

★ Roll Call Number

Agenda Item Number

54C

Date October 25, 2010

Communications regarding applications for Certificate of Public Convenience and Necessity to operate a taxicab service.

Moved by _____ to receive and file.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

540

CITY ATTORNEY

Bruce E. Bergman

DEPUTY CITY ATTORNEYS

Mark Godwin
Lawrence R. McDowell
Kathleen Vanderpool

ASSISTANT CITY ATTORNEYS

Angela T. Althoff
Roger K. Brown
Ann M. DiDonato
David A. Ferree
Glenna K. Frank
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Michael F. Kelley
Vicky L. Long Hill
Steven C. Lussier
Katharine J. Massier
Carol J. Moser
Douglas P. Philip



October 21, 2010

HONORABLE MAYOR AND MEMBERS
OF THE DES MOINES CITY COUNCIL

RE: Taxicab Provisions

At the October 11th meeting the City Council requested information on City ordinance provisions relating to issuance of a taxicab certificate of public convenience and necessity on a probationary basis and to the suspension or revocation of an issued certificate. Municipal Code Section 126-186(b) provides that:

- (b) If the City Council finds that further taxicab service in the city is required by the public convenience and necessity and that the applicant is fit, willing, and able to perform such public transportation and to conform to provisions of this article (taxicabs), then the City Council shall direct the Traffic Engineer to issue a certificate...otherwise the application shall be denied.

In accordance with the above, following public hearing the City Council must either direct the issuance of the certificate of public convenience and necessity based on the appropriate findings or deny the application for such certificate. The Municipal Code does not provide for the issuance of a certificate of public convenience and necessity on a probationary basis.

Municipal Code Section 126-190 addresses the potential suspension or revocation of an issued certificate of public convenience and necessity. This section provides:

- (a) A certificate may be revoked or suspended by the city council if the holder has:
 - (1) Violated any of the provisions of this article (taxicabs). A certificate may be suspended if the certificate holder or any of the certificate holder's taxicab operators have a combined total of three or more convictions of violations of this article in an 18-month period, and may be revoked if the certificate holder or any of the certificate holder's taxicab operators have a combined total of five or more convictions of violations of this article in an 18-month period; or

- (2) Discontinued operations for more than ten days unless such discontinuance is caused by a labor dispute; or
 - (3) Violated any provision of this Code or ordinance of the city, or any law of the United States or the state, the violation of which is found by the city council to so affect the public safety as to prove the holder not a proper person to offer public transportation.
- (b) Prior to suspension or revocation as provided in this section, the holder shall be given three days written notice by the city clerk of the proposed action to be taken and shall be afforded an opportunity to appear before the city council and be heard.

In accordance with the above, a certificate of public convenience and necessity may be suspended or revoked following public hearing if there has been a requisite number of successfully adjudicated violations by the certificate holder or its drivers of the Code sections governing the operation of taxicabs, if the certificate holder has discontinued operations or if the certificate holder has violated laws that are determined to affect the public safety.

Ordinance requirements relating to taxicab operations that a certificate holder and its operators must comply with include mandatory condition of vehicles, proper operation of taximeters, maximum and minimum fare rates, proper charging and payment of rates, limitations on the solicitation of passengers, prohibitions on driver conduct, minimum standards for driver appearance and conduct, conduct with respect to taxicab stands, and business requirements for the certificate holder including the handling of calls, dispatching, reporting and recordkeeping.

Respectfully submitted,



Lawrence R. McDowell
Deputy City Attorney

54C

CONNOLLY O'MALLEY LILLIS HANSEN OLSON LLP

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October 19, 2010

Mayor and Members of the
Des Moines City Council
c/o Larry McDowell
Assistant City Attorney
401 Robert D. Ray Dr.
Des Moines, IA 50309

FILED
2010 OCT 20 AM 9:37
CITY CLERK
DES MOINES, IA

Re: Request for Deferral - City Cab and United Cab Certificate of Need Consideration

Honorable Mayor and Members of the Council:

On behalf of our client, Trans Iowa L.C., we are requesting deferral of consideration of this matter from your agenda of Monday, October 25 until your meeting of November 8, 2010.

The reason for this request is to allow for submission of report by the independent consultant we have selected to evaluate the impact of granting certificates to smaller cab companies to enter into the Des Moines market.

Thank you for your consideration.

Sincerely,



William J. Lillis
For the Firm



Christopher R. Pose
For the Firm

CRP:dj

cc: Sam Kreamer
Rick Howe

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October 18, 2010

Mayor and Members of the
Des Moines City Council
c/o Larry McDowell
Assistant City Attorney
401 Robert D. Ray Dr.
Des Moines, IA 50309

FILED
2010 OCT 20 AM 9:37
CITY CLERK
DES MOINES, IA

Re: Taxi Cab Licensure Applications of City Cab and United Cab - Additional points of resistance by Trans Iowa L.C.

Honorable Mayor and Members of the Council:

On behalf of Trans Iowa L.C. we are submitting the following further points of information as you consider whether Certificates of Convenience and Necessity should be denied to City Cab or United Cab.

1. City Rules Supersede State Regulation. Representatives from United Cab indicated that it had been issued an IDOT approval to operate a taxi cab service inside and outside of Des Moines. This cannot be the case due to Iowa Code Section 325A.2, (2) of the Iowa Code. By virtue of this section as amended this year, the City of Des Moines' imposition of additional and more restrictive regulations or requirements for taxi cabs is permissible. You may want to ask Assistant City Attorney Steve Lussier about the impact of this statutory amendment on the existing Des Moines regulatory scheme.

2. Probationary Period of Certificate. We find nothing in Chapter 126 of the City Code which would allow the City Council to grant a certificate to a taxicab service on a probationary basis.

3. Lack of Enforcement. By admission of City transportation officials and also the Des Moines Police, enforcement of the taxi licensure provisions after a license has been granted are difficult. Our client had made previous requests of the City to enforce the ordinance against other violators and this has not been completed.

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CONNOLLY O'MALLEY LILLIS HANSEN & OLSON LLP

October 18, 2010

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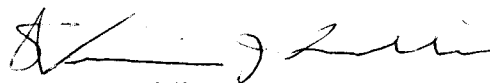
4. Number of Cabs. We can find no provision in Chapter 126 of the which limits the amount of cabs that can be put in service in a given year. In other words, while the application does require a minimum number of cabs, there is nothing to indicate that that number of cabs cannot be increased by the applicant.

5. Combination of Businesses. We share the Council's suspicion that the two pending applications are somehow linked and are not independent. For that reason, we fear that granting one of the applications will result in the parties combining their efforts to form one taxi cab company which will not provide benefits or public convenience to the City of Des Moines.

6. Independent Consultant. Several council members expressed the desire to receive input from an independent consultant on the impact of smaller taxi cab companies on the taxi cab service within the metropolitan Des Moines area. Our client will be obtaining and submitting a study from Joseph Rubino and will submit this to the Council.

We submit this information and your further consideration of the pending applications. Again, Trans Iowa L.C. resists the granting of any further applications as they would be contrary to public convenience and necessity. Further, at least one of the applicants has indicated by their conduct a propensity to violate the ordinance provisions prior to licensure being granted.

Sincerely,



William J. Lillis

For the Firm



Christopher R. Pose

For the Firm

CRP:dj

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KREAMER LAW FIRM, P.C.

Attorneys and Counselors at Law

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October 20, 2010

To the Mayor and the City Council of Des Moines, Iowa
City Hall
400 Robert D. Ray Drive
Des Moines, Iowa 50309

And VIA e-mail to cityclerk@dmgov.org

In Re: City Cab, LLC
Our File No. 43044

Honorable Mayor and City Councilpersons:

The purpose of this letter is to urge you to deny the requested deferral of Council Action on City Cab's application, and to urge you to reject any purported "report" offered by Trans Iowa, L.C.

FACTS

1. City Cab timely filed its Application, and the date for the public hearing was fully and properly publicized. On the publicized date (September 27) a public hearing was in fact held on the applications of BOTH City Cab and United Cab. However, on September 27th the Council voted to "defer" action on the applications until its subsequent meeting (October 11) with the understanding that at the end of this second "public hearing" this matter would be considered closed; EXCEPT FOR submission by the APPLICANTS of specifically requested information.
2. The October 11th public hearing lasted over 2 hours and Trans Iowa made substantial arguments at that time.

REASONS TO REJECT REQUESTS OF TRANS IOWA, L.C.

1. Trans Iowa, L.C. has had MORE than sufficient time to prepare and present its arguments. It has had not one, *but two*, opportunities to make its presentations, and either did, or could have, availed itself of the opportunity to make its arguments on those occasions.

2. It places an undue burden on City Cab as an applicant to prepare for, and sustain, a THIRD public hearing when only ONE is required by Ordinance.
3. It is an undue economic hardship for City Cab as an applicant to have to hire an "independent consultant" to issue a "report" refuting the claims of Trans Iowa. Although City Cab hopes that its business will require them to expand in the future, at this point they plan to have SIX (6) cabs, which will be primarily driven by refugees from various African countries. City Cab believes that their entry into the Des Moines market will have a positive impact to taxi service to the City of Des Moines, but they simply are not in an economic position to hire an "independent consultant" to refute claims of Trans Iowa's "independent consultant". City Cab does NOT want, and simply cannot afford, a "war of experts" on this matter. Simply stated, the owners, drivers and employees of City Cab are trying to earn a living by meeting the need of their customers INCLUDING those individuals who want to use their services on trips originating within the City of Des Moines.
4. As stated above, the clear and unequivocal position of the City Council at the October 11th meeting was that the public hearing was "closed" except for information requests of the applicants (City Cab and United Cab) from City Staff. City Cab received an information request with less than a 5 day deadline, and supplied the requested well within the required time frame. City Cab feels it is losing revenue with every day it is unable to assist customers within the City of Des Moines.

City Cab, LLC hopes that the City Council will act to approve its application at the meeting scheduled for October 25, and looks forward to the opportunity to serve customers in the City of Des Moines.

Sincerely,



Samuel I. Kremer, J.D., C.P.A.

CC: Ako Abdul-Samad, State Representative via e-mail and regular mail
Rick Howe via e-mail
Chris Pose/ Bill Lillis via e-mail