210.A.4, subsection 100.240.A.4 of Ordinance 126091, subsection 100.240.A.4 of Ordinance 126094, and subsection 100.240.A.4 of Ordinance 126274, the applicant or licensee has failed to comply, within 30 days of service of any settlement agreement, with any final order issued by the Director of the Office of Labor Standards, or any final order issued by the Hearing Examiner under Title 8, Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, 14.30, and 14.33, Ordinance 126091, Ordinance 126094, and Ordinance 126274 for which all appeal rights have been exhausted, and the Director of the Office of Labor Standards has requested that the Director deny, refuse to renew, or revoke any business license held or requested by the applicant or licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s) under Title 8, Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, 14.30, and 14.33, Ordinance 126091, Ordinance 126094, and Ordinance 126274 are remedied.

10. The business is one that requires an additional license under this Title 6 and the business does not hold that license.

11. The business has been determined under a separate enforcement process to be operating in violation of law.

\* \* \*

Section 7. Section 3 of this ordinance shall take effect 12 months after the effective date of this

ordinance.

Section 8. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2022, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved / returned unsigned / vetoed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Bruce A. Harrell, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)

## SUMMARY and FISCAL NOTE\*

<b>Department:</b>	<b>Dept. Contact/Phone:</b>	<b>CBO Contact/Phone:</b>
LEG	Amy Gore/386-9107	N/A

*\* Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

### **1. BILL SUMMARY**

**Legislation Title:** AN ORDINANCE relating to app-based worker labor standards; establishing a compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility; amending Sections 3.02.125, 3.15.000, and 6.208.020 of the Seattle Municipal Code; and adding a new Title 8 and Chapter 8.37 to the Seattle Municipal Code.

**Summary and Background of the Legislation:** App-based workers perform offers facilitated or presented by network companies to provide a variety of valued services for the community (e.g., on-demand food delivery, pre-scheduled tasks). However, many app-based workers earn inconsistent or low pay and lack adequate bargaining power to negotiate better terms and conditions for their work. Since network companies treat app-based workers as independent contractors, app-based workers do not have access to minimum wage, mandatory insurance and leave benefits, paid rest breaks, and other protections that would apply to an employee workforce.

This legislation would establish a new labor standard, Chapter 8.37, requiring a comprehensive compensation scheme for app-based workers. Network companies would be required to:

1. Pay all tips and at least the equivalent of Seattle’s minimum wage under [Seattle Municipal Code \(SMC\) 14.19](#) plus reasonable expenses;
2. Regularly provide transparent job and pay information; and
3. Permit flexibility in choosing when to work and which offers to accept, reject, or cancel with cause.

These requirements would become effective approximately 12 months after Council’s passage and would be implemented by the Office of Labor Standards (OLS).

#### Coverage

The legislation would cover (1) app-based workers accepting offers to perform services in Seattle via a network company’s worker platform and (2) network companies with 250 or more app-based workers worldwide. Requirements would not apply to certain offers, such as online orders for transactions involving sale/rental of products or real estate or transportation provided by taxicabs or for-hire vehicles. Requirements would also not apply to certain network companies, such as companies operating digital advertising or messaging platforms that do not intermediate relationships between parties or involve any oversight of service provision.

## Legal requirements

### 1. Minimum payment

Network companies would pay, or ensure that an app-based worker receives, all tips and at least the equivalent of a minimum network company payment. This payment would be the total of a “per minute amount” for engaged time and a “per mile amount” for engaged miles to perform an offer.

For most companies, the start and end of engaged time and engaged miles would depend on whether: (1) an on-demand network company facilitates or presents the offer or the network company expects the worker to initiate performance within two hours; or (2) the network company expects the worker to initiate performance of the offer in two hours or more.

For marketplace network companies, which facilitate prescheduled offers in which the customer and worker negotiate an offer and in which the company does not monitor an offer’s location, mileage and time, engaged time for an offer may be estimated by the customer and app-based worker, and engaged miles do not apply.

Network companies would also pay a minimum per-offer amount of at least \$5 (subject to annual adjustments for inflation) for any offer resulting in engaged time or miles. The OLS Director could issue rules excluding certain offers from the minimum per-offer amount, such as those cancelled by the customer within a grace period of not more than five minutes, and for offers from marketplace network companies which are cancelled before completion of performance.

$$\text{(Engaged Time x Per-Minute Amount) + (Engaged Miles x Per-Mile Amount)} \\ = \text{Minimum Network Company Payment}$$

#### a. Per-minute amount – \$0.39

The per-minute amount would ensure that app-based workers receive at least the total of a “minimum wage equivalent rate” multiplied by an “associated cost factor” multiplied by an “associated time factor” for their engaged time to perform an offer. The amounts of each rate and/or factor would depend on applicable law or Director rules. For example, in 2022, the amounts would be:

- Minimum wage equivalent rate – \$0.288  
The minimum wage equivalent rate would provide a per-minute equivalent of Seattle’s hourly minimum wage for Schedule 1 employers (i.e., large employers with more than 500 employees worldwide).
- Associated cost factor – 1.13  
The associated cost factor would pay workers for non-mileage expenses (e.g., cost of employer-side payroll taxes, workers compensation insurance) that are necessary to perform app-based work.

- Associated time factor – 1.21  
The associated time factor would account for unpaid time (e.g., time to review an offer) that is necessary to perform app-based work.

b. Per-mile amount – \$0.73

The per mile amount would ensure that app-based workers receive at least the “standard mileage rate” multiplied by an “associated mileage factor” for their engaged miles to perform an offer. For example, in 2022, these amounts would be:

- Standard mileage rate – \$0.585  
The standard mileage rate would be the Internal Revenue Service rate of reimbursement for operating an automobile.
- Associated time factor – 1.25  
The associated mileage factor would pay workers for miles travelled that are necessary to perform app-based work but are not included in payment for a specific offer (e.g., miles travelled to locations for rest breaks).

## 2. Transparency

Network companies would provide pay-related information to app-based workers, customers, and/or OLS:

- a. Offer information  
Network companies would provide app-based workers with specific information for each offer.
- b. Electronic receipts  
Network companies would provide app-based workers with pay information within 24 hours of performing each offer or cancelling with cause, and on a weekly basis. Network companies would also provide customers with information on worker pay within 24 hours of the online order’s performance or cancellation with cause.
- c. Company records  
Network companies would provide OLS with aggregated or disaggregated records to support the City’s administration, evaluation, and enforcement of pay requirements, subject to rulemaking.

## 3. Flexibility

App-based workers would have the right to determine their availability to work and which offers to accept, reject, or cancel with cause. Network companies would be prohibited from engaging in actions, or instituting policies, that would subject app-based workers to an adverse action for exercising any of these rights.

## Enforcement

OLS would implement and enforce the legislation. OLS could conduct complaint-based or directed investigations; facilitate information exchanges between parties through a complaint procedure; or provide intake and informational services through a navigation program. To remedy violations, OLS could order (1) payment to aggrieved parties of up to three times the amount owed plus interest; and (2) penalties and/or fines payable to OLS or the aggrieved party. In addition to filing claims with OLS, app-based workers could file a civil action against the network company and, upon prevailing, could be awarded attorney fees plus costs.

## 2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project?       Yes  No

## 3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget?       Yes  No

**Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?**

Yes. There would be financial implications for OLS (e.g., cost of rulemaking, outreach, and enforcement), and to a lesser extent for the City Attorney Office (e.g., cost of supporting OLS enforcement), and Hearing Examiner (e.g., cost of conducting hearings on appeals from respondents and aggrieved parties).

OLS estimates that the cost to implement the ordinance would include \$566,900 for initial implementation in the first year, \$670,685 per year for on-going staffing, and an additional \$502,775 per year for on-going costs such as translations, outreach and communication, community partnerships. Central Staff will continue to gather and analyze information from OLS to better understand financial implications.

**Are there financial costs or other impacts of *not* implementing the legislation?**

No.

## 4. OTHER IMPLICATIONS

**a. Does this legislation affect any departments besides the originating department?**

Yes. OLS would implement and enforce this legislation. There would be an undetermined number of legal referrals to the City Attorney. The Hearing Examiner would conduct hearings on appeals from respondents and aggrieved parties.



**b. Is a public hearing required for this legislation?**

No.

**c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No.

**d. Does this legislation affect a piece of property?**

No.

**e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?**

The Race and Social Justice Initiative works toward eliminating racial disparities and achieving racial equity in Seattle. Black, Indigenous, and other People of Color face unique barriers to economic insecurity and disproportionately work in low-wage jobs with insecure working conditions. Black and Latinx workers are overrepresented among app-based workers, comprising almost 42 percent of app-based workers but less than 29 percent of the overall labor force, and are disproportionately deprived of core employee protections when network companies treat them as independent contractors.

The compensation scheme established by this legislation seeks to address the inequities of app-based work by providing workers with minimum pay for each performed offer, transparent information about their work and pay, and the discretion to choose when to work. To encourage vulnerable workers to report violations of these requirements, OLS would keep identifying information of complainants confidential and would have authority to conduct company-wide investigations. To incentivize network company compliance, OLS could impose strong remedies (e.g., triple damages for workers and per violation penalties) for violations.

To reach workers with limited English proficiency, network companies would provide a notice of rights in English and in the worker's primary language. OLS would create and distribute model notices of rights in English and other languages.

**f. Climate Change Implications**

**1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?**

N/A

**2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**

N/A

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?**

OLS posts information on outreach and enforcement efforts on their [on-line, interactive dashboard](#). The same metrics publicized for other labor standards could apply for this legislation (e.g., number of inquiries, number of investigations, amounts of remedies). OLS contracts with community and business organizations to conduct measurable outreach efforts on worker rights and hiring entity/employer responsibilities.

**Summary Attachments:**



# **CB 120294**

# **App-Based Worker Minimum Payment**

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AMY GORE, ANALYST  
PUBLIC SAFETY AND HUMAN SERVICES COMMITTEE  
APRIL 12, 2022

# Overview

# Pay-Up Proposal

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## Suite of labor standards for app-based workers\*

1. Minimum payment
2. Transparency
3. Flexibility
4. Deactivation
5. Background checks
6. Bathroom access
7. Protections against discrimination and right to reasonable accommodations
8. App-based workers' advisory board

*\* Proposal would also include amendments to the Independent Contractor Protections Ordinance*

# CB 120294: App-Based Worker Minimum Payment

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## Creation of Title 8 Labor Standards ♦ Chapter 8.37

1. Minimum payment
2. Transparency
3. Flexibility
4. Notice of rights
5. Recordkeeping
6. Prohibited retaliation
7. Enforcement by Office of Labor Standards (OLS)

# Community Engagement

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## 1. Stakeholder Meetings

- 12+ Meetings

## 2. Public Safety & Human Services Committee presentations

- July 13, 2021
- September 14, 2021
- February 8, 2022
- April 8, 2022

# Coverage: App-based Workers

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## Covered

- Workers accepting offers to perform services for pay via a network company's worker platform.

## Not covered

- Workers accepting offers for sale/rental of goods or real estate; licensed professional services (by rule); creative work; wholly digital services; and transportation provided by TNCs, taxis, or for-hire vehicles.
- Workers considered employees of a network company or the customer.



# Coverage: Network Companies

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## Covered

- Companies using online-enabled applications or platforms to connect customers with workers, present offers to workers, and/or facilitate the provision of services by workers.
- 250 or more app-based workers worldwide.

# Coverage: Network Companies

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## Not covered

- Companies offering services that enable individuals to schedule appointments with and/or process payments to users when the entity does not engage in additional intermediation of the relationships between customers and workers, nor engages in any oversight of services provided by workers.
- Companies operating digital advertising and/or messaging platforms, when the entity neither engages in intermediation of the payments or relationships between parties nor engages in any oversight of service provision.
- Taxis and Transportation Network Companies

# Coverage: Network Companies

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## On-demand network company

- Primarily engaged in facilitating or presenting on-demand offers to app-based workers including, but not limited to, delivery services from one or more of the following:
  - Eating and drinking establishments,
  - Food processing establishments,
  - Grocery stores, or
  - Any facility supplying groceries or prepared food and beverages for an online order.

# Coverage: Network Companies

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## Marketplace network company

- Facilitates pre-scheduled offers.
- Company or Customer and worker exchange information on scope and detail of services.
- Facilitates services without the company monitoring offers by geographic location, mileage, or time.
- Excludes on-demand network companies and companies that primarily provide delivery services.

# Minimum Payment

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## Policy Goals

*Provide or ensure payment of minimum wage plus expenses with a per-minute and per-mile floor for the engaged time to perform each offer.*

# Minimum payment

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Network company must pay, or ensure that worker receives, a minimum payment amount for “engaged time” and “engaged miles.”

**Engaged time** = time that a worker performs services for an offer.

- For marketplace network companies, engaged time is estimated by company/customer and worker prior to the offer acceptance.

**Engaged miles** = miles travelled by a worker during engaged time.

- Engaged miles do not include any miles that are traveled as part of an offer facilitated by a marketplace network company.

# Engaged Time → Covered Work

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1. Offer from “on-demand network company” OR offer with performance expected within two hours.
  - Engaged time begins upon acceptance of offer.
  - Engaged time ends upon completing performance of offer, cancellation of offer by network company/customer, or cancellation with cause by worker.

# Engaged time → Covered work

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## 2. Marketplace Network Company Offers

- **Engaged time** for an offer is estimated by the company or customer and the app-based worker prior to offer acceptance.

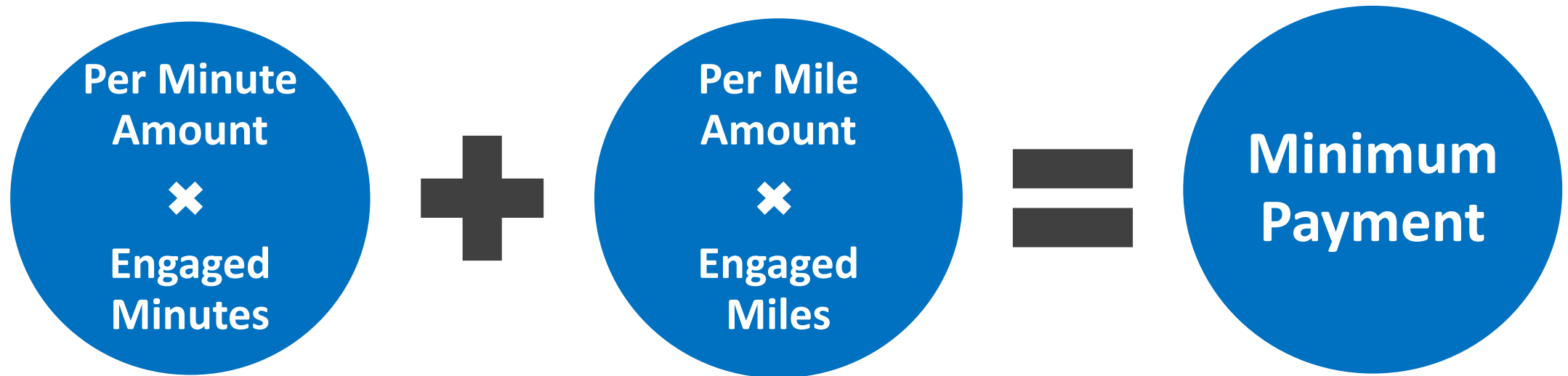
## 3. All other offers.

- **Engaged time begins** upon performance of offer or upon reporting to assigned location.
- **Engaged time ends** upon completing performance of offer, cancellation of offer by network company/customer, or cancellation with cause by the worker.

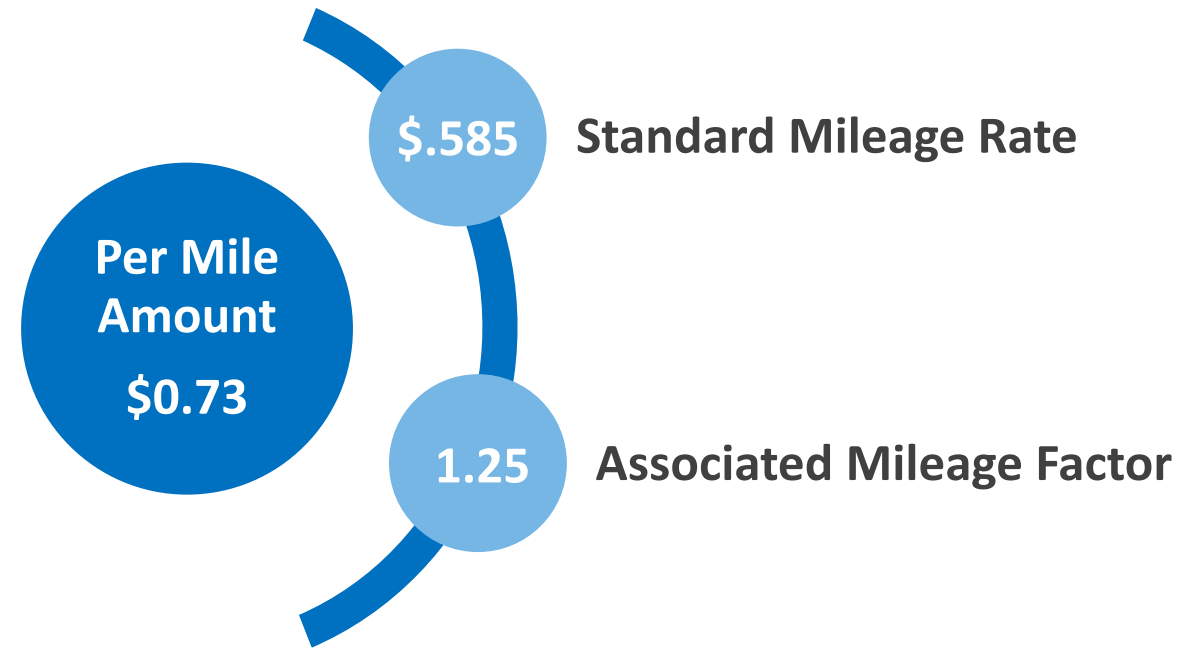
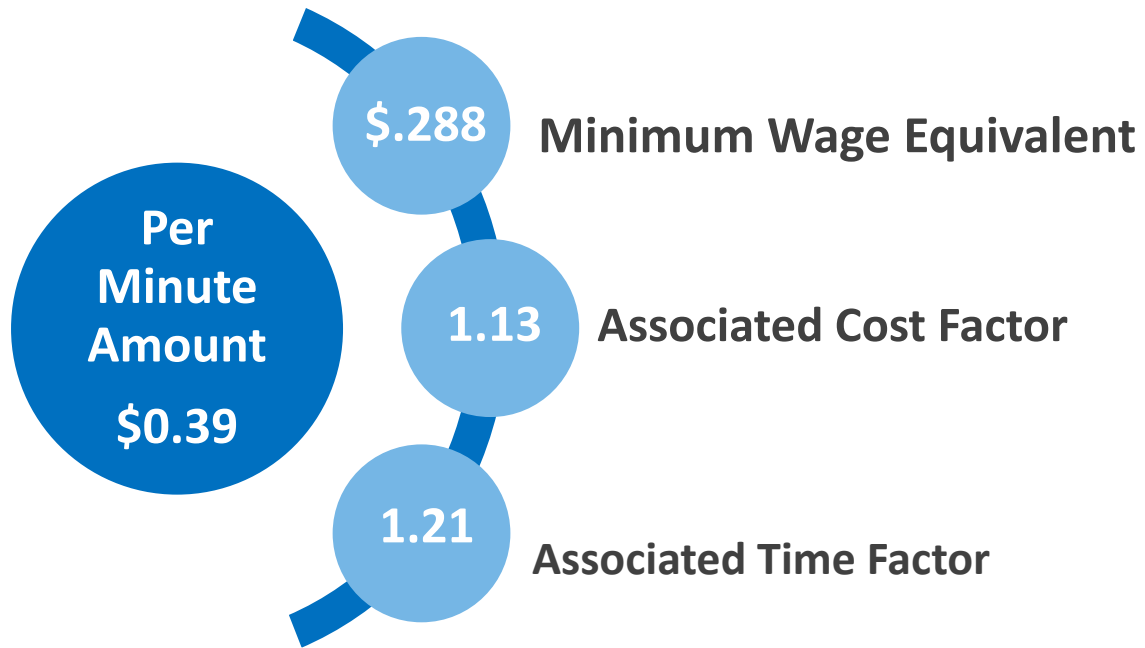


# Minimum Payment Calculation

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# Minimum Payment → 2022



# Minimum Wage Equivalent

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**Minimum Wage Equivalent for app-based workers** = per-minute equivalent of the hourly minimum wage for Schedule 1 employers (large employers with more than 500 employees worldwide) under the Minimum Wage Ordinance, SMC 14.19.

- **2022 Minimum Wage for employees** = \$17.27 per hour
- **2022 Minimum Equivalent for app-based workers** = \$0.288 per minute

# Associated Cost Factor

**Associated Cost Factor** for baseline expenses paid by app-based workers treated as independent contractors (vs. baseline expenses paid by companies).  
Adjustable by OLS Director after the ordinance is in effect for three years.

Item	Amount	Notes
Pay roll tax	7.65%	Additional “employer share” of payroll taxes
State Paid Family Medical Leave	0.25%	Expense of contractor opt-in to PFML
Unemployment compensation	1.06%	Average cost of state unemployment insurance
Workers Compensation	2.84%	Average cost of state workers comp coverage
Miscellaneous expenses	1.2%	Equipment, business taxes & license fees
<b>Total associated cost factor</b>	<b>113%</b>	1.13

# Associated Time Factor

**Associated Time Factor** for additional working time to successfully perform work. Adjustable by OLS Director after the ordinance is in effect for three years.

Item	Amount per engaged hour	Notes
Rest breaks	2.5 minutes	10 minutes of rest time per 4 hours of work
Time to review offers	3 minutes	Minimal estimate of time to review offers
Time to availability	5 minutes	Minimal estimate of time from performing offer to availability for next offer
Time for administrative tasks	2 minutes	Minimal estimate of time for managing account, recordkeeping & customer support
<b>Total associated time factor</b>	<b>121%</b>	1.21

# Associated Mileage Factor

Associated Mileage Factor for miles driven while a worker is not engaged on a specific offer, but when those miles are required to successfully perform work.

Amount	Notes
For every 10 engaged miles:	Non-exclusive examples
<ul style="list-style-type: none"><li>• 1.25 miles</li></ul>	Miles to travel to locations where offers are available or return to starting location when dispatched from hub
<ul style="list-style-type: none"><li>• 1.25 miles</li></ul>	Miles to travel to locations for rest breaks, meal breaks, restroom access, and administrative needs.
<b>Total associated mileage factor 125%</b>	1.25

# Minimum Per Offer Amount ➡ \$5

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## Minimum per offer amount

- Minimum payment per offer of at least \$5.
- Annual adjustment to reflect the rate of inflation.
- OLS Director rules could establish a “grace period” (between acceptance and cancellation of an offer) as exemption.

# Transparency

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## Policy Goals

- *Provide workers with information to make informed choices about which offers to accept and to verify compliance with minimum pay requirements.*
- *Provide end customers with information on the nature of charges, including amounts paid to workers and retained by the company.*
- *Provide OLS with regular and routine access to aggregated and disaggregated company records.*



# Transparency (1/2)

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- 1. Offer information** – a network company shall provide, and/or ensure a customer provides:
  - Offer information for at least three minutes.
  - Best estimate of engaged time and mileage to complete performance.
  - Locations of work (e.g., geographic and business locations).
  - Guaranteed minimum amount of payment.
  - Physical requirements of work (e.g., flights of stairs, weight of materials).
  - Contents of unsealed online orders (e.g., network company shares info from customer).

# Transparency (2/2)

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2. **Electronic receipts** within 24 hours of performed and/or cancelled offers.
  - Worker receipts
  - Customer receipts
3. **Weekly statements** to workers on performed and/or cancelled offers.
4. **14-day notice** to workers before significant change(s) to payment calculation.
5. **Routine and affirmative disclosure to OLS** of aggregated and disaggregated. company records, subject to rules.

# Flexibility

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## Policy Goals

*Protect workers' flexibility, including the right to freely choose jobs and hours, while maintaining companies' provision of services to end customers and third-party businesses.*

# Rights for App-based Workers (1/2)

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1. Right to be logged into platform for any dates and times of day.
2. Right to be logged onto platform without limitation except for health and safety restrictions.
3. Right to decide work availability.
4. Right to accept or reject any individual offer, any types of offers, and any number or proportion of offers.

# Rights for App-based Workers (2/2)

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5. Right to cancel offer with cause (“cancellation with cause”).
  - Offer information is substantially inaccurate.
  - Offer cannot be completed due to customer actions. (e.g., customer not present, customer fails to communicate).
  - Timely completion of the offer is unsafe or impracticable due to an unforeseen obstacle or occurrence.
  - Good faith complaint about sexual harassment or discrimination.

# Effective Date

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- Legislation will take effect 30 days after signing.
- Provisions of new Chapter 8.37, including requirements for minimum payment, transparency and flexibility requirements will take effect 12 months after the effective date of the ordinance.

# Policy Considerations

# 1. Impacts to Workers, Customers, and Businesses

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Legislation will likely result in changes to the costs, demand, and supply of network company services, however it is difficult to determine the scale of these impacts.

Options:

- a. Enact the legislation as proposed, and, in addition, fund a study to monitor the impacts of the regulations with the intention of modifying regulations based on the study findings; or
- b. Delay enacting legislation in order to fund a study to examine and model the potential impacts to inform regulations; or
- c. No change



## 2. Coverage (1/2)

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Legislation creates broad definitions for company coverage, to be clarified and detailed during rulemaking, however some stakeholders would prefer that additional detail be determined by Council and codified in the legislation.

## 2. Coverage (2/2)

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### Options:

- a. Amend the legislation to clarify that offers performed by workers covered by an employee relationship while they are performing the offer are excluded; and/or
- b. Amend the legislation to clarify the definition of covered network companies to provide more detail on concepts such as “facilitate”, “present” and “intermediation”; and/or
- c. Amend the legislation to provide other clarifying language related to coverage; and/or
- d. Amend the legislation to require additional clarification through rulemaking; and/or
- e. No change.

# 3. Marketplace Network Companies (1/2)

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Marketplace Network Companies use a model which does not track time, mileage or geography of work, which makes applying the payment standards difficult. The legislation establishes different regulations for marketplace companies, which may result in diminished worker protections, but also may not fully reflect the operational model of all marketplace network companies.

# 3. Marketplace Network Companies (2/2)

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## Options:

- a. Amend the legislation with additional regulations for marketplace network companies to strengthen and clarify requirements; or
- b. Amend the legislation to require additional clarification through rulemaking; or
- c. Amend the legislation to exempt all or some marketplace companies or offers from the minimum network payment; or
- d. No change.

## 4. Adjustments to Associated Factors

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Associated factors reflect cost of performing app-based work and cost factor and time factor may be adjusted by the OLS Director, but they may never go below the initial rate set in this legislation. The legislation does not give express authority to the Director to adjust the mileage factor.

Options:

- a. Amend the legislation to allow associated factors to be decreased by the OLS Director if the needed components change or if the cost of those components decrease significantly; and/or
- b. Amend the legislation to allow the OLS Director to adjust the associated mileage factor; and/or
- c. No change.

# 5. Rulemaking

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Legislation authorizes OLS Director to promulgate, revise, or rescind rules to administer and enforce standards. In some cases, rulemaking is required and in some cases rulemaking is discretionary.

Options:

- a. Amend the legislation to include specific policies rather than delegating to rulemaking; or
- b. Amend the legislation to include more specific guidelines for policies delegated to rulemaking; or
- c. Amend the legislation to change whether specific rulemaking is required or discretionary; or
- d. No change.

## 6. OLS Resources

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OLS estimates that the total cost to implement the minimum payment standards would be \$566,900 for one-time, initial costs and \$1.2 million per year for on-going staffing and other costs. These costs cannot be absorbed by the Department.

Options:

- a. Increase funding for OLS to perform these responsibilities in the 2022 and/or 2023 Annual Budget through separate legislation; or
- b. Do not allocate additional funding and allow OLS to prioritize work as determined by the Department.

# Next Steps



# Next Steps

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- Amendments to CB 120294 discussed in April 26 PSHS Committee
  - Please contact me about amendments **by Friday, April 15**
- Introduction of Deactivation Protections
- Introduction of Protections against Discrimination

# Questions?

April 8, 2022

## MEMORANDUM

**To:** Public Safety and Human Services Committee  
**From:** Amy Gore, Analyst  
**Subject:** Council Bill 120294 – App-Based Worker Minimum Payment Standards

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On April 12, 2022, the Public Safety and Human Services Committee (Committee) will discuss [Council Bill \(CB\) 120294](#) which would establish minimum payment requirements and related protections for app-based workers. This memo provides background and an overview of the proposed legislation, identification of policy considerations for the Committee, and next steps.

### Background

A study by Mastercard estimates that the “gig economy” is growing at approximately 17.4% each year<sup>1</sup> and growing numbers of people are participating in app-based work. A 2021 Pew Research Center study found that 16 percent of American adults have earned money from app-based work and these rates are higher for those who are Hispanic (30 percent), Black (20 percent), and Asian (19 percent).<sup>2</sup> While most workers (68 percent) reported that app-based gig work was a side job, 31 percent report that app-based gig work was their main job during the past year.<sup>3</sup>

Network companies rely on business models that treat app-based workers as independent contractors who are not classified as employees and therefore are not covered by labor standards established by federal, state and local laws. This means app-based workers may not earn minimum wage, particularly after covering expenses, lack employee protections against harassment or discrimination, and do not have access to typical employee benefits like healthcare and retirement savings. Previously, Council has passed legislation to establish labor standards for workers regardless of their employment status, including the Domestic Workers Ordinance ([ORD 125627](#)), Driver Deactivation Rights ([ORD 125976](#)) and Minimum Compensation for Transportation Network Company (TNC) workers ([ORD 125977](#)), and the Independent Contractor Protections Ordinance ([ORD 126373](#)).

To address the issues raised by the network companies’ practices, stakeholders have requested that the Council consider a suite of proposals intended to establish labor standards for app-based workers, including:

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<sup>1</sup> Mastercard and Kaiser Associates, May 2019, “[The Global Gig Economy: Capitalizing on a \\$500B Opportunity](#)”. Accessed online at <https://newsroom.mastercard.com/wp-content/uploads/2019/05/Gig-Economy-White-Paper-May-2019.pdf> on March 24, 2022.

<sup>2</sup> Pew Research Center, December 2021, “[The State of Gig Work in 2021](#)”. Accessed online at [https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2021/12/PI\\_2021.12.08\\_Gig-Work\\_FINAL.pdf](https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2021/12/PI_2021.12.08_Gig-Work_FINAL.pdf) on March 23, 2022.

<sup>3</sup> Ibid.

1. establishing a minimum payment standard;
2. establishing transparency requirements related to offers, receipts, and record keeping;
3. providing workers with more control over their work availability;
4. establishing regulations related to deactivations and appeals;
5. establishing regulations related to background checks for app-based workers;
6. providing access to restrooms for app-based workers;
7. establishing protections against discrimination; and
8. establishing an App-based Workers Advisory Board.

Stakeholder meetings began in July 2021 and are ongoing as these proposals continue to be developed.

### **CB 120294 Overview**

CB 120294 is the first piece of legislation in the series and would cover the first three proposals listed above by doing the following:

1. establishing a minimum payment standard for app-based workers which meets local minimum wage requirements as well as reasonable expenses paid for by app-based workers;
2. creating transparency requirements related to app-based offers prior to acceptance by workers, receipts to workers and customers, and company records; and
3. providing flexibility for app-based workers to determine their availability to work and which offers to accept, reject, or cancel with cause without adverse actions for network companies.

This proposal was discussed by the Committee on [July 13, 2021](#), [September 14, 2021](#), and [February 8, 2022](#). For a summary of significant policy changes between the draft discussed on February 8 and the introduced version, see Appendix 1.

### Coverage and Definitions

The legislation would cover app-based workers and network companies as described below:

- Workers accepting offers to perform services for pay via a network company's worker platform. The legislation would not cover workers accepting offers for sale/rental of goods or real estate, licensed professional services, creative work, wholly digital services, or transportation provided by TNCs, taxis, or for-hire vehicles.
- Network companies that use online-enabled applications or platforms to connect customers with workers, present offers to workers, and/or facilitate the provision of

services by workers. A network company with 250 or more app-based workers worldwide would be covered by the legislation. The legislation would not cover:

1. an entity offering services that enable individuals to schedule appointments with and/or process payments to users when the entity does not engage in additional intermediation of the relationships between customers and workers, nor engages in any oversight of services provided by workers;
2. an entity operating digital advertising and/or messaging platforms, when the entity neither engages in intermediation of the payments or relationships between parties to resulting transactions nor engages in any oversight of service provision; or
3. a transportation network company or taxicab association.

The legislation would also define two types of network companies for specific regulations:

- On-demand network companies are primarily engaged in facilitating or presenting on-offers to app-based workers. On-demand offers require that performance be initiated within two hours of acceptance. On-demand network companies include, but are not limited to, companies primarily facilitating offers to app-based workers for delivery services from one or more of the following: (a) eating and drinking establishments, (b) food processing establishments, (c) grocery stores, or (d) any facility supplying groceries or prepared food and beverages for an online order. This would include companies like Instacart, DoorDash, or GrubHub.
- Marketplace network companies are (a) exclusively engaged in facilitating pre-scheduled offers in which the prospective customer and worker exchange information regarding the scope and details of services to be performed prior to the customer placing the online order for those services and (b) exclusively facilitates services performed without the network company monitoring offers by geographic location, mileage or time. The definition specifically excludes on-demand network companies and companies that primarily provide delivery services. This would include companies like TaskRabbit and Rover.

A company that meets the definition of a network company but is neither an on-demand network company nor a marketplace network company is still covered by the legislation.

#### Minimum Network Company Payment

The legislation would require that network companies pay, or ensure that app-based workers are paid, a minimum network company payment, plus all tips and gratuities.

*Calculation* – The minimum network company payment is intended to provide minimum pay that factors in the minimum wage plus reasonable expenses (e.g., travel, administrative duties, etc.) that are covered by the worker. See Appendix 2 for a detailed description of the minimum payment methodology. It is calculated as follows:

$$\begin{aligned} & (\text{Engaged Time} \times \text{Per-Minute Amount}) + (\text{Engaged Miles} \times \text{Per-Mile Amount}) \\ & = \text{Minimum Network Company Payment} \end{aligned}$$

1. Engaged Time – For most network companies, engaged time is the period of time in which an app-based worker performs services or participates in training required by a network company. It begins when the worker starts performance of an offer and ends when performance is complete, or when an offer is cancelled by the network company or customer, or when cancelled with cause by the app-based worker. There are two exceptions to this definition:
  - For on-demand network companies, or on-demand offers when performance is expected to be initiated within two hours, engaged time begins at the time of offer acceptance, not at the beginning of performance.
  - For marketplace companies, engaged time for an offer is estimated by the company or customer and the app-based worker prior to offer acceptance.
2. Per-minute Amount – The per-minute amount consists of three components:
  - Minimum Wage Equivalent – pays workers a per-minute equivalent to Seattle’s hourly minimum wage for Schedule 1 employers. In 2022, the minimum wage is \$17.27 per hour, or equivalent to \$0.288 per minute.
  - Associated Cost Factor – pays workers for non-mileage expenses that are necessary to perform app-based work, such as employer-side payroll taxes, workers compensation insurance, paid family and medical leave insurance, business taxes and licensing. The associated cost factor is 1.13. (For more detail on Associated Cost Factor, see Appendix 2.)
  - Associated Time Factor – pays workers for unpaid time that is necessary to perform app-based work, such as time to review offers, communicating with customers, or to relocate to locations before accepting a new offer. The associated time factor is 1.21. (For more detail on Associated Time Factor, see Appendix 2.)

The total per-minute amount in 2022 is \$0.39.

3. Engaged Miles – For most network companies, engaged miles includes miles traveled during engaged time in a vehicle that the network company does not own or maintain (or is leased by the network company to the app-based worker). There is one exception to this definition:

- Engaged miles do not include any miles that are traveled as part of an offer facilitated by a marketplace network company.

4. Per-Mile Amount – The per-mile amount consists of two components:

- Standard Mileage Rate – The standard mileage rate is the Internal Revenue Service rate of reimbursement for operating an automobile. In 2022, the standard mileage rate is \$0.585 per mile.
- Associated Mileage Factor – The associated mileage factor pays workers for miles travelled that are not included in payment for a specific offer, but are necessary to perform app-based work, such as miles travelled to locations for rest breaks or to relocate to locations before accepting a new offer. The associated mileage factor is 1.25. (For more detail on Associated Mileage Factor, see Appendix 2.)

The total per-mile amount in 2022 is \$0.73.

*Minimum Per Offer Amount* – For each offer resulting in engaged time or miles, a network company would have to compensate app-based workers a minimum of \$5.00. The Office of Labor Standards (OLS) Director may issue rules excluding some offers from the minimum per offer amount, such as on-demand offers which are cancelled by the customer within a grace period of not more than five minutes after acceptance. The minimum per offer amount will be increased based on the rate of inflation each year beginning in 2024.

*Adjustments* – After three years, OLS would be able to make adjustments to the minimum wage equivalent rate, associated cost factor, associated time factor, standard mileage rate, or associated mileage factor based on relevant and available sources of data. OLS would determine the per-minute and per-mile amount and file a schedule with the City Clerk annually.

*Cancellation of Marketplace Network Company Offers* – The OLS Director would be required to issue rules to establish a minimum network payment for offers from marketplace network companies that are not completed. Because the minimum network payment for these offers is based on an estimated engaged time negotiated prior to the offer, without rulemaking the total minimum payment would be due regardless of if the offer was completed or not.

*“Stacking”* – If an app-based worker is performing an offer and accepts a new offer facilitated by the same network company, any overlapping engaged time and miles would be subject to minimum compensation requirements of a single offer.

*Tips and Incentives* – A network company would be required to pay all tips and incentives to app-based workers and tips may not count towards:

- minimum network company payment;
- guaranteed minimum amount for an offer; or
- any other incentives or compensation.

### Transparency

The objective of the transparency requirements is to provide app-based workers, customers, and OLS clear and timely information related to app-based work offers and payments. Currently, workers receive minimal information about the offers they accept, resulting in difficulty determining which offers to accept or reject, and may not receive clear information about their wages, tips, or other pay. For a full list of transparency requirements, see Appendix 3.

### Flexibility

The objective of the flexibility requirements is to provide app-based workers the ability to choose their availability and cancel offers under certain conditions without being penalized by the network company.

*Availability* – App-based workers would have the right to decide when to be available for work and which offers to accept or reject. App based workers can log into the platform at any date, time, or amount of time unless they have been deactivated as defined by rules or other laws, or due to limitations on maximum amount of consecutive work to protect worker and public safety.

*Cancellation with Cause* – App-based workers would be able to cancel their acceptance of an offer with cause if (1) the offer was substantially inaccurate; (2) the offer cannot be completed because customer is not present or fails to communicate; (3) an unforeseen obstacle or occurrence; or (4) due to sexual harassment or discrimination during performance of the offer.

*Adverse Actions* – The company would be prohibited from responding to any of the above with adverse actions, including limiting hours of availability, reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair immigration-related practices; or filing a false report with a government agency.

### Notice of Rights

Network companies would be required to provide each app-based worker with a written notice of rights established by the Minimum Network Payment legislation, regardless of whether OLS has created and distributed a model notice of rights. The notice of rights must be included in English and any language that the network company knows or has reason to know is the



primary language of the worker. The Director may issue additional rules regarding the notice of rights, including distribution and translation.

### Role of OLS

In addition to the specific roles described above, OLS would be authorized to implement and enforce these regulations, including, but not limited to (1) promulgating rules related to the administration, evaluation and enforcement of Chapter 8.37; (2) investigating violations of the chapter (both complaint-based and directed); (3) determining if violations have occurred; and (4) assessing remedies such penalties, fines, and interests due to violations of these regulations.

### Effective Date

The legislation would take effect 30 days after signing; however, the provisions of Chapter 8.37, including requirements for minimum payment, transparency and flexibility, would take effect 12 months after the effective date of the ordinance, to allow for rulemaking and changes required by network companies to operationalize the requirements.

## **Policy Considerations**

### 1. Impacts on Workers, Customers, and Businesses

This legislation is intended to increase pay and improve working conditions for app-based workers.

The establishment of the minimum network company payment will likely result in changes to the costs, demand, and supply of network company services; however, the scale of those impacts are unknown and there may be unintended consequences of this legislation. Due to the new nature of the app-based industry; the limited, recent establishment of regulations of the industry; and the COVID-19 pandemic, there is inadequate, conflicting data on impacts of regulations. Some potential impacts could include:

- Network companies choosing not to offer their services in Seattle due to the new regulations;
- An increase in the cost of market network services which the network companies could choose to pass on to customers and partner businesses;
- A decrease in customer demand for network company services due to cost increases which would result in a decrease in revenues to partner businesses and fewer offers for workers. This could be particularly significant to small business owners, business owners with limited English, and BIPOC-owned business who may rely on third-party delivery to increase sales rather than establishing and managing their own delivery services; and/or
- An increase in the number of people who want to do app-based work due to higher pay and improved flexibility and transparency, therefore increasing competition for offers

for workers. Given the disproportionate representation of Hispanic and Black workers in this industry, this impact could be disproportionately harmful to these workers.

Options:

- a. Enact the legislation as proposed, and, in addition, fund a study to monitor the impacts of the regulations with the intention of modifying regulations based on the study findings;
- b. Delay enacting legislation in order to fund a study to examine and model the potential impacts to inform regulations; or
- c. No change.

## 2. Coverage

The legislation creates broad definitions of network companies, app-based workers and offers with the expectation that these definitions will be refined and clarified through the rulemaking process. This provides time for in-depth discussions with stakeholders about business models, operational approaches, and technical limitations however, some stakeholders have expressed interest in adding more specificity to the legislation to clarify what companies, workers, and offers are covered, specifically as it relates to:

- Offers that are accepted by a company and performed by an employee of that company, or offers that are accepted and performed by a worker as part of their employment; and
- Network companies that have a limited role in the presentation and facilitation of offers, or in the intermediation of the relationship between customers and workers.

Options:

- a. Amend the legislation to clarify that offers performed by workers covered by an employee relationship while they are performing the offer are excluded;
- b. Amend the legislation to clarify the definition of covered network companies to provide more detail on concepts such as “facilitate,” “present,” and “intermediation”;
- c. Amend the legislation to provide other clarifying language related to coverage;
- d. Amend the legislation to require additional clarification through rulemaking; or
- e. No change.

## 3. Regulations of Marketplace Network Companies

Network companies include a range of businesses with diverse operational models. The proposed legislation reflects some of these variations by establishing separate regulations for marketplace network companies. These companies do not track offers by location, time, or miles, but instead facilitate pre-scheduled offers in which the company or customer and the

worker exchange information regarding the scope and details of services, including an estimate of engaged time, prior to the customer placing the online order for those services.

The legislation would create different regulations for these companies, including (1) that engaged miles do not apply to marketplace network companies; (2) a different definition of “engaged time” for marketplace companies which allow for non-concurrent or flexible time ranges within an offer; and (3) allowing the minimum network company to be calculated from the estimated engaged time rather than actual engaged time.

These regulations for marketplace network companies would result in worker standards that could be significantly less rigorous than for other network companies. For example:

- If a company or customer and an app-based worker agree on a two-hour estimate of engaged time for an offer, but the actual engaged time is three hours, there is no mechanism to require the minimum network payment reflect the actual time worked rather than the estimate.
- Conversely, if actual engaged time for an offer is significantly less than the estimated engaged time, the minimum network payment will still be based on the higher engaged time estimate.
- If an app-based worker is required to drive their car to the store or to other locations as part of a marketplace company offer, the legislation does not require that the mileage be reflected in the minimum network payment for the worker.

Additionally, these definitions and regulations may not adequately reflect the operational models of all marketplace network companies, leading to regulations that are difficult or impracticable for some marketplace network companies to fulfill without significant operational changes.

Options:

- a. Amend the legislation with additional regulations for marketplace network companies to strengthen and clarify requirements;
- b. Amend the legislation to exempt all or some marketplace companies or offers from the minimum network payment; or
- c. Amend the legislation to exempt all or some marketplace companies or offers from the minimum network payment; or
- d. No change.

#### 4. Adjustments to Associated Cost Factor, Associated Time Factor, and Associated Mileage Factor

The associated cost factor, associated time factor, and associated mileage factor are all intended to reflect the cost of performing app-based work. Appendix 2 presents the components that were considered in the calculations of the associated factors. The legislation states that the associated cost factor and associated time factors may be adjusted by the OLS Director, but that they may never go below the initial rate set in this legislation. The legislation states that the per-mile amount shall be increased annually to reflect any adjustment(s) to the standard mileage rate or associated mileage factor, but does not expressly give the authority to the Director to adjust the associated mileage factor or provide guidance on the adjustment.

Options:

- a. Amend the legislation to allow associated factors to be decreased by the OLS Director if the needed components change or if the cost of those components decrease significantly;
- b. Amend the legislation to allow the OLS Director to adjust the associated mileage factor;  
or
- c. No change.

#### 5. Rulemaking

The legislation authorizes the Director of OLS to promulgate, revise, or rescind rules to administer and enforce the standards required by this legislation. In some cases, rulemaking is required (“shall”) and in some cases rulemaking is discretionary (“may”). Some stakeholders have expressed an interest in establishing more of these policies within the legislation to provide certainty and clarity to covered network companies, or to make discretionary rulemaking required when it is critical that the policy be expanded upon before implementation. However, the ability to address industry changes through rulemaking would allow the City to more easily and rapidly respond to a rapidly changing industry.

*Required rulemaking –*

- Establish list of services subject to professional licensure which are exempted from online orders covered by the legislation.
- Establish the minimum network payment for marketplace offers that are based on estimated engaged time and are cancelled before completion of the performance of the offer.
- Establish types of information required to be disclosed, the format of provision of the information, and efforts to ascertain the information that would be considered reasonable to meet transparency requirements for information on physical labor

required to perform services, and the establish rules governing the submission of network company records

*Discretionary rulemaking –*

- Establishing rules on “engaged time” for (a) offers with non-compensable time, such as sleep time or other periods of off-duty time; or (b) offers with periods of time when the worker is not completely relieved of the duty to perform services and cannot use the time effectively for their own purposes.
- Further refining the definition of “online order” and the types of transactions excluded from the definition.
- Excluding certain offers from payment of the minimum per-offer amount, including but not limited to on-demand offers cancelled by the customer within a grace period of not more than five minutes after acceptance.
- Beginning three years after the effective date the legislation, the Director may adjust the associated cost factor annually.
- Beginning three years after the effective date the legislation, the Director may adjust the associated time factor annually.
- Require additional information in the daily receipts to workers, the weekly notice to workers, receipts to customers, or production rules for to the network company data required for network company transparency.
- Issue rules governing the form and content of the notice of rights, the manner of its distribution, and required languages for its translation.
- The Director may issue rules for the complaint procedure or establish other enforcement methods to efficiently resolve violations the legislation.

Options:

- a. Amend the legislation to include specific policies rather than delegating to rulemaking;
- b. Amend the legislation to include more specific guidelines for policies delegated to rulemaking;
- c. Amend the legislation to change whether specific rulemaking is required or discretionary; or
- d. No change.

## 6. Implementation Costs

OLS estimates that the total cost to implement the App-Based Worker Minimum Payment standards would be \$553,800 for one-time, initial costs and \$1.2 million per year for on-going staffing and other costs. Table 1, below, itemizes the cost estimate provided by OLS.

Table 1. Estimated Implementation Costs

<b>Initial implementation costs</b>	
Rulemaking, inc. language access for stakeholder meetings	\$5,450
Notice of Rights Design and Translation	\$5,300
Outreach & Communications Campaign and Materials	\$50,000
Community Partnerships	\$480,000
New employee set up costs	\$3,050
Software, hardware, and consulting needs	\$10,000
<i>Total Initial implementation costs</i>	<i>\$553,800</i>
<b>On-going staffing</b>	
1 Senior Investigator	\$137,707
1 Enforcement & Data Strategist	\$151,698
1 Policy Analyst	\$151,698
1 Labor Standards Engagement Specialist	\$130,943
1 Admin Specialist 3	\$98,639
<i>Total On-going staffing</i>	<i>\$670,685</i>
<b>On-going Costs, in addition to continued staffing</b>	
Additional translations of the Notice of Rights	\$900
Outreach & Communications efforts, including language access	\$20,000
Community Partnerships	\$480,000
Employee support costs	\$1,875
<i>Total On-going Costs, in addition to continued staffing</i>	<i>\$502,775</i>

OLS reports that they currently do not have the resources to perform this work. Currently, Central Staff is not aware of any General Fund (GF) resources available to support this appropriation absent an offsetting reduction in GF appropriations.

### Options:

- a. Increase funding for OLS to perform these responsibilities through separate budget legislation (e.g., Mid-Year Supplemental Budget) for 2022 and during the fall biennium budget process for 2023-24;
- b. Do not allocate additional funding and allow OLS to prioritize work as determined by the Department; or

- c. Delay action on this legislation until sufficient resources are identified for implementation.

**Next Steps**

The Committee will discuss proposed amendments to the legislation on April 26. Please contact me with any amendment proposals by Friday, April 15.

**Attachments:**

1. Summary of Significant Policy Changes in Introduced Bill
2. Components of Associated Cost Factor, Associated Time Factor, and Associated Mileage Factor
3. Transparency Requirements

cc: Aly Pennucci, Deputy Director  
Yolanda Ho, Lead Analyst

## Appendix 1. Summary of Significant Policy Changes

A [draft version](#) of this bill was most recently discussed in Committee of February 8, 2022. The introduced draft includes the following policy changes:

- Adds a definition of marketplace network companies as a subset of network companies which are (1) exclusively engaged in facilitating pre-scheduled offers in which the prospective customer and worker exchange information regarding the scope and details of services to be performed prior to the customer placing the online order for those services and (2) exclusively facilitates services performed without the network company monitoring offers by geographic location, mileage or time. The definition specifically excludes on-demand network companies and companies that primarily provide delivery services. (8.37.020 Definitions)
- Establishes different regulations for marketplace network companies:
  - Edits definition of “engaged miles” to exclude any miles that may be traveled in furtherance of an offer facilitated by a marketplace company. (8.37.020 Definitions)
  - Edits definition of “engaged time” to be different for marketplace companies; rather than beginning and ending based on actual time working, “engaged time” is the reasonable estimate of engaged time required to perform the offer as mutually agreed by the marketplace network company or customer and the app-based worker when the offer is accepted. For marketplace companies, engaged time may be non-consecutive and/or performed flexibly during an agreed upon range of time and is subject to rulemaking regarding offers that are cancelled with cause. (8.37.020 Definitions)
  - Clarifies that for marketplace companies, “perform in Seattle” is determined based on the address where services are to be performed. (8.37.020 Definitions)
  - Authorizes the Director to issue rules about what the minimum network payment should be for offers from marketplace companies that are cancelled before completion of the performance of the offer. (8.37.050 Minimum network company payment)
  - Allows marketplace network companies to fulfill the minimum network payment based on the reasonable estimate of engaged time rather than actual engaged time. (8.37.050 Minimum network company payment)
- Added definition of “unsealed” (8.37.020 Definitions)
- Clarified worker coverage and network company definitions to align with Fare Share Ordinance (i.e., Minimum Compensation for TNC Drivers, SMC 14.33) (8.37.020 Definitions)
- Added requirement for OLS Director to annually file updated “per-minute amount” and “per-mile amount” with City Clerk (8.37.050.B)
- Narrowed requirement for network company to share contents on online orders to only “unsealed” contents of online orders (8.37.070.A.1.g)



- Identified a daily amount of unpaid compensation that the OLS Director can order network companies to pay in the event that OLS cannot determine a precise amount owed to the worker due to the company's failure to provide sufficient records. The daily amount is at least the equivalent of payment for eight hours of work at the "hourly minimum wage" rate for Schedule 1 employers under Chapter 14.19. For example, in 2022 the daily amount would be \$138.16 (\$17.27 per hour x 8 hours) (8.37.170 Remedies)
- Itemized fines for failure to comply with flexibility requirements (8.37.170 Remedies)

Appendix 2. Components of Associated Cost Factor, Associated Time Factor, and Associated Mileage Factor

**Associated Cost Factor**

Item	Amount	Notes
Payroll tax	7.65%	Additional “employer share” of payroll taxes
State Paid Family Medical Leave	0.25%	Expense of contractor opt-in to PFML
Unemployment compensation	1.06%	Average cost of state unemployment insurance
Workers Compensation	2.84%	Average cost of state workers comp coverage
Miscellaneous expenses	1.2%	Equipment, business taxes & license fees
<b>Total associated cost factor</b>	<b>113%</b>	1.13

**Associated Time Factor**

Item	Amount per engaged hour	Notes
Rest breaks	2.5 minutes	10 minutes of rest time per 4 hours of work
Time to review offers	3 minutes	Minimal estimate of time to review offers
Time to availability	5 minutes	Minimal estimate of time from performing offer to availability for next offer
Time for administrative tasks	2 minutes	Minimal estimate of time for managing account, recordkeeping & customer support
<b>Total associated time factor</b>	<b>121%</b>	1.21

**Associated Mileage Factor**

Amount	Notes
For every 10 engaged miles:	Non-exclusive examples
<ul style="list-style-type: none"> <li>1.25 miles</li> </ul>	<p>Miles to travel to locations where offers are available or return to starting location when dispatched from hub; and</p> <p>Miles to travel to locations for rest breaks, meal breaks, restroom access, and administrative needs.</p>
<b>Total associated mileage factor 125%</b>	1.25

### Appendix 3. Transparency Requirements

*Offer Information* – Network companies would be required to provide app-based workers with up-front information on offers, including, as applicable:

- a reasonable estimate of engaged time required for performance;
- a reasonable estimate of engaged miles required for performance;
- a guaranteed minimum amount of network company payment;
- amount of any tip that a customer has indicated they will provide;
- name of any businesses that must be visited as part of the offer;
- information regarding physical labor required; and
- information about unsealed contents of online orders.

*Receipts to App-based Workers* – Within 24 hours of performance of an offer, a company would have to provide receipts to the app-based worker, including, as applicable:

- total amount of engaged time and miles, and geographic location(s) of the engaged time and miles;
- total compensation, itemized by gross network company payment, total incentives, compensation from tips, deductions, and net compensation;
- itemized fees collected from the app-based worker.

*Weekly Notice to App-based Workers* – Each week, a network company would need to provide a summary of the following to app-based workers, as applicable:

- total amount of engaged time and miles;
- total compensation, itemized by gross network company payment, total incentives, compensation from tips, deductions, and net compensation;
- itemized fees collected from the app-based worker; and
- any other information required by rulemaking from the OLS Director.

*Receipts to Customers* – Within 24 hours of performance of an offer, a network company would be required to provide receipts to the customer, including, as applicable:

- date and time of order;
- total amount paid to the network company, itemizing tips paid to the app-based worker, and any charges or fees retained by the company;
- any other information required by rulemaking from the OLS Director.

*Company Records* – Network companies would be required to routinely transmit records that the OLS Director deems necessary to administer, evaluate, and enforce the provisions of this legislation. These records may include (but are not limited to):

- availability of offers facilitated via the company platform;
- amount of engaged time and miles;
- amount of time that app-based workers spend working or waiting for work;
- number of app-based workers logged on to worker platform or accepting offers;
- aggregated worker compensation; and
- any other records deemed material and necessary by the OLS Director.

*Tip Policies* – A company would be required to ensure that its websites and other public facing materials do not describe fees or non-time charges in a way that could be misconstrued as a tip, gratuity or payment to the app-based worker. In addition, companies would need to ensure that all workers have access to the network company’s tip policy.

April 23, 2022

## MEMORANDUM

**To:** Public Safety and Human Services Committee  
**From:** Amy Gore, Analyst  
**Subject:** Council Bill 120294 – App-Based Worker Minimum Payment Standards

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On April 26, 2022, the Public Safety and Human Services Committee (Committee) will continue discussing [Council Bill \(CB\) 120294](#), which would establish minimum payment requirements and related protections for app-based workers. The discussion will focus on changes requested by stakeholders, potential amendments identified by Councilmembers, and other issues related to the proposed legislation to inform the development of amendments by Councilmembers.

This memo provides a brief background of the legislation; a discussion of requested changes and potential amendments; and next steps.

### Background

CB 120294 was discussed by the Committee on April 12. For a full overview of the legislation and initial presentation of policy considerations, see the [Central Staff Memo](#) presented in the meeting.

### Requested Changes and Proposed Amendments

The following table provides an overview of changes that have been requested by stakeholders<sup>1</sup> and potential amendments that have been identified for discussion by Committee members. It includes 25 requested changes or potential amendments divided into eight topic areas:

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<sup>1</sup> See [Memorandum from TaskRabbit and Rover](#), [Proposed Revisions from DoorDash](#), and [Letter from Drive Forward Seattle](#) for exact language requested, where applicable, and rationale for requested changes.

Table 1. Requested Changes and Potential Amendments

#	Description	Page
<b>Engaged Time</b>		
1	Amend the definition of engaged time for on-demand companies and on-demand offers to change when engaged time begins.	3
2	Amend the definition of engaged time to exclude any time a worker spends on an offer that the worker cancels without cause prior to completion.	4
3	Amend the definition of engaged time to allow for exclusions to prevent fraud, as determined by network companies.	4
4	Amend the definition of engaged time to exclude required training that is less than two hours.	5
<b>Other Definitions</b>		
5	Remove the definition of “unsealed.”	5
6	Clarify the definition a pre-scheduled offer.	6
<b>Minimum Payment</b>		
7	Lower the standard mileage rate, associated cost factor, and associated time factor.	6
8	Change the discretionary adjustment of associated cost factor from annually to every three years.	9
9	Remove the discretionary adjustment of associated time factor.	9
10	Change the minimum payment requirements from “a network company shall compensate” to “app-based workers shall be compensated.”	9
11	Allow companies to calculate minimum required payment on a pay-period basis, rather than on a per-offer basis.	10
12	Allow incentives to count towards minimum payment standard.	10
13	Include more information on the deduction of fees.	11
<b>Transparency</b>		
14	Remove tip amount from pre-offer transparency requirements.	11
15	Reduce the amount of time that a worker has to review offers from two minutes to one minute.	12
16	Increase the time for companies to provide receipts from completed offers to workers from 24 hours to 48 hours.	12
<b>Marketplace Network Companies</b>		
17	Exempt marketplace network companies.	12
18	Revise marketplace network company regulations.	13
<b>Rulemaking and Impacts Study</b>		
19	Request that the OLS director develop and present proposed rules to Council before passage of the legislation.	14
20	Appropriate funding for an independent study of potential impacts of these regulations on drivers, network companies, partner businesses, and/or customers.	15
21	Change the effective date from 12 months to 24 months.	17
<b>Other Provisions</b>		
22	Amend language regarding worker status.	17
23	Remove translation requirement for the notice of rights.	18
<b>OLS Resource Needs and Appropriations</b>		
24	Determine funding needed for OLS to administer and enforce CB 120294.	18
25	Identify and appropriate resources for OLS needed to administer and enforce CB 120294.	19

## Engaged Time

### 1. Amend the definition of engaged time for on-demand companies and on-demand offers to change when engaged time begins.

CB 120294 would require that engaged time begin at acceptance of an offer for on-demand offers or offers from an on-demand company.<sup>2</sup> This potentially gives a worker two hours of paid time between the acceptance and initiation of performance of the offer. It is intended to reflect that a worker may need to drive immediately to the destination or may be unable to accept other offers during that period. Functionally, it is unlikely that many workers would be paid for significant amount of time between acceptance and initiation because (1) most companies would not present an offer until a time closer to initiation and (2) a worker is typically incentivized to minimize the time between acceptance, initiation, and completion of performance through tips, customer rating systems, and the desire to maximize earnings, among other incentives.

This requested change would amend the definition of engaged time from beginning at acceptance of the offer to beginning at initiation of performance of the offer for on-demand companies or on-demand offers. This change is intended to minimize engaged time by excluding the time spent by the worker between acceptance of the offer and performance of a particular service. Examples of excluded time could include (1) travelling to a restaurant to pick-up a food delivery; or (2) waiting to perform a task that is scheduled an hour in advance and precludes accepting other offers in the interim period. As a result, this change could reduce the required minimum payment for any on-demand offers.

The impact of this amendment depends on one's interpretation of when performance is initiated for a certain offer. It is possible that Director's rules could clarify that "initiation of performance" includes travel time or wait time, depending on the nature of the offer. If Councilmembers want to include or exclude that time explicitly, they could define "initiation of performance" in the legislation or delegate the issue to OLS rulemaking with guidelines.

#### Options:

- a. Amend the legislation as described.
- b. Provide additional clarity by defining "initiation of performance" in the legislation.
- c. Request or mandate that the Office of Labor Standards (OLS) define "initiation of performance" through rulemaking.
- d. No change.

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<sup>2</sup> On-demand network companies are primarily engaged in facilitating or presenting on-demand offers to app-based workers. On-demand offers require that performance be initiated within two hours of acceptance.

2. Amend the definition of engaged time to exclude any time a worker spends on an offer that the worker cancels without cause prior to completion.

CB 120294 would allow a worker to cancel an offer with cause under certain circumstances.<sup>3</sup> If a worker cancels with cause, the time preceding cancellation is considered engaged time and is therefore covered by the minimum payment standard. The legislation is silent on how to compensate a worker for time spent in the performance of an offer if the offer is cancelled without cause.

This proposed change would clarify that any time spent in performance of an offer that is cancelled without cause by the worker is not included in engaged time and the minimum payment standard would not apply to that time, nor would any miles driven during that time be compensated.<sup>4</sup>

Options:

- a. Amend the legislation as described.
- b. Amend the legislation to address the circumstance of “cancellation without cause” in another way (e.g., requiring the \$5 minimum per offer amount be required for offers that meet a minimum engaged time threshold).
- c. Request or mandate that the Office of Labor Standards (OLS) determine how engaged time should be defined when an offer is cancelled without cause through rulemaking.
- d. No change.

3. Amend the definition of engaged time to allow for exclusions to prevent fraud, as determined by network companies.

The proposed legislation does not provide any exclusions to engaged time to be determined by the network companies. Some companies have provided feedback that there are examples of workers misusing the platform by intentionally and unnecessarily extending the amount of time they spend performing an offer, or by initiating performance to generate payment without the intention of completing the offer.

This requested change would amend the definition of engaged time to exclude any period of time identified by the network companies that is “reasonably necessary” to remedy or prevent fraudulent use of the application or platform. This language could be broadly interpreted and could result in significant reductions in engaged time. The Committee may want to consider additional guidance or limitations on this requested exception to engaged time.

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<sup>3</sup> Cause for cancellation would include: (1) the offer was substantially inaccurate; (2) the offer cannot be completed because the customer is not present or fails to communicate; (3) an unforeseen obstacle or occurrence; or (4) due to sexual harassment or discrimination during performance of the offer.

<sup>4</sup> “Engaged miles” is defined as miles traveled during engaged time, therefore any changes to engaged time will also impact engaged miles.



Options:

- a. Amend the legislation as described.
- b. Amend the legislation as described, with additional specifics about the amount of time that could be excluded, how the excluded time would be defined, or other guidance.
- c. Request or mandate that OLS define this type of exclusion to engaged time through rulemaking.
- d. No change.

4. Amend the definition of engaged time to exclude required training that is less than two hours long.

CB 120294 defines engaged time as including all time that a worker participates in required training, which would then be covered by the minimum network payment requirements.

The requested change would amend the definition of engaged time to only include training that exceeds two hours; therefore, any training program lasting two hours or less would be uncompensated for the worker. This change would reduce the cost of training app-based workers and avoid unintentionally disincentivizing training for workers, but could encourage companies to avoid minimum payment requirements by breaking up training into two-hour increments over several days, none of which would require payment. The Committee may want to consider additional parameters, such as a maximum amount of uncompensated training time per worker, or a maximum amount of uncompensated training time in a specific period, such as per week or per month.

Options:

- a. Amend the legislation as described.
- b. Amend the legislation as described, with the inclusion of a maximum amount of training time that workers would be required to perform without payment.
- c. No change.

**Other Definitions**

5. Remove the definition of “unsealed.”

CB 120294 would require a network company to make any information that it has available about the unsealed contents of an online order available to the worker as part of the offer presented to workers prior to acceptance. The proposed legislation would define unsealed as “unpackaged, visible within packaging, and/or in packaging that is not designed to withstand shipment [and]... includes but is not limited to bags, boxes, or containers designed to allow customers to transport hot food or groceries to their homes.” The intent of this requirement and the definition is to allow workers the opportunity to decline offers that may violate their

personal beliefs or cause health issues due to allergies or other conditions. It would functionally apply to almost all food and grocery delivery offers.

The requested change would remove the definition of unsealed from the legislation, but maintain the reference to “unsealed” in the transparency requirements. The removal of the definition would allow network companies more flexibility in meeting the transparency requirements, but could create ambiguity or confusion about the legislation’s requirements and when they apply.

Options:

- a. Amend the legislation as described.
- b. Request or mandate that OLS define “unsealed” through rulemaking.
- c. No change.

#### 6. Clarify the definition a pre-scheduled offer.

The proposed legislation would not specify who could require the worker to initiate performance in a particular timeframe.<sup>5</sup> This requested change would add “by the network company” to clarify the definition, and exclude circumstances in which a customer or other entity imposes performance requirements on the worker from pre-scheduled offers. This could exclude marketplace offers in which it is the customer that is determining the timing requirement.

Options:

- a. Amend the legislation as described.
- b. No change.

### **Minimum Payment**

#### 7. Lower the standard mileage rate, associated cost factor, and associated time factor.

CB 120294 would establish a minimum payment based on several inputs, including a minimum wage equivalent rate, associated cost factor, associated time factor, standard mileage rate, and associated mileage factor. These factors and the standard mileage rate are intended to ensure the minimum payment covers expenses incurred by workers.<sup>6</sup> These cost factors are not intended to be a one-for-one reimbursement of the expenses of each worker, but are intended

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<sup>5</sup> The legislation currently defines “Pre-scheduled offer” as “an offer that is facilitated or presented by a network company to an app-based worker at least two hours prior to when the app-based worker is required to initiate performance.”

<sup>6</sup> For a full list of types of expenses included in various inputs, see the [Central Staff Memo](#) from the April 12 Committee meeting.

to generally ensure that independent workers can afford or achieve similar benefits or safety nets that workers classified as employees receive.<sup>7</sup>

Stakeholders have requested that these inputs be changed as shown below in Table 2, because they believe these inputs do not accurately reflect the expenses incurred by app-based workers in Seattle.

*Table 2: Requested Reduction to Minimum Cost Payment Inputs*

	CB 120294	Requested Change	Difference
<b>Per Minute Amount</b>			
Minimum Wage Equivalent Rate	\$0.288	\$0.288	\$0.00
Associated Cost Factor	1.13	1.10	(-0.03)
Associated Time Factor	1.21	1.15	(-0.06)
<b>Total (Rounded)</b>	<b>\$0.39</b>	<b>\$0.36</b>	<b>(-\$0.03)</b>
<b>Per Mile Amount</b>			
Standard Mileage Rate	\$0.585	\$0.300	(-\$0.285)
Associated Mileage Factor	1.25	1.05	(-0.20)
<b>Total (Rounded)</b>	<b>\$0.73</b>	<b>\$0.32</b>	<b>(-\$0.41)</b>

These changes would reduce the total per minute amount from \$0.39 to \$0.36, and reduce the total per mile amount from \$0.73 to \$0.32, ultimately decreasing the required minimum payment for workers. For example, the required minimum payment for a 20-minute, five-mile offer would decrease from a total of \$11.45 to \$8.80; the required minimum payment for a 30-minute, three-mile offer would decrease from \$13.89 to \$11.76; and the required minimum payment for a 60-minute, four-mile offer would decrease from \$26.32 to \$22.88 (see Table 3).

<sup>7</sup> For example, an independent worker may not contribute to workers compensation, but the intention of the associated cost factor is that they are paid enough to save for a situation when they cannot work and need wage replacement.

Table 3: Comparison of Required Minimum Payment

	CB 120294	Requested Change	Difference
<b>Scenario 1</b>			
Engaged Time (20 minutes)	\$7.80	\$7.20	(\$0.60)
Engaged Miles (5 miles)	\$3.65	\$1.60	(\$2.05)
<i>Total Payment</i>	<i>\$11.45</i>	<i>\$8.80</i>	<i>(\$2.65)</i>
<b>Scenario 2</b>			
Engaged Time (30 minutes)	\$11.70	\$10.80	(\$0.90)
Engaged Miles (3 miles)	\$2.19	\$0.96	(\$1.23)
<i>Total Payment</i>	<i>\$13.89</i>	<i>\$11.76</i>	<i>(\$2.13)</i>
<b>Scenario 3</b>			
Engaged Time (60 minutes)	\$23.40	\$21.60	(\$1.80)
Engaged Miles (4 miles)	\$2.92	\$1.28	(\$1.64)
<i>Total Payment</i>	<i>\$26.32</i>	<i>\$22.88</i>	<i>(\$3.44)</i>

CB 120294 would use the standard mileage rate set by the Internal Revenue Service (IRS) to reflect the cost of owning, operating, and maintaining a vehicle for a worker. This is based on national averages for car and truck owners and includes fixed costs (e.g., the cost of buying the car) and variable costs (e.g., fuel). Network companies believe that this rate does not reflect the specific costs for drivers in Seattle. They commissioned a study conducted by Beacon Economics which estimated that the per mile cost to drivers in Seattle is between \$0.27 and \$0.30. This is significantly lower than the IRS rate because it is limited to four variable costs (depreciation, fuel, maintenance and auto insurance) and excludes fixed costs for a hypothetical driver who operates a Toyota Camry.

The standard mileage rate set by the IRS is adjusted each year to reflect changes to the expenses of driving and maintaining a vehicle. Therefore, the proposed legislation does not include any mechanism to adjust the standard mileage rate, either at the discretion of the OLS Director, or through an annual inflationary adjustment. If the Committee chooses to set a different mileage rate, they may consider how the standard mileage rate should be adjusted to reflect changes in the expenses covered by the rate (e.g., through an annual inflationary adjustment, OLS rulemaking, or study). The Committee may also consider using a different term than “standard mileage rate” to avoid confusion with the generally understood definition of the term as referring to the IRS standard.

Options:

- a. Amend the legislation to reduce standard mileage rate to \$0.30 with no provision for adjustment, or guidance on factors to consider for adjustments.

- b. Amend legislation to reduce standard mileage rate to \$0.30 and add provision for discretionary adjustment by the OLS Director with guidance on factors to consider for adjustments.
- c. Amend legislation to reduce standard mileage rate to \$0.30 with a periodic, non-discretionary adjustment based on inflation or other factors.
- d. Amend the legislation to reduce the associated cost factor, associated time factor, and associate milage factor as described.
- e. No change.

8. Change the discretionary adjustment of associated cost factor from annually to every three years.

The proposed legislation would allow the OLS Director, beginning three years after the legislation's effective date, to adjust the associated cost factor annually. The requested change would allow this discretionary adjustment by the Director every three years. This would make the associated cost factor more stable and predictable for companies and workers, and reduce the workload on the OLS to determine any adjustments, but may make the associated cost factor less responsive to real world changes to worker costs.

Options:

- a. Amend the legislation as described.
- b. No change.

9. Remove the discretionary adjustment of associated time factor.

The proposed legislation would allow the OLS Director, beginning three years after the legislation's effective date, to adjust the associated time factor annually. The requested change would amend the legislation to remove the allowance of a discretionary adjustment of the associated time factor. This would maintain a stable rate but would not reflect any new insights on how workers perform services, or any changes in their work experience.

Options:

- a. Amend the legislation as described.
- b. No change.

10. Change the minimum payment requirements from "a network company shall compensate" to "app-based workers shall be compensated."

The proposed legislation states that a network company shall compensate or ensure that an app-based worker is compensated at least the equivalent of the minimum required payment. It clearly establishes that the network company is responsible for fulfilling the minimum network

payment requirements and that it is the network companies which will be held responsible for violations of the minimum payment standard.

This requested change could negate (minimize) the network company's responsibility for meeting the minimum payment requirements established by the legislation. This is intended to reflect that some network companies do not act as an intermediary between the customer and worker for payment, but rather the client pays the worker directly. However, this language does not identify who, if anyone, is responsible for meeting the minimum payment requirement and would make enforcement extremely difficult.

Options:

- a. Amend the legislation as described.
- b. No change.

11. Allow companies to calculate minimum required payment on a pay-period basis, rather than on a per-offer basis.

The proposed legislation would require that minimum payment requirement be met for the engaged time and engaged miles of each offer performed by an app-based worker.

The requested change would allow the minimum payment requirement to be calculated for the total engaged time and engaged miles for all offers within a pay-period. The pay-period would not exceed seven days. Some network companies already calculate payments in this way in other jurisdictions and therefore would not require technological or policy changes to meet the Seattle requirements.

This change may result in companies providing higher per-offer pay for offers early in the pay period, but then decreasing below the standard pay for offers later in the pay period, knowing that they can average out payment to meet the standard. This could result in the minimum network payment acting as a pay maximum rather than a minimum. In addition, app-based workers believe this change would reduce the opportunity to earn incentives, which are currently made primarily on a per-offer basis.

Options:

- a. Amend the legislation as described.
- b. No change.

12. Allow incentives to count towards minimum payment standard.

The proposed legislation would not allow incentives paid to an app-based worker to count towards the required minimum payment.

This requested change would allow incentives to count toward the minimum payment standard. This would allow companies the ability to maintain incentive programs without incurring additional cost over and above the minimum payment standard. It is possible that companies would discontinue the use of incentives if they do not count towards the minimum required payment.

Options:

- a. Amend the legislation as described.
- b. No change.

### 13. Include more information on the deduction of fees.

The proposed legislation would allow a network company to collect fees from the app-based worker to access the company's application or platform. While this is not specifically included, the transparency requirements include "itemized fees collected from the app-based worker to access the network company's online-enabled application or platform" for both the per-offer receipts and the weekly notification provided to the worker.

The requested change would amend the legislation to further clarify that a network company may deduct a fee for use of its platform if the fee is (1) clearly notified to the app-based worker when they sign up for work on the application or platform or (2) communicated in accordance with Section 8.37.050.H.<sup>8</sup> It would allow minimum payment to be measured net of the subtraction of the fee. This change would more explicitly and clearly allow for the deduction of fees, and create additional requirements on a network company that deduct those fees.

Options:

- a. Amend the legislation as described.
- b. No change.

## **Transparency Requirements**

### 14. Remove tip amount from pre-offer transparency requirements.

The proposed legislation would require that if an application or platform enables customers to tip in advance of completion of an order, all offers presented to app-based workers will include the tip amount that a customer has indicated they will provide.

This requested change would remove the requirement that tip amount be provided, where possible, as part of the offer information prior to acceptance by the worker. Some network companies believe this would help avoid a situation where workers "cherry-pick" offers based

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<sup>8</sup> Requires that a network company notify app-based workers at least 14 days prior to making a material change to how payment will be calculated.

on tip amounts. Given that tips can be a large portion of a worker's total compensation, knowing a tip amount prior to acceptance would give the worker more control over their pay and help them make informed choices about what offers to accept.

Options:

- a. Amend the legislation as described.
- b. No change.

15. Reduce the amount of time that a worker has to review offers from two minutes to one minute.

The proposed legislation would require that companies make offers available to workers for at least two minutes to give time to the worker to determine whether or not they want to accept the offer. This requested change would reduce that time from two minutes to one minute. This may not provide a worker sufficient time to adequately review the offer prior to acceptance or rejection. One of the purposes of the review period is to discourage drivers from reviewing their offers while driving, which would be more likely with limited review time.

Options:

- a. Amend the legislation as described.
- b. No change.

16. Increase the time for companies to provide receipts from completed offers to workers from 24 hours to 48 hours.

The proposed legislation would require network companies to provide workers an electronic receipt for all offers that are performed or cancelled with cause within 24 hours. The receipt would provide total amount of engaged time and miles, the worker's compensation, itemized fees, location of engaged time and miles, and other information as required by the OLS Director. This requested change would give companies 48 hours to provide the receipt.

Options:

- a. Amend the legislation as described.
- b. No change.

**Marketplace Network Companies**

17. Exempt marketplace network companies.

Marketplace network companies are a subset of network companies which have different operational models than other network companies. They (1) typically do not intermediate the offer, but instead allow a customer and worker to exchange information of the scope and



details of service prior to placement/acceptance of an offer; and (2) do not monitor offers by location, mileage, or time. To reflect this, the proposed legislation would define marketplace network companies and would establish different regulations for these companies. Stakeholders have reported that their operational model would make compliance with this legislation difficult or impractical, and requested that marketplace network companies be exempted from the legislation.

This change would relieve marketplace network companies of the need to make operational changes to their business model to comply with the legislation's requirements. It would also mean that workers performing offers for marketplace network companies would not be covered by the legislation's requirements, including a minimum payment standard, transparency requirements like information about an offer prior to acceptance, or flexibility standards like the ability to cancel an offer acceptance with cause. In addition, as the Committee considers additional regulations for network companies, such as deactivation protections, Councilmembers would need to choose whether to (1) continue to exclude marketplace network companies or (2) have different coverage for each Pay Up ordinance which could create significant confusion and difficulty in enforcement.

Creating this exemption could incentivize network companies who do not currently meet this definition to change their operational model to avoid the regulations established by this legislation. The Committee may want to consider excluding marketplace companies from the minimum payment standard, but maintain some transparency and flexibility requirements.

Options:

- a. Amend the legislation as described.
- b. Amend the legislation to exclude marketplace network companies from some requirements, such as the minimum payment standard, while maintaining the applicability of transparency and flexibility requirements.
- c. No change.

18. Revise marketplace network company regulations.

As discussed above, marketplace network companies have a different operational model, and the proposed legislation would impose different regulations for these companies. Table 4 below presents changes requested by marketplace network companies to better reflect their business models.<sup>9</sup>

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<sup>9</sup> This section includes amendments requested by marketplace network companies that are specific to marketplace network companies. Some requested amendments, which apply to all network companies have been addressed in other sections of this memo.

*Table 4. Requested Changes to Marketplace Network Company Regulations*

Requested Change	Discussion
<p>a. Amend marketplace network company definition to include companies that are “primarily” engaged in facilitating pre-schedule offers, rather than “exclusively” engaged, and that “primarily” facilitate services that can be performed without the network company monitoring offers.</p>	<p>This change would expand the definition of marketplace network companies, and may result in more companies meeting the definition. It would require more rulemaking by OLS to determine what “primarily engaged” means and what companies meet the definition.</p>
<p>b. Amend the marketplace network company definition of “engaged time” to state, “For an offer involving engaged time that is non-consecutive and/or performed flexibly, the offer may satisfy the reasonable estimate of engaged time requirement by listing the range of time and compensation equivalent to at least one hour of engaged time in any 24-hour period.”</p>	<p>The proposed legislation would allow the minimum required payment for marketplace network companies to be calculated from an estimate of engaged time. It states that this estimate may be agreed to by the customer and the worker prior to offer acceptance. This requested amendment would further allow that the estimate of engaged time for any flexible or non-consecutive offer could be only one hour of engaged time in any 24-hour period, regardless of actual time required to complete the task. For example, a dog-sitter who works for two days, but has some flexibility or assumed sleep time would require a minimum payment of \$46.80 dollars over the two-day period, even if the actual time spent actively working is significantly higher than the one-hour per day estimate.</p>
<p>c. Amend the legislation to exclude marketplace network companies from requirement to provide workers with a weekly written notice.</p>	<p>The proposed legislation requires that companies provide workers with a weekly written notice summarizing their pay for the week. This proposed change would remove the requirement for marketplace network companies and require that the worker calculate a weekly summary from their receipts.</p>

Options:

- a. Amend the legislation with all or some of the amendments as described.
- b. No change.

**Rulemaking and Impacts Study**

19. Request that the OLS director develop and present proposed rules to Council before passage of the legislation.

Seattle Municipal Code (SMC) [3.15.06](#) gives the OLS Director the authority to adopt, promulgate, amend and rescind rules and regulations in accordance with [Chapter 3.02](#) “as

deemed necessary to carry out the functions of the Department.” In addition to this broad authority, CB 120294 would specifically authorize the OLS Director to conduct rulemaking to refine and clarify specific regulations of the proposed ordinance. For a full list of rulemaking specified in CB 120294 see Appendix 4.

The OLS Director issues rules for [every ordinance administered by OLS](#), for example [Domestic Workers Ordinance](#), [Commuter Benefits Ordinance](#), and the [Transportation Network Company Minimum Compensation Ordinance](#). These rules typically include needed clarification of definitions, as well as rules which help the Department administer and enforce the proposal. OLS conducts rulemaking in collaboration with stakeholders, including industry representatives, impacted workers, and other policy experts to go into a level of detail that is not usually included in legislation passed by Council. This allows more flexibility in the future to amend policy through a revision of rules rather than needing to amend the SMC.

The Committee could request that the OLS Director draft the proposed rules and delay the vote on CB 120294 until the rules are substantially completed. This would allow the Committee to understand how rulemaking might impact the administration and enforcement of the legislation and ensure the rules as proposed are consistent with the intended policy objectives.

Options:

- a. Postpone vote on CB 120294 until proposed rules are provided by the OLS Director.
- b. Do not postpone vote on CB 120294, but request that the OLS Director develop and provide proposed rules to the Committee prior to the legislation’s effective date.
- c. Do not postpone vote or request proposed rules.

#### 20. Appropriate funding for an independent study of potential impacts of these regulations on drivers, network companies, partner businesses, and/or customers.

CB 120294 is intended to increase pay and improve working conditions for app-based workers; however, this legislation may result in changes to the costs, demand, and supply of network company services. Some potential impacts could include:

- Network companies choosing not to offer their services in Seattle due to the new regulations;
- An increase in the cost of market network services which the network companies could choose to pass on to customers and partner businesses;
- A decrease in customer demand for network company services due to cost increases which would result in a decrease in revenues to partner businesses and fewer offers for workers. This could be particularly significant to small business owners, business owners with limited English, and BIPOC-owned business who may rely on third-party delivery to increase sales rather than establishing and managing their own delivery services; and/or

- An increase in the number of people who want to do app-based work due to higher pay and improved flexibility and transparency, therefore increasing competition for offers for workers. Given the disproportionate representation of Hispanic and Black workers in this industry, this impact could be disproportionately harmful to these workers.

The Committee could choose to fund a study to better understand the potential or actual impacts of the regulations on both app-based workers and network companies. In developing the approach for this study, the Committee should consider:

- *Timing* – In the past, the City has commissioned studies to provide information to inform policy development prior to adoption of legislation (e.g., the study by Parrot and Reich for [TNC Minimum Compensation Standard](#)). The City has also commissioned studies which take place after the adoption of legislation to monitor impacts and inform revisions to policy (e.g., [Evaluation of Seattle’s Sweetened Beverage Tax](#), Reports on the Seattle Minimum Wage, including the [Baseline Report](#) and multiple follow up studies on [Impacts](#), and a multi-year Secure Scheduling Evaluation<sup>10</sup>). The Committee could consider whether they prefer a study to inform the legislation or one to study the impacts of enacted regulations.
- *Participation of Stakeholders* – A successful study of economic impacts requires participation from stakeholders, including a range of workers and companies. Ensuring the protection of proprietary data; choosing a trusted, independent consultant; and determining an appropriate scope of study can impact whether stakeholders feel participation in the study is in their interests. Collaborating with stakeholders to develop a study scope and goals, qualifications of the consultant, and methodology can help encourage participation of stakeholders. The Secure Scheduling studies successfully utilized the stakeholders convened by OLS for rulemaking as a resource for the study development and implementation.
- *Administration of Study* – Any study will require City staff to administer the study, including developing and issuing a Request for Proposal, managing the contract, and providing management and oversight of the study. The Committee will need to consider which department (e.g., Office of the City Auditor, OLS) should serve this role and what resources will be required.
- *Cost* – The cost for an economic impact study can vary significantly. For example, the cost of the Parrott and Reich study that informed the TNC Fair Share legislation cost \$53,000. (Note: This paid for the consulting study; the City of Seattle also covered costs for significant outreach and engagement, administration, and additional policy analysis.) The Secure Scheduling studies, a multiyear effort conducted by a team of five researchers from five universities, had a total cost of over \$765,000. City costs were supplemented by federal and private foundation grants obtained by the researchers.

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<sup>10</sup> Secure Scheduling: [Baseline Report \(2018\)](#), [Year One Report \(2019\)](#), [Year Two Worker Impact Report \(2021\)](#).

Options:

- a. Postpone vote on CB 120294 and fund a study to examine and model the potential impacts to inform the regulations prior to vote.
- b. Do not postpone vote on CB 120294, and fund a study to monitor the impacts of the regulations with the intention of reviewing and potentially modifying regulations based on the study findings.
- c. Do not postpone vote or fund study of impacts.

21. Change the effective date from 12 months to 24 months.

CB 120294 would take effect 30 days after the Mayor’s signature; however, the provisions of Chapter 8.37, including requirements for minimum payment, transparency and flexibility, would take effect 12 months after the effective date of the legislation to allow for rulemaking and changes required by network companies to operationalize the requirements. The Committee could consider changing the effective date from 12 months to 24 months to allow further time for City rulemaking, outreach, studies, or other related activities. Changing the effective date would also provide network companies with more time to prepare for implementation but would delay the benefits and protections of this legislation for app-based workers.

Options:

- a. Amend the legislation as describe.
- b. No change.

**Other Provisions**

22. Amend language regarding worker status.

CB 120294 states that “no provision of Chapter 8.37 shall be construed as providing a determination about legal classification...of independent contractors.” This requested change would amend the language to state that any company’s compliance with Chapter 8.37 shall not be considered when determining the status of a worker (i.e., just because a network company is treating a worker more like an employee due to the requirements of this legislation, that should in no way be used to determine that the worker is an employee).

Options:

- a. Amend the legislation as described.
- b. No change.

### 23. Remove translation requirement for the notice of rights.

The proposed legislation would require that companies provide a notice of rights to workers in English and in any language that the network company knows or has reason to know is the primary language of the worker.

The requested change would remove the requirement that the company provide notice in any other language. This requested change as drafted by the network companies would specify that a notice of rights be provided in English, which could impede the Director's ability to require translation through rulemaking. For most worker standards, OLS provides translated materials and requires the companies to distribute the materials, rather than companies being responsible for both translation and distribution.

Options:

- a. Amend the legislation as described.
- b. Amend the legislation as described and remove reference to solely providing the notice of rights "in English."
- c. No change.

### **OLS Resource Needs and Appropriations**

#### 24. Determine funding needed for OLS to administer and enforce CB 120294.

According to OLS, it will cost \$1.2 million in the first year to stand up CB 120294, including \$566,000 for implementation costs and \$670,685 for staffing. In addition, it will cost \$1.2 million for on-going administration and enforcement of the ordinance.<sup>11</sup> With a potential Council vote in May, this would mean that OLS would need at least a portion of these resources in 2022 to begin rulemaking and outreach.

Central Staff is continuing to work with OLS to determine if any of these costs can be reduced, for example delaying hiring for some staff (like the investigator) or by reducing either initial or on-going community partnerships.

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<sup>11</sup> Note that this estimate has been updated since the April 12, 2022 Committee memo and presentation.

Table 5. Estimated Implementation Costs

<b>Initial implementation costs</b>	
Rulemaking, inc. language access for stakeholder meetings	\$5,450
Notice of Rights Design and Translation	\$5,300
Outreach & Communications Campaign and Materials	\$50,000
Community Partnerships	\$480,000
New employee set up costs (\$3050 per employee)	\$15,250
Software, hardware, and consulting needs	\$10,000
<b>Total Initial Implementation Costs</b>	<b>\$566,000</b>
<b>On-going staffing</b>	
1 Senior Investigator	\$137,707
1 Enforcement & Data Strategist	\$151,698
1 Policy Analyst	\$151,698
1 Labor Standards Engagement Specialist	\$130,943
1 Admin Specialist 3	\$98,639
<b>Total On-going Staffing Costs</b>	<b>\$670,685</b>
<b>On-going Costs, in addition to continued staffing</b>	
Additional translations of the Notice of Rights	\$900
Outreach & Communications efforts, including language access	\$20,000
Community Partnerships	\$480,000
Employee support costs	\$1,875
<b>Total On-going Costs, in addition to continued staffing</b>	<b>\$502,775</b>

Options:

- a. Provide total funding requested by OLS, through one of the resources presented below.
- b. Provide reduced funding to OLS, through one of the resources presented below.
- c. Do not provide additional funding to OLS and let the Department determine how to prioritize existing budgetary authority on competing priorities.

25. Identify and appropriate resources for OLS needed to administer and enforce CB 120294.

OLS reports that they currently do not have the resources to administer and enforce CB 120294. Currently, Central Staff is not aware of any General Fund (GF) resources available to support this appropriation absent an offsetting reduction in GF appropriations. Therefore, Council will need to identify and appropriate resources to OLS for this purpose.

In considering potential revenue resources for additional OLS appropriations, Council could utilize the following:

- OLS Civil Penalties and Fines – OLS levies remedies on companies that violate labor standards. Some of these remedies, such as unpaid wages, are due to the aggrieved party, while some, like civil penalties and fines, are due to OLS; however, the Director has the authority to specify that these remedies go to the aggrieved party rather than OLS. This avoids the appearance that the Department is motivated by financial benefit when taking enforcement actions and determining remedies and ensures that the maximum amount of remedy can go to the aggrieved party. Typically, the Director does not keep the civil penalties and fines owed to OLS, and instead passes those remedies onto the aggrieved party.
- OLS Subfund – In 2017, Council passed [ORD 125273](#) which established a special Office of Labor Standards Subfund to guarantee annual funding of OLS from the City’s existing business and occupation (B&O) tax revenues and to require the OLS Director to certify a Minimum Annual Contribution needed to fund the Office’s enforcement and outreach activities each year. Council could express their intent that the OLS Director adjust the Minimum Annual Contribution to cover the costs incurred by this proposed legislation using B&O tax revenues. Currently, these revenues are used for other appropriations in the General Fund (GF) and using these resources for OLS would require cuts to other City GF expenditures.
- Fee on Network Companies – The City frequently imposes fees on businesses to fund regulatory or other administrative activities related to those businesses. For example, TNCs pay \$0.08 per ride to cover the estimated enforcement and regulatory costs of TNC licensing, vehicle endorsements and driver licensing. Imposing fees does require additional City resources to administer and collect. The Committee could consider a fee or tax on network companies to cover the cost of administration and enforcement of CB 120294.

Any proposal for additional budgetary authority to OLS would need to be taken through separate budget legislation (e.g., Mid-Year Supplemental Budget) for 2022 and during the fall biennium budget process for 2023-24.

Options:

- a. Expect OLS to voluntarily use some of levied civil penalties and fines to cover some proportion of cost of enforcement of the legislation.
- b. Mandate that OLS use some defined portion of levied civil penalties and fines to cover some proportion of cost of enforcement of the legislation.
- c. Utilize some portion of the B&O tax to fund the OLS Subfund to support some portion of the cost of enforcement of the legislation.
- d. Establish a fee or tax on network companies to support some portion of the cost of enforcement of the legislation.



- e. Delay action on this legislation until sufficient resources are identified for implementation.

**Next Steps**

The Committee will consider proposed amendments to CB 120294 on May 10. Please let me know if you are interested in developing any amendments by April 27 at 5:00 pm.

**Attachments:**

1. List of Rulemaking Authorized Specifically in CB 120294

cc: Aly Pennucci, Deputy Director  
Yolanda Ho, Lead Analyst

## Appendix 1: List of Rulemaking Authorized Specifically in CB 120294

### Required rulemaking –

- Establish list of services subject to professional licensure which are exempted from online orders covered by the legislation.
- Establish the minimum network payment for marketplace offers that are based on estimated engaged time and are cancelled before completion of the performance of the offer.
- Establish types of information required to be disclosed, the format of provision of the information, and efforts to ascertain the information that would be considered reasonable to meet transparency requirements for information on physical labor required to perform services, and the establish rules governing the submission of network company records

### Discretionary rulemaking –

- Establishing rules on “engaged time” for (a) offers with non-compensable time, such as sleep time or other periods of off-duty time; or (b) offers with periods of time when the worker is not completely relieved of the duty to perform services and cannot use the time effectively for their own purposes.
- Further refining the definition of “online order” and the types of transactions excluded from the definition.
- Excluding certain offers from payment of the minimum per-offer amount, including but not limited to on-demand offers cancelled by the customer within a grace period of not more than five minutes after acceptance.
- Beginning three years after the effective date the legislation, the Director may adjust the associated cost factor annually.
- Beginning three years after the effective date the legislation, the Director may adjust the associated time factor annually.
- Require additional information in the daily receipts to workers, the weekly notice to workers, receipts to customers, or production rules for to the network company data required for network company transparency.
- Issue rules governing the form and content of the notice of rights, the manner of its distribution, and required languages for its translation.
- The Director may issue rules for the complaint procedure or establish other enforcement methods to efficiently resolve violations the legislation.