

ORDINANCE NO. 20141016-038

AN ORDINANCE DEFINING TRANSPORTATION NETWORK COMPANIES (TNCs) AND DIRECTING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH TNCs TO ALLOW THEIR OPERATION; CREATING A PENALTY; AND AMENDING CITY CODE CHAPTER 13-2 TO INCREASE CERTAIN PENALTIES.

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

PART 1. FINDINGS.

- (A) Many Austinites prefer or rely on modes of transportation other than their own private vehicle, including those who are not able to drive a car, those who choose not to own a car, and those who have been drinking and should not be behind the wheel.
- (B) More and better transportation alternatives are a priority for many Austinites and are prioritized in the Imagine Austin Comprehensive Plan.
- (C) Particularly at times of peak demand, such as weekend nights and during festivals and special events, many Austinites do not have realistic alternatives to driving a personal vehicle.
- (D) Austin is in the midst of a drunken driving epidemic, with over 6,000 DWIs occurring in 2013 alone, fed in part by revelers' lack of transportation options late at night.
- (E) Taxicab service in Austin is not consistently meeting the demand for a variety of reasons, including inefficiencies of the owner-operator system of our taxi franchises which prevent cabs from being directed to drive at certain times or places, having three individual dispatch systems, and having times of extreme peaks in demand for these services.
- (F) Austin is not unique in the level of regulatory burden that it places on its taxicab drivers and franchises.
- (G) Transportation Network Companies (TNCs) are a recent innovation in transportation services that use an online-enabled application (app) or platform to connect passengers with drivers.

- (H) Through smartphone technology, TNCs are able to be more responsive to meeting the needs of specific passengers, particularly with regard to wait time, and can also be more responsive overall to fluctuations in demand.
- (I) TNCs, like any for-hire transportation alternative, must be regulated to protect the safety of their drivers, riders, and the general public.
- (J) TNCs do not currently fit into the conventional transportation regulatory framework and are operating outside of the regulatory framework in many U.S. cities, including Austin.
- (K) There are unanswered questions about how TNCs can meet the needs of those with disabilities who require specific vehicle types in order to be transported.
- (L) The Austin City Council approved Resolution No. 20130307-67 directing the City Manager to explore ridesharing regulations in peer cities, including insurance requirements, background checks, and cost-sharing parameters.
- (M) Staff responded to Resolution No. 20130307-67 with a memo dated May 31, 2013 which described that no peer cities were allowing ridesharing for compensation.
- (N) On June 6, 2013 Council discussed clarifying the definition of ridesharing to exclude instances in which the compensation was higher than the federally determined \$.56/mile with further direction to staff to explore a pilot for ridesharing where the driver could be compensated, as well as insurance requirements and regulations to protect the safety of users.
- (O) Staff issued memos on June 19 and August 21, 2013 outlining a series of concerns over a pilot program allowing ridesharing with compensation to exist in Austin.
- (P) On August 22, 2013, the Council passed a revised definition of ridesharing definitively disallowing ridesharing in which the compensation exceeds \$.56/mile in Austin.
- (Q) On November 20, 2013 the Urban Transportation Commission created a TNC Subcommittee to examine and make recommendations on allowing TNCs to legally operate in Austin and that subcommittee began meeting in January, 2014.
- (R) Council passed Resolution No. 20140515-24 directing the City Manager to convene a stakeholder group to make recommendations on a pilot program for TNCs.

- (S) The stakeholder group has been meeting regularly, although without the input of the public.
- (T) Some members of the stakeholder group have expressed concerns about the information that the stakeholder group is receiving, the way that input is being handled within the stakeholder group, and over the composition of the stakeholder group.
- (U) Two well-known TNCs have since begun operating outside of the regulatory framework in Austin and are allegedly carrying thousands of riders each week without oversight or regulation and without sharing any of the information that could be helpful to the City in understanding where the gaps are in our current transportation network, and how this new transportation mode relates to the existing modes.
- (V) The primary safety regulations needed to protect the safety of the public, namely insurance requirements and driver background checks, are generally agreed upon by stakeholders working on this topic and are in accordance with those TNCs that are operating in Austin currently.
- (W) There are still a variety of components of TNC regulation that must be determined, including, but not limited to compliance with the Americans with Disabilities Act.
- (X) The City of Austin is currently expending precious police resources by citing and impounding the vehicles of TNC drivers, taking resources away from such initiatives as arresting those who are driving while impaired.
- (Y) Some cities and states, such as Detroit and Virginia, have taken the approach of signing agreements with TNCs who meet certain safety criteria while they evaluate their transportation codes to determine permanent changes needed to regulate them.

PART 2. DEFINITION.

A Transportation Network Company (TNC) is defined as an organization whether a corporation, partnership, sole proprietor, or other form, that provides on-demand transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers.

PART 3. TNC OPERATION.

- (A) A TNC may operate in accordance with the process set forth in this ordinance.
- (B) A TNC must enter into an agreement with the City that includes the following provisions:

- (1) A TNC must provide primary commercial automobile liability insurance coverage with a minimum combined single limit of \$1 million for each occurrence of bodily injury and property damage for accidents involving TNC vehicles in transit, beginning with the time that the TNC driver accepts a trip request on the TNC's digital network, or during the accepted trip, and ending when the rider departs the vehicle, naming the City of Austin as an additional insured. The policy shall be accompanied by a commitment from the insurer that such policy will not be cancelled or coverage reduced without at least 30 days' notice.
- (2) During the time period beginning when a TNC driver has logged into a TNC's digital network and indicated that they are available to receive requests for transportation until such time when the TNC driver accepts a request for transportation through the TNC's digital network, Transportation network company insurance shall be in the amount of at least thirty thousand dollars (\$30,000) for death and personal injury per person, sixty thousand dollars (\$60,000) for death and personal injury per incident, and twenty five thousand dollars (\$25,000) for property damage. The requirements for the coverage required by this paragraph shall be satisfied by any of the following:
 - (a) transportation network company insurance maintained by a participating driver;
 - (b) transportation network company insurance or commercial insurance maintained by a transportation network company that provides coverage in the event a participating driver's insurance policy under subparagraph (a) has ceased to exist or has been canceled, or the participating driver does not otherwise maintain transportation network company insurance pursuant to this subdivision;
 - (c) any combination of subparagraphs (a) and (b); and
 - (d) "transportation network company insurance" is defined as a liability insurance policy that specifically covers liabilities arising from a driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform.
- (3) Data on insurance claims and the effectiveness of the coverages described in Sections (B)(1) and (B)(2) shall be submitted to the City for annual review. After review, this ordinance and the City's

agreements with the TNCs may be amended to correct any deficiencies and improve insurance protection.

- (4) Insurance coverage required by Sections (B)(1) and (B)(2) may be placed with an eligible surplus lines insurer.
- (5) 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. 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.
- (6) 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.
- (7) Criminal background and driver history checks for all TNC drivers, as set forth below, are required upon application to drive and annually thereafter.
 - (a) A criminal background check is required and must be national in scope and prevent any person who has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, or who has been convicted at any time for fraud, sexual offenses, use of a motor vehicle to commit a felony, gun related violations, resisting/evading arrest, reckless driving, a crime involving property damage, and/or theft, acts of violence, or acts of terror from driving for a TNC.
 - (b) A TNC driver history check is required and must prevent anyone with more than three moving violations within the three-year period before the driving history check, or anyone charged with driving without insurance or a suspended license within the three-year period prior to the history check, from driving for a TNC.

- (c) A TNC driver may be authorized to drive for a TNC under this ordinance if the TNC has caused the criminal history of the driver to be researched by a company approved by the Austin Transportation Department Director (Director), and the results of that search demonstrate that the driver has no convictions of any offense listed in this ordinance. These results must be available for audit by a private, agreed-upon third party, for further criminal history checks if deemed necessary by the Director.
- (8) A TNC must maintain a website and provide a 24-hour customer service phone number and email address.
- (9) A TNC must maintain an agent for service of process in Austin, Texas.
- (10) 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.
- (11) A TNC app 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.
- (12) As part of the agreement with the City, each TNC shall be required to set aside a sum equivalent to 10 cents for every ride originating in the City of Austin and use those funds to support the TNC's riders who require ADA accommodations, with the goal of accessible rides being met with wait times that are equivalent to those of other TNC rides.
- (13) 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.
- (14) TNC drivers shall only accept rides booked through the digital platform and shall not solicit or accept street-hails.
- (15) A TNC driver may not drive-for-hire for more than twelve hours within any 24-hour period. In this ordinance, "drive-for-hire," is defined as offering, making available, or using:

- (a) a vehicle to provide a transportation network service, including any time when a driver is 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
 - (b) a ground transportation service vehicle or operating a ground transportation service as defined in City Code Chapter 13-2 (*Ground Transportation Passenger Services*).
- (16) 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.
- (17) 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.
- (18) 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 results quarterly.
- (19) 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.
- (20) If a TNC utilizes dynamic pricing through its software application to incentivize drivers in an effort to maximize the supply of available vehicles on the network to match the demand for rides and increase reliability, the software application must:
 - (a) provide clear and visible indication that dynamic pricing is in effect prior to requesting a ride;

- (b) 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; and
 - (c) provide a fare estimator that enables the user to estimate the cost under dynamic pricing prior to requesting the ride;
 - (d) during periods of abnormal market disruptions, dynamic pricing shall be prohibited; and
 - (e) “abnormal market disruptions” are defined as 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.
- (21) A TNC must maintain accurate records of all drivers providing service, and discontinued from providing service, through the platform. A TNC must also maintain accurate records of all activities and information relating to any element of an agreement with the City under this ordinance. All information must be available for audit by a private, agreed-upon third party at any time, no more than four times per year. These audits shall be paid for by the TNC. Additionally, a TNC must comply with the following reporting requirements:
- (a) A TNC shall provide quarterly reports to the City providing information on the effectiveness of the platform to address gaps in Austin’s transportation network.
 - (b) The TNC reports required under this section must document and evaluate information such as rider pick-up and drop-off patterns (i.e. peak ridership times and popular pick-up and drop-off locations), cost of trip (including a measure of the amount of time in dynamic pricing), length of trip, and ADA service comparison, in order to help the City evaluate the role of TNCs to address transportation issues, such as drunk driving and underserved community needs.
 - (c) The TNC reports required under this section must be provided to the City no later than 15 days after the end of the quarter.

- (22) 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.
- (23) A fee will be imposed on all approved TNCs to facilitate the City's administration and enforcement of agreements made under this ordinance. This fee will be set by separate ordinance.
- (24) An accessible service request indicator must be available on the app within three months of the execution of the TNC agreement with the City. Once the accessible service request indicator is available, if a driver cannot provide a passenger a requested accessible ride, the TNC must identify an alternative transportation arrangement for the passenger.
- (25) To secure a TNC company agreement with the City under this ordinance, an application must be submitted under the terms of City Code Section 13-2-161 (*Operating Authority Application Required*).
- (26) This agreement does not regulate or authorize the operation of TNCs, including vehicles or operators, at the Austin Bergstrom International Airport (ABIA). Such operation shall be with the approval of the ABIA Director and under such terms and conditions as the ABIA Director shall prescribe, including assessment of a fee.
- (27) A TNC shall comply with the provisions of the TNC's agreement and applicable federal, state, and local laws and rules.
- (28) A TNC shall establish and enforce policies requiring compliance with the applicable provisions of this ordinance and agreements by drivers who contract with the TNC.
- (29) Appropriate taxes must be paid or the vehicle is not allowed to operate on the streets of Austin.

PART 4. The permit requirement described in City Code §13-2-101 (*Chauffeur's Permit Required*) is waived for TNC drivers working under TNCs as provided by this ordinance.

PART 5. The City Manager is directed to enter into agreements with TNCs consistent with Parts 2 and 3 of this ordinance within 30 days.

PART 6. The agreements executed pursuant to Part 5 of this ordinance must be for a minimum of one year and be cancellable at any time by either party if the requirements of the agreement are not upheld, a public safety issue becomes apparent, or if Council adopts code amendments to regulate TNCs. The performance of TNCs under these agreements should inform the work of the TNC Stakeholder group.

PART 7. The effects of this ordinance will be reviewed no later than six months after the date of passage, at which time the City Council may, in its sole discretion, repeal or amend the ordinance.

PART 8. Any person, corporation, partnership, sole proprietor, or other entity that meets the definition of TNC established under Part 2 of this ordinance and operates without an agreement with the City, as required by this ordinance, commits a Class "C" Misdemeanor punishable by a fine of not less than \$500 per offense.

PART 9. City Code Section 13-2-19 (*Penalty*) is amended as follows:

- (A) [~~A~~] Unless otherwise provided in this Chapter, an offense under this Chapter is a Class "C" misdemeanor, punishable by a fine not to exceed \$500.

PART 10. City Code Section 13-2-101 (*Chauffeur's Permit Required*) is amended to add a new Subsection (D) to read as follows:

- (D) A person who operates a ground transportation service vehicle in violation of this section commits a Class "C" Misdemeanor punishable by a fine of not less than \$500 per offense.

PART 11. City Code Section 13-2-3 (*Operating Authority or Taxicab Franchise Required*) is amended to add a new Subsection (G) to read as follows:

- (G) A person who provides or operates a ground transportation service in violation of this section commits a Class "C" Misdemeanor punishable by a fine of not less than \$500 per offense.

PART 12. City Code Section 13-2-34 (*Insurance Required*) is amended to add a new Subsection (H) to read as follows:

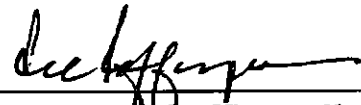
(H) A person who provides or operates a ground transportation service in violation of this section commits a Class "C" Misdemeanor punishable by a fine of not less than \$500 per offense.

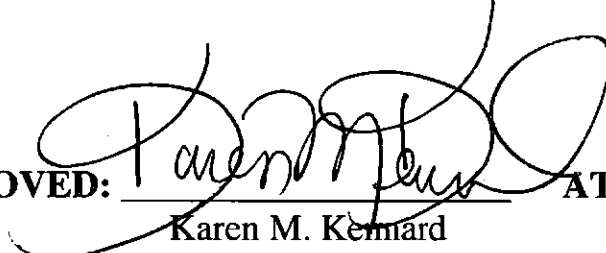
PART 13. The City Manager is directed to seek equity in the treatment of taxis, TNCs, and other vehicles for hire with regard to fares charged, dynamic pricing, fleet size, accessibility, insurance, vehicle safety, and driver background among other relevant factors. The TNC Stakeholder group should explore these issues and provide that recommendations accordingly are returned to Council within 30 days.

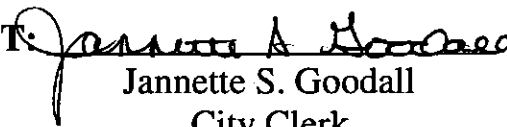
PART 14. This ordinance takes effect on October 27, 2014.

PASSED AND APPROVED

October 16, 2014 §
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Lee Leffingwell
Mayor

APPROVED: 
Karen M. Kennard
City Attorney

ATTEST: 
Jannette S. Goodall
City Clerk