



To: Honorable Mayor William D. Euille;
Vice Mayor Allison Silberberg;
Members of City Council

Cc: Rashad Young, City Manager;
James L. Banks, City Attorney;
Richard Baier, Director, Department of Transportation and
Environmental Services

From: M. Aurora Vásquez, Co-Executive Director, Tenants and Workers United;
Alexandria Cabdrivers' Steering Committee

Date: March 8, 2013

Re: **Proposal to improve Alexandria taxicab industry structure**

PURPOSE

Create a taxicab industry that ensures quality and reliable service for riders while increasing cabdrivers' chances of making livable earnings by affording them fair opportunities to select the company with which they affiliate their skills while giving all cab companies equal opportunity to grow their fleet without also increasing the overall number of cabs operating in the city.

BACKGROUND

Between 2003 and 2005 Alexandria cabdrivers affiliated with Tenants and Workers United collaborated with the city to undertake comprehensive reform of the taxicab industry to achieve goals similar to those stated above.¹ In addition to creating economic opportunity for cabdrivers the effort was also meant to facilitate growth among the best and most dynamic cab companies as any company with a good 'business package' – such as strong marketing and reasonable stand dues – would be able to readily attract cabdrivers from among the existing workforce in order to meet increased demands for service. In short, cab companies would get to grow their fleet by vigorously competing for existing cabdrivers and their cabs not by increasing the total number of cabs operating in the city. In turn, vigorous competition between and across cab companies would lead to more robust service options for Alexandria customers.

While extensive, the changes preserved two key features: 1) the city's right to determine how many cabs operate within its borders and 2) the requirement that all cabdrivers affiliate with a company. The changes however, were meant to put an end to the city's practice of allocating

¹ At that time the city's two largest cab companies – Yellow and Diamond Cab- were under common ownership, thereby controlling the working conditions and economic opportunity of the majority of the industry's workforce. Additionally, the city did not issue an official document authorizing a car to operate as a cab. As a result, cabdrivers did not own a taxi outright. Rather, they simply owned a car that could operate as a cab so long as they remained in a cab company's good graces.

cabs among companies. Rather, individual companies were to be allowed to affiliate up to 50 percent of existing cabs. Through this lens, the distribution of the city's cabs was to be left to a combination of market forces and cab companies' ability to attract and retain its workforce. Thus, while not every company would succeed in affiliating 50 percent of all cabs, every company had an equal shot at doing so. This vision made Alexandria a national model for a progressive and balanced taxicab industry structure.

CURRENTLY

Today, the vision has been severely undermined by changes to the Alexandria taxicab code that create barriers to cabdrivers' ability to freely select the company with which they will affiliate. These barriers are particularly acute for cabdrivers who, by definition, are city-serving drivers because the airport is no longer issuing licenses.^{2/3} In turn, city-serving cabdrivers' inability to affiliate freely prevents cab companies from readily growing their fleet in response to actual or anticipated increases in demand for service. In short, the city now stands squarely between drivers and cab companies' ability to readily respond to consumer choice. The two provisions most negatively impacting the industry are the 'backfill' provisions triggered by 9-12-30(2) and the biennial movement period set forth in Section 9-12-30(a)(2) and related provisions.

The 'Backfill' Provisions

Section 9-12-30(2) gives the City Manager the absolute authority to increase the total number of cabs operating in the city whenever 10 percent of a company's drivers elect to change affiliation. It does not however, obligate the City Manager to do so. However, any new cabs so authorized must go directly to the company that lost drivers. For this reason, the law is said to offer 'backfill.' Section 9-12-30(2) states in part:

"In the event the application of this policy results in the net reduction of more than the limit set forth in Section 9-12-31(c) of any taxicab company's authorized vehicles, the city manager shall have the authority to grant the impacted taxicab company such additional authorized vehicles as to allow the company to only suffer a net reduction in authorized vehicles equal to the limit set forth in Section 9-12-31(c)."

The optional nature of Section 9-12-30(2) however, is undermined by Section 9-12-31(c) which states: *"the minimum number of authorized taxicabs for each certificate holder shall not be fewer than 10 percent less than the number authorized at the time of the biennial review"* (emphasis added). Moreover, Section 9-12-31(i)(D) states:

² City-serving cabdrivers are those cabdrivers who by definition or choice, transport riders who initiate service within the city 100% of the time. Currently there are upwards of 300 cabdrivers serving the city in this manner as airport authorities are no longer issuing airport licenses.

³ See: Appendix A.

*“The net impact on any certificate of all transfers allowed during any single biennial review process **shall not reduce** the size of any certificate holder...by more than 10 percent of the number of authorizations held at the time of the biennial review” (emphasis added).*

In practice, these provisions mean that when cabdrivers respond to market forces by changing affiliation or in the case of cab companies – when they succeed in attracting workers away from their competitors – both company and cabdrivers are penalized through what amounts to over saturation of the market. Moreover, the backfill provision does not require the City Manager to make a determination as to why workers leave their parent company in the first place. Thus, where cabdrivers leave a company in mass – such as during the predetermined movement period – due to unfair working conditions for example, the offending company will never be held accountable. Rather, it can rest comfortably knowing the city will replenish its workforce.

The negative consequences of the backfill provision have been far reaching on the one hand and almost singular in benefits, on the other. Since 2005 for instance – with Section 9-12-31 as cover – the addition of new cabs has been permissible absent parallel increases in demand for surface. In turn, this approach most benefits Yellow Cab who, as the city’s largest cab company, controls most drivers and thereby stands to experience the greatest shift in cabdriver affiliations away from it and toward its competitors. In short, while over the years the City has helped ensure Yellow Cab is able to protect its income by affiliating a fixed number of workers, city-serving cabdrivers’ income and ability to earn a livable wage has continued to diminish.

Biennial Movement Period

The annual movement period that emerged from the 2003 – 2005 reform effort, no longer exists. The annual movement period was meant to enable cabdrivers and cab companies to better negotiate their contracts in addition to better aligning themselves to/with one another in order to respond to the ebb and flow in consumer preferences and thereby, ridership demands.

Today however, drivers are only allowed to change affiliation every two years. But even then, change rarely happens because cab companies’ ability to receive drivers from their competitors has been made contingent upon outdated methods for determining service levels.

In particular, a company’s ability to grow the size of its fleet is tied to the total number of calls it logs.⁴ A part of this approach tracks dispatch calls, an approach put in place during the 2003-2005 reform effort to collect information regarding how much city-based service companies

⁴ This includes dispatched and non-dispatched trips defined as a “Documented city trip.” (See: 9-12-1(7.3)).

provide. Today this information is used to thwart the expansion of cab companies who fail to log a fixed number of ‘documented city trips.’ In turn, when cab company growth is thwarted, cabdrivers’ ability to freely select the cab company for whom they will work ceases to exist.

Lastly, the switch to a two year movement period wholly undermines drivers’ ability to ensure equitable stand dues and fair treatment because with a mere 30 days notice companies can – and some do – change the terms of their contracts leaving drivers bound by the 24 month movement period.

A SIMPLE SOLUTION

Give every cab company an equal shot at reaching its maximum operating capacity. Currently, the city takes on the responsibility of allocating its 766 cabs among the existing cab companies. Stated differently, the city is not assigning empty cabs to each company. To the contrary, because almost every cab is owned by its driver the city is assigning each cab company a fixed number of workers. The taxicab code however, allows any company to affiliate up to 50 percent of all cabs.⁵ As a result, rather than allocate cabs and workers ahead of time the city should simply give every cab company an operating certificate reflecting the same maximum operating capacity.⁶ Thereafter, while not every company will be able to operate at capacity, every company should be expected to put its best business foot forward in order to attract and retain as many cabdrivers as possible. After all, the responsibility of amassing a workforce of any size should fall squarely on the shoulders of individual cab companies and not on the city.

Growth opportunities by company

Company Name	Current Maximum Operating Size	Growth potential Max size = 383
Go Green	20	363
King Cab	54	329
VIP	65	318
White Top	110	273
Union Cab	227	156
Yellow Cab	290	93

⁵ 9-12-32(e)

⁶ At this time, the maximum operating capacity would be 383 (766/2).

HOW TO GET THERE

- **Let market forces within the city be the measure of companies' service levels and thereby, company size.** We recognize the city's interest in ensuring riders can readily connect to a cab company that is capable of providing quality and reliable service, especially those riders seeking service to and from points within the city. Because consumers will naturally align themselves with the company that best meets their needs however, the city does not need to take on the task of determining how many cabs to allocate to each company. Similarly, cabdrivers will seek to align themselves with the company(s) experiencing the strongest service demands thereby ensuring riders' needs are always met. Thus, market forces – not staff – are best suited to measure service levels and set company size. In order for this to happen however, the city should permit cabdrivers who primarily serve the city to freely transfer affiliation during a pre-determined movement period at least once a year.
- **Abandon antiquated notions calling on staff to measure companies' service to riders.** While market forces are the most natural measure of the quality and breadth of service a cab company provides, city staff has taken on the responsibility of trying to measure service levels (such as by tracking dispatch calls). Over the past decade however, with increased development around metro stations comes increased flag business between metro riders and cabdrivers who queue there making it exceedingly difficult for cab companies to track those interactions. Additionally, technology improvements and market changes have changed the ways in which riders connect with drivers. For instance, today it is not uncommon for riders to connect with drivers directly by cell phone or through independent GPS-based services such as My Taxi. Thus, while dispatch should still be required, as a mechanism for measuring service levels it is obsolete.⁷ In fact, the notion that the city must track companies' service levels is, -- in and of itself – obsolete as market forces tell the story best. Therefore the city should abandon its practice of tracking the number of trips a company provides as a measure for determining if a cab company can receive *city-serving* cabdrivers during the movement period.
- **Eliminate all 'backfill' provisions.** While it is appropriate for the city to determine how many cabs can operate within its borders, the city ought to give every company equal opportunity to reach its maximum operating capacity. As a result, the city must not only stop the practice of pre-allocating its 766 cabs among companies, it must also eliminate

⁷ We are not opposed to the city monitoring service levels for other reasons, such as to determine whether the city needs more cabs, to identify best practices where one company's service levels exceed others, etc.

all ‘backfill’ provisions. Backfill not only allows cab companies to circumvent responsibility for the reason(s) its workers leave, it also leads to oversaturation of the market which undermines economic opportunity for cabdrivers and penalizes companies that succeed in attracting workers away from its competitors.

- **Reinstate the Annual Movement Period**

As of date, there are upwards of 300 cabdrivers who do not – nor can they – serve the airport as the airport is no longer issuing licenses.⁸ Cab companies seeking to grow their fleet by attracting these city-only drivers to their ranks should be allowed to do so freely during an annual movement period as proper alignment of city-serving cabdrivers compliments the City’s interest in ensuring robust city-based service. Moreover, these companies should not be subject to the ‘documented city trip’ requirements because: 1) as in all industries, workers and business owners should be able to readily align based on actual or anticipated service demands; and 2) riders have a clear right to direct their consumer dollars to the cab company of their choosing and natural alignment of cabdrivers and cab companies ensures better response to such choices. On the other hand, where a cab company seeks to grow its fleet by receiving cabdrivers who primarily serve the airport, such company(s) should continue to be subject to ‘documented city trip’ requirements as realignment of airport cabdrivers does not strengthen the city’s interest in ensuring city-based service.

INACCURATE INTERPRETATIONS OF STATE LAW SHOULD NOT TRUMP COMMON SENSE APPROACHES TO INDUSTRY REGULATION

Over the past several months staff has asserted that recent revisions to state-level taxicab regulations require the city to keep every cab company at its current operating size.⁹ Stated differently, it is staff’s position that the city is obligated to backfill. The language in question states:

*The governing body may promulgate such reasonable regulations to further the provisions of this section...[h]owever, such ordinances and regulations shall not...authorize the governing body to reduce the number of taxicabs **permitted to be operated** by a taxicab operator or a holder of a certificate issued under such ordinance”* (emphasis added). – Code of Virginia, Section 46.2-2067

In Alexandria, where almost all cabs are owned by the cabdrivers themselves, staff’s interpretation is the equivalent of asserting that as cabdrivers leave one company for another or simply because they no longer want to be a cabdriver, the city is obligated to *find and assign*

⁸ See Appendix A.

⁹ There is a ‘for cause’ exception.

the company replacement workers in order to ensure the company remains at its current size. This position was set forth in Deputy City Attorney Spera's August 22, 2012 memo to then Vice Mayor Donnelly:

*"I think under the new state code section, we would be obligated to replace the transferred authorizations from the complaint companies with new ones those companies would be free to fill, because I do not think driver-initiated transfers pursuant to our City Code would constitute 'cause' for reducing a company's fleet size under the new state Code section."*¹⁰

Clearly, this interpretation is erroneous because the state legislature could not have intended to shelter cab companies from losing workers to natural attrition. Moreover, under staff's position that the city must backfill when cabdrivers leave a company without 'cause' (i.e. through the movement period), should 100 workers leave company X tomorrow and should there not be 100 new cabdrivers available to replace them, the city would have to obligate 100 people to become cabdrivers who work for company X as anything less would amount to a violation of the backfill requirement. Common sense dictates however, that the state legislature could not have intended to require the city to engage in forced labor.

State Law gives Alexandria Absolute Right to Cap the Number of Cabs Operating in the City

Lastly, every analysis shared to date has wholly ignored the first part of Section 46.2-2067. Part A of the law however, cannot be bifurcated from the whole especially when it makes clear that the city of Alexandria has the absolute right to cap the total number of cabs operating in the city. The pertinent language in part A states:

*"It is the policy of this Commonwealth, based on the public health, safety and welfare, to assure safe and reliable privately operated taxicab service for the riding public...and in furtherance of this policy, it is recognized that **it is essential that counties, cities, and towns be granted the authority to reasonably regulate such taxicab service as to the number of operators and the number of vehicles that shall provide service...even though such regulations may have an anti-competitive effect on such service by limiting the number of operators and vehicles within a particular jurisdiction.**"*
(emphasis added)

Because this paragraph gives Alexandria the absolute right to cap the total number of cabs operating in the city it cannot be the case that in part A the legislature grants this absolute right only to have part B undermine it by obligating the city to backfill a company every time

¹⁰ *Recent change in state taxicab laws*, Memorandum, City of Alexandria, Virginia, Christopher P. Spera, Deputy City Attorney (August 22, 2012).

cabdrivers leave. Moreover it is common knowledge that when interpreting a law it must be presumed that the legislature was fully aware of existing law and the law's intent. Therefore, it cannot be that the legislature intended to undermine itself by preserving the city's right to cap the number of cabs on the one hand and then negating it on the other. To the contrary, because in choosing to amend part B the legislature did not also choose to eliminate the city's absolute right to cap the total number of cabs operating within its boundaries, part B must be read so as to complement the plain language of part A.

Furthermore, it is also the case that when interpreting law such interpretation must be free of *perceived intent*. Rather, the language of the law should be given a plain and natural meaning so as to avoid unreasonable results. When viewed through a plain-meaning lens therefore, to avoid an unreasonable result part B must be read so as to compliment the language in part A.

Additionally, a plain meaning read of the legislature's statement that a jurisdiction cannot – without cause – reduce the total number of cabs a company is *permitted to operate* speaks clearly to a company's maximum operating capacity as determined by the city. Giving a cab company permission to operate up to a fixed number of cabs however is not the same as promising them they will always operate at capacity. The notion that the city is obligated to ensure companies always operate at capacity, is an interpretation wholly outside the plain meaning of what it means to give a company permission to operate.

What is more, in summarizing the bill that produced the amendments to Section 46.2-2067(B) the legislature's intent to protect the overall number of cabs operating in a jurisdiction – as distinguished from affording protections to individual companies – was made clear. For instance, the summary of the bill as passed by the Senate says: *Disallows counties, cities and towns from reducing the number of cabs that are permitted or authorized under the local ordinance except for non-use or cause as defined by the ordinance*. Clearly this speaks to the total number of cabs operating in the city not to how many cabs each company in fact operates.

STATE-LEVEL TAXICAB REGULATIONS SUPPORT OUR GOALS

The state law does not extend protections to individual companies when it comes to how many cabdrivers they succeed in affiliating. Rather, the law plainly seeks to protect the overall number of cabs that have been authorized to operate in the city and thereby, the overall number of cabs individual companies can *seek* to affiliate.¹¹

¹¹ See e.g. Summary as Passed Senate: *Disallows counties, cities and towns from reducing the number of cabs that are permitted or authorized under the local ordinance except for non-use or cause as defined by the ordinance*.

ATTACHMENT 2

This goal makes sense because it would be unfair for companies to invest in infrastructure believing they have a shot at a portion of 766 cabs, only to have the city reduce that number without cause. Therefore, our position that every cab company should have the same maximum operating capacity and be left to do its best to affiliate as many as 383 of the city's existing cabs, squares firmly with the state law's purpose.

In fact, under this approach the city would never run afoul of the proscription against adopting ordinances or regulations that reduce the total number of cabs a company is permitted to operate as it would never have to reduce companies' maximum operating capacity.¹² To the contrary, the total number of cabs a company is permitted to operate would remain constant and market forces – not the city – would determine if it operates at capacity.¹³

CONCLUSION

Freedom of movement for cabdrivers who primarily serve the city ensures cab companies that have or anticipate an increased demand in service, can better meet riders' needs. Cab companies can however, meet consumer demand without increasing the overall number of cabs operating in the city. Rather than increasing the overall number of cabs operating in the city rider needs can be met and better treatment of drivers achieved, by ensuring the distribution of cabs is readily able to mirror consumer demand. In turn, this requires the city to abandon its practice of predetermining how many cabs each company should have. Instead, market forces should determine how cabs that primarily serve the city are distributed. Through this lens, cab companies should be afforded equal opportunity to affiliate up to 50 percent of the city's existing cabs and while not every company will be able to operate at maximum capacity, those with the best business practices and policies as well as the highest service demands will rise to the top. State law supports this approach because the law seeks to prevent the city from shrinking the total number of cabs operating within its borders, absent cause. In turn, this proscription should encourage cab companies to put their business foot forward in order to maximize their ability to affiliate as many of the authorized cabs as possible.

¹² Except of course, where the overall number of cabs operating in the city have to be reduced for cause, so too will every company's maximum operating capacity have to be reduced as no company can affiliate more than 50 percent of all cabs.

¹³ Of course, the city would retain its right to reduce numbers 'for cause.'

Appendix A

From: Rob Krupicka <Rob.Krupicka@alexandriava.gov>
Date: June 22, 2012 10:17:04 AM EDT
To: Gabriel Rojo <grojo@tenantsandworkers.org>
Subject: Fwd: Airport Taxi Information

Begin forwarded message:

From: Rose Boyd <Rose.Boyd@alexandriava.gov>
Date: June 21, 2012 3:20:02 PM EDT
To: Joseph Seskey <Joseph.Seskey@alexandriava.gov>
Cc: Rob Krupicka <Rob.Krupicka@alexandriava.gov>, Elizabeth Jones <Elizabeth.Jones@alexandriava.gov>, Eleonore Cox <Eleonore.Cox@alexandriava.gov>, Linda Owens <Linda.Owens@alexandriava.gov>, City Council <CityCouncil@alexandriava.gov>
Subject: RE: Airport Taxi Information

Thanks. I am forwarding this response to Councilman Krupicka. Rob, as noted earlier, the Hack Office at Reagan National licenses cabs who service that facility. The information below was provided by the Airport Hack Office.

From: Joseph Seskey
Sent: Thursday, June 21, 2012 2:18 PM
To: Rose Boyd
Subject: RE: Airport Taxi Information

Here is the best information that they could provide at this time.

1) How many Airport Licenses with Alexandria cab drivers?

A. Around + or - 450

2) What is the total number of taxi licenses given out by the airport?

A. They have about 1700 active licensed cabs

3) Do we know the number of airport licensed drivers at each company?

A. According to the Airport the April 17 list has not changed much. It will take them a while to provide an updated list.

King -55

Union-222

ATTACHMENT 2

VIP-79

Yellow-29

White Top-65

4) How many airport licenses given out each year?

A. None. They are not currently issuing any licenses. They renew the active ones once annually.