

DATE: February 17, 1987

TO: Barbara Lupro, Paratransit Administrator
FROM: City Attorney
SUBJECT: Taxicab Driver Identification Cards (Appeal of
Joshua Josephs)

In response to your memo of January 16, 1987, the decision of the Hearing Officer in the Joshua Josephs appeal regarding the revocation of his taxicab driver identification card has been reviewed. The decision of the Hearing Officer appears correct and no basis for further appeal is presented. We agree, however, that the Municipal Code should be amended.

Mr. Josephs had been issued a taxicab driver identification card by the Sheriff of San Diego. His privilege to operate a taxicab in the City was revoked by the City Manager because of a conviction for battery in 1985. He appealed. The Hearing Officer concluded that there was not a valid (or effective) revocation because there was no document issued by the City upon which the revocation could be operative. Thus, there was no "administrative action." Further, Mr. Josephs intended to operate his cab in El Cajon and not in San Diego.

The problem was created because taxicab driver identification cards that are valid county-wide are issued by the Sheriff's department. City Paratransit does not issue separate cards for taxicab drivers. The Sheriff issues an identification card provided the applicant has not been convicted of certain crimes within a two year period, whereas the City bars eligibility to operate if the conviction occurred within a five year period (San Diego Municipal Code .75.0112(i)(3)).

The licensing and permit regulations for taxicab drivers are complicated by the fact that the City Manager issues paratransit identification cards but does not issue taxicab identification cards to taxicab drivers. The City Manager reserves the right to suspend a taxicab driver's operation within the City when a taxicab driver becomes ineligible. These provisions are set out

in San Diego Municipal Code sections 75.0102, 75.0112 and 75.0114. To aid in understanding the interplay between pertinent portions of those sections, they are quoted for ease of reference.

Section 75.0102 provides as follows:

No person shall engage in the business of operating any paratransit vehicle within the City of San Diego without first having obtained an operating permit from the City

Manager of the City of San Diego or his designated representative, which permit has not been revoked, suspended or otherwise cancelled or termination by operation of law or otherwise. A separate permit is required for each paratransit vehicle operated.

A paratransit vehicle includes a taxicab. San Diego Municipal Code section 75.0101.

Section 75.0112 provides, in pertinent part, as follows:

- (a) No person shall drive or operate any taxicab under the authority of a permit granted under this article unless such person has and displays a taxicab driver's identification card obtained through the Sheriff of the County of San Diego.
- (b) No person shall drive or operate any paratransit vehicle (except taxicab) under the authority of a permit granted under this article unless such person has and displays a paratransit vehicle driver's identification card issued by the City Manager of The City of San Diego.
- (c) No permit holder shall employ as a taxicab driver or operator any person who has not obtained a taxicab driver's identification card through the Sheriff of the County of San Diego.
- (d) No permit holder shall employ as a driver or operator any person whose privilege to

operate a taxicab within The City of San Diego has been revoked, denied or suspended.

* * *

- (i) No paratransit vehicle driver's identification card shall be issued by the City Manager to any of the following persons:
 - (1) Any person under the age of 18 years.
 - (2) Any person who has been convicted of a felony, or driving a vehicle upon the highway under the influence of an intoxicating liquor or narcotics, or reckless driving; unless five (5)

years have elapsed since his or her discharge from a penal institution or after having been placed upon probation during which period of time his or her record is good.

- (3) Any person who, within the five (5) years immediately preceding the processing of the application, has been convicted of, or held by any final administrative determination to have been in violation of, any statute, ordinance, or regulation pertaining to the same or similar business operation which would have resulted in suspension or revocation of the driver's identification card in accordance with Section 75.0114 of this article.
- (4) Any person who has provided false information in their application.

Section 75.0114 provides as follows:

- (a) Driver's identification cards may be suspended or revoked by the City Manager at anytime in case:

* * *

- (3) Circumstances furnish grounds for the denial, suspension, revocation or refusal to renew the driver's identification card by the Sheriff under the terms of the applicable ordinance of the County of San Diego; or
- (4) His or her State Driver's License is revoked or suspended; or
- (5) The driver is convicted of driving under the influence of intoxicating liquors and/or narcotics while operating a paratransit vehicle; or
- (6) His or her driving record shows a violation point count as specified in Sections 12810 and 12810.5 of the California Vehicle Code; or
- (7) The driver has been convicted of assault, battery, resisting arrest, or any felony involving force and violence; or
- (8) The driver has been convicted of a crime

involving moral turpitude that would require a person to register under Section 290 of the California Penal Code.

- (c) Notwithstanding a driver's possession of a valid taxicab driver identification card, the City Manager may deny, suspend, revoke or refuse to renew the driver's privilege to operate a paratransit vehicle in The City of San Diego if the driver falls within the provisions of this section.

The Paratransit Administrator, acting for the City Manager, issues paratransit permits and cards to all paratransit operators other than taxicab drivers. The City Manager may not issue a paratransit vehicle drivers identification card if a person was convicted of certain crimes within a five year period. San Diego Municipal Code section 75.0112(i)(3). The City Manager's authority to deny, suspend, revoke or refuse to renew the taxicab drivers privilege to operate a paratransit vehicle is however limited to situations where the driver fits within the provisions of section 75.0114. The provisions of that section dealing with

conviction of crime, however, are not limited by any time period, such as the five years ineligibility period set out in section 75.0112.

We consider the lack of a time period in section 75.0114 to be of concern since it would appear that a conviction that is more than five years old would also create ineligibility. It would not suffice to argue that the periods of ineligibility in section 75.0112(e) apply, because section 75.0114 limits disqualification to the grounds enumerated in section 75.0114 and not to those in section 75.0112. Because of this omission, consideration should be given to amending section 75.0114 by adding periods of ineligibility following conviction, tailored to the specific categories of offenses that are narrowly and rationally related to the paratransit industry and protection of the public.

Next, we note that section 75.0112 dealing with driver identification cards does not address the situation presented when a taxicab operator with a valid Sheriff's identification card has his "privilege" suspended or revoked by the City Manager. The Sheriff's identification card remains valid until it is subjected to administrative action by the Sheriff. Therefore, section 75.0112 should be amended to prohibit the driver of a taxicab to operate a taxicab within the City limits when the privilege has been suspended or revoked by the City

Manager.

Another part of the problem lies with the word "operating" or "operate" contained in San Diego Municipal Code sections 75.0102, 75.0112 and 75.0114 regarding operating a taxicab without an identification card or permit. It is the practice of both paratransit and police to interpret the term "operating" to refer only to the picking up or solicitation of a fare and not to the actual driving or the discharge of passengers. It is therefore suggested that the paratransit code be amended to make it clear that the word "operate" or "operating" shall refer to the act of picking up or soliciting of fares within the City.

We therefore suggest the following amendments to the Code language and rationale:

1. Amend San Diego Municipal Code section 75.0101 to add a new subsection (aa) as follows: "The term "operate" or "operating" shall refer to the solicitation or acceptance of a fare within the City limits, but shall not

refer to the discharge or transportation of a fare."

Rationale: An out-of-jurisdiction operator should not be prevented from discharging a fare lawfully picked up in some other jurisdiction, but should not pick up fares in San Diego if not eligible. This would make the code comply with current practice.

2. Amend San Diego Municipal Code section 75.0114 (c) to add at the end: "The City Manager shall send a notice of prohibition to operate a taxicab to any holder of a Sheriff's driver identification card who is ineligible under subsection (a) to operate a paratransit vehicle within the City limits. The notice of prohibition shall be appealable in accordance with section 75.0116."

Rationale: While it may not be administratively possible to revoke, suspend, deny or not renew a card or application that is not presented to or administered by Paratransit, it is possible to prohibit the holder of the Sheriff's identification card from operating in the City based on such

ineligibility. Ordinarily, it would not be necessary to allow for an administrative hearing where the applicant is subject to a misdemeanor citation for picking up a passenger, but in view of the convoluted periods of ineligibility based on felony or misdemeanor conviction, some mechanism must be adopted consistent with due process to notify the operator when he is subject to penalty.

3. Amend section 75.0112 to add a subsection (i) as follows: (i): "No person shall operate a taxicab within the City of San Diego who has received a notice of prohibition pursuant to section 75.0114 or whose privilege to operate a taxicab within the City of San Diego has been suspended, revoked, denied or not renewed by the City Manager."

Rationale: This will address the anomaly presented by section 75.0112(a) which allows the operation of a taxicab with a valid Sheriff's driver identification card.

4. Amend section 75.0114, subsections (a)(5) through (a)(8) to add time periods of ineligibility based on conviction for certain crimes, with consideration for a rational, narrow nexus between the nature of the crime and the public safety vis a vis the paratransit industry. In this regard, the periods of ineligibility in both sections 75.0112 and 75.0114 should be consistent and thus section 75.0112 may also require revision.

Rationale: The period of ineligibility should be rationally related to the nature and seriousness of the crime as it relates to the paratransit industry and public safety.

As a final thought, you may wish to consider adding "reckless driving" to the category of vehicular offenses in section 75.0114(a)(5). This would be consistent with section 75.0112(i)(2). Reckless driving under Vehicle Code section 23103 is used as a permissible reduction under Vehicle Code section 23103.5 from driving under the influence of intoxicants under Vehicle Code section 23152.

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