



SEATTLE CITY COUNCIL
CENTRAL STAFF

CB 120775

App-Based Worker Minimum Payment

Revisions Ordinance – Issue Identification

JASMINE MARWAHA AND KARINA BULL, ANALYSTS

GOVERNMENT, ACCOUNTABILITY AND ECONOMIC DEVELOPMENT COMMITTEE

APRIL 25, 2024

Presentation Outline

- Brief Overview
- Policy Considerations
- Questions
- Next Steps

ABWMP Revisions Ordinance

- CB 120775 would amend the pay standard established by ABWMP Ordinance, SMC 8.37, with the intent of providing a **guaranteed minimum earnings standard for app-based workers**, while reducing labor and administrative costs for network companies, and incentivizing network companies to lower their consumer fees. The goal in reducing fees is to increase overall consumer demand and provide economic benefits to the app-based workers, restaurants and other businesses that rely on the services, and network companies themselves.
- The legislation also amends the transparency, flexibility, and enforcement provisions of the ABWMP Ordinance, with the intent of further reducing costs by easing the regulatory burden on network companies.

ABWMP Revisions – Pay Standard

- Guarantee gross minimum wage of **\$19.97/hour + \$0.35/mile** (i.e., remove associated cost, time, & mileage factors; and reduce mileage rate).
 - At a gross, vs. net, level this hourly rate is equal to the City's current minimum wage. The mileage rate is lower than current law, which is linked to the IRS reimbursement rate and may not reflect the effective costs for most app-based workers.
- Engaged time (paid time) is calculated when worker is *en route* instead of upon acceptance of an offer.
- No payment for offers cancelled with cause *unless* customer changes result in five or more minutes of estimated engaged time.
- Pay would be calculated over a *network company earnings period*, instead of per-offer.
- Allow network companies to count incentives and bonuses toward minimum pay standard.

ABWMP Revisions - Transparency

- Retain estimate of engaged time, estimated engaged miles, approximate geographic location of work, guaranteed minimum payment for offer, names of businesses for relevant offers.
- Remove specific pickup and dropoff locations, amount of tip, information about physical labor requirements and unsealed contents.
- Remove requirements for receipts to customer and permit removal of geographic location of order if customer deleted their account.
- Remove OLS's ability to require affirmative production of records for administration, evaluation, and enforcement purposes.

ABWMP Revisions - Flexibility

- Clarify requirements to allow rewards/incentives for worker acceptance rate and availability (i.e., network company cannot *terminate a worker's contract* for lower acceptance rate or limited availability but can take other actions).
- Permit network company to limit worker access to the app, if the company discloses the reason.
- Narrow and clarify reasons for cancelling an offer with cause (i.e., network company cannot *terminate a worker's contract* for such reasons).

ABWMP Revisions - Enforcement

- Modify anti-retaliation protections, eliminating presumptions in [SMC 8.37.120.D and 8.37.120.E](#) that would otherwise establish retaliation.
- Modify OLS rulemaking authority, clarifying the scope of permissible rules (e.g., removes authority to issue rules for purposes of evaluating the ordinance, prevents rules that would require network companies to disclose certain records outside of an enforcement action).
- Eliminate private right of action, which allows workers additional options for redress if OLS cannot pursue enforcement due to capacity or other reasons.
- Establish a cure period for certain “non-willful” violations, which would prevent OLS from assessing penalties, fines, or other costs for those violations.

ABWMP Revisions – At a Glance

Pay Standard

- Guarantee gross minimum wage of **\$19.97/hour + \$0.35/mile** (i.e., remove associated cost, time, & mileage factors; and reduce mileage rate).
- Engaged time (paid time) is calculated when worker is *en route* instead of upon acceptance of an offer.
- No payment for offers cancelled with cause *unless* customer changes result in five or more minutes of estimated engaged time.
- Pay would be calculated over a *network company earnings period*, instead of per-offer.
- Allow network companies to count incentives and bonuses toward minimum pay standard.

Transparency

- Retain estimate of engaged time, estimated engaged miles, approximate geographic location of work, guaranteed minimum payment for offer, names of businesses for relevant offers.
- Remove specific pickup and dropoff locations, amount of tip, information about physical labor requirements and unsealed contents.
- Remove requirements for receipts to customer and permit removal of geographic location of order if customer deleted their account.
- Remove OLS's ability to require affirmative production of records for administration, evaluation, and enforcement purposes.

Flexibility

- Clarify requirements to allow rewards/incentives for worker acceptance rate and availability (i.e., network company cannot *terminate a worker's contract* for lower acceptance rate or limited availability but can take other actions).
- Permit network company to limit worker access to the app, if the company discloses the reason.
- Narrow and clarify reasons for cancelling an offer with cause (i.e., network company cannot *terminate a worker's contract* for such reasons).

Enforcement

- Changes to enforcement, including narrowing anti-retaliation provisions, modifying rulemaking authority, establishing a “cure” period for non-willful violations, and removing private right of action.

Policy Considerations

The following slides highlight significant policy changes or considerations associated with the ABWMP Revisions Ordinance. If a councilmember is interested in addressing any of the policy considerations, Central Staff can work to identify options and prepare amendments that meet the councilmember's interests.

1. Network Company Consumer Fees

With limited information, it is difficult to assess specifically how the current regulations impact labor and administrative costs, and correspondingly how the proposed legislation would result in changes to the costs, demand, and supply of network company services, particularly the non-economic provisions.

Network companies could still choose to offset the cost of regulation by raising costs and may retain consumer fees.

Central Staff memo identifies a range of potential options for this consideration.

2. Worker Earnings

If CB 120775 achieves the intended impact of reducing consumer fees and thereby increasing consumer demand for online orders, the proposed pay standard (although lower than current requirements) could increase worker earnings as compared to prior to the law being in effect.

While the proposed legislation would result in a gross payment of the Seattle minimum wage to app-based workers when actively performing offers, it may result in a net payment that falls below minimum wage when accounting for on-call time and expenses.

Central Staff memo identifies a range of potential options for this consideration.

3. Earnings Period and Incentives

CB 120775 would require the minimum payment standard to be met for all engaged time over the course of a network company “earnings period,” rather than for each offer, and allow incentives and bonuses to count toward the minimum pay requirement.

This change could result in reduced labor costs per online order and may lead network companies to reduce consumer fees per offer. It may also result in less transparency and predictability at the end of the earnings period, and a lower likelihood of incentives and bonuses adding to higher earnings than the minimum required by law.

Central Staff memo identifies a range of potential options for this consideration.

4. Customer Receipts

The proposed legislation would remove the requirement for customer receipts. While the network companies may still provide this information to consumers regardless of the requirement, the Committee may want to consider retaining requirements for consumer receipts in CB 120775 to provide greater assurances of consumer transparency.

Central Staff memo identifies potential options for this consideration.

5. Flexibility (1/2)

The current law prohibits network companies from taking *any adverse action* against app-based workers who limit hours of availability, reject individual offers, or cancel offers with cause. CB 120775 would allow network companies to *take any action except for terminating a worker's contract* (i.e., permanently blocking access to the platform) in response to workers exercising flexibility options.

The App-Based Worker Deactivation Rights Ordinance (SMC Chapter 8.40), effective January 1, 2025, prohibits network companies from *deactivating a worker* (i.e., restricting access but not necessarily permanently blocking access to the platform) for exercising flexibility options. The Committee may want to consider harmonizing CB 120775 with Chapter 8.40, to simplify outreach and enforcement of this provision.

Central Staff memo identifies a range of potential options for this consideration.

5. Flexibility (2/2)

CB 120775 would also allow network companies to block a worker's access to the platform for any reason, provided they disclose the reason to the worker. This could allow network companies to increase the efficiency of app-based workers by reducing on-call time and increasing the number of offers completed by workers who are able to access the platform, thereby increasing overall earnings.

However, when combined with the other proposed changes to the flexibility provisions, this could result in workers being restricted from the platform for limiting their availability or acceptance of offers.

Central Staff memo identifies potential options for this consideration.

6. Affirmative Production of Records

CB 120775 would remove the OLS Director's authority to collect records from network companies to administer, evaluate, and enforce the ordinance. OLS would retain authority to require records from individual network companies during enforcement actions.

Other City laws regulating app-based platforms (i.e., TNCs and short-term rentals) include regular data reporting requirements.

Central Staff memo identifies a range of potential options for this consideration.

7. Penalties (1/2)

- CB 120775 would restrict the OLS Director from assessing penalties for certain **non-willful violations** if the network company “cures” the violation within 30 days or longer if the network company requests additional time for “good cause.”
- Potential impacts:
 - Penalties could lose deterrent effect, functioning as the cost of doing business.
 - Additional work for OLS enforcement staff to determine whether violation was willful or non-willful and whether violation was cured.
 - Reduced financial remedies paid to workers who are affected by violations regardless of the network company’s intent. The OLS Director regularly uses the authority to assess penalties to workers (rather than the City) as a mechanism to compensate workers for technical violations that do not result in backpay.

Central Staff memo identifies a range of potential options for this consideration.

8. Retaliation

CB 120775 would modify anti-retaliation protections, removing presumptions that a network company has retaliated against a worker for exercising their rights unless the network company shows otherwise.

These presumptions are intended to address the information asymmetry that exists when hiring entities take actions against workers and are considered strong measures to protect workers who ask questions about their rights or report violations. These presumptions are reflected in the City's other labor standards and statewide labor protections.

Central Staff memo identifies a range of potential options for this consideration.

9. Private Right of Action

CB 120775 would remove the right of app-based workers to file civil actions for violations of the ABWMP Ordinance.

The private right of action allows OLS to prioritize its investigations while giving workers other options if OLS can't pursue enforcement due to capacity or other reasons. Most of Seattle's worker protections have a private right of action (i.e., all labor standards except for the Fair Chance Employment Ordinance and the Commuter Benefits Ordinance).

Central Staff memo identifies potential options for this consideration.

10. Implementation & Financial Considerations

- Implementing CB 120775 would likely have financial impacts for OLS, as the office could incur additional costs to revise rules, outreach materials, and enforcement procedures.
- Central Staff is prepared to work with OLS and the City Budget Office (CBO) to develop estimates of these costs, including the impact of additional work on OLS's existing programs and priorities, whether the costs are short- or long-term, and whether the costs could be absorbed within OLS's existing operations.
- Central Staff may not receive and/or be able to analyze this information prior to Council voting on CB 120775.

Central Staff memo identifies potential options for this consideration.

11. Racial Equity Considerations (1/2)

- Black and Latinx workers are overrepresented among app-based workers, comprising almost 42 percent of app-based workers but less than 29 percent of the overall labor force. Thus, the impacts of the current law or the proposed changes disproportionately affect BIPOC workers.
- Many restaurants using app-based delivery services are small businesses owned by individuals or families in low-income and historically disenfranchised communities.
- Customers, including those with disabilities, may depend on app-based workers to provide essential services, such as delivery of prepared food and groceries.

Central Staff memo identifies a range of potential options for this consideration.

Next Steps

- April 29 – Proposed amendments due to Central Staff by noon.
- May 9 – Consideration of any proposed amendments & final Committee vote
- May 21 – Council vote

Questions?