



SEATTLE CITY COUNCIL

Finance and Housing Committee

Agenda

Tuesday, September 15, 2020

9:30 AM

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

Teresa Mosqueda, Chair
Lisa Herbold, Vice-Chair
M. Lorena González, Member
Andrew J. Lewis, Member
Dan Strauss, Member
Tammy J. Morales, Alternate

Chair Info: 206-684-8808; Teresa.Mosqueda@seattle.gov

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SEATTLE CITY COUNCIL
Finance and Housing Committee
Agenda
September 15, 2020 - 9:30 AM

Meeting Location:

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

Committee Website:

<http://www.seattle.gov/council/committees/finance-and-housing>

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.

In-person attendance is currently prohibited per Washington State Governor's Proclamation No. 20-28.9, through October 1, 2020. Meeting participation is limited to access by telephone conference line and Seattle Channel online.

Register online to speak during the Public Comment period at the 9:30 a.m. Finance and Housing meeting at

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

Online registration to speak at the Finance and Housing meeting will begin two hours before the 9:30 a.m. meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to Teresa.Mosqueda@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

One Tap Mobile No. US: +12532158782,,5864169164#

Please Note: Times listed are estimated

A. Call To Order**B. Approval of the Agenda****C. Public Comment****D. Items of Business**

1. [CB 119886](#) **AN ORDINANCE relating to the transfer of City property located at 722 18th Avenue, Seattle, Washington; authorizing the conveyance of the property to Byrd Barr Place, a Washington non-profit corporation, consistent with the intent of Resolution 31856 and to provide for the continued delivery of social services; making findings of fact about the consideration for the transfer; authorizing acceptance of a negative easement restricting future development of the property; superseding Resolution 31837 for the purposes of this ordinance; and authorizing the Director of the Department of Finance and Administrative Services or designee to execute and deliver documents necessary to carry out the conveyance of such property on the terms and conditions of this ordinance.**

Attachments: [Att 1 - Byrd Barr Place Transfer Agreement](#)
[Att 1 Ex A – Form of Negative Easement](#)
[Att 1 Ex B – Form of Deed](#)

Supporting

Documents: [Summary and Fiscal Note](#)
[Summary Att A – Property Map for Former Fire Station 23](#)
[Central Staff Memo](#)

Briefing, Discussion, and Possible Vote

Presenters: Shefali Ranganathan, Deputy Mayor; Samuel Assefa, Director, Office of Planning and Community Development; Andres Mantilla, Director, Seattle Department of Neighborhoods; Andrea Caupain, Byrd Barr Place; Lish Whitson, Council Central Staff

2. [CB 119876](#) **AN ORDINANCE relating to transportation network company driver labor standards; establishing minimum labor and compensation standards for transportation network company drivers; establishing provision of or reimbursement for personal protective equipment to transportation network company drivers during the civil emergency declared on March 3, 2020; establishing notice, posting, and data requirements for transportation network companies; prescribing remedies and enforcement procedures; amending Section 3.15.000 of the Seattle Municipal Code; amending the title of Chapter 14.31 and Sections 6.208.020 and 14.31.010 of the Seattle Municipal Code; and adding a new Chapter 14.33 to the Seattle Municipal Code.**

*Supporting
Documents:*

[Summary and Fiscal Note v2
Presentation](#)

Briefing, and Discussion

Presenter: Kerem Levitas, and Jenee Jahn, Office of Labor Standards;
Karina Bull, and Amy Gore, Council Central Staff

E. Adjournment



Legislation Text

File #: CB 119886, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the transfer of City property located at 722 18th Avenue, Seattle, Washington; authorizing the conveyance of the property to Byrd Barr Place, a Washington non-profit corporation, consistent with the intent of Resolution 31856 and to provide for the continued delivery of social services; making findings of fact about the consideration for the transfer; authorizing acceptance of a negative easement restricting future development of the property; superseding Resolution 31837 for the purposes of this ordinance; and authorizing the Director of the Department of Finance and Administrative Services or designee to execute and deliver documents necessary to carry out the conveyance of such property on the terms and conditions of this ordinance.

WHEREAS, in 1957, the City authorized a proposal for conversion of former Fire Station 23 to a multipurpose neighborhood facility and an application for federal financial assistance in connection therewith; and

WHEREAS, in 1967, the Central Area Motivation Program (CAMP), which was founded in 1964, began working with the City to turn former Fire Station 23 into a multi-use community facility; and

WHEREAS, in 1967, the City initially leased the former Fire Station 23, located at 722 18th Avenue (Former Fire Station 23), to the Seattle-King County Economic Opportunity Board, Inc. for use as a multi-purpose neighborhood facility by its delegate agency, the Central Area Citizens' Committee, Inc. (CACC), a Washington non-profit corporation, d/b/a Central Area Motivation Program (CAMP); and

WHEREAS, in 1976, the City designated Former Fire Station 23 as a historic landmark; and

WHEREAS, in 1988, the City entered into a long-term, mutual and offsetting benefit lease with CACC, pursuant to which CACC paid de minimis cash rent in exchange for its promise to use Former Fire Station 23 for the delivery of social services, and which then converted to a month to month lease in 1992; and

WHEREAS, in 2012, CACC changed its name to Centerstone, a non-profit corporation, and then in 2018, changed its name again to Byrd Barr Place (BBP), a non-profit corporation; and

WHEREAS, as a month-to-month tenant, BBP uses and occupies Former Fire Station 23 in exchange for mutual and offsetting benefits in the form of social services to residents of the Central Area, including a food bank, energy assistance, housing assistance, and financial counseling; and

WHEREAS, Byrd Barr Place has been awarded a grant from the State of Washington that would provide for over one million dollars in capital improvements to the property, conditioned upon a long-term lease or ownership; and

WHEREAS, in Resolution 31856, City Council stated its intention to collaborate with the Executive with the goal of transferring certain properties to non-profit organizations, including BBP, in exchange for commitments to provide services to the community; and

WHEREAS, pursuant to the 2019 *Memorandum of Agreement Implementing Criteria for Initiating Transfer of Mutually Offsetting Facilities to Tenants*, by and amongst six City of Seattle departments and offices (the Department of Finance and Administrative Services, the Office of Planning and Community Development, the Department of Neighborhoods, the Office of Economic Development, the Office of Housing, and the Human Services Department), an interdepartmental team within The City of Seattle has determined that the proposed new property owner, BBP - in all material respects - meets the transfer criteria established by the City for transferring property to tenants who have been operating properties under mutually and offsetting benefit lease agreements; and

WHEREAS, FAS and BBP have entered into an agreement regarding the consideration, terms and conditions for the City's conveyance of Former Fire Station 23 to BBP, subject to the City Council's authorization;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As used in this ordinance, "Former Fire Station 23" means the real property and all

easements, privileges, and appurtenant improvements on a site of approximately 15,360 square feet located at 722 18th Avenue and legally described as follows:

LOTS FOUR (4) AND FIVE (5) IN BLOCK TWENTY-EIGHT (28), SUPPLEMENTARY PLAT OF EDES & KNIGHT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS AT PAGE 194, RECORDS OF KING COUNTY, WASHINGTON,

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

Section 2. The Director of the Department of Finance and Administrative Services (the “Director”) or the Director’s designee is authorized to convey Former Fire Station 23 to Byrd Barr Place, a Washington non-profit corporation, for consideration and on the terms and conditions described under the Agreement for the Transfer of Real Property by and between The City of Seattle and Byrd Barr Place (the “BBP Transfer Agreement”), included as Attachment 1 to this ordinance. The Director is authorized to convey title by deed substantially in the form of the Quitclaim Deed Conveying Determinable Estate with Covenants that is Exhibit B to the BBP Transfer Agreement (the “Deed”).

Section 3. The Director of the Department of Finance and Administrative Services is authorized to accept, for and on behalf of the City, a negative easement in the form of Exhibit A to the BBP Transfer Agreement (the “Negative Easement”) preserving the development value of Former Fire Station 23 for social services facilities, affordable housing or both.

Section 4. The City Council finds that (i) the environmental and use covenants in the Deed, (ii) the Negative Easement, and (iii) the reversion of the property to the City if it is not used for the purposes required in the Deed, together form sufficient consideration for the transfer of the property to BBP.

Section 5. The City Council finds that the property interests in Former Fire Station 23 that are authorized to be conveyed to BBP on the terms of this ordinance are consistent with municipal purposes and therefore the surplus property procedures of Resolution 31837 are superseded for the purposes of this ordinance.

Section 6. The Director or the Director’s designee is authorized to negotiate, execute, deliver, and record, for and on behalf of the City, any and all documents and agreements necessary or advisable to carry out the conveyance of the Former Fire Station 23 consistent with the terms and conditions of the BBP Transfer Agreement.

Section 7. 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 _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment 1 - BBP Transfer Agreement

Exhibit A - Form of Negative Easement

Exhibit B - Form of Deed

AGREEMENT FOR THE TRANSFER OF REAL PROPERTY (the “Agreement”)

EFFECTIVE DATE: _____, 2020
(see Section 14(b) for provisions governing the Effective Date).

PARTIES

- THE CITY OF SEATTLE, a Washington municipal corporation (the “Seller”) acting by and through its Department of Finance and Administrative Services; and
- BYRD BARR PLACE, a Washington nonprofit corporation (the “Purchaser”).

RECITALS

- A. Seller owns that certain real property having a street address of 722 18th Avenue, Seattle, WA 98122, and legally described as follows:

LOTS FOUR (4) AND FIVE (5) IN BLOCK TWENTY-EIGHT (28),
SUPPLEMENTARY PLAT OF EDES & KNIGHT'S ADDITION TO THE CITY
OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN
VOLUME 2 OF PLATS AT PAGE 194, RECORDS OF KING COUNTY,
WASHINGTON,

Situate in the City of Seattle, County of King, State of Washington,

which real property, including easements, privileges, and improvements appurtenant to the land, is referred to in this Agreement as the “Real Property.”

- B. Since the late 1960s, the Purchaser – then known as the Central Area Motivation Project - has used the Real Property to furnish community services.
- C. In 1988, Seller and Purchaser - then known as Central Area Citizens’ Committee - entered into that certain *Mutual and Offsetting Benefit Lease Agreement* (hereinafter, the “Lease”) whereby Seller leased the Real Property to the Purchaser. The lease expired in 1991, since which time Purchaser’s tenancy has been a month-to-month tenancy at Seller’s consent.
- D. The Seller has determined that the Real Property is excess to its needs.
- E. Pursuant to that certain 2019 *Memorandum of Agreement Implementing Criteria for Initiating Transfer of Mutually Offsetting Facilities to Tenants*, by and amongst various City of Seattle departments and offices, an interdepartmental team within the City of Seattle has determined that the Purchaser – in all material respects – meets the transfer criteria established by the City for transferring property to tenants who have been operating properties under mutually and offsetting benefit lease agreements.

- F. The Seller and Purchaser mutually desire to enter into a binding agreement for the Seller's transfer and conveyance of the Real Property to Purchaser. NOW THEREFORE,

AGREEMENT

1. The **RECITALS** are made a part of this Agreement.
2. **TRANSFER OF THE PROPERTY.** Subject to the terms and conditions of this Agreement, the Seller shall transfer and convey to the Purchaser, and the Purchaser agrees to accept from the Seller, the Real Property together with any and all personal property owned by the Seller and located within or used in connection with the Real Property, including any and all furniture, furnishings, fixtures, appliances, heating, air conditioning and cooling units or systems, sign and boilers. Such personal property, together with the Real Property, is collectively referred to in this Agreement as the "**Property**".
3. **CONSIDERATION.** In consideration for the Seller's transfer and conveyance of the Property to the Purchaser, the Purchaser shall provide the Seller with the following:
 - a. At Closing, Purchaser shall grant Seller a *Negative Easement for Preservation of Development Rights* (the "**Negative Easement**") providing that development of the Property shall be restricted to social services facilities, affordable housing, or both, in the form attached as **Exhibit A**. The Negative Easement shall be recorded following recording of the Deed (defined in Section 8) at Closing, with no intervening liens between the Deed and the Negative Easement.
 - b. As provided in the Deed, Purchaser shall assume all environmental risk associated with the property and shall indemnify the City from all environmental liabilities arising from the Property. In the event ownership of the Property is re-conveyed to the City, Purchaser's obligation shall not apply to the extent any environmental liability results from any release, contamination or occurrence that occurs after the date of re-conveyance through no fault or action of Purchaser.
 - c. As provided in the Deed, title shall revert to the City if the Property is no longer used to provide social services or a combination of social services and affordable housing.
4. **"AS-IS"; SELLER DISCLOSURE STATEMENT; PURCHASER ACKNOWLEDGEMENT OF CERTAIN CONDITIONS; SELLER WORK PRIOR TO CLOSING.**
 - a. Purchaser is in possession of the Property, is familiar with the Property and understands its limitations and defects. Therefore, except as expressly set forth in Section 4.d of this Agreement:

- i. Purchaser acknowledges that Seller is transferring and conveying the Property “**AS-IS**” on the date of Closing with all faults, and that Seller makes no representations or warranties regarding the Property or its suitability for Purchaser’s intended use, and that Seller will convey the Property and Purchaser will accept the Property subject to any defects, including but not limited to easements, encroachments or claims for adverse possession, whether known or unknown, matters of public record, and off-record liens.
 - ii. Neither Seller nor any agent, employee, officer, director, attorney, broker, contractor, representative or property manager of Seller has made, and Seller specifically disclaims, any warranties, representations or guaranties of any kind or character, express or implied, statutory, oral or written, past, present or future, with respect to the Property.
 - iii. Purchaser acknowledges that it has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of Seller (except those provided for in this Agreement) or any of its respective agents, employees, officers, directors, attorneys, brokers, contractors, representatives or property managers and acknowledges that no such representations have been made.
- b. Seller to furnish a seller disclosure statement, as required pursuant to RCW CH. 64.06 as soon as reasonably possible, but no later than the time required by statute.
- c. Purchaser acknowledges the following with respect to the Property:
- i. **THE PROPERTY IS CURRENTLY USED AS A MULTI-PURPOSE COMMUNITY CENTER. SUCH USE IS NOT PERMITTED UNDER THE PROPERTY’S LR-1(M) ZONING DESIGNATION AND IS THUS CONSIDERED A NON-CONFORMING USE.**
 - ii. **PURSUANT TO THAT CERTAIN** Seattle Department of Constructions and Inspections’ April 2019 *List of URM*s, **THE BUILDING ON THE PROPERTY IS IDENTIFIED AS AN UNREINFORCED MASONRY STRUCTURE WITH NO VISIBLE RETROFITS.**
 - iii. Receipt, on or about November 8, 2019, of a copy of **SoundEarth Strategies, Inc., Phase I Environmental Site Assessment, dated May 30, 2019**, which documents SoundEarth Strategies, Inc.’s investigation of the Property.
 - iv. The Property’s current use as a social services community institution is recognized as a legal, permitted non-conforming use.

- v. The Property has been designated as a landmark under Seattle City Council Ordinance 102229 and is subject to certain controls under Ordinance 106050).

5. REPRESENTATIONS AND WARRANTIES

- a. **Seller's Representations and Warranties.** For purposes of the representations and warranties in subsections 5.a.ii-iii, "Seller's Representative" is Karen Gruen. Seller represents and warrants to Purchaser as of the Effective Date, as follows:

- i. Seller is a municipal corporation duly organized and validly existing under the laws of the state of Washington.
- ii. To the best of Seller's Representative's knowledge, there are no actions, suits or other legal proceedings pending or threatened against Seller with respect to the Property.
- iii. Seller's Representative has not received written notice that Seller is in default under any covenants, easements, deeds, regulations, laws, rules, ordinances, order, or restrictions affecting or encumbering the Property.
- iv. Seller has obtained all necessary approvals to enter into this Agreement, and, as of Closing, to complete the transaction contemplated by this Agreement, including the Seattle City Council's passage of an ordinance which authorizes the transfer and conveyance of the Property to the Purchaser.
- v. Entering into the Agreement does not conflict with any other contract or legal obligation of Seller.

- b. **Purchaser's Representations and Warranties.** Purchaser hereby represents and warrants to Seller that as of the Effective Date:

- i. Purchaser is a duly organized and validly existing entity under the laws of the state of Washington.
- ii. Purchaser has obtained all necessary approvals to enter into this Agreement, and, as of Closing, to complete the transaction contemplated by this Agreement.
- iii. Entering into the Agreement does not conflict with any other contract or legal obligation of Purchaser.
- iv. Purchaser is in possession of the Property and Purchaser has not granted any other party, affiliate, subtenant, or licensee a right to use

and possession of the Property in a manner that conflicts with the use under the Deed or the Negative Easement.

- v. Purchaser (a) has not filed a petition in bankruptcy, (b) is not the subject of a petition in bankruptcy, (c) does not have a trustee or receiver appointed with respect to Purchaser's assets, (d) has not assigned assets for the benefit of creditors, (e) has not received notice of default, trustee's sale, foreclosure or forfeiture.

6. **ACCESS AND DUE DILIGENCE.** As of the Effective Date, the Purchaser is in possession of the Property pursuant to the Lease and has had sufficient access to the Property and information regarding the Property to enable Purchaser to complete due diligence prior to entering into this Agreement without need of an additional due diligence period.

7. **FORM OF DEED.** At Closing, Seller shall convey the Property to Purchaser by quitclaim deed in the form attached as **Exhibit B** (the "**Deed**").

8. **CONDITIONS TO SELLER'S AND PURCHASER'S PERFORMANCE**

a. **Seller's Closing Conditions.** The obligation of the Seller to close the transaction contemplated by this Agreement is subject to the following closing conditions, any of which Seller may waive, in whole or in part:

- i. Purchaser shall have delivered to Seller all funds, documents and instruments required to be delivered by Purchaser hereunder.
- ii. Purchaser shall have performed in all material respects all covenants and obligations required by this Agreement to be performed by Purchaser on or prior to Closing.
- iii. The representations and warranties made by Purchaser in this Agreement (as set forth above in the subsection above with the caption Purchaser's Representations and Warranties) are true and correct as of the Closing date.

b. **Purchaser's Closing Conditions.** Purchaser's obligation to close the transaction contemplated by this Agreement is subject to the following closing conditions, any of which Purchaser may waive in whole or in part:

- i. Ratification of this Agreement by the Purchaser's board of directors.
- ii. Seller shall have delivered to Purchaser all documents and instruments required to be delivered by Seller hereunder.

- iii. Seller shall have performed in all material respects all covenants and obligations required to be performed by Seller on or prior to Closing.
- iv. Seller's representations and warranties (as set forth above in the section with the caption "Seller's Representations and Warranties") are true and correct as of the Closing date.

9. CLOSING; CLOSING DELIVERABLES; CLOSING COSTS/PRORATIONS; OBLIGATION FOR LEASEHOLD EXCISE TAX

a. Closing.

- i. The anticipated Closing Date is 30 days following authorization by Seattle City Council; **provided that**, Seller may extend the Closing Date for a reasonable period of time.
- ii. The parties agree not to use escrow for Closing and agree to cooperate to take steps necessary to complete Closing. Seller shall hold Purchaser's Closing deliverables in trust until Purchaser notifies Seller that Purchaser's Closing conditions are satisfied. Seller shall notify Purchaser when Purchaser's Closing conditions are satisfied ("Purchaser's Notice"). Promptly following Purchaser's Notice, the Seller shall first record the Deed and then immediately record the Negative Easement with no intervening liens or recorded interests. Seller shall provide Purchaser with copies of the recorded Deed and Negative Easement. Seller shall invoice Purchaser for fifty (50%) of the recording costs and Purchaser shall pay within thirty (30) days.
- iii. "**Closing**" will be deemed to have been completed when the Deed is recorded by the King County Recorder's Office.

b. Seller's Closing Deliverables. On or before the Closing Date, Seller shall deliver to the Purchaser the following:

- i. Executed Real Estate Excise Tax Affidavit in form required by law;
- ii. Seller's certification of Non-Foreign Status under Foreign Investment in Real Property Tax Act (26 U.S.C. 1445); and
- iii. Certification that Seller's representations and warranties are true and correct.

- c. **Purchaser's Closing Deliverables.** On or before the Closing Date, Purchaser shall deliver to the Seller the following:
- i. Certification that Purchaser's representations and warranties are true and correct as of Closing.
 - ii. The following documents as executed by the Purchaser:
 - a. Negative Easement;
 - b. Counter-signed Real Estate Excise Tax Affidavit in form required by law; and
 - c. Deed acceptance.
- d. **Closing Costs/Prorations.**
- i. Purchaser and Seller shall equally share the closing costs, recording fees, real estate excise tax (if any), and other costs associated with the transfer and conveyance of the Property, excluding the cost of a purchaser's policy of title insurance (whether it provides standard coverage or extended coverage) and any endorsements thereto. Purchaser shall be responsible for the cost of title insurance.
 - ii. Real and personal property taxes, assessments, and charges payable in the year of Closing will be pro-rated as of Closing Date. Purchaser acknowledges that pursuant to RCW 84.36.010 the Real Property is not currently subject to property tax because Seller is a public entity, and that the Real Property will become subject to taxation when Purchaser acquires it. Seller calls Purchaser's attention to the fact that the Real Property is subject to miscellaneous charges (e.g., a charge for surface water), despite the fact that Property is exempt from taxation pursuant to RCW 84.36.010(1). Such miscellaneous charges will be pro-rated at Closing.
- e. **Leasehold Excise Tax.** In the event the State of Washington makes any demand upon the Seller for payment of leasehold excise taxes resulting from the Purchaser's occupation of the Property (or possession of the Property by the Purchaser's predecessors-in-interest under the Lease) or withholds funds due to the Seller to enforce collection of leasehold excise taxes, the Purchaser shall, at its sole expense, defend and indemnify the Seller from all such demands, and if necessary repay Seller for all sums expended by the Seller, or withheld by the State from the Seller, in connection with such taxation; provided that this shall not prevent Purchaser from contesting such action, at Purchaser's sole cost. The obligations of this Section shall survive Closing.

10. **RELEASE.** Seller's willingness to enter into this Agreement is conditioned, in part, on Purchaser's agreement to take the Property AS-IS and Purchaser's covenant to release and indemnify Seller from environmental liabilities arising from the Property as provided under the terms and conditions of the environmental covenant in the Deed.

11. **LEASE TERMINATION.** Seller and Purchaser agree that Purchaser's month-to-month tenancy will be deemed terminated as of the Closing Date, and Seller hereby forever releases, disclaims and discharges any and all claims, actions, suits, remedies, obligations or liabilities that Purchaser may have or claim against Seller under the Lease or any subsequent month to month or other tenancies or agreements regarding the Property, to be effective as of the Closing Date. This release shall not apply to any third party claims made against the City that arise from Purchaser's use and occupancy of the Property and Purchaser shall defend and indemnify the City from any third-party claims and liabilities arising from Purchaser's use and occupancy of the Property, including any use and occupancy by Purchaser's employees, subtenants, assignees, contractors, licensees and invitees.

12. **BROKERS**

The Seller represents and warrants that, in the context of the transaction contemplated by this Agreement, it is not represented by a real estate broker. Similarly, Purchaser represents and warrants that in the context of the transaction contemplated by this Agreement, it is not represented by a real estate broker. If any person or entity makes a claim for a brokerage commission or finder's fee of any kind, then the party through whom or on whose behalf such services are claimed shall defend and indemnify the other party from any claims, costs or fees for unpaid broker's fees or commissions.

13. **MISCELLANEOUS**

- a. **Notices.** Any notice required or permitted to be delivered under this Agreement must be in writing and will be deemed given on the earlier of actual receipt or (i) when delivered, if delivered by hand during regular business hours, (ii) three (3) days after being sent by United States Postal Service, registered or certified mail, postage prepaid, return receipt requested and first class mail, postage prepaid, or (iii) the next business day if sent by a reputable national overnight express mail service that provides tracing and proof of receipt or refusal of items mailed. Notices to Seller and/or Purchaser shall be delivered as follows:

If to Seller: THE CITY OF SEATTLE
Department of Finance and Administrative Services
Attn: Karen Gruen, Director Real Estate Services
700 Fifth Avenue, Suite 5200
P.O. Box 94689
Seattle, WA 98124-4689
Telephone: 206-733-9238

Note: If delivering notice by hand pursuant to subsection (i) above, notice must be delivered to the City's street address; if sending notice by U.S. Mail pursuant to subsection (ii) above, notice must be sent to the City's P.O. Box; and if sending notice by overnight express mail service pursuant to subsection (iii) above, notice must be delivered to the City's street address.

If to Purchaser: BYRD BARR PLACE
Attention: Andrea Caupain Sanderson, Chief
Executive Officer
722 18th Avenue
Seattle, WA 98122
Telephone: 206-812-4940

- b. **Effective Date.** The "**Effective Date**" of this Agreement is the date the last party to execute this Agreement executes it, as represented by the date appearing below each party's signature. Each party authorizes the endorsement of such date for administrative reference in the space provided in the Agreement's heading.
- c. **Entire Agreement.** This Agreement, including exhibits, constitutes the entire agreement of the Seller and Purchaser with respect to the Property and supersedes all written or oral agreements or undertakings. This Agreement may be modified only pursuant to a writing signed by both parties.
- d. **Negotiated Agreement.** This Agreement has been negotiated by the parties and each party has had the opportunity to review it with legal counsel and to participate in the drafting. It shall be construed according to the fair intent of the language as a whole, and not for or against either party as the drafting party.
- e. **No Assignment.** Purchaser may not assign its interest in this Agreement to any other party, without the Seller's prior written consent, which the Seller may withhold in its sole and absolute discretion.
- f. **No Third-Party Beneficiaries.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies on any person other than the parties to this Agreement, nor is anything in this Agreement intended to relieve or

discharge the obligation or liability of any third-party, nor shall any provision give any third-party any right of subrogation or action against any party to this Agreement.

- g. **Attorney Fees.** In the case of any legal action or dispute arising under this Agreement, each party will bear its own attorney fees and costs.
- h. **Further Acts.** Seller and Purchaser will each execute and deliver such additional documents and instruments and take such further actions as may be reasonably necessary to carry out the Agreement’s terms and conditions.
- i. **Time** is of the essence.
- j. **Subject to the Approval of the Seattle City Council.** Final decisions regarding the disposal of the City’s real property require authorization by the Seattle City Council.
- k. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Washington. Jurisdiction and venue shall be in the Superior Court for the State of Washington – King County.

l. **Exhibits**

- Exhibit A Negative Easement
- Exhibit B Form of Deed

SELLER:

THE CITY OF SEATTLE
Department of Finance and Administrative
Services

By: _____

Printed Name:

Title: _____

Date: _____

PURCHASER:

BYRD BARR PLACE, a Washington
nonprofit corporation

By: _____

Printed Name: Andrea Caupain Sanderson

Title: Chief Executive Officer

Date: _____

Exhibit A
Form of Negative Easement

AFTER RECORDING RETURN TO:

City of Seattle
Department of Finance and Administrative Services
Seattle Municipal Tower
700 Fifth Avenue, Suite 5200
P.O. Box 94689
Seattle, WA 98124-4689

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): Negative Easement for Preservation of Development Rights
Reference Number(s) of Documents assigned or released: None Additional reference numbers on page(s) _____ of document.
Grantor(s) (Last name, first name, initials) BYRD BARR PLACE, a Washington non-profit corporation <input type="checkbox"/> Additional names are on page(s) _____ of document.
Grantee(s) (Last name first, then first name and initials) THE CITY OF SEATTLE, a Washington municipal corporation <input type="checkbox"/> Additional names are on page(s) _____ of document.
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) Lots 4-5, Block 28, EDES & KNIGHTS ADD SUPPL Plat, SW-33-25-4 <input checked="" type="checkbox"/> Additional legal description is on Exhibit A of this document.
Assessor's Property Tax Parcel/Account Number <input type="checkbox"/> Assessor Tax # not yet assigned 22545-02235
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

NEGATIVE EASEMENT FOR PRESERVATION OF DEVELOPMENT RIGHTS

This NEGATIVE EASEMENT FOR PRESERVATION OF DEVELOPMENT RIGHTS (“**Easement**”) is granted by BYRD BARR PLACE, a Washington non-profit corporation (the “**Grantor**”) in favor of THE CITY OF SEATTLE, a Washington municipal corporation (“**Grantee**”).

1. RECITALS

- 1.1. Grantor is the sole owner in fee simple determinable of that certain real property (hereinafter, “**Property**”) located in King County, Washington, more particularly described in “**Exhibit A**” (Legal Description of Property Subject to Easement) and shown on “**Exhibit B**” (Site Map), both of which are attached and incorporated herein. The Property consists of 15,360 square feet and is improved with a 17,210-square foot building constructed in or about 1908 (the “**Existing Building**”).
- 1.2. The City of Seattle is facing an acute shortage of affordable housing. The scarcity of suitable land is an important factor in this shortage.
- 1.3. The Property is zoned LR-1(M), a zoning designation under which multi-story residential buildings are permitted. The Property’s current use as a social services community institution is recognized as a legal, permitted non-conforming use.
- 1.4. Additionally, the Property’s suitability for development of housing is further enhanced by the Property’s proximity to transportation networks, services, employment centers, as well as its access to utilities necessary for its redevelopment.
- 1.5. Therefore, in light of the shortage of affordable housing and the suitability of the Property for housing, the development potential of the Property is of great importance to Grantor, Grantee and the citizens of the City of Seattle.
- 1.6. Grantor acquired title to the Property from Grantee, and Grantee’s willingness to convey the Property to Grantor was conditioned, in part, on Grantor’s execution and recording of this Easement immediately after conveyance of title, to be effective on the date of recording of this Easement in the public records of King County (the “**Effective Date**”).
- 1.7. The parties intend that the additional development potential of the Property be preserved and utilized in perpetuity for the purpose of affordable housing.

2. CONVEYANCE AND CONSIDERATION

- 2.1. NOW THEREFORE, in consideration of the foregoing recitals which are made a part of this Easement, and for other valuable consideration, the receipt of which is hereby acknowledged, Grantor grants and conveys to Grantee a negative easement as further described in Section 3 in perpetuity in, on, over and across the Property, subject to all of the terms in this Easement.

- 2.2. Grantor expressly intends that this Easement conveys certain rights and a non-possessory interest in the Property to the Grantee.
- 2.3. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor’s personal representatives, heirs, successors, assigns, agents, employees, tenants, and occupants of the Property.

3. PURPOSE AND GRANT OF EASEMENT

- 3.1 **Purpose and Definition of Development Value and Affordable Housing.** The purpose of this Easement is to forever preserve Development Value of the Property for the purposes of social services facilities, or Affordable Housing, or both. As used in this Easement, “**Development Value**” means any expansion of the Existing Building above or below grade, or any construction of a new facility, building, structure or other fixture or appurtenance upon the Property. “**Affordable Housing**” means a housing development that creates and maintains housing units on the Property with a mix of unit sizes which are affordable to and serve households with income levels up to 80% of area median income (“**AMI**”), and with a majority of units serving households with incomes up to 60% of AMI.
- 3.2. **Grant of Easement.** Grantor hereby covenants for the benefit of Grantee to preserve and use the Development Value of the Property for the purposes of social services facilities, for Affordable Housing, or both. Grantor hereby grants to Grantee a negative easement in perpetuity providing Grantee the right to take any actions permitted by law or equity to ensure that the Development Value of the Property is used by Grantor solely for the creation and maintenance of social services facilities, for the creation and maintenance of Affordable Housing, or both (the “**Easement**”). The parties further agree that the rights in the Development Value may not be used or transferred from the Property, as it now or hereafter may be bounded or described, to any other property without the prior written approval of the Grantee. Any purported transfer of the Development Value without Grantee’s prior written approval shall be deemed null and void.
- 3.3. **Interpretation of the Easement; Grantee’s Rights.** The parties intend that this Easement be interpreted (a) in a manner consistent with its stated purpose, and (b) so as to confine the Grantor’s use of the Property to such activities that are consistent with the purpose and terms of this Easement. At the same time, the parties intend, and this Easement is structured, to give Grantor discretion to undertake activities that are consistent with the Easement’s purpose and terms. Accordingly, Grantor shall provide Grantee at least sixty (60) days’ notice and obtain Grantee’s written approval before Grantor submits an application to any regulatory body for any permit that utilizes the Development Value. In such circumstance, at the option of Grantee, Grantor shall enter into a regulatory agreement with Grantee, on a form to be provided by Grantee, to ensure that housing units constructed on the Property serve and are affordable to households with income levels up to 80% of AMI and a majority up to 60% of AMI.

- 3.4. **No Public Rights Conveyed Through Easement.** The parties acknowledge that, except as specifically provided herein, Grantor does not grant, expand or extend any rights to the general public through this Easement, including without limitation, any rights of public access to, on or across, or public use of, the Property.

4. ADDITIONAL RIGHTS CONVEYED TO GRANTEE

- 4.1 The following additional rights are conveyed to Grantee by this Easement:

4.1.1 Access by Grantee. As provided for and limited herein, Grantor hereby grants to Grantee reasonable and non-exclusive access once per year (to be coordinated with Grantor in advance) across the Property solely for the purposes of monitoring and enforcing Grantee's rights under this Easement. Specifically, Grantee shall have the right:

(a) To enter upon, inspect, observe and study the Property, with such persons as Grantee may require, once per year at mutually agreeable dates and times and upon reasonable prior notice to the Grantor, for the purpose of monitoring the uses and activities on the Property to determine whether they are consistent with this Easement; and

(b) To enter upon the Property with no less than five days' written notice and during business hours if Grantee has a good faith basis for believing that a violation of this Easement is occurring.

4.1.2 Grantee shall exercise its access rights in compliance with applicable law and the terms of this Section 4.1 in a manner that will not materially disturb or interfere with Grantor's reserved rights, any other person's lawful use of the Property, or Grantor's ongoing operations or quiet enjoyment of the Property.

4.1.3 Grantor shall not unreasonably withhold or delay its consent to dates and times of access proposed by Grantee under Subsection 4.1.1.

- 4.2 **Enforcement.** Grantee shall have the right to enforce the terms of this Easement, in accordance with Sections 6 and 7.

5. PERMITTED USE

The Existing Building shall be maintained in good and sound repair. Grantor will not commit or permit waste (i.e., abuse, unreasonable use, and/or deterioration other than normal wear and tear) of the Existing Building. Accordingly, Grantor may undertake any activities on the Property which are reasonable and necessary to maintain the Existing Building so long as the activities do not frustrate the purpose of preserving the Development Value for social services facilities and Affordable Housing.

6. NOTICE AND CONSENT

- 6.1. **Addresses for Notices.** Any notice, demand, request, consent, concurrence, approval, or communication that any party desires or is required to give to the other under this Easement shall be given in writing and to the party's address below or such other address as any party shall designate in writing from time to time. Notice shall be served personally, or sent by first class registered or certified mail, postage pre-paid, or overnight courier with proof of delivery and shall be deemed given on the earlier of (a) acknowledgement of actual receipt, or (b) the date of delivery affidavit or three business days after deposit in U.S. Mail.

To Grantor: Byrd Barr Place
Attention: Executive Director
722 18th Avenue
Seattle, WA 98122
Telephone: 206-812-4940

To Grantee: City of Seattle
Department of Finance and Administrative Services
Attention: Real Estate Services Director
700 Fifth Avenue
Suite 5200
P.O. Box 94689
Seattle, WA 98124-4689

- 6.2. Where notice from Grantee to Grantor of entry upon the Property is required under this Easement, Grantee may notify any appropriate agent of Grantor by telephone, mail, or in person prior to such entry.

7. REMEDIES

- 7.1. **Notice of Non-Compliance.** If Grantee reasonably determines that the Grantor is in violation of the terms of this Easement or that a violation is likely to occur, Grantee shall give written notice to Grantor specifying the violation and the corrective action sufficient to cure the violation. Where the violation involves injury or damage to the Property resulting from any use or activity inconsistent with the Easement's purpose or terms, Grantor shall restore the portion of the Property so injured to its prior or potential condition in accordance with a plan to which Grantee has consented.
- 7.2. **Grantor's Failure to Respond.** Grantee may bring an action as provided in Section 7.3 if Grantor:
- 7.2.1. Fails to cure a violation of this Easement within thirty (30) days after receipt of written notice thereof from Grantee; or

- 7.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to diligently pursue the cure to completion.
- 7.3. **Grantee's Action.** Grantee may bring an action at law or in equity, or both, to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, or injury to any of the Development Values, including damages for the loss of the Development Values; and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.
- 7.4. **Immediate Action Required.** Despite any other provision of this Easement to the contrary, if Grantee, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Development Values, Grantee may pursue its remedies under this Section 7 with prior notice to Grantor but without waiting for the period provided for cure to expire.
- 7.5. **Nature of Remedy.** Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement and Covenant. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement may be inadequate, and that Grantee shall be entitled to the injunctive relief described in this Section 7 both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including Grantee's rights under the deed conveying title to Grantor.
- 7.6. **Costs of Enforcement.** If Grantor or Grantee finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions of this Easement, each party shall bear its own attorneys' and consultants' fees.
- 7.7. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee in accordance with the terms of this Easement. Any forbearance by Grantee to exercise its rights under this Easement if Grantor breaches any of the Easement's terms shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. Grantee's delay or omission in the exercise of any right or remedy upon any breach by Grantor shall not impair such right or remedy or be construed as a waiver.

- 7.8. **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Easement and in view of the fact that Grantee will not be continually present on the Property, that Grantee has limited resources to monitor compliance with the Easement, and that activities inconsistent with the purpose and terms of this Easement could occur without Grantee's immediate knowledge, Grantor hereby waives any claim or defense it may have against Grantee or its successors in interest under or pertaining to this Easement based upon abandonment, adverse possession, prescription, laches, estoppel or changed circumstances relating to the Property or this Easement.
- 7.9. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from actions by a trespasser upon the Property or causes beyond Grantor's control, including, without limitation, civil unrest, epidemic, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. If the Easement terms are violated by acts of trespassers, and Grantor has not undertaken suit itself, Grantor agrees, at Grantee's option, to assign its right of action to Grantee or to appoint Grantee its attorney-in-fact, for purposes of pursuing enforcement action against the responsible parties. It shall be Grantor's burden to demonstrate that a violation was caused by a trespasser and that Grantor could not have anticipated or prevented such violation.

8. LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

- 8.1. **Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of liability insurance coverage with a liability limit of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Such insurance shall include Grantee's interest, name Grantee as an additional insured, and (if available) provide for at least thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. The parties release and relieve the other and waive their entire right to recovery for loss or damage to the extent that the loss or damage is covered by the injured party's insurance. This waiver applies whether the loss is due to the negligent acts or omissions of Grantor or Grantee. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement. Grantor shall keep the Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; **provided** that the Property shall be deemed to be free of such liens if I) Grantor or Grantee, as the case may be, is diligently challenging the application of such liens to the

Property; or ii) such liens are subordinated to this Easement and do not require any action or inaction inconsistent with the purpose and terms of this Easement.

- 8.2. **Compliance with Applicable Laws.** Grantor shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Property that have been enacted or otherwise promulgated by any federal, state, county, municipal, or other governmental or quasi-governmental agency, board, bureau, commission, court, department, panel, or other official body (whether legislative, administrative, or judicial), or by any competent official of any of the foregoing, including, but not limited to, those relating to pollution or the protection of human health or the environment.
- 8.3. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Property by competent authority after the Effective Date, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.
- 8.4. **Liability.** Grantor shall defend, indemnify and hold harmless the Grantee, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any covenant or agreements contained in this Easement, or violations of any Federal, State, or local laws, except to the extent arising from Grantee's negligent acts or omissions or Grantee's breach of this Easement, or violations of any Federal, State, or local laws.

9. CONDEMNATION and SUBSEQUENT TRANSFERS

- 9.1. **Condemnation.** If the Easement is taken, in whole or in part, by the exercise of the power of eminent domain by government or quasi-government agencies other than Grantee, Grantee shall be entitled to compensation in accordance with applicable law. If all or part of the Property is taken by the exercise of the power of eminent domain by public, corporate, or other authority (other than Grantee) so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee shall cooperate in appropriate action(s) at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, it being expressly agreed that the Easement constitutes a compensable property right. The reasonable expenses of each party incurred in connection with such action(s) shall first be deducted from the total proceeds, and the remaining proceeds shall be divided consistent with the provisions of this Easement, based on the respective values of the interests of Grantor and Grantee, giving full credit to Grantor for any improvements to the Property made by Grantor.

- 9.2. **Subsequent Transfers by Grantor.** Grantor shall: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Property, including without limitation any leasehold interest; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Property. Grantor shall give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. The failure of the Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit Grantor's right to enforce it in any way.
- 9.3. **Subsequent Transfers by Grantee.** This Easement is intended to bind any and all Grantor's heirs, successors and assigns to Grantee's rights in the Property, and is intended to be freely transferable by Grantee. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of any transfer or assignment. However, the failure of Grantee to give such notice shall not affect the validity of this Easement or limit Grantee's heirs, successors and assigns to enforce Grantee's rights against Grantor and its subsequent purchasers, heirs, or successors.

10. AMENDMENT

Grantor and Grantee recognize that circumstances could arise which justify amendment of certain of the terms, covenants or restrictions contained in this Easement and Covenant. Amendments will become effective when executed by an authorized representative of each party and recorded with the King County Recorder.

11. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of King County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

12. GENERAL PROVISIONS

- 12.1. **Governing Law and Venue.** The laws of the State of Washington and applicable federal law shall govern the interpretation and performance of this Easement. By executing this Easement, Grantor submits to the jurisdiction of the courts of the State of Washington in this matter. In the event of a lawsuit involving this Easement, venue shall be proper in King County, Washington.
- 12.2. **Liberal Construction.** Despite any general rule of construction to the contrary, this Easement shall be liberally construed in favor of the grant to further the Purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation

consistent with the purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

12.3. **Severability.**

12.3.1. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

12.3.2. If any material provision of this Easement or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, so that the intent of this Easement is frustrated, the parties agree to immediately negotiate a replacement provision to fulfill the intent of the superseded provisions consistent with applicable law.

12.4. **Entire Agreement.** This instrument and the deed whereby Grantee originally conveyed title to the Property to Grantor sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter herein, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 10.

12.5. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns, and to any party taking ownership of the Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running with the Property in perpetuity.

12.6. **No Joint Venture.** Grantor and Grantee expressly disclaim the existence of any fiduciary relationship, partnership, joint venture or agency relationship between or amongst them with respect to matters arising out of or related to this Easement and Covenant.

12.7. **Authority.** The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

13. SCHEDULE OF EXHIBITS

13.1. Exhibit A. Legal Description of Property Subject to Easement and Covenant

13.2. Exhibit B. Site Map

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW



IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ____ day of _____, 20__.

GRANTOR:

Byrd Barr Place, a Washington nonprofit corporation

By: _____

Printed Name: _____

Title: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ known to me (or proved to me on the basis of satisfactory evidence) to be the _____ of **Byrd Barr Place**, the non-profit corporation named in and which executed the foregoing document, and stated on oath that he was authorized to execute the foregoing document on behalf of said non-profit corporation and signed the same as the free and voluntary act and deed of said non-profit corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____

My commission expires: ____

REMAINDER OF PAGE IS INTENTIONALLY BLANK; ADDITIONAL SIGNATURE PAGE FOLLOWS

EXHIBIT A

Legal Description of Property Subject to Easement and Covenant

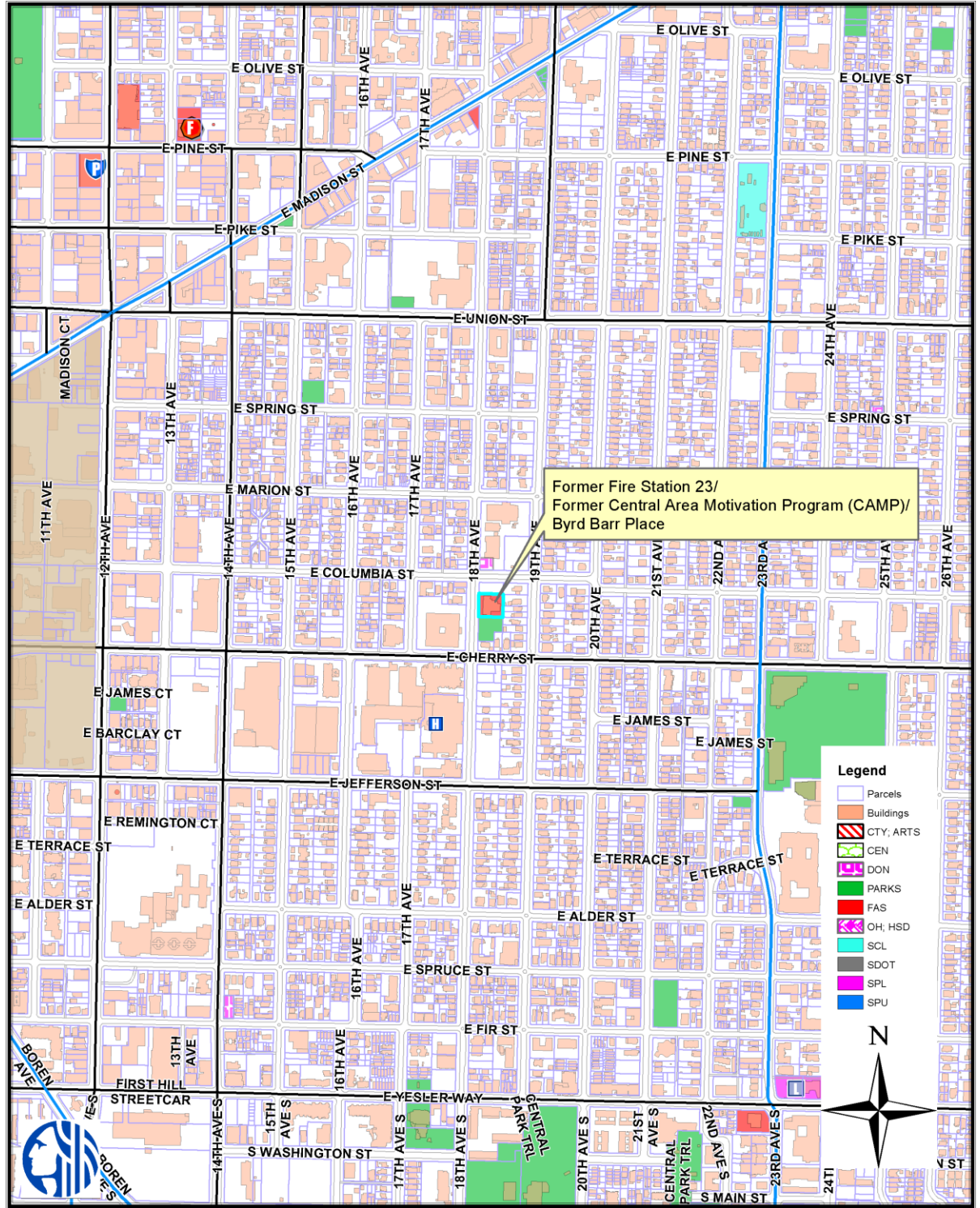
LOTS 4 AND 5 IN BLOCK 28 OF SUPPLEMENTAL PLAT OF EDES AND KNIGHT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS AT PAGE 194, RECORDS OF KING COUNTY, WASHINGTON.

Situate in the County of King, State of Washington.



EXHIBIT B

Site Map



Former Fire Station 23 - CAMP - Byrd Barr Place

Produced by the City of Seattle Dept of Finance and Administrative Services, Real Estate Services Division, A. Bond. All Rights Reserved.
No guarantee of any part implied, including accuracy, completeness or fitness of use.

Exhibit B
Form of Deed

Return Address:

Byrd Barr Place
722 18th Avenue
Seattle, WA 98122

Please print or type information WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

<p>Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)</p> <p>1. QUIT CLAIM DEED CONVEYING DETERMINABLE ESTATE WITH COVENANTS</p>
<p>Reference Number(s) of Documents assigned or released:</p> <p>NONE</p>
<p>Grantor(s) (Last name, first name, initials)</p> <p>1. CITY OF SEATTLE, a Washington municipal corporation</p>
<p>Grantee(s) (Last name first, then first name and initials)</p> <p>1. BYRD BARR PLACE, a Washington non-profit corporation</p>
<p>Legal description (abbreviated: i.e. lot, block, plat or section, township, range)</p> <p>Lots 4-5, Block 28, EDES & KNIGHTS ADD SUPPL Plat, SW-33-25-4</p>
<p>Assessor's Property Tax Parcel/Account Number <input type="checkbox"/> Assessor Tax # not yet assigned</p> <p>22545-02235</p>
<p>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p>

QUIT CLAIM DEED CONVEYING DETERMINABLE ESTATE WITH COVENANTS
(the “**Deed**”)

This Deed conveys real property located in King County, Washington legally described as follows:

LOTS FOUR (4) AND FIVE (5) IN BLOCK TWENTY-EIGHT (28),
SUPPLEMENTARY PLAT OF EDES & KNIGHT'S ADDITION TO THE CITY
OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN
VOLUME 2 OF PLATS AT PAGE 194, RECORDS OF KING COUNTY,
WASHINGTON.

Situate in the City of Seattle, County of King, State of Washington (the
“Property”).

For good and valuable consideration, the receipt of which is hereby acknowledged, THE CITY OF SEATTLE (“Grantor”), a Washington municipal corporation, hereby conveys and quitclaims to the BYRD BARR PLACE (“Grantee”), a Washington non-profit corporation, all Grantor’s right, title and interest in the Property, other than the rights expressly reserved in this Deed, for: (i) so long as the Property is used to provide social services in compliance with the Covenant for Use of the Property in Section B.3 below; and (ii) so long as any additional development or expansion of improvements on the Property is limited to improvements dedicated to social services facilities, or affordable housing, or both.

At such time when the Property is no longer used as provided in the prior paragraph , the Property shall revert to Grantor and its heirs and successors, and by its acceptance of this Deed the Grantee hereby binds itself and its heirs, successors and assigns, grantees and lessees forever to use the Property as provided in this Deed, and further covenants as follows:

A. Environmental Covenant

1. The Property is conveyed AS-IS, WHERE-IS, WITH-ALL-FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO ITS CONDITION, ENVIRONMENTAL OR OTHERWISE, OR ITS SUITABILITY OR SUFFICIENCY FOR THE GRANTEE'S INTENDED USES AND PURPOSES. Grantee acknowledges that adverse physical, economic or other conditions (including without limitation, adverse environmental soils and ground-water conditions), either latent or patent, may exist on the Property. Grantee assumes Grantor's responsibility for all environmental conditions of the Property, known or unknown, including but not limited to responsibility, if any, for investigation, removal or remediation actions relating to the presence, release or threatened release of any Hazardous Substance (defined below) or other environmental contamination relating to the Property. Grantee also releases and shall

indemnify, defend, and hold Grantor and its past, present and future officials, employees, and agents, harmless from and against any and all claims, demands, penalties and costs assessed by any regulatory agency, fees, damages, losses, expenses (including but not limited to attorneys' fees, contractors' and consultants' fees and costs), and liabilities arising out of, or in any way connected with, the condition of the Property, including but not limited to any alleged or actual past, present or future presence, release or threatened release of any Hazardous Substance in, on, under or emanating from the Property, or any portion thereof or improvement thereon, from any cause whatsoever; it being intended that Grantee shall so indemnify Grantor and such personnel without regard to any fault or responsibility of Grantor or Grantee. The obligation to complete all environmental investigation, removal or remediation of the Property and the acknowledgement, release and indemnification touch and concern the Property, restrict the use of the Property, constitute an assessment against the Property and are intended to run with the land and bind Grantee and Grantee's heirs, successors and assigns, and inure to the benefit of Grantor and its successors and assigns.

2. For purposes of this Environmental Covenant, the term "Hazardous Substance" shall mean petroleum products and compounds containing them; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; asbestos or asbestos-containing materials in any friable form; underground or above-ground storage tanks; or any substance or material that is now or hereafter becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to environmental protection, contamination or cleanup.
3. Grantee's release shall include both claims by Grantee against Grantor and cross-claims against Grantor by Grantee based upon claims made against Grantee by any and all third parties. The obligation to indemnify and defend shall include, but not be limited to, any environmental or similar liability of Grantor to any and all federal, state or local regulatory agencies or other persons or entities for remedial action costs and natural resources damages claims. The obligation to complete all environmental investigation, removal or remediation of the Property and the acknowledgement, release and indemnification touch and concern the Property, restrict the use of the Property, constitute an assessment against the Property and are intended to run with the land and bind Grantee and Grantee's heirs, successors and assigns, and inure to the benefit of Grantor and its successors and assigns. This release means that Grantee accepts the Property "as-is, where-is and with-all-faults," and that Grantee assumes all responsibility of Grantor to investigate, remove and remediate any environmental conditions on the Property and has no recourse against Grantor or any of its officers, employees or agents for any claim or liability with respect to the Property.
4. Grantor shall have the right to defend itself and seek from Grantee recovery of any damages, liabilities, settlement awards and defense costs and expenses incurred by Grantor if Grantee does not accept unconditionally Grantor's tender to Grantee of the duty to investigate, remove and/or remediate environmental conditions on the Property and/or defend and indemnify Grantor against any such claim, suit, demand, penalty, fee, damages, losses, cost or expense arising therefrom. This Covenant shall apply regardless of whether or not Grantee is culpable, negligent or in violation of any law, ordinance, rule or regulation. This Covenant is not intended, nor shall it, release, discharge or affect any rights or causes of

action that Grantor or Grantee may have against any other person or entity, except as otherwise expressly stated herein, and each of the parties reserves all such rights including, but not limited to, claims for contribution or cost recovery relating to any Hazardous Substance in, on, under or emanating from the Property.

B. Covenants Regarding Use and Condition of the Property:

1. Improvements to the Property shall be maintained in good and sound state of repair, subject to reasonable wear and tear. Grantee will not commit or permit waste (i.e., abuse, unreasonable or improper use, and/or deterioration other than normal wear and tear) of the building or site improvements.
2. With the prior written consent of Grantee (which shall not be unreasonably withheld), Grantor shall have the right to enter the property during weekday business hours for the purpose of making inspections of the property to determine if there is compliance by Grantee with the terms of this Deed. Grantee shall not request inspection more than annually unless Grantee has reasonable cause to believe there is a violation of one or more covenant in this Deed.
3. Grantee shall use the Property for social services provided to the public. For purposes of this Deed, ‘social services’ means services offered to support the wellbeing and safety of the public, which may include:
 - a. Operation of a food bank;
 - b. Offering of energy assistance programs;
 - c. Offering of short-term financial assistance for housing expenses;
 - d. Offering instruction in personal finance;
 - e. Affordable housing; and
 - f. Any combination of a - e.
4. The Grantee shall pay real estate taxes and assessments on the property hereby conveyed, or any part thereof, when due and shall place thereon no mortgage, lien or other encumbrance without the prior written consent of the City’s Director of Finance and Administrative Services, or the head of any successor agency, which shall not be unreasonably withheld, conditioned, or delayed.
5. The Grantee shall annually, no later than March 31, submit to the Director of Finance and Administrative Services, or the head of any successor agency, certification that it has used the Property consistent with the covenants and limitations of this Deed.
6. If the Property reverts to Grantor, then upon written request from Grantee, Grantor will execute in favor of Grantee a recordable document relating to such reversion or reconveyance that will include environmental covenants and indemnity release provisions which will be effective on a prospective basis after the date of such reversion or reconveyance to release Grantee from any subsequent environmental liabilities, excluding

any environmental conditions that may have been created or caused by Grantee while it owned the Property.

7. Grantee shall use the Property in compliance with all municipal, county, state and federal laws, ordinances and regulation and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers
8. Americans with Disabilities Act. Grantee shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its ongoing obligations under this Agreement.
9. Grantee shall not deny an otherwise qualified individual any services anticipated by or required under this Agreement on the grounds of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, political ideology, ancestry, or the presence of any sensory, mental or physical handicap. BBP shall not discriminate on any of the foregoing grounds in the awarding of any contract, in the provision of services, or in other activities made possible by this Agreement.

C. Notice and Remedies

The provisions in this Section C shall not in any way amend, limit, or otherwise require the Grantor to take any action with respect to the automatic reversion of the Property to Grantor and Grantor's heirs and assigns at such time as the Property is no longer used as provided in the granting clause above. This section applies to any breach of one of more of the Covenants in Section A and B, excluding only B.3 (the "Deed Covenant(s)").

1. **Notice of Non-Compliance.** If Grantor reasonably determines that the Grantee is in violation of any Deed Covenant or that a violation is likely to occur, Grantor shall give written notice to Grantee of such violation and demand specific corrective action in writing sufficient to cure the violation.
2. **Grantee's Failure to Respond.** Grantor may bring an action as provided in Section C.3 below if Grantee:
 - a. Fails to cure a violation of any Deed Covenant within thirty (30) days after receipt of written notice thereof from Grantor; or
 - b. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to diligently pursue the cure to completion.
3. **Grantor's Action.** Grantor may bring an action at law or in equity, or both, to enforce the terms of the Deed Covenants, to enjoin the violation, ex parte as necessary and as allowed

under the applicable civil rules, by temporary or permanent injunction, and to recover any damages to which it may be entitled for violation of the terms of the Deed Covenants. All such actions for injunctive relief may be taken without Grantor being required to post bond or provide other security.

4. **Nature of Remedy.** Grantor's remedies described in this Section C shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
5. **Grantor's Discretion.** Enforcement of the Deed Covenants shall be at the discretion of the Grantor in accordance with the terms of this Section C. Any forbearance by Grantor to exercise its rights under this Deed if Grantee breaches any of the Deed Covenants shall not be deemed or construed to be a waiver by Grantor of such term or of any of Grantor's rights under this Deed, including the reversion of the Property. Grantor's delay or omission in the exercise of any right or remedy upon any breach by Grantee shall not impair such right or remedy or be construed as a waiver.
6. **Waiver of Certain Defenses.** Grantee acknowledges that it has carefully reviewed this Deed and has consulted with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Deed and in view of the fact that Grantor will not be continually present on the Property, that Grantor has limited resources to monitor compliance with the Deed, and that activities inconsistent with the purpose and terms of this Deed could occur without Grantor's immediate knowledge, Grantee hereby waives any claim or defense it may have against Grantor or its successors in interest under or pertaining to this Deed based upon abandonment, adverse possession, prescription, laches, estoppel or changed circumstances relating to the Property or this Deed.
7. **Acts Beyond Grantee's Control.** Nothing contained in this Section C shall be construed to entitle Grantor to bring any action against Grantee to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from actions by a trespasser upon the Property or causes beyond Grantee's control, including, without limitation, civil unrest, epidemic, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. If the Deed Covenants are violated by acts of trespassers, and Grantee has not undertaken suit itself, Grantee agrees, at Grantor's option, to assign its right of action to Grantor or to appoint Grantor its attorney-in-fact, for purposes of pursuing enforcement action against the responsible parties. It shall be Grantee's burden to demonstrate that a violation was caused by a trespasser and that Grantee could not have anticipated or prevented such violation.

The Property is conveyed subject to all existing easements, covenants, restrictions, conditions, reservations, exceptions and agreements, recorded and unrecorded, and the Grantor makes no warranties of any kind as to the title of the Property.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed.

<p>GRANTOR: THE CITY OF SEATTLE, a Washington municipal corporation</p> <p>By: _____ Calvin W. Goings</p> <p>Title: Director, Finance and Administrative Services</p> <p>Date: _____</p>	<p>ACCEPTED BY (GRANTEE): BYRD BARR PLACE, a Washington non-profit corporation</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
---	--

This Quit Claim Deed is executed and delivered pursuant to City of Seattle Ordinance

_____.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Calvin W. Goings** known to me (or proved to me on the basis of satisfactory evidence) to be the **Director of Finance and Administrative Services of The City of Seattle**, the municipal corporation named in and which executed the foregoing document, and stated on oath that he was authorized to execute the foregoing document on behalf of said municipal corporation and signed the same as the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 20__, before me, personally appeared _____, to me known to be the _____ of **Byrd Barr Place**, the Washington non-profit corporation who executed the foregoing instrument, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute such document for and on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year written above in this certificate.

Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Finance and Administrative Services	Karen Gruen 733-9238	George Dugdale 733-9297

** 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 the transfer of City property located at 722 18th Avenue, Seattle, Washington; authorizing the conveyance of the property to Byrd Barr Place, a Washington non-profit corporation, consistent with the intent of Resolution 31856 and to provide for the continued delivery of social services; making findings of fact about the consideration for the transfer; authorizing acceptance of a negative easement restricting future development of the property; superseding Resolution 31837 for the purposes of this ordinance; and authorizing the Director of the Department of Finance and Administrative Services or designee to execute and deliver documents necessary to carry out the conveyance of such property on the terms and conditions of this ordinance.

Summary and background of the Legislation: For many years, the City has contemplated conveying title to certain senior centers/community centers, each to its non-profit operator, so long as the operator demonstrates the capacity to own and operate the property. The City is now prepared to move forward with the transfer of title on one such property to its non-profit operator, Byrd Barr Place (BBP), pursuant to City Council Resolution # 31856 for Mutual and Offsetting Benefit Properties.

In 1967, the City leased former Fire Station 23, located at 722 18th Avenue (“Former Fire Station 23”) to the Seattle-King County Economic Opportunity Board, Inc. for use as a multi-purpose neighborhood facility by its delegate agency, the Central Area Citizens’ Committee (“CACC”), a Washington non-profit corporation, d/b/a Central Area Motivation Program. In 1976, the City designated former Fire Station 23 as a historic landmark. Then, in 1988, the City entered into a long-term, mutual and offsetting benefit lease with CACC, pursuant to which CACC paid de minimis cash rent in exchange for its promise to use former Fire Station 23 for the delivery of social services which converted to a month to month lease in 1992. CACC, now known as Byrd Barr Place, continues in possession of former Fire Station 23, out of which it delivers social services.

Pursuant to the 2019 *Memorandum of Agreement Implementing Criteria for Initiating Transfer of Mutually Offsetting Facilities to Tenants*, by and amongst six City of Seattle departments and offices (FAS, OPCD, DON, OED, OH and HSD), an interdepartmental team within the City of Seattle has determined that the proposed new property owner, BBP – in all material respects – meets the transfer criteria established by the City for transferring property to tenants who have been operating properties under mutually and offsetting benefit lease agreements.

FAS and Byrd Barr Place have entered into an agreement regarding the consideration, terms and conditions for the City’s conveyance of former Fire Station 23 to Byrd Barr Place, subject to the City Council’s authorization.

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

Appropriation change (\$):	General Fund \$		Other \$	
	2020	2021	2020	2021
	0			-\$32,000
Estimated revenue change (\$):	Revenue to General Fund		Revenue to Other Funds	
	2020	2021	2020	2021
	\$0			-\$4,699
Positions affected:	No. of Positions		Total FTE Change	
	2020	2021	2020	2021
	0	0	0	0

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?

Conveying title to its nonprofit operator in exchange for a commitment to furnish needed social services or a combination of social services and affordable housing means that the City will forego the monetary value of these properties in its citywide real estate holdings. In 2020, the King County Assessor assigned a value of \$2.7 million to former Fire Station 23.

Is there financial cost or other impacts of *not* implementing the legislation?

The financial impact of not conveying title to the property is that the City would continue to receive modest revenue from rent, but also still be responsible for the cost of major maintenance expenses. For example, the City spent approximately \$39,000 in 2018 and \$26,000 in 2019 on corrective and preventative maintenance for former Fire Station 23. For 2020 and 2021, those costs are estimated to be roughly \$32,000.

3.a. Appropriations

This legislation adds, changes, or deletes appropriations.

Fund Name and number	Dept	Budget Control Level Name/#*	2020 Appropriation Change	2021 Estimated Appropriation Change
Facility Operations - 50300	FAS	Space Rent - PO-FA-SPACERENT	\$0	- \$32,000
TOTAL			\$0	- \$32,000

*See budget book to obtain the appropriate Budget Control Level for your department.

Is this change one-time or ongoing?

This change would be ongoing.

Appropriations Notes:

The reduced appropriation reflects a best estimate of annual maintenance costs in 2021 and subsequent years for the facility, since that will no longer be the responsibility of the City.

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Dept	Revenue Source	2020 Revenue	2021 Estimated Revenue
Facility Operations - 50300	FAS	Annual Rent	\$0	-\$4,699.44
TOTAL			\$ 0	-\$4,699.44

Is this change one-time or ongoing?

This change would be ongoing.

Revenue/Reimbursement Notes:

The reduced revenue reflects the loss of rent in 2021, presuming changes go into effect year end 2020.

3.c. Positions

This legislation adds, changes, or deletes positions.

4. OTHER IMPLICATIONS

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

Yes. Representatives from six other departments and offices have participated in an interdepartmental team tasked with overseeing the disposition of Mutual and Offsetting Benefit (MOB) properties.

b. Is a public hearing required for this legislation?

No.

c. Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?

No.

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

No. However, pursuant to Washington Administrative Code section 197-11-800(5)(b), the disposition of property requires the making of a threshold determination under the State Environmental Policy Act (SEPA). In the case of this property, the threshold determination resulted in a determination of non-significance. A notice of such determination was published in *The Daily Journal of Commerce*.

e. Does this legislation affect a piece of property?

Yes. See Summary Attachment A – Property Map for Former Fire Station 23.

f. 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 impact of the legislation is limited to vesting title to the property in its non-profit operator, with no disruption to the ongoing delivery of social services.

However, a key tenet of MOB property transfers is that by putting control of each property that much closer to the property's clients, the legislation will ultimately benefit the local community for each property.

Byrd Barr Place has historically served the local African American community, other communities of color, and low-income communities in the Central District. Transferring this property is a community priority and this transfer is aligned with City priorities such as

community wealth building and community ownership. Overall, the MOB property transfer process is rooted in the Race and Social Justice Initiative's goals.

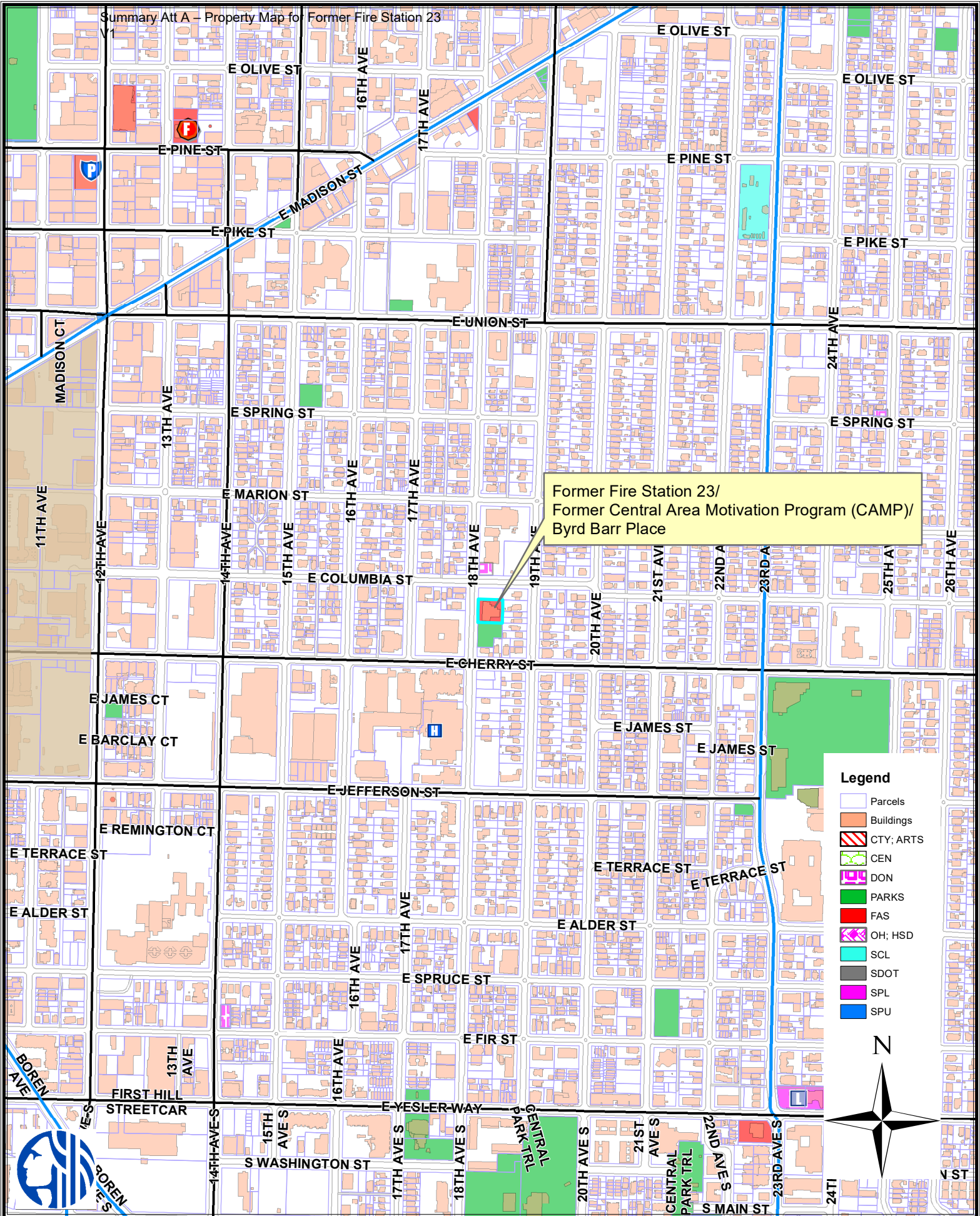
No language access plan was prepared as much of the outreach for the disposition of this property pre-dates the 2017 Executive Order implementing the requirements for a language access plan.

- 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).**

Not a new initiative. City Council Resolution # 31856 for Mutual and Offsetting Benefit Properties dates from November 2018.

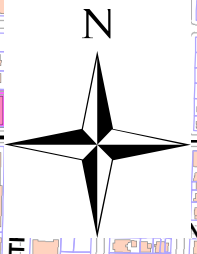
List attachments/exhibits below:

Summary Attachment A – Property Map for Former Fire Station 23



Former Fire Station 23/
Former Central Area Motivation Program (CAMP)/
Byrd Barr Place

- Legend**
- Parcels
 - Buildings
 - CTY; ARTS
 - CEN
 - DON
 - PARKS
 - FAS
 - OH; HSD
 - SCL
 - SDOT
 - SPL
 - SPU



Former Fire Station 23 - CAMP - Byrd Barr Place



September 14, 2020

MEMORANDUM

To: Finance and Housing Committee
From: Lish Whitson, Analyst
Subject: Council Bill 119886: Transfer of property to Byrd Barr Place

On Tuesday, September 15, the Finance and Housing Committee will discuss and may vote on Council Bill (CB) [119886](#) which would transfer City-owned property located at 722 18th Avenue to its long-term occupant, Byrd Barr Place. The property is a landmark former Fire Station, which has housed Byrd Barr Place and its predecessor organizations since 1967. CB 119886 would transfer the property to Byrd Barr Place with a negative easement to ensure that the property is used for social services, affordable housing, or both.

This is the first of three agreements the Executive is working on to transfer City-owned properties to non-profits with which the City has had mutually-offsetting benefits lease agreements (MOB).¹ The other two are with the Central Area Senior Center (CASC) and the Phinney Neighborhood Association (PNA), which operates the Greenwood Senior Center under an MOB agreement.

This memorandum provides background information on Byrd Barr Place and describes the transfer agreement that would be approved by CB 119886. If this Committee acts on this legislation at the meeting on September 15, final Council action could occur as early as September 21.

Byrd Barr Place

Byrd Barr Place was founded in 1964 as the Central Area Motivation Program (CAMP). CAMP arose out of the Civil Rights Movement and the Central District's African American community. In 1967, CAMP moved into the former Fire Station 23, located at 722 18th Avenue in the Central District. Today, Byrd Barr Place is a social service agency with a commitment to "helping people help themselves through direct services, community action and advocacy." It currently provides energy assistance, housing assistance, a food bank, and personal finance support.

Since 1988, there has been a MOB between Byrd Barr Place² and the City that has allowed Byrd Barr Place to operate at 722 18th Avenue with little or no rent in exchange for the provision of social service activities. Currently they operate under a month-to-month tenancy. 722 18th

¹ Mutual and Offsetting Benefit (MOB) leases allow tenants to pay the City rent, in whole or in part, through the public services they provide.

² Known at the time as the Central Area Citizen's Committee, Inc. (CACC). In 2012, CACC changed its name to Centerstone and in 2018 the organization was renamed Byrd Barr Place after Roberta Byrd Barr. Barr was a community leader, an educator and a journalist. She was the first woman and the first African American principal of a Seattle High School.

Avenue is a 15,360 square feet parcel, which is improved with a 17,210-square foot building constructed in or about 1908. In 1973, the building was [designated](#) as a City Landmark. The designation recognized the importance of the social service activities that were taking place within the building.

Council Bill 119886

CB 119886 would transfer ownership of 722 18th Avenue to Byrd Barr Place at no cost to Byrd Barr Place for ongoing use for social service activities. The King County Assessor has valued the property at \$2.7 million. Among the important terms in the agreement are a [negative easement](#) to preserve future use for social service facilities or affordable housing and a [quit claim deed](#) indemnifying the City against environmental claims.

The City would receive a negative easement that would “forever preserve Development Value³ of the Property for the purposes of social services facilities, or Affordable Housing, or both.” If Byrd Barr Place wants to expand the property or otherwise use development rights from the property, it needs to notify the City. Byrd Barr Place will need written approval from the City to use the development value of the property.

Byrd Barr Place currently pays approximately \$4,700 a year in in rent. The City has spent over \$30,000 a year in 2019 and 2020 to maintain the property.

Byrd Barr Place is working on a major renovation project, and in order to receive a state grant, they must control the property either through ownership or a long-term lease. CB 119886 would transfer ownership of the property to Byrd Barr Place ensuring continuing community ownership of the facility and continued use of the facility for social service activities. The transfer would help to maintain an anchor of the African American community in the Central District. It would also have the benefit of relieving the City’s maintenance obligations.

cc: Dan Eder, Interim Director
Aly Pennucci, Supervising Analyst

³ According to the easement “Development Value” means any expansion of the Existing Building above or below grade, or any construction of a new facility, building, structure or other fixture or appurtenance upon the Property.’ Affordable housing is defined as being available to and affordable by people earning below 80% of [Area Median Income](#) with a majority of units affordable at 60% of Area Median Income.



Legislation Text

File #: CB 119876, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to transportation network company driver labor standards; establishing minimum labor and compensation standards for transportation network company drivers; establishing provision of or reimbursement for personal protective equipment to transportation network company drivers during the civil emergency declared on March 3, 2020; establishing notice, posting, and data requirements for transportation network companies; prescribing remedies and enforcement procedures; amending Section 3.15.000 of the Seattle Municipal Code; amending the title of Chapter 14.31 and Sections 6.208.020 and 14.31.010 of the Seattle Municipal Code; and adding a new Chapter 14.33 to the Seattle Municipal Code.

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

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

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

WHEREAS, in 2019, the two largest TNCs accounted for over 26 million trips in the City of Seattle. At their peak in 2012, taxicabs in the City and King County provided about 5.2 million trips; and

WHEREAS, the two largest TNCs are also major hiring entities, accounting for most of the 33,058 TNC drivers issued permits by King County in 2019 as recorded by the King County Department of Licensing; and

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

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

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

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Findings

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

B. Studies around the nation, including a 2018 study commissioned by the New York City Taxi and Limousine Commission (New York TLC) entitled *An Earnings Standard for New York City’s App-based Drivers: Economic Analysis and Policy Assessment* and a 2018 nationwide study by the Economic Policy Institute entitled *Uber and the Labor Market: Uber Drivers’ Compensation, Wages, and the Scale of Uber and the Gig Economy* (Economic Policy Institute Study), have shown that many transportation network company (TNC) drivers earn below the equivalent of the hourly minimum wage rate established by Chapter 14.19 of the Seattle Municipal Code for Schedule 1 employers.

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

D. In November 2019, City Council passed and the Mayor signed Ordinance 125977, creating Seattle Municipal Code (SMC) Chapter 14.31 and establishing as City policy that the City create "a minimum compensation standard for TNC drivers that is comprised of at least the equivalent of the 'hourly minimum wage' established for Schedule 1 employers in Chapter 14.19 plus "reasonable expenses" and which considers "compensation for available platform time, dispatch platform time, [and] passenger platform time."

E. The two largest TNCs (Uber and Lyft) have both publicly stated that they support the City's policy as established in SMC Chapter 14.31. In an April 10, 2020 press release Uber stated "We also are committed to supporting Mayor Durkan's work on a new earnings standard equal to the City's minimum wage plus reasonable expenses..." and that they expected to "avoid the need for any further challenges to the ordinances, whether legally or through a local or state ballot measure." Similarly, on April 10, 2020, Lyft stated "[a] new safety net with a minimum earnings guarantee and fair worker protections would strengthen the opportunities for independent rideshare drivers to supplement their income through the platform" and that Lyft anticipated that "there should be no need for further legal or ballot challenges to the Fare Share ordinance."

F. In furtherance of that policy and to better understand local TNC driver earnings, expenses, and working time, the City commissioned an independent study to evaluate these issues and retained Dr. James Parrott of The New School and Dr. Michael Reich of the University of California at Berkeley to conduct the study. Parrott and Reich based their research on a survey of over 7,390 Seattle TNC drivers, data provided directly by the TNCs, and existing licensing and regulatory data from the City and King County.

G. Parrott and Reich found that 84 percent of TNC drivers currently earn below the equivalent of the

hourly minimum wage rate established by SMC Chapter 14.19 for Schedule 1 employers after accounting for reasonable expenses. Parrott and Reich determined that such reasonable expenses amount to \$11.80 on an hourly basis or \$0.725 per mile and that average gross TNC driver earnings were \$21.53. Accordingly, they concluded that TNC drivers average hourly earnings are \$9.73 after accounting for reasonable expenses.

H. The study found that 32 percent of TNC drivers drive full time (more than 32 hours a week) and these full-time drivers provide 55 percent of all trips. The JPMorgan Chase Institute study similarly found that the top ten percent of transportation gig workers earned 56.9 percent of earnings. Further, Parrott and Reich determined that 72 percent of full-time drivers and 58 percent of intermediate drivers (20 to 32 hours per week) rely on TNC driving as their sole source of income.

I. Despite this commitment to providing TNC services, many drivers struggle to pay for basic necessities. Thirty percent of drivers receive federal supplemental nutritional assistance, while 27 percent have no health insurance and 37 percent have incomes low enough to qualify for Medicaid coverage.

J. In the pursuit of economic opportunity, many TNC drivers are immigrants and people of color-72 percent and 73 percent, respectively-who have taken on debt or invested their savings to purchase and/or lease vehicles to provide TNC services. The Parrott and Reich Study found that 83 percent of full-time drivers and 75 percent of intermediate drivers purchased their vehicles primarily to provide TNC services. Further, 70 percent of drivers who own vehicles are still paying loan payments for those vehicles.

K. To more fully understand the driver experience, the City engaged in an extensive qualitative research and outreach effort by conducting five driver roundtables, two randomly selected focus groups, an online survey, one-on-one interviews, a telephone town hall, as well as many additional meetings and phone calls, that collectively reached over 9,000 drivers. The driver roundtables included two roundtables organized and convened by Uber and Lyft, respectively, which included drivers that they selected to present a perspective that Uber and Lyft believed was important for the City to consider. This research found that many TNC drivers struggle to pay for basic necessities like housing and health insurance. The research further found that TNC

drivers incur significant expenses by reason of performing TNC services.

L. TNC drivers in all of the roundtable groups-including the TNC drivers in the roundtables organized and convened by Uber and Lyft-identified several significant expenses that affect their overall earnings from providing TNC services. Specifically, drivers identified gas, maintenance, insurance, interior and exterior cleaning, cell phone and service plans, the cost of vehicle acquisition, financing, and depreciation, among other costs. TNC drivers in the Uber-convened driver roundtable stated that maintenance costs alone account for 25 percent of TNC driver earnings, that gas is “a very large cost,” that they perform car washing “every other day,” and that cars depreciate quickly. Similarly, TNC drivers in the Lyft-convened roundtable stated “My insurance tripled the day I became a rideshare driver,” that expenses can amount to \$32 a day, and that one TNC driver purchased a vehicle specifically to provide TNC services and such services accounted for 93 percent of the miles driven. Similarly, a driver in the online survey commented that “After deducting my cost for car maintenance and gas...I make less than minimum wage driving for Uber...”, while a focus group participant reported “[g]ross shows a lot of money [but] the expenses are almost half of it.”

M. The qualitative research also paralleled Parrott and Reich’s findings in other ways. Of the respondents to the City’s telephone town-hall and online survey, 40 to 50 percent work more than 32 hours per week providing TNC services. Further, two-thirds of TNC drivers that responded to the online survey said that driving for a TNC is their sole job.

N. Uber and Lyft likewise commissioned a study to determine TNC hourly earnings, which the City has thoroughly considered. While the Uber/Lyft commissioned study reaches different conclusions in some respects, it is similar to the Parrott and Reich report in that it also found that significant numbers of TNC drivers earn less than the equivalent of the hourly minimum wage rate established by SMC Chapter 14.19 for Schedule 1 employers plus reasonable expenses.

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

P. TNC drivers receive unpredictable income due to the high variability and opacity of the rates of compensation paid by TNCs, the amount of available platform time and dispatch platform time spent by TNC drivers between passenger trips, and the difficulty TNC drivers experience in determining their reasonable expenses. TNC drivers do not have guaranteed access to information about their expected earnings and expenses, the composition of trip payments or the amount of tips provided by passengers and a 2019 Georgetown University Study entitled *The Uber Workplace in D.C.* found that “100% of drivers experienced difficulties with, or barriers to, calculating their actual compensation.” Similarly, a driver who participated in the City’s focus group research reported “[t]he flexibility is great, but how many jobs do you ever go to that you don’t know what you are going to be paid. We just don’t know.”

Q. Numerous studies, including the Economic Policy Institute Study, calculate driver pay and driver work time by including waiting time or available platform time. In a 2019 study entitled *The Gender Earnings Gap in the Gig Economy: Evidence from over a Million Rideshare Drivers*, researchers found, in part, “that driver earnings are a function of wait times between trips.”

R. Failure to account for available platform time in a minimum compensation standard likely would result in hourly pay below the equivalent of the hourly minimum wage rate established by SMC Chapter 14.19 for Schedule 1 employers.

S. The Parrott and Reich study found that TNCs compensate TNC drivers in Seattle only for passenger platform time, but TNC drivers spend an average of 50.8 percent of each hour or 30.48 minutes per hour without a passenger in the car, but while logged on to the driver platform to perform TNC services. The study further determined that TNC drivers in Seattle drive an average of 37.8 per cent of the total miles driven per hour or 6.15 miles per hour without a passenger in the car, but while logged on to the driver platform to perform TNC services.

T. The City has repeatedly called on the TNCs to produce data on driver working time, earnings, and expenses in order to analyze and formulate policy to ensure that drivers earn a fair wage and can perform their

work in a safe and reliable manner.

U. In April 2018, the City Council passed Resolution 31808 calling on the TNCs to voluntarily share anonymized data on an individual driver and trip level (commonly referred to as “trip level data”), including data on driver working time, trip volumes, distances traveled in available platform time, dispatch platform time, and passenger platform time, fare information, and driver earnings by May 31, 2018. Between May 31, 2018 and January 10, 2020, neither Uber nor Lyft provided the City with any of the requested data.

V. Following the passage of SMC Chapter 14.31, which required the City to conduct a study into TNC driver earnings, working time, and reasonable expenses and propose a minimum compensation standard, Uber and Lyft advised the City that they believed the study should be informed by Uber and Lyft’s data. The City welcomed this offer and called on the companies to voluntarily provide trip-level data covering TNC driver working time, earnings, distances traveled in available platform time, dispatch platform time, and passenger platform time, and other information sufficient to determine TNC driver earnings and expenses.

W. Both Uber and Lyft declined to provide this data.

X. In an attempt at compromise, the City proposed that Uber and Lyft provide summary aggregate data for one representative week in each month beginning October 2018 and ending October 2019 and including:

1. The total number of TNC drivers, trips, trip miles, and trip minutes;
2. The distribution of TNC driver trip miles and trip minutes at defined percentile distributions;
3. The distribution of aggregate available platform time, dispatch platform time, and passenger platform time at defined percentile distributions;
4. The distribution of passenger fares at defined percentile distributions;
5. The distribution of TNC driver pay at defined percentile distributions;
6. The percentage of trips, trip miles, trip minutes, passenger fares, and TNC driver pay that represent shared or pooled trips; and
7. The composition of the vehicles providing the trips.

Y. On January 10, 2020, Uber provided a portion of the requested data. Specifically, Uber provided the distribution of aggregate available platform time, dispatch platform time, and passenger platform time, the distribution of driver pay, and the total number of trips. While not requested by the City, Uber also provided the average speed traveled by TNC drivers during available platform time, dispatch platform time, and passenger platform time as well as the top ten vehicles providing trips originating in Seattle ranked by mileage during the sample period, which comprised 67.16 percent of the total vehicles for this period.

Z. On January 10, 2020, Lyft notified the City that it would not provide any of the requested data. Subsequently, on February 13, 2020, Lyft provided a list of the top ten vehicles types providing trips that originated in Seattle between October 2018 and ending October 2019, which comprised 56 percent of the total vehicles. Lyft declined to provide any data on TNC driver earnings or working time.

AA. Requirements for affirmative data production by the TNCs covered by SMC Chapter 14.33 as created by this ordinance are necessary to effectively enforce the ordinance and understand the effects of the minimum compensation standard. Further, the California Public Utilities Commission, the City of Chicago, the New York TLC, Washington, D.C., and Toronto currently require such affirmative production of trip-level data. The California Public Utilities Commission recently found that TNC trip level data was not protected by trade-secret principles because “neither Uber nor Lyft identify a competitor by name who would gain an unfair competitive disadvantage if their annual reports were made public” and neither “company [could] honestly state that they will be surprised or learn something new about the other if their annual reports were disclosed publicly.” Similarly, the New York TLC and the City of Chicago release anonymized trip-level data publicly. Neither Uber nor Lyft have experienced adverse effects on their businesses due to the release of this data, nor have passengers or TNC drivers had their privacy interests infringed by such release.

BB. Numerous studies suggest minimum compensation and minimum wage 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 TNC drivers.

CC. Many Seattle workers, including TNC drivers, 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.

DD. Minimum compensation standards support stable incomes and promote job retention by ensuring that TNC drivers are compensated at sufficient levels to support themselves and their families. Further, minimum compensation standards promote 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.

EE. Providing a minimum compensation standard for TNC drivers would benefit the Seattle economy by significantly increasing TNC driver earnings and thereby boosting consumer spending in Seattle and benefiting the economy overall.

FF. Establishing minimum compensation standards and transparency requirements will help ensure that the compensation that thousands of drivers who provide vital transportation services in Seattle every day receive for their services is sufficient to alleviate undue financial pressure to provide transportation in an unsafe manner by working longer hours than is safe, skipping needed breaks, or operating vehicles at unsafe speeds in order to maximize the number of trips completed or to ignore maintenance necessary to the safe and reliable operation of their vehicles.

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

Section 2. A new Chapter 14.33 is added to the Seattle Municipal Code as follows:

CHAPTER 14.33 TRANSPORTATION NETWORK COMPANY DRIVER MINIMUM

COMPENSATION

14.33.010 Short title

This Chapter 14.33 shall constitute the “Transportation Network Company Driver Minimum Compensation Ordinance” and may be cited as such.

14.33.015 Declaration of policy

It is declared to be the policy of the City, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to ensure that TNC drivers can perform their services in a safe and reliable manner, and thereby promote the welfare of TNC drivers and the people who rely on such services to meet their transportation needs. The role of the Office of Labor Standards is to enforce the provisions of this Chapter 14.33 in furtherance of this policy.

14.33.020 Definitions

For the purposes of this Chapter 14.33:

“Adverse action” means reducing the rates of compensation to the TNC driver, garnishing tips or gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, changing a TNC driver’s status to provide TNC services from eligible to ineligible, putting a TNC driver on hold status, failing to rehire a TNC driver after a seasonal interruption of work, threatening, penalizing, retaliating, denying authorization to provide TNC services, threatening, penalizing, 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 14.33.120. “Adverse action” for a TNC driver may involve any aspect of TNC services, including compensation, work hours, volume and frequency of trips assigned, responsibilities, or other material change in the ability of a TNC driver to perform TNC services. “Adverse action” also includes any action that would dissuade a reasonable TNC driver from exercising their rights under this Chapter 14.33;

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

“Aggrieved party” means the TNC driver or other person who suffers tangible or intangible harm due to the TNC or other person's violation of this Chapter 14.33;

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

“Available platform time” means the time a TNC driver is logged in to the driver platform and available to receive a TNC dispatched trip prior to receiving a trip request from a TNC. A TNC driver cannot simultaneously be engaged in available platform time, dispatch platform time, and/or passenger platform time for the same TNC. For trips involving multiple passengers picked up from different passenger pick-up locations, available platform time means the period of time when a TNC driver is logged in to the driver platform prior to receiving the first trip request from a TNC;

“City” means the City of Seattle;

“Compensation” means payment owed to a TNC driver by reason of providing TNC services including, but not limited to the minimum payment for passenger platform time and mileage under Section 14.33.050, incentives, and tips;

“Deactivation” means the blocking of a TNC driver’s access to the driver platform, changing a TNC driver’s status from eligible to provide TNC services to ineligible, or other material restriction in access to the driver platform that is effected by a TNC.

“Director” means the Director of the Office of Labor Standards or the Director's designee;

“Dispatch location” means the location of the TNC driver at the time the TNC driver accepts a trip request through the driver platform;

“Dispatch platform time” means the time a TNC driver spends traveling from dispatch location to passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip, a driver cancels a trip, or the driver begins the trip in the driver platform. A TNC driver cannot simultaneously be engaged in available

platform time, dispatch platform time, and/or passenger platform time for the same TNC. For trips involving multiple passengers picked up from different passenger pick-up locations, dispatch platform time means the time a TNC driver spends travelling from the first dispatch location to the first passenger pick-up location;

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

“Front pay” means the compensation the TNC driver would earn or would have earned if reinstated to the TNC driver’s 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);

“Incentives” means a sum of money paid to a TNC driver upon completion of a task, usually completing a certain amount of trips, a certain amount of consecutive trips, a trip subject to a price multiplier or variable pricing policy, or some other provision of TNC services;

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

“Passenger drop-off location” means the location of a TNC driver’s vehicle when a TNC driver ends the trip in the driver platform;

“Passenger mileage utilization rate” means the percentage of miles that TNC drivers drive during passenger platform time relative to the total miles TNC drivers drive during available platform time, dispatch platform time, and passenger platform time.

1. The passenger mileage utilization rate is calculated by dividing the total miles TNC drivers drive during passenger platform time by the total miles TNC drivers drive during available platform time,

dispatch platform time, and passenger platform time.

2. If data on mileage driven by TNC drivers during available platform time, dispatch platform time, or passenger platform time is not available or complete, the Director is authorized to calculate the passenger mileage utilization rate pursuant to subsection 14.33.050.B;

“Passenger pick-up location” means the location of the TNC driver’s vehicle at the time the TNC driver starts the trip in the driver platform;

“Passenger platform time” means the period of time commencing when the TNC driver starts the trip in the driver platform until the time when the TNC driver ends the trip in the driver platform. For trips involving multiple passengers picked up from different passenger pick-up locations, passenger platform time means the period of time commencing when the TNC driver starts the trip in the driver platform after the first passenger enters the TNC driver’s vehicle until the time when the TNC driver ends the trip in the driver platform after the last passenger exits the TNC driver’s vehicle at the end of the trip. A TNC driver cannot simultaneously be engaged in available platform time, dispatch platform time, and/or passenger platform time for the same TNC;

“Passenger platform time utilization rate” means the percentage of time that TNC drivers spend during passenger platform time relative to the total of the time TNC drivers spend during available platform time, dispatch platform time, and passenger platform time.

1. The passenger platform time utilization rate is calculated by dividing the total amount of time that TNC drivers spend during passenger platform time by the total of the time TNC drivers spend during available platform time, dispatch platform time, and passenger platform time.

2. If data on available platform time, dispatch platform time, or passenger platform time is not available or complete, the Director is authorized to calculate the passenger platform time utilization rate pursuant to subsection 14.33.050.B;

“Per minute rate” means the per minute equivalent of the “hourly minimum wage” established for Schedule 1 employers in Chapter 14.19. For example, in 2020 the “hourly minimum wage” established for

Schedule 1 employers in Chapter 14.19 is \$16.39 and the resultant per minute rate is \$0.27;

“Per mile rate” means the per mile equivalent of the reasonable expenses necessary for a TNC driver to provide TNC services;

“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;

“Reasonable expenses” means (1) the per mile cost of operating a vehicle for purposes of providing TNC services and (2) the non-mileage expenses incurred by TNC drivers to provide TNC services. Reasonable expenses may include, but are not limited to:

1. Vehicle acquisition and financing costs;
2. Depreciation;
3. Lease payments;
4. Maintenance and repairs;
5. Tires;
6. Gasoline (including all taxes thereon);
7. Oil;
8. Vehicle insurance;
9. License and vehicle registration fees;
10. Cell phone and cell phone service plans;
11. Cost of medical, dental, and vision insurance;
12. The amount of employer-side payroll taxes that TNC drivers must pay;
13. The amount of business taxes that TNC drivers must pay;
14. Business license fees that TNC drivers must pay; and
15. Any other cost or information the Director determines is necessary to further the purposes of

this Chapter 14.33;

“Respondent” means the TNC or any person who is alleged or found to have committed a violation of this Chapter 14.33;

“Tips” means a verifiable sum to be presented by a passenger as a gift or gratuity in recognition of some service performed for the passenger by the TNC driver receiving the tip;

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

“Transportation network company” or “TNC” means an organization, licensed or required to be licensed under Chapter 6.310, operating in the City that offers prearranged transportation services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect passengers with drivers using a “transportation network company (TNC) endorsed vehicle,” as defined in Chapter 6.310.

“Transportation network company” includes any such entity or person acting directly or indirectly in the interest of a transportation network company in relation to the transportation network company driver;

“Transportation network company driver” or “TNC driver” means a licensed for-hire driver, as defined in Chapter 6.310, affiliated with and accepting trips from a licensed transportation network company. For purposes of this Chapter 14.33, at any time that a driver is logged into the driver platform, the driver is considered a TNC driver;

“TNC dispatched trip” or “trip” means the dispatch of a TNC driver to provide transportation to a passenger in a TNC endorsed vehicle through the use of a TNC’s application dispatch system. A trip is completed when the TNC driver ends the trip in the driver platform. The term “TNC dispatched trip” or “trip” does not include transportation provided by taxicabs or for-hire vehicles, as defined in Chapter 6.310;

“Written” or “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 and maintained electronically, including via the driver platform.

14.33.030 TNC driver coverage

A. A TNC driver is covered by this Chapter 14.33 if the TNC driver provides TNC services within the geographic boundaries of the City for a TNC covered by this Chapter 14.33.

B. For a trip with a passenger pick-up location in the City, all minimum compensation requirements under Section 14.33.050 apply, regardless of the passenger drop-off location.

C. For a trip with a passenger pick-up location outside the City, minimum compensation under Section 14.33.050 is due only for the portion of passenger platform time and mileage that occurs within the City.

14.33.040 TNC coverage

A. TNCs that report 200,000 or more rides that originate in the City per the most recent quarterly report received by the City under Section 6.310.540 are covered under this Chapter 14.33.

B. Separate entities that form an integrated enterprise shall be considered a single TNC under this Chapter 14.33. Separate entities will be considered an integrated enterprise and a single TNC under this Chapter 14.33 where a separate entity controls the operation of another entity. The factors to consider include, but are not limited to:

1. Degree of interrelation between the operations of multiple entities;
2. Degree to which the entities share common management;
3. Centralized control of labor relations;
4. Degree of common ownership or financial control over the entities; and
5. Use of a common brand, trade, business, or operating name.

14.33.050 Minimum compensation

For each TNC dispatched trip, a TNC shall compensate TNC drivers by providing at least the equivalent of the minimum per minute amount for passenger platform time under subsection 14.33.050.A.1 and the minimum per -mile amount for passenger platform time under subsection 14.33.050.A.2.

A. Minimum payment

1. Per minute amount. For each minute of passenger platform time on each trip, a TNC shall compensate TNC drivers at least the equivalent of the per minute rate divided by the passenger platform time utilization rate, except that in the first three months after the effective date of this section, the per minute amount shall be phased in according to a rate schedule filed by the Agency with the City Clerk. The minimum per minute amount during the three month phase in period shall not fall below \$0.32 per minute.

a. Passenger platform time utilization rate. For a period of one year after the effective date of this section the passenger platform utilization rate shall be 0.492.

2. Per mile amount. For each mile driven during passenger platform time on each trip, a TNC shall compensate TNC drivers at least the equivalent of the per mile rate divided by the passenger mileage utilization rate. For a period of one year after the effective date of this section, this amount is \$1.17.

a. For a period of one year after the effective date of this section, the per mile rate shall be \$0.725.

b. For a period of one year after the effective date of this section, the passenger mileage utilization rate shall be 0.622.

3. The calculations described in this subsection 14.33.050.A are expressed in equation form as:

$$\left(\frac{\text{Per minute rate} \times \text{Passenger Platform Time Minutes}}{\text{Passenger Platform Time Utilization Rate}} \right) + \left(\frac{\text{Per mile rate} \times \text{Passenger Platform Time Miles}}{\text{Passenger Mileage Utilization Rate}} \right) = \text{Minimum Payment Per Trip}$$

B. Adjustment of the per mile rate, passenger platform time utilization rate, and the passenger mileage utilization rate

1. Adjustment of the per mile rate. Beginning one year after the effective date of this section, and thereafter on January 1 of each year, the Director by rule may adjust the per-mile rate. In adjusting the per-mile rate each year, the Director shall consider the best available sources of data, which may include, but are not

limited to: TNC driver surveys, data provided by TNCs, data provided by TNC drivers, data provided by passengers, data from other jurisdictions, data available through academic, policy, or community based organizations, and stakeholder interviews. The Director shall base the adjustment on an assessment of relevant factors or costs during the 12-month period ending in August. Provided however, that this adjustment shall not result in reduction of the per mile rate below \$0.725. The Director may consider the following non-exhaustive factors or costs:

- a. Vehicle acquisition and financing costs;
- b. Depreciation;
- c. Lease payments;
- d. Maintenance and repairs;
- e. Tires;
- f. Gasoline (including all taxes thereon);
- g. Oil;
- h. Vehicle Insurance;
- i. License and vehicle registration fees;
- j. Cell phone and cell phone plans;
- k. Cost of medical, dental, and vision insurance;
- l. The amount of employer-side payroll taxes that TNC drivers must pay;
- m. The amount of businesses taxes that TNC drivers must pay;
- n. Business license fees that TNC drivers must pay;
- o. Any other cost or information the Director determines is necessary to further the

purposes of this Chapter 14.33.

If the Director does not adjust the per-mile rate in any given year, the per-mile rate 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. The Agency shall determine the amount and file a schedule of such amount with the City Clerk.

2. Adjustment of the passenger platform time utilization rate and the passenger mileage utilization rate. Beginning one year after the effective date of this section, the Director by rule may adjust the passenger platform time utilization rate or the passenger mileage utilization rate. The Agency shall provide notice to the public no less than three months before the effective date of any adjustment under this subsection 14.33.050.B.2. The purpose of any adjustment is to reflect changes in the percentage of time that TNC drivers spend in passenger platform time relative to the total time that TNC drivers spend in available platform time, dispatch platform time and passenger platform time or the percentage of miles TNC drivers drive during passenger platform time relative to the total miles TNC drivers drive during available platform time, dispatch platform time, and passenger platform time. The Director shall have discretion to determine a passenger platform time utilization rate or a passenger mileage utilization rate on an industry-wide basis or for each TNC covered by this Chapter 14.33.

a. The Director may choose not to adjust the passenger platform time utilization rate or the passenger mileage utilization rate for any time period that the Director determines is necessary to further the purposes of this Chapter 14.33, including but not limited to: while the civil emergency proclaimed by Mayor Durkan on March 3, 2020 remains in effect; or while the combined total trips reported by all TNCs that originate in the City covered by this Chapter 14.33 is less than 3,000,000 per the most recent quarterly report received by the City under Section 6.310.540.

b. Prior to beginning any assessment period on which the Agency will base a passenger platform time utilization rate or the passenger mileage utilization rate adjustment, the Agency shall provide reasonable notice to the TNCs and other stakeholders of the date on which the assessment period begins.

c. In adjusting the passenger platform time utilization rate or the passenger mileage utilization rate, the Director may consider the following sources of information:

1) The best available sources of data, which may include, but are not limited to:

TNC driver surveys, data provided by TNCs, data provided by TNC drivers, data provided by passengers, data from other jurisdictions, data available through academic, policy, or community based organizations, and stakeholder interviews;

2) Input from stakeholders on the method and time period for assessment or adjustment of the passenger platform time utilization rate or the passenger mileage utilization rate; and

3) Any other information the Director determines is necessary to further the purposes of this Chapter 14.33.

d. The Director shall base any adjustment to the passenger platform time utilization rate or passenger mileage utilization rate on an assessment of relevant factors during an assessment period of up to 12 months prior to the date of adjustment. The Director may consider the following factors:

1) The average and median amount of available platform time, dispatch platform time, and passenger platform time for TNC drivers;

2) The average and median mileage driven by TNC drivers during available platform time, dispatch platform time, and passenger platform time;

3) The average and median speeds driven by TNC drivers during available platform time, dispatch platform time, and passenger platform time;

4) The percentage of total trips that each TNC covered by this Chapter 14.33 represents;

5) The impact of the adjustment of the passenger platform time utilization rate or the passenger mileage utilization rate on TNCs, TNC passengers, and TNC drivers, including the impact on TNC driver earnings and work hours, the availability of TNC services, and any other factor the Director deems relevant. and

6) Any other information the Director determines is necessary to further the purposes of this Chapter 14.33.

3. The Agency shall file a schedule of such amounts described in this Section 14.33.050 with the City Clerk.

C. Cancellations

If a passenger cancels a trip, or fails to appear at the passenger pickup location, the TNC shall pay the TNC driver any cancellation fee that the TNC charged to the passenger, except in instances where the TNC refunds the cancellation fee to the passenger.

D. Deductions

1. A TNC may only deduct compensation when the TNC driver expressly authorizes the deduction in writing and does so in advance for a lawful purpose for the benefit of the TNC driver. Any such authorization by a TNC driver must be voluntary and knowing.

2. Neither the TNC nor any person acting in the interest of the TNC may derive any financial profit or benefit from any of the deductions under this subsection 14.33.050.D. For the purposes of this subsection 14.33.050.D, reasonable interest charged by the TNC, or any person acting in the interest of a TNC, for a loan or credit extended to the TNC driver is not considered to be of financial benefit to the TNC, or any person acting in the interest of a TNC.

14.33.060 Tip and incentive compensation

A. A TNC shall pay to its TNC drivers all tips and gratuities. Tips paid to a TNC driver are in addition to, and may not count towards, the TNC driver's minimum compensation under Section 14.33.050.

B. Incentives may count towards the TNC's minimum compensation requirements under Section 14.33.050 only for the particular trip in which the incentives are earned.

14.33.070 Provision of personal protective equipment and disinfecting supplies

A. While the civil emergency proclaimed by Mayor Durkan on March 3, 2020 remains in effect, each TNC covered by this Chapter 14.33 must provide to each TNC driver, at the TNC's expense, a reasonable amount of non-medical grade face coverings, gloves, hand sanitizing agents, and disinfecting supplies, such as

disinfecting wipes or sprays. A reasonable amount of supplies may be considered as those necessary to meet any TNC industry-specific health and safety requirements promulgated by local, state, or federal agencies. At a minimum shall include, but not be limited to, the following supplies or their equivalent: one disposable mask for every ten trips; one pair of gloves for every ten trips; one 8-ounce bottle of hand sanitizer for every 100 trips; and one 32-ounce bottle of disinfecting spray for every 200 trips.

B. If a TNC determines that directly providing all TNC drivers with the supplies referenced in subsection 14.33.070.A is infeasible, the TNC may, in addition to or in lieu of direct delivery, allow for:

1. TNC drivers to pick up the items at one or more centralized location(s), which shall be open for pickups some evening and weekend hours; and/or
2. TNC drivers to be reimbursed for the reasonable cost of the items.

C. Each TNC covered by this Chapter 14.33 shall provide each TNC driver with written notice of the TNC's policy and procedure for meeting the requirements of this Section 14.33.070. The policy and procedure shall include:

1. The amount of supplies available to each TNC driver;
2. The method of distribution of such supplies;
3. If supplies will not be delivered directly to TNC drivers, the location where such supplies are available for pickup and the hours during which the location is open for pickup; and
4. If supplies will not be provided to TNC drivers, the reasonable cost of the items to be reimbursed to a TNC driver.

14.33.100 Notice and posting

A. TNCs shall provide each TNC driver with a written notice of rights established by this Chapter 14.33. The Agency may create and distribute a model notice of rights in English and other languages. However, TNCs are responsible for providing TNC drivers with the notice of rights required by this subsection 14.33.100.A, in a form and manner sufficient to inform TNC drivers of their rights under this Chapter 14.33,

regardless of whether the Agency has created and distributed a model notice of rights. The notice of rights shall provide information on:

1. The right to the applicable per minute rate and per mile rate guaranteed by this Chapter 14.33;
2. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 14.33; and
3. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 14.33, including a TNC or any person's failure to pay the minimum per minute rate or per mile rate, and a TNC or other person's retaliation against a TNC driver or other person for engaging in an activity protected by this Chapter 14.33.

B. TNCs shall provide the notice of rights required by subsection 14.33.100.A in an electronic format that is readily accessible to the TNC driver. The notice of rights shall be made available to the TNC driver via smartphone application or online web portal, in English and any language that the TNC knows or has reason to know is the primary language of the TNC driver. 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.

C. Within 24 hours of each trip completion, a TNC must transmit an electronic receipt to the TNC driver that contains the following information for each unique trip, or portion of a unique trip, covered by this Chapter 14.33:

1. The total amount of passenger platform time;
2. The total mileage driven during passenger platform time;
3. Passenger pick-up location and passenger drop-off location. The Director shall issue rules regarding the precision with which a TNC must describe the passenger pick-up location and passenger drop-off location and may consider methods to protect the privacy of passengers, to the maximum extent permitted by applicable laws. Prior to the issuance of such rules, a TNC's current practice of describing the passenger pick-up location and passenger drop-off location as of the effective date of this section shall be deemed to comply

with this subsection 14.33.100.C.3;

4. Rate or rates of pay, including but not limited to the rate per minute, rate per mile, percentage of passenger fare, and any applicable price multiplier or variable pricing policy in effect for the trip;
5. Tip compensation;
6. Gross payment;
7. Net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;
8. Itemized deductions or fees, including any toll, surcharge, commission, lease fees, and other charges;
9. Pursuant to rules issued by the Director, other information that is material and necessary to effectuate the terms of this Chapter 14.33.

D. On a weekly basis, the TNC shall provide written notice to the TNC driver that contains the following information for trips, or a portion of a trip, that is covered by this Chapter 14.33 and which occurred in the prior week:

1. The TNC driver's total passenger platform time;
2. Total mileage driven by the TNC driver during passenger platform time;
3. The TNC driver's total tip compensation;
4. The TNC driver's gross payment, itemized by:
 - a. Rate per minute;
 - b. Rate per mile; and
 - c. Any other method used to calculate pay including, but not limited to, base pay, percentage of passenger fare, or any applicable price multiplier or variable pricing policy in effect for the trip.
5. The TNC driver's net payment after deductions, fees, tolls, surcharges, lease fees, or other charges;
6. Itemized deductions or fees, including all tolls, surcharges, commissions, lease fees, and other

charges, from the TNC driver's payment; and

7. Pursuant to rules issued by the Director, other information that is material and necessary to effectuate the terms of this Chapter 14.33.

E. Within 24 hours of a trip's completion, a TNC must transmit an electronic receipt to the passenger on behalf of the TNC driver that lists:

1. The date and time of the trip;

2. The passenger pick-up and passenger drop-off locations for the trip. The Director shall issue rules regarding the precision with which a TNC must describe the passenger pick-up location and passenger drop-off location and may consider methods to protect the privacy of passengers, to the maximum extent permitted by applicable laws. Prior to the issuance of such rules, a TNC's current practice of describing the passenger pick-up location and passenger drop-off location as of the effective date of this section shall be deemed to comply with this subsection 14.33.100.E.2;

3. The total duration and distance of the trip;

4. Driver first name;

5. The total fare paid, itemizing all charges and fees;

6. Pursuant to rules issued by the Director, other information that is material and necessary to effectuate the terms of this Chapter 14.33.

14.33.110 TNC records

A. Each TNC shall retain for three years records that document compliance with this Chapter 14.33 including:

1. Records of compensation paid to TNC drivers pursuant to Section 14.33.050, including records of payment of the per-minute amount pursuant to subsection 14.33.050.A.1, payment of the per-mile amount pursuant to subsection 14.33.050.A.2, payment of cancellation fees pursuant to subsection 14.33.050.C, and any tip or incentive compensation pursuant to Section 14.33.060;

2. Records of time spent during available platform time, dispatch platform time, and passenger platform time, including but not limited to the duration that each TNC driver is logged in to the driver platform, the amount of time each TNC driver spends travelling from dispatch location to passenger pickup location for each trip, and amount of time each TNC driver spends travelling from passenger pickup location to passenger drop-off location for each trip.

3. Records of TNC driver mileage driven during available platform time, dispatch platform time, and passenger platform time, including but not limited to the date, time, and location of dispatch location, passenger pickup location, and passenger drop-off location for each trip. The Director is authorized to issue rules regarding the precision with which a TNC must describe the dispatch location, passenger pick-up location, and passenger drop-off location;

4. Written per-trip driver receipts and weekly statements of trip information pursuant to subsections 14.33.100.C and 14.33.100.D;

5. Written per-trip passenger receipts pursuant to subsection 14.33.100.E; and

6. Pursuant to rules issued by the Director, other records that are material and necessary to effectuate the terms of this Chapter 14.33.

B. If a TNC fails to retain adequate records required under subsection 14.33.110.A, including records required by Director's rule pursuant to subsection 14.33.110.A.6, there shall be a presumption, rebuttable by clear and convincing evidence, that the TNC violated this Chapter 14.33 for the periods and for each TNC driver for whom records were not retained.

C. Respondents in any case closed by the Agency shall allow the Office of City Auditor access to such records to permit the Office of City Auditor to evaluate the Agency's enforcement efforts. Before requesting records from such a respondent, the Office of City Auditor shall first consult the Agency's respondent records on file and determine if additional records are necessary. The City Auditor may apply by affidavit or declaration in the form allowed under RCW 9A.72.085 to the Hearing Examiner for the issuance of subpoenas under this

subsection 14.33.110.C. The Hearing Examiner shall issue such subpoenas upon a showing that the records are required to fulfill the purposes of this subsection 14.33.110.C.

14.33.113 Production of records

A. The TNC 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 aggregated or disaggregated records.

Such records may include, but are not limited to:

1. The length and duration of each trip;
2. The amount of time spent and miles travelled in available platform time, dispatch platform time, and passenger platform time;
3. Per-trip TNC driver compensation;
4. For each trip, the date, time, and location of dispatch, passenger pickup and passenger drop-off;
5. Unique vehicle and driver identifier;
6. Passenger fares for each trip; and
7. Any other records that the Director determines are necessary to effectuate the purposes of this Chapter 14.33.

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

14.33.116 Rulemaking authority

The Director is authorized to enforce and administer this Chapter 14.33. The Director shall exercise all responsibilities under this Chapter 14.33 pursuant to rules and regulations developed under Chapter 3.02. 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 14.33, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 14.33.

14.33.120 Retaliation prohibited

A. No TNC or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this Chapter 14.33.

B. No TNC 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 14.33. Such rights include but are not limited to the right to make inquiries about the rights protected under this Chapter 14.33; the right to inform others about their rights under this Chapter 14.33; the right to inform the person's TNC, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this Chapter 14.33; the right to file an oral or written complaint with the Agency, or bring a civil action for an alleged violation of this Chapter 14.33; the right to cooperate with the Agency in its investigations of this Chapter 14.33; the right to testify in a proceeding under or related to this Chapter 14.33; 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 14.33.

C. No TNC or any other person shall communicate to a person exercising rights protected under this Section 14.33.120, directly or indirectly, the willingness to inform a government employee or contracted organization 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 a TNC driver or a family member of the TNC driver to a federal, state, or local agency because the TNC driver has exercised a right under this Chapter 14.33.

D. It shall be considered a rebuttable presumption of retaliation if the TNC or any other person takes an adverse action against a person within 90 calendar days of the person's exercise of rights protected in this Section 14.33.120. The TNC 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 14.33.120 shall be sufficient upon a showing that the TNC or

any other person has taken an adverse action against a person and the person's exercise of rights protected in Section 14.33.120 was a motivating factor in the adverse action, unless the TNC can prove that the action would have been taken in the absence of such protected activity.

F. The protections afforded under this Section 14.33.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.33.

G. A complaint or other communication by any person triggers the protections of this Section 14.33.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.33.

14.33.130 Enforcement power and duties

Subject to the provisions of this Section 14.33.130, the Agency shall have the power to investigate violations of this Chapter 14.33, as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.33 and otherwise necessary and proper in the performance of the same and provided for by law.

14.33.140 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 14.33 is a violation.

14.33.150 Investigation

A. Subject to the provisions of this subsection 14.33.150.A, the Agency shall have the power to investigate any violations of this Chapter 14.33 by any respondent. The Agency may initiate an investigation pursuant to rules issued by the Director including, but not limited to:

1. 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 business or class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.33 or the workforce is unlikely to volunteer information regarding such violations; and

2. Following the receipt by the Agency of a report or complaint filed by a TNC driver or any other person.

B. A TNC driver or other person may report to the Agency any suspected violation of this Chapter 14.33. The Agency shall encourage reporting pursuant to this Section 14.33.150 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 TNC driver or person reporting the violation. However, with the authorization of such person, the Agency may disclose the TNC driver's or person's name and identifying information as necessary to enforce this Chapter 14.33 or for other appropriate purposes.

2. The Agency may require the TNC to post or otherwise notify TNC drivers that the Agency is conducting an investigation, in a form, place, and manner designated by the Agency. The TNC may provide the form on an individual basis in physical or electronic format that is reasonably conspicuous and accessible in in English and other languages as provided by rules issued by the Director.

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). The certification is subject to applicable federal law and regulations, and rules issued by the Director.

C. The Agency's investigation must 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 14.33 and any administrative enforcement proceeding under this Chapter 14.33 based upon the same facts. For purposes of this Chapter 14.33:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 14.33, or when the Agency provides notice to the respondent that an investigation has commenced under this Chapter 14.33.

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 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring the TNC to produce the records identified in Section 14.33.110, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under Section 14.33.110, or any other document relevant to the issue of whether any TNC driver or group of TNC drivers has been or is afforded proper amounts of compensation under this Chapter 14.33 and/or to whether the TNC has violated any provision of this Chapter 14.33. 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 if a complaint has been filed with the Agency, or that circumstances show that violations are likely to occur within a business or class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter 14.33 or the workforce is unlikely to volunteer information regarding such violations.

F. A TNC that fails to comply with the terms of any subpoena issued under subsection 14.33.150.E in an investigation by the Agency under this Chapter 14.33 prior to the issuance of a Director's Order issued pursuant to subsection 14.33.160.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 14.33.150.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 14.33.180.

14.33.160 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 14.33 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 14.33, the Director shall issue a "Determination of No Violation" with notice of a TNC driver's or other person's right to appeal the decision, subject to the rules of the Director.

C. If the Director determines that a violation of this Chapter 14.33 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 14.33 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, and interest pursuant to Section 14.33.170.

2. The Director's Order may specify that civil penalties due to the Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party under subsection 14.33.170.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 14.33, 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 14.33.180.

14.33.170 Remedies

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to

aggrieved parties, and interest provided under this Chapter 14.33 are cumulative and are not intended to be exclusive of any other available remedies, penalties, and procedures.

1. The amounts of all civil penalties and penalties payable to aggrieved parties contained in this Section 14.33.170 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year. 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 the total amount of civil penalties 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. The Director may waive half the amount of civil penalties 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. The Director shall not waive any amount of civil penalties 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, and penalties payable to aggrieved parties due under this Section 14.33.170, for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties due to the Agency for timely payment of remedy due to an aggrieved party under subsection 14.33.170.A.4, the Director shall consider:

a. The total amount of unpaid compensation, liquidated damages, penalties, 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 amounts of penalties in similar situations; and
- h. Other factors pursuant to rules issued by the Director.

B. A respondent found to be in violation of this Chapter 14.33 shall be liable for full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 14.33, and other equitable relief. Where the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records, or where a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may designate an amount for unpaid compensation in a minimum amount of \$200 for the Director may assess unpaid compensation in an amount to be determined by rules issued by the Director in favor of the aggrieved party for each week that each violation occurred or continued. For a first violation of this Chapter 14.33, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

1. For subsequent violations of this Chapter 14.33, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid compensation.

2. For purposes of establishing a first and subsequent violation for this Section 14.33.170, the violation must have occurred within ten years of the settlement agreement or Director's Order.

C. A respondent found to be in violation of this Chapter 14.33 for retaliation under Section 14.33.120 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 14.33, 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 \$5,462.70.

D. A respondent who willfully violates the notice and posting requirements of subsection 14.33.100.B shall be subject to a civil penalty of \$819.61 for the first violation and \$1,092.13 for subsequent violations.

E. A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 14.33 shall be subject to a civil penalty of not less than \$1,092.13 and not more than \$5,462.70.

F. A respondent found to be in violation of this Chapter 14.33 shall be subject to civil penalties. Pursuant to subsection 14.33.160.C.3, the Director 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 14.33, the Director may assess a civil penalty of up to \$546.07 per aggrieved party.

2. For a second violation of this Chapter 14.33, the Director shall assess a civil penalty of up to \$1,092.13 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 14.33, the Director shall assess a civil penalty of up to \$5,462.70 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater. The maximum civil penalty for a violation of this Chapter 14.33 shall be \$21,849.79 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 Section 14.33.170, 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.

G. For the following violations, the Director may assess a fine in the amounts set forth below:

Violation	Fine
Failure to provide reasonable supplies under subsection 14.33.070.	\$546.07 per aggrieved party
Failure to provide TNC drivers with written notice of rights under subsection 14.33.100.B	\$546.07 per aggrieved party
Failure to provide TNC drivers with per-trip receipts or weekly statements under subsection 14.33.100.C	\$546.07 per aggrieved party
Failure to maintain compensation or trip records for three years under subsection 14.33.110.A and 14.33.110.B	\$546.07 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 14.33.120	\$1,092.13 per aggrieved party
Failure to provide notice of investigation to TNC drivers under subsection 14.33.150.B.2	\$546.07 per aggrieved party
Failure to provide notice of failure to comply with final order to the public under subsection 14.33.210.A.1	\$546.07 per aggrieved party

The fine amounts shall be increased cumulatively by 50 percent of the fine for each preceding violation for each subsequent violation of the same provision by the same TNC or person within a ten-year period. The maximum amount that may be imposed in fines in any one-year period for each type of violation listed above is \$5,462.70 unless a fine for retaliation is issued, in which case the maximum amount is \$21,849.79.

H. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City reasonable costs incurred in enforcing this Chapter 14.33, including but not limited to reasonable attorneys' fees.

I. The TNC that is the subject of a settlement agreement stipulating that a violation shall count for debarment, or 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 TNC is the subject of a final order two times or more within a five-year period, the contractor or subcontractor shall not be allowed to bid on any City contract for two years. This subsection 14.33.170.I 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 14.33.170.I shall be construed to limit the application of Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all TNCs subject to debarment under this subsection 14.33.170.I.

14.33.180 Appeal period and failure to respond

A. A TNC driver or other person who claims an injury as a result of an alleged violation of this Chapter 14.33 may appeal the Determination of No Violation Shown, pursuant to the rules of the Director.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 14.33.170, 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.

14.33.190 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 review shall be conducted de novo and the Director shall have the burden of proof by a preponderance of the evidence before the Hearing Examiner. 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 will result in an order being entered finding that the TNC 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 failure to appear.

B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying, or reversing

the Director's Order.

14.33.200 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 14.33.200.

14.33.210 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 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 a court of competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the Director may seek to enforce a settlement agreement, Director's Order, or a final order of the Hearing Examiner under Section 14.33.190.
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 TNC or person until such time as the TNC 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 14.33.210.A.4.

B. No respondent that is the subject of a settlement agreement or final order issued under this Chapter 14.33 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 settlement agreement or final order at least three business days prior to 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 the settlement agreement or the final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the settlement agreement or 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 TNC.

14.33.220 Debt owed The City of Seattle

A. All monetary amounts due under a settlement agreement or 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 14.33.180.B the Director's Order 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 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 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 appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 14.33.180.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 14.33.200.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 14.33.200.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 14.33.220.B and 14.33.220.C, the 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 14.33.

14.33.230 Private right of action

A. Any person or class of persons that suffers financial injury as a result of a violation of this Chapter 14.33 or is the subject of prohibited retaliation under Section 14.33.120, may bring a civil action in a court of

competent jurisdiction against the TNC or other person violating this Chapter 14.33 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; a penalty payable to any aggrieved party of up to \$5,462.70 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 14.33.230, "person" includes any entity a member of which has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 14.33.230, two or more TNC drivers are similarly situated if they:

1. Are or were contracted to perform TNC services by the same TNC or TNCs, 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 14.33.230.C, TNC drivers shall not be considered dissimilar solely because their:

1. Claims seek damages that differ in amount, or
2. Job titles or other means of classifying TNC drivers differ in ways that are unrelated to their claims.

E. Nothing contained in this Chapter 14.33 is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from or by reason of any act or omission in connection with the implementation or enforcement of this

chapter on the part of the City by its officers, employees or agents.

14.33.235 Encouragement of more generous policies

A. Nothing in this Chapter 14.33 shall be construed to discourage or prohibit a TNC from the adoption or retention of protections more generous than the ones required by this Chapter 14.33.

B. Nothing in this Chapter 14.33 shall be construed as diminishing the obligation of a TNC to comply with any contract, or other agreement providing more generous protections to TNC drivers than required by this Chapter 14.33.

14.33.240 Other legal requirements

This Chapter 14.33 defines requirements for TNC driver protections and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater requirements; and nothing in this Chapter 14.33 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this Chapter 14.33 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 14.33 affecting such person.

14.33.245 Study of application of TNC driver protections

A. The Council shall request the City Auditor, in collaboration with the Agency, to contract with academic researchers who have a proven track record of rigorous analysis of the impacts of labor standards regulations to conduct an evaluation of the impacts of this ordinance following implementation. The City Auditor should complete the evaluation within two years of the effective date of this section and shall have discretion to determine whether the evaluation shall consist of a single report for the entire evaluation period or periodic reports focused on shorter time periods. Areas of evaluation may include, but not be limited to, the impacts of this ordinance on TNCs, TNC drivers, including TNC driver earnings and work hours, the share of time TNC drivers spend in or miles they drive during available platform time, dispatch platform time, and passenger platform time, TNC passengers, including passenger fares and average passenger wait times, new

TNC driver applications, and total active TNC drivers.

B. The Council shall use the results of the evaluation to identify possible areas for revision to accomplish the goals of this ordinance.

C. The requirements set forth in subsection 14.33.245.A shall be conditioned on the City Council appropriating sufficient monies to fund the evaluation described in subsection 14.33.245.A.

D. During the first year following the effective date of this section, the Agency may conduct an evaluation of the impacts of this ordinance following implementation. Areas of evaluation may include, but not be limited to, the impacts of this ordinance on TNCs, TNC drivers, including TNC driver earnings and work hours, the share of time TNC drivers spend in or miles they drive during available platform time, dispatch platform time, and passenger platform time, TNC passengers, including passenger fares and average passenger wait times, new TNC driver applications, and total active TNC drivers. If at any time the Agency determines that the ordinance is not achieving its stated purposes, the Agency may propose changes either through a rulemaking process or by proposing amendments to the Ordinance.

14.33.250 Severability

The provisions of this Chapter 14.33 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.33, or the application thereof to any TNC, TNC driver, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 14.33, or the validity of its application to other persons or circumstances.

Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance 126094, 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:

Basis for Case	Fee in dollars
* * *	

Third Party Utility Billing (Chapter 7.25)	No fee
Transportation Network Company Driver Minimum Compensation (Chapter 14.33)	No fee
Type III or Type IV Land Use Application (Chapter 23.76)	No fee
* * *	

* * *

Section 4. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance 125976, 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 City of Seattle ordinances relating to (~~minimum wage and minimum compensation (Chapter 14.19),~~) 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 5. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 126108, 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, 5.40, 5.45, 5.46, 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 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, ~~((and))~~ 14.30.180.A.4, and 14.33.210.A.4, subsection 100.240.A.4 of Ordinance 126091, and subsection 100.240.A.4 of Ordinance 126094, 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 Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, ~~((and))~~ 14.30, and 14.33, Ordinance 126091, and Ordinance 126094 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 Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, ~~((and))~~ 14.30, and 14.33, Ordinance 126091, and Ordinance 126094 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 6. The title of Chapter 14.31 of the Seattle Municipal Code, enacted by Ordinance 125977, is amended as follows:

**CHAPTER 14.31 TRANSPORTATION NETWORK COMPANY DRIVERS MINIMUM
COMPENSATION STUDY**

Section 7. Section 14.31.010 of the Seattle Municipal Code, enacted by Ordinance 125977, is amended as follows:

14.31.010 Short title

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

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

Section 9. Section 2 of this ordinance shall take effect on January 1, 2021.

Section 10. 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 _____, 2020, and signed by me in open session in authentication of its passage this ____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Office of Labor Standards	Kerem Levitas, 6-9758	Arushi Kumar, 4-0225

** 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 transportation network company driver labor standards; establishing minimum labor and compensation standards for transportation network company drivers; establishing provision of or reimbursement for personal protective equipment to transportation network company drivers during the civil emergency declared on March 3, 2020; establishing notice, posting, and data requirements for transportation network companies; prescribing remedies and enforcement procedures; amending Section 3.15.000 of the Seattle Municipal Code; amending the title of Chapter 14.31 and Sections 6.208.020 and 14.31.010 of the Seattle Municipal Code; and adding a new Chapter 14.33 to the Seattle Municipal Code.

Summary and background of the Legislation: The ordinance takes effect on January 1, 2021. The ordinance establishes minimum labor standards as well as notice and posting requirements for Transportation Network Company (TNC) drivers. The key components of the legislation are:

1. **Establishment of minimum compensation standards for TNC drivers.** TNCs must compensate TNC drivers at a minimum per minute and per mile rate for each minute of time and each mile travelled while transporting a passenger (termed “passenger platform time” in the ordinance).
 - a. The per minute rate is based on the per minute equivalent of the minimum wage for Schedule 1 employers under Seattle Municipal Code Chapter 14.19, but is scaled up to compensate drivers for time they spend without a passenger in the car.
 - b. The per mile rate is based on the reasonable expenses drivers incur while providing TNC services and is also scaled up to compensate drivers for the miles they travel without a passenger in the car.
 - c. The OLS Director has authority to adjust the scale up factor based on the proportion of time TNC drivers spend without a passenger.
2. **Protection from unlawful deductions.** A TNC may only deduct compensation when the TNC driver authorizes the deduction in writing and does so for a lawful purpose for the benefit of the TNC driver. A TNC may not derive financial benefit from deductions.
3. **Tip Protection.** TNCs must pay all customer tips to drivers. Tips may not count towards the minimum payment or expense requirements of the ordinance.
4. **Provision of personal protective equipment and disinfecting supplies.** During the COVID-19 civil emergency, covered TNCs must supply drivers with, or reimburse drivers for, a reasonable amount of personal protective equipment and disinfecting supplies.

5. **Notice and Posting.** TNCs must provide the following notices to drivers or passengers:
 - a. Notice of rights afforded under the ordinance;
 - b. Per-trip receipts, including time and mileage records for passenger platform time; total compensation; tip compensation; deductions;
 - c. Weekly pay statements, including total time and mileage records for passenger platform time; total compensation; total tip compensation; deductions; and
 - d. Passenger receipts, including: date/time of trip; pickup/drop-off locations; duration and distance of trip; driver first name; total fare paid; the standard per mile and per minute rate.
6. **Recordkeeping.** TNCs must maintain records necessary for OLS enforcement for a period of three years.
7. **OLS Enforcement and Outreach.** The legislation provides authority to OLS to provide rulemaking, outreach and enforcement related to the new labor standards.

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. The legislation creates new labor standards for TNC drivers. The legislation provides authority to the Office of Labor Standards (OLS) to provide rulemaking, outreach/education and enforcement related to the new labor standards.

The City Budget Office has indicated OLS' existing base budget appropriations and staffing levels are insufficient to do the work outlined in the legislation. Therefore, CBO estimates that OLS will need up to \$602,850 in ongoing annual appropriations to support up to four new positions and \$45,000 in one-time appropriations to support initial implementation activities, including translation and interpretation services and other rulemaking costs and activities, external counsel legal fees, and outreach, communication, and educational activities for the initial outreach to those impacted by the ordinance.

This work will be supported by revenue generated by collection of the tax set forth in Seattle Municipal Code 5.39.

Is there financial cost or other impacts of *not* implementing the legislation?

There are no financial costs to the City of not implementing the legislation.

4. OTHER IMPLICATIONS

- a. **Does this legislation affect any departments besides the originating department?**
No.
- b. **Is a public hearing required for this legislation?**
No.
- c. **Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?**
No.
- d. **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.
- e. **Does this legislation affect a piece of property?**
No.
- f. **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?**

This ordinance establishes minimum labor standards for TNC drivers. TNCs classify these drivers as independent contractors and represent that they are exempt from existing minimum labor standards established by federal, state, and local law. In 2019, the King County Department of Licensing issued 33,058 TNC driver permits. A large number of those drivers are immigrants and people of color—72 and 73 percent, respectively—who have taken on debt or invested their savings to purchase and/or lease vehicles to provide TNC services. Additionally, these drivers often lack basic information regarding the potential earnings and expenses associated with driving for a TNC. A 2019 Georgetown University Study titled *The Uber Workplace in D.C.* found that “100% of drivers experienced difficulties with, or barriers to, calculating their actual compensation.” This ordinance would guarantee drivers minimum compensation that is the equivalent to Seattle’s Schedule 1 Minimum Wage (SMC 14.19) plus compensation for reasonable expenses, as well as provide workers with clear information regarding earnings and trip details.

The ordinance requires TNCs to provide a notice of rights to TNC drivers in “English and any language that the TNC knows or has reason to know is the primary language of the TNC driver.” By requiring this notice be provided by the companies, this legislation ensures that the companies play an active role in making their workplaces accessible. Contingent upon funding and capacity, OLS would support making sample language available for the companies.

Contingent upon sufficient funding, OLS also intends to make its educational materials available in multiple languages translated. OLS has extensive experience developing

materials in other languages and working with community partners to ensure that translations are appropriate for the particular demographic groups in impacted communities. OLS intends to provide translations based on the specific demographics of the TNC driver community, as established through available data and consultation with driver and community-based organizations, as well as information and best practices made available by the Office of Immigrant and Refugee Affairs.

- 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).**

This legislation will be the 16th local labor standard that OLS will provide education and outreach on and implement and enforce. The same metrics OLS uses for other local labor laws should apply here (e.g., number of inquiries, number of complaints, case completion time).

Education, outreach and enforcement will be key to the effectiveness of providing TNCs with information on their responsibilities, TNC drivers on their rights, and compliance with required legal protections and benefits.

List attachments/exhibits below:

TNC Driver Minimum Compensation Ordinance

UNDERSTANDING DRIVE TIME

A driver's time can be broken down into three primary phases: P1, P2, and P3

P1: Available platform time

- A driver is logged in to a driver platform waiting for a trip request

P2: Dispatch platform time

- A driver has accepted a trip and is driving to pick up the passenger

P3: Passenger platform time

- Passenger is in vehicle and is being driven to the drop-off location

TOTAL TIME ON APP

Ordinance Coverage



TNC Drivers

- Drivers performing TNC services in Seattle.
- Seattle-originating trips covered regardless of destination.
- Non-Seattle trips covered once driver enters Seattle.



TNCs

- TNCs covered if they provide 200,000 trips in prior quarter

Minimum Compensation Components

Time

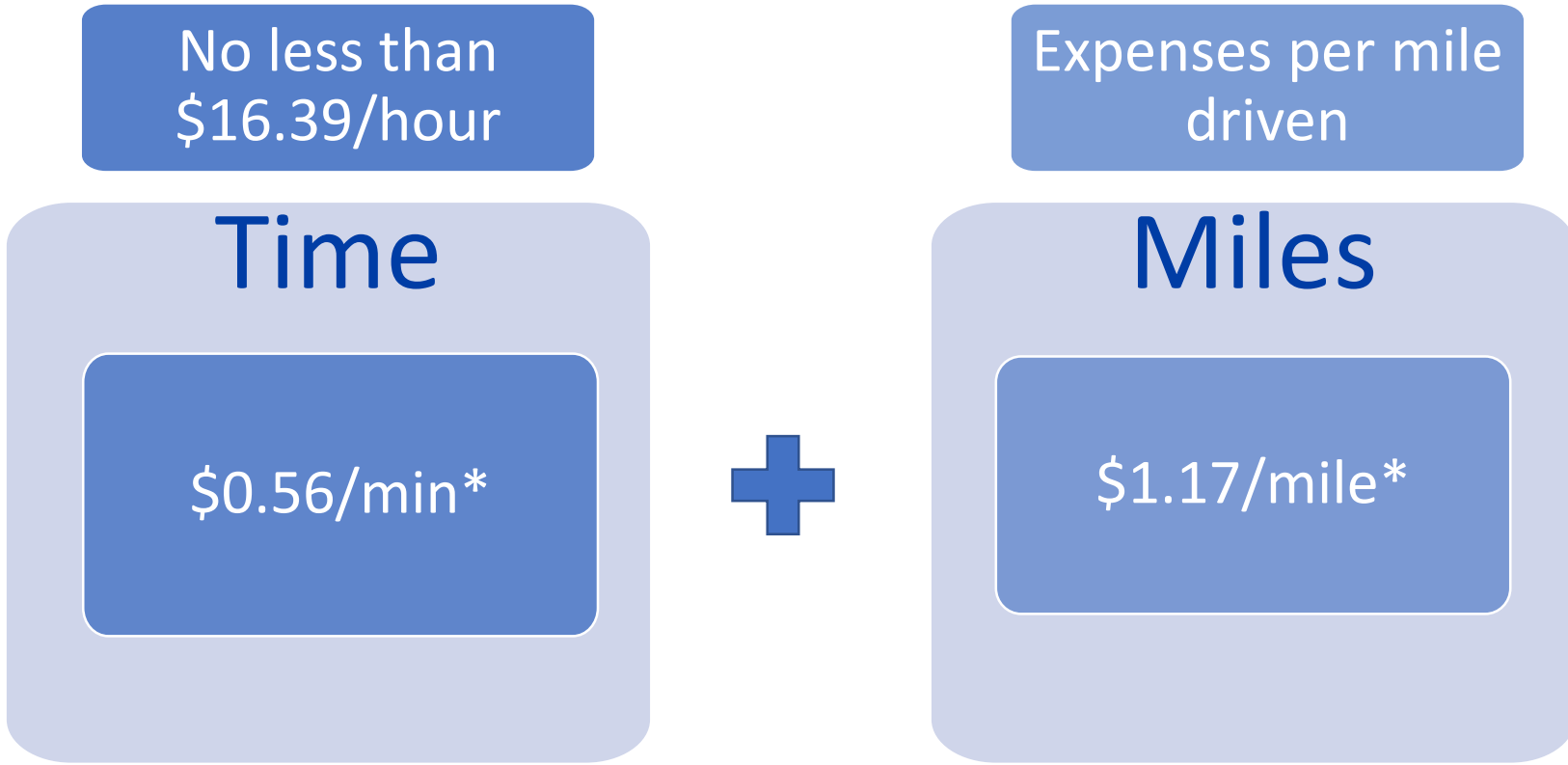
- Seattle's Schedule 1 Minimum Wage

Mileage

- Vehicle acquisition/financing
- Gas
- Vehicle maintenance
- Insurance
- Cellphone + cell plan
- Vehicle cleaning
- Health insurance
- Payroll taxes
- Public utilities tax
- Licensing/vehicle registration fees/related taxes



Minimum Pay Rate



*Scaled-up to account for P1 & P2 time and mileage

Additional Protections & Provisions

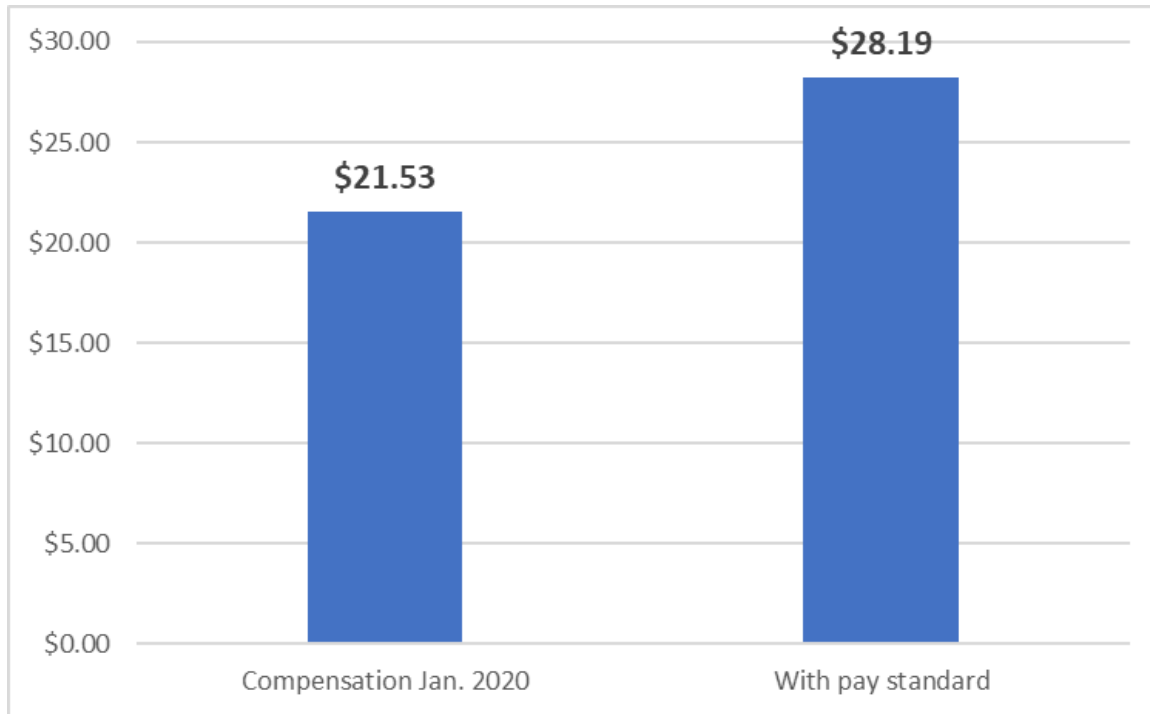


- **Tips**
 - ✓ Right to full tip paid by passenger
 - ✓ No tip credit permitted
- **Cancellation fees go to driver**
- **Ride and Pay Information**
 - ✓ Detailed per-ride receipts for drivers & passengers
 - ✓ Pay statements for drivers
- **Recordkeeping: three years**
- **Proposed Effective date: Jan. 1, 2021**

Minimum Compensation Effects — Sample Trips

Trip	Time	Miles	Current Pay	Pay Standard
Capitol Hill- Downtown	12 minutes	1.4 miles	\$5.18	\$8.36
Downtown- SeaTac	25 minutes	14.8 miles	\$25.59	\$31.31
Westlake- Pioneer Square	9 minutes	0.9 miles	\$3.99	\$6.09
Downtown- U. District	16 minutes	4.6 miles	\$9.76	\$14.34

Minimum Compensation Effects — Driver Earnings



- **Driver Pay: Will increase 30% under proposed pay standard.**
- **84% of drivers will receive pay increases.**

*This chart reflects average gross hourly earnings, \$11.80 of which is expenses per hour

