



Council Meeting: November 26, 2013

SUBJECT: Discussion and Possible Action to Introduce an Ordinance to Award a Taxicab Franchise to Classic Cab

BACKGROUND

Classic Cab has submitted an application to renew its existing taxicab franchise; all required fees have been received. The effective dates of the requested franchise renewal are January 21, 2014 through January 20, 2016.

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

Classic Cab acknowledges and accepts the requirements of a taxicab franchise as set forth in Sunnyvale Municipal Code (SMC), as well as the taxicab franchise agreement. Classic Cab 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 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 SMC, 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 November 29, 2011, City Council awarded a non-exclusive taxicab franchise to Classic Cab (RTC 11-246). This action allowed Classic Cab to begin operating with its franchise in the City at midnight on January 21, 2012 through January 20, 2014. Classic Cab is currently requesting a taxicab franchise with effective dates of January 21, 2014 through January 20, 2016. Classic Cab is currently operating with a valid franchise agreement, which will expire on January 20, 2014. 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.

Classic Cab has submitted information and documentation to demonstrate compliance with the criteria identified in SMC Chapter 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

SMC Section	Description	Requirement Status
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 the franchise was included in the FY 2013/2014 Adopted Budget. This franchise generates General Fund revenues of approximately \$6,500 during the two years of the agreement due to application fees (\$1,502 + \$199 additional background check = \$1,701), quarterly vehicle fees (\$116 per vehicle), and the business license fee (\$111). This amount does not include revenue generated by the driver permits issued (\$178 per driver for year 1; \$117 per driver for each subsequent year), 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 the 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.

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 report was provided to Classic Cab via U.S. Mail to the address listed on the franchise application.

ALTERNATIVES

1. Introduce an ordinance awarding a non-exclusive franchise for taxicab service to Classic Cab for the period of January 21, 2014 through January 20, 2016, per applicant's request, and authorize the City Manager to execute necessary documents of agreement.

2. Do not introduce an ordinance awarding a non-exclusive franchise for taxicab service to Classic Cab for the period of January 21, 2014 through January 20, 2016, per applicant's request.

RECOMMENDATION

Staff recommends Council approve Alternative #1: Introduce an ordinance awarding a non-exclusive franchise for taxicab service to Classic Cab for the period of January 21, 2014 through January 20, 2016, per applicant's request, and authorize the City Manager to execute necessary documents of agreement.

Reviewed by:

Frank J. Grgurina, Chief, Department of Public Safety
Prepared by: Rachel Vasquez, Sr. Office Assistant

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 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, 2014, and ending at 12:00 midnight on January 20, 2016.

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

SECTION 11. 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 November 26, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on December __, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

Joan A. Borger, City Attorney

TAXICAB FRANCHISE AND AGREEMENT

THIS FRANCHISE AND AGREEMENT, dated _____, 2013, is between the CITY OF SUNNYVALE, a municipal corporation of the State of California (herein "City"), and JATINDER KUMAR and VARINDER 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 _____, 2013, 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, 2014, and ending at midnight on January 20, 2016.

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 Clerk

CITY OF SUNNYVALE
A Municipal Corporation

By _____
KATHLEEN FRANCO-SIMMONS
City Clerk

By _____
GARY LUEBBERS
City Manager

APPROVED AS TO FORM:

JATINDER KUMAR
dba CLASSIC CAB

By _____
JOAN A. BORGER
City Attorney

By _____
JATINDER KUMAR
Owner