

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.

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## 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 mileage 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*

<b>Requested Change</b>	<b>Discussion</b>
<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.