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ORDINANCE NO. 113-2005

AMENDING ORDINANCE NO. 90-2003 ENTITLED "TO ESTABLISH A TAXI AND LIMOUSINE COMMISSION AND TO PROVIDE FOR THE REGISTRATION OF FOR-HIRE VEHICLES"

APPROVED AS PER CHARTER

Deputy County Attorney

Passed by Nassau County Legislature
OCT 17 2005
for 18: votes against 0: Abstained 0: recused /
one an ordinance on **OCT 24 2005**
the approval of the Deputy County
Executive acting for the County Executive

Section 1. Ordinance No . 90-2003, entitled "To Establish a Taxi and Limousine Commission and to Provide for the Registration of For-Hire Vehicles," is hereby amended to read as follows:

WHEREAS, in May 2003 the Nassau County Legislature passed a home rule message requesting that New York State authorize Nassau County to regulate the registration of taxicabs and limousines; and

WHEREAS, on August 26, 2003, the Governor of the State of New York signed Chapter 430 of the Laws of 2003, amending the General Municipal law and authorizing the County of Nassau to regulate the registration of taxicabs and limousines by Ordinance; and

WHEREAS, the many unlicensed passenger vehicles operating for-hire within Nassau County pose a danger to County residents because these vehicles may be uninsured and unsafe; and

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WHEREAS, this ordinance provides for the registration by Nassau County of for-hire vehicles including properly licensed taxicabs, limousines, commuter vans, and private livery vehicles, and prohibits the operation of any unregistered vehicle as a taxicab, limousine, commuter van or private livery vehicle; now, therefore,

BE IT ORDAINED BY THE COUNTY LEGISLATURE OF NASSAU COUNTY, as follows:

§1. Definitions.

(a) "Base station" shall mean the location from which a for-hire vehicle is dispatched.

(b) "Commissioner" shall mean the Commissioner of Consumer Affairs.

(c) "For-hire vehicle" shall mean a vehicle carrying passengers for hire including, but not limited to, a taxicab, limousine, commuter van or private livery vehicle, but shall not include a bus operating along a fixed route nor any vehicle over which the County does not have jurisdiction pursuant to state or federal law.

(d) "Operate" shall mean to pick up or drop off passengers.

(e) "Permit to operate" shall mean to own or lease the base station from which a for-hire vehicle is dispatched.

(f) "Person" shall mean an individual, a partnership, an unincorporated association, a corporation or any other legal entity.

(g) "Primary Owner" shall mean the vehicle owner with the predominant financial interest in such vehicle.

§2. Registration of For-Hire Vehicles. No person may operate or permit to be operated a for-hire vehicle in the County of Nassau without a certificate of registration

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for such vehicle issued by the Nassau County Office of Consumer Affairs. Such certificate of registration shall be issued only: (i) to for-hire vehicle owners, taxi medallion owners and base station owners who hold taxicab, limousine, or private livery vehicle licenses issued by another municipality, in addition to any license required by the state of New York; or (ii), pursuant to rules recommended by the Commission and adopted by the Office of Consumer Affairs as authorized by subdivision d of section 6 of this Ordinance, to persons who operate for-hire vehicles outside of the jurisdictions of such municipalities. An owner, taxi medallion owner and any base station owner shall jointly register with the County each and every for-hire vehicle on an annual basis. Every for-hire vehicle registered shall conspicuously display a County registration certificate within the view of the passengers therein and such registration certificate shall include a registration number issued by the Nassau County Office of Consumer Affairs, a photograph of the operator together with his or her name and the name, address and telephone number of the base station owner, where the vehicle is operated from a base station. Every for-hire vehicle registered shall also be issued a registration sticker which must be displayed as designated by the rules and regulations of the Taxi and Limousine Commission established herein and which shall indicate the purposes for which the vehicle is registered. No person may operate a for-hire vehicle registered by Nassau County in a manner not authorized by such registration. Every for-hire vehicle registered by the County that is also licensed by a municipality within the County shall, to the extent practicable, be issued Nassau County Taxi and Limousine Commission license plates, which, once issued, are required to be displayed.

§3. Fees. All initial for-hire vehicle registration fees shall be fixed at three hundred (\$300.00) dollars per vehicle and shall be valid for a period of one (1) year from the date of issue. Annual renewal fees for the for-hire vehicles shall be fixed at a rate of two hundred fifty (\$250.00) dollars per vehicle.

§4. Exemptions.

(a) A person who possesses a for-hire vehicle license or registration issued by a municipality within the County of Nassau shall be exempt from all but five (\$5.00) dollars of the registration fees set forth in section 3 of this Ordinance.

(b) A person who possesses a for-hire vehicle license or registration issued by a jurisdiction outside the County of Nassau that reciprocates with the County in permitting for-hire vehicles registered by Nassau County to operate within such jurisdiction without the necessity of obtaining a license from such jurisdiction or upon payment of no more than a five (\$5.00) dollar registration fee shall be exempt from all but five (\$5.00) dollars of the County's registration fees.

(c) New York City medallion taxicabs that are permitted to accept hails from passengers in the street within New York City and which are not equipped for radio dispatch shall be exempt from the provisions of this Ordinance.

§5. Penalties. Any person who violates any provision of this Ordinance shall be guilty of a Class A misdemeanor. In addition to the penalties provided by subdivision 1 of section 80.05 of the New York State Penal Law, any such person will be subject to the following civil fines: for a first time violation, by a fine of not less than three hundred (\$300.00) dollars but not more than \$1,500.00, for a second violation committed within five (5) years of first violation, by a fine of not less than six hundred (\$600.00) dollars

but not more than three thousand five hundred (\$3,500.00) dollars; for a third violation and each subsequent violation committed within five (5) years of two prior violations, by a fine of at least one thousand (\$1,000.00) dollars but not more than five thousand (\$5,000.00) dollars. Each violation of this Ordinance shall be deemed to be a separate offense.

§6. (a) A police officer or authorized officer, employee or agent of the Office of Consumer Affairs may, upon service on the operator of a vehicle of a notice of violation for operating without registration required by section 2 of this Ordinance, seize and impound such vehicle. The operator shall surrender the keys to the vehicle to the seizing police officer or authorized officer, employee or agent of the Office of Consumer Affairs and the operator shall disable any engine cut-off mechanisms, if present in the vehicle. A vehicle seized pursuant to this subdivision shall be delivered into the custody of the Office of Consumer Affairs.

(b) A person from whom a vehicle has been seized and impounded pursuant to this section shall receive notice at the time of such seizure and by certified mail, return receipt requested, as soon thereafter as practical informing such person how and when the vehicle may be reclaimed and whether the vehicle is subject to a civil forfeiture proceeding pursuant to subdivision (f) of this section. In the event that the person from whom the vehicle was seized is not the registered owner of the vehicle, separate notice shall be provided by certified mail, return receipt requested, to the registered owner of the vehicle. Notice shall also be provided to any lien holder. For purposes of this section, the term "lien holder" shall mean any person, corporation, partnership, firm, agency, association or other entity who at the time of an seizure pursuant to this section has a

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financial interest recorded as a lien with the department of motor vehicles of New York state or any other state, territory, district, province, nation or other jurisdiction, except that "lien holder" shall not mean an entity that leases vehicles pursuant to a written agreement subject to the New York state personal property law or the uniform commercial code. Nothing in this provision shall be construed to prevent a lien holder whose lien is not so recorded from intervening in any action or proceeding under this section.

(c) A vehicle seized and impounded pursuant to this section may be released prior to the hearing provided in section 8 of this Ordinance upon the posting of an all cash bond in a form satisfactory to the Commissioner in an amount sufficient to cover the maximum fines or civil penalties which may be imposed for the violation underlying the impoundment and all reasonable costs for removal and storage of such vehicle; provided, however that such release shall be conditioned on presentation of proof of ownership or authorization from the owner of the vehicle as ownership is defined by section 388 of the vehicle and traffic law.

(d) Following an adjudication that has resulted in a determination that the vehicle was not used in connection with a violation of section 2 of this Ordinance, the Commissioner shall order the immediate release of the vehicle. In the event that an adjudication results in a determination that the vehicle was used in connection with such a violation, release of such vehicle may be obtained upon payment of all applicable fines and civil penalties and all reasonable costs of removal and storage and upon proof of ownership as provided in subdivision (c) of this section.

(e) Notwithstanding the provisions of subdivisions (c) and (d) of this section, no person shall obtain release of a vehicle unless and until such person submits an application for registration, or reinstatement of registration, as appropriate, to the Commissioner in the form and containing the information required by the commissioner; provided, however, that such vehicle may be released to a person who has not previously been found to have violated the registration requirement of section 2 of this Ordinance and who attests in an affidavit that he or she does not normally operate the vehicle in Nassau County, will not so operate the vehicle in the future and does not, therefore, wish to register with the County. Notwithstanding the provisions of this section, in the event that the owner of the vehicle is not the person who was found to be in violation of the provisions of section 2 of this Ordinance, such owner may obtain release upon payment of fines and penalties and reasonable costs of removal as provided herein and upon execution of a sworn statement, subject to the provisions of the penal law relative to false statements and satisfactory to the Commissioner, that he or she will not permit the person who has violated such provisions to operate the vehicle in violation of section 2 of this Ordinance.

(f) (i) Notwithstanding any other provision of this Ordinance, the County of Nassau may, after notice to the operator, owner and lien-holder, if any, commence a civil action for forfeiture to the County in the event that release of a vehicle seized pursuant to this section has not been obtained within thirty (30) days following an adjudication that has resulted in a determination that operation of the vehicle has been in violation of section 2 of this Ordinance because there has been no application for registration nor

submission of an affidavit, as provided in this subdivision, attesting that the vehicle is not ordinarily operated within Nassau County.

(ii) In addition to any other fine, penalty or sanction for violation of section 2 of this Ordinance, the County of Nassau may commence a civil action for forfeiture to such county of any vehicle where there is no valid license from another jurisdiction to operate a for-hire vehicle and the vehicle is operated by a person who has been found on at least two prior occasions within any five year period that commences after the effective date of this Ordinance to have engaged in unregistered activity in violation of section 2 of this Ordinance and each such determination has included findings that a vehicle was used in connection with such violations.

(iii) The interest of a lien holder in such property shall not be subject to forfeiture pursuant to this subdivision, provided, however, that this provision shall not be construed to entitle a lien holder to more than the outstanding balance of the lien.

(g) The County may, at any time subsequent to the commencement of a forfeiture proceeding, apply to the court, after having provided notice as required to the persons or entities set forth in subdivisions (a) and (e) of this section, for a prompt hearing to request the court to take measures to protect the public from unregistered for-hire vehicles and to protect the vehicle from destruction or sale during the pendency of the forfeiture proceeding. At such hearing the court may authorize the custody of the vehicle by the County, or other such appropriate measures, including but not limited to an order prohibiting the use of the vehicle, the posting of a bond or an order restraining the sale or transfer of title of the vehicle. The hearing shall take into consideration, but not be limited to: (i) the existence of probable cause for the underlying seizure; (ii) the

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likelihood of success on the merits of the forfeiture action; and (iii) determinations of unregistered for-hire vehicle activities within the past five years.

(h) Notice pursuant to this section to an owner or lien holder shall be to the address recorded with the Department of Motor Vehicles by certified mail, return receipt requested.

§7. Nassau County Taxi and Limousine Commission.

(a) A Nassau County Taxi and Limousine Commission is hereby established. The County Executive shall appoint, subject to approval by the Legislature, seven (7) members to serve at his or her pleasure for a term expiring at the conclusion of the year 2007. Such appointments shall include: an officer or employee of the Office of Consumer Affairs; representatives of taxi or limousine business coalitions or associations, not more than two members to be appointed from any coalition or association; and a representative recommended by the Nassau County Village Officials Association. Each Town Supervisor and each Mayor of a city in Nassau County shall also appoint a member to serve at his or her pleasure. Members shall not be entitled to any compensation but shall be entitled to reimbursement for ordinary and reasonable expenses incurred while conducting the business of the Commission. All requests for reimbursement shall be approved by the Commissioner who shall make a final determination as to what expenses are ordinary and reasonable.

(b) The Commission shall meet at the Nassau County Office of Consumer Affairs as often as is necessary to conduct Commission business, but no less than every other month.

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(c) The Commission shall recommend any rules and regulations needed to effectuate the purpose of this Ordinance to the Commissioner for adoption by the Office of Consumer Affairs, and the Commissioner may adopt all rules and regulations necessary to effectuate the purposes of this Ordinance.

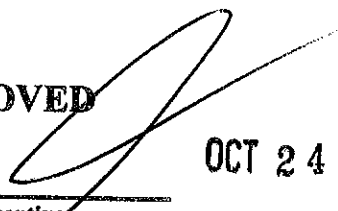
§8. Enforcement. This Ordinance shall be enforced concurrently by the Police Department and the Office of Consumer Affairs. The Office of Consumer Affairs shall be empowered to issue notices of violation and the Police Department shall be empowered to issue tickets for violations of this Ordinance. A copy of any ticket issued by the Police Department shall be promptly forwarded to the Office of Consumer Affairs and shall also serve as a civil notice of violation. Upon receipt of a copy of any such ticket, the Office of Consumer Affairs shall mail correspondence to the recipient of the ticket indicating the date, time and location of a civil hearing on the alleged violation, which date shall be no later than five business days from the date of the notice of violation in any case in which the vehicle has been seized. A hearing shall be held before a hearing officer designated by the Commissioner, a record of the hearing shall be created, and the hearing officer shall make a determination on the violation and levy fines, where appropriate, at the conclusion of the hearing. All such determinations may be appealed to the Commissioner by submitting, within five business days of the hearing officer's determination, a written statement of appeal detailing the grounds on which the appeal is based. The Commissioner shall then issue a final determination in writing. In any case in which a vehicle has been seized, the determination shall be made within five days of the date that the statement of appeal is received. The Office of Consumer Affairs shall receive payments for all fines.

§9. Separability

If any part of or provision of this Ordinance or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Ordinance, or the application thereof to other persons or circumstances.

§ 10. This Ordinance shall take effect immediately.

APPROVED



County Executive

OCT 24 2005

DEPUTY CTY. EXEC.
ANTHONY CANCELLIERI

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