

Agenda: Item 5

Criminal Background Checks for Taxi Drivers [DISCUSSION and
POSSIBLE ACTION]



CITY AND COUNTY OF
SAN FRANCISCO

TAXI COMMISSION
MAYOR GAVIN NEWSOM

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HEIDI MACHEN, EXECUTIVE DIRECTOR

MEMORANDUM

To: Honorable Commissioners
From: Jordanna Thigpen and Scott Leon
Re: Standards for denial and revocation of permits
Date: October 15, 2007

A-card Applicants

The current procedure for A-card (P-44) applicants is as follows:

Step 1 Attend and complete a certified and approved Taxicab School training course. Approved schools include Cab College, Flag-A-Cab Taxi School and Taxi Driver Institute (see below for more information). Obtain a Certificate of Completion and ADA (Paratransit) Certificate.

(NOTE: Certificates must be dated within one year of application.)

Step 2 Obtain a letter of intent to hire from a company willing to hire.

(NOTE: Letter must be dated within 30 days of application)

Step 3 Obtain a printout of driving record from Department of Motor Vehicles.

(NOTE: Printout must be dated within 30 days of application)

Step 4 Obtain a "Passport Size" color or black and white, full face photograph.

(NOTE: Absolutely no large photos, cannot wear a hat, scarf, or sunglasses)

Step 5 Bring all of the above and the application & fingerprinting fees to SFPD Permits, 850 Bryant Street, Room 458 (Tuesday - Thursday, 9:00 a.m. to 12 noon, 1:00 p.m. to 3:00 p.m.), to submit an application for Driver Public Vehicle for Hire permit.

Driver will be scheduled for taxicab class on Thursday of the same week if he applies on Tuesday or Wednesday or the following Thursday if he applies on Thursday. Upon completion of the class and passing of the test, a temporary permit is issued. Once the temporary permit is issued, he may begin to work as a San Francisco taxicab driver.

Step 6 Pick-up permanent permit, badge and "A" Card at the Tax Collector's Office at City Hall. Allow at least 8 weeks for processing from the date of issuance of temporary permit.

When the applicants come to SFPD, they are issued a temporary permit while SFPD sends their fingerprints to the California Department of Justice in Sacramento. Sometimes, the DOJ (*California* Department of Justice, not to be confused with the federal Department of Justice) records are delayed, although other times they return almost instantaneously.

The DOJ records are only for California. Records in other states are not checked.

Currently SFPD denies A-cards for any of the following offenses that appear in an applicant's California record:

- Sexual assault
- Rape
- Homicide
- Child abuse of any type (ie, a physical or sexual nature)
- Serious domestic violence
- Crimes of moral turpitude

Staff recommends additional reasons for denial as follows:

- Misdemeanor or felony convictions for driving under the influence in the three years prior to application
- Serious felonies of a vehicular nature – i.e., vehicular assault
- Serious felonies involving violence
- A prior felony charge of gun possession
- Two or more moving violations in the twelve months prior to application
- A suspended license for any reason in the three years prior to application

Staff also recommends that permits not be issued until the DOJ records have come into SFPD and the applicant has been cleared.

Staff also recommends, based on the advice of Sgt. Reynolds, that the application ask whether an applicant has ever been convicted of any of the crimes for which permits have been denied – in any state.

A resolution is attached to this memorandum for your consideration.

Medallion Holders

Additionally, staff recommends that the above-listed reasons for denial be extended to applicants for the medallion (P-16) permits.

Currently, MPC § 1090 governs revocation of permits. A copy of MPC § 1090 is attached to this memorandum. Staff recommends that additional grounds for revocation include:

(x) the Permittee has been convicted of any violent felony, or of felony gun possession.

This will ensure that medallion holders are held to the same standard as A-card holders. Staff also recommends that conviction of a violent felony or felony gun possession be grounds for automatic revocation.

Additionally, staff recommends amendments to MPC § 1081 to ensure that medallions are issued to people who conform to the standards, since these new revised standards will only apply prospectively. A copy of MPC § 1081 is attached to this memorandum.

Staff recommends the addition of MPC § 1081(a)(4) as follows:

(4) Whether the applicant has passed a background investigation with standards established by the Taxi Commission and conducted by the San Francisco Police Department.

Finally, it is important that those applicants who are now eligible for any new medallions that the Commission issues prior to the end of the year also have their backgrounds checked, since the last time they did was when they applied to be a driver – in some cases over twenty years ago.

MPC § 1079 allows the Commission to issue new permits. The 50 new medallions issued at the beginning of the year were issued in accordance with MPC § 1079 and survived appeal at the Board of Appeals. MPC § 1079(j) allows the Commission to “attach such conditions as it deems to be consistent with public convenience and necessity upon any new permit issued under this Article.” Therefore, staff requests that the Commission attach the following condition, by resolution, to the 50 new permits and any future permits issued under MPC § 1079:

That any P-16 permit be issued only to an individual who has submitted to a LiveScan fingerprint analysis and passed a background check from the San Francisco Police Department.

Resolutions as to both the new standards and amendments are attached to this memorandum.

Commission any and all additional information which may be required. If the Taxi Commission then finds that the applicant, in addition to complying with all other requirements, is the owner of the vehicle or vehicles for which a permit is sought, and that each such vehicle meets with all applicable statutes, ordinances, rules and regulations, it shall thereupon issue the permit. A finding made at or as a result of a hearing under this Section may be appealed to the Board of Appeals as set forth in Section 4.106 of the Charter of the City and County of San Francisco.

(j) Conditions on Permits. The Taxi Commission may attach such conditions as it deems to be consistent with public convenience and necessity upon any new permit issued under this Article. From time to time, existing permits or those issued without conditions may be made subject to such conditions as the Taxi Commission may determine to be consistent with public convenience and necessity after a hearing of which notice is given to all affected permittees and the public in the manner prescribed for giving notice in Section 1080(a) of this Article.

(Added by Ord. 562-88, App. 12/27/88; amended by Ord. 228-02, File No. 020678, App. 12/5/2002)

SEC. 1080. PERMIT APPLICATIONS.

(a) Forms and Applications; Notice of Hearing. Application for a permit required by this Article shall be made to the Police Commission on a form to be furnished by the Police Commission. The form shall specify, and the application shall state, such information as the Police Commission reasonably shall require. Within 14 days of the filing of such an application with the Police Commission, it shall cause a notice to be published in a newspaper approved for the giving of official notices of the City and County of San Francisco, which notice shall state that an application has been filed for a permit pursuant to this Article (specifying the type, kind or class), the name of the applicant, the kind of equipment to be used, and such other information as may be necessary to identify the applicant and to specify the type, kind or class of permit or service. If the hearing on an individual application is held more than 45 days after the last such notice was published, that notice shall be republished, commencing at least 14 days prior to the hearing. The notices required by this Section shall be published for three successive days and shall state the date, time, and place set for the hearing thereon.

(b) Fee for Application. Applicants for permits authorized by this Article shall pay to the City and County of San Francisco a sum set by ordinance to cover the costs of advertising, investigating, and processing the application for each permit. No application for a permit under this Article shall be deemed to be complete until and unless such sum is fully paid.

(c) Applications Deemed Active. Every application for a motor vehicle for hire permit shall be deemed to remain active and shall be considered until the earliest of the following events:

- (1) The applicant withdraws the application in writing;
- (2) The applicant is deemed to be ineligible by a vote of the Police Commission; or
- (3) The applicant receives a permit;

(d) Notwithstanding the provisions of Subsection (c), the Chief of Police may adopt regulations requiring applicants periodically to reaffirm that their applications are active.

(Added by Ord. 562-88, App. 12/27/88; amended by Ord. 88-99, File No. 981443, App. 4/30/99)

SEC. 1081. FACTORS CONSIDERED IN ISSUING PERMITS; DRIVING REQUIREMENTS.

(a) General Factors. The Taxi Commission, in determining whether an individual applicant is eligible for the issuance of a motor vehicle for hire permit pursuant to Section 1079(i) may consider such facts as it deems pertinent, but must consider the following:

- (1) Whether the applicant is financially responsible and will comply with all insurance requirements and will maintain proper financial records.
 - (2) Whether the applicant has complied with all applicable statutes, ordinances, rules and regulations.
 - (3) Whether the applicant holds or has ever held any other permits issued to operate a motor vehicle for hire either in the City and County of San Francisco or elsewhere and the record of such applicant with regard to any such other or former permits.
- (b) Full-Time Driving Pledge. No permit to operate a motor vehicle for hire shall be issued unless the person applying for the permit shall declare under penalty of perjury his or her intention actively and personally to engage as permittee-driver under any permit issued to him or her for at least four hours during any 24-hour period or at least 75 percent of the business days during the calendar year.
- (c) Driving Experience Required. No permit to operate a taxicab or ramped taxi shall be issued unless the applicant has the driving experience required by Section 1121 for a taxicab permit or Section 1148.1 for a ramped taxi permit.
- (d) Order of Consideration. Except as otherwise state in this Article, all applications for motor vehicle for hire permits shall be processed and considered in the order of their receipt by the Taxi Commission. The Commission retains discretion at any time, following a hearing, to deny an application for a motor vehicle for hire permit on the basis that the applicant has engaged in fraud, deceit, misrepresentation, or other misconduct in connection with the application process.
- (e) Applicability of Section. Notwithstanding any contrary provision in this Article, the requirements set forth in this Section shall not apply to any person holding a permit issued on or before July 1, 1978.
- (f) Full-Time Driving Required. Every permittee subject to the provisions of this Section shall be a full-time driver as defined in Section 1076(o), subject to the qualifications state in subparts (i)--(iii) below.
- (i) During the calendar year in which the permittee receives the permit, and during the first full calendar year following receipt of the permit, the permittee must qualify as a full-time driver by satisfying the definition of that term in Section 1076(o)(i). For the calendar year in which the permittee receives the permit, the number of business days shall be measured from the date of receipt of the permit.
 - (ii) A permittee may be granted approval not to drive a certain number of days under certain circumstances pursuant to Section 1096(c). In such a case, for the permittee to qualify as a full-time driver as defined in Section 1076(o)(i), the number of business days for the calendar year shall be reduced in the same proportion as the ratio of the permittee's excused driving days to calendar days in the calendar year.
- (g) Promotion of the General Welfare. By adopting a program for the issuance of permits for motor vehicles for hire, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Added by Ord. 562-88, App. 12/27/88; Ord. 111-04, File No. 040343, App. 7/1/2004)

SEC. 1081.5. DRIVING REQUIREMENTS FOR DESIGNATED TAXI COMPANY KEY PERSONNEL.

- (a) Driving Requirement. Beginning January 1, 2007 and notwithstanding any other provision

SEC. 1090. REVOCATION OF PERMITS.

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

- (i) The permittee ceased to be a full-time driver.
- (ii) The permittee failed to pay a permit fee after notice of nonpayment.
- (iii) The permittee or the lessee of the permittee's permit operated without the insurance required by this Article.
- (iv) The permittee or an agent of the permittee knowingly made false statements to or concealed information from the Police Commission, the Chief of Police or the Police Department.
- (v) The permittee has been convicted of any crime involving moral turpitude.
- (vi) The permittee has failed to satisfy any judgment for damages arising from unlawful or negligent operation under any permit issued under this Article.
- (vii) The permittee has been convicted of a misdemeanor under Section 1185 of this Article.
- (viii) The permittee violated the Traffic Code of the City and County of San Francisco or the Vehicle Code or related laws of the State of California.
- (ix) The permittee violated any applicable statute, ordinance, rule or regulation pertaining to the operation or licensing of the vehicles and services regulated by this Article, including any rules and regulations enacted by the Chief of Police pursuant to this Article.

Upon a showing of good cause, the Police Commission shall have discretion to suspend or revoke a permit as set forth above, except that a suspension and/or revocation shall be mandatory in the circumstances described in Subparts (i) through (vi) above.

(b) Revocation of More Than One Permit. Where a person violating this Article holds more than one permit to operate a motor vehicle for hire in the City and County of San Francisco, the Police Commission may revoke or suspend all such permits.

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

(Added by Ord. 562-88, App. 12/27/88)

SEC. 1091. INSURANCE REQUIRED.

Unless otherwise provided by ordinance, no person, firm or corporation, shall operate any motor vehicle for hire unless and until such person, firm or corporation shall comply with the provisions of either Section 1092 or 1094 of this Article.

(Added by Ord. 562-88, App. 12/27/88)



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HEIDI MACHEN, EXECUTIVE DIRECTOR

November 13, 2007

At the meeting of the Taxicab Commission on Tuesday, November 13, 2007 the following resolutions and findings were adopted:

RESOLUTION NO. 2007-XX

Establishing Standards for Denying Individuals a P-44 Permit and Mandating Changes to the Application Process

WHEREAS, on October 23, 2007 the Taxi Commission considered items pertaining to the current standards for criminal background checks performed by the San Francisco Police Department for applicants for P-44 Permits ("A-cards") issued by the Treasurer and Tax Collector's office, and whether certain line items revealed in background checks constitute grounds for denying individuals a P-44 permit; and

WHEREAS, the Commission finds an overriding public safety interest in enhancing the current standards for denial of a permit; and

WHEREAS, current grounds for denying a permit include evidence of sexual assault, rape, homicide, sexual assault or physical abuse of a child, serious domestic violence, and crimes of moral turpitude; and

WHEREAS, the Commission also wishes to deny permits to applicants whose background checks reveal any of the following offenses:

- Misdemeanor or felony convictions for driving under the influence in the three years prior to application
- Convictions of a vehicular nature – i.e., vehicular assault
- Convictions involving violence
- Convictions for gun possession; and

WHEREAS, the Commission also mandates that temporary permits for any P-44 permits cannot be issued until all criminal records have been received and processed by the San Francisco Police Department; and

WHEREAS, the Commission also mandates that P-44 applications ask if an applicant has ever

been convicted of any of the above-listed crimes in any of the 50 United States; and

THEREFORE BE IT RESOLVED, that the Commission hereby mandates that the San Francisco Police Department reject any P-44 application which contains evidence of the above-listed offenses, mandates that temporary permits cannot be issued until criminal records have been received, and mandates changes to the application for P-44 permits as described.

AYES:

ABSENT:

NOES:

RECUSED:

Respectfully Submitted,

Heidi Machen

CITY AND COUNTY OF
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HEIDI MACHEN, EXECUTIVE DIRECTOR

November 13, 2007

At the meeting of the Taxicab Commission on Tuesday, November 13, 2007 the following resolutions and findings were adopted:

RESOLUTION NO. 2007-XX

Recommending Amendments to Municipal Police Code § 1081

WHEREAS, on October 23, 2007 the Taxi Commission considered items pertaining to the current standards for criminal background checks performed by the San Francisco Police Department for applicants for P-44 Permits ("A-cards") issued by the Treasurer and Tax Collector's office, and also considered how those standards relate to waiting list applicants who are being considered for a P-16 ("medallion") permit; and

WHEREAS, the Commission found an overriding public safety interest in enhancing the current standards for issuing a permit under MPC § 1081; and

WHEREAS, the Taxi Commission has established standards for denying a P-44 permit in Resolution No. 2007-XX, and wishes to adopt those standards for denying issuance of a P-16 permit; and

THEREFORE BE IT RESOLVED, that the Commission hereby requests that the Board of Supervisors amend MPC § 1081(a) by adding Subsection (4) as follows:

(4) Whether the applicant has passed a background investigation with standards established by the Taxi Commission and conducted by the San Francisco Police Department.

AYES:
ABSENT:

NOES:
RECUSED:

Respectfully Submitted,

Heidi Machen



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HEIDI MACHEN, EXECUTIVE DIRECTOR

November 13, 2007

At the meeting of the Taxicab Commission on Tuesday, November 13, 2007 the following resolutions and findings were adopted:

RESOLUTION NO. 2007-XX

Recommendation for Amendments to Municipal Police Code § 1090(a)

WHEREAS, on October 23, 2007 the Taxi Commission considered items pertaining to the current standards for criminal background checks performed by the San Francisco Police Department for applicants for P-44 Permits ("A-cards") issued by the Treasurer and Tax Collector's office, and also considered how those standards relate to existing P-16 ("medallion") holders; and

WHEREAS, the Commission found an overriding public safety interest in enhancing the current standards for revocation of a permit; and

WHEREAS, current grounds for revoking a permit are established in Municipal Police Code (MPC) § 1090(a) and are enumerated as subsections (i) to (ix); and

WHEREAS, the Commission also wishes to revoke the P-16 permit of any permit holder who has been convicted of a violent felony or of felony gun possession; and

THEREFORE BE IT RESOLVED, that the Commission hereby requests that the Board of Supervisors amend MPC § 1090(a) as follows:

(x) the Permittee has been convicted of any violent felony, or of felony gun possession....

Upon a showing of good cause, the Taxi Commission shall have discretion to suspend or revoke a permit as set forth above, except that a suspension and/or revocation shall be mandatory in the circumstances described in *Subsections (i) through (vi) and (x)* above.

AYES:
ABSENT:

NOES:
RECUSED:

Respectfully Submitted,

Heidi Machen

CITY AND COUNTY OF
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HEIDI MACHEN, EXECUTIVE DIRECTOR

November 13, 2007

At the meeting of the Taxicab Commission on Tuesday, November 13, 2007 the following resolution(s) and finding(s) were adopted:

RESOLUTION NO. 2007-XX

CONDITION ON P-16 PERMITS ISSUED PURSUANT TO PUBLIC CONVENIENCE & NECESSITY

WHEREAS, the San Francisco Municipal Police Code § 1079(j) allows the San Francisco Taxi Commission to attach conditions "as it deems to be consistent with public convenience and necessity upon any new permit issued under this Article;" and

WHEREAS, the San Francisco Taxi Commission desires to ensure that medallion P-16 permits are not issued to individuals with criminal records which would currently constitute grounds for revocation of a permit; and

THEREFORE BE IT RESOLVED, the San Francisco Taxi Commission mandates that effective November 15, 2007, any P-16 permits issued shall only be issued to individuals who have submitted to a LiveScan fingerprint analysis and passed a resulting criminal background check from the San Francisco Police Department.

AYES:
ABSENT:

NOES:
RECUSED:

Respectfully Submitted,

Heidi Machen
Executive Director