

OFFICE OF THE CITY CLERK

2007 JUN 11 PM 7:09

Approved as to Form and Legality

*James Atencio*  
Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. 80444 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, MAR 6 2007, 2007

**PASSED BY THE FOLLOWING VOTE:**


AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, ~~WATSON, WONG~~, CHANG, AND  
~~RESIDENT DE LA FUENTE~~ - 5

NOES - Brooks, Reid, De La Fuente - 3

ABSENT - 0

ABSTENTION - 0

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  
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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 18<sup>th</sup> 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 16<sup>th</sup> 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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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

<sup>2</sup> 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