



WORKING GROUP SUBCOMMITTEE MEMBERS

PATRICIA BRESLIN, CHAIR  
PAUL GILLESPIE  
TOM ONETO

JORDANNA THIGPEN, EXECUTIVE DIRECTOR

## Rules and Regulations Subcommittee MINUTES

October 14, 2008

City Hall, 1 Dr. Carlton B. Goodlett Place  
Room 408

**Present:** Breslin, Oneto, Gillespie

**Absent:** None

Called meeting at 10:42 pm

1. **Call to Order/Roll Call : Quorum**
2. **General Public Comment (Please limit public comment to items not on the agenda):**
  - **Jim Gillespie:** Did we ever bring up the regulation of the rule about driving your own cab?
  - **Dir Thigpen:** We talked about it in February; basically we were going to talk about it again.
  - **Com Breslin:** It's coming up because it's in the rule book.
  - **Com Gillespie:** You have to drive your own cab if available from what I understand the rule says.
  - **Jim Gillespie:** A lot of people are scared that they will be penalized.
  - **Com Breslin:** We need to close that loop.
  - **Dir Thigpen:** It will help to get some clarity.
  - **Com Gillespie:** Are people getting credit for driving another vehicle?
  - **Com Oneto:** Weren't we considering waiting to see what MTA was doing with those new units?
  - **Dir Thigpen:** It can go on the 31st agenda.
  - **Com Gillespie:** I would like to consider it on this agenda.
  - **Dir Thigpen:** We have no plans to issue any situation for this violation.
  - **Com Breslin:** Let's agree to agenda this item on the next rules agenda. (November meeting if possible)
  - **Rich Hybels:** I'm against getting rid of this due to making it easier for the frauds.
  - **Marty Smith:** It goes by the ID number not the cab number. I was at the last PCC meeting I noticed they gave away vehicles to certain companies. Giving corporate medallions to offset expenses. My drivers are taking 15-20 calls a day on the radio.
3. **Adoption of Minutes from the August 11, 2008 Subcommittee Meeting [ACTION] :**
  - Adopted without objection
4. **Consideration of State Law Requirements Applicable to California Taxicab Companies [ACTION]**
  - **Com Breslin:** We should try to get someone from the State to speak. We wanted a Workers Compensation representative from the State.
  - **Dir Thigpen:** We have to wait until November for the MTA hearing again. We have three more meetings for this year. We are the only jurisdiction in the whole state that does not have drug

testing. This has been on the books since 1996. I will post this under the proposed rules. When drivers get hired they have to submit that they have completed drug testing. Once when they test negative on the drug test they can receive their driving permit. When a driver gets terminated he/she should surrender their A-Card back to the city. Companies are also not notifying us of this. The only thing we are complying with is establishing rates of fare and regulating them under state law in this city.

- **Com Breslin:** I thought we already had it in our driver requirements that they have a physical.
- **Dir Thigpen:** Physical happens when they become a medallion holder.
- **Com Breslin:** This is a law and or regulation in our rule book? I just want to make sure that that is happening.
- **Dir Thigpen:** I do know that for Medallion Holders there is a medical fitness statement that comes with the application. The drug testing is separate.
- **Com Breslin:** What I see is not an official medical report, but a voluntary report.
- **Dir Thigpen:** The Medallion Holder applications have a signed medical report from their doctor.
- **Com Gillespie:** State law states that the A-Card should be surrendered?
- **Dir Thigpen:** State Code; driver permit becomes void upon termination of employment.
- **Com Breslin:** How many hours qualify as a shift for a driver?
- **Dir Thigpen:** 156 four hour shifts.

#### Public Comment:

- **Marty Smith:** As far as the number of hours. State of California has no jurisdiction over taxicabs in San Francisco. The PUC works as a licensee to the highway patrol.
- **Carl Macmurdo:** Bi-Annual physicals should be taken off the books.
- **Jim Gillespie:** I know truckers and airline pilots have drug testing. I would personally like to see this be a part of the A-card process.
- **Mark Gruberg:** On the medical exams I believe there is a purpose for that. There are some drivers who really shouldn't be driving. If it really is a safety issue a medical exam will go a very long way in getting people off the streets. The drug testing there are some basic civil liberties to this.
- **Rich Hybels:** We never talk about drivers roles in accidents. I don't know if you're going to do drug testing with A-cards, phony certificates will be issued. Unless you do this randomly it will be pointless.

#### 5. Consideration of Proposed Rules with Housekeeping, Non-Substantive Amendments [ACTION]

- **Dir Thigpen:** I didn't make any policy changes, I just eliminated duplicative rules.
- **Com Breslin:** I have not had a chance to go through this, now I have to compare this to the old book. Can get a footer with a date so we won't lose track where these are coming from. I'm just concerned for historical authenticity.
- **Com Gillespie:** It looks good. We moved the section on ramped taxi permits as far as the structure of it.
- **Dir Thigpen:** All the rules existed in other parts; there are still references to ramped taxis.
- **Com Oneto:** On page 19 under driving requirements you references medallion holders.
- **Dir Thigpen:** We have to redo the numbering.
- **Com Gillespie:** You haven't added or subtracted you just structured it?
- **Dir Thigpen:** Yes.
- **Com Breslin:** It was in 4A10, driving your own medallion number. I thought we voted on 4A11.
- **Dir Thigpen:** It hasn't been voted on by the full commission, we can amend that. 4A7 we had extensive conversation about that with no agreement. From now on we will bring this document to every meeting.
- **Com Breslin:** I'd also like to add on the decisions we made that it had to be available upon A-card renewal.
- **Dir Thigpen:** For the next year we can definitely do that.
- **Com Breslin:** Pending the recommendations prior to the MTA.
- **Dir Thigpen:** The color schemes advocated that they not be the ones to issue the rule books. So during the A-card renewal the treasurer's office will issue the new rule books.

- **Com Breslin:** We can fix that by putting in PENDING. I just want to see that the things that we are spending time talking about are being put in place and that this was worthwhile.
- **Com Gillespie:** I also wonder if we should create a new document in our final days or let MTA publish these new documents.
- **Com Breslin:** It might not be final but I want it to be inclusive. I don't want to burden the staff. This is what I would like to do as chair of this committee. If it's not included there should be a special memorandum.
- **Dir Thigpen:** That's something that we can bring up for the next few commission agendas. Anything else will go into a memorandum for the MTA for institutional knowledge.

**Public Comment:**

- **Marty Smith:** I would like to see if we can get memorandums or notices of these rule changes.
- **Dir Thigpen:** Nothing has been voted on, this is just a draft.
- **Carl Macmurdo:** I would like to thank Dir Thigpen for the clean up. The agenda says action that is why in here today. Maybe I have a fundamental understanding of this committee. I don't see why there is a rules committee if there won't be a book published to give to MTA.
- **Com Breslin:** We were looking to change the rules but it wasn't in the budget to reproduce.
- **Dir Thigpen:** We have the budget to reproduce but MTA has its own rules.
- **Com Breslin:** I would rather we print a rule book with the recommendation for us to change. I think MTA is going to take a long time.
- **Dir Thigpen:** MTA will make a rule book immediately. A book will be in place by February 09.
- **Com Breslin:** We want to make sure that MTA is accepting our rule recommendation. If we are going to issue all of these new rules, what are drivers going to carry around?
- **Dir Thigpen:** Drivers will carry new books. If we don't merge with MTA, I will print one in December; end of January.
- **Com Breslin:** We can have inserts.
- **Dir Thigpen:** All the new versions of the rules are always posted online.
- **Com Breslin:** Which ones did the full commission approve?
- **Dir Thigpen:** Insurance, we changed those because drivers can be added to title/registration. Security cameras, minor changes. You voted to change the rules on spare vehicles; inspections and those were adopted because of clean air since the end of June. Those are the only changes that I can recall.

**6. Consideration of Commission's Worker's Compensation Requirements [DISCUSSION AND POSSIBLE ACTION]**

- **Dir Thigpen:** Overview of memo. It's helpful to understand how workers compensation is calculated. Dimitri told me that he is getting it per permit. His comp was going to expire 10/14/08 and there would be no more workers comp but he has found someone to get workers compensation. I asked him to come but he said that he likes to stay out of politics. People covered by workers compensation in the taxi industry are employee and that depends on the employment relationship.
- **Com Breslin:** We are still waiting for a representative to come and talk to us.
- **Com Gillespie:** I haven't got to review the changes.
- **Com Breslin:** I think the payroll is divided.
- **Tom Owen:** I think it's like your property tax.
- **Com Gillespie:** The bottom line is the people have to be in compliance with state law.
- **Tom Owen:** You can have the rule that they must be in compliance. You have to have the option of the company proving that they are real independent contractors. It's always going to be an intensive analysis.
- **Com Gillespie:** I pay self employment tax.
- **Com Breslin:** Until we have more experts before us, I don't want to have it on the agenda again.
- **Com Gillespie:** What section is this under?
- **Dir Thigpen:** MPC 1147.4, 5H16 in the rule book (workers comp). 5A1 applies to color schemes that they have to comply with several laws including workers compensation.

- **Com Gillespie:** Would this be case law?
- **Tom Owen:** Case law would be an official interpretation of what the regulation means.
- **Com Gillespie:** Companies wanted to be protected from lawsuits so they got insurance.
- **Tom Owen:** If state law determines a particular group of people are not employees of state law we cannot extend state laws.
- **Com Gillespie:** We cannot adopt a local ordinance?
- **Tom Owen:** We can require compliance with state law and we can start with an informal assumption that a gas gates driver is an employee. But the company gets the opportunity to define. The city cannot force the company to provide workers compensation.
- **Dir Thigpen:** What kind of regulation could the City adopt? Could the commission say "we are going to presume that drivers are employees" and then rely on some state agencies laws.
- **Tom Owen:** Probably not. State will not come up with some generic language.
- **Com Gillespie:** Long term lease drivers and gate/gas drivers according to the state.

#### Public Comment

- **Marty Smith:** Right now its just policy acting as law and I think that's against the law. Drivers need protection and color schemes need protection. This is why industrial insurance should be looked into.
- **Rich Hybels:** I think if you look into it, the issue is whether the driver is controlled by anyone?
- **Dan Hinds:** Our workers compensation insurance is tied to the medallion.
- **Mark Gruberg:** From my own personal experience. I applied for my own workers compensation while working with Yellow Cab. After the Tracy case was decided I was denied workers compensation as an independent contractor. There is never going to be perfect clarity on this on an administrative or city level.
- **Jim Gillespie:** Yellow cab is self insured. We take cases on a fairly regular basis. San Francisco is the only city covering workers compensation over taxi drivers.
- **Com Gillespie:** Why doesn't any other city in California?
- **Jim Gillespie:** The cases that have been brought and challenged. They haven't lost enough where they needed to. They don't feel like there is a huge risk.
- **Com Gillespie:** Who do you go to for your certificate?
- **Jim Gillespie:** Insurance commissioner.
- **Com Gillespie:** Is that based on the number of medallions?
- **Jim Gillespie:** There is a net worth that you go through.
- **Com Gillespie:** When you go through your process do they look at previous years claims?
- **Jim Gillespie:** Yes, claims and outstanding claims.
- **Com Gillespie:** What's the process and who decides if a claim is valid?
- **Jim Gillespie:** I'm not sure.
- **Dir Thigpen:** Action items for next meeting are 4A7, 4A10 and 4A11, we are going to pull together resolutions. I will distribute a fresh copy of the Bay decision, sample for Com Breslin regarding whether calculation of workers compensation is multiplied or divided. Self insurance for claims, housekeeping, doing a basic memo outlying the changes that have been made.
- **Com Gillespie:** This package we have a fact sheet, on the Tracy decision.
- **Dir Thigpen:** Yes and a DIR fact sheet, Tracy order (decision), and a Yellow Cab decision yellow cab vs. workers comp,
- **Com Breslin:** Are there any more recent cases?
- **Tom Owen:** There have been more but they haven't involved taxi drivers, only package delivery drivers.

7. Adjournment. 12:25pm