

THE RISE OF THE PEDICAB: MUNICIPAL REGULATION OF AN EMERGING INDUSTRY

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Over the past decade, pedicabs—bicycles with chariots attached that carry passengers for a fee—have grown from a quaint novelty to a full-grown industry in the United States. Once a relic of Southeast Asia, pedicabs can now be found transporting tourists and residents alike in dozens of American cities. Born out of the minds of several entrepreneurs, American pedicabs got their start in New York and San Diego, and these cities combined now have more than a thousand operating pedicabs. But the pedicab industry's growth has been resisted by competing businesses that fear the loss of customers—notably the taxicab industry—and by local governments concerned about public safety. This Note examines the evolution of pedicab regulations in New York and San Diego, and then analyzes whether the various regulations each city has adopted truly benefit the public. The Note then culls the best regulations for inclusion in a list of provisions for a Model Pedicab Code.

INTRODUCTION

The route to grace is often a trail with many turns.

– Unknown

On a Monday morning in Manhattan, two forms of inner-city transportation came into an unusual and absolute form of competition. While frequently direct competitors for customers, on October 5, 2009, a taxicab driver

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and a pedicab operator took their competition to a personal level on a wrestling mat of asphalt that happened to be the intersection of 53rd Street and Broadway.¹

What had started moments before as a honking horn, a few competing expletives, and a thrown cup of coffee, quickly escalated when the taxi driver cut off the pedicab.² The pedicab operator retaliated by smashing the taxi's passenger-side window with his fist.³ The game of brinksmanship hit disaster level when, moments later, both individuals got out of (or off) their vehicles, ran into oncoming traffic, and engaged in a violent brawl outside of the Ed Sullivan Theater in Times Square.⁴

The battle went on for several moments as cars drove by and New York tourists witnessed a free and exciting show.⁵ Reporter Reid Lamberty of Fox 5 and his team (who were coincidentally on scene shooting video for a report on, ironically enough, taxicab medallions) caught the entire incident on film.⁶ Lamberty and another bystander quickly stepped in and broke up the fight, which continued as a war of competing expletives for several more minutes. Then the pedicab operator picked up a trash can and hurled it at the taxi driver.⁷ Fortunately, the can missed, and the pedicab operator took off on his bike just in time to escape the arriving NYPD.⁸

Neither contender appeared seriously hurt, but the footage of the bizarre incident quickly appeared on both YouTube⁹ and national news outlets.¹⁰ Fox News' Bill O'Reilly showed a few clips of the incident as an exposition of New York "entertainment" and the inherent competition between pedicabs and taxis.¹¹

While a freak outlier, the fight is but one incident in a long struggle between two competing transportation industries. Though the overarching competition is seldom so provocative, taxi owners and other competing forms of transportation are resisting the proliferation of pedicabs in major American cities. The public has also expressed concerns over pedicab safety. After several high-profile pedicab accidents, city governments on both coasts responded with varying

1. For the video and commentary, see Chris Rovzar, *Taxi and Pedicab Drivers in Awesome Times Square Brawl*, N.Y. MAGAZINE DAILY INTEL (Oct. 6, 2009, 2:30 PM), http://nymag.com/daily/intel/2009/10/taxi_and_pedicab_driver_in_awe.html.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Pedicab Operator and Taxi Driver Brawl on Broadway*, MY FOX N.Y. (Oct. 5, 2009, 5:13 PM EDT), http://www.myfoxny.com/dpp/news/local_news/manhattan/091005_Pedicab_Operator_Taxi_Driver_Brawl.

7. Rovzar, *supra* note 1.

8. *Id.*

9. The clips on YouTube were later removed for copyright violations.

10. *E.g.*, *O'Reilly Factor* (Fox News television broadcast Oct. 6, 2009).

11. *Id.*

levels of regulation. Some of this regulation is legitimate and productive, while other aspects are overly intrusive.¹²

Cities regulate pedicabs in a variety of ways. Standard safety features similar to those on automobiles are commonly required, including headlights and taillights.¹³ Some cities also require that pedicabs be regularly inspected,¹⁴ that operators be licensed (with some proposals for mandatory training classes),¹⁵ and that owners carry liability insurance.¹⁶ Some cities have also gone considerably further by placing a cap on the number of pedicabs that may operate within the city and by limiting pedicabs to certain parts of the city.¹⁷

As with any government regulation, policymakers should thoroughly consider all major factors before implementing a regulatory scheme. In the case of pedicabs, forces operating in favor of regulation include legitimate concerns, primarily that of passenger safety, and illegitimate concerns, mostly the interests of competing industries that lobby for unfair burdens upon pedicabs.¹⁸ On the other side of the scale is the concern that additional regulation may hamper the pedicab industry by negatively affecting its cost structure and reducing its market area.¹⁹ While pedicab passenger safety is a legitimate concern that warrants local government intervention, this Note shows that city governments go too far by imposing caps or area restrictions. These burdensome regulations are contrary to the goal of increasing the public welfare; they instead merely benefit competing forms of transportation—namely, the taxicab.

This Note examines the evolution of the pedicab industries in New York and San Diego,²⁰ identifying the types of pedicab regulations that are truly necessary for public safety and those that exceed the scope of promoting the public welfare. Part I briefly describes the history of the pedicab and its emergence in the United States. Part II identifies the generic participants and events that tend to lead to pedicab regulation. Part III chronicles the rise of pedicab regulation in New York and San Diego. Part IV analyzes various pedicab regulations to determine

12. See *infra* Part IV (discussing which types of regulations benefit the public and which types do not).

13. E.g., SAN DIEGO, CAL., ORDINANCE O-18701 (1999).

14. E.g., N.Y.C., N.Y., ORDINANCE § 20-255 (2010).

15. E.g., N.Y.C., N.Y., LOCAL LAW No. 19, § 20-257 (2007).

16. E.g., *id.* § 20-253.

17. E.g., SAN DIEGO, CAL., MUN. CODE §§ 83.0113–4 (2010); SAN DIEGO, CAL., RESOLUTION R-2010-52 (2009).

18. See *infra* Parts II and III.

19. See *infra* Part IV.D–E.

20. While many cities have thriving pedicab industries, New York and San Diego are the premier locations. Pedicabs first appeared in both cities in the late 1990s and each city has at least several hundred operating pedicabs. Pedicabs also can be found in such locations as Albuquerque, Austin, Boston, Chicago, Denver, El Paso, Houston, Minneapolis, Philadelphia, Phoenix, Portland, Seattle, Salt Lake City, and Washington, D.C., among others. *Rickshaws Outside Asia*, WIKIPEDIA, http://en.wikipedia.org/wiki/Rickshaws_outside_Asia (last visited Mar. 1, 2011). (The Author cites Wikipedia here because this claim relies on industry and public input which, for many cities, cannot be found elsewhere.)

whether they benefit the public and includes suggested provisions for a Model Pedicab Code.

I. A NEW INDUSTRY: PEDICABS CYCLE INTO AMERICAN CITIES

A pedicab is essentially a bicycle with a cart or chariot attached to it. The bicycle rider, commonly called the operator, transports several passengers for a fee, much like a taxi. Also known as a cycle rickshaw, pedicabs were widely used in Asian cities from the late nineteenth to the mid-twentieth century.²¹

The common legend is that an American missionary living in Japan, Jonathan Scobie, invented the pedicab in 1869 to transport his sick wife.²² A decade later, more than 40,000 pedicabs were operating in Tokyo alone.²³ The idea spread to other Asian cities and became a means of employment for many peasants, who often had to work 17–18 hour days to survive.²⁴

The pedicab appeared in Bangkok in 1933. It quickly became a means of transportation for the middle class who, while valuing their time too much to wait for the bus, could not yet afford automobiles.²⁵ The pedicab operators, mostly poor farmers from small villages, would come to the city to work for several years and then frequently return home with relative affluence.²⁶ Armed with their urban business experiences, these former operators often became significant contributors to social and economic change in their native villages.²⁷ While the cycle rickshaw continues to be used in some Asian cities, its use has largely declined due to the advent of other forms of transportation and enactment of many prohibitory laws.²⁸

Pedicabs only recently arrived in American and European cities. The first pedicabs started carrying passengers in New York in 1993²⁹ and in San Diego in 1995.³⁰ The original New York operators were mostly artists and environmentalists, but the operators today come from more diverse walks of life, including day traders supplementing their regular income.³¹ San Diego operators tend to be foreign college students who have found pedicab operation to be a

21. Dina Modianot-Fox, *Rickshaws Reinvented*, SMITHSONIAN, Mar. 1, 2007, <http://www.smithsonianmag.com/people-places/10024086.html>.

22. *Id.*

23. *Id.*

24. *Id.*

25. ROBERT B. TEXTOR, *FROM PEASANT TO PEDICAB DRIVER 5* (1961).

26. *Id.*

27. *Id.* at 1–2.

28. *See* Modianot-Fox, *supra* note 21.

29. Sewell Chan & Nicholas Confessore, *Not So Merrily, They Roll Along: Pedicabs Vie for Midtown Riders*, N.Y. TIMES, Jan. 2, 2005, § 1, at 2, available at <http://query.nytimes.com/gst/fullpage.html?res=9C00E5D91539F931A35752C0A9639C8B63&sc=travel&spn=&pagewanted=all>.

30. Mark Arner, *Booming Pedicab Trade to Be Regulated*, SAN DIEGO UNION-TRIB., Dec. 20, 1999, at B3.

31. Chan & Confessore, *supra* note 29.

lucrative part-time job while they continue their studies.³² Armed with new technologies, the modern pedicabs have greatly advanced over their mid-twentieth century Asian forebears³³ and now boast hydraulic brakes, suspension, complete lighting systems, seatbelts, full weather canopies, steel frames, and fiberglass bodies.³⁴

Customers choose a pedicab in lieu of a taxi or other form of transportation for various reasons, but three motivations are commonly cited. First, riding a pedicab can be a novel experience, especially for tourists.³⁵ Pedicabs provide a more exciting way to see a city. The open-air environment is fun and provides the rider with a large field of view.³⁶ Second, pedicabs are more environmentally friendly than taxis, as they run on no fuel at all, except the caloric intake of the operator.³⁷ In fact, one of the primary manufacturers of pedicabs, Main Street Pedicabs, markets their cabs to potential entrepreneurs as an environmentally friendly business alternative.³⁸ Finally, customers might choose a pedicab over a taxi in high traffic situations, like New York City gridlock. In such situations, a pedicab can actually be faster than a taxi due to the pedicab's superior mobility.³⁹

The number of operating pedicabs has grown rapidly since their arrival in American cities. As of June 2009, there were an estimated 1000 pedicabs operating in New York.⁴⁰ New York pedicab proprietors have even established their own lobbying organization, the New York City Pedicab Owners' Association.⁴¹ The San Diego pedicab industry has also experienced rapid growth. There were more than 400 San Diego pedicabs operating before the City Council imposed a cap in July 2009 of 250 operating pedicabs.⁴² Other American cities also exhibit rapidly growing pedicab industries.⁴³

32. Tony Perry, *San Diego Putting the Brakes on Pedicabs*, L.A. TIMES, July 19, 2009, <http://articles.latimes.com/2009/jul/19/local/me-pedicabs19>.

33. See Modianot-Fox, *supra* note 21.

34. Modianot-Fox, *supra* note 21 (quoting Peter Meitzler of the Manhattan Rickshaw Company).

35. Alexandra Marks, *Tricycles the Answer to NYC Gridlock?*, CHRISTIAN SCI. MONITOR, Oct. 27, 2003, <http://www.csmonitor.com/2003/1027/p03s01-ussc.html>.

36. *Id.*

37. *Id.*

38. About Main Street Pedicabs, MAIN STREET PEDICABS, <http://www.pedicab.com/about-main-street-pedicabs.html> (last visited Dec. 31, 2010). "We also strive to support entrepreneurial, environmentally minded people who seek independent employment." *Id.*

39. See Marks, *supra* note 35.

40. Michael M. Grynbaum, *Stalled Plan to License Pedicab Advances*, N.Y. TIMES, June 15, 2009, at A17, available at <http://www.nytimes.com/2009/06/15/nyregion/15pedicab.html>.

41. N.Y.C. PEDICAB ASS'N, <http://www.nycpedicabassociation.org/> (last visited Dec. 31, 2010).

42. SAN DIEGO, CAL., RESOLUTION R-2010-52 (2009); see also Steve Schmidt, *Council Members Seek Pedicab Regulations*, SAN DIEGO UNION-TRIB., July 8, 2009, <http://>

In the past decade, the pedicab business has become its own industry in the United States, and this growth and rise in popularity has been accompanied by a corresponding increase in pedicab regulation by local governments.

II. THE GENERIC STORY OF AMERICAN PEDICAB REGULATION

The tale of pedicab regulation is an engaging twenty-first century story, but it is one that harkens back to a classic American saga of an innovative emerging business encountering defensive competing industries, a reactionary public, and a variety of all-too-willing-to-please government players. An apt historical comparison is the jitney, a taxi-like vehicle that enjoyed sudden popularity in 1914, but was eliminated by excessive regulation by 1920.⁴⁴

As private automobiles started to spread to mainstream American consumers in the 1910s, owners realized they could make extra revenue on their daily commutes by picking up additional passengers along the way.⁴⁵ Rather than becoming full-time drivers, many jitney drivers continued to hold their regular jobs.⁴⁶ Some drivers, however, expanded their jitney businesses to include several hours of driving after their day jobs.⁴⁷ The proliferation of the jitney industry caused its primary competitors, the capital-intensive street railways, to lose significant revenue. The railways responded by lobbying states and local governments for excessive regulation of the jitneys.⁴⁸ Because part-time jitney drivers lacked political action organizations of their own, the debate was one-sided.⁴⁹ The resulting legislation crippled the jitney industry and it rapidly collapsed.⁵⁰

The story of the pedicab in America has followed a similar plot but, unlike the jitney, the protagonist in this tale has prevailed over adversity. Pedicab industries in individual cities tend to eventually obtain equitable regulatory schemes, but the route to grace is often a trail with many turns. The usual story goes something like this: pedicabs will begin to arrive in an American city when an entrepreneur rides one while visiting another city and decides to start a pedicab business back home.⁵¹ These pioneer pedicab businesses become popular quickly,

www.signonsandiego.com/news/2009/jul/08/1m8pedicabs234924-council-members-seek-pedicab-reg/. The July 2009 cap is discussed *infra* in Parts III.B and IV.E.

43. For example, there were about fifty pedicabs in Chicago as of July 2008. Becky Schlikerman, *Rickshaw: New Ride About Town*, CHI. TRIB., July 31, 2008, at 4A.

44. See generally Ross D. Eckert & George W. Hilton, *The Jitneys*, 15 J.L. & ECON 293 (1972) (providing a detailed history of the jitney with accompanying economic analysis).

45. *Id.* at 294.

46. *Id.* at 297.

47. *Id.*

48. *Id.* at 295, 304.

49. *Id.* at 305.

50. See *id.* at 322. In a bit of historical irony, the regulation ultimately did not save the street railways either, which were eventually replaced by subways, buses, and, the successor to the jitney, the taxicab. *Id.* at 323–24.

51. For example, Daniel M. Smith brought the first pedicabs to San Diego in 1995 after seeing them in operation in San Francisco. Arner, *supra* note 30.

with tourists and locals alike willing to pay reasonable fares for a quick ride in a vehicle that is inexpensive to operate. The novelty and “green” aspects of the business garner media attention, which in turn attracts more riders as well as advertising on the sides of the pedicabs.⁵² Other entrepreneurs see the success of the initial pedicab business and open their own competing pedicab companies as the idea takes off.⁵³

Before long, competing industries and government officials begin to take notice.⁵⁴ Unlike a regular bicycle, the pedicab has a chariot and greater passenger capacity. Regulation is needed to protect these passengers.⁵⁵ Competing industries, typically taxi drivers and other forms of inner-city transportation, naturally dislike the challenge to their businesses. Beyond expressing their distaste, these competitors bring potential safety concerns to the attention of the regulators who wield the power to damage or destroy the pedicab industry.⁵⁶ Pedicab owners generally concede the need for sensible safety regulation, as such regulation boosts their public image. The perception of safety increases business and pushes out shady operators.⁵⁷ The pedicab owners and operators will, however, fight against any further regulation, especially caps and restrictions on operating areas.

Pedicab owners sometimes form an association to defend themselves, both by lobbying local government and by standing up for the industry in the media.⁵⁸ This organization clashes directly with opponents in the public and legislative spheres. Sometimes the pressure is great enough for the city council to take action and regulate the industry even before an accident occurs. If it does not, a serious accident involving a pedicab eventually does occur, and then, due to the media attention, the city council is forced to take notice.⁵⁹ The media focuses on not just the faults of the pedicab operator and the pedicab industry, but also on the regulators’ failure to prevent the accident. Thus, accidents tend to serve as a catalyst for reactionary and often overburdening regulation, usually in the form of

52. The environmentally friendly nature of the pedicab was one of its appeals in New York. *See Marks, supra* note 35.

53. George Bliss brought the first pedicabs to New York, which he described as a “big gamble.” Once the business proved successful, other pedicabs began appearing in droves. *Id.* Similarly, the success of Mr. Daniel Smith’s San Diego pedicab business also led to other companies entering the market. *See Arner, supra* note 30.

54. *See infra* text accompanying notes 68–74 (explaining how New York cab drivers and horse-drawn carriage operators responded to the pedicab industry’s growth).

55. *See infra* text accompanying notes 105–07, 160–66 (providing details on two pedicab accidents).

56. *See infra* text accompanying notes 73–74. The horse-drawn carriage industry in New York, discussed *infra*, hired a former chief counsel to the city council to lobby on its behalf against pedicabs. Carl Skutsch, Op-Ed., *Keep the Big Wheels Turning*, N.Y. TIMES, Dec. 18, 2005, § 14, at 4.

57. *See infra* text accompanying notes 90, 117–19 (providing examples of pedicab owners and associations acquiescing to or agreeing with safety equipment requirements).

58. *See supra* text accompanying note 41 (discussing the creation of the New York City Pedicab Owner’s Association).

59. *See infra* text accompanying notes 105–07, 160–66 (providing details on two pedicab accidents).

a cap on the number of pedicabs allowed in the city.⁶⁰ Even when such regulation becomes law, however, a pedicab organization may be able to successfully challenge it in court.⁶¹

Eventually, upon the creation of a regulatory scheme that attempts to balance safety concerns with the need to let market forces control, the pedicab industry and the connected parties reach a point of harmony with a functioning regulatory system. Such a regulatory scheme almost always contains certain safety features, such as passenger seatbelts, mandatory inspections, and battery-operated headlights and taillights for nighttime operation.⁶² Pedicab operators are required to carry a minimum amount of liability insurance.⁶³ Additionally, the regulations generally require the operators to obtain pedicab licenses.⁶⁴ Finally, some pedicab regulatory schemes limit where the pedicabs can operate or how many pedicabs can operate in a city or area.⁶⁵

Once such a regulatory system is enacted, the local pedicab industry has completed its transformation. It is no longer a novel and innovative business concept; it has reached a point of legitimacy with its customers, its city, and even its competitors, all of whom must accept that the pedicab is there to stay. But questions naturally arise along the way. Which regulatory scheme is the most effective at balancing the competing factors and interests? Which regulations are necessary for public safety, and which go too far by interfering with the free market? These questions have been debated and disputed by interested parties in every American city where an operating pedicab regulatory system exists. In much the same way individual states experiment with legal varieties within American federalism, cities have been experimenting with pedicab regulation and, in some instances, learning from other cities' mistakes.⁶⁶

III. THE TAMING OF THE PEDICAB ON BOTH COASTS: NEW YORK AND SAN DIEGO REGULATORY HISTORIES

A. East Coast: New York Regulation

New York City and San Diego are two cities with extensive pedicab regulatory schemes that have arisen only after protracted legislative battles, occasional legal fights, and unfortunate tragedies. Pedicab regulation in New York City has undergone several distinct phases. In response to legitimate safety

60. See *infra* text accompanying notes 168–83 (discussing how the 2009 San Diego accident resulted in more stringent pedicab regulations).

61. See *infra* text accompanying notes 98–104 (discussing litigation in New York over Local Law 19).

62. See *infra* Part IV.A.

63. Most pedicab operators are general contractors. Importantly, this shields the owners from accident liability. See *infra* Part IV.C.

64. See *infra* Part IV.B.

65. See *infra* Part IV.D–E.

66. For example, Portland enacted its own regulatory system after San Francisco and San Diego failed to prevent fatal accidents. Jennifer Anderson, *Pedicabs Must Follow Rules*, PORTLAND TRIB., Aug. 20, 2009, http://www.portlandtribune.com/news/story.php?story_id=125071315294079100.

concerns, dangerous accidents, and prodding by the taxicab lobby, the New York City Council has passed and defeated several regulatory schemes, and the New York courts have intervened and overturned some regulatory legislation.

Though pedicabs originally appeared in New York City as early as 1993, they were relatively few in number until the turn of the century. By 2005, the industry had started to take off. More than 200 pedicabs were operating in Manhattan in that year.⁶⁷ In January 2005, a *New York Times* article characterized pedicabs as “combatants” against taxicabs and horse-drawn carriages “in a quiet war on the streets of Midtown, with tourist dollars as the primary spoils.”⁶⁸ In the same article, a family-run horse-drawn carriage business that had been in the city for decades expressed deep reservations about its new competitors.⁶⁹

One midtown cab driver estimated his business was down 10% due to the pedicab’s explosion in popularity. He also expressed (potentially biased) concerns about pedicab safety and its effects on overall traffic safety.⁷⁰ Taxicab drivers were not the only ones concerned about pedicab safety. After a nonfatal accident, Gretchen Dykstra, the City’s commissioner on consumer affairs, began advocating for pedicab regulation.⁷¹ Besides requiring safety features, Dykstra was also concerned about the lack of liability insurance among some of the pedicab drivers.⁷²

The horse-drawn carriage industry was the first group to go political. Several owners hired a former chief counsel to the City Council to lobby for a ban on pedicabs in certain areas, notably Midtown, as well as other registration requirements.⁷³ In October 2005, five council members, including the future council speaker, Christine Quinn, sponsored initiative 0740-2005.⁷⁴ The initiative included the area restrictions that would prevent pedicabs from operating in the greater Central Park area, between 30th and 65th Streets.⁷⁵ Another bill that was introduced concurrently, 0748-2005, included an owner licensing requirement that incorporated a mandatory inspection and a \$50 fee, a separate pedicab operator’s licensing system with a mandatory training program, mandatory liability insurance minimums, and a license plate system.⁷⁶ Some organizations were quick to cry foul, especially regarding the area restrictions. The League of Humane Voters of New York City characterized the legislation as “a thinly veiled attempt by the

67. Chan & Confessore, *supra* note 29.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. Skutsch, *supra* note 56.

74. N.Y.C., N.Y., Council Int. 0740-2005 (never enacted), *available at* <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=445028&GUID=5BC436C9-14EF-4C8E-9E71-DF091FAF51FC&Options=Advanced&Search=>.

75. *Id.* § 2.

76. N.Y.C., N.Y., Council Int. 0748-2005 (never enacted), *available at* <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=445029&GUID=1135B9F8-F656-4B17-8481-894F7D784490&Options=Advanced&Search=>.

horse-and-carriage industry to deny visitors and residents of Midtown access to cruelty-free methods of transportation.”⁷⁷

This first regulatory attempt was never voted on in either committee or by the full City Council, and ultimately died at the end of session.⁷⁸ A second attempt, 0075A-2006 was proposed several months later in February 2006.⁷⁹ It had very similar features to initiatives 740 and 748 but also included enhanced enforcement procedures.⁸⁰ Although the initiative was sponsored by eighteen council members, it too died in committee.⁸¹

Despite these initial failures, proponents of pedicab regulation were ultimately successful with a third legislative attempt in 2007. In that year, the New York City Council successfully passed initiative 0331-2006, which, after a protracted struggle, became Local Law 19 (“Law 19”)⁸² in April 2007.⁸³

The initiative took the basic provisions of the previous legislative approaches and expanded upon them considerably. Besides the registration and insurance requirements, Law 19 provided that no more than thirty licenses would be granted to a single company.⁸⁴ It also included more stringent licensing requirements, as well as a list of required safety equipment, such as headlights, taillights, and passenger seatbelts.⁸⁵ The area requirements for Midtown were still part of the bill, but they were only enforced for several months out of the year and at times when there was heavy pedestrian traffic, such as during parades.⁸⁶ Finally, Law 19 required that the pedicab fares be posted on the outside of the cab, and a timer be viewable by passengers for fares based upon ride time.⁸⁷

Law 19 was strongly resisted by both the pedicab industry⁸⁸ and New York Mayor Michael Bloomberg.⁸⁹ New York City Pedicab Owner’s Association

77. The League evidently had concerns over animal cruelty in the horse and carriage industry and was not primarily motivated by the desire to promote free market principles. Skutsch, *supra* note 56.

78. N.Y.C. Council, Legislation File #0740-2005, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=445028&GUID=5BC436C9-14EF-4C8E-9E71-DF091FAF51FC&Options=ID|Text|&Search=pedicab> (last visited Feb. 10, 2010).

79. N.Y.C. Council, Legislation File #0075-2006, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=450209&GUID=9EB699D1-5CD0-4AA0-A477-385300F09592&Options=ID|Text|Other|&Search=pedicab> (last visited Feb. 10, 2010) [hereinafter Council File #0075-2006].

80. N.Y.C., N.Y., Council Int. 0075A-2006 (never enacted).

81. Council File #0075-2006, *supra* note 79.

82. N.Y.C., N.Y., Council Int. 0331-2006 (became N.Y.C., N.Y., LOCAL LAW No. 19 (2007)).

83. Jonathan P. Hicks, *Pedicab Limit Withstands Mayor’s Veto*, N.Y. TIMES, Apr. 24, 2007, at B3, available at <http://query.nytimes.com/gst/fullpage.html?res=9D0DE7DD143EF937A15757C0A9619C8B63&sec=&spon=>

84. N.Y.C., N.Y., LOCAL LAW No. 19, § 20-251(b)(3) (2007).

85. *Id.* § 20-254.

86. Ray Rivera & Tanzina Vega, *Pedicabs, Under New Rules, Will No Longer Roam So Freely*, N.Y. TIMES, Mar. 1, 2007, at B1, available at <http://query.nytimes.com/gst/fullpage.html?res=9D00E4D61F3EF932A35750C0A9619C8B63>.

87. N.Y.C., N.Y., LOCAL LAW No. 19, § 20-254.

88. See Rivera & Vega, *supra* note 86.

(“NYCPOA”) representative Chad Marlow agreed with some elements of the legislation, namely the safety aspects and (surprisingly) the cap on the number of pedicabs, but immediately announced his intention to challenge the Midtown-area ban in court.⁹⁰ Other independent pedicab companies strongly objected to this Midtown-area ban because it had the potential to force them out of business.⁹¹ Still other members of the industry objected to the cap, arguing that it would remove 175 pedicabs from New York City.⁹²

Mayor Bloomberg, while in favor of safety regulations, objected to how far Law 19 went into managing the industry. As he stated, “[t]he government has a responsibility to ensure safety and to encourage good long-term behavior that will help society and help individuals, but government shouldn’t be any more than it absolutely has to be, in the business of trying to manage economics.”⁹³ Bloomberg favored allowing the free market, through the principles of supply and demand, to determine the number of pedicabs that would operate in the city. For him, this was preferable to regulation by a city ordinance—especially if the ordinance would result in a number of pedicab drivers losing their jobs.⁹⁴ The bill passed the Council 38-7 and was promptly vetoed by Bloomberg.⁹⁵ Undeterred, the Council voted to override the veto several weeks later by a similar margin.⁹⁶

Originally set to go into effect in June 2007,⁹⁷ Law 19 hit further delay when Mr. Marlow and the NYCPOA made good on their threat to challenge the law in court. In September of that year, the city’s Department of Consumer Affairs (“DCA”) and the city’s corporate counsel agreed to temporarily suspend implementation of the law and DCA’s corresponding regulation until NYCPOA had its day in court.⁹⁸

89. Interview by John Gambling with Mayor Michael Bloomberg (Mar. 30, 2007), available at http://www.nyc.gov/portal/site/nycgov/menuitem.b270a4a1d51bb3017bce0ed101c789a0/index.jsp?pageID=nyc_blue_room&catID=1194&doc_name=/html/om/html/2007a/events_03.html [hereinafter Gambling Interview].

90. Rivera & Vega, *supra* note 86.

91. *See id.* Pedicab operators complained that the ban would prevent them from operating in their primary business areas. *Id.* As one operator remarked in regards to the City Council, “Don’t they realize we need to pay our rent?” *Id.*

92. *Id.*

93. Gambling Interview, *supra* note 89.

94. *Id.*

95. Ray Rivera, *Bloomberg Vetoes Bill Limiting Pedicabs*, N.Y. TIMES, Mar. 31, 2007, at B2, available at <http://www.nytimes.com/2007/03/31/nyregion/31pedicab.html>.

96. N.Y.C. Council, Legislation File #0331-2006, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=445938&GUID=8A7AB7FF-DC95-4811-B028-DB0AC6EC31F1&Options=ID|Text|Other|&Search=pedicab> (last visited Feb. 10, 2010).

97. Hicks, *supra* note 83.

98. Press Release, N.Y.C. Pedicab Owners’ Ass’n, Agreement Reached to Suspend Implementation of New York City Pedicab Laws and Regulations Until Hearing on Pedicab Lawsuit Is Held (Sept. 19, 2007), available at http://www.nycpedicabassociation.org/pdf/stay_press_091907.pdf.

The case revolved heavily around the cap of 325 pedicabs.⁹⁹ The NYCPOA alleged in its complaint that DCA's regulations, designed to implement Law 19, were invalid because they exceeded the scope of Law 19.¹⁰⁰ The NYCPOA specifically attacked the DCA regulations that permitted individuals who did not own pedicabs to apply for pedicab licenses and allowed the procurement of licenses in excess of the number of pedicabs owned by the applicant.¹⁰¹ In January of 2008, the court held that any interpretation of Law 19 that did not favor established pedicab owners in the permit application process would run contrary to the apparent intention of the law and, furthermore, that the DCA could not allow individuals to apply for more permits than the number of pedicabs they owned.¹⁰² The court stated, "the reference in this section (dealing with the selection process among applicants) to persons who 'operated' a pedicab can only refer to authorizing regulations that will grant a priority in the selection process to owners who also operated a pedicab."¹⁰³ This decision was affirmed by the New York Supreme Court's Appellate Division in April 2009.¹⁰⁴

As the smoke cleared from the courts' decision, New York momentarily appeared to finally have a functioning Pedicab regulatory system in place. Law 19 could take effect, provided that it abided with the judicial limitations. But this apparent harmony unraveled two months later, on June 10, 2009, when four individuals were hurt by a collision involving—ironically—a pedicab and a taxicab.¹⁰⁵ While carrying three passengers in the early morning, the pedicab operator sped down a bridge and rode into opposing traffic at the next intersection, smashing into the side of the taxi.¹⁰⁶ The operator was seriously injured, and two pedicab passengers were slightly hurt; the taxicab driver was unscathed.¹⁰⁷

Perhaps trying to mitigate any negative publicity for the pedicab industry, the NYCPOA blamed the incident on the city's failure to begin enforcing Law 19 after the conclusion of the case, arguing that the restrictions on bridge travel and the implementation of seatbelt requirements could have prevented the accident.¹⁰⁸ The DCA defended its two years of inaction, pointing out that it could not have

99. See *N.Y.C. Pedicab Owners' Ass'n v. N.Y.C. Dep't of Consumer Affairs*, 855 N.Y.S.2d 831, 832 (N.Y. Sup. Ct. 2008) (noting that Law 19 "limits the number of plates that may be issued by DCA at any one time to 325" and that the "controversy herein relates to regulations issued by DCA" enacting that measure).

100. *Id.* at 834–35.

101. *Id.* Presumably the NYCPOA opposed these regulations because they did not favor existing operators (and NYCPOA members), but instead allowed new potential operators to obtain a licenses while the existing operators were denied licenses and forced out of business.

102. *Id.* at 835–36.

103. *Id.*

104. *N.Y.C. Pedicab Owners' Ass'n v. N.Y.C. Dep't of Consumer Affairs*, 877 N.Y.S.2d 283, 285 (N.Y. App. Div. 2009).

105. Al Baker & Michael M. Grynbaum, *Four Hurt When a Pedicab Slams into a Taxi in Brooklyn*, N.Y. TIMES, June 11, 2009, at A27, available at <http://www.nytimes.com/2009/06/11/nyregion/11pedicab.html>.

106. *Id.*

107. *Id.*

108. *Id.* (statements made by NYCPOA's lawyer, Chad Marlow).

enforced the other regulations until the licensing issue was resolved in court.¹⁰⁹ Once the licensing issue was out of the picture, only then could the DCA begin to pass regulations and set up systems to enforce Law 19, a process that was apparently unfinished at the time of the accident.¹¹⁰ And it seemed no one had been in a hurry to finish that process before the June 10 accident. Councilman Leroy G. Comrie Jr., one sponsor of Law 19, expressed surprise that the court decision had occurred: “I hadn’t heard that [the suit was over] . . . I’ve been working on the budget. I haven’t paid much attention to it at all.”¹¹¹

But after the accident, the City Council did take notice of the pedicabs again. Just four days later, Mayor Bloomberg and Speaker Quinn agreed on new legislation for a modified regulation system for pedicabs.¹¹² Initiative 1031-2009 kept all the safety regulations of Law 19, but abandoned the cap on the number of pedicabs operating in New York.¹¹³ The initiative further created a system that would allow the DCA to license and inspect all operating pedicabs in the city within a sixty-day window, and would then shut down registration temporarily for an eighteen-month period.¹¹⁴ Pedicab businesses were also required to provide their drivers with training.¹¹⁵

The initiative was adopted by the City Council with surprising speed,¹¹⁶ most of the major parties supported the legislation’s provisions.¹¹⁷ Bloomberg and Quinn announced the legislation together, and NYCPOA, after years of fighting the licensing cap and area restrictions, was pleased that those limitations had been dropped from the legislation.¹¹⁸ Mr. Marlow stated that “[t]his is really what we had been hoping for from the beginning.”¹¹⁹ Despite arguing for more intense regulation than the initiative offered, the taxicab industry was pleased that pedicabs were finally being regulated.¹²⁰ A few local business groups, including

109. Michael M. Grynbaum, *Pedicab Safety Rules Were Never Put into Effect*, N.Y. TIMES, June 12, 2009, at A20, available at <http://www.nytimes.com/2009/06/12/nyregion/12pedicab.html>.

110. *Id.*

111. *Id.*

112. Press Release, Office of the Mayor, Mayor Bloomberg and Speaker Quinn Announce Agreement on New Legislation to License Pedicabs in New York City (June 14, 2009), available at http://www.nycpedicabassociation.org/pdf/10_12_2009/NYC_gov_mayors_pressrelease_printer.pdf.

113. N.Y.C., N.Y., ADMIN. CODE tit. 20, ch. 2, subch. 9 (2009).

114. *Id.*

115. Simon Akam, *City Room: Council Adopts Pedicab Rules*, N.Y. TIMES, July 29, 2009, <http://cityroom.blogs.nytimes.com/2009/07/29/council-adopts-overhaul-of-pedicab-regulation/>.

116. *Id.*

117. Grynbaum, *supra* note 40.

118. *Id.*

119. *Id.*

120. N.Y.C. Council, Comm. on Consumer Affairs, Pedicab Rules Hearing (June 29, 2009) (statement of David Pollack, Exec. Dir. Comm. for Taxi Safety), available at <http://legistar.council.nyc.gov/View.ashx?M=F&ID=681941&GUID=D914D30E-11CF-4660-AE46-0FB6209972CC>.

The Broadway League, were disappointed by the lack of a licensing cap.¹²¹ Despite these objections, the Council unanimously adopted the measure less than two months after it was proposed. Mayor Bloomberg signed the initiative into law on August 13, 2009.¹²²

And so the New York pedicab officially became regulated on November 21, 2009, when the law finally went into effect.¹²³ What had begun as a small group of operators who, by some accounts, consisted mostly of “[t]ap dancers, undertakers, and striptease artists,” had, over the course of fifteen years, become a completely new industry.¹²⁴ Peter Meitzler, one of the first pedicab fleet owners, aptly described the change: “12:01 Saturday, we’re in a new era.”¹²⁵ The days of no liability insurance, no mandatory safety features, and a “Wild West” mentality to the industry had come to an end.¹²⁶ The pedicab industry had prevailed over the business competitors that would have preferred to see it eliminated or severely minimized by overregulation. Some owners and operators felt that, while regulatory legitimacy would lend respect to the trade, the new rules would kill the casual mood of the business.¹²⁷ One longtime operator and musician retorted, “Now it’s an average job. It’s lost its charm.”¹²⁸

B. West Coast: San Diego Regulation

Meanwhile, 2400 miles away on the other side of the continent, pedicabs had a similar emergence in 1995 in downtown San Diego.¹²⁹ A local attorney, Daniel M. Smith, brought four pedicabs from San Francisco and began leasing them out to operators.¹³⁰ Tourists in the city’s Gaslamp Quarter were his initial customers. By 1999, Smith expanded his business to other areas of the city, and numerous competing companies started to appear.¹³¹ By the turn of the century, there were between seventy-five and 100 pedicabs operating in San Diego.¹³²

The process of regulating San Diego pedicabs was a significantly smoother ride than in New York, though it was not without its own bumps. The City of San Diego made its first effort to regulate the industry in 1999.¹³³ The first

121. *Id.* (statement of Thomas Ferrugia, Dir. Gov’t Rel. for Broadway League).

122. N.Y.C. Council, Legislation File #1031-2009, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=452683&GUID=82826507-4706-4F0E-BBAE-D02BE21852BC&Options=&Search=> (last visited Feb. 10, 2010).

123. Michael M. Grynbaum, *Pedicabs Will Now Be Inspected and Licensed*, N.Y. TIMES, Nov. 21, 2009, at A14, available at <http://www.nytimes.com/2009/11/21/nyregion/21pedicabs.html>.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. Arner, *supra* note 30.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

ordinance, O-18701, passed without significant protest.¹³⁴ Its primary focus was on safety features and their enforcement.¹³⁵ The ordinance's sponsor, City Councilwoman Barbara Warden, embraced the new form of transportation.¹³⁶ Her spokesmen stated, "[W]e tried to balance safety against over-regulation of small businesses."¹³⁷

The 1999 ordinance required operators to obtain operating permits before operating a pedicab, restricting operators to individuals over the age of eighteen who have a driver's license.¹³⁸ The ordinance created a system for approving the actual pedicabs, requiring pedicab owners to file applications for pedicab decals before using them.¹³⁹ Besides requiring at least \$1 million in liability insurance,¹⁴⁰ the ordinance also required that pedicabs have battery operated headlights and taillights as well as rearview mirrors.¹⁴¹ The ordinance went into effect January 1, 2000.¹⁴² Subsequent legislation added to the list of required safety features.¹⁴³

In the early part of the decade, the pedicab industry continued to grow. By 2004, the San Diego industry had doubled to 200 pedicabs.¹⁴⁴ As this growth continued, the City Manager's Office submitted reports and recommendations on a nearly yearly basis with suggestions as to how to continue to improve the city's pedicab regulatory scheme.¹⁴⁵ Common suggestions included: (1) requiring operators to have California Driver's Licenses (not merely any driver's license); (2) requiring passenger seatbelts; (3) requiring codes of conduct for pedicab operators that must be signed before the operator may obtain a permit;¹⁴⁶ and (4) requiring the display of fares in a clear manner on all operating pedicabs.¹⁴⁷

In June 2006, the City Council once again took action. Citing pedicabs' increasing popularity as well as an increase in traffic violations, Ordinance O-

134. *Id.*

135. *See* SAN DIEGO, CAL., MUN. CODE §§ 83.0101–.0134 (2000) (mandating certain safety equipment and creating regulatory enforcement system).

136. Arner, *supra* note 30.

137. *Id.*

138. SAN DIEGO, CAL., MUN. CODE §§ 83.0103, .0121 (2000).

139. *Id.* § 83.0115–.0116.

140. *Id.* § 83.0126.

141. *Id.* § 83.0117.

142. CITY OF SAN DIEGO: MANAGER'S REPORT, No. 01-011, UPDATE ON AND AMENDMENTS TO PEDICAB REGULATION ORDINANCE 0-2000-19 (2001).

143. *See infra* text accompanying notes 152–53, 174.

144. CITY OF SAN DIEGO: MANAGER'S REPORT, No. 05-115, AMENDMENT TO PEDICAB REGULATIONS AND TRANSFER OF PROGRAM TO MTS (2005).

145. The Manager's office wrote five, frequently redundant, reports between 2001 and 2006: CITY OF SAN DIEGO: MANAGER'S REPORT, No. 01-011, *supra* note 142; CITY OF SAN DIEGO: MANAGER'S REPORT, No. 02-142, ELECTRIC LOW-SPEED VEHICLE PILOT PROGRAM AND PEDICAB SAFETY AMENDMENTS (2002); CITY OF SAN DIEGO: MANAGER'S REPORT, No. 03-076, AMENDMENTS TO PEDICAB ORDINANCE (2003); CITY OF SAN DIEGO: MANAGER'S REPORT, No. 05-115, *supra* note 144; CITY OF SAN DIEGO: MANAGER'S REPORT, No. 06-055, AMENDMENT TO PEDICAB REGULATIONS AND TRANSFER OF PROGRAM TO MTS (2006).

146. CITY OF SAN DIEGO: MANAGER'S REPORT, No. 05-115, *supra* note 144.

147. CITY OF SAN DIEGO: MANAGER'S REPORT, No. 01-011, *supra* note 145.

19502 was designed by the Council to further protect the safety and welfare of pedicab passengers.¹⁴⁸ Taking up a number of the Manager's Office recommendations, the Ordinance directed that operating permits not be granted unless the operator has a California Driver's License,¹⁴⁹ that fares be prominently posted,¹⁵⁰ and that each pedicab have a unique nontransferable identification number.¹⁵¹

The city also enhanced the safety requirements by requiring that all pedicabs have seatbelts¹⁵² and that pedicabs not operate where a bicycle cannot operate.¹⁵³ The city also added more stringent liability insurance requirements to ensure insurance legitimacy.¹⁵⁴ The ordinance also included the first, albeit limited, area ban on pedicabs, banning their use on Martin Luther King Promenade,¹⁵⁵ a famous downtown avenue near the convention center with a variety of restaurants, shops, and activities.¹⁵⁶ Finally, the ordinance provided more detailed procedures for the denial, suspension, or revocation of pedicab licenses and decals.¹⁵⁷

Perhaps because of the lack of any unified pedicab lobbying organization, the 2006 ordinance passed without a hitch and garnered very little publicity.¹⁵⁸ Nevertheless, the San Diego pedicab industry continued to quietly expand, with more than 400 pedicabs in operation by 2009.¹⁵⁹ But this tranquility came to a sudden halt in July of that year.¹⁶⁰

Only several weeks after the New York pedicab accident involving a taxicab, a tourist in San Diego was killed when she fell out of a pedicab driven by a twenty-three-year-old student.¹⁶¹ Sharon Miller, a sixty-year-old resident of Illinois, was visiting San Diego with a friend when the two decided to ride a pedicab.¹⁶² In violation of the 2006 ordinance, the pedicab was not equipped with seatbelts.¹⁶³ The operator began to rapidly swerve the pedicab back and forth and, as a result, Miller was ejected from the vehicle, striking her head on the pavement

148. SAN DIEGO, CAL., ORDINANCE O-19502 (2006).

149. SAN DIEGO, CAL., MUN. CODE § 83.0104 (2006).

150. *Id.* § 83.0109.

151. *Id.* § 83.0126(d).

152. *Id.* § 83.0126(c).

153. *Id.* § 83.0122.

154. *Id.* § 83.0129.

155. *Id.* § 83.0128(d).

156. *Martin Luther King Promenade Information*, GROOPLE, http://www.homeandabroad.com/c/23/Site/78762_Martin_Luther_King_Promenade_visit.html (last visited Dec. 31, 2010).

157. SAN DIEGO, CAL., MUN. CODE § 83.0130.

158. A LexisNexis news search found no significant articles detailing the 2006 ordinance or describing any controversy.

159. Schmidt, *supra* note 42.

160. Press Release, San Diego Police Dep't, Arrest Made in Fatal Pedicab Collision (July 7, 2009), available at <http://www.sandiego.gov/police/about/media/pdf/2009/pedicabincident.pdf>.

161. *Id.*

162. *Id.*

163. *Id.*

and immediately losing consciousness.¹⁶⁴ Miller died in the hospital the following day.¹⁶⁵ The operator was arrested and initially charged with involuntary manslaughter,¹⁶⁶ but these charges were later dropped.¹⁶⁷

Much like the New York accident, this accident brought to light legitimate pedicab safety concerns in San Diego, and the City Council immediately took action.¹⁶⁸ The city began to consider a preexisting piece of legislation which had not yet been reviewed by the full Council at the time of the accident.¹⁶⁹ Many city officials believed the pedicab market was oversaturated, and that this contributed to the overall safety problem.¹⁷⁰ Ordinance O-2010-4¹⁷¹ tried to correct this by capping the number of pedicabs to 250 in high-traffic areas such as Pacific Beach, Mission Beach, Ocean Beach, and La Jolla—the prime pedicab locales.¹⁷² The ordinance also contained other provisions, including provisions banning pedicabs from sidewalks,¹⁷³ requiring seatbelts,¹⁷⁴ and forbidding pedicabs from travelling more than twenty-five miles per hour unless operated in a bike lane.¹⁷⁵

The ordinance was unanimously passed by the City Council within several weeks of the accident.¹⁷⁶ Council members declared it a victory for public safety. “This is a really good start. People are going to be made safer,” commented Councilman Tony Young.¹⁷⁷ Pedicab business owners, however, were very disappointed with the ordinance, knowing the cap would lead to significant losses.¹⁷⁸ One business owner suspected he would have to cut his pedicab fleet by nearly 60% in response to the shortage of pedicab licenses, as only 250 licenses would be issued¹⁷⁹ to the 400 pedicabs operating at the time.¹⁸⁰ “We don’t want to lose our investment and lose our business with these new laws that are coming into

164. *Id.*

165. *Id.*

166. *Id.*

167. *Pedicab Driver Not Charged in San Diego Death*, VENTURA COUNTY STAR, July 9, 2009, <http://www.vcstar.com/news/2009/jul/09/pedicab-driver-not-charged-in-san-diego-death/>.

168. *See* Katie Orr, *Pedicab Driver Charged with Felony*, KPBS, July 7, 2009, <http://www.kpbs.org/news/2009/jul/07/pedicab-driver-charged-felony/> (discussing council members’ reactions to the accident).

169. *Id.*

170. *See* Schmidt, *supra* note 42.

171. SAN DIEGO, CAL., ORDINANCE O-2010-4 (2009); *see also* Helen Gao, *San Diego City Council Puts Brakes on Pedicabs*, SAN DIEGO UNION-TRIB., July 29, 2009, <http://www.signonsandiego.com/news/2009/jul/29/city-council-puts-brakes-pedicabs/>.

172. SAN DIEGO, CAL., ORDINANCE O-2010-4 § 83.0113–.0114; *see also* Orr, *supra* note 168. The exact amount was set by city council resolution. SAN DIEGO, CAL., RESOLUTION R-2010-52 (2009).

173. SAN DIEGO, CAL., ORDINANCE O-2010-4 § 83.0125.

174. *Id.*

175. *Id.*

176. Gao, *supra* note 171.

177. *Id.*

178. *See id.*

179. *Id.*

180. Schmidt, *supra* note 42.

effect,” stated Eric Wesselink, a pedicab business owner.¹⁸¹ On the other hand, at least a few pedicab operators were more optimistic (provided they were able to keep their jobs)—the caps would mean less competition and thus more profits.¹⁸² The ordinance went into effect in August 2009.¹⁸³

Unlike their New York brethren, San Diego pedicab owners were unable to prevent the imposition of a cap on the number of operating pedicabs. The negative publicity stemming from a fatal accident, versus one with mere injuries, proved too great a force for the unorganized San Diego industry to withstand. The lack of any organized resistance from an organization like the NYCPOA perhaps contributed to this defeat. As of January 1, 2011, the Ordinance O-2010-4 cap and safety requirements remain in effect in San Diego.

IV. THE MODEL PEDICAB REGULATORY SYSTEM: THAT WHICH SERVES THE PUBLIC

In order to analyze pedicab regulation in any depth, the purposes of government regulation—of any nature—must be considered. Regulatory systems exist primarily for the benefit of the general public, as government regulation is intended to rectify societal and market problems.¹⁸⁴ As President Clinton stated in a 1993 Executive Order, “The American people deserve a regulatory system . . . that protects and improves their health, safety, environment, and well-being and improves the performance of the economy *without imposing unacceptable or unreasonable costs on society.*”¹⁸⁵ In essence, the benefits and the costs of a potential regulation must be weighed by considering both the positive and negative effects of imposing that regulation.

Any government regulation, especially regulation that significantly interferes with a market for goods or services, has the potential to negatively impact the market to such a degree that the regulation does more harm than good.¹⁸⁶ Such regulation is unduly burdensome.¹⁸⁷ As President Clinton further stated, regulators must recognize that private markets are often “the best engine for economic growth.”¹⁸⁸

181. *Id.*

182. *See* Steve Schmidt, *Too Many Pedicabs Drivers Compete for Business, Operators and City Say*, SAN DIEGO UNION-TRIB., July 12, 2009, <http://www.signonsandiego.com/news/2009/jul/12/1m12pedi21655-too-many-pedicab-drivers-compete-bus/?metro&zIndex=130674> (quoting San Diego operators as believing the market is oversaturated and thus reducing operator income).

183. *See* Gao, *supra* note 171 (noting that the regulations would take effect thirty days after July 29, 2009).

184. The San Diego Pedicab Code’s purpose statement reads: “[i]t is necessary to enact regulations governing pedicabs, operators, and owners to protect the health, safety, and welfare of the general public, and passengers using pedicabs.” SAN DIEGO, CAL., MUN. CODE § 83.0101 (2010) (emphasis omitted).

185. Exec. Order No. 12,866, 58 Fed. Reg. 190 (Oct. 4, 1993) (emphasis added).

186. *See id.*

187. *See id.*

188. *Id.*

While local governments are not obligated to follow this Executive Order, this Note assumes that local regulators are—or should be—primarily interested in promoting the general welfare, and should be opposed to regulations that are overly burdensome. Overly burdensome regulations, with their inherent “unreasonable costs,”¹⁸⁹ run the risk of deterring business growth,¹⁹⁰ stifling economic expansion, and ultimately decreasing the rate at which standards of living increase.

This Part examines various pedicab regulations adopted by New York and San Diego and determines whether particular provisions serve the public interest. As they are the premiere pedicab markets with the most extensive pedicab regulations, New York and San Diego remain the center of the discussion.

Most pedicab regulatory features can be divided into five categories, discussed in turn: (1) the requirement of basic safety equipment, such as headlights and seatbelts; (2) operating license requirements; (3) liability insurance requirements; (4) restrictions on where pedicabs may operate; and (5) caps on the number of pedicabs that may operate in a city or area of a city. While there are other types of regulations that may affect pedicabs, these five categories are the most common and most significant.

Each section’s conclusions are summarized as recommendations for a Model Pedicab Code (“MPC”)—those provisions the Author believes are the most beneficial to the public. As the pedicab industry continues to expand to new cities, other municipalities are encouraged to adopt the features of the MPC in their own regulatory schemes.

A. Safety Equipment Requirements

Mandatory safety equipment constitutes the most significant area of pedicab regulation and is perhaps the most beneficial variety of regulation for the public. The benefits of requiring all pedicabs to have some standard safety features commonly found on motor vehicles significantly outweigh the costs, and such regulations are thus an essential component of an effective pedicab regulatory system. New York and San Diego both require a number of safety devices, but the regulations leave significant room for improvement. All of the safety equipment regulations, as well as the MPC suggestions, are summarized in Table 1.

New York, under the revised Local Law 19, requires pedicabs to have a wide variety of standard safety features. All New York pedicabs must have seating for no more than three passengers,¹⁹¹ passenger seatbelts,¹⁹² and a braking system

189. *Id.*

190. For example, Massachusetts Governor Deval Patrick acknowledged the danger of overly burdensome regulation when he agreed to work with business leaders to remove such “undue hindrances to economic investment and development.” Press Release, Office of Mass. Att’y Gen., Governor Deval Patrick & Att’y Gen. Martha Coakley Join in Regulatory Review Initiative to Foster Economic Development in the Commonwealth (Oct. 26, 2007), *available at* http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2007_10_26_economic_initiative&csid=Cago.

191. N.Y.C., N.Y., ORDINANCE § 20-254(3) (2010).

192. *Id.* § 20-254(9).

that is both unaffected by rain and has a backup.¹⁹³ The pedicabs must also be equipped with battery-operated headlights capable of projecting light 300 feet¹⁹⁴ and battery-operated taillights visible from 500 feet,¹⁹⁵ as well as lighted turn signals.¹⁹⁶

San Diego has similar safety requirements. The city requires pedicabs to have at least two taillights visible from 500 feet, both at the same height, which must be colored red.¹⁹⁷ San Diego similarly requires passenger seatbelts.¹⁹⁸ But unlike New York, San Diego no longer requires pedicabs to have headlights.¹⁹⁹ Additionally, San Diego once required rearview mirrors²⁰⁰ (a feature the New York initiatives never had), but the City Council has since dropped the requirement.²⁰¹ San Diego also does not have any explicit requirements for braking systems, but the ordinance does have a catch-all provision stating that “[i]t is unlawful to operate, or for any *owner* to allow to be operated, a *pedicab* in an unsafe condition.”²⁰² This is a potential source of liability for an owner or operator of a pedicab that has a poor-quality braking system or a braking system that is adversely affected by rain or water.

193. *Id.* § 20-254(4)–(5).

194. *Id.* § 20-254(6).

195. *Id.* § 20-254(7).

196. *Id.* § 20-254(8).

197. SAN DIEGO, CAL., MUN. CODE § 83.0123(a) (2010).

198. *Id.* § 83.0123(b).

199. While headlights were added to the city’s ordinances as part of the 1999 ordinance, SAN DIEGO, CAL., ORDINANCE O-18701 § 83.0117(a)(1) (1999), the requirement was dropped when the pedicabs regulatory scheme was overhauled in 2009. *See* SAN DIEGO, CAL., MUN. CODE § 83.0123 (no requirement of headlights).

200. SAN DIEGO, CAL., ORDINANCE O-18701 § 83.0117(a)(3) (1999).

201. *See* SAN DIEGO, CAL., MUN. CODE § 83.0123 (no requirement of rearview mirrors).

202. *Id.* § 83.0123(c).

Table 1
Summary of Safety Equipment Requirements

	New York	San Diego	MPC
Headlights	Projecting a beam of light 300 feet	No longer required	Projecting a beam of light 300 feet
Taillights	Visible from 500 feet	Visible from 500 feet and must be red	Visible from 500 feet and must be red
Passenger Seatbelts	Required	Required	Required
Brake System	Required and cannot be affected by wet conditions; backup required	Unlawful to operate in “unsafe condition” catch-all	Required and cannot be affected by wet conditions; secondary backup required
Turn Signals	Required	No requirement	Required
Rearview Mirrors	No requirement	No longer required	Required

The benefits of these safety regulations are readily apparent, and while the exact costs are not known, they are likely to be rather low. Headlights serve to allow the pedicab operator to see where he is riding at night. Even in urban areas, streetlight coverage can be an insufficient light source, and without an auxiliary source of light the pedicab operator runs a significant chance of striking another vehicle, a pedestrian, or some other obstruction in the middle of a street.²⁰³ Similarly, taillights allow other vehicles behind the pedicab to notice the pedicab at night and avoid potential collisions. There are no empirical studies indicating an increased chance of collision when a pedicab does not have headlights and taillights, but a similar study for bicycles concluded that, as might be expected,

203. Cars have long been equipped with headlights to prevent nighttime accidents. Bernard S. Abrams, *Locomotive Headlight/Ditch Light Conspicuity*, 2 ASS’N TRIAL LAW. AM. 2497 (2002); Vikram Kumar, *The Importance of Using Headlights for Road Safety*, ARTICLEBLISS (June 24, 2009, 6:41 AM), <http://www.articlebliss.com/Art/292378/81/The-importance-of-using-headlights-for-road-safety-When-should-you-replace-your-car-s-headlight.html>. By analogy, avoiding accidents is also the purpose of pedicab headlights.

having lights reduces the occurrence of accidents with motor vehicles.²⁰⁴ With medical and related costs of serious injuries from pedicab collisions totaling tens of thousands of dollars or more per accident,²⁰⁵ avoiding collisions is an obvious benefit of requiring headlights and taillights.

Headlights and taillights tend to be fairly inexpensive. Bicycle headlights can be purchased for as little as \$21,²⁰⁶ and taillights can be as inexpensive as \$10 each.²⁰⁷ While these prices might not reflect the commercial quality needed for pedicabs, even products ten times as expensive as these would still be reasonable in light of the benefits they provide. Main Street Pedicabs sells complete pedicabs, including standard lighting, for \$3400.²⁰⁸ The lights are only one minor component of the entire pedicab. Additionally, while all lights will require batteries and occasional replacements, maintenance costs are likely to be minimal compared to the pedicab operator's gross revenues. In sum, because the costs of requiring pedicabs to have headlights and taillights pale in comparison to their benefits, the MPC includes these regulatory requirements.

Another essential safety feature is passenger seatbelts. Seatbelts keep passengers from being ejected during a collision, thereby preventing further potential injury.²⁰⁹ If the victim of the 2009 San Diego accident had been wearing a seatbelt, she would most likely not have been ejected from the pedicab and her death would have been avoided.²¹⁰ Seatbelts are also standard equipment on the Classic Pedicab sold by Main Street.²¹¹ Additionally, the cost of retrofitting old pedicabs with seatbelts is likely to be low. Thus, the benefits of seatbelts—preventing injuries and saving lives—outweigh their minimal costs. Regulations requiring pedicabs to have seatbelts therefore serve the interests of the public and are part of the MPC.

204. The U.S. Department of Transportation concluded in 1975 that “illumination on both sides and on the front of the bicycle will reduce the occurrence of vehicle/bicycle collisions . . . such as where a bicycle crosses the path of a motor vehicle.” John Forester, *Nighttime Safety Equipment Requirements of the Consumer Product Safety Commission*, JOHNFORESTER.COM, <http://www.johnforester.com/Articles/Lights/cpscreq.htm> (last visited Jan. 29, 2011).

205. For example, in 2002 the average bicycle injury in Minnesota cost \$49,000. *Best Practices to Prevent Bicycle Injuries*, MINN. DEP'T HEALTH (Sept. 2002), <http://www.health.state.mn.us/injury/best/best.cfm?gcBest=bike>. Pedicab accidents are likely to be even more expensive as pedicabs have multiple passengers.

206. *Search Results for Bicycle Headlights*, WALMART, http://www.walmart.com/search/search-ng.do?search_constraint=0&ic=48_0&search_query=bicycle+headlight (last visited Feb. 28, 2010).

207. *Search Results for Bicycle Tail Light*, WALMART, http://www.walmart.com/search/search-ng.do?search_constraint=0&ic=48_0&search_query=bicycle+tail+light (last visited Feb. 28, 2010).

208. *The Classic Pedicab*, MAIN STREET PEDICABS, <http://www.pedicab.com/pedicabs-classic-pedicab.html> (last visited Feb. 28, 2010).

209. *Seat Belts*, SAFETY FORUM (Sept. 10, 1999), <http://www.safetyforum.com/seatbelts/>.

210. See Press Release, San Diego Police Dep't, *supra* note 160.

211. *The Classic Pedicab*, *supra* note 208.

An effective braking system is another obvious safety feature of a pedicab. New York requires that the brakes not be affected by water, a necessary safety feature for when it rains.²¹² New York further requires that all pedicabs have a secondary braking system available²¹³ in case the primary brakes fail. San Diego requires that pedicabs are in good operating condition, which is a catch-all that logically includes an effective braking system.²¹⁴ If a pedicab has a poor braking system, the system would be apt to fail, resulting in the pedicab operator losing control of the unit and a potential collision.

The benefit of avoiding such collisions is the prevention of injuries and fatalities. The costs of a quality braking system are relatively low. The Classic Pedicab comes equipped with forward V-Brakes and rear hydraulic brakes.²¹⁵ Although pedicab brakes are slightly more expensive, V-Brakes for bicycles cost as little as \$8.²¹⁶ Even including installation costs, the benefits of effective braking systems certainly outweigh their costs, and thus this regulation benefits the public. The MPC includes the requirements of the New York Code: pedicabs must be equipped with brakes that are not affected by water and must employ a secondary backup. Such explicit requirements will do more to curtail accidents than the San Diego style catch-all requirement, which is more likely to allow weaker safety features that will be litigated in court—after accidents and injuries have already occurred.

Finally, San Diego previously required that pedicabs have two rearview mirrors.²¹⁷ New York has no rearview mirror requirement and Main Street Pedicabs do not offer rearview mirrors on any model.²¹⁸ The argument for rearview mirrors is somewhat weaker than for the other discussed safety features. While there is no alternative option to having headlights at night, for instance, a pedicab operator will always have the option to look over his shoulder in lieu of having rearview mirrors. Nevertheless, that moment of looking back could be critical to avoiding an accident in dense traffic.²¹⁹ Assuming rearview mirrors are easy to install, this safety feature has discernible benefits. Bicycle rearview mirrors

212. N.Y.C., N.Y., ORDINANCE § 20-254(4) (2010).

213. *Id.* § 20-254(5).

214. SAN DIEGO, CAL., MUN. CODE § 83.0123(c) (2010).

215. *The Classic Pedicab*, *supra* note 208.

216. *Search Results for V-Brake*, WALMART, http://www.walmart.com/search/search-ng.do?search_constraint=0&ic=48_0&search_query=v-brake (last visited Feb. 28, 2010).

217. SAN DIEGO, CAL., ORDINANCE O-18701 § 83.0117(a)(3) (1999) (subsequently amended).

218. See all six models at MAIN STREET PEDICABS, <http://www.pedicab.com/pedicabs.html> (last visited Feb. 28, 2010).

219. For automobile drivers, not looking forward on the road tends to increase the frequency of accidents, regardless of whether the driver is distracted by a cell phone or by reaching for a moving object. Press Release, National Highway Traffic Safety Administration, Virginia Tech Transportation Institute Releases Findings of Breakthrough Research on Real-World Driver Behavior, Distraction and Crash Factors (Apr. 20, 2006), <http://www.nhtsa.gov/Driving+Safety/Distracted+Driving/Breakthrough+Research+on+Real-World+Driver+Behavior+Released/>. The distraction of looking over one's shoulder on a pedicab is likely to be similarly dangerous.

are also low-cost, starting at about \$10.²²⁰ Thus, although neither New York City nor San Diego require rearview mirrors, their benefits outweigh their costs. A rearview mirror requirement would likely enhance the public welfare and is therefore included in the MPC.

There is almost universal support for such safety regulations.²²¹ Even the NYCPOA was quick to support these regulations,²²² perhaps believing that such measures would improve public opinion of pedicab safety and enhance pedicab popularity.

B. Operating License Requirements

Beyond the requirement that pedicabs have reasonable safety equipment, New York and San Diego also have strict licensing requirements for pedicab operators. New York requires that all pedicab operators obtain a “pedicab driver license,”²²³ which requires an operator to be at least eighteen years of age, possess a valid regular driver’s license, and meet fitness requirements set by the DCA Commissioner.²²⁴ New York requires all pedicab licenses to be renewed annually.²²⁵ Licenses can be revoked for certain bad behavior.²²⁶

San Diego has somewhat similar requirements. Operators are required to get licenses, called “operating permits.”²²⁷ The permit has no age or driver’s license requirement, but it does require the operator or owner to possess a city Business Tax Certificate²²⁸ and requires the operator to sign a copy of the “Pedicab Operator Code of Conduct.”²²⁹ San Diego also requires pedicab licenses to be renewed annually,²³⁰ and the City Manager can revoke licenses for bad behavior or certain criminal activity.²³¹ A summary of all of these features is provided in Table 2.

220. Search Results for Bicycle Rearview Mirrors, WALMART, http://www.walmart.com/search/search-ng.do?search_constraint=0&ic=48_0&search_query=bicycle+rearview+mirrors (last visited Feb. 28, 2010).

221. The Author could not locate any printed opposition to requiring headlights, taillights, or seatbelts.

222. Rivera & Vega, *supra* note 86.

223. N.Y.C., N.Y., ORDINANCE § 20-257(a) (2010).

224. *Id.* § 20-257(d).

225. *Id.* § 20-257(e).

226. *Id.* § 20-257(f).

227. SAN DIEGO, CAL., MUN. CODE § 83.0103 (2010).

228. San Diego requires all local businesses to obtain a Business Tax Certificate. A Certificate costs \$51 as of December 30, 2010, and can be obtained online at the City of San Diego’s official website. *Apply for a Business Tax Certificate*, CITY OF SAN DIEGO, <http://www.sandiego.gov/treasurer/taxesfees/btax/btaxhow.shtml> (last visited Dec. 30, 2010).

229. SAN DIEGO, CAL., MUN. CODE § 83.0104(d).

230. *Id.* § 83.0107.

231. *Id.* § 83.0127. San Diego pedicab licenses can be denied, suspended, or revoked for several reasons, including: failure to abide by the pedicab code, providing false statements in the pedicab license application process, involvement in a pedicab accident, violent felonies, sexual offenses, and any crimes related to unsafe driving of passengers. *Id.*

Table 2
Summary of Operating Licensing Requirements

	New York	San Diego	MPC
Operating Permit	Pedicab driver's license required.	Operating permit required.	Operating permit required.
Requirements	18 years of age, valid driver's license, fitness requirements established by Commissioner.	Business Tax Certificate and signed "Pedicab Operator Code of Conduct".	Driver's license and signed Pedicab Operator Code of Conduct.
Administrative Suspension & Revocation	Commissioner can revoke for bad behavior, with due notice and the opportunity to be heard.	City Manager can revoke for bad behavior or criminal activity. One administrative appeal granted.	Can be revoked for bad behavior or criminal activity, with due notice and the opportunity to be heard.

Pedicab operating licenses are essential to any pedicab regulatory system. Without a licensing system, it would be significantly more difficult to enforce other pedicab regulations, such as the safety equipment or liability insurance requirements. New York and San Diego have different requirements for an individual to obtain a license, but at a minimum pedicab operators should have a driver's license. Possession of a driver's license demonstrates that an operator knows the rules of traffic and is competent to operate an automobile. A separate age requirement is not necessary—if a state deems an individual competent enough to operate an automobile with passengers, then that is sufficient for the operation of the much slower pedicab. Additionally, San Diego's "Pedicab Operator Code of Conduct" is a beneficial regulation, as it requires operators to commit to certain pedicab operating guidelines that are inherently different from motor vehicles. The cost of requiring a driver's license and a signed code of conduct is minimal, but those requirements help protect passengers and other members of the public by ensuring operators are generally aware of the rules of the road and know what is specifically required of them. In light of their obvious benefits, the MPC includes these requirements.

New York and San Diego both allow administrative officials to suspend or revoke operating licenses for a laundry list of bad behavior, including a

The City Manager has broad discretion to deny, suspend, or revoke the permits, *id.*, but the operators may appeal to a Manager-appointed "Enforcement Hearing Office," pursuant to administrative enforcement hearing procedures. *Id.* § 83.0128.

violation of any section of the pedicab codes²³² or a conviction of a serious or vehicular crime.²³³ Such an administrative discipline system is beneficial in that it ensures that poor operators can be quickly removed from the streets. The cost of having a non-judicial system is that, by allowing an administrative official to be judge, jury, and executioner, there is a greater chance that a pedicab operator's license could be unjustly taken away. The MPC thus includes New York's requirement that all operators be given "due notice and an opportunity to be heard"²³⁴ before their licenses are suspended or revoked. Though far from perfect, this solution balances the public's interest in revoking the licenses of irresponsible operators with the operators' needs for due process.

C. Liability Insurance Requirements

New York and San Diego both require pedicab companies to carry a minimum amount of liability insurance. In New York, pedicab operators may select from two alternative insurance requirements: (1) entire pedicab businesses must carry at least \$2 million in insurance, with a maximum of \$1 million per incident; or (2) each individual pedicab must be insured for at least \$100,000 per individual (\$300,000 per incident) and \$50,000 in coverage for property damage.²³⁵ San Diego simply requires a flat amount of liability insurance—at least \$1 million per incident.²³⁶ These insurance requirements are displayed in Table 3.

232. A section of New York's Code reads:
 the commissioner, after due notice and an opportunity to be heard, may suspend or revoke a pedicab business license upon the occurrence of any one or more of the following conditions:
 . . .
 4. violation by a pedicab business of any of the provisions of chapter one of this title, provisions of this subchapter, rules promulgated pursuant to this subchapter, or any other law applicable to the operation of a pedicab business.

N.Y.C., N.Y., ORDINANCE § 20-261(a) (2010).

233. San Diego allows the City Manager to suspend or revoke an operating permit if the operator commits certain crimes or other dangerous acts. SAN DIEGO, CAL., MUN. CODE § 83.0127(a); *see supra* note 231.

234. N.Y.C., N.Y., ORDINANCE § 20-261(a).

235. *Id.* § 20-253(b)(2).

236. SAN DIEGO, CAL., MUN. CODE § 83.0126(b) (2010).

Table 3
Summary of Liability Insurance Requirements

	New York	San Diego	MPC
Liability Insurance	(1) Pedicab business must have \$2m in liability coverage, with \$1m in coverage per incident; or (2) Pedicab must be insured per person \$100k; with \$300k in coverage per incident and \$50k in property damage coverage.	\$1m in liability coverage per pedicab.	\$1m in liability coverage per pedicab.

Just as with automobile insurance requirements, the benefit of mandatory liability insurance is that it ensures that tort victims will be compensated for injuries.²³⁷ Most pedicab businesses, especially those that consist of sole proprietors, are unlikely to have substantial assets to satisfy a judgment resulting from an accident. Liability insurance ensures that victims receive at least some compensation. It also spreads the risk of accidents among pedicab owners.

The cost of requiring insurance is the expense incurred by pedicab owners purchasing the insurance. Although this is likely to be a significant operating cost for a pedicab business, the requirement is in line with the legal tradition of requiring those responsible for injuries to compensate their victims.²³⁸ Additionally, it follows that pedicabs should face the same requirements as their direct competitors—taxicabs and other commercial transportation—all of which are required to purchase liability insurance.

Though the cost of liability insurance is more substantial than the cost of headlights or seatbelts, the cost is still outweighed by the benefit to society. Regulations requiring pedicab owners to carry liability insurance thus serve the interests of the public and are not overly burdensome. In light of rapidly increasing medical costs, the MPC adopts San Diego's mandatory higher standard of \$1 million in liability coverage per pedicab. New York's second insurance option of

237. See DAN B. DOBBS & PAUL T. HAYDEN, *TORTS AND COMPENSATION* 802 (5th ed. 2005) ("One important effect of liability insurance is that it provides a fund available to pay judgments for injured persons, without which legal liability might be meaningless.").

238. See *id.* ("The defendant's fault is a wrong that has harmed the plaintiff in some recognizable way; tort liability, by requiring the wrongdoer to compensate the plaintiff, can put the accounts right between the parties.").

\$100,000 per individual may simply not be enough to cover life-threatening injuries such as those sustained by Sharon Miller in San Diego.²³⁹

D. Area Bans

Some pedicab regulations or proposals limit pedicab operation in certain areas within a city. In its 2005 regulatory proposal, the New York City Council considered banning pedicabs from the entire Midtown area, including Central Park.²⁴⁰ The city council members claimed the ban was necessary because of traffic congestion and the belief that pedicabs “create hazardous conditions in high traffic areas.”²⁴¹ San Diego actually enacted a limited area ban, barring pedicabs from operating on certain roads, including the famous Martin Luther King Promenade in downtown.²⁴² A summary of these area bans is provided in Table 4.

Table 4
Summary of Area Bans

	New York	San Diego	MPC
Area Bans	Currently no area bans—Midtown ban defeated	Absolute ban on operating pedicabs on Martin Luther King Blvd.	No area bans other than high-speed roadways

The benefits of these area restrictions must be divided into categories. The first are the benefits to the public. Generally, when a vehicle of any variety is removed from a street, travelling on that street inherently becomes safer. If the pedicab were operating on a street where it could not travel fast enough to keep up with traffic, then there would certainly be an increased risk of collision. But to the extent that such area restrictions are on roads where the pedicab could otherwise operate effectively, there are no further benefits to the public in removing an alternative source of transportation. A second set of benefits are those that go out to the special interests that have pushed for these bans, primarily taxicab organizations or horse-drawn-carriage lobbies.²⁴³ By removing the pedicab from a particular area or street, these businesses are likely to increase their market share.

The costs of these area bans are significant. A consumer that would have ridden a pedicab in lieu of a taxicab or walking would no longer have that option because of government regulation. If the 2005 New York initiative had passed, tourists near Central Park who might have preferred riding a pedicab over a horse-drawn carriage would not have been able to choose their top preference.

239. See *supra* text accompanying notes 160–65.

240. Skutsch, *supra* note 56.

241. *Id.*

242. SAN DIEGO, CAL., MUN. CODE § 83.0125(c)–(d) (2010).

243. New York horse-drawn carriage owners lobbied for the failed 2005 initiative that would have banned pedicabs from Midtown. Skutsch, *supra* note 56.

Unlike the safety regulations or insurance requirements, area restrictions provide minimal overall benefit to society²⁴⁴ at the cost of removing choices for the consumer. Regulations that ban pedicabs from certain areas without legitimate safety concerns apply a substantially undue burden on society. The MPC thus includes no area bans other than those covering highways and other high-speed roadways.

E. Operating Caps

Both New York and San Diego have experimented with capping the number of pedicabs that may operate in the city or in a specific area of the city. New York's city-wide operating cap was abandoned before it went into effect,²⁴⁵ but San Diego's cap of 250 pedicabs in "Restricted Zones,"²⁴⁶ passed in 2009, remains in effect.²⁴⁷ When the San Diego cap was enacted, potentially 180 (42%) of the then-operating pedicabs were forced off the streets.²⁴⁸ The cities' operating caps are summarized in Table 5.

Table 5
Summary of Operating Caps

	New York	San Diego	MPC
Caps	Considered and abandoned	Cap of 250 for Restricted Pedicab Zones: Downtown, Ocean Beach, Mission Beach, La Jolla, Petco Ballpark Zone	No caps

Placing caps on the number of pedicabs that may operate in a city is, like area bans, burdensome to society. There are no direct public benefits,²⁴⁹ though special interests—competing industries—again benefit by having pedicabs removed from the marketplace. The cost of capping the number of pedicabs is the

244. They do, however, provide a significant benefit to select minority interests: competing industries.

245. See *supra* text accompanying notes 117–23.

246. Restricted Zones include the most prominent pedicab locales in San Diego: Downtown, Ocean Beach, Mission Beach, La Jolla, and Petco Ballpark Zone. SAN DIEGO, CAL., MUN. CODE § 83.0113(b)(1)–(5) (2010).

247. The exact amount was set by city council resolution. *Id.* § 83.0114; SAN DIEGO, CAL., RESOLUTION R-2010-52 (2009).

248. See Gao, *supra* note 171.

249. The caps allegedly try to ensure that the market is not oversaturated. See N.Y.C., N.Y., Council Int. 0740-2005 (never enacted). However, the free market makes this unnecessary. The market controls how many pedicabs are operated in a city. If there aren't enough operating pedicabs, then new operators will enter the marketplace because of the opportunity to profit. If there are too many pedicabs, then some operators will be forced out of the marketplace due to an insufficient number of customers.

same as the cost of banning them from certain areas: it is a direct interference to the market. If pedicabs in New York were limited to 20% of what consumers would otherwise demand, 4 out of 5 willing pedicab customers would be forced to take alternative transportation. The bottom line is that pedicab caps are an excessive undue burden on cities with flourishing pedicab industries. The MPC thus includes no cap on the number of pedicabs allowed to operate in a city, instead preferring to allow the market to naturally set the amount.

In sum, regulations requiring safety features and equipment, as well as those regulations mandating reasonable registration requirements and liability insurance, serve the public because their benefits outweigh their costs. Conversely, regulations banning pedicabs from operating in certain areas or capping the number of pedicabs that may operate within a municipality are detrimental to society because their costs greatly outweigh their benefits. Effective regulation enhances the market for competing forms of urban transportation; it does not damage it.

CONCLUSION

Over the last decade, pedicabs have evolved from a quaint novelty to a full-fledged transportation industry that continues to grow and flourish in many American cities. Due to concerns over safety, amplified by unfortunate accidents as well as pressure brought by competing industries, pedicabs in New York, San Diego, and other American cities are now being regulated by local governments.

Regulations requiring standard safety equipment equivalent to the equipment often mandated for bicycles or automobiles have increased public safety and improved the industry. Regulations requiring operating permits and liability insurance are also both fair and necessary. But regulations restricting the areas where pedicabs may operate or capping the number of pedicabs that can operate in a city have little or no legitimate purpose. These regulations instead serve competing industries that benefit from laws that hinder pedicabs.

Though it is inevitable that pedicabs, taxis, and other forms of transportation will continue to compete for customers, lobbying for government interference is just as inappropriate as a fist fight on Broadway. America's economic prowess comes from innovation and the entrepreneurial spirit. The jitney was initially destroyed by the lobbying efforts of the street-car industry but eventually trumped that foe in the form of the modern taxicab. Similarly, the innovative spirit behind the pedicab should not be extinguished. As Mayor Bloomberg stated, "The government has a responsibility to ensure safety and to encourage good long-term behavior that will help society and help individuals, but government shouldn't be any more than it absolutely has to be in the business of trying to manage economics."²⁵⁰

250. Gambling Interview, *supra* note 89.