

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK

2007 JAN 16 PM 7:09

TO: Office of the City Administrator
ATTN: Ms. Deborah Edgerly
FROM: Administrative Hearing Officer
DATE: January 16, 2007

RE: A Public Hearing on the Appeal of the Administrative Hearing Officer's Decision to Revoke Ten Yellow Cab Taxi Medallions (aka Vehicle Permits), and Adopting a Resolution Affirming Hearing Officer's Revocation of Ten Yellow Cab Taxi Medallions

SUMMARY

On October 19, 2006, at the request of the Oakland Police Department's (OPD) Taxi Detail Unit (Taxi Detail), the Administrative Hearing Officer conducted a public hearing to determine whether Taxi Medallions issued to Yellow Cab Company should be revoked. The Taxi Detail supported their request with waybill summary evidence that indicated that thirty-seven (37) of the fifty-one Taxi Medallions issued to Yellow Cab Company had not been used for three months. Oakland Municipal Code (OMC) section 5.64.080E specifies, "Any vehicle permit that is not used for a period of ten consecutive days may be revoked . . . unless good cause for abandonment is shown."

On November 30, 2006, following post-hearing investigation and based upon the preponderance of the evidence, the Hearing Officer revoked ten Yellow Cab Taxi Medallions. The Hearing Officer's decision is attached herewith as Exhibit A. Yellow Cab timely appealed the revocation, listing four bases for appeal and requesting the reinstatement of the revoked permits. The East Bay Driver Association also timely appealed the Hearing Officer's failure to revoke more than ten medallions on the basis that "half [of the taxis are] still sitting in the company garage." This report addresses both appeals and sets forth the analysis as to why both appeals should be denied

FISCAL IMPACT

There is no fiscal impact of revoking these permits, other than the annual renewal fee of \$350 each. This impact will cease when the permits are re-issued. Pursuant to OMC section 5.64.080, the permits may be reissued in an order determined by lot 120 days after revocation.

BACKGROUND

As outlined in the Hearing Officer's November 30, 2006 decision, a number of taxi drivers filed complaints with the Hearing Officer in early 2006, including the allegation that numerous cabs sit unused for extended periods of time on the lot that is used by Yellow Cab Company and

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Friendly Cab Company. As a result, the Taxi Detail requested that Yellow Cab Company submit their waybills for the period of March through May 2006.¹

Prior to the revocation, Yellow Cab Company had 51 Taxi Medallions. No waybills were submitted for 37 of the Taxi Medallions for the entire three-month period. The waybills submitted for several other Yellow Cab Taxi Medallions (vehicle permits) had gaps of greater than ten days. On this basis, the Taxi Detail Unit requested revocation of the vehicle permits that had not been used for more than ten days.

Documents submitted to the Hearing Officer by the Taxi Detail show that Mrs. Surinder and Mr. Baljit Singh have been leasing at least 51 vehicle permits and the Yellow Cab name from the original permittee, A. John Merlo since 1991. Mr. Merlo did not respond to the hearing notice.

KEY ISSUES AND IMPACTS

- A. The appeal filed by Mr. and Mrs. Baljit Singh lists four (4) grounds on which the appeal is based. The grounds, as stated on their appeal are in bold typeface.
1. **Yellow Cab's ten (10) permits (medallions) were a vested property right, and it was not established that Yellow Cab was a public nuisance or that there was a compelling public necessity for the revocation.**

The appeal additionally states that the fleet initially cost \$383,500 and that half has been replaced at a cost of \$150,000, with the balance of the fleet scheduled for upgrade in 2007. Two cabs were converted to natural gas engines at an approximate cost of \$25,000 per cab, and that a GPS computer dispatch system, which Yellow Cab converted to, cost approximately \$550,000. The appeal also cites the standard fees paid to the City and the cost of repairs and maintenance.

HEARING OFFICER'S RESPONSE

Taxi Medallions (Vehicle Permits) Are The Property Of The City.

OMC section 5.64.040D states "Vehicle permits issued by the city are the property of the city." The City's ordinance makes it clear that taxi medallions are the property of the City, not a property right vested in the permit holder. The City, however, acknowledges that permit holders require an expectation of continued operation in order to maintain confidence in their investments. Revocations, therefore are not done frequently and are never done lightly.

Permit Holders Can Expect Continuing Operation If They Abide By The Rules.

Holders of all permits controlled by Title 5 of the OMC are justified in expecting continued operation so long as they abide by the rules governing their permit. In the case of the Taxi

¹ OMC section 5.64.070 requires that "Drivers shall maintain waybills which fully and accurately report all fares paid and distances traveled while hired by a passenger. Waybills shall be deposited with the fleet manager for filing." OMC section 5.64.040 requires fleet managers, such as Yellow Cab, "to maintain for a period of not less than one year all records. . . , including but not limited to all waybills. . ."

Medallions, the rules in question are not buried in regulations that are difficult to access or in undocumented policies developed by the Taxi Detail. The City's ability to revoke permits not used for ten consecutive days, as well as the requirement for the fleet manager to maintain driver waybills, the only specified mechanism by which the City may verify use, are clearly laid out in OMC sections 5.64.080E and 5.64.040C respectively.

Yellow Cab, Under The Management Of The Singhs, Intentionally Violated the Rules For Personal Benefit.

Mrs. Singh was also clearly aware of the requirement to maintain waybills, as she testified at the hearing that the primary reason the National Labor Relations Board (NLRB) ruled against Yellow Cab and in favor of the driver's claim that they were employees, not contractors, was that drivers had to abide by all of the rules in the company's Personnel Manual, one of which was the City's requirement to keep waybills. Ms. Singh testified that after that decision, she did not enforce the waybill requirement in response to the NLRB's determination. The NLRB decision, however, referred to "rules that go beyond, and do not involve, government regulation." The waybill requirement, as a government regulation, was not one of the bases of the NLRB decision, nor is it good cause for discontinuing collection of the waybills.

The investments listed in the appeal have not been made solely to maintain Oakland permits or solely for Yellow Cab.

The City is mindful of the investment made by Yellow Cab. However, this investment has not been made strictly to maintain Oakland Taxi Medallions. The computer dispatch records provided by the Singhs show that cabs with Oakland Taxi Medallions are routinely dispatched to pick up fares in San Pablo, Richmond, Berkeley, Alameda, Pinole, Piedmont, Albany, and Emeryville.

Assuming they are permitted or authorized to pick up fares in other cities, nothing prevents Yellow Cab from using vehicles permitted in Oakland from also being used in other cities. However, those usages do not count as usage in Oakland for the purposes of fulfilling the ordinance requirements. Additionally, the investment made in the fleet cannot be earmarked as investment in maintaining Oakland vehicle permits.

Since half the Yellow Cab fleet is scheduled to be replaced next year, one can assume that half of the fleet, at least 25 vehicles, has been fully depreciated as of the end of 2006. Also, in addition to leasing and operating the Yellow Cab fleet, the Singhs own and operate Friendly Cab and operate Metro Cab, which, according to Taxi Detail staff, is owned by Mrs. Singh's mother. Friendly Cab has 122 vehicle permits and Metro Cab has 31 vehicle permits, giving the Singh's control over 194 of Oakland's 314 vehicle permits after the revocation of ten permits. All of these cabs use the same dispatch system, thereby distributing the cost of that system over all fleets.

Lack of public service, not public nuisance is the basis upon which the permits are being revoked.

The lack of use of Yellow's Cabs results in reduced taxi service for Oakland residents. The likelihood of these cabs being used on the streets will increase if drivers (or others who did not use the cabs simply as spare vehicles when their other cabs were out of commission) held the actual permits.

2. **Good cause for not having more than forty-one (41) permitted drivers exists. Over the time period in question, there was a shortage of qualified drivers. Not just anyone can be an Oakland taxi driver, rather they must pass background checks, drug tests, and have a knowledge about Oakland and being a safe driver. This shortage of drivers has recently come to an end because the City's economy and employment is rebounding – due in part to companies like Yellow Cab making the above sorts of long term investments. As of the filing of this appeal, Yellow Cab has ten new drivers ready to take the City's drivers test (the test is not being offered in December). These new Drivers are qualified and should pass just as soon as the test is offered again.**

The appeal additionally states that not all vehicles can be on the road at the same time, due to break-downs, routine maintenance and variability of demand. The appeal also states that, because Yellow Cab was entitled to ten spare cabs², if they had maintained spare cabs, they would have been in full compliance with the code. They claim, "It is unfair for Yellow Cab to be penalized for having a portion of its fleet out for service and repair as is specifically allowed under the Code."

HEARING OFFICER'S RESPONSE

The determination that ten permits will be revoked was a lenient ruling made in an effort to give Yellow Cab Company every benefit of the doubt, not because of a determination that Yellow Cab had 41 drivers.

The City has determined the number of taxi medallions that should be issued on the basis of what is necessary to provide the citizens of Oakland with good taxi service. Taxis that are not driven for ten consecutive days are obviously not providing the intended service, and the revocation of such a permit provides the opportunity for someone else to obtain the permit and use it to provide taxi service to Oakland residents as intended.

The waybills initially provided by Yellow Cab indicated there were 37 cabs that had not been used for three consecutive months. At the hearing, while acknowledging that not all cabs were in use, Mrs. Singh protested that computer dispatch records would prove that many more cabs were used on a regular basis. The Hearing Officer therefore extended the investigation to provide Yellow Cab the opportunity to prove this. What Yellow Cab submitted post-hearing was, however, not computer dispatch records, but a second set of waybills, some of which had been fabricated. The Hearing Officer's decision noted examples of this. "There were records for individual drivers that would show a driver going to the exact same addresses at the exact same time of day and in the exact order on two different days of the same month. The waybills

² OMC section 5.64.060 entitles fleet management permittees to maintain one spare cab for every five permitted cabs.

submitted on vehicles for which waybills had been received in the original audit differed from the original waybills submitted.”

Since the second batch of waybills was not a credible source of information, the Hearing Officer took into account that over the past four years Yellow Cab has never submitted more than 41 driver names in their fleet permit renewal package. The 41 names were submitted at the end of 2005. The renewal package submitted at the end of 2006 contained the names of only 38 drivers, and, as Mrs. Singh testified at the hearing, not all of the drivers are full-time drivers. Although the City had valid grounds for revocation of many more permits, the Hearing Officer decided that, while unlikely, it was conceivable that 41 cabs had been on the road during the period in question.

Yellow Cab mischaracterizes the Spare Cab program.

Yellow Cab makes the claim that, if they had availed themselves of the spare cab program, they would not be in this situation. The ‘spare cab program’ is not an optional choice. Regularly permitted cabs are not to be used as spare cabs for the same reason that the revocation provision exists: to provide Oakland residents with the necessary level of taxi service as determined by the City. Because Oakland caps the number of cabs available, each permit is expected to be in regular use, thus the provision for spare cabs.

The City recognizes all of the scenarios described in Yellow’s appeal as situations requiring extra cabs, and, to ensure the maximum number of cabs on the streets at all times, provides for spare cabs, which are to be used in those instances. The utilization of regularly permitted cabs as spare cabs is, of course, less costly than maintaining additional cabs, and, because Yellow Cab has never had enough drivers to staff all of their permitted vehicles, they have used these permitted vehicles as their spare fleet, defying the intent of the spare cab provision and denying Oakland residents the expected level of taxi service.

Yellow Cab’s claim that, had they done the right thing (maintained ten spare cabs), they would not be in this situation, is mathematically illogical. Yellow admitted that permitted cabs were out of use due to routine maintenance, breakdowns, etc. However, no driver can drive more than one car at a time. Additionally, not all drivers are full time drivers. Some are students, hold other jobs, or work only part time. These part time drivers lease the cab for a day at a time, therefore allowing a single cab to be split among multiple drivers. It is likely, therefore, that fewer than 41 cars were in regular use. As previously stated, the Hearing Officer gave Yellow Cab the benefit of the doubt and assumed that with 41 drivers they could have conceivably had 41 cars in regular use. If they had availed themselves of the spare cab program, they would have had ten spares for a total of 61 cabs. Without waybill evidence to the contrary, the conclusion would have been the same – with 41 drivers, not more than 41 cabs would have been in regular use.

Not keeping permitted cabs in regular use and not maintaining spare cabs for when the regular cabs are out of commission are both violations of the OMC, not rational grounds for appeal of OMC violations.

Yellow Cab's claim that they could not obtain drivers is not credible.

Yellow's main argument in this component of their appeal is that they could not hire enough drivers to staff their fleet. However, it appears from the record that Yellow Cab is itself establishing a significant barrier to entry for new drivers. Although the non-use charge that is the subject of this revocation came to the City's attention through driver complaints, the major complaint of the drivers is the amount charged by Yellow and Friendly Cab to lease the cabs.

The simplest and most effective thing Yellow Cab could do to attract more drivers would be to reduce the gate. Oakland's cab companies charge a fee to drivers to lease cabs on a daily or weekly basis. This fee is called "the gate." The drivers complain that because Oakland's ordinance controls the fares that they can charge to customers, but does not control the amount of the gate, their income has eroded steeply over the years. The mileage fee, set by OMC section 5.64.100 has not changed since 2001³, while the gate has steadily increased and the cost of gas, which is paid by the drivers, has skyrocketed in price.

At the hearing, Mrs. Singh testified that the current gate for cabs that are authorized to go the Oakland airport is \$700 to \$750 per week and the gate for cabs that can only drive on Oakland streets is \$450. Airport cabs are far more popular with the drivers, as the assurance of picking up a good fare is much higher. Street drivers claim their earning power is significantly handicapped by poor dispatch systems, short distance fares, few cab stands, and fares that are simply not there when the driver arrives. Friendly cab has 46 airport authorized cabs, which is 38 percent of their fleet, Metro has 3, which is 10 percent of their fleet, and Yellow has 2, which is 4 percent of their fleet.

In addition to being most popular with the drivers, airport cabs are the most lucrative to the cab companies, as the gate rates testify. If Yellow Cab was serious about hiring drivers, they would have dropped the gate to the point that more drivers would believe it was possible to make a living driving on the streets. Yellow Cab did not choose to do this. Several drivers have complained to the Hearing Officer that, when they have attempted to get the gate reduced, the Singhs have told them the gate has to be high enough to cover all of the cars. Since a severe shortage of drivers has existed for at least three years, it is reasonable to believe that the costs of the unused cars has been spread across the fees charged to the drivers, thereby removing the urgency to find drivers for those cars.

3. **There was no showing, by a preponderance of the evidence, that ten (10) permits (medallions) were not used.**

HEARING OFFICER'S RESPONSE

Yellow Cab's lack of evidence is a violation of their responsibility under the OMC.

Pursuant to OMC section 5.64.040C, "Fleet management permittees are required to maintain for a period of not less than one year all records pertaining to the fleet manager's operation and

³ The flag drop fee of \$2.00, the amount charged as soon as the passenger enters the cab has not changed since 1992. Drivers who do not have airport privileges complain that fares within Oakland frequently are less than five dollars due to short distance trips.

management, including but not limited to all waybills . . .” As discussed under Yellow Cab’s first grounds for appeal, the Singhs stopped collecting the mandated waybills in order to prove that the drivers were not employees. This violation of the OMC in order to gain an advantage in a case against the drivers created a situation in which the best evidence of usage was not available. It is their responsibility to maintain the records that would prove usage, and their willful violation of this responsibility does not provide them with the grounds for retaining the permits.

The preponderance of the evidence provided indicated that more than 10 permits were out of use for more than ten consecutive days, and Yellow Cab received the benefit of the doubt in the revocation of only ten permits.

The first set of waybills submitted by Yellow Cab for the period of March through May, 2006, established a presumption that 37 permits had not been used for more than ten days and could therefore be revoked. Yellow Cab disputed this, providing computer dispatch records for ten days of each of the audited months. The days submitted, however, were not consecutive, so the computer records proved nothing regarding lack of use. The second set of waybills, submitted by Yellow Cab after the hearing, included waybills for cabs not included in the initial set. However, even in this submission, no waybills were submitted for eight vehicles, and other waybill sets showed periods of non-use by at least three vehicles for more than 10 days.

Following Yellow Cabs’ second submission of waybills, drivers reported to the Hearing Officer that Mrs. Singh told them to “just fill out anything” or she would take the car. Even assuming these records to be correct they document at least eleven Yellow Cabs out of use for periods of more than 10 days.

Because of the deficiencies in the other evidence and because Yellow Cab submitted 41 driver names in the permit renewal paperwork submitted for 2006 (the number includes both full and part time drivers) the Hearing Officer determined to give Yellow Cab the benefit of the doubt. The underlying rationale for the decision was based on the assumption that during the audit period 41 cabs could have been regularly in use. Therefore, the Hearing Officer revoked only ten permits. No current Yellow Cab Drivers were harmed by the revocation, as the renewal package currently submitted by Yellow Cab listed only 38 drivers.

Yellow Cab has been submitting driver names to the Taxi Detail and may claim that it would be unfair to these drivers to revoke the Yellow Cab permits. However, because the Singhs operate Friendly, Yellow and Metro, there are cars available for these drivers. The renewal packet submitted by Metro Cab lists 23 drivers for 31 permits, so some of the drivers may be assigned to Metro. Also, although the City does not gather this information, the existence of part-time drivers means that some cars can be shared among drivers.

4. Yellow Cab has been a good citizen of Oakland for years. Yellow Cab and its affiliated companies have assisted the Police with investigations, provide Para transit services, and otherwise provide safe, clean and reliable taxi service. In light of this record, a lesser penalty than outright revocation is humbly requested. Should Yellow Cab fail to

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fix the above issues, OPD can quickly seek the ultimate penalty of revocation at a later date.

HEARING OFFICER'S RESPONSE

The revocation of only ten permits provides Yellow Cab with the opportunity to "fix the issues" on a far greater number of cabs than provided for in the ordinance.

If the revocation decision was strictly based on the letter of the law, Yellow Cab's violation of the requirement to maintain waybills would have allowed the City to revoke up to thirty-seven permits. Revocation of ten permits serves the purposes of the ordinance by providing the opportunity for the permits to be reissued to applicants who would use them regularly, increasing the available cabs on the street. Leaving them in the hands of the Singhs means that they will continue to be the least popular and therefore least used permits of the permits controlled by the Singhs, which constitute nearly two thirds of the 314 total Oakland taxi permits.

The deficiencies in the first submission of waybills and inaccuracies in the second submission are a basis for additionally revoking Yellow Cab's fleet permit. OMC section 5.64.040C states that "Any records which are determined to be inadequate, inaccurate, or any request which is not complied with may result in the suspension or revocation of the fleet management permit." Instead of revoking or suspending that permit, the Hearing Officer attempted to establish a balance, by giving Yellow Cab an opportunity to "fix the issues" with forty-one permitted cabs and giving the citizens of Oakland an opportunity to obtain better cab service through the deployment of long-term unused cabs.

- B. The appeal filed by the East Bay Driver's Association takes exception with the Hearing Officer's failure to revoke more than ten Taxi Medallions. It states,

The above company [Friendly Cab, Yellow Cab, and Metro Cab] is holding 184 medallions. The company operates only half of the taxicab medallions, and the other half are still sitting in the company garage without drivers, which the company creates a monopoly and charges the drivers extra gate fee to cover the cost and expenses for those cars that are not operating.

HEARING OFFICER'S RESPONSE

The Driver Association appeal takes exception to the fact that the Hearing Officer did not revoke more than ten permits. However, they provide no evidence or proof for their claim that only half of the permits are used. The paucity of police resources and the amount of work involved in physically monitoring the fleets and/or auditing their records make it very difficult for the City to prove this, and the Driver Association has not done so.

It is obvious from a revenue generation standpoint that Yellow Cab would rather have the cabs leased than not. However, because the cabs that are the subject of this revocation are not airport cabs and are also cabs which the Singhs are leasing from Mr. Merlo, they are the least profitable for the Singhs and therefore the most likely to go into disuse when there are driver shortages or maintenance problems. And because this situation has existed for a long time, the Singhs have had to adjust their lease rate structure to cover this overhead. So, while the Driver Association

claim is plausible, there is not a preponderance of the evidence to support it. Without proof of the drivers' claim that half of the cabs go unused, the revocation of ten permits is justified by the preponderance of the evidence.

SUSTAINABLE OPPORTUNITIES

Economic

The revocation of these permits have no long-term economic effects. There are a fixed number of taxi permits, and the revoked permits will be returned to the City to be re-issued in the next taxi permit lottery.

Environmental

There are no environmental impacts of revoking this permit.

Social Equity

Upholding the Hearing Officer's decision will affirm the findings of OMC section 5.64.020 that "Taxicabs provide an essential component of the public transit system," a component that the City relies on private companies to fulfill. It will affirm to both the citizens of Oakland and Oakland's other taxi companies that, except for safety, service is the most important duty of these private companies holding Oakland taxi permits. The revocation and re-issuance of ten permits will also encourage business growth by providing an opportunity for drivers or small companies, who are anxious to drive cabs on the streets of Oakland, to obtain the permits. The most obvious social equity consideration, of course, has been stated throughout this report – increased taxi service to the citizens of Oakland.

DISABILITY AND SENIOR CITIZEN ACCESS

Disabled persons and senior citizens are populations that must often rely on taxi service. Getting to the doctor, the store, to meetings, and to friends' houses does not require taxis that are authorized to go to the airport. It requires the use of taxis that are willing to drive on the streets of Oakland. The ten revoked permits do not include Yellow Cab's two airport cabs. All ten permits are for cabs that are authorized to drive only on the streets of Oakland. This will ultimately be a significant addition to the service available to the disabled and seniors.

RECOMMENDATION AND RATIONALE

Oakland's vehicle permits are a limited and valuable commodity that is intended to be in regular use. The evidence shows that Yellow Cab has left many of these permits dormant for extended periods of time, has seriously violated the requirement to maintain waybills, and has submitted fabricated evidence in an attempt to maintain control of the medallions. Yellow Cab has not shown good cause for abandonment of the medallions.

The Hearing Officer recommends that the City Council uphold the decision to revoke ten of Yellow Cab's vehicle permits (taxi medallions). Yellow Cab egregiously violated the City's waybill requirement, primarily to prove an NLRB decision wrong. According to the complaints

of the cab drivers, the lack of cab use has been a long-standing problem, and Yellow Cab's number of permitted drivers substantiates these claims. These violations provide the basis for revocation of the more than thirty-seven permits for which there was initially no use documentation.

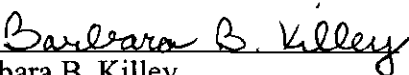
The Drivers' Association, by their appeal, has requested the revocation of far more than ten permits. The Hearing Officer requests that this appeal also be denied. To prove the ongoing disuse of half the fleet, as alleged by the drivers, requires greater police and administrative resources than the City has available to dedicate to this issue. The Drivers' Association bears the burden of proof of this claim, and they have not provided such proof.

Revocation of ten permits, proven by even Yellow Cabs' second set of submitted waybills to be in disuse longer than ten consecutive days, will fulfill the intent of the OMC by expanding the pool of taxis available on the streets of Oakland. It will do so without serious disruption to the operation of Yellow, Friendly, and Metro Cab companies, as it affects less than five percent of the combined fleet. It will also not negatively impact Yellow's permitted drivers as Yellow will still have more taxis than it has drivers, and enough taxis in the combined fleets to absorb the additional drivers it has lined up.

ACTION REQUESTED OF THE CITY COUNCIL

The Administrative Hearing Officer requests that the City Council move to affirm the Hearing Officer's decision and uphold the revocation of ten Yellow Cab Taxi Medallions.

Respectfully submitted,


Barbara B. Killey
Administrative Hearing Officer
Office of the City Administrator

APPROVED AND FORWARDED TO THE
CITY COUNCIL


OFFICE OF THE CITY ADMINISTRATOR

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January 16, 2007

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Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION DENYING THE APPEAL FILED BY MR. AND MRS. BALJIT SINGH ON BEHALF OF YELLOW CAB AND DENYING THE APPEAL FILED BY ENAYAT AMINY ON BEHALF OF EAST BAY DRIVER ASSOCIATION AGAINST THE ADMINISTRATIVE HEARING OFFICER'S DECISION TO REVOKE TEN TAXI MEDALLIONS ISSUED TO YELLOW CAB COMPANY

WHEREAS, pursuant to Oakland Municipal Code section 5.64.080, any vehicle permit that is not used for a period of ten consecutive days may be revoked, unless good cause for abandonment is shown; and

WHEREAS, the City of Oakland received reports that numerous Yellow Cabs were unused for extended periods of time; and

WHEREAS, based upon these reports, the Oakland Police Department audited the waybills of Yellow Cab Company for the period of March through May, 2006; and

WHEREAS, there were no waybills submitted for thirty-seven of Yellow Cab's fifty-one vehicle permits; and

WHEREAS, in accordance with the requirements of Oakland Municipal Code chapter 5.02, a hearing was conducted on October 19, 2006, to consider the Taxi Detail's request to revoke the unused Yellow Cab vehicle permits based on the reports of unused taxi vehicles; and

WHEREAS, at the hearing, Yellow Cab testified that they intentionally discontinued maintenance of waybills, in violation of OMC section 5,64.040C, after the National Labor Relations Board decided in favor of Yellow Cab drivers claim that they were employees, not independent contractors, on April 30, 2004, citing Yellow Cab's policy manual, which required, among other rules, the submission of waybills; and

WHEREAS, at the hearing, Yellow Cab claimed that they could prove that less than thirty-seven cabs were consistently out of use, and the Hearing Officer requested this proof; and

WHEREAS, the Hearing Officer determined the waybills additionally submitted by Yellow Cab to be unreliable, as some appeared to be falsified and others differed from the original submission, but, even so, the additionally submitted waybills showed at least eleven Yellow Cabs unused for periods of at least ten days during the audit period; and

WHEREAS, despite the lack of reliable waybill evidence, Yellow Cab's records submitted to the Taxi Detail indicated that they have not had more than forty-one drivers in the past three years; and

WHEREAS, on November 30, 2006, on the preponderance of the evidence, the Hearing Officer determined that ten Yellow Cab vehicle permits should be revoked; and

WHEREAS, Yellow Cab and the East Bay Driver Association timely appealed the Hearing Officer's decision; and

WHEREAS, none of the grounds submitted by Yellow Cab provide good cause for the lack of use; and

WHEREAS, the East Bay Driver Association provided no proof and the City cannot confirm that half of the Yellow Cab vehicles are unused; and

WHEREAS, the fiscal impact of revoking the permits, a \$350.00 annual permit renewal fee, will cease when the permits are reissued, which the Oakland Municipal Code allows to occur 120 days after revocation; and

WHEREAS, the revocation and reissue of ten Yellow Cab permits provides the opportunity to improve taxi service to Oakland's residents, particularly seniors and the disabled, in accordance with the intent of Oakland's ordinance; now, therefore, be it

RESOLVED, that the City Council finds and determines that the Administrative Hearing Officer's decision was made in accordance with the requirements of Oakland Municipal Code Chapters 5.02 and 5.64; and be it

FURTHER RESOLVED, that Yellow Cab has failed to show good cause for the non-use of at least ten vehicle permits; and be it

FURTHER RESOLVED, that the East Bay Driver Association has failed to prove non-use of half of the Yellow Cab fleet; and be it

FURTHER RESOLVED, that the Administrative Hearing Officer's November 30, 2006, decision to revoke ten Yellow Cab vehicle permits is hereby affirmed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
PRESIDENT DE LA FUENTE

NOES -

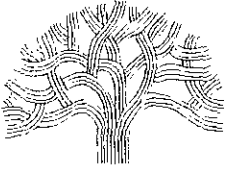
ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

EXHIBIT A



CITY OF OAKLAND

1 FRANK H. OGAWA PLAZA - OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Barbara B. Killey
Assistant to the City Administrator

(510) 238-2257
FAX: (510) 238-7084

November 30, 2006

**Findings and Determination of Hearing Officer
Pertaining to Public Hearing on Vehicle Permits (Taxi Medallions)
Of Yellow Cab Company**

Pursuant to Section 5.64.808E of the Oakland Municipal Code (OMC), the Oakland Police Department (OPD) Taxi Detail Unit requested that the City Administrator revoke the vehicle permits of Yellow Cab Company that had not been used for a period of at least ten consecutive days during an audit period that spanned the months of March through May of 2006. A public hearing was held on October 19, 2006 at 9:30 a.m. in Hearing Room 1, City Hall, 1 Frank H. Ogawa Plaza, Oakland, California.

Presented below are the findings and determination of the Hearing Officer:

BACKGROUND

In early 2006, a number of Oakland taxi drivers filed complaints with the Hearing Officer. Among these complaints was an allegation that numerous cabs sit unused for extended periods of time on the lot used by Yellow Cab Company and Friendly Cab Company. Pursuant to OMC section 5.64.080E, "Any vehicle permit that is not used for a period of ten consecutive days may be revoked . . . unless good cause for abandonment is shown.

This allegation was referred to the Taxi Detail Unit. They determined that the allegation was credible, as, for the past several years, Yellow Cab did not have enough permitted drivers to staff all of their permitted vehicles. The Taxi Detail therefore requested that Yellow Cab submit their waybills for the period of March, April and May of 2006. OMC section 5.64.070 requires that "Drivers shall maintain waybills which fully and accurately report all fares paid and distances traveled while hired by a passenger. Waybills shall be deposited with the fleet manager for filing."

The Taxi Detail Unit summarized the information from the submitted waybills. The audit summaries revealed that, of the fifty-one (51) vehicle permits operated by Yellow Cab, 37 vehicles had no waybills for the entire three month period and several other had periods of more than ten days with no waybills. On this basis the Taxi Detail Unit requested the revocation of the vehicle permits that had not been used for more than ten days.

A. John Merlo is the permittee of the vehicle permits being operated as Yellow Cab Company. Since 1991 Mr. Merlo has leased the permits to Surrinder and Baljit Singh. Mr. Merlo, Mr. Singh and Mrs. Singh were notified of the hearing. Mr. Merlo did not respond and did not attend the hearing.

On October 16, 2006, Mr. Singh submitted a letter contesting the Taxi Detail's contention that thirty-seven vehicle permits were not used for the period of March through May 2006. The letter explained that, although it is company policy for waybills to be turned in every day, the company has no way of forcing the drivers to return the waybills, as the drivers are independent contractors. The letter further stated that a random sampling of the company's computer (dispatch) data for ten days of each of the audited months revealed that the cabs were on the road and being used. Mr Singh concluded, "We have not violated Oakland Municipal Code section 5.64.080E and believe we have shown good cause."

At the hearing, Mrs. Singh presented the computer printouts from the dispatch system for ten day periods of each of the three audited months. Mrs. Singh explained that these records show that more of the Yellow Cabs were on the street than the waybills indicated.

SUMMARY OF HEARING TESTIMONY

Mr. Leo Bazile testified that he is the previous general manager of Yellow Cab. He requested that the October 16 letter be marked exhibit one and that the computer records be marked exhibit two. Mr. Bazile said that he had prepared questions to ask Mrs. Singh which would explain how the company operates.

In answer to Mr Bazile's questions, Mrs. Singh testified as follows in paragraphs one through eleven:

1. She is the owner of Friendly Cab and the lessee of the permits for Yellow Cab.
2. She has been operating the company and leasing these vehicles for twenty years.
3. At some point there was a limit placed on the number of vehicle permits [that could be permitted to an individual], but the cabs of Friendly and Yellow were *grandfathered in*.
4. The computer printouts from ten days each of March, April, and May show that there were more cabs on the road. When a call comes in, it is automatically sent to a driver, who can pick the call up or not.
5. Mrs. Singh had requested the computer data from the entire three month period, but Jennifer Chen, an employee of Digital Dispatch Systems, the Vancouver company that handles the computer records, emailed her on October 18 that it was impossible to print the records in time for the hearing. The email stated that the data must be printed from hard drive backups in ten day segments.
6. Friendly Cab and Yellow Cab have control of the medallions, and they lease the cabs to the drivers, who are independent contractors and who are certified to drive a taxi by the Oakland Police Department. The leases are called gate fees.
7. The company has no control over how many drivers may come to them at any one time wanting to lease a cab.
8. At least eight or nine years ago, the company was sued by some of the drivers before the National Labor Relations Board. Last month she was notified by her attorneys,

Hanson and Bridgett, that the case was over and that the drivers lost, because they are independent contractors, not employees.

9. The suit claimed that the drivers were employees and that the company was controlling them. The judge ruled that they were employees. She had no problem with them being employees. The ruling was based primarily on the company's Personnel Manual, which contained all of the rules under which the drivers were to operate. Because of all of these rules the [NLRB] hearing officer decided that was a substantial amount of control that would take the drivers out of independent contractor status.
10. One of the rules in the Personnel Manual was that the drivers had to adhere to all of the City of Oakland rules, one of which is the provision of waybills. After the hearing, the company did not enforce the manual of rules, including the rule to turn in waybills.
11. There is great difficulty in getting the drivers to turn in the waybills. It is an ongoing problem. They have no way of enforcing it. Even taking the cab away is not a solution. Waybill collection is one of the duties of Claudia Shmorgn.

In answer to questions from Mr. Bazile, Claudia Shmorgn testified as follows in paragraphs 12 through 15.

12. She has been employed by the company for over four years. She handles the driver application and permit renewal processes, waybills, accidents, complaints, and customer service.
13. As part of her cashier function, when drivers come to her to pay the gate, that is when she requests the waybills. She requests the waybills before collecting the gate and provides the new blank waybills after the driver pays the gate. Some drivers work on a shift basis and pay the gate on a daily basis. These drivers receive one waybill and are responsible to bring the waybill back at the end of the shift. Other drivers, called 24 hour drivers, keep the cab for the whole week. They receive seven waybills and are supposed to return seven waybills when they pay the gate. The company also posts a copy of the City rules.
14. It is so difficult to collect the waybills. Most of the drivers say they left them at home or they will bring them later. Or they say, "Let me go get them." Then they never come back. They say, "I don't have to give them because they are only for my records." She has no way of enforcing the City's requirement.
15. Ms. Shmorgn presented some waybills from Friendly Cab Company showing how incompletely even the drivers who submit them fill them out. Whatever condition they receive them in, the company files them.

In response to the Hearing Officer's question why they stopped enforcing the manual of rules, Mr. Bazile responded that the NLRB had ruled the drivers were employees because they were being controlled through the manual. As independent contractors, the company should do no more than hand them the keys.

In response to the Hearing Officer's question why, if, as Mrs. Singh testified, the company had no problem with the drivers being employees, the company stopped enforcing the rules, Mr. Bazile responded that the drivers were trying to be declared employees so that they could unionize. The company has no problem with unionizing. They have another company, Friendly Transportation, in which all of the employees are unionized. The company was not contesting

the drivers on that issue. They were simply contesting that the drivers were independent contractors, not employees. The ruling was that they were employees because the manual attached to their lease agreement. The manual was all of the rules that the City of Oakland required of the company.

In response to the Hearing Officer's question whether the company was currently refusing to negotiate with the union, Mr. Bazile answered that the drivers had not formed a union yet. They had an election that indicated they wanted to unionize but they have not presented themselves in such a way that they would sit down to collectively bargain.

In response to the Hearing Officer's question why withholding the cab is not the solution to obtaining the waybills, Mr. Bazile testified that is a separate issue. Only drivers who are permitted by the City of Oakland can drive the cabs and, if they don't come in, the cab must sit unused. The Hearing Officer clarified that the company's power over the drivers is economic. They need to drive to make a living. Mrs. Singh reiterated that the drivers make excuse after excuse. The Hearing Officer repeated the question of why the cabs are not withheld. Mr. Bazile answered that, if the cabs sit there, they are not providing service, and the company is paying thousands and thousands of dollars of insurance on each cab and debt service on all of the company obligations.

Gabriel Cervantes testified as follows in paragraphs 16 through

16. He has been working for Friendly for about a month. They brought him in to be a buffer between the drivers and the dispatchers and to make the system work a little better. On the 18th of October, he had a meeting with Mrs. Singh and driver number 140, whose name is Peter. Mrs. Singh told Peter she needed his waybills. Peter said he had worked for the company a long time, that he had left them at home, and that he was going to go home to get them. He never brought them back.
17. It is hard to get qualified drivers. Mr. Cervantes submitted a newspaper article dated the 16th of October discussing the murder of a cab driver in Richmond.
18. The company is trying to stay in business. If the airport allowed rotation so that all of the cabs could have some days at the airport, it would be easier to get qualified drivers.

Mr. Bazile testified that there are cars that are out of action because they get into accidents or are in the queue for mechanical maintenance. They have a limited number of mechanics and their first priority is to get the ones on the street rolling. They have records showing when cabs are under repair.

Mr. Bazile questioned, if drivers don't come in for ten days, are they to give up all of their permits?

In response to a question from the Hearing Officer whether there are any unused cabs at Yellow Cab, Mrs. Singh responded that there are some. Yellow has two airport cabs and 39 drivers, and Friendly has 48 airport cabs.

In response to the Hearing Officer's question what the period of the current lease with Mr. Merlo is, Mrs. Singh said that it is open-ended and that one day they will own Yellow Cab. Mr. Merlo cannot lease the permits to others unless the company violates the terms of the lease. She declined to divulge the lease rate. The Hearing Officer said that, if it was the amount listed in the lease paperwork, it adds considerable overhead and queried why the company would want to maintain that overhead on unused cars. Mrs. Singh responded that the Yellow Cab name is a good name and they wanted to maintain that name.

In response to whether the cabs permitted in Oakland are used in other cities, Mrs. Singh responded that they have permits to drive in other cities and that some of those permits are used on vehicles that also have Oakland permits.

Officer Matthew Greb of the Oakland Police Department Taxi Detail Unit testified that Oakland taxi medallions are issued numerically, one through 315 and are issued to a permittee, not to a vehicle. Each year the taxi company must submit a fleet manager's package, which includes all of the vehicles that operate under the cab company. If the permittee is different from the fleet manager, the permittee must submit a notarized statement that the fleet is authorized to operate the permit that year. The company can assign the permit to a specific vehicle of their choice. If a vehicle breaks down, the company is supposed to notify the Taxi Detail and estimate the down time. They should then activate one of their permitted "spare cabs," which then functions as the original permit number. If the down time extends beyond ten days, the company is to notify the Taxi Detail Unit again and be re-authorized to utilize the spare. If they purchase a new car, they submit Change of Vehicle paperwork and go through the inspection process, so the City knows which physical car is being utilized for each medallion.

Officer Greb testified that the Yellow Cab fleet package just submitted for the 2007 year lists 51 operable cabs and 38 insured drivers. Their 2006 package also listed 51 operable cabs and 41 drivers. There have been 10 taxi classes conducted in the year between package submission. During that time Yellow has put 13 drivers through the class, compared to 43 for Friendly.

Mr. Bazile testified that any change, such as transferring a permit to a different vehicle results in a \$25 charge. This also applies to the change in insurance policy number that occurs every year, resulting in a \$25 charge for 200 cabs, which the company does not think is fair that they must bear. But it is an example of the cost of business that makes it in their interest to get the cabs out on the street. It is difficult to get drivers at this time.

The Hearing Officer's stated that one of the driver complaints is the gate fee charged, and queried whether that may affect the ability to recruit driver's. In response to the Hearing Officer's query regarding the gate fees, Mrs. Singh responded that there are a total of 184 cabs, 50 of which are airport cabs. All of the drivers want an airport cab because that is easy money. The charge a gate fee of \$750 per week for a CNG (natural gas) car and \$700 per week for a non-CNG car, but the drivers would pay \$1000 if they charged that. The gate for a City (not authorized to go to the airport) car is \$450. For that the drivers get a fully insured, fully maintained car, which they can also use for their personal use. 100 drivers have weekly leases. More drivers want to drive for Friendly so that they may get an airport cab.

Officer Greb testified that, if the vehicles are being used in other cities, that does not qualify as operation in Oakland. There is nothing to prevent them from using the cabs in other cities, assuming they are properly permitted in those cities, but they must be operated in Oakland in order to keep the Oakland permit. Only permitted Oakland cabs may legally pick up fares in Oakland. Officer Greb briefly reviewed the computer printouts submitted by Mrs. Singh and pointed out several dispatches of Yellow Cab medallion numbers to other cities.

Eugene Adams testified that he is the Fleet Manger for Friendly and Yellow. He tries to rotate the cabs so that they are all maintained properly. Drivers are assigned to specific cabs unless they break down or must come in for their maintenance, which is every 3000 miles. During that time they can drive a different car. Some drivers prefer to not drive during the maintenance time.

Baljit Singh testified that due to crime, driver's wives call him and ask him not to let their husbands drive, particularly in East Oakland. This is why they can't attract more drivers. They need more police, especially at night.

The Hearing Officer explained that the investigation would continue and that Mrs. Singh need not request the complete computer records unless the Hearing Officer subsequently ask for additional information.

POST HEARING INVESTIGATION

Following the hearing, the Hearing Officer reviewed the computer reports submitted at the hearing and determined that they were inconclusive regarding the operation of Yellow Cabs. Consequently, on October 25, 2006 the Hearing Officer notified Mrs. Singh by letter that she would be afforded the opportunity to compile additional data showing which cabs were not out of use ten or more consecutive days during the audit period.

On November 14, 2006, Mr. Singh delivered a box of waybills to the Hearing Officer along with a letter from Mrs. Singh arguing that there are no issues of safety or welfare and that revocation is an extreme action that should be used only in extreme circumstances. The letter indicated more cars are in use than even shown on the computer dispatch system because drivers may often check in with their regular cab number when they are driving a different vehicle. The letter stated, "This happens often because accidents happen, vehicles are at city inspections, maintenance must be done, cars have to be repaired, etc."

The letter stated that the waybill problem was difficult and that part of the problem had been delegation of this duty. Mrs. Singh stated she is now taking personal responsibility, "insisting that waybills be done as the law and Company Policy require, making it clear that it is an essential condition of every taxi lease."

Mrs. Singh's letter also stated that drivers will no longer be allowed to choose which company they wish to drive for and that she has acquired 3 permitted drivers for Yellow and has "ten more lined up for January when the new class is run by the OPD."

No explanation was given for why waybills were submitted instead of the complete computer records discussed at the hearing. The waybills delivered by Mr. Singh were clearly 'manufactured' in response to the Hearing Officer's October 25 letter and raised more questions than they answered. There were records for individual drivers that would show a driver going to the exact same addresses at the exact same time of day and in the exact order on two different days of the same month. The waybills submitted on vehicles for which waybills had been received in the original audit differed from the original waybills submitted. Although it was apparent that the waybills were attempting to document usage at least once every ten days, there were several instances where there was no use for periods greater than 10 days. Nine vehicles still showed no usage for the month of March.

Terri Masson, who described herself as a former lawyer and current advocate for the Singhs, telephoned the Hearing Officer to ask about the status of the case. The Hearing Officer asked if she knew how the waybills had been generated. Ms. Masson said that Mrs. Singh is very persuasive and knows how to handle the drivers and get what she wants. She speculated that Mrs. Singh probably told the drivers they needed to generate the waybills to keep their jobs. Ms. Masson said she would call the Hearing Officer if that was incorrect. She has not called.

Mr. Bob Aiello, Business Representative of Teamsters Local No. 70, submitted a copy of the National Labor Relations Board decision of April 30, 2004 in the case of Friendly Cab Co and East Bay Taxi Drivers Association. Among other reasons cited for a finding that the drivers were employees, the decision stated;

Under the Employer's policy manual and standard operating procedure, drivers must adhere to a dress code, attend Employer and government mandated classroom training and follow procedures concerning the use of the radio, operation of the vehicle and reporting of accidents and incidents. Drivers may not use private business cards and must accept credit cards, vouchers and scrip. The Employer has the right to discipline drivers or terminate their leases for any infractions. To ensure that the Employer's policies are followed, the road manager monitors the drivers' activity while on the job. The Employer also investigates customer complaints and may terminate the lease or issue discipline as a result. *Thus, the Employer maintains and enforces rules that go beyond, and do not involve, government regulations.* (341 NLRB No. 103, emphasis added.)

Mr. Aiello also submitted three letters documenting Local 70's unsuccessful attempts, on behalf of the East Bay Taxi Drivers Association, to present proposals for a labor agreement to Friendly Cab. A fourth letter, dated May 20, 2005, from the NLRB to Jerrold Shaeffer, Esq. of Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, stated, "It is my understanding that your client declines to comply with the Board's decision and Order in the above matter. Because of this, I am referring the case to the General Counsel's office to seek court enforcement of the Board order.

The OPD Taxi Detail Unit submitted information from prior Yellow Cab Fleet Manager's Packages showing the following:

- 2004 – 36 drivers
- 2005 – 40 drivers

2006 – 41 drivers
2007 – 38 drivers

DISCUSSION

While the issue of cab usage may be simple, the economic issues underlying the interests of both the drivers and the cab company in this case are complex. The drivers have an interest in obtaining their own cab permits so that they would not have to pay the daily or weekly gate fee that is required when they drive for a company.

The structure of the City's ordinance caps the rates drivers can charge without similarly controlling the rates they pay to lease the cabs. The result, the drivers claim, is that, if they are driving an airport cab, they must drive more hours per day than is permitted by law to pay the gate and also make a living. Many claim it is nearly impossible to pay the gate and make a living driving a non-airport cab. All but two of the Yellow Cabs are non-airport cabs.

In conjunction with an October 11, 2006, OMC mandated biennial hearing to determine if more cabs are needed in Oakland, the Hearing Officer received several complaints from citizens who claim it is difficult to get a cab in Oakland, other than at the airport, BART or the Marriott. Economics would certainly indicate that drivers would be more likely to drive in the city if they did not have to pay the first \$450 of fares each week to lease a cab.

The company claims that it structures its rates to cover its costs, which is only good business practice. Of course, as Mr. Bazile pointed out, some of the costs, such as insurance, are fixed, whether the cab is used or not. It is, as both Mr. Bazile and Mrs. Singh testified, in the company's interest to have all of the cabs in use, but, if the cabs are not in use, their costs must be covered by the income from those that are.

The drivers have been striving to obtain employee status in order to obtain the right to collectively bargain for better working conditions, including, according to their representative, fringe benefits such as health and life insurance. The company is clearly adverse to this, and, again, economics are the only rational basis for such adversity.

It is not within the purview of this hearing to decide whether the economic interests of the company are more legitimate than those of the drivers. The question is whether Oakland vehicle permits were out of use for more than ten days and, if so, whether good cause was shown for not revoking the permits.

The City's reasons for such a requirement are obvious. Since the number of permitted cabs fixed and is determined by a judgment of what number would best serve the needs of Oakland's citizens and visitors, those needs will only be optimally met if the permitted cabs are regularly used.

The record keeping of Yellow Cab in regard to cab usage is abysmal. Because of the obvious fabrication of some of the waybills submitted after the hearing, the determination of usage cannot be made from the waybills. Although Mrs. Singh claims enforcement of

waybill collection ceased due to the NLRB decision, there was nothing in the decision that would have dictated such a result. The decision specifically cites rules that go beyond government regulations as an indicator that the drivers are employees. Resistance to doing paperwork is not good cause for ignoring the requirement. Again, the failure to enforce was linked to the Singh's determination that the drivers were not employees and to the economic loss to the company that would occur if cabs were withheld until drivers turned in their records.

Both at the hearing and in the letter submitted with the waybills, the Singhs explain that cabs are often out of service due to accidents, maintenance, and inspections. As Officer Greb discussed, this is the purpose of the spare taxicab permit provision. Under this provision a fleet management permittee is entitled to one spare taxicab permit for every five regular vehicle permits. None of the 51 audited Yellow Cab permits is a spare permit, and, according to the Taxi Detail, Yellow Cab has no spare taxicab permits. A spare permit would require the acquisition of a vehicle to which it would be assigned. While that would obviously be more costly than the utilization of cars that are not being used anyway, the use of regularly permitted vehicles as spare cabs is not a justification of or a show of good cause for the lack of use of other regularly permitted vehicles.

Clear uncontroverted evidence of vehicle non-use is the fleet manager's packages submitted by Yellow Cab. These filings show that, over the past four years, Yellow Cab has had only between 36 and 41 drivers. With 51 vehicle permits it is obvious that not all cabs will be in use.¹ While arguing that more cars are in use than the originally submitted waybills showed, Mrs. Singh admitted that not all cars are in use.

Although her letter of November 14, 2006, states that she is hiring new drivers and enforcing the City's waybill requirement, Mrs. Singh provided no additional explanation, other than her own lack of personal management, for the lack of adherence to the requirements of the ordinance in the past. Poor management is not a show of good cause.

DETERMINATION

The Oakland Municipal Code is clear that Vehicle Permits are the property of the City. The provision for revocation of permits not used for more than 10 days evidences the City's goal to have taxi services available to its citizenry at optimal levels. The drivers, in bringing the complaint of unused vehicles, were well aware of this provision, and, as an astute business woman, it can be assumed that Mrs. Singh was also aware. In spite of this, drivers were not recruited to fully staff the permits. Although Mrs. Singh testified that the company has no control over the number of drivers that come to them and Mr. Singh and Mr. Bazile blamed their continued lack of success in recruiting drivers on the danger of the job and a difficult market, their November letter indicates they have been able to recruit three and line up ten more since the hearing.

¹ Considering the maximum of ten driving hours per day dictated by California Vehicle Code section 21702, it is also obvious that drivers will not be available for all shifts, a partial explanation for the lack of cab service reported by Oakland residents.

Mrs. Singh cannot prove usage because, by her own admission, she has not been enforcing the waybill requirement for at least the past two years, maintaining that the drivers are independent contractors and discarding even the City-mandated waybill requirement in her zeal to prove that the drivers are not employees.

Yellow Cab's lack of waybills and fabricated waybills provide the City with valid grounds for revoking at least 37 of Yellow Cabs vehicle permits. It is tempting to do so in order to put more permits in the hands of drivers and get more cabs in operation. However, in spite of the flimsy waybill evidence presented by Yellow Cab, the number of drivers submitted in the annual fleet manager's package indicates that, over the past four years, up to 41 cabs could have been in use at any one time.² The City has no interest in removing cabs than are in actual regular use.

The City's interest is in providing the maximum availability of its permitted cabs, something Yellow Cab has consistently failed to do for at least the past four years. The Singhs' testimony that they have no control over the number of drivers is simply not credible. Due to the much higher gate, there is more financial incentive to lease the 48 Friendly Cab permits and 2 Yellow Cab permits that are authorized to work the airport before leasing the Yellow non-airport cabs. The gate fees from these cabs and the non-airport cabs that are leased apparently cover the costs of all of the unused cars, while providing a ready supply of spares. If these permits were issued to individual drivers, the drivers would have a greater financial incentive to keep the cabs operating on the streets of Oakland, thus fulfilling the intent of the ordinance.

The preponderance of the evidence indicates that over that four year time period, even if every one of the maximum 41 permitted drivers had been a weekly driver, there would have normally been at least ten cars out of use for at least ten consecutive days. Good cause was not shown for sustained lack of use. Therefore, ten vehicle permits (medallions) currently being managed by Yellow Cab Company are revoked. Pursuant to OMC section 5.02.080 ten permits must be surrendered to the City Administrator.

Maintenance of valid waybills is the only definitive way the City has of determining cab usage. This decision, therefore, also serves as a warning to Yellow Cab Company that any future lack of compliance with this requirement will be considered prima-facie evidence of non-usage of the associated vehicle permits and grounds for revocation. Yellow Cab is also expected to fully comply with all other sections of OMC Chapter 5.64.

Pursuant to OMC section 5.02.100, anyone excepting to this decision may appeal to the City Council within fourteen days of the date of mailing. Information regarding the appeal process is enclosed.

Barbara B. Killey
Barbara B. Killey, Administrative Hearing Officer

11/30/06
Date

² Because only approximately half of the drivers are weekly drivers who have a car the entire week, it is unlikely that the number of cabs in use has been that high.

cc: Deborah Edgerly, City Administrator
Niccolo De Luca, Deputy City Administrator
Joyce Hicks, Executive Director, Citizens' Police Review Board
Officer Matthew Greb, OPD Taxi Detail
James Atencio, Deputy City Attorney
John Merlo, Permittee
Baljit and Surrinder Singh, Yellow Cab Company
CAO file

Enclosures: Appeal Information
Appeal Form