



Office of the City Manager

CONSENT CALENDAR

March 20, 2007

To: Honorable Mayor and  
Members of the City Council  
From: *PK* Phil Kamlarz, City Manager  
Submitted by: Manuela Albuquerque, City Attorney  
Subject: Cleanup Amendments to Taxi Ordinance

RECOMMENDATION

Adopt first reading of an ordinance amending Berkeley Municipal Code (BMC) Sections 9.52.020, 9.52.030, 9.52.040, 9.52.050 and 9.52.150 pertaining to taxi permits.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City has for many years licensed taxi business owners, operators and vehicles. This regulatory scheme protects the public safety and welfare, as well as benefits the taxi industry itself.

The Taxi Ordinance (BMC Chapter 9.52) requires persons who wish to operate taxi businesses or drive a taxi to apply to the City for a permit to do so.<sup>1</sup> Such permits expire automatically at the end of each calendar year and must be renewed annually. In order to renew a business owner's permit, an applicant must make the same showing as is required to obtain a permit in the first instance. Specifically, Section 9.52.030.B.1 of the Taxicab Ordinance provides that the City "shall" approve a taxicab business owner's application unless it determines that:

---

<sup>1</sup> The Taxi Ordinance also requires that the City inspect and approve vehicles before they may be used as taxis.

- a. The applicant fails to submit a complete application; or
- b. The applicant makes any omission, untrue statement or provides fraudulent documentation with the application; or
- c. The applicant has violated this chapter three or more times within the last three years or is otherwise subject to suspension or revocation under Sections 9.52.150 or 9.52.160; or
- d. There is an absence of satisfactory proof that the business owner will comply with the provisions of this chapter.

Provisions relating to approval and renewal of drivers' permits (BMC § 9.52.050.B.1) are essentially the same: drivers' permits "shall" be approved unless

- a. The applicant fails to submit a complete application; or
- b. The applicant makes any omission, untrue statement or provides fraudulent documentation with the application; or
- c. State Department of Motor Vehicle records indicate that the department has taken administrative action which resulted in actual suspension or revocation of the applicant's driver's license within the last two years, unless such suspension or revocation was based on a non-driving related matter; or
- d. The applicant has violated this chapter three or more times within the last three years or is otherwise subject to suspension or revocation under Sections 9.52.150 or 9.52.160; or
- e. There is an absence of satisfactory proof that the vehicle for hire will be operated in compliance with the provisions of this chapter; or
- f. The applicant has failed to maintain a valid California driver's license.

As is evident, the required findings for both an business owner's permit and a driver's permit grant the City substantial discretion over approval and renewal of taxi permits, and the City has always understood the Taxi Ordinance as granting it significant discretion in permit decisions.

However, because of the use of the word "shall" in these sections, in 2005 the Alameda County Superior Court held that applicants have a property interest in issuance and renewal of those permits, and thus are entitled to administrative hearings whenever the City does not issue or renew a license based on a factual determination. This ruling was based on taking the word "shall" out of context, and interpreting it as creating a ministerial duty on the part of the City, and ignoring the substantial discretion vested in the City by the findings. It was never the City's intent to give all applicants for taxi-related permits a property interest in those permits, and the City had never interpreted the ordinance in this manner. This interpretation significantly limits the City's ability to regulate the taxi industry in Berkeley, makes it difficult to eliminate problematic

operators and imposes significant additional costs<sup>2</sup> on enforcement of the Taxi Ordinance. Accordingly, this report recommends that the Council amend the Taxi Ordinance to eliminate the word “shall” in the sections quoted above relating to business owners’ permits and drivers’ permits to more accurately reflect its original intention. The proposed amendments would recast this language as more obviously permissive, so that it reads that permits “may be granted only if the City determines” that the specified findings can be made. This eliminates any ambiguity as to whether the Taxi Ordinance imposes a ministerial duty of n the City and thereby creates a property right for applicants.

In addition, the litigation involving the Taxi Ordinance raised the issue of when permits may be suspended without a hearing, without offending due process rights of permit holders (although the Court never ruled on this issue). Unlike issuance or renewal of licenses, taxi business operators and taxi drivers do have a property right in an existing unexpired permit, and in most circumstances are entitled to administrative hearings when a permit is suspended.<sup>3</sup>

As a result, the City Attorney recommends that the grounds for immediate suspension of permits be limited to cases where there is no factual dispute (i.e., where a driver does not possess a valid California driver’s license), and or emergencies (i.e., where a taxi vehicle itself presents a hazard). Specifically, the amendment (see BMC § 9.52.150) would permit immediate suspension of a driver’s permit if he or she is operating a taxi without a valid California driver’s license, because whether or not a taxi driver has a California driver’s license is easily verified with the DMV and is not subject to factual dispute. Similarly, a business owners’ permit could be suspended for 30 days where the owner has allowed unlicensed drivers to operate his or her taxis three or more times within the prior 12 months, because this also is an issue that is not subject to factual dispute. Finally, suspension of vehicle permits would be authorized where the vehicle itself poses a danger to public safety or is not registered<sup>4</sup>.

## BACKGROUND

See “Current Situation and Its Effects”.

## RATIONALE FOR RECOMMENDATION

This action is necessary to eliminate an ambiguity in the Taxi Ordinance that has led to unintended consequences.

---

<sup>2</sup> For instance, the City settled the case in which the Court made the ruling mentioned above by granting the petitioner (a taxi business operator) an administrative hearing with respect to its decision not to renew his permit. The hearing process consumed a significant additional amount of staff time, and the result was the same.

<sup>3</sup> The Taxi Ordinance already requires administrative hearings when a permit is revoked.

<sup>4</sup> Whether or not a vehicle is registered is easily ascertained and not subject to dispute.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Zach Cowan, Assistant City Attorney

981-6950

Attachment:

1. Ordinance

ORDINANCE NO. - N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) SECTIONS 9.52.020, 9.52.030, 9.52.040, 9.52.050 AND 9.52.150, TO ELIMINATE AMBIGUITY IN THE TAXI ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 9.52.020.C of the Berkeley Municipal Code is amended to read as follows:

**9.52.020 Annual permits required for business owners, drivers, and vehicles--Fees, expiration and limitation on number of permits.**

C. Annual Application, Renewal and Expiration. Applications for all permits shall be submitted on or before November 1st of each year for the following calendar year and all permits shall expire on December 31st of each year. Permits may be renewed annually by application to the City. Current permit holders have priority for annual renewal. Applications to renew permits shall be treated in the same manner as applications for new permits. Nothing in this chapter creates any property interest in issuance or renewal of a permit.

Section 2. That Section 9.52.030.B of the Berkeley Municipal Code is amended to read as follows:

**9.52.030 Business owner's permits.**

B. Disposition of Taxicab Business Owner's Application--Conditions.

1. Such taxicab business owner's permit ~~shall be granted unless:~~ may be granted only if the City determines that the applicant:
  - a. has submitted a complete application;
  - b. has submitted satisfactory proof that he or she will comply with the provisions of this chapter;
  - c. has not made any omission or untrue statement or provided fraudulent documentation with the application;
  - d. has not violated this chapter three or more times within the last three years; or
  - e. is not otherwise subject to suspension or revocation under Sections 9.52.150 or 9.52.160.
2. The City may deny any taxicab business owner's permit if it determines that approval would pose an unreasonable risk to the public safety or welfare.
  - ~~a. The applicant fails to submit a complete application; or~~
  - ~~b. The applicant makes any omission, untrue statement or provides fraudulent documentation with the application; or~~
  - ~~c. The applicant has violated this chapter three or more times within the last three years or is otherwise subject to suspension or revocation under Sections 9.52.150 or 9.52.160; or~~
  - ~~d. There is an absence of satisfactory proof that the business owner will comply with the provisions of this chapter.~~

23. The issuance of a business owner's permit is conditional upon such owner ensuring that each vehicle for hire operated by such business owner has a vehicle permit issued by the City, and each driver of such vehicle for hire has a driver's permit issued by the City, within the limits and in the manner set forth in this chapter.

34. The business owner shall notify the City immediately upon termination of employment of an employee hired to operate a vehicle for hire in the City.

Section 3. That Section 9.52.040.B of the Berkeley Municipal Code is amended to read as follows:

**9.52.040 Vehicle permits.**

B. Disposition of Vehicle Permit--Conditions.

1. Such vehicle permit ~~shall be granted unless~~ may be granted only if the City determines that the applicant:

- a. has submitted a complete application;
- b. has submitted satisfactory proof that he or she will comply with the provisions of this chapter;
- c. has not made any omission or untrue statement or provided fraudulent documentation with the application;
- d. has not violated this chapter three or more times within the last three years; or
- e. is not otherwise subject to suspension or revocation under Sections 9.52.150 or 9.52.160.

2. The City may deny any vehicle permit if it determines that approval would pose an unreasonable risk to the public safety or welfare.

- ~~— a. The applicant fails to submit a complete application; or~~
- ~~— b. The applicant makes any omission, untrue statement or provides fraudulent documentation with the application; or~~
- ~~— c. The applicant has violated this chapter three or more times within the last three years;~~
- ~~— d. There is an absence of satisfactory proof of compliance with the provisions of this chapter.~~

23. The issuance of a vehicle permit is conditional upon the business owner ensuring that each such vehicle for hire is operated by a business owner who has obtained a business owner's permit and any driver of such vehicle for hire has been issued a driver's permit within the limits and in the manner set forth in this chapter.

Section 4. That Section 9.52.050.B of the Berkeley Municipal Code is amended to read as follows:

**9.52.050 Driver's permits.**

B. Disposition of Driver's Permit--Conditions.

1. Such driver's permit ~~shall be granted unless~~ may be granted only if the City determines that the applicant:

- a. has submitted a complete application;
- b. has submitted satisfactory proof that he or she will comply with the provisions of this chapter;
- c. has maintained and possesses a valid California driver's license;
- d. has not made any omission or untrue statement, or has provided fraudulent documentation with the application;
- e. has violated this chapter three or more times within the last three years; or

~~f. is not otherwise subject to suspension or revocation under Sections 9.52.150 or 9.52.160.~~

~~2. The City may deny any driver's permit if it determines that approval would pose an unreasonable risk to the public safety or welfare or the State Department of Motor Vehicles records indicate that the Department has taken administrative action which resulted in actual suspension or revocation of the applicant's driver's license within the last two years, unless such suspension or revocation was based on a nondriving related matter.~~

~~a. The applicant fails to submit a complete application; or~~

~~b. The applicant makes any omission, untrue statement or provides fraudulent documentation with the application; or~~

~~c. State Department of Motor Vehicle records indicate that the department has taken administrative action which resulted in actual suspension or revocation of the applicant's driver's license within the last two years, unless such suspension or revocation was based on a nondriving related matter; or~~

~~d. The applicant has violated this chapter three or more times within the last three years or is otherwise subject to suspension or revocation under Sections 9.52.150 or 9.52.160; or~~

~~e. There is an absence of satisfactory proof that the vehicle for hire will be operated in compliance with the provisions of this chapter; or~~

~~f. The applicant has failed to maintain a valid California driver's license.~~

23. The issuance of a driver's permit is conditional upon the driver ensuring that he or she will only operate a vehicle which has received a valid vehicle permit for a business owner who has received a valid business owner's permit.

3.4 The driver's permit shall become void upon termination of such driver's employment driving a vehicle for hire, including termination of self-employment as an independent driver, and the driver immediately shall return his or her permit to the City upon such termination of employment.

45. The City may deny any driver's permit if the applicant has been convicted of any crime or of any penal law involving moral turpitude, taking into consideration the nature of the conviction, the age of the applicant at the time of the conviction, any evidence of rehabilitation, and the relationship of the conviction to the propriety of the applicant operating a vehicle for hire.

Section 5. That Section 9.52.150 of the Berkeley Municipal Code is amended to read as follows:

#### **9.52.150 Suspension of permits.**

A. The City ~~shall may~~ immediately suspend any ~~owner's, driver's or vehicle~~ permit if ~~he or she the vehicle for hire~~ is operating a vehicle for hire without a valid driver's license required insurance or registration, or is being operated by an unlicensed or unpermitted driver. The City may also suspend any a vehicle permit issued under this chapter if there is damage to, or mechanical malfunction of, a the vehicle for hire such that it cannot be operated safely or it is not currently registered with the State of California. Such permit suspension shall be lifted upon a showing that the violations have been corrected. If no such showing has been made within a reasonable time, depending on the type of violation, the City may issue a notice of revocation and proceed as set forth in this chapter. During the time that the permit is suspended, it shall be unlawful for the permittee to exercise any of the rights granted under this chapter.

B. ~~In addition, the City may suspend any permit pending revocation proceedings under Section 9.52.160. The City shall immediately suspend any owner's permit for a period of 30 days if unlicensed or unpermitted drivers have operated any of that owner's vehicles for hire three or more times within any 12-month period.~~

Section 6. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.