City of Seattle

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Finance and Administrative Services

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Rule FHDR-8, Decertification of an Exclusive Driver Representative (SMC 6.310.735.L)

This Rule establishes the process to decertify an Exclusive Driver Representative (EDR) as authorized by the Seattle Municipal Code (SMC).

General

A Driver Coordinator will not initiate, assist the initiation or circulation of or provide or offer to provide money or anything of value in support of a decertification petition, or take any other action that will interfere with, restrain or coerce drivers in the exercise of their rights in connection with a decertification effort.[1] A Driver Coordinator will not provide or offer to provide money or anything of value to petitioners with the intent of encouraging the petitioners to seek decertification of an EDR.

Decertification petitioners and EDRs will not:

1. Interfere with, restrain or coerce drivers in the exercise of their right to decide whether to continue authorizing the EDR to represent them, their right to become members of or refrain from membership in the EDR or any other right protected in the SMC.

2. Be dominated or controlled by any Driver Coordinator or receive any financial support or anything of value from a Driver Coordinator. Domination or control will mean that the Driver Coordinator has assisted and supported the petitioners' operation and activities to such an extent that it must be looked at as the Driver Coordinator's creation.

Any agreement in effect will remain in effect during the pendency of a decertification process. Negotiation of a successor agreement will not be suspended during the decertification process.

Submission of a Decertification Petition

Any petition to decertify an EDR must be made on a City supplied form and must be received by the Director no more than 30 calendar days before the expiration date of an existing agreement between the EDR and the Driver Coordinator or no less than three years after the agreement's effective date, whichever is earlier. A petition will not be accepted at any other time.

Ten or more qualifying drivers must sign the decertification petition. The petition form must designate one person or entity as the primary representative for the petitioners during the decertification process. This representative will have responsibility for serving

[1] The Director will rely primarily on Washington State Public Employment Relations Commission (PERC) cases and secondarily upon federal National Labor Relations Board authority to interpret the terms "interfere with, restrain, or coerce" and "domination or control." This Rule does not prevent a Driver Coordinator from acts such as providing lists of driver names or answering drivers' informational questions.

as a point of contact, sending communication on the petitioners' behalf and receiving communication from the City and other parties.

For purposes of the decertification petition, a qualifying driver is a driver who meets the qualifying driver definition set forth in this Rule and in *FHDR-1, Qualifying Driver and Lists of Qualifying Drivers* but for the time periods before the date that the petitioners submit the decertification petition to the Director.[2]

Upon receipt of a decertification petition, the Director will notify the EDR and will ask the Driver Coordinator to provide, within 10 calendar days, the information needed to verify that at least ten decertification petition signators met the qualifying driver definition as of the date the decertification petition was filed with the Director. Within 15 calendar days of receipt of information from the Driver Coordinator, the Director will determine whether at least ten signators met that definition.

If at least ten signators met the definition, the Director will accept the decertification petition. If the petition is deemed incomplete, the Director may provide an opportunity for the petitioners to correct the deficiency. Once a petition has been accepted by the Director, the Director will issue a written notice to the Driver Coordinator and the EDR and promulgate a decertification date.

Qualifying Driver and Lists of Qualifying Drivers

For purposes of signing statements of interest to decertify an EDR, a qualifying driver is a for-hire driver licensed under the SMC who meets the following conditions:

- Was hired by or began contracting with, partnering with or maintaining a contractual relationship with the relevant Driver Coordinator at least 90 calendar days prior to the decertification date; and
- Drove at least 52 trips originating or ending within the Seattle city limits for the relevant Driver Coordinator during any three-month period in the 12 months preceding the decertification date. A trip is defined as transporting a passenger from one place to another for compensation.
    - Any driver who is an active member of the U.S. military and could not provide trips because he/she was deployed on a military assignment outside of the greater Seattle area will qualify if he/she drove at least 52 trips originating or ending within the Seattle city limits for a particular Driver Coordinator during any three-month period in the 24 months preceding the decertification date. A trip is defined as transporting a passenger from one place to another for compensation. The driver must provide documentation corroborating the deployment and trips driven to the Director for inspection and to confirm qualification.

[2] If a decertification petition were submitted to the Director on March 1, 2017, for example, then a qualifying driver would be a licensed for-hire driver who was hired by or began contracting with, partnering with or maintaining a contractual relationship with the relevant Driver Coordinator on or before December 1, 2016 (90 calendar days prior to March 1, 2017), and who drove at least 52 trips originating or ending within the Seattle city limits for the relevant Driver Coordinator during any three-month period between March 1, 2016, and March 1, 2017 (or, if the military exception applies, between March 1, 2015 and March 1, 2017).

The Driver Coordinator will have 14 calendar days from the decertification date to transmit the list of qualifying drivers to the petitioners' representative and the EDR. The accuracy of a driver list's content is the responsibility of the Driver Coordinator creating it, not the City's responsibility.

A Driver Coordinator will notify the City by e-mail (DriverRepresentation@seattle.gov) of the date the driver list was transmitted to the petitioners' representative and the EDR. Petitioners' representative and the EDR will notify the City by e-mail (DriverRepresentation@seattle.gov) of the date the driver list was received from a Driver Coordinator. The notifications will not include a copy of the driver list.

At a minimum, a driver list will include the following information for all non-employee qualifying drivers working for a Driver Coordinator:
1. Name (last name, first name and middle initial)
2. Mailing address
3. E-mail address (if available)
4. Phone number (if available)
5. Valid for-hire driver license/permit number (issued by King County/City of Seattle)

A Driver Coordinator will make a driver list available in an electronic format such as an Excel spreadsheet that allows the petitioners' representative and the EDR to read, sort and organize the driver information/data supplied. A scanned document presented in the Portable Document Format (PDF), for example, does not meet the standard under this Rule. A Driver Coordinator will devise and employ a way to securely transfer driver lists to the petitioners' representative and the EDR and to secure, through password protection or other means, access to those lists.

Petitioners, petitioners' representative and the EDR will use driver lists solely for the purpose of contacting drivers to solicit their interest in being represented by or no longer being represented by the EDR. Petitioners' representatives, petitioners and EDRs may not sell, publish or otherwise disseminate driver contact information.

Collection and Submittal of Drivers' Decertification Statements of Interest
Within 120 calendar days of receiving the qualifying driver list, petitioners' representative may submit to the Director statements of interest supporting decertification from a majority of qualifying drivers from the list described in this Rule.

Petitioners' representative may choose to use either an electronic option or a paper-based option (but not a combination of the two options) to collect drivers' decertification statements of interest and will communicate the chosen method to the EDR and Driver Coordinator within 3 calendar days of the decertification date.

Electronic Option
1. In addition to the driver's full name (first, last, and middle initial), the name of the EDR, and the name of the driver's Driver Coordinator, which must be set forth as provided in

subsection d. below, an electronic decertification statement of interest must clearly and conspicuously show:

a. Driver's e-mail address
b. Driver's telephone number
c. Valid for-hire driver license/permit number issued by King County/City of Seattle[3]
d. The following language:
    i. "I, (name of driver), no longer want to be represented by (name of EDR) for the purposes of collective negotiations with (name of driver's Driver Coordinator). It is my intent that my name typed below is my signature."

    "I understand that my signature means that I do not want (name of EDR) to negotiate with (Driver Coordinator) on behalf of all drivers about the terms and conditions of our work for (Driver Coordinator), including about payments to/from drivers, safety and vehicle equipment standards, and other rules that apply to drivers. If a majority of drivers who are considered "qualifying drivers" under the law sign decertification statements of interest, then (EDR) will no longer be the representative of all (Driver Coordinator)'s drivers, and drivers will no longer negotiate collectively through (EDR)."
e. Driver's electronic signature
f. Date the electronic signature was provided

2. No language other than those items set forth in section 1 will appear on the screen or other visual display that the driver sees when the driver provides an electronic signature.

3. The petitioners' representative submitting electronic signatures must provide access to the system or technology used so that the party verifying can view all statements and signatures submitted for consideration, and must also submit the following:
    a. A declaration, signed by the petitioners' representative under penalty of perjury, that:
        i. Identifies what steps were taken to ensure: (i) that the electronic signature is that of the signatory driver, and (ii) that the driver herself signed the document and
        ii. Confirms that the electronically transmitted information showing what the drivers signed is the same information seen and signed by the drivers
    b. A decertification request on a City supplied form that, among other things, will state when the petitioners' representative received the driver list from the Driver Coordinator
    c. An electronic copy of the version of the qualifying driver list provided to the petitioners' representative by the Driver Coordinator

[3] For purposes of collecting statements of interest, a driver must possess a valid (i.e., unexpired or, if expired, expired for no more than 60 calendar days) for-hire driver license/permit on the date he/she signs the statement. Sixty calendar days is given as a grace period while an expired license/permit goes through the renewal process.

Paper-Based Option

1. In addition to the driver's full name (first, last, and middle initial), the name of the EDR and the name of the driver's Driver Coordinator, which must be set forth as provided in subsection d. below, a paper-based decertification statement of interest submitted, which can be either an individual card or a signature list, must clearly and conspicuously show:
    a. Driver's e-mail address
    b. Driver's telephone number
    c. Valid for-hire driver license/permit number issued by King County/City of Seattle[4]
    d. The following language:
        i. In the case of an individual card: "I (name of driver) no longer want to be represented by (name of EDR) for the purposes of collective negotiations with (name of driver's Driver Coordinator)."

            "I understand that my signature means that I do not want (name of EDR) to negotiate with (Driver Coordinator) on behalf of all drivers about the terms and conditions of our work for (Driver Coordinator), including about payments to/from drivers, safety and vehicle equipment standards, and other rules that apply to drivers. If a majority of drivers who are considered "qualifying drivers" under the law sign decertification statements of interest, then (EDR) will no longer be the representative of all (Driver Coordinator)'s drivers, and drivers will no longer negotiate collectively through (EDR)."

        ii. In the case of a signature list, with signatures listed below: "I, the undersigned, no longer want to be represented by (name of EDR) for the purposes of collective negotiations with (name of driver's Driver Coordinator)."

            "I understand that my signature means that I want (name of EDR) to no longer negotiate with (Driver Coordinator) on behalf of all drivers about the terms and conditions of our work for (Driver Coordinator), including about payments to/from drivers, safety and vehicle equipment standards, and other rules that apply to drivers. If a majority of drivers who are considered "qualifying drivers" under the law sign decertification statements of interest, then (EDR) will no longer be the representative of all (Driver Coordinator)'s drivers, and drivers will no longer negotiate collectively through (EDR)."
    e. Driver's handwritten signature
    f. Date the handwritten signature was provided

[4] For purposes of collecting statements of interest, a driver must possess a valid (i.e., unexpired or, if expired, expired for no more than 60 calendar days) for-hire driver license/permit on the date he/she signs the statement. Sixty calendar days is given as a grace period while an expired license/permit goes through the renewal process.

2. No language other than those items set forth in section 1 will appear on the individual card or the signature list page that a driver signs.

3. The petitioners' representative submitting signatures handwritten on paper must also submit:
    a. A decertification petition on a City supplied form
    b. Scanned copies of all signed decertification statements of interest submitted via a means specified by the City such as a secure file transfer protocol (ftp) site or similar
    c. Hard copies of all original decertification signed statements of interest
    d. An electronic copy of the version of the qualifying driver list provided to the petitioners' representative by the Driver Coordinator

Foreign Language Translations
Petitioners are strongly encouraged to make paper-based or electronic-based statements of interest and any related materials, regardless of paper, electronic or other format, available to drivers in languages in addition to English. Possible languages include Somali, Amharic, Oromo, Tigrinya, Hindi, Punjabi and Spanish. Certified translated versions of the English language statements set forth in 1(e) above will be accepted.

Expiration and Validity of a Driver's Signature
1. Under either the electronic or paper-based option, a qualifying driver's signature is valid for one year from the date the driver signed a decertification statement of interest, unless that qualifying driver has signed a later-dated statement revoking his or her support for decertification that is dated on or before the date the decertification statements are submitted for verification. The signing date must be shown; if the signing date cannot be established, the statement will be deemed invalid. If the verification process is extended for any reason, the Director may extend the validity of a signature.

2. An electronic or handwritten signature submitted by petitioners in support of decertification is presumed to be valid unless called into question by objective evidence submitted to the City or records in the City's possession.

Revocation of Decertification Statements of Interest
Any revocations of support for decertifying an EDR must be in the same format (electronic or paper-based) as the original decertification statements of interest.

Electronic Option
1. An electronic statement revoking support for a decertifying an EDR will include the same information required to be included in a decertification statement of interest, except that instead of the language expressing support for decertifying an EDR an electronic revocation must state the following (or a translated version of the following):

"I, (name of driver), want to continue being represented by (name of EDR) for the purposes of collective negotiations with (name of driver's Driver Coordinator), and hereby revoke any decertification statement of interest that I have previously signed. It is my intent that my name typed below is my signature."

"I understand that my signature means that I want (name of EDR) to negotiate with (Driver Coordinator) on behalf of all drivers about the terms and conditions of our work for (Driver Coordinator), including about payments to/from drivers, safety and vehicle equipment standards, and other rules that apply to drivers."

2. No language other than those items set forth in section 1 will appear on the screen or other visual display that the driver sees when the driver provides an electronic signature.

3. Persons submitting electronic revocations must provide access to the system or technology used so that the party verifying can view all statements and signatures submitted for consideration, and must also submit a declaration, signed by the person submitting the statements under penalty of perjury, that:
    a. Identifies what steps were taken to ensure: (i) that the electronic signature is that of the signatory driver, and (ii) that the driver herself signed the document,
    b. Confirms that the electronically transmitted information showing what the drivers signed is the same information seen and signed by the drivers.

4. The signing date must be shown; if the signing date cannot be established, the revocation will be deemed invalid.

Paper-Based Option

1. A paper-based statement revoking support for decertifying an EDR will include the same information required to be included in a statement of interest, except that instead of the language expressing support for decertifying an EDR a paper-based revocation must state the following (or a translated version of the following):
    a. In the case of an individual card: "I, (name of driver), want to continue being represented by (name of EDR) for the purposes of collective negotiations with (name of driver's Driver Coordinator), and hereby revoke any decertification statement of interest supporting that (QDR) that I have previously signed."

       "I understand that my signature means that I want (name of EDR) to negotiate with (Driver Coordinator) on behalf of all drivers about the terms and conditions of our work for (Driver Coordinator), including about payments to/from drivers, safety and vehicle equipment standards, and other rules that apply to drivers."
        i. Driver's handwritten signature
        ii. Date the handwritten signature was provided

    b. In the case of a signature list, with signatures listed below: "I, the undersigned, want to continue being represented by (name of EDR) for the purposes of collective negotiations with (name of driver's Driver Coordinator), and hereby

revoke any decertification statement of interest supporting the (QDR) that I have previously signed."

"I understand that my signature means that I want (name of EDR) to negotiate with (Driver Coordinator) on behalf of all drivers about the terms and conditions of our work for (Driver Coordinator), including about payments to/from drivers, safety and vehicle equipment standards, and other rules that apply to drivers."

i. Driver's handwritten signature
ii. Date the handwritten signature was provided

2. No language other than those items set forth in section 1 will appear on the individual card or the signature list page that a driver signs.

3. Persons submitting paper-based revocations must also submit:
    a. Scanned copies of all signed statements of revocation submitted via a means specified by the City such as a secure file transfer protocol (ftp) site or similar
    b. Hard copies of all original signed statements of revocation

4. The signing date must be shown; if the signing date cannot be established, the revocation will be deemed invalid.

Public Records Requests and Confidentiality of Materials Used to Verify Decertification Statements of Interest or Investigate Challenges to an EDR Decertification or Non-Decertification

During the decertification process, if the City receives a public records request for records designated as confidential by the party that submitted those records ("submitting party"), the City will notify the submitting party in writing of the request and will postpone disclosure. The party will be allowed an opportunity to obtain and serve the City with a court order to prevent the City from releasing the records.

Verification of Qualifying Drivers' Statements of Interest and Certification of an EDR

Statements of interest supporting decertification or revoking support for decertification will be verified or deemed invalid within 27 calendar days of receipt by the City or a governmental entity or independent third party designated by the Director.

Statements may be verified by comparing one or more of the following elements against a source document, including a list of qualifying drivers produced by a Driver Coordinator as part of the decertification process, to provide reasonable assurance that the statement was signed by the qualifying driver:

1. Name

2. Signature

3. Telephone number

4. E-mail address

5. Unique personal identifier (e.g., a City/King County issued for-hire driver license number)

During the verification period, the City, governmental entity or independent third party designated by the Director may seek additional information from a Driver Coordinator, EDR or petitioners' representative if such information would assist the timely completion of the verification process. If the governmental entity or independent third party chooses to use source document(s) generated within the City/King County for-hire driver licensing process, the City is authorized to release that information to the governmental entity or independent third party.

A Driver Coordinator, petitioners' representative, EDR or any other party may provide additional records to assist the verification process, such as signatures or unique personal identifiers of qualifying drivers, even if not requested by the Director, governmental entity or independent third party. Such records, as well as any statements by qualifying drivers revoking support for decertifying an EDR or any other records or evidence that should be considered as part of the verification process, must be submitted within 5 calendar days of the petitioners' representative's submission of the decertification statements of interest or may be disregarded.

The Director will select from one of three options to verify drivers' statements of interest:

1. Dedicate staff from the Department of Finance and Administrative Services or another City department.

2. Secure the services of a governmental entity other than the City through a contract, memorandum of understanding or another instrument. Services provided by the governmental entity will be paid for by the City.

3. Use the City's contracting process to establish a list of independent third-party vendors. The petitioners' representative and the EDR will then either agree upon a third-party vendor or will take turns striking the names of vendors listed by the Director until one is chosen. The vendor's services will be paid for by the City.

Absent good cause, the Director will announce by e-mail and/or an online notification which option has been selected for the verification no later than 30 calendar days after the decertification date.

Absent good cause, within 30 calendar days of the petitioners' representative's submission of decertification statements of interest, the Director will reach one of two decisions.

1. Upon confirmation from either the City, governmental entity or independent third party that the petitioners' representative has submitted verified statements that were not

timely revoked from a majority of qualifying drivers, the Director will decertify the EDR for that particular Driver Coordinator.

2. Upon confirmation from either the City, governmental entity or independent third party that the petitioners' representative has not submitted verified statements that were not timely revoked from a majority of qualifying drivers, the Director will reaffirm that the EDR will continue representing all drivers for that particular Driver Coordinator.

No decertification will take effect until 11 calendar days after notice of decertification or until completion of the challenge process described below, whichever is later. Upon such decertification or reaffirmation, the City will notify, by e-mail, the petitioners' representative, EDR and Driver Coordinator of the decision and any immediate obligation(s) of the affected parties.

Challenging an EDR Decertification or Non-Decertification

Written objections to an EDR's decertification or non-decertification, along with specific documentary or other evidence supporting those objections, if any, may be submitted to the Director by U.S. mail, personal delivery or e-mail within 10 calendar days of the decertification or non-decertification.

If such objections are timely filed, the Director will notify the petitioners' representative, Driver Coordinator, and EDR of the nature of the objections via email and public online notice. Any responses to such objections must be filed in writing to the Director by U.S. mail, personal delivery or e-mail within 10 calendar days of the date of such notice.

1. Objections to an EDR's decertification may be made on the grounds that the decertification petitioners did not demonstrate majority support, that there was fraud or coercion in obtaining the decertification statements of interest, that the list of qualifying drivers did not comply with the SMC and/or that a violation of the SMC or the Director's Rules implementing Ordinance 124968 interfered with drivers' exercise of their rights. Objections must be in writing and may include documentary support.

2. Objections to a EDR's non-decertification may be made on the grounds that the decertification petitioners did have majority support, that there was fraud or coercion in obtaining revocations, that the list of qualifying drivers did not comply with the SMC and/or that a violation of the SMC or the Director's Rules implementing Ordinance 124968 interfered with drivers' exercise of their rights. Objections must be in writing and may include documentary support.

The Director may hold an in-person hearing to allow for live testimony on the objections made. The Director will issue a written ruling on any objections within 30 calendar days of the deadline for filing written responses, or a hearing, whichever occurs later.

1. If after consideration of objections to an EDR's decertification the Director concludes that the decertification petitioners did not demonstrate majority support, that the list of qualifying drivers did not comply with the SMC and that this affected the outcome, and/or that decertification statements of interest sufficient to affect the outcome were obtained through fraud or coercion or through a violation of the SMC or Director's Rules that interfered with drivers' exercise of their rights, the Director will revoke the EDR's decertification and the EDR will continue representing drivers for that Driver Coordinator.

2. If after consideration of objections to an EDR's non-decertification the Director concludes that the decertification petitioners did demonstrate majority support through statements of interest that were not obtained through fraud or coercion nor through violations of the SMC or Director's Rules that interfered with drivers' exercise of rights, or concludes that revocations of decertification statements of interest that would otherwise preclude decertification were obtained through fraud or coercion and/or through a violation of the SMC or Director's Rules that interfered with drivers' exercise of rights or that the list of qualifying drivers did not comply with the SMC and that this affected the outcome, the Director will issue a written ruling decertifying the EDR.

3. If the Director concludes that the list of qualifying drivers did not comply with the SMC, that a violation of the SMC or Director's Rules interfered with drivers' exercise of rights or that there was fraud or coercion in obtaining decertification statements of interest or revocations, but cannot determine whether the violation, fraud, or coercion affected the outcome of the decertification process, the Director may establish a new period for the petitioners to submit decertification statements of interest.