



City of Santa Barbara
Police Department

Memorandum

DATE: January 23, 2014
TO: Fire and Police Commission
FROM: Holly Perea, Police Technician
SUBJECT: Cristino Sanchez - Appeal of Suspension of Taxi Driver Permit

On December 4, 2013, the Police Technician's office received a "Subsequent Arrest Notification" from the Department of Justice for taxi driver Cristino Garcia Sanchez. As part of the initial application process to become a taxi driver, all applicants must undergo Live Scan fingerprinting. Because of Live Scan fingerprinting, the Department of Justice automatically notifies the Santa Barbara Police Department of any subsequent arrests concerning an applicant. The Department of Justice's Arrest Notification process notified the Santa Barbara Police Department that Mr. Sanchez was charged with two counts of Driving Under the Influence [23152(A) VC and 23152(B) VC] on December 3, 2013.

Due to the abovementioned information, on December 9, 2013, Mr. Sanchez was sent a letter notifying him that his permit to drive a taxi in the City of Santa Barbara was immediately suspended per **Santa Barbara Municipal Code (SBMC) §5.29.220(B)**, which states:

"The Chief of Police shall immediately suspend the public vehicle driver's permit of any driver upon the receipt of information reasonably sufficient and reliable to establish that the driver:

1. Has been formally accused of a violation of law involving:
 - h. a driving under the influence of alcohol or drugs offense."

The above referenced section does not use the discretionary term "may suspend," but instead states that the Chief of Police "shall immediately suspend the public vehicle driver's permit," thereby mandating an immediate suspension under the above-listed circumstances. (See Attachment 1.).

The subsequent subsection of the Santa Barbara Municipal Code discusses the length of such a suspension by stating the following:

"Such a suspension shall remain in effect until there has been a final judgment of conviction by a court of competent jurisdiction; the entry of a plea agreement entering a plea of guilty or no-contest shall constitute a conviction." [SBMC §5.29.220(C)]. Again, the word "shall" is used, mandating that the permit remains suspended until final adjudication.

On December 19, 2013, in accordance with the terms set forth in the Municipal Code §5.29.220(F), Allen Bifano, Esq filed a letter of appeal with the Chief of Police on behalf of Cristino Garcia Sanchez, requesting that the suspension be rescinded.

RECOMMENDATION:

The Santa Barbara Police Department recommends that the Fire and Police Commission upholds the decision to suspend Cristino Garcia Sanchez's taxi driver permit until final adjudication of the aforementioned Driving Under the Influence charges.

ATTACHMENTS:

1. SBMC §5.29.220 Surrender, Suspension, Revocation of Public Vehicle Driver's Permit
2. Letter of appeal submitted by Allen Bifano, Esq.

5.29.220 Surrender, Suspension, Revocation of Public Vehicle Driver's Permit.

- A. The Chief of Police may suspend or revoke the public vehicle driver's permit of any person licensed under this Chapter for a period not to exceed thirty (30) days for any of the following:
1. Repeated and persistent violations of the traffic and parking laws of the City or the state Vehicle Code.
 2. Conviction for misdemeanor or felony reckless driving.
 3. Driving any vehicle known to the driver not to be in good order and repair.
 4. Violation of Section 5.29.100 in any twelve (12) month period.
 5. Falsifying or omitting material and relevant facts on an application for a public vehicle driver's permit.
 6. Conviction or plea of nolo contendere to the violation of any law involving alcohol.
 7. Conviction or plea of nolo contendere to the violation of any law involving moral turpitude.
 8. Operating any vehicle in a manner which constitutes a misdemeanor under the laws of the State of California.
 9. Conviction of a misdemeanor or felony "crime of violence" defined as a crime that by its nature poses a substantial risk of the use, attempted use, or threatened use of physical force against another person or property of another. A crime of violence may include, but is not limited to, the following crimes: domestic abuse, murder, manslaughter, criminal vehicular homicide and injury, assault, sexual assault, use of drugs to injure or to facilitate crime, robbery, burglary, kidnapping, false imprisonment, incest, rape, neglect or endangerment of a child, arson, terrorist threats, or stalking. 128-1 rev. 6/30/05
 10. Repeated violations of this Chapter.
- B. The Chief of Police shall immediately suspend the public vehicle driver's permit of any driver upon the receipt of information reasonably sufficient and reliable to establish that the driver:
1. has been formally accused of a violation of law involving:
 - a. a felony;
 - b. a sex offense;
 - c. a prostitution solicitation offense;
 - d. a narcotics offense;
 - e. a crime of violence as defined by this Section;
 - f. a reckless driving offense;
 - g. a hit and run offense;
 - h. a driving under the influence of alcohol or drugs offense;
 - i. a public intoxication offense; or
 2. has had a license to drive issued by the State of California suspended by the State.
- C. Such a suspension shall remain in effect until there has been a final judgment of conviction by a court of competent jurisdiction; the entry of a plea agreement entering a plea of guilty or no-contest shall constitute a conviction.
- D. The Chief of Police shall immediately revoke the public vehicle driver's permit of any driver if that permit has become void by operation of Section 5.29.175 of this Chapter, or if that driver:
1. has been found guilty by final judgment of a court of competent jurisdiction, as defined by this Section, of a violation of the law involving:
 - a. a felony;
 - b. a sex offense;
 - c. a prostitution solicitation offense;
 - d. a narcotics offense;
 - e. a crime of violence offense as defined by this Section; or
 - f. a hit and run offense; or
 2. has had a license to drive issued by the State of California revoked by the State.

- E. If the required insurance policy is cancelled for either the owner or the driver of a taxi, both the owner and the driver shall be suspended for no less than three (3) days for the first violation in a one (1) year period, fifteen (15) days for the second violation in a one (1) year period, and revoked for the third violation in a one (1) year period.
- F. A driver may appeal a suspension or revocation under this Section to the Board of Fire and Police Commissioners if the notice of appeal is filed with the Chief of Police within the (10) days after written notice of suspension is provided to the driver. The Board of Fire and Police Commissioners shall hear an appeal after a notice of appeal is filed with the Police Chief, as required by this Subsection, at the next regular meeting of the Board of Fire and Police Commissioners.
- G. A suspension shall remain in effect until a duly filed appeal is heard by the Board of Fire and Police Commissioners. The Board of Fire and Police Commissioners shall suspend a driver's permit for as long as a license to drive and vehicle issued by the State of California is suspended or revoked by the State. In the case of suspension for any other reason under this Section, the Board of Fire and Police Commissioners shall consider the propriety of the suspension and may either rescind or continue the suspension as may be required to protect public safety, peace and welfare.
- H. Any decision, except under 5.29.220.C, shall be effective immediately upon service of written notice of the decision and reasons therefore. A driver whose permit has been suspended or revoked by the Chief of Police shall be notified in writing within five (5) days by certified mail directed to the last known address on record with the City. Such written notice shall state the reasons for the suspension or revocation. (Ord. 5360, 2005; Ord. 4974, 1996; Ord. 4206, 1983.)

ALLEN A. BIFANO

Attorney at Law
228 East Anapamu Street
Santa Barbara, California 93101
Phone (805) 882-1307
Fax (805) 845-5348

12-19-13

Notice of Appeal

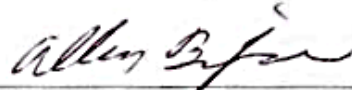
Suspension of Taxi Driver's Permit

Cristino Garcia Sanchez

To: Chief of Police Camerino Sanchez

My office represents Mr. Sanchez in his upcoming DUI case. I am requesting an appeal within the 10 day requirement as letter was dated 12-9-13. He understands that if convicted he will not be able to drive at all for 30 days and may still have permit taken. However, Mr. Sanchez begs to be allowed to continue in his employment until that time because he is the caretaker of his wife and child. In addition, the typical DUI case can take months to finish especially if case goes to trial. This suspension would exceed the mandated 30 day suspension under SB Municipal Code 5.29.220 A(6)(8). Please consider rescinding the suspension.

Thank You for your consideration,



Allen Bifano Esq.