

Agenda Item: 3

The Proposed SFMTA/Taxi Commission Merger [INFORMATION]

The San Francisco Municipal Transportation Agency/San Francisco Taxi Commission Merger Plan

- *Overview of the Taxi Industry*
- *The Merger Plan*
 - ◆ *Strategy*
 - ◆ *Implementation*
 - ◆ *Operations*
- *Legislative Strategy and Proposed Regulations*
- *Future Opportunities*



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INTRODUCTION

The *San Francisco Municipal Transportation Agency/ San Francisco Taxi Commission Merger Plan* (“Plan”) is the product of months of planning by several departments involved in taxi regulation. The Plan has four components.

- **The San Francisco Taxi Industry: Overview and Current Affairs:** This Plan will provide a brief history of the City and County of San Francisco (“the City”) taxi industry, as well as provide a snapshot of current affairs.
- **The Merger Plan: Strategy, Implementation, and Operations:** The Plan will outline the strategy for the merger, describe the implementation, and outline the proposed operation of the new Taxi Regulation (TR) section within the SFMTA.
- **Legislative Strategy and Proposed Regulations:** The Plan will describe the legislative timeline as well as the proposed regulations resulting from combining the Municipal Police Code with the *Taxicab/Ramped Taxi Rules & Regulations*.
- **The Future: Opportunities and Challenges:** The Plan will outline outstanding policy issues in preparation for a strategy session at the March 17, 2008 meeting of the SFMTA Executive/Senior Staff and for subsequent stakeholder briefings.

OVERVIEW

A brief Overview of the San Francisco Taxi Industry and Proposition K is located in Appendix A. The Overview was prepared for the Charter Reform Working Group, a policy body of the TxC that was constituted to examine issues affecting the taxi industry. The Overview describes the history of the taxi industry, including a political history of various initiatives over the years, outlines the current state of affairs, and provides a glossary of terms commonly used in the industry and throughout this Report.

For those interested in the history of taxicabs generally, attached as Appendix A is a May 28, 1986 letter to the Board of Supervisors from former City Attorney George Agnost which provides an extraordinarily detailed history of taxicab regulation and touches on some of the outstanding policy issues involving regulation generally.

The San Francisco Taxi Industry: A Snapshot	
Taxi Drivers in San Francisco	Approximately 7,000
Taxi Medallions (Taxicabs)	1500 approved, with 69 on appeal
Ramped Taxi Medallions	100
Sedan Taxi Medallions	1400 approved, with 69 on appeal
Taxi Companies (Color Schemes)	34
Dispatch Companies	10
Flag Drop + Meter Charge	\$3.10 + .45 per fifth of a mile
Range of Total Annual Payments to a Medallion Holder	\$21,600-\$48,000
Annual Permit Fee Paid by Medallion Holder to City	\$635
Estimated Annual Total Taxi Trips in San Francisco	16,000,000
Average Fare Including Tip	\$16.14
Average Number of Fares per Driver Shift	15
Driver's Average Gross Income Per Shift	\$242.10
Current Average Gate Charge to Drivers Per Shift	\$91.50 (\$5 increase takes effect April 7, 2008)
Current Revenues and Expenditures of TxC	\$1,600,000

Table 1: Snapshot of the San Francisco Taxi Industry

Current Affairs

Current Structure: Taxi Commission (TxC) and Taxi Detail

Historically, all taxi permits were considered by the Police Commission and issued by the San Francisco Police Department. The seven-member TxC was created in 1998 after voters approved Proposition D. The idea was for the TxC to assume administrative functions and oversee issuance of permits, in particular the sedan medallion (P-16) and ramp medallion (P-68) permits, with its own staff. However, it was not until 2002 that the TxC received its first staff member. The TxC oversees the TxC staff and works with the SFPD through a work order.

TxC: The TxC is a seven-member body appointed by the Mayor and confirmed by the Board of Supervisors. The seven seats are represented by the following constituencies: taxi drivers; labor; hospitality; disability community; medallion holders or taxi companies; neighborhoods; and the general public. The Commission meets twice monthly on the second and fourth Tuesday.

The TxC's role is to set policy for the taxicab industry by:

- adopting its own Rules and Regulations
- recommending legislative change from the Board of Supervisors
- recommending executive action from the Mayor
- hearing disciplinary cases
- voting on disciplinary recommendations from administrative hearing officers
- issuing permits
- approving the department's budget

TxC Staff: Currently, the Commission's staff consists of an executive director, a deputy director, two investigators, a Commission secretary, and two clerks, for a total of 7 full-time employees, or FTEs. (See Figure 1: Taxi Commission Organizational Chart – FY 2008.)

TxC staff duties can be divided into two categories, Administration/Policy and Enforcement/Regulation. Staff continues to assimilate administrative functions from the SFPD's Taxi Detail. Current duties include:

- administration and investigation of permittees and applicants
- coordination and implementation of Commission policies
- functions assigned by Municipal Police Code Article 16, which governs motor vehicles for hire
- assuring compliance with the *Rules & Regulations*.
- coordinating with the various departments which participate in taxicab regulation

Taxi Detail: The SFPD Taxi Detail includes a Lieutenant overseeing the Permits Division (this position is 25% of an FTE,) a Sergeant who acts as Officer-in-Charge (OIC), two Q-4 Police Officers, and two clerks. This constitutes a total of 5.25 FTEs. (See Figure 2: Taxi Detail Organizational Chart – FY 2008.)

Taxi Detail has enforcement and administrative duties, including:

- processing background checks on some types of permittees
- processing driver applications
- training of new drivers (consisting of a limited portion of the curriculum)

Taxi Commission FY 2008

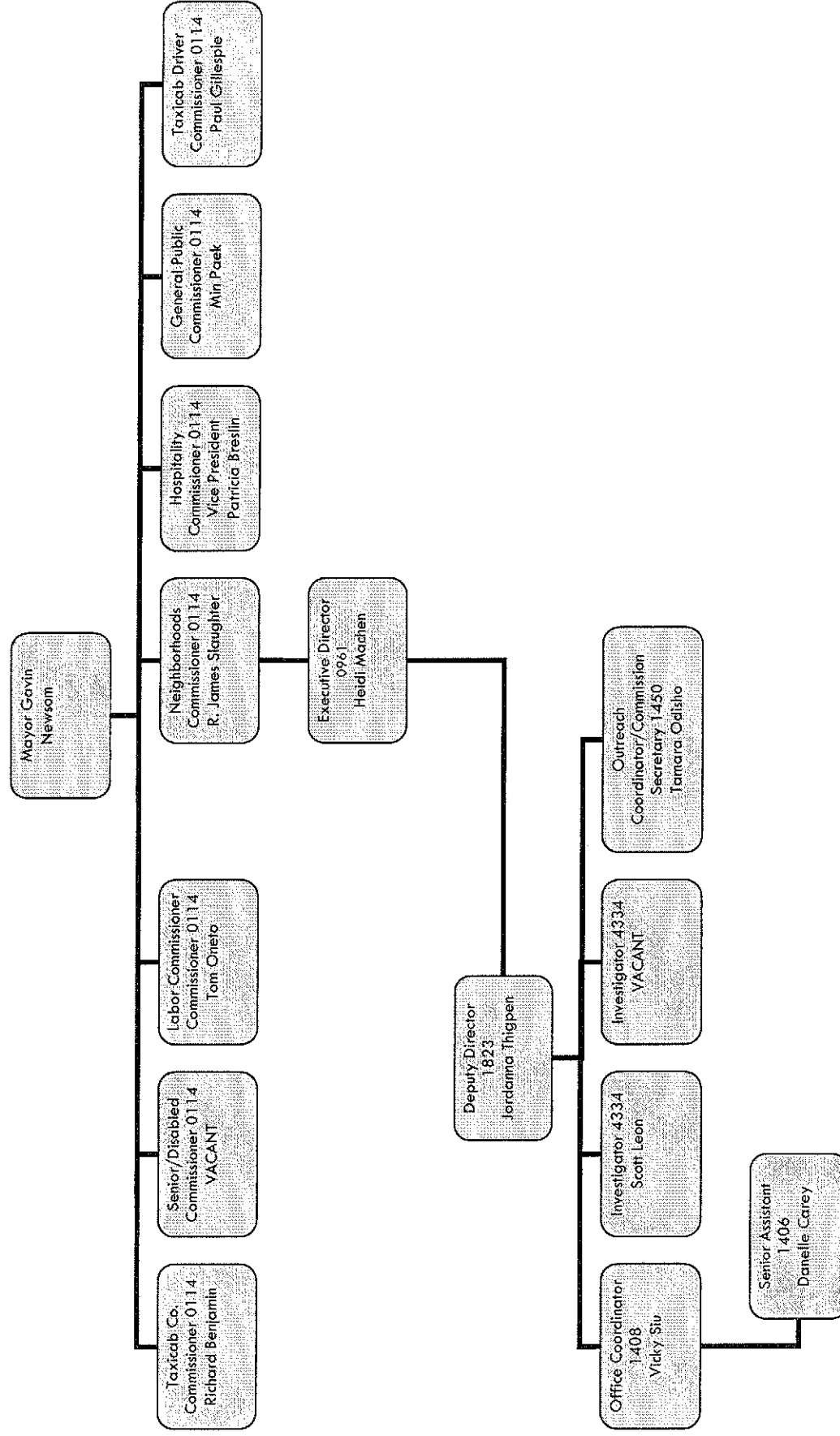


Figure 1: Taxi Commission Organization Chart – FY 2008

SFPD Taxi Detail FY 2008

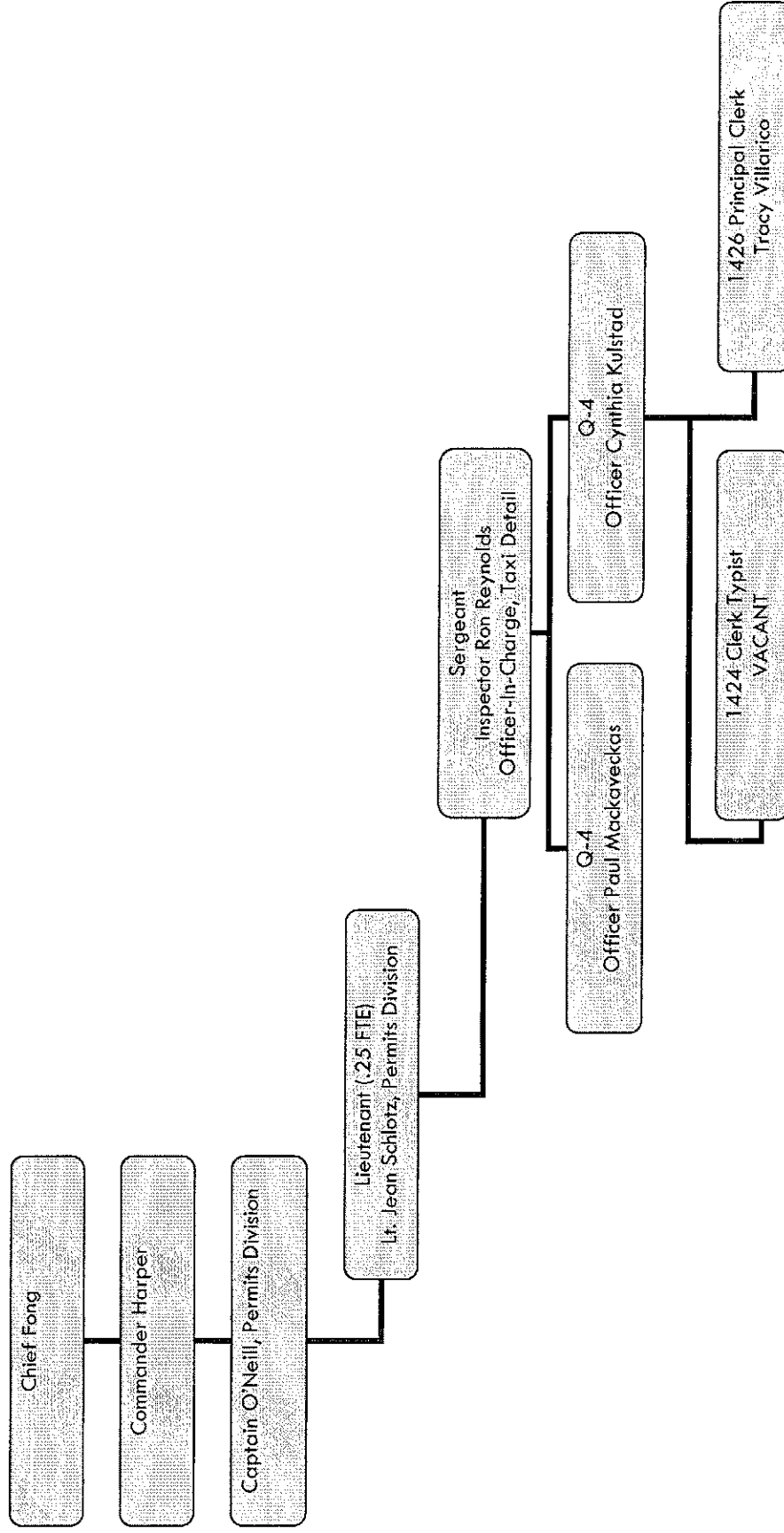


Figure 2: Taxi Detail Organizational Chart – FY 2008

- managing lost and found items for taxi customers
- assessing discipline for permittees that commit severe violations
- performing criminal investigations
- assisting the TXC with administrative investigations
- enforcement of illegal limousines and out-of-town taxicabs

For a precise explanation of the current duties by the TXC and the Taxi Detail, see Figure 3: Detail Current Workload.

Current Agencies Involved in Taxi Regulation

Regulating the San Francisco taxi industry currently involves no fewer than 11 separate city departments, and further subdivision within department divisions for a total of 17 total entities:

- Taxi Commission
- The SFMTA: Transportation Planning & Development; External Affairs (Accessible Services and Administrative Hearings); Security & Enforcement; Parking and Traffic
- SF Environment
- Treasurer & Tax Collector's Office
- Board of Appeals
- Planning Commission
- SFPD: Taxi Detail and the Ground Transportation Unit (GTU) at San Francisco International Airport
- The Controller's Office
- Department of Public Health (Department of Weights & Measures)
- 311
- Board of Supervisors

SF Environment applies for and administers clean vehicle grants for the taxi industry. The Treasurer & Tax Collector's Office receives application and renewal fees for permits. The Board of Appeals hears appeals of TXC decisions on issuance, denial, suspension, revocation, or withdrawal of permits. The Planning Commission issues environmental impact reports on new permits, pursuant to a requirement in the City's Business & Tax Code. Taxi Detail performs enforcement as described above. GTU performs annual inspections of taxicab vehicles as the TXC's inspection designee. The Controller's Office performs certain legislatively required reports, collects financial information from the industry, and monitors the TXC's budget. Weights & Measures is responsible for annual inspections of taximeters. 311 takes service requests or comments regarding the taxicab industry. The Board of Supervisors passes legislation and may review the total number of medallions if the TXC recommends an increase.

Detail Current Workflow

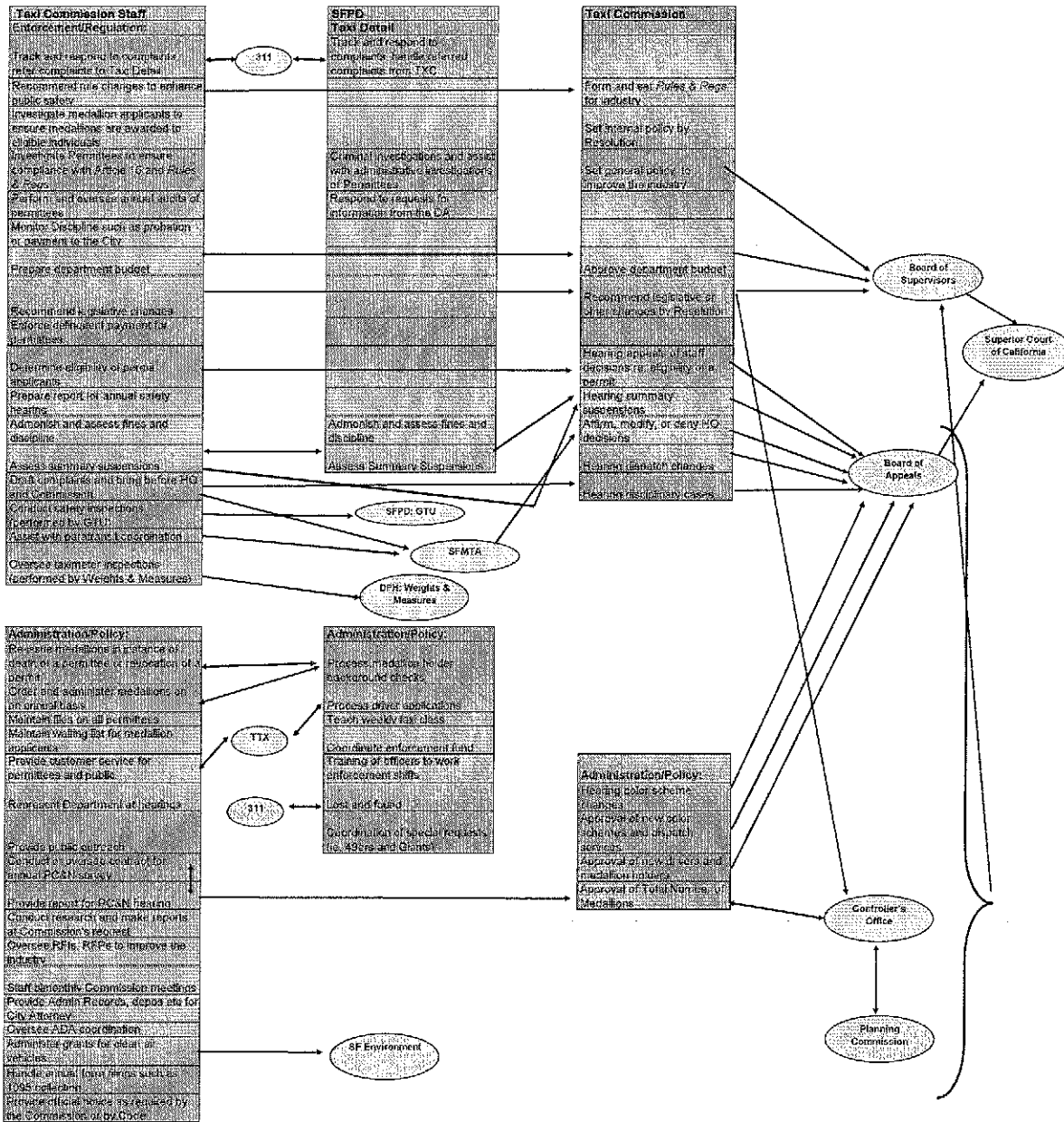


Figure 3: Detail Current Workflow

Current Fees and Revenue

Municipal Police Code (MPC) § 1087 governs expenditure of permit fees collected from taxi industry permittees:

All permit fees collected pursuant to this Article shall be held in trust by the Treasurer of the City and County of San Francisco and shall be distributed according to the fiscal and budgetary provisions of the San Francisco Charter subject only to the following conditions and limitations: the proceeds from permit fees collected pursuant to this Article, including earnings from investments thereof, may be used only to compensate and defray the capital and operating costs incurred by the City and County of San Francisco in enforcing the provisions of this Article, including, without limitation, the costs incurred by the Police Department and the Controller to comply with their obligations as set forth in this Article. The foregoing permit fee fund is necessary for the purpose of regulation and to provide for the necessary investigation, inspections and administration under, and enforcement of, the provisions of this Article.

The Treasurer collects permit fees and provides them to the TXC to conduct its business. The TXC in turn funds Taxi Detail through an interdepartmental work order with the SFPD. A current fee schedule, with the revenue that was estimated for FY 2008, is attached as Figure 4.

As Figure 4 demonstrates, 53% of the TXC's revenue results from taxicab medallion permit renewal, while 26% of the TXC's revenue results from taxi driver permit renewal.

Fees do not currently meet the City's cost recovery needs. Multiple lawsuits by taxi medallion permittees, for example, have resulted in high City Attorney fees and had a deleterious effect on the TXC's budget for the past two fiscal years. Both TXC and Taxi Detail are understaffed, and additional enforcement personnel are needed.

Current Legislation and the Current Legislative Process

Existing California law requires every city or county to adopt ordinances relating to the regulation of taxicabs. Town Cars, limousines, airport shuttles, and charter party carriers (such as tour buses, etc.) are regulated by the California State Public Utilities Commission (CPUC.)

San Francisco has adopted its regulations for taxicabs in accordance with State law: Article 16 of the Municipal Police Code, adopted by the Board of Supervisors, and the *Taxicab/Ramped Taxi Rules & Regulations*, which were adopted by the TXC.

Article 16 applies to all taxicabs in San Francisco and contains some provisions applicable to other types of motor vehicles for hire. Amendments may occur by vote of the Board of Supervisors, by voter mandate, or through amendments suggested by the Mayor's Office. The TXC may participate in this process by passing Resolutions. The TXC regulates its own internal affairs by Resolution.

There are several important processes that occur legislatively.

✓ Passing Meter and Gate Increases

The "meter" is the physical taximeter inside a taxicab which records the amount of the fare when a customer is taking a ride. Pursuant to California State law, all taxicabs must be inspected annually by the Department of Weights & Measures. All taximeters must have a current and valid seal issued by Weights & Measures. The meter in each taxicab is programmed with the current amounts allowed by the Board of Supervisors. The meter charge is currently \$3.10 for a flag drop and .45 cents per fifth of a mile. There are other charges allowed depending on the circumstances of the trip, such as airport charges or extra charges for trips over 15 miles outside City limits.

	DESCRIPTION	Fee	Quantity	Revenue	Fee	Quantity	Revenue
Subobject		06-07 rate	06-07	06-07	07-08 rate	07-08	07-08
60611	Driver Permit Application	68.00	955	\$64,940	74.80	1,020	\$76,296
20230	Driver Renewals (P44)	47.00	8,990	\$422,530	51.70	8,325	\$430,403
60611	Permit Holders Applications	577.00	45	\$25,965	634.70	70	\$44,429
20230	Permit Holders Renewals (P16)	498.00	1,306	\$650,388	658.00	1,331	\$875,798
60611	Ramped Taxi Applications	105.00	10	\$1,050	115.50	31	\$3,581
20230	Ramped Taxi Renewals (P68)	105.00	75	\$7,875	115.50	100	\$11,550
60611	PCN Applications (waiting list)	315.00	50	\$15,750	346.50	50	\$17,325
60611	Color Scheme Change	262.00	96	\$25,152	288.20	84	\$24,209
60611	Lost Medallions	157.00	20	\$3,140	172.70	15	\$2,591
60611	Metal Medallions	31.00	1,381	\$42,811	34.10	1,431	\$48,797
60611	New Color Schemes 1 to 5	787.00	5	\$3,935	865.70	2	\$1,731
60611	6 to 15 medallions	1,573.00	1	\$1,573	1,730.30	0	\$0
60611	16 to 49 medallions	3,147.00	0	\$0	3,461.70	0	\$0
60611	50 or more medallions	3,933.00	0	\$0	4,326.30	0	\$0
20230	Color Scheme Renew 1 to 5 (P69)	524.00	13	\$6,812	576.40	13	\$7,493
20230	6 to 15 medallions (P69)	1,049.00	5	\$5,245	1,153.90	5	\$5,770
20230	16 to 49 medallions (P69)	2,098.00	8	\$16,784	2,307.80	8	\$18,462
20230	50 or more medallions (P69)	2,622.00	7	\$18,354	2,884.20	8	\$23,074
60611	Dispatch Applications	2,622.00	2	\$5,244	2,884.20	2	\$5,768
20230	Dispatch Renewals (P70)	2,622.00	12	\$31,464	2,884.20	11	\$31,726
20235	Taxi Wraps- Fee is per month per vehicle	100.00	50	\$5,000	110.00	50	\$5,500
	FUND BALANCE			\$62,863			\$338
				\$1,416,875			\$1,634,840

Figure 4: Revenue Schedule, FY 2007 and FY 2008

The “gate” is the charge drivers pay to a taxi company to operate a taxicab vehicle (literally, to drive the vehicle out of the “gate” at the taxi company parking lot.)

Pursuant to MPC § 1137, in even-numbered years the Controller is required to issue reports on the gate and meter charges with any recommendations for changes and transmit these reports to the Board of Supervisors. The Board reviews the Controller’s recommendations, and may also, on its own motion hold hearings on gate and meter charges at other times. The Mayor may also recommend changes.

✓ **Public Convenience & Necessity**

This process, which predates the passage of Proposition K in 1978, governs the issuance of more medallions (taxicabs) to the streets. Currently the process involves the Taxi Commission, the Board of Appeals, the Controller’s Office, and the Planning Commission, and is codified in MPC § 1079. The steps are illustrated below:

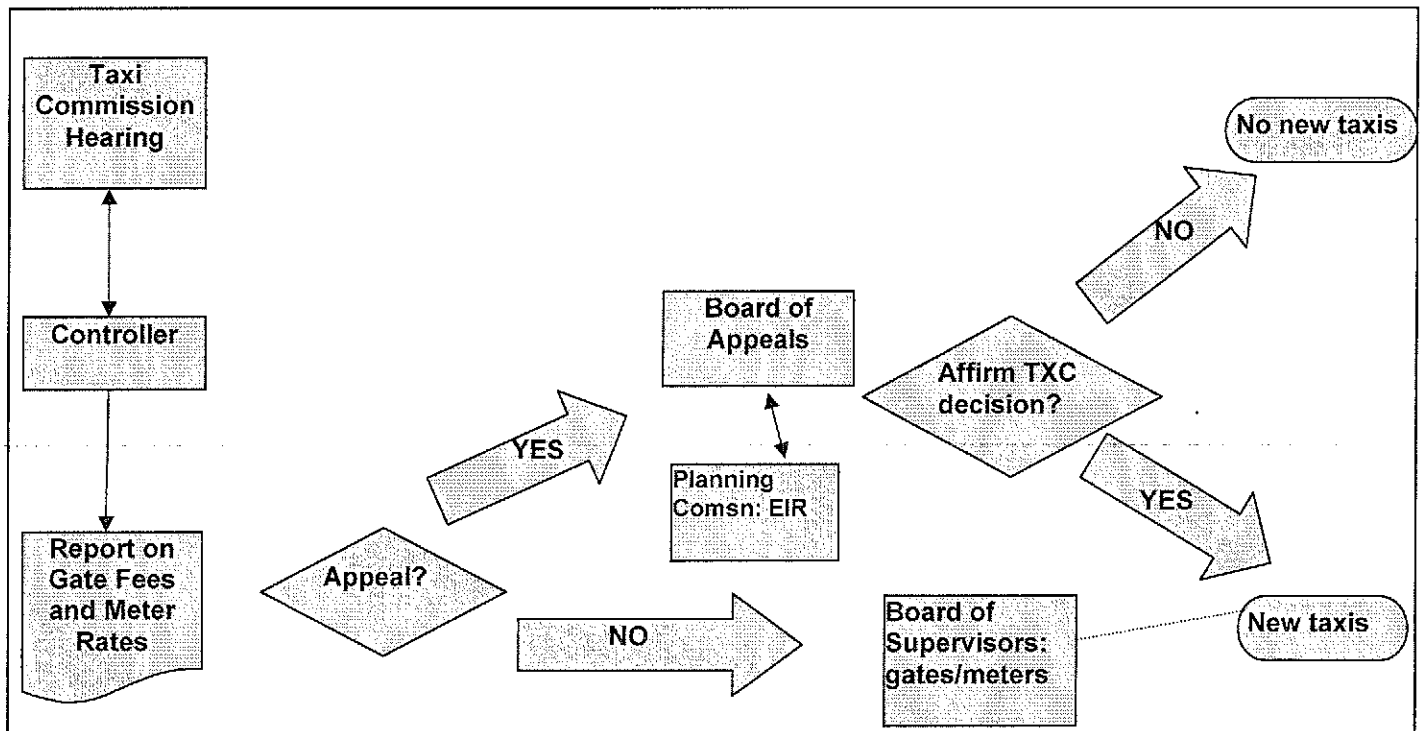


Figure 5: Current Public Convenience & Necessity Process

Current Permit Enforcement and Appeals

Both TXC’s *Rules & Regulations* and Article 16 regulate permittees. If there has been a rule violation or a complaint with sufficient evidentiary support, the TXC may conduct an investigation. TXC staff issues discipline or forwards administrative complaints to the TXC based on investigations. The Taxi Detail may assist with administrative investigations, or it may conduct criminal investigations. Criminal investigations may result in prosecution by the District Attorney’s Office.

The TXC, usually in conjunction with the Taxi Detail, may also issue a summary suspension of a permit for threats to public health and safety, pursuant to MPC § 1090(c). Typically, the two agencies have

partnered to issue these suspensions since the suspensions usually result from criminal activity of some type.

Once an investigation is conducted, the TxC may administer discipline. The levels of discipline range from a warning, a written admonishment, a fine, suspension, probation, and/or revocation. Permittees may receive several types of discipline for the same violation, e.g, a fine and a suspension.

Permittees who appeal certain types of administrative discipline are afforded a hearing. The hearing may occur before either a Hearing Officer hired through a work order with SFMTA, or at the TxC. If a hearing is held before a Hearing Officer, he or she issues a decision which is a recommendation to the TxC. Pursuant to MPC § 1188, the TxC may then "adopt, modify, or deny the decision." Following TxC action, the permittee has an opportunity for appeal to the Board of Appeals. Depending on the decision of the Board of Appeals, the permittee may then appeal to the Superior Court. (See Figure 6: Current Complaint Process.)

Table 2 illustrates the possible scenarios once TxC has initiated an investigation. These totals do not include staff resources at the Board of Appeals level. Board of Appeals hearings cost an average of \$5,000 per permit, per hearing, to produce. These are the **minimum** charges based on prior cases involving permittee discipline.

Scenario	Process	Typical Time to Resolution	Typical Cost
One	Investigation, Hearing Officer, Commission, no appeal	4 months	\$3626
Two	Investigation, Hearing Officer, Commission, Appeal, Board of Appeals, no request for rehearing, no appeal	6 months	\$4514-\$4814
Three	Investigation, Hearing Officer, Commission, Appeal, Board of Appeals, Rehearing requested, Rehearing denied, no appeal	7 months	\$4602-\$4902
Four	Investigation, Hearing Officer, Commission, Appeal, Board of Appeals, Rehearing requested, Rehearing granted, decision affirmed, no appeal	8 months	\$5452-\$6090
Five	Investigation, Hearing Officer, Commission, Appeal, Board of Appeals, Rehearing requested, Rehearing denied, appeal to Superior Court	3 years	\$14602-\$14902
Six	Investigation, Hearing Officer, Commission, Appeal, Board of Appeals, Rehearing, Rehearing granted, decision affirmed, appeal to Superior Court	3 years	\$15452-\$16090

Table 2: Regulatory Enforcement Scenarios

The SFMTA's Security & Enforcement Division also participates in enforcement since its Parking Control Officers enforce white zones and ticket for certain Traffic Code violations. There is currently no MOU between the TxC and the SFMTA Security & Enforcement Division.

Current Taxi Commission Complaint Process

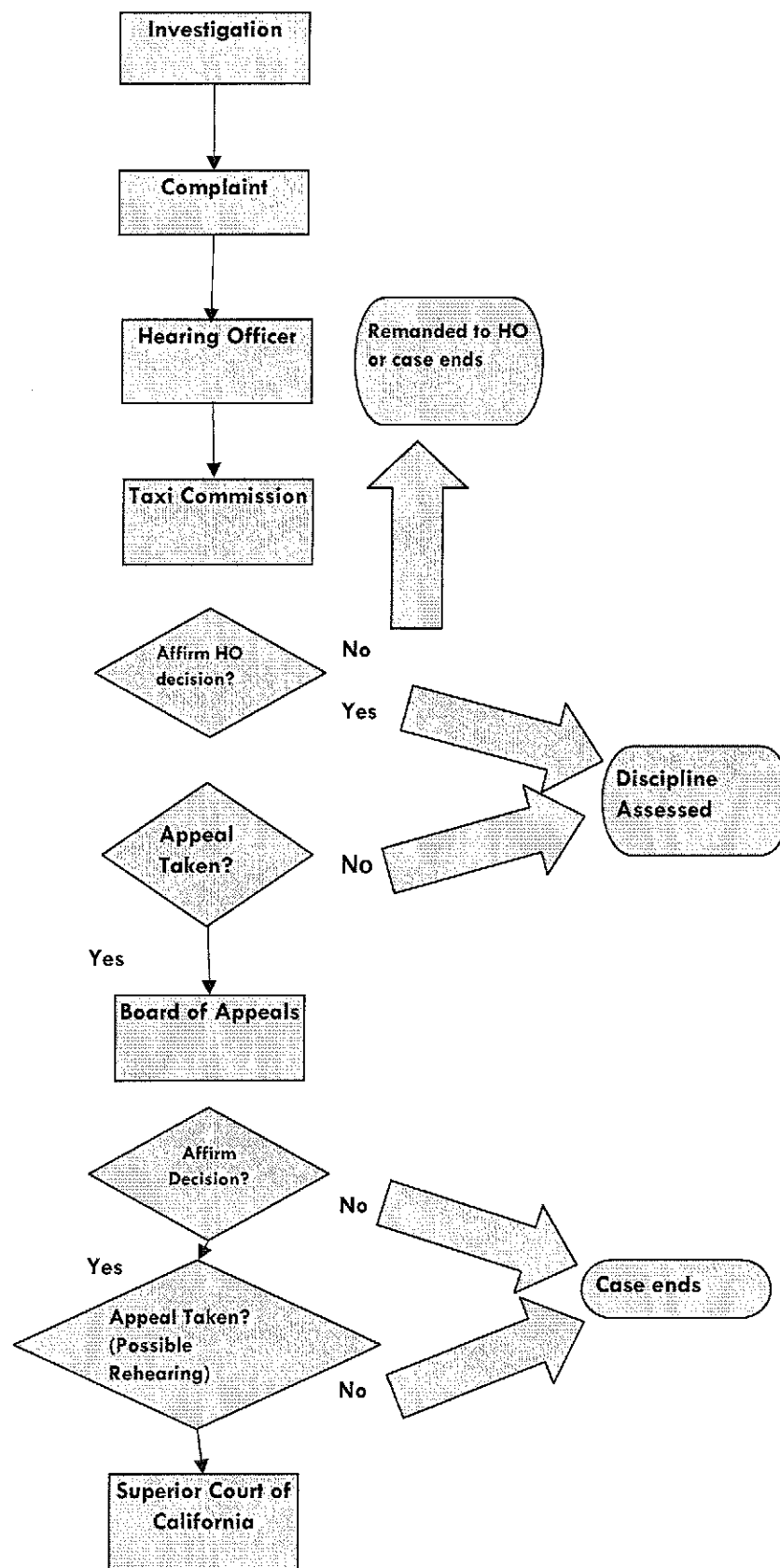


Figure 6: Current Complaint Process

Current Litigation

The taxi industry has brought multiple lawsuits against the City since the passage of Proposition K in 1978. Some of these have been heard at the California Court of Appeal. With each lawsuit, the Courts have denied the taxi industry's claims. As described above there are several levels of appeal for permit decisions: from Board of Appeals, to the Superior Court, and potentially to the Court of Appeal. Alternatively, individuals may file for relief in Superior Court or the Northern District of the federal court.

Board of Appeals: Currently the Board of Appeals is hearing several cases concerning permit revocations. One of these involved an attack on a TXC staff member and subsequent stalking of public officials; another involves a medallion permit holder with three prior DUI convictions, and another involved false imprisonment of a fare and repeated rule violations; and still others concern failure/refusal to complete permit renewal forms or severe failure to adhere to the *Rules & Regulations*.

Superior Court of California: Multiple appeals are currently pending. Most of these claims involve medallion holders whose permits were revoked for fraud or false statements. (Yuen v. Taxi Commission, Wong v. Taxi Commission.) One case concerns a medallion holder who claims a particular status, the so-called "key personnel exemption," which would reduce his driving requirement. (Breall v. Taxi Commission.)

UTW v. City and County of San Francisco: There is another case pending in which an organization, the United Taxicab Workers, has sued the City for failing to properly enforce the gate charges that were made to drivers over a period of some years and failed to ensure a program for health care for drivers.

Northern District of California: Slone et al v. Taxi Commission et al.: In 2003, an industry group brought Proposition N to the ballot, which would have provided that P-16 and P-68 (medallion) permit holders could keep their medallions for life, even after becoming disabled and unable to drive the requisite number of shifts. This Proposition failed by a wide margin of 72% to 28%, but the TXC established an ADA policy which responded to the need to allow for certain driving requirement modifications for medallion holders who become disabled or catastrophically ill. In 2007, industry groups, including individual permit holders, who are disabled, brought this lawsuit claiming that the TXC's ADA policy and the driving requirement, as applied to permit holders claiming disability, are invalid. The lawsuit is currently pending.

Current Activities

The TXC formed a Charter Reform Working Group, which is meeting through June 2008, to look at legislative and administrative recommendations to provide greater service to the public. The Commission is also, through a Rules Subcommittee, working on amendments to the *Taxicab/Ramped Taxi Rules & Regulations*.

Other current activities include:

- designing and implementing the Merger Plan
- continuing to develop neighborhood taxi stands
- improving taxicab service at major events and the ballparks
- improving ramped taxi service in partnership with the industry

- improving taxicab dispatch service
- establishing the Clean Taxi Program

Current Opportunities to Improve

Aside from the aforementioned lawsuits, there are several major policy discussions that are on-going. These policy discussions involve the public, the industry, the regulatory agency, other agencies, and other branches of government:

Enforcement/Regulation

- Enforcement of regulatory violations by permittees
- Enhancing inspection standards and procedures
- Lost and found items in taxicab vehicles
- Changes to Proposition K to allow transferability of medallions
- Eligibility for medallion applicants
- Award of medallions
- Adequate staffing levels at the TxC

Administration/Policy

- Appropriate number of taxicab vehicles
- Clean air taxicab vehicles
- Gate and meter charges
- Health care for taxi drivers
- Cost recovery for the taxi regulation program
- Adequate staffing levels at the TxC

In an effort to address some of these issues, the TxC has formed stakeholder groups to discuss and recommend policy to the full TxC and to the Board of Supervisors. In the past year alone, those groups have included a Clean Air Taxi Working Group, the Charter Reform Working Group, a Taxi Driver Health Care Working Group, and the Rules Subcommittee.

The SFMTA/TXC Merger Plan: Strategy, Implementation, and Operations

SCOPE

This Merger Plan encompasses:

- Agencies currently involved in taxi regulation (See Figures 7 and 8)
- A multi-year program
- Targeted strategies to achieve overall goals
- Organization and technical solutions
- Potential challenges and opportunities

BACKGROUND

The TXC was formed by charter amendment in November 1998. That amendment (Proposition D) contained language authorizing the Board of Supervisors to abolish the TXC and merge it with the SFMTA.

Discussions to merge the TXC with the SFMTA began in 2005. The merger will increase efficiency and maximize resources to improve the taxi industry and provide the public with better taxicab service.

The merger will result in cost savings to the City as existing programs are streamlined and the amount of entities responsible for taxicab regulation is consolidated.

The SFMTA is responsible for all modes of transportation within the City, including public transit, pedestrian planning, accessibility, and parking and traffic management. By bringing all surface transportation under one regulatory agency, there will be more strategic integration of policy.

In November 2007, Mayor Gavin Newsom and Supervisor Aaron Peskin announced plans to effectuate the merger. On the November 2007 ballot, voters approved Proposition A, which, among other provisions, offered more detail on a possible dissolution of the TXC and merging its powers with the SFMTA.

Figure 7: Current Agency Workflow

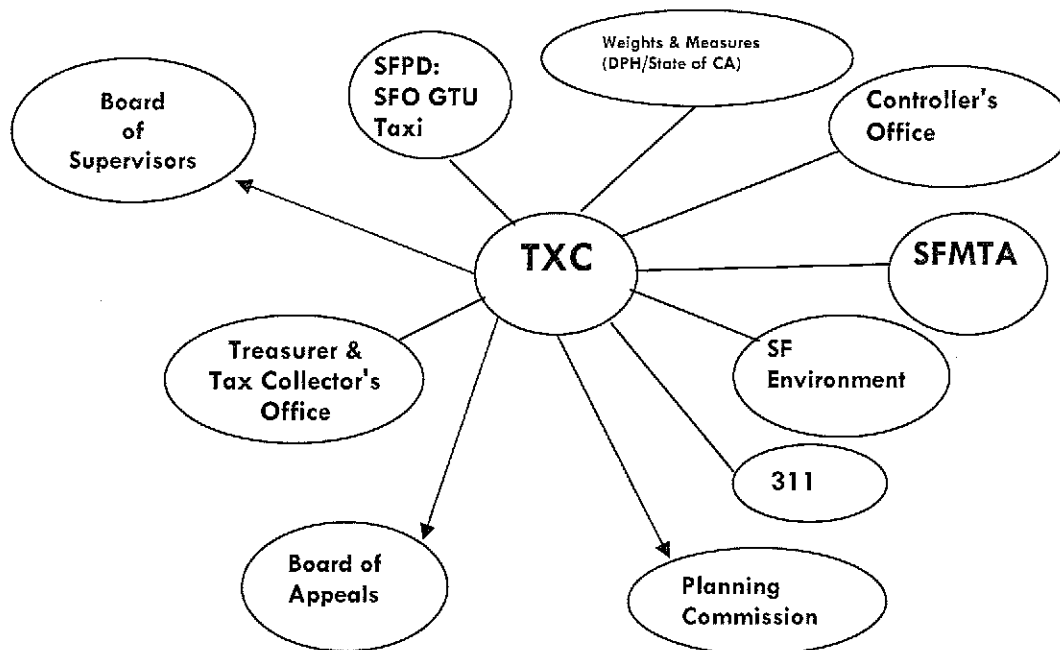
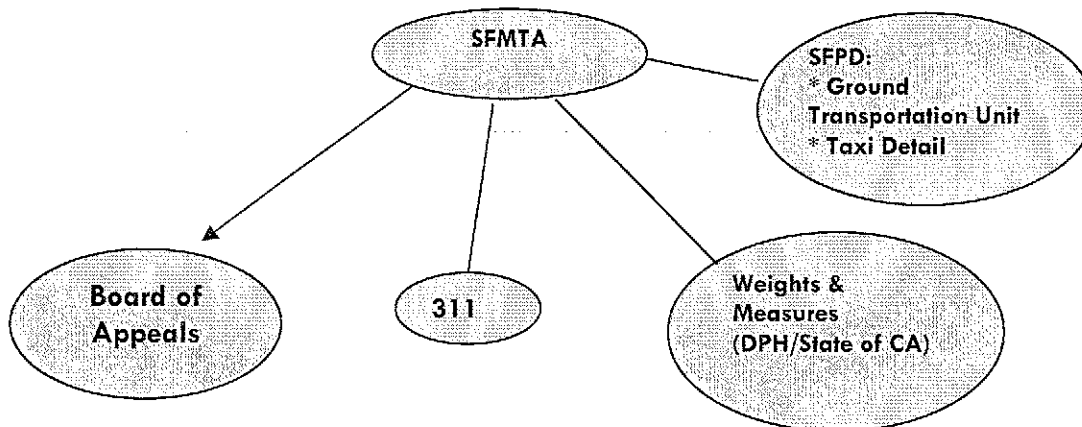


Figure 8: Post-Merger Agency Workflow



The Merger has two goals: to increase customer service and to increase administrative efficiency. The Merger has three partners: the regulatory agencies of the TxC and the SFMTA (the Agencies,) the Taxi Industry, and the Public. By increasing efficiency, the agency will provide greater service to the Industry and the Public.

The Merger Plan will result in the creation of a new section within the External Affairs Division, to be called Taxi Regulation (TR). TR will perform the duties of the former TxC and serve as the central point of accountability for taxi-related functions within the SFMTA. Other sections and divisions within SFMTA will assume duties formerly allocated to other agencies and departments. (See Figure 9, Detail Post-Merger Workflow.) Effective regulation will also result in financial savings by removing other City departments from the workflow.

Detail Post-Merger Workflow

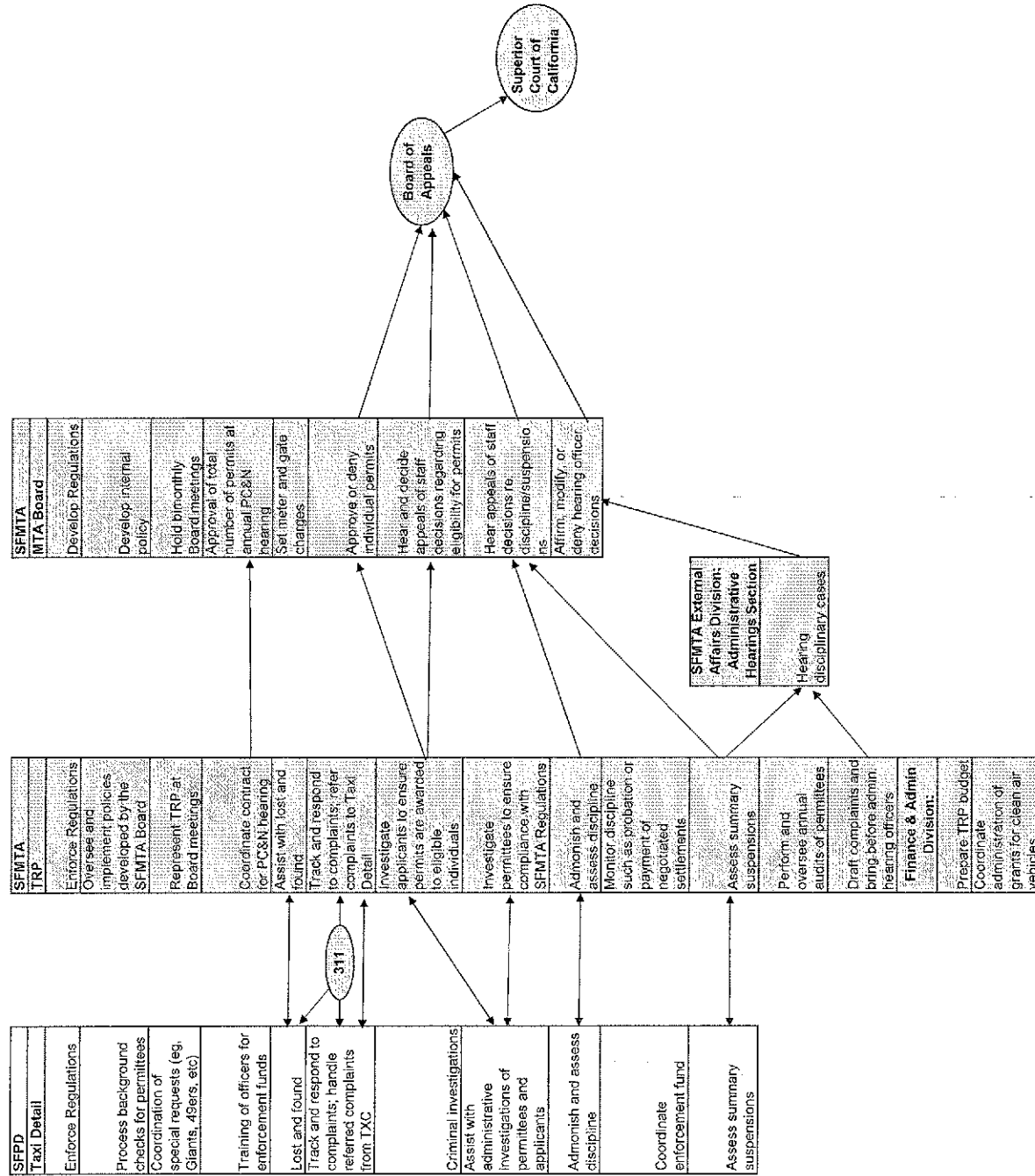


Figure 9: Detail Post-Merger Workflow

Detail Post-Merger Workflow

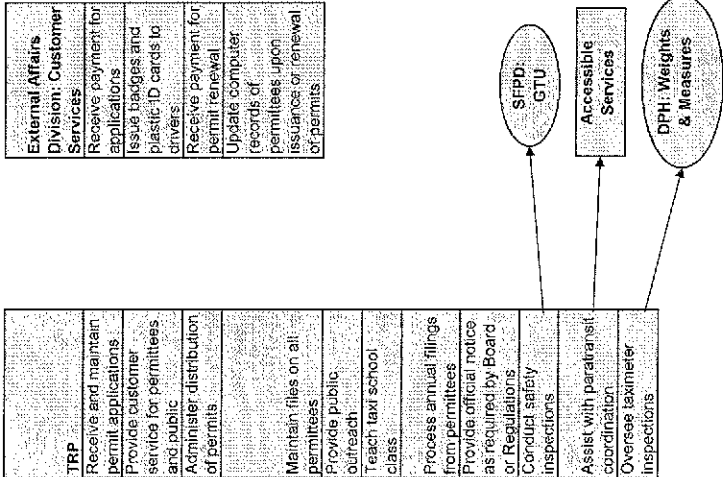


Figure 9: Detail Post-Merger Workflow

The Merger will take place by July 1, 2008. The legislative and administrative timelines are as follows:

Legislative

The legislative timeline is being developed and will depend on the date that the Board of Supervisors adopts the legislation that effectuates the merger. After the enabling legislation is adopted, another ordinance abolishing certain provisions in Article 16 of the Municipal Police Code and amending portions of the City's Business & Tax Code will be adopted by the Board of Supervisors. The SFMTA will adopt its regulations pertaining to taxicabs thereafter. The proposed TR budget has been included with the SFMTA budget in anticipation of the merger.

Administrative

Debra Johnson, Chief of Staff of the SFMTA, has convened an inter-departmental working group to oversee all aspects of the merger during Phase I (described in more detail below.)

Subcommittees of the working group include:

- Hearings and Discipline Subcommittee: to develop recommendations for updating current procedures and penalties.
- Customer Services Subcommittee: to develop a timeline for construction of a database for taxicab permits and procedures for receiving and processing permits.

TXC staff will continue to have primary administrative responsibility for the merger during Phase I and will provide status reports to the SFMTA Board and the working group.

There are three aspects to the Merger: Strategy, Implementation, and Operations.

Strategy

The SFMTA/TXC Merger is a strategy to:

- Enhance the City's surface transportation network
- Provide a single point of accountability for the public and the transportation industry within San Francisco
- Improve customer service for the taxi industry and the public
- Streamline and optimize taxi regulation

The strategies to implement the merger itself include:

- Careful policy planning by the Merger Committee
- Detailed analysis of and recommendations for administrative policy through Subcommittees of the larger Committee
- Developing a timeline for phased Implementation

Implementation

Implementation will occur as follows: Phase I will take place from March 17, 2008 to July 1, 2008. Phase II will occur in FY 2009. Phase III will occur in FY 2010.

Proposed Structure of TR

From FY 2009-FY 2011, TR will slowly take shape within SFMTA. TR will have two internal groups: Enforcement & Regulation and Administration & Policy. (See Figure 10, Organizational Chart for TR.)

TR will slowly add staff to bring itself to optimal staffing levels by the end of FY 2011. One of the major challenges that the Taxi Commission has faced since 1998 is inadequate staff levels to enforce the driving requirement required by Proposition K and to ensure that taxi companies and medallion holders are complying with the Rules and Regulations.

Phase I: March 17, 2008-July 1, 2008

During this phase, the TXC and the SFMTA will perform separate ongoing duties as currently established. In addition, the TXC will coordinate the overall Merger Plan, including functions such as:

- Providing the Merger Committee with status reports
- Coordinating the legislative timeline in consultation with the SFMTA and the City Attorney's Office
- Chairing the Subcommittees and presenting reports from each Subcommittee in April 2008
- Developing operational necessities such as the TR Database Project and the TR pages for the SFMTA's website
- Ensuring legislative and/or regulatory continuation of permits, discipline, and policies (policies include ADA, the taxi wrap fund, the Clean Taxi Program, policies around issuing medallions/A-cards/1095 process, badge policy, and more)
- Ensuring the Controller's merger of TXC accounts with SFMTA accounts
- Developing plans to ensure collection of permit fees due after July 1, 2008
- Providing training and resources for the SFMTA Board of Directors and staff to ensure a smooth transition

Phase II: FY 2009

As of July 1, 2008, TR will exist as a Section of the External Affairs Division of SFMTA. TR will develop its own strategic plan to shape programs to complete Goals and Objectives in furtherance of Goals 1 and 3 of SFMTA's Strategic Plan.

Taxi driver permit fees will most likely continue to be collected at the Treasurer/Tax Collector's office in FY 2009, while other permits will be collected at TR's office. Throughout FY 2009, in coordination with other sections within External Affairs, and with other division, TR will finalize the TR Database Project to receive taxi driver permit fees and centralize TR's own data in one system.

Taxicab Regulation (TR)

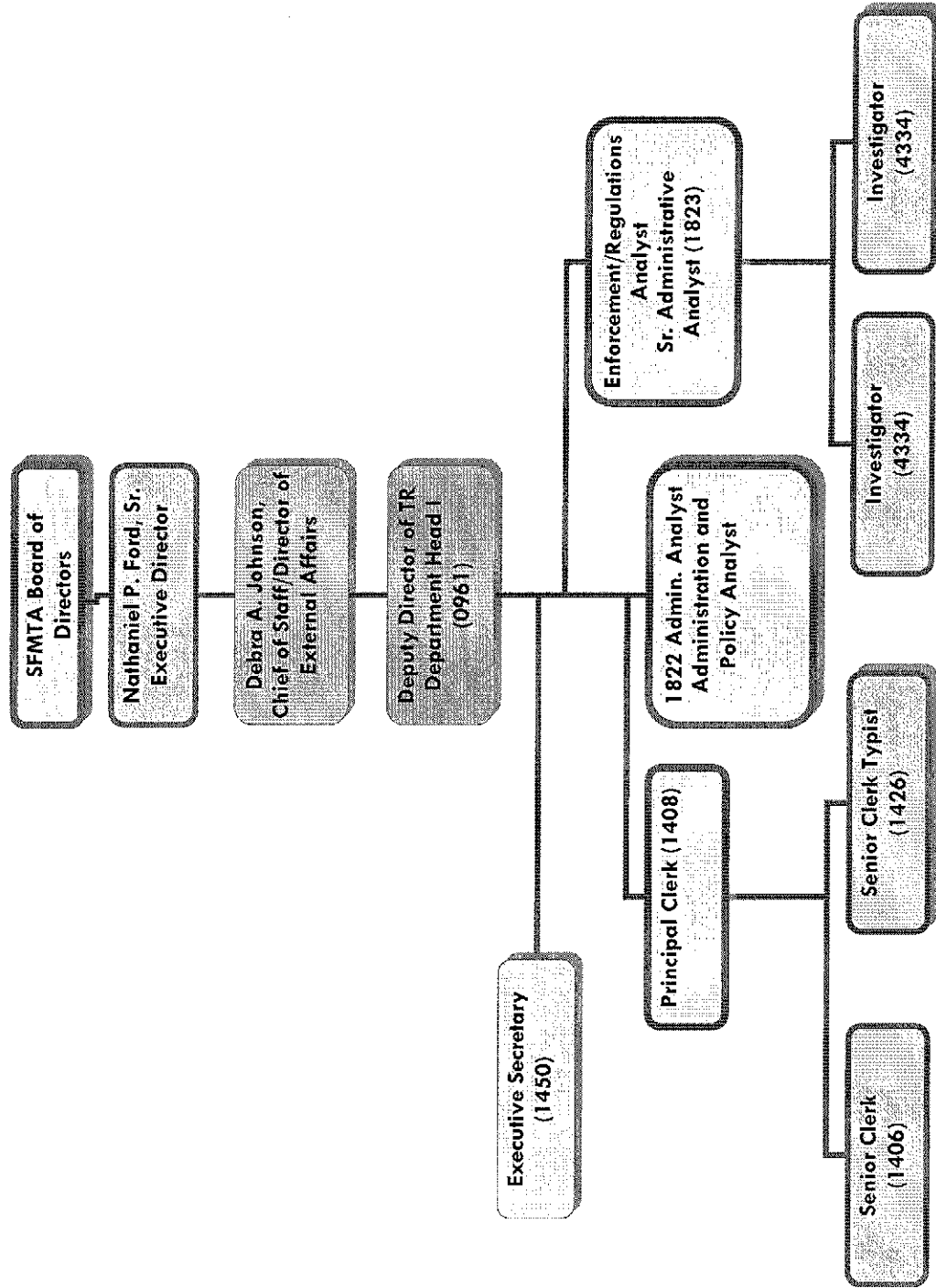


Figure 10: Organizational Chart for TR

Phase III: FY 2010

By December 31, 2009, TR will be settled into its new space at 1 S. Van Ness. Although staffing will not yet be at optimum levels, TR will continue to add staff in FY 2010. TR will not be at full staffing levels until the end of FY 2011.

TR may begin to collect taxi driver permit fees at its new space at 1 S. Van Ness, or there may be another collection site, but by FY 2010, SFMTA will discontinue the planned work order with the Treasurer/Tax Collector's Office.

TR will continue to follow developed strategy to achieve Goals and Objectives in furtherance of Goals 1 and 3 of SFMTA's Strategic Plan.

Operations

A detailed plan for implementation of TR functions will be developed during Phase I in consultation with each Division Director that is involved with TR issues.

Divisions within the SFMTA that will assimilate or be involved with taxi-related functions are as follows:

- **External Affairs**
 - Administration & Policy Initiatives
 - Strategic Communications
 - Administrative Hearings
 - Customer Services
 - Accessible Services
- **Security and Enforcement**
 - Security
 - Enforcement
- **Transportation Planning & Development**
 - Planning
 - Development
 - Regulatory Affairs
 - Transit Effectiveness
- **Technology Planning**
 - Technology Planning and Strategy
 - Services and Operations
- **Finance & Administration**
 - Contracts and Procurement
 - Grants
 - Revenue
 - Budget
- **Human Resources**

Regulations

In October 2006, the TXC formed a Rules Subcommittee to address necessary changes in the *Taxicab/Ramped Taxi Rules & Regulations*. The Subcommittee's recommendations began appearing

before the full Commission in February 2008 and will continue to appear at the Commission through June 2008 for rejection or adoption.

With the Merger, Article 16 of the Municipal Police Code and the *Rules & Regulations* will appear in one cohesive set of SFMTA-adopted Regulations.

Looking Towards the Future

The SFMTA has already completed its Strategic Planning Process which resulted in a Strategic Plan for 2008-2012. The Strategic Plan uses goals and objectives to determine how the overall vision of the SFMTA will be carried out.

SFMTA Vision

"Providing timely, convenient, safe, and environmentally friendly transportation alternatives...SFMTA enhances the quality of life of San Francisco."

As a section of External Affairs, TR will work towards Goals 1 and 3 of the Strategic Plan.

Goal 1 – Customer Focus:

To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

Goal 3 – External Affairs/Community Relations:

To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.

To accomplish these goals, TR will utilize the following tactics:

- Continue uninterrupted service to the public through Phases II-III of the Merger Plan
- Increase service to the public through Phases II-III of the Merger Plan
- Enhance standards for permittees and ensure all permittees are complying with the law
- Phase in the hiring of additional employees, in order to bring the staff up to optimum levels to enforce regulations, provide effective administration, and recommend appropriate policy for adoption by the SFMTA Board of Directors
- Enhance standards for the taxi driver training programs
- Develop a comprehensive plan for streamlining completion of all types of 311 Service Requests
- Additional tactics to be developed in consultation with Division Directors and the SFMTA Board of Directors

With the merger of the TXC to the SFMTA, improvements in the taxi industry are finally within reach. Accomplishing goals and objectives within the SFMTA's Strategic Plan will mean that the public and the industry will benefit. In addition, with greater administrative efficiency and more effective regulation resulting in a safer industry, TR can spend greater time on policy and strategy to help the industry and less time on enforcement.

More creative solutions will also be possible on all levels. Innovative policy solutions can be developed by staff and approved by the SFMTA Board of Directors. Additionally, long-awaited special projects such as a Technology Summit will be possible. Under the SFMTA, taxis will finally be a part of the City's surface transportation planning.

With effective regulation and better policy from the agency to help the industry serve the public more efficiently, each partner has an opportunity to succeed, for our shared future in the City.

Acknowledgments

This Plan is the result of collaboration between the **Office of Mayor Gavin Newsom**, the **SFMTA**, the **San Francisco Taxi Commission (TXC)**, the **San Francisco Police Department**, and the **Office of City Attorney Dennis Herrera**.

The Merger Committee was formed in September 2007 to begin reviewing some of the outstanding issues pertaining to a merger of the TXC with SFMTA. Representatives from the Taxi Commission and relevant divisions of the SFMTA were selected to ensure that administrative and policy solutions were incorporated. The City Attorney's Office participated to develop legislation. Mayor Gavin Newsom also sent a representative.

Merger Committee

Debra Johnson, Chief of Staff/Director, External Affairs, SFMTA
Sonali Bose, Director of Finance and Administration, SFMTA
Roberta Boomer, Board Secretary, SFMTA
Antonio Parra, Deputy Chief, SFPD, Director of Security & Enforcement, SFMTA
Bond Yee, Director, Parking & Traffic, SFMTA
Julia Friedlander, Deputy City Attorney, General Counsel, SFMTA
Christiane Hayashi, Deputy City Attorney
Thomas Owen, Deputy City Attorney
Heidi Machen, former Executive Director, SF Taxi Commission
Jordanna Thigpen, Acting Executive Director, SF Taxi Commission
Greg Wagner, Mayor's Office of Budget & Policy

Merger Planning Participants

Merger Plan Preparation and Coordination: Jordanna Thigpen

Customer Services Subcommittee:

Jordanna Thigpen, Acting Executive Director, SF Taxi Commission
Joy Houlihan, Deputy Director, Customer Services, SFMTA
Victoria Einhaus, Manager, Customer Service, SFMTA
Julie Rosenberg, Deputy Director, Administrative Hearings, SFMTA

Hearings and Disciplinary Process Subcommittee:

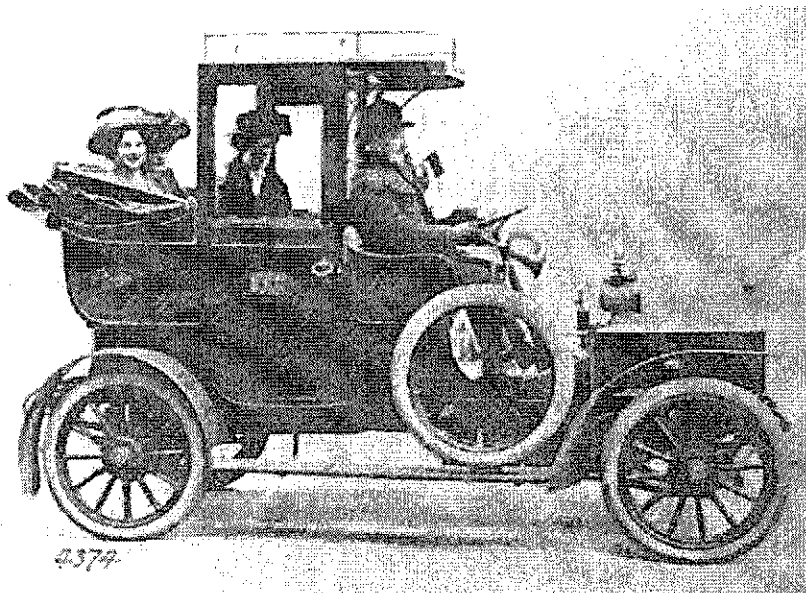
Jordanna Thigpen, Acting Executive Director, SF Taxi Commission
Julie Rosenberg, Deputy Director, Administrative Hearings, SFMTA
Henry Epstein, Hearing Officer, SFMTA

Security and Enforcement issues are addressed through collaboration between Deputy Chief Parra, the TXC, and the SFPD Taxi Detail.

With gratitude to everyone who has participated so far.

Overview of the San Francisco Taxi Industry and Proposition K

A Short Report Prepared for the Charter Reform Working Group
A Policy Body of the San Francisco Taxi Commission



Overview of the San Francisco Taxi Industry and Proposition K

San Francisco's taxi industry has a long and colorful history. This report will attempt to provide an objective history as well as an explanation of the current state of affairs for members of the Charter Reform Working Group. Terms will be highlighted throughout and defined in a separate glossary for those unfamiliar with the vernacular of the industry.

The **Charter Reform Working Group** is a Policy Body of the San Francisco Taxi Commission formed to evaluate possible amendments to the San Francisco Charter which would improve taxi service and the taxi industry for the public benefit. There are 12 voting members and 5 non-voting members representing various sectors of San Francisco as described below. The Group is subject to the Sunshine Ordinance, which will be covered during the first meeting.

Voting Members:

Chair, Taxi Commissioner Malcolm Heinicke
Commissioner Bruce Oka
Adam Millard Ball, Member of the Public
Laurie Graham, Yellow Cab Medallion Holder
Richard Hybels, Owner of Metro Cab
Hansu Kim, Taxi Industry Consultant
John Lazar, Owner of Luxor Cab
Tone Lee, Taxi Driver
Autumn O'Keefe, Member of the Public
Charles Rathbone, Medallion Holders Association
Rich Schlackman, Member of the Public
Thomas George Williams, President of United Taxicab Workers

Non-Voting Members

Taxi Commission President Paul Gillespie
Michelle Allersma and Rick Wilson, Controller's Office
Deputy City Attorney Tom Owen
Greg Wagner, Mayor's Office of Budget & Policy
A representative from the Board of Supervisors, TBD

Staff

Executive Director Heidi Machen
Deputy Director Jordanna Thigpen

Report Prepared by: Heidi Machen and Jordanna Thigpen

Origins of the Taxicab Industry

Mass production and more democratic pricing of automobiles helped the taxi industry evolve in the United States after 1905. During the Great Depression, unemployment and automobile dealers' desperation led to the rental of unsold vehicles from dealerships for operation as taxicabs. Problems such as overpricing, lack of insurance, violence, and crime led to crisis regulation. Further reactive regulation followed in the wake of World War II as returning servicemen who were ineligible for regular employment entered the taxicab industry.

As other "utilities" and transportation-related industries such as airlines and trucking were deregulated in the 1970s, some cities and the state of Arizona deregulated the taxicab industries. A comparison of different systems of regulation in various jurisdictions can be made in a further report at the will of this Committee.

San Francisco

Along with every other industry, the San Francisco taxi industry suffered labor turmoil for the first half of the 20th century, but the taxi industry was particularly affected by strikes along the waterfront and by other industries. Charles Rathbone, a San Francisco medallion holder and Working Group member has prepared an excellent history of San Francisco waterfront labor strife and its effect on taxis: it is available at <http://www.taxi-library.org/history.htm>. The first taxi regulation apparently occurred in 1932.

According to Mr. Rathbone, "permits became an issue as early as 1950." It was during this year that the existing taxi drivers' union fined three members for leasing their permits to other drivers, a practice which continues today.

Luxor Cab, Yellow Cab (previously under a different name), Veterans (now National) Cab, and DeSoto Cab all existed prior to 1978. All companies held some corporate **permits**, while the majority were held by individuals. Permits were issued by the City for a nominal fee, and could be sold or transferred with essentially no regulation. There were still limits on the amount of permits that were issued by the Police Department, and there was a public hearing process (today known as the "Public Convenience and Necessity" hearing) to determine the appropriate number of taxis needed to serve the public.

Prior to the 1978 passage of Proposition K, the industry employed a split meter system that shared profits between the taxi driver and taxi company rather than today's lease-based system.

The Tumultuous 1970s

In 1976, Westgate-California corporation went bankrupt. Its owner, C. Arnholt Smith, created one of the largest financial disasters in U.S. history by embezzling and commingling funds among his vast empire of holdings ranging from real estate to the San Diego Padres to Yellow Cab Companies in San Francisco, Los Angeles, San Diego, and other cities.¹ As the San Francisco Yellow Cab was a subsidiary of Westgate-California, the valuable Yellow Cab permits ended up as assets of the bankruptcy trustee.

Westgate-California had siphoned funds from the subsidiaries, including Yellow Cab, to satisfy obligations of larger holdings. At the time, Yellow Cab offered drivers a benefits package, but as a result of the bankruptcy, money was not available to pay drivers. In April 1976, the drivers' union obtained an attachment of the company's assets in bankruptcy court and shut the company down for eleven days.

After the bankruptcy was concluded, Yellow Cab looked for subscribers for its corporate permits. Eventually all of the permits were taken except for 25. While at first a liability, these permits eventually became assets. However they were eventually removed from Yellow's possession due to the corporate transfer rule codified at MPC § 1093, which mandates that the permits revert to the City to be reissued to natural persons if 10% or more of a corporate owner's stock is transferred.

According to California State Senator Quentin Kopp (Ret.), permit holders fetched estimated sales prices of between \$40,000 and \$50,000 between 1976 and 1977.² Responding to what he determined were inequitable problems with the existing system, and the chaos surrounding 500 of the city's taxicab permits, then-Supervisor Kopp introduced an ordinance barring transfer of the permits and providing that only individuals that should receive taxicab permits. This ordinance passed 8-3, but Mayor Moscone vetoed it. Supervisor Kopp introduced another, more refined version, which also passed, but Mayor Moscone vetoed it again. Supervisor Kopp and a coalition of other supervisors then put the proposal on the ballot as an initiative, which passed as the infamous Proposition K in 1977, taking effect in 1978 as the ruling law of the land for taxi permits in San Francisco. A competing measure, Proposition J, would have limited the sale prices of **medallions**³ to \$7500 unless the seller had paid more originally. It also

¹ In 1984, Mr. Smith served only nine months of a three year sentence for his crimes because he allegedly had only five years left to live. He died in 1996 at the age of 97.

² http://utw.us/archive/old/fall98_files/fall98.html

³ A medallion is literally the piece of tin with a number on it that is placed inside a vehicle, is a physical manifestation of the "permit to operate," and authorizes that vehicle to operate as a taxicab. The number on the piece of tin corresponds to the unique identifying number painted on the taxicab (unless the original taxi

would have required that new permits be issued only to working taxi drivers. However, Proposition J failed.

What is Proposition K?

Proposition K:

- Requires that after June 6, 1978, taxicab permits issue only to natural individuals and in one name only
- Imposes a driving requirement for these individuals to ensure only working taxicab drivers hold permits
- Bars sale or transfer (**transferability**) of taxicab permits

Proposition K is currently codified in both Article 16 of the Municipal Police Code and Appendix 2 of the San Francisco Charter. It was adopted on June 6, 1978. It was originally known as Appendix F before the 1995 reorganization of the Charter.

Proposition K provides for the regulation of taxicabs and other motor vehicles for hire. At the time that Proposition K passed in 1978, there were 711 taxicab permits, of which 579 were held in joint tenancy or as sole proprietorships. The remaining 132 were held by corporate permittees.

Proposition K sets San Francisco apart from other jurisdictions' regulatory schemes, because it theoretically requires that permits be held by actual working taxicab drivers, not by corporations or by random individuals who can afford a permit, as is the case in other jurisdictions. Proposition K also required that permits may only be issued to individuals. MPC § 1082(b).

Proposition K imposes a **full-time taxi driving requirement, defined as 800 hours or 156 four-hour shifts** for permit-holders. To prove he has been driving, the driver must submit waybills filled out in accordance with MPC § 1138 after each shift, and must pass an annual audit of those waybills that is conducted by the Taxi Commission. Those drivers who fail to drive, fail to submit waybills meeting the standards outlined in MPC § 1138, or fail the audit are subject to discipline and possible suspension and/or revocation of their permits.

Pre-K medallions are held by individuals who received permits prior to June 6, 1978. In the spring of 1978, immediately prior to K's passage, permittees were offered an opportunity to add their names to family permits. Individuals may own more than one pre-K medallion, as well; some own as many as 10 medallions.

is out of service and an authorized "spare" taxicab is being used). "Medallion" is used interchangeably with "taxi permit."

No permit – whether it is pre-K, post-K, or corporate – may be sold or transferred under Proposition K.

Proposition K is the single most important piece of legislation that defines the taxicab industry, and it forms the basis for the Charter Reform Working Group.

The San Francisco Taxicab Industry Today

San Francisco's taxi industry is currently overseen and regulated by the San Francisco **Taxi Commission, created in 1998 by a voter-approved Charter amendment, otherwise known as Proposition D.** The Commission is composed of seven Mayoral-appointed Commissioners representing the following constituencies: taxi drivers; labor; hospitality; disability community; medallion holders or taxi companies; neighborhoods; and the general public. They assumed duties previously held by the Police Commission and meet twice a month to vote on permit issues and taxi policy. The Commission's full-time staff consists of an Executive Director, a Deputy Director, an Investigator, a Commission Secretary, and two clerks.

Street enforcement of taxis is handled by Taxi Detail, a boutique division of the San Francisco Police Department that performed this function under the Police Commission.

Snapshot of the taxi industry:

Total fleet size: as of November, 2007, there are 1,431 authorized permits to operate a taxi, broken down thus:

Pre-K corporate permits: 96

Pre-K individual permits: 323

Post-K permits (all are individual): 1012*

(* note that 25 of the post-K medallions are restricted to be operated in either alternative fuel or hybrid vehicles)

Regular taxis: 1331

Ramped taxis (wheelchair accessible): 100

A-card holders: 7000

Taxi companies: 34

Dispatch companies: 10

Authority to drive a taxi derives from receipt of an "**A-card**" or driver's permit issued by the City after the driver undergoes a background check and several days of training and testing. The City has issued approximately 7000 A-cards,

though not all A-card holders are active drivers. The Treasurer & Tax Collector's Office processes annual renewals of the A-card.

All medallions must affiliate with a particular **taxicab company** or **color scheme**. A color scheme is a design, paint color, or set of markings which distinguishes one company from the next. No company may have confusingly similar markings, and the colors must contrast in some fashion. Holders of color scheme permits are sometimes also known as **color scheme holders**. There are currently 34 color schemes ranging in size from 1 (multiple individuals) to 475 (Yellow Cab.) Color scheme holders are subject to a set of rules and regulations and are audited on an annual basis to ensure compliance.

All medallion holders, and all color schemes, must affiliate with a particular **dispatch** service, all of which are affiliated with taxi companies though it is not a requirement. Dispatch is required to serve twenty-four hours per day.

Medallion holders may lease their permits either to a color scheme, who may then lease it to a driver, or directly to a driver. There may only be three layers to the lease (ie, City to medallion holder to driver or City to medallion holder to color scheme holder.) Over the years, many elaborate financial gymnastics have occurred around the issue of permit leases. Monthly fees paid to medallion holders by the color scheme for affiliating with that particular color scheme range from \$1,800 to upwards of \$4,000 and may include a signing bonus. The many different types of leases and some of the problems with permit leasing, brokers, and illegality will be covered in a subsequent report and meeting. In June 2007, the Taxi Commission revoked the permit of a taxicab company known as Union Cab, in part because of abuse of permit leasing.

Drivers may lease the taxicab vehicle directly from the medallion holder or from the color scheme. These drivers are known as **leaseholders** or **long-term lease holders**. There are also "**gates and gas drivers**." These drivers pay a daily fee to the color scheme in exchange for a per-shift use of the vehicle. Gate fees are not supposed to exceed a daily average of \$91.50 per shift. Companies charge lower amounts on slower shifts (such as Sunday) and the highest amounts on busy shifts such as Friday and Saturday evenings. Once the driver pays the lease fee or daily gate fee to the company, he is free to operate throughout the City and at SFO, and any money he collects for the evening is his to keep. He must also pay for gas for the vehicle throughout the shift. Shifts of more than ten hours are prohibited by the California Vehicle Code and Taxi Commission rules. A driver typically transports between 20 to 30 **fares** over the course of a ten hour shift.

Drivers are considered independent contractors and not employees of the taxi companies under most legal analysis; though case law deems gas and gates drivers to be employees for the purpose of workers compensation coverage. Taxi

Commission Rules and MPC § 1147.4 also provide that color schemes must provide worker's compensation for all drivers.

As independent contractors, drivers are free to operate where they prefer in the City. Some drivers are "**radio players**," meaning they prefer to answer dispatch calls. Some drivers service very few radio calls and focus exclusively on hotel stands, street hails, and airport runs.

City agencies that regulate the industry:

The Board of Supervisors sets fares and the amount of gate that a taxi company may charge and passes varying pieces of legislation that affect the industry.

The Taxi Commission, with the aid of Taxi Detail of the SFPD, oversees and regulates the industry, enforces Proposition K and the *Taxicab/Ramped Taxi Rules & Regulations*.

The Commission, seven mayoral appointed members, sets policy such as deciding when more medallions should issue and makes individual disciplinary decisions.

Permit decisions may be appealed to the Board of Appeals, a separate City department.

The Airport Commission sets rules for taxis at the airport.

The Department of Weights & Measures checks and inspects the taximeters in each taxicab. The Ground Transportation Unit of the SFPD inspects taxicab vehicles on a regular basis.

The California State Public Utilities Commission (not to be confused with our local Public Utilities Commission) oversees limousine regulation.

A History of Attempts at Change, Reform or Regulatory Clarification

After the passage of Proposition K, Yellow Cab and other companies filed an unsuccessful suit in San Francisco Superior Court [*O'Connor v. Superior Court* (1979) 90 Cal.App.3d 107] on the theory that Proposition K constituted an unlawful taking of private property. A series of appeals ultimately culminated in the denial of a writ of certiorari at the U.S. Supreme Court.

Proposition M: Then-Mayor Feinstein placed Proposition M on the November 1979 ballot, which would have restored transferability. Proposition M ultimately failed.

Proposition P in 1981 was another failed attempt at repeal of K.

Proposition P of 1988 would have repealed Proposition K and given the Board of Supervisors complete authority to regulate taxicabs and other motor vehicles for hire.

Proposition Y, sponsored by Mayor Jordan on the November 1993 ballot, would have (1) increased the number of permits from 811 to 1200 by 1998; (2) created three new types of permits, two of which would have been issued only to taxi companies; (3) changed procedures for issuing permits after 1999, and (4) allowed persons driving pursuant to agreement with a permit holder to choose whether to work as employees or independent contractors. It joined the growing list of failed measures.

Proposition I, another unsuccessful measure, which the Board of Supervisors placed on the 1995 ballot, would have regulated lease fees and gate fees, and it would have required the City to establish and operate a centralized dispatch system.

Proposition J appeared on the 1996 ballot. It would have allowed for transferability after 10 years of permit ownership, but only to other working taxi drivers. It would also have provided that the City receive a transfer tax on the sale of permits. Additionally, it would have provided that taxi companies provide the opportunity to purchase group health and disability insurance. Proposition J failed. In a newspaper article from that time, then-Mayor Willie Brown opposed Proposition J and promised to increase the number of permits to 1,500 to increase taxi service (there were 856 permits at that time.)

Proposition D unanimously placed by the Board of Supervisors on the 1998 ballot, successfully created the Taxi Commission. A year later, the Muni Reform Measure of 1999 provided for merger of the Municipal Railway with Department of Parking and Traffic, calling the new department the Municipal Transportation Agency. This measure also provided the Board of Supervisors with authority to later abolish the Taxi Commission by ordinance and merge it with the Municipal Transportation Agency.

Proposition M, another unsuccessful measure, was placed on the November ballot in 2000 by seven San Francisco Supervisors. It would have allowed special permits to issue in two or more persons' names for (1) ramped taxis; (2) "transportation emergencies;" (3) peak time taxis; (4) taxis operated only in certain areas (such as neighborhood-only, airport-only, city-only etc.) and

(5) fleet taxis. It failed 62% to 38%. It was widely opposed by nearly every group with endorsement capacity.

Proposition N, a 2003 initiative measure rejected by the voters by an overwhelming majority of 72% to 28%, would have waived the driving requirement for disabled permit holders. Proposition N stated, in its entirety: Any taxicab permit holder who is unable to comply with a driving requirement due to disability shall not be subject to permit revocation or suspension for failure to comply with the driving requirement.

Proposition A, which is assumed to have passed in November 2007, greatly expands the role of the MTA in making "taxi-related regulations" in the event that Taxi Commission is merged by ordinance with the Municipal Transportation Agency. Some have interpreted this to mean that it provides MTA with full power to abolish Proposition K. Taxi Commission has been working with MTA and the City Attorney's Office in drafting legislation to merge the two departments with a goal of merger happening by July 1, 2008.

Regulation 1978-1998

The Taxi Detail performed all of the administration and enforcement of Proposition K from 1978-1998. This included periodic audits of medallion holders' waybills to determine if they were fulfilling their full-time driving requirements. Many permits were **revoked or suspended** over the years due to lack of compliance with this or other requirements. **Taxi Detail also issued admonishments.**

The Taxi Detail also performed response time surveys of taxicab availability, particularly in the late 1990s as the demand for taxis reached an all-time high in the City. The Detail reported to the Police Commission during the annual **Public Convenience & Necessity Hearing**, the annual hearing to determine the appropriate number of permits needed to serve the City's need.

The Taxi Detail also focused on complaints from the public, mainly overcharging, unacceptable behavior ranging from rudeness to assault, and theft of lost items. Policy issues for the industry, such as the passage of the *Taxicab/Ramped Taxi Rules & Regulations*, were left to the Police Commission to decide with recommendations from Taxi Detail.

Regulation 1998-Present

In 1997, in response to public demand for more and better taxi service, then-Mayor Willie Brown convened the Taxi Task Force. This Task Force was co-

chaired by Mayor Brown and then-Supervisor Gavin Newsom, and staffed by current Taxi Commission Executive Director Heidi Machen. A diverse group of 27 members represented different industries and segments of the City.

Several recommendations came out of the Taxi Task Force, one of which was to create a separate department to oversee and regulate the industry and incorporate Taxi Detail into the new department's budget. In 1998, after Proposition D passed, the Taxi Commission was created.

The Taxi Commission did not receive its first staff member, the Executive Director, until 2001. Since that time, the Taxi Commission has experienced a remarkably high turnover and has gradually added support staff to the original staff. There are currently six individuals on staff, and the Commission has budgeted to add another Investigator to supplement the work of the current Investigator, Taxi Detail, and the Deputy Director in investigating and enforcing violations.

Recent Reports & Analysis

A large library of taxi-related information is available online at <http://www.taxi-library.org/index.htm>. Several reports are available on the Taxi, Limousine & Paratransit Association's website at <http://www.tlpa.org/reports/index.cfm>. Additional reports are available at <http://www.sfgov.org/taxicommission>. Copies may be distributed upon need or request.

Some Notable San Francisco Reports

- The Taxi Task Force issued a Final Report in April 1998. This report included a wide variety of recommendations developed over meetings from August 1997 – April 1998.
- In November 2001, the San Francisco Planning & Urban Research Association, in partnership with Nelson/Nygaard Consulting Associates, issued *Making Taxi Service Work in San Francisco*, a report addressing a package of reforms to improve taxi service in San Francisco
- In May 2006, the Goldman School of Public Policy at UC Berkeley issued a report on the industry entitled *The San Francisco Taxicab Industry: An Equity Analysis*
- In August 2006, the San Francisco Controller's Office issued *Taxicab Industry Report: An Update on Rates of Fare, Gate Fees, and the Industry*
- In January 2007, the Taxi Commission issued a Driver's Healthcare Report after the Board of Supervisors directed the Commission to

convene a Driver's Healthcare Working Group. This report contains information gleaned from a large driver survey.

Glossary of Terms

A-card: a public passenger vehicle driver's permit issued by the San Francisco Tax Collector's Office to qualified individuals

Admonishment: a form of administrative discipline for medallion holders and drivers which involves a written notice of violation. May also include an administrative fine. A sufficient number and/or severity of admonishments may result in further discipline such as suspension and/or revocation.

Alternative fuel/hybrid medallions: medallions issued by the Taxi Commission in February 2007 which limit the vehicle that may be used for this medallion to alternative fuel (that typically means Compressed Natural Gas) or hybrid vehicles.

Cap: an upper limit set on the rates charged for leasing, e.g. gate cap or lease cap.

Centralized Dispatch: a single consolidated dispatch service receiving and assigning calls from passengers requesting taxicab service that would allocate calls based on the taxicab closest to each customer.

Charter Reform Working Group: a Policy Body of the San Francisco Taxi Commission formed to evaluate possible amendments to the San Francisco Charter which would improve taxi service and the taxi industry for the public benefit.

Color scheme/color scheme holder: the color that a taxi company paints its vehicles to distinguish it from competitors; also refers to the company itself.

Contract service: an agreement between a color scheme holder and a private or public entity for regular taxicab service.

Corporate permit: a medallion held by a corporation. Under Proposition K, they are supposed to revert to the City when 10% or more of the corporate stock is transferred

Deadheading: when a driver travels a great distance without a passenger or dispatch call to pick up a passenger, usually at the Airport.

Dispatch: a system for receiving and assigning calls from passengers requesting taxicab service that allocates calls either by calling it over a radio or entering it into a computer system.

Fare: the amount that a cab driver receives from paying passengers for the rendering of taxi service; also refers to the passenger.

Flag: to hail a taxi from the street. May also refer to a customer who hails a taxi from the street.

Flag Drop: the initial charge on the meter when a customer enters a taxicab; currently, this fee is \$3.10.

Full-time driving requirement: the requirement that post-K medallion holders (P-16 permittees) drive either 800 hours or 156 four-hour shifts in order to maintain the permit.

Gas and Gates Driver: a driver who pays daily gate fees and gas for his vehicle on a per-shift rather than a monthly or other basis.

Gate: the daily fee which taxi drivers pay to a color scheme for the use of taxi vehicles.

Global Positioning Satellite (GPS): a computerized tracking system which uses a satellite to locate geographic points; it is used in the taxicab industry to locate vehicles which are linked to this device.

Graft: the illegal exchange of money to gain an unfair advantage.

Hail: to attempt to obtain a taxi from the street by raising one's arm or otherwise gaining the attention of the driver.

Independent Contractor: the employment status under which most cab drivers are classified. As independent contractors, drivers must still be covered by worker's compensation.

Lease: A contract for use of a taxicab vehicle. Types of leases are regulated by Taxi Commission rules and the Municipal Police Code.

Leaseholders or long-term leaseholders: Drivers or medallion holders who have entered into contracts for the lease of a medallion number taxicab vehicle. Types of leases are regulated by Taxi Commission rules and the Municipal Police Code.

Medallion: a unique number displayed on a piece of metal issued by the Taxi Commission which confers the right to operate a vehicle as a taxicab. The Taxi Commission authorizes the number of medallions. Medallions may also be referred to as 'permits, also known as a P-16 permit issued at the Treasurer's Office.

Meter rate: the maximum amount taxis are allowed by law to charge customers, set by the Board of Supervisors. Currently the rate is \$3.10 initially plus .45 per 1/5 of a mile and .45 per minute for waiting time.

Paratransit scrip program: a program funded by the San Francisco Municipal Transportation Agency which provides cash-equivalent coupons which can be used by the disabled (defined as someone who can't get to a fixed route stop without assistance) for payment of taxi fares.

Peak time medallions: a proposed type of medallion which could only be operated during busy times in the City, for example Friday and Saturday evenings.

Permit: various types of documents issued by the City and County of San Francisco which entitles the bearer to provide some service or operation. May also refer to a P-16 or medallion holder permit.

Permit holders: holders of a medallion (P-16) permit.

Pre-K medallion holders: those medallion holders who held their permit prior to the passage of Proposition K on June 6, 1978. The term includes corporate permit holders as well as individual permit holders.

Post-K medallion holders: those medallion holders who obtained a permit after the passage of Proposition K on June 6, 1978.

Proposition K: a successful 1978 San Francisco voter's initiative which reformed the taxi industry, specifically by imposing a driving requirement for post-K medallion holders, barring transferability, and mandating phased revocation of corporate permits after at least 10% transfer of company stock.
Public Convenience & Necessity (PC&N): public hearings held by the Taxi Commission to determine whether changes to the taxi industry serve the best interest of the public.

Radio players: drivers who answer dispatch calls only as a means of picking up customers.

Ramped taxi: a vehicle (usually a mini-van) with a lift for the conveyance of wheelchairs.

Ramped taxi permit: a medallion issued for exclusive use in a wheelchair-accessible vehicle.

Revocation: a form of discipline which results in a particular permittee losing the right to operate that permit. Revocation is imposed by the Taxi Commission and may be challenged at the Board of Appeals.

Spare cab: a vehicle to be used as a temporary replacement when a medallion-numbered vehicle is out of service.

Suspension: a form of discipline which halts operations of a particular taxicab driver, medallion holder, color scheme, or dispatch permit holder for a specified period of time. Suspension is imposed by the Taxi Commission and may be challenged at the Board of Appeals.

Taxi Commission: a seven-member mayoral appointed body with support staff which oversees, regulates, and sets policy for the San Francisco taxicab industry.

Taxi Detail: a unit of the San Francisco Police Department which assists the Taxi Commission in enforcement and regulation of for-hire vehicles in San Francisco.

Taxi stand: a curbside area designated for the exclusive use of taxis, at which taxis wait for passengers.

Taxi Task Force: an advisory body established by Mayor Brown in August 1997.

Transferability: the right to sell or otherwise transfer permits issued by the City and County of San Francisco.



George Agnost,
City Attorney

28 May 1986

John L. Taylor
Clerk, Board of Supervisors
235 City Hall
San Francisco, CA 94102

Re: Regulation of Taxicab "Gates"

Dear Mr. Taylor:

You have asked, on behalf of Supervisors Britt, Nelder and Kopp of the Public Protection Committee, and Supervisors Silver and Walker for an opinion whether the Board of Supervisors (Board) may adopt an ordinance regulating taxicab "gates". The issue was first raised by the Public Protection Committee during its hearings on a proposed increase in taxicab fares. See Board of Supervisors File No. 121-85-14.1. During those hearings this office orally advised that the Board could not adopt a rate ordinance under File No. 121-85-14.1 regulating both fares and gates. The issue was next raised during floor debate of the entire Board. Again, an oral opinion was presented stating the Board had neither the legislative authority under the "Ordinance Providing for the Regulation of Taxicabs and Other Motor Vehicles for Hire" (Appendix "F" of the Charter, adopted June 6, 1978), nor the requisite factual basis necessary to regulate gates. A proper amendment to the voter approved ordinance is required.

During both the final committee hearing and the first reading by the Board of File No. 121-85-14.1, a request was made for a written opinion. The context of the requests suggest that more was sought than a mere memorialization in writing of the previous oral advice. In response, this letter attempts to place the oral opinion in context with the larger subject of taxicab regulation. This letter, beyond reciting the previous oral advice, is intended only to provide information against which future consideration of regulation, if any, made be judged. No

attempt is made here to be exhaustive on the subject, or to suggest policy. Others may well (and perhaps rightly) present other information when taxicab regulation is next considered. Nonetheless, this letter may serve as a primer for future discussions as taxicab regulations cannot be understood isolated from its history and purpose.

The taxicab is the modern form of what has been called the exclusive-transportation industry. This industry has long been subject to some regulation. "[I]t has been customary in England from time immemorial, and in this country from its first colonization to regulate ferries, common carriers, hackmen . . .". Munn v. Illinois (1877) 94 U.S. 113. First in Paris soon after 1600, and shortly thereafter in London, the horse-drawn hackney appeared, usually standing outside inns waiting to be hired. Within that same century, market entry regulations appeared when Charles I (Charles Stuart of Great Britain) imposed a restriction on entry into the hackney-for-hire business because they interfered with his passage along the streets, as well as that of his Queen and the noblemen. By the early 19th century the first comprehensive regulatory scheme - the London Hackney Carriage Act of 1831 - was promulgated.

The modern development of the industry followed the development of the motor car. The term "taxicab" was coined for Americans by Harry W. Aiken in 1907 from the name of a distance-measuring device the French called a "taxi-metre". Prior to 1915 there were few laws in this country regulating taxicabs. Most statutes concerned bonds of indemnity for damages and the posting of rates. Until the 1920s the required bonds usually protected the municipality, not injured passengers.

About the time of World War I the automotive industry began to produce vehicles intended as taxicabs. As production increased there evolved the taxicab fleet, a phenomenon which has directly affected the economics and regulatory programs of the industry. The development of fleets mandated large investments in order to purchase taxicabs and operating facilities and, in manufacturing plants, to acquire tools and materials. Through these very large investments, providers of taxicab services were able to meet the rapidly-growing desire of an expanding population for mobility. Fleet size was enhanced through the merchandising of recognizable color schemes; dispatching facilities, including private cab stands; and the encouragement of street-hailing the easily recognizable fleet vehicles. Such activity soon required larger investments in vehicles, stands, telephone systems, garages, and administration. These, in turn, encouraged further expansion and additional investment. Built-for-the purpose taxicabs, having proved themselves durable

and efficient for city operation, continued to be used by the fleets, resulting in expansion of manufacturing facilities, which in turn drew more investment into that industry.

Until the late 1920s fleets prospered and filled the growing public demand. No reason was seen in many cities to limit the number of licenses or fix the minimum rates of fare. Indeed, little thought was given by some to mandatory insurance as some fleets were then so financially secure they could purchase their own insurance companies. What regulation did exist prior to 1929 were of three major types: (1) maximum fare regulations; (2) consumer protection regulations requiring posting of fares or use of meters, licensing of drivers, and insurance coverage; and (3) restrictions on jitney operation, including prohibitions against ride sharing, which were imposed around 1915 because ride sharing was understood, politically, as a threat to public transit.

The period of the "unregulated" taxicab industry (and many other "unregulated" industries) ended soon after October 24, 1929. The taxicab industry with its millions of dollars invested in facilities from coast to coast was directly affected by the Depression. As 15 million people became unemployed and bread marches and riots occurred, both investment capital for and customers of the taxicab industry disappeared. All transportation providers suffered financial difficulty, while their insurers filed for bankruptcy.

The economic dislocation of the Depression resulted in the first instance of free entry, i.e. competition with unlicensed and unregulated taxicabs. Anyone able to secure an automobile by loan or lease, by hook or by crook plied the streets looking for passengers. Used car dealers leased their unsold cars as taxicabs. Some drivers engaged in bloody fights over a passenger or a place on a taxicab stand. Inevitably there developed an open market for fares, and rate wars began. Rates once set between 40-70 cents fell to 5-10¢. Losses were covered by cheating, counterfeiting and extorting tips. Simpson, "The Taxicab Problem", Bull. No. 389, American Electric Railway Assn. 1932. Each new entrant into the business would charge whatever he could get. As fares were small the fleet companies were unable to compete. Tompkins, R.S. "The Taxicab Runs Amok", American Mercury; 26, August 1932. Compensation for injured passengers and pedestrians was rare.

The people, press, municipal governments, fleet companies, and the taxicab operators admitted a need for regulation. They recognized that without protection from irresponsible competition there would never be a reliable and responsible taxicab industry

or any public passenger transportation. As both the depressed economic condition and the public demand for regulation existed nationwide, municipal legislative action took place within the space of a few years with nationwide similarity. Although some commentators suggest this movement began in the late 1920s the trend was certainly accelerated by the Depression. See, e.g. Eckert, R.D. "The Los Angeles Taxi Monopoly: An Economic Inquiry," Southern California Law Review, 1970, p. 433; Kitch, E.W. et. al. "The Regulation of Taxicabs in Chicago," Journal of Law and Economics, Oct. 1971, pp 285-350.

Draftsmen of municipal regulation considered a century of English law and experience and compared it to a century of American mass transportation regulation. The concept of a regulated transportation public utility was clearly attractive. The public wanted regulation of the number and reliability of taxicabs. Public convenience and necessity became the criterion for the establishment of the number of taxicab licenses to be issued. Reliability became the criterion for the issuance of licenses to a specific operator.

Reliability meant not only that the permittee had the requisite equipment, management staff, and experience, but also that it had the necessary financial resources to pay claims for damages resulting from the operation and to pay employees a proper wage and replace wornout equipment. Reliability became the sine qua non of a proper transportation system. It was determined that reliability could only be achieved if the rates of fare were fixed at a level that would produce income necessary to provide these basics and, in addition, a reasonable rate of return on capital investment. Reliability ensured availability of service and was, therefore, an element and extension of the public convenience and necessity concept.

A contemporary account dealing with 1932 (Transit Journal 77, March 1933) describes how taxi regulations proliferated during this period:

Briefly the developments of the year may be summarized as follows: Codes, setting forth in detail the regulations for every phase of taxicab operations, were prepared and adopted in three cities with a population of more than 100,000 during 1932. Ten cities enacted laws placing taxis under the jurisdiction of a Public Service Commission or a Taxicab Board, eight required a showing of convenience and necessity before issuing licenses, four required permits or licenses and fourteen adopted measures intended specifically to limit the number of cabs in operation. To drive out the cut-rate cabs and to end rate wars, three

cities increased the minimum rate of charge, fifteen established a minimum rate, and two adopted a uniform rate. Seven cities specified a maximum fare, and most of these also set a minimum rate. Flat rate taxis were dealt several serious blows, for three cities eliminated the zone system and fourteen required the installation and use of taximeters. Eleven cities made it compulsory to carry liability insurance, one increased the amount of insurance to be carried, two asked for posting of bonds, and three required a privilege tax or increased the license fee. Measures were passed in six cities to reduce cruising on the streets.

The discussions of the early 1930s emphasize that the motivation behind the regulations was "to drive many cut-throat cabs, operating without authority, from the streets" and to enable the organized taxicab fleets and transit companies to increase their profits. Transit Journal 77, March 1933. Restriction of entry was not motivated by a concern for congestion or pollution externalities. The Operation and Regulation of Taxicabs in the City of Chicago, Northwestern University, 1958, pp. 61-63.

To induce investment two things had to be promised under a regulatory scheme: a reasonable return on the capital invested and a limitation on the number of vehicles to be licensed. This promise underscores all regulations and is the center of debate whenever deregulation is considered.

The leasing of taxicabs to drivers, which circumvented the relationship of master and servant, was prohibited. Leasing was perceived to be the hallmark of the independent operator and unthinkable for the fleets. The ban on leasing reflected what was perceived to be the public's abhorrence of any uncontrolled operation. There evolved the concepts of a nationwide set of similar regulatory systems which continued with little change for a half century. Public approval of the system of the 1930s seems demonstrated by the record.

During World War II, manufacturers of motor cars turned their facilities over to war production, and for four years neither automobiles nor taxicabs were built. The necessity (or romance) of the built-for-the-purpose taxicab, as a sturdy vehicle capable of many years of useful life, proved valid. However, by the end of the war such built-for-the-purpose taxicabs were very worn. The reconversion of the automobile industry was slow, especially at factories that could produce taxicabs. Returning servicemen were given priorities for the

purchase of new automobiles, and everyone bought one because, price controls to the contrary notwithstanding, there was a very lucrative resale market.

As war production came to an end the number of jobs available to the servicemen decreased, and unemployment became a serious problem. For the second time in fifteen years, unemployed people turned to the taxicab industry for employment.

Thousands, without resources or licenses, with little or no insurance, but with an automobile, entered into what was virtually an unregulated industry. As in 1930, the political issue presented to the regulatory bodies was such that they were forced to abandon any notion of enforcing existing law. Apparently, few had the audacity to harass an unemployed ex-serviceman. The problem was complicated by the fact that licensed fleets were not rendering full service because of delays in the delivery of taxicabs. So, believing the situation would be short-lived, regulators decided to resolve the impasse by issuing temporary permits to unregulated taxicabs.

This solution turned out to be an unmitigated disaster. Immediately after the issuance of the temporary permits, licensed fleets began to receive new taxicabs and to rehire returning ex-servicemen who, previous to the war, had been employed by them. This expansion of the industry was met by a surge of new operators without permits or licenses, many of whom never served in the military. Regulations was not enforced. In many cities, albeit not in San Francisco, the solution was to legitimize all illegal operators and begin the Depression-based regulatory system anew. Even in San Francisco, until 1978, most ordinances regulating taxicabs in San Francisco were either enacted during the 1940s or were founded on those enacted during what was referred to in the Police Code as "the present war emergency."

The City derives its power to regulate taxicabs under the constitutionally-granted police power declaring each city may make and enforce within its limits all such "local, police, sanitary, and other regulations as are not in conflict with general laws." California Const. Art. XI § 11; People v. Taylor (1938) 33 Cal.App.2d Supp. 760. Two legal maxims best describe this power: *salus populi suprema est lex* (the welfare of the people is the highest law) and *sic utere tuo ut alienum non laedas* (use your property as not to injure the rights of others). See Slaughter House Cases (1873) 16 Wall 36; Munn v. Illinois, *supra*. The police power embraces the authority of the City to legislate for the public welfare matters of local concern. Bacon v. Walker (1970) 204 U.S. 311; McKay Jewelers,

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Inc. v. Bowron (1942) 19 Cal.2d 595, 600. The regulation of taxicabs has been found to be a matter of local concern. People. ex rel. Freitas v. City and County of San Francisco (1979) 92 Cal.App.3d 913; Buck v. California (1951) 343 U.S. 99; In Re Martinez (1943) 22 Cal.2d 259. ✓

The City may under the police power enact an ordinance regulating a lawful occupation Odd Fellows' Cemetery Assn. v. San Francisco (1903) 140 Cal. 226; Laurel Hill Cemetery v. San Francisco (1907) 152 Cal. 464 affd 216 U.S. 358 if the regulation of the business is reasonable, Justenien's Food Stores, Inc. v. Tulare (1938) 12 Cal. 2d 324, and has a relation to the ends for which the police power exists, Skaggs v. Oakland (1936) 6 Cal.2d 222; Laurel Hill Cemetery v. San Francisco, supra; Ex Parte Hadacheck (1913) 165 Cal. 416, affd 239 U.S. 394; and is reasonably necessary to the protection of life, health and property. Skaggs v. Oakland, supra; Meridian Ltd. v. Sippy (1942) 54 Cal.App.2d 214.

No regulation justifies an unwarranted or arbitrary interference with the right to carry on a lawful business, Pacific Palisades Assn. v. Huntington Beach (1925) 196 Cal. 211, or if the result is undue oppression of a person or a confiscation of property. Curtis v. City of Los Angeles (1916) 172 Cal. 230.

The business of operating taxicabs is a municipal affair subject to regulation. In Re Martinez, supra; Buck v. California, supra; Grier v. Ferrant (1944) 62 Cal.App.2d 306. The rationale for the regulation of taxicabs, however, has been a response to specific needs of the public.

Most taxi firms are organized in one of three ways: employee-driver, contractor-driver, and owner-driver. The employee-driver drives a car owned by the company, and he or she is paid on either a commission or rate formula basis. In San Francisco all or most employee-drivers are compensated pursuant to a collective bargaining agreement. The issue of regulating members of a union is discussed later in this letter.

The contractor-driver and owner-driver arrangements avoid the employer-employee arrangement by making the driver, in effect, an independent contractor. Under a this arrangement, a driver will pay a daily, weekly, or monthly fee for the use of a vehicle. In San Francisco the fee is usually imposed daily. An owner-driver owns his or her vehicle. Under either the contractor-driver or owner-driver arrangement, the driver may contract with the firm for such services as advertising, fuel,

dispatching, and maintenance. There are approximately 3000 active taxicab drivers in San Francisco. Most drivers are independent contractors.

The daily fee paid by the driver for the use of a vehicle is called a "gate". Briefly stated a "gate" is a cost imposed by a taxicab owner (usually a taxicab company) on the driver for the use of the taxicab for each shift. A taxicab driver's income is, essentially, the result of the following formula: Bookings or gross take, (b), minus the sum of the "gate" (g) plus "tips" (t). $[b-(g+t) = \text{driver's daily net receipts.}]$ "Bookings" is comprised of amounts received from the taxi meter charges (regulated) plus any gratuities (unregulated informal payment subject to personal preference and custom which the general public refers to as "tips"). "Tips", as they are known to the drivers, are "informal" charges paid by the driver for "services" supplied by the company. The sum of the "tips" for each shift is equal to 5-10% of the gate.

In June of 1978, the voters of San Francisco approved an "Ordinance Providing For the Regulation of Taxicabs and Other Motor Vehicles For Hire", promulgated as Appendix F to the City Charter, and also known as Proposition "K". The ordinance was upheld under O'Conner v. Superior Court (1979) 90 Cal.App.3d 106. Comprised of ten sections, the ordinance regulates (1) entry into the market (including transferability of permits); (2) financial records and (3) rates. The ordinance imposes specific threshold standards upon those desiring to enter the market and operate on a continual basis. These standards establish the present scope and limit of taxicab regulations in San Francisco. The standards address no areas novel to the law since the Depression.

The first section of the ordinance establishes the provisions enumerated therein ". . . shall be the law of the City and County of San Francisco . . .". Section 1(b) provides "[t]he chief of Police . . . shall have the responsibility of establishing regulations to assure prompt, courteous and honest service to the riding public." Section 1(c) declares that "[t]he taxicab business shall operate under the principles of free enterprise . . .". Section 1(d) requires the Police Commission issue "a sufficient number of permits to assure adequate taxicab service throughout the City . . .".

Section 2(a) of the ordinance requires "[a]ny applicant for a permit to operate a taxicab shall apply to the Police Commission for its declaration of public convenience and necessity . . .". During the hearing on a permit application "the burden of proof shall be upon the applicant to establish . .

. that public convenience and necessity require the operation . .
. for which permit application has been made . . ." Section 2(a).

Part of the Police Commission's analysis of the public convenience and necessity requirement [Section 3] includes a determination whether the applicant is financially responsible and whether the public will not be adequately or properly served unless the application is granted. Sections 3(a)(b).

Sections 4 through 7, inclusive, govern the operation of a taxicab upon issuance of the permit. Sections 4(a) requires, inter alia, that the taxicab be regularly and daily operated ". . . to the extent necessary to meet the public demand for such taxicab . . . service." Section 5 concerns corporate permittee records, which in great part concerns the issue of transferability.

Section 6 requires the City Controller to establish regulations for the keeping of financial records by each permittee for the purpose of providing ". . . information to the Board of Supervisors for ordinances respecting maximum rates of fares or other changes . . .".

Section 7 provides that the rates of fare set by ordinance are maximum rates; lower rates may be established by a filing with the Board of Supervisors for its approval. Sections 8 and 9 repealed a number of sections of the Police Code.

The ordinance, taken as a whole concerns one issue: will the public enjoy adequate, safe and honest service. Each of the regulations proceed from a simple threshold requirement of: "public convenience and necessity", a standard which has existed in one form or another (and known by many names) since at least Emperor Diocletian.

Public convenience and necessity concerns the demands and needs of the public at large. Application of J. C. Best (1922) 21 CRC 509. A business requiring such a finding can be considered only from the standpoint as to whether or not public convenience requires such service. It looks not to the desires of the operator, its contractors or employees, but solely to the fact of whether or not the public requires the services proposed. Application of Santa Clara Valley Auto Line (1917) 14 CRC 112. The doctrine calls for the convenience and necessity of the public and not of an individual or individuals. See e.g. State ex rel Utilities Commission v. Carolina Coach Co. (1963) 132 S.E.2d 249; Application of Dakota Transportation of Sioux Falls (1940) 291 N.W. 589.

not individual
permit
issue

The regulation of taxicab gates is not an element of the public convenience and necessity concept. Market entry and fares are a proper subject as they relate directly to the availability and solvency of the service providers. The history of taxicab regulations demonstrates the limited issues which such regulations address. No public convenience and necessity analysis could be made unless, at a minimum, the gate system was causing the industry to lose drivers to a point where service to the public was no longer available. The proponents of gate regulation have admitted to no such reduction.

The conclusion presented in this letter concerns only the power of the Board to regulate gates under the present statutory scheme. It is not being stated here that gates are beyond the reach of the police power. For example, in Minneapolis, a city ordinance specified that drivers were to receive a certain percentage of fares. The police power is too broad to suffer that limitation. To "attempt to define [the police power's] reach or trace its outer limits is fruitless." Berman v. Parker (1954) 348 U.S. 26, 32. "The scope of the police power changes with changing social and economic conditions." People v. K. Sakai Co. (1976) 56 Cal.App.3d 531, 535. See also Miller v. Board of Public Works (1925) 195 Cal. 477, 485.

The Board's power to regulate gates is restricted by the terms of the "Ordinance Providing for the Regulation of Taxicabs and Other Motor Vehicles For Hire", promulgated as Appendix F to the City Charter. That ordinance was adopted by the electorate and can only be amended or repealed by them. Beneficial Loan Soc. v. Haight (1932) 215 Cal. 506.

Ordinances regulating the contractual agreements between private persons usually require findings of fact sufficient to warrant the intrusion. It can not be conclusively argued, however, that the use of the initiative process to adopt or amend a municipal regulatory measure such as Proposition K is precluded by the unavailability to the electorate of factfinding procedures by which a legislative body can ascertain the existence of facts that would warrant the imposition of the proposed regulation. Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129. The initiative power is derived from the state constitution and is free from any specific factfinding prerequisite. An initiative city ordinance "must be deemed to have been enacted on the basis of any state of facts supporting it that reasonably can be conceived." Higgins v. City of Santa Monica (1964) 62 Cal.2d 24, 30. Even if the Board proposed the ordinance for voter approval, a court could not probe the members' motivations, County of Los Angeles v. Superior Court (1975) 13 Cal.3d 721, rather a court

would be required to judge the ordinance's validity by its own terms rather than by the motives of or influences upon the Board members. City and County of San Francisco v. Cooper (1975) 13 Cal.3d 898.

Although a strict factfinding procedure is not necessary for the electorate to amend Proposition K, a factual basis must exist, Birkenfeld v. City of Berkeley, *supra*, and a factfinding procedure is advised. Information presented to the Public Protection Committee was useful but incomplete. Indeed, some of the information was no more than a collection of broad, value-laden statements supported largely by casual observation and opinion. Such data may have been legally sufficient for the first cases which broke away from the natural-law jurisprudence of early 20th century America [See e.g. Muller v. Oregon (1907) 208 U.S. 412] but such data would not be accepted as social science evidence today. The necessary data may well be available and, if so, admittedly the proponents of gate regulation had little time to gather it.

Restrictions on the Board to regulate gates where the drivers are employees of the taxicab companies is subject to an entirely different analysis. In this area the Board is preempted by federal law. With regard to these union drivers, until the early 1970s, the wages were determined on a commission basis where each driver's wages were based on a specified percentage of his or her weekly bookings. As the specified percentage commission determined each driver's wages, certain taxicab companies engaged in collective bargaining with the Teamsters Union (at that time Local 265) concerning the percentage amount of the commission. The percentage amount was then specified in three-year-collective bargaining agreements negotiated by the parties.

The companies and the Union subsequently modified the collective bargaining agreements to permit each driver to select one of two options for the payment of wages. The first option was to be paid wages based on the previously described commission basis. The second option allowed the drivers to receive as wages all bookings minus a specified daily deduction. This daily deduction is, of course, known as the "gate".

Under the 1977-1980 collective bargaining agreements, the parties agreed that, in the event of a meter rate increase, the Union and companies would attempt to reach agreement as to the amount of a gate increase; and, in the event the parties could not reach agreement, the issue would be referred to final and binding arbitration. When the meter rates increased in 1980 and

no agreement was reached, Arbitrator Sam Kagel was selected to arbitrate the issue of the gate increase.

During the late 1970s, virtually all drivers selected the second option, and the first option was deleted from the collective bargaining agreements for the period October 17, 1982, through October 17, 1985.

Luxor and DeSoto taxicab companies recently concluded negotiations for new collective bargaining agreements with Teamsters Union, Local 860. Local 860 is now signatory to the agreements because Local 265 has merged with Local 860. The term of these current agreements is from October 17, 1985, through April 16, 1988. Section 14.1 of each agreement specifies the amount of the gate and Section 14.2 contains a new provision which prescribes a formula for determining, in the event of a meter rate increase, the amount of a gate increase.

In the case of the union employee drivers the setting of the gate deduction is equivalent to the setting of wages. Consequently, for these drivers the setting of the "gate" is a matter for mandatory collective bargaining and has been historically incorporated in the collective bargaining agreements negotiated with Local 265/860.

The federal preemption doctrine precludes state and municipal regulations concerning conduct Congress intended to be unregulated, Metropolitan Life Ins. Co. v. Massachusetts 471 U.S. at ____ (slip op. 23); and, although the labor-management relationship is structured by the National Labor Relations Act (hereinafter "NLRA"), certain areas intentionally have been left to be controlled by the free play of economic forces of collective bargaining. Machinists v. Wisconsin Employment Relations Commission (1976) 427 U.S. 132.

On April 1, 1986, in Golden State Transit Corporation v. City of Los Angeles, No. 84-1644, the U.S. Supreme Court issued its most recent pronouncement on the preemption issue. In that case, a taxicab company's franchise was subject to renewal by the City of Los Angeles at the same time the company was engaged in collective bargaining for a new contract covering its drivers. A strike ensued and the City refused to renew the company's franchise unless it reached agreement with the union for a new collective bargaining agreement. Unlike the instant situation (wherein the Board seeks to directly control the wages of the drivers by dictating the gate), the Court noted that the City of Los Angeles "had not attempted to dictate the terms of the agreement, but had 'merely insisted upon resolution of the

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dispute as a condition to franchise renewal.'" Nevertheless, the Supreme Court held that the City's action was preempted by the NLRA because the City directly interfered with the collective bargaining process and frustrated free collective bargaining, which is the cornerstone of the structure of labor-management relations carefully designed by Congress when it enacted the NLRA. See also: Machinists & Aerospace Workers Union v. Wisconsin Employment Relations Commission (1976) 427 U.S. 132 and cases cited therein.

Any ordinance adopted by the Board which would enable the City to set the gate falls directly within the federal preemption doctrine. The gate is the agreed-upon method of determining the wages of the employee-drivers. As such, it is necessarily subject to collective bargaining and both state and municipal governments are thus precluded from interfering with the determination of the gate. Furthermore, if the City were to start dictating the amount of the gate, the City's action would require the nullification of the current collective bargaining agreements at DeSoto Cab Company and Luxor Cab Company - which would be impermissible under the federal preemption doctrine.

Based on the foregoing, it is clear that any involvement by the City in the setting of the gate would be an impermissible interference with the collective bargaining relationship between the DeSoto/Luxor companies and Teamsters Local 265/860.

Very truly yours,

GEORGE AGNOST
City Attorney



MARK B. KERTZ
Deputy City Attorney

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