

Council Members,

As you know, DSI has been working diligently with representatives from the TNC industry over the past several months to craft an ordinance that fits this newly emerging form of commerce, while still retaining the tools necessary to effectively regulate TNCs and ensure that the City is meeting its public protection responsibilities.

At this time, we are pleased to indicate that the industry has only one remaining concern; that being protection of data requested by DSI for regulatory purposes.

Uber representatives have expressed concerns that their competitors might attempt to gain knowledge of Uber's business by making data practices requests. Specifically, they fear competitors will request Uber data held by DSI as part of the regulatory process.

To address this concern, Uber first sought to amend the proposed ordinance to create a regulatory scheme whereby DSI would be allowed to pick a group of drivers from a random set of pin numbers. Under Uber's proposal, they would then forward the records related to the drivers they indicate are associated with those pin numbers, but with any identifying information redacted. Essentially, DSI would simply have to trust that TNCs were providing real information, as DSI would not be able to confirm the information without the identities of the drivers. This system would make it impossible for DSI to accurately confirm that TNCs were following the requirements of the ordinance, so DSI rejected this amendment.

Next, Uber sought to insert language into the proposed ordinance which would have essentially required the City to give TNCs decision-making authority when the city is responding to Data Practices requests. That language is as follows:

Any information that licensee makes available to the city pursuant to this article is deemed to be confidential and proprietary information ("licensee's confidential information"), regardless of whether the records are marked as such, and shall not be disclosed to anyone without licensee's express written permission. In the event that the City receives a request for licensee's confidential information pursuant to the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. sec. 13.01 et seq., or other applicable law, the City shall notify licensee of that request promptly and no later than seven (7) business days before any disclosure deadline. Further, the City shall withhold licensee's confidential information from disclosure pursuant any available bases set forth in the MGDPA or other applicable law. In the event a lawsuit is filed seeking the public release of licensee's confidential information, the city shall continue to withhold such information until it receives a final judgment, after any appeals are exhausted, ordering the release of such information. If the city is required to release licensee's confidential information, it nevertheless shall use any available authorities to redact personal or business confidential information from such records to the extent consistent with applicable law and the final judgment.

This language would require the City to acquiesce to Uber's determination as to the nature of data in the City's possession when responding to a lawful Data Practices request, and to even defend Uber's position in court – regardless of the City's own determination as to the status of the requested data. DSI recommends against such language for two reasons:

(1) This is likely illegal. The City is bound by the language of the Data Practices Act, and cannot pass an ordinance transferring its decision-making responsibilities relative to the Data Practices Act to a private party;

(2) There is no public purpose in putting such a restriction in the ordinance. While Uber would likely prefer to have such control, it does not require it to operate in Saint Paul. There is no other industry under public regulation within the city that has such language in its regulatory ordinance.

To address the industry's concerns, the current DSI proposed ordinance language includes a provision reiterating that DSI will treat any trade secret information as such, as allowed under the provisions of the MN State Data Practices Act. Essentially, this assures the industry that the City will follow the law. DSI would recommend that the City not agree to go beyond the law, or hand its decision-making authority under the law to a private entity.

In addition, DSI's TNC related policies and procedures will reflect processes that decrease issues related to data practice requests.

Accordingly, DSI would recommend that the Council pass Ch. 373 as currently amended.

Please let me know if you have any questions.



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Director

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