

TAXI COMMISSION MEETING
Minutes of the March 18, 2015 meeting

I. CALL TO ORDER

Chair Bresciano called the meeting to order at 9:06 a.m.

II. ATTENDANCE

Present: Members: Chair Peter Bresciano, Assistant Mayor James Splaine, Commissioners Stephen Dunfey, Tristin Law, City Attorney Robert Sullivan and Deputy City Clerk Dianne Kirby

Absent: Commissioner Cataldo and Lieutenant Chris Cummings

III. ACCEPTANCE OF MINUTES FROM FEBRUARY 18, 2015

Commissioner Dunfey moved to approve and accept the minutes of the February 28, 2015 Taxi Commission meeting. Seconded by Commissioner Law. Motion passed.

IV. NEW BUSINESS

1. There was no new business.

OLD BUSINESS

1. Complaint by Greater Portsmouth Chamber of Commerce – Merle White

Commissioner Law moved to accept the letter and place the complaint on file. Seconded by Commissioner Dunfey. Motion passed.

Chair Bresciano extended an invitation to Mr. White to speak on his behalf.

Mr. White stated what he says in his cab as long as he doesn't swear, yell, or punch is freedom of speech. He said the first thing he did when her group got into his cab was call Portsmouth Taxi because the run was referred by them. He said he wanted to check to make sure the run wasn't one of Portsmouth Taxi's discount runs. He stated he informed the clients that he was talking to Portsmouth Taxi about their vouchers. He said she misunderstood what he was talking about. He said what he said about Puddle Duck Pond was that the archeology community of this City was outraged that they went and dug that deep hole without talking to anybody and they did destroy artifacts to build a skating rink. He said people have a right to their opinion. He said he has an opinion and he has a reputation as the Crabby Cabby. He stated he has people that come back every year for him to take care of them while they are in Portsmouth. He said if a person don't like what he says in his cab – they can say "sir, I don't like your opinion – can you keep it to yourself" or "let me out of here" He said for a woman in her position to sit down at the Chamber of Commerce and say she won't recommend any cab company in this City is wrong. Assistant Mayor Splaine said it is a person's right to make a complaint and a person has a right to free speech like Mr. White just said. He said he don't

think there is a problem there. He said when people contact Mr. White for a cab they know what they are getting.

Motion passed.

2. Moped Parking in Front of Taxi Stands

Deputy City Clerk Kirby received a response to her memorandum to the Parking Committee. She read the memorandum into the record.

Merle White, Anchor Taxi said the problem with that is most of your parking violations occur well after the Parking Enforcement people go home. He said it will have to be the duty of the Police Department to enforce. Chair Bresciano stated that is what Parking Enforcement and the Police Department are for.

Commissioner Dunfey moved to accept and place the letter on file. Seconded by Commissioner Law. Motion passed.

3. Status of Pending Complaint

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

VI. MISCELLANEOUS/UNFINISHED BUSINESS

1. Police Representative Report

There was no police report available.

2. New Taxi Ordinance

Assistant Mayor Splaine stated there was a lot of discussion from the City Council on the new taxi ordinance. He said he made a motion that the City Council postpone the 2nd reading until April 6, 2015. He said there was a long public hearing with a diversity of opinions. He said UBER Representatives were saying that they would not operate in Portsmouth if we pass the ordinance. He said there were others saying that the Council should pass an ordinance so we have a level playing field. He said the Council was careful not to send it back to the Taxi Commission, but by the nature of the fact that the Council has delayed action for three weeks, gives the Commission an opportunity to offer more insight or input if we want to and offer an ordinance amendment or two if that is necessary. He said he thinks there is some value right now for the Commission to have a little more dialog about it. He said he feels we are so close to having a win-win on this. He suggested the Commission discuss two elements of the ordinance.

1. He said he was convinced during the discussion that there was value to taking out the regulation concerning limousines because he feels that is a different type of company.

2. He thinks the Commission has done a good job and he has done a lot of research since Monday in other communities and towns around the Country that have dealt with UBER and other ride-sharing companies. He said our ordinance is simpler logistically and process wise for UBER or any ride-share company to participate.

He said UBER would not like to have any regulation. He said it is our responsibility to keep our people safe. He asked how we can streamline the process a little more with the City Clerk's office, checking the insurance regulations through the City Attorney's office and the background checks with the Police Department so that UBER can more simply conform. He said we can not give up on knowing who is driving and what their background is. He said we can't abdicate our responsibility on that. He said we can not surrender that basic premise of knowing who is picking up passengers in Portsmouth.

Chair Bresciano said City Attorney Sullivan wrote a good ordinance. He said we have narrowed it down to making sure drivers have background checks and proper insurance so the passengers are protected and the vehicles have State inspections. He said that is all this ordinance is. He said we can't make it any simpler.

City Attorney Sullivan said he tried to follow the principles the Taxi Commission set to level the playing field. He said the Taxi Commission said they wanted to restructure the regulation of the Taxi/Transportation business so that we can welcome ride-sharing into the City. He further stated the Commission does not want ride-sharing to have an advantage over our traditional taxi cab businesses. He said the Commission has set a more registration rather than regulation ordinance. He stated this ordinance would be for everyone – traditional taxis and ride-sharing. He said anyone who would pickup another person and give them a ride in the City of Portsmouth just has to show the City who they are and pass a minimal background requirement to the satisfaction of the Portsmouth Police Department. He said that is the level playing field. He said if the City Council were to establish a different ordinance for ride-sharing drivers as opposed to traditional taxi cab drivers then the Commission or the City Council would be upsetting that level playing field. He said that would violate the core policy principal established by the Commission. He said when he viewed the argument that UBER made to the City Council as to why they shouldn't register drivers, it comes down to UBER saying to the City of Portsmouth trust me. He said he doesn't think that protecting the safety of taxi passengers in the City trusting anyone is good enough. He said it is the obligation of the City to verify that the people driving these vehicles are who they say they are and will be as safe as we can make it for their passengers. He stated he personally thinks that in order to stay true to the Commission's level playing field policy and in order for the City to perform its function of protecting passenger and cabs as much as possible to the extent that we assure that they have safe drivers, it is necessary to keep the ordinance as proposed.

Chair Bresciano said in the end the Commission needs to ensure everyone is protected. He said when it comes to two ordinances (one for UBER/Ride-sharing and one for Taxi Cabs) if he were a taxi company he would dissolve his company and work the way UBER/Ride-Sharing does because he could make more money that way and he would not have to go through all the hoops the taxi companies have to. He asked who in the end is protected. He said if all drivers operate as ride-sharing cabs who will pick up the ordinary person off the street and who will come out late at night in the freezing temperatures. He said the taxi cabs know people

need rides and they are available for these people. He said Ride-Sharing is part time and they only work when it's convenient for them. He said we are not asking much. Assistant Mayor Splaine said he agrees with Chair Bresciano and what the City Attorney said. He said other than the issue of limousines, which he feels needs to be revisited, the process of how we will get this done can be completed administratively by the City Clerk, the Police Department and UBER and might be done without changes to the ordinance itself. He suggested the Commission invite Jim Merrill to speak and let us know where the problem is as he sees it with UBER adhering to this ordinance and conforming to the basic simple requirements of letting the City know who is operating these vehicles so we can verify through our Police Department the drivers' backgrounds.

Chair Bresciano asked City Attorney Sullivan if, at the present time, we are violating the City ordinance by not having the City Clerk and Police Department's administrative process written into the ordinance. City Attorney Sullivan said all ordinances within the City require that City officials who administer those ordinances determine their duties under the ordinance applying some kind of rule of reasonableness.

Assistant Mayor Splaine said one of UBER's concerns is that if they have 22 people who will be answering UBER apps in Portsmouth during a given year they would rather not have 22 individuals walk into City Hall to register as some of them might not be local. He asked if that could be done in some unified way. He said he thought that could be handled administratively, but the Commission and the City Council can not give up on knowing who the drivers are so we have that level of protection for our residents and visitors. He said if the Council doesn't vote on this or something on April 6th, UBER will be operating illegally. He said if we can find a way to get everybody working legally we want to do that. He said if we don't pass something on April 6, we are going to have to work something out with the Police Department on how we are going to enforce the ordinance. He further stated this will not help our taxi owners any because we will still have the medallion process and nothing would change. He asked what the problem is; he doesn't quite comprehend the difficulty here other than a company being so set in their mind that they don't want to have any regulations if they can avoid them. Chair Bresciano asked John Palreiro, Great Bay Taxi how many drivers he has. Mr. Palreiro said he has 14 drivers. Chair Bresciano asked if they all live in Portsmouth. Mr. Palreiro stated no they live in Maine, Dover, Exeter and other surrounding areas. Chair Bresciano said it is no different for a taxi company than it is for UBER. He said we can't treat ride-sharing drivers different than we treat our taxi company drivers.

Commissioner Law said we are using a lot of words for something simple. He said we are only asking them to share their information with us. He said they collect information on their drivers and they just need to pass it on to our Police Department. He urged the City Council to stick to their guns and this ordinance.

Jim Merrill, UBER Representative said he can't say anything more than what the letter from Bryce Bennett, General Manager, UBER sent out last week that itemized the issues with the various sections. He said some are significant, some were very minor. He said with the fare section where it states the driver and rider agree, with the UBER app when a customer contacts an UBER driver the app says what the fare from A to B will be. He said the letter states clearly the issues with the sections of the ordinance. He said earlier it was said UBER

doesn't want any regulation – he said that is not the case. He said UBER isn't seeking a blank license and a wave of the wand. He said other municipalities have designed ordinances that UBER has approved. He brought in ordinances from Minneapolis, Tulsa, Chattanooga, and Baton Rouge. He said these communities have enacted ordinances and been able to create a permanent home for Ride-Sharing and UBER. He said these communities have found a way to make this work. He said he thinks the issue is not that UBER is saying trust us and we are going to go off and do our thing. He said the Portsmouth Herald said that Assistant Mayor Splaine said they are asking us to trust them – we need to verify. He said UBER is not opposed to having you verify, but it's the difference of creating a process where it's the company that is requesting and the company that does the background checks and he said UBER does more background checks than anyone in the country except the Federal Government. He said what UBER wants to do is create a system where we work with the company to verify that the drivers are who they say they are and they meet the standards for the vehicle inspections. He said UBER wants to find a way that you can work with UBER so their drivers do not have to come in and go through a regulatory process. He said that's what UBER has done with other communities and would like to happen here.

Commissioner Dunfey asked Mr. Merrill if he is opposed to driver's registering. Jim Merrill, UBER Representative said what these ordinances do is create a process to accomplish that goal. He said he understands that from UBER's stand point the drivers list they consider a proprietary trade secret and is something they have spent a lot of time and money developing and is something that if it is generally known then competitors will come in and work toward bringing those drivers under their system.

Assistant Mayor Splaine said that what Mr. Merrill just said is a reiteration of his observation – he said he's saying trust us and don't verify, but what you are saying is trust us we know that our process of background checks is great and that we know what we are doing. He said that is a big step to being able to verify. He said it assumes that UBER's police oversight is good enough for us. He said he doesn't buy it that UBER is concerned about not letting other companies know who is working for them. He said it all comes down to UBER doesn't want to follow those type of regulations. He said there must be a way to verify beyond just trust us. He said the best way to verify is to know who the people are who are working. Jim Merrill, UBER Representative said they have done that in other municipalities. He said there is not a one size fits all method here. He said UBER's positioning is they want to be here. Assistant Mayor Splaine said sitting behind you is John – John has 14 people working for him – should we also let John self police his drivers and assume what he says is true or does the City have the obligation to verify his drivers. Chair Bresciano said he doesn't buy the proprietary listing. He said we have no idea what these drivers criminal and driver's records are.

John Palreiro, Great Bay Taxi said if UBER sends the information to our Police Department will the Police Department then insure the information is correct. Chair Bresciano said the Police Department will do the same things that they do on our taxi company – DMV and Criminal background checks.

John Palreiro, Great Bay Taxi asked if a resident gets in an UBER cab are they insured – UBER says they are. Chair Bresciano said they have to submit their insurance to the City Attorney. John Palreiro, Great Bay Taxi said the contractor or UBER – the owner of the

vehicle has to show commercial insurance. UBER keeps saying they are a technical company and they hire independent contractors and they have insurance to supplement the contractor in case of an accident. The problem lies when the contractor tries to make a claim because they have regular auto insurance and not commercial insurance and the claim is denied and UBER then refuses to pay. City Attorney Sullivan said the City requires the owner of that vehicle to have insurance required by the ordinance. John Palreiro, Great Bay Taxi asked if in order for UBER to operate in this City they have to show commercial insurance. City Attorney Sullivan stated that is correct. John Palreiro, Great Bay Taxi said by the owner of that vehicle. City Attorney Sullivan stated that was also correct.

Stephen Gerrato, Rockingham Livery asked if the rate/fare is taken out of this ordinance. Chair Bresciano stated it is. Stephen Gerrato, Rockingham Livery said there will be no protection against inflated rates. City Attorney Sullivan said the City Council is concerned about surge pricing and a sober driver taking advantage of an intoxicated passenger and they want to put in a stop gap to make sure that within the City of Portsmouth there will be a maximum amount that can be charged. He said the proposal that has been drafted is that for any ride beginning and ending within the City of Portsmouth the maximum fare would be \$25.00. He said this figure was arrived at when he asked what the fare would be from Kittery to Rye, which is the longest ride in the City. He said this amendment would be voted on by the City Council at the April 6, 2015 City Council meeting. Stephen Gerrato, Rockingham Livery asked what if a passenger has a split fare. Chair Bresciano stated a taxi company can still use their meters.

Mayor Lister asked what the problem is with UBER releasing the names of their drivers. He asked Mr. Merrill if UBER would release a list of their drivers Yes or No. Jim Merrill, UBER Representative said there is a way. Mayor Lister said Yes or No. He said I assume the answer is No. He further asked if the ordinance on the table today would prevent UBER from working in the City. Jim Merrill, UBER Representative said yes it would. He said the letter sent last week speaks to that point. Mayor Lister said in his opinion it is very possible that the bottom line to all of this is maybe it is not going to work for UBER to work in this City. Jim Merrill, UBER Representative said these concerns are being raised and being discussed. UBER is not saying they want no rules – no regulations. He said the ordinances he brought today are evidence of that. He said there are ways the verification can be dealt with. He said the question is how we get there. He said he will take this information back and they will see where we are over the next few weeks. He said to Mayor Lister if the decision is to go forward with this ordinance as it is drafted then that is the municipalities' decision. He said UBER then has a decision to make.

Mayor Lister said what he is saying is instead of just beating this to death; the Council is just going to have to make a decision and make it work. He said he is not against UBER or anyone starting a business – but when the policy people in this community come up with a process or ordinance and vote on it - that is the way it's going to be. He said if we can work this out to have a level playing field, that is fine, but there are certain questions that we have. He said he knows there are other City's ways, but there is a Portsmouth way too. Jim Merrill, UBER Representative said he understands – Portsmouth defines its own way. Mayor Lister said if we vote this ordinance in on April 6, 2015, and UBER can't conform to that ordinance then maybe UBER can't work here. Mr. Merrill, UBER Representative said that's a decision

UBER will have to make. He said the letter submitted last week outlines the challenges UBER has with certain provisions and what may happen as a result.

Commissioner Law said as a consumer he knows how much his ride is going to cost up front, who is coming to pick him up, what color car they drive and he can look at the comments and reviews. He said UBER the company has vetted their drivers - so where is the missing link in all this information. He asked why the City can't be a part of that. Jim Merrill, UBER Representative said there is a way for the City to verify as explained in the letter provided and the ordinances from other communities that have been submitted. He said there is not a one size fits all as you would expect.

John Palreiro, Great Bay Taxi said the key word here is safety. He said insurance needs to be greater or the same as the drivers being vetted. He said UBER keeps talking about this million dollar policy they have, but they have never paid out a claim.

City Attorney Sullivan said in looking at the proposed ordinance the other day he realized there is an ambiguity in there that needs to be resolved. He said in Section 7.203 it states that licenses will be renewed each year effective May 1st. He said in Section 7.207 it says that Transportation Service licenses will be renewed annually on its date of issuance. He said that Section is in error – it should also state May 1st. He said with the permission of the Commission he proposes to correct this error.

Permission of the Commission to make the correction was granted

3. Public Comment

There was no further public comment.

VII. ADJOURNMENT

The meeting was adjourned at 10:29 a.m.

Respectfully submitted by:

Dianne M. Kirby

Dianne M. Kirby, Deputy City Clerk