

TAXI COMMISSION MEETING  
Minutes of the February 18, 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, Tristin Law, City Attorney Robert Sullivan and Deputy City Clerk Dianne Kirby

Absent: Lieutenant Chris Cummings

**III. ACCEPTANCE OF MINUTES FROM JANUARY 14, 2015 SPECIAL MEETING AND JANUARY 21, 2015**

**Commissioner Dunfey moved to approve and accept the minutes of the January 14, 2015 Special Meeting and January 21, 2015 Taxi Commission meeting. Seconded by Commissioner Cataldo. Motion passed.**

**IV. NEW BUSINESS**

1. Review of Taxi Ordinance

City Attorney Sullivan stated he received a proposed model ordinance on behalf of UBER. He stated he forwarded a copy to the Commissioners and then he skimmed it quickly and saw that the UBER concept differs significantly from the concepts that have been advanced by the Taxi Commission. He said since they were provided to him he provided them to the Commission.

He stated he has received written comments concerning the draft ordinance from City Clerk Kelli Barnaby, Chair Peter Bresciano and Commissioner Lawrence Cataldo. He stated he would like to go through everyone's comments and discuss them.

City Attorney Sullivan stated that after the draft ordinance has passed first reading that ordinance then belongs to the City Council for any and all changes. He said until first reading the ordinance belongs to the Taxi Commission for all changes.

City Attorney Sullivan stated this draft ordinance was drafted from scratch using everything the Taxi Commission had said they wanted in the ordinance. He said the key concept was straight forward simplicity and using a level playing field while allowing for enforceability. He said the symmetry of the ordinance is important. He said he feels there would be problems with understanding what the ordinance is suppose to accomplish and enforcement if it got to complicated. Chair Bresciano said it appears that this is an easy fix, but it is not. He said this could grow back into a huge ordinance. He said simplicity is what we want.

Assistant Mayor Splaine said simplicity really communicates what we want to do. He said we have talked about the responsibility that the City has and the limited responsibility. He said the

over regulation of anything can be complicated. He said our responsibility is to provide public safety in the areas of insurance and background checks. He said our responsibility is not given to the fare setting and all of the interactions of the cab companies, but to zero in on just making sure that there is comprehensive insurance. He said we need to keep it simple.

Chair Bresciano suggested we start with the City Clerk's comments.

City Attorney Sullivan stated this new ordinance, if adopted, was intended to make the work of the City Clerk's office much simpler. He said it will only be licensing the drivers and registering the cabs. He said the purpose of the taxi ordinance was never to make money for the City. He said the City can have fees to cover the cost. He said with this new ordinance the City's Fee Study Committee; after it has a chance to see what it costs to implement these registration requirements can adjust that fee yearly.

City Clerk Barnaby asked if Section 7.201 Transportation Services would include limousine services. City Attorney Sullivan stated it would. He said all the limousine services would have to do is register. He said the purpose of bringing the limousine services into the picture is that the burden that kept the limousines out of the present ordinance have been removed and therefore the limousines should be included. He said the reason he did it this way was to simplify enforcement. He said if a police officer sees someone picking up off the street, the officer will know it must be a vehicle for hire. He said it is simplicity of enforcement that was the thinking there. Chair Bresciano asked about ambulance services. City Attorney Sullivan said the definition of what is a transportation service is the same as the current definition of taxi service. He said due to this, ambulance services would not be a taxi or a transportation service provider unless it's a taxi now. City Clerk Barnaby stated the Clerk's office would have to send out notifications to every limousine service within a certain radius to advise them the change in the ordinance requires them to now register their drivers and vehicles with the City Clerk's office. She said this will create administrative work that was not required prior to this. City Attorney Sullivan said as a courtesy she might want to send out notifications. City Clerk Barnaby stated if she doesn't there are going to be individuals saying they saw limousine services that are not registered. Commissioner Cataldo said originally he suggested limousines be excluded because of the past practice. He said he agrees with City Attorney Sullivan that if you are going to open the market it should be for all. He said he likes the idea of simplicity and transportation covers all factors. He said he knows it's a burden for the Clerk's office but if we can make a slight adjustment to cover this additional cost at these early stages before any reviews are made it might off set some of it.

City Clerk Barnaby asked about the placard stated in Section 7.202: Vehicle Registration. She asked what the definition of a placard is. She asked if it will go inside or outside of the vehicle and what type of material would it be made of. She asked if there is a fee list for the issuance of the registration. She said there is no difference in the amount of administrative time in the issuance of the registration then there would be for a medallion. She said she recommends the fee remain at \$100.00. She stated presently Public Works makes the medallions and has not charged the Clerk's office as they recycle the plates from year to year, but with these new placards they will need to absorb that cost into their budget, which we haven't had to do in the past. Commissioner Cataldo asked City Attorney Sullivan if the ordinance cover this administrative process. City Attorney Sullivan said the answer to all the questions on the

placard is that the City Clerk will determine what the placard is going to be. Commissioner Cataldo said every step that the clerk has to do needs to be spelled out very clearly as to what they are going to look for, or if there will be a checklist. He said that is not the purpose of the ordinance. City Attorney Sullivan said all the vehicle registration is going to be in the future is a form with make, model, color, year etc, so the city knows what vehicles are lawfully on the street picking up passengers. City Clerk Barnaby said she realizes that all that is going to be filled out is a form and that form is going to be looked at, but we do still have to maintain those forms, review the forms for accuracy, and they have to be issued a placard and the clerk's office should be compensated for that as it requires time. City Attorney Sullivan asked City Clerk Barnaby what she figured the placard fee should be. City Clerk Barnaby said she doesn't feel it should be any different than what a medallion is now - \$100.00. Assistant Mayor Splaine stated we want to simplify and deregulate. He stated \$100.00 is a lot of money especially for a part-time employee. He said he sees this as a service to the public and suggested a \$25.00 fee. He stated the placard or a small poster should be placed inside the windshield. Commissioner Cataldo stated he agrees with Assistant Mayor Splaine. He said he wants everyone to register first and next year we can make any adjustments we deem necessary. City Attorney Sullivan stated if the Commission chooses to insert a placard fee into the ordinance then he will also put in the language that allows the City Council to make annual adjustments during the budget process. Chair Bresciano stated the placard could be placed in the window when the vehicle is for hire. City Attorney Sullivan asked what the Commission wanted for the placard fee. Commissioner Cataldo recommended a \$25.00 placard fee or registration fee. Chair Bresciano said the placard could be as simple as possible.

City Clerk Barnaby said in Section 7.203: License, the fee mentioned is linked to the conducting of the background check and not for the issuance of the license. She said she does not support a sliding scale for the license. She said the sliding scale was put in place due to the high cost of fuel, which is no longer an issue. City Attorney Sullivan said it was determined the background check was going to be left to the Police Department. City Clerk Barnaby said the Clerk's office still has to ensure that it is completed before we give them their license. City Attorney Sullivan said they have to provide you with written authority from the Chief of Police. City Clerk Barnaby said they will have to get their criminal records and background check from the Police Department, which they currently do. She said no license is issued until that has been completed. She asked if the drivers' licenses will remaining the same. City Attorney Sullivan said no. City Clerk Barnaby asked if the Clerk's office would be creating a license for every driver. City Attorney Sullivan stated they would. City Clerk Barnaby said the registration basically is for the companies and the license is for the individual. City Attorney Sullivan stated no, there is nothing for the companies. Chair Bresciano said the registration is for the vehicle. City Attorney Sullivan said in general the City is going to get away from extensive regulation of taxi business and replace it with a situation where in order to protect public safety drivers are going to be licensed but with no limitation on the number of drivers. He said as much as possible taxi related decisions are going to be left to the market place to decide. He said the City would be moving from the current intensive regulation to a much reduced regulation only keeping in place those regulations that are necessary for public safety. City Clerk Barnaby said she doesn't see a fee for the license that will be issued. She said there is a fee listed for the Police Department to conduct their background check, but there needs to be a fee for the City Clerk's office because we will be administratively issuing that license. City Attorney Sullivan asked what City Clerk Barnaby suggested the cost should

be. City Clerk Barnaby said they presently charge \$50.00. Chair Bresciano asked what the Police Department charges. City Clerk Barnaby stated they don't charge anything. She stated the individual provides their own criminal and drivers records from the State and the Police Department reviews them. Chair Bresciano said a driver goes to the Police Department and provides the Police Department with their criminal and drivers records. He said the Police Department takes these records and looks at them. He asked if the Police representative goes to all these agencies to check them. City Clerk Barnaby stated he reviews the records and performs a global check. Chair Bresciano asked if the global check is what the \$50.00 is for. City Attorney Sullivan said since that is the main thing that is going to happen when someone wants a Transportation Services License background check, that is where he thought the fee would go, but if the Commission wants it to go somewhere else he can create another place. Chair Bresciano said once this background check is complete they just have to bring it to the City Clerk. He said all the City Clerk should have to do is say sign here, and give them their license. City Attorney Sullivan said this is correct. Chair Bresciano said there should be nothing for the Clerk's office to do. City Clerk Barnaby stated we have to create a license. Chair Bresciano asked how much issuing a license would cost. City Clerk Barnaby said she would be willing to go down to \$25.00. Deputy City Clerk Kirby said Lieutenant Cummings stated he can't get criminal and driver records on an individual without cause so these drivers are still going to have to bring these in themselves.

City Clerk Barnaby said her next item is insurance. She asked City Attorney Sullivan if they will still be required to have insurance. City Attorney Sullivan said yes. City Clerk Barnaby asked why under the insurance the City is not being listed as a certificate holder or additional insured. She asked is it because the Commission is trying to deregulate the process? City Attorney Sullivan said yes. He said we still require them to have insurance. He stated they will be required to have satisfactory proof of commercial insurance. City Clerk Barnaby asked if the drivers are required to show that to us as part of their registration process. City Attorney Sullivan stated they would. Commissioner Cataldo said as a side comment if UBER comes in with a James River Insurance Company policy the City Clerk's office cannot accept that until the City Attorney's office looks it over. City Clerk Barnaby said that is an additional step for us and time for the processing of it. City Attorney Sullivan stated that was correct. He said the City Attorney's office reviews all kinds of insurances and his office would just absorb it.

City Clerk Barnaby asked about safety inspections. She said she realizes that this ordinance doesn't cover inspections, but as food for thought, in the past an inspection sticker has been approved by a local inspection center, but when it was brought in for inspections by our Police Department it failed due to serious safety violations. City Attorney Sullivan stated this has been discussed at length. Chair Bresciano stated we don't inspect buses and they carry passengers throughout our City. He said the owner of a vehicle has the responsibility to keep their vehicle safe as he is liable in an accident. Commissioner Cataldo said it is good business for an owner to keep their vehicles in top working order. He further stated we have to allow the State to do their job. City Clerk Barnaby stated there should be a section in the ordinance that allows the Police Department to pull a license/registration due to a safety violation. Chair Bresciano said if the Police Department sees a vehicle that they consider unsafe they can stop the vehicle and remove the inspection sticker.

City Clerk Barnaby said she is adamantly against deregulation of fares. She said people will be taken advantage of, especially the vulnerable population. She said UBER is known to increase their fees substantially during events, snowstorms and during an increased demand for their services. She said with no fare structure you are opening the City up to the constant complaints and requests of residents to have the City reinstate the fare structure that would make it equal and fair for all. Assistant Mayor Splaine sees this as an opportunity for our taxis to make money. He said the taxis can advertise that they charge metered prices. UBER has to charge what they are told. Commissioner Cataldo said if we remove the medallion system we need to remove the fare regulation. He said it becomes a buyer beware situation and with the market gap the taxis will win. Chair Bresciano said he doesn't think the cab companies should remove their meters. He said they should continue to use them and advertize that fact. Assistant Mayor Splaine stated with UBER you are always told what the price will be before you get in the vehicle. He said the taxi companies can advertize that they use meters.

Chair Bresciano stated he agrees with City Clerk Barnaby with the annual renewal date. He asked Deputy City Clerk Kirby how she felt about it as she was going to be doing the work. Deputy City Clerk Kirby stated it would be much easier to do the annual renewal date as one date for all. She said if it is done on an individual yearly basis she would have to daily check the records to see if there is anyone that needs to be renewed that week/month. She said this would be very time consuming. City Attorney Sullivan asked what a good date would be. Deputy City Clerk Kirby suggested May 1<sup>st</sup> or June 1<sup>st</sup>. City Attorney Sullivan stated he would make the annual license renewal annual on May 1<sup>st</sup>.

Commissioner Cataldo suggested keeping the Commission vs. a Committee until after the first 6-12 months. He said at some point it could become a committee, that deals with complaints. City Attorney Sullivan agreed with Commissioner Cataldo. Chair Bresciano suggested changing the requirement to four (4) at large members and remove the requirement for a member within the taxi business.

Chair Bresciano said under Licenses, Section 7.203 b, where it states "in this or any other State, in the three full years prior to the date of the application, for any reason related to the operation of a motor vehicle". He said in the past the Commission has gotten into the - it was just an administrative over cite, but it still had to do with the operation of the motor vehicle or the log book wasn't completed properly situation. He said that is still part of the motor vehicle operation. He said when we say motor vehicle operations are we still going to run into those kinds of problems. City Attorney Sullivan said it is initially the Commissions decision what to recommend and then the City Council decisions what to adopt. He said he feels related to the operation of a motor vehicle should include operating an uninspected vehicle and operating after a suspended license could be debated as to if they are related to the operation of a vehicle. He said he would say in every case they are and in every case they should be used as a basis for denial. Chair Bresciano asked about an improperly filled out log book or failure to pay a ticket. He said he feels they should be handled as they are now and deny the license and allow the individual to appeal to the Taxi Commission on a case by case basis.

Chair Bresciano said in Section 7.204 he already went over his recommendation with City Clerk Barnaby about the notice shall be mailed to the City Clerk. He asked City Attorney

Sullivan to change that to read mailed, faxed or e-mailed. City Attorney Sullivan said he would change it to read “shall be provided to the City Clerk”.

Commissioner Cataldo stated all his comments have been covered except Section 7.211: Penalties for Violation. He suggested imposing an administrative fine of \$300.00 for anyone who fails to register and it comes to our attention. He said he would like to propose a category – Failure to Register – which would carry an administrative fine to be determined by the Committee. Chair Bresciano asked if this would be for the vehicle and/or the driver. Commissioner Cataldo stated it would be for both. He said if you do not register and are caught this would give the Commission the teeth to levy a fine. City Attorney Sullivan stated it is already stated in the ordinance in Section 7.211 b. Commissioner Cataldo said it says an administrative penalty as may be determined. He just wanted to put a limit of up to \$300.00. Chair Bresciano stated there is always a dollar figure penalty for a violation of the City ordinance.

Chair Bresciano asked if this ordinance covered all that the Transportation letter from UBER covers. City Attorney Sullivan stated what the Taxi Commission has come up with for basis concepts of regulation in the City and what is being proposed by UBER are different ideas. Chair Bresciano stated our draft is not just going to cover UBER it is going to cover everyone. City Attorney Sullivan said the most fundamental difference between what they are proposing and what the Commission has discussed is that UBER proposes to carve out ride-sharing and adopt a special ordinance that relates just to ride-sharing and keep the taxi regulation as it is now. He said what the Commission has done so far is just the opposite. He said rather than separate ride-sharing and allow it as a separate ordinance, what the Commission has recommended is to bring everything together on a level playing field. Assistant Mayor Splaine stated the UBER draft creates an unlevel playing field. He feels the Commission has done a better job.

Assistant Mayor Splaine said UBER and Lift do not allow their drivers to be able to pick up except by app or they are off the platform. He said our cab companies have been using these taxi stands, how do we make it clear that it is still only for our taxi companies. City Attorney Sullivan said as the ordinance stands right now anyone with a placard can park in a taxi stand. Commissioner Cataldo said UBER drivers are not allowed to pick-up passengers so they shouldn't need to park in the taxi stands. Assistant Mayor Splaine said we don't want UBER to use these spaces. City Attorney Sullivan said it is against the level playing field concept. Chair Bresciano agrees with City Attorney Sullivan. He said UBER drivers are going to say they are being discriminated against because this Transportation Service can use those spots to pick up road side passengers and they can't. Assistant Mayor Splaine said UBER can't pick up road side passengers. Commissioner Cataldo said when they were going through the different options he had made a recommendation that says “allow City taxi companies (current Medallion holders) to use taxi stands for a small fee”. He said this option was voted on. Assistant Mayor Splaine stated the taxi stands are not only for the benefit of the taxi cabs they are for the benefit of the public. He said the public knows that they can go to these taxi stands and find a taxi cab. He said if UBER drivers are using these spaces it prevents our taxi cabs from stopping to pick up the passengers waiting there. Chair Bresciano stated we can't discriminate. He said if we go with Commissioner Cataldo's suggestion and if an individual wants to purchase a blue placard instead of a pink placard then they are authorized to use that

parking space. Commissioner Cataldo said if we use that scenario then anyone can buy the blue placard. Chair Bresciano stated correct. Assistant Mayor Splaine stated UBER will not get their cut if they allow their drivers to pick up passengers. He said what if we add a simple proviso that any company can use the parking spot, but those companies that do ride-sharing as part of a platform company can not use the spaces. He said this would save these advantage spaces for our cab companies. City Attorney Sullivan said the problem with that is that it flows against what the rest of the ordinance says which is bring the ride-sharing and cabs together on a level playing field. He said with the taxi stands and only the taxi stands we are going to have to create a distinction and somehow define it between ride-sharing and other kinds of transportation services to say the ride-sharing vehicles can not use these taxi stands. Assistant Mayor Splaine said he feels that is reasonable to do. He suggested a one year trial period where former medallion holders are allowed to park in the taxi stands. City Attorney Sullivan asked how you would identify the drivers allowed to use the taxi stands from those that can't. Deputy City Clerk Kirby suggested doing a different color placard for the companies allowed to park in the taxi stands.

**Commissioner Cataldo moved to have the City Attorney incorporate the changes from this meeting and forward to the City Council for first reading. Seconded by Commissioner Law. Motion passed.**

2. Complaint by Greater Portsmouth Chamber of Commerce

Commissioner Cataldo stated he received an email from the Chamber of Commerce that stated they were embarrassed by one of the City drivers. He stated Assistant Mayor Splaine, Commissioner Dunfey and himself had met with the Chamber of Commerce some weeks ago with the intention of trying to obtain business for the taxi companies. He said they discussed this with the Chamber and were told very bluntly that the City taxi owners should form an association and clean up their act as far as their behavior. He said he received an e-mail on January 30<sup>th</sup> where an individual complained that one of the drivers; she used the term Merle embarrassed the Chamber of Commerce by making statements concerning Strawbury Banke and other places of business to a number of tourist industry representatives that the Chamber brought in.

Commissioner Cataldo read the letter of complaint from the Greater Portsmouth Chamber of Commerce into the record. Commissioner Cataldo stated this incident is very unfortunate. He thinks that with the Code of Conduct that they should explain themselves in public. Chair Bresciano asked if this was second hand information. Commissioner Cataldo stated Ms. Valerie Rochon was in the cab at the time of the incident. Chair Bresciano said we can take it up at this meeting or we can decide on what action to take and then send out a letter to the individual saying he needs to appear before the Taxi Commission because we are going to take some action on this. City Attorney Sullivan stated there are three courses of action the Commission can take:

1. Take no action
2. Censure or admonish the driver or prepare a written warning.
3. Suspend the License of the Driver (giving him the opportunity to explain their actions to the Commission)

Commissioner Law stated if we are talking about deregulating and letting the businesses speak for themselves, he doesn't see the point of any action on this matter. He said if Merle wants to be the "Crabby Cabby" and he turns away business from the City that's his choice. Chair Bresciano stated we are not to the deregulation stage yet. Assistant Mayor Splaine said maybe we should send a copy of the letter to Merle and ask him if he wants to respond to the allegations. He said we are at a point where we are looking at deregulating and we need not create a problem that does not exist. He said another purpose of a complaint is to bring awareness to an individual as well as to others

**Assistant Mayor Splaine moved to send Mr. White a copy of the complaint letter and request if Mr. White wants to respond to the allegations. Seconded by Commissioner Cataldo. Motion passed.**

## **OLD BUSINESS**

1. Ordinance Correction – Section 7.219 A – Steve Gerrato Rockingham Livery

Chair Bresciano stated with the new ordinance change, this issue becomes moot.

**Commissioner moved to place the letter on file. Seconded by Commissioner Dunfey. Motion passed.**

2. Moped Parking in Front of Taxi Stands

Chair Bresciano asked if there has been any word from Traffic and Safety on the moped parking in front of Taxi stands. Deputy City Clerk stated she sent a memo to the Parking Manager, but has not heard anything back from them. She stated she will follow-up on it.

3. Status of Pending Complaint

Chair Bresciano stated with Lieutenant Cummings unavailable, he requested this item be added to the agenda for March.

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

1. Police Representative Report

There was no police report available.

2. Public Comment

Stephen Gerrato – Rockingham Livery stated the Taxi Commission is accommodating UBER.

He stated the taxis in Portsmouth charge the meter rates during the storm, but no one did anything about UBER charging higher fares. He said the fact that the City did not put a stop to them operating in the City of Portsmouth before they came up with a way for them to operate



legally should mean that at this point and time they should not regulate the taxi companies at all until they regulate them. He said there is an UBER driver that has a blue U light in his window, which according to Lieutenant Cummings it is illegal to have a blue light on any vehicle except a police vehicle. He said anyone who has the app and sees this light knows UBER is in town and they can call them back. He said this is essentially haling an UBER driver. He said until the Commission comes up with a way to figure this all out they are not making a level playing field for the taxi companies. He said we should not be held to the fire until this ordinance is completed.

Stephen Gerrato stated he agrees with City Attorney Sullivan that if the Commission is set on making everything a level playing field they can't choose who can and can't park in the taxi stands.

Merle White – Anchor Taxi said it is a nationwide law that anyone who picks up passengers for hire must have commercial insurance.

John Palreiro – Great Bay Taxi stated UBER has operated illegally since October. He said they have been catered to since then. He said they have violated the entire ordinance and they are taking revenue from the taxi cabs. He said the taxi cabs lose money on the weekends because of the UBER drivers and this is what they use to float themselves during the weekdays.

Assistant Mayor Splaine asked when the annual renewal of the taxi licenses and medallions was. Deputy City Clerk Kirby said by April 1, 2015. Assistant Mayor Splaine suggested coming up with some kind of rebate to the taxi companies.

Chair Bresciano stated he would strongly suggest anyone who wants to voice their opinion on the new ordinance should attend the public hearing on March 16, 2015.

## **VII. ADJOURNMENT**

The meeting was adjourned at 11:00 a.m.

Respectfully submitted by:

*Dianne M. Kirby*

Dianne M. Kirby, Deputy City Clerk