

**Council Meeting: January 29, 2013**

SUBJECT: Discussion and Possible Action to Introduce an Ordinance to Award a Taxicab Franchise to Jasraj Bhatia (fka Bikram Singh) dba Yellow Cab Company Peninsula, Inc.

BACKGROUND

An application to renew an existing taxicab franchise; all required fees have been received from Jasraj Bhatia, formerly known as (fka) Bikram Singh, doing business as (dba) Yellow Cab Company Peninsula, Inc. The effective dates of the requested franchise are March 15, 2013 through March 14, 2015.

There are currently eight valid taxicab companies franchised to operate within the City of Sunnyvale: A Orange Cab (currently operating under an administrative extension), All Time Cab, California Cab Company, Checker Cab of Silicon Valley (currently operating under an administrative extension), Classic Cab, Green Cab, Silicon Valley Cab Company, and Yellow Cab Company Peninsula, Inc. (currently operating under an administrative extension).

Jasraj Bhatia, fka Bikram Singh, dba Yellow Cab Company Peninsula, Inc. acknowledges and accepts the requirements of a taxicab franchise as set forth in Sunnyvale Municipal Code (SMC), as well as the taxicab franchise agreement. Jasraj Bhatia, fka Bikram Singh, dba Yellow Cab Company Peninsula, Inc. 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.

Jasraj Bhatia, fka Bikram Singh, dba Yellow Cab Company Peninsula, Inc. is also the owner of California Cab Company, which was awarded a taxicab franchise with conditions as set forth in RTC 12-116. During Council's consideration of the owner's request for a taxicab franchise for California Cab Company, it was found that the franchise had been suspended then reinstated for late payments and failure to maintain at least five (5) vehicles. The owner presented information to the Council during Public Comment showing extenuating circumstances that caused the suspension. Council took the information into consideration and agreed to grant the franchise with conditions that included a probationary period and reimbursing the City for additional charges the City incurred when the franchise was suspended.

As required by SMC Section 5.36.050, the Department of Public Safety (DPS) conducted the same type of investigation into Jasraj Bhatia dba Yellow Cab Company Peninsula, Inc. The investigation showed similar results. It was verified with the Department of Finance that the franchise owner has been delinquent in paying the quarterly vehicle fees five (5) times out of a total of eight (8) quarterly billings over the prior two years covered by the previous franchise agreement. Finance also confirmed delinquent payments were received anywhere from 32 days to more than 60 days after the date of invoice.

Since beginning operations in November 2010, Yellow Cab Company Peninsula, Inc. has been issued two suspension warning notices and was suspended on two occasions. In March 2011 and April 2011, the franchise was issued warning notices for failure to have the required five (5) vehicles. In March 2012 and May 2012, the franchise was suspended for failure to have the required five (5) drivers.

Since May 2012, the franchise has not been out of compliance and all payments have been made in a timely manner. Given the franchise's efforts since May 2012 to remain in compliance and to make timely payments, DPS recommends awarding a franchise to Jasraj Bhatia (FKA Bikram Singh), dba Yellow Cab Company Peninsula, Inc. with the same conditions implemented in the franchise agreement with California Cab Company.

EXISTING POLICY

The term "non-exclusive franchise" as used in the SMC means 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 SMC 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. Pursuant to SMC 5.36.110, 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 submits an incomplete application.
4. The applicant has been in violation of any law or municipal code regulation relating to the conduct of a taxicab business.

5. 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.
6. The applicant was denied a franchise within the prior two years.
7. Any other reasonable cause exists which, within the City Council's sound discretion would render the proposed operation undesirable or inadequate 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 SMC Chapter 5.36.

DISCUSSION

On October 19, 2010, City Council awarded a non-exclusive taxicab franchise to Jasraj Bhatia, fka Bikram Singh, dba Yellow Cab Company Peninsula, Inc. (RTC 10-267). This action allowed Yellow Cab Company Peninsula, Inc. to begin operating with its franchise in the City at midnight on November 27, 2010 through November 26, 2012. Yellow Cab Company Peninsula, Inc. currently is requesting a taxicab franchise with effective dates of March 15, 2013 through March 14, 2015. Yellow Cab Company Peninsula, Inc. has previously operated with a valid franchise agreement, which expired on November 26, 2012. Pursuant to SMC Section 5.36.120, the franchise has been granted an administrative extension to continue operations until Council takes action on the renewal.

DPS recommends the same conditions be implemented for Yellow Cab Company Peninsula, Inc. as were implemented for California Cab Company. Additional conditions include implementing a probationary period and reimbursing the City for additional charges the City incurred when the franchise was suspended. Said conditions to be set forth are as follows:

1. Total reimbursement of \$845 for non-compliance and subsequent suspensions be paid to the City of Sunnyvale.
2. A one-year probationary period is effective from March 15, 2013 through March 14, 2014, in which Yellow Cab Company Peninsula, Inc. must:
 - a. Pay all quarterly vehicle fees within 30 days of the first day of each calendar year quarter, as follows: April 1, 2013, July 1, 2013, October 1, 2013, and January 1, 2014.
 - b. Pay annual driver permit fees no later than November 30, 2013.

- c. Complete and submit to DPS all documentation showing completion of annual vehicle inspections no later than March 1, 2013.
3. If any of these conditions are not met, the taxicab franchise awarded to Yellow Cab Company Peninsula, Inc. will be revoked immediately by the Chief of Public Safety.

In addition to these conditions, the owner, Jasraj Bhatia, fka Bikram Singh, dba Yellow Cab Company Peninsula, Inc. has submitted information and documentation to demonstrate compliance with the criteria identified in SMC Section 5.36, as outlined below:

SMC Section	Description	Requirement Status
5.36.040	Applicant has paid the required franchise application fee.	Met
5.36.050	Applicant has at least five (5) vehicles.	Met
5.36.050	Taxicabs have unique color scheme.	Met
5.36.050	Applicant shows sufficient experience to operate franchise.	Met
5.36.050	All drivers for the franchise will be permitted by DPS.	Met
5.36.050	All drivers will be subject to random drug testing requirements.	Met
5.36.220	Applicant has a toll free phone number and sufficient phone lines for dispatch.	Met
5.36.280	Applicant has filed its fare schedule with DPS.	Met
5.36.300	Applicant has a valid insurance policy with \$1.0 million single limit and \$1.0 million general liability.	Met
5.36.320	All vehicles have a taximeter which was inspected by Santa Clara Co. Weights and Measures.	Met
5.36.360	Applicant has undergone a criminal history check. There were no convictions for felony, narcotics, or crimes of moral turpitude.	Met
5.36.365	Applicant has current contract for medical review officer services.	Met

FISCAL IMPACT

The revenue generated from this franchise was included in the FY 2012/2013 Adopted Budget. This franchise generates General Fund revenues of approximately \$6,000 during the two years of the agreement due to application fees (\$1,356), quarterly vehicle fees (\$116 per vehicle per quarter), and the business license fee (\$111). This amount does not include revenue generated by the driver permits issued (\$205 per driver for year 1; \$144 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. Staff estimates the City's annual subsidy to be less than \$600 per franchise and \$700 per vehicle. In general, this subsidy is believed to be in the best interest of the City so that taxicab services to the community are regulated and comply with all applicable laws.

However, in the case of Yellow Cab Company Peninsula, Inc., it is believed the General Fund subsidy for this taxicab franchise is considerably higher. DPS estimates that each time a franchise is suspended then reinstated, there is an additional cost to the City of approximately \$315 (4.0 hours of Sr. Office Assistant + 1.0 hour DPS Manager). When an administrative hearing is requested, the additional cost to suspend and reinstate is approximately \$530.

DPS estimates that Yellow Cab Company Peninsula, Inc.'s non-compliance and subsequent suspension have cost the City an additional \$845 over the effective dates of its most recent franchise agreement. The additional costs resulted from the issuance of warning notices on March 14, 2011 and April 20, 2011, as well as the suspensions issued on March 2, 2012 and May 30, 2012.

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.

A copy of this RTC was provided to Jasraj Bhatia (FKA Bikram Singh) dba Yellow Cab Company Peninsula, Inc. via U.S. Mail to the address listed on the franchise application.

ALTERNATIVES

1. Introduce an ordinance renewing a non-exclusive franchise for taxicab service to Jasraj Bhatia, fka Bikram Singh, dba Yellow Cab Company Peninsula, Inc. for the period of March 15, 2013 through March 14, 2015, per applicant's request and authorize the City Manager to execute necessary documents of agreement, including additional provisions as set forth above.
2. Do not introduce an ordinance renewing a non-exclusive franchise for taxicab service to Jasraj Bhatia, fka Bikram Singh dba Yellow Cab

Company Peninsula, Inc. for the period of March 15, 2013 through March 14, 2015, per applicant's request.

RECOMMENDATION

Staff recommends Council approve Alternative #1: Introduce an ordinance renewing a non-exclusive franchise for taxicab service to Jasraj Bhatia, fka Bikram Singh, dba Yellow Cab Company Peninsula, Inc. for the period of March 15, 2013 through March 14, 2015, per applicant's request and authorize the City Manager to execute necessary documents of agreement, including additional provisions as set forth above.

The recommendation to renew the taxicab franchise to Jasraj Bhatia, fka Bikram Singh, dba Yellow Cab Company Peninsula, Inc. is based on Mr. Bhatia's recent payment history and his agreement to reimburse the City for additional costs incurred because of non-compliance and suspension. He also agreed to all additional provisions added to the franchise agreement.

Reviewed by:

Frank J. Grgurina, Chief of Public Safety
Prepared by: Rachel Vasquez, License & Permits Coordinator

Reviewed by:

Joan Borger
City Attorney

Approved by:

Gary M. Luebbers
City Manager

Attachments

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AWARDING NONEXCLUSIVE FRANCHISE TO JASRAJ BHATIA (FKA BIKRAM SINGH), OWNER OF YELLOW CAB COMPANY PENINSULA, INC.

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, Jasraj Bhatia (FKA Bikram Singh), owner of Yellow Cab Company Peninsula, Inc., 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 interest 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 Jasraj Bhatia (FKA Bikram Singh), owner of Yellow Cab Company Peninsula, Inc. (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 March 15, 2013, and ending at 12:00 midnight on March 14, 2015.

SECTION 3. ADDITIONAL FEE. Within 30 days of the effective date of this franchise, Franchisee shall pay to City the sum of \$845 as compensation for the cost of Franchisee's previous non-compliance and subsequent suspensions of the Franchise.

SECTION 4. PROBATIONARY PERIOD. Franchisee shall be on probation for a one-year period commencing March 15, 2013, and ending at 12:00 midnight on March 14, 2014. During the probationary period, Franchisee must: (a) Pay all quarterly vehicle fees within 30 days of the first day of each calendar year quarter, (b) Pay annual driver permit fees no later than Dec. 31, 2013; (c) Complete and submit to DPS all documentation showing completion of annual vehicle inspections no later than March 1, 2014.

SECTION 5. 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 6. 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 7. GENERAL CONDITIONS. This Franchise is granted subject to the terms and conditions set forth in the "Taxicab Franchise and Agreement" attached and incorporated.

SECTION 8. 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 9. 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 10. 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 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 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 January 29, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on February 12, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

Date of Attestation:

(SEAL)

APPROVED AS TO FORM:

Joan Borger, City Attorney

TAXICAB FRANCHISE AND AGREEMENT

THIS FRANCHISE AND AGREEMENT, dated March 15, 2013, is between the CITY OF SUNNYVALE, a municipal corporation of the State of California (herein "City"), and Jasraj Bhata (FKA Bikram Singh), doing business as Yellow Cab Company Peninsula, Inc. (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 _____, the City Council passed and adopted Ordinance No. _____, after Notice and Public Hearing, approving issuance of such Franchise;

NOW, THEREFORE, in consideration of the award of a nonexclusive 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 March 15, 2013, and ending at midnight on March 14, 2015.

2. As a result of Franchisee's prior non-compliance with the terms of its franchise, City imposes the following additional conditions.

A. Within 30 days of the effective date of this franchise, Franchisee shall pay to City the sum of \$845 as compensation for the cost of Franchisee's previous non-compliance and subsequent suspensions of the Franchise.

B. Franchisee shall be on probation for a one-year period commencing March 15, 2013, and ending at 12:00 midnight on March 14, 2014. During the probationary period, Franchisee must:

- (i) Pay all quarterly vehicle fees within 30 days of the first day of each calendar year quarter.
- (ii) Pay annual driver permit fees no later than Dec. 31, 2013.
- (iii) Complete and submit to DPS all documentation showing completion of annual vehicle inspections no later than March 1, 2013.

C. If Franchisee violates any of the above conditions, the Chief of the Department of Public Safety shall have the right to summarily revoke the franchise as soon as deemed appropriate by the Chief, and Franchisee hereby waives its right to a hearing and appeal under Sunnyvale Municipal Code § 5.36.140.

3. 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.

4. 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, and all applicable laws and regulations of the United States, or any regulatory agency having jurisdiction. Franchisee shall establish a controlled substance and alcohol certification program. The program shall be included in a written company policy. Each driver must sign for receipt of said policy, and the receipt shall be retained by Franchisee. A copy shall be provided to DPS upon request. Every driver shall test negative for controlled substances as specified in 40 CFR Part 40 and 49 CFR Part 382.

5. 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.

6. 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.

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

8. 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 Agreement, the Sunnyvale City Charter, and all applicable provisions of the Sunnyvale Municipal Code.

IN WITNESS WHEREOF, the parties have executed this Agreement.

"FRANCHISEE"

YELLOW CAB COMPANY PENINSULA, INC.

By _____
Jasraj Bhatia (FKA Bikram Singh)
Owner

"CITY"

CITY OF SUNNYVALE
A Municipal Corporation

By _____
Gary Luebbers, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

By _____
Joan Borger, City Attorney