

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 13

Date: November 14, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney

SUBJECT: Additional Standards for Taxicab Operators

RECOMMENDATION:

Consider introduction of Ordinance No. 2012-22 amending sections of the Escondido Municipal Code to update standards required of taxicab operators and drivers in the City of Escondido.

PREVIOUS ACTION:

On July 10, 1996, the City Council passed Ordinance 96-25 which dissolved the Franchise Commission which previously regulated taxicabs. On November 20, 1996 the City Council adopted Ordinance No. 96-36 which revised Chapter 26 of the Escondido Municipal Code to reflect revised licensing requirements for taxicab operators and provide for the effect of the dissolution of the Franchise Commission.

On November 19, 2008, the City Council adopted Ordinance 2008-31 which amended Chapter 26, Section 26-45 of the Escondido Municipal Code to specify the insurance coverage required to operate a taxicab within the City.

BACKGROUND:

Councilmember Ed Gallo and Councilmember Marie Waldron have requested that staff prepare an ordinance to add standards and requirements for operating a taxicab in the City of Escondido. An ordinance and a redline ordinance illustrating the proposed changes are attached to this staff report. The additional standards requested were that a taxicab operator maintain at least ten (10) operating vehicles, that one (1) vehicle be compliant with the Americans Disabilities Act (ADA) and available at all times, that a taxicab driver not smoke while transporting a passenger, and that a taxicab driver not use a cellphone while transporting a passenger.

The regulation of taxicabs is traditionally a subject of a city's police power. *Cotta v. City and County of San Francisco*, 157 Cal.App.4th 1550 (2007). The City may adopt rules and regulations by ordinance or resolution regarding the licensing and regulation of the operation of vehicles for hire and drivers of passenger vehicles for hire. Cal. Veh. Code § 21100(b).

Currently, Escondido Municipal Code Chapter 26 regulates the operation and licensing of a taxicab operator and/or driver. Chapter 26 requires potential taxicab operators to obtain a license from the City according to the standards and requirements as determined by the City. One of the requirements is to maintain insurance coverage for the taxicab in the amounts set out in the municipal code. Escondido also requires potential taxicab drivers and operators to obtain the appropriate license from the San Diego County Sheriff in addition to regulations imposed by the City. The Sheriff's licensing requirement is consistent with the requirement of other local municipalities. Some jurisdictions impose more detailed restrictions and regulations on operators which also require more oversight and administration by the jurisdiction.

The proposed ordinance would add two requirements for taxicab operators. Ordinance No. 2012-22 would require that an operator of a taxicab apply for, and maintain, at least ten (10) vehicles available to be dispatched at all times. The proposal would also require that an operator of a taxicab have at least one wheelchair accessible vehicle available to be dispatched at all times.

The proposed ordinance would add two requirements for both taxicab operators and drivers. Ordinance No. 2012-22 would make it unlawful for a taxicab driver to smoke while transporting a passenger. The proposal would also make it unlawful for a taxicab driver to use a cell phone, regardless of whether it is used in conjunction with a "hands free" device, while transporting a passenger unless it is for work-related or emergency purposes. Using a cell phone would include placing or receiving a phone call, sending or receiving a text message, sending or receiving an email, or other text based communication.

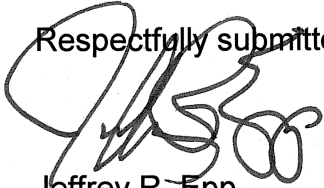
The State of California regulates the use of cell phones while operating a motor vehicle. Generally, it is unlawful to place or receive a phone call while driving unless the driver is done using a "hands free" device. Cal. Veh. Code § 23123. Similarly, it is unlawful to write, send, or read a text-based communication while driving. Cal. Veh. Code § 23123.5. While the State has regulated the use of cell phones generally by persons operating a motor vehicle, the ordinance before you today contains rules and regulations governing the licensing and operation of a taxicab operator or taxicab driver. The proposed ordinance would prohibit the use of cell phones by taxicab drivers while transporting passengers, regardless of whether they use a "hands free" device. The exception to the prohibition would be for emergency and work related purposes. This would allow better communication between the passenger and the taxicab driver and would ensure the reliable provision of transportation to residents. While it is noted that the enforcement of such a prohibition may be difficult, the mere prohibition itself may serve as a deterrent.

CONCLUSION:

The additional standards proposed by Councilmember Gallo and Councilmember Waldron through Ordinance No. 2012-22 would require that a taxicab operator maintain at least ten (10) operating vehicles, that one (1) vehicle be compliant with the Americans Disabilities Act (ADA) and available at

all times, that a taxicab driver not smoke while transporting a passenger, and that a taxicab driver not use a cellphone while transporting a passenger.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "JEPP", written over the text "Respectfully submitted,".

Jeffrey R. Epp
City Attorney

ORDINANCE NO. 2012-22

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING THE ESCONDIDO MUNICIPAL
CODE TO ADD REQUIREMENTS FOR THE
LICENSING AND OPERATION OF A
TAXICAB IN THE CITY**

WHEREAS, the City Council of the City Escondido desires to amend Chapter 26 of the Escondido Municipal Code to provide protection for the public health, safety , and welfare by adopting additional requirement for taxicabs to operate within the City; and

WHEREAS, the City Council finds it necessary for the public welfare to require taxicab operators have a minimum of ten taxicabs; and

WHEREAS, the City Council finds it necessary for the public welfare to require taxicab operators have a minimum of one vehicle which would be accessible to persons in wheelchairs in conformance with the American Disabilities Act; and

WHEREAS, the City Council finds it necessary for the public welfare to prohibit taxicab drivers from smoking or using a cell phone while transporting passengers.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. RECITALS. The City Council hereby finds and determines that the foregoing recitals, which are incorporated herein by reference, are true and correct.

SECTION 2. Article 1 of Chapter 26 of the Escondido Municipal Code Section 26-1 is hereby amended to read as follows:

Sec. 26-1. Definitions.

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section.

- (a) **Operating a Wireless Communication Device.** To operate a wireless communications device shall mean placing or receiving a phone call using the device, talking or listening to another person by use of the device, using the device to manually communicate with any person using a text-based communication, including, but not limited to, communications referred to as a text message, instant message, or electronic mail.
- (b) **Smoke or Smoking.** Smoke or Smoking means the lighting or carrying of a pipe, cigar, cigarette, or other instrument used to burn tobacco of any kind.
- (c) **Wait Time.** Waiting time shall include all time when a taxicab occupied or engaged by a passenger is not in motion or traveling at a speed which is slow enough for the time rate to exceed the mileage rate, and the time consumed while standing at the direction of the passenger or person who has engaged such taxicab.

SECTION 3. That Sections 26-9 & 26-10 are hereby amended as follows:

Sec. 26-9 Use of Wireless Communications Device Prohibited.

- (a) A taxicab driver shall not operate a wireless communications device while transporting a passenger, regardless of whether the device can be operated hands-free.
- (b) This section does not apply to a taxicab driver using a wireless telephone or electronic communications device for work-related purposes, or for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency service agency or entity.

Sec. 26-10 Smoking in Taxicab Prohibited.

It shall be unlawful for a taxicab driver to smoke while a passenger is in the taxicab.

SECTION 4. That Article 2 of Chapter 26 of the Escondido Municipal Code Sections 26-41 & 26-42 are hereby amended as follows:

Sec. 26-41 Authority to Refuse Issuance of License

- (a) The City may refuse to issue a license required by this article to any applicant whose responsibilities, qualifications, or methods of operating its business does not comply with the standards or requirements as determined by the city council by resolution. Any of the following reasons shall be sufficient for refusal of a license:
- (1) The application is for less than ten (10) vehicles;
 - (2) The application does not provide for at least one (1) vehicle which is wheelchair accessible in compliance with the standards set forth in the Americans Disabilities Act (ADA);
 - (3) That the color scheme, name, monogram, or insignia to be used upon such automobiles is in conflict or imitates any color scheme, name, monogram, or insignia used by any person in such a manner as to be misleading or tend to deceive or defraud the public; or
 - (4) For the violation of any standard or requirement established pursuant to Section 26-41(a).

Sec. 26-42 Revocation, Suspension or Modification of License

- (a) The City may modify, suspend, or revoke any certificate when any licensee fails to comply with any standard or requirement established pursuant to Section 26-41. Any of the following reasons shall be sufficient for the modification, suspension, or revocation of a license:
- (1) Failure to maintain at least ten (10) vehicles that are fully compliant with the provisions of this Chapter available to be dispatched at all times;
 - (2) Failure to have at least one wheelchair accessible vehicle pursuant to Section 26-41 available to be dispatched at all times;
 - (3) Failure to maintain any standard or requirement established pursuant to Section 26-41.
 - (4) Failure to comply with any of the provisions of this Chapter.

SECTION 5. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct

and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.