

ORDINANCE NO. 09-2016

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE DELETING AND REPLACING CHAPTER 14, "RESERVED" OF THE ABILENE MUNICIPAL CODE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.**

**WHEREAS**, the City has a duty to protect the health, safety, and welfare of the citizens of the City of Abilene; and

**WHEREAS**, to meet that duty, it is the policy of the City to promote efficient, safe, reliable, and quality ground transportation services in the City of Abilene; and

**WHEREAS**, a transportation business model described as a Transportation Network Company, sometimes referred to as ride-sharing, has emerged in recent years; and

**WHEREAS**, the City of Abilene currently has an ordinance that governs the operation of vehicles for hire service in the City of Abilene; and

**WHEREAS**, the City's vehicle for hire ordinance does not adequately regulate this new industry known as Transportation Network Companies; and

**WHEREAS**, this Transportation Network Company ordinance provides for the regulations of ground transportation services to be carried out in a manner that protects the public health and safety, promotes public convenience, and respects free enterprise.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:**

- PART 1:** That Chapter 14, "Reserved" is hereby deleted in its entirety and replaced as set out in Exhibit A, attached and made a part of this ordinance for all purposes.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.


**PART 4:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON FIRST READING this 11<sup>th</sup> day of February, 2016.**

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on 21<sup>st</sup> day of February, 2016, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 25<sup>th</sup> day of February, 2016, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON SECOND AND FINAL READING this 25<sup>th</sup> day of February, 2016.**

ATTEST:

  
CITY SECRETARY

  
MAYOR

APPROVED:

  
CITY ATTORNEY

## EXHIBIT A

ORDINANCE NO. 09-2016

An ordinance of the City of Abilene Texas adding Chapter 14 regarding Transportation Network Company (TNC) Services within the City of Abilene.

### CHAPTER 14 - TRANSPORTATION NETWORK COMPANY SERVICES

#### SECTION 1. DEFINITIONS. As used in this Chapter:

*"Abnormal market disruptions"* shall mean any change in the ground transportation market, whether actual or imminently threatened, resulting from weather, 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 abnormal disruption of the market which results in the declaration of a state emergency by the governor.

*"Digital network"* shall mean any online-enabled application, software, website, or system offered or used by a transportation network company that enables a prearranged ride with a transportation network company driver.

*"Dynamic Pricing"* shall mean the ability of the TNC to adjust pricing during a temporary event, other than Abnormal Market Disruptions, where market demand has increased and the TNC desires to attract more TNC Drivers to make themselves available to accept passengers. Dynamic Pricing shall be used in accordance with Section 4(b).

*"Personal vehicle"* shall mean a vehicle that is used by a transportation network company driver and is:

- (1) owned, leased, or otherwise authorized for use by the driver; and
- (2) not a taxicab, limousine, or similar for-hire vehicle.

*"Prearranged ride"* means transportation provided by a transportation network company driver to a transportation network company rider, beginning at the time a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company and ending at the time the last requesting rider departs from the driver's personal vehicle. The term does not include:

- (1) a shared expense carpool or vanpool arrangement or service; or
- (2) transportation provided using a taxicab, limousine, or similar for-hire vehicle.

*"Transportation Network Company" or "TNC"* shall mean an entity licensed pursuant to this Chapter and operating in Abilene that uses a digital network or software application service to connect a transportation network company rider to a transportation network company driver for a prearranged ride. A Transportation network company shall not be deemed to control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract. The term does not include an entity arranging nonemergency medical transportation under a contract with the state or a managed care organization for individuals qualifying for Medicaid or Medicare.

*"Transportation network company (TNC) driver"* means an individual who:

- (1) receives connections to potential transportation network company riders and related services from a transportation network company in exchange for payment of a fee to the company; and
- (2) uses a personal vehicle to offer or provide a prearranged ride to a transportation network company rider on connection with the rider through a digital network controlled by the company in exchange for compensation or payment of a fee.

*"Transportation Network Company (TNC) Permit"* shall mean the permission granted by the city to a TNC to operate a TNC or provide TNC Services inside the city for a period of one year, renewable under the provisions of this chapter.

*"Transportation network company (TNC) rider"* means an individual who uses a transportation network company's digital network to connect with a transportation network company driver who provides a prearranged ride to the individual in the driver's personal vehicle between points chosen by the individual.

*"Transportation Network Company (TNC) Services"* shall mean transportation of a passenger between points chosen by the passenger and prearranged with a TNC Driver through the use of a TNC digital network or software application. TNC Services shall begin when a TNC Driver accepts a request for transportation received through the TNC's digital network or software application service, continue while the TNC Driver transports the passenger in the TNC Driver's vehicle, and end when the passenger exits the TNC Driver's vehicle.

## **SECTION 2. TNC OPERATING PERMIT REQUIRED.**

(a) A person shall not operate a TNC, nor allow TNC Drivers to provide TNC Services in the City of Abilene, without first having obtained a permit from the City Secretary.

(b) An application for an operating permit required under this section shall be filed with the City Secretary on forms provided by the city. At a minimum, the Applicant shall provide the following information:

- (1) The name and business address of the applicant;
- (2) Proof of authorization from the Texas Secretary of State to conduct business in the state of Texas;
- (3) A method for the Chief of Police to verify whether a driver or vehicle are currently operating as a TNC driver or were operating in the past 30 days; and
- (4) Evidence that the TNC's third party background check provider meets the following criteria:
  - (a) Possesses current accreditation by the National Association of Professional Background Screeners (NAPBS)
  - (b) Possesses a PI license in Texas

(c) The City Secretary shall issue a permit to each applicant that meets all of the requirements for a TNC set forth in this Chapter and as otherwise required by the City, and pays an annual

permit fee of \$500 to the City Secretary. Fees for permits issued less than a full year shall not be prorated.

(d) Due cause for the suspension or revocation of an operating permit includes, but is not limited to, the following:

- (1) Failure of the operating permit holder to maintain any and all of the general qualifications applicable to the initial issuance of the permit as set forth in this title; or
- (2) Obtaining an operating permit by providing false information; or
- (3) Violating any ordinance of the city or any local, state or federal laws which may adversely affect the ability of the holder to offer transportation network services; or
- (4) Violating any part of this Chapter.

(e) The applicant/holder shall have the right to appeal the suspension or revocation of an operating permit. Such appeal shall be made by delivery of written notice of appeal to the City Manager within ten business days of the notice of suspension or revocation. Upon receiving such notice of appeal, the City Manager or his designee, as soon as practical thereafter, shall conduct a hearing at which the appealing party will be given an opportunity to present evidence and make argument in the person's behalf. At the discretion of the City Manager or his designee, the hearing may be conducted by the submission of written evidence or other documentation.

### **SECTION 3. AGENT.**

The TNC must maintain an agent for service of process in the State of Texas, and must provide the name and address of the agent to the City.

### **SECTION 4. FARE CHARGED FOR SERVICES.**

(a) A TNC may charge a fare for the services provided to passengers. If a fare is charged, the TNC shall disclose in writing to passengers the fare calculation method on its website or within the software application service. The TNC shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC Driver's vehicle.

(b) If a TNC utilizes dynamic pricing through its software application, the software application must:

- (1) Provide clear and visible indication that dynamic pricing is in effect prior to a passenger requesting services;
- (2) Include a feature that requires passengers to confirm that they understand that dynamic pricing will be applied before a passenger can request services; and.
- (3) Provide a feature that allows a passenger to request a fare estimate that includes the dynamic pricing.

## **SECTION 5. IDENTIFICATION OF TNC VEHICLES AND DRIVERS.**

The TNC's software application or website shall display a picture of the TNC Driver, and the license plate number of the motor vehicle utilized for providing the TNC Service, in a format viewable to the passenger, before the passenger enters the TNC Driver's vehicle.

## **SECTION 6. ELECTRONIC RECEIPT.**

Following the completion of a trip, a TNC shall transmit an electronic receipt to the passenger that lists:

- (a) The origin and destination of the trip;
- (b) The total time and distance of the trip; and
- (c) An itemization of the total fare paid.

## **SECTION 7. INSURANCE.**

A TNC and TNC Drivers shall comply with the requirements of Chapter 1954 of the Texas Insurance Code, "Insurance for Transportation Network Company Drivers," as amended.

## **SECTION 8. ZERO TOLERANCE FOR DRUG OR ALCOHOL USE.**

(a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a TNC Driver is providing TNC Services or is logged into the TNC's digital network but is not providing TNC Services, and shall provide notice of this policy on its website, as well as procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip. Such zero tolerance policy shall be reviewed and approved by the City prior to any permit approval.

(b) Upon receipt of such passenger complaint alleging a violation of the zero tolerance policy, or any other method whereby the TNC receives notice that a TNC Driver has violated the zero tolerance policy, the TNC shall immediately suspend such TNC Driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(c) The TNC shall maintain records relating to the enforcement of this requirement for a period of at least two (2) years from the date that a passenger complaint, or other notice of violation, is received by the TNC.

## **SECTION 9. TNC DRIVER REQUIREMENTS.**

- (a) Prior to permitting an individual to act as a TNC Driver on its digital platform, the TNC shall:
- (1) Require the individual to submit an application to the TNC, which shall include information regarding his or her address, age, driver's license number and state of issuance, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC;
  - (2) Conduct or have a third party conduct, a local and national criminal background check for each applicant that shall include:
    - (A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and
    - (B) National Sex Offender Registry database;
  - (3) Obtain and review a driving history report for such individual.
- (b) The TNC shall not permit an individual to act as a TNC Driver on its digital platform who:
- (1) Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license);
  - (2) 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 of fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence, or acts of terror;
  - (3) Is a match in the National Sex Offender Registry database;
  - (4) Does not possess a valid driver's license;
  - (5) Does not possess proof of registration for the motor vehicle(s) used to provide TNC Services;
  - (6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide TNC Services; or
  - (7) Is not at least 19 years of age.
- (c) If a TNC becomes aware of a TNC driver being involved in criminal conduct or driving violations or otherwise becomes ineligible to serve as a driver because he or she no longer meets the criteria listed in subsection (b) above, the TNC shall immediately terminate the driver's ability to access the platform's application.

**SECTION 10. VEHICLE SAFETY AND EMISSIONS.** The TNC shall require that any motor vehicle(s) that a TNC Driver will use to provide TNC Services meets the requirements set forth in Chapter 547 of the Texas Transportation Code, and other applicable laws, for vehicle safety and inspections.

**SECTION 11. NO STREET HAILS.** A TNC Driver shall exclusively accept passengers through a TNC's digital network or software application service and shall not solicit or accept street hails or by any other method.

**SECTION 12. NO CASH TRIPS.** The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify TNC Drivers and the City of such

policy. TNC Drivers shall not solicit or accept cash payments from passengers, and shall be immediately terminated as a TNC Driver if they do solicit or accept cash payments from passengers. Any payment for TNC Services shall be made only electronically using the TNC's digital network or software application.

### **SECTION 13. NO DISCRIMINATION; ACCESSIBILITY.**

(a) The TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age or sexual orientation/identity with respect to passengers and potential passengers and notify TNC Drivers and the City of such policy.

(b) The TNC shall insure that all of its TNC Drivers comply with all applicable laws regarding non-discrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.

(c) The TNC shall insure that all of its TNC Drivers comply with all applicable laws relating to accommodation of service animals.

(d) A TNC and the TNC Drivers shall not impose additional charges for providing services to persons with disabilities because of those disabilities.

(e) A TNC shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC Service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

### **SECTION 14. RECORDS.**

(a) A TNC shall maintain:

(1) individual trip records for at least one (1) year from the date each trip was provided; and

(2) TNC Driver records at least until the one year anniversary of the date on which a TNC Driver's activation on the TNC digital network has ended.

(b) The Company shall permit the City to audit and examine the books and records relating to Company's performance of its obligations under this Agreement at a mutually agreed upon location and no more than twice a year. The City shall provide reasonable notice of the books and records requested for inspection in writing at least 14 days prior to the scheduled examination.



(c) Within 7 business days of the receipt of a duly issued subpoena, court order or warrant relating to the investigation of a criminal matter, or within a longer period of time if agreed to by the parties, the TNC shall furnish the requested records to the Chief of Police or his designee. For any non-criminal investigations conducted by the Chief of Police or his designee in his administrative capacity, a TNC will conduct an internal investigation and shall within 7 business days, or within a longer period of time if agreed to by the parties, furnish records in response to a written request related to the underlying complaint.

(d) Except as required by the Texas Public Information Act or other applicable law, any record or information made available by the TNC to the City pursuant to this Chapter is confidential and proprietary, and shall not be made public without TNC's express written permission.

#### **SECTION 15. PERSONALLY IDENTIFIABLE INFORMATION.**

A TNC shall not disclose a passenger's personally identifiable information to a third party unless: the passenger consents or disclosure is required by a court order or legal obligation. In addition to the foregoing, a TNC shall be permitted to share a passenger's first name and/or anonymized telephone number with the TNC Driver providing TNC Services to such passenger in order to facilitate correct identification of the passenger by the TNC Driver, or to facilitate communication between the passenger and the TNC Driver.