



Legislation Text

File #: CB 118499, Version: 2

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, driving taxis, for-hire, and 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; and

WHEREAS, allowing taxicab, transportation network company, and for-hire vehicle drivers (“for-hire 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, stable, cost-effective, and economically viable manner and thereby promote the welfare of the people; and

WHEREAS, The new responsibilities for the Department of Finance and Administrative Services (FAS) contemplated in this legislation will require additional resources; and

WHEREAS, The Director of FAS has authority to adjust fees to cover the cost of the regulatory functions FAS performs on behalf of the public; and

WHEREAS, Should this legislation go into effect the Director may exercise that authority to raise additional revenue through fees to cover the additional costs;

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 and taxicab transportation services pursuant to RCW Chapters 46.72 and 81.72. 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. Seattle Municipal Code Chapter (SMC) 6.310 is an exercise of the City of Seattle's power to regulate the for hire and taxicab transportation industry. The purpose of SMC Chapter 6.310, in pertinent part states: "Some of its regulatory purposes are to increase the safety, reliability, cost-effectiveness, and the economic viability and stability of privately-operated for-hire vehicle and taxicab services within The City of Seattle." SMC 6.310.100(A).

C. The purpose of this ordinance is to ensure safe and reliable for hire and taxicab transportation service pursuant to RCW 46.72.160 and RCW 81.72.210, respectively, and to meet the state's authorization to regulate for hire transportation pursuant to RCW 46.76.001, which states: "The legislature finds and declares that privately operated for hire transportation service is a vital part of the transportation system within the state. Consequently, the safety, reliability, and stability of privately operated for hire transportation services are matters of statewide importance. The regulation of privately operated for hire transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit political subdivisions of the state to regulate for hire transportation services without liability under federal antitrust laws." RCW 81.72.200 governing taxicab transportation has a similar statement of legislative intent.

D. As the City is acting under specific state statutory authority, it is immune from liability under antitrust laws.

E. Entities that hire, contract with, or partner with for-hire drivers for the purpose of assisting them with, or facilitating them in, providing for-hire services to the public establish the terms and conditions of their contract with their drivers, including changes in driver compensation rates and deactivation from dispatch

services. Sudden contract changes may adversely impact the ability of a for-hire driver to provide transportation services in a safe, reliable, stable, cost-effective, and economically viable manner.

F. Sudden changes in contract terms and working conditions unilaterally imposed by entities that hire, contract with, or partner with for-hire drivers have resulted in driver unrest and transportation service disruptions around the country.

G. There is currently no effective mechanism for for-hire drivers to directly address working conditions collectively with the entity that hires, contracts with, or partners with them.

H. Business models wherein companies control aspects of their drivers' work, but rely on the drivers being classified as independent contractors, render for-hire drivers exempt from minimum labor requirements that the City of Seattle has deemed in the interest of public health and welfare, and undermine Seattle's efforts to create opportunities for all workers in Seattle to earn a living wage.

I. Collective bargaining in other industries has achieved public health and safety outcomes for the general public including, but not limited to: job security provisions, scheduling predictability, job training, and methods of communicating health and safety information.

J. Leveling the bargaining power between for-hire drivers and the entities that control many aspects of their working conditions will enable more stable working conditions and better ensure that drivers can perform their services in a safe, reliable, stable, cost-effective, and economically viable manner, and thereby promote the welfare of the people who rely on safe and reliable for hire transportation to meet their transportation needs.

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

* * *

“Commencement date” means a calendar date set by the Director after the effective date of the ordinance introduced as Council Bill 118499 for the purpose of initiating certain processes pursuant to Section 6.310.735 and establishing timelines and deadlines associated with them.

“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 all licensed 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 licensed 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 commencement date set by the Director. 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 Director shall promulgate a commencement date that is no earlier than 180 days and no later than 240 days from the effective date of the ordinance introduced as Council Bill 118499.

B. 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.

C. An entity wishing to be considered as a QDR for qualifying drivers must submit a request to the Director within 30 days of the commencement date. 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. The Director shall provide a list of all QDRs to all driver coordinators.

D. Driver coordinators who have hired, contracted with, or partnered with 50 or more for-hire drivers at any one time in the 30 days prior to the commencement date, other than in the context of an employer-employee relationship, must, within 60 days of the commencement date, provide all QDRs seeking to represent their drivers the names, addresses, email addresses (if available), and phone number (if available) of all qualifying drivers they hire, contract with, or partner with.

E. 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.

F. The Director shall certify a QDR as the EDR for all 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 statements of interest to the Director from a majority of qualifying drivers from the list described in subsection 6.310.735.D. Each statement of interest shall be signed, dated, and clearly state that the driver wants to be represented by the QDR for the purpose of collective bargaining. The Director shall determine by rule the standards and

procedures for submitting and verifying statements of interest by qualifying drivers choosing an EDR.

a. The methods for submitting and verifying statements of interest by qualifying drivers choosing an EDR may include, but not be limited to: signature verification, unique personal identification number verification, statistical methods, or third party verification.

2. Within 30 days of receiving such statements of interest, the Director shall determine if they are 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.

G. If no EDR is certified for a driver coordinator, the Director shall promulgate a new commencement date that is no earlier than 180 days and no later than 360 days from the announcement that no QDR met the majority threshold, provided that no driver coordinator shall be subject to the requirements of Section 6.310.735 more than once in any calendar year. The affected EDR and driver coordinator shall repeat the processes in subsections 6.310.735.D and 6.310.735.F. If the Director again fails to certify an EDR, all QDRs shall lose their certification, and the processes in subsections 6.310.735.D and 6.310.735.F shall end, until such time as outlined in subsection 6.310.735.G.1.

1. If The Director may designate QDRs upon request of organizations wishing to be certified pursuant to 6.310.735.C, and promulgate a new commencement date to repeat the processes in subsections 6.310.735 D, and F.

H. 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 30 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.

I. 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 30 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.

J. 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.

K. Decertification. An Exclusive Driver Representative may be decertified according to the following:

1. The Director receives a petition to decertify an EDR within 30 days of the expiration of an agreement reached pursuant to this Section 6.310.735.

a. A decertification petition must be signed by 10 or more qualifying drivers. The Director shall determine by rule the standards and procedures for submitting the decertification petition.

2. Once a petition has been accepted by the Director, the Director shall issue notice to the driver coordinator and the EDR of the decertification petition and promulgate a new commencement date.

3. The driver coordinator shall have 14 days from the commencement date to transmit the list of qualifying drivers to the petitioners and the EDR.

4. Within 90 days of receiving the driver contact information, petitioners for a decertification will submit to the Director statements of interest from a majority of qualifying drivers from the list described in subsection 6.310.735.K.3. The statements of interest shall be signed and dated and shall clearly indicate that the driver no longer wants to be represented by the EDR for the purpose of collective bargaining with the driver

coordinator. The Director shall determine by rule the standards and procedures for submitting and verifying the statements of interest of qualifying drivers.

5. Within 30 days of receiving such statements of interest, the Director shall determine if they are sufficient to decertify the EDR for that particular driver coordinator. The Director shall either decertify the EDR, or declare that the decertification petition did not meet the majority threshold and reaffirm that the EDR shall continue representing all drivers for that particular driver coordinator.

a. If an EDR is decertified for a particular driver coordinator, the process of selecting a new EDR may start according to the process outlined in subsection 6.310.735.G.1.

L. 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.D, 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.D, 6.310.735.E, 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 150 days after the effective date of the ordinance introduced as Council Bill 118499.

Section 6. No provision of this ordinance shall be construed as a providing any determination regarding the legal status of taxicab, transportation network company, and for-hire vehicle drivers as employees or independent contractors.

Section 7. No provision of this ordinance shall be construed as relieving taxicab, transportation network company, and for-hire vehicle drivers from any legal obligation under any other law, including but not limited to antitrust laws, nor shall any provision of this ordinance be construed as providing any determination regarding whether any such law applies to taxicab, transportation network company, and for-hire vehicle drivers.

Section 8. Should a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, determine that any provision of this ordinance is preempted by federal law, any and all such provisions shall be deemed null and void.

Section 9. 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)