Council Meeting: November 15, 2011

SUBJECT: Award of Taxicab Franchise to Jatinder Kumar dba Classic Cab

REPORT IN BRIEF
A taxicab franchise application and required fees have been received from Jatinder Kumar dba Classic Cab. Staff has conducted an investigation into the applicant’s background as required by Sunnyvale Municipal Code (SMC) Section 5.36.050. After careful review, the Department of Public Safety (DPS) determined the applicant meets the mandatory code requirements. Staff recommends that Jatinder Kumar dba Classic Cab be awarded a non-exclusive taxicab franchise for the period of January 21, 2012 through January 20, 2014, per applicant’s request.

BACKGROUND
There are currently seven valid taxicab companies franchised to operate within the City of Sunnyvale. They are Silicon Valley Checker Cab, Yellow Cab Peninsula, Orange Cab, A-1 Cab, ACME Cab, California Cab, and Silicon Valley Cab Co. There are also two franchises that will become effective by the end of 2011 – All Time Cab and Green Cab. Jatinder Kumar dba Classic Cab has not previously operated with a franchise agreement in the City of Sunnyvale.

Jatinder Kumar dba Classic Cab acknowledges and accepts the requirements of the SMC as well as the taxicab franchise agreement. Jatinder Kumar dba Classic Cab also is aware of the right of the City of Sunnyvale to revoke or suspend the taxicab franchise if it is determined there is a violation of, or non-compliance with, the terms contained in SMC Section 5.36.

EXISTING POLICY
The term “non-exclusive franchise” as used in SMC means the City does not limit the number of like franchises in operation at one time. The City’s non-exclusive taxicab franchise requirements contained in SMC Section 5.36 state it is unlawful to operate any taxicab in the City unless the owner applies for and obtains a franchise. 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 SMC 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.

If an applicant meets the provisions as outlined in SMC and none of the above has occurred, a franchise to operate a taxicab service should be issued to the applicant(s). A franchise is issued for a term of two years. At the expiration of the term, the franchise shall be deemed expired and shall no longer be valid unless a new franchise is issued under the provisions of SMC Section 5.36.

**DISCUSSION**

The owner, Jatinder Kumar dba Classic Cab, has submitted information and documentation to demonstrate compliance with each of the criteria identified in SMC Section 5.36, as outlined below.

1. **Local Contact Requirement** – Jatinder Kumar dba Classic 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** – Jatinder Kumar dba Classic Cab is the registered owner of five (5) company owned vehicles that have been identified for operation under this franchise. The taxicabs have a yellow roof, hood, and trunk. The top two-thirds of the doors are also yellow. The bottom third of the doors, fenders, and bumpers are royal blue. The company’s name and phone numbers are shown on the doors in royal blue lettering.

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 Clara County Sealer of Weights and Measures. DPS was provided with compliance reports for the vehicles identified for this franchise agreement.

4. **Insurance** – A certificate of valid insurance issued by Khalsa Insurance Agency, Inc. of San Jose, CA for $1,000,000 combined single limit; with City of Sunnyvale listed as the Additional Insured; and a 30-day prior notices of cancellation clause, as required in SMC 5.36.300. Jatinder Kumar dba Classic Cab understands it may not operate without proper insurance as listed in SMC Section 5.36.300.
5. **Criminal History** – A criminal history check of the applicant was conducted as required by SMC. The applicant has not been convicted of any felonies, narcotic violations, or crimes of moral turpitude as referenced in SMC.

6. **Experience of Owner** – The investigation revealed the applicant, Jatinder Kumar, has history as a taxicab and limousine driver since 2001.

7. **Personnel** – Individual drivers were not identified in the application. However, each will be required to obtain a taxicab driver’s permit issued by DPS. The applicant is aware of the requirement to maintain five (5) permitted drivers while operating in the City of Sunnyvale.

The applicant adheres to the random drug testing requirements as established by State Law. The applicant’s company has contracted with U.S. Health Works for medical review officer services.

8. **Fees** – The applicants have paid the required franchise application fee of $1,212, which was the fee in effect on the date the applicant first submitted his application. The filing of other required paperwork was completed on October 31, 2011.

Further, 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** – Classic Cab has filed its fare schedule with DPS in accordance with Section 5.36.280.

**FISCAL IMPACT**
The revenue generated from this franchise will increase the General Fund by approximately $6,000 during the term of the agreement due to application fees ($1,212), quarterly vehicle fees ($116 per vehicle per quarter), and the business license fee ($140). This amount does not include revenue generated by the driver permits issued ($198 per driver for year 1; $137 per driver for each subsequent year). Driver permit fees are not included because it 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. DPS estimates the City’s annual subsidy to be less than $600 per franchise and $700 per vehicle. This subsidy is believed to be in the best interest of the
City so taxicab services to the community are regulated and comply with all applicable laws.

**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.

Copies of this RTC were provided to Jatinder Kumar dba Classic Cab via U.S. Post to the address listed on the franchise application.

**ALTERNATIVES**
1. Introduce and adopt an ordinance awarding a non-exclusive franchise for taxicab service to Jatinder Kumar dba Classic Cab for the period January 21, 2012 through January 20, 2014, 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 for taxicab service to Jatinder Kumar dba Classic Cab for the period January 21, 2012 through January 20, 2014, per applicant’s request.

**RECOMMENDATION**
Staff recommends Council approve Alternative #1: Introduce and adopt an ordinance awarding a non-exclusive franchise for taxicab service to Jatinder Kumar dba Classic Cab for the period January 21, 2012 through January 20, 2014, per applicant’s request and authorize the City Manager to execute necessary documents of agreement.

Reviewed by:

Dayton Pang, Interim Director of Public Safety
Prepared by: Ann Durkes, Manager

Approved by:

Gary M. Luebbers
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 AWARDSING NONEXCLUSIVE FRANCHISE TO JATINDER KUMAR, DOING BUSINESS AS CLASSIC 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, Jatinder Kumar, doing business as Classic 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 Jatinder Kumar, doing business as Classic 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 January 21, 2012, and ending at 12:00 midnight on January 20, 2014.

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 Agreement” attached and incorporated herein.
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 of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, 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 _____________, 2011, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____________, 2011, by the following vote:

AYES: 
NOES: 
ABSTAIN: 
ABSENT: 

ATTEST: APPROVED:

__________________________________________
City Clerk Mayor
(SEAL)

APPROVED AS TO FORM AND LEGALITY:

________________________________________
David E. Kahn, City Attorney
ATTACHMENT B

TAXICAB FRANCHISE AND AGREEMENT

THIS FRANCHISE AND AGREEMENT, dated _________________, 2011, is between the CITY OF SUNNYVALE, a municipal corporation of the State of California (herein “City”), and JATINDER KUMAR doing business as Classic 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 ___________, 2011, the City Council passed and adopted Ordinance No. ___________, 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 January 21, 2012, and ending at midnight on January 20, 2014.

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 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.

ATTEST: CITY OF SUNNYVALE
City Clerk A Municipal Corporation

By ___________________________ By ___________________________
KATHLEEN FRANCO-SIMMONS GARY LUEBBERS
City Clerk City Manager

APPROVED AS TO FORM:

By ___________________________ By ___________________________
DAVID E. KAHN JATINDER KUMAR
City Attorney Owner
dba CLASSIC CAB