



Legislation Text

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to transportation network company drivers; establishing deactivation protections for transportation network company drivers; amending Section 3.15.000 of the Seattle Municipal Code; and adding a new Chapter 14.32 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 2018, the two largest TNCs accounted for over 24 million trips in the City and King County; and

WHEREAS, these two companies are also major hiring entities, accounting for most of the 31,676 TNC drivers issued permits by King County in 2018 as recorded by the King County Department of Licensing; and

WHEREAS, the regulation of TNC driver protections 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 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. In the pursuit of economic opportunity, many transportation network company (TNC) drivers are immigrants and people of color who have taken on debt or invested their savings to purchase and/or lease vehicles to provide TNC services.

C. 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.

D. TNC drivers are subject to TNC companies' policies that can be unilaterally changed so they can be deactivated for a variety of reasons, and they do not have consistent access to due process for such deactivations, nor do they have regular access to human resources staff who have the power to correct unwarranted deactivations, via either in-person meeting or telephone, to air their deactivation-related grievances.

E. The TNCs deactivate drivers with unclear processes for review of those deactivations. Establishing a reasonable standard for the deactivations of TNC drivers as well as access to a neutral Deactivation Appeals Process in which unwarranted deactivations may be challenged will help ensure that thousands of drivers who provide vital transportation services in Seattle will be able enjoy a small measure of

job security.

F. TNC drivers who have protection against unwarranted deactivation 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 14.32 is added to the Seattle Municipal Code as follows:

CHAPTER 14.32 TRANSPORTATION NETWORK COMPANY DRIVERS DEACTIVATION RIGHTS

14.32.010 Short title

This Chapter 14.32 shall constitute the “Transportation Network Company Driver Deactivation Rights Ordinance” and may be cited as such.

14.32.015 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 the people who rely on such services to meet their transportation needs.

14.32.020 Definitions

For the purposes of this Chapter 14.32:

“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’s violation of this Chapter 14.32.

“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 prior to

receiving a 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.

“Days” means calendar days.

“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.

“Dispatch location” means the location of the TNC driver at the time the TNC driver accepts a trip request from the TNC.

“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, fails to appear for a trip, or enters the TNC driver’s vehicle.

“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.

“Driver Resolution Center” means a non-profit organization registered with the Washington Secretary of State that contracts with the Agency to provide culturally competent TNC driver representation services, outreach, and education, that is affiliated with an organization that has experience representing workers in grievance proceedings and whose administration and/or formation was/is not funded, excessively influenced, or controlled by a TNC.

“Operating in Seattle” 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 Seattle.

“Passenger drop-off location” means the location where a passenger exits a TNC driver’s vehicle at the end of a trip.

“Passenger pick-up location” means the location where a passenger has requested to be picked up at the time of dispatch, for the purpose of receiving TNC services.

“Passenger platform time” means the period of time commencing when a passenger enters the TNC driver’s vehicle until the time when the passenger exits the TNC vehicle.

“Representative” means a person who gives advice or guidance and includes, but is not limited to, family members, friends, licensed professionals, attorneys, advocates, and Driver Resolution Center advocates.

“Respondent” means the TNC who is alleged or found to have committed a violation of this Chapter 14.32.

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

“Transportation network company” or “TNC” means an organization whether a corporation, partnership, sole proprietor, or other form, licensed or required to be licensed under Chapter 6.310, operating in Seattle 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 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 14.32, 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. 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.

14.32.030 TNC driver coverage

A TNC driver is covered by this Chapter 14.32 if the TNC driver provides TNC services within the geographic boundaries of the City for a TNC covered by this Chapter 14.32.

14.32.040 TNC coverage

A. TNCs that report greater than 1,000,000 trips that originate in the City per the most recent quarterly report under Section 6.310.540 are covered under this Chapter 14.32.

B. Separate entities that form an integrated enterprise shall be considered a single TNC under this Chapter 14.32. Separate entities will be considered an integrated enterprise and a single TNC under this Chapter 14.32 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; and
4. Degree of common ownership or financial control over the entities.

14.32.050 Protection from unwarranted deactivation

- A. TNC driver deactivation rights
1. No TNC shall subject a TNC driver to unwarranted deactivation, as defined by Director’s rule.
 2. Subject to driver eligibility standards created by Director’s rule, a TNC driver shall have

a right to challenge all permanent deactivations and temporary deactivations, as defined by Director's rule.

3. The TNC driver has the right to elect between representing themselves during any deactivation challenge or being represented by a representative, including an advocate from the Driver Resolution Center. The Driver Resolution Center shall have discretion to determine whether to represent a TNC driver.

4. Upon deactivation, every TNC shall furnish to the TNC driver a written statement of the reasons for and effective date of deactivation and provide notice, in a form and manner designated by the Agency, of the TNC driver's right to challenge such deactivation under this Section 14.32.050. The Agency shall create and distribute the notice in English and other languages as provided by rules issued by the Director.

B. The TNC driver and TNC may, by mutual agreement, proceed to arbitration through the Deactivation Appeals Panel arbitration ("Panel arbitration") proceeding created by this Chapter 14.32 instead of proceeding under any applicable arbitration agreement between the TNC driver and the TNC ("private arbitration agreement"). In the absence of a private arbitration agreement between a TNC driver and a TNC, the TNC driver shall have an absolute right to challenge the deactivation pursuant to subsections 14.32.050.C and 14.32.050.D, regardless of agreement by the TNC.

C. Deactivation Appeals Panel process

1. If the TNC driver and TNC agree to proceed to arbitration through the Deactivation Appeals Panel arbitration proceeding created by this Chapter 14.32, the TNC driver and/or a representative must provide notice to the TNC of intent to challenge the deactivation no later than 60 days after the deactivation.

2. The TNC and the TNC driver and/or a representative shall attempt to resolve the challenge informally no later than 15 days after the notice of intent to challenge has been provided to the TNC, or within a time frame mutually agreed by the parties.

3. If the parties resolve the challenge informally pursuant to subsection 14.32.050.C.2, they

must memorialize that resolution in a written agreement.

4. The TNC driver and/or representative must provide notice of intent to arbitrate to the TNC no later than 15 days after the notice of intent to challenge has been provided to the TNC under subsection 14.32.050.C.1.

5. If a TNC driver demonstrates that a TNC failed to engage in the informal appeals process under this subsection 14.32.050.C, there shall be a presumption, rebuttable by clear and convincing evidence, before the Deactivation Appeals Panel that the deactivation is unwarranted.

D. Deactivation Appeals Panel

1. The City shall establish a “Deactivation Appeals Panel” (“Panel”) for purposes of hearing TNC driver challenges to deactivations. The Agency shall contract with one or more persons or entities (“neutral arbitrator”) to conduct arbitration proceedings to hear deactivation challenges. The neutral arbitrator shall be one member of the Panel. The remaining Panel members shall consist of an equal number of partisan panel members, representing the interests of the TNC driver and the TNC, respectively. The partisan panel members shall not be compensated by the City.

2. The utilization of the Panel arbitration proceeding created by this Chapter 14.32 is voluntary upon agreement by both parties and shall be of no cost to the TNC driver. If utilized, the Panel shall be the sole arbitration proceeding for challenging the deactivation.

3. The cost of arbitration, including any fee charged by an arbitrator, will be shared equally by the TNC and the Driver Resolution Center. If the TNC driver is not represented by a representative of the Driver Resolution Center, the TNC shall be solely responsible for the cost of arbitration.

4. The arbitration shall be conducted no later than 30 days after the notice of intent to arbitrate has been provided to the TNC under subsection 14.32.050.C.4, within a time frame mutually agreed by the parties, or as ordered by the Panel.

5. Subject to rules issued by the Director, the Panel may conduct pre-hearing procedures, as

well as an evidentiary hearing at which parties shall be entitled to present witnesses and written evidence relevant to the dispute, and to cross-examine witnesses.

6. The Panel's decision in any case shall be by majority vote, with each arbitrator holding one vote.

7. The Panel shall issue a written decision and, if appropriate, award relief. The Panel shall endeavor to issue the written decision within 48 hours of the evidentiary hearing.

8. Upon a decision concluding an unwarranted deactivation occurred, the Panel may order such relief as may be appropriate to remedy the violation including, without limitation, all remedies provided in Section 14.32.170. Should the Panel order that the TNC driver be reinstated, such order shall be limited to reinstatement to provide TNC services from a passenger drop-off location or a passenger pick-up location in the City.

9. The decision of the Panel shall be final and binding upon the parties.

10. Nothing in this subsection 14.32.050.D shall be construed as restricting a TNC driver's right to pursue any remedy at law or equity for an unwarranted deactivation.

11. The Director shall issue rules to effectuate the terms of this Section 14.32.050 including, but not limited to, rules regarding the definition of unwarranted deactivation, driver eligibility to challenge deactivations, the selection of and criteria for the neutral arbitrator and partisan panel members, and the number of partisan panel members. The Director shall further consider methods to protect passenger privacy and address potential safety concerns during the Deactivation Appeal Panel proceeding.

E. Subject to the provisions of this Section 14.32.050 and rules issued by the Director, a TNC may immediately deactivate a TNC driver if such action is required to comply with any applicable local, state, or federal laws or regulations or where a TNC driver has engaged in egregious misconduct.

F. For deactivations not described in subsection 14.32.050.E, the TNC shall provide the TNC driver with 14 days' notice of the impending deactivation.

G. In computing any period of time prescribed or allowed by this Section 14.32.050, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a federal or City holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a federal or City holiday.

14.32.060 Driver Resolution Center

A. The Agency may contract with a Driver Resolution Center to provide driver resolution services.

Those services shall include, but not be limited to:

1. Consultation and/or direct representation for TNC drivers facing deactivation;
2. Other support for TNC drivers to ensure compliance with applicable labor standards and/or to support their ability to perform TNC services; and
3. Outreach and education to TNC drivers regarding their rights under this Chapter 14.32 and other applicable federal, state, and local laws and regulations.

B. The Director must approve in advance, by rule or otherwise, the provision of any services by a Driver Resolution Center pursuant to contract other than those identified in subsection 14.32.060.A. Any additional services provided must be consistent with this Chapter 14.32.

14.32.116 Rulemaking authority

The Director is authorized to administer this Chapter 14.32. The Director shall exercise all responsibilities under this Chapter 14.32 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, and evaluate the provisions of this Chapter 14.32, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 14.32.

14.32.140 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter

14.32 is a violation.

14.32.170 Remedies

A. The payment of unpaid compensation, liquidated damages, and interest provided under this Chapter 14.32 is cumulative and is not intended to be exclusive of any of the above referenced remedies and procedures.

1. 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.

2. When determining the amount of liquidated damages payable to aggrieved parties due under this Section 14.32.170, the Panel shall consider:

- a. The total amount of unpaid compensation, liquidated damages, 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. Other factors pursuant to rules issued by the Director.

B. A respondent found to be in violation of this Chapter 14.32 shall be liable for full payment of unpaid compensation plus interest in favor of the aggrieved party for the period of deactivation under the terms of this Chapter 14.32, and other equitable relief. The Director shall issue rules regarding the method of calculating unpaid compensation. The Director is authorized to designate a daily amount for unpaid compensation. For a first violation of this Chapter 14.32, the Panel may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

1. For subsequent violations of this Chapter 14.32, the Panel may assess an amount of liquidated damages in an additional amount of up to twice the unpaid compensation.

2. For purposes of establishing a first and subsequent violation for this Section 14.32.170, the violation must have occurred within ten years of the settlement agreement or Panel's written decision.

14.32.230 Private right of action

A. Any person or class of persons that suffers financial injury as a result of a violation of this Chapter 14.32, may bring a civil action in a court of competent jurisdiction against the TNC violating this Chapter 14.32 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. 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 14.32.230, "person" includes any entity a member of which has suffered financial injury, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 14.32.230, 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 14.32.230.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 14.32 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 administration of this Chapter 14.32 on the part of the City by its officers, employees, or agents.

14.32.235 Encouragement of more generous policies

A. Nothing in this Chapter 14.32 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 14.32.

B. Nothing in this Chapter 14.32 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 14.32.

14.32.240 Other legal requirements

This Chapter 14.32 defines requirements for TNC driver deactivation 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 14.32 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

14.32.250 Severability

The provisions of this Chapter 14.32 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.32, 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 14.32, or the validity of its application to other persons or circumstances.

Section 3. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance 125684, 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), wage and tip compensation requirements (Chapter 14.20), secure scheduling (Chapter 14.22), commuter benefits (Chapter 14.30), transportation network company driver deactivation protections (Chapter 14.32), and other labor standards ordinances the City may enact in the future.

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Section 4. 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 5. Section 2 of this ordinance shall take effect on July 1, 2020.

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 _____, 2019, and signed by
me in open session in authentication of its passage this _____ day of _____, 2019.

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)