



July 14, 2009

**SUBJECT: Award of Taxicab Franchise to ACME Yellow LLC,
dba ACME Cab**

REPORT IN BRIEF

A taxicab franchise application and required fees have been received from ACME Yellow LLC doing business as ACME Cab. Staff has conducted an investigation into the applicants' backgrounds as required by Municipal Code Section 5.36.050. After careful review, staff has determined that the applicants meet the mandatory code requirements as established. Staff recommends that Acme Cab be awarded a non-exclusive taxicab franchise for the period of May 31, 2009 through May 30, 2011, per applicant's request.

BACKGROUND

There are currently five valid taxicab companies franchised to operate within the City of Sunnyvale. They are Yellow Checker Cab Co., Inc., DBA Checker Cab of Silicon Valley, A Orange Cab, A-1 Cab, Yellow Cab Co. Peninsula, Inc., and ACME Yellow LLC DBA ACME Cab. ACME Yellow LLC DBA ACME Cab has previously operated with a valid franchise agreement, which will expire on May 30, 2009. They have requested and been granted an extension to continue operations until a new ordinance is awarded pursuant to section 5.36.120 of the Municipal Code.

ACME Yellow LLC DBA ACME Cab acknowledges and accepts the requirements of the Municipal Code as well as the taxicab franchise agreement. ACME Yellow LLC DBA ACME Cab is also aware of the right of the City of Sunnyvale to revoke or suspend the taxicab franchise if it is determined that there is a violation or non-compliance of the terms contained in Municipal Code Section 5.36.

EXISTING POLICY

The term "non-exclusive franchise" as used in the Sunnyvale Municipal Code means that the city does not limit the number of like franchises in operation at one time. If an applicant meets the provisions as outlined in the Municipal Code, then the franchise to operate a taxicab service should be issued.

The City's non-exclusive franchise requirements are derived from Municipal Code Chapter 5.36. It is unlawful to operate any taxicab in the City unless the owner applies for and obtains a franchise to do so. The City Council may deny a franchise to any applicant if:

1. The applicant has been convicted of certain criminal offenses.
2. The proposed color scheme or other insignia may tend to confuse the identification with other franchises already operating within the city.
3. The applicant has been in violation of any law or Municipal Code regulation relating to the conduct of a taxicab business.
4. The applicant has had a taxicab license revoked or suspended in the City of Sunnyvale or any other jurisdiction within five years prior to the date of application.
5. Any other reasonable cause exists which, within the City Council's sound discretion would render the proposed operation undesirable to the City of Sunnyvale.

A franchise is issued for a term of two years. At the expiration of the term, the franchise is deemed expired and is no longer valid unless a new franchise is issued under the provisions of Municipal Code Chapter 5.36.

DISCUSSION

The owner of ACME Cab has submitted information and documentation to demonstrate compliance with each of the criteria identified in Municipal Code Chapter 5.36, as outlined below.

1. Local Contact Requirement – ACME Yellow LLC DBA ACME Cab has provided a toll-free telephone number to its dispatchers, together with sufficient phone lines to provide for prompt response to callers.
2. Vehicles – ACME Yellow LLC DBA ACME Cab is the registered owner of five (5) company owned vehicles that have been identified for operation under this franchise. The taxicabs are identical in color schemes and markings; they are white on the top half of the vehicles and yellow on the lower half with the company name and telephone number in black lettering on the door.
3. Taximeter – Each taxicab, which has been identified for operation under the franchise, is equipped with a taximeter which must be inspected annually by the Santa Mateo County Sealer of Weights and Measures. Staff has been provided with compliance reports for the vehicles identified for this franchise agreement.
4. Insurance – A certificate of valid insurance has been provided from Y.A. Title & Associates in the amount of \$1,000,000 combined single limit, as well as \$1,000,000 Auto Liability/Property/Bodily Injury. This

- insurance will be in effect, with the City of Sunnyvale listed as Additional Insured, with a 30-day prior notice of cancellation clause as required. The company understands that it may not operate without proper insurance. Staff reviewed the Certificate of Insurance and found that it meets the requirements of the Municipal Code.
5. Criminal History – A criminal history check of the applicants was conducted as required per code. The applicants have not been convicted of any felonies, narcotic violations, or crimes of moral turpitude as referenced in the Municipal Code.
 6. Experience of Owner – – The investigation has revealed that the applicants, Jeffrey Browning and Amandeep Kaur, have histories in general businesses. Jeffrey Browning has operated as a taxicab driver since 1975 and began owning/managing his own companies in 1996.
 7. Personnel – Individual drivers were not identified in the application, but each will be required to obtain a taxicab driver's permit issued by the Department of Public Safety. The applicant is aware of the requirement to maintain five (5) permitted drivers while operating in the City of Sunnyvale. The applicant is also adhering to the random drug testing requirements as established by State Law and is utilizing Schlim, McCabe and Associates for his Medical Review Officer Services.
 8. Fees – The applicant has paid the required franchise application fee of \$398.00. The applicant agrees to pay the quarterly vehicle fees that are due during the month following the quarter the agreement is signed and each quarter thereafter during the term of the franchise. The applicant has agreed to complete a Taxicab Franchise Questionnaire listing driver and vehicle information each quarter during the term of the franchise.
 9. Fare Schedule – ACME Yellow LLC DBA ACME Cab has filed their fare schedule with the Department of Public Safety in accordance with Section 5.36.280 SMC.

FISCAL IMPACT

Granting a taxicab franchise will have a minor fiscal impact relating to costs of monitoring the franchise for compliance. The revenue generated from this franchise due to application fees (\$398), quarterly vehicle fees (\$180 per vehicle per quarter), and the business license fee (\$35) is estimated to be approximately \$7,668.00 during the term of the agreement. This does not include revenue generated by the driver permits issued (\$108 per driver), as this amount fluctuates due to driver turn over during the term of the agreement. The associated fees do not represent full cost recovery for the overall program administration, primarily because costs are passed directly to drivers, making for a difficult balance between the need for service and the cost of regulation. Staff

estimates the city annual subsidy of less than \$600 per Franchise and \$700 per vehicle to be in the best interest of the city in maintaining taxi services to the community.

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. Introduce and adopt an ordinance awarding a non-exclusive franchise for taxicab service to ACME Yellow LLC DBA ACME Cab for the period of May 31, 2009 through May 30, 2011 per applicant's request, and authorize the City Manager to execute necessary documents of agreement.
2. Do not introduce or adopt an ordinance awarding a non-exclusive franchise to ACME Yellow LLC DBA ACME Cab for the period of May 31, 2009 through May 30, 2011, per applicant's request.

RECOMMENDATION

Staff recommends Council approves alternate #1.

Reviewed by:

Don Johnson, Director, Department of Public Safety
Prepared by: Rachel Vasquez, Sr. Office Assistant

Approved by:

Gary M. Luebbbers,
City Manager

Attachments

- A. Non-exclusive Franchise Ordinance
- B. Taxicab Franchise and Agreement

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AWARDING NONEXCLUSIVE FRANCHISE TO JEFFREY BROWNING AND AMANDEEP KAUR, OWNERS OF ACME YELLOW LLC, DOING BUSINESS AS ACME CAB

WHEREAS, Chapter 5.36 of the Sunnyvale Municipal Code establishes a procedure for the consideration and award of nonexclusive taxi franchises by the City of Sunnyvale; and

WHEREAS, JEFFREY BROWNING and AMANDEEP KAUR, owners of ACME YELLOW LLC, doing business as ACME CAB, has applied for a nonexclusive taxicab franchise; and

WHEREAS, public notice in accordance with Sunnyvale Municipal Code Section 5.36.070 has been given that the City Council of the City of Sunnyvale would hold a public hearing for the purpose of determining whether to award the franchise; and

WHEREAS, the City Council finds that it would be in the best interests of the City of Sunnyvale to award a nonexclusive franchise for taxicab service to the applicant;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. FRANCHISE GRANTED. The City of Sunnyvale hereby grants to JEFFREY BROWNING and AMANDEEP KAUR, owners of ACME YELLOW LLC, doing business as ACME CAB (hereinafter "Franchisee"), a nonexclusive Franchise for taxicab service within the corporate boundaries of the City of Sunnyvale as such boundaries presently exist or as they may be changed during the term of this Franchise. The Franchisee shall conduct its operations under the Franchise in strict compliance with Sunnyvale City Charter and Chapter 5.36 of the Sunnyvale Municipal Code, and any amendments thereto, together with all applicable laws and regulations of the State of California, the United States or any regulatory agency having jurisdiction.

SECTION 2. TERM. The term for which this Franchise is granted shall be two years commencing May 31, 2009, and ending at 12:00 midnight on May 30, 2011.

SECTION 3. CONSIDERATION. The Franchisee shall pay quarterly to the City as consideration for the granting of this Franchise the amounts per vehicle as set forth in the City's Master Fee Schedule, which is incorporated by reference herein.

SECTION 4. USE OF CITY STREETS. The Franchisee hereby is given permission to use City streets for the purpose of providing taxicab service in accordance with the terms of this ordinance and the franchise agreement.

SECTION 5. GENERAL CONDITIONS. This Franchise is granted subject to the terms and conditions set forth in the "Taxicab Franchise and Agreement" attached and incorporated.

SECTION 6. ACCEPTANCE OF FRANCHISE TERMS AND CONDITIONS. This Franchise shall not become effective until the Franchisee accepts the Franchise by executing the Taxicab Franchise Agreement within ten (10) days after adoption of this ordinance.

SECTION 7. APPROVAL OF FRANCHISE AGREEMENT - EXECUTING AND ATTESTING. The Taxicab Franchise Agreement is hereby approved, and the City Manager is authorized to execute it on behalf of the City.

SECTION 8. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions 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 9 EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 10. 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 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 on _____, 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

Mayor

Date of Attestation:

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

David Kahn, City Attorney

TAXICAB FRANCHISE AND AGREEMENT

THIS FRANCHISE AND AGREEMENT, dated May 30, 2009, is between the CITY OF SUNNYVALE, a municipal corporation of the State of California (herein "City"), and JEFFREY BROWNING and AMANDEEP KAUR, owners of ACME YELLOW LLC, doing business as ACME CAB (herein "Franchisee").

RECITALS

WHEREAS, Franchisee has filed a verified application of a nonexclusive Franchise to operate a taxicab service pursuant to Chapter 5.36 of the Sunnyvale Municipal Code; and

WHEREAS, on May 1, 2007, the City Council passed and adopted Ordinance No. 2833-07, after Notice and Public Hearing, approving issuance of such Franchise;

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE AWARD OF A NON-EXCLUSIVE FRANCHISE AND OF THE MUTUAL COVENANTS AND CONDITIONS AS SET FORTH HEREIN, IT IS AGREED AS FOLLOWS:

1. City grants to Franchisee a nonexclusive Franchise to use the public streets, ways, alleys and places, as the same now or may hereafter exist, within the corporate limits of the City of Sunnyvale as they presently exist or as they may be changed during the term of this Franchise by annexations or detachments, in connection with furnishing the City of Sunnyvale and its inhabitants with taxicab service for a term of two (2) years, beginning May 31, 2009, and ending at midnight on May 30, 2011.

2. The Franchisee during the term of this Franchise shall pay to the City the consideration based on the number of vehicles in service under the Franchise, as set forth in the City's Master Fee Schedule, which is incorporated by reference herein.

3. The Franchisee shall:

A. Appear and defend all actions against the City arising out of the exercise of the Franchise and shall indemnify and save City, its officers, employees and agents harmless of and from all claims, demands, actions or causes of action of every kind and description resulting directly or indirectly, arising out of, or in any way connected with, the exercise of the Franchise.

B. Obtain and keep in force during the term of the Franchise insurance in compliance with the requirements of Sunnyvale Municipal Code Section 5.36.300.

C. Comply with all other requirements of Sunnyvale Municipal Code Chapter 5.36 and any amendments thereto, and with all applicable laws and regulations of the State of California, the United States, or any regulatory agency having jurisdiction.

4. The Franchise granted hereunder shall not be assignable, either voluntarily or by operation of law, without the prior approval of the City Council, by resolution. At least forty-five (45) days prior to the date for the formal transfer of such interest or ownership, the Franchisee shall

ATTACHMENT B

so notify City in writing. If the Franchisee at any time during the term of this Franchise becomes insolvent, or if any proceeding in bankruptcy shall be instituted by or against the Franchisee, or if the Franchisee shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy, or receiver of any property of the Franchisee shall be appointed in any suit or proceeding brought by or against the Franchisee, or if the Franchisee shall make an assignment for the benefit of creditors, then and in each and every such case this Franchise and the rights and privileges granted thereby shall immediately cease, and be forfeited and cancelled, without notice and without suit or other proceeding.

5. If the Franchisee at any time during the term of this Franchise shall sell, exchange or otherwise transfer more than one-half of the equity interest in or ownership of the taxicab service business, whether with or without the property, equipment or other assets in connection therewith, permitted to be operated by the Franchise granted hereunder, the City Council shall have the right to cancel and revoke the Franchise following a hearing held after then (10) days' written notice thereof to the Franchisee. The right to cancel and revoke the Franchise shall not be triggered by any mortgage or deed of trust made in good faith by the Franchisee.

6. This Franchise and Agreement may be amended by the City during its term with the consent of the Franchisee.

7. The Franchise is granted to and is accepted by the Franchisee upon the express condition that the public streets, ways, alleys and places shall be used and taxicab service furnished in strict compliance with the terms of this Franchise and Agreement, the Sunnyvale City Charter, and all applicable provisions of the Sunnyvale Municipal Code.

IN WITNESS WHEREOF, the parties have executed this Agreement.

"City"

"Franchisee"

CITY OF SUNNYVALE
A Municipal Corporation

ACME YELLOW LLC dba ACME CAB

By _____
Gary Luebbers, City Manager

By _____
Jeffrey Browning, Owner

ATTEST:

By _____
Amandeep Kaur, Owner

Kathleen Franco Simmons, City Clerk

APPROVED AS TO FORM:

DAVID E. KAHN, CITY ATTORNEY

By _____
Robert L. Boco
Assistant City Attorney