



**LACEY CITY COUNCIL  
WORKSESSION  
THURSDAY, FEBRUARY 18, 2016  
7:00 – 8:30 P.M.  
LACEY CITY HALL – 420 COLLEGE STREET SE**

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**AGENDA**

- 7:00 OLYMPIA-LACEY-TUMWATER VISITOR CONVENTION BUREAU  
UPDATE**  
*SHAUNA STEWART, VCB DIRECTOR*  
(VERBAL – NO ATTACHMENT)
- 7:30 THURSTON COUNTY COALITION AGAINST HUMAN TRAFFICKING  
UPDATE**  
*ROSE GUNDERSON, CO-FOUNDER - WA ENGAGE*  
(VERBAL – NO ATTACHMENT)
- 8:00 UBER DISCUSSION**  
*STEVE KIRKMAN, PUBLIC AFFAIRS MANAGER*  
(STAFF REPORT ATTACHED)
- 8:30 ADJOURN**



## LACEY CITY COUNCIL WORKSESSION

February 18, 2016

**SUBJECT:** Regulation of Transportation Network Companies

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**RECOMMENDATION:** Consideration of a draft ordinance regulating transportation network companies and establishing a new chapter in the Lacey Municipal Code.

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**STAFF CONTACT:** Scott Spence, City Manager <sup>SS</sup>  
Liz Gotelli, Public Affairs and Human Resources Director  
Steve Kirkman, Public Affairs Manager <sup>SK</sup>

**ORIGINATED BY:** Public Affairs Department

**ATTACHMENTS:** 1. [Draft ordinance regulating transportation network companies and establishing a new chapter in the Lacey Municipal Code.](#)

**FISCAL NOTE:** None

**PRIOR REVIEW:** General Government & Public Safety Committee,  
December 14, 2015

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### BACKGROUND:

Transportation network companies (TNCs) provide transportation services via web-based apps that connect paying passengers with drivers in private vehicles. Uber is perhaps the best-known TNC. Others include Lyft, Sidecar, Summon and Wingz.

Through the TNC app, which is accessed through a phone, mobile device, or personal computer, TNCs manage routes, rates, fare calculations and payments, as well as ratings of drivers and riders. TNCs generate revenue by receiving a commission from drivers for each arranged ride, typically between 20 and 30 percent of the fare.

Recently, Uber officially requested approval to operate in Lacey, Olympia, Tumwater, and Yelm. The company estimates it will attract between 40 and 50 local (Thurston County) drivers initially, with 10 to 15 new drivers signing up each week. TNC driver turnover, however, is often high. Data compiled by Uber in January 2015, indicated eleven percent of its new drivers stopped driving within their first month, and about half leave within the first year.

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Seattle has an estimated 2,000 Uber drivers. For comparison, Seattle has 890 licensed taxis, limousines, and town cars (for-hire vehicles). In Washington, Uber also currently operates in Bellingham, Spokane, Tacoma, and Vancouver. Nationwide, it serves about 187 cities.

In 2012, the cities of Lacey, Olympia, and Tumwater adopted common taxi company rules to provide a uniform regulatory environment for taxi operators. The goal of the proposed TNC ordinance is to pursue a similar approach with TNCs. It's important to note TNCs can operate locally under existing taxi company regulations. Most TNCs, however, prefer to conduct their own background investigations of potential drivers.

There are some differences between existing taxi/for-hire vehicle background checks, as specified by LMC Chapter 5.22.050: General Occupational Permit Occupational Permits, and the process used by TNCs. LMC 5.22.050 requires fingerprinting of drivers by one of the participating jurisdictions' police departments (Lacey, Olympia, or Tumwater). The fingerprints are then forwarded to the Washington State Patrol, which queries the state fingerprint database, and then forwards the prints to the FBI nationwide Criminal Justice Information System database. Any resulting FBI report would contain criminal history convictions reported nationwide to the FBI; the report, however, would not include convictions for misdemeanors or other crimes that aren't routinely reported to the FBI.

TNC background checks are normally conducted by private security firms. Uber, for example, contracts with Checkr, which is nationally accredited by the National Association of Professional Background Screeners. The draft ordinance requires TNC background checks to include a 5-year look back of local, state, and national criminal history databases and national and state sex offender registries. Any person who is on a sex offender registry or who has been convicted (within the past five years) of crimes involving driving under the influence of alcohol or controlled substances, sexual offenses, felony fraud or property damage or theft, acts of violence, acts of terror, reckless driving or negligent driving, or use of a motor vehicle to commit a felony, is not permitted to act as a TNC driver. The TNC must maintain background check records for a period of two years. The draft ordinance provides for jurisdictional audit of twenty randomly selected TNC driver records per year.

TNC drivers will also be required to obtain a business license in each of the three cities. Staff are evaluating methods for TNC drivers to pay local business and occupation (B&O) taxes, which would be based on the gross amount of collected fares. Under the three cities' taxicab regulations, a cab driver's B&O assessment is paid to the jurisdiction where the taxi is stored or garaged. However, in at least Uber's case, the TNC app can provide drivers with a year-end fare location summary, which could aid in allocating B&O to individual jurisdictions.

Elected officials and staff at the cities of Olympia and Tumwater are also reviewing the draft TNC ordinance, and the City of Olympia has proposed hosting an interjurisdictional public meeting to receive feedback from the public regarding the proposal, particularly from taxicab companies and drivers.

The tentative proposed timeline for adoption of the new TNC regulations is late-March or early-April, 2016.

**ADVANTAGES:**

1. The proposed ordinance will provide a uniform regulatory environment among the cities of Lacey, Olympia, and Tumwater for transportation network company operators and drivers, and allow for provision of additional transportation options to residents and visitors.

**DISADVANTAGES:**

1. If adopted, the new regulations may impact existing taxicab and for-hire vehicle companies.

Ordinance No. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, REGARDING TRANSPORTATION NETWORK COMPANIES, AMENDING OLYMPIA MUNICIPAL CODE SECTION 5.10.020.E, AND ADOPTING A NEW CHAPTER 5.11 OF THE OLYMPIA MUNICIPAL CODE**

**WHEREAS**, Olympia Municipal Code Chapter 5.10 regulates for-hire vehicle driver/operator services in the City of Olympia; and

**WHEREAS**, new technology-based companies, known as transportation network companies, offer a new model of commercial transportation service using online-enabled digital platforms to connect passengers with drivers using personal vehicles; and

**WHEREAS**, transportation network company services are sufficiently distinct from taxicabs and for-hire vehicle services as to warrant separate regulation; and

**WHEREAS**, the Olympia City Council desires to amend Olympia Municipal Code Section 5.10.020.E, regarding Occupational Permits for taxicabs and for-hire vehicles, and adopt a new Olympia Municipal Code Chapter 5.11 in order to regulate the operations of transportation network companies in the City of Olympia for the purpose of promoting the safety and welfare of the general public.

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Amendment of Olympia Municipal Code Section 5.10.020.E. Olympia Municipal Code Section 5.10.020.E, is hereby amended to read as follows:**

**5.10.020 Definitions.**

For the purpose of this chapter, the following definitions apply:

- A. "Chief of Police" means the City of Olympia Chief of Police.
- B. "City" means the City of Olympia.
- C. "Department" or "Police Department" means the Olympia Police Department.
- D. "Driver" or "Operator" means the person physically engaged in driving a for-hire vehicle, whether or not said person is the owner of or has any financial interest in said vehicle.
- E. "For-hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except chartered and scheduled buses, vehicles not for hire by the general public (such as vans operated by hotels, employers, churches, schools and retirement facilities) and ride share vehicles, and transportation network company vehicles as defined and regulated in OMC Chapter 5.11. The term refers primarily to taxicabs and limousines.

- F. "Limousine" means a chauffeur-driven, unmetered, unmarked luxury motor vehicle pre-arranged for transportation meeting the definition in RCW 46.04.274. Limousines differ from "taxis" in that they are for the exclusive use of the person(s) paying the pre-arranged fare, are unmetered, unmarked, and are not available for spontaneous hire.
- G. "Locksmith" means any person who, for hire, is engaged in the installation, removal, adjustment or repair of any locking or security device of any type used for doors, safes, windows or other similar purpose, and performs such service on a customer's premises.
- H. "New application" means an application submitted by a person who did not possess a permit for the same occupation issued by the City in the immediate prior year.
- I. "Person" means any natural person of either sex, firms, corporations, partnerships and associations either acting by themselves or by servant, agent or employee. The singular shall include the plural and the masculine pronoun shall include the feminine and neuter.
- J. "Renewal application" means an application submitted by a person who possessed a permit for the same occupation issued by the City in the immediate prior year.
- K. "Solicitor" within the meaning of this chapter, is any person who, either as a principal or agent, goes from door to door, or from place to place and enters upon any private property within the City and thereon engages in any of the following activities:
- a. Sells, takes orders for, or offers to sell or take orders for, any goods, wares or merchandise whether or not collecting in advance for such goods, wares or merchandise; and/or
  - b. Sells, takes orders for, or offers to sell or take orders for services, whether or not collecting in advance for the performance of such services; and/or
  - c. Sells, takes orders for, or offers to sell or take orders for the making, manufacturing, or repairing of any article or thing whatsoever, whether or not collecting in advance for the performance of such services; and/or
  - d. Seeks contributions or donations.
- L. "Taxicab," "Taxi" or "Cab" means a vehicle used for the transportation of passengers for-hire, where the route traveled, destination and number of passengers is controlled by the customer(s) and the fare is based on an amount recorded and indicated on a taximeter, or on a special fare rate or contracted agreement.
- M. "Taximeter" means any instrument or device by which the charge for hire of a passenger carrying vehicle is measured or calculated either for the distance traveled by such vehicle or for waiting time, or for both, and upon which such calculated charges are indicated by means of figures.

**Section 2. A new Olympia Municipal Code Chapter 5.11 is added as follows:**

**5.11.00 Chapter Contents**

**Sections:**

- 5.11.010 Purpose**
- 5.11.020 Definitions**
- 5.11.030 Olympia business license required**
- 5.11.040 TNC license required**
- 5.11.050 TNC driver requirements**
- 5.11.060 Vehicle inspection and maintenance**
- 5.11.070 Insurance requirements**
- 5.11.080 Registered agents required**
- 5.11.090 Audit**
- 5.11.100 Operation requirements**
- 5.11.110 Revocation, suspension, or denial of TNC license**
- 5.11.120 Enforcement**
- 5.11.130 Penalty**

**5.11.010 Purpose**

The purpose of this chapter is to provide for and promote the safety and welfare of the general public and not to create or designate any particular class of persons who will or should be specially protected by its terms. Nothing contained in this chapter is intended, nor shall be construed, to create any liability on the part of the city or its employees for any injury or damage resulting from the failure of the licensee to comply with the provisions of this chapter, or by the city's or its employees' enforcement or failure to enforce any part of this chapter.

**5.11.020 Definitions**

For the purpose of this chapter, the following definitions apply:

- A. "Transportation Network Company" or "TNC" means an entity that uses a digital network to connect passengers to TNC drivers who use personal vehicles to transport passengers for compensation between geographical points chosen by the passenger.
- B. "Digital network" means an Internet-enabled platform or application used to connect passengers with TNC drivers.
- C. "TNC driver" means an individual who uses a personal vehicle to provide transportation services arranged through a TNC's digital network.
- D. "TNC vehicle" means a personal vehicle used by a TNC driver to provide transportation services arranged through a TNC's digital network.
- E. "Operate a TNC in the City of Olympia" means a TNC uses its digital network to connect a TNC driver to a passenger for a trip originating or terminating in the City of Olympia.

F. “Operate as a TNC driver in the City of Olympia” means a TNC driver accepts a trip request over a TNC’s digital network that originates or terminates in the City of Olympia.

G. “Person” means any natural person of either sex, firms, corporations, partnerships and associations either acting by themselves or by servant, agent or employee. The singular shall include the plural and the masculine pronoun shall include the feminine and neuter.

H. “Director” means the Director of the City of Olympia’s Administrative Services Department.

#### **5.11.030 Olympia business license required**

A. It is a violation of this chapter for any TNC to operate in the City of Olympia without a current and valid City of Olympia business license.

B. It is a violation of this chapter for any TNC driver, who is an independent contractor affiliated with a TNC, to operate in the City of Olympia without a current and valid Olympia business license.

#### **5.11.040 TNC license required**

A. It is a violation of this chapter for any TNC to operate in the City of Olympia without a current and valid City of Olympia TNC license.

B. The Director or designee may issue a TNC license provided that the TNC applicant submits an affidavit sworn under penalty of perjury, on a form provided by the City, that to the best of the applicant’s knowledge, formed after a diligent inquiry into the facts, the TNC is in full compliance with this chapter, including, but not limited to, all driver, vehicle, insurance, and operational requirements.

C. The TNC license shall be effective for one year.

D. The annual TNC license fee shall be \$1,000 and shall be paid in full at the time of submitting all initial and renewal applications.

#### **5.11.050 TNC driver requirements**

A. TNC drivers shall have no physical or mental infirmity which jeopardizes the ability to operate as a TNC driver.

B. TNC drivers shall be at least twenty-one (21) years of age.

C. TNC drivers shall possess a valid Washington State driver’s license and shall have been continuously licensed as a driver by the State of Washington and/or another state for at least one (1) year immediately prior to operating as a TNC driver in Olympia.

D. TNC drivers shall not have been convicted or found to have committed three or more moving violations during any twelve (12) month period during the five (5) years prior to operating as a TNC driver in Olympia.

E. TNC drivers shall possess proof of motor vehicle registration and proof of current automobile liability insurance that meets the requirements of this chapter, including insurance coverage for use of the vehicle for transportation of passengers for-hire as required by Washington 2015 Regular Session Laws, Chapter 236, Sections 1 and 2 (ESSB 5550).

F. The TNC or its agent shall maintain accurate and up-to-date records for all TNC drivers accessing its digital network to provide TNC services in the City of Olympia. Said records shall include the driver's name, age, address, social security number, criminal history, driver's license, motor vehicle registration, business license, vehicle maintenance records, and proof of automobile insurance coverage for liability, including insurance coverage for use of the vehicle for transportation of passengers for-hire as required by Washington 2015 Regular Session Laws, Chapter 236, Sections 1 and 2 (ESSB 5550).

G. Prior to permitting a person to act as a TNC driver on its digital network, and annually thereafter, the TNC shall obtain and review a criminal background check report for such person. The criminal background check shall include a search of no less than five (5) years of database history, unless prohibited by law, in which case the duration of the search shall be the maximum number of years permitted by law. The criminal background check shall include local, state, and national criminal history databases and national and state sex offender registries. Any person who is on a sex offender registry or who has been convicted, within the past five (5) years, of crimes involving driving under the influence of alcohol or controlled substances, felony fraud, sexual offenses, felony property damage or theft, acts of violence, acts of terror, reckless driving or negligent driving, or use of a motor vehicle to commit a felony, shall not be permitted to act as a TNC driver on the TNC's digital network. The TNC or its agents shall maintain records of such criminal background checks for a period of two (2) years. For purposes of this section, the term "conviction" includes convictions, bail forfeitures, and other final adverse findings.

H. The TNC shall only permit an individual to act as a TNC driver on its digital network if it finds that the standards set forth in this section are met by such individual. The TNC shall revoke a driver's authority to act as a TNC driver on its digital network if the standards set forth in this section are not met.

#### **5.11.060 Vehicle inspection and maintenance**

A. TNC vehicles operating in the City of Olympia shall be no more than ten (10) years old.

B. The TNC shall inspect or cause to be inspected annually and every year thereafter, every motor vehicle used by a TNC driver before allowing the driver to use the motor vehicle to provide transportation services.

C. The inspection required in subsection B must include, without limitation, an inspection of the foot and emergency brakes, steering, windshield, rear window, other glass, windshield wipers, headlights, tail lights, turn indicator lights, braking lights, front seat adjustment mechanism, doors, horn, speedometer, bumpers, steering system, air bags, body component soundness, muffler, exhaust, alignment, tires, rear view mirrors, and safety belts. The inspection must ensure that all of the components listed are in proper functioning order. The TNC vehicle inspection must be performed by an independent motor vehicle mechanic who is not employed by or associated with the TNC company, and who is a certified National Institute of Automotive Service Excellence (ASE) Master Mechanic in good standing with the ASE.

D. The TNC shall maintain vehicle safety inspection records for a minimum of three (3) years.

#### **5.11.070 Insurance requirements**

A. The TNC shall comply with the automobile liability insurance requirements contained in Washington Laws of 2015, Chapter 236, Sections 1 and 2, as enacted or subsequently amended.

#### **5.11.080 Registered agent required**

The TNC shall maintain a registered agent for service of process in the State of Washington. The name, telephone number, and physical address of the registered agent shall be submitted to the City of Olympia at the time of license application. The TNC shall notify the City of Olympia in writing of any changes to its registered agent during the term of the license.

#### **5.11.090 Audit**

A. No more than twice per license year, the City may audit the TNC's records to review compliance with this chapter. Each audit shall be limited to records relating to no more than twenty randomly selected TNC drivers operating in the City of Olympia. In the event the audit reveals discrepancies in the records reviewed, the City reserves the right to audit all of the TNC's records related to TNC drivers operating in the City of Olympia.

B. The audit shall occur at City Hall, 601 4<sup>th</sup> Avenue E, Olympia, Washington; provided that the City may in its discretion agree to an alternative location.

C. Notwithstanding the foregoing, the City may require the TNC to produce records at any time to investigate a specific complaint regarding compliance with this chapter.

#### **5.11.100 Operational Requirements**

A. TNC drivers shall accept only rides arranged through a TNC's digital network and shall not solicit or accept street hails by persons seeking transportation.

B. While in service in the City, each TNC vehicle shall display removable trade dress or marks which is visible from fifty (50) feet and clearly associates the vehicle with a licensed TNC company.

C. The TNC's software application or website shall display for the passenger the first name and photograph of the TNC driver as well as the make, model, and license plate number of the TNC vehicle.

D. The TNC's software application or website shall display for the passenger the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC vehicle.

E. The TNC shall implement a zero tolerance policy on the use of drugs or alcohol applicable to any TNC driver on its digital network. The TNC shall provide notice of the zero tolerance policy on its website, as well as the procedures to report a complaint about a TNC driver with whom the passenger was matched and for whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the ride. The TNC shall immediately suspend a driver upon receipt of a

passenger complaint alleging a violation of the zero tolerance policy. The suspension shall last the duration of the investigation.

#### **5.11.110 Revocation, suspension, or denial of TNC license**

A. A TNC license may be revoked, suspended, or denied by the Director for any of the following reasons:

1. Failure to meet or maintain any of the requirements or qualifications set forth in this chapter for obtaining a TNC license.
2. A materially false statement contained in the application for the license.
3. Any violation of this chapter.

B. Prior to any revocation, suspension or denial of any TNC license, the City shall inform the TNC of their right to a hearing thereon. Such hearing, if requested, shall be conducted before the City prior to the implementation of any revocation, suspension or denial.

#### **5.11.120 Enforcement**

The Director shall have the administrative authority to implement and enforce this ordinance. The Director may adopt rules and regulations for its administration, not inconsistent with this chapter. This provision shall not be construed to abrogate or limit the jurisdiction of the Olympia Police Department to enforce any provisions of this chapter or of any other city ordinance relating to motor vehicles or the operation of taxicabs or TNC vehicles.

#### **5.11.130 Penalty**

A. TNC and TNC drivers are jointly and severally responsible for violations of this ordinance. In addition to all other provisions and standards of this ordinance, the acts or omissions set forth in this section are prohibited. Any TNC or TNC driver who shall fail to comply with any provision or standard of this ordinance shall be in violation of this ordinance. Any special license granted to a TNC may be suspended or revoked by the Director or designate for such violation.

B. Submitting a materially false affidavit or attestation. Any TNC submitting a materially false affidavit as provided for under OMC 5.11.040 shall be subject to a fine of not more than \$10,000 for each affidavit submitted.

C. Operating without a special license. Any TNC affiliating with a driver who is picking up a passenger in the City of Olympia without having first obtained a TNC special license shall be subject to a fine of not more than \$10,000 for each violation.

D. Any TNC driver picking up a passenger in the City of Olympia that has not contracted with a special licensed TNC shall be subject to a fine of \$1,000 for each violation.

E. Any independent contractor TNC driver who picks up a passenger in the City of Olympia and who has not obtained a business license under OMC 5.02.005 or determination of exemption under OMC 5.02.040 shall be subject to penalties as stated in OMC 5.02.070.

F. Willful violations of the foregoing provisions may be prosecuted as a gross misdemeanor with a confinement of up to one year in jail and fine not to exceed \$10,000.

**Section 3. Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

**Section 4. Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 5. Effective Date.** This ordinance shall take effect five (5) days after publication, as provided by law.

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Cheryl Selby, MAYOR

**ATTEST:**

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CITY CLERK

**APPROVED AS TO FORM:**

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CITY ATTORNEY

**PASSED:**

**APPROVED:**

**PUBLISHED:**