

TAXI COMMISSION MEETING
Minutes of the April 15, 2015 meeting

I. CALL TO ORDER

Chair Bresciano called the meeting to order at 9:03 a.m.

II. ATTENDANCE

Present: Members: Chair Peter Bresciano, Assistant Mayor James Splaine, Commissioners Stephen Dunfey, Larry Cataldo, Lieutenant Chris Cummings, City Attorney Robert Sullivan and Deputy City Clerk Dianne Kirby

Absent: Commissioner Tristin Law

III. ACCEPTANCE OF MINUTES FROM MARCH 18, 2015

Commissioner Cataldo moved to approve and accept the minutes of the March 18, 2015 Taxi Commission meeting. Seconded by Commissioner Dunfey. Motion passed.

IV. NEW BUSINESS

1. Temporary Operating Agreement presented to City Council on April 6, 2015 by UBER Technologies, Inc.

Assistant Mayor Splaine stated the City Council agreed to postpone the vote on the 2nd reading until the next meeting. He said he was careful not to say that the issue was to be sent back to the Taxi Commission, but the City Council wants to hear the advice of the Taxi Commission. He said this is a matter of fulfilling the City government's job of finding ways to let businesses operate provided they do so safely and follow the standards of City government. He said we need to find a way to level the playing field and treat all businesses equally while finding a way to allow ride-sharing companies and taxi companies to be able to operate. He said that is why he suggested another model shift – instead of regulating the businesses we just set the standards on insurance and background checks. He said that is what the temporary operating agreement does for UBER. He said the problem is on Monday the City Council either has to find a way to be able to get over the wall on this issue and allow ride-sharing to continue or not. He said there is an ordinance before the City Council that levels the playing field for all companies. He said the proposed ordinance requires all companies and their drivers to register with the City. He said we need to continue the discussions for perhaps 90 days within the Taxi Commission and find ways to solve this real dilemma with ride-sharing and find a way to let them operate. He said all the discussion in the past five (5) months has led us to this point. He said we have identified the one real stumbling block and that is the registering the drivers. He said if we treat all the businesses the same as we treat any other business we will then have the win-win we need. He said we need to make the businesses responsible for the operation of their business and the people who work for them rather than the drivers. He said he thinks that is the kind of responsibility we can require. He said he assumes we are looking at how to solve this temporarily because we would need an ordinance in order to do what he described and the current ordinance doesn't do that. He said that will take a little more time.

He said on a temporary basis, say 90 days, they would be able to find a way to legalize the decision by the City Council – the operation of UBER so that it just doesn't stop on April 21st and create a real problem for the City.

Chair Bresciano said this would not apply to our taxi businesses. Assistant Mayor Splaine said the temporary agreement would not. Chair Bresciano asked what the taxi companies would operate under. Assistant Mayor Splaine said they would have to operate under the old ordinance if the Council doesn't pass the new proposed ordinance on the 20th. Chair Bresciano said that means the taxi companies are going to have to come in on the 21st and pay \$100.00 for medallions. Assistant Mayor Splaine stated they would not. Chair Bresciano said they are going to have to operate under the present ordinance. Assistant Mayor Splaine said exactly. He said if the Council doesn't pass the new one the taxi cabs would have to pay for their medallions and continue under the old ordinance. He said if the City Council passes the new ordinance then they don't have to do that. Chair Bresciano said either way the taxi companies will have to come in and register and UBER doesn't. Assistant Mayor Splaine stated this is correct. He said the dilemma is we still don't have an ordinance that allows for a level playing field for everybody and allows UBER to operate and they will not be working here after the 21st if we solve this. Chair Bresciano said the solution maybe for the City to get involved in this taxi ordinance. He said this is an ordinance that the Taxi Commission recommended and that the City Council is going to either adopt or reject. He said we are at 2nd reading – the City Council can do whatever they want with it. Assistant Mayor Splaine stated the Council would listen to a recommendation from the Taxi Commission. He said the Commission would have to be specific in what to recommend. He said we all want a level playing field.

City Attorney Sullivan said the City Council is the policy makers and what they adopt as a municipal policy is going to be followed unless that policy was unconstitutional or illegal or unpermitted by State law. He said in general if the City Council says it wants an issue handled in any particular way that's the way that issue will be handled. Chair Bresciano stated if the City Council says UBER or any ride-sharing company can operate in the City as they are now that company can do that. Assistant Mayor Splaine said he would make that motion to the Council if the Taxi Commission requests that. He said it would get us to a point where we can continue to focus on how to write a permanent ordinance that will do the job we want. Chair Bresciano said the City Council has the ordinance in front of them. He said this Monday night if someone sat down and did their homework they could come back and say we don't need paragraph 7.202 and move to take it out. He said UBER doesn't like the way we want background checks – they want to call up the Police Chief and say it is all taken care of. He said the only problem is when someone has an accident and a passenger gets hurt and we find out the driver has 15 arrests in Manchester for speeding the Police Chief and the City Council will be accused of not doing their job. He said the solution is if we are going to agree to this and let UBER tell us that their guys are taken care of we have to do the same thing for our taxi companies. Assistant Mayor Splaine said he agrees. He said that is why we need to revise the proposed ordinance that we have for the Council. He said we have to deal with the businesses not the individuals. He said we have to trust the businesses to do what we require.

Chair Bresciano asked if Assistant Mayor Splaine was ready this morning to go through this ordinance and say we recommend to the City Council that 7.202 be eliminated. Assistant

Mayor Splaine stated he was not. He said he is ready to look at the temporary operating agreement because 7.202 is not the only issue. He asked City Attorney Sullivan what advise he would give the Commission with the problem they are having in trying to get to yes on something. City Attorney Sullivan said all over the world governments are struggling with the same issues. He said the initial approach by the Taxi Commission focused very heavily on a leveling the playing field concept. He said it was the first time anywhere that concept was being applied to try to solve the problem. He said he thought the Taxi Commission was on the cutting edge in dealing with the complicated situation and the proposed ordinance written relies heavily on the level playing field concept. He said even though the ordinance that would create the level playing field was written with the Transportation Network Companies in mind and would make them lawful, UBER has notified the Mayor and him that if this ordinance were adopted they would withdraw from the City. He said the level playing field does not match their business model and they felt that the popularity of UBER is so great that if UBER withdrew from the City – the City would be obligated to redraft the ordinance to allow them to come back and keep their business model. He said there appears to be some truth in that regard – they are very popular. He said this is a very difficult situation for the Municipal Government. He said whether the Council in the end agrees with Assistant Mayor Splaine's recommendation or not – everyone would agree that he has done a huge amount of work to try to bring together all the various factions into some plan that we can all get behind. He said whether that works or not is a decision for the City Council. He said the City Council doesn't seem to have a clear agreement amongst them as to what direction this is going to go. He said the proposed ordinance is coming up for 2nd reading. The City Council will have to make a decision whether to pass it, not pass it, amend it or postpone action on it to a later date. Every one of these choices has its own problems and the situation gets very complicated. He feels the proposed ordinance was a very good ordinance. He said it was simple, direct, it had clear principles that the City would have to follow and it relied on free market forces to determine the number of cabs and amount of fares. He said it processed the level playing field concept and would allow the cabs to be able to continue in business without having to carry the heavier burden than the transportation network vehicles yet the Transportation Network Companies would be allowed into the City to operate with minimal regulations. He said the path has not been smooth. He said unlike the Taxi Commission and the City Council; the Legal Department is not a policy maker. He said their job is to advise others and to represent them when there is litigation. He said he feels that the Taxi Commission's proposed ordinance is a pretty good ordinance. Chair Bresciano said there are some Councilors that would say let them leave.

Commissioner Cataldo said there is a mind set that we know who the drivers are. He said he looked at some of the references of what other Cities have done. He said what we have proposed is somewhat common in that it requires the drivers to register. He said the City of Chattanooga, Tennessee went one step further by suggesting there might be another way of doing the same thing. He said in their ordinance they have made some headway in solving this dilemma. He said their basic concept is that we require less regulation than the current proposed ordinance has, but would also ask that the Police Department and City Attorney maintain the same amount of effort in verification. He said unlike Tennessee what Assistant Mayor Splaine is proposing is that all companies follow the same format while eliminating the need for a medallion, but still heavily regulating the drivers. He said he would not suggest that. He said if we want a level playing field and free market competition it has to apply to everybody. He said while we refer to the temporary operating agreement UBER has

suggested for us it does suggest that all companies who operate and pickup passengers in Portsmouth would have to sign the same agreement. He said he would not expect anything less. He said if it applies to everyone, we allow all the companies to administer their own background checks and insurance. However, as was suggested the Police Department would have the right to conduct checks to make sure the vehicles are in working order and the drivers have commercial insurance and proper background checks. He said if they do not have these items they would lose their operating permits.

Commissioner Cataldo said UBER and other ride-sharing companies maybe suggesting that we provide a look at their information in their computers as that was done in Chattanooga, Tennessee and every quarter we could look to see that the drivers have proper insurance and background checks. He said this was accepted by UBER in Tennessee. He said that would be one way to do the public safety checks. He said it is possible to permit all companies to operate under a contract basic where they promise they will uphold the regulations that we have specified. He said as a result we could be ready for the summer tourist season.

Commissioner Cataldo said there is a social benefit to allowing more vehicles for hire in the City, especially in the evening hours. He said if there is any chance to have a level playing field for all cab companies and all vehicles for hire then Assistant Mayor Splaine's proposal has a chance to do that. He said it won't be quick and everyone has questions about the temporary operating agreement, but he feels it is doable. He said he would like to hear a little more on what our recommendations could be and then take a vote. He said we have an existing proposed ordinance which he would recommend we pass. He suggested the Taxi Commission recommend to the City Council that the existing proposed ordinance should be passed with one exception and that would be the section that governs maximum fares. He said he would recommend to the City Council that the Taxi Commission would entertain a temporary operating agreement for which several Commissioners will sit down with the Attorney for UBER and make changes and if they agree to sign this it will buy us time and keep everything legal. He said another option would be to do nothing.

Assistant Mayor Splaine said he might have a solution. He said what Commissioner Cataldo said is a direction that we can take, but we can't do that today. He said this issue is solvable. He said Monday night he can make a motion that all cab companies and ride sharing companies continue to operate as they are now and allow the Taxi Commission to work with the City Attorney to consider ordinance changes. He said this would eliminate a vote by the City Council on both the proposed ordinance and the temporary operating agreement. He said in the 4-5 months UBER has been operating there has not been an incident and all the companies are going to be busy these next few months and that will give us a change to resolve this during the next few months and come in with a solution in September.

City Attorney Sullivan said with regard to the enforcement provision, there are really two Municipal Department involved – the Legal Department and the Police Department and neither controls the other. Attorney Sullivan said enforcement is for the Police and the City Attorney's office. He said the Police Department and the Legal Department have agreed even with the discomfort about not enforcing the ordinances as we see them, that there would be no enforcement. He said we agreed on a grace period and if this motion passes we will have to extend the grace period. Chair Bresciano asked City Attorney Sullivan what he thought of the

temporary operating agreement. City Attorney Sullivan said an agreement not to enforce an ordinance is problematic to him. He said if the City Council said to do it they would, however if it is between continuing the grace period and signing the temporary operating agreement he would rather see the Council continue the grace period. He further said there is too much in this temporary agreement to discuss at a City Council or Taxi Commission meeting. He said that would need to be done at a work session or a sub-committee meeting.

Assistant Mayor Splaine said the Taxi Commission would recommend that the City Council on Monday approve a motion to allow Taxi Companies and Ride-Sharing Companies to continue to operate as they currently are while the Taxi Commission continues to work with the City Attorney to consider ordinance changes. Seconded by Commissioner Dunfey.

Assistant Mayor Splaine said he wants to be as fair to everyone as possible and more dialog is needed. He said this is not about regulations it's about setting standards on insurance regulations, liability and making sure the background checks are up to the standard of the Portsmouth Police Department. Chair Bresciano said he would support that motion.

Chair Bresciano said he would like to know what direction the City Council is going. He said we could be here until December trying to work things out. He said before we have a work session with the City Council he said we need to work on what we are going to recommend to the Council. He said we need to find out what the Council's issues are. He said we could probably do some type of a joint work session with the Council to find out what direction the Council is looking toward.

City Attorney Sullivan said the situation at the City Council is that they have a proposed ordinance for 2nd reading. He said some part of Assistant Mayor Splaine's recommendation will have to deal with that. Assistant Mayor Splaine said he could add that the Council postpones the 2nd reading. Chair Bresciano asked if the postponement would be to a time certain or what. City Attorney Sullivan stated that would be the Council's choice.

Commissioner Cataldo said he would like a date this should end. He said we have been extending this for months and he is not happy with 90 more days of limbo. He said with members of this Taxi Commission working with City Attorney Sullivan we can do something sooner than 90 days. He said that would require any ride-sharing company to weigh-in well before that. He said we are moving closer to the summer and we are getting into the heavy tourist season and he thinks we need some resolution before the July/August time period. He said the City Council; with the exception of Assistant Mayor Splaine really don't want to tackle this problem. He said he would really like two Council members to work with the Taxi Commission on this. Chair Bresciano asked Assistant Mayor Splaine who he would suggest work in this group. Assistant Mayor Splaine said the Taxi Commission should work with City Attorney Sullivan for a month or so then work with the entire Council in a work session. He further stated he could get Mayor Lister and a few Councilors to join the Taxi Commission in a couple discussion sessions prior to meeting in a work session. Chair Bresciano said we need to get our group together with the City Council before we start coming up with any type of solutions. He suggested Assistant Mayor Splaine and another City Councilor meet so the Taxi Commission has a since of where they are headed because he doesn't have the feeling that

they are involved in this issue. Assistant Mayor Splaine said he can ask for a couple of volunteers from the Council and have the Mayor make the appointment.

Chair Bresciano asked Deputy City Clerk Kirby to read back the motion. Deputy City Clerk Kirby read back the motion:

Assistant Mayor Splaine moved that Taxi Companies and Ride-Sharing Companies continue to operate as they currently are while the Taxi Commission continues to work for the next 90 days with the City Attorney and the City Council to consider ordinance changes. Seconded by Commissioner Dunfey.

Assistant Mayor Splaine asked Jim Merrill, Attorney for UBER if without passing the temporary operating agreement that UBER will understand that they can continue to operate in the current format. Jim Merrill, UBER Attorney said based on the wording of the motion and based on his being at this public meeting he thinks it's clear that the Taxi Commission's intent of the motion is to allow taxi cabs and ride-sharing to operate as they are. He said that is his understanding and he will advise UBER of this.

Assistant Mayor Splaine asked John Palreiro, Great Bay Taxi if he would like to offer something for the Taxi Companies. John Palreiro, Great Bay Taxi said if we are going to be on a level playing field does that mean we can hire drivers without registering them and not have commercial insurance. Assistant Mayor Splaine stated that is incorrect – they would continue as is. John Palreiro, Great Bay Taxi said that is not a level playing field. Chair Bresciano stated the Taxi companies are to operate under the current ordinance. He said the current ordinance has not been suspended. Commissioner Cataldo said to clarify – UBER operates as they have been and the current ordinance will be observed by the Taxi Companies. He said the only difference is that the fees and inspections are suspended.

Motion passed.

2. Request from John Palreiro, Great Bay Taxi, to speak on various issues

John Palreiro, Great Bay Taxi stated every taxi in the City has commercial insurance to protect the residents of this City. He said every taxi in this City ensures their driver's background checks are acceptable to the City of Portsmouth Police Department to protect the residents and guests of the City. He said the City is allowing a company that says trust me to commit violations of the Cities ordinances. He said he has yet to find anywhere that UBER has paid out on an insurance claim. He said the taxis in the City have complied with all the City's policies, rules and regulations and it is about time the Taxi Commission advise the City Council that any Ride-Sharing company – including his, needs to adhere to the rules. He said all he sees is a bully saying operate by my rules or we are out of here.

Commissioner Cataldo moved to place Mr. Palreiro's letter on file. Seconded by Commissioner Dunfey and voted.

OLD BUSINESS

1. Proposed New Taxi Ordinance updates

Chair Bresciano stated this item was discussed earlier in the meeting.

2. Status of Pending Complaint

Lieutenant Cummings stated the individual was found guilty and the finding has been placed on his motor vehicle record. Chair Bresciano asked if his taxi license was suspended. Lieutenant Cummings stated there are only two items on his record – therefore, his license was not suspended.

Commissioner Cataldo said he would like to invite the individual to the next meeting in order for him to explain his actions. Chair Bresciano said he would like to have Lieutenant Cummings outline the complaint and the resolution at the next meeting and then invite the individual in to explain his actions. Lieutenant Cummings asked what Chair Bresciano meant by what the resolution was – he actually didn't show up for court so the court found him guilty. Chair Bresciano stated he actually doesn't remember what the complaint was so if at the next meeting he could let the Commission know what the complaint was and what the resolution was then it will be public knowledge and we can invite the individual in to make a statement if he chooses. Commissioner Cataldo stated that was fine with him.

VI. MISCELLANEOUS/UNFINISHED BUSINESS

1. Police Representative Report

There were no police reports this month.

2. Public Comment

Steve Gerrato asked if when the licenses are back to being issued, will new driver and criminal records be required? He said they have already turned in their records and they have had to pay for those records. He asked if they will have to do that again. Lieutenant Cummings stated due to the amount of time expended they would have to get new records checks.

Commissioner Cataldo asked if there is anyway that the background checks can be done by Lieutenant Cummings. Lieutenant Cummings stated he can not get a criminal record on an individual without a cause and a taxi license is not enough cause for him to request it. He said the driver records are available to him, but not the criminal records.

Merle White, Anchor Taxi stated the taxi companies are the ones that take care of the City people. He said UBER is only out during peak times and don't care about the City residents during the day.

John Palreiro, Great Bay Taxi stated UBER has made all the taxi companies worthless for resale. He said they have given their life and blood 24 hours a day to transport people for hire in the City – UBER comes in – it's an app. He said you can see people with their apps waiting for UBER to show up so they can press the app. He said this City has 27 medallions which is more than enough if they all operate. He said if we are going to allow UBER in and we are going to allow them to be licensed in this City they need a fixed medallion to identify them and there should be a limit on how many medallions are available in order to keep everybody in business.

Christopher David, UBER driver thanked the Taxi Commission for the extended grace period to discuss the issues. He said if the City wants to get information on the drivers he feels there are ways to get that information voluntarily. He said there are parking issues in Portsmouth and the City has revenues available that could go to incentives to taxi companies and ride-sharing companies to be able to cut some of the costs and help to make it a level playing field. He said this would solve the ride-sharing and the parking problems. He feels longer dialog is needed and another 90 days is welcome.

VII. ADJOURNMENT

The meeting was adjourned at 10:30 a.m.

Respectfully submitted by:

Dianne M. Kirby

Dianne M. Kirby, Deputy City Clerk