



# Seattle City Council

## Central Staff - Memorandum

**Date:** April 13, 2016  
**To:** Gender Equity, Safe Communities and New Americans Committee  
**From:** Amy Tsai, Council Central Staff  
**Subject:** **Council Bill (CB) 118651: Open-Air Tour Vehicles**

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This memorandum provides a brief background and summarizes the Mayor's proposed tour vehicle legislation, CB 118647, and also describes proposed substitute Council Bill 118651.

### Background

On September 24, 2015, an amphibious "Duck" vehicle from Ride the Ducks of Seattle struck a charter bus when the Duck vehicle swerved across the Aurora Bridge's centerline. Five international college students in the charter bus were killed and 62 occupants from vehicles involved in the resulting crash reported a range of injuries. A sheared left front axle of the Duck vehicle was one of the subjects of a state (Washington Utilities and Transportation Commission) and federal (National Transportation Safety Board) investigation. The investigations are still ongoing.<sup>1</sup>

Less than a month after the accident, Ride the Ducks of Seattle announced that in the future it would require two crew members, one to drive and one to serve as a tour guide and provide entertainment.<sup>2</sup> In January 2016, the company entered into a memorandum of understanding with the City of Seattle prohibiting drivers from engaging in tour narration and prescribing driving routes.<sup>3</sup>

In January, the Mayor transmitted a proposal to Council, **CB 118647**, that would make it a violation of Title 15 of the Seattle Municipal Code for a driver of any amphibious tour vehicle, charter party vehicle, or excursion service vehicle operating wholly within the City of Seattle to engage in tour narration while driving in Seattle.<sup>4</sup> Penalty alternatives would include a civil penalty (\$500 or \$1,500 per day collected via a civil action brought by the City),<sup>5</sup> gross misdemeanor,<sup>6</sup> or an injunction.<sup>7</sup>

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<sup>1</sup> [http://www.nts.gov/investigations/accidentreports/pages/HWY15MH011\\_preliminary.aspx](http://www.nts.gov/investigations/accidentreports/pages/HWY15MH011_preliminary.aspx)

<sup>2</sup> <http://www.seattletimes.com/seattle-news/ride-the-ducks-adds-crew-member-to-rides-to-boost-safety-2/>

<sup>3</sup> [http://murray.seattle.gov/wp-content/uploads/2016/01/MOU\\_Ride-the-Ducks.pdf](http://murray.seattle.gov/wp-content/uploads/2016/01/MOU_Ride-the-Ducks.pdf)

<sup>4</sup> The proposed legislation would apply to charter party carriers and excursion service carriers operating wholly within Seattle, plus amphibious tour vehicles regardless of their areas of service.

<sup>5</sup> SMC 15.90.018

<sup>6</sup> SMC 15.90.020

<sup>7</sup> SMC 15.90.022

San Francisco is the only jurisdiction known to have adopted similar legislation. In October, 2014, a San Francisco resident was killed by a Classic Cable Car trolley bus while in a crosswalk, allegedly by a distracted tour bus driver.<sup>8</sup> In May 2015, a San Francisco code change went into effect prohibiting tour narration by drivers of any city tour bus operating wholly within San Francisco.<sup>9</sup>

CB 118647 in its preamble notes that driving a tour bus is more complex than driving an automobile, and that safety problems are compounded when a tour bus driver provides ongoing tour narration while driving.

Distracted driving has been linked to vehicular accidents and personal injuries. The U.S. Department of Transportation National Highway Traffic Safety Administration reported 3,154 people killed and an estimated additional 424,000 injured in motor vehicle crashes involving distracted drivers in 2013.<sup>10</sup> In the National Motor Vehicle Crash Causation Survey (NMVCCS), conducted from 2005 to 2007, the critical reason leading to a crash was assigned to the driver in about 94 percent of the crashes, to the vehicle in 2 percent, and to the environment in 2 percent of the crashes. Of driver errors, the most frequently assigned critical reason was recognition error (41 percent), which included driver's inattention, internal and external distractions, and inadequate surveillance.<sup>11</sup>

CB 118647 was discussed but not acted on in the Gender Equity, Safe Communities and New Americans Committee (GESCNA) on March 23. At that meeting, tour operators offered public testimony commenting on economic hardships of the proposal and the safety of trained tour guides routinely providing narration. A new version of the bill, **CB 118651**, was subsequently introduced and referred to GESCNA.

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<sup>8</sup> <http://sanfrancisco.cbslocal.com/2015/04/07/san-francisco-tour-bus-drivers-forced-to-decide-between-driving-narrating-after-new-rule-passes/>

<sup>9</sup> The San Francisco legislation (San Francisco municipal code Sec. 7.2.89) in essence applies to passenger buses operating wholly within the city and county of San Francisco. "City Tour Bus" is defined in the legislation as a bus carrying passengers for compensation that is not required to be authorized by the California Public Utilities Commission (CPUC) to operate as either a charter party carrier or a passenger stage corporation under the California Public Utilities Code. (San Francisco Municipal Code Sec. 7.2.89) Passenger buses not required to be authorized by the CPUC include transportation services rendered wholly within the corporate limits of a single city or the city and county of San Francisco where licensed or regulated by ordinance ([http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Licensing/Passenger\\_Carriers/BasicInformationforPassengerCarriersandApplicants\\_Nov2014\\_11172014lct.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Passenger_Carriers/BasicInformationforPassengerCarriersandApplicants_Nov2014_11172014lct.pdf)).

<sup>10</sup> U.S. Department of Transportation National Highway Traffic Safety Administration (April 2015). Traffic Safety Facts – Distracted Driving 2013.

[http://www.distraction.gov/downloads/pdfs/Distracted\\_Driving\\_2013\\_Research\\_note.pdf](http://www.distraction.gov/downloads/pdfs/Distracted_Driving_2013_Research_note.pdf)

<sup>11</sup> U.S. Department of Transportation National Highway Traffic Safety Administration (Feb. 2015). Traffic Safety Facts Crash-Stats. Critical Reasons for Crashes Investigated in the National Motor Vehicle Crash Causation Survey. <http://www.nrd.nhtsa.dot.gov/pubs/812115.pdf>

**CB 118651**

Substitute CB 118651 differs from the original proposed legislation in five main respects:

1. Type and size of vehicle. It would limit the type and size of tour vehicles affected by the legislation to open-air tour vehicles with seating capacity for 16 persons or greater;
2. Tour locations. It would apply to any such vehicles when operating on any public road in Seattle, regardless of point of origin or other places travelled;
3. Activity prohibited. It would prohibit driver entertainment in addition to driver tour narration;
4. Penalties. It would create an alternative citation penalty (\$250 for the first violation and \$500 for each additional violation);
5. Subject of enforcement. It would hold the tour carrier responsible instead of the driver.

The differences between the original and substitute legislation are summarized in Table 1 below.

Table 1. Comparison of Original and Substitute Legislation

	<b>CB 118647 (original)</b>	<b>CB 118651 (substitute)</b>	<b>The substitute, compared to original, is:</b>
Type of vehicle	Charter and excursion tour vehicles, and amphibious tour vehicles	Open-air tour vehicles	Narrower
Size of vehicle	Any size	16+ person capacity	Narrower
Tour location	Tours originating and remaining within Seattle and amphibious tour vehicles of any origin	Tours of any origin	Broader
Activity prohibited	Tour narration by driver on Seattle public roads	Tour narration or entertainment by driver on Seattle public roads	Broader
Penalties	Notice of violation with civil penalty (\$500-\$1,500 via civil suit), gross misdemeanor, or injunction	Notice of violation with civil penalty (\$500-\$1,500 via civil suit), misdemeanor, injunction, or citation (\$250-\$500)	Broader
Subject of enforcement	Driver	Tour carrier	N/A

Type of tour vehicle. The substitute ordinance would limit the legislation to open-air tour vehicles, i.e., vehicles lacking a fixed roof, windows or pillars. Open-air tour vehicles can be distinguished from closed tour vehicles in several respects that have implications for driver distraction and public safety.

While any driver engaged in tour narration or entertainment could be distracted regardless of vehicle type, open-air tour vehicles have characteristics that increase the likelihood of distracting behaviors occurring. For instance, the open-air configuration facilitates two-way interaction with passengers throughout the vehicle compared to charter buses with high seat backs where rear passengers cannot directly see the driver. The open-air configuration also makes it easier for a driver to interact with persons on the street. Interactive entertainment with the outside environment increases the likelihood of the vehicle posing a distraction to other drivers. Another distraction in open-air vehicles is that passengers are more likely to reach their arms outside of the vehicle and need to be reined in.<sup>12</sup>

There is also an added safety issue with open-air tour vehicles in that the lack of a window creates an elevated risk of passenger ejection in the event of a collision, and ejection is associated with a greater risk of death.<sup>13</sup> Funk et al. (2012) noted that restraining forces such as seatbelts or various structures on the vehicle's perimeter such as door, window glass, pillars, roof rail, or roof, can provide a restraining force that has the potential to reduce the risk of ejection.<sup>14</sup> It should also be noted, however, that many ejection-related fatalities occur through, and in spite of, side windows.

Size of vehicle. The substitute ordinance would limit the legislation to vehicles with a seating capacity of 16 persons or more. The original legislation would apply to tour vehicles of any size, including limousines.

Limiting the legislation to larger vehicles is consistent with the heightened safety concerns that larger vehicles pose. Vehicles of this size require a Commercial Driver's License (CDL) to operate. CDLs are also required for vehicles over 26,000 pounds, school buses, and vehicles transporting certain types of hazardous materials.<sup>15</sup> The Federal Motor Carrier Safety Administration, in describing the CDL program, noted that such vehicles are a "big responsibility" and require "special skills and knowledge" to drive. Commercial Driver's License

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<sup>12</sup> Emerald City Trolley employs a non-driver whose functions include, among other things, narration and directing passengers to keep limbs safely inside the vehicle.

<sup>13</sup> According to the National Highway Traffic Safety Administration, 79 percent of passenger vehicle occupants who were ejected during a fatal crash in 2013 died from their injuries. U.S. Dept of Transportation, National Highway Traffic Safety Administration (NHTSA). Traffic Safety Facts: Passenger Vehicles. Washington (DC): NHTSA; 2013. <http://www-nrd.nhtsa.dot.gov/Pubs/812192.pdf>

<sup>14</sup> Funk, J.R., Cormier, J.M., Bain, C.E., Wirth, J.L., Bonugli, E.B., & Watson, R.A. (2012). Factors Affecting Ejection Risk in Rollover Crashes, 56<sup>th</sup> Annals of Advances in Automotive Medicine Annual Conference, Oct. 14-17, 2012. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3503426/pdf/file050final.pdf>

<sup>15</sup> RCW 46.25.010

holders are held to a higher standard when operating any type of motor vehicle on public roads.<sup>16</sup>

According to the National Highway Traffic Safety Administration, Fatality Analysis Reporting System, 43 motorcoaches (cross-country intercity buses) were involved in fatal crashes in the U.S. in 2013.<sup>17</sup> While the number of fatal bus crashes is relatively small, the five fatalities and 62 injuries from the September 24 event illustrate how catastrophic the accidents can be when vehicles carrying a large number of passengers collide on a busy road.

Tour location. The substitute ordinance would cover tour vehicles while they are operating on public roads in Seattle, regardless of where the tour originates or stops. This would expand the legislation to include tours that begin elsewhere and pass through Seattle. At present, there are no known tour operations originating outside of Seattle that would be impacted. The substitute ordinance has the effect of ensuring that applicability of the legislation does not depend on non-safety factors such as where a tour originates or stops. It also ensures that a tour vehicle cannot circumvent the legislation by adding a tour stop outside of the city limits to a tour that occurs primarily in Seattle.

Activity prohibited. The substitute ordinance would add a prohibition on in-person entertainment. While tour narration could be considered a form of entertainment, the entertainment prohibition provides illustrations of additional distracting behaviors, such as singing, dancing, or dramatic acts.

The substitute ordinance would also simplify the definition for tour narration. The main effect would be to simplify and clarify the language, by eliminating specific, narrow examples of exemptions.

Penalties. There are two enforcement chapters in Title 15: Chapter 15.90 and Chapter 15.91. The original proposed legislation, CB 118647, would allow enforcement under Chapter 15.90; the substitute ordinance would add an enforcement mechanism under Chapter 15.91 as well.

Chapter 15.90 penalty alternatives include a civil penalty (\$500 or \$1,500 per day during peak periods), gross misdemeanor, or an injunction. The civil penalty is collected following a notice of violation by civil action brought in the name of the City, where the City must prove the violation occurred by a preponderance of the evidence.

Chapter 15.91 allows enforcement via issuance of a citation. Not unlike a parking ticket, a person must respond to a citation by paying the penalty, requesting a mitigation hearing or requesting a contested hearing of the Hearing Examiner. In a contested hearing, the person

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<sup>16</sup> Federal Motor Carrier Safety Administration, Commercial Driver's License Program Overview. <https://www.fmcsa.dot.gov/registration/commercial-drivers-license>

<sup>17</sup> U.S. Department of Transportation Federal Motor Carrier Safety Administration Analysis Division (April 2015) Large Truck and Bus Crash Facts 2013. [https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-and-Bus-Crash-Facts-2013\\_0.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Large-Truck-and-Bus-Crash-Facts-2013_0.pdf)

carries the burden of establishing that the cited violations did not occur or that the person is not responsible for the violation. The fine is \$250 for the first violation and \$500 for each additional violation. By adding this option, the substitute ordinance creates a different enforcement option that carries a lower fine and has a collection process that is simpler for the City. According to the City Attorney's Office, adding this option does not preclude the City from pursuing any remedies available under Chapter 15.90.

Subject of enforcement action. The original proposed legislation would hold the driver responsible for Title 15 penalties. The substitute ordinance would hold the tour company responsible, in recognition of the fact that the driver is acting on behalf of the tour company.

### Conclusion

The original and substitute proposed legislation would reduce distracting behaviors by tour drivers, with each addressing a different subset of tour drivers. The original proposal would target tour vehicles of all sizes operating wholly within Seattle, plus amphibious tour vehicles. The substitute ordinance would target open-air larger vehicles of any origin while travelling on Seattle roads. It is worth noting that even if performed by someone other than the driver, the presence of tour narration or entertainment may pose some level of distraction to the driver or others on the road. The hope would be that by letting the driver focus on driving, distraction would be decreased and safety increased.