

Monterey County Regional Taxi Authority

*City of Carmel-by-the-Sea • City of Del Rey Oaks • City of Monterey • City of Pacific Grove
City of Salinas • City of Sand City • City of Seaside • County of Monterey
Monterey Peninsula Airport District*

Technical Advisory Committee Meeting

**October 18, 2011
2:00PM**

**TAMC Conference Room
55-B Plaza Circle
Salinas, California**

AGENDA ITEMS

1. Call to order

1-1 Roll Call.

2. Public Comments on matters not on the Agenda.

3. Consent Agenda

3-1 Approve minutes of September 20, 2011, TAC meeting. (pg. 1)

4. Old Business

5. New Business

5-1 Review proposed administrative penalties/fines and provide comment to the RTA Board of Directors. (pg. 7)

6. Correspondence

6-1 Memo from David C. Laredo, RTA General Counsel, regarding the RTA's authority to regulate color schemes of taxicabs and taxi companies. (pg. 11)

6-2 Memo from David C. Laredo, RTA General Counsel, regarding the RTA's authority to adopt proposed Section 5(n) of the Equipment, Safety, Security and Operational Policy. (pg. 15)

- 6-3 Memo from David C. Laredo, RTA General Counsel, regarding the effect of recent amendments to ADA Regulations on the RTA's policy on service animals. (pg. 19)

7. Announcements

- 7-1 Study session with RTA Board of Directors and TAC members – October 31, 2011, from 9:00 a.m. until noon at the Monterey Bay Unified Air Pollution Control District Board Room – 24580 Silver Cloud Court, Monterey, CA 93940.

8. Adjournment

**MONTEREY REGIONAL TAXI AUTHORITY
TECHNICAL ADVISORY COMMITTEE
MINUTES OF REGULAR MEETING**
September 20, 2011
2:00 p.m.

Monterey Peninsula Airport
200 Fred Kane Drive, Suite 200, Monterey, CA 93940

TAC Members:	Alma Almanza	Disability
	Chris Sommers	Hospitality/Resort
	John Narigi	Hospitality/Lodging (arrived at 2:31pm)
	Kathi Krystal	Taxi/Driver (arrived at 2:07pm)
	Ken Griggs (alt.)	Monterey Peninsula Airport
	Steve Cardinalli	Taxi/Company Owner (arrived at 2:03pm)
	Phil Penko	Law Enforcement
	Roy G. Graham	Taxi/Independent
	Beronica Carriedo (alt.)	Public Transit
	Tom Mancini	Seniors
Absent:	Dr. Christine Erickson	Education
	Eddie Estrada	Hospitality/Restaurant
RTA Staff:	Deanna Smith	Deputy Secretary to the Board
	Hunter Harvath	AGM of Finance & Administration
Public:	Alex Lorca	De Lay & Laredo
	Lance Atencio	MVT
	Sam Martinez	Yellow Cab Operator
	Dick Stember	Yellow Cab
	Sal Cardinalli	Yellow Cab

Chair Penko called the meeting to order at 2:00 p.m.

Apology is made for any misspelling of a name.

2. PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA

Sam Martinez of Yellow Cab requested that MST staff be removed from the RTA process because they represent direct competition to the taxi industry.

Steve Cardinalli arrived at 2:03pm.

3. CONSENT AGENDA

3-1 Approve minutes of August 23, 2011, TAC meeting.

Mr. Mancini made a motion to approve the minutes of August 23, 2011 and was seconded by Mr. Graham. The motion carried unanimously.

4. OLD BUSINESS

4-1 Review “long-distance deadhead” fares and provide comment to the RTA Board of Directors.

Mr. Harvath presented the TAC with a zip code map of the RTA jurisdiction as requested at the August 23 TAC meeting.

Kathy Krystal arrived at 2:07pm.

Steve Cardinalli stated that the proposed restrictions on fares does not support the free market that has been supported by the RTA at recent meetings. He believes the RTA is over-regulating the taxi industry with the restrictions and suggests allowing taxi companies and drivers to negotiate long-distance deadhead rates. Mr. Graham expressed support for his opinion.

Mr. Mancini suggested allowing the operators to negotiate the fares and allow complaints to go to the RTA for review.

Ms. Krystal stated that whatever fares were decided, they should be in writing and provided to passengers upon entering the cab to avoid confusion.

Chair Penko reminded the committee that the agenda item was to establish a fare structure for the long-distance fares and opened for Public Comment.

Public Comment

Mr. Martinez stated that the rates should be negotiated with the taxi company in charge.

Close Public Comment

Mr. Narigi arrived at 2:31pm.

Mr. Graham made a motion to set a maximum negotiable rate for long-distance deadhead fares at a rate not to exceed the round trip meter rate beginning from the point of origin of the dispatched taxi cab, and allow companies to negotiate rates lower than the established maximum. The motion was seconded by Ms. Krystal. The motion carried 6 to 4.

Yeas: Almanza, Mancini, Graham, Cardinalli, Carriedo, Krystal

Nays: Griggs, Narigi, Penko, and Sommers

Those opposing the motion were concerned that the motion did not define what constituted a long-distance fare, either by zip code or geographic location, thus opening up the possibility of any fare regardless of trip origination to be negotiated, which could have the unintended consequence of undoing the Board adopted maximum fare schedule.

4-2 Review third draft Equipment, Safety, Security, and Operational Policy (ESSOP) and provide comment to the RTA Board of Directors.

Mr. Harvath reminded committee members that this was the last opportunity to make recommendations on the ESSOP before being sent to the RTA for a final decision. A copy of the draft ESSOP, with all revisions to date, was included in the agenda packet.

Mr. Cardinalli asked if the RTA staff had fixed the issue of Coastal Yellow Cab having a name and taxi color scheme that was indistinguishable from Yellow Cab of Monterey. Mr. Harvath stated that there had been no conversation between RTA staff and Coastal Yellow Cab, and that it was an issue for the RTA Board to determine. Mr. Lorca, counsel for the RTA, suggested that the proper protocol would be for Yellow Cab of Monterey to send a letter of complaint to the RTA Board requesting that they look into the issue.

Mr. Harvath stated that Coastal Yellow Cab was granted an interim permit and would have to come before the RTA again in December to request a permanent permit. He stated that if the TAC made recommendations regarding the establishment of color scheme guidelines for new taxi companies, then the RTA would have to consider the issue when determining the requirements for the permit. He stated that at this time, the ESSOP has not been adopted; therefore, no official restriction on color schemes exist.

Mr. Lorca stated that Item 3b of the ESSOP pertains to new taxi companies. Unless something is written into the ESSOP, existing companies may maintain their current color schemes.

Mr. Graham stated that defining taxi companies by color scheme helps law enforcement identify taxis if they receive complaints.

Public Comment

Sal Cardinalli stated that there was a 9th circuit case that determined that businesses could not trademark color; specific design and company name could be trademarked.

Sam Martinez stated that he has lost dozens of calls because Coastal Yellow Cab has the same color and similar design as Yellow Cab of Monterey.

Close Public Comment

The following recommendations and comments were made to the ESSOP:

Item 3b: There was no definitive recommendation for the issue of limiting color schemes for new and existing companies. Some members request that no company permits be approved to new companies with similar color schemes and/or company names as existing companies. One member of the public mentioned a 9th circuit court case that has determined no trademark rights exist on color, but name and design do contain trademark rights. It was requested that legal counsel research the case and provide comment to the RTA board. One member of the TAC prefers that all cabs are of similar color and that they are identified by name, logo, and number only.

Item 5h: Strike “the most” and insert “a” before “direct route” and strike “possible.”

Item 5k: It was suggested that language be added to the item that requires passengers to maintain control of animals at all times. Legal counsel was asked to research current ADA laws and language to ensure RTA regulations and ESSOP are in compliance.

Item 5l: Add “overpowering cologne/perfume” before “or animal related odors.”

Chair Penko made a motion to appoint TAC member Ken Griggs to chair the meeting in his absence and was seconded by Mr. Narigi. The motion carried unanimously.

Mr. Steve Cardinalli discussed a history of his company’s service on the Monterey Peninsula and expressed dissatisfaction with some of the hotels for calling multiple cab companies for one fare. He stated that he believes he should have the right to refuse service if it does not make financial sense for him to dispatch to the hotels.

Mr. Narigi denied Mr. Cardinalli’s claims and made the request that counsel research the legality of denying service to the public.

Item 5n: It was recommended to change “requested” to “available.”

Public Comment

Sal Cardinalli stated that Yellow Cab has been a safety net for out of work individuals, providing a source of income for many on the Peninsula over the years. He stated that Coastal Yellow Cab dispatches out of Utah.

Sam Martinez stated that as a business owner, he should have the right to refuse service to anyone, just like a restaurant owner. Mr. Sommers asked what the public is supposed to do if they cannot receive taxi service?

Legal counsel was asked to research and provide an update on the legal right of taxi companies to refuse service. Counsel was asked to research and provide comment on restrictions on hotels calling multiple companies for one fare.

5. NEW BUSINESS

Due to arguments among several members of the committee, Mr. Griggs suggested continuing Agenda Item 5-1 to the October meeting.

Mr. Mancini made a motion to continue Item 5-1 to the next TAC meeting and was seconded by Ms. Krystal. The motion carried unanimously.

6. CORRESPONDENCE

There being no further business, Mr. Griggs adjourned the meeting at 3:48pm.

Prepared by:


Deanna Smith, Deputy Secretary

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To: Technical Advisory Committee
From: Hunter Harvath, Assistant General Manager – Finance & Administration
Subject: RTA Administrative Penalties/Fines

RECOMMENDATION:

Review proposed administrative penalties/fines and provide comment to the RTA Board of Directors.

DISCUSSION:

At the June 29, 2011, meeting of the RTA Board of Directors, a referral to the Technical Advisory Committee (TAC) was made seeking input on proposed penalties and fines for violations of operating taxicabs in the RTA jurisdictions. At the July 19, 2011, TAC meeting, input was submitted to the RTA Board regarding fines for operating taxi dispatching companies, vehicles and driving taxis without permits. With the Equipment, Safety, Security, and Operational Policy (ESSOP) now under consideration, staff is seeking input from the TAC regarding proposed penalties and fines that would be associated with violating regulations of that policy (Attachment 1). In addition, input on proposed administrative penalties based on other violations of the RTA Program Regulations, adopted by the RTA Board through ordinance 2011-001, is also sought from the TAC (Attachment 2).

Comments that TAC members have regarding these proposed administrative violations will be forwarded to the full RTA Board of Directors at their next meeting, currently scheduled for October 31, 2011.

Attachment 1: Proposed Administrative Penalties Based on RTA Equipment, Safety, Security, and Operational Policy (ESSOP).

Attachment 2: Proposed Administrative Penalties Based on RTA Program Regulations.

SUBMITTED BY: 
Hunter Harvath

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Proposed Administrative Penalty Guidelines
Based on RTA Equipment, Safety, Security and Operational Policy (ESSOP)

<u>ESSOP Section/Description</u>		<u>1st Offense</u>	<u>2nd Offense</u>
Section 2 - Violations of Safety Requirements Based on CA Vehicle Code			
2a	Tires fail to meet CA Vehicle Code	RUC*	3-Day Permit Suspension
2b	Lights fail to meet CA Vehicle Code	RUC*	3-Day Permit Suspension
2c	Windshield wipers inoperable	RUC*	3-Day Permit Suspension
2d	Meter not working or seal is broken	RUC*	3-Day Permit Suspension
2e	Brakes fail to meet CA Vehicle Code	RUC*	3-Day Permit Suspension
2f	Play in steering wheel exceeding 3 ins.	RUC*	3-Day Permit Suspension
2g	Windshield cracks interfering with driver vision	RUC*	3-Day Permit Suspension
2h	Inoperable door latch from either interior or exterior	RUC*	3-Day Permit Suspension
2i	Any seat not securely fastened to floor	RUC*	3-Day Permit Suspension
2j	Seatbelts fail to meet CA Vehicle Code	RUC*	3-Day Permit Suspension
2k	Missing/defective mirrors in violation of CA Vehicle Code	RUC*	3-Day Permit Suspension
2l	Unsafe vehicle endangering passenger/pedestrian safety	RUC*	3-Day Permit Suspension
Section 3 - Violations of Maintenance Standards Based on RTA policy and/or CA Vehicle Code			
3a	Unsafe vehicle body condition	RUC*	3-Day Permit Suspension
3b	Color scheme	Field Report Warning	RUC*
3c	Paint faded/deteriorated	Field Report Warning	RUC*
3h	Engine compartment clean and free of combustibles	RUC*	3-Day Permit Suspension
3i	Muffler in good operating condition	Field Report Warning	RUC*
3j	Windows intact and open/close as intended by manufacturer	Field Report Warning	RUC*
3l	Suspension in good working condition	Field Report Warning	RUC*
3m	Seats in relatively good repair	Field Report Warning	RUC*
3n	Interior, trunk, luggage areas clean, litter- and odor-free	Field Report Warning	RUC*
3o	Window tinting too dark	RUC*	3-Day Permit Suspension
Section 4 - Violations of Posted Information Requirements			
4a	Vehicle permit and/or driver permit posted	Field Report Warning	RUC*
4b	Meter rates posted in passenger compartment	Field Report Warning	RUC*
Section 5 - Violations of Operating Procedures			
5a	Receipt on request	Field Report Warning	3-Day Permit Suspension
5b & 5d	Refuse to comply with lawful order	10-Day Permit Suspension	Permit Revocation
5e	More passengers than manufacturer rating	Field Report Warning	3-Day Permit Suspension
5f	Improper hygiene, cleanliness, odor	Field Report Warning	3-Day Permit Suspension
5g	Traffic violation of CA Vehicle Code (i.e., parking in red zone)	Field Report Warning	3-Day Permit Suspension
5h	Taking indirect route to increase fare on meter	5-Day Permit Suspension	Permit Revocation
5j	Discourage passenger	3-day Permit Suspension	5-Day Permits Suspension
5j	Refusal to transport legally protected classes	5-Day Permit Suspension	Permit Revocation
5k	Noncompliance with Americans with Disabilities Act (ADA)	Field report Warning	Permit Revocation
5m	Refuse or discourage passenger due to shortness of trip	Field Report Warning	3-Day Permit Suspension
5n	Deny service to place of public accommodations	Warning Letter from RTA staff	10-Day Permit Suspension
5o	Driver soliciting passengers	Field Report Warning	3-Day Permit Suspension
5p	Only authorized passengers in vehicle	Field Report Warning	3-Day Permit Suspension

***RUC – Remove Until Corrected:** This penalty shall require the temporary removal of the medallion of vehicle or the temporary suspension of a driver's identification card until the violation is corrected. Vehicles under the effect of this penalty may not be placed in service until they have passed re-inspection or the driver has provide proof that the violation has been corrected. All re-inspections or re-instatements may be subject to applicable administrative fees.

Penalties may be adjusted up to including revocation of permit at the sole discretion of the RTA based on severity and frequency of violations .

Proposed Administrative Penalty Guidelines
Based on RTA Program Regulations

<u>RTA Regulation Section / Description</u>		<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
6	Inadequate proof of insurance	RUC*	3-day permit suspension	10-day permit suspension
6	Lapse of insurance coverage	RUC*	Permit Revocation	
7	Overcharge of meter rate filed with RTA	5-Day Permit Suspension plus restitution to passen	Permit Revocation	
9	Exterior signage required	Field Report Warning	RUC*	5-day permit suspension
16.1	Inappropriate driver conduct	Field Report Warning	5-day permit suspension	permit revocation
16.2	Driver smoking in taxicab	Field Report Warning	5-day permit suspension	permit revocation
27.5	Meter not engaged	5-Day Permit Suspension	Permit Revocation	
22.6, 23.8.3	Unlawful transference of permits	Permit Revocation		

***RUC – Remove Until Corrected:** This penalty shall require the temporary removal of the medallion of vehicle or the temporary suspension of a driver’s identification card until the violation is corrected. Vehicles under the effect of this penalty may not be placed in service until they have passed re-inspection or the driver has provide proof that the violation has been corrected. All re-inspections or re-instatements may be subject to applicable administrative fees.

Penalties may be adjusted up to including revocation of permit at the sole discretion of the RTA based on severity and frequency of violations .

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September 26, 2011

TO: Board Members & General Manager/CEO

FROM: David C. Laredo, General Counsel

RE: The RTA's Authority to Regulate Color Schemes of Taxicabs and Taxi Companies

This memo discusses whether the RTA has the authority to regulate the color schemes of taxicabs and taxi companies.

BACKGROUND

At its September 20, 2011 meeting the Monterey County Regional Taxi Authority (RTA) Technical Advisory Committee (TAC) requested counsel provide a memo analyzing whether the RTA has the authority to regulate the color schemes of taxicabs and taxi companies.

ANALYSIS

Current Section 3(a)

Section 3(a) of the current RTA Equipment, Safety, Security and Operational Policy (ESSOP) states the following:

“The color scheme of for-hire vehicles for new taxicab companies permitted by the RTA are subject to the approval of the RTA and shall be sufficiently distinctive so as not to cause confusion with other for-hire vehicles already operating within the RTA.”

This language gives the RTA the authority to regulate color schemes for *new* taxicab companies.

Authority of the RTA

The RTA Joint Powers Agreement provides that the “purpose of the RTA shall be to...regulate the licensing of taxi operators and the regulation of taxi services...”¹ The RTA Bylaws provide that the RTA Board shall “perform all... activities... to further the mission and the goals of the [RTA]...”²

Because the regulation of color schemes falls within the “regulation of taxi services” the RTA may exercise authority over color schemes. Therefore this Section 3a is a valid exercise of RTA’s authority.

It should be noted that the RTA has the discretion as to what level it may regulate color schemes. Presently Section 3a regulates not only which colors are in use, but also which colors schemes new companies may use. The RTA may choose to regulate color schemes to a lesser extent – for example, the RTA may require taxicab companies to register a color (even if similar to, or the same as, one currently in use) and only require the taxicab company to use the color scheme uniformly throughout its fleet.

A review of other jurisdictions within the state reveals the varying degrees to which color schemes are regulated by agencies.

The Regulations of the Orange County Taxi Administration Program OC Regulations, at Section 8.2.5, provide: “The color scheme, name, monogram, or insignia used upon Permittee Taxicabs shall not be in conflict with and shall not imitate any other color scheme, name, monogram, or insignia used by any other Permittee.”

The SunLine Regulatory Administration³ only requires that taxicab companies register a color scheme of their choosing and apply it uniformly throughout its fleet, regardless of other color schemes in use.

Other jurisdictions have chosen a free market approach and have opted to not exercise authority over color schemes at all.⁴

¹ Section 1(a)

² Article VII, Section a.

³ Serving the Inland Empire area of California

⁴ Fort Wayne, IN <http://www.journalgazette.net/article/20110914/LOCAL/309149947/1002/LOCAL>

Free Market Regulation

Should the RTA decline to exercise its authority to regulate color schemes of taxicabs and taxicab companies, those taxicabs and companies would still be able to protect their interests in color schemes, logos and marks. This would be accomplished via the court system, for action including, but not limited to, trademark infringement, unfair competition, interference with prospective economic advantage, injunctive relief and declaratory relief.

Sacramento Yellow Cab v. Elk Grove Yellow Cab

At the September 20, 2011 TAC meeting, counsel was asked to review *Yellow Cab Company of Sacramento v. Yellow Cab Company of Elk Grove*⁵ (*Yellow Cab*) to determine if this case limits or otherwise affects the RTA's authority to regulate color schemes. Upon review, it is counsel's opinion that *Yellow Cab* does not limit the RTA's authority to regulate color schemes of taxicab or taxicab companies.

In *Yellow Cab* the United States Court of Appeal for the Ninth Circuit reversed the United States District Court for the Eastern District of California's finding of summary judgment in favor of Yellow Cab of Elk Grove. The District Court held: 1) "yellow cab" was a generic mark (and therefore not entitled to trademark protection); and 2) that even if the mark was not generic, but rather a descriptive mark, it was still not entitled to trademark protection as it did not acquire a "secondary meaning."

In reversing the District Court, the Court of Appeal stated that whether the mark "Yellow Cab" has become generic, and whether "Yellow Cab" was a descriptive mark that had acquired a "secondary meaning" were triable issues of fact and not suitable for summary judgment as summary judgment is only properly granted where there are no issues of material fact requiring trial for their resolution.

Therefore, *Yellow Cab* did not answer the question of whether the "yellow cab" mark was entitled to a trademark; rather the court only stated that the answer to that question was a triable issue of material fact.

It should be noted that *Yellow Cab* concerned the "yellow cab" *mark*, not color.

CONCLUSION

The RTA has the authority to regulate the color schemes of taxicabs and taxicab

⁵419 F.3d 925 (9th Cir. 2005)

companies. If the RTA chooses to continue to regulate color schemes, it may do so in several different ways. It may ensure that two companies do not use the same color scheme, or may choose to allow more than one company to use the same color scheme. In either situation, the RTA should ensure that once a color scheme is approved, it is used uniformly throughout the permittee's fleet.

Alternatively, the RTA may choose to not regulate color schemes. Should the RTA elect to not regulate color schemes, taxicab owners and companies would still have the right to seek protection of their color schemes and logos via the courts.

Sincerely,

DAVID C. LAREDO, General Counsel
MONTEREY COUNTY REGIONAL TAXI
AUTHORITY

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September 26, 2011

TO: Board Members & General Manager/CEO

FROM: David C. Laredo, General Counsel

RE: RTA Authority to Adopt Proposed Section 5(n) of the Equipment, Safety, Security and Operational Policy

This memo discusses whether the Monterey County Regional Taxi Authority has the authority to require taxicab companies to dispatch to locations of public accommodation within its jurisdiction.

BACKGROUND

At its September 20, 2011 meeting the Monterey County Regional Taxi Authority (RTA) Technical Advisory Committee (TAC) requested counsel provide a memo regarding the RTA's authority to implement proposed Section 5(n) to the RTA Equipment, Safety, Security and Operational Policy (ESSOP).

ANALYSIS

Proposed Section 5(n)

Proposed Section 5(n) of the September 9, 2011 Draft Version of the ESSOP states:

“A taxicab dispatching company owner or its staff shall not deny service when

requested to a specific location of public accommodations within the RTA jurisdictions without prior approval by the RTA Board of Directors or the local law enforcement department having jurisdiction over the location of the public accommodation to be denied taxicab service.”

As proposed, Section 5(n) would compel taxicab dispatching companies to provide services to all locations of public accommodation within the RTA’s jurisdiction. It also allows dispatching companies to seek approval from the RTA Board to deny services to locations of public accommodation.

Authority of the RTA

The RTA Joint Powers Agreement provides that the “purpose of the RTA shall be to...regulate the licensing of taxi operators and the regulation of taxi services...”¹ The RTA Bylaws provide that the RTA Board shall “perform all... activities... to further the mission and the goals of the [RTA]...”²

Therefore, if the Board believes that Section 5(n) will further the mission and goals of the RTA, the Board has the discretion to adopt Section 5(n) and require taxicab companies to dispatch to all locations of public accommodation within the RTA’s jurisdiction.

Concerns have been raised by some taxicab dispatching companies who feel that it is not economically viable for them to dispatch to certain locations of public accommodation. Proposed Section 5(n) allows such companies to seek approval from the RTA Board to deny service to a location of public accommodation.

It should be noted that the current RTA Regulations, adopted on April 25, 2011, at Section 21.1 already prohibit *drivers* from denying service to persons seeking transportation and tendering a fare for service.³

A survey of taxi regulators in the state revealed that other jurisdictions have exercised their authority to compel taxicab drivers to serve all customers who request taxi service within their jurisdiction.

The Regulations of the Orange County Taxi Administration Program provide “[a] taxicab driver who is in service, not hired, and able to accommodate passengers, shall not refuse service to any passenger requesting transportation.”⁴

¹ Section 1(a)

² Article VII, Section a.

³ RTA Regulations Section 21.1

⁴Section 9.13

The San Francisco Transportation Code, at Section 1108 (e)(1) “Driver Duties During Shift” provides: “[a] Driver shall not refuse, or direct or permit the refusal, of prospective passengers in any place within the City for transportation to any other place in the City, or to or from the San Francisco International Airport, or to the Oakland International Airport ... at rates authorized by law, if the prospective passengers present themselves for transportation in a clean, coherent, safe and orderly manner and for a lawful purpose and the Driver has sufficient time before the end of his or her shift.”

The SunLine Regulatory Administration⁵ provides “[n]o driver shall refuse a dispatch call or other request for taxicab service unless the driver has a legitimate fear for his or her safety or is otherwise engaged with a passenger.”⁶

Therefore, while other agencies do not have specific regulations addressing the refusal to dispatch to certain locations, all other jurisdictions prohibit refusals to customers requesting a taxi.

CONCLUSION

The RTA has already adopted regulations prohibiting drivers from refusing fares. The RTA has similar authority to implement Section 5(n) if it believes the proposed Section furthers the mission and goals of the RTA. Should taxicab dispatching companies wish to deny services to a specific location of public accommodation, Section 5(n) provides them an opportunity to seek approval from the RTA Board to do so.

Sincerely,

DAVID C. LAREDO, General Counsel
MONTEREY COUNTY REGIONAL TAXI
AUTHORITY

⁵ Serving the Inland Empire area of California

⁶Section R.6.13, Taxicab Regulations of the SunLine Regulatory Administration

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September 26, 2011

TO: Board Members & General Manager/CEO

FROM: David C. Laredo, General Counsel

RE: The Effect of Recent Amendments to ADA Regulations on the RTA's Policy on Service Animals

BACKGROUND

At its September 20, 2011 meeting the Monterey County Regional Taxi Authority (RTA) Technical Advisory Committee (TAC) requested counsel provide a memo analyzing whether recent amendments by the U.S. Department of Transportation's (DOT) to its Americans with Disabilities Act (ADA) regulations affected the RTA's proposed regulations regarding service animals.

ANALYSIS

Proposed Section 5(k)

Section 5(k) of the September 9, 2011 Draft Version of the RTA's Equipment, Safety, Security and Operational Policy (ESSOP) states:

“It is a violation of the Americans with Disabilities Act (ADA) for owners and operators of taxis to discriminate against or refuse a passenger because that passenger has a service

animal assisting them. A service animal includes guide dogs, signal dogs, or other animals providing assistance to disabled individuals. However, where a taxicab operator has a physical or mental impairment regarding service animals (including, but not limited to, allergies) that substantially limits one or more major life activities, that driver may not be forced to provide transportation to a person using a service animal. In this situation, taxi company owners must provide a reasonable accommodation to this class of drivers by sending another taxicab operated by a driver without a physical or mental impairment regarding service animals.”

DOT ADA Regulations

Under the Americans with Disabilities Act of 1990 (ADA),¹ the United States Department of Transportation (DOT) is charged with promulgating regulations “to implement the transportation and related provisions ... of the Americans with Disabilities Act of 1990.”² From time to time, the DOT amends its regulations to keep up with changes in the law, ensure better access to transportation for persons with disabilities, and to harmonize its regulations with other federal agencies.

Amendments to DOT ADA Regulations

On October 19, 2011 amendments to the DOT’s ADA Regulations³ go into effect. The amendments are entitled “Transportation for Individuals with Disabilities at Intercity, Commuter, and High Speed Passenger Railroad Station Platforms; Miscellaneous Amendments.”

As the title suggests, these amendment do not have a direct affect on ADA regulations relating to service animals. The most significant amendment requires intercity, commuter, and high-speed passenger railroads to ensure that passengers with disabilities can get on and off *any* accessible train cars. This change will apply to new and altered stations in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations. Another amendment modifies transportation providers’ obligations relating to wheelchairs and “other power-driven mobility devices.”

The one mention of service animals in the amendments is in reference to the Department of Justice’s (DOJ) (which also promulgates ADA regulations) September 15, 2010 change to the definition of “service animal.” However, the amendments state that the changes in definitions are “at the level of detail and wording, and the definitions are not vastly different in concept.”

¹ 42 U.S.C. § 12101 et seq.

² 49 CFR 37.1

³ Parts 37 and 38 of Title 49 of the Code of Federal Regulations

CONCLUSION

The DOT amendments to its ADA Regulations going into effect October 19, 2011 do not have an impact on the Proposed Section 5(k).

Sincerely,

DAVID C. LAREDO, General Counsel
MONTEREY COUNTY REGIONAL TAXI
AUTHORITY