



City of Seattle

Edward B. Murray, Mayor

Finance and Administrative Services

Fred Podesta, Director

MEMO

Date: September 21, 2015
To: Councilmember Mike O'Brien
From: Fred Podesta
Subject: **CB 118499 - For-hire driver collective bargaining**

Thank you for allowing the Department of Finance and Administrative Services (FAS) the opportunity to comment on CB 118499 addressing collective bargaining of for-hire drivers. You have asked FAS to identify (1) any areas of the proposal that are particularly challenging for the City to administer; (2) suggested edits, if any, to address the challenges; and (3) the financial, staffing, and administrative resources needed to implement the framework. Many of the issues raised in this memo were discussed in the Council briefings meeting on September 21, but are repeated here to create a comprehensive document. We look forward to working on these issues with Council and, in doing so, determine which need clarification through action of the City's legislative body and which might be appropriately left to rule-making.

Summary

The proposal creates a framework that allows for-hire drivers to collectively bargain with the companies with which they contract or partner. To our knowledge, this type of framework has not been attempted by a local municipality in the case of for-hire drivers. Furthermore, the app-based Transportation Network Companies (TNC) are a relatively new type of industry that is still evolving. Due to the uniqueness of this proposal, the challenges defined below, and the emergent nature of this industry, FAS requests additional time to fully analyze the proposal and evaluate risks, recommend edits, and to appropriately determine the continuing resources necessary.

Legal Authority and Liability

The proposal raises serious questions under federal and state law, and if passed could involve the City in prolonged and costly litigation. As the department responsible for the City's risk management function, FAS strongly recommends that before voting on this bill the Council be thoroughly briefed by the City Attorney about these issues, and the potential legal costs and liability that the City could face in litigation.

Data Verification

The current proposal requires companies to identify all drivers that have 150 trips within a 30 day period. Under the current law, companies are required to provide electronic trip data, and this provision has proven to be difficult for taxi and flat-rate companies who are using legacy systems, paper-based systems or no system at all. If a company does provide data, verification by FAS would require access and auditing to an extent that would prove difficult, if not

impossible. To date, companies have provided no additional data or access other than what is required by law. Carefully defining data required and expanding the data requirements of SMC 6.310.540 could resolve this issue.

Determining Certification Process

The Director is required to verify the drivers' statement of interest and certify the election of the Exclusive Driver Representative. The proposal should define this process and the expectation with regard to driver identification, data security and method of verification. While several methods exist such as signature verification or PIN assignment, the method chosen will likely require a system approach and additional data from over 10,000 licensed drivers. Multiply that by the number of companies (12), number of qualified representatives and number of elections per year, and it could be 100,000 verifications. An electronic process and data automation will be absolutely necessary for this process. Currently no part of for-hire driver licensing is automated and signatures are not maintained electronically.

Decertification of the Exclusive/Qualified Driver Representative

The proposal allows for decertification of the Exclusive Driver Representative (EDR) and the process to be defined by the Director. The terms under which decertification can happen should be defined in the proposal. The for-hire industry experiences significant churn with 50% of drivers that start with a TNC not driving after 30 days. If a company employs only a small fraction of the originally qualified drivers, what process will be in place to ensure drivers remain satisfied with the existing EDR? Can decertification occur unilaterally at the request either drivers or the EDR or only after a specific time period? What verification process will be required?

Non-Represented Drivers

The bill is silent on the relationship between driver coordinators and the drivers who have not expressed interest in representation. Are driver coordinators and non-represented drivers bound by the agreement negotiated by an EDR? As new drivers are enrolled by a driver coordinator, are they automatically represented or given a choice?

Management of Relationships and Enforcement of Collective Agreements

The proposal does not specify how ratification of a proposed agreement would occur. Would it need to be approved by a majority or plurality of drivers? Does a driver who has not expressed an interest in representation vote on an agreement? What is the City's role in enforcing the provisions of the agreement? If dues are contemplated, which drivers are they collected from? Does the City have a role in creating rules around dues?

Frequency of Election

If no EDR is certified, an election can be repeated per Section 6.310.735.F1. Defining the frequency of elections in the proposal would provide clarity and set clear expectations.

Driver Privacy

The proposal calls for the City to transmit data about drivers collected by a third party to another third party. How will we ensure sensitivity to privacy issues and the potential liability of transmitting this data?

Implementation Time for Rule-Making

FAS has recently undergone significant rulemaking with this industry as part of the implementation on Ordinance 124524. On average, complex rules take three months to write, design business processes and implement. A public process that adequately hears, analyzes and resolves the interested parties' views on this legislation's issues will require a significant time

investment. While the effective date of CB 118499 is three months after passage, the complexity of developing rules for the processes required by this legislation will likely take at least six months.

Resources

Due to the unknown verification process, decertification process and rulemaking, it would be difficult to determine the amount of resources necessary to implement this proposal. If the processes are left to rulemaking, significant legal and policy analysis will be needed.

Funding

The proposal is currently silent on how costs should be addressed and clarity on this topic could help ensure future success of the proposal. Historically, regulated businesses and their customers have borne the cost of the regulatory program. If increased fees to the industry are necessary, those fees should be articulated in the proposal.

cc:

Jasmine Marwaha
Tony Kilduff
Chris Gregorich
Katie Tassery
Doug Carey