

**Council Meeting: May 15, 2012****SUBJECT: Taxicabs: Franchises, Regulation and, Enforcement  
(Study Issue)****REPORT IN BRIEF**

The taxicab industry is a valued part of the Sunnyvale business community. Further, the industry provides an important service to residents and visitors alike. As such, the City must ensure the taxicab companies operating within its jurisdiction are doing so legally and safely.

In November 2011, Councilmembers Spitaleri, Moylan, Lee, and Griffith asked the Department of Public Safety (DPS) to review how taxicabs and limousines operating in the City are regulated (Attachment A, Study Issue Paper 12-01). In addition to researching the six issues requested by Council, an outreach meeting was held for all current taxicab franchise holders. The purpose of the meeting was to provide a venue for open discussion of current regulatory practices, to hear franchise holders' concerns, discuss citizens' concerns received by DPS, and provide an opportunity for suggestions on how DPS could assist the franchise holders. As a result of the research and the franchise holders' input, DPS recommends several changes to Sunnyvale Municipal Code (SMC) which will enhance regulatory authority, strengthen enforcement capabilities, and assist franchise holders.

**BACKGROUND**

There are four laws that govern transportation for hire (limousines, taxicabs, shuttles, etc.) in the City of Sunnyvale. They are California Vehicle Code, City Charter, Article XVI Franchises, California Public Utilities Code, and Sunnyvale Municipal Code (SMC), Chapter 5.36.

California Vehicle Code governs how transportation for hire moves over the streets and other byways in the City. Vehicle Code is enforced by Public Safety Officers, including all moving, non-moving, and parking violations. Vehicle Abatement Officers provide specific enforcement for parking laws.

City Charter and SMC govern how transportation for hire operates as business entities. All businesses operating in Sunnyvale are required to register their business activities with the City. Taxicabs, limousines, and other transportation for hire are specifically noted in City Charter, Article XVI. First, transportation for hire is called out as a type of business requiring "franchised privilege." Charter Section 1600 defines "franchised privilege" as

transportation, communication, terminal facilities, wharves, water, light, heat, electricity, gas, power, refrigeration, storage, garbage, waste or refuse removal, taxicab service, or any other public utility service. The stated reason for the franchise is because these services:

*“... use ... public streets, ways, alleys or places in the City of Sunnyvale ... for... (t)raversing any portion of the City for the transmitting or conveying of any such utility or service ...”*

Charter Section 1600 further states:

*No person, firm or corporation shall engage in a franchised privilege without having first obtained a grant of franchise therefore in accordance with the provisions of this Article and in accordance with the procedure prescribed by ordinance, except insofar as entitled to do so by direct authority of the Constitution or laws of the State of California or of the United States.*

This is the section of law that exempts all transportation for hire except taxicabs from regulation by the City. In this case, California state law supersedes the City Charter and places regulatory authority over limousines and other transportation for hire with the California Public Utilities Commission. The specific state law is California Public Utilities Code, Section 5371-5379.5. Specific exemption from City Charter is granted to limousines in Section 5371.4(a):

*“The governing body of any city, county, or city and county may not impose a fee on charter-party carriers operating limousines. However, the governing body of any city, county, or city and county may impose a business license fee on, and may adopt and enforce any reasonable rules and regulations pertaining to operations within its boundaries for, any charter-party carrier domiciled or maintaining a business office within that city, county, or city and county.*

The Department of Finance (Finance) and the Community Development Department (CDD) verified limousine businesses are required to obtain a business license prior to operating in Sunnyvale. Currently, there are nine active business licenses issued to passenger transport enterprises in Sunnyvale.

Taxicab businesses, however, are regulated by the City. As stated above, they are required by City Charter to obtain both a franchise and a business license prior to operating within the City. To obtain a business license, all companies' applications are reviewed by CDD's Planning Division. If all criteria are met, the application is forwarded to Finance where the business license tax is assessed. Upon payment, the application is forwarded to DPS, which is responsible for investigating the suitability of the taxicab company to operate in the City. If backgrounds of the owners are clear, a franchise agreement is

prepared by the Office of the City Attorney and a Report to Council (RTC) is prepared by DPS. The RTC includes a full explanation of the criteria necessary to obtain the franchise, and a recommendation to Council of whether the franchise should be approved or denied.

These franchise agreements cannot be administratively authorized. City Charter Section 1601 specifically places the authority to grant franchises with the City Council. Further, Council is required to take formal action via public hearing to approve all City franchises, including those for taxicabs.

SMC Chapter 5.36 is the law specifically governing taxicab operations in Sunnyvale. The most recent amendment to this chapter occurred in 2009. This chapter includes laws designed to ensure the companies are operating safely within the City.

### **EXISTING POLICY**

City Charter, Article XVI Franchises.

Sunnyvale Municipal Code, Chapter 5.36 Taxicabs.

California Public Utilities Code, Section 5371-5379.5.

### **DISCUSSION**

In November 2011, Council asked DPS to review how taxicabs and limousines are regulated. Six specific issues were listed:

1. Parking Enforcement in the CalTrain Parking Lot.
2. Taxicab Parking in Downtown Sunnyvale.
3. Regulation of Taxicab Franchises in Sunnyvale.
4. Options for Changing City Charter to Allow Administrative Award of Taxicab Franchises.
5. Fee Structure of Taxicab Franchises and Taxi Drivers' Permits.
6. Enforcement Options.

In addition to the Council concerns, there has been an increase in the number of taxicab-related complaints from citizens, current franchise holders, and DPS staff. The complaints from citizens generally relate to issues with drivers and fares. Complaints from franchise holders include, but are not limited to lack of enforcement, companies and drivers operating illegally in Sunnyvale, and fee increases. The complaints from staff related to lack of administrative enforcement capabilities.

#### **Parking Enforcement in the CalTrain Parking Lot**

The CalTrain Station parking lot located at 121 W. Evelyn Ave., Sunnyvale is owned and operated by the Peninsula Corridor Joint Powers Board. The board consists of representatives from:

1. City and County of San Francisco: one appointee each by Mayor, County Board of Supervisors, and Municipal Transportation Agency (MUNI)
2. San Mateo County: one appointee each by City Selection Committee, San Mateo County Transit District, and the San Mateo County Board of Supervisors
3. Santa Clara County: three appointees made by the Santa Clara Valley Transportation Authority

The Board, as the governing body, contracts with the San Mateo County Sheriff's Office for enforcement on CalTrain property, including all parking lots. DPS staff contacted the San Mateo County Sheriff's Office with Council's question – "Would San Mateo be willing to allow Sunnyvale to provide parking enforcement at the Sunnyvale CalTrain lot?"

San Mateo Sheriff's Office replied the current contract between the Sheriff's Office and the Peninsula Corridor Joint Powers Board includes parking enforcement at all CalTrain lots. San Mateo is not interested in relinquishing that authority or sub-contracting the enforcement responsibilities to Sunnyvale DPS because of the resulting loss in revenue to San Mateo County Sheriff's Office.

CalTrain Rail Services Division stated there are no new plans to expand the parking for taxicabs at the Sunnyvale CalTrain parking lot. According to Public Works' staff, there are no plans for additional taxicab parking included as part of the current construction occurring adjacent to the CalTrain lot. The current construction includes three new parking lots in the vicinity of the CalTrain Station and the Mathilda Avenue Overpass. These new lots will be available for long term parking, but not for taxicab parking. The City is currently upgrading the parking lot underneath the north side of the Mathilda Avenue Overpass, which will be available for long term parking as soon as construction on the overpass is complete. There is limited unrestricted parking on Hendy Avenue, which is north of the CalTrain station. The parking for CalTrain is on the south side of the street. The plaza parking garage is intended to support business and commercial uses in the Downtown; therefore it is restricted for long term parking.

An alternative to additional taxicab parking in the surface lots was offered by the Downtown Association. Economic Development and DPS staff met with Joe Antuzzi, President of the Downtown Association to discuss taxicab parking in Downtown Sunnyvale. The following options were suggested by the Downtown Association:

- Continue to prohibit taxicabs from parking in the city-owned parking lots behind Murphy Avenue.
- Allow taxicabs to park in underground lot(s).

- Convert up to four parallel parking spaces on Frances Street between Washington Avenue and Evelyn Avenue to a taxicab waiting area and/or taxicab stands.

These options were suggested for two reasons. First, most calls for taxicab services in Sunnyvale are dispatched as a call for service. For example, you call to have a taxicab pick you up. However, in the Downtown area, taxicabs are often “hailed.” Second, the City, Downtown merchants, and the taxicab franchises have worked collaboratively to reach an agreement about taxicab parking in Downtown Sunnyvale. The downtown businesses believe the taxicabs provide a valuable and needed service to their clientele. However, when allowed to park at-will, the taxicabs keep patrons from parking in prime parking spots. Several years ago, the City worked closely with the Association and the taxicab franchises to reach a compromise. The resulting agreement is that taxicabs do not park in the parking lots behind Murphy Avenue during prime dining hours (lunch and dinner). The Downtown merchants want this agreement to continue. They also want DPS to continue to enforce that agreement during peak dining hours.

#### Regulation of Limousines Operating in Sunnyvale

As discussed earlier, the California Public Utilities Commission is responsible for regulating limousines and other transportation for hire. The City is responsible for regulating taxicabs.

#### Regulation of Taxicab Franchises and Taxicab Drivers in Sunnyvale

Taxicab services in Sunnyvale are managed through non-exclusive franchise agreements which allow an unlimited number of taxi companies to apply for and receive franchise agreements. For a number of years, six taxicab companies maintained franchises in Sunnyvale. In 2011, the City Council granted four additional franchises and denied renewing one. The current number of taxicab franchises in good standing is eight. They operate 64 taxicabs and have 78 permitted drivers.

All taxicab franchises granted by the City, as well as the permitted drivers, are regulated by DPS. The Director of Public Safety oversees all enforcement and regulation. The Director has specific authority to revoke a franchise (SMC 5.36.140), as well as suspend a franchise for non-compliance (SMC 5.36.130). The Director also has the authority to suspend or revoke a driver’s permit (SMC 5.36.380). Enforcement of California Vehicle Code, SMC, and parking are provided by sworn personnel. The majority of parking enforcement is conducted by Vehicle Abatement Officers; however, Public Safety Officers also enforce parking laws. Annual inspections of taxicabs, as required by SMC, are conducted by DPS Traffic Unit. Administrative aspects of SMC are regulated by DPS Strategic Services, Licensing & Permitting Unit. Duties include testing drivers, documenting and responding to all complaints, billing, and monitoring all franchises and drivers for compliance.

Taxicab fares are not regulated by the City. The industry is exceptionally competitive, thus allows the market to set the rates. SMC does require each franchise to provide its schedule of rates/fares to DPS as a condition of a franchise being awarded. Any changes to its rate/fare schedule are required to be filed with DPS as a condition of the franchise agreement.

### Options for Changing City Charter to Allow Administrative Award of Taxicab Franchises

In November 2011, Council requested research be conducted on the possibility of administratively awarding taxicab franchises. The City Attorney determined that to allow administrative awarding of any franchise, the City Charter would have to be modified. As such, a charter amendment would have to be placed on the ballot and approved in a general election. The City Clerk estimated that placing a ballot measure for a charter amendment on the next regular election in November 2013 would cost approximately \$43,000. To hold a special election during a non-election year would cost approximately \$158,000.

### City's Current Fee Structure for Taxicab Franchises and Taxicab Driver Permits

The City uses a cost recovery fee structure for taxicab franchises, driver permits, and quarterly vehicle fees. The current fee structure is:

<u>Fee Type</u>	<u>Amount</u>	<u>Cost Recovery for:</u>
Two-year Franchise	\$1,212	Administrative processing, fingerprinting, background, City assessed overhead costs
Driver Permit: New	\$198	Administrative processing, testing, fingerprinting, background, City assessed overhead costs
Driver Permit: Renewal	\$137	Administrative processing and City assessed overhead costs
Vehicle Fee	\$116/quarter	Annual inspection by Public Safety Officer, administrative processing, City assessed overhead costs

The current fee schedule does not contain late fees, non-compliance fees, the ability to charge for retesting drivers, or fees if a vehicle needs to be reinspected. The lack of penalties reduces compliance. In short, there is no incentive for paying on time, preparing for the driver's permit test, or showing up for a scheduled appointment. The result is an increase in administrative staff time. DPS estimates the cost of non-compliance of franchises and retesting drivers is approximately 80.0 hours per year. These tasks are currently assigned to a Senior Office Assistant. The budgeted fully-loaded salary hourly rate is \$55.40 bringing the total estimated cost to \$4,432.

To offset these costs, DPS proposes implementing a non-compliance fee of \$250 for failing to renew a franchise agreement within 30 days as specified in the contract. A \$250 non-compliance fee also would be assessed for late payments

for annual driver permit renewals, as well as failure to pay quarterly vehicle fees within 30 days of the due date. These new fees are consistent with the non-compliance fees DPS currently charges for failure to comply with security/burglar alarm permits. Further, DPS proposes implementing a driver permit re-test fee of \$75 per additional testing for each test beginning with the second time the test is taken.

### Enforcement Options

City law specific to taxicab companies, the vehicles, and drivers is contained in SMC Chapter 5.36. DPS recommends the following modifications to strengthen regulatory authority in areas that have proven to be insufficient in dealing with the current concerns relating to taxicabs. DPS carefully weighed all input from franchise holders, the general public, and staff. Staff recommends the following be considered:

1. Require all drivers desiring to renew their driver permit for the following year to submit their application a minimum of 30 days prior to the expiration of the current permit. Failing to do so will result in the assessment of a late fee.
2. Require drivers to maintain daily trip manifests which record all trips made each day. The manifests should include time and place of origin, as well as destination of each trip. Daily manifests would be used to verify the driver if a complaint is received by DPS.
3. Require drivers to provide their name, company, permit number, vehicle or cab number, meter reading, date, and time on all receipt of fares.
4. Provide that no person shall be issued a permit if that person has been convicted of any act of violence, dishonesty, or fraud with the intent to substantially injure another or substantially benefit the applicant or another.
5. Require franchise holders ensure their drivers comply with the provisions of SMC Chapter 5.36.
6. Add a provision limiting a franchise holder from reapplying for a franchise to operate in the City for a period of two years after a denial.
7. Add a provision limiting a driver from reapplying for the necessary permit to operate in the City for a period of two years after a denial.
8. Expand the Director of Public Safety's current authority to include revocation/suspension/denial of a driver's permit based on multiple complaints of SMC violations which were investigated by DPS. Currently, the Director can revoke/suspend/deny a driver's permit if the driver was convicted of a felony or misdemeanor; no longer has a valid California driver's license; has four or more moving violations in a 12-month period; or if the Director determines the driver is a danger to public safety.

If authorized by Council to make these types of changes in SMC, DPS will work with the City Attorney to draft an ordinance for consideration. The ordinance will be presented to Council at a subsequent meeting.

### **FISCAL IMPACT**

The City Clerk estimated that placing a ballot measure for a charter amendment on the next regular election in November 2013 would cost approximately \$43,000. To hold a special election during a non-election year would cost approximately \$158,000.

The fiscal impact of all other proposed changes in this RTC cannot currently be quantified. It is estimated that imposing late fees and administratively applying non-compliance fees will increase City revenues; however, the magnitude is expected to be minimal.

### **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. Further, the RTC was sent to each franchise holder two weeks in advance of the public hearing.

### **ALTERNATIVES**

1. Direct staff to draft an ordinance to amend SMC Chapter 5.36 as outlined in this report, implement new fees as recommended by DPS, and implement taxicab parking recommendations made by the Downtown Association.
2. Place Charter Amendment on next general election ballot allowing taxicab franchises to be awarded administratively.
3. Do not approve any amendments to SMC Chapter 5.36 or implement any new fees.
4. Direct staff to conduct further study.

### **RECOMMENDATION**

Staff recommends Alternative #1: Direct staff to draft an ordinance to amend SMC Chapter 5.36 as outlined in this report, implement new fees as recommended by DPS, and implement taxicab parking recommendations made by the Downtown Association.

Reviewed by:

Frank J. Grgurina, Chief of Public Safety

Prepared by: Ann Durkes, Manager – Strategic Services

Approved by:

Gary M. Luebbers  
City Manager

Attachment A: Study Issue Paper 12-01

## 2012 Council Study Issue

## DPS 12-01 Taxicabs: Franchises, Regulation, and Enforcement

Lead Department Public Safety

History 1 year ago None 2 years ago None

### 1. What are the key elements of the issue? What precipitated it?

City Charter Section 1601 provides that all franchises must be awarded by the City Council and by ordinance. During the first half of FY 2011/2012, the City Council granted four (4) new taxicab franchises, which has increased the total number to ten (10). This dramatic increase in a relatively short time has caused concern within the City's business community.

In November 2011, Council directed these concerns be addressed and a thorough examination of issues related to taxicabs in Sunnyvale be conducted. Staff should present information on taxicab parking, regulation of taxicabs and limousines in the City of Sunnyvale, and enforcement. Topics should include, but are not limited to:

1. Parking Enforcement at the Sunnyvale CalTrain Parking Lot. DPS will examine the relationship with San Mateo County Sheriff's Department regarding parking enforcement at the Sunnyvale CalTrain parking lot, as well as options for expanding the available taxicab parking at the CalTrain lot.
2. Taxicab Parking in Downtown Sunnyvale. DPS and OCM-Economic Development will examine the effect of taxicab parking in Downtown Sunnyvale. The issue will be examined within the context of how taxicab parking in Downtown affects the businesses in that area. Alternatives and possible options for enhancing the relationship between the businesses and taxicabs will be included.
3. Regulation of Taxicab Franchises in Sunnyvale. The regulatory aspects should include any relationship between taxicab franchises and limousine/driver for hire services. Fares and rate information should be examined.
4. Options for changing the current City Charter provision requiring City Council take formal action via Public Hearing to allow a taxicab franchise to operate in Sunnyvale. (example: Make this an administrative staff function.)
5. Examination of the City's current fee structure as it relates to taxicab franchises and driver's permits.
6. Enforcement options.

### 2. How does this relate to the General Plan or existing City Policy?

2012 Study Session DPS 12-01 relates to the City of Sunnyvale Charter, the General Plan, and existing policy. City Charter Section 1601 provides that all franchises must be awarded by the City Council and by ordinance.

DPS 12-01 also relates to Sunnyvale Municipal Code (SMC). Specifically, the City's non-exclusive taxicab franchise requirements are contained in SMC Section 5.36, which states 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 in certain conditions. However, a franchise to operate a taxicab service should be issued to the applicant(s) if the provisions as outlined in SMC are met and no conditions occurred that could cause Council to deny the application. 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.

DPS 12-01 relates to the General Plan, as well. In general, DPS regulates taxicab franchises and taxicab drivers to meet Goal SN-3 - Safe and Secure City: Ensure a safe and secure environment for people and property in the community by providing effective public safety response and prevention

and education services.

All of which should be considered in the context of Goal LT-6 – Supportive Economic Development Environment: An economic development environment that is supportive of a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal and land use constraints.

3. Origin of Issue

Council Member(s) Moylan, Spitaleri, Lee, and Griffith

4. Staff effort required to conduct study Moderate

Briefly explain the level of staff effort required  
Research of existing code, policy, and procedures.

5. Multiple Year Project? No Planned Completion Year 2012

6. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No  
Does this issue require review by a Board/Commission? No  
If so, which?  
Is a Council Study Session anticipated? No

7. Briefly explain if a budget modification will be required to study this issue

Amount of budget modification required 0

Explanation  
None.

8. Briefly explain potential costs of implementing study results, note estimated capital and operating costs, as well as estimated revenue/savings, include dollar amounts

Are there costs of implementation? No

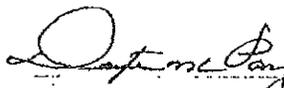
Explanation  
None.

9. Staff Recommendation

Staff Recommendation None

If 'Support', 'Drop' or 'Defer', explain

Reviewed by

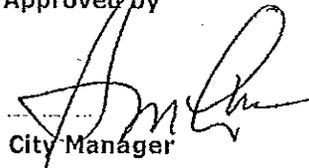


Department Director

11-3-11

Date

Approved by



City Manager

11-3-11

Date