

Agenda: Item 2

Staff Report and Commissioner Announcements [INFORMATION]



COMMISSIONERS TELEPHONE (415) 554-7737

PAUL GILLESPIE, PRESIDENT, ext. 3
PATRICIA BRESLIN, VICE PRESIDENT
RICHARD BENJAMIN, COMMISSIONER, ext. 1
TOM ONETO, COMMISSIONER, ext. 6
MIN PAEK, COMMISSIONER, ext. 7
SUSAN SUVAL, COMMISSIONER, ext. 5
ART TOM, COMMISSIONER, ext. 4

JORDANNA THIGPEN, EXECUTIVE DIRECTOR

TO: Honorable Commissioners
FROM: Jordanna Thigpen
RE: Staff Report 10.31.08
Date: October 31, 2008

Administration/Policy

- **Office Hours:** The office is still open from 9-11:30 and 2-5 PM for customer service drop-ins.
- **We have a new, temporary staff member, Arthur Gulling, who will be performing clerical work and assisting the front of the office staff.**
- **Open Forum:** Open Forum will occur Wednesday, November 5, 2008, from 2-3 PM
- **TLPA Conference:** President Gillespie and I will attend the TLPA Conference from October 27-30, 2008 in Tampa, Florida.
- **Rules & Regulations Subcommittee:** The date for our next meeting is still being determined.
- **Taxi Wraps:** No new ones have been approved.
- **SFMTA's Taxi Advisory Group:** The group has been meeting regularly and developed recommendations for the proposed Division of Taxis and Accessible Services if it is created within SFMTA's jurisdiction.
- **Tour and Sightseeing Buses:** I have been meeting with constituents involved in the tour and sightseeing bus industry in Fisherman's Wharf and Union Square. We are attempting to come up with some creative solutions to the problems that are facing the industry from a permitting and enforcement perspective.
- **Taxi Driver Appreciation Luncheon:** The Driver Appreciation Luncheon will be held on November 20, 2008 at 12:00 PM at the Beach Chalet Restaurant on Great Highway. Admission is \$20 for an incredible lunch. We encourage drivers and their families to attend! Contact the office at (415) 503-2180 for more information or to attend.
- **Airport Service:** Sgt. Reynolds and myself are meeting with representatives from SFO on an ongoing basis. We have discussed topics ranging from vehicle condition to driver safety and refunds on the smart card system. We have encouraged the Airport to process the refunds more quickly as we have received many complaints from drivers. The Airport is establishing a more streamlined process for refunds and we look forward to announcing it when it is ready.
- **Smart cards at companies:** SFO has asked us to remind companies that no one may store or reissue smart cards. Any company found to have smart cards in its possession will be cited for possession of City and County of San Francisco property.
- **Lost and Found Protocol:** the Commission will shortly make some changes to the handling of lost and found property in consultation with color schemes.

Enforcement/Regulation

- **William Hunger:** Attached please find a copy of a complaint issued against Mr. Hunger. Mr. Hunger surrendered his A-card at the hearing and Taxi Commission and Taxi Detail thanked him for his years of service in the industry.
- **Administrative Hearings:** There are several upcoming Qualification Hearings on November 7, 2008: Philip Lo and Wei Chen Lee are intended. Mr. Ikarouien will be rescheduled before the Commission on November 25, 2008.
- **Administrative Complaints:** There are several pending complaints based on summary suspensions and other fresh violations: Taxi Commission v. Benchekor, Taxi Commission v. Ahmed.
- **Board of Appeals:** There are several upcoming hearings including Ennazer, Rahimi, and several applicants who were denied medallions.
- **Lost Medallions:** Black and White Checker has lost medallion # 953, if anyone has seen it, or if it is noticed in operation in any out-of-town taxicabs that might be masquerading as a permitted taxicab vehicle.
- **311 Complaints:** We have submitted our requested updates to 311 which will enable greater reporting and tracking of complaints by driver, medallion number, and by company. We are doing very well with processing the backlog of lost and found and complaints with the assistance of SFPD.
- **Medallion Applicants:** Staff continues to process and investigate each medallion applicant as they arrive at the top of the list.

CITY AND COUNTY OF
SAN FRANCISCO



TAXI COMMISSION
MAYOR GAVIN C. NEWSOM

PAUL GILLESPIE, PRESIDENT
PATRICIA BRESLIN, VICE PRESIDENT
RICHARD BENJAMIN, COMMISSIONER
TOM ONETO, COMMISSIONER
MIN PAEK, COMMISSIONER
R. JAMES SLAUGHTER, COMMISSIONER
SUSAN SUVAL, COMMISSIONER

**TAXI COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

**ORDER TO APPEAR
NOTICE OF ADMINISTRATIVE
ACTION ON PERMIT**

TO William K Hunger

BUSINESS DeSoto Cab Company

LOCATION 555 Selby Street San Francisco, CA 94124

You are hereby notified that the annexed complaint has been filed with the taxi commission of the City And County Of San Francisco, and you are hereby cited to appear in person before the Hearing Officer of the Taxi Commission on

FRIDAY September 12, 2008 AT 10:00 a.m.

in room 408, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, CA to show cause why your

TAXICAB DRIVER PERMIT, #P44-46901

heretofore granted to you, should not be subjected to the administrative action and for the reasons set forth in said complaint.

BY ORDER OF THE TAXI COMMISSION,

SAN FRANCISCO, CA August 22, 2008
Date


Executive Director

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**SAN FRANCISCO TAXI COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

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COMPLAINT

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1. Complaint is hereby made against William K. Hunger, DeSoto # 46901, that said permit holder has conducted himself in a disorderly manner and violated provisions of the Municipal Police Code and Taxicab/Ramped Taxi Rules and Regulations as described below.

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2. On July 29, 2008, Tina Durden was seated at a bus stop at Geary and Larkin Streets in san Francisco. She observed a taxicab driver pull up in DeSoto Cab # 1089 with an empty can of beer. The driver, a heavysset male, got out and went to a convenience store, bought a fresh can of beer, put it into a paper bag, got back into the cab and drove off. She filed a 311 complaint describing the situation. (Exhibit A, 311 Complaint; Exhibit B, Complaint and Incident Report # 080802042.) The 311 complaint was referred to SFPD Taxi Detail from the Taxi Commission office based on the fact that the complaint involved possible driving under the influence.

3. On July 30, 2008, Taxi Detail contacted DeSoto Cab Company. Management informed Sgt. Reynolds that William Hunger was operating the vehicle during the day prior at that time. He was also operating the vehicle at that very moment. Sgt. Reynolds ordered DeSoto to appear immediately.

4. On July 30, 2008 at 12:20 PM, Mr. Hunger arrived at Taxi Detail. He had a hip and leg impairment and was limping. He was wearing shorts and Sgt. Reynolds noticed that his legs were covered in bruises and cuts. Mr. Hunger came inside Taxi Detail for an interview and both Sgt. Reynolds and Lt. Schlotz detected an order of an alcoholic beverage on his breath.

1 5. Mr. Hunger was advised of the complaint made the day before. He claimed he had not had
2 an alcoholic drink for several days. He denied buying any beer on July 29, 2008. Sgt. Reynolds
3 administered field sobriety tests to him, and adjudged failure upon viewing the results of the tests.
4 Mr. Hunger agreed to submit to a voluntary breath test to measure the alcoholic content of his
5 blood. Sgt. John Haggett gave Mr. Hunger a hand held breath test, and Mr. Hunger's results were
6 .053. Sgt. Reynolds interviewed Mr. Hunger again. This time Mr. Hunger stated that he did buy a
7 can of beer on July 29, 2008, that he had had several beers on the night of July 29, 2008, and that he
8 had started his shift of July 30, 2008 at 2:30 am and that he did not feel impaired. DeSoto was
9 contacted and they came to pick up the vehicle and Mr. Hunger.

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11 6. The Taxi Detail and the Taxi Commission issued a joint summary suspension of Mr. Hunger
12 on August 1, 2008, which he appealed on August 7, 2008.

13 7. Taxicab/Ramped Taxi Rule 6.G.1 provides that "No taxicab driver shall consume or be
14 under the influence of any alcohol or other intoxicating substance while acting in the capacity of a
15 taxicab driver." Mr. Hunger was under the influence while acting as a taxicab driver.

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17 8. Taxicab/Ramped Taxi Rule 6.G.2 provides that "No Taxicab Driver shall operate a taxicab
18 within four (4) hours after consuming alcohol." Mr. Hunger admitted to drinking "several beers" on
19 the night of July 29, 2008 and then began a shift at 2:30 AM on the morning of July 30, 2008.

20 9. Taxicab/Ramped Taxi Rule 6.G.3 provides that "No driver shall begin a shift to operate a
21 taxicab or continue to operate a taxicab while having a blood alcohol content of .02 percent or
22 greater." Mr. Hunger's blood alcohol content was .053 according to the breath test.

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24 10. Taxicab/Ramped Taxi Rule 6.G.4 provides that "No driver shall operate a taxicab or
25 continue to operate a taxicab while using any controlled substance..." Mr. Hunger operated a
26 taxicab vehicle while drinking alcohol, which is a controlled substance, and drank it during his shift
27 operating the vehicle.

28 11. Taxicab/Ramped Taxi Rule 6.A.4 provides that "A Taxicab Driver shall not hinder, delay, or

1 knowingly make false or misleading statements to the Taxicab Commission or their designee on any
2 matters relating to regulatory compliance.” The Taxi Detail was the Commission’s designee for
3 investigation purposes in Mr. Hunger’s case, and he made false statements to Sgt. Reynolds
4 regarding his consumption of alcohol.

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6 12. The Taxi Commission believes that Mr. Hunger represents a public safety risk due (1) his
7 admitted consumption of alcohol during his shifts; (2) his poor judgment, evidenced by
8 excessive drinking the night before he intended to start an early morning shift; and (3) his false
9 statements to a police officer.

10 13. A hearing will be scheduled for 10:00 AM on September 12, 2008 in Room 408 of City
11 Hall, 1 Dr. Carlton B. Goodlett, San Francisco, CA, 94102. The Commission will present Sgt. Ron
12 Reynolds and Sgt. John Haggett as witnesses.



SAN FRANCISCO POLICE DEPARTMENT TAXICAB DETAIL

July 30, 2008

Mr. William K Hunger
DeSoto Cab Company.
555 Selby St.
San Francisco, CA 94124
415-970-1300

Subject: Summary Suspension of Public Vehicle for Hire Permit 46901.

Dear Mr. Hunger:

Pursuant to Sec. 1090 (c) (viii) of the Municipal Police Code, NOTICE IS HEREBY GIVEN that on: June 18, 2008, the SFPD Taxicab Detail has summarily suspended your Driver of Public Vehicle for Hire Permit 46901.

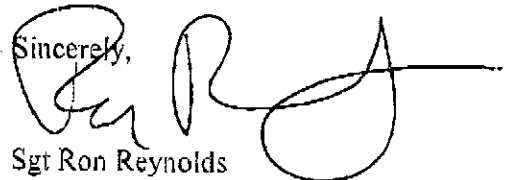
You have the right to appeal this suspension to the Taxicab Commission. Written notice of appeal must be filed with the Director of the Taxicab Commission at 25 Van Ness, Room 420, San Francisco, California 94102, within ten (10) DAYS AFTER RECEIPT OF THIS LETTER. You are entitled to a hearing on your appeal within thirty (30) days after the filing of the notice of Appeal.

YOU ARE HEREBY ORDERED to immediately surrender badge, "A" card and Taxicab Photo Identification to the Taxicab Detail within 5 days of receipt of this notice.

Should you have any questions or need further information, please contact the Taxi Commission at (415) 503-2180.

Attachments:

Sincerely,


Sgt Ron Reynolds
Officer in Charge
San Francisco Police Taxi Detail

07/30/08
Date


Permit Holder



Date: 2008-07-29 09:44:47

Service Request
Number: 255874

TAXI Complaint

Name: **Tina Durden**

Phone: **[REDACTED]**

Complaint
Details:

CALLER REPORTS SHE WAS SITTING AT BUS STOP WAITING FOR A BUS. THE CAB DRIVER PULLED RIGHT IN FRONT OF STORE WITH AN EMPTY CAN OF BEER. DRIVER EXCHANGED TWO DOLLARS TO STORE WORKER AND GOT ANOTHER CAN OF BEER IN A PAPER BAG. CAB DRIVER GOT BACK INTO CAB AND DROVE AWAY

Complaint
Type:

Unsafe Driving

Incident
Date/Time:

07/29/2008 09:10 am

Clarify if necessary. Eg Is it Fri 1:30 or really Sat 1:30am

Cab /
Medallion
#:

1089

(Cab # is on top, sides and back.)

(Medallion is a metal plate on the dash facing forward)

Driver
Name/Badge# **n/a**

(Photo ID faces passenger and has: Company name, picture, badge #, name is optional)

Driver
Physical
Description:

HEAVY SET MALE

(ethnicity, gender, physical characteristics, facial hair, glasses, etc)

Vehicle
Description: **DE SOTO**
(Colors, company name, logo/picture)

Dispatched: **No**

Starting
point: **CORNER OF GEARY AND LARKIN**

Ending
point:

(e.g. Destination, From/To)

Comments: **CALLER REPORTS SHE WAS SITTING AT BUS STOP WAITNG FOR A
BUS.THE CAB DRIVER PULLED RIGHT IN FRONT OF STORE WITH AN
EMPTY CAN OF BEER.DRIVER EXCHANGED TWO DOLLARS TO STORE
WORKER AND GOT ANOTHER CAN OF BEER IN A PAPER BAG.CAB DRIVER
GOT BACK INTO CAB AND DROVE AWAY**

SubmitCancel



GAVIN NEWSOM
MAYOR

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO

THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603



HEATHER J. FONG
CHIEF OF POLICE

08/01/2008

COMPLAINT

STATE OF CALIFORNIA

City & County of San Francisco

Complaint is hereby made against:

William K Hunger

Engaged in the business of:

Driver Public Vehicle

At the address of 555 Selby St., San Francisco, in the said City & County, that the said business was conducted by William Hunger in an unlawful, disorderly and improper manner as follows, to wit:

On July 29, 2008, at 09:10 hrs, Ms. Tina Duden was sitting at a bus stop at Geary and Larkin Sts. waiting for a bus. She observed DeSoto Taxicab # 1089 pull in front of a store with an empty can of Beer. The driver of the taxicab was a heavy set male. The taxicab driver exchanged two dollars to the store worker and got another can of beer in a paper bag. The taxicab driver got back into his taxicab and drove off. Duden then reported the incident to 311.

On July 30, 2008 DeSoto Cab Company was contacted by the Taxi Detail and it was discovered that William Hunger was driving vehicle # 1089 on July 29, 2008. Hunger was working a day shift on July 30, 2008 and DeSoto was ordered to have Hunger appear at the Taxi Detail immediately.

On July 30, 2008 at 1220 hrs. Hunger arrived at the Taxi Detail. He had a hip and leg impairment. He was limping when he walked. Hunger was wearing shorts and Sgt. Ron Reynolds of the Taxi Detail noticed his legs and arms had numerous bruises, cuts and injuries on his limbs. Hunger came into the Taxi Detail and Sgt Reynolds and Lt. Schlotz could detect a slight odor of an alcoholic beverage on his breath.

Hunger was advised of the complaint against him operating a taxicab while drinking an alcoholic beverage. Hunger stated he had not had an alcoholic drink for several days. He denied buying beer on 07/29/2008. Sgt. Reynolds checked Hungers eyes and they appeared normal. Sgt. Reynolds had Hunger stand up behind a filing cabinet and lean his head back. Hunger was able to stable himself and stand without falling. Sgt. Reynolds then asked him to close his eyes. Both times Hunger closed his eyes he fell backwards into the cabinets. Sgt. Reynolds confronted Hunger and told him he had been drinking today. Hanger voluntarily agreed to take a breath test to measure the alcoholic content of

his blood. Hunger agreed to go to the SFPD Traffic Detail and take a breath test. Sgt. John Haggett gave Hunger a hand held breath test, Hungers results were 0.053.

Sgt Reynolds interviewed Hunger and Hunger stated the following:

He did buy a can of beer yesterday while he was driving a taxicab, that he had drank several beers on the night of July 29, 2008, and that he started his taxicab shift at DeSoto at 0230 hrs. on July 30, 2008, and that he did not feel impaired.

DeSoto Cab Company was contacted and they came and picked up Hunger and the taxicab vehicle.

Taxicab/Ramped Taxi Rules and Regulations 6.G.1. states:

No Taxicab Driver shall consume or be under the influence of any alcohol or other intoxicating substance while acting in the capacity of a taxicab driver.

Taxicab/Ramped Taxi Rules and Regulations 6.G.2. states:

No Taxicab Driver shall operate a taxicab within four (4) hours after consuming alcohol.

Taxicab/Ramped Taxi Rules and Regulations 6.G.3. states:

No driver shall begin a shift to operate a taxicab or continue to operate a taxicab while having a blood alcohol content of 0.02 percent or greater.

Municipal Police Code 1077(a) states:

Rules and Regulations. The Taxi Commission from time to time shall, after a noticed public hearing, adopt such rules and regulations to effect the purposes of this Article as are not in conflict where within.

Municipal Police Code 1090(a) (vii) states:

(a) Revocation for Cause. Any permit issued under this article may be suspended or revoked by the Police Commission for good cause after a noticed hearing. "Good cause" hereunder shall include, but shall not be limited to, the following:

(viii) The permittee violated the Traffic Code of the City and County of San Francisco or the Vehicle Code or related laws of the State of California.

Municipal Police Code 1090(c) states:

(c) Suspension by the Chief of Police. The Chief of Police may suspend summarily any permit issued under this Article pending a disciplinary hearing before the Police Commission when in the opinion of said Chief of Police the public health or safety requires such summary suspension, Any affected permit tee shall be given notice of

such summary suspension in writing delivered to said permit tee in person or by registered letter.

Taxicab/Ramped Taxi Rules and Regulations 6.A. 1. states:

Every licensed permit holder shall comply with the provisions of the Charter, Police Code, Planning Code and Traffic Code of the City and County of San Francisco. The California Vehicle Code, California Worker's Compensation Laws and these Taxicab Regulations. The provisions of all ordinances and regulations applicable to the San Francisco International Airport, San Francisco City and County Department of Agriculture and Weights and Measures and all other governmental jurisdictions thought which the permit holders traverse.


The SFPD Taxi Detail believes that Mr. Hunger demonstrated irresponsible criminal behavior and poor judgment by operating a vehicle for hire in San Francisco while under the influence of an alcoholic beverage. Therefore, the Taxi Detail requested that the Taxi Commission start administrative disciplinary proceedings against William K. Hunger for operating a vehicle for hire while under the influence of an alcoholic beverage in San Francisco, and for not being in compliance with the Taxicab/Ramped Taxi Rules and Regulations, the San Francisco Municipal Police Code and the California Vehicle Code.

Dated: August, 2008

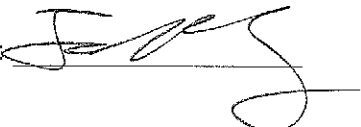
Sgt. Ron Reynolds # 137
O.I.C. Taxicab Detail



Dated: August 1, 2008

Approved by:  Lt 4020
Lt. Jeanne Schlotz # 4020
Commanding Officer Permits Bureau

Dated: August 1, 2008

Approved by: 
Jordanna Thigpen
Executive Director
Taxicab Commission

1) SFPD Incident Report # 080802042

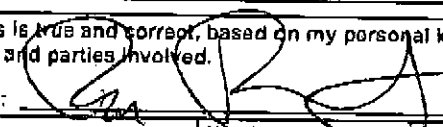
San Francisco Police Department INCIDENT REPORT

Report Type: Initial

080802042

080802042

INCIDENT	Incident Number 080-802-042	Occurrence from Date/Time 07/29/08 09:10	Occurrence to Date/Time 07/30/08 12:30	Reported Date/Time 07/30/08 16:00	CAD Number 082123009	
	Type of Incident Driving While Under The Influence Of Alcohol -65050					
	Location of Occurrence 850 Bryant St At Intersection with/Premise type Government Premise					
	Confidential Report? <input type="checkbox"/>	Arrest Made? <input type="checkbox"/>	Suspect Known? <input checked="" type="checkbox"/>	Suspect Unknown? <input type="checkbox"/>	Non-Suspect Incident? <input type="checkbox"/>	Domestic Violence? <input type="checkbox"/> (Type of Weapon Used)
	Reporting Unit 2E100					
Location Sent 850 Bryant St St						
How Cleared?	Reported to Bureau	Name	Star	Date/Time	Elder Victim <input type="checkbox"/>	
					Gang Related? <input type="checkbox"/>	
					Juvenile Subject? <input type="checkbox"/>	
					Prejudice Based? <input type="checkbox"/>	

OFFICER	I declare under penalty of perjury, this report of 2 pages is true and correct, based on my personal knowledge, or is based on information and belief following an investigation of the events and parties involved.					
	PROP 115 CERTIFIED			Signature: 		
	Reporting Officer R. REYNOLDS	Star 137	Station TAXI	Watch 0700/1700	Date 7/31/08	
	Reviewing Officer	STAR	Station	Watch	Date	
	OTC	STAR	Station	Watch	Date	
Related Case	Related Case	Re-Assigned to	Assigned to	Assigned by		
		Copies to	District	Add'l Copies		

REPORTEE	Code R	Name (Last, First Middle) Duden, Tina	Alias	
	Day Phone Type	Home Address Refused	City State Zip Code	
	Night Phone Type	Work Address	City State Zip Code	
	DOB / Age DOB Unk. <input type="checkbox"/>	or age between and	Race Sex Height Weight Hair Color Eye Color ID Type Jurisd. ID No.	
	Confidential Person <input type="checkbox"/>	Violent Crime Notification <input type="checkbox"/>	293 PC Notification <input type="checkbox"/>	Star Follow-up Form YES <input type="checkbox"/> Statement YES <input type="checkbox"/> Relationship to Subject
	School (if Juvenile)	Injury/Treatment	Other Information/If Interpreter Needed Specify Language	

SUSPECT	Code S	Name (Last, First Middle) Hunger, William	ALIAS	
	Day Phone Type	Home Address	City State Zip Code	
	Night Phone Type	Work Address 555 Seiby	City State Zip Code	
	DOB Unknown <input type="checkbox"/>	Date of Birth Age or age between and	Race W Sex M Height 6'02 Weight 230 Hair Color BRO Eye Color BRO	
	SFNO	I/D# (if Juvi.) ID Type/Jurisdiction/Number DL	ID Type/Jurisdiction/Number ID Type/Jurisdiction/Number	
	Book Section #1	Book Section #2	Book Section #3	Book Section #4
	Book Section #5	Booking Location		
	Warrant #	Court #	Action #	Dept Enroute to
	Warrant Violation(s)	Bail	Mirandized <input type="checkbox"/>	Star Date Time Statement <input type="checkbox"/>
	Citation #	Violation(s)	Appear Date/Time	Location of Appearance
	Book/Cite Approval	Star	Mass Arrest Code	M X-Rays <input type="checkbox"/>
	School (if Juvenile)			<input type="checkbox"/> CA Form Booked Copy Attached
Other Information: Citation/Warrant/Booking Charge(s)/Missing Person-Subject Description; Scars, Marks, Tattoos				

080802042**San Francisco Police Department
NARRATIVE**

On 07/29/08 at 1500 hrs. I received 311 Service Request # 255874. This was a 311 complaint filed by (R) Duden/Tina . Duden stated the following:

She was sitting at bus stop waiting for a bus. The cab driver pulled right in front of store with an empty can of beer. Driver exchanged two dollars to store worker and got another can of beer in a paper bag. Cab driver got back into cab and drove away. The medallion number was Desoto 1089.

On 07/30/08 at 1000 hrs. I contacted DeSoto Cab Company and asked who was driving taxicab # 1089 on 07/29/08. I was told it was (S) Hunger/William. I asked if Hunger was driving a taxicab today and was told yes. I told DeSoto Taxicab Company to send him to the Hall of Justice immediately. At 1220 hrs. Hunger arrived. He had a hip and leg handicap and had problems walking. He was wearing shorts and I noticed his legs and arms had numerous bruises, cuts and injuries. He came into the Taxi Detail and I could detect a slight odor of an alcoholic beverage on his breath. I showed him the complaint about him drinking beer while on duty in his taxicab. I gave him his Behealer rights. Hunger told me he hadn't had a drink for several days. He denied buying the beer on 07/29/08. I had Lt. Jeanne Schlotz # 4020 talk to Hunger and she too detected the smell of an alcoholic beverage on his breath. I checked his eyes and they appeared normal. I had Hunger stand up behind a filing cabinets and asked him to lean his head back. He was able to stable himself and stand without falling. I then asked him to close his eyes. Both times he closed his eyes he fell back into the cabinets. He was upset that he wasn't able stand upright when he closed his eyes. I told Hunger he was lying to me about drinking alcohol and I told him I could not let him continue to operate a taxicab in his present condition. I told him I thought he was under the influence of alcohol. He told me he was not. I told Hunger there were several things we could do. One he could take a breath test and prove me wrong. Two, he could tell me the truth and I would try and help him get into an alcohol program. Three, I could call DeSoto and let them handle his situation. Hunger chose the breath test. I explained the test was voluntary and he did not have to take it, he agreed. We went to the Traffic Bureau and Sgt. John Haggett gave Hunger a hand held breath test. The results were .053.

I then took Hunger upstairs and asked for an interview. The interview was tape recorded. Hunger did admit to buying a can of beer yesterday. He admitted he did drink beers on the night of 07/29/08. He stated he came to work at 0230 hrs. on 07/30/08 and has been driving his taxicab ever since. He did not feel the effects of the alcohol. Since Hunger's blood alcohol was .053 DeSoto was contacted and they came to pick up their taxicab. DeSoto also sent someone to help Hunger. Before Hunger left the Taxi Detail, his right to drive a taxi permit was suspended.



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: October 23, 2008

RE: SB 1519

The Governor signed SB 1519 on September 30, 2008. The statute, Chapter 721 of the Statutes of 2008, adds Sections 53075.7, 53075.8, and 53075.9 to the California Government Code. (A copy of the bill is attached to this memorandum.) These changes will take effect on January 1, 2009.

New Government Code Section 53075.7

1. Investigating Illegal Taxi Services. The statute requires the Taxi Commission (or the Municipal Transportation Agency, if the Board of Supervisors transfers responsibility for taxi regulation to the Agency), upon receiving a complaint containing sufficient information to justify an investigation, to investigate any business that advertises or operates a taxicab service.

[Comment: Notwithstanding the mandatory language of the statute, the Taxi Commission would still retain the basic authority to prioritize the use of Commission resources and the discretion to determine whether a particular complaint warrants conducting an investigation.]

2. Adoption of Criteria for Instituting an Investigation. The statute also requires the City to adopt formal criteria describing whether a complaint contains sufficient information to warrant an investigation.

[Comment: The statute requires the "local agency" to adopt criteria "by ordinance, resolution, or other appropriate procedure." Under the City Charter and the definition of "local agency" used in the statute, the Taxi

TO: Honorable Members
San Francisco Taxi Commission
DATE: October 23, 2008
PAGE: 2
RE: SB 1519

Commission exercises the City's powers as the local agency and therefore may adopt such criteria by Commission rule.]

3. Enforcement Proceedings. If the Taxi Commission determines that the business is operating a taxi service without a permit, it shall notify the business not having a permit that it is violating the law, and, within 60 days of the notice, start civil or criminal proceedings, or both, against the business.

[Comment: Because Section 53075.9, also enacted as part of SB 1519, authorizes the "local agency" to impose a fine of up to \$5,000 for operating a taxi service without a permit, we conclude that the statute is intended to include administrative proceedings as "civil proceedings" for these purposes. The Taxi Commission, the District Attorney, and the City Attorney would retain their basic discretion over whether to initiate administrative, civil, or criminal proceedings, respectively, against a particular business.]

New Government Code Section 53075.8

1. Terminating Phone Service of Illegal Taxis. The statute authorizes the Taxi Commission to seek a court order terminating the phone service of a company operating a taxicab in San Francisco without a permit, if the phone service is being used as part of that violation and other enforcement efforts have failed.

2. The Initial Administrative Determination. Under the statute, if the Taxi Commission determines that a company is operating a taxicab in San Francisco without a permit, it may start the process to terminate phone service as follows:

- The Commission notifies the company that the Commission intends to seek termination of the company's phone service.
- The company may file a written protest with the Commission contesting the charges within 10 calendar days of the date of the Commission's notice. The Commission then schedules a hearing on the charges within 21 calendar days of receiving the company's protest.
- The Taxi Commission, or its designee, holds a hearing on the protest. The Commission has the burden of proving that the company is using the telephone

TO: Honorable Members
San Francisco Taxi Commission
DATE: October 23, 2008
PAGE: 3
RE: SB 1519

service to offer taxi service to the public, in violation of the City's permit requirement.

- Within 10 calendar days of the close of the hearing, the Commission issues a written decision on the allegations contained in the notice. If the Commission upholds the allegations, the decision also states whether the allegations are sufficient to justify seeking termination of the company's phone service

2. Application for a Court Order. If the company does not protest the Commission's notice, or if after the hearing the Commission determines that the allegations are sufficient to justify seeking termination of the company's phone service, the Taxi Commission may proceed as follows:

- The City, acting through the Taxi Commission, applies to the Superior Court for a written order finding that probable cause exists to believe that the company is advertising or offering to the public to perform taxicab transportation services in violation of the City's permit requirement, or that the company is otherwise using the telephone service, directly or indirectly, to violate the City's permit requirement.

[Comment: Issuance of the court order is not automatic—the City must convince the court that the company is using its phone service, directly or indirectly, to operate a taxi service without a City permit.]

- If the Superior Court issues the order, the Taxi Commission then presents the order to the telephone company providing the service. The Taxi Commission must also establish that other available enforcement efforts have failed to terminate unlawful activities detrimental to the public welfare and safety. The telephone company must disconnect the illegal taxi company's telephone service, and provide notice to the company of the action.

[Comment: The Commission must convince the phone company (and, as a practical matter, the court) that prior enforcement efforts and other "progressive discipline" have failed to stop the company's unlawful operations.]

3. Provisions Made Part of All Contracts for Telephone Service. The provisions of the section are an implied term of every contract for telephone service and a part of any application for telephone service. Applicants for, and subscribers and

TO: Honorable Members
San Francisco Taxi Commission
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customers of, telephone service, have, as a matter of law, consented to the provisions of this section as a consideration for the furnishing of the telephone service.

New Government Code Section 53075.9

1. **Cab Companies to Include Permit Numbers in Advertisements.** The statute requires that every taxi company include its permit number in all written or oral advertisements. "Advertisement" includes signs, business cards, print and electronic ads, and phone directory ads.

2. **Enforcement Actions.** The Taxi Commission may impose a "fine" (actually an administrative penalty) on any person who fails to include the permit number in advertisement, or who operates a taxi service without a permit, up to \$5,000 for each violation, as well as the costs of the investigation and interest. The Commission must conduct a hearing before imposing the penalty.

[Comment: Although the statute refers to "the number required by subdivision (a) of Section 50739", it appears that the reference is intended to be to the permit number required by subdivision (a) of this section, Section 53075.9.]

Encl.

cc: Jordanna Thigpen
Chris Hayashi

Senate Bill No. 1519

CHAPTER 721

An act to add Sections 53075.7, 53075.8, and 53075.9 to the Government Code, relating to taxicabs.

[Approved by Governor September 30, 2008. Filed with Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1519, Yee. Local governments: taxicabs.

(1) Existing law requires every city or county to adopt an ordinance or resolution regarding taxicab transportation service, including, but not limited to, provisions for a policy for the entry into the business of providing taxicab transportation service and for the establishment or registration of rates for the provision of that service.

This bill would require the local agency, defined as the local entity responsible for the regulation of, and enforcement of, rules, regulations, or ordinances governing, taxicabs within the local jurisdiction, upon receipt of a complaint containing sufficient information to warrant conducting an investigation, to investigate any business that advertises a taxicab transportation service for hire identified in the complaint. The bill would require the local agency, by ordinance, resolution, or other appropriate procedure, to adopt criteria that establishes the type of information, if contained in a complaint, that is sufficient to warrant an investigation.

This bill would also require every taxicab transportation service to include the number of its certificate, license, or permit in every written or oral advertisement, as defined, of the services it offers, and would authorize the local agency to impose a fine of not more than \$5,000 if it finds, after a hearing, that a person or corporation is operating as a taxicab transportation service without a valid certificate, license, or permit, or fails to include the number of the certificate or permit in any written or oral advertisement.

(2) Existing law provides for the termination of telephone service by a telephone corporation or telegraph corporation to a charter-party carrier of passengers without a valid certificate or permit, pursuant to specified procedures by the Public Utilities Commission.

This bill would provide for the termination of telephone service by a telephone corporation or telegraph corporation to a taxicab transportation service without a valid certificate, license, or permit and places enforcement of this prohibition with the local agency. By imposing a new or higher level of service upon local governments, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 53075.7 is added to the Government Code, to read:

53075.7. (a) Upon receipt of a complaint containing sufficient information to warrant conducting an investigation, the local agency shall investigate any business that advertises or operates taxicab transportation service for hire. The local agency shall, by ordinance, resolution, or other appropriate procedure, adopt criteria that establishes the type of information, if contained in a complaint, that is sufficient to warrant an investigation. Pursuant to this investigation, the local agency shall do all of the following:

(1) Determine which businesses, if any, are required to have in effect a valid taxicab certificate, license, or permit as required by ordinance, but do not have that valid authority to operate.

(2) Inform any business not having valid authority to operate that it is in violation of law.

(3) Within 60 days of informing the business pursuant to paragraph (2), institute civil or criminal proceedings, or both, pursuant to the governing municipal code or other authority of jurisdiction.

(b) For purposes of this section:

(1) "Advertises" means any action described in subdivision (b) of Section 53075.9.

(2) "Local agency" means the local entity responsible for the regulation, including, but not limited to, the certification, licensing, or permitting of, and enforcement of rules, regulations, or ordinances governing, taxicabs within the local jurisdiction.

SEC. 2. Section 53075.8 is added to the Government Code, to read:

53075.8. (a) The Legislature finds and declares that advertising and use of telephone service is essential for a taxicab transportation service to obtain business and conduct intrastate passenger transportation services. Unlawful advertisements by taxicabs operating without a valid taxicab certificate, license, or permit required by any ordinance has resulted in properly certificated, licensed, and permitted taxicab operators competing with these taxicabs operating without a proper taxicab certificate, license, or permit using unfair business practices. Taxicabs operating without a proper taxicab certificate, license, or permit have also exposed passengers to unscrupulous persons who portray themselves as lawful operators. Many of these taxicabs operating without a proper taxicab certificate, license, or permit have been found to have also been operating without insurance, or in an unsafe manner, thereby placing their passengers at risk.

(b) (1) The Legislature further finds and declares that the termination of telephone service utilized by taxicabs operating without proper authority is essential to ensure the public safety and welfare. Therefore, local agencies should take enforcement action, as specified in this section, to disconnect telephone service of unauthorized taxicab operators who unlawfully advertise passenger transportation services in yellow page directories and other publications. The enforcement actions provided for by this section are consistent with the decision of the California Supreme Court in *Goldin v. Public Utilities Commission* (1979) 23 Cal. 3d 638.

(2) For purposes of this section, a telephone corporation or telegraph corporation, or a corporation that holds a controlling interest in the telephone or telegraph corporation, or any business that is a subsidiary or affiliate of the telephone or telegraph corporation, that has the name and address of the subscriber to a telephone number being used by a unauthorized taxicab operator shall provide the local agency, or an authorized officer or employee of the local agency, upon demand, and the order of a magistrate, access to this information. A magistrate may only issue an order for the purposes of this subdivision, if the magistrate has made the findings required by paragraph (2) of subdivision (f).

(c) (1) In addition to any other remedies that may be available by law, if a local agency determines that a taxicab transportation service has operated within the local agency's jurisdiction in violation of the local agency's ordinance adopted under Section 53075.5, the local agency may notify the taxicab operator that the local agency intends to seek termination of the operator's telephone service. The notice shall be sent by certified mail to the operator at the operator's last known mailing address. If the local agency is unable to determine the operator's mailing address, the local agency shall post the notice for at least 10 calendar days.

(2) The notice shall contain sufficient information to identify the taxicab transportation service, to inform the taxicab operator of the alleged violations of the local agency's ordinance, and the procedures for protesting the allegations contained in the notice.

(d) The taxicab operator, within 10 calendar days of the date of the notice, may contest the allegations contained in the notice by filing a written protest with the local agency. The local agency shall schedule a hearing on the protest within 21 calendar days of receiving the protest.

(e) The governing body of the local agency, or any person or persons as may be designated by the governing body, shall hear the protest. The local agency shall have both the burden of providing that the use made, or to be made, of the telephone service is to hold out to the public to perform, or to assist in performing, services as a taxicab transportation service, and that the telephone service is being, or is to be, used as an instrumentality, directly or indirectly, to violate, or assist in violating, the local agency's applicable ordinance. The taxicab operator, or his or her designated representative, shall be allowed to present evidence to answer or refute any allegations presented to the hearing body by the local agency. The hearing body may continue the hearing from time to time. Within 10 calendar days of the close

of the hearing, the hearing body shall issue a written decision to uphold or reject, in whole or in part, the allegations contained in the notice. If the hearing body upholds the allegations in whole or in part, the written decision shall state either that the allegations are sufficient to justify seeking termination of the taxicab operator's telephone service, or that the allegations are not sufficient.

(f) (1) If the local agency does not receive a timely protest, or, after a protest hearing held pursuant to subdivision (d), the hearing body has determined that the allegations are sufficient to justify seeking termination of the telephone operator's telephone service, the local agency may seek termination of the taxicab operator's telephone service as provided in this section.

(2) A telephone or telegraph corporation shall refuse telephone service to a new subscriber and shall disconnect telephone service of an existing subscriber only after it is shown that other available enforcement remedies of the local agency have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized officer or employee of the local agency of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal Code, finding that probable cause exists to believe that the subscriber is advertising or holding out to the public to perform taxicab transportation services in violation of the local agency's applicable ordinance, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or assist in violation of the laws requiring a taxicab operator to have valid operating authority. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been, or are to be, used in the commission or facilitation of holding out to the public to perform taxicab transportation services in violation of the local agency's applicable ordinance.

(g) The telephone or telegraph corporation, immediately upon refusal or disconnection of service in accordance with paragraph (2) of subdivision (f), shall notify the subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of a local agency and the writing of a magistrate, and shall include a copy of this section, a copy of the writing of the magistrate, and a statement that the customer of the subscriber may request information from the local agency concerning any provision of this section and the manner in which a complaint may be filed.

(h) The provisions of this section are an implied term of every contract for telephone service and a part of any application for telephone service. Applicants for, and subscribers and customers of, telephone service, have, as a matter of law, consented to the provisions of this section as a consideration for the furnishing of the telephone service.

(i) As used in this section, the terms "person," "customer," and "subscriber" include the subscriber to telephone service, any person using the telephone service of a subscriber, an applicant for telephone service, a

corporation, a limited liability company, a partnership, an association, and includes their lessees and assigns.

(j) As used in this section, the following terms have the following meanings:

(1) "Authorized officer or employee of the local agency" includes any employee of the local agency designated by the local agency's governing body.

(2) "Local agency" has the same meaning as specified in subdivision (b) of Section 53075.7.

(3) "Telegraph corporation" has the same meaning as specified in Section 236 of the Public Utilities Code.

(4) "Telephone corporation" has the same meaning as specified in Section 234 of the Public Utilities Code.

SEC. 3. Section 53075.9 is added to the Government Code, to read:

53075.9. (a) Every taxicab transportation service shall include the number of its certificate, license, or permit in every written or oral advertisement of the services it offers.

(b) For purposes of this subdivision, "advertisement" includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing the placement of any sign or marking on or in any building or structure, or in any media form, including newspaper, magazine, radiowave, satellite signal, or any electronic transmission, or in any directory soliciting taxicab transportation services subject to this chapter.

(c) Whenever the local agency, after a hearing, finds that any person or corporation is operating as a taxicab transportation service without a valid certificate, license, or permit or fails to include in any written or oral advertisement the number required by subdivision (a) of Section 50739, the local agency may impose a fine of not more than five thousand dollars (\$5,000) for each violation. The local agency may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the local agency. The local agency may assess interest on any fine or assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in a fund established for the purpose of enforcing the provisions of this section.

(d) For purposes of this section, "local agency" has the same meaning as specified in subdivision (b) of Section 53075.7.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.