



Legislation Text

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to taxicab, transportation network company, and for-hire vehicle drivers; amending Section 6.310.110 of the Seattle Municipal Code; adding a new Section 6.310.735 to the Seattle Municipal Code; and authorizing the election of driver representatives.

WHEREAS, The City of Seattle currently exercises its municipal police power to license and regulate the for-hire transportation industry through Chapter 6.310 of the Seattle Municipal Code (SMC); and

WHEREAS, allowing taxicab, transportation network company, and for-hire vehicle drivers to modify specific agreements collectively with the entities that hire, direct, arrange, or manage their work will better ensure that they can perform their services in a safe, reliable, cost-effective, and economically viable manner and thereby promote the welfare of the people;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Findings

A. Driving taxis, for-hire, and transportation network company (TNC)-endorsed vehicles can be a viable path to steady, reliable, and regular work for historically disadvantaged communities, including new immigrants to the United States.

B. For-hire drivers can be at the mercy of sudden changes in their working conditions imposed by taxi, for-hire vehicle, and TNCs that contract with them. These changes can severely impact the ability of a for-hire driver to work in a safe, reliable, cost-effective, and economically viable manner. Such changes could include, but are not limited to: a reduction in fares, changes in the company's commissions charged to the driver, and

deactivation from dispatch services.

C. There is currently no mechanism for for-hire drivers to address the issues in subsection 1.B of this ordinance with their employer directly, without fear of retaliation.

D. Business models wherein companies control aspects of their drivers' work, but rely on the drivers being classified as independent contractors, undermine Seattle's efforts to address income inequality and create opportunities for all workers in Seattle to earn a living wage.

E. Allowing taxicab, TNC, and for-hire vehicle drivers to modify specific agreements collectively with the entities that hire, contract with, or partner with these drivers will better ensure that the drivers can perform their services in a safe, reliable, cost-effective, and economically viable manner, and thereby promote the welfare of the people.

Section 2. Section 6.310.110 of the Seattle Municipal Code, last amended by Ordinance 124524, is amended as follows:

* * *

“Director” means the Director of Finance and Administrative Services or the director of any successor department and the Director’s authorized designee.

“Driver coordinator” means an entity that hires, contracts with, or partners with for-hire drivers for the purpose of assisting them with, or facilitating them in, providing for-hire services to the public.

“Exclusive driver representative” (EDR) means a qualified driver representative, certified by the Director to be the sole and exclusive representative of for-hire drivers operating within the City for a particular driver coordinator.

* * *

“Personal vehicle” means a vehicle that is not a taxicab or for-hire vehicle licensed under this ((chapter)) Chapter 6.310. A personal vehicle that is used to provide trips via a transportation network company application dispatch system is subject to regulation under this ((chapter)) Chapter 6.310.

“Qualifying driver” means a for-hire driver who drives for a driver coordinator and who has completed at least 150 trips for that driver coordinator in the 30 days before the effective date of the ordinance introduced as Council Bill _____. A for-hire driver may be a qualifying driver for more than one driver coordinator.

“Qualified driver representative” (QDR) means an entity that can assist qualifying drivers in reaching consensus on desired terms of work and negotiate those terms on their behalf with driver coordinators.

* * *

Section 3. A new Section 6.310.735 is added to the Seattle Municipal Code as follows:

6.310.735 Exclusive driver representatives

A. The process of designating a QDR shall be prescribed by Director’s rule. The designation of a QDR shall be based on, but not limited to, consideration of the following factors:

1. Registration with the Washington Secretary of State as a not-for-profit entity;
2. Organization bylaws that give drivers the right to be members of the organization and participate in the democratic control of the organization; and
3. Experience in assisting stakeholders in reaching consensus agreements with, or related to, employers and contractors.

B. An entity wishing to be considered as a QDR for qualifying drivers must submit a request to the Director within 120 days of the effective date of the ordinance introduced as Council Bill _____. Within 14 days of the receipt of such a request the Director will notify the applicant in writing of the determination. Applicants who dispute the Director’s determination may appeal to the Hearing Examiner within 10 days of receiving the determination.

C. Driver coordinators who have hired, contracted with, or partnered with 50 or more for-hire drivers at any one time within 30 days of the effective date of the ordinance introduced as Council Bill _____, other than in the context of an employer-employee relationship, must, within 120 days of the effective date of the ordinance introduced as Council Bill _____, provide the Director the names, addresses, email addresses (if

available), and phone number (if available) of all qualifying drivers they hire, contract with, or partner with.

D. No later than 30 days after the receipt of the qualifying driver contact information from the driver coordinators, the Director shall:

1. Notify each listed driver of the provisions of this Section 6.310.735, and
2. Provide QDRs with the driver contact information.

QDRs shall use driver contact information for the sole purpose of contacting drivers to solicit their interest in being represented by the QDR. The QDR may not sell, publish, or otherwise disseminate the driver contact information outside the entity/organization.

E. The Director shall certify a QDR as the EDR for drivers contracted with a particular driver coordinator, according to the following:

1. Within 120 days of receiving the driver contact information, a QDR will submit documentation to the Director that a majority of qualifying drivers from the list described in subsection 6.310.735.D have expressed interest in being represented by that QDR. The Director shall determine by rule the standards and procedures for submitting and verifying statements of interest by Qualifying Drivers choosing an EDR.
2. Within 30 days of receiving such documentation, the Director shall determine if the documentation is sufficient to designate the QDR as the EDR for all drivers for that particular driver coordinator. If more than one QDR establishes that a majority of qualifying drivers have expressed interest in being represented by that QDR, the Director shall designate the QDR that received the largest number of verified affirmative statements of interest to be the EDR.
3. Within 30 days of receiving submissions from all QDRs for a particular driver coordinator, the Director shall either certify one to be the EDR or announce that no QDR met the majority threshold for certification.
4. An EDR may be decertified as prescribed by Director's rule.

F. If no EDR is certified for a driver coordinator, the Director shall set a date no earlier than 180 days and no later than 360 days from the announcement that no QDR met the majority threshold to repeat the processes in subsections 6.310.735.C, 6.310.735.D, and 6.310.735.E. If the Director again fails to certify an EDR, all QDRs shall lose their certification, and the processes in subsections 6.310.735.C, 6.310.735.D, and 6.310.735.E shall end, until such time as outlined in subsection 6.310.735.F.1.

1. No earlier than 180 days after the Director fails to certify an EDR after repeating the processes in subsections 6.310.735 C, D, and E, the Director may designate QDRs upon request of organizations wishing to be certified, and set a date to repeat the processes in subsections 6.310.735 C, D, and E, as prescribed by Director’s rule.

2. When repeating processes in subsections 6.310.735.C, 6.310.735.D, and 6.310.735.E, for the purpose of determining deadlines established in this Section 6.310.735, the following modifications apply:

a. In subsection 6.310.735.B, substitute “within 30 days of the date set by the Director, pursuant to subsection 6.310.735.F” for “within 120 days of the effective date of the ordinance introduced as Council Bill _____,”; and

b. In subsection 6.310.735.C, substitute “in the 60 days prior to the date set by the Director, pursuant to subsection 6.310.735.F, other than in the context of an employer-employee relationship must, within 30 days of the date set by the Director, pursuant to subsection 6.310.735.F” for “within 30 days of the effective date of the ordinance introduced as Council Bill _____, other than in the context of an employer-employee relationship, must, within 120 days of the effective date of the ordinance introduced as Council Bill _____”.

G. Upon certification of the EDR by the Director, the driver coordinator and the EDR shall meet and discuss certain specified subjects, including, but not limited to, best practices regarding vehicle equipment standards, safe driving practices, the nature and amount of payments to be made by, or withheld from, the driver coordinator to or by the drivers, minimum hours of work, and conditions of work and applicable rules,

and shall reduce their discussion to a written agreement.

1. Nothing in this Section 6.310.735 shall preclude a driver coordinator from making an agreement with the EDR to require membership of for-hire drivers in the EDR's entity/organization as a condition of being hired, contracted with, or partnered with by the driver coordinator to provide for-hire services to the public.

2. After reaching agreement, the parties shall transmit the agreement to the Director for review for compliance with the provisions of this Chapter 6.310. The Director shall have 14 days upon receipt of an agreement to determine if it complies with this Chapter 6.310 and to notify the parties of the determination in writing.

a. If the Director finds the agreement compliant, the agreement is final and binding on all parties.

b. If the Director finds it fails to comply, the Director shall remand it to the parties with a written explanation of the failure(s) and, at the Director's discretion, recommendations to remedy the failure(s).

c. The agreement shall not go into effect until the Director affirmatively determines its adherence to the provisions of this Chapter 6.310.

H. If a driver coordinator and the EDR fail to reach an agreement within 90 days of the certification of the EDR by the Director, either party must submit to interest arbitration upon the request of the other.

1. The interest arbitrator may be selected by mutual agreement of the parties. If the parties cannot agree then the arbitrator shall be determined as follows: from a list of seven arbitrators with experience in commercial and/or labor disputes designated by the American Arbitration Association, the party requesting arbitration shall strike a name. Thereafter the other party shall strike a name. The process will continue until one name remains, who shall be the arbitrator. The cost of the interest arbitration shall be divided equally between the parties.

2. The interest arbitrator shall consider the following criteria in making a decision:

- a. stipulations of the parties;
- b. the cost of expenses incurred by drivers (e.g., fuel, wear and tear on vehicles, and insurance);
- c. comparison of the amount and/or proportion of revenue received from customers by the driver coordinators and the income provided to or retained by the drivers;
- d. the wages, hours, and conditions of employment of other persons, whether employees or independent contractors, employed as for-hire or taxicab drivers in Seattle and its environs, as well as other comparably sized urban areas; and
- e. any other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

3. The arbitrator shall transmit the agreement to the Director for review for compliance with the provisions of this Chapter 6.310. The Director shall have 14 days upon receipt of an agreement to determine if it complies with this Chapter 6.310 and to notify the interest arbitrator of the determination in writing.

- a. If the Director finds the agreement compliant, the agreement is final and binding on all parties.
- b. If the Director finds it fails to comply, the Director shall remand it to the interest arbitrator with a written explanation of the failure(s) and, at the Director's discretion, recommendations to remedy the failure(s).
- c. The agreement shall not go into effect until the Director affirmatively determines its adherence to the provisions of this Chapter 6.310.

4. If either party refuses to enter interest arbitration, upon the request of the other, either party may pursue all available judicial remedies.

I. A driver coordinator shall not retaliate against any for-hire driver for exercising the right to participate in the representative process provided by this Section 6.310.735. It shall be a violation for a driver coordinator

or its agent, designee, employee, or any person or group of persons acting directly or indirectly in the interest of the driver coordinator in relation to the for-hire driver to:

1. Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Section 6.310.735; or

2. Take adverse action, including but not limited to threatening, harassing, penalizing, or in any other manner discriminating or retaliating against a driver because the driver has exercised the rights protected under this Section 6.310.735.

J. Enforcement

1. Powers and duties of Director

a. The Director is authorized to enforce and administer this Section 6.310.735. The Director shall exercise all responsibilities under this Section 6.310.735 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 the provisions of this Section 6.310.735, providing affected entities with due process of law and in conformity with the intent and purpose of this Section 6.310.735.

b. The Director shall investigate alleged violations of subsection 6.310.735.C, and if the Director determines that a violation has occurred, the Director shall issue a written notice of the violation. The Director may investigate alleged violations of other subsections of this Section 6.310.735, and if the Director determines that a violation has occurred, the Director shall issue a written notice of the violation. The notice shall:

1) Require the person or entity in violation to comply with the requirement;

2) Include notice that the person or entity in violation is entitled to a hearing

before the Hearing Examiner to respond to the notice and introduce any evidence to refute or mitigate the violation, in accordance with Chapter 3.02; and

3) Inform the person or entity in violation that a daily penalty of up to \$10,000 for every day the violator fails to cure the violation will accrue if the violation is uncontested or found committed.

c. The person or entity named on the notice of violation must file with the Hearing Examiner's Office the request for a hearing within ten calendar days after the date of the notice of violation. The Hearing Examiner may affirm, modify, or reverse the Director's notice of violation.

d. If the person or entity named on the notice of violation fails to timely request a hearing, the notice of violation shall be final and the daily penalty of up to \$10,000 will accrue until the violation is cured.

e. Nothing in this Section 6.310.735 shall be construed as creating liability or imposing liability on the City for any non-compliance with this Section 6.310.735.

2. Judicial review. After receipt of the decision of the Hearing Examiner, an aggrieved party may pursue all available judicial remedies.

3. Private right of action

Subsections 6.310.735.C, 6.310.735.G, 6.310.735.H, and 6.310.735.I may be enforced through a private right of action. Any aggrieved party, including but not limited to a EDR, may bring an action in court, and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this Section 6.310.735. A plaintiff who prevails in any action to enforce this Section 6.310.735 shall be awarded reasonable attorney's fees and costs.

Section 4. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of its application to any person or circumstance, does not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 5. Sections 2 and 3 shall take effect and be in force 90 days after the effective date of this ordinance.

Section 6. 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 _____, 2015, and signed by me in open session in authentication of its passage this ____ day of _____, 2015.

President _____ of the City Council

Approved by me this ____ day of _____, 2015.

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2015.

Monica Martinez Simmons, City Clerk

(Seal)