

**Council Meeting: March 3, 2009****SUBJECT: Amendment to Sunnyvale Municipal Code Chapter 5.36  
(Taxicabs) Related to Taxicab Franchises****REPORT IN BRIEF**

The City of Sunnyvale last amended Chapter 5.36 (Taxicabs) in 2006. Since that time there have been legislative changes that require the City to modify the Ordinance and add an administrative process to ensure complaints related to the operation of taxicabs are investigated. In addition, Staff is requesting to make other adjustments that will allow the Taxi Franchisees more latitude in addressing economic concerns such as volatile fuel prices and rising insurance rates.

**BACKGROUND**

The original Taxicab Ordinance was established in 1946 and the most recent update was in 2006. In January 2009, changes to the California Government Code Section 53075 went into effect, requiring cities to create standard operating procedures to investigate complaints of unauthorized taxicab operations. Also, at the suggestion of the City Risk Manager, staff is proposing a change to the Insurance Requirements that must be met by the franchisees. These changes have been proposed to clarify the language in the Municipal Code and to simplify the processes for both the companies and staff.

Taxicab services in Sunnyvale are managed through the non-exclusive franchise agreement which allows for an unlimited number of taxi companies to apply for and receive franchise agreements.

**EXISTING POLICY**

Sunnyvale Municipal Code Chapter 5.36

**DISCUSSION**

The taxi industry provides a valuable service to the community, and like any business there is a level of competition between proprietors. The City has a responsibility to ensure that the companies operating within our jurisdiction are doing so legally and ethically so as not to pose a risk to our residents. This proposed update to the Ordinance is designed to address areas of the business that have either not been addressed before or the methods are out of date and are no longer sufficient to deal with the current climate of the business. In addition, there have been recent legislative changes that require

cities that regulate the Taxi Business within its jurisdiction to establish procedures to investigate complaints of unauthorized taxicab operations.

Many of the proposed changes are in response to suggestions from the business community and others are a combination of feedback from patrons, staff and best practice ideas and existing ordinance language from surrounding agencies that deal with the taxi industry.

The summary of the proposed changes are as follows, Attachment A shows the actual track changes for your reference:

5.36.010 Definitions: Deleting the reference to Taxicab Stands. This was originally added with the intention of allowing better management of taxi services for private property owners such as restaurants, hotels and large corporate headquarters. The definition of and authority to establish Taxicab Stands is already addressed in SMC10.36.130.

5.36.140 Franchise Revocation: Deleting the reference to a rate of fare set by the City Council. Staff is proposing that Council not set the maximum rates, rather leave it to the companies so they are able to adjust to market conditions.

5.36.235 Taxicab Stands: Deleting this section, as previously stated this is a duplication of SMC 10.36.130 which gives the Traffic Engineering Department authority over the Taxicab Stands.

5.36.280 Fare Schedule: This changes the authority to set a maximum fare rate from the City Council to the Taxicab Franchisee. It became apparent during this past year that economic conditions that impact the transportation industry are volatile and that in order for the businesses to thrive they need flexibility to adjust their rates. In current practice, Staff may bring the rate schedule in front of Council every year or two for review; hindering the company's ability to adjust to changing costs. Staff is confident that the companies will maintain competitive rates and will continue to monitor the rates as each company is required to file a uniform and reasonable schedule with the Department of Public Safety.

5.36.290 Posting Schedule: Changing the authority to receive the official fare schedule from the Director of Finance to the Director of Public Safety or designee.

5.36.300 Insurance Required: This changes the insurance requirement from a split limit of \$1 Million for property damage and \$1 Million for personal injury per occurrence to a combined single limit of \$1 Million per incident. It also adds a requirement that any insurance obtained must carry an "A.M. Best Rating of at least A:VII". These changes have been proposed on the advice of

the Risk Manager as our current policy is not in line with the industry standard.

5.36.365 Testing of Taxicab Drivers for Controlled Substance and Alcohol:

Adding language in compliance with Title 49 of the Code of Federal Regulations and California Government Code Section 53075.5 requiring all franchise holders and drivers to maintain mandatory controlled substance and alcohol testing certification. This language allows for denial of an application if the applicant does not have proof of a negative test for controlled substances or alcohol.

5.36.405 Investigation of Complaints of Unauthorized Taxicab Operation:

Adding the new language as required by Government Code Section 53075.7.

**FISCAL IMPACT**

There is no fiscal impact to the City.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

**ALTERNATIVES**

1. Adopt the proposed ordinance amending Chapter 5.36.
2. Adopt an amended version of the ordinance.
3. Do not adopt the ordinance and provide direction for staff.

**RECOMMENDATION**

Staff recommends Alternative #1; adopt the proposed ordinance amending Chapter 5.36.

Reviewed by:

Don Johnson, Director, Public Safety

Prepared by: Heather Tannehill, Management Analyst

Reviewed by:

David A. Kahn, City Attorney

Approved by:

Gary M. Luebbers  
City Manager

**Attachments**

A. Draft Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING SECTIONS 5.36.365 AND 5.36.405 TO AND AMENDING CERTAIN SECTIONS OF CHAPTER 5.36 (TAXICABS) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE SUNNYVALE MUNICIPAL CODE PERTAINING TO TAXICAB FRANCHISES**

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 5.12.010 AMENDED. Section 5.12.010 of Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is amended to read as follows:

**5.36.010. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

(1) – (4) [Text unchanged.]

~~(5) “Taxicab stand” means a designated area on private property for the purpose of allowing taxicabs to solicit customers for transportation.~~

SECTION 2. SECTION 5.36.140 AMENDED. Section 5.36.140 of Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is amended to read as follows:

**5.36.140. Franchise revocation.**

(a) The director of public safety, or his or her designee, may revoke the franchise granted under this chapter, if any of the following determinations are made:

(1) – (3) [Text unchanged.]

(4) If taxicabs are operated at a rate of fare other than that specified in the franchisee’s rate schedule then in effect and on file with the director of finance, ~~or at a rate in excess of any maximum rate schedule as set by the city council pursuant to Section 5.3 6.280~~(b) public safety;

(5) - (6) [Text unchanged.]

SECTION 3. SECTION 5.36.235 DELETED. Section 5.36.235 of Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is deleted as follows:

~~**5.36.235. Taxicab stands.**~~

~~(a) When a space has been designated as a taxicab stand, taxicab drivers shall be entitled to use of the stand on a first come first serve basis and are not subject to paying additional costs requested from property personnel.~~

- ~~————(b) Hotel personnel or its valet representatives shall not ask for or receive any type of compensation from the drivers in exchange for requesting taxi service.~~
- ~~————(c) The driver shall pull onto the taxicab stand from the rear and shall advance forward as the cabs in front pull off.~~
- ~~————(d) Except for a customer deliberately choosing a different taxi, taxis shall pick up customers and leave the taxicab stand by the order of arrival only.~~
- ~~————(e) A taxicab driver shall not park, stand or stop in any other place where there is a designated taxicab stand provided.~~
- ~~————(f) Taxicab drivers shall not leave their vehicle unattended while parked in a taxicab stand.~~
- ~~————(g) Taxicabs displaying “out of service” signs shall not park in a taxicab stand.~~
- ~~————(h) The taxicab stand owner’s right to use a taxicab stand, as provided herein, shall be modified and/or suspended if the taxicab driver fails to obey the provisions of this chapter or any laws and ordinances of the city.~~

SECTION 4. SECTION 5.36.280 AMENDED. Section 5.36.280 of Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is amended to read as follows:

**5.36.280. Fare schedule.**

~~(a) Each franchisee shall adopt a uniform and reasonable schedule of charges for use of taxicabs operated under its franchise, based upon the distance traveled or waiting time, or both, as may be indicated by such taximeter, which schedule of fares shall be filed with the director of public safety, or his or her designated representative, prior to being employed in the franchisee’s operations. In no event shall the fares under such schedule exceed any of the fares that may be set forth in the Maximum Rate Schedule, as adopted by the city council under subsection (b) below.~~

~~————(b) The city council at annual intervals, may by resolution, and after public hearing and notice, establish a schedule of maximum rates to be charged by all franchisees operating under this chapter. In setting such maximum rate schedules, the city council may review and consider the average rates for taxicab service charged in Sunnyvale, as well as in jurisdictions in the vicinity of Sunnyvale, and any other factors which it deems relevant to its determination.~~

SECTION 5. SECTION 5.36.290 AMENDED. Section 5.36.290 of Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is amended to read as follows:

**5.36.290. Posting schedule.**

All owners and operators shall keep posted in a conspicuous place, and in a permanent and secure manner in the passenger compartment of each taxicab, the schedule of fare rates chargeable for the use of the taxicab, and no owner or operator shall change the schedule of rates so posted unless a new schedule of rates has been filed with the director of finance public safety, or his or her designee.

SECTION 6. SECTION 5.36.300 AMENDED. Section 5.36.300 of Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code is amended to read as follows:

**5.36.300. Insurance required.**

It shall be unlawful for an owner or driver to operate a taxicab unless there is in full force and effect a policy of insurance in form as the city attorney deems proper, executed by an insurance company authorized to conduct business in the ~~s~~State of California and with an A.M. Best rating of at least A:VII, whereby the owner and driver of each of the taxicabs operated under the franchise are insured against liability for damage to property and for injury to or death of any person as a result of the ownership, operation or other use thereof. The minimum liability limits upon each such vehicle shall not be less than one million dollars ~~on account of combined single limit~~ for bodily injury to or death of any persons and for damages to or destruction of property in any one accident, ~~and the minimum liability limits upon each such vehicle shall be not less than one million dollars for damages to or destruction of property in any one accident.~~ Such policy of insurance shall contain an endorsement providing that the policy shall not be canceled or materially modified until notice in writing has been given to the city, addressed to the director of public safety, city of Sunnyvale, California, at least thirty days immediately prior to the time such cancellation becomes effective. Further, such policy of insurance shall name the city, its officers, agents and employees as additional insured. Any deviations from these requirements must be approved in writing by the city's risk manager. Additionally, a vehicle owner and driver shall indemnify, defend and hold harmless the city, its officers, agents and employees from claims arising from or alleged to arise from the negligence of the vehicle owner or driver.

SECTION 7. SECTION 5.36.365 ADDED. Section 5.36.365 is added to Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code to read as follows:

**5.36.365. Testing of taxicab drivers for controlled substances and alcohol.**

(a) Each holder of a taxicab franchise or taxicab driver's permit shall maintain a mandatory controlled substance and alcohol testing certification program conforming to Part 40 of Title 49 of the Code of Federal Regulations and California Government Code section 53075.5 for all drivers of vehicles operated under the franchise. The program shall contain requirements for rehabilitation, return-to-duty, follow up testing and other requirements conforming substantially to Part 382 of Title 49 of the Code of Federal Regulations. No taxicab franchise or taxicab driver's permit shall be issued or renewed unless proof of this mandatory program is submitted to the department of public safety.

(b) No taxicab franchise shall be issued or renewed unless the holder at the time of issuance or renewal files with the department of public safety a certification that each driver of vehicles operated under the franchise has tested negatively for controlled substances under a mandatory controlled substance testing certification program conforming to Part 40 of Title 49 of the Code of Federal Regulations and California Government Code section 53075.5.

(c) No taxicab driver's permit shall be issued or renewed unless the applicant and the franchise holder for which the driver is authorized to operate a vehicle both certify that the driver has tested negatively for controlled substances under a mandatory controlled substance and alcohol testing certification program conforming to Part 40 of Title 49 of the Code of Federal Regulations and California Government Code section 53075.5.

**SECTION 8.** SECTION 5.36.405 ADDED. Section 5.36.405 is added to Chapter 5.36 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the Sunnyvale Municipal Code to read as follows:

**5.36.405. Investigation of complaints of unauthorized taxicab operation.**

(a) The director of public safety shall create standard operating procedures pursuant to Government Code section 53075.7 to investigate complaints of unauthorized taxicab operation. These operating procedures may be revised from time to time by the director.

(b) In addition to any other remedies available under this chapter, the city may institute administrative proceedings to determine if the unauthorized operation of a taxicab has occurred. The director of public safety, or his or her designee, shall be the hearing officer. A notice shall be sent to the violating party at least ten (10) calendar days prior to the hearing date. Failure of the violating party to attend the hearing shall constitute a failure to exhaust administrative remedies. After the conclusion of the hearing, the hearing officer shall issue a written decision within five (5) calendar days of the hearing date. The hearing officer's decision shall be final.

(1) After a hearing and upon finding that any person, firm or corporation does not have the proper authority to operate a taxicab under this chapter or has violated the advertising requirements under Government Code section 53075.9, the city may impose a fine of not more than five thousand dollars (\$5,000). The fine shall cover the reasonable expenses of the investigation.

(2) The city may also seek to terminate the telephone service of the violator as an additional remedy. If the termination of telephone service is sought, the notice and hearing procedures under Government Code section 53075.8 shall be followed.

**SECTION 9.** CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**SECTION 10.** CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 11. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 12. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held \_\_\_\_\_, 2009, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2009, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney