



REPORT TO COUNCIL

DATE

1. ITEM NUMBER : C 29B/05/16

2. SUBJECT:

**AUTHORITY FOR THE COMMISSIONER TCT TO PAY COMPENSATION TO
ADDITIONAL MINIBUS-TAXI OPERATORS AFFILIATED TO THE CAPE
ORGANISATION OF DEMOCRATIC TAXI ASSOCIATION (CODETA)**

ONDERWERP:

**MAGTIGING VIR DIE KOMMISSARIS VAN TCT OM VERGOEDING TE BETAAL
AAN NOG MINIBUSTAXI-OPERATEURS WAT BY DIE CAPE ORGANISATION
OF DEMOCRATIC TAXI ASSOCIATION (CODETA) GEAFFILIEER IS**

ISIHLOKO:

**ISIGUNYAZISO SOKUBA UMKHOMISHINALA WE-TCT UKUBA AHLAWULE
IMBUYEKEZO KUBAQHUBI BEETEKSI EZIZIKHUMBI EZINCINANE
ABONGEZELELWEYO ABAKUMBUTHO ONGEDEMOKRASI YOONOTEKSI
WASEKAPA (I-CODETA)**

LSU: G5353

3. STRATEGIC INTENT

- Opportunity City
- Safe City
- Caring City
- Inclusive City
- Well-run City

Making progress possible. Together.

4. PURPOSE

The purpose of this report is to seek approval from Council for Commissioner TCT to pay compensation to four (4) additional minibus-taxi operators affiliated to the Cape Organisation of Democratic Taxi Association (CODETA) based on the deceased estates. The approved Compensation Policy does not make provision for compensation to be paid outside the categories as stipulated in the policy to be deducted from the subsequent allocation for compensation.

5. FOR NOTING BY / FOR DECISION BY

This report is for consideration/decision by:

- Council

6. EXECUTIVE SUMMARY

In October 2012 Council approved the IRT Phase 1A Business Plan and resolved inter alia that *“the Compensation Policy as set out in Annexure F to the Business Plan regarding the relevant categories of public transport operators, be adopted.”*

The 31 October 2012 Council RESOLUTION (Item C 54/10/12) and subsequent resolutions, Item C 35/02/14 and C37/01/16 stated that *“content and procedures for the calculation and payment of compensation be delegated to the Commissioner: Transport for Cape Town (TCT) the authority to determine, in consultation with the Executive Director: Finance (Chief Financial Officer), the compensation to be offered to minibus-taxi operators and to determine the process to be followed regarding the offer and payment of such compensation.”*

The Commissioner: TCT was also given the authority:

- (i) *to effect amendments to Annexure F of the Business Plan as may be necessary to ensure the successful conclusion of the compensation process, provided that*
 - (1) *the total amount of compensation to be paid in accordance with the amended Annexure F does not exceed the amounts for compensation payments approved by Council;*
 - (2) *any such amendments are noted at the first possible Council meeting, taking into account dates of closure of agendas for Council and its committees;*
- (ii) *to exercise any authority reasonably necessary for, or incidental to, the effective implementation of the compensation policy, subject to proviso (1) above.”*

The Compensation policy (Policy number 13776) that has been approved by Council makes provision for payment of monetary compensation in the event that the scheduled MyCiTi services impact negatively on the business of the minibus-

taxi operators. The current approved policy does not make provision for payment of compensation in the event of exceptional circumstances.

Exceptional Circumstances

After the City concluded the determination and payment of compensation of forty seven (47) out 144 operating licenses of the CODETA Khayelitsha – Cape Town Taxi Association members, the executive members approached the Commissioner: TCT to authorize an additional four (4) members. The reason for this request was that the association had four members who are deceased and the families have requested that the association assist them in order for the licenses to be bought out by the City and for the executors of the estates to conclude the estates of the deceased. As the approved Compensation Policy does not make provision for these categories of licenses to be bought out, the Commissioner is seeking Council approval to offer compensation for the surrender of these licenses. It is envisaged that this will be the only time that this type of request will be advanced and therefore it is not advisable to amend the policy to include such a category.

The reason why this request can be acceded to is the fact that the N2 Express contract may be extended and expanded, which will allow for a new round of compensation. TCT will take into consideration these four licenses when the new determination of compensation is calculated and the value of association compensation will be reduced by four. CODETA has agreed that their subsequent compensation allocation will be reduced by four.

7. RECOMMENDATIONS

It is recommended that,

- a) Council approves the once off deviation from the compensation policy for the Commissioner TCT to pay the payment compensation to the four (4) additional deceased estates belonging to CODETA on the basis of exceptional circumstances to be deducted from the subsequent allocation of compensation.
- b) Council approves that the compensation value to be paid to the four (4) members equivalent of the compensation value that was approved by the Commissioner, in consultation with the CFO to the 47 who were compensated and who exited.

AANBEVELINGS

Daar word aanbeveel dat:

- a) Die Raad goedkeuring verleen vir die eenmalige afwyking van die vergoedingsbeleid sodat die kommissaris van TCT op grond van buitengewone omstandighede vergoeding kan betaal aan die vier bykomende bestorwe boedels wat aan CODETA behoort, en dat dit van die daaropvolgende toewysing van vergoeding afgetrek word.

- b) Die Raad goedkeuring verleen dat die waarde van die vergoeding wat aan die vier lede betaal moet word, gelykstaande is aan die waarde van die vergoeding wat die kommissaris in oorleg met die hoof- finansiële beampte goedgekeur het ten opsigte van die 47 wat vergoed is en uitgetree het.

IZINDULULO

Kundululwe ukuba:

- a) IBhunga maliphumeze uphambuko olukanye iolususela kumgaqo-nkqubo engembuyekezo ukuba uMkhomishinala we-TCT makahlawule imbuyekezo kwii-arhente/kwiipropati zabangasekho kurhwebo ezongezelelweyo ezine (4) eziphantsi kombutho i-CODETA, phantsi kweemeko ezizodwa apho iyakuthi yoxulwe kwisabelo sembuyekezo esilandelayo
- b) IBhunga maliphumeze ukuba ixabiso lembuyekezo kufuneka lihlawulwe kumalungu amane, esondele kwixabiso lembuyekezo elathi laphunyezxwa nguMkhomishinala, ecebisana ne-CFO, kwabangama-47 abathi banikezelwa imbuyekezo kwaye abangasekho kurhwebo.

8. DISCUSSION/CONTENTS

8.1. Background

In October 2012 Council approved the IRT Phase 1A, 1B and N2 Express Business Plan and resolved inter alia that *“the Compensation Policy as set out in Annexure F to the Business Plan regarding the relevant categories of public transport operators, be adopted.”*

In subsequent resolutions and 28 January 2016 Council RESOLVED (as Item C 37/01/16) that:

- a) Council's Compensation Policy of the MyCiTi Business Plan , approved by Council in October 2012, has been amended by the Commissioner: Transport for Cape Town , in consultation with the Chief Financial Officer, in terms of the powers delegated in terms of Council Resolution C 37/01/16 approved by Council on 28 January 2016, to the extent set out in Annexure A to the report on the agenda
- b) this amendment to the Compensation Policy includes making provision for the method of determining the following :
- (i) Nominal Compensation;
 - (ii) Minimum Compensation (Floor Price)
- c) this amendment to the Compensation Policy includes making provision for the following:
- (i) Special Compensation

- d) the Commissioner : Transport for Cape Town, in consultation with the Chief Financial Officer, approved the methodology to be used in calculating compensation, in terms of the above delegation
- e) the amendment to the policy and the methodology of calculating compensation has not resulted in an increase to the amounts for compensation.

8.2. Motivation to pay Compensation on Exceptional Circumstances

The Council resolution (Item C37/01/16) allows for amendments to the Compensation Policy on the basis that the actual legitimate business of the operator whose service is being replaced by the new system is evaluated according to normal business valuation principles.

The number of licenses and vehicles that are determined to exit should not result in a shortage of capacity in the relevant corridor, therefore a consideration of the proposed MyCiTi capacity on the route as well as the supply of the remaining minibus taxi operators is taken into account.

In the case of N2 Express, the City replaced 47 CODETA operating licenses (OLs) and vehicles and 34 Route 6 Taxi Association operating licenses (OLs) and vehicles. The above numbers were based on the available MyCiTi capacity as well as projected shift of passengers from the minibus-taxis to the MyCiTi buses.

The Association has regularly consulted the Commissioner: TCT with regarding to the plight of the deceased member's families. The operating licenses of the deceased estates are currently not operating as a result of the hardship. Given the plight of these families, the City deemed it fit to offer the operators monetary compensation for the relinquishing of their operating rights. In this instance, the method of determining the number of operators that should exit was determined through direct consultation with the affected taxi association. Consultation and consideration only commenced because the following process was followed:

- a) TCT was convinced that the application of the compensation offer to operators based on impact of MyCiTi services has resulted in an operator being worse off than before the implementation of MyCiTi services and this was supported by:
 - i. Submission, by CODETA of justifiable reasons why the business of the operator is worse off and therefore warrants the City to pay the operator monetary compensation to ensure that the operator exits the minibus taxi industry;

- ii. Investigations by the City into the submission by CODETA to consider whether payment of compensation is necessary

- b) TCT engaged with the Association and ensured that the executive members represent the affected taxi operators and there was a mandate to engage in the consultation with the City.

The current compensation policy makes no provision for payment of compensation in the case where the operator, through technical determination, is not adversely affected by the implementation of MyCiTi services on the relevant route.

8.3. Constitutional and Policy Implications

- IRT Phase 1A, 1B and N2 Express Business Plan: Compensation Policy as approved by Council – Council resolution (31 October 2012) as recorded in C54/10/12

8.4. Sustainability Implications

Does the activity in this report have any sustainability implications for the City? No Yes

8.5. Financial Implications

The Compensation amounts to be paid to the affected operators including vehicle surrender are as follows:

No of OLS	OLS Value	Vehicle Surrender Value	Total Amount
4	R5,767,401.85	R502,763.00	R6,270,164.85

Budget Provisions:

Cost Centre / WBS	G15.00008-F1
GL Account	412610
Cost Centre/ WBS Description	IRT Compensation and scrapping allowance
Budget Provision (2015/16)	R42,665,170.98
Spent to Date / Committed	R0
Balance Available	R42,665,170.98
Funds Required for this report	R6,270,164.85

8.6. Legal Implications

Since the City is responsible for municipal public transport (Schedule 4B to the Constitution of the Republic of South Africa, 1996, read with section 11(1) (c) of

the NLTA), it is entitled to do what is "*reasonably necessary for, or incidental to, the effective performance of its*" municipal public transport functions (section 156(5) of the Constitution). In order for the City to fulfil its obligations in terms of the NLTA, it is necessary for the City to compensate minibus-taxi operators which agree to forfeit their operating licenses.

8.7. Staff Implications

Does your report impact on staff resources, budget, grading, remuneration, allowances, designation, job description, location or your organisational structure?

No

Yes

8.8. Risk Implications

- City of Cape Town could be setting precedence that if an operator claims hardship beyond the technical grounds that are provided by the City process in the event that MyCiTi services are implemented in the relevant corridor, the operator could be eligible for Compensation even though there are no technical grounds to do so.

8.9. Other Services Consulted

Finance: Executive Director: Finance (Chief Financial Officer)
(Mr Kevin Jacoby)

Advisory Committee Mr Robert Verwant (Legal Services)
Mr David Valentine (Corporate Finance)
Mr Dawie Bosch (TCT Planning)

The Advisory Committee resolved that it is not within their Terms of Reference to make any recommendations with regards to minibus taxi compensation outside of the compensation policy as the authority vests with Council if it falls within Council's strategic objectives and therefore did not take a view regarding the recommendations of this report.

FOR FURTHER DETAILS CONTACT:

NAME	Babalwa Nyoka
CONTACT NUMBERS	021 400 2930/ 072 877 4036
E-MAIL ADDRESS	Babalwa.nyoka@capetown.gov.za
DIRECTORATE	Transport for Cape Town
FILE REF NO	
SIGNATURE : DIRECTOR	

Handwritten initials

Handwritten signature of Kevin Jacoby

Chief Financial Officer (Executive Director: Finance)
Kevin Jacoby

Comment:

The compensation recommended is not covered by the compensation policy approved by Council. I therefore do not have any delegated authority to consider the compensation recommended. I can also not advise Council in this regard as it falls outside the terms of reference of the advisory committee. I can however confirm that adequate funding is available for the compensation recommended.

NAME

DATE

6 May 2016

Whitehead

Commissioner: TCT
Melissa Whitehead

DATE

19/4/2016

REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.

NON-COMPLIANT

LEGAL COMPLIANCE

NAME

TEL

DATE

Joan-Mari Holt

021 400 2753

11/05/2016

Comment:

The report will become compliant upon Council positively resolving on the recommendations. JMH

CRAIG KESSON (STRATEGIC POLICY UNIT)

- SUPPORTED FOR ONWARD SUBMISSION TO MAYCO / COUNCIL
- PC RECOMMENDATION
- RECOMMENDATION AS CONTAINED IN ORIGINAL REPORT
- ALTERNATIVE RECOMMENDATION (TO BE REFLECTED IN COMMENTS SECTION BELOW)
- NOT SUPPORTED

DATE

COMMENT:

A. G. R. ni

EXECUTIVE DIRECTOR: CORPORATE SERVICES AND COMPLIANCE (ED: CORC)

- SUPPORTED FOR ONWARD SUBMISSION TO MAYOR / MAYCO / COUNCIL
- AUDIT/PERFORMANCE AUDIT
- NOT SUPPORTED
- REFERRED BACK

DATE

13/5/16

COMMENT:

NOTED

092

COMMENT:


MAYORAL COMMITTEE MEMBER
Cllr Brett Herron

NAME

Brett Herron

DATE

16/05/2016


EXECUTIVE MAYOR

(Acting)

SUPPORTED FOR ONWARD SUBMISSION
TO MAYCO COUNCIL

PC RECOMMENDATION

RECOMMENDATION AS CONTAINED IN
ORIGINAL REPORT

ALTERNATIVE RECOMMENDATION TO
BE REFLECTED BELOW

APPROVED I.T.O. DELEGATED
AUTHORITY

NOTED

REFUSED

REFERRED BACK

DATE

23/5/16

COMMENT: