

September 24, 2020

MEMORANDUM

To: Seattle City Council
From: Karina Bull, Analyst
Subject: Council Bill 119876: TNC Driver Minimum Compensation Ordinance

On September 24, 2020, the Finance and Housing Committee will discuss and may vote on [Council Bill 119876](#), legislation transmitted by the Office of Labor Standards (OLS). This memo (1) summarizes the legislation and (2) presents potential amendments in a substitute bill sponsored by Councilmember Mosqueda for the Council's consideration. See the "Amendments" section below for more detail.

Background

Transportation Network Companies (TNCs) rely on business models that classify TNC drivers as independent contractors who are not subject to local, state and federal workplace protections, including ancillary benefits such as employer-provided health insurance or Seattle's minimum wage.

In November 2019, the Council passed Ordinance 125977, [Seattle Municipal Code \(SMC\) 14.31](#), asking the Department of Finance and Administrative Service and the Office of Labor Standards (OLS) to (1) conduct an evaluation process to develop a proposed minimum compensation standard for drivers; and (2) transmit future legislation to propose implementation of this standard.

In 2020, the City retained Dr. James Parrott of the New School and Dr. Michael Reich of the University of California at Berkeley to study driver pay and engaged City departments to gather local information. After surveying over 7,000 Seattle drivers and analyzing data from the TNCs and licensing and regulatory data from the City and King County, Parrott and Reich found that 84 percent of drivers earned below the Seattle minimum wage after accounting for reasonable expenses. Specifically, Parrott and Reich determined that drivers incur \$11.80 per hour of reasonable expenses and average gross earnings of \$21.53 per hour – meaning that their average hourly earnings are \$9.73 after accounting for reasonable expenses – substantially below the 2020 Seattle minimum wage of \$16.39 per hour.

Summary

This legislation, effective on January 1, 2021, would establish minimum compensation standards for drivers that align with Seattle's minimum wage requirements and include pay for reasonable expenses. For example, minimum gross compensation for 2020 (including an allowance for reasonable expenses) would be \$28.19 per hour. Key components of the minimum compensation standard would include:

1. Minimum Compensation Standard for TNC Drivers

TNCs would pay drivers at a minimum “per minute rate” and “per mile rate” for each minute of time and each mile travelled while transporting a passenger. Both the per minute rate and the per mile rate would be scaled up by “utilization rates” to pay drivers for time they spend without a passenger in the car. Thus, the minimum compensation standard would pay drivers for all the time spent on the TNC app in available platform time, dispatch platform time, and passenger platform time. See Table 1 for the minimum compensation formula.

Table 1: Minimum Compensation Formula

$$\left(\frac{\text{Per minute rate} \times \text{Passenger Platform Time Minutes}}{\text{Passenger Platform Time Utilization Rate (.492)}} \right) + \left(\frac{\text{Per mile rate} \times \text{Passenger Platform Time Miles}}{\text{Passenger Mileage Utilization Rate (.622)}} \right) = \text{Minimum Payment Per Trip}$$

a. Per minute rate

The per minute rate would be based on the per minute equivalent of the Seattle minimum wage for Schedule 1¹ employers (See [SMC 14.19](#)). For example, the 2020 Seattle minimum wage for Schedule 1 employers is \$16.39 and the corresponding per minute rate would be \$0.27.²

b. Per mile rate

The per mile rate would be based on Parrott and Reich’s determination of driver reasonable expenses and could be adjusted by the OLS Director. For a minimum of one year, the per mile rate would be \$.0725. See Attachment A for a chart of reasonable expenses.

c. Utilization rates

For a minimum of one year, the passenger platform utilization rate would be 0.492; the passenger mileage utilization rate would be 0.622.

d. Adjustments to utilization rates

After one year of implementation, the OLS Director would have discretion to adjust (by rule) the utilization rates based on the proportion of time drivers spend without a passenger. The Director would be required to base any adjustment on a study of relevant factors during an “assessment period” of up to 12 months prior to the date of adjustment. The Director would also be required to provide advance notice to TNCs and other stakeholders of any assessment period to establish awareness of the study.

¹ Under [SMC 14.19.010](#), Schedule 1 employers are employers with more than 500 employees worldwide.

² Per minute rate = (Seattle hourly minimum wage for Schedule 1 employers) divided by (60 minutes).

2. Tip Protection

TNCs would pay all passenger tips paid to drivers. TNCs would not be allowed to count tips towards minimum pay requirements.

3. Provision of Personal Protective Equipment and Disinfecting Supplies

During the COVID-19 civil emergency, TNCs would supply drivers with, or reimburse drivers for, a reasonable amount of personal protective equipment and disinfecting supplies.

4. Transparency Requirements for TNC Drivers and Passengers

TNCs would provide drivers with a notice of rights, per-trip receipts, and weekly pay statements. TNCs also would provide passengers with per-trip receipts.

5. OLS Implementation and Enforcement

OLS would implement the legislation through rulemaking, outreach and enforcement. Aggrieved parties would have a private right of action.

6. TNC Study

Council would ask the City Auditor to contract with academic researchers to study the impacts of the legislation within two years following initial implementation. OLS would also have discretion to study the impacts of the legislation during the first year of implementation.

Financial Impacts

The legislation would provide OLS with authority to (1) implement the legislation, and (2) study the impacts of the legislation.

OLS indicates the legislation would increase its costs by \$647,850 beginning in 2021.

- \$602,850 in ongoing annual appropriations for four new positions: a policy analyst, two senior investigators, and an enforcement strategist; and
- \$45,000 in one-time implementation costs: translation and interpretation services, rulemaking, external counsel legal fees, outreach, and communication.

There would be an additional cost to study the impacts of the legislation. OLS estimates it would cost up to \$278,000 for a one-year evaluation involving academic research, survey and driver outreach, and project management staff. This estimate does not include any costs for qualitative research such as roundtables, intercept interviews, or focus groups.

While the City Budget Office estimates that these expenses could be supported by revenue generated by collection of the tax set forth in [SMC 5.39](#), the City has not yet collected funds

related to this tax because the TNCs have not reached the threshold number of rides for coverage (i.e., one million rides per quarter). As such, the Council could either:

1. Require OLS to reprioritize their existing portfolios of work; or
2. Add resources to support the newly created roles either during the 2021 budget adoption process or a future supplemental budget process.

Amendments

As of September 23, Councilmember Mosqueda has sponsored a substitute bill for the Council’s consideration. The substitute bill contains substantive amendments and technical changes. See Table 2 for an overview of the amendments. Any additional amendments, if identified, will be distributed as soon as they are available.

Table 2: Substitute Bill

Issue	Description
<p>A. Findings</p>	<p>Add findings to provide context for increasing the “per mile rate” to include on reasonable expenses for vehicle cleaning and rest breaks.</p> <ul style="list-style-type: none"> • For vehicle cleaning, the amendments would reference findings by Dr. Marissa Baker of the School of Public Health at the University of Washington. Dr. Baker has found that drivers need to clean and disinfect their vehicles to ensure passenger and driver safety during and after the COVID-19 emergency. • For rest breaks, the amendments would reference findings by Parrott and Reich.
<p>B. Minimum Per Trip Amount</p>	<p>Establish a “minimum per trip amount” (paid by TNCs) of at least \$5 for each TNC dispatched trip.</p> <p>This amendment would require TNCs to pay drivers a “minimum per trip amount” of at least \$5 for each TNC dispatched trip. TNCs would need to pay (a) the minimum “per minute amount” plus the “per mile amount” for passenger platform time, or (b) the minimum per tip amount, whichever amount is greater.</p> <ul style="list-style-type: none"> • For the minimum per trip amount, “each TNC dispatched trip” would include (a) trips to the passenger’s drop-off location; (b) trips cancelled by the passenger or TNC, subject to limitations; and (c) trips where the passenger fails to appear at the pick-up location. • The minimum per trip amount would not include (a) trips cancelled by the passenger or TNC if the TNC refunds the passenger cancellation fee due to driver conduct; or (b) trips cancelled by the driver. • Effective January 1, 2022, the minimum per trip amount would be increased to reflect the rate of inflation.
<p>C. Reasonable expenses</p>	<p>Include cleaning time and rest breaks in reasonable expenses.</p> <p>In the introduced legislation, the “per mile rate” for reasonable expenses would be \$0.725 and the corresponding “per mile amount” would be \$1.17. This amendment</p>

Issue	Description
	<p>would add (a) 30 minutes per day for vehicle cleaning and (b) rest breaks to the compensation for reasonable expenses. With these additions, the per mile rate would increase from \$0.725 to \$0.830. The per mile amount would increase from \$1.17 to \$1.33. For example, 2020 gross compensation (including expenses) would be \$29.90 per hour.</p> <ul style="list-style-type: none"> • Vehicle cleaning – The introduced legislation would include a per mile rate of \$.004 to cover 12 car washes per year. This amendment would increase the per mile rate by \$0.0629 to also include 30 minutes of cleaning per day. The additional pay would compensate drivers to regularly clean and disinfect their vehicles to keep themselves and passengers safe. Dr. Marissa Baker at the School of Health at the University of Washington has found that drivers need at least two to three minutes after each passenger (approximately 30 minutes per day of compensable time) to adequately clean vehicles to discourage the spread of infectious disease in Seattle during and after the COVID-19 emergency. • Rest breaks – The introduced legislation would not include compensation for rest breaks, a state-mandated labor standard for employees that does not apply to workers hired as independent contractors. This amendment would increase the per mile rate by \$0.042 and would pay for paid rest periods of at least ten minutes for every four hours worked.
<p>D. Adjustment of Utilization Rates</p>	<p>Delay the OLS Director’s adjustment of the utilization rates.</p> <p>This amendment would delay the OLS Director’s adjustment to the passenger platform utilization rate or the passenger mileage utilization rate until three years after the effective date of the ordinance.</p> <p>Require an assessment period of 12 months for first adjustment.</p> <p>This amendment would require an assessment period of 12 months for the first adjustment to the utilization rates. Any subsequent assessment period could be up to 12 months.</p>
<p>E. Cancellations</p>	<p>Remove provision that would require TNCs to pay TNC drivers any cancellation fee charged to the passenger.</p> <p>This provision would be replaced by the new requirement to provide drivers with a minimum per trip amount.</p>
<p>F. Transparency Requirements</p>	<p>Add transparency requirements for TNC drivers and passengers.</p> <p>This amendment would require TNCs to provide additional information to drivers and passengers.</p> <ul style="list-style-type: none"> • For drivers, this amendment would require notice of passenger fares for each trip and weekly notice of total passenger fares for the prior week. • For passengers, this amendment would require notice of compensation paid to the driver with passenger-paid tips separately itemized.

Issue	Description
G. TNC Study	<p>Assign TNC study to OLS rather than the City Auditor.</p> <p>This amendment would (a) task OLS with all responsibility for coordinating potential studies on the impacts of the legislation on TNCs and drivers; (b) make Council’s request for a study permissive rather than mandatory; and (c) clarify that Council’s request for a study would cover the initial two years of implementation and would be due within three years of implementation.</p>
H. Technical Changes	<p>Make technical changes as necessary.</p> <p>The substitute bill would make a number of technical changes to the introduced legislation, including amending the definition of reasonable expenses to include vehicle cleaning and rest breaks (vehicle cleaning was inadvertently omitted from the introduced legislation); updating the amounts of penalties and fines to reflect forthcoming 2021 adjustments for inflation; and correcting typos.</p>

Next Steps

Council action could occur at the Finance and Housing Committee meeting on September 24, 2020.

Please contact me if you have questions.

Attachments:

- A. Chart of TNC Driver Reasonable Expenses

cc: Dan Eder, Interim Director

Attachment A – Chart of TNC Driver Reasonable Expenses

	Item¹	Annual Amount	Per Mile Rate	Per Mile Amount²
1	Vehicle acquisition and financing costs, including lease payments	\$8,006	\$0.2288	\$0.3678
2	Maintenance and repairs	\$2,261	\$0.0646	\$0.1039
3	Vehicle cleaning	\$140	\$0.0040	\$0.0064
4	Gasoline	\$3,289	\$0.0940	\$0.1511
5	Vehicle insurance	\$2,466	\$0.0705	\$0.1133
6	License and vehicle registration fees, including business license taxes	\$571	\$0.0163	\$0.0262
7	Cell phone and cell phone service plans	\$1,560	\$0.0446	\$0.0717
8	Medical, dental, and vision insurance	\$3,766	\$0.1076	\$0.1730
9	Employer-side payroll taxes that drivers must pay	\$2,923	\$0.0835	\$0.1342
10	Business taxes that drivers must pay	\$392	\$0.0112	\$0.0180
Total in Introduced Legislation		\$25,374	\$0.7250	\$1.1656
11	Rest breaks	\$1,469	\$0.042	\$0.0675
12	Vehicle cleaning time (30 minutes per 8 hours)	\$2,202	\$0.0629	\$0.1012
Total in Substitute Bill		\$29,045	\$.830	\$1.33

¹ Items one through 10 were determined in a study commissioned by the City. See James Parrott and Michael Reich, *A Minimum Compensation Standard for Seattle TNC Drivers: Report for the City of Seattle* at 1-2; 35 (July 2020), available at https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5effff2647a3f573481a187c/1593835306875/Parrott_Report_July22020.pdf.

² The “per mile amount” is calculated by dividing the “per mile rate” by the passenger mileage utilization rate (0.622).