
M E M O R A N D U M

DATE: June 3, 2005
TO: City Council Members
FROM: Russell Weeks
RE: Public Hearing: Responses to *Ground Transportation Study* by Dr. Ray Mundy of the Tennessee Transportation & Logistics Foundation
CC: Cindy Gust-Jenson, Rocky Fluhart, Sam Guevara, Tim Campbell, Ed Rutan, Gary Mumford, Orion Goff, Edna Drake, Larry Spendlove, Jodi Howick, Larry Bowers, Laurie Donnell

This memorandum pertains to the City Council's scheduled public hearing June 7 on Dr. Ray Mundy's *Ground Transportation Study*. Dr. Mundy presented the study to the City Council on April 19. The study plus written and oral comments received between April 20 and the June 7 hearing will be part of a final report by Dr. Mundy. The City Council commissioned Dr. Mundy in December to conduct the study.

The June 7 meeting will contain two parts – both held in the City Council Chamber. The first part involves a City Council discussion that will include introductory remarks by City Council Vice-Chair Nancy Saxton and 15-minute presentations by Dr. Mundy and representatives of Salt Lake City's three taxicab companies that hold certificates of convenience and necessity. Each presentation will be followed by period in which City Council Members may ask questions. After that, Steve Lindburg, general manager of the Salt Lake City Center Hilton Hotel and President of the Utah Hotel & Lodging Association, will speak to issues raised in Dr. Mundy's study. Mr. Lindburg is scheduled to speak for about five minutes and then respond to questions.

The second part of the meeting will be the scheduled public hearing at the City Council meeting at 7 p.m. Speakers at the public hearing will be limited to a maximum of two minutes. Again, the focus of the public hearing is Dr. Mundy's *Ground Transportation Study*. No other action pertaining to ground transportation or taxicabs will be on the agenda.

(It should be noted that since Dr. Mundy's presentation April 19 the City Council Office has received about 40 written comments including the response by the law firm representing the three taxicab companies. About half of the written comments were written or sent by two other members of the taxicab industry.)

BACKGROUND

The public hearing is the culmination of a process that began in spring 2004 when Mayor Ross Anderson's Administration forwarded proposed changes to the *City Code* sections that regulate ground transportation and taxi services. The proposed changes were the result of negotiations among the Administration, ground transportation and taxi services, and hotel operators that first started in 2002.

After two briefings and discussion of the proposed amendments the City Council adopted a motion at its August 24, 2004 meeting that enacted some of the proposed amendments but deferred action on the other proposed amendments until they could be studied further. (Please see Attachment No. 1.)

Provisions the City Council enacted were:

- Making it unlawful to operate a ground transportation business without a license. (Section 5.71.025.) The provision means that a ground transportation business that has a business license in another city still must obtain a business license in Salt Lake City.
- Making it unlawful for any person to operate a ground transportation vehicle upon the streets of Salt Lake City “without having first obtained and having then in force a valid ground transportation vehicle driver's license issued by the police department of the city.” (Section 5.71.250.)
- Making it unlawful for “any person who owns or controls a ground transportation vehicle to permit it to be driven ... unless the ground transportation vehicle is operated by a driver who has then in force a valid ground transportation vehicle driver's license issued under the provisions of this chapter.” (Section 5.71.260.) (It should be noted that the City Council’s motion also gave time for ground transportation drivers to obtain the driver’s license the required by the amendments.)
- Adopting a series of amendments pertaining to ground transportation at the Salt Lake City International Airport that, according to Airport administrators, brought ground transportation regulations into conformance with homeland security requirements.

The City Council adopted the provisions and deferred others in part because the Administration appeared to agree with the City Council on the need to study other issues. (Please see Attachment No. 2, Items Nos. 2 and 3.)

On May 3, 2005, the City Council adopted a motion to increase rates taxicab drivers may charge customers. The increases included raising the taxicab flag drop rate from \$1.60 to \$2, raising taxicab per mile rates from \$1.60 to \$1.80, raising waiting time rates from \$21 to \$22 and raising the minimum airport fair rates from \$10 to \$12.

Between the two formal actions by the City Council on August 24, 2004 and May 3, 2005 several other events relating to ground transportation and taxicabs occurred. The events included:

I. In mid-December 2004, the City Council contracted with Dr. Ray Mundy of the University of Missouri at St. Louis and the Tennessee Transportation & Logistics Foundation to conduct a study of the City’s ground transportation and taxicab industries. The study included the following items:

- A. The Consultant shall research and evaluate ground transportation data and make recommendations to the City Council for an ordinance that meets the following objectives:
 - 1. Provide Salt Lake City residents and visitors to Salt Lake City with reliable, affordable and consumer-friendly taxi and ground transportation service
 - 2. Provide the City with enforceable ground transportation regulations
 - 3. Enhance the opportunity for ground transportation industry workers in Salt Lake City to earn a reasonable income at or near national averages

- B. Consultant shall review and evaluate City provided documents and other data including current and proposed City ordinances regulating taxicab businesses, ground transportation businesses and special transportation businesses that transport people with disabilities.

II. In January 2005, Third District Court Judge Frank Noel entered a ruling in favor of Yellow Cab Drivers Association Inc. that reversed a Salt Lake City hearing officer's decision that Yellow Cab in the year 2001 had to forfeit 33 taxicab licenses because Yellow Cab had not licensed the total number of vehicles authorized Yellow Cab by the City under its certificate of public convenience and necessity. Judge Noel ruled the forfeiture provision in the *City Code* "is inapplicable in the event a holder does not have the total number of vehicles authorized by a certificate."

III. In January 2005 Judge Dale Kimball of the U.S. District Court for Utah dismissed a lawsuit brought by the Disable Rights Action Committee to require that three Salt Lake City taxicab companies provide vans to transport people who use wheelchairs.

According to the ruling, federal regulations do not require taxi services to buy vehicles other than automobiles to have a number of vehicles accessible to people with disabilities in their fleets. However, if a taxi service buys a new van for its fleet, the van must be accessible to people with disabilities. Federal regulations define "new" as "a vehicle which is offered for sale or lease after manufacture without any prior use."

According to the ruling, the Action Committee sought to have the definition of "new" changed to one in which "new" would be "any van purchased after the enactment of the Americans with Disabilities Act." Judge Kimball noted that the three Salt Lake City taxicab companies had provided an affidavit saying the companies did not have "new" vans in their fleets because they do not buy "new" vehicles "because the fare regulation imposed by Salt Lake City makes them cost prohibitive." Judge Kimball declined to redefine the word "new" beyond what already was in federal regulations. "The (federal) agency employed the plain language meaning of the word "new," Judge Kimball wrote. "It would not be appropriate for this court to substitute its own interpretation."

IV. After Dr. Mundy's preliminary presentation to the City Council on March 8 about the status of the taxicab and ground transportation industries Dr. Mundy met with the City Council's Taxi Subcommittee. The Subcommittee directed Dr. Mundy to explore further short-term and long-term ways to improve City regulation of the industries. One of the items the Subcommittee wanted Dr. Mundy to explore was moving from a certificate of public convenience and necessity form of regulation to a franchise or contractual form of regulation.

RECAP: GROUND TRANSPORTATION STUDY RECOMMENDATIONS

On April 19 Dr. Mundy made a second presentation that included short-term and long-term ways to improve City regulation of the taxi and ground transportation industries. The recommendations include:

SHORT-TERM

No. 1. Suspend the City requirement relating to the mandatory use of permits

(Section 5.72.150 of City code). The “cab day” rules are extremely difficult to administer and monitor anyway and operators should not be forced to either put marginal cabs on the airport line or lose their permits.

No. 2. Freeze all new applications for taxi driver permits

There is already an excess of drivers within Salt Lake City. Temporarily closing applications will enhance the ability of drivers to bargain with existing taxi firms for their services and may enhance their revenue potential as other drivers leave the system. Also, the City of Salt Lake has a set of requirements for permitting drivers which includes some degree of understanding English and area geography, but it is suspect that recent or new drivers are not meeting all these requirements. Currently the Salt Lake City police department is looking into a third party arrangement to test for English comprehension and geographic knowledge and thus, a comprehensive review of these requirements and a strengthening of them, based on comparisons with other major cities, should be undertaken.

No. 3. Do not renew existing business licenses of the city’s three taxi firms

The report recommended giving the firms notice to continue on a month to month basis if needed. These licenses which are renewed annually and, depending upon the company, are to be renewed by January 1 and February 1, 2006, so it would be prudent to let current operators know it is the City’s intention not to renew these licenses. Six to eight months should be sufficient time to issue nonexclusive taxi franchise RFP’s, select two to four operators and have them in place, but legal challenges and other unforeseeable events may delay the conversion. Current operators should be informed of the schedule for conversion to a franchise taxi operation and encouraged to work with the city in this transition period.

No. 4. Do not permit any new taxicabs to be added to existing taxi fleets which are older than the 2000 model year.

There are already a number of taxis that are 2000 and newer vehicles and several owners have related that it was their intention to add vehicles that were no older than 6 years. While not having an immediate affect since these vehicles will be phased in as replacements occur, it will nevertheless stop the taxicab image from deteriorating any further in the community.

No. 5. Enforce elements of the latest ground transportation ordinance regarding licensing of all ground transportation vehicles and drivers.

With the current situation regarding the legality of non-metered cabs in the City of Salt Lake, officials should move forward to clarify who will be required to obtain city approval to operate ground transportation vehicles in both courtesy and commercial operations. As per discussions with the police department, applicants should have a complete FBI background check for each of their drivers with the results forwarded to their offices in a sealed envelope. The police department should also direct hotels which have operating agreements or authorizations with non metered shuttle and van operators to file these agreements with the city and airport as per the ordinance. While a grace period for compliance should be offered, it should be only 60 days.

No. 6. Expand pending ordinance paying a hotel doorman for transportation to include the reception of gratuities as well.

Some hotel doormen in Salt Lake City have come to expect certain “gratuities” in return for using their cell phones to call metered and non metered cabs or shuttles when guests request ground transportation services. Such gratuities may or may not figure into the compensation doormen receive from their hotel employment but it is easy to see that such activity can get out of hand and affect both the fare a guest may have to pay and the quality of service. Under recommendation number 5 above hotels will by city ordinance be required to have agreements in place regarding any ground transportation services so there should be less flexibility for individual doormen to “sell” their transportation requests. Gratuities should be paid for by the hotel guest – not the driver.

No. 7. Enforce ordinance provisions regarding the transportation of passengers by hotel shuttle to and from destinations other than the airport as a common practice.

Restricting the ability of hotels to offer complimentary shuttle service to their guests would be considered by some to be an infringement upon their right to provide these common guest amenities. On the other hand, by offering such on demand services to their guests, they are operating a “taxicab” service. Gratuities paid by the transported guests, while not requested, nevertheless constitute payment for transportation services. Thus, City officials should look to their local hotel industry representatives for some common acceptable solution to this potential problem. As a starting point, it is suggested that occasional use of the vans for non airport trips be permitted but arranged for in advance and require the consent of the hotel manager on duty.

No. 8. Restrict the ability of taxis to enter the Salt Lake International Airport Holding Lot to every other day.

While longer run recommendations are made to eventually reduce the number of days a taxi can pick up at the airport without bringing passengers to the airport, this requires the use of an AVI system the airport has yet to acquire. A short term solution to involving more taxicabs into serving the entire city is to alternate days these cabs can enter the airport holding lot to odd or even license number days. This is simple and easy to administer and will bring about immediate results.

According to the study, the bulk of the recommendations address “an excess of taxicabs and drivers within the Salt Lake taxi system.”

LONG-TERM

No. 1. Suspend current city ordinances and regulations regarding issuance of taxi businesses licenses and replace with nonexclusive taxi franchise operators.

The study termed the first recommendation as the major restructuring of the Salt Lake City taxi industry. It is recommended that Salt Lake authorize no more than 200 taxi permits or a 25% reduction in the number of total cab permits issued for the city. Requests for proposals would be issued for a number of competing cab companies with the minimum number taxis an individual firm would operate would be 50. It is suggested that there be a minimum of two firms and a maximum of 4 firms with each firm submitting a bid for the maximum number of cabs they wished to operate. By requiring a minimum of 50 taxis, there would be sufficient business to support investment in GPS

dispatching and other technologies for improving the delivery of service to the traveling public. It is anticipated that some negotiation on the actual number of taxis to be awarded to each successful franchisee would be required.

No. 2. Restrict the ability of taxis to enter the Salt Lake International Airport Holding Lot to the minimum number necessary after replenishment by taxis bringing passengers to the airport.

Taxi firms and their drivers are licensed by their city to serve all the residents – not just those traveling to and from the airport. Therefore, to reduce the pooling of taxis and drivers at the airport drivers should be restricted from entering the holding lot unless it is their assigned day to pick up at the airport or they have dropped off a passenger at the airport. In this way, taxi firms are encouraged to develop their taxi markets for their drivers other than the airport so they have some business activity on the days they are not assigned at the airport. This restriction would start with every other day for the first month, and then move to every third day the second month, and then every 4 day the next month and so on until only a minimal number of cabs were assigned daily to the airport that would be sufficient to eliminating any wait time for passengers wishing taxicab service at the airport.

No. 3. Develop a shared – ride exclusive walkup van concession at SLC International Airport.

With very few exceptions, most U.S. airports have more than one walk up alternative for arriving airline passengers. Currently SLC has none – the only on demand service being taxicab service. Shared ride ground transportation is typically less expensive for the single individual and the preferred mode for many airline travelers. This will increase competition for taxicab service at the airport but with newer vehicles and a sharper image, taxis should be able to compete effectively for this market. The recommendation for a single concessionaire is that shared ride service requires density in order to be effective. Permitting only one operator at a time would make the concession an attractive concession and permit the operator to invest the capital necessary to develop a competitive high quality operation.

No. 4. Revise fees required for city approved ground transportation operations.

Current business licensee and driver permit fees for the City of Salt Lake are not adequate for the services being performed. Taxi franchise operators are expected to eventually pay a 5% franchise fee to the city for the right to operate a non-exclusive taxi franchise. The prevailing attitude of subsidizing the cost of these city services through directed reductions in their cost should be replaced with one of granting a franchise and permit to conduct business within the city and fees should be expected to cover their cost and make a contribution to the general budget.

Response to Study from Holders of Certificates of Public Convenience and Necessity

Clearly, more people involved than holders of certificates of public convenience and necessity responded to the *Ground Transportation Study*. However, given that they are the largest employers of ground transportation workers in Salt Lake City, a brief summary of the three taxicab companies is warranted.

In terms of importance the May 19 response from the three taxicab company's representative – the Winder & Haslam law firm – appears to indicate that the companies would oppose a City change from a certificate of public convenience and necessity form of regulation to a franchise or contractual form of regulation.

“Yellow Cab, Ute Cab, and City Cab vigorously oppose the proposed franchise system,” the response says on Page 3. “Adopting a franchise system is fraught with numerous threshold problems,” according to a sub-headline further down the page.

According to the response, the current certificate of public convenience and necessity regulation would end, and “there would be no assurance that ... any of the current taxicab companies would be selected as franchisees.” Moving to a franchise system potentially would waste “significant resources and investments built up” by the three taxicab companies.

Moreover, the companies contend that moving to a franchise system would require firms awarded a franchise to pay a franchise fee instead of the City “charging fees reasonably related to City services.” The response contends that franchise fees “likely” would place additional financial pressures on the taxicab companies. In addition, instituting a franchise system would involve a more complex method regulating the taxicab industry than the current method. (Pages 5 and 6, Companies' Response.) The response also contends that a potential consequence of moving to a franchise system would be an “increased chance of regulatory failure – ‘where the interest of the regulator ... and the firms being regulated are furthered at the expense of the public.’” (Page 7.)

Much of the rest of the companies' response involves the validity of Dr. Mundy's *Ground Transportation Study*.

The response contends that the report “fails to justify transition to a franchise system” of regulation. The report quotes the litigation support firm of Lewis and Bowles as indicating after a review of the *Ground Transportation Study* that the study “is not explicit concerning the rationale behind” the study's recommendation to arrange for taxicab services through contract law.

The response also contends that the *Ground Transportation Study* fails to address adequately other ground transportation businesses. In addition, the response contends that a survey conducted for the *Study* was unreliable, and that in general the report is incomplete, and its opinions and reasoning is not supported by facts.

The response indicates that its own Exhibit E – a letter from Winder & Haslam after Dr. Mundy's interim briefing on March 8 – indicates where the companies agree with the *Study*.

According to the letter:

- The companies agree “under the current environment there may be an overabundance of taxicab vehicles.” However, the letter noted “the appropriate number of taxicabs is impacted in part by the uncontrolled proliferation of shuttles, limousines, and gypsy taxicabs that have entered the market.” (Page 2, Exhibit E.)
- The companies agree that eliminating the “cab day” definition – a short-term recommendation – should be done.

- The companies agree that “the practice of tipping bell staff” – a short-term recommendation – to get transportation customers should be stopped.
- The companies disagreed with the *Study* that the taxicab fleets were as old as the *Study* said. They also questioned how the companies and drivers would afford newer vehicles if the City mandated that the vehicles be newer.
- The companies agreed that quality of service could be improved. However, they cautioned that “rather than scrapping the current regulated system due to a perception that cab drivers are rude, taxis are dirty and the cab companies don’t care, changes should be made to the current system to increase the quality of service.”
- The companies disagreed with the *Study*’s proposal to eliminate the 45-minute wait time for prearranged service. According to Exhibit E, “a 45-minute wait time preserves the distinction and protects the cab companies’ exclusive right to provide on-demand service. Perhaps another solution to this is to allow taxicabs to compete with shuttles at hotels by offering shared rides at rates comparable to what the shuttle van operators are charging.”

August 24, 2004

**SLC Administration's Recommendations re
Proposed Amendments to Title 16 and Title 5
re Ground Transportation Regulations**

The Administration proposes that the City Council take the following actions:

1. Enact the proposed ordinances as presently drafted. This will accomplish the following:
 - Make necessary technical corrections, *e.g.* inconsistent definitions between City Code Titles 5 & 16.
 - Remove Airport requirements in Title 16 that have become outdated due to changes in facilities and operations, and provide for rules that can address existing needs.
 - Level the "playing field" among all ground transportation types, including insurance & driver qualifications.
 - Clarify ambiguities, *e.g.* meaning of "pre-arranged" and "cab day."
 - Ensure reasonable seasonal taxicab reporting requirements rather than artificial calendar dates.
 - Provide flexibility in taxicab rate increase applications (allow requested rate hearing to go forward now).
 - Reduce cab day requirements increased in 1999 due to anticipated 2002 Winter Olympics needs and prior to 9/11 attack.
 - Settle Yellow Cab litigation and allow Administrative Hearing Officer to go forward with hearings re proper number and distribution of cabs.
 - Codify consensus reached between taxi companies, limousine companies, shuttle companies, hotel representatives and Convention and Visitors Bureau.
2. Authorize an immediate study, including expert consultation, regarding possible modifications to the City's "Certificate of Convenience and Necessity" method of regulating taxicabs.
3. Authorize an immediate study, including expert consultation, regarding how the City should appropriately address the transportation needs of persons with disabilities.

Ground Transportation Motion

Adopted August 24, 2004

I move that the City Council adopt the ordinance containing the proposed amendments to Title 16 – with the exception of Section 16.60.110 – and the proposed amendments to Section 5.71.025, titled *License Required*, and Article VI of Chapter 5.71, titled *Driver Licensing* – except for Section 5.71.415 – and defer action on other proposed amendments until after further study.

I further move that the calendar dates in Section 5.71.250, titled *License Required for Operators*, reflect that applicants must submit their application for a ground transportation vehicle driver's license within 30 days of the publication of the ordinance.