

Agenda: Item 2

Public Convenience and Necessity: Consideration of Peak Time
Medallions



DENNIS J. HERRERA
City Attorney

THOMAS J. OWEN
Deputy City Attorney

DIRECT DIAL: (415) 554-4679
E-MAIL: thomas.owen@sfgov.org

MEMORANDUM

TO: Honorable Members
San Francisco Taxi Commission

FROM: Thomas J. Owen
Deputy City Attorney

DATE: August 14, 2007

RE: Peak-Time Medallions; Applicant's Option, Prohibition on Leasing

QUESTIONS PRESENTED

1. If the Taxi Commission issues "peak-time" taxi medallions (medallions that drivers could only use to operate taxis during peak hours designated by the Commission), may the Commission by regulation allow medallion applicants to decline a peak-time medallion and keep their place on the waiting list for a regular medallion?
2. If the Taxi Commission issues peak-time taxi medallions, may the Commission by regulation prohibit the medallion-holders from leasing the medallions to other drivers?

SHORT ANSWERS

1. The Taxi Commission may by regulation allow permit applicants to decline a peak-time medallion and keep their place on the waiting list for a regular medallion.
2. The Taxi Commission may prohibit leasing of peak-time medallions, so long as medallion-holders still are able to satisfy the continuous operation requirement of Proposition K without using other drivers.

TO: Honorable Members
San Francisco Taxi Commission
DATE: August 14, 2007
PAGE: 2
RE: Peak-Time Medallions; Applicant's Option, Prohibition on Leasing

BACKGROUND

No person may operate a taxi in San Francisco without a permit, commonly referred to as a "medallion", issued by the Taxi Commission. (SF Police Code § 1078(a).) The issuance of medallions is governed largely by Article 16 of the San Francisco Police Code and a 1978 initiative known as "Proposition K." Proposition K has been codified as Appendix 6 to the San Francisco Administrative Code.

This office has previously advised that the Taxi Commission may condition the hours of operation of new or existing medallions, to create peak-time medallions. (See Memorandum to Supervisor Gavin Newsom, dated February 2, 1998; Memorandum to Supervisor Gavin Newsom, dated February 23, 1998.)

DISCUSSION

Applicant's Option to Decline a Peak-Time Medallion:

"[A]ll applications for a permit to operate a taxicab or other motor vehicle for hire shall be processed and considered in the order of their receipt by the [Taxi] Commission." (SF Admin. Code, Appx. 6, § 2(e); see also SF Police Code § 1081(d) [same].) The Taxi Commission must maintain a list, in the order of receipt, of all permit applications that it has not yet acted on (the "taxicab waiting list"). (SF Police Code § 1121(a).) Applications on the waiting list remain open until one of three events has occurred: the applicant withdraws the application in writing; the applicant is deemed to be ineligible by a vote of the Taxi Commission; or the applicant receives a permit. (SF Police Code § 1080(c).)

The Taxi Commission is authorized to adopt rules and regulations to fill in gaps in the regulatory scheme for taxicabs. (SF Charter § 4.104(a)(1); SF Admin. Code, Appx. 6, § 1(b); SF Police Code § 1077.) Nothing in Proposition K or the Police Code addresses what happens to an applicant's position on the waiting list if the applicant refuses a permit. Therefore, the Commission may adopt regulations governing such a situation. Specifically, it may adopt a rule providing that an applicant's decision to refuse a peak-time permit shall not be deemed to be a withdrawal of the application under Police Code Section 1080(c).

TO: Honorable Members
San Francisco Taxi Commission
DATE: August 14, 2007
PAGE: 3
RE: Peak-Time Medallions; Applicant's Option, Prohibition on Leasing

The Taxi Commission has adopted rules giving permit applicants a limited ability to suspend consideration of their applications where the applicants needed additional time to meet the permit qualifications. (See SF Taxi Commission Resolution Nos. 2004-25, 2006-87.) The rule under discussion would have a similar effect, suspending consideration of the application until a later date. Accordingly, the Commission may by regulation allow permit applicants to decline a peak-time medallion and keep their place on the waiting list for a regular medallion.

This advice is consistent with past practice. The Board of Supervisors did act by ordinance to create a separate waiting list for ramped taxi medallions and to allow persons holding a ramped taxi medallion to keep their place on the regular taxi medallion waiting list while they fulfill their obligation to operate the ramped taxi medallion for at least three years. (SF Police Code § 1148.1.) The Police Commission (which regulated taxis until the creation of the Taxi Commission in 1998) could have done the same thing by administrative regulation. But the ordinance adopting Police Code Section 1148.1 (SF Board of Supervisors Ord. No. 64-97) also made it unlawful to operate a ramped taxi without a ramped taxi medallion (SF Police Code § 1148) and set eligibility standards for ramped taxi medallion-holders (SF Police Code § 1148.2). These provisions were legislative acts, which had to be accomplished by ordinance. (SF Charter § 2.105.)

Prohibition on Leasing Peak-Time Medallions:

The Police Code generally authorizes leasing of taxi medallions. "Provided that a taxicab permit is operated in compliance with all other applicable statutes, laws, rules and regulations, a permittee may operate his or her permit by authorizing another to drive or operate pursuant to said permit under any otherwise lawful lease, employment, or other agreement." (SF Police Code § 1124.) Other than a prohibition on leasing a medallion after the death of the medallion-holder (Police Code § 1084(c)) and a now-expired cap on medallion lease fees (Police Code § 1135.2), the Board of Supervisors has not regulated leasing of medallion.

As discussed above, the Taxi Commission is authorized to adopt administrative regulations to implement Proposition K and Article 16 of the Police Code and fill in any gaps in the regulatory scheme. The Commission has already adopted some regulations addressing medallion leasing. (See Rules 4.C.1, 5.K.1 [medallion-holders and color scheme permit-holders must limit the layers of medallion leases to three layers, and a taxi driver may not lease a medallion from anyone other than the medallion-holder or

TO: Honorable Members
San Francisco Taxi Commission
DATE: August 14, 2007
PAGE: 4
RE: Peak-Time Medallions; Applicant's Option, Prohibition on Leasing

the color scheme company]; Rules 4.C.2, 5.K.2 [all leases must be in writing and copies kept at the color scheme company's principal place of business].) Police Code Section 1124, which otherwise authorizes leasing, expressly provides that the ability to lease a taxi medallion may be subject to administrative "rules and regulations." Accordingly, the Commission may adopt additional regulations further limiting, or even prohibiting, medallion leasing, so long as those regulations are consistent with applicable laws, including Proposition K and Article 16 of the Police Code. (See *Young v. Dept. of Fish & Game* (1981) 124 Cal.App.3d 257, 279 [power to regulate includes power to prohibit]; *Mineral Ass'ns Coalition v. State Mining & Geology Bd.* (2006) 138 Cal.App.4th 574, 583 [agency regulation must be consistent with and not in conflict with statutory scheme].)

Proposition K and the Police Code require that a medallion-holder be a "full-time driver," which has been quantified as driving (i) "at least four hours during any 24-hour period on at least 75 percent of the calendar year," or (ii) 800 hours during the calendar year. (SF Police Code § 1076(o).) State and federal law limit the number of hours that a person may drive commercially. (See, for example, Cal. Admin. Code tit. 13, § 1212(b)(1)(B) [intrastate driver may not drive more than 14 hours in the aggregate following eight consecutive hours off duty].)

Proposition K also requires that "[a]ll [medallion-holders] shall regularly and daily operate their taxicab . . . business during each day of the year to the extent reasonably necessary to meet the public demand for such taxicab . . . service." (SF Admin. Code, Appx. 6, § 4; see also SF Police Code § 1096(a) [same].) This provision is known as the "continuous operation" requirement. Ordinarily, "continuous operation" of a taxicab is two ten-hour shifts per day, seven days a week.

Thus, the number of hours a taxi with a regular, full-time medallion must be in operation to satisfy the continuous operation requirement exceeds the number of hours required to be a full-time driver; it may also exceed the amount of time that one person may drive legally. Accordingly, we have in the past advised that Proposition K effectively requires the holder of a "full-time" medallion to lease the medallion to other drivers to keep the medallion in continuous operation. (See Memorandum to Supervisor Gavin Newsom, dated February 2, 1998; Memorandum to Supervisor Gavin Newsom, dated February 23, 1998.) A prohibition on leasing a full-time medallion would conflict with Proposition K and be void if it prevented the medallion-holder from complying with the continuous operation requirement.

But if the Taxi Commission were to issue peak-time medallions, it could also set new standards for what constitutes compliance with the continuous operation and full-

TO: Honorable Members
San Francisco Taxi Commission
DATE: August 14, 2007
PAGE: 5
RE: Peak-Time Medallions; Applicant's Option, Prohibition on Leasing

time driver requirements for those medallions. The new standards, if appropriately drawn, could make it possible to prohibit leasing without interfering with the medallion-holder's ability to meet the continuous operation requirement.

For example, if the peak-time hours of operation designated by the Commission for the new medallions totaled 40 hours per week, which presumably would constitute "continuous operation" for that medallion, the Commission could also set the standard for full-time driving under the new medallions at 40 hours per week. The medallion-holder would not need other drivers to keep the taxi in continuous operation for those 40 hours per week, and a prohibition on leasing in those circumstances would not conflict with Proposition K and the Police Code.

If the Taxi Commission were to prohibit leasing of peak-time medallions in general, it might want to consider, as a matter of policy, allowing some limited leasing to keep the medallion in operation when the medallion-holder was ill, on vacation, etc.

CONCLUSION

The Taxi Commission may by regulation allow permit applicants to decline a peak-time medallion and keep their place on the waiting list for a regular medallion.

The Taxi Commission may prohibit leasing of peak-time medallions, so long as medallion-holders still are able to satisfy the continuous operation requirement of Proposition K and the Police Code without using other drivers.