

ORDINANCE NO. 20151217-075

AN ORDINANCE AMENDING CITY CODE CHAPTER 13-2 RELATING TO TRANSPORTATION NETWORK COMPANIES (TNCs) AND TERMINATING TNC OPERATING AGREEMENTS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 13-2 (*Ground Transportation Services*) of the City Code is amended to add a new Article 4 to read:

ARTICLE 4. – TRANSPORTATION NETWORK COMPANY SERVICE.

§ 13-2-509 DEFINITIONS.

In this Article:

- (1) **COMPLIANT DRIVER** means a Transportation Network Company driver who has passed a driver history check and a fingerprint-based criminal background check.
- (2) **DYNAMIC PRICING** means a software application or other method used to maximize the supply of available vehicles on the network to match the demand for rides, including for the purpose of increasing reliability or incentivizing drivers.
- (3) **TRANSPORTATION NETWORK COMPANY (TNC)** means an organization, whether a corporation, partnership, sole proprietor, or other form, which provides on-demand transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers.

§ 13-2-510 PENALTY.

Any person, corporation, partnership, sole proprietor, or other entity that meets the definition of TNC and operates in violation of this Article commits a Class “C” Misdemeanor punishable by a fine of not less than \$500 per offense.

Division 1 – Operations.

§ 13-2-511 TNC OPERATING AUTHORITY REQUIRED.

- (A) A TNC may not legally operate within the City without a TNC operating authority.
- (B) A TNC must apply for a TNC operating authority under the requirements of Section 13-2-161 (*Operating Authority Application Required*).
- (C) A TNC applicant must have a representative located in the City and named on the application for a TNC operating authority, and as an agent for process.
- (D) With its application for a TNC operating authority, a TNC applicant must provide a certificate of insurance as proof that it has commercial automobile insurance issued in compliance with Article 4, Division 3 of this Chapter, by a company licensed to operate in the State of Texas and by an agent licensed by the State of Texas. The policy must include coverage for:
 - (1) bodily injury;
 - (2) property damage; and
 - (3) owned, non-owned, and hired vehicle coverage.
- (E) A TNC operating authority will be for a term of one year.
- (F) A TNC operating authority may not be transferred or assigned.

§ 13-2-512 TNC LOCAL PRESENCE REQUIRED.

A TNC must maintain a local presence to include an active website and a 24-hour customer service number and email address.

§13-2-513 DISCLOSURE OF FARE.

Before a TNC trip is accepted, a rider must be able to view the estimated compensation, suggested compensation, or indication that no-charge is required for the trip. A TNC must transmit an electronic receipt documenting the origin and destination of each TNC trip, and the total amount paid upon completion of each trip.

§ 13-2-514 DYNAMIC PRICING.

- (A) If a TNC utilizes dynamic pricing, the software application must:
- (1) provide clear and visible indication that dynamic pricing is in effect prior to requesting a ride;
 - (2) include a feature that requires riders to confirm that they understand that dynamic pricing will be applied in order for the ride request to be completed;
 - (3) provide a fare estimator that enables the user to estimate the cost under dynamic pricing prior to requesting the ride; and
 - (4) during periods of abnormal market disruptions, dynamic pricing shall be prohibited.
- (B) As used in this section, “abnormal market disruptions” includes any change in the ground transportation market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor.

§ 13-2-515 IDENTIFICATION.

A TNC application used to connect drivers to riders must display an accurate picture of drivers, and a picture or description of the type of vehicle, as well as the license plate number of the vehicle.

§ 13-2-516 DATA REPORTING REQUIREMENTS.

- (A) A TNC must comply with the reporting requirements of this section as a condition of its TNC operating authority for the purpose of supporting public safety and transportation planning including prevention of driving while intoxicated.
- (B) A TNC shall provide the following data, recorded in four-hour blocks, to the director on the last day of each month:
- (1) number of trips requested for service;
 - (2) number of trips requested, but not serviced, according to zip code;

- (3) number of vehicles logged into the TNC platform;
 - (4) number of pick-ups and drop-offs according to zip code;
 - (5) accessible vehicle trips requested and serviced;
 - (6) accessible vehicle trips requested and not serviced; and
 - (7) amount of time that surge pricing is in effect.
- (C) Driver hours logged onto the TNC platform shall be recorded daily and reported to the director on the last day of each month.
- (D) A TNC shall record the following data monthly and report it to the director on the last day of each month:
- (1) number of trips completed and passengers transported;
 - (2) gross receipts generated;
 - (3) progress on meeting the accessibility needs of the public; and
 - (4) total hours and miles driven by compliant drivers and for all drivers.
- (E) A TNC shall, on a daily basis, record all accident reports involving a vehicle in service and operating through the TNC platform, and report all such accidents to the director every Monday.
- (F) A TNC operating authority is automatically suspended if the TNC fails to submit the data required under this section within fifteen days of the required reporting deadline.

§ 13-2-517 ACCESSIBLE VEHICLE SERVICE.

- (A) Within six months of obtaining a TNC operating authority, a TNC shall implement an accessibility plan approved by the director. If a TNC has an existing accessibility plan on file in another jurisdiction, the TNC must adapt that plan for use in the City.
- (B) Within three months of obtaining a TNC operating authority, an accessible service request indicator must be available on the app. If a driver cannot provide a passenger a requested accessible ride, the TNC must identify an alternative transportation arrangement for the passenger.

- (C) Service animals must be reasonably accommodated by TNC drivers. If a service animal cannot be reasonably accommodated by a driver, the TNC must identify an alternative transportation arrangement for the passenger and service animal.
- (D) A TNC may not allow its drivers to refuse to accept a passenger who is disabled, or to charge a higher fare or additional fee to a person who is disabled, based on the person's disability, use of a support animal, wheelchair, crutches, or other mobility assistance device. Should exposure to a support animal cause a TNC driver an undue health burden, the TNC shall provide an alternate driver for the passenger with the support animal.
- (E) A TNC shall conduct outreach events to community organizations with ADA-compliant vehicles to publicize the TNC's need for ADA vehicles and drivers with the goal of providing services to all passengers. A TNC shall report back to the City on the results of this outreach quarterly.
- (F) A TNC shall conduct outreach events to communities that are of lower social economic strata without adequate transit options with the goal of increased access to transportation options. The TNC shall report to the City the effectiveness of this outreach quarterly.

§ 13-2-518 GEOFENCING.

During large special events TNCs shall cooperate with event sponsors and the City to identify and use geo-fence pick-up and drop-off locations, as determined by the director to promote a safe and transportation efficient event.

§ 13-2-519 TRAVEL LANES.

A driver operating as a TNC driver may not stop, stand, park, load or unload passengers in a travel lane or in an officially designated bus stop.

§ 13-2-520 DRIVER ENFORCEMENT.

A TNC shall establish and enforce policies requiring compliance with the applicable provisions of City Code in all agreements by drivers who contract with the TNC.

Division 2. – TNC Vehicle Requirements.

§ 13-2-521 INSPECTIONS.

- (A) Before operating a vehicle under a TNC platform, a vehicle must successfully pass an inspection by a mechanic certified by the State of Texas, and approved by the director, to perform state inspections. Inspection stickers must be displayed on the vehicle.
- (B) The safety inspections will certify a list of items established by separate ordinance and shall be equitable as between TNCs and other vehicles for hire.

§ 13-2-522 TRADE DRESS.

All vehicles operating under a TNC platform shall display a consistent and distinctive director approved emblem indicating which TNC is being used at all times that the vehicle is being used to provide TNC services.

§ 13-2-523 TAXES.

Appropriate taxes must be paid on each vehicle operated for a TNC. A vehicle used as a TNC vehicle that has unpaid taxes assessed may not operate on City streets.

Division 3. – Insurance Requirements.

§ 13-2-524 INSURANCE.

TNCs must comply with State of Texas insurance requirements for TNCs as described in Texas Insurance Code Chapter 1954.

§ 13-2-525 DRIVER NOTIFICATION.

- (A) Pursuant to Texas Insurance Code Chapter 1954, a TNC shall disclose in writing to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the TNC provides while the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform.
- (B) A TNC shall also disclose in writing to participating drivers, as part of its agreement with those drivers, that the driver's personal automobile insurance policy may not provide collision or comprehensive coverage

for damage to the vehicle used by the driver from the moment the driver logs on to the TNC's online-enabled application or platform to the moment the driver logs off the TNC's online-enabled application or platform.

Division 4. – Drivers.

§ 13-2-526 DRIVER REQUIREMENTS.

TNC drivers must possess a valid driver's license, proof of registration, and current automobile liability insurance, must be at least 21 years old, and must use a vehicle that is in compliance with Texas' inspection requirements and possess proof of a successful inspection in compliance with this Chapter.

§ 13-2-527 DRIVER ELIGIBILITY—CRIMINAL BACKGROUND AND DRIVER HISTORY CHECKS.

- (A) In accordance with the schedule set forth in (B) below, a person must pass a driver history check and a fingerprint-based criminal background check under the provisions of this section to be eligible to drive for a TNC.
- (B) The department will implement procedures for drivers to obtain driver history and finger-print based background checks in order to assist TNCs to meet the following benchmarks. The department is authorized to calculate benchmarks using data reported by TNCs under Section 13-2-516, and other data available to the department. Benchmarks are calculated as the percentage of hours or miles driven by compliant drivers of the total hours or miles driven by other drivers for the TNC during the benchmark time period. TNCs that fail to meet the following benchmarks shall be subject to penalties established by separate ordinance.
 - (1) 25% compliance by May 1, 2016
 - (2) 50% compliance by August 1, 2016
 - (3) 85% compliance by December 1, 2016
 - (4) 99% compliance by February 1, 2017

- (C) If the driving history check required by this section indicates that, within the three-year period prior to the history check, a person has had more than three moving violations or has been charged with driving without insurance or a suspended license, that person is prohibited from driving for a TNC.
- (D) To meet the requirements of this section, a criminal background check must be national in scope and comply with the requirements in Subsection (E) of this section. If the criminal background check indicates that a person has been convicted of certain offenses, to be specified by separate ordinance, that person is prohibited from driving for a TNC.
- (E) Consistent with the requirements of Texas Government Code Sections 411.122 and 411.087, which authorizes the City to obtain criminal history record information maintained or indexed by the Federal Bureau of Investigation (FBI) through the Texas Department of Public Safety (DPS).
- (1) Each individual whose application for a license, permit or authorization or any renewal thereof is subject to subsection (a) shall be required to provide a complete set of fingerprints and other identifying information to the official designated by the permitting, licensing or authorizing department, along with any applicable fee and any release or waiver forms required in order for the official to conduct a national background check through the FBI.
 - (2) Upon receipt of the fingerprints and any applicable fee, the City, or City approved third-party, is authorized to submit the fingerprints to the DPS for a search of the State's criminal history record, and the DPS is authorized to forward a set of the fingerprints to the FBI for a national criminal history check. The results of the FBI check will be returned to the DPS, which will disseminate the results of state and national criminal history checks to the City.
 - (3) The criminal history record information obtained through the FBI will be used by the Austin Transportation Department to determine whether an individual is prohibited from driving for a TNC under Subsection (C).
 - (4) An individual may request and obtain a copy of his or her criminal history and related information from Austin Transportation Department. Any requests to amend or correct an individual's

criminal history must be submitted to and approved by the Texas Department of Public Safety, for a Texas state record, or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

- (F) After obtaining a TNC operating authority, a TNC that meets the requirements in Subsection (G) of this section may elect to participate in a Safety Assurance Program. The program shall be administered by the Austin Transportation Department consistent with the requirements of this subsection.
- (1) If a TNC opts to participate in the program, the Austin Transportation Department shall assist the TNC in obtaining fingerprint-based criminal background checks for all drivers, as required by this section.
 - (2) In providing assistance to TNCs participating in this Program, the Austin Transportation Department shall:
 - (a) develop processes that mitigate perceived or actual barriers for drivers obtaining fingerprints, including use of best practices for app and other technology functionality;
 - (b) facilitate driver completion of fingerprint checks through driver fairs and other activities;
 - (c) contract with a third party, if necessary at the department's determination, to manage the fingerprint collection and background check process so that the process is completed quickly, does not create barriers for onboarding drivers, and supports the processes developed under Subsection (E) of this section; and
 - (d) implement incentives designed to assist the TNCs to achieve the city's goal of 100% hours or miles driven by compliant drivers.
 - (3) The Austin Transportation Department may provide assistance to drivers with the cost of fingerprint collection
 - (4) The Austin Transportation Department may develop innovative processes and initiatives, in conjunction with community organizations and the TNCs participating in this Program to

enhance the availability of services to prevent driving while intoxicated. The Austin Transportation Department may assess the processes developed with the TNCs for effectiveness in mitigating perceived or actual barriers for drivers obtaining fingerprints, and their impact on public safety including driving while intoxicated.

- (G) To be eligible to participate in the Safety Assurance Program authorized under Subsection (E), a TNC must commit to a driver onboarding process that:
 - (a) reflects best practices for public safety;
 - (b) includes face-to-face interviews with all drivers to be onboarded;
 - (c) requires potential drivers to demonstrate the ability to drive safely; and
 - (d) demonstrates good-faith efforts to onboard drivers who have completed the fingerprint-based background check process as measured by the Austin Transportation Department and measured by percentages of drivers.
- (H) Council will establish by separate ordinance programs, processes and procedures to incentivize drivers to become compliant drivers under subsection (A), incentivize consumers to use compliant drivers, and incentivize TNCs to utilize compliant drivers.

§ 13-2-528 DRIVER HOURS.

- (A) A TNC driver may not drive-for-hire, as defined in Subsection (B) of this section, for more than twelve hours within any 24-hour period.
- (B) For purposes of this section, “drive-for-hire” includes offering, making available, or using:
 - (1) a vehicle to provide any TNC or TNC-related service, including any time when a driver is in the vehicle and logged onto the transportation network company’s internet-enabled application or digital platform showing that the driver is available to pick up passengers; when a passenger is in the vehicle; when the TNC’s dispatch records show that the vehicle is dispatched; or when the driver has accepted a dispatch and is enroute to provide transportation network service to a passenger; and

- (2) a ground transportation service vehicle or operating a ground transportation service as defined in City Code Chapter 13-2 (*Ground Transportation Passenger Services*).

§ 13-2-529 DRIVER TRAINING.

A TNC shall establish a driver-training program designed to ensure that each driver safely operates his or her vehicle prior to the driver being able to offer service.

§ 13-2-530 ZERO TOLERANCE POLICY.

A TNC shall implement a zero tolerance policy on the use of drugs or alcohol by drivers who are driving passengers obtained through the use of a TNC app and advertise this policy on its website. Procedures for filing a complaint about a TNC driver suspected of using drugs or alcohol while driving and an explanation warning of deactivation for drivers found in violation of the policy must also be advertised on a TNC's website.

§ 13-2-531 OFF-APPLICATION AND STREET-HAILS PROHIBITED.

- (A) TNC drivers shall only accept rides booked through the digital platform and shall not solicit or accept street-hails.
- (B) In addition to criminal penalties, any TNC driver who provides rides without using the TNC digital application shall face suspension of their chauffeur permit.

PART 2. Chapter 13-2- *Ground Transportation Services* of the City Code is amended to add:

Division 5 – Fees.

§ 13-2-532 TNC FEES.

- (A) Each TNC operating in the City of Austin shall pay an annual fee calculated by the department based on one of the following methods of that TNC's choosing:
 - (1) The total of the permit fee paid by taxicab companies times the number of persons driving for the TNC;
 - (2) One (1) percent of the TNC's annual local gross revenues, or a comparable percentage of a TNC's portion of driver fares; or

- (3) Based on total miles driven.
- (B) Except for any TNC participating in the Safety Assurance Program, each TNC shall pay an additional fee of one (1) percent of the TNC's annual local gross revenue for the Compliant Driver Education Fund to be used to assist and incent drivers to become compliant.
- (C) Subsection (B) shall not take effect until the incentives referenced in Section 13-2-527 (H) (*Driver Eligibility – Criminal Background and Driver History Checks*) have been established by Council.

§ 13-2-533 GRADUATED FEES.

TNCs with a total number of drivers that is less than the number of taxicab permits for the smallest taxicab company may elect to pay a fee according to a graduated per driver fee schedule determined by the Transportation Department that is less than the permit fee paid by taxicab companies.

§ 13-2-534 MAXIMUM FEE.

No TNC shall pay more than 2% of its annual gross revenue.

PART 3. All TNC operating agreements executed under the authority of Ordinance No. 20141016-038 by the City are hereby terminated as of the effective date of this ordinance.

PART 4. This ordinance takes effect on February 1, 2016.

PASSED AND APPROVED

December 17, 2015

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Steve Adler
Mayor

APPROVED: _____
Anne L. Morgan
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk