

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF CHAPTER 6.64 OF TITLE 6 OF THE SAN JOSE MUNICIPAL CODE TO AUTHORIZE THE CHIEF OF POLICE TO CEASE THE PROCESSING OF ANY NEW APPLICATIONS FOR TAXICAB DRIVER PERMITS WHEN CERTAIN ECONOMIC INDICATORS DEMONSTRATE A DECLINE IN THE DEMAND FOR TAXICAB SERVICES, WITH SUCH AUTHORIZATION SUNSETTING WITHIN THREE (3) YEARS OF TAKING EFFECT UNLESS EXTENDED BY THE CITY COUNCIL; TO CLARIFY THE AUTHORIZATION OF THE CHIEF OF POLICE TO ALLOW THE TRANSFER OF PERMITTED TAXICAB DRIVERS BETWEEN LICENSED TAXICAB COMPANIES; AND TO CLARIFY PROVISIONS OF CHAPTER 6.64 TO ENSURE CONSISTENCY THROUGHOUT THE CODE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 6.64.050 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.050 Board

"Board" means the San José Appeals Hearing Board as established pursuant to Section 2.08.600 of this Code.

SECTION 2. Section 6.64.180 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.180 Grounds for Denial

The Chief of Police, or the Board on appeal, may deny an application for a taxicab license on any of the following grounds:

- A. Public convenience and necessity do not require the proposed service;
- B. The application fails to contain any of the required information as set forth in Section 6.64.160 above;
- C. Any of the information contained in the application is false;
- D. The name under which the applicant will conduct business, or applicant's proposed color scheme or other marking, design or insignia, will tend to confuse the identification of taxicabs which applicant proposes to operate with those operated under existing taxicab licenses; or
- E. The Chief of Police, or the Board on appeal, determines that the applicant lacks the financial ability to provide the proposed service;
- F. Any vehicle proposed for operation is not safe, and the applicant has failed to remove such vehicle from service or to substitute a safe vehicle in its place within a reasonable time;
- G. The applicant has failed to comply with any term, condition, or requirement in a taxicab license previously issued;
- H. An act or omission of the applicant constitutes a ground for revocation or suspension of the taxicab license as provided in Section 6.64.600 of this Chapter;

- I. The applicant, within five (5) years prior to the date of application, has been convicted of a crime, and the crime is substantially related to the qualifications, functions or duties of the taxicab business;
- J. The applicant is on parole or probation for a crime, and the crime is substantially related to the qualifications, functions or duties of the taxicab business;
- K. The applicant, within five (5) years prior to the date of application, has done an act involving violence, dishonesty, or fraud with the intent to substantially injure another, or substantially benefit the applicant or another;
- L. The applicant has had a taxicab license issued under the provisions of this Chapter revoked within three (3) years prior to the date of application; or
- M. The applicant has failed to pay when due any applicable taxes imposed by the City of San José.

SECTION 3. Section 6.64.200 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.200 Appeal

- A. The decision of the Chief of Police to deny the application for a taxicab license may be appealed to the Board.
- B. The procedures for the appeal and the requirements of notice and hearing are set forth in Part 8 of this Chapter.

SECTION 4. Section 6.64.400 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.400 Appeal

- A. The order of the Chief of Police issued under Section 6.64.390 of this Chapter may be appealed to the Board.
- B. The procedures for the appeal and the requirements of notice and hearing are set forth in Part 8 of this Chapter.
- C. The vehicle(s) in question shall not be used for taxicab service pending the appeal.

SECTION 5. Section 6.64.440 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.440 Additional Permit Requirements on the Airport

- A. No owner shall engage in the transportation of any passenger or property to and from the San José International Airport without having first obtained a permit from the Director of Aviation pursuant to Chapter 25.08 to do so, except that ground transportation providers of taxicab services for on-demand (non-prearranged) passenger pickups, as defined in Chapter 25.08, may operate at the San José International Airport pursuant to and in compliance with an agreement with the City issued pursuant to Chapter 25.08 which authorizes such operations.
- B. The City's Director of Aviation shall have the authority to issue such permits in accordance with Chapter 25.08 of this Code.

- C. Permits issued by the Director of Aviation pursuant to Chapter 25.08 of this Code shall be in addition to any permit or license required by this Chapter.

SECTION 6. Section 6.64.460 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.460 Application

- A. No person shall operate any taxicab in the City of San José unless the person has obtained a valid taxicab driver's permit from the Chief of Police to do so, as hereinafter provided.
- B. Application for a taxicab driver's permit shall be made in writing to the Chief of Police setting forth the following information:
1. The applicant's name, age, address and past experience with regard to taxicab service;
 2. The names and addresses of the applicant's employers during the preceding three (3) years;
 3. Whether an operator's or a chauffeur's license issued to the applicant by any state or governmental agency has ever been revoked, and the reasons therefor;
 4. Whether the applicant has been convicted of a crime within five (5) years prior to the date of the application, including the nature of the crimes;
 5. The name and address of the owner by whom the applicant is to be employed or engaged under contract as a taxicab driver;

6. The endorsement by the owner, by whom the applicant is to be employed or engaged under contract as a taxicab driver, on the application stating that the applicant has acquired proficient knowledge of the traffic laws of the state of California and the City of San José, and of the streets of the City, as well as the ability to read and understand English, and to safely operate a public transportation vehicle in the City; and
7. Whether the applicant has paid all applicable taxes imposed by the City of San José, including the business license tax if applicant is to be engaged under contract as an independent contractor.
8. Such additional information as the Chief of Police may require.

SECTION 7. Chapter 6.64 of Title 6 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

6.64.495 Limitation on Issuance of Permits

- A. Beginning January 15, 2010, on a quarterly basis, the Chief of Police shall determine whether applications for new taxicab driver permits will or will not be accepted for processing during that particular quarter.
- B. The Chief of Police shall not accept for processing any applications for new taxicab driver permits when both of the following exist:
 1. Hotel occupancy rates for the most recent three (3) months for which information is available are lower than what they were during the prior calendar year for the same period of time; and

2. On-demand (non-prearranged) taxicab trips originating at the Airport for the most recent three (3) months for which information is available are lower than what they were during the prior calendar year for the same period of time.
- C. To determine whether hotel occupancy rates and on-demand taxicab trips from the Airport are lower than what they were during the prior calendar year for the same period of time the Chief of Police is reviewing, the Chief of Police shall rely on data collected at the direction of the City Manager.
 - D. If the data being reviewed by the Chief of Police reflects that hotel occupancy rates and on-demand taxicab trips from the Airport are less than what they were during the prior calendar year for the same period of time, the Chief of Police shall post on the Police Department's website a notice stating that within ten (10) days of the date the notice is posted, the Chief of Police will not accept for processing any applications for new taxicab driver permits.
 - E. If after the Chief of Police posts a notice pursuant to subsection D, the Chief of Police conducts a subsequent quarterly review and discovers that either the hotel occupancy rates or the on-demand taxicab trips from the Airport exceed what they were for the previous calendar year for the same period of time, the Chief of Police shall post a notice stating that within ten (10) days of the date the notice is posted, the Chief of Police will begin accepting for processing applications for new taxicab driver permits.
 - F. This Section shall not apply to applications for the renewal of existing taxicab driver permits.
 - G. This Section shall remain in effect until January 15, 2013, unless further action is taken by ordinance of the City Council prior to that date.

SECTION 8. Chapter 6.64 of Title 6 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

6.64.496 Exemption to Limitation on Issuance of Permits

A. A taxicab driver will not be subject to Section 6.64.495 and may submit an application for a taxicab driver permit to the Chief of Police for processing if the owner endorsing the application for the taxicab driver, as required by Section 6.64.460B.6, demonstrates that it has too few taxicab drivers to meet demand for that owner's service, as may be documented by the following:

1. Trip data showing demand requires additional taxicab drivers;
2. Documentation reflecting a marked increase in customer complaints regarding long response and/or wait times;
3. Documentation reflecting new business activity that necessitates adding new taxicab drivers (i.e., the owner has entered into a contract with a new customer); or
4. Documentation showing that the owner's adding additional taxicab drivers will not materially adversely impact the average income of the taxicab drivers currently employed by or under contract with the owner.

B. A taxicab driver requesting an exemption from Section 6.64.695, as provided for in subsection A, shall file a written request with the Chief of Police. The taxicab driver's request for exemption shall not be deemed complete until the owner endorsing the taxicab driver has submitted all information required by the Chief of Police to support the existence of one of the conditions listed in subsection A.

- C. Within ten (10) business days of the date a taxicab driver submits a complete request for exemption, the Chief of Police shall send a notice to the taxicab driver of the Chief of Police's decision to either grant or deny the request.
- BD. Nothing in this Section shall be deemed to require the Chief of Police to issue a taxicab driver permit to an applicant applying under subsection A if grounds for denial of the application exist under Section 6.64.500.
- GE. This Section shall remain in effect until January 15, 2013, unless further action is taken by ordinance of the City Council prior to that date.

SECTION 9. Section 6.64.500 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.500 Grounds for Denial

The Chief of Police, or the Board on appeal, may deny an application for a taxicab driver's permit filed by any person:

- A. Who is under the age of eighteen (18) years;
- B. Who does not hold a valid driver's license issued by the Department of Motor Vehicles of the state of California for the type of vehicle the applicant proposes to use as a taxicab in the City.
- C. Who, because of excessive and continuous use of alcoholic liquors, is incapable of safely operating a public transportation vehicle;

- D. Who is a habitual user of any other drug which renders a person incapable of safely operating a public transportation vehicle;
- E. Who has a disorder characterized by lapses of consciousness;
- F. Who does not demonstrate either proficient knowledge of the traffic laws of the state of California and the City of San José, or of the streets of the City, or the ability to read and understand English, or to safely operate a public transportation vehicle in the City;
- G. Who has failed to furnish the information required for the application for the permit;
- H. Who has knowingly made a false statement, or concealed a material fact, or otherwise committed any fraud in the application;
- I. Who, within five (5) years prior to the date of application, has been convicted of any offense involving the use, possession, sale or transportation of narcotics, and the commission of such offense involved the use of a motor vehicle;
- J. Who, within five (5) years prior to the date of application, has been convicted of reckless driving or driving under the influence of any drug or intoxicating liquor, regardless of whether the incident resulted in bodily injury or death;
- K. Who, within five (5) years prior to the date of application, has been convicted of a crime, and the crime is substantially related to the qualifications, functions or duties of the taxicab business;
- L. Who is on parole or probation for a crime, and the crime is substantially related to the qualifications, functions or duties of the taxicab business;

- M. Who, within five (5) years prior to the date of application, has done any act involving violence, dishonesty or fraud with the intent to substantially injure another, or substantially benefit the applicant or another;
- N. Who has had a taxicab driver's permit issued pursuant to this Chapter revoked within three (3) years prior to the date of application;
- O. Who, the Chief of Police determines, is a negligent or incompetent operator of a motor vehicle; or
- P. Who has failed to pay when due all applicable taxes imposed by the City of San José.

SECTION 10. Section 6.64.510 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.510 Action by Chief of Police

- A. Except as otherwise provided herein, within a reasonable time after receipt of the application, the Chief of Police shall issue a taxicab driver's permit to the applicant, if the Chief determines that there is no ground for denial of the permit.
- B. The Chief of Police may impose such terms, conditions or restrictions on the permit as the Chief deems necessary.
- C. The duration of the permit issued pursuant to this Chapter shall be for twenty-four (24) months from the date of the application.

SECTION 11. Section 6.64.520 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.520 Temporary Permit

- A. The Chief of Police may issue a temporary taxicab driver's permit to the applicant who has applied for a taxicab driver's permit pursuant to this Chapter, if the Chief has not completed all necessary investigation of the applicant and the application, but has no reason to believe that any ground exists for denial of the permit.
- B. The temporary taxicab driver's permit shall be for a period of six (6) months or less, and shall automatically expire upon the actual issuance or denial of the taxicab driver's permit.

SECTION 12. Section 6.64.530 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.530 Appeal

- A. The decision of the Chief of Police to deny an application for a taxicab driver's permit may be appealed to the Board.
- B. The procedures for the appeal and the requirements of notice and hearing are set forth in Part 8 of this Chapter.

SECTION 13. Section 6.64.550 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.550 Termination of Employment or Contract

- A. Within twenty-four (24) hours after termination of a taxicab driver's employment or contract with the owner who endorsed the permit application as required by Section 6.64.460B.6, either the owner or the taxicab driver shall notify the Chief of Police in writing of such termination. The written notification of termination shall be accompanied by the surrender of any taxicab driver's permit in the owner's or taxicab driver's possession. If said permit is unavailable, the owner or the taxicab driver shall state on the notification of termination the unavailability of the permit and the reasons therefor.
- B. The taxicab driver's permit shall automatically expire upon receipt by the Chief of Police of the written notice of termination of the taxicab driver's employment or contract with the owner who endorsed the permit application.

SECTION 14. Section 6.64.560 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.560 Reissuance of Permit

- A. The Chief of Police may approve reissuance of a taxicab driver's permit to an applicant without requiring the applicant's photographs and fingerprints, and the permit fee, if an application endorsed by another owner is filed within six (6) months after the applicant's prior employment or contract with a taxicab business as a driver was terminated and the prior permit would not have expired during that six (6)-month period.

- B. This Section does not apply to an applicant whose employment or contract with a taxicab business as a driver was terminated for reasons which constituted any of the grounds for denial, suspension or revocation of a taxicab driver's permit.

SECTION 15. Section 6.64.600 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.600 Suspension or Revocation of Taxicab License

The Chief of Police, or the Board on appeal, shall have the power to suspend or revoke a taxicab license issued under this Chapter, on any of the grounds stated in Section 6.02.130 of this Code, or on any of the following grounds:

- A. The violation by the owner of any of the terms, conditions or requirements of the taxicab license, or of this Chapter.
- B. Any act or omission of the owner of any fact or condition which, if it existed at the time the application for a taxicab license was filed, would have warranted the denial of the application.
- C. Cancellation or suspension of any insurance policy or coverage required of the owner by Section 6.64.450 of this Chapter.
- D. Failure of the owner to pay any judgment against the owner for personal injury or death, or property damage arising out of the conduct of business under the taxicab license issued pursuant to this Chapter, within thirty (30) days after the judgment has become final.
- E. Voluntary written request by the owner to suspend the taxicab license for a definite period of time.

- F. Overcharge of, or the attempt to overcharge, taxicab fares by the owner, as prohibited by Section 6.64.320 of this Chapter.
- G. Failure of the owner to pay when due any applicable taxes imposed by the City of San José.

SECTION 16. Section 6.64.610 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.610 Suspension or Revocation of Taxicab Driver's Permit

The Chief of Police, or the Board on appeal, shall have the power to suspend or revoke a taxicab driver's permit issued under this Chapter, on any of the grounds stated in Section 6.02.130 of this Code, or on any of the following grounds:

- A. Suspension, revocation, or expiration of the driver's privilege granted by the Department of Motor Vehicles of the state of California to operate a motor vehicle on the public highways of the state of California.
- B. The violation of the driver of any of the terms, conditions or requirements of the taxicab driver's permit, or of this Chapter.
- C. Any act or omission of the driver or any fact or condition which, if it existed at the time the application for a taxicab driver's permit was filed, would have warranted the denial of the application.
- D. Failure of the driver to pay any judgment against the driver for personal injury or death, or property damage arising out of the driver's operation of a public transportation vehicle, within thirty (30) days after the judgment has become final.

- E. The driver consumed drugs or alcohol or is under the influence of drugs or alcohol while on duty, or is convicted of a crime relating to drugs or alcohol.
- F. Overcharge of, or the attempt to overcharge, taxicab fares by the driver, as prohibited by Section 6.64.320 of this Chapter.
- G. Failure of the driver to pay when due any applicable taxes imposed by the City of San José.

SECTION 17. Section 6.64.640 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

6.64.640 Appeal

- A. The decision of the Chief of Police to suspend or revoke a taxicab license or taxicab driver's permit may be appealed to the Board.
- B. The procedures for the appeal and the requirements of notice and hearing are set forth in Part 8 of this Chapter.
- C. The suspension or revocation of a taxicab license or taxicab driver's permit shall remain in effect pending the appeal.

SECTION 18. Part 8 of Chapter 6.64 of Title 6 of the San José Municipal Code is amended to read as follows:

Part 8
Appeal to the Board

6.64.650 Notice, Hearing and Decision

- A. Any action taken by the Chief of Police under this Chapter may be appealed to the Board by filing, with the Chief of Police, a written notice of appeal within ten (10) days after a copy of the decision of the Chief of Police has been placed in the mail to the applicant, owner or driver.
- B. When such notice of appeal has been accepted by the Chief of Police:
1. The Chief shall, subject to the rules of the Board, set a date for a hearing which shall be held by the Board. Said date of hearing shall be not less than ten (10) days nor more than sixty (60) days after the date such notice of appeal was received by the Chief.
 2. The Chief shall provide a report and recommendation to the Board. In addition thereto, the Chief shall file with the Board at its hearing all relevant papers, documents and exhibits which are part of the file.
 3. The Board shall hear the matter de novo. Within a reasonable time after the Board has concluded its hearing, it shall, by resolution, set forth its findings and decision on the matter. The decision of the Board shall be final.
- C. The decision of the Board shall be mailed to the applicant, owner or driver, at the address shown on the application or the notice of appeal in the manner provided for in Section 6.64.030 of this Chapter.

RD:AGN
11/24/09

PASSED FOR PUBLICATION of title this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk