CITY OF BRYAN
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ACTION FORM
BRYAN CITY COUNCIL

Meeting Date (?) 03/22/2016

Subject Matter* (?) TNC/VFH Ord.
This must match rolling agenda entry

Department of Origin* EXECUTIVE

Submitted By* Hugh R. Walker

Type of Meeting* ○ BCD ○ Special ◉ Regular

Classification* ○ Public Hearing ○ Consent ◉ Statutory ○ Regular

Ordinance* ○ None ◉ First Read ○ Second Read ○ First & Only Read

Strategic Initiative* ☐ Public Safety ☑ Service ☐ Economic Development ☐ Infrastructure ☑ Quality of Life

Agenda Item Description* Consideration of an ordinance to amend Chapter 126 (Vehicles for Hire) of the City of Bryan Code of Ordinances. Specifically, this proposed ordinance addresses multiple Articles within Chapter 126, including the current Articles for Horse-Drawn Carriages, Taxicabs, and Pedicabs, plus the proposed ordinance includes a new Article (Article VI) to address Transportation Network Companies. Furthermore, the proposed ordinance repeals all ordinances or parts of ordinances in conflict; provides a savings clause; provides a severability clause; provides for codification; provides for publication; provides for penalty; finds and determines that the meetings in which the ordinance is passed are open to the public as required by law; and, provides an effective date.

Summary Statement* At the January 12, 2016, City Council Workshop, the City Council directed staff to prepare a Transportation Network Company (TNC) ordinance similar to the ordinance adopted by the City of College Station City Council on December 10, 2015. The Bryan City Council also directed staff to suggest revisions to the City's current Vehicles for Hire (VFH) ordinance in an effort to level the playing field between TNCs and taxicab services, and to address other VFH requirements.

A common simplified definition for a TNC is an online service to allow participating drivers to connect with participating riders to set up prearranged transportation service provided for compensation via a digital platform; examples of such include Lyft, Sidecar, and Uber. The City of Bryan currently does not regulate TNCs. A common simplified definition for taxicab service is a company that owns a motor vehicle and employs a driver to carry passengers on public streets at a rate/fare for the distance/time traveled. The City of Bryan currently regulates taxicab services.

The City Council has received information and proposed TNC ordinances on several occasions other than January 12, 2016. On March 10, 2015, staff presented information during the City Council Workshop, and a proposed TNC ordinance the Regular Agenda. A proposed TNC ordinance also was on the July 28, 2015, City Council Regular Agenda. The City Council did not take action on either date as they expressed interest in pending State of Texas legislation and additional information in general. To date, the City Council has not taken formal action regarding a TNC ordinance.

The January 12, 2016, City Council Workshop presentation included several options for the City Council to consider. The options included general summary information along with pros and cons. After discussing options, the City Council asked questions about the City of College Station ordinance, which was then reviewed during the Workshop. After a review of the City of College Station TNC ordinance and comments expressed by Police Chief Eric Buske, the City Council directed staff to prepare an ordinance similar to the College Station TNC ordinance, and suggested changes to the City of Bryan's VFH ordinance in an effort to level the playing field between TNCs and taxicab services.

Of particular note, during the January 12 Workshop presentation, Chief Buske expressed concern

about background checks being conducted by applicants instead of the City of Bryan. After the City Council discussed this concern, the City Council directed staff to prepare a TNC ordinance that mirrors the City of College Station TNC ordinance, which has the applicant – not the city – responsible for conducting background checks. Among other comments, the City Council seemed interested in having similar TNC processes between the two cities.

In an effort to obtain information from a variety of sources, staff met on multiple occasions with taxicab service company representatives and TNC representatives. Among many other meetings, staff from the Cities of Bryan and College Station held a public meeting on October 12, 2015, in the Council Chambers of the Bryan Municipal Office Building; representatives from taxicab service companies and TNC were present and provided input. Staff also has reviewed numerous articles, ordinances from other cities, and other resources to learn specifically about TNC legislation/ordinances. On February 4, 2016, staff shared a draft ordinance with taxi owners/drivers and Uber. Their comments are summarized below:

• Taxicab Service Companies:
a) "…wonderful job." "My only concern is if you can implement…when finally it is approved by the members of Bryan City Council." "Otherwise, it is worthless." "Thanks for a job well done." (Note: no changes to the draft ordinance were suggested.)

• Uber: Uber provided suggested revisions, some of which are incorporated into the proposed ordinance. However, for the most part, the proposed ordinance continues to reflect the approved City of College Station ordinance and their staff also worked with Uber representatives to draft an ordinance.

The State of Texas implemented insurance requirements for TNCs. During the 84th State of Texas Legislative Session, the legislature passed House Bill 1733, which provides specific State-wide insurance requirements for TNCs. With this legislation, local governments do not need to impose additional TNC insurance requirements. Additionally, with this legislation, the State appears to recognize TNC differently than taxicab service companies, since the State only addressed insurance requirements for TNCs.

As staff reviewed Chapter 126 (Vehicles for Hire) of the City's Code Ordinances, two (2) new Articles are being recommended: Article I (was reserved) and Article VI (new for TNC). Additionally, changes to Article III (Taxicabs) are proposed, and changes and general clean-up to Article II (Horse-Drawn Carriages) and Article V (Pedicabs) are being recommended as part of the attached proposed ordinance. Some changes were formatting and consistency changes (i.e., general housekeeping changes); for example, the word "license" was removed in many areas and replaced with "permit." Other changes may be considered more significant and staff attempts to point out such changes. The following text summarizes proposed ordinance changes, especially major changes:

Article I (In General):

Prior to this proposed ordinance, Sections 126-1 through 126-18 were reserved. The two (2) new sections for Article I are described below:

Section 126-1: A new section to provide consistent definitions throughout the proposed ordinance.

Section 126-2: A new section to address criminal convictions and background checks to make them consistent throughout the VFH ordinance. Of note, while all permit applications and permit holders have the same standards for annual background checks, only taxicab drivers and TNC drivers are subject to annual driver history checks.

Article II (Horse-Drawn Carriages):

Section 126-19(a)(13): Added to provide similar background checks as required of other vehicles for hire; sworn statement affirming the applicant has conducted annual background checks on each driver. This change may be considered significant as the current ordinance does not require background checks. However, similar requirements exist in other articles in the proposed ordinance.

Section 126-19(b): Added to provide clarification about permit expiration and renewal dates; a permit is typically based on a calendar year.

Section 126-19(c): A driver of a horse-drawn carriage must be at least sixteen (16) years of age and

Section 126-19(c): A driver of a horse-drawn carriage must be at least sixteen (16) years of age and possess a valid driver's license.

Section 126-20: Amended to update insurance requirements.

Article III (Taxicabs):

Section 126-46: The definitions section was revised for housekeeping purposes, to better mirror proposed ordinance changes, and for better consistency throughout the ordinance.

Section 126-48: The City will no longer inspect vehicles and instead will rely upon the State motor vehicle registration process, which includes an inspection. Some individuals might consider this change significant. Each driver must be at least nineteen (19) years of age and possess a valid driver's license. The current ordinance does not provide an age restriction other than requiring a driver's license (i.e., sixteen years of age). The proposed age is consistent with the TNC proposed age.

Section 126-49: Changes represent a leveling of the playing field between taxicabs and TNCs. For example, the reference to cruising was removed from this section.

Section 126-49(e) and (f): Added to address non-discrimination, accommodations of service animals, and accessibility.

Section 126-77(b): This section includes new language to have the company conduct background checks. That is, the City will not conduct background checks. Staff considers this change significant; however, the change is consistent with the proposed TNC requirements.

Section 126-78: Insurance requirements are changed to modernize the language and to more closely mirror the State requirements for TNCs.

Sections 126-106, 107, 108, 109, and 110: These sections addressing "City Taxi Driver Permit" were removed as the change has only the company obtaining a permit, unless the driver is the company. Staff considers this change significant, but consistent with the proposed requirements for TNCs.

Section 126-134: A revised section to address rates/fares and the posting of such. The City Secretary's Office is not required to be notified of rate increases and a limit of the number of increases in a year is not regulated. (See Section 126-81(b)(5), too.) Staff considers this change significant, but consistent with the proposed requirements for TNC.

Section 126-136: A new section, which mirrors the proposed TNC requirements, regarding records, audit, and driver information. A taxicab service operator is required to maintain individual records of drivers for at least one (1) year after the driver's relationship with the permit holder has ended. This section is similar as proposed for TNC – Section 126-197(i).

Article IV (Tow Truck and Vehicle Storage Business Regulations):

No proposed changes at this time.

Article V (Pedicabs):

Section 126-178: Remove the requirement to provide a copy of current rates with the City Secretary. Staff considers this change significant, but consistent with other articles in the proposed ordinance. The requirement to prominently display/post rates remains.

Section 126-180(b): Written proof that a pedicab has passed City inspection is removed. (See Section 126-181 regarding equipment requirements for pedicabs.) Some individuals may consider this change significant; however, equipment requirements exist. A schedule of rates is no longer required to be provided to the City Secretary. Staff considers this change significant, but consistent with other articles in the proposed ordinance. Additionally, Section 126-178 requires the prominent display of rates.

Section 126-180(b)(1): Revised to have the applicant provide a sworn statement that annual background checks will be conducted on each driver; similar to other articles in the proposed ordinance.

ordinance.

Section 126-180(b)(2): Insurance requirements are addressed.

Section 126-181(a)(11) (old number): The requirement to have the Chief of Police inspect a pedicab is removed; however, the equipment requirements for pedicabs remain unchanged. (See other parts of Section 126-181 regarding equipment requirements for pedicabs.)

Section 126-175 (old number): This section is removed as it required a driver permit. Similar to proposed changes in in other articles of the proposed ordinance, individual drivers do not obtain a permit, unless he/she is the applicant; the business is permitted and responsible for the driver(s). Some individuals might consider this change significant.

Section 126-186(f): A driver of a pedicab must be at least sixteen (16) years of age and possess a valid driver's license.

Article VI (Transportation Network Companies):

Article VI is a new article created for TNCs. As previously stated, the review in this Council Action Form is not a comprehensive review of the proposed ordinance; the following are selected highlights of the proposed TNC ordinance:

Section 126-191: This section provides definitions pertinent to TNC. The definitions are mostly similar to, but not identical to, the City of College Station's adopted Transportation Network Company ordinance.

Section 126-192: This section addresses the permit requirements. Permits, which are issued through the City Secretary, are issued to a company and not an individual driver. The City of College Station issues a permit through the Police Department.

Section 126-192(b)(2): This section requires the company to provide a sworn statement stating the TNC will conduct an annual criminal background check and driver history check on TNC drivers/operators. As a reminder, at the January 12, 2016, Workshop, Chief Buske expressed concern with this concept. He specifically suggested background checks be conducted by the City of Bryan. However, a TNC (i.e., Uber) has suggested requiring individual background checks conducted by the City is not an acceptable requirement for their operational model. The City Council directed staff to prepare an ordinance similar to the City of College Station TNC ordinance, and as prepared, the proposed Bryan TNC ordinance reflects the City of College Station practice (i.e., company conducted background checks).

Section 126-192(b)(3): This section addresses the permit fee, which is based on the number of drivers operating on the TNC digital network within the City at the time of application or renewal. For example, the application fee for ten (10 or fewer drivers is $300, and the application fee for eleven (11) to forty (40) drivers is $600. As a point of reference, Section 126-77(c) has a taxicab operator paying $50 per vehicle as part of the application process. The proposed TNC fee schedule mirrors the City of College Station TNC fee schedule.

Section 126-193: This section addresses TNC driver requirements, including a criminal background check and driver's record check conducted by the TNC, a valid driver's license, proof of a valid registration and inspection of the driver's vehicle, and the driver is a minimum of nineteen (19) years of age; these requirements are similar to those in the proposed taxicab ordinance. The City of College Station's ordinance includes a "catch-all," which states, "Or any other criminal offense that may adversely affects the TNC Driver's ability to provide safe and reliable passenger transportation." City of Bryan staff prefers to specifically list requirements and opted not to include this catch-all.

Section 126-194: Insurance requirements are based on the Texas Insurance Code Chapter 1954 "Insurance for Transportation Network Company Drivers."

Section 126-195(b): The term of a permit is generally one (1) year and is established to expire at the end of the calendar year (i.e., based on a calendar year).

Section 126-196(a): Rates are required to be posted on the TNC's internet enabled application or digital network in a manner readily accessible to passengers before the service is provided.

Section 126-196(b): This section addresses “dynamic pricing,” which is defined as a surge in cost that is in response to sharp increases in demand for TNC services. If dynamic pricing is in effect, the software application must provide clear and visible indication of the pricing before a ride is requested, include a feature requiring the rider(s) to confirm understanding of the pricing, provide a fare estimate to the rider(s) before requesting the ride, and that dynamic pricing is prohibited during abnormal market disruptions (e.g., a natural disaster or state of emergency declaration). Additionally, drivers are prohibited from “assisting” passengers by using the passenger’s mobile device, accepting the fare, and bypassing the warning about the pricing surge.

Section 126-197(a): The TNC digital network shall display, after a ride is accepted by the driver, an accurate picture of the TNC driver along with the driver’s first name, and a picture or description of the vehicle, including the color, make, model, and license plate number.

Section 126-197(b): Riders must be able to request receipts via email or other electronic format.

Section 126-197(c): A request for service must be placed and accepted only through the digital network.

Section 126-197(d): A driver must take the most direct route unless specifically requested otherwise by the rider.

Section 126-197(f): Cash payments are not allowed; payment is made via the TNC’s digital network.

Section 126-197(h): A TNC and its drivers shall comply with all applicable laws concerning non-discrimination and accessibility.

Section 126-197(i): This section requires a TNC to maintain records for one (1) year, provides for an audit of a sample of books and records relating to the TNC’s performance of its obligations under this ordinance, addresses emergency situations in a criminal case, and addresses other criminal cases. (This section is similar as proposed for taxicabs – Section 126-136.)

Section 126-198: This section addresses the revocation or suspension of a permit. The Chief of Police has the authority to revoke or suspend a permit. A TNC may appeal the revocation or suspension by filing an appeal with the City Secretary. An appeal is heard by the City Manager or designee.

Section 126-199: This section addresses “Offenses,” and does not allow a TNC driver to provide his/her contact information to riders or potential riders in order to bypass the digital network – unless the driver is operating a taxicab pursuant to a valid permit issued by the City.

Staff Analysis & Recommendation *

Based on the City Council's direction at the January 12, 2016, City Council Workshop, staff prepared a proposed ordinance similar to the City of College Station TNC ordinance. In an effort to level the playing field and as directed by the City Council, staff also included changes to other sections of the VFH ordinance, including taxicabs, horse-drawn carriages, and pedicabs.

If approved, Chapter 126 (Vehicles for Hire) of the City of Bryan Code of Ordinances will now include six (6) articles with Article VI being the newest:

• Article I – In General
*Prior to this proposed ordinance, the sections within Article I were reserved. As proposed, two (2) new sections (Sections 126-1 and 126-2) within this Article mostly address definitions in an effort to be consistent throughout the proposed revisions.

• Article II – Horse-Drawn Carriages
*Some changes are proposed throughout Article II, most of which are housekeeping, modernize terminology, and/or better reflect changes suggested for the proposed TNC ordinance.

• Article III – Taxicabs
*Most changes proposed throughout Article III reflect requirements in the proposed TNC ordinance. As such, some changes may be considered significant (e.g., not permitting drivers unless a driver is the business owner, allowing companies to conduct background checks on their drivers, etc.).

• Article IV – Tow Truck and Vehicle Storage Business and Regulations
*At this time, changes are not being recommended for Article IV.

• Article V – Pedicabs
*Within Article V, proposed changes are housekeeping, modernize terminology, and/or better reflect changes suggested for the proposed TNC ordinance.

• Article VI – Transportation Network Companies
*Article VI is new and is specifically introduced to address TNCs.

If the City Council desires to adopt an ordinance as requested at the January 12 Workshop, staff contends the proposed version reflects that sentiment and should be approved. Additionally, the section within the proposed ordinance for TNC closely mirrors the City of College Station Transportation Network Companies ordinance.

Options *

(In Suggested Order of Staff Preference)
1. Approve the proposed ordinance

2. Suggest changes to the proposed ordinance and then approve, which may require consideration at a future City Council meeting

3. Do not approve the proposed ordinance and provide direction to staff

4. Provide other direction to staff

Funding Source *

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Attachments

TNC_VFH Ordinance_Attachment.docx	88.01KB
TNC_VFH Ord._Chapter 126.pdf	195.88KB

Please detail attachments and note attachments available for viewing in City Secretary's Office:
Note: Attachments 1 and 2 are combined in a single Word document, while Attachment 3 is a pdf file.
1. Proposed ordinance – clean version
2. Proposed ordinance – redline version
3. Chapter 126 – Current Ordinance (Articles highlighted in yellow)

Dept. Head Signature

Deputy City Manager Signature	
City Manager Signature	
City Attorney Signature	