

APPENDIX

A

If the installation of new meters is recommended in Section VII, such meters will all rate charge to be programmed on the meters. This will allow for the accurate and fair determination of the flat rate based on the number of miles actually travelled. At the time that the new meters are installed, it is recommended that a flat charge of \$2.10 per mile be implemented after the taxicab has travelled twelve (12) miles.

In view of the inadequacies and inequities produced by the use of the flat rate book and the proposed installation of new meters, it is recommended that the use of this flat rate book be terminated now. In the interim it is recommended that the actual meter charges based on the recommended fare increase be used for all trips regardless of distance until the new meters are installed.

V. LEASING AND LEASE RATES

A. Introduction

For approximately a twenty year period ending in 1974, Section 2 of Rule 65 of the Police Department Rules and Regulations provided that:

The leasing or renting of taxicabs by licensed owners is expressly forbidden, and any infraction of this rule shall be considered sufficient grounds for revocation of the owner's hackney carriage set-up license and medallion.

Pursuant to this rule, medallion owners were prohibited from leasing or renting their taxicabs to anyone. During this time period, medallion owners were required to employ an

individual to drive their taxicabs. Such drivers were usually compensated on a commission basis.

In 1974, the relationship between the owners and drivers changed dramatically. On December 10, 1974, the Commissioner issued Special Order No. 74-133 which rescinded the foregoing provision in the Rules and Regulations. As a result of this Special Order, medallion owners were able to enter into leasing arrangements for the use of their taxicabs. Since the issuance of Special Order No. 74-133, there has developed an intricate system of leasing arrangements between owners and drivers to the extent that presently there remain only approximately twenty to twenty-five commissioned drivers working the City of Boston.²⁰ All of the remainder of the sixty-two hundred drivers (6,200) lease vehicles from an owner.

Generally, under the leasing system, if the company does not operate the taxicab itself, the taxicab is leased to another individual for a fixed period of time at a lease rate determined by the owner. The period of time is usually a twelve hour shift. It can also be for a shorter hourly period or a period of time such as a daily, weekly or monthly iron.

The lease rate is currently unregulated by the Commissioner. As a result, there is a wide range of rates at which taxicabs are leased. In addition to the lease rate

20. It appears that all these commissioned drivers are employed by Checker Taxi and Town Taxi.

itself, the leasing driver is often required to pay for a number of other items such as gas, mileage and insurance. The usual practice is for a driver to enter into a master lease with a particular company. This master lease contains the general terms pursuant to which the driver agrees to lease the taxicab. Then when the driver comes in to actually lease a taxicab, he often signs another lease type document which contains the specific rates and charges that will be paid by the driver. However, a number of lease arrangements are oral for which no documents exist.

In addition to the existence of a wide range of lease rates among different companies, the same company may itself have a variety of lease rates depending on when a taxicab is leased, that is, on a week day or weekend or during the day or at night. The lease rate is also contingent on the period of time for which the taxicab is leased.

As several drivers who testified pointed out, the lease rates charged by some companies have increased continually and significantly over the last four or five years although there has been no increase in the meter rate since 1984. As a result, the drivers' ability to earn a fair and reasonable income has been sharply curtailed. Drivers described situations where a driver was earning only ten or twenty dollars for a twelve hour shift. There were even instances described where a driver may end a shift owing the company money, after the driver paid the lease rate and other extra

was
high
active

charges such as mileage. Some drivers suggested that there should be a return to the commissioned driver system.

On the other hand, owners have suggested that the Commissioner's rescission of the leasing prohibition in 1974 was at the behest of the drivers and for the benefit of the drivers. The owners also strongly opposed any return to the use of commissioned drivers. They indicated that the prohibition of leasing would be disastrous to the taxi industry. However, since 1974, the adoption of an unregulated leasing system has operated in such a way as to strip the drivers of all the usual employee benefits such as health, workers' compensation,²¹ and F.I.C.A.

One of the most common and recurring refrains heard from large fleet owners during the course of these hearings is that there is a lack of available drivers despite the fact that there are over six thousand licensed drivers in the City of Boston. They state that this shortage of drivers results in a shortage of taxicabs on the streets. The remedy proposed by large owners to this problem is a meter rate increase. A meter rate increase clearly is warranted as stated above. However, such a meter rate hike alone is no solution to ending the driver shortage. It completely ignores the fact that a major cause of the driver shortage is the actions of the owners themselves in their treatment of drivers. By continually raising the

21. This result was accomplished with respect to workers' compensation through the passage of St. 1985, c. 572, s. 9 which became effective as of January 1, 1986.

unregulated lease rates for drivers who are already deprived of benefits commonly enjoyed by most American workers, these large owners have made it increasingly difficult for the drivers to make a decent living. For example, some large fleet owners have increased their lease rates approximately twelve percent a year for the past three years. Such actions adversely affect the public interest since the number of taxicabs available to the public is reduced.

The negative impacts of unregulated leasing on the ability of the drivers to earn a decent living as well as the drivers' availability leads to the conclusion that leasing and lease rates must now be regulated in the manner described below. When the benefit to drivers and to the public by increasing the quality and quantity of drivers is taken into account, the need for regulation of leases and lease rates becomes even clearer.

B. Authority and Jurisdiction of the Police
Commissioner to Regulate Leases and Lease
Rates

As indicated above, for a twenty year period, the Commissioner exercised his statutory authority to regulate the leasing of taxicabs by prohibiting entirely the leasing of such vehicles. Then in 1974, in the exercise of that same authority, the Commissioner determined that leasing should be allowed in the taxi industry. The Commissioner in this proceeding decided to review again the need for the regulation of leasing and lease rates. The present hearings

were conducted in part for the purpose of examining the operation of the existing leasing system and its impact on the public and on taxi drivers and their ability to earn a fair and reasonable income. All interested persons were clearly put on notice that the issue of leasing and lease rates would be a matter considered in the instant proceeding. In fact, the Special Hearing Officer indicated specifically that he was considering recommending to the Commissioner the implementation of lease rate regulations.

In light of questions raised by taxi industry representatives challenging the authority of the Commissioner to regulate leasing and lease rates, it is appropriate to review briefly the statutory and judicial basis of the Commissioner's ability to regulate this area of the taxi industry.

In determining whether the Commissioner's regulatory authority over the taxi industry in Boston empowers him to regulate leases and lease rates, the scope of the enabling statute must be reviewed. As discussed above in Section III, the Commissioner pursuant to Section 4 of St. 1930, c 392, as amended, has been granted broad regulatory authority over the taxi industry. This statutory delegation of power includes the authority "to make rules and orders for the regulation of hackney carriages" and to "fix maximum and minimum rates to be charged...for the use of [taxicabs]".

The scope of the Commissioner's regulatory authority over the taxi industry was at issue in the Town Taxi case.

There, Town Taxi Inc. challenged a Special Order of the Police Commissioner requiring a discount fare for elderly passengers and imposing financial reporting requirements on the taxi industry. The Court held that the Special Order was within the scope of the Police Commissioner's authority stating:

Where a grant of power is expressly conferred by statute upon an administrative officer or board or where a specific duty is imposed upon them, they in the absence of some statutory limitation have authority to employ all ordinary means reasonably necessary for the full exercise of power and for the faithful performance of the duty.²²

Based on the Court's holding in Town Taxi, the Commissioner may adopt regulations or orders reasonably related to his mandate which are not expressly excluded or limited by the enabling legislation. The Court's decision in the Town Taxi case clearly supports the Commissioner's regulation of leases and lease rates. In that case, the Court further stated that:

We may, however, properly take note of the nature of the industry in deciding what regulatory powers the Legislature intended to delegate to the Commissioner. Id. at 585

The Court on several occasions referred to the Boston taxicab industry as a "regulated monopoly" and the "taxi industry monopoly". Thus, the Court considered the nature

22. Id. at 586, citing Bureau of Old Age Assistance of Natick v. Commissioner of Pub. Welfare, 326 Mass. 121, 124, 93 N.E. 2d 267 (1950).

of the Commissioner's authority "in light of the monopolistic nature of the industry".

Applying the foregoing principles to the facts presented in this proceeding, there can be no question that there is a relationship between the lease system and the lease rates charged by owners and the regulation of the taxi industry by the Commissioner. The leasing of taxicabs is an integral part of the industry and has a substantial impact and effect on the availability of drivers and on the quality of service being provided to the public. The experience of the last several years has shown that, left unregulated, some owners have taken the opportunity to continually raise the lease rates to drivers to the point where drivers are no longer able to earn a decent living and when owners themselves claim that taxicabs sit idle. If the meter increase recommended in this Report is adopted by the Commissioner, there is nothing to preclude the owners from merely increasing the lease rates or creating a new add-on to be charged the drivers. The result could be to effectively deny to the drivers any increase in their earning capacity and thus, contribute to the scarcity of taxicabs in the Boston area.

In light of the nature of the taxi industry and the broad authority granted to the Commissioner to set rates, the regulation of leases and lease rates is not prohibited or limited by the Commissioner's statutory mandate. Based upon the problems in the existing system, such regulations

can be characterized as reasonably necessary to ensure that taxi service will be available to the public on a reasonable basis and that taxi service will not be adversely affected by unregulated and excessive lease rates. To protect the public, the Commissioner must be deemed to have authority to regulate all aspects of the taxi industry when he determines that such regulation is necessary. See, Levy v. Bd. of Registration and Discipline in Medicine, 378 Mass. 579 (1979); Grocery Manuf. of America Inc. v. Department of Public Health, 379 Mass. 70 (1979).

C. Recommendation of An Industry Wide Lease Rate

Based on the present situation, there are two alternatives available to address the problems. One option is to reinstate the ban on the leasing or the renting of taxicabs which existed in 1974. In view of the well-established practice of leasing which exists in the industry presently, we would recommend the adoption of this alternative only as a last resort.

The other alternative, which we recommend, is for the Commissioner to set a fair and reasonable maximum lease rate on an industry-wide basis. Such a process does not require companies to charge the maximum rates fixed by the Commissioner. Companies would still be free to charge a lease rate which is less than the maximum rate. It would still allow companies the flexibility to adjust their lease rates to reflect the market place and to compete within the

industry to obtain drivers. As will be discussed below, any company should also be given the right to seek to deviate from the maximum rate if it is able to demonstrate in a formal review the need for such a deviation.

1. Basis of Lease Rate Structure

Presently there are over five hundred (500) corporations providing taxicab service in Boston. While most of these are small owners, i.e., one (1) to three (3) medallions in operation, each is able to show a somewhat different cost of providing cab service as well as a somewhat different earning's history. It is neither practical nor advisable to address each cab corporation individually; rather the Commissioner must address the taxi industry as a whole in terms of allowable lease rates and meter rates. Consequently, a basis for lease rates which is equitable for both the smallest corporation, i.e., one medallion, and the largest, i.e., 177 medallions must be established.

The lease rate structure must allow the lessor to recover the expenses of providing the taxicab for service as well as a reasonable return of and return on the lessor's investment, i.e., the vehicle and the medallion. With some notable exceptions, the cost of the medallion represents the single largest investment, and consequently the largest single expense in providing taxicab service. Thus, the

lease rate must provide the medallion owner with sufficient revenue to:

1. Cover all operating expense;
2. Depreciate (amortize) the taxicab vehicle; and
3. Earn a return of and return on the medallion investment.

The lease rate should also provide an incentive to the owner to have the taxicab continually available for service. Taking each of these objectives, the revenues obtainable to any owner from leasing a taxicab can be stated as:

$$ALR = E + DV + (RR\%)M$$

Where

ALR = Annual lease revenue
E = Total expenses
DV = Depreciation of the vehicle
RR% = Carrying charge rate²³
M = Cost of a medallion

If, for example, the operating expenses for a taxicab were \$300/week, the principal and interest on the taxicab were \$4000/year and the owner paid \$90,000 for the medallion, the annual lease revenue could be determined at different rates of return. In this example, the lease revenues at different rates would be:

23. It should be noted that the carrying charge rate refers to a rate which includes both the recovery of the cost of the asset and a return on the asset investment.

$$\text{@ 10\%, ALR} = (\$300/\text{week})(52\text{weeks})+(\$4,000/\text{yr})+ \\ (\$90,000)(10\%) = \$28,600$$

$$\text{@ 15\%, ALR} = (\$300/\text{week})(52\text{ weeks})+(\$4000/\text{yr})+ \\ (\$90,000)(15\%) = \$33,100$$

$$\text{@ 20\%, ALR} = (\$300/\text{week})(52\text{ weeks})+(\$4,000/\text{yr})+ \\ (\$90,000)(20\%) = \$37,600$$

To translate this revenue formula into a lease rate requires the lease revenue, "ALR", to be divided by the maximum number of leases (transactions) in a year times an availability factor for the vehicle. For example, there are 365 potential daily leases which can be transacted in a year. Assume that a vehicle is out of service 20% of the time. Thus, the total daily leases in a year would equal only 292 (365 x 0.8). Accordingly, the lease rate would be determined as follows:

$$R = \frac{\text{ALR}}{L \times A}$$

Where

- R = Lease rate
- L = Number of leases possible
in a year
- A = Cab availability (as a percent of a year)

2. Development of Lease Rate

The foregoing lease rate formula as now developed in principle requires an evaluation of the expenses and investments typical of the taxicab industry in Boston.²⁴

24. The expense, cost and investment data used in determining the rates recommended in this Report reflect the most current data.

Through discovery and evidence adduced at the hearings, it became apparent that there were some material differences in the detail of financial information as well as the level of individual types of expenses between small owners and the large fleets. Consequently, each segment of the industry was considered before recommending an industry wide lease rate. The significant differences, it turned out, were not the total costs of providing taxicab service, but rather the indirect categories of costs. Large fleets, for example, tended to have higher maintenance and garage costs, as well as higher vehicle turnover. Small or single owners, on the other hand, represented many of the most current and consequently most expensive medallion purchase costs, some as high as \$100,000 as well as higher insurance costs. Table V-1 shows the typical expenses for large fleets and for small owners.

Table V-1
 Typical Annual Expense
 Per Cab
 (\$ year/cab)²⁵

<u>Expense Category</u>	<u>Large Fleets</u> ²⁶	<u>Small Owners</u> ²⁷
Insurance	\$4,800	\$4,360
Operation/Maintenance	4,510	3,250
Uninsured Repairs	1,200	2,300
Wages/Salaries	1,625	-
Garage Costs	2,300	2,285
Taxes/Fees	800	800
Radio/Dispatch Costs	1,390	1,500
Administration/General Costs	1,400	650
Other Costs	<u>715</u> ²⁸	<u>715</u> ²⁸
Total Expense	\$18,740	\$15,860

These data are based on the higher end of the ranges of responses for fifteen (15) expense categories supplied by the industry in response to detailed data requests issued by the Special Hearing Officer. The responses from the large fleets include information from the following corporations or associations:

Checker Cab	177 medallions
Town Taxi	100 medallions
USA Cab	96 medallions
Boston Cab Association	114 medallions
Red and White Cab Association	108 medallions

25. Excludes gasoline, principal and interest on vehicle, amortization and return on medallion investment.

26. Checker, Town, Red and White, Boston, USA.

27. Based on industry supplied records from a survey of small medallion owners.

28. Includes contingency reserve, renewal fees and allowance for change-out to electronic meters.

From Table V-1 we note that the industry reports annual expenses per cab of between \$15,860 for small owners to \$18,740 for large fleets. These expenses include certain proforma costs such as the conversion of the present meters to the electronic meters. Table V-2 shows the range of vehicle depreciation expense and medallion costs for large fleets and small owners.

Table V-2
Range of Vehicle and
Medallion Cost per Cab

<u>Item</u>	<u>Large Fleets</u>	<u>Small Owners</u>
<u>Vehicle Costs</u>		
Principal & Interest/year	\$4,650-\$5,400	\$2,700-\$5,480
Median Cost ²⁹ (\$/year)	\$4,900	\$3,125
<u>Medallion Cost</u>		
Original Purchase Price ³⁰	\$0-68,000	\$0-100,000

Further, the industry has reported that financing for medallions is typically given for 80% of value at a variable rate of 3-3 1/2% over prime for an eight (8) year term. These terms are commonly applied to medallion financing by the Shawmut Bank, the largest lender for medallion purchases

29. Based on a survey of the large fleets and small owners. The survey indicated that in general the large fleets turn over their taxicabs more frequently than do small owners.

30. Records of the Hackney Carriage Unit indicate that the average cost of medallions for large fleets range from a nominal \$50 per medallion to an average cost of \$68,000 per medallion. Small owner costs range from the nominal \$50 per medallion to recent purchases as high as \$100,000.

within Boston. Given the financial profile supplied by the industry, the total annual costs at the higher end of the range of owning and operating a taxicab in Boston are:

Table V-3
Annual Expenses, Amortization
 and Medallion Costs Per Taxicab

	<u>Large Fleet</u>	<u>Small Owner</u>
Annual Expense	\$18,740	\$15,860
Cost of Vehicle	\$ 4,900	\$3,135
Cost of Medallion	\$0-68,000	\$0-100,000

Using a 15% return on the medallion investment, the annual cost of interest and amortization is 21.534% of the purchase cost. Thus, considering the high range expense profile of each industry segment, a median annual cost of the taxicab and the maximum medallion cost, i.e., \$68,000 for large fleets and \$100,000 for small owners, the maximum lease revenues can be derived as follows:

Table V-4
Development of Maximum Lease Rate

	<u>Large Fleet</u>	<u>Small Owner</u>
Annual Expense	\$18,740	\$15,860
Annual Vehicle Cost	4,900	3,125
Annual Medallion Cost	14,640	21,535
Maximum Annual Lease Revenues	\$37,860	\$40,520
Availability	75%	80%
Maximum Rate (12 hour shift) ³¹	\$69.91	\$69.38

While the various categories of costs are different within the two industry segments, the actual calculations for each lease rate result in a similar value. Given this result, a fair and equitable lease rate ceiling can be established at \$70.00 per 12 hour shift. This rate of \$70.00 per 12 hour shift will recover all operating, financing and return requirements listed on Table V-4. The ceiling consequently includes all operating expenses, excluding gasoline, which are currently charged on a per mile basis. The establishment of this base lease ceiling thus precludes the need for mileage charges. This rate also assumes the need to pay principal and interest on a medallion at the highest cost to date. As a practical

31. 12 hour shift rate, excluding gasoline. It should be noted that the industry surveys indicated that small owners generally maintain a higher availability of taxicabs for service. A contributing factor to this result is that the small owners do not have driver availability problems. This particular problem, however, will become less of a factor for fleets as well with the combination of the lease cap and meter rate increase.

matter, only a tiny percentage of the medallions were actually transacted at such a cost; most were transacted at much lower costs and many are now owned outright. Consequently, this lease rate is a ceiling to accommodate the need to allow those few recent entries into the business to remain viable. Clearly, the industry is encouraged to maintain lease prices as low as practical to maintain good drivers and a high availability of service.

The industry has reported a number of other lease variations which remain in the discretion of the lessor. These variations include the short shift, daily iron and weekly iron. Consistent with the foregoing, the short shift ceiling maximum is set at \$6.00/hour times the number hours assuming the total number of hours in the shift does not exceed eleven (11) hours. Additionally, the industry has reported typical ratios between the 12 hour shift, the daily iron and the weekly iron. These ratios being that the daily iron is typically 1.65 times a shift rate and a weekly iron is 7.5 to 7.75 times a shift rate. Maintaining the existing industry standards, we recommend that the daily lease ceiling therefore be set at \$115.00/day and the weekly lease be set at \$545.00/week. Leases of greater than one week should be established in multiples of the weekly iron, for example, a four week lease ceiling would be not more than \$2,180.00 (\$545.00x4). No lease arrangements other than those here specified should be allowable, without prior

written approval of the Hackney Carriage Unit and a Special Order promulgated by the Commissioner.

It is clear these lease ceilings, as well as current industry practice, provides for the highest revenues if the 12 hour shift is the predominate lease arrangement. Further, an owner with untypically high expenses and a maximum medallion mortgage may find it more advantageous to use primarily 12 hour shift leases. This, however, will be rare and, in general owners will be able to use a mix of daily and weekly irons as may suit their individual purposes. These longer leases, it should be pointed out, generate somewhat less lease revenues per hour but allow for higher cab availability and lower administrative costs.

3. Charges in Addition to Lease Rates

The lease rate ceilings herein recommended exclude certain costs which lessors may charge in addition to basic lease rates. These additional charges include and are limited to the following;

1. The driver shall be given responsibility for gasoline costs incurred during his or her shift and the driver may not be required to purchase such gas from the owner/lessor;

2. The driver may only be charged for additional insurance at the driver's option;

3. The driver may be charged for a violation assessment (current \$0.30 per lease shift);³²

4. The driver may be charged an additional \$2.00 per 12 hour shift, \$3.00 per 24 hour shift or \$15.00 per weekly shift for a cab of the most recent model year;

5. The driver may be charged for late charges of \$5.50/hour up to the cost of the next shift multiple, i.e., a daily rate rather than a 12 hour shift, for failure to return the vehicle on time; and

6. The driver may be charged all applicable sales taxes associated with the lease transaction.

No other charges, such as the assessment made to medallion owners for the elderly and handicapped discount program, may be included in the lease rate without specific prior written approval of the Hackney Carriage Unit pursuant to a Special Order.

D. Appeal by An Individual Company from the Maximum Lease Rate

If this recommendation to implement an industry wide lease rate is adopted, the Commissioner should also establish an appeal procedure whereby an individual company may file with the Hackney Carriage Unit a request for permission to charge a lease rate higher than the maximum industry wide lease rate.

In order to make such a filing, the Company would be required to meet certain filing requirements. First, the

32. See, G.L. c. 90, s. 20E.

company must be in compliance with all the filing requirements discussed in Section VI. Thus, the Company must have on file with the Commissioner all the annual and quarterly financial statements that are the subject of our recommendation in Section VI.

The company must in addition also comply with the proposed Standard Filing Requirements ("Requirements") which are attached hereto as Attachment 8. The purpose of these requirements is to facilitate an orderly and expeditious disposition of lease rate requests and hence improve the efficiency of the lease rate appeal process. The proposed requirements mandate that any company which files an appeal to establish a special lease rate to include with such filing certain specified data and financial information. Failure to comply with the filing Requirements would result in dismissal of the appeal.

It should also be pointed out that the Company filing such an appeal would have the burden of demonstrating that the request is reasonable and fair based on company specific data and financial information. As discussed above, certain assumptions were made in establishing the industry wide rate. However, a company filing a request to deviate from the industry wide lease rate cannot rely on these assumptions to establish a special rate for itself. The company's case must be based on company specific information. The company must be able to demonstrate that it cannot earn a reasonable rate of return and that the

failure to earn such a return is directly caused by the maximum lease rate and not by its own imprudent actions. Thus, the company's expenses must have been prudently incurred in order to be recoverable. For example, a company which purchases a medallion for an unreasonable price under then current market conditions cannot expect to be compensated for any imprudent portion of that investment. Therefore, if there are other reasons or causes for its failure to earn a reasonable return such as uncontrolled and excessive operating expenses, the taxi owner would not be in a position to present a successful challenge to the maximum lease rate.

In order to verify the information contained in the reports and schedules filed as part of the appeal process, the company's federal tax returns for the last three years must also be filed.³³

Accordingly, we recommend that the Commissioner adopt the appeal process described above and also adopt the proposed standard filing Requirements attached hereto as Attachment 8.

33. In the Town Taxi case, the Court also found that the Commissioner had demonstrated by substantial evidence that copies of federal tax returns were needed in order to verify the data contained in other reports without putting the companies to the expense of a full audit in order for the Commissioner to have reliable data on which to predicate rate revisions.

Edward Harrington
ControllerMonique Zmuc
Deputy Controller

October 1, 2003

Honorable Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689APPENDIX
BAttention: Gloria L. Young
Clerk of the Board

RE: Taxicab Industry - Long-Term Lease Report

Dear Supervisors:

Ordinance #228-02 added Police Code Section 1135.1(i) requiring the Controller to report to the Board of Supervisors regarding long-term lease fee caps. Our findings and the resulting alternatives are outlined below.

EXECUTIVE SUMMARY

Throughout our review of long-term leases, we found that there are numerous working arrangements among the three industry principals: drivers, medallion holders and taxicab operating companies. Based on various reports from industry principals and the Taxi Commission, it would appear that long-term lease arrangements apply to a small group of drivers who prefer to have a longer-term arrangement rather than a daily gas and gate structure. We were unable to confirm exactly how many of the nearly 7,800 A-Card holding drivers (including full and part-time drivers) prefer or make use of a long-term lease arrangement, but various industry sources have estimated that some 100 to 250 drivers may be affected. However, because the City has not summarized this at this point, nor has any survey been conducted in the recent past that would facilitate estimation, it is difficult to know with certainty.

Due to these factors, we recommend that during this December's annual A-Card renewal process the Taxi Commission, with administrative coordination through the Tax Collector, conduct a driver survey including questions pertaining to long-term lease arrangements. We have provided a proposed driver survey for the Board's consideration. Following this survey completion, the Taxi Commission should file a report with the Board that summarizes survey responses.

In general, however, it would seem that drivers would not enter into long-term lease agreements unless they believed it to be a more beneficial arrangement than the daily gas and gate arrangement. This would suggest that additional regulation would not be

October 1, 2003

warranted unless the City had evidence of wrongdoing or coercion to require drivers to agree to long-term leases - of which we did not hear of any such claim.

Given the limited information about lease arrangements, the lack of any claim of wrongdoing or coercion and the reported small proportion of drivers affected (some 100 to 250 of a total of 7,800 A-Card holding drivers), the general policy alternatives outlined in this report would suggest that maintaining the status quo is reasonable. Ultimately this is a policy decision for the Board of Supervisors. We have included a summary of alternatives by lease-type as we see them on pages 6-7 of this report for the Board's review.

RECOMMENDED NEXT STEPS

1. Remove the current sunset provision pertaining to the gate fee and long-term leases from the Police Code.
2. Direct the Taxi Commission, in coordination with the Tax Collector, to conduct a taxicab driver survey during the upcoming A-Card renewal in December - the proposed survey is attached.
3. Direct the Taxi Commission to file a report summarizing survey responses by the end of February 2004.

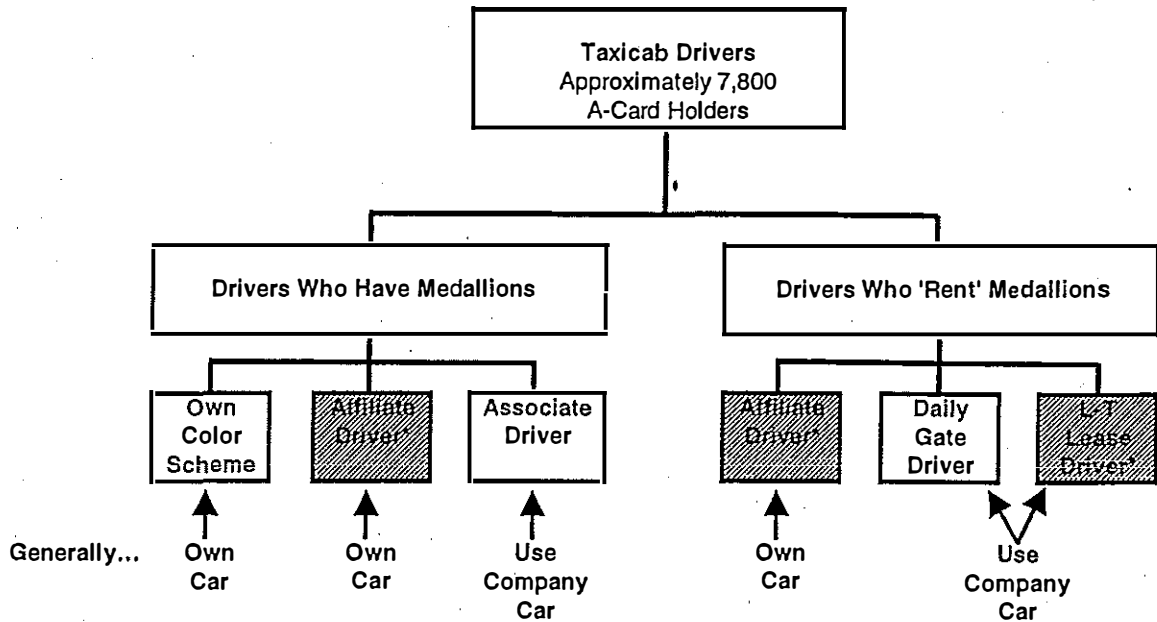
BACKGROUND

The San Francisco taxi industry is comprised of three major components: medallion (or permit) holders, color schemes (or taxicab companies), and drivers. The current structure of industry is geared toward senior drivers having an opportunity to become medallion holders. Medallion holders typically rent their medallion permits to color schemes that, in turn, provide drivers (both medallion holders and non-medallion holders) with vehicles, insurance, dispatch and other taxi support services. In consideration of these items the companies charge a fee to drivers commonly referred to as a "gate fee." In the case of larger companies this fee generally covers a wide range of services. For smaller companies, services can range from full service to only color scheme and radio dispatch services. While taxicab operating company services are not prescribed by legislation, it is important to note ranges of service because smaller companies, who provide limited service - and therefore charge lower gate fees - are not necessarily impacted by the City's gate fee cap while larger companies providing full service have, in effect, a revenue ceiling due to current legislative structure.

When addressing the "gate fee" it is also helpful to point out the broad usage of the term (i.e. - payment made to the taxicab operating companies) with the more narrow definition of the Police Code. Police Code Section 1135.1(c) specifically defines the gate fee as payment by a non-medallion holder, while Section 1135.1(a) sets forth the maximum restriction on gate fees as a payment to taxicab operating companies. Therefore, many of the industry's business arrangements we describe below are unregulated by gate fee restrictions.

Conceptualizing Taxicab Business Relationships. In our review we found that there are numerous working arrangements among the three primary industry principals. We have summarized these relationships in the chart and descriptions that follow.

Taxicab Drivers Summary



*Shading reflects a driver classification that may be affected by a some type of lease.

It is helpful to note that, even within these summaries, there is a wide variance in how companies, medallion holders, and drivers interact to provide taxicab service to the public.

- **Affiliate – Medallion Holder:** These are medallion-holding, primary drivers who generally own a car and have secondary drivers (that is, primary drivers with medallions). This arrangement involves primary and secondary drivers. Primary drivers hold the medallions, generally own vehicles, and engage secondary drivers to provide 'around the clock' taxi service. Primary drivers then have an arrangement with a taxicab operating company to provide color scheme and dispatch services, but remain generally responsible for all other vehicle maintenance and operation costs.¹ In this situation either the operating company or the primary driver may own the vehicle. Given that no payment is typically made from a secondary driver to an operating company, the primary/secondary driver arrangement does not appear to be governed by City restrictions on gate fees.

¹ Maintenance and operation costs are commonly referred to as "gas and gate," although, in actuality, gasoline costs are paid by drivers and not part of the 'gate fee'. Full service including maintenance is distinguished from limited service, which typically includes only basic services like dispatch and color scheme.

- **Associate:** *These are medallion-holding drivers without vehicles, and without secondary driver relationships* (that is, drivers with medallions working directly with a company that then uses the medallion for other drivers when the medallion-holding driver is not driving). Associate drivers rely on operating companies to provide the color scheme, dispatch, vehicle ownership, and gas and gate in return for a fee. However, this fee does not appear to fall under the Police Code limit because a medallion holder pays it. Additionally, the value of placing a medallion with an operating company is market force leverage that may keep associate fee payments at or below the limit.

- **Affiliate – Non-Medallion Holder:** *These are non-medallion-holding drivers who generally own a car and hire drivers* (that is, primary drivers without medallions). This arrangement involves primary and secondary drivers. The primary drivers lease medallions, generally own vehicles, and engage secondary drivers to provide 'around the clock' taxi service. Primary drivers then have an arrangement with a taxicab operating company to provide color scheme and dispatch services, but remain generally responsible for all other vehicle maintenance and operation costs.²

- **Daily Gate Drivers:** *These are the non-medallion-holding drivers who drive for an operating company* (that is, drivers without medallions working directly through an operating company). Daily Gate Drivers comprise the majority of all drivers and are estimated to be about 90 percent or more of non-medallion-holding drivers. Daily Gate Drivers are provided with all of the operating companies range of service, from color scheme, dispatch, a vehicle, and maintenance, in exchange for a daily gate fee, which is currently limited to no more than \$91.50 on average. This gate fee cap serves as a protection to drivers who do not possess the economic leverage of owning a medallion. On occasion this type of arrangement may be extended to more than a 10-hour shift, perhaps by the week or month.

- **Long-Term Lease Drivers:** *These are non-medallion primary drivers who generally own a car and may have secondary drivers³* (that is, primary drivers without medallions). As described for Affiliates above, this arrangement also involves primary and secondary drivers, and taxicab operating companies that provide basic color scheme and dispatch services. These primary drivers perform all the work of the Affiliates, but do not possess medallions. Frequently, Long-term lease drivers have a longer-term arrangement with a company that may include vehicle ownership. Again, payments from secondary drivers do not appear to be subject to the Police Code limit on gate fees because payment is not made to a company; and primary driver payment to the operating company falls well below the gate limit because it

² Maintenance and operation costs are commonly referred to as "gas and gate," although, in actuality, gasoline costs are paid by drivers and not part of the 'gate fee'. Full service including maintenance is distinguished from limited service, which typically includes only basic services like dispatch and color scheme.

³ This appears to be in conflict with the San Francisco Taxicab Commission's Taxicab / Ramped Taxi Rules and Regulations, Section C 1, page 8, which states... "Every Medallion Holder and Color Scheme Holder shall limit the layers of medallion or permit leases to three (3) layers (e.g. Medallion Holder to Color Scheme to driver). No Taxicab Driver may lease a permit or medallion, either on a per shift basis or for any term of time from anyone other than the Medallion Permit Holder or the Color Scheme Company under which the permit or medallion is operating."

does not typically include the full-range of services covered under the daily 'gas and gate' arrangement.

During our attempt to summarize the types of taxicab drivers and the various industry relationships, we found that an easy to understand, uniform model that describes all of the various operating relationships simply did not exist. This may be due to the complex range of operating and contractual combinations between primary drivers, secondary drivers, medallion holders, non-medallion holders and operating companies. Additionally, drivers individually self-select an operating arrangement that best serves them, whether that be through a direct relationship with an operating company or as a secondary driver for some primary driver.

Driver and Operating Company Trends. Medallion-holding status has important implications for drivers. Under the current system, drivers are generally considered to be self-employed. We say "generally considered" because for tax purposes (IRS and FTB), non-employee drivers are considered to be self-employed or independent contractors. However, for worker's compensation and general liability purposes the distinction between entities is less clear. Following the passage of Proposition K in 1978, the drivers shifted from employment status (i.e. being an employee of an operating company) toward self-employment or independent contractor status. At the same time, the number of primary / secondary driver relationships have increased. This has served to further separate any perceived employment relationship between operating companies and drivers, which some may claim has also made more complex adjudication of work-related injuries or driver/company liability exposure, as well as procurement of employee benefits coverage, like health insurance. Additionally, a recent trend toward increasing primary driver vehicle ownership serves to further underscore the nature of the driver being a distinctly separate entity from the operating company.

DISCUSSION

Understanding Long Term Leases. We have found the term "Long-Term Lease" does not have a single, uniform and widely accepted definition. Sections 1135.1(a) and (b) of the Police Code set the gate fee cap at a mean level of \$91.50 for a ten-hour shift, and is prorated for shifts of less than ten hours. On occasion, the gate fee is paid by a driver through a lease arrangement that covers a period beyond one shift, for example one week, one month, etc. To many larger operating companies this is the accepted understanding of "long-term lease." There are also various contractual arrangements between operating companies and primary drivers in which the operating company provides a long-term level of limited support through a written contractual agreement. These contractual agreements generally include color scheme and dispatch services and often involve vehicle ownership. To many primary drivers this arrangement is considered the "long-term lease." In this report, we consider both aspects of the definition and possible policy alternatives.

Long-Term Gate Fee Arrangements. In discussing gate fees with the Taxicab Commission, drivers and taxicab companies, and in reviewing financial submissions of the reporting companies regarding gate fee revenues, our office determined that long-term leases appear to be more common between larger companies and primary drivers, and only occasionally with associates and daily drivers. While the Police Code does not currently regulate limited service, long-term lease fees explicitly, the market has established its own equilibrium price.

We found that long-term lease fees are a multiple of individual shift gate fees and can cover a one-month or one-year period. Often, the gate fee of \$83.50 (i.e., the gate fee limit which was in effect during the companies' last reporting period) generated average company gate fee revenue of approximately \$5,000 per month per medallion. In a 30-day month the sum of daily fees would be \$5,010 (i.e., 30 days x 2 shifts x \$83.50); in a thirty-one day month the sum would amount to \$5,177 (i.e., 31 days x 2 shifts x \$83.50). Based on the assumption that not all shifts are fully booked, companies appear to have a motivation to lease on a monthly basis at a slight discount. According to Henry Kim of the San Francisco Taxi Association long-term discounts "... are generally nominal, in the range of 5% to 10%." While this standard seems to apply generally to drivers dealing directly with the companies, lease terms also depend on the range of services provided by the company.

In the case of smaller companies there is little company-reported information. This may occur because the services provided and associated revenues fall below the gate fee cap. Company vehicle ownership, company vehicle repair and other factors such as insurance and workers' compensation (for the period reported) are often excluded from the gate fees for the small company.

Long-Term Company and Primary Driver Arrangements. To date, operating companies have reported and the City has gathered some, but limited information regarding this type of lease arrangement. Existing reporting requirements require financial information to be disclosed by medallion permit holders and operating companies. However, there is no specific requirement to report contractual relationships among companies, medallion holders or drivers at this point.

In general, the current gate provides an upper limit for the industry, but these types of contractual relationships typically involve limited services. Based on our research, we found that monthly leases paid by non-medallion holding primary drivers to operating companies are generally in the \$3,500 per month range. When we asked the various industry principals, most reported that they believed there were a small number, approximately 100 – 250 of these types of contracts now in effect, each of which varied based upon services provided. This would mean that of the 7,800 A-Card holding drivers, between 1 to 3 percent are likely covered under this type of arrangement.

If the City were to cap this type of long-term lease it would also need to codify the various levels of service in the current gate fee structure and may need to apply individual limits for each service component beyond basic color scheme and dispatch services. Below we have identified the continuum of services. *(Note: This chart is provided for illustration purposes only and is not intended to be a comprehensive list of the services being provided.)*

CONTINUUM OF TAXICAB SERVICES

Limited Service

Full Service

◆-----◆
Color Scheme Dispatch Insurance Licenses Vehicle Ownership Operation & Maintenance

It appears that to effectively regulate long-term leases would also necessitate establishing control over service components and require: (1) a delineation and definition of the component services, (2) a determination of the cap value of each service; and, (3) a possible discount factor for unfilled shifts. Such an undertaking would involve a scope of analysis that extends beyond the limits of this review. To fully undertake such a task would require additional service pricing models to estimate the value of the component parts of a full service gate fee. Additionally, were this to occur additional administrative duties may be required of the Taxi Commission to review prototype lease contracts and to monitor lease fees and service levels.

RESEARCH MATERIALS & RESOURCES

Of the approximately 33 taxicab companies in operation, 17 have filed their latest annual statements.⁴ Of the 33, 12 companies control 1,189 of the 1,381 total issued permits in service. In other words, approximately one-third of the companies control 85 percent of the permits. This concentration of control would also apply to the 7,800 A-Card holding drivers (full- and part-time drivers) who are eligible to drive for operating companies in the same approximate proportion, as well as the estimated population that would have their gate fees capped. For the remaining 21 small companies, only 5 have filed annual reports. It may be that smaller companies have not reported because they provide drivers with less service for lower gate fee charges than the cap would otherwise limit. Thus, the reporting incentive in Ordinance 228-02 to allow an increased gate fee (from \$83.50 to \$91.50) may not impact smaller companies as they remain below the capped level.

FINDINGS & RECOMMENDATION

In general, it would seem that drivers would not enter into long-term leases unless they believed it to be a beneficial arrangement. This would then argue that additional regulation would not be warranted unless the City had evidence of wrongdoing - of which we did not find any claim. However, given the paucity of information pertaining to the subject of long-term leases, we do recommend that a survey of drivers be conducted and have attached a proposed driver survey that could be conducted during the A-Card renewal process in December. This would serve to better estimate just how many drivers are affected by long-term leases and they types of long-term leases.

⁴ Based on Calendar Year 2001 review.

RECOMMENDED NEXT STEPS

1. Remove the current sunset provision pertaining to the gate fee and long-term leases from the Police Code.
2. Direct the Taxi Commission, in coordination with the Tax Collector, to conduct a taxicab driver survey during the upcoming A-Card renewal in December - the proposed survey is attached.
3. Direct the Taxi Commission to file a report summarizing survey responses by the end of February 2004.

In addition to conducting a driver survey, we have outlined the general policy alternatives that the Board of Supervisors could review in the area of the two main categories of long-term leases.

Long-Term Leases under Gate Fee Extension Arrangements:

1. Stay with the status quo. As is, the market appears to be efficiently determining lease fees - market equilibrium, within the context of the cap, appears to be reached as larger operating companies afford drivers slight discounts with the longer-term lease arrangements. The current limit may serve as a full-service market cap, proving reference pricing to contracts not covered by the Police Code and to contracts that provide less than full gate fee services. OR
2. Extend the per shift cap on gate fees to become a long-term fee cap. Using this alternative the Board could extend the gate fee to a daily, monthly, or longer period by simply multiplying the current daily fee to the period the lease is intended to cover. However, it appears the private market already affords a discount as operating companies have some level of unfilled shifts.

Long-Term Leases between Operating Companies and Primary Driver:

1. Stay with the status quo. As is the market appears to be efficiently determining the willingness to drivers to pay for desired services levels with operating companies. OR
2. Address legislation that attributes value to various service components of the gate fee, extending these limits to all contracts among components in the industry. Such legislation could provide protections for all drivers whether they are medallion holders or not, or primary drivers or not. We believe such an approach would need to follow the steps outlined in the discussion above and would involve additional analysis and administrative resources.

October 1, 2003

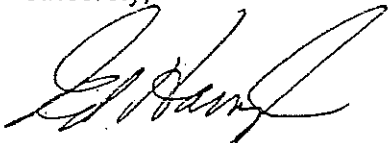
Other Board of Supervisor considerations may also include the following items raised during our research.

The current protections of the Police Code do not appear to be afforded to secondary drivers or medallion holders. In our discussions with Marc Gruberg of the United Taxi Workers, he also pointed out that the focus of gate fee caps should simply be the driver and the shift, without regard to color scheme or medallion relationship. In addressing any legislation which cover various long-term leases, the Board may wish to extend the definition of gate fees to cover payment for services made between primary and secondary driver relationships, as well a company and medallion holder relationships.

Additionally, the primary drivers covered under a lease, who have secondary drivers operating under their lease, may be out of compliance with the Taxi Commission's own regulation. This issue should be reviewed by the Taxi Commission and clarified.

If you have any questions regarding this report, please contact Todd Rydstrom, Director of Budget & Analysis in the Controller's Office, at 554-4809 or Joe Matranga, Senior Financial Analyst, at 554-7569.

Sincerely,



ED HARRINGTON,
Controller

cc: Naomi Little, San Francisco Taxi Commission
Mark Gruberg, United Taxicab Workers
Henry Kim, San Francisco Taxi Association

Attachment: Appendix A: Taxicab Driver Survey, 2 pages

Appendix A

Sample Taxicab Driver Survey

GENERAL DRIVER DEMOGRAPHICS

AGE

- Under 30
 30 to 39
 40 to 49
 50 to 59
 60 or older

GENDER

- Female
 Male

PLACE OF RESIDENCE

- San Francisco
 Peninsula
 East Bay
 North Bay
 Other: _____

ESTIMATED ANNUAL INCOME FROM DRIVING A TAXI

[Take-home pay from driving only, excluding medallion lease fees.]

- Less than \$10,000
 \$10,000 to \$14,999
 \$15,000 to \$19,999
 \$20,000 to \$24,999
 \$25,000 to \$29,999
 \$30,000 to \$34,999
 \$35,000 to \$39,999
 \$40,000 to \$44,999
 \$45,000 to \$49,999
 \$50,000 or greater

DRIVER CHARACTERISTICS

OVER THE PAST 12 MONTHS, HOW MANY HOURS DID YOU DRIVE PER WEEK?

- On average, 10 or fewer hours per week.
 On average, more than 10, but not more than 20 per week.
 On average, more than 20, but not more than 30 per week.
 On average, more than 30, but not more than 40 per week.
 On average, more than 40, but not more than 50 per week.
 On average, more than 50, but not more than 60 per week.
 On average, more than 60 per week.

MEDALLION STATUS

- I am a Medallion Permit Holder.
 I am a non-medallion driver.

IF YOU HOLD A MEDALLION, INDICATE PRE- or POST-K CLASSIFICATION.

- I hold a pre-K medallion.
 I hold a post-K medallion.

DRIVER TYPE

- I am a daily 'gas and gate' driver.
 I am a 'gas and gate' driver, but operate under a weekly or monthly lease.
 I have a long-term lease with a taxi operating company for selected services.
 I drive for someone who has a long-term lease with a taxi operating company.

Appendix A

DRIVER HEALTHCARE NEEDS

HEALTH STATUS: Please indicate your personal health status.

- Excellent
- Good
- Average
- Below Average
- Suffer from chronic illness and require regular medical treatment

HEALTH BENEFITS COVERAGE

- Currently covered through individual insurance
- Currently covered through a spouse or domestic partner's plan
- Not covered
- Other (please explain): _____

IF YOU DO NOT HAVE HEALTH BENEFITS COVERAGE, Why?

- I am healthy and don't believe I need it.
- I cannot afford the cost coverage.
- I was previously denied coverage due to pre-existing condition(s).
- Other (please explain): _____

OVER THE PAST 12 MONTHS, WHERE HAVE YOU RECEIVED MEDICAL CARE?

- City & County Public Health Clinics and/or San Francisco General Hospital
- I have other coverage so I went to my covered providers.
- I did not seek any medical care in over the last 12 months.
- Other (please explain): _____

ASSUMING HEALTH INSURANCE COSTS \$200 MONTHLY, INDICATE YOUR WILLINGNESS / ABILITY TO PAY.

- up to 100% or \$200 per month.
- up to 90% or \$180 per month.
- up to 80% or \$160 per month.
- up to 70% or \$140 per month.
- up to 60% or \$120 per month.
- up to 50% or \$100 per month.
- up to 40% or \$80 per month.
- up to 30% or \$60 per month.
- up to 20% or \$40 per month.
- up to 10% or \$20 per month.
- I am not willing/able to pay for any portion of the cost.

ASSUMING YOUR WILLINGNESS/ABILITY TO PAY ABOVE, WOULD YOU PARTICIPATE IN A VOLUNTARY HEALTH INSURANCE PROGRAM?

- Yes
- No

TAXICAB CUSTOMER DEMAND CHARACTERISTICS

OVER THE PAST 12 MONTHS, ESTIMATE YOUR CUSTOMER BASE.

- % are Airport Customers
- % are Visiting Tourists (Non-Convention Goers)
- % are Visiting Convention Goers
- % are Business Travelers
- % are Paratransit Customers
- % are Other Local, Non-Paratransit Customers
- % are Other [please explain]: _____
- 100 % Total Customers**

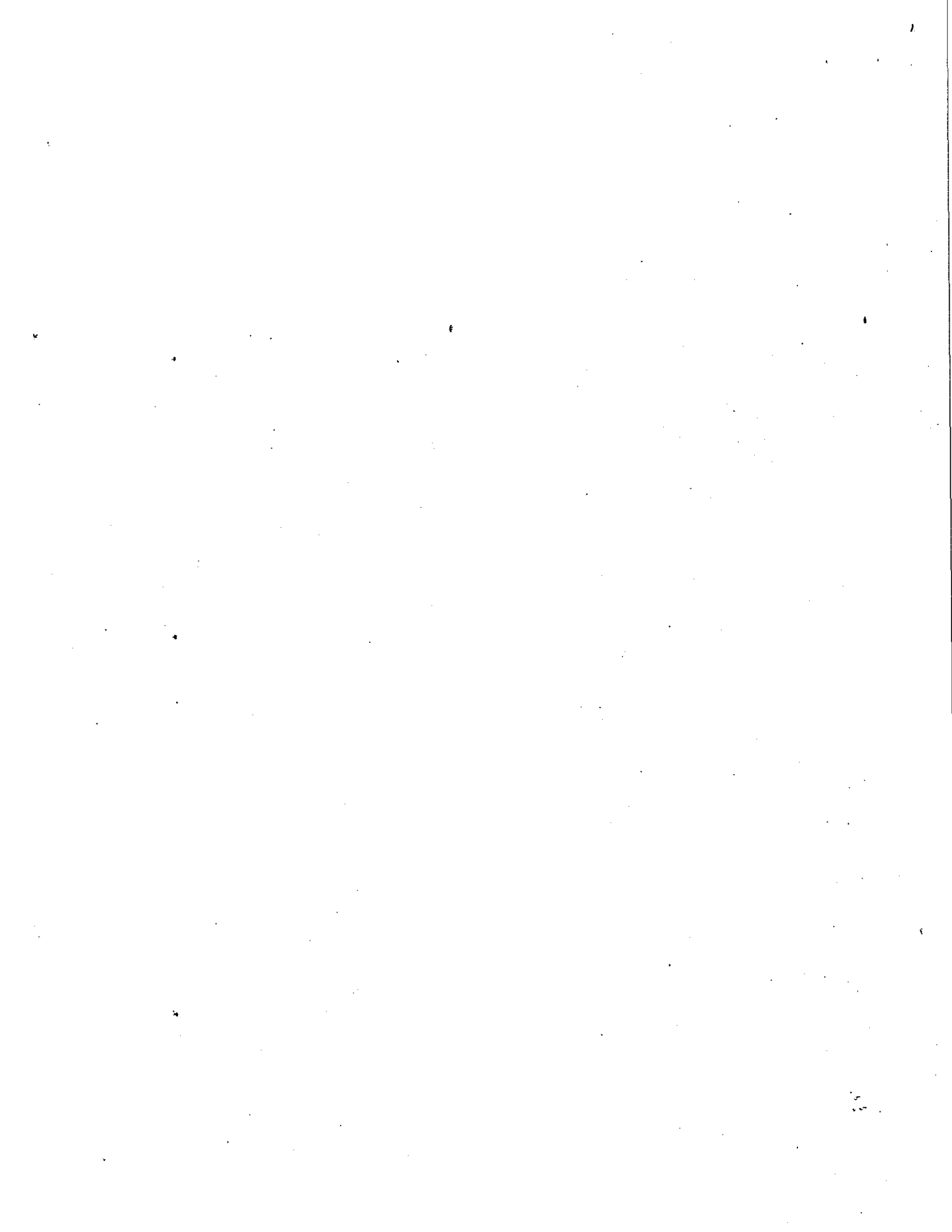
OVER THE PAST 12 MONTHS, ESTIMATE YOUR CUSTOMER DEMAND...

Based on a typical 10-hour shift, how many fares did you have?

- More than 20 fares per typical 10-hour shift
- 20 fares per 10-hour shift
- 19 fares per 10-hour shift
- 18 fares per 10-hour shift
- 17 fares per 10-hour shift
- 16 fares per 10-hour shift
- 15 fares per 10-hour shift
- 11 to 14 fares per 10-hour shift
- 10 fares or less per 10-hour shift

OVER THE PAST 12 MONTHS, ESTIMATE YOUR AVERAGE FARE...

- \$20 or greater
- \$19 to \$19.99
- \$18 to \$18.99
- \$17 to \$17.99
- \$16 to \$16.99
- \$15 to \$15.99
- \$14 to \$14.99
- \$13 to \$13.99
- \$12 to \$12.99
- \$11 to \$11.99
- \$10 to \$10.99
- \$9 to \$9.99
- \$8 to \$8.99
- \$7 to \$7.99
- \$6 to \$6.99
- \$5.99 or less



Good Afternoon Supervisors, Naomi Little Executive Director of the Taxi Commission.

I would like to thank, Todd Rydstrom and Joe Matranga for all the hard work they put into the long-term lease report. Additionally, I would like to thank Yellow, Luxor, DeSoto and Veterans for providing the Taxi Commission the various types of contracts that are utilized in their respective companies. It was through that information, that Todd, Joe and I were able to get a better understanding of the long-term lease contract.

I agree with the Controller's analysis that market appears to be efficiently determining lease fees. It is the driver's choice to enter into a long-term lease agreement instead of a gas and gate structure. It provides the driver the freedom to work his or her desired shift and or share the vehicle with another driver that he or she trusts.

Additionally, I think it is important for the taxi commission to administer a formal survey to determine the different contractual relationships among drivers and what would be the preferred contractual relationship. Thus far, I only have informal information from the long-term lease drivers I have spoken.

APPENDIX
C



UNITED TAXICAB WORKERS

2940 Sixteenth St., Suite 314, San Francisco, CA 94103-
 Affiliated With Communications Workers of America, AF

APPENDIX

June 11, 2007

D

Aaron Peskin, President, and Members
 Board of Supervisors
 1 Dr. Carlton B. Goodlett Pl.
 San Francisco, CA 94102

RECEIVED

JUN 11 2007

SAN FRANCISCO
TAXI COMMISSION

Dear President Peskin and Board Members:

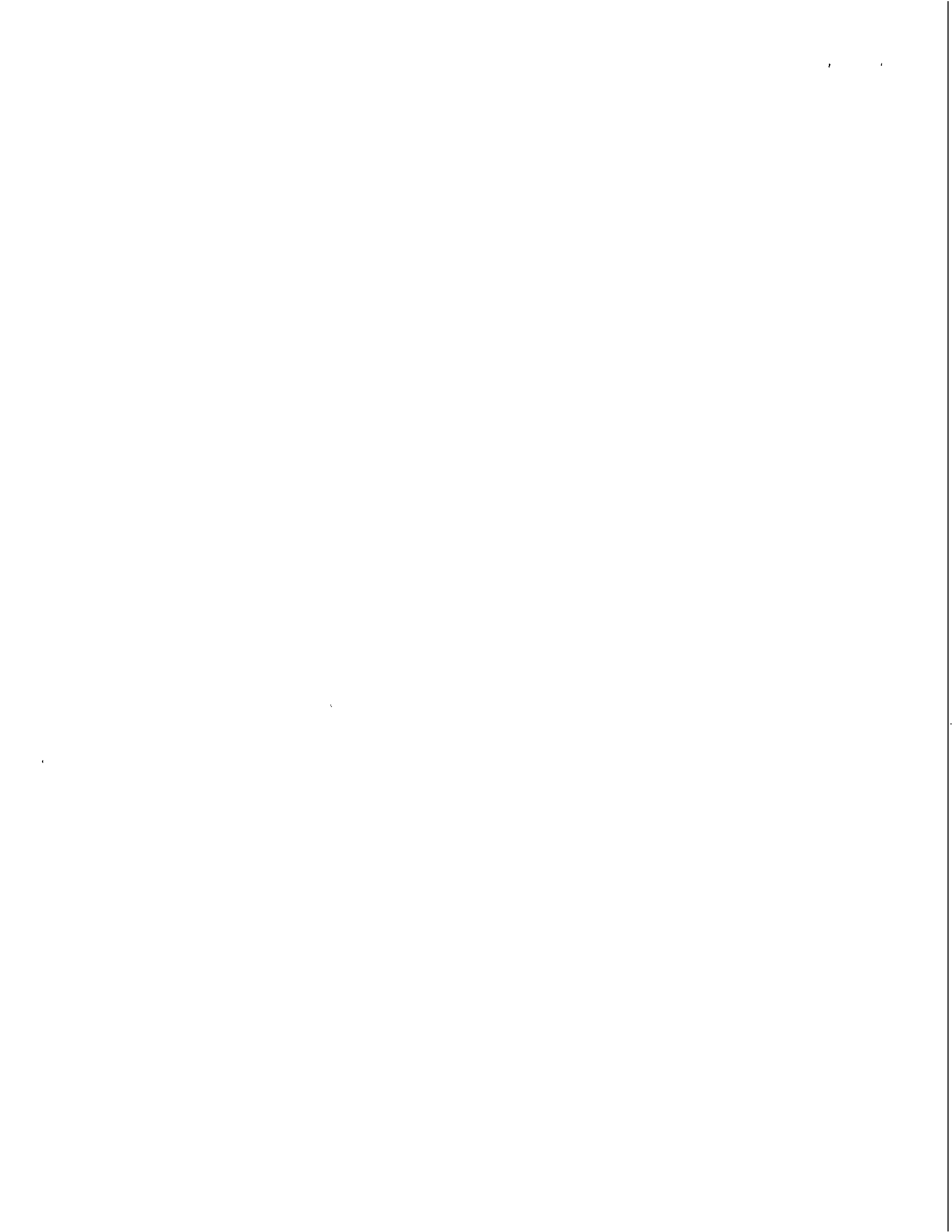
United Taxicab Workers urges the Board in the strongest terms to support the Resolution introduced last week by Supervisor Tom Ammiano relating to taxicab long-term leasing.

Yellow Cab and Luxor Cab, which control close to half the city's taxi fleet, have informed their drivers that they will be phasing out shift leasing arrangements in favor of so-called "long-term leasing."

According to the notices, the companies will be leasing out blocks of 16 to 40 monthly shifts. In order to obtain one of these leases, drivers will have to pay a first-and-last month's deposit of between \$2,928 and \$7,320 a month. The notices warn, "as a consequence of these changes, a good number of you may lose the lease periods that you now have."

If this threat is carried out, the rest of the industry is bound to follow. Here are the likely consequences of this move:

- Many drivers will be forced out of the industry because they won't be able to afford the deposit. Others will lose their jobs because long-term leasing will employ far fewer drivers than shift leasing. In all, thousands of jobs are in jeopardy.
- In time (if not immediately), companies will attempt to charge more than the gate cap allows, arguing that the cap does not apply to these leases. Besides the economic hardship this would impose, it would make meaningless a company contribution to a taxi driver health care plan, since the company share could be passed on to the driver. That would undermine the financing mechanism contained in the Taxi Commission's recommended health plan, and render the plan unaffordable for many drivers.
- Yellow and Luxor are currently required by court rulings to cover their drivers for workers' compensation and unemployment benefits. They will now argue that those protections no longer apply.
- Yellow and Luxor do not currently charge security deposits on account of an adverse court ruling holding that deposits they used to charge violated the State Labor Code. According to company notices, these new leases will require security deposits of thousands of dollars.



- Service will suffer, both in quality and quantity. Long-term lease drivers are more likely to spend time at the airport and hotel lines, rather than serve the neighborhoods. Fewer cabs will be available overall because fleet utilization will decrease.

The rationale cab companies have used to justify this move is false. They claim they "have not had a real increase in gates since 1998." In fact, the gate cap went up from \$83.50 to \$91.50 in 2003. Gates should have been reduced to \$85 in September 2004, but companies continued to charge higher amounts in violation of the law. The Board granted them an increase to \$91.50 last year, but both Yellow and Luxor are violating that cap by charging an average of \$92.50. Companies also got a de facto increase last year, when a \$1.50-per-shift surcharge to the Paratransit program expired.

The second reason stated for the move is "an opportunistic class-action lawsuit" for gate overcharges filed by United Taxicab Workers and individual drivers. The City Attorney and Controller have both opined that cab companies were, in fact, violating the gate cap. These companies are trying to use their own unlawful behavior as an excuse for further abusing their drivers.

The third reason given is the taxi driver health care proposal the Taxi Commission has recommended to the Board. The companies claim "The economic impact (of the plan) could be devastating." But in fact, cab companies would profit handsomely from the recommended plan. Its estimated cost to companies of \$175 per month per cab would be offset by a recommended gate increase netting them \$300 per month.

A line at the end of the notice hints that what they are really after is a gate increase. We would urge the Board not to be intimidated into granting this wish, which is totally uncalled for from an economic standpoint. The Controller's Office has determined that most cab companies -- especially the large ones -- are profitable. And in fact, the taxi industry is awash in enormous profits, most of which are passed through to medallion holders in the form of lease fees or dividends. Those fees are derived from the labor of working drivers. Somewhere between one-third and one-half of cab drivers' gates end up in medallion holders' pockets. If cab companies need more revenues, that is where they should look.

United Taxicab Workers urges the Board to approve the Resolution and follow it up with legislation regulating long-term leasing. Failure to do so will cause untold hardship to thousands of hard-working drivers, and will have a profoundly negative effect on taxi service.

Yours very truly,



Thomas George-Williams
Chair

Cc: Heidi Machen, Executive Director, Taxi Commission

UNITED TAXICAB WORKERS

2940 Sixteenth St., Suite 314, San Francisco, CA 94103-3682
Affiliated With Communications Workers of America, AFL-CIO

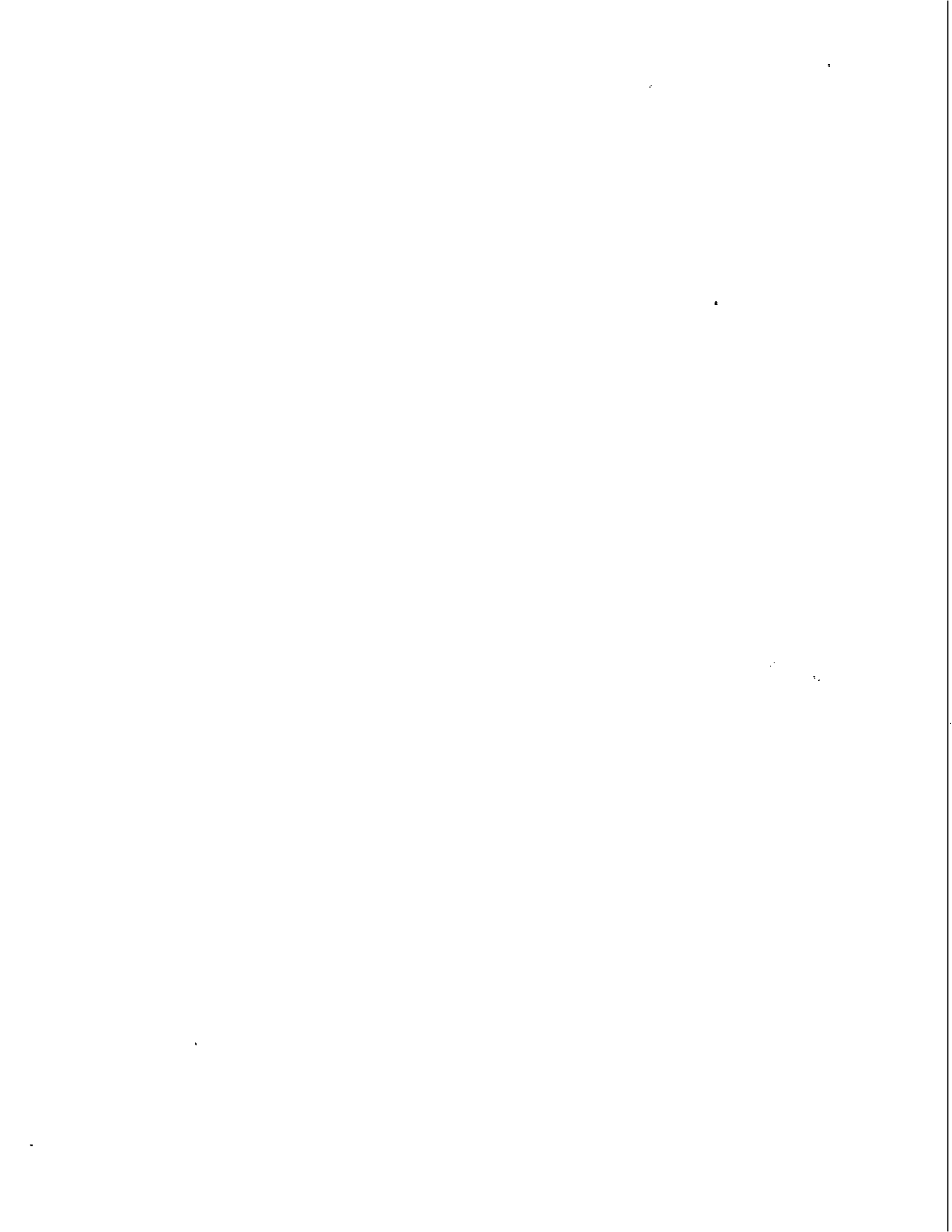
FAX

Date: 6/11/07

To: TAXI COMMISSION
Fax #: 503-2186

From: UTW

Page 1 of 3





COMMISSIONERS TELEPHONE (415) 554-7737
PAUL GILLESPIE, PRESIDENT, ext. 3
PATRICIA BRESLIN, VICE PRESIDENT
RICHARD BENJAMIN, COMMISSIONER, ext. 1
MALCOLM HEINICKE, COMMISSIONER, ext. 4
BRUCE OKA, COMMISSIONER, ext. 5
TOM ONETO, COMMISSIONER, ext. 6
MIN PAEK, COMMISSIONER, ext. 7

HEIDI MACHEN, EXECUTIVE DIRECTOR

DRAFT – MEMORANDUM – DRAFT

TO: MAYOR GAVIN NEWSOM
FROM: HEIDI MACHEN
SUBJECT: DRAFT ON RULE CHANGES FOR TAXI COMMISSION
DATE: SEPTEMBER 11, 2007

APPENDIX
E

Introduction

In pursuit of long-term efficiency goals to improve city services and conserve resources, the Taxi Commission has nearly absorbed all administrative functions of the San Francisco Police Department Detail. One of those functions is the annual Proposition K audit to ensure that medallion holders are in compliance with the driving requirement specified in Municipal Police Code (MPC) § 1081(b).

In the course of conducting this audit, staff has determined that certain rules and procedures need some amendment. This report will begin the process of reforming some outdated policies. It is anticipated that another report of this type will issue in six months after the 2006 Proposition K Audit has been completed in accordance with these procedures. At that time the Commission can revisit the procedures and make any adjustments that are necessary.

Included in this report are proposed rule changes and a discussion of some current rules which are at

Problems

There are several outstanding policy problems, some of which can be solved through reform and amending of existing rules and within the existing system, and some of which cannot. They include as follows:

Problems with documentation (waybills) including not being able to physically identify each medallion holder on each shift that they are purportedly working;
Lack of automation and modern technology; falsification or fraud of waybills;
Lack of resources at the Taxi Commission to investigate;
A disciplinary process which exhausts resources by requiring multi-step process of approvals through staff, Commission, Board of Permit Appeals, and the Board of Supervisors;
Problems with the ADA modifications – presently in litigation over this;

- Lack of subpoena power;
- Lack of real enforcement over illegally operating limos;

- Interdepartmental issues like lack of temporary taxi stand signs for events and street enforcement.

Business Goals for the Commission

To comply with its mission of improving taxi service for the general public, the Commission must ensure that each medallion holder strictly comports with Proposition K. Proposition K ensures that medallions stay in the hands of working taxi drivers who have an interest in ensuring the safety of their vehicles and will strive to improve the industry. The Commission must ensure that the audit process is efficient, smooth, and conserves as many resources as possible. Voters have mandated that medallions should only be released to and held by individuals who are interested in driving their own shifts.

History of Enforcement

Since the Taxi Commission's inception, the Taxi Commission and the Taxi Detail have worked together on enforcement. For this reason, many rules are conflicting and confusing, requiring approval from one entity or the other.

Proposition K Medallion Holders: Pre-K Medallion Holders

The audit is an annual event. No specific date or time has ever been provided but generally it has been conducted in the spring-summer.

The driving requirement of 156 4-hour shifts or 800 hours applies only to Post-K medallion holders.

Pre-K medallion holders are subject to the following restrictions. If the pre-K medallion holder is a corporation, then the Commission must be notified whenever there is a change of 10% or more of its stock or other ownership. MPC § 1083(a)(i). Additionally, these corporations are supposed to notify the Commission in writing when there is any transfer of any shares of stock [MPC §1083(b)(i)], any change in corporate officers [MPC § 1083(b)(ii)], or any change in the board of directors [MPC § 1083(b)(iii).]

Permits which have experienced a 10% or more transfer of stock or other ownership "shall be deemed null and void and revoked." MPC § 1083(a).

The Commission rarely receives notifications in accordance with MPC § 1083(b), and it is believed that many pre-K corporate medallion holders are not in compliance with these rules. Additionally, a preliminary audit of corporate owners reveals that many are actually suspended corporations.

Staff proposes adding the following addition to MPC § 1083(a): (iv): If the permittee is suspended, dissolved, or otherwise ceases to exist as a legal entity. Suspensions which have been in effect for more than one year shall not be curable for purposes of this statute.

Additionally, any pre-K corporate medallions issued to sole proprietorships "doing business as" an entity should be re-issued in the name of the individual only since a sole proprietorship bears no legal distinction from the individual.

Staff proposes amending MPC § 1082(c), which currently provides for exceptions for pre-K corporate permits and those held by more than one individual, so that it provides as follows (amendments in italics): (c) Exceptions for Existing Permits. The provisions of Subsection (a) of this Section shall not apply to any permit issued on or before July 1, 1978 that has been renewed and maintained in effect continuously since that date. Such permits shall continue in effect *unless said permits are held by a sole proprietorship, in which case said the permit shall be re-issued in the name of the individual doing business as an entity.*

Proposition K Medallion Holders: Post-K Medallion Holders

The biggest problems with the current system have resulted from certain medallion holders who are abusing the system. While the majority of medallion holders appear to be in compliance with the Proposition K driving requirement, others are not.

At the outset, staff would note that there are many technological solutions available in the marketplace that would eliminate fraud in the current system. These should include biometric identification so that the actual medallion holder can be identified when he or she drives the taxicab. This would eliminate the problem of falsification of waybills.

Any technology implemented should be a single unit consisting of a taximeter, a credit card/paratransit debit card machine, and GPS. Logging into the machine would only be possible through biometric identification. The information gathered by the machines could be available in an Internet-based format and credit cards would be processed more swiftly and with less expense to companies.

Technological solutions to the problems described below should be considered. Staff would be very interested to do further research into various possibilities if the Commission deems it appropriate.

The Audit Procedure: Current Problems

In the past there has been criticism of the method by which the audit is conducted. In the past, Taxi Detail officers would go to a color scheme and conduct the Proposition K waybill audits in person. Unfortunately, the Taxi Commission does not have the resources to have staff out of the office for so many days. Additionally, original waybills must be preserved as evidence.

There are two methods by which the waybills can be brought to the Taxi Commission offices. Taxi Commission staff can go in person to a color scheme and pick up the boxes of waybills. Or, color schemes can be responsible for bringing them down to Taxi Commission offices.

There have been complaints that waybills have not been returned in a timely manner. Taxi Commission staff will strive to return all waybills within thirty days, except in cases where original waybills must be retained as evidence for the disciplinary process.

A major problem for Taxi Commission staff has been color schemes' and medallion holders' presentation of disorganized waybills. In some cases drivers and medallion holders' waybills have been mixed together, and years have been mixed together. Organizing the waybills by driver and by date wastes Taxi Commission time and resources. Color schemes that do not have their waybills in order should be

assessed administrative penalties.

Rule 5.H.10 currently provides:

Every Color Scheme Holder, Medallion Holder, and Taxicab Driver shall use the waybill format as prescribed by the Taxicab Commission or their designee. Color Schemes will devise their own waybill filing system that allows inspections by the Taxicab Commission or their designee within twenty-four (24) hours of notification. Pursuant to Section 1121(f) of the San Francisco Police Code, Color Scheme Holders ("Color Schemes") shall maintain and retain waybill records for no less than six (6) years to document that driving performed by drivers of taxicabs and ramped taxis affiliated with the Color Schemes have met the specific driving requirements mandated by Section 1121(b). Color Schemes shall maintain at minimum the most recent twelve (12) months of waybills in traditional hard-copy format. Color Schemes may store waybills more than twelve (12) months old in a reasonably secure electronic form and/or on a computer storage diskette, and duplicate copies of the electronic record shall be given to drivers for each year of record. Failure of the Color Scheme to comply with the regulations shall not excuse a Permit Applicant from the driving requirement, or relieve a Permit Applicant from the burden of proving that he or she has satisfied the requirement.

Staff proposes amending 5.H.10 as follows (amendments in italics):

...Color Schemes will devise their own waybill filing system that allows inspections by the Taxicab Commission or their designee within twenty-four (24) hours of notification. *The waybill filing system shall ensure that waybills are organized numerically or alphabetically by medallion holder and by day and month for each medallion holder. Color Schemes who fail to comply with this requirement may be assessed an administrative penalty.* Pursuant to Section 1121(f)...

Currently, Rule 5.H.10 provides that medallion holders shall use the waybill format prescribed by the Taxi Commission (as quoted above) but this Rule is in the Color Scheme Section and not in the Medallion Holder section. Most medallion holders are using the same type of form for their waybills, although the forms vary slightly from company to company. While standardization would be nice, it would likely put the companies to greater expense for what amounts to a minor detail, so a standardized waybill is not recommended at this time. However, the Commission should prescribe that the standard format include a time in/time out stamp from a Taxi Commission-issued mechanical time stamp device or from a computer. Currently only two color schemes use computers.

Companies which do not currently have computerized time stamps should be required to purchase mechanical time stamps, which range in price from \$100 to \$300, and provide a sample of that time stamp to the Taxi Commission. The Taxi Commission can approve a list of possible vendors for these stamps in the same manner that the security cameras were approved. Companies can notify the Taxi Commission which vendor they have selected when they provide a sample of the time stamp.

Staff also proposes adding the following provision:

Rule 4.A.13: All Medallion Holders shall use the waybill format prescribed by the Taxi Commission or their designee. Waybills shall be completed in indelible ink, and shall

include the medallion holder's signature at the commencement of this shift as well as the "A" card number and total number of hours worked. Waybills shall be time-stamped with the time in and the time out with a Taxi-Commission issued mechanical time stamp device or by a computerized time stamp if permission is granted in writing from the Taxi Commission to use a computerized time stamp. This waybill is to be filed at the Color Scheme Holder's principal place of business at the conclusion of each shift. Waybills that do not comply with this requirement will not be counted towards the Medallion Holder's driving requirement.

Staff also proposes amending Rule 6.C.8, which is applicable to drivers only, to state as follows (amendments in italics):

Every Taxicab Driver shall use the waybill format as prescribed by the Taxicab Commission or the Commission's designee. The waybills shall be completed in indelible ink, and shall include the driver's signature at the commencement of the shift as well as the "A" card number and total number of hours worked. *Waybills shall be time-stamped with the time in and the time out with a Taxi Commission-issued mechanical time stamp device or by a computerized time stamp if permission is granted in writing from the Taxi Commission to use a computerized time stamp.* This waybill is to be filed at the Color Scheme Holder's principal place of business at the conclusion of each shift.

Staff proposes the following procedure for the Proposition K audits:

- Color Schemes are contacted by the Taxi Commission or its designee in writing at least twenty-four hours notice of the pending audit.
- Taxi Commission staff shall arrive at the Color Scheme with two copies of a list of the applicable post-K medallion holders for that Color Scheme.
- Color Schemes will provide waybills for all post-K medallion holders, as well as a complete driver's roster for the audit year.
- Taxi Commission staff shall demarcate on the list whether or not waybills are received for a particular medallion holder. If no waybills are received for that medallion holder, staff shall demarcate that as well.
- If a medallion holder has only been at a particular color scheme for part of the year, the Color Scheme shall notify Taxi Commission staff of that fact upon presentation of the waybills.
- Taxi Commission staff and the Color Scheme owner or representative shall compare the list with the presented waybills and shall both sign off on each copy. Each shall retain a copy.
- Original waybill records or copies thereof will be returned to the Color Schemes after an initial audit is complete, typically within fifteen to thirty business days. Original waybills will be retained by the Taxi Commission until an investigation is complete. The Taxi Commission reserves the right to re-open investigation into any particular audit year and request original waybills again.

Being a Licensed Driver

Some issues have surfaced around Post-K medallion holders who are not licensed to drive. Some of them are not licensed because of speeding tickets, DUIs, or due to imprisonment, and some of them are just simply not licensed. Obviously, not having a driver's license makes it difficult to comply with the post-K

full-time driving requirement.

Staff proposes amending MPC § 1090(a) to include the following as a cause for revocation:

(xi) For permittees who are required to fulfill the driving requirement mandated by Section 1121(b), the permittee no longer holds a valid California driver's license.

Penalties

MPC § 1185(d) contains a fine schedule of \$25/50/150 for Minor Violations, \$75/150/450 for Moderate violations, and 250/400/500 for Major violations. **Apparently these fines were last raised in 1999, but staff does not recommend increasing the fines at this time.** The Schedule of Administrative Fines is attached for review.

Form 1095 Process

Every year, pursuant to MPC § 1095, medallion holders must submit a "Form 1095" that is notarized and meets other requirements. Resolution 274-90, from 1990, requires medallion holders to come in personally every three years. This year, for the first time, Taxi Commission staff photographed all medallion holders as part of efforts to bring the Taxi Commission into the 21st century.

Staff proposes making all medallion holders appear personally at Taxi Commission offices each year to submit their Form 1095.

Many problems were noted this year. Many medallion holders live in other states. Others live close by, but have situations ranging from catastrophic illnesses to Alzheimer's to hospice care. The Taxi Commission dealt with all of these on a case by case basis.

Taxi Commission staff investigated the possibility of instituting a legal residency requirement for post-K medallion holders to hold a medallion. It could be argued that a residency requirement is necessary to effectuate the goal of Proposition K, since it is difficult to fulfill a driving requirement from out of state.

Proposed Rule Changes

A. Shift-Changing Off Property

The applicable rules are some of the most important safety rules in the *Taxicab/Ramped Taxi Rules and Regulations*.

Rules 4.A.9 and 5.B.6

Rule 4.A.9 provides as follows:

Medallion Holders shall ensure that the taxicab operating under the medallion issued to them begins and ends all shifts at their color scheme's place of business, except with the approval of the Taxicab Commission or their designee for "formal employee operations." When the taxicab is not employed, Medallion Holders shall either leave the vehicle at the

color scheme's place of business or at an alternative location approved by the Taxi Detail that is off the public street and sidewalk. Each request for the use of an alternative site must be made in writing. Medallion Holders shall ensure that all waybills, reports, and found property are turned in at the Taxi Company premises at the conclusion of each shift. Waybills shall be retained for a period of three (3) years at the principal place of business.

Rule 5.B.6 provides as follows:

Color Scheme Holders shall ensure that every taxicab driver starts and ends each shift at the color scheme's principal place of business, except with approval of the Taxicab Commission or their designee for "formal employee operations."

Finally, Rule 5.B.7 provides:

When the taxicab is not employed, Color Scheme Holders shall ensure that the vehicle either remains at their place of business or at an alternative location that is off the public street and sidewalk and that they can gain immediate access to the vehicle. Prior approval by the Taxi Detail must be obtained for each written request for the use of an alternative site.

Rules 4.A.9, 5.B.6, and 5.B.7 were enacted for several reasons. Primarily, these rules protect the medallion holders and drivers who need to change shifts in a secure location. Shift changing off property, without permission and without restriction, leads to dangerous situations. Many medallion holders admit

to shift-changing at their own or their drivers' residences. This opens them up to robbery, accidents, and other problems. Last year, a Yellow Cab driver suffered a tragic death when he shift-changed in Richmond, California.

Additionally, these rules were enacted because the Taxi Commission inspects and regulates each color scheme's place of business. The Taxi Commission can inspect an approved off-site location if necessary, but without a request and granting of permission, there is no control over the location. Safety concerns are paramount.

Recently several medallion holders were admonished for violation of this rule, and a color scheme was also admonished.

Staff recommends minor amendments to the above-listed rules – substituting "Taxi Commission" for "Taxi Detail" in each rule – thus requiring that the permission and notification process come only from the Taxi Commission.

Staff strongly recommends leaving Rules 4.A.9 and 5.B.6 in place with only the minor changes noted and enhancing enforcement of these very important rules.

Rule 4.A.10

Another very important rule is Rule 4.A.10. This rule states as follows:

Unless their taxicab is out of service, all Medallion Holders must drive their own medallion number taxicab when complying with the full time driving requirement provisions of Appendix F, Section 2 (B) of the San Francisco Charter.

There are currently disciplinary cases pending involving this rule.

Some medallion holders claim that when they arrive at the lots to fulfill their Proposition K driving requirement, their medallion is not available. Others, however, have made it clear to the company that they will not use that color scheme unless their cab is available. These medallion holders have been in compliance with this rule for years without issue.

This rule is absolutely necessary to ensure appropriate enforcement of safety rules and to track medallion holders' Proposition K fulfillment. Only medallion holders have the leverage to ensure that the vehicle is properly maintained and in safe condition. Only medallion holders can take their medallion to another company if their requests for safety improvements or regulatory compliance are ignored.

In fact, only Medallion Holders can demand that they receive their own taxicab when they arrive for their regularly scheduled shifts to comply with the driving requirement. Apparently some medallion holders have either not known of this requirement or have ignored it, despite the fact that it has been in the *Rules* for over a decade. No circumstances have changed since this rule was put into place – apparently backed by sound reasoning. According to Taxi Detail records, this law has been enforced and individuals have been admonished in the past for violations – regardless of what statements may have been made at Taxi Commission hearings.

Thus, staff proposes the following amendment to Rule 4.A.10 (in italics):

Unless their taxicab is out of service *and use of a spare has been approved*, all Medallion Holders must drive their own medallion number taxicab when complying with the full time driving requirement provisions of Appendix F, Section 2 (B) of the San Francisco Charter. *Shifts driven in another medallion number taxicab will not be counted towards fulfilling the Proposition K driving requirement.*

B. Layering of Leases

Major problems have also arisen lately with the layering of leases.

Rule 4.C.1 provides as follows:

Every Medallion Holder and Color Scheme Holder shall limit the layers of medallion or permit leases to three (3) layers (e.g. Medallion Holder to Color Scheme to driver.) No Taxicab Driver may lease a permit or medallion, either on a per shift basis or for any term of time from anyone other than the Medallion Permit Holder or the Color Scheme Company under which the permit or medallion is operating.

This rule also applies verbatim to Color Schemes under **Rule 5.K.1.**

Rule 6.A.11 applies to drivers as follows:

No Taxicab Driver may lease a permit or medallion, either on a per shift basis or for any term of time from anyone other than the Medallion Holder or the Color Scheme Holder under which the permit or medallion is operating.

The Taxi Commission has received reports of various levels of individuals operating vehicles in what is essentially an underground economy, on contracts which are void under the law since they are based on illegality.

Reports abound that medallion holders are leasing to “managers” or “brokers” who then lease to still other individuals who are then leasing to drivers. In other cases, color schemes lease to these managers, who then maintain a roster of drivers.

With multiple lease levels, the regulatory power of the Commission dwindles. Some of the drivers who are involved with these leases end up paying very high gate fees, sometimes in excess of \$125. In other cases, regular “gas and gate” drivers are required by these “managers” or “brokers” to provide monies for worker’s compensation, liability insurance, vehicle maintenance, and other expenses which are usually borne by the medallion holder or his color scheme (and which may already be borne by them, resulting in unnecessary double fees and possible illegal insurance “brokering”.) The drivers at the end of the lease line end up bearing the economic burden for the other individuals “affiliated” with a single medallion.

In addition taxi companies are able to absolve themselves of responsibility for managing these permits by claiming lack of control. This further weakens the Commission’s regulatory power over issues of importance such as worker’s compensation.

Staff proposes amending Rules 4.C.1 and 5.K.1 as follows:

Every Medallion Holder and Color Scheme Holder shall ensure that all drivers are operating a permit only under daily “gas and gate” agreements with the Color Scheme with which the permit is associated. No long-term leases, affiliations, or other agreements are permitted. No Taxicab Driver may operate a permit or medallion unless he or she is operating it pursuant to a daily “gas and gates” agreement with a Color Scheme.

Staff proposes amending Rule 6.A.11 as follows:

No Taxicab Driver may operate a permit or medallion, unless such operation is pursuant to a daily “gas and gates” agreement with the Color Scheme with which the permit or medallion is associated.

MPC § 1124 also provides for long-term leases.

Provided that a taxicab permit is operated in compliance with all other applicable statutes, laws, rules and regulations, a taxicab 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. A true and correct copy of such lease, employment, or other agreement shall be filed by the permit holder with the Chief of Police within 10 days of the execution of that agreement. Nothing in this Section shall be deemed to modify, limit or excuse the obligations of any permittee pursuant to the provisions of Section 1123 of this Article.

Thus, any change to the rule regarding long-term leases would also necessitate an amendment to MPC § 1124.

Staff proposes amending MPC § 1124 as follows:

Provided that a taxicab permit is operated in compliance with all other applicable statutes, laws, rules, and regulations, a taxicab permittee may operate his or her permit by authorizing another to drive or operate pursuant to said permit under a "gas and gates" agreement with the color scheme with which the permit is affiliated. No long-term leases, whether for consideration or otherwise, shall be entered into or adopted by the permit holder or drivers operating the permit. A true and correct copy of such agreements(s) shall be filed annually with the Taxi Commission in connection with the sworn statement required by Section 1095 of this Article and filed again pursuant to any color scheme change. Nothing in this Section shall be deemed to modify, limit, or excuse the obligations of any permittee pursuant to the provisions of Section 1123 of this Article.

Disciplinary Hearings

From a resource perspective, the hearing process is inefficient for the Taxi Commission and for the City.

First the Taxi Commission must conduct an investigation. Depending on the complexity of the case, this can take several months. Next, a complaint is drafted and additional evidence might be collected and analyzed. The Commission staff sets a hearing date which is often continued, once as of right and then on a discretionary basis by the hearing officer. The hearing is held; evidence is presented and witnesses may appear. At least two Taxi Commission staff members are always present at the hearings. The hearings are usually held before a hearing officer. There are many reasons to hold them before a hearing officer, but one of the main reasons is that the hearing officer essentially functions as an administrative law judge and makes many legal decisions and rulings which require special training and expertise.

After the hearing, although MPC § 1188 and Commission rules (pursuant to Resolution No. 2003-54) requires a decision to be rendered within 10 business days, the hearing officer may take several months to decide a case. Once the decision is issued, it is considered a recommendation to the Executive Director. The Executive Director may then, adopt, modify, or deny such recommendation and prepare a final decision on the matter. The Director shall act on the decision within twenty days of receiving the appeal and shall serve the final decision on the parties.

The Executive Director places the decision on the calendar at the next Commission meeting after issuance of the decision. The Commission will act on the decision the record presented, it may not rehear the case. The Commission may only modify or overturn the Director's decision by a two-thirds' vote. The permitholder may then appeal the decision to the Board of Permit Appeals. From

there, the permitholder may appeal again to the Superior Court.

As an illustration, the *Welch* case which proceeded to Superior Court, cost \$46,900 in City Attorney fees just to render a final decision on the writ of mandate at the Superior Court. This did not include any City Attorney fees for proceedings prior to the actual Superior Court case. And, this figure does not include Taxi Commission staff time for investigation, case preparation, hearing time, Commission hearing time, Board of Permit Appeals time, and continued discussion through final decision.

Reforms of this process are impossible without charter amendments.

Under Proposition K and the Charter, the Taxi Commission must be the final decision-maker with respect to the suspension or revocation of permits.

Under Proposition K, the Police Commission (as opposed to the Chief of Police) was authorized to issue and revoke taxi permits. Proposition K, codified as Appendix 6 to the San Francisco Administrative Code, provides that "[t]he Police Commission shall issue a sufficient number of permits to assure adequate taxicab service throughout the City and County of San Francisco." and that "[a]ll such permits and all rights granted under them may be rescinded and ordered revoked by the Police Commission for good cause." (Secs. 1, 4(a); emphasis added.)

Under the Charter, the Taxi Commission, as opposed to the Executive Director, succeeded to the powers of the Police Commission under Proposition K. Charter Section 4.133(b) provides that "[e]ffective March 1, 1999, the [Taxi] Commission shall succeed to all powers and responsibilities relating to taxicabs and other motor vehicles for hire, other than criminal enforcement, now vested in the Police Commission, the Police Department or the Chief of Police."

The suspension or revocation of a permit for cause is a quasi-judicial act. (See *Rodriguez v. Dept. of Real Estate* (1996) 51 Cal.App.4th 1289, 1300.) The Taxi Commission may not delegate its ultimate responsibility for judicial decisions, although it may delegate the fact-finding function to a hearing officer or to agency staff. (*Schechter v. City of Los Angeles* (1968) 258 Cal.App.2d 391, 396-97.)

Thus, in order to allow staff or a hearing officer to decide disciplinary cases involving action on a permit without Commission participation, the voters would have to amend Proposition K or Charter Section 4.133 to give the department head that authority.

Under the Charter, the Board of Appeals has jurisdiction over appeals taken from the grant, denial, suspension or revocation of a taxi permit.

Currently, Charter Section 4.1096(b) provides that

The Board shall hear and determine appeals with respect to any person who has been denied a permit or license, or whose permit or license has been suspended, revoked, or withdrawn, or who believes that his or her interest or the public interest will be adversely affected by the grant, denial, suspension, or revocation of a license or permit, except for a permit or license under the jurisdiction of the Recreation and Park Commission or department, or the Port Commission, or a building or demolition permit for a project that has received a permit or license pursuant to a conditional use authorization.

The Charter could be amended, through voter approval, to include “permit[s] or license[s] under the jurisdiction of the Recreation and Park Commission or department, *Taxicab Commission*, or the Port Commission...” This would remove the Board of Permit Appeals from the appeals process.

Hearing Procedures

Due Process: All investigations and hearings will be conducted in a completely fair, unbiased manner. Individual rights will be protected at all stages of investigation and hearing. Allegations must be proven to a “preponderance of the evidence” standard. Only provable facts and extremely solid inferences can be used as evidence. When evidentiary information is unreliable or inconclusive, then the alleged violator may be given the benefit of the doubt. The Taxi Commission, as the charging party, acts as a prosecutor and has a duty to provide a defendant with all relevant and unprivileged documents even if not requested.

At the hearing officer’s urging, staff recommends that the Commission issue a formal statement that the burden of proof is a “preponderance of the evidence” standard in accordance with administrative standards.

Timeliness: Permitholders or their counsel, the Taxi Commission, and the hearing officer should submit any relevant evidence or information by the close of business fourteen days before the hearing to the Taxi Commission Office at 25 Van Ness Suite 420, San Francisco, CA 94102.

Witnesses: The Taxi Commission staff who investigated the permit at issue should appear at the hearing. Any witnesses present at the scene of the arrest or incident, be they Taxi Commission or Taxi Detail staff or otherwise, should also appear. Eyewitnesses should appear if possible, and if they cannot, sworn statements should be submitted.

Evidence: Any out of court statements should be made under penalty of perjury and submitted fourteen days before the hearing. Original waybills should be provided as evidence. All waybills should be provided for years in which violations are alleged. Airport or GTU records shall be provided as evidence if possible, to show discrepancies with waybills. Driver rosters shall be provided, if possible, to show discrepancies with waybills.

CITY AND COUNTY OF
SAN FRANCISCO



TAXI COMMISSION
MAYOR GAVIN NEWSOM

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
ARTHUR TOM, COMMISSIONER, ext. 4

JORDANNA THIGPEN, EXECUTIVE DIRECTOR

APPENDIX

F

February 11, 2009

At the meeting of the Taxicab Commission on Tuesday, February 10, 2009 the following resolution(s) and finding(s) were adopted:

RESOLUTION NO. 2009 -05

WHEREAS, The Taxi Commission has considered several solutions to the problems of "medallion brokers" and exploitative leasing arrangements in the San Francisco taxi industry; and

WHEREAS, The Commission wishes to memorialize its recommendations for certain rules before responsibility for the enforcing leasing arrangements passes to the Municipal Transportation Agency on March 1, 2009; therefore, be it

RESOLVED, That the Taxi Commission recommends to the Municipal Transportation Agency that it adopt the rules contained in the Draft SFMTA Tax Rules and Regulations, as described in the attached Exhibit to this Resolution.

Ayes: Breslin, Gillespie, Oneto, Suval, Tom
Absent: Paek

No: Benjamin
Recused: 0

(1) Lease of Taxi Permits [1124]

(A) Provided that a Taxi permit is operated in compliance with all other applicable statutes, laws and Regulations, a Taxi Permit Holder may authorize a Color Scheme or Driver to operate or drive the Taxi permit pursuant to a Lease.

(B) A Lease is only valid if it is in writing, on file with the SFMTA, and is limited to the following parties: a Taxi Permit Holder, a Color Scheme and/or a Driver who will actually drive the vehicle associated with that Taxi permit.

(C) No person may lease a Taxi Permit, either on a per shift basis or for any term of time, to or from anyone other than the Permit Holder or the Color Scheme with which the Taxi permit is affiliated.

(D) A Lease is not assignable or transferable. Any attempt to assign or transfer a Lease is invalid, and shall render the Lease void by operation of law as of the date of the attempted assignment or transfer.

(E) A true and correct copy of any Lease shall be filed with the SFMTA within 45 calendar days of execution, and the original shall be retained at the Color Scheme's place of business during the term of the Lease. All Leases must be available twenty-four hours a day for inspection by the SFMTA and/or the Chief of Police.

(F) Nothing in this Section shall be deemed to modify, limit or excuse the obligations of any Permittee under this Article or to suspend any permit conditions.

(G) This Section 5(a)(13) shall be strictly enforced, and violation shall be grounds for revocation of any Permittee who executes a Lease for the use of a Taxi permit in violation of this Section. Any person who executes any oral or written Lease for the use of a Taxi permit in violation of this Section shall be considered to be operating without a permit in violation of Section 5(a)(1).

**IMPORTANT INFORMATION REGARDING
ACCEPTABLE OPERATING ARRANGEMENTS
FOR MEDALLIONS USED AS COLLATERAL FOR A LOAN**

There are only two types of operating arrangements that are acceptable to obtain financing for a medallion purchase.

The two arrangements are: 1.) Leasing the medallion to a Color Scheme; or, 2.) having an Owner/Operator affiliate type arrangement that allows the purchase of certain services from a Color Scheme.

1. Lease to Color Scheme

In this arrangement, the medallion holder leases the medallion to the color scheme and the *color scheme pays the medallion holder a monthly lease payment*. The monthly lease payment amount is determined between the Color Scheme and the Medallion Holder and is documented in the Agreement that is executed between the two parties.

Under this type of arrangement generally, the color scheme owns the vehicle and will provide all the vehicle maintenance, vehicle liability and worker's comp insurances, and provides the additional shift drivers. The Color Scheme is responsible for all the vehicle inspections, etc., required by SFMTA and the associated expense. There can be other financial considerations contained in this agreement as well, such as reduced gate fees, changes in compensation for certain periods during the year (extended vacations), etc. Whatever the agreement between the Medallion Holder and the Color Scheme, all of the provisions must be clearly stated in the lease agreement that is executed between the two parties.

2. Owner/Operator Arrangement (also referred to as Affiliate or Buying/Renting Services from Color Scheme)

In this type of arrangement, *the medallion holder will pay a monthly fee to the color scheme* for radio dispatch services and the right to paint the vehicle to show association with the color scheme. This type of arrangement can also include liability insurance and/or worker's comp insurance but isn't required to do so. It could also contain provisions for the Color Scheme to provide the additional shift drivers for the taxi, buy also may not do so. The monthly payment amount paid to the Color Scheme and the specific services the Medallion Holder is buying from the Color Scheme is determined between the Color Scheme and the Medallion Holder and must be clearly and specifically stated in the Agreement that is executed between the two parties.

In this type of arrangement, the Medallion Holder must own or purchase his/her own vehicle and provide the vehicle liability and/or worker's comp insurances (if not provided by color scheme.) The Medallion Holder is responsible for all maintenance, inspections, etc., required by SFMTA and the associated expense. The Medallion Holder is also responsible for hiring the additional drivers of his/her taxi, if not provided for in the arrangement with the Color Scheme.

In order to obtain a loan with this type of financial arrangement, the Medallion Holder must provide documentation that he/she only allows additional drivers of his/her taxi that comply with the provisions of Transportation Code Division II, Article 1100, Section 1105 and must provide proof of such compliance in the form of the valid "A-Card" and valid California Driver's License for all additional drivers. Additionally, the Medallion Holder must provide written documentation of the financial arrangement with any and all additional drivers prior to the Credit Union funding the loan, and on an ongoing basis as new additional drivers are hired by the Medallion Holder.

In order for the credit union to lend to the medallion holder, he or she must have an active, vested interest in his or her own taxicab business.

APPENDIX

G

MIAMI-DADE COUNTY

(m) *Dispatch* means a communication via two-way radio or cellular telephone from a passenger service cc for-hire tr

(n) Res

(o) *Far* lished pu passenger vided by :

APPENDIX
H

s estab- paid by ces pro- cle.

(p) *For compensation or compensation* means for money, property, service or anything of value, including tips and commissions.

(q) *For-hire* means driving, operating, or managing a for-hire passenger motor vehicle, and includes all non-revenue producing operations of the passenger motor vehicle.

(r) *For-hire license* means an annual, renewable license issued pursuant to this Article which authorizes the provision of for-hire transportation services and which may expire, be suspended or revoked.

(s) *Passenger service company* means a Florida corporation or partnership created for the purpose of providing passenger services for for-hire taxi operations and providing various services to for-hire license holder(s) and chauffeurs with whom the passenger service company has entered into passenger service agreements.

(t) *Passenger service company registration* means an annual, renewable registration issued pursuant to this article which grants authority to provide passenger services for for-hire operations and which may expire, be suspended or revoked.

(u) *For-hire passenger motor vehicle or for-hire motor vehicle* means any chauffeur-driven taxicab as defined herein which engages in the casual and nonrecurring transportation of persons and their accompanying property for compensation over the public streets, but excluding ambulances and nonemergency medical transportation of decedents and persons participating in funeral services, vehicles used solely to provide free transportation services for customers of the business establishment owning said vehicles, vehicles used solely to provide special transportation services for the Metro-Miami-Dade Transit Agency pursu-

ant to a contract with Miami-Dade County, and rental or leased vehicles which rental or lease does not include a chauffeur; provided, however, that no vehicles excluded under this definition shall be used on a for-hire basis except as authorized by this article. Vehicles used to provide Metro-Miami-Dade Transit Agency special transportation services pursuant to a contract with Miami-Dade County are subject to the regulations contained in Article IV of this chapter.

(v) *Good cause* shall mean delay caused by circumstances beyond the control of the applicant.

(w) *In service* means a for-hire vehicle which is displaying a valid, current operating permit or decal, as applicable, issued by the CSD.

(x) *Passenger service agreement* means the CSD approved form agreement entered into by the for-hire license holder and the passenger service company prior to any for-hire operation.

(y) *MDTA* means the Miami-Dade Transit Agency.

(z) *Medallion* means a plate or decal issued by CSD as the physical evidence of a taxicab license which is affixed to the outside or inside of such taxicab.

(aa) *Medallion system* means the system which deems a taxicab for-hire license to be intangible property.

(bb) *Off Duty* means the periodic, temporary cessation of daily for-hire service indicated by a sign placed and visible on the vehicle's front windshield and which shall not be construed to alter the "in service" status of the for-hire vehicle. No for-hire vehicle in operation or awaiting passengers shall display an off-duty sign.

(cc) *Operate* means to provide transportation services for compensation regulated by this article utilizing a for-hire passenger motor vehicle.

(dd) *Operating permit* means the valid and current vehicle decal issued to the license holder or passenger service company, when applicable, which authorizes a specific, registered vehicle to operate for-hire and which may expire, be suspended or revoked.

DEFINITIONS

(g) Issuance and replacement of for-hire license.

(1) *Issuance.* Each for-hire license shall be on a form developed by the CSD and shall be signed by the director. Each for-hire license shall, at a minimum, contain the name and the business address of the license holder, date of issuance, its expiration date and such additional terms, conditions, provisions and limitations as were imposed during the approval process.

(2) *Replacement.* The director may issue a replacement license to any license holder upon application, payment of a non-refundable replacement fee and presentation of proof or a sworn affidavit that the license has been lost or stolen.

(h) Expiration of and renewal process for for-hire license. For-hire licenses may be issued for such periods as specified in the Administrative Order establishing the fees. The CSD may establish staggered license terms to ease administration of the renewal process. Each renewal shall be submitted no less than thirty (30) days prior to expiration of the current initial or annual for-hire license together with payment of a license fee. As part of the renewal process, the original application shall be updated and verified by the applicant on forms supplied by the CSD. The director shall deny any renewal application that is not timely, is not properly filed, is incomplete, is untrue in whole or in part, or results in a determination by the director that the applicant has failed to satisfy the requirements of subsections 31-82(c)(d) or (e). Renewal applications shall additionally include disclosure of all interests in the for-hire license (legal, beneficial, equitable or otherwise) and a sworn statement as to the number of months which each permitted for-hire vehicle operated during the preceding license year. Appeal of the denial of a renewal application shall be in accordance with this chapter.

(i) *Grace period.* License holders shall have a grace period of up to thirty (30) days after expiration of their license in which to renew same provided, however, that all operations shall cease on the date of license expiration and the license

holder shall also pay a late fee over and above the annual license fee. All for-hire licenses which have not been renewed on or before thirty (30) days after their expiration shall automatically be deemed revoked.

(j) *Rules of operation.* For-hire license holders shall abide by all rules and regulations applicable to for-hire license holders and shall be subject to the enforcement provisions contained in this chapter and chapter 8CC of the Miami-Dade County Code. A for-hire license holder and her, his or its agents shall comply with the following regulations:

- (1) Comply with applicable federal law, Florida law, and ordinances, rules and regulations of the County applicable to the operation of for-hire vehicles;
- (2) Immediately report any change of address;
- (3) Maintain all records pertaining to the for-hire operations of a vehicle at the place of business of the entity responsible for passenger services for one (1) year and make same available for inspection during the regular business hours of such entity. When requested by the CSD, the entity shall provide copies of the records;
- (4) Where required by this article, enter into a passenger service agreement with a passenger service company to provide passenger services or directly perform passenger services as provided in Section 31-100;
- (5) Obtain the operating permit for each for-hire vehicle operated pursuant to authority of the for-hire license and pay all application and vehicle inspection fees;
- (6) Not permit or authorize any chauffeur or other person to operate any for-hire vehicle without that vehicle's current valid operating permit being displayed therein;
- (7) Not allow any person to operate a for-hire vehicle who is not a Miami-Dade County registered chauffeur and who has not entered into a chauffeur's agreement in accordance with this article;

- (8) Not allow or permit any person to operate a for-hire vehicle without current, valid and sufficient insurance coverage as required in this chapter;
- (9) Register and have inspected by CSD all vehicles to be placed into service and all vehicles taken out of service;
- (10) Not permit or authorize anyone to drive any for-hire vehicle unless the brakes, steering mechanism, tires, horn, windshield wipers, side and rearview mirrors and all lighting devices are in good working order and the vehicle meets all other applicable vehicle standards as set forth in this chapter;
- (11) Not allow or permit any person to operate a for-hire vehicle while his or her ability or alertness is so impaired or so likely to become impaired through fatigue, illness, or any other cause, as to make it unsafe for the chauffeur to begin or continue to drive the for-hire vehicle;
- (12) Not refuse or neglect to transport to or from any place in the county, any orderly person requesting service. Every deaf or hard of hearing person, totally or partially blind person, or physically disabled person shall have the right to be accompanied by a service animal specially trained for the purpose without being required to pay an extra charge for the service animal;
- * (13) Each for-hire license holder shall enter into a written chauffeur's agreement with each chauffeur it allows to operate any for-hire vehicle. The written chauffeur's agreement:
 - (a) Shall provide for an express duration of the agreement;
 - (b) Shall only be terminated with at least thirty (30) days prior notice unless good cause be shown and only for the reasons stated therein;
 - (c) Shall state the full legal name and address (post office boxes shall not

be acceptable) and respective license holder's number and chauffeur's registration numbers;

- (d) Shall state and itemize the compensation to be paid by the chauffeur for the right to operate a for-hire vehicle authorized by a for-hire license. It shall be unlawful for the for-hire license holder to receive any compensation from the chauffeur which is not specified in the existing chauffeur's agreement. The Agreement shall specifically provide that the compensation to be paid by a chauffeur may be paid utilizing any of at least two of the following: (1) cash, (2) money order, (3) certified check, (4) cashier's check, (5) valid traveler's check, (6) valid bank credit card, or (7) valid personal check showing on its face the name and address of the chauffeur. The chauffeur shall be allowed to make payment as provided in the preceding sentence, and shall be provided with a written receipt which contains the name of the license holder or passenger service company, whichever is applicable, and the name of the driver, the for-hire license number, payment amount and form of payment utilized, date of payment and the period covered by the payment;
- (e) Shall state whether the passenger service company or the license holder shall be responsible for obtaining the required insurance for the for-hire vehicle;
- (f) Shall state that the license holder shall obtain the operating permit and pay all application and vehicle inspection fees.
- (g) Shall be signed by both the chauffeur and the license holder; and
- (h) Shall include a sworn statement attesting to the truth of all representations made in the chauffeur agreement.

(14) For-hire license holders who operate an accessible vehicle shall place an advertisement in the Yellow Pages of the Miami-Dade County Telephone Directory under the trade name under which the owner operates indicating that it is capable of providing service to wheelchair passengers and that such requests for service shall receive priority over all other service requests.

(15) Each license holder shall ensure that chauffeurs operating an accessible vehicle are certified in the safe and proper methods of securing, transporting, and dealing with passengers utilizing a wheelchair. Proof of certification shall be provided to the CSD.

(16) It shall be unlawful for any person to use, drive or operate an accessible vehicle without certification in the safe and proper methods of securing, transporting, and dealing with passengers utilizing a wheelchair.

(k) Responsibility for violations of chapter. The holder of a for-hire license shall be held responsible for any applicable violation of this article arising from the operation of the for-hire vehicle authorized under the holder's for-hire license and shall be subject to the penalties provided in this chapter for any such violation. In addition, his, her or its license shall be subject to suspension or revocation for any such violation. Charges against or penalties imposed on a passenger service company or for-hire chauffeur for the same or related violations shall not relieve the for-hire license holder of responsibility under this article.

(l) In order to assure the development and maintenance of adequate wheelchair accessible taxicab service, Miami-Dade County shall strive to ensure that at least three (3) percent of the total number of for-hire taxicab licenses are operated using accessible vehicles by December 31, 2006.

(1) The director, by administrative decision, may require that at least fifty percent of for-hire vehicles authorized to operate under a for-hire license initially issued pursuant to sections 31-82(o)(1) and 31-82(p)

after the effective date of this ordinance must be accessible vehicles. All for-hire taxicab licenses issued pursuant to this subsection (1) shall be selected first in each lottery.

(2) Licenses to be operated using accessible vehicles pursuant to 31-82(l)(1), 31-82(o)(1), 31-82(o)(2), or 31-82(o)(3) shall be issued upon payment of an amount that is \$10,000 less than the amounts stated in sections 31-82(m), 31-93(c)(2), or 31-93(d), respectively, or \$5,000, whichever amount is greater, payable in full within one hundred and twenty (120) days after each lottery.

(3) It shall be a condition of all for-hire taxicab licenses that are required to operate using accessible vehicles pursuant to sections 31-82(l)(1), 31-82(o)(1), 31-82(o)(2), or 31-82(o)(3) that the vehicle operated under the authority of such license shall always be an accessible vehicle.

(4) Notwithstanding any provision to the contrary, all for-hire taxicab licenses ordered by the director to operate using accessible vehicles pursuant to sections 31-82(l)(1) or 31-82(o)(2) shall meet the following vehicle age requirements: any vehicle initially placed into service shall not have been previously used as a taxicab and shall be no greater than five (5) model years of age. Any vehicle over ten (10) years of age shall not be operated as a taxicab.

(m) All new taxicab for-hire licenses issued after the effective date of this ordinance shall be issued pursuant to a medallion system. Such licenses shall be issued upon payment of twenty-five thousand dollars (\$25,000), payable in full within one hundred and twenty (120) days after lottery and only to such drivers who have had a Miami-Dade County taxicab chauffeur's registration for the previous five (5) years in good standing and satisfy the criteria stated in section 31-82(c). A sixty-day extension may be granted by the CSD Director provided good cause be shown.

BOSTON

SECTION 6: LEASING AND SHIFTING OF HACKNEY CARRIAGES

I. Mandated Lease or Shift Agreements For Hackney Carriages

The Inspector of Carriages or the Police Commissioner may from time to time issue documents that shall be used by Medallion Owners, Lessees and Hackney Carriage Drivers as lease agreements or shift rental agreements for Hackney Carriages. No lease or shift agreement may be altered without express permission of the Inspector of Carriages. All lease and shift agreements that are in force as of August 29, 2008 shall remain in effect for the duration of that agreement. The Medallion Owner, Manager, or Lessee shall provide an immediate receipt to the Hackney Carriage Driver for all payments and/or transactions.

APPENDIX

I

SECTION 7: RADIO ASSOCIATIONS

I. Radio Association Regulations

- a. Membership: All persons, firms, or corporations holding a Hackney Carriage Medallion must belong to an approved dispatch service or radio association which provides twenty-four (24) hour two-way communication solely and exclusively for Boston Licensed Hackney Carriages. All vehicles licensed as Hackney Carriages must be equipped with two-way communication linked to an approved dispatch service or radio association, as listed at the Office of the Inspector of Carriages.
- b. Exemption: Only those Medallion Owners previously exempted by the 1998 Inspector of Carriages agreement can operate without membership in an approved Radio Association. If at any time a second Driver has control of the previously exempted Hackney Carriage, the Medallion Owner must immediately notify the Inspector of Carriages and must immediately join an authorized Radio Association. However, the Medallion Owner may place a second Driver on this Medallion for up to two weeks per calendar year while the original Driver is on vacation, provided written notice is submitted to the Inspector of Carriages seven (7) business days prior to said vacation (such notice will be stored with the Medallion File). Once in a Radio Association, the Medallion cannot be taken out of a Radio Association. Upon transfer or sale of an exempt Medallion, the vehicle associated with the Medallion is subject to the Radio Association requirement.
- c. Approved Associations: Only those Radio Associations approved by the Inspector of Carriages are authorized to accept Licensed Hackney Carriage Medallion Owners as their members.
- d. Approved Radio Association Services: All Radio Associations shall provide, at a minimum, the following services to their members:
 - i. Twenty-Four (24) Hour Dispatch Capabilities;
 - ii. Two-Way Radio and Dispatch Service;
 - iii. Wheelchair Accessible Vehicle (WAV) Availability;
 - iv. Elderly Discount Re-imbusement Services;
 - v. Call/Dispatch Record Keeping and Reporting;
 - vi. Lost Or Found Property Reporting Procedures; and
 - vii. Dispatch services shall include record keeping that specifies:
 1. the total number of calls for service;
 2. the time and location of each request;
 3. the Medallion number of the cab dispatched; and
 4. the time and location of WAV's dispatched.
- e. Records: Records of the Radio Association shall be kept for a period of not less than one (1) year. A summary report shall be forwarded to the Office of the Inspector of Carriages upon request within five (5) business days of the request.