



**AGENDA  
TAXI COMMITTEE MEETING**

**May 23, 2012  
10:00am – 11:15am**

**Board Room  
SunLine Transit Agency  
Thousand Palms, CA**

(Public Comments will be accepted on each Agenda item upon the conclusion of the staff report on that item. Public comments on non-agendized items will be accepted during the Public comments section. Comments may be limited to 3 minutes in length. Please notify the Committee Chair if you wish to comment.)

1. **Call to Order**
2. **Roll Call**
3. **Confirmation of Agenda**
4. **Public Comments** **Receive Comments**  
Anyone wishing to address the Taxi Committee on items not on the Agenda should do so at this time. Each presentation is limited to three minutes.

----- **ACTION** -----

5. **Consent Calendar**
  - a) SSG/SRA checks over \$1000 issued for April, 2012 (Page 1)
  - b) SSG/SRA Monthly Budget Report for April, 2012 (To be provided at June meeting)
  - c) Taxi Vehicle/Rides Analysis (Pages 2-3)
6. **Fifteen Temporary Non Permanent Taxicabs Permits (Naomi Nightingale)** **Approve**  
Discuss request to the Board to approve the sunset of the fifteen temporary non permanent taxicab permits on May 31, 2012. (Page 4)
7. **First Reading of SSG Revised Ordinance #2012-01 (Jeffrey Goldfarb)** **Approve**  
Discuss request to the Board to approve the first reading of the proposed SSG Ordinance #2012-01. ([Ordinance separate attachment.](#))  
(Pages 5-9)

----- DISCUSSION -----

8. **Request For Proposal Revisions (Jeffrey Goldfarb)**  
Discuss RFP revisions. ([Redlined RFP separate attachments](#))  
(Pages 10-12)

**Discussion**

9. **Adjourn**

SunLine Regulatory Administration

Checks \$1,000 and Over

For the month of April 2012

NOTE: 1). Bold check payments represent "pass through" payments that were, or will be reimbursed to SunLine under the provisions of specific grants or contracts.  
2). Underlined check payments represent "shared" payments with SunLine and specific vendors/employees.

<b>Vendor Name</b>	<b>Description</b>	<b>Check #</b>	<b>Check</b>	<b>Amount</b>
SUNLINE TRANSIT AGENCY	Payroll Liabilities Expense	089515	4/17/2012	\$9,718.88
SUNLINE TRANSIT AGENCY	Payroll Liabilities Expense	089524	4/27/2012	\$9,595.67
LEFLORE GROUP LLC, THE	Project Management	089512	4/17/2012	\$2,660.00

<b>Total of Checks Over \$1,000</b>				\$21,974.55
<b>Total of Checks Under \$1,000</b>				\$4,453.82
<b>Total of All Checks for the Month</b>				\$26,428.37

<b>Total Amount of Checks Prior Years Same Month</b>				\$72,935.75
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TRIP vs. VEHICLE ANALYSIS

TRIP vs. VEHICLE ANALYSIS

FY 04/05		FY 05/06		FY 06/07		FY 07/08		FY 08/09	
CABS	TRIPS	TRIP/VEH	CABS	TRIPS	TRIP/VEH	CABS	TRIPS	TRIP/VEH	TRIP/VEH
193	32,877	170	205	33,123	161	240	28,204	117	269
185	25,911	140	209	24,445	117	240	24,010	100	269
195	29,145	149	215	35,072	163	240	35,278	147	269
196	44,593	227	221	32,817	148	240	38,459	160	205
197	36,344	184	227	40,343	178	240	41,751	174	203
187	38,687	207	232	34,534	149	243	46,866	193	204
191	40,638	212	240	42,539	177	245	27,290	114	204
196	43,880	224	241	41,587	173	246	41,520	169	206
204	42,973	210	241	51,373	213	255	54,598	214	205
206	53,980	262	241	50,791	211	269	46,823	174	205
204	38,698	190	240	42,916	179	271	43,593	161	205
203	33,348	164	240	34,427	143	271	35,711	132	183
<b>TOTALS</b>	<b>461,074</b>	<b>196</b>	<b>2752</b>	<b>463,967</b>	<b>169</b>	<b>3000</b>	<b>464,103</b>	<b>155</b>	<b>2627</b>
							<b>436,589</b>	<b>166</b>	<b>2216</b>
									<b>441,934</b>

FY 09/10		FY 10/11		FY 11/12		FY 12/13		FY 13/14	
CABS	TRIPS	TRIP/VEH	CABS	TRIPS	TRIP/VEH	CABS	TRIPS	TRIP/VEH	TRIP/VEH
170	26,487	156	151	31,211	207	125	30,391	243	
155	23,671	153	148	29,238	198	123	29,459	240	
158	29,239	185	150	31,807	212	131	34,446	263	
153	37,468	245	117	40,222	344	139	43,009	309	
153	40,466	264	126	40,494	321	144	44,173	307	
160	32,084	201	128	36,226	283	143	39,180	274	
155	38,276	247	133	45,232	340	152	45,048	296	
157	36,557	233	132	42,331	321	156	53,840	345	
159	44,219	278	138	48,942	355	158	62,962	398	
167	57,645	345	141	60,821	431	170	71,576	421	
157	42,074	268	142	43,910	309				
156	29,940	192	120	31,088	259				
<b>TOTALS</b>	<b>438,126</b>	<b>231</b>	<b>1626</b>	<b>481,522</b>	<b>296</b>	<b>1441</b>	<b>454,084</b>	<b>315</b>	<b>0</b>
							<b>0</b>	<b>#DIV/0!</b>	<b>0</b>
									<b>#DIV/0!</b>



SunLine Services Group

**DATE:** May 23, 2012 **ACTION**  
**TO:** Taxi Committee  
Board of Directors  
**FROM:** Chief of Staff/EEO/Taxi Administrator  
**RE:** Fifteen Temporary Non Permanent Taxicabs Permits

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**Recommendation**

Recommend that the Board of Directors approve the sunset of the fifteen temporary non permanent taxicab permits on May 31, 2012.

**Background**

The SunLine Service Group (SSG) Taxi Ordinance and RFP are currently under revision. Changes to non permanent and non temporary taxicab permits are a part of this revision for the Board of Directors approval.

Staff has reviewed eight years of historical data and included recent trends through our current fiscal year and find.

Currently not including the extra capacity taxicab due to sunset May 31, 2012, the count of available taxicab per franchise is as follows.

**American Cab** has forty five non-temporary permits, twelve non-permanent permits.  
Total of 57

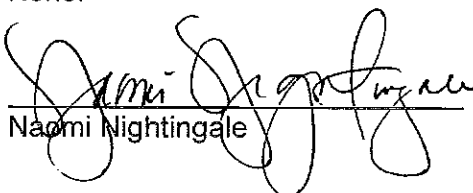
**Desert City Cab** has forty five non-temporary permits, twelve non-permanent permits.  
Total of 57

**Yellow Cab of the Desert** has forty non-temporary permits, ten non-permanent permits.  
Total of 50

Based on trend data analyzed by staff and the past eight years of historical data, staff believes that the current number of taxicabs is sufficient to meet the anticipated passenger demand during off season. (June, July, August).

**Fiscal Impact**

None.

  
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Naomi Nightingale



whether a franchisee's ownership of the taxicab is necessary or whether a leasehold interest in the cab is sufficient.

4. **Regulation of Transfer of Control of Any Franchisee.** A new Section 1.090.5 has been added to clarify that, in addition to requiring documents, SunLine has the authority to approve or disapprove of any sale or transfer of a franchisee's assets, a sale or transfer of any interest or membership in a franchisee, or any transfer of control over a franchisee. The definitions contained in Section 1.010 have been revised to establish a rebuttable presumption that a transfer of 25% or more of the beneficial ownership of an LLC constitutes a change in control. Under Section 1.090.5, any franchisee proposing any of the aforementioned transfers in interest is required to submit to SRA all information required of an applicant seeking a franchise and the Board has the authority to approve or disapprove that transfer in the same manner as it would evaluate a new application for a franchise.

5. **Allocation of Responsibility between Board and Taxi Administrator.** Section 1.100 is proposed to be amended by establishing that the Board has the sole responsibility to establish the number of allocable Non Temporary Taxi Permits, to allocate those Non Temporary Taxi Permits to franchisees, and to grant requests of franchisees to increase their Non Temporary Taxi Permits by up to 25%. The taxi administrator's authority is proposed to include the ability to unilaterally issue Temporary Taxi Permits, initially decide to suspend or revoke a permit and to issue warning letters,

6. **Denial, Revocation, Suspension or Termination of Permits and Franchises and Appeals.** Currently, Section 1.110 authorizes the taxi administrator to serve as the hearing officer to conduct hearings necessary to suspend or revoke a franchise or permit. That determination may then be appealed under Section 1.256 to the taxi administrator. Having a person sit as the hearing officer on an issue they had previously decided is inconsistent with existing principles of due process. In addition to the appeal procedures contained in Section 1.256, Sections 1.257 and 1.258 provide separate administrative hearing and appeal processes, respectively, regarding suspensions or terminations of franchise agreements. These provisions are, at best, confusing because they appear to overlap with the appeal process in Section 1.256.<sup>1</sup>

Given both the constitutional infirmity and the irreconcilable confusion created by the patchwork of various hearing and appeal procedures, the proposed Ordinance simplifies the process as follows:

- (a) The taxi administrator remains authorized to issue orders denying, revoking, suspending, or terminating any permit or franchise.

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<sup>1</sup> The overlap is caused because Section 1.256 relates to appeals from Section 1.110. Section 1.110 relates to the revocation, suspension and termination of not just permits, but franchises as well. It is therefore impossible to determine under the existing ordinance which appeals regarding franchise agreements are intended to be resolved through Section 1.256 and which appeals are intended to be resolved pursuant to Section 1.257.

- (b) Anyone aggrieved by a decision of the taxi administrator or by the issuance of any administrative citation is afforded the right of a hearing under Section 1.256.
- (c) The Ordinance proposes to have all hearings be conducted by an independent third-party hearing officer.
- (d) All hearings on administrative citations whose total fine or penalty is less than \$2,000 are to be adjudicated by an employee selected by the General Manager or his or her designee. It is a requirement that the person selected have no communication with the taxi administrator on the case and that he or she have had no input into the decision being appealed.
- (e) Administrative hearings on citations whose fine or penalty exceed \$2,000 and on all suspensions and revocations of drivers' permits or franchises are proposed to be heard by either a retired judge or an administrative law judge with the California State Office of Administrative Law Judges.
- (f) The decision on all hearings is final, but may be challenged through the administrative writ process contained in Code of Civil Procedure section 1094.5.
- (g) All appeals to the Board of Directors are eliminated. Matters that previously were appealable to the Board included fines over \$500, reductions in excess of 25% of a franchisee's Non Temporary Taxi Permits, and the suspension or termination of a franchise. If the proposed Ordinance is adopted, these issues will be handled as provided above. The primary rationale for this change is that it is exceedingly time consuming to hold an adversarial fact finding hearing before the Board. This can be handled more efficiently as provided above. Moreover, if the appellant is dissatisfied with the decision, he or she retains the right to file a writ of mandate with the courts to challenge the decision.

Section 1.257 is proposed to be deleted as it would no longer be necessary.

7. **Establishment of Infraction Penalties.** Currently, Section 1.259 allows the taxi administrator to determine whether a violation of the Ordinance constitutes a misdemeanor or an infraction. This process has been called into question because it allows an administrator to determine whether and to what extent a person alleged to have committed a crime would be permitted a jury trial.<sup>2</sup> The Ordinance proposes to eliminate the discretion to consider a misdemeanor violation to be an infraction. I believe that this authority is unnecessary, in any event, because SunLine has adopted

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<sup>2</sup> Persons charged with infractions are not entitled to a jury, while persons charged with a misdemeanor are.

the civil citation process which allows it to impose a civil penalty in an amount which would otherwise be equivalent to the infraction fine. As a result, issuing a criminal infraction would no longer appear necessary.

8. **Enforcement of Airport Regulations.** Currently, Section 1.260 directs SSG to enforce the rules adopted by the Palm Springs Regional Airport Authority. I question whether the law authorizes SSG to delegate its rule-making authority to the Palm Springs Regional Airport Authority. SSG may well lack the legal authority to enforce the rules adopted by another governmental entity (in this case, the Airport Authority), particularly on property over which SunLine lacks the jurisdiction to engage in rule-making. If the Board desires to enforce rules on airport property, an appropriate mechanism can be devised to do so. The Board is asked to indicate whether such a mechanism is desired.

9. **Regulation of Taxi Leases.** The taxi committee asked that we evaluate the ability to regulate the amount a franchisee can charge a driver to lease a taxi. While such regulation is possible, it may be difficult to administer as explained below.


As a general rule, a governmental body “is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose.” (*Nebbia v. New York* (1934) 291 U.S. 502, 537; see also *Santa Monica Beach v. Superior Court* (1999) 19 Cal. 4th 952, 995 (explaining that “the deferential, rational basis, level of judicial scrutiny” is generally “scrutiny applied in due process based challenges to economic and social legislation”).) However, in California, regulations involving “price control” must survive a heightened standard of scrutiny. (*Santa Monica Beach*, supra, at p. 967 (explaining standard of review for regulations constituting “price control, which includes rent control”).) Price control “regulations are generally found to pass constitutional muster ‘so long as the law does not deprive investors of a “fair return” and thereby become “confiscatory.”’” (*Galland v. City of Clovis* (2001) 24 Cal. 4th 1003, 1021, quoting *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal. 4th 761, 771; see also, *FCC v. Florida Power Corp.* (1987) 480 U.S. 245, 253 (applying heightened level of scrutiny to FCC order reforming lease agreements between power company and cable companies).) To determine whether a price control regulation violates due process, “a ‘court must determine whether the [regulation] may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection for the heart of relevant public interests, both existing and foreseeable.’” (*Galland*, supra, at p. 1021, quoting *Kavanau*, supra, at pp. 771-772.) In other words, price control regulation “must not prevent an efficient enterprise from ‘operating successfully,’ but rent regulators are permitted to adjust prices ‘within a broad zone of reasonableness’ ...” (*Galland*, supra, at pp. 1021-1022, quoting *Kavanau*, supra, at pp. 778-779.)

The types of considerations that might go into the calculation of acceptable lease rates include but are not limited to vehicle purchase prices, the cost of insurance premiums, fuel costs, and variations in the Consumer Price Index evaluated over a twenty-four (24)

month time period preceding the determination of the lease amount, and other factors that may affect the market for taxicab leases or that may affect the provision of taxicab services. Given that many of these factors change over time, one would expect that the lease cap would also have to change over time. How often this change must occur, however, is not known as there are no cases directly on point.

## **II. CONCLUSION**

The proposed revisions are an attempt to create for the Board a more effective and enforceable regulatory system. The Interim General Counsel's office asks staff and the Board, who have substantially more experience in the actual operation of the SunLine franchise program, to evaluate the proposed changes and to feel free to accept, reject, or modify these changes in any way it sees would be more appropriate.

  
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Jeffrey A. Goldfarb  
Interim General Counsel *JR.*

**SunLine Services Group**

**DATE:** May 23, 2012

**DISCUSSION**

**TO:** Taxi Committee  
Board of Directors

**FROM:** Legal Counsel

**RE:** Taxi RFP Changes

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**I. BACKGROUND**

Interim General Counsel was directed to work with a subcommittee consisting of staff members and two members of the taxi committee to revise the taxi franchise ordinance (Ordinance No. 2010-01; the "Ordinance") and the franchise agreement (consisting of the agreement and the Request For Proposals for providing franchise taxicab services—RFP 09-021) to provide more consistency between the documents and to better serve SunLine's goal of an effective and efficient taxi franchise system which does not result in the creation of a *de facto* or *de jure* monopoly. Pursuant to that direction, this office has prepared a red-lined draft of both the Ordinance and the RFP. This Memo address the proposed changes in the franchise agreement, which changes are contained in the RFP SSG issues when a franchise becomes available. The drafts of the RFP were previously circulated to the subcommittee, revised, and again considered by the subcommittee. Comments of the subcommittee have been incorporated into the revised drafts that are presented for your consideration. The substantive revisions are discussed by category below.

1. **Franchise Application Requirements.** The franchise application requirements are generally contained in Section II of the RFP (RFP pp. 8-9). The requirements appeared somewhat broad and, as a result, it was unclear what documents were actually required. The proposed revisions to the RFP include numerous specific requirements which will improve applicant's understanding of what documents are needed and improve the Board's ability to evaluate applications for a new franchise, a transfer of a franchise, and a transfer of any interest in a franchisee.

2. **Adjustments to the "Per Mile Rate."** The Per Mile Rate is the maximum rate the taxi meter can charge per mile driven, The Per Mile Rate is currently adjusted twice each year based upon the cost of fuel. Staff proposes to amend the RFP to adjust the Per Mile Rate annually on or near March 15.

3. **Increase or Decrease in Taxicab Permits.** Currently, the RFP contains both a six month and an annual review period. The review periods primarily appear to be used

to determine when additional taxicab permits will be allocated or withdrawn from franchisees for the next period. The review periods have overlapping criteria and it is unclear whether they individually perform a unique function.

It was my belief that the six month review period was unnecessary at best and counter-productive at worst. This is because the six month review largely focused on the number of rides per cab per day. The six month period evaluated either the high season or the low season performance of a franchisee. As a consequence, SunLine was evaluating *high* season performance for purposes of increasing or decreasing a franchisee's taxicab allocations for the following *low* season, and vice versa. As a result, the RFP, as drafted, can cause SunLine to institutionally run the risk of misallocating cabs. By eliminating the six month review, a franchisee's performance can be evaluated over the course of an entire year for the purpose of determining taxicab permit allocations for the ensuing year. In this way, the review periods are all similar. For this reason, we propose that the six month review period would be eliminated in favor of an annual review that is to begin in April and concluded by July 1.

The proposed change also adopts consistent nomenclature in order to distinguish between the allocation of temporary taxicab permits and the allocation of non-temporary taxicab permits.

The proposed changes also establish a two-step annual review process. The first step evaluates total taxicab demand in the valley. This first step of analysis is helpful to determine whether, as a whole, SunLine needs to add or reduce the total number of non-temporary taxicab permits issued in the valley. For instance, if the analysis reveals that the average number of trips per vehicle per day exceeds 10 trips for the total number of taxicabs in the valley, the Board could properly conclude that there are simply not enough taxicabs operating in the valley. The Board might therefore wish to increase the number of non-temporary taxicab permits that can be allocated to the existing franchisees.

The second stage of the analysis determines which of the franchisees is to be offered or awarded any of the then unallocated non-temporary taxicab permits, and which will be required to give permits back. While the RFP establishes a formula for determining available capacity in any particular franchisee, it does not require the Board to allocate any additional non-temporary taxicab permits to a franchisee. We believe the discretion **not** to allocate additional non-temporary taxicab permits to any of the existing franchisees is important for the express purpose of preventing any franchisee from becoming a *de facto* monopoly. Using this discretion, the Board might decide that it does not wish to award a high-performing franchisee more non-temporary taxicab permits<sup>1</sup> and instead decide that it wishes to circulate an RFP for the purpose of issuing

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<sup>1</sup> This is what I call the Microsoft dilemma. One franchisee continually outperforming the competition by getting the lion's share of the business. It will therefore have a much higher number of trips per vehicle per day, which makes it eligible for more non-temporary taxicab permits. At the same time, the other franchisees' business either does not grow in the same way or drops. At some point the other franchisees' trips per vehicle per day will require them to surrender some of their non-temporary taxicab

a new franchise to whom it will issue those withheld permits. The RFP also proposes to permit the Board to consider any other relevant factor to reach an allocation determination, including but not limited to issues such as the franchisee's citation history, the franchisee's wait time, and whether the franchisee has demonstrated that it is providing its customers longer taxi rides than the valley average, such that its cabs are occupied for a longer period of time which thus reduces their ability to pick up the minimum number of riders per day.

The amendment also clarifies that there are two ways to obtain an increase in non-temporary taxi permits: (1) a franchisee can apply for a 25% increase in the number of non-temporary taxi permits they currently have; and (2) the Board can issue additional permits when it conducts its annual review as discussed above.

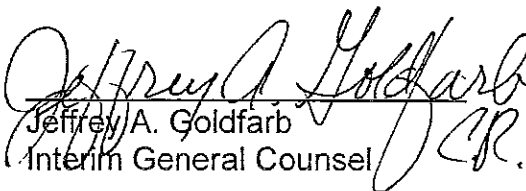
The final change in this section is to clarify that it is the Board's duty to allocate taxicab permits.

4. **Advertising.** The proposed change on page 22 is to make the RFP's advertising regulations consistent with the regulations currently enforced by SSG.

5. **Regulating Drivers' Hours.** Both the RFP and the Ordinance have been revised to clarify that the taxicab regulations' restrictions on the number of hours a driver can operate a taxicab are enforceable. As proposed, the RFP requires that, by April 1, 2013, all franchisees shall have in place the electronics necessary to transmit real time driver hour reports to a franchisee. (RFP p. 24.)

## **II. CONCLUSION**

The proposed revisions are an attempt to create for the Board a more effective and enforceable regulatory system. The Interim General Counsel's office asks staff and the Board, who have substantially more experience in the actual operation of the SunLine franchise program, to evaluate the proposed changes and to feel free to accept, reject, or modify these changes in any way it sees would be more appropriate.

  
Jeffrey A. Goldfarb  
Interim General Counsel

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permits, worsening the gap between them and the high-performing franchisee. This can eventually create a *de facto* monopoly.