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(O-2006-79) 2/20/06

ORDINANCE NUMBER O- 19502 (NEW SERIES)

ADOPTED ON JUL 22 2006

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 3, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE RELATING TO PEDICABS BY AMENDING SECTIONS 83.0102 THROUGH 83.0104; 83.0106, 83.0117, 83.1023 THOUGH 83.1025, 83.1028, 83.0130, AND 83.1033; REPEALING SECTIONS 83.0108, 83.0109, 83.0121, 83.0131, AND 83.0132; AND RENUMBERING SECTIONS 83.0110 AND 83.0111

WHEREAS, pedicabs have become an increasingly popular form of nonmotorized transportation for hire in San Diego; and

WHEREAS, the City currently regulates the operation of pedicabs; and

WHEREAS, pedicab owners have instituted a practice of hiring seasonal operators from outside California and outside the United States;

WHEREAS, the Police Department has reported an increase in traffic violations and accidents involving pedicabs; and

WHEREAS, the City has received reports of pedicabs being operated with expired or altered operator permits; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0101 to read as follows:

The Council finds that *pedicabs* have become an increasingly popular form of nonmotorized transportation for hire in San Diego. This division is enacted in response to

concerns due to this increasing prevalence of *pedicabs*. It is necessary to enact regulations governing *pedicabs*, *operators*, and *owners* to protect the general safety and welfare of passengers using *pedicabs* for hire.

Section 2. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0102 to read as follows:

§83.0102 Definitions

Defined terms appearing in this division are shown in italics. Whenever any word or phrase used in this chapter is not defined by the Municipal Code but is defined in the California Vehicle Code, the word or phrase shall have the meaning set forth in the California Vehicle Code. For purposes of this division:

Bicycle means any device upon which a person may ride, which is propelled by human power through a system of belts, chains, or gears, and which has wheels at least 16 inches in diameter and a frame size of at least 13 inches.

Darkness means any time from one-half hour after sunset to one-half hour before sunrise and any time when visibility is not sufficient to render clearly discernible any person or vehicle on the highway at a distance of 1000 feet.

Decal means the numbered decal issued by the City to a *pedicab owner* for display on the *pedicab* to indicate that the *pedicab* is permitted to operate.

Hearing Officer has the same meaning as the term “Enforcement Hearing Officer” defined in section 11.0210 of this Municipal Code.

Identification Badge means a badge that includes a color passport-size photo.

Martin Luther King Promenade means the pedestrian right-of-way that runs parallel to Harbor Drive and north of the Metropolitan Transit System trolley tracks, between Market Street and Park Boulevard.

Operating Permit means a written permit issued by the City authorizing a *person* to operate a *pedicab* as a business.

Operator means any individual who operates a *pedicab* within the City of San Diego.

Owner means any *person* who owns a *pedicab*.

Pedicab means:

- (a) A *bicycle* that has three or more wheels, that transports, or is capable of transporting, passengers on seats attached to the bicycle, that is operated by an individual, and that is used for transporting passengers for hire; or
- (b) A *bicycle* that pulls a trailer, sidecar, or similar device, that transports, or is capable of transporting, passengers on seats attached to the trailer, sidecar, or similar device, that is operated by an individual, and that is used for transporting passengers for hire.

Person has the same meaning as that term is defined in section 11.0210 of this Municipal Code.

Section 3. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0103 to read as follows:

§83.0103 Permit Requirement to Operate Pedicab

It is unlawful for any *person* to operate a *pedicab* within the City without having a valid *operating permit* issued by the City pursuant to this division.

Section 4. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0104 to read as follows:

§83.0104 Application for Operating Permit

- (a) The *operating permit* application form shall be prescribed by the City Manager.
- (b) Any application that does not include all information requested by the application form or is not supported by the materials required by section 83.0104(d) shall be rejected as incomplete, or the application denied.
- (c) The application form shall require the following information:
 - (1) the applicant's full name and residence address;
 - (2) the applicant's date of birth;
 - (3) the applicant's California driver's license number; and
 - (4) such other information as the City Manager may require.
- (d) The applicant shall provide the following material to complete the application:
 - (1) a valid California driver's license;

- (2) proof of a valid City of San Diego Business Tax Certificate issued in accordance with the provisions of Chapter 3, Article 1, of this Code;
- (3) two recent color passport-sized photographs;
- (4) a signed copy of the "Pedicab Owner or Operator Code of Conduct;" and
- (5) such other material as the City Manager may require.

Section 5. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0105 to read as follows:

§83.0105 Pedicab Operating Permit Fee

The City Manager shall charge a nonrefundable fee to recover the cost of activities associated with the administration, regulation, and issuance of *operating permits*. The fee schedule shall be filed in the Ratebook of City Fees and Charges in the City Clerk's Office.

Section 6. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0106 to read as follows:

§83.0106 Validity of Operating Permit

- (a) *Operating permits* shall be valid for a period of one year from date of issuance.
- (b) *Operating permits* shall become invalid immediately if the *operating permit* is defaced, altered, forged, or counterfeited.

Section 7. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0107 to read as follows:

§83.0107 Operating Permit Renewal

Operating permits shall be renewable annually upon filing and approval of a new application and payment of an *operating permit* fee as determined by the City Manager.

Section 8. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by repealing Sections 83.1208 and 83.1209.

Section 9. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by renumbering Section 83.0110 to Section 83.0108, and amending new Section 83.0108 to read as follows:

§83.0108 Identification Badges Issued to Pedicab Operators With a Permit

- (a) The City Manager shall issue an *identification badge* to an individual after that individual has been issued an *operating permit*.
- (b) While the *pedicab* is in operation, the *operator* shall wear the *identification badge* at all times, in a manner clearly visible to the public.
- (c) It is unlawful for an *operator* to fail to wear an *identification badge*, in a manner clearly visible to the public, while operating a *pedicab*.

Section 10. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by renumbering Section 83.0111 to 83.0109 and amending new Section 83.0109 to read as follows:

§83.0109 Fare Schedule

- (a) *Operators* shall post a fare schedule on the *pedicab* that meets the size, format and location requirements promulgated by the City Manager. This fare schedule shall be clearly visible to the public at all times.
- (b) It is unlawful for any *operator* to demand from a passenger a fare greater than the fare contained in the posted fare schedule.
- (c) Section 83.0109(b) does not apply to fares for special tours, provided that the fare for the special tour is agreed upon between the passenger and the *operator* prior to the beginning of the tour.

Section 11. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0116 to read as follows:

§83.0116 Application for Pedicab Decal

- (a) Before allowing a *pedicab* to be operated for hire, *owners* shall obtain a *decal*.
- (b) The *decal* application form shall be prescribed by the City Manager.
- (c) The applicant shall provide the following information to complete the application:
 - (1) the full name and address of the applicant;

- (2) the name and address of all legal and registered *owners* of the *pedicab*; and
 - (3) a description of the *pedicab*, including trade name, if any, serial number, and body style.
- (d) Applicants shall also provide proof of insurance in accordance with the provisions of this division in an amount not less than \$1 million per occurrence.

Section 12. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0117 to read as follows:

§83.0117 Requirements for Issuance or Renewal of Pedicab Decal

Decals will be issued or renewed only when a *pedicab* meets all of the equipment requirements contained in Section 83.0126.

Section 13. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0118 to read as follows:

§83.0118 Pedicab Decal Fee

The City Manager shall charge a nonrefundable fee to recover the cost of activities associated with the administration, regulation, and issuance of *decals*.

Section 14. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0119 to read as follows:

§83.0119 Duration of Validity of Pedicab Decal

Decals shall be valid for a period of one year from date of issuance.

Section 15. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0120 to read as follows:

§83.0120 Pedicab Decal Renewal

Decals shall be renewable annually upon filing of a new application and payment of a *decal* fee as determined by the City Manager.

Section 16. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by repealing Section 83.0121.

Section 17. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0122 to read as follows:

§83.0122 Other Laws Applicable to Pedicab Owners and Operators

Operators are subject to all applicable laws, rules, and regulations of the San Diego Municipal Code and the California Vehicle Code pertaining to the operation of *bicycles* upon streets, except those provisions that by their very nature can have no application.

Section 18. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0123 to read as follows:

§83.0123 Minimum Age for Pedicab Operators

It is unlawful for any *person* under the age of 18 to operate a *pedicab*.

Section 19. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0124 to read as follows:

§83.0124 Driver's License Requirement to Operate Pedicab

It is unlawful for any *person* without a valid California driver's license to operate any *pedicab* within the City.

Section 20. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0125 to read as follows:

§83.0125 Business Tax Certificate Requirement to Operate Pedicab

- (a) It is unlawful for any *person* to operate a *pedicab* without first obtaining a business tax certificate pursuant to Chapter III, Article 1 of this Code.
- (b) Municipal Code section 31.0202 is not applicable.

Section 21. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0126 to read as follows:

§83.0126 Equipment Regulations for Pedicabs

- (a) It is unlawful for any *person* to operate, or cause to be operated, a *pedicab* during the hours of *darkness*, without using a headlight capable of projecting a beam of white light for a distance of 300 feet.
- (b) It is unlawful for any *person* to operate, or cause to be operated, a *pedicab* during the hours of *darkness*, without using battery-operated taillights mounted on the right and left, respectively, at the same level on the rear exterior of the passenger compartment. Taillights shall be red in color and plainly visible from all distances within 500 feet to the rear of the *pedicab*.
- (c) It is unlawful for any *person* to operate, or cause to be operated, a *pedicab* without a seatbelt or seatbelts for passengers.
- (d) It is unlawful for any person to operate or cause to be operated a *pedicab* that does not display the unique, nontransferable *pedicab* identification number issued by the City Manager in a location that meets the location requirements promulgated by the City Manager.
- (e) It is unlawful for any *person* to operate, or cause to be operated, a *pedicab* in an unsafe condition.
- (f) It is unlawful for any *person* to operate, or cause to be operated, a *pedicab*, which has more than one attached trailer or sidecar.

Section 22. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0128 to read as follows:

§83.0128 Prohibitions on the Manner of Operating Pedicabs

- (a) It is unlawful for any *person* to operate a *pedicab* in a manner that results in damage to public property.
- (b) It is unlawful for any *pedicab* to be parked, stopped, or remain standing in any location where it would be unlawful for any motor vehicle to be parked, stopped or remain standing.
- (c) It is unlawful to operate a *pedicab* in violation of the Pedicab Owner or Operator's Code of Conduct.
- (d) It is unlawful to operate a pedicab on the *Martin Luther King Promenade*.
- (e) It is unlawful for any *person* to operate, or cause to be operated, a *pedicab*, which has more than one attached trailer or sidecar.

Section 23. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0129 to read as follows:

§83.0129 Insurance Requirements

- (a) It is unlawful for any *person* to operate a *pedicab* within the City of San Diego unless at the time of such operation the *owner* has in effect a valid policy of commercial general liability coverage or business auto coverage with a *pedicab* endorsement on the vehicle.
- (b) The insurance policy, required to be issued under section 83.0129(a), shall be executed and delivered by a company with a rating of A in Best's Key

Rating Guide and authorized to carry on an insurance business in the State of California, the financial responsibility of which company has been approved by the City Manager. The terms of the policy shall provide that the insurance company assumes financial responsibility in an amount not less than \$1 million per occurrence for bodily injuries and personal injuries or property damage caused by the operation of the *pedicab*, including but not limited to, *pedicabs* operated by the officers, employees, agents, or lessees of the *owner*.

- (c) A valid certificate of insurance issued by a company providing the required insurance policy shall be available for inspection at the *owner's* principal place of business. A certificate of insurance shall provide that the insurer will notify the City Manager of any cancellation of the *owner's* insurance policy and that the cancellation notice shall be in writing and such notice shall be sent by registered mail at least thirty days before cancellation of the policy. The certificate shall include all of the following:
- (1) the full name of the insurer;
 - (2) the name and address of the insured;
 - (3) the insurance policy number;
 - (4) the type and limits of coverage;
 - (5) the specific vehicles insured;
 - (6) the effective dates of the insurance policy; and
 - (7) the certificate issue date.

Section 24. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0130 to read as follows:

§83.0130 Denial, Suspension or Revocation of Operating Permit or Decal; Notification of Action

(a) *Operating permits or decals* may be denied, suspended, or revoked by the City Manager based upon any of the following grounds:

- (1) The *operator* or *pedicab* fails or has failed to comply with the applicable provisions of this division, or the rules and regulations prescribed by the City Manager.
- (2) The *operator* has been convicted of assault; battery; resisting arrest; any felony involving force and violence; any misdemeanor or felony reckless driving or driving under the influence offense; or any crime reasonably related to the qualifications, functions, or duties of the passenger transport business or the ability of the *operator* to safely transport passengers, unless 5 years has elapsed from the date of discharge from a penal institution, or the successful completion of probation for such conviction.
- (3) The *operator* has been convicted of a crime that requires registration under the California Penal Code as a sex offender.
- (4) The *operator* or *owner* has knowingly made a false statement of material fact, or knowingly failed to state a material fact in the application process for the *operating permit* or *decal*.

- (5) The *operator's* ability to drive lawfully in California has expired or has been suspended or revoked.
 - (6) The *operator* has engaged in activity that, in the judgment of the City Manager, constitutes a serious threat to public health, safety, or welfare. Such a threat may be indicated by, but is not limited to:
 - (A) an arrest for driving under the influence of alcohol or a controlled substance while operating a *pedicab*;
 - (B) an arrest for a crime that, if convicted, would require registration as a sex offender, and where a *pedicab* was used in the planning of, perpetration of, or fleeing from the offense;
 - (C) a report from a law enforcement agency that the *pedicab* or *pedicab operator* was involved in a vehicle accident involving a *pedicab*, where *pedicab* passengers were injured.
 - (7) The *pedicab* does not meet the requirements of the California Vehicle Code for *bicycles* or the requirements of this division.
- (b) The City Manager shall provide notice to the *operator* or *owner* of the denial, or intent to suspend or revoke, as follows:
- (1) When, prior to the issuance of an *operating permit* or *decal*, the City Manager has evidence that one of the grounds specified in section 83.0130(a) exists, the City Manager shall serve an applicant with a notice that his or her *operating permit* or *decal* has

been denied. The notice shall also advise the applicant of the right to appeal the denial. Service shall be by any of the methods listed in Municipal Code section 11.0301.

- (2) Where, after the issuance of an *operating permit* or *decal*, the City Manager has information that the one of grounds listed in section 83.0130(a) exists, the City Manager shall notify the *operator* or *owner* of that information, and commence suspension or revocation proceedings as specified in section 83.0131. The notice shall be served in accordance with section 11.0301.
- (3) Section 83.0130(b)(2) notwithstanding, when, after the issuance of an *operating permit*, the City Manager receives a certified record of conviction for an offense meeting the criteria of section 83.0130(a)(2) or (a)(3), or receives a report from a government agency that contains information that the grounds specified in section 83.0130(a)(5) or (a)(6) exists, the City Manager may summarily suspend or revoke an *operating permit* without a prior hearing. The City Manager shall serve a notice of the suspension or revocation in accordance with section 11.0301. The summary suspension or revocation shall remain in effect until the conclusion of the appeal process set forth in section 83.0131.

Section 25. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code be amended by amending Section 83.0131 to read as follows:

§83.0131 Procedures for Denial, Suspension or Revocation of Operating Permits and Decals

- (a) An applicant served with a notice of denial, may file an appeal within 10 calendar days from the date the notice from the date the notice required by section 83.0130(b)(1) was served.
 - (1) The appeal shall be made in writing and filed with the City Manager.
 - (2) As soon as practicable after receiving the written notice of appeal, the City Manager shall appoint a *Hearing Officer* and schedule a date, time, and place for the hearing.
 - (3) Written notice of the date, time, and place of the hearing shall be served at least 10 calendar days before the date of the hearing on the person appealing the notice by any of the methods listed in Municipal Code section 11.0301.
 - (4) The appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedures set forth in Division 4, Article 2, Chapter I of this Code.
 - (5) Failure to attend the administrative enforcement hearing by the person appealing a notice shall constitute a waiver of his or her rights to an administrative enforcement hearing and adjudication of the notice or any portion of the notice.

- (b) Where a notice of suspension or revocation is issued pursuant to section 83.0130(b)(2), the notice shall:
- (1) specify the ground(s) listed in 83.0130(a) for suspension of revocation;
 - (2) specify the evidence used to determine that the ground(s) listed may exist;
 - (3) specify the penalty the City Manager will recommend to a *Hearing Officer*, should a hearing be held;
 - (4) specify subsequent procedures as follows:
 - (A) If the City Manager proposes to suspend an *operating permit* or *decal* for less than 30 days, the notice shall specify:
 - (i) that the *operator* or *owner* may request a hearing;
 - (ii) that any such request must be filed with the City Manager within 10 days of service of the notice; and,
 - (iii) that the failure to submit a timely hearing request will be deemed a waiver of the right to a hearing and the penalty proposed by the City Manager shall go into effect the first business day after the hearing request deadline has lapsed.
 - (B) If the City Manager proposes to suspend an *operating permit* or *decal* for more than 30 days or proposes to revoke an *operating*

permit or *decal*, the notice shall specify a date for a hearing before a *Hearing Officer* not less than 10 days nor more than 30 days from the date of the notice.

- (c) When the City Manager has summarily suspended or revoked an *operating permit* or *decal* under the provisions of section 83.0130(b)(3), the City Manager shall, as soon as practicable, set the matter for a hearing before a *Hearing Officer* and serve a notice of the hearing to the owner or *operator* by the methods listed in section 11.0301. In no case shall the hearing be set for more than 15 days after the mailing of the notice of summary action.
- (d) Where a *Hearing Officer* is reviewing the denial, suspension, or revocation of an *operating permit* or *decal*, review by the *Hearing Officer* is limited to whether substantial evidence supports a finding that the grounds listed in the notice of denial, suspension, or revocation exists. Where the review is of the suspension or revocation of an *operating permit* or *decal*, review also extends to whether the proposed penalty is reasonable or unreasonable.
 - (1) If substantial evidence does not support the finding required in section 83.0131(d), the *operating permit* or *decal* shall be issued or reinstated immediately, unless the *Hearing Officer* makes a finding supported by substantial evidence that good cause exists to delay issuance or reinstatement.

- (2) When the City Manager proposed the suspension or revocation of an *operating permit* or *decal*, if substantial evidence supports the finding required in Section 82.1031(d), the *Hearing Officer* shall also make a finding that the penalty proposed by the City Manager is reasonable or unreasonable. A reasonable penalty shall be imposed immediately. If the *Hearing Officer* finds that the proposed penalty is unreasonable, the *Hearing Officer* shall prescribe and immediately impose an alternative penalty.
- (e) For all proceedings conducted by a *Hearing Officer*:
- (1) Failure to attend the administrative enforcement hearing by the person appealing a notice shall constitute a waiver of his or her rights to an administrative enforcement hearing and adjudication of the notice or any portion of the notice.
- (2) If the *Hearing Officer* upholds the decision of the City Manager to revoke or suspend an *operating permit* or *decal*, the appellant shall immediately surrender the operating permit or decal.
- (f) The *Hearing Officer's* decision on an appeal of a denial, suspension, or revocation of a *decal* or *operating permit* shall be final on the date of service. Service shall be by any of the methods listed in Municipal Code section 11.0301.
- (g) An *operating permit* or *decal* suspended or revoked pursuant to Section 83.0130 and 83.0131, including the period during which an *operating permit* or *decal* has been summarily suspended pursuant to Section

83.1030(a)(6), shall be deemed invalid for the purposes of Section
83.0130 during the period of suspension or upon revocation.

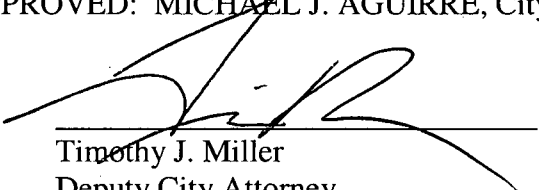
Section 26. The Council finds and declares that this activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(2).

Section 27. A full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 28. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

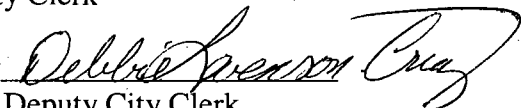


Timothy J. Miller
Deputy City Attorney

TJM:mm
12/14/05
Or.Dept: E&CP
O-2006-79

I hereby certify that the following Ordinance was passed by The Council of the City of San Diego, at its meeting of JUN 20 2006.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 6-22-06
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor