

Council Business Meeting

January 15, 2019

Agenda Item	Mayoral Veto on Ordinance No. 3165 Related to Vehicles For Hire, Amending Ashland Municipal Code (AMC) 6.28.080 and AMC 6.28.190 and Deleting AMC 6.28.090	
From	Kelly A. Madding	City Administrator
Contact	kelly.madding@ashland.or.us ; (541) 488-6002	

SUMMARY

On February 10, 2019 the Mayor vetoed Ordinance No. 3165 related to vehicles for hire, that would have amended the Ashland Municipal Code (AMC) Chapter 6.28. Ashland Municipal Code Article IV Section 3 describes the manner and timeline by which the Mayor may veto an ordinance or resolution. In addition, the Section describes the process by which the ordinance is re-heard by the City Council at the next City Council meeting.

POLICIES, PLANS, AND GOALS SUPPORTED

1. Nurture emerging new technologies. (Council Goal 16).
2. Provide, promote, and enhance the security/safety, environmental health, and livability of the community. (Quality of Life Administrative Goal).

PREVIOUS MAYOR/COUNCIL ACTION

September 18, 2018: Council adopted new AMC Chapter 6.28 to allow Transportation Network Companies (TNC's) to operate within the City of Ashland. However, TNC's objected to the City of Ashland's requirements for vehicle inspections and mandatory Wheelchair Accessible Vehicles.

January 15, 2019: City Council approved the first reading of Ordinance No. 3165, amending AMC Chapter 6.28.080 and AMC 6.28.190 and deleting AMC 6.28.090 by removing these requirements of provision of a wheelchair access vehicle and vehicle safety checks.

February 5, 2019: City Council approve second reading of Ordinance No. 3165.

February 10, 2019: Mayor issues a veto of Ordinance No. 3165.

BACKGROUND AND ADDITIONAL INFORMATION

AMC Article IV Section 3 gives the Mayor the authority to veto an ordinance or resolution. It states that he/she must issue the veto within five days of ordinance or resolution approval, file the veto with the City Recorder, and provide reasons for his/her disapproval. The Mayor has complied with these provisions. The Section goes onto state that at the next City Council meeting the ordinance should come back for a vote. If two-thirds of the City Council members vote yes (at least four City Councilors), the ordinance will go into effect in 30 days.

Information from Council Communication on first and second reading of Ordinance No. 3165.

City staff was initially contacted in late October of 2017 by a representative from Uber after Medford adopted its new ordinance regulating vehicles for hire. Uber’s representative proposed that Ashland adopt Medford’s exact regulatory regime since the two cities are in such close proximity to each other, or that Ashland deregulate vehicle for hire services altogether, in effect leaving regulation of vehicles for hire to Medford.

As the City of Ashland has been regulating taxicabs and taxi agencies for over twenty years, Council chose to amend the AMC to allow for these new forms of vehicle for hire services in lieu of deregulation. When Council adopted new AMC Chapter 6.28 on September 18, 2018, it was aware that the AMC would contain a few requirements for vehicles for hire that were not present in Medford’s regulatory regime. At the time Council felt that the additional requirements were not prohibitive and would further accessibility and community safety.

As of today’s date, no TNC’s have chosen to apply to operate within the City of Ashland. Both Uber and Lyft have cited the vehicle inspection and the Wheelchair Accessible Vehicle requirements as the primary reasons. Ordinance No. 3165 removes these requirements.

FISCAL IMPACTS

The fiscal impact to the City would be minimal.

ACTIONS, OPTIONS, AND POTENTIAL MOTIONS

1. I move to approve Ordinance No. 3165.
2. I move to deny Ordinance No. 3165 and direct staff to _____.

REFERENCES AND ATTACHMENTS

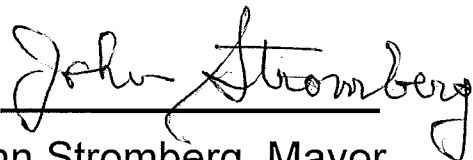
- Attachment 1. February 10, Mayoral Veto
- Attachment 2. Proposed Ordinance No. 3165

VETO OF ORDINANCE 3165 RELATED TO VEHICLES FOR
HIRE

Pursuant to Section 3 of Article 4 of the Ashland City Charter, I hereby veto Ordinance 3165 Related to Vehicles for Hire, the second reading of which was approved by the Ashland City Council February 5, 2019.

The reasons for this veto are set forth in the attached memorandum.

Dated this 10th day of February, 2019


John Stromberg, Mayor

Encl: 2/10/2019 Memorandum stating reasons for veto
Cc: Ashland City Recorder; Ashland City Councilors

TO: Ashland City Recorder and Ashland City Councilors
FROM: Mayor John Stromberg
SUBJECT: Veto of Ordinance 3165 Related To Vehicles For Hire
DATE: February 10, 2019

This message accompanying my mayoral veto of Ordinance 3165 Related to Vehicles for Hire is to state the reasons for the veto. But I want to begin by providing some context.

As Mayor, my role is generally to support and help implement Council decisions. In cases of tie votes, my vote breaks the tie. But sometimes – rarely – a majority of the Council makes a decision with which the Mayor at the time strongly disagrees or believes is in need of further consideration before a final determination is made. Then, an option available to the Mayor is veto.

I have vetoed only one other ordinance in the past 10 years, one having to do with chickens. I took that action to give the Council an opportunity to redo a vote in which there was some confusion.

In the case of this Ordinance 3165, it is again intended as a “friendly veto.” By that, I mean it’s my belief that some important questions need to be answered before the City makes its final decision on whether to allow Transportation Network Companies (“TNCs”), such as Uber and Lyft, to operate in Ashland with virtually none of the passenger assurances required of taxicabs since at least the year 2000. As suggested by Councilor Graham, we need to get this decision right because once it is in place it will be very hard politically to change.

I want to acknowledge at the outset that the ride-hailing software used by Uber, Lyft, Drive Austin, and others is a brilliant concept in that it allows individual drivers and consumers of for-hire transportation to communicate directly with one another and replaces the taxicab company middleman with a less obvious new middleman, usually a mega-corporation in some distant city. I have personally used Uber and found it convenient and believe availability of TNCs could be especially helpful to older individuals who no longer have drivers’ licenses, if they can afford it.

But there are at least these questions still to be answered:

1. Will the TNC corporations themselves (as opposed to their independent contractor drivers) be likely to play a constructive role in the community?

Comment: Along Councilor Graham's line of reasoning, the TNCs have so far offered no basis for believing they will participate in the local community in a positive way. The principal local effect of corporate Uber and Lyft may be the exporting of local revenue to them for providing minimal oversight from afar to their “independent contractors.” Other cities’ problems with the TNCs’ seeming disinterest in being constructive community partners has been covered in numerous news stories over the last few years.

2. Did we, as a Council, pay sufficient heed to the recommendations of our Transportation Commission?

Comment: Our own Transportation Commission made cogent, community-minded recommendations to the Council after devoting significantly more time and attention to a draft ordinance than the Council has been able to do. The Commission recommended more extensive

requirements for vehicle safety inspections, meaningful criminal background checks for drivers, and accessibility for wheelchair users. These provisions have been deleted from the proposed ordinance without much deliberation, apparently simply because Uber and Lyft refuse to serve Ashland if we apply those conditions.

3. Could Ashland citizens get the same protections and services that the TNCs offer citizens in larger cities?

Comment: The citizens of Portland and Eugene get the benefit of TNCs' commitment to comply with requirements for vehicle safety inspections and more comprehensive background checks. In addition, Portland requires that TNCs provide wheelchair accessible vehicle service within a reasonable amount of time. Would it be possible to make those benefits available to the citizens of Ashland, too?

4. Have we adequately explored possibilities for working collectively with other cities and the League of Oregon Cities to try to gain leverage in negotiating with Uber/Lyft?

5. How would the TNCs' ride-hailing service affect RVTD's growing bus service?

Comment: Wouldn't it be wise to wait to see if RVTD gets funding for its hybrid buses to provide door-to-door service as a pilot test in Ashland? RVTD may be able to provide similar service to community members who can't afford either TNCs or taxis. This service, and perhaps even regular RVTD bus service, may be undercut by TNCs primarily serving middle and upper class persons and neighborhoods.

6. How affordable would TNC service be for those on a fixed income?

Comment: Will TNC service benefit primarily those on a fixed income, or those with disposable income? What has been the experience of other cities?

7. Will our local taxicab companies be put out of business?

Comment: Does City government have some responsibility to avoid tilting the competitive field to favor transnational corporations at the expense of home-grown businesses, whose owners probably have much of their personal resources tied up in their businesses? Uber and Lyft are not even close to turning a profit but seem to be using their ample investor capital to undercut their competitors, the taxicab companies. The TNCs have shown they are ready to raise their prices dramatically when they have captive customers: "dynamic pricing" after snow storms or big events (OSF plays?) can yield shockingly expensive rides. If local taxi service is lost and the TNCs are not finally able to make a profit in small cities, will Ashland be left with only very expensive vehicle-for-hire service or possibly no such service at all?

8. Have we sufficiently considered the impact of TNC service on other City initiatives?

Comment: Council's deliberations on this ordinance to date have not taken into account its impact on our CEAP goal of encouraging reductions in greenhouse gas emissions or the goal of reducing annual vehicle miles traveled within the city. The results of studies of the impact of TNCs on such goals have been inconclusive and disputed. See June 21, 2018 *Portland Business Journal* ("More Ride Services, More Congestion?"). In our desire to make new transportation alternatives available for our citizens as soon as reasonably possible, we did not consider possible unintended consequences for these other important City goals.

9. How would passing this ordinance at this time impact decisions being made in the current session of the Oregon Legislature?

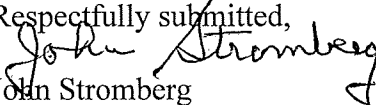
Comment: Uber and Lyft are lobbying in Salem to get the Legislature to preempt local governments' ability to regulate TNCs and force their business model on every city in the state. See February 2, 2019 *Willamette Week* ("Oregon Legislation on Uber and Lyft Might Override Portland Rules") and February 4, 2019 *Oregonian* ("Portland Blasts Lyft for Proposed Statewide Bill, Says May Undercut Local Regulations"). Ashland's unilateral acquiescence to the TNCs' preferences at this stage of the legislative session could signal to our legislators a willingness to cede local control not only to the TNCs, but also to the state.

The purpose of this veto is not to permanently ban ride-hailing services from operating out of Ashland. Its purpose is to urge the Council to more thoroughly consider the pros and cons and to seek some fairly minor accommodations from the TNCs on behalf of our citizens.

The effect of the veto is to put the draft ordinance before the Council again for a final vote. If the measure receives fewer than four votes this time, I will propose a joint study session with the Transportation Commission to get the full benefits of its members' thinking. I will also seek Council approval to ask staff to seek collaboration with other Oregon cities on TNC-related issues. Finally, I will seek Council approval to have staff bring back First Reading of a subsequent TNC ordinance with revised provisions to reflect any new insights gained in the interim.

If the re-vote following this veto again receives enough votes for passage, it will at least be clear to Ashland citizens that the Council took the trouble to deliberate the hard questions posed above.

Respectfully submitted,


John Stromberg
Mayor

1 **ORDINANCE NO. 3165**

2 **AN ORDINANCE RELATING TO VEHICLES FOR HIRE; AMENDING AMC 6.28.080**
3 **AND AMC 6.28.190; AND DELETING AMC 6.28.090.**

4 Annotated to show deletions and additions to the Ashland Municipal Code sections being
5 modified. Deletions are **~~bold-lined through~~**, and additions are **bold underlined**.

6
7 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

8 **SECTION 1.** Ashland Municipal Code Section 6.28.080 is hereby amended to read as follows:

9 **6.28.080. Reasonable Accommodations, WAVs.**

10 A. Vehicle for Hire Agencies must provide reasonable accommodations to
11 passengers with disabilities, including passengers accompanied by a service animal,
12 passengers with hearing and visual impairments, and passengers with mobility devices.
13 Vehicle for Hire Agencies must comply with all applicable requirements of the
14 Americans with Disabilities Act.

15 B. Vehicle for Hire Agencies and their Drivers shall provide services in a manner that
16 ensures the equal protection, treatment, and representation of all persons and shall not
17 discriminate against any person for any reason, including, but not limited to, age,
18 citizenship status, color, familial status, gender identity or expression, marital status,
19 mental disability, national origin, physical disability, race, religion, sex, sexual
20 orientation, and source or level of income.

21 ~~**C. Taxi Companies and TNCs must provide service to any passenger with a severe**~~
22 ~~**mobility limitation that requests a Wheelchair-Accessible Vehicle. Taxi Companies**~~
23 ~~**and TNCs shall provide WAV service within a reasonable amount of time by**~~
24 ~~**maintaining one or more affiliated Wheelchair-Accessible Vehicles, contracting with**~~
25 ~~**a permitted operator of Wheelchair-Accessible Vehicles, or a combination thereof.**~~
26 ~~**It is a rebuttable presumption that failing to provide a WAV within forty-five (45)**~~
27 ~~**minutes of receipt of a request for such a vehicle is unreasonable.**~~

28 ~~**D. Fare rates for WAVs shall not exceed the fare rates for comparable non-WAV**~~
29 ~~**vehicles and shall not be subject to Dynamic Pricing.**~~

30 **SECTION 2.** Ashland Municipal Code Section 6.28.190 is hereby amended to read as follows:

6.28.190. Violations, Penalties.

1 A. It shall be unlawful to operate or provide services as a Vehicle for Hire Agency or
2 Vehicle for Hire Driver in the City without a valid Permit issued pursuant to this Chapter.

3 B. It shall be unlawful to refuse service to a person with a disability.

4 ~~C. It shall be unlawful to operate a Vehicle for Hire in the City without having an
5 annual vehicle inspection as required by AMC 6.28.090.~~

6 CD. A violation of subsection A of this section is a Class I violation. A violation of
7 subsection B of this section is a Class I violation. ~~A violation of subsection C of this
8 section is a Class II violation.~~ A violation of any other provision of this Chapter is a
9 Class II violation. Each day that a violation continues shall constitute a separate
10 violation.

11 **SECTION 3.** Ashland Municipal Code Section 6.28.090 is hereby deleted in its entirety:

12 ~~**6.28.090. Vehicle Safety Inspection.**~~

13 ~~**Each Vehicle for Hire operating in the City shall pass on an annual basis a standardized
14 vehicle safety test as performed by a National Institute for Automotive Service Excellence
15 (ASE) Blue Seal recognized shop or by an automotive technician with a current, valid ASE
16 certification in any of the areas of ASE A4-A8. Any vehicle that is less than two (2) years
17 old, based on model year, or has less than 20,000 miles on its odometer is exempt from this
18 requirement. Proof of passage of a standardized vehicle safety test shall be kept in the
19 vehicle at all times.**~~

20 **SECTION 4. Codification.** In preparing this ordinance for publication and distribution, the
21 City Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within
22 such limitations, may:

- 23 (a) Renumber and rearrange sections and parts of sections of the ordinance;
24 (b) Change reference numbers to agree with renumbered chapters, sections or other parts;
25 (c) Delete references to repealed sections;
26 (d) Substitute the proper subsection, section, or chapter numbers;
27 (e) Change capitalization and spelling for the purpose of uniformity; and
28 (f) Correct manifest clerical, grammatical, or typographical errors.

29 **SECTION 5. Severability.** Each section of this ordinance, and any part thereof, is severable,
30 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
remainder of this ordinance shall remain in full force and effect.

