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MEMORANDUM OF LAW

DATE: August 26, 2014
TO: Councilmember Marti Emerald
FROM: City Attorney
SUBJECT: Removing the Current Limitation on the Number of Taxicab Permits

QUESTION PRESENTED

Can the City lawfully remove its limitations on the number of permits available to operate a taxicab within the City?

SHORT ANSWER

Yes. The City has broad discretionary powers over the granting of taxicab permits and may remove the limit on the number of permits.

BACKGROUND

The City has used several approaches to regulate the taxi industry. *See* City Mgr. Report No. 01-050 (Mar. 14, 2001). The policy through the mid-1970s required the City Council to hold hearings to determine whether to issue certificates of convenience and necessity whenever specific requests were received from existing or prospective operators. In the late 1970s, the Council decided to increase the supply of taxicabs to encourage competition and diversity, to allow drivers to own their own cabs, and to detach taxicab matters from the political process. A series of amendments to the Municipal Code were passed that set no limit on the total number of taxicabs and transformed licensing to an administrative process. The number of taxicabs more than doubled to 928 taxicabs by 1984. Subsequently, the City Council adopted Council Policy 500-02 to limit the number of taxicab permits within the City and instituted a moratorium on new permits. San Diego Resolution R-260636 (May 7, 1984).

In 1988, the City delegated the administration and regulation of taxicabs to the San Diego Metropolitan Transit System (MTS), while maintaining authority over major policy matters including the number of taxicab permits. In 2001, the City Council amended Council Policy

500-02 to replace the moratorium on new taxicab permits with a formula intended to balance the supply of taxicabs to the demand for taxicab services within the City. San Diego Resolution R-295355 (August 6, 2001). This formula has been modified twice with the intent of balancing the issuance of new permits with the increased demand for taxicab services. San Diego Resolution R-302130 (Dec. 6, 2006); San Diego Resolution R-307494 (Jun. 26, 2012).

ANALYSIS

In the State of California, cities and counties are required to adopt a resolution or ordinance regulating taxicab transportation services within their limits. Cal. Gov. Code § 53075.5(a). These regulations include “A policy for entry into the business of providing taxicab transportation service[s].” Cal. Gov. Code § 53075.5(b)(1).

As the City Attorney’s Office has opined before, 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. *See* City Att’y MOL No. 99-7 (Aug. 2, 1999). 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.¹

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). This 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.

In the past, the City has expanded and limited the number of taxicab permits issued. At present, Council Policy 500-02 governs how new taxicab permits are to be issued. While this Council Policy currently contemplates additional permits being granted based upon certain supply and demand conditions being present, it remains within the discretion of the City Council to amend this criteria. There is no legal impediment to the City Council modifying Council Policy 500-02 to allow for unlimited taxicab permits to be issued if the City Council has a reasonable basis for doing so. If the City Council desires to do so, it should develop a record through public hearings and testimony as to the rational reason for the change.

¹ Under the rational basis test, legislative classifications are constitutional if they bear some reasonable relationship to a permissible governmental objective. *See* City Att’y MOL No. 99-7 (Aug. 2, 1999) at pg. 4.

CONCLUSION

The City Council may remove the limit on the number of taxicab permits. Such a change should be memorialized as an amendment to Council Policy 500-02, which governs how taxicab permits are issued.

JAN I. GOLDSMITH, City Attorney

By . /s/ Ryan P. Kohut
RYAN P. KOHUT
Deputy City Attorney

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ML-2014-9
Attachment: CP-500-02

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: TAXICAB PERMITS
POLICY NO.: 500-02
EFFECTIVE DATE: June 26, 2012

BACKGROUND:

Regulation of taxicab service is in the interest of providing residents and visitors to the City of San Diego with a good quality local transportation service. Towards this end, the City finds it desirable to regulate the issuance of taxicab permits.

PURPOSE:

To establish a policy for the issuance of additional taxicab permits, for the purpose of expanding the taxi industry to meet growing demand for taxi service throughout the City, and providing opportunity for both existing and new taxi operators and for experienced drivers.

POLICY:

The City will periodically issue additional taxicab permits based on a formula. The formula will take into account both the demand for taxicab services and the supply of taxicabs.

New permits will be issued on a full cost recovery basis. All applicants will first have to submit an application and satisfy Screening Criteria based on quality and customer service standards. Two methods of issuance will be used:

1. 60% of new permits will be issued in blocks of five or more permits by lottery to entities that demonstrate an ability to manage a fleet of taxicabs.
2. 40% of new permits will be issued one at a time by lottery to experienced drivers.

The process through which permits are issued will limit the concentration of permits. No permits will be issued or transferred to any person, company, business, corporation, or other entity if such issuance or transfer would result in any permit holder having an interest in more than 40% of the existing permits. New permits shall not be transferred for a period of five years after issuance. No single permit will be issued or transferred to any person, company, business, corporation, or other entity if such issuance or transfer would result in single permit holders in aggregate having interest in more than 40% of the existing permits.

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Permit holders of newly awarded permits must demonstrate that they are in compliance with Screening Criteria as a condition of annual permit renewal or the permit may be suspended or revoked.

When any taxicab permit is transferred, the transferee must satisfy Screening Criteria at time of transfer and thereafter as a condition of annual permit renewal or the permit may be suspended or revoked.

All permits held by corporations or limited liability companies shall comply with Screening Criteria within five years of the adoption of this Policy.

IMPLEMENTATION:

Increases in the number of taxicab permits will be based on a formula to be computed every three years. Permits that are authorized but not awarded, as well as permits that are vacant due to revocation or relinquishment, shall not be considered to be active permits for the purposes of determining need for new permits.

Screening Criteria will be evaluated on a pass-fail basis. Each element must be a "pass" in order for the applicant to have been considered to have satisfied the screening. Applicants are responsible for providing complete and accurate information needed for the screening evaluations.

1. Screening Criteria
 - A. Applicants must:
 - a. Meet regulatory requirements for a taxicab permit holder and operator specified in ordinance and regulation
 - b. Provide evidence of at least five years' experience driving a taxicab or managing a demand responsive transportation service, or similar service-oriented business
 - c. Provide evidence of ability to meet insurance requirements
 - d. Provide evidence of ability to finance the meeting of screening criteria and regulatory requirements

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- B. Vehicles must:
 - a. Meet regulatory and ordinance requirements
 - b. Meet California Air Resources Board criteria for Zero Emission Vehicle or Low Emission Vehicle
 - c. Be ADA-compliant (applies to first permit, thereafter at least 50% of vehicles must comply)
 - d. Be equipped with GPS
 - e. Be equipped with security cameras

- C. Adequate facilities must be demonstrated for:
 - a. Administrative functions
 - b. Vehicle maintenance
 - c. Off-street vehicle storage when not in service

- D. Dispatch must be:
 - a. Staffed 24 hours
 - b. Computerized
 - c. Utilize GPS

- E. Customer service plan must include:
 - a. Acceptance of credit cards
 - b. Customer complaint system
 - c. Record keeping of every call, dispatch, trip, and complaint
 - d. 25% of trips must originate in underserved communities

- F. Additional screening criteria may be added as needed by regulatory action to fulfill the purpose of improving industry standards and customer service and keeping current with technology.

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2. Lottery of Permit Blocks

Eligibility: Applicants must satisfy Screening Criteria as well as demonstrating ability to finance and manage a fleet of taxicabs.

Blocks of Permits: 60% of the permits available shall be divided as evenly as possible into blocks five or more permits, maximizing the number of blocks available. For example, if 24 permits are available, then they shall be divided into four blocks of six permits; 25 permits shall be divided into five blocks of five permits; and 26 permits shall be divided into one block of six and four blocks of five permits.

Distribution: Applicants shall be screened for eligibility. Eligible applicants are placed in a lottery. The first 25 names drawn shall be placed on a list based on order of selection, with blocks awarded starting with the first drawn until all of the available blocks have been awarded. Larger blocks shall be awarded first. Names that are drawn but not awarded blocks shall constitute a waiting list. Applicants who subsequently fail to meet regulatory requirements shall be removed from the list and blocks reassigned in order to include the next listed applicant on the waiting list.

3. Lottery to Individual Drivers

Eligibility: Applicants must satisfy Screening Criteria, and: 1) not have any ownership interest in any taxicab permits, 2) have a current Taxicab Drivers Identification Card issued by the San Diego County Sheriff, 3) demonstrate a minimum of five years' experience leasing and driving a taxicab for at least 1000 hours per year, and 4) if awarded a permit, must drive the taxicab for at least 1000 hours per year for the first five years that the permit is held.

Individual Permits: 40% of the permits available shall be distributed one at a time.

Distribution: Applicants shall be screened for eligibility. Eligible applicants are placed in a lottery. The number of names drawn shall equal twice the number of permits available in the lottery. The names drawn shall be placed on a list based on order of selection. One permit shall be awarded starting with the first name on the list until all of the available permits have been awarded. Names that are drawn but not awarded a permit shall constitute a waiting list. Applicants who subsequently fail to meet regulatory requirements shall be removed from the list and the permit reassigned to the next listed applicant on the waiting list.

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FORMULA

The formula will be computed as follows:

$$S=D/M$$

Where:

- S= the calculated ideal supply of taxicabs
- D=measured aggregate demand for taxicab trips
- M=the number of taxicab trips needed to sustain one new taxicab vehicle entering the market

The formula shall be applied every three years. Economic studies shall be conducted to determine the values of D and M.

Additional permits shall be issued when S exceeds the number of active permits by 40 or more. The number of permits distributed shall be S minus the number of active permits. The number of active permits is the number of authorized permits minus unassigned and vacant permits.

HISTORY:

“Taxicabs - Certificates of Convenience and Necessity”

Adopted by Resolution R-72292 - 08/21/1962

Amended by Resolution R-216590 - 08/11/1976

Amended by Resolution R-217293 - 12/15/1976

Amended by Resolution R-222474 - 12/19/1978

Repealed by Resolution R-258090 - 03/14/1983

“Taxicabs - Permits”

Added by Resolution R-260636 - 05/07/1984

Amended by Resolution R-261739 - 10/15/1984

Amended by Resolution R-271307 - 06/28/1988

Amended by Resolution R-295355 - 08/06/2001

Amended by Resolution R-302130 - 12/06/2006

Amended by Resolution R-307494 - 06/26/2012