MEMORANDUM OF LAW

DATE: August 2, 1999

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Mayor's Taxicab Task Force Recommendation/Method of Permit Issuance

INTRODUCTION

During the Rules Committee meeting of April 26, 1999, our office was asked to advise the Mayor and City Council concerning the constitutionality of the Mayor's Taxicab Task Force [Task Force] recommendation on issuing taxicab permits. Specifically, the following questions were asked:

QUESTIONS PRESENTED

1. If implemented, would the recommendation by the Task Force to issue eighty taxicab permits [permits] to four specifically enumerated companies be constitutional?

2. Would increasing the number of permits from 870 to 1,020 be constitutional?

SHORT ANSWER

1. Maybe. Although there is no case directly applicable, courts generally defer to the wisdom of legislative bodies in economic regulation. However, there is risk if The City of San Diego [City] grants certain permits to specifically enumerated companies pursuant to the recommendation of the Task Force. The risk is that the allocation will be set aside and all permits would be subject to an open lottery distribution.

2. Yes. The City has broad discretionary powers to approve distribution of additional permits based on public need.

DISCUSSION

In September 1998, the Rules Committee recommended that a Task Force be formed to review the City's taxicab policy and develop recommendations on a variety of issues. The

objective of the Task Force was to make recommendations that would improve the quality of taxicab service in the City. Specifically, it was asked whether additional permits should be issued. In 1984, the number of permits was limited to the then issued 928. Presently, 870 permits are effective. The Task Force recommended that 150 additional permits be issued to bring the total number to 1,020 (870 + 150).

The Task Force's recommendation to allocate the 150 permits was as follows: eighty Class I permits distributed equally over a two-year period to four different companies (West Coast Cab, Star Cab, Ethio Star Cab, and Personalized Transportation, Inc.); thirty Class II permits distributed by open lottery over a two-year period to qualified applicants providing wheelchair accessible vehicles. Any remaining Class II permits are to be distributed on a first come first served basis. Forty Class III permits distributed by open lottery over a two-year period. In City Manager Report No. 99-83, the Manager recommended increasing the number of permits to 1,020 and distributing the additional 150 permits by open lottery.

The Class I members were identified collectively by the Task Force as a group who aggressively and persistently pursued their permit applications and encouraged the City and MTDB to address issues considered by the Task Force.

I. **Issuance of Eighty Permits**

A. REGULATION UNDER THE POLICE POWER

A City may regulate numerous types of commercial enterprises and activities pursuant to its police powers. The operation of taxicabs is the type of commercial enterprise and activity a city may regulate. Neither the Fourteenth Amendment to the Federal Constitution nor any other amendment was designed to interfere with the state or local government's power to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to: increase the industry of the state, develop its resources, and add to its wealth and prosperity.[1] So long as the regulation is designed to promote the public's general good and neither unequally nor unnecessarily restricts any person or entity based on suspect criteria then the regulation is constitutional even where the effects are unequal.[2] The Equal Protection Clause[3] does not interfere with the legitimate exercise of police power providing it operates alike on all persons and property within the same circumstances and conditions. *People v. Cordero*, 50 Cal. App. 2d 146, 148 (1942).

Whether prohibiting special laws or prohibiting the granting of special privileges and immunities,[4] California Constitutional provisions do not prohibit classification by the legislature nor require that statutes operate uniformly with respect to persons or things that are in fact different. *Zuckerman-Mandville, Inc. v. Sheffield*, 8 Cal. App. 3d 793, 798-99 (1970). No constitutional requirement compels uniform treatment of dissimilarly situated classes, provided that a reasonable basis for each classification exists. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961).

Through the police powers, the City can regulate the operation of taxicabs. This regulation includes determining the number of permits that will be issued as well as the method

of allocation. In order to achieve the desired objective of providing quality service, the Task Force has recommended that four companies be allotted Class I permits. In order to determine whether a violation of the federal or state constitution has occurred based on the allocation of Class I permits, a rational basis test is applied.

B. RATIONAL BASIS TEST

Rational basis scrutiny is a two-part test used where a regulation is economic in nature. Rational basis scrutiny has been characterized as "the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause." *City of Dallas v. Stanglin*, 490 U.S. 19, 26 (1989). Under this test, two questions are raised:

> (1) whether the challenged legislation has a legitimate purpose; and
>
> (2) whether the distinction between the different classes have a fair and substantial relation to the object of the law.

"Where neither a fundamental right nor a suspect class is implicated, legislative classifications are constitutional if they bear some rational relationship to a permissible governmental objective." *Golden State Transit Corp. v. City of Los Angeles*, 686 F. 2d 758, 761 (1982). "The classification is valid if some legitimate state interest is advanced. The reviewing court need not and should not ascertain whether the particular governmental interest was the primary legislative purpose." *Id.* "[C]ourts may properly look beyond the articulated stated interest at the time of enactment in testing a statute under the rational basis test." *Id.*

In *Golden State Transit Corp*., the City refused to renew a franchise with a taxicab company that was engaged in a collective bargaining dispute. In acting on twelve applications for franchise renewals, the City created a classification that differentiated between an applicant that was engaged in a collective bargaining dispute and the remaining applicants not involved in such a dispute. The Court held that even if the members of the City Council were motivated at least in part by an impermissible purpose, that classification arising out of the refusal to renew the franchise bore a rational relationship to the permissible governmental purpose of providing quality taxicab service and adequate compensation for taxicab drivers. *Id*.

If a classification is reasonably related to the purpose of the statute and is based on some natural, intrinsic or constitutional distinction that justifies the exclusion, then it will not violate constitutional guarantees of due process, equal protection, or uniform application of the law. *Helton v. City of Long Beach,* 55 Cal. App. 3d 840, 844 (1976). This classification, however, cannot be based on a "fanciful difference" or one designed to afford an advantage to local business competing with outsiders. *Los Angles v. Lankershim,* 160 Cal. 800, 803 (1911).

In *Lankershim*, an ordinance sought to create a separate class of business in which those owners who rented over 30 rooms in a building would be taxed, while those renting under 30 would not. The Court determined that the distinction made between the two groups was artificially contrived and therefore gave an unfair benefit to certain members of the same group. *Id*. At 804. The ordinance was subsequently declared invalid. *Id.* The Court acknowledged that

while it should be "zealous in its search to uphold a ordinance that has come under attack, the Court should not shut its ears to reason." *Id*. At 803. As such, the Court determined that there must be some substantial distinction within the business in order to create the desired subclass.

Applying the reasoning in *Lankershim* to the Task Force recommendation, creating a distinction between Class I and other taxicab companies may violate the equal protection clause. The Class I members along with other members of the taxi industry are involved in the same profession. As such, any distinction between Class I and other cab companies must be substantially related to the objective of the law change, improving the quality of taxicab service, as opposed to an artificially created category. The category of "aggressively and persistently pursued..." or instrumental in beneficial legislative change has not been addressed by any Court. A Court decision rests on the City's ability to establish that the Task Force classification is substantially related to the objective of the legislative change. Having no case on point will add to the difficulty of meeting the rationally based standard. An argument could be made by those opposing the Task Force recommendation that, merely because four companies demonstrated aggressiveness and persistence in pursuing permits it does not necessarily follow that the quality of taxicab service will be enhanced by providing that those companies are excepted from the lottery. Thus, those who oppose the Task Force recommendation would argue, the noncompetitive issuance of 80 permits is not substantially related to the objective of the legislative change.

II. **Increasing the Number of Permits from 870 to 1,020**

Taxicabs are considered common carriers for purposes of regulation because the industry services offered are public in nature and take place on streets and highways in and around the City. No vested rights are associated with the granting or prohibiting of permits, so no fundamental rights are affected that would raise constitutional concerns requiring more than a rational basis for the regulation.

The use of highways by a common carrier is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process or equal protection clause. *Buck v. Kuykendall*, 267 U.S. 307, 314 (1925). Ordinances may condition the granting of taxicab licenses on the basis of public need. *Capitol Taxicab Co. v. Cermak*, 60 F. 2d 608, 609-610 (1932). The exercise of discretion was appropriate where public convenience and necessity required the issuance of new certificates for taxicab service. *Luxor Cab Co. v. Thomas Cahill*, 21 Cal. App. 3d 551, 576 (1971). In *Luxor*, a cab company and chauffeurs union sought to prevent a city board of permit appeals from issuing new certificates for the operation of taxicabs; the Court held that the board had broad discretion in passing upon permit matters and that the issuance of new certificates did not infringe on the vested rights of present certificate holders. *Id.* at 551.

The City Council has both the power to regulate the taxicab industry because taxicab's are common carriers and the discretion to issue permits as long as the exercise of discretion is reasonable. The Task Force has recommended distributing an additional 150 permits based on public need. The Task Force concluded that due to the increases in population, tourism, and transportation requirements of the disabled and the elderly, increased quality taxicab service

could be achieved by issuing 150 additional permits. Because the City Council has broad direction in exercising its powers, approving this recommendation and implementing a public policy to increase the number of permits to 150 is constitutional because it arguably increases the quality of taxicab service.

III. **Presumption of Constitutionality**

Wide discretion is vested in the legislature in making a classification, and its decision as to what is a sufficient distinction to warrant a classification will be upheld by the courts, unless it is palpably arbitrary and beyond rational doubt erroneous and no set of facts reasonably can be conceived that would sustain it. "It is now well established that legislative acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary or irrational way." *Usery v.Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). "All presumptions favor the validity of a statute. The court may not declare it invalid unless it is clearly so." *Tobe v. Santa Ana*, 9 Cal. 4th 1069, 1102 (1995). The City Council has wide discretion in approving recommendations made by the Task Force. Should the City Council decide to vote to approve this recommendation, the burden will be on the challenging party to prove that the City Council acted in an arbitrary or irrational way.

CONCLUSION

There is a risk that the grant of Class I permits as recommended by the Task Force would not be found constitutional. The risk is based on whether the classification is substantially related to the objective of the legislative change. Courts attempt to uphold City Council legislative decisions and will only overturn them if the Council acts in an arbitrary or irrational way. However, even with that significant presumption, the risk is not eliminated. The City Manager's recommendation creates no constitutional issue, because it recommends that the 150 permits be issued by open lottery.

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By _____
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