

TAXI COMMISSION MEETING  
Minutes of the February 21, 2012 meeting

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**I. CALL TO ORDER**

Commissioner Bresciano called the meeting to order at 9:01 a.m.

**II. ATTENDANCE**

Present: Members: Commissioners Peter Bresciano, Paul Ford, and James Feehley, Councilor Brad Lown, Police Lieutenant Mark Newport, City Attorney Robert Sullivan and Deputy City Clerk Dianne M. Kirby

**III. ACCEPTANCE OF MINUTES FROM DECEMBER 19, 2011 AND JANUARY 17, 2012**

**Commissioner Feehley moved to approve and accept the minutes of the December 19, 2011 and January 17, 2012, Taxi Commission meetings. Seconded by Commissioner Ford and voted.**

**IV. NEW BUSINESS**

1. Welcome to Councilor Brad Lown, Representative to the Taxi Commission

Chair Bresciano welcomed Councilor Lown to the Taxi Commission.

2. Request for Medallions – Lawrence Bagnall

Chair Bresciano stated that Lawrence Bagnall has requested to be allowed to operate a taxi company under the name NH Checker Cab, which he recently purchased. He stated he is presently asking for one cab with the possibility of requesting a second cab in the future.

Commissioner Ford requested to poll the present taxi companies to see how they feel. Stephen Gerrato, Rockingham Livery, stated he is against NH Checker Cab being given a medallion. Commissioner Ford requested why he is against issuing a medallion to Mr. Bagnall. Mr. Gerrato stated that NH Checker Cab has been operating within the City of Portsmouth without a meter or a medallion for weeks. Chair Bresciano asked if the Police Department has received any called about this. Lieutenant Newport stated he received one call. He further stated he has been out for the last three weekends looking for illegal cabs and only found one – Beach Taxi. He stated they did not actually have a passenger at the time he stopped them, but he did explain the rules concerning picking up and dropping off passengers in Portsmouth without a medallion. He further stated he did not see a Checker Cab. Chair Bresciano asked if there have been any other cab companies that have turned in complaints. Lieutenant Newport stated there has not. Alan Ladd, Sunshine Taxi asked if this is the same Checker Cab as before. Chair Bresciano stated it is the same cabs, but a new owner. Alan Ladd asked if the old medallions were still in play. Chair Bresciano stated they were not.

Councilor Lown asked if the Commission can hear from Mr. Bagnall and give him a chance to admit or deny the allegations against him. Mr. Bagnall stated he has submitted paperwork for the surrounding communities and if he comes into Portsmouth he is either picking up or dropping off. He stated when he was seen at Pease, he was sitting across the street from C&J with his cell phone and GPS checking the distances and fares from the other towns. He stated he did not have any passengers. He stated he would not do anything to jeopardize his chances of working in Portsmouth. Councilor Lown asked Mr. Bagnall if his vehicle is marked. Mr. Bagnall stated he presently has a couple of magnetic signs and is getting a meter and a light set up and then have permanent marking done.

Stephen Gerrato, Rockingham Taxi stated Mr. Bagnall does not have a meter in his taxi and by State law you cannot pick up anyone without a meter. Chair Bresciano asked City Attorney Sullivan if this was correct. City Attorney Sullivan stated meters are not required state wide, but they are required in Portsmouth.

Chester Deorocki, Blue Star Taxi, spoke against issuing another medallion. He stated the companies presently in business are all losing money.

Councilor Lown asked Mr. Bagnall if the previous owners dissolved the LLC. Mr. Bagnall stated they did. Councilor Lown asked Mr. Bagnall if he has purchased the name and reformed it under the Secretary of State. Mr. Bagnall stated he has. He said he has already gotten the LLC approval from Concord. Councilor Lown asked City Attorney Sullivan if the Commission has any role in inquiring about the need for additional taxis. City Attorney Sullivan stated one of the primary purposes of the Commission is to control the number of taxis so the taxi business remains viable. He stated presently within the ordinance the City Council has set a maximum number of 25 cabs, but the Commission has a say in how many they approve. Councilor Lown asked how many taxi cabs are presently registered in Portsmouth. Deputy City Clerk Kirby stated we presently have 19 medallions issued.

**Lieutenant Newport moved to allow NH Checker Cab to operate as a taxi company within the City of Portsmouth. Seconded by Councilor Lown. Motion passed with Chair Bresciano, Councilor Lown and Lieutenant Newport voting for and Commissioners Ford and Feehley voting against.**

### 3. Taxi Medallions

Deputy City Clerk stated that annual renewal of taxi medallions and operator licenses are due in by April 1, 2012. She handed out packets to all companies present and requested they have their drivers start now to get their driving and criminal records completed and get them back to her as soon as possible. She further stated April is also the month for the annual taxi inspections. Lieutenant Newport stated he would contact Public Works and set up a date and time for the inspections. Chair Bresciano asked Lieutenant Newport to coordinate the date and time with Deputy City Clerk Kirby and e-mail all the commissioners with the information. Deputy City Clerk Kirby stated she would.

## V. OLD BUSINESS

### 1. Election of Officers

Commissioner Bresciano stated at the last meeting, he proposed nominating a Vice Chair to handle any meeting he was unable to attend. He stated Commissioner Feehley was nominated and requested if Commissioner Feehley would accept the nomination. Commissioner Feehley stated he would accept the nomination.

**A vote was taken on the motion to nominate Commissioner James Feehley for Taxi Commission Vice Chair. Motion passed.**

### 2. Compliance with State and Federal Laws

Chair Bresciano turned the meeting over to City Attorney Sullivan. City Attorney Sullivan stated the November 29, 2011 memo is a proposed ordinance and is a continuation of a discussion that has been held by the Commission for a number of months now. He stated the change arose out of a belief by members of the taxi business that other owners are not operating in compliance with the law, particularly as concerns whether the drivers of the cabs are employees, independent contractors or leasing the cabs. He stated another option the Commission entertained in the past was for the City to regulate the type of business entity that could be in the cab business. He stated primarily based upon a concern over unnecessary governmental interference with business operations, the Commission determined not to go ahead with any of those intrusive regulations. He said what is being proposed here recognizes the fact that there already is existing State law concerning when an employee is in fact an employee as opposed to the lessee of a cab, when employee withholding needs to take place, when workers compensation insurance needs to be provided, when employment taxes need to be withheld etc. He stated the proposed ordinance change is really the least intrusive proposed ordinance that we have come up with to date in an effort to resolve the problem which is seen by some cab companies that other companies are operating in violation of State and Federal laws right now. He said the proposal basically says every cab has to operate in compliance with State and Federal Laws and that the business records of those companies need to be available to the Commission. He stated if the Commission likes this proposal then it should forwarded the matter along to the City Council for consideration. He stated it is his recommendation to the Commission to recommend an ordinance amendment to Section 7.229 – GENERAL PROVISIONS of the Taxi Ordinance be amended by adding a new Subsection 7.229 E.

Chair Bresciano asked about the e-mail City Attorney Sullivan received from Attorney Bernard Pelech. City Attorney Sullivan stated in his conversations with Mr. Pelech, he did not seem to object to the wording of this subsection. He stated it would be hard to object to the concept that the ordinance requires cab companies to be in compliance with State and Federal law. He stated Mr. Pelech's concerns were with the earlier versions of this amendment which would have the City telling owners how to operate their businesses. He was under the impression

Mr. Pelech would be at the meeting today. Deputy City Clerk Kirby stated she did send him a copy of the agenda and notice of today's meeting.

Commissioner Ford stated in the case of an independent operator that hits someone and injures them. The injured party is going to go after the independent operator, if the independent operator does not have any insurance, he will go after the company, then the City. He stated there is a hole in this situation. City Attorney Sullivan stated it is possible that a situation could arise where the cab driver might not be insured. He stated we require insurance from the company in order to obtain a medallion. He said in a situation where the driver is not covered the company would be. Chair Bresciano stated in reviewing the cab ordinance from Manchester New Hampshire it seems very vague as to what a contract driver is. City Attorney Sullivan said unless the company is violating the law, he does not think a situation can arise in Portsmouth now with our current regulations whereby an injured individual wouldn't have some insured entity to look to.

Councilor Lown asked if this ordinance addresses insurance even though insurance is not mentioned anywhere in it. City Attorney Sullivan said insurance is mentioned in the ordinance, but not in this particular provision. Councilor Lown stated in the situation Commissioner Ford was talking about it wouldn't matter who was driving the taxi, if they have a medallion, they must have insurance and there must be coverage no matter who is driving. City Attorney Sullivan stated that to be correct. Councilor Lown said the practical problem here is the business records are going to be made available on demand for review by City officials. He asked if City officials mean the Taxi Commission. City Attorney Sullivan stated it might mean the Commission, the Taxi Inspector or the City Attorney's office. Councilor Lown stated periodically we will have to actually ask medallion holders to bring in their papers for our review. City Attorney Sullivan said the ordinance would allow that to happen. He stated what we have now is a complaint system. He said when someone suspects a company of non-compliance with State law they file a complaint. He said if a complaint exists, this new subsection E would give us the authority to request these records from the company during an investigation of the issue. Chair Bresciano stated we as a City cannot check everyone's records. He suggested when a cab company has a complaint or suspicion about a company; they should file a formal complaint with the Commission and we will check into it.

Councilor Kenneth Smith stated as a business owner himself, he feels this is good and will protect potential liability issues for the City.

Stephen Gerrato, Rockingham Taxi, said the State of New Hampshire says everyone has to be an employee – that was the initial issue. He said the problem is the State has no record of all the drivers that are listed as having a license. He said because of this there are no unemployment taxes being taken out of their payroll. He said in some cases there is no payroll at all; it's half for you – half for me. He said that's what it's all about. He stated the Commission is missing the whole point. He said by having the companies provide the City with their Federal Tax ID number and their State Unemployment ID number makes all the licensed people within the company identifiable with the State. City Attorney Sullivan stated he agrees.

Commissioner Ford said his concern about this, as a whole, is that someone who is operating a cab in a contract with the company and there is a disconnect with the insurance, the City would be open to liability by that operator's actions. Chair Bresciano said the owner of the company would be liable first before the City. Richard Ford, Blue Star Taxi stated the injured party will go to the person with the deepest pockets. He stated it is unfair for the companies playing by the rules and paying the appropriate taxes. He said it is difficult to compete with these companies that are not playing by the rules. Councilor Lown stated Mr. Ford raises a good point. He asked if there are any circumstances under which the driver of the cab would not be considered an employee or an owner. City Attorney Sullivan stated there are situations when a cab operator would not be an employee, such as a cab owner lets someone use his cab at a flat rate for a certain period of time and during that time, the driver decides when he wants to work, where he would go and what to charge as a fare. He said the more control that is given to the driver the more likely that driver might be found to be an independent contraction and not an employee.

Melissa Mcguire, Annie's Taxi stated we have a battlefield going on in the City, where one company is against another. She said we are not even touching on the issues that are happening in town or all the regulations that are being broken. She said what is frustrating to her is that it is clear what is required by State and Federal laws, her issue is not about employee/sub –contractor matters, it's about being kept hostage in this battlefield of company against company. She said they are insured and if they have to sign a release form with the independent contractors saying they are fully responsible we can do that. Commissioner Ford stated if there are companies with contracts for individual contractors, these contracts could be reviewed by City Attorney Sullivan to insure they abide by all the laws of the State and rules of the City. Ms. Mcguire agreed.

City Attorney Sullivan stated this ordinance change will require a taxi company to be in compliance with all State and Federal laws. He said if there is a State or Federal law that states in order to operate a taxi company all drivers have to be employees; this ordinance would require that the owners be in compliance with that law.

Commissioner Ford asked if there would be a benefit to have a representative from the State Department of Employment attend a meeting to advise everyone what the State regulations are. Chair Bresciano stated this ordinance says you have to be in compliance with State laws or the State will come after you. He said he really doesn't want to make this any more difficult.

Stephen Gerrato, Rockingham Taxi, requested if when this ordinance is passed will it have the authority to revoke a medallion, will it be retroactive from last year and will owners be required to produce the 941H statement that is filed with the Federal Government quarterly to prove that all their drivers have been employed or is it just going to be an oops. City Attorney Sullivan stated the primary thing within this subsection is that it adds another level of enforcement. He said right now if you violate State laws, the State enforces it or the State doesn't. He said if this ordinance is adopted it would allow the City of Portsmouth, with the Taxi Commission to revoke a medallion for failure to comply with state employment laws.

Melissa McGuire, Annie's Taxi asked if you have to run a meter within the City. Chair Bresciano stated the ordinance states you will run the meter, but it does not address what the minimum fee you must charge. He said you can charge under that fee, but not over.

**Councilor Lown moved to recommend to the City Council this ordinance be adopted as written below:**

**Section 7.229 – GENERAL PROVISIONS of the Taxi Ordinance be amended by the addition of a new Subsection 7.229 E which shall read as follows:**

**Every owner and holder of a taxi medallion shall operate at all times in compliance with all applicable state and federal law, including but not limited to provisions relating to the proper designation of employees as compared to independent contractors, worker's compensation federal income tax withholding, and social security. The business records of each owner or medallion holder demonstrating compliance with this provision shall be made available on demand for review by City officials engaged in the enforcement of this ordinance.**

**Seconded by Vice Chair Feehley and voted.**

## **VI. MISCELLANEOUS/UNFINISHED BUSINESS**

### **1. Police Liaison Report**

Lieutenant Newport stated in December there was a complaint of a vehicle parked in a taxi stand, the vehicle was gone upon their arrival. He stated on January 16, 2012, there was a call that Checker Cab was at Pease Golf Course. He said on February 12, 2012, there was a complaint by Portsmouth Taxi that they were losing business to the Port Authority with the ship unloading the salt. Lieutenant Newport stated he talked to the Port Authority and was informed that a volunteer service group comes around to take passengers off the ship and gives them rides to where they wish to go. He said they have been doing it for years.

Steve Gerrato, Rockingham Taxi asked if we are waiting for the Council to adopt this change or has it been passed. Chair Bresciano stated it will be recommended to the City Council for adoption. Steve Gerrato stated he would like to resubmit his complaint. Chair Bresciano requested he put it in writing and get it to Deputy City Clerk Kirby not later than the Wednesday prior to the next meeting to be added to the agenda.

Commissioner Ford requested Chair Bresciano read the ordinance change to the Companies present. Chair Bresciano read the ordinance change.

Councilor Smith stated he is the Chairman for the Parking and Traffic Safety Committee and he has received complaints and himself seen taxis within the City parked in metered spaces and they are not suppose to. He stated there are taxi stands that have been reserved by the City for taxis to park in. He stated these taxi stands cost the City over \$3,300.00 a year per space in lost revenue. He requested taxis park where they are suppose to and not illegally. He stated if these taxi stands are not being utilized by taxi companies they will be reclaimed for

public use. Commissioner Ford stated the Commission has fought hard to get these taxi stands and if we loose them, it will be forever before we can get them back. Chair Bresciano asked owners to report any illegally parked taxies to the Police Department so the Commission can take action.

Edward Heath, Anchor Taxi asked if the horse drawn carriage is allowed to park in taxi stands. Chair Bresciano stated they are not. He stated they have one space down by Prescott Park. Edward Heath stated someone needs to notify the owner of these carriages. Chair Bresciano stated if you see someone, anyone disobeying parking laws, contact the Police Department. Lieutenant Newport stated there is also a space for them by the North Church on Pleasant Street.

Melissa McGuire, Annie's Taxi asked if there was any protocol or rule concerning being in line at C&J for passengers. She stated there are two parking spaces for taxis there and usually the first taxi will pick up off loading passengers, then the second taxi will get the next so forth and so on. She said on numerous occasions, one company will park on the side and when the passengers start to off load, will swoop in and cut the other drivers off and take the passengers. Lieutenant Newport stated there is no protocol that the City has, but C&J might have their own protocol. Chair Bresciano stated C&J probably leases that property from the Pease Development Authority. He suggested she bring this complaint to the Portsmouth Development Authority and see if they have any protocol.

## **VII. ADJOURNMENT**

**At 10:00 a.m. Vice Chair Feehley moved to adjourn the meeting. Seconded by Commissioner Ford and voted.**

Respectfully submitted by:

*Dianne M. Kirby*

Dianne M. Kirby, Deputy City Clerk