

## FREQUENTLY ASKED QUESTIONS

About the NYCPOA and the lawsuit regarding Local Law 19 (the new pedicab law) and DCA regulations

Prepared by NYCPOA

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1. What's happening now with the new Pedicab Law? Wasn't it supposed to be effective September 20, 2007?
  - ▶ While the Pedicab Law and the accompanying regulations from the Department of Consumer Affairs ("DCA") were supposed to go into effect on September 20, 2007, the law and regulations were placed on hold by a lawsuit brought by the NYCPOA. As such, the law and regulations will not be in effect until the injunction in the lawsuit is lifted.
2. Does that mean there is no law governing the operation of pedicabs on NYC streets?
  - ▶ Only laws generally governing traffic apply to pedicabs at the moment. No special laws are in effect.
3. Who filed the lawsuit?
  - ▶ The New York City Pedicab Owners Association, along with three individual plaintiffs who were included to ensure "standing" to bring the suit. The attorneys handling the lawsuit are acting under the sole direction of the NYCPOA.
4. What is the NYCPOA anyway?
  - ▶ The NYCPOA was founded in 2005 to offer responsible owners the opportunity to band together and affect positive change for the local pedicab industry. It was inspired in part by the success of the London Pedicab Operators Association (LPOA). The objectives of the New York City Pedicab Owners' Association, a 501(c)6 non-profit corporation, are as follows:
    - Encourage pedicab owners to run their operations in accordance with the agreed Code of Practice for Pedicab Owners;
    - Lobby New York City to regulate our industry in a workable manner;
    - Represent the interests of pedicab owners;
    - Ensure the safety, sustainability, and integrity of pedicab transportation;
    - Ensure the pedicab industry maintains positive reputations with each stakeholder in the street of New York City (including customers, road users, pedestrians, police, NYCPOA members, drivers, and legislators);
    - Assist in obtaining group insurance at a competitive price;
    - Foster the expansion of the industry;
    - Educate the public on the benefits of our industry; and
    - Train and monitor our drivers.

NYCPOA membership remains open to responsible pedicab owners who are committed to the achievement of the objectives listed above.

5. Why was the lawsuit filed?

- ▶ The lawsuit was filed to block three provisions of the DCA's regulations that are inconsistent with the Pedicab Law itself. Those three provisions involve:
  - (1) DCA allowing non-pedicab owners to apply for pedicab licenses and plates even though the Pedicab Law limits license and plates to pedicab owners;
  - (2) DCA allowing owners of 1 pedicab to apply for up to 30 pedicab plates even though the Pedicab Law only allows owners to apply for plates for pedicab they presently own, but no more than 30 (so, for example, under the Law, if you own 3 pedicabs you can apply for up to 3 plates); and
  - (3) DCA allowing person to use traffic tickets as proof of their operation of a pedicab even though the Pedicab Law's focus on safety would not permit DCA to do so.

6. Are there aspects of the new Pedicab Law that the lawsuit is not seeking to overturn? If so, why?

- ▶ The lawsuit is not challenging any portions of the Pedicab Law itself. There are two reasons for this. First, with regard to most portions of the Law, no legitimate legal grounds exist for having the law overturned. Second, with regard to specific portions of the Law that are clearly illegal (such as the power given to the NYPD to unilaterally ban pedicabs from certain city blocks, which violates the City Charter), court rules will not permit us to bring a lawsuit until the NYPD actually attempts to use the illegal power.

7. Why would the city seek to limit pedicabs anyway to just 325? Who came up with that number?

- ▶ While different theories have been posited as to where the 325 number came from, regardless of the basis given, the number is without justification.

8. What is the lawsuit seeking to change or prevent from happening?

- ▶ In short, the lawsuit is seeking to force DCA to re-write the portions of its regulations that exceed DCA's authority under the Pedicab Law. Those provisions, discussed in #5 above, make the bad Pedicab Law even worse.

9. Can I get a copy of the lawsuit somewhere?

- ▶ Yes. You can get a copy of all the lawsuit's materials at the Manhattan Supreme Court building, which is located at 60 Centre Street. Bring a photo identification to get into the building and a lot of quarters for the copy machine! The name of the case is New York City Pedicab Owners Association, Inc. v. Department of Consumer Affairs. The index number (which you will need to get the documents) is 112671/07.

10. What is at stake or at risk to current pedicab business operators?

- ▶ On September 20, 2007, anyone in New York City who owned and operated more than one pedicab, with very few exceptions, would have been forced to forfeit his/her ability to operate the vast majority of his/her pedicabs on the streets of New York. While independent owner-operators were largely protected by DCA's regulations, the Department of Consumer Affairs apportionment process favored non-pedicab owners over

presently operating local pedicab fleets. This favoritism, which violates the provisions of the Pedicab Law, would have devastated the city pedicab fleets, both large and small.

The lawsuit launched by the NYCPOA, is successful, will enable long-established fleets to continue their traditional role of training responsible pedicab drivers and providing them an entree into the New York pedicab industry as a driver and/or future owner.

11. What would have happened if the lawsuit had not been filed?

- ▶ The Pedicab Law and DCA regulations (including the legally deficient ones) would have gone into effect “as is” on September 20, 2007.

12. Have pedicab businesses suffered regardless?

- ▶ Responsible pedicab business operators, particularly fleet operators, continue to suffer in a number of ways due to uncertainties created by the language of the new pedicab bill and the rules drafted by the Department of Consumer Affairs.

First, fleet operators saw a significant downturn in pedicab rentals as drivers started to move to other kinds of work. Drivers rightfully feared that under the new regulations, there would be so few available pedicabs that it would be hopeless to find a pedicab to rent. Owners and drivers alike saw clear evidence that this shortage of pedicabs was certain to be worsened because DCA was unprepared to inspect and approve the operation of most pedicabs by September 20, 2007, the day the Pedicab Law and DCA’s regulations were to go into effect. Without the right to operate their pedicabs on the city’s streets, fleet owners were advising drivers that their businesses might have to close temporarily.

Second, fleet operators had to turn down advertising projects and avoid signing any contracts with event producers because their futures were so uncertain. Advertising projects subsidize pedicab fleet operating costs, which cannot be fully sustained by rental income. Losing this income just before the holiday season is a major setback. In addition, the lost of special events contracts translates to lost income to drivers who are hired on an hourly basis for the event.

13. Where is the lawsuit filed? With what court? With what judge?

- ▶ The lawsuit was filed with the New York County (Manhattan) Supreme Court at 60 Centre Street. The judge assigned to the case is Justice Edward Lehner.

14. Who are the lawyers working on it? Whom do they represent?

- ▶ The lawyers for the NYCPOA are The Public Advocacy Group LLC (by Chad Marlow, Esq.), which is serving as general counsel to the NYCPOA, and Seham, Seham, Meltz & Petersen, LLP (by Lee Seham, Esq. and Stanley Silverstone, Esq.), which is serving as the NYCPOA’s litigation counsel. New York City is represented by the city’s law firm, which is referred to as “Corporation Counsel.”

15. What is the current calendar for the lawsuit? Will there be a hearing?

- ▶ The City’s Answer to the NYCPOA’s complaint is due on or before October 12. NYCPOA’s Reply to the City’s Answer is due on or before October 26. The next time the lawyers will appear before Justice Lehner is on November 2. A hearing may be held on November 2, but in all likelihood, the hearing date will be determined on that day.

16. How long do you expect the new Pedicab Law will be on hold?

- ▶ It is impossible to say at this point. The Pedicab Law will definitely be on hold until at least November 2.

17. If I own or operate a pedicab right now, what's the best thing for me to do?

- ▶ If you own a pedicab: Continue to operate your pedicab under the same rules that applied in the past. You should also get a pedicab liability insurance policy that covers your driver(s). You can find information about insurance providers at [nycpoa.org](http://nycpoa.org). As the safety and inspection provisions of the Pedicab Law will go into effect eventually, make sure that your pedicab equipment is up to inspection standards, including having hydraulic brakes, working head-, tail- and turn signal lights, spoke reflectors on all wheels, and seat belts.
- ▶ If you drive a pedicab: Make sure your American driver's license is currently valid. If the license was issued by a state other than New York, get a Certified Abstract of your driving record from the state Division of Motor Vehicles or equivalent that issued your license.

18. If the Pedicab Law is on hold, does that mean the issuance of pedicab drivers licenses is also on hold?

- ▶ Yes.

19. If the Pedicab Law is on hold, does that mean there might be unsafe pedicab drivers riding on unsafe pedicabs?

- ▶ Yes. Right now there are no limits at all on who can drive a pedicab or on what pedicabs can be driven, and many are taking advantage of that.

20. How do we tell them irresponsible operators apart from responsible ones?

- ▶ First and foremost, the passenger should always inspect the pedicab he is about to hire for obvious signs of safe operation (lights at night, clean equipment, a maintained presence). Lack of working headlights or taillights is a dead giveaway that the owner and/or driver is irresponsible in other ways. Passengers should also interact with the driver to confirm that the driver is knowledgeable about the trip and able to provide accurate trip information (time, route and price).

21. What other safeguards are in place in the interim?

- ▶ Many companies subscribe to the NYCPOA's best practices code of conduct, including possessing liability insurance, operating safe equipment with lighting for night-time riding and other safety equipment, working with trained drivers, and possessing a history of responsible operation. In order to join the NYCPOA, candidate members must provide proof they adhere to the above best practices (insurance, safe equipment, driver training). To ensure you are hiring a safe pedicab, look for the NYCPOA plate on the back of the pedicab.

A list of member companies with websites can be seen at:

<http://www.nycpoa.org/links/index.htm>. When considering travel by pedicab ahead of time, consult this list of operators first. For a complete list of member companies and their contact information, please email [info@nycpoa.org](mailto:info@nycpoa.org).

22. While this is going on, how do I know if I'm being quoted a fair price?

- ▶ For years the going rate for a pedicab ride has generally been \$1 per block or \$20 per mile, but those rates are subject to weather, terrain, passenger load, traffic and other factors. The only hard-and-fast rule is that the price should be agreed upon in advance. If the driver doesn't tell you a price, ask – if it's more than the ride is worth to you, try to negotiate.