

TRANSPORTATION SERVICES COMMISSION  
Minutes of the October 21, 2015 meeting

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**I. CALL TO ORDER**

Chair Bresciano called the meeting to order at 9:05 a.m.

**II. ATTENDANCE**

Present: Members: Chair Peter Bresciano, Assistant Mayor James Splaine  
Commissioners Lawrence Cataldo, Stephen Dunfey and Tristan Law,  
Lieutenant Chris Cummings and Deputy City Clerk Dianne Kirby

**III. ACCEPTANCE OF MINUTES FROM SEPTEMBER 16, 2015**

**Commissioner Dunfey moved to approve and accept the minutes of the September 16, 2015 Transportation Services Commission meeting. Seconded by Commissioner Cataldo. Motion passed.**

**IV. NEW BUSINESS**

1. Fingerprinting for all Transportation Service Drivers (John Palreiro)

Commissioner Cataldo asked to have John Palreiro explain his reasoning behind wanting drivers fingerprinted.

John Palreiro stated a lot of Cities are requiring Transportation Service drivers and drivers for hire to be fingerprinted. He said it's just another safety step. He said we do it for our bus drivers, teachers and City employees and we should do it for the drivers of our residents and guests. He said all drivers have to be fingerprinted by DOD to get on the base. He said he believes all drivers should be fingerprinted or palm scanned. Chair Bresciano suggested this be sent to the City Attorney and the Police Chief for review and report back.

**Commissioner Dunfey moved to send the issue to the City Attorney and Police Chief for review and report back. Seconded by Commissioner Cataldo.**

Assistant Mayor Splaine said this gets down to what we have talked about for the last year – how to provide safety for the passengers and level the playing field. He said there is a diverse opinion about how far we should go to protect our residents. He said many people don't think we need any protection at all. He said we came up with a streamlined procedure that has background checks and insurance requirements which he feels are necessary to protect the riders. He said he does not think we need to go this far. He said we should revisit our thought of one year ago and try to further simplify the process. Commissioner Cataldo stated he agrees with Assistant Mayor Splaine. He said anyone who picks up a child would have to have a full background check, but for general public it's not necessary. Commissioner Law said he agrees. He said any further fingerprinting would be overkill. Lieutenant Cummings said he also doesn't agree fingerprinting is necessary. He said when the Police Department fingerprints someone they do the prints and give it back to the individual and it gets sent to the State. He said we will find criminal information with the background check.

**Motion failed. All opposed.**

2. Provider/Driver Fine Proposal (Commissioner Cataldo)

Commissioner Cataldo moved to have the Transportation Service Commission review the fine proposal and take action at the next meeting.

Commissioner Cataldo said the ordinance has many different structures. He said we need to take into consideration these fines would be used as a guideline only. He said it is non-binding and would be assessed on a case by case basis. He stated this proposal treats driver and company actions differently and single vehicle owners and multi vehicle owners also slightly different. He said there will be more emphasis on truthfulness of the drivers and safety. He stated we would need a definition of suspension and we would want an appeal system prior to actual suspension. Chair Bresciano said by numbering them with ordinance paragraphs, it would have to be incorporated in the ordinance. Commissioner Cataldo stated he does not agree. Chair Bresciano suggested we handle this as a guideline such as the Code of Conduct. Lieutenant Cummings asked if these fines are in addition to the \$500.00 fine to the Police Department. Commissioner Cataldo said they can be. Lieutenant Cummings said if so we would have to look to see about 8<sup>th</sup> amendment rights. Commissioner Cataldo asked if Lieutenant Cummings could look into this. Lieutenant Cummings said that would be a legal department issue. Chair Bresciano said this is the type of thing we need to look at. Lieutenant Cummings asked if we have spoken to the City Attorney on this and who would be levying these fines and what authority do we have to levy fines. Commissioner Cataldo said we have the authority of the ordinance. Chair Bresciano stated these are guidelines and could be added to the ordinance. Lieutenant Cummings stated he likes that idea. He said there are pre printed tickets that can be made up for this type of thing. He said it needs to be reviewed with legal to decide what we are going to do. Commissioner Cataldo said it is a good suggestion. Lieutenant Cummings said it will take the levying of the offenses out of our hands.

**Assistant Mayor Splaine moved to table this discussion. Seconded by Commissioner Cataldo. Motion passed.**

3. Signs Posted in Downtown by UBER

Chair Bresciano stated it is a First Amendment issue.

**Assistant Mayor Splaine moved to place on file. Seconded by Commissioner Law. Motion passed.**

**Commissioner Cataldo moved to suspend the rules to take up a new matter. Seconded by Commissioner Law. Motion passed.**

Commissioner Cataldo stated that Jim Merrill from UBER was here to explain the letter he sent to the members of the Transportation Services Commission.

Jim Merrill – UBER stated since the Council passed the Ordinance in September there has been a back and forth discussion about the application allowing UBER to operate within the City. He said UBER has sent two letters to the Council that outlines a series of edits that UBER feels needs to be changed within the ordinance that would allow UBER to operate. He said that hasn't moved forward so they are at a stand still. He said we are hoping to move past that. He stated he talked with the Police Department and Legal and they have resolved many of the issues that are outstanding particularly the insurance issue. He stated there are three discreet areas that edits to the ordinance would allow UBER to submit the applications.

1- Addition to Section 7.201 – creating a definition for “transportation Services”, as follows:

“Transportation Services” means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the vehicle.”

Assistant Mayor Splaine said it is his interpretation that is what the provision says. He said someone accepts a ride – that's when the insurance kicks in and when the rider departs the vehicles that is when the insurance for that rider stops. Jim Merrill – UBER said their concern is that this language very finely defines what the ride-sharing is and so from an insurance perspective helps make sure that they are in compliance. He said he doesn't doubt that that is the intent of the present language, but they want to make sure it is as fine tuned as possible.

Commissioner Cataldo asked if that definition could be put in the insurance section. Jim Merrill – UBER said he doesn't think it matters where it is put, but he would need to check with his legal guys. Lieutenant Cummings said what you are saying is a person is not a ride-sharer if they are sitting on the side of the road waiting for a request for a ride. Jim Merrill – UBER said when the app is not on. Lieutenant Cummings said no the app is on and they are sitting waiting for someone to request their services. He said under this definition they are technically not a ride sharing service because they do not actively have a passenger in the back of their vehicle or driving to pick someone up. Jim Merrill – UBER said all he can speak to is how the language is written here. Lieutenant Cummings said that is correct, so it obviously narrows our scope considerably. He said he would argue if Mary is sitting on the side of the road, her app is on and she is waiting for that ride-share call – she is a ride-sharer whether she has someone in the back of that car or not. He said she is still out there trying to obtain fares. Jim Merrill – UBER said that is a bone of contention, but from an insurance perspective and how they operate this language ... Lieutenant Cummings said so like Commissioner Cataldo said it should be under the insurance section of the ordinance. Assistant Mayor Splaine said all we are worried about from an insurance standpoint is the protection of the rider, so if there is no rider, what's the big deal. He said he feels the interpretation of the current ordinance covers it. He asked if City Attorney Sullivan says that in order for him to be able to sign off on the insurance this provision would have to be in. Jim Merrill – UBER said no this is a provision that UBER is recommending. Assistant Mayor Splaine said their dilemma is that in order to make more ordinance changes rather than doing something administratively will take until the new year and they would like to be able to get this settled quickly so UBER can be legal. Jim Merrill – UBER said according to the meeting they had with City Attorney Sullivan and Police Chief DuBois they made it clear their hands were tied – the language is the language, is the

language. Chair Bresciano said by putting this under 7.201 we are differencing between Ride-Sharing, UBER and the rest of the Transportation Service Providers. He said we have no idea what companies like lift, sidecar and the others think. He said we are trying to make it so everyone is under the same rules. Jim Merrill – UBER said Portsmouth has done a very good job trying to come up with a compromise solution, but just because you try to make it uniform for everybody, the truth is there are differences and so what UBER is raising here are some of the differences that will allow them to move forward and make the applications. Lieutenant Cummings said UBER doesn't seem to be operating in good faith here. He said he has stopped, spoken to, warned and summoned UBER drivers and have been told by many UBER drivers that UBER has told them they will pay their fines and legal costs and to continue to operate anyway. He asked why should we make any of these changes when you tell your drivers to ignore our rules and continue to operate illegally. Jim Merrill – UBER said he has no knowledge of that. Lieutenant Cummings said he has a problem with UBER. He said he is all for UBER, but we can't change the ordinance around UBER and it seems UBER is not bending and wants us to design the ordinance around them. Jim Merrill – UBER said that isn't true with any business that wants to do business in Portsmouth and you choose to regulate them. He said if you regulate them in a way that doesn't allow them to do business then they can choose not to do business in Portsmouth. Lieutenant Cummings said he was 100% correct. He said we want UBER here and all these comments that the City is banning UBER are false. He said we are not banning UBER at all – UBER has not been banned – UBER has been welcomed with open arms. He further said all we are asking is that UBER and their drivers follow the same rules as the others do. That's it.

Commissioner Cataldo said UBER's item 1 is there, he said it is just not as you want it stated word for word. He said he has no problem with putting it in under the insurance section of the ordinance. He said it is just a clarification. Assistant Mayor Splaine said this can be done administratively. He said if we do need to go back to the Council that will take 2-3 months. He said if we can figure this out to make it a level playing field we will have done something this morning. Commissioner Cataldo said if the City Attorney's office gives you a pass on insurance the next Council can deal with the language, because the language is in there.

Chair Bresciano said he has to agree with Lieutenant Cummings about a driver setting on the side of the road. He said is that driver part of Transportation Service or not. He said when a taxi is parked downtown in the taxi stands they are Transportation Service Providers. He said this paragraph is saying we can't consider an UBER driver as a Transportation Service Provider until he picks up a passenger. Assistant Mayor Splaine said that paragraph deals with insurance and protection of the passengers. He asked who we are protecting when there are no passengers. Chair Bresciano said we don't need this paragraph. Assistant Mayor Splaine said he agrees we don't need that paragraph. He said you are already protecting the passenger. Chair Bresciano said UBER is saying they have to have it in there. Jim Merrill – UBER said that is right.

2 – Edits to Section 7.204 – Background Check – see redlines below:

### **Section 7.204 BACKGROUND CHECK**

- A. The individual does not have more than three (3) **or more** convictions for moving violations, in this or any other state, in the three (3) full years prior to the date of the certification.
- B. The privilege of the individual to operate a motor vehicle has **not** been revoked and/or suspended at any time, in this or any other state, in the three (3) full years prior to the date of the certification, for any reason related to the operation of a motor vehicle.
- C. The individual has not been convicted of a felony **or misdemeanor**, in this or any other state, in the seven (7) full years prior to the date of the certification.
- D. **The individual has not been convicted of a felony involving a controlled substance or violence, in this or any other state, in the fifteen (15) full years prior to the date of the certification.**

Jim Merrill – UBER said there are some concerns with some of the elements addressed here. He said Item B is a typographical error, but the broad focus on misdemeanor, which could be anything and has nothing to do with someone's fitness to drive. He said they have some statutory concerns with the 15 year look back based on NH Law and the more than 3 or 3 or more in item A. He said UBER has talked with the Police Chief and again they explained how the process works. He said the application asks them to certify that they have done checks to the exact wording of the statute and because our check doesn't work exactly the way the statute operates that becomes a problem for them. Lieutenant Cummings said # C. has to stay the same. He said we can then make the determination from there as far as the misdemeanor. He said indecent exposure is a misdemeanor – I would not want that person driving my wife around. He said in some cases possession of child pornography is a misdemeanor – I would not want that person driving my wife and family around. He said those are misdemeanors that he would not certify. Jim Merrill – UBER said do you agree that there are misdemeanors that do not apply.... Lieutenant Cummings said he agrees. He said that needs to be one of those things that come on his desk and he makes the decision as to which misdemeanor would qualify as unfit to drive. Jim Merrill – UBER said the statute says has not been convicted. He asked if Lieutenant Cummings has the discretion to ignore the "has not been convicted of a misdemeanor". Chair Bresciano said yes he does. He said the Commission has on numerous occasions over ridden his decision. He said A. must be an ordinance change. B. is a correction issues but needs to be run by the City Attorney. He said item C you can also have a DUI downgraded to a misdemeanor. Lieutenant Cummings stated that would still result in a suspension anyway and fall under item B.

Commissioner Cataldo asked if we can define some intent for what misdemeanors we intent to include, such as protection of the public. Lieutenant Cummings stated we can. He said we could do crimes against the person – crimes against property. Commissioner Cataldo asked what a public safety issue becomes. He said he is concerned about the type of offense that is committed. Chair Bresciano said he would rather leave it like it is and let the Police Chief decide and if the individual wants to come before the Commission – then the Commission decides. Assistant Mayor Splaine said the dilemma is that the background checks UBER does

are not define by items C or D. He said UBER then verifies drivers and the complication for UBER and other Ride-Sharing Services would be how to weed out those specific drivers who do have misdemeanors according to our ordinance. Lieutenant Cummings said is there anything that precludes UBER drivers from getting their criminal background checks from the State. He said if UBER want this to be put to bed and they want the company to operate in Portsmouth, the City has their own requirements and we have to sign off on your background checks. He said even if this is all ironed out and UBER says they have reviewed and approved the background checks, he has to sign off on those and he is not going to sign off unless he sees the reports. He said he is putting his name, reputation and integrity on the line for someone else's word and he is not going to do that. Assistant Mayor Splaine said he agrees with Lieutenant Cummings that all drivers should get the State criminal records with UBER paying the \$25.00 it would be the simplest solution.

3. Edits to Section 7.211 – Signage – see red lines below:

#### Section 7.211. SIGNAGE

All vehicles engaged in the provision of Transportation Services shall at all times display prominently:

- A. A placard approved in size, form and content by the City Clerk identifying the Transportation Service Provider shall be plainly visible from the exterior of the vehicle.
- B. A notice providing passengers with the fare information required by **full text of** Section 7.209 of this ordinance.

Jim Merrill – UBER said UBER wants to move forward here. Assistant Mayor Splaine said # 1 and 3 can be made into ordinance amendments, but that will take until January. He said #2 will be difficult for an ordinance change and it will also take until January to complete. He said he thinks items #1 and #3 can be dealt with by policy. He further stated item #2 can be solved by Lieutenant Cummings idea of background checks. He said if we can get UBER to agree to that with the application process and make the additional provision that any operator working in Portsmouth would have their background checks done by the State and they would be paid by the company. He said UBER could be in legal business. Jim Merrill – UBER said what Lieutenant Cummings is looking for is that a certification has been done concerning every word of that ordinance so if you are saying the State check would satisfy that then that's good to know. Lieutenant Cummings said he has to see the background check. He said he has to have something to look at and please take no offence, but Jim Merrill coming and saying Mary Smith is all set won't work. He will have to see her documents. Chair Bresciano said even under the old ordinance there have been companies that have submitted their applications to the Police Department and the Police Department has denied them. He asked why the company isn't checking these out before they hire the individuals.

## **OLD BUSINESS**

### 1. Placard Sign

Commissioner Cataldo passed out a sample placard where he stated the City Clerk would issue the document as shown in the sample and the Transportation Provider would type his/her name in. He said he suggested something a little more official. He said his would have the City Clerk's office provide the company name with the provider number. He said it would then be put in a PDF form and sent to the provider. He said it looks nice and only took him 15 minutes to put together. He said the City Clerk would take two minutes to make the changes and send it out electronically. He said the ordinance says it is the City Clerk that makes the decision on the design of the placard. He said he will respect that.

**Commissioner Cataldo moved to recommend this placard design to the City Clerk. Seconded by Commissioner Dunfey.**

Lieutenant Cummings said he likes the design a lot, but he understands we didn't want the City Clerk to get involved with this. Chair Bresciano said you can't just give that to the company. He may have 20 cars. He said the reason we did it this way is because it is sent out to the company and they have to provide this placard for all the vehicles. Commissioner Cataldo said if it is put on PDF and the company makes copies of as many as they need. Chair Bresciano said he wants to make it clear the City Clerk is only going to send out one email. Commissioner Cataldo said this is only a recommendation. Commissioner Law asked if a provider could make 1000 copies. Commissioner Cataldo said they could if they have 1000 vehicles. Deputy City Clerk Kirby said in City Clerk Barnaby's defense, the City Seal is basically made to be issued by the City Government and by putting this out over the web – even PDF there are hackers that are going to be able to get into it. She said this is the only thing that City Clerk Barnaby has a problem with. She said in order to put the City seal on it, it would have to be issued by the City Government and by putting it out on the web for others to make copies is not making it issued by the City Government. Chair Bresciano suggested Commissioner Cataldo come up with a Transportation Service Logo. Deputy City Clerk Kirby suggested that if a new logo was to be designed, that it be effect with the 2016-2017 year reissue as some of the companies have already put out money for their placard and it would be unfair for them to do that again now and again in May.

Assistant Mayor Splaine moved to table further discussion on a design/logo to the March meeting for the 2016-2017 Transportation Service year. Seconded by Commissioner Law. Motion passed.

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

### 1. Police Representative Report

Lieutenant Cummings stated his officers have been stopping unauthorized drivers to warn them. He said they put their information in the system and if they are stopped again they will issue a summons. He stated so far they have only issued one summons.

Commissioner Cataldo asked if they have stopped any City drivers. Lieutenant Cummings said he doesn't know, but his officers are getting him reports now. Assistant Mayor Splaine asked for the official summary on the stopped. Lieutenant Cummings stated the passengers were told the driver could not take passengers. He said they got out of the cab. He further stated there was a bus station across the street and a taxi cab behind the police car.

## 2. Public Comment

John Palreiro – Great Bay Taxi stated the City needs to get a temporary injunction to stop them from operating until they become legal. He said those drivers should be responsible for having commercial insurance and to show background checks. He stated fairness is fairness, but if they are not going to comply they should be made to leave.

Merle White – Anchor Taxi said he gave Mayor Lister an article about UBER drivers who have committed rape. He said there is a driver with Connecticut plates driving in the City for the last 60 days. He said Portsmouth had the best system around and now we have nothing but problems.

Scott Gerrato – Rockingham Livery said they had an altercation with an UBER driver and they recorded it. He said that same driver is the one putting up the signs.

## VII. ADJOURNMENT

The meeting was adjourned at 10:56 a.m.

Respectfully submitted by:

*Dianne M. Kirby*

Dianne M. Kirby, Deputy City Clerk