

TAXI COMMISSION MEETING
Minutes of the August 19, 2013 meeting

I. CALL TO ORDER

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

II. ATTENDANCE

Present: Members: Commissioners Peter Bresciano, Aaron Lawson, and Michael Barker, John Palreiro, Lieutenant Mark Newport and Deputy City Clerk Dianne M. Kirby

Absent: Councilor Brad Lown

III. ACCEPTANCE OF MINUTES FROM MEETING MINUTES FROM JUNE 17, 2013

Lieutenant Newport moved to approve and accept the minutes of the June 17, 2013 meeting. Seconded by Commissioner Lawson and voted.

IV. NEW BUSINESS

Commissioner Lawson moved to switch the order on the agenda and take up item 2 – Application for Taxi Medallion – Great Bay Taxi, LLC first. Seconded by Commissioner Barker and voted.

2a. Application for Taxi Medallion – Great Bay Taxi, LLC

Lieutenant Newport moved to open for discussion the Application for Taxi Medallion – Great Bay Taxi. Seconded by Commissioner Barker and voted.

City Attorney Sullivan stated Commissioner Palreiro would be required to abstain from this discussion.

Chair Bresciano stated the first issue would be applying for preapproval for a taxi medallion when one becomes available. He stated he has no problem with that. He said there are presently no medallions available.

Lieutenant Newport moved to approve the application when the medallion becomes available.

Lieutenant Newport asked if a time frame would be placed on this. Chair Bresciano stated there would not. City Attorney Sullivan stated the Commission can indicate that Great Bay Taxi would be qualified and would be granted a medallion when one was available, but if the circumstances change between now and when a medallion becomes available the Commission might not want to make the decision that it would be given to Great Bay. Chair

Bresciano said we have had times previously where we had approved a company when we had medallions available and it wasn't the next day that the individual would come down and get the medallion – it was months. He said if there were 10 people approved, a medallion would be issued on a first come, first served basis. City Attorney Sullivan stated the Commission needs to be careful. He said if at the time a medallion becomes available there are three applicants, would the Commission, regardless of who the other two applicants are, want that medallion to go to Great Bay Taxi. Chair Bresciano stated he has always said that if someone has been approved by the Commission for a medallion, whoever submits their paperwork first gets the medallion. City Attorney Sullivan stated if that is the policy that the Commission wants to adopt, they can, but that's not how the ordinance reads. Lieutenant Newport stated he agreed with City Attorney Sullivan that if there aren't any medallions available that the Commission should not approve it. City Attorney Sullivan said there may be some issues with the number of medallions that are available and it may be that a medallion will become available very soon, and if that is true, he feels that Great Bay Taxi should be allowed to apply for it along with anyone else. He said it doesn't seem to him that it is appropriate today to say that when a medallion becomes available, Great Bay Taxi gets it no matter who else is applying. He stated the Commission should make a decision at the time there is a decision to be made.

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

Deputy City Clerk Kirby stated the motion was:

Lieutenant Newport moved to approve the application when the medallion becomes available.

Commissioner Barker stated it might be good to consider in the future, since this could be an ongoing problem, how the Commission wants to approach this. He said there might be a better way to manage the applications that are submitted when there aren't medallions available. City Attorney Sullivan stated in his discussions with Mr. Palreiro it sounds like there are problems with the availability of medallions and whether they are being improperly being taken up by companies that are not actually using them. City Attorney Sullivan said if the Commission is going to have a lot of problems all related to medallions, then the more logical way to deal with them is to cure the issue with the availability of medallions first, because if its cured and there are medallions available the second issue goes away.

Chair Bresciano said the problem is we have meetings once a month which causes a prospective company to have to wait up to a month to get permission to get a medallion. He said he can call a special meeting anytime he feels it's needed. He said if they run into a problem where they have medallions and someone has been waiting a long time, a special meeting could be called. City Attorney Sullivan stated he could. Chair Bresciano asked City Attorney Sullivan if the ordinance should be changed to reflect some kind of a waiting list. City Attorney Sullivan said that is a policy decision that the Commission could make. He said if the Commission wanted to do that, the ordinance could be amended to create a waiting list.

Chair Bresciano asked if the Legal Department could look into this issue and come back to the Commission in September with either a better way of doing it with a waiting list or reasons why

we don't want a waiting list. City Attorney Sullivan stated he would. He stated he understands the Commission wants him to look into whether or not all the medallions that have been issued are actually being used. Chair Bresciano said he would also like the pros and cons of a waiting list. City Attorney Sullivan stated if the Commission wants to put a waiting list provision in the ordinance, they can recommend that to the City Council and the Council could adopt it.

Chair Bresciano called the motion.

Commissioner Barker stated he would rather the motion read: **move to approve the application of Great Bay Taxi if a medallion becomes available.**

Chair Bresciano suggested City Attorney Sullivan bring back to the Commission ideas for a waiting list. City Attorney Sullivan stated the Commission has to be careful in how they establish a waiting list. Commissioner Barker stated with the number of new hotels and growth in Portsmouth presently there is probably a need for more medallions.

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

Deputy City Clerk Kirby stated the motion was:

Commissioner Barker moved to approve the application of Great Bay Taxi if a medallion becomes available. Seconded by Lieutenant Newport. Motion passed.

2b. Temporary use of Portsmouth Handicap Medallion

City Attorney Sullivan stated this item was out of order due to the temporary use of the handicap medallion for other than what the ordinance states it to be, would be a violation of the ordinance.

Commissioner Lawson moved to deny the temporary use of the Portsmouth Taxi handicap medallion. Seconded by Lieutenant Newport.

Chair Bresciano stated it has been 23 years since this medallion was set up. He said the handicap medallion was used for only a short period of time. He stated the ordinance would have to be changed in order to use this medallion for something other than a handicap taxi. City Attorney Sullivan stated the ordinance could be amended to allow for the temporary use of the handicap medallion. He stated a better approach would be to increase the number of medallions. He said the comment about the hotels is accurate and it may be time to reconsider the balance the City makes of limiting the number of cabs so the business remains viable and yet allowing enough cabs to insure the people are served.

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

Commissioner Lawson moved to deny the temporary use of the Portsmouth Taxi handicap medallion. Seconded by Lieutenant Newport.

Motion passed.

1. Request to Raise the Number of Medallions

City Attorney Sullivan stated there are two reasons why the City is in the business of regulating taxis at all.

a. It was commonly believed that if anyone could run their vehicle as a taxi, business would be disbursed among all the different vehicles and no one business would stay in business. City Attorney Sullivan stated as a result, the City regulates the number of cabs so there will be enough business for each company to be viable and there will be cab service for the City.

b. Protection of the cab riding public. City Attorney Sullivan said it is regulated to insure cabs are inspected for safety and have the required insurance.

City Attorney Sullivan said those are the two reasons that lead to the number of cabs within the City. He said the Commission makes the decision to recommend to the City Council whether there should be more medallions for public service or fewer medallions so that the business remains viable. Chair Bresciano stated this has been done in the past. He said medallions have been raised from 13 to 30 and then lowered from 30 to 25.

Commissioner Barker asked the reason the amount was reduced to 25.

City Attorney Sullivan stated there was a time when medallions were not all used and it was clear the City was authorizing more than necessary. He stated circumstances appear to have changed. Commissioner Barker stated the citizens of Portsmouth believe there are not enough taxis in the City. Lieutenant Newport stated within this last year all medallions have been used. He said the Commission has never had a time when there were no medallions available.

City Attorney Sullivan stated this is a complicated question. He stated we definitely need more taxis on Friday and Saturday nights, but if we have enough medallions on the road to meet the demands of Friday and Saturday there are far too many for weekdays. He said the business of how many medallions should be authorized by the City is one of the more complex questions the Commission has to deal with. Lieutenant Newport said he thinks part of the issue is that of the 24 medallions out all 24 medallions are on the road on Friday and Saturday nights. He said as a Commission he doesn't know how they can enforce that. City Attorney Sullivan said this issue has been addressed in the past, but he doesn't think any practical way to make it happen has ever been developed.

Chair Bresciano said one of the issues that come up is why we don't require COAST and the trolley to have their vehicles running after midnight. City Attorney Sullivan stated one of the reasons the City regulates cabs is so the business will remain viable for the taxi owners and if we take business away by giving it to others especially during their most profitable time, the Commission would be acting counter productive to that purpose.

Chair Bresciano stated we do not get into the taxi's business except for safety, cleanliness and the number of medallions. Commissioner Barker said the City is increasing and the lack of efficient taxi service is causing individuals to make bad decisions.

Commissioner Lawson asked if they can ask the Council to look into public transportation. City Attorney Sullivan stated the Council is presently working on this. He said the Council has an extensive packet of transportation related issues in front of them.

Commissioner Lawson asked if the cabs keep logs of their fares and could these logs be checked to insure these vehicles are all being used during peak times. Commissioner Barker stated currently we don't want to regulate these businesses. He said as long as they are on the road, have insurance and they are safe, the Commission is not going to tell them they have to be on the road during certain hours. He said if we do, we would then have to decide how to regulate it. Lieutenant Newport stated it is not the Commission's job to tell the companies how to run their company.

Commissioner Lawson said shouldn't the Commission just add more medallions and allow the free market to take care of itself.

Commissioner Barker moved to recommend to the City Council that the number of medallions be increased from 25 to 28. Seconded by Lieutenant Newport and voted.

3. Complaint against Annie's Taxi

Deputy City Clerk Kirby stated the letter of complaint came in the day after Nicole Wolfe had received her license. She stated she contact Ms. Wolfe and she stated she thought once she had turned in her papers and paid she was able to drive.

City Attorney Sullivan stated this should not be taken lightly. He stated the Commission can suspend the medallion, revoke the license, or issue a summons by the Police Department for driving without a license.

Chair Bresciano stated owners do not read the ordinance. City Attorney Sullivan suggested one way to ensure the owners read the ordinance is to penalize the owners who are not acting under the ordinance. Commissioner Barker stated he doesn't want to just put this on file. He feels it is a bigger issue. Chair Bresciano said this complaint has been substantiated by her admittance to Deputy City Clerk Kirby. Lieutenant Newport recommended the Commission send a letter of Reprimand as a warning to the company stating should this happen again they risk losing their medallion. Chair Bresciano agreed.

Lieutenant Newport moved to send a letter of reprimand to the company in violation. Seconded by Commissioner Palreiro and voted.

City Attorney Sullivan stated some action should be taken in order to preserve the integrity of the law in the eyes of the drivers. He stated he will write the letter of reprimand.

4. Appeal of Denied Taxi License for Paula Himmer

Lieutenant Newport moved to open this issue for discussion. Seconded by Commissioner Lawson and voted.

Chair Bresciano stated Ms. Himmer's driver record report shows her license was revoked on December 3, 2009 for 60 days and that her license was reinstated on June 6, 2011. He asked why it was restored so much later. Lieutenant Newport stated the license was revoked for 60 days with a fine of \$620.00. He said the license is not restored until the reinstatement fee is paid. He stated although the conviction is in 2009, which covers the time frame of the ordinance, the language in the ordinance states the license can not be suspended within three years. He said due to the fact it wasn't reissued, she overlaps that time frame. Lieutenant Newport asked how the Commission wants this to be based on, her conviction date or the date her license was reinstated. City Attorney Sullivan stated he interprets the ordinance to mean that at no time in the prior 3 years could the license be suspended. Chair Bresciano stated he looked at it as the privilege was revoked for 60 days. He said after that 60 days period if I don't want my license back why should I pay the fee for having the license reinstated. He said 2 years down the road if I want a driver's license then first thing I have to do is pay the fee to have the license reinstated. He stated he looks at using the 60 day date. Lieutenant Newport stated he understands what Chair Bresciano is saying, but the ordinance says:

"The privilege of the individual to operate a motor vehicle has been revoked and/or suspended at any time, 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."

City Attorney Sullivan stated until the license is reinstated it is suspended and the ordinance says a driver has to have a valid license three full years prior to the date of the application. He stated the suspension is for reckless operation and one of the main concerns of having a taxi ordinance at all is the safety of the passengers. He suggested this may not be the case in which the Commission wants to attach a loose interpretation. Chair Bresciano said he agrees with City Attorney Sullivan, but he also looks at the time period. Commissioner Barker stated it seems clear that the application should be denied on face value given the ordinance.

Ms. Himmer stated the fine was a large amount and she was homeless at the time and could not pay it. Stephen Gerrato, Rockingham Taxi stated Ms. Himmer has asked him to speak on her behalf. He stated Ms. Himmer lost her job due to the suspension and became homeless. He stated it took her until 2011 to get the money together to get her license back. He said she presently works for him on his outside of Portsmouth runs and would like to use her within Portsmouth. He stated she is a good worker and has been trying to get her life back together.

Commissioner Barker stated the Commission does not want to set a precedent. Stephen Gerrato stated a precedent was already set for other cases that have been appealed.

Chair Bresciano stated he would like to take into consideration the circumstances as to why it was such a lengthy period before reinstatement. Commissioner Palreiro stated his position is to follow the ordinance, which states she has to have a valid driver's license for 3 years.

Commissioner Lawson stated he sees the ordinance saying if there is a suspension in effect in the past 3 years – but it sounds like the suspension was enforced for 60 days. He said the rest was the paying of the reinstatement fees. Chair Bresciano said it appears the suspension stayed in effect because the fine wasn't paid. City Attorney Sullivan stated if Ms. Himmer had been stopped by the police on June 5, 2011 driving a vehicle, she could have been convicted of operating with a suspended license. City Attorney Sullivan stated the Commission has more latitude with someone who already has a taxi license than with an initial license. He said if there are grey areas in the ordinance then the interpretation of that grey area is the Commissions' decision to make. Commissioner Barker asked City Attorney Sullivan if in his legal opinion he sees any grey area. City Attorney Sullivan stated in his opinion he does not.

Stephen Gerrato said Merle White, driver for Anchor Taxi was denied his license when he was applying for his initial taxi license, he appealed and the Commission approved his appeal. Merle White, Anchor Taxi stated his appeal was not for a moving violation, it was a log book violation.

Commissioner Barker said it is unfortunate, but it seems that the ordinance is very clear in this case and we don't have the latitude.

Stephen Gerrato, Rockingham Taxi asked if Ms. Himmer's license would be approved if she resubmitted it when the three year time period was passed. Lieutenant Newport stated it would.

Commissioner Barker moved to deny the appeal of Paula Himmer. Seconded by Commissioner Palreiro and voted.

5. Complaint Against Rockingham Livery and Portsmouth Taxi, LLC

Commissioner Barker moved to open this matter for discussion. Seconded by Lieutenant Newport and voted.

Commissioner Barker stated he agrees there are some significant allegations in the complaint and he feels more information is needed before anything is done. Chair Bresciano said he would like to see the Police Department and the Legal Department get together and find out if these allegations are true or not. City Attorney Sullivan stated if that motion passes, they will do what the Commission wants done. He said they will investigate it to the best of their ability and report back to the Commission.

Commissioner Barker moved to engage the Police Department and the Legal Department to investigate into the allegations and report back at the next Taxi Commission meeting. Seconded by Commissioner Lawson and voted.

V. OLD BUSINESS

1. Hotel Courtesy Vans

Deputy City Clerk Kirby stated she sent letters out to Homewood Suites; Residence Inn, Pease; the Hampton Inn; and The Wentworth requesting information concerning their policy with regard to their courtesy vans and possible extension of the time these vans operate on Friday and Saturday nights. She stated she has not heard back from any of the hotels. Commissioner Barker suggested some of those hotels could have made the change, but not informed us. Commissioner Palreiro stated they are staying out a little later, but only about an hour later. Chair Bresciano asked what time the vans stopped before the letters went out. Commissioner Palreiro said it was 9:30-10:00. Commissioner Barker stated there is an issue in the City on Friday and Saturday nights. He asked if it made sense to do more than just the letters. He said there have been no phone calls, no in person meetings etc. He said clearly the City has an issue on Friday and Saturday nights. Commissioner Lawson asked if the Commission could invite representatives of the hotels to a meeting. Commissioner Barker suggested someone contact these hotels to get the operating hours for their courtesy vans. Chair Bresciano asked City Attorney Sullivan if it would be inappropriate for Deputy City Clerk Kirby to do this. City Attorney Sullivan stated it would not. Chair Bresciano requested Deputy City Clerk Kirby contact the hotels to see if they received the letters and plan on extending their hours of operations and request the present working hours of their courtesy vans. Commissioner Barker stated the hotels get the most benefit from Portsmouth's tourism trade. He said it is not unreasonable to put a little pressure on the hotels to help compensate for the challenges on Friday and Saturday nights.

Chair Bresciano asked if with the City's concern with transportation there was a Commission or panel set up. City Attorney Sullivan stated there is a City Council Committee on Transportation. Chair Bresciano asked if it would be advantageous to have a member from the Taxi Commission on that Commission. City Attorney Sullivan stated it probably would be. He said in terms of public transportation, cabs are probably the most important component in the City at the moment. Chair Bresciano asked Commissioner Barker if he would serve if they can get a representative on the committee. Commissioner Barker stated he would. Chair Bresciano asked City Attorney Sullivan how this could be done. City Attorney Sullivan said Councilor Lown could make a request to the City Council.

Commissioner Lawson moved to appoint Commissioner Barker to the City Councils Commission on Transportation if the City Council approves it. Seconded by Commissioner Palreiro and voted.

2. Report Back on the meaning of Section 7.201 – Taxi or Taxicabs

City Attorney Sullivan stated the question, as he understands it, is there was a vehicle in the City which did not have a taxi medallion which would indicate to passengers in the downtown area that if they call the number on the door, he could pick them up and take them where they want to go. He said that becomes a question as the taxi ordinance says:

“...this ordinance shall not apply to the following:

- A. Limousine services, which provide designated luxury or specialty vehicles by prior appointment for discrete functions;*
- B. Limousine services whose operator is limited to the transport of passengers by prior appointment from locations within the City of Portsmouth to destinations located outside of the City or the reverse.”*

He stated that provision was intended to apply to limousine taking passengers to the airport. It was not the intention of the City Council to regulate those vehicles going to the airport as taxi cabs under those circumstances. He stated the question now is the cell phone arrangement. He said the Taxi Commission has asked for his thoughts on this matter. He stated the important part of the ordinance is that those phone calls have to be by prior appointment. He stated he does not think that an individual standing on the sidewalk outside a vehicle, who is told to call, constitutes a prior appointment. Therefore, he does not think the practice of having people call a cab, without a medallion, parked in the street and ask for a ride is consistent with the City's ordinance and a vehicle operating in that way would require a taxi medallion or would be in violation of the ordinance.

He stated the Commission has a lot of new members and it is important to understand the difference between a taxi and a limousine. He stated the main difference is that the calls have to be by prior arrangement.

City Attorney Sullivan stated this, in his view, is one of those walks like a duck situations. He said the intent of the City Council was exactly that. He said if the traveling public can walk up to a vehicle parked on the sidewalk, get in and go where they direct the driver to take them – he feels it would be the intent of the City Council to make sure that vehicle was inspected and safe, the driver was licensed as a cab driver and there was sufficient insurance for the protection of the passengers. He said the charge of the Commission under the ordinance is to regulate the taxi business. He said the Commission has to comply with what the ordinance says, but in the grey areas the Commission makes the interpretation. Chair Bresciano asked about services that are provided out at C&J or at the airport. He said there are vehicles that don't look like limousines taking people from C&J to places outside the City. City Attorney Sullivan stated unless there was a prior arrangement, they would be a taxi and should be regulated.

Lieutenant Newport said the airport is supposed to be back up and operating and in the past the PDA has had shuttles, which were not for hire so that would be moot. He said with the airport on line again, there will be business like Flightline and other van services. He stated they pick up at C&J and transport to Boston and Manchester Airports. Chair Bresciano asked about a Flightline Service that picks up a passenger at the terminal in Portsmouth and takes them to a downtown hotel. City Attorney Sullivan stated that vehicle is a taxi cab. He said if it is a motor vehicle, if it was used for the transportation of passengers for hire and the destination of route is under the control of the passenger it is a taxi. He said if it operates like a bus with planned routes it would not be a taxi, but if the passenger gets in and says take me to 777 Middle Road then it is a cab.

Commissioner Palreiro stated the medallions should be approved by the City Clerk's office. He stated once the insurance, inspection and background checks are completed the City Clerk's office should be able to issue a medallion if one is available and eliminate the approval by the Commission. He said waiting for the approval by the Commission took months to get and now there is a possibility he will have to wait another 2-3 months for a medallion to be available.

Commissioner Barker stated the issue is still unclear to him as to what is prearranged. City Attorney Sullivan stated there is no definition of the term. He said the Commission has the authority to provide a reasonable definition.

Commissioner Lawson stated he interprets a limousine as having a set schedule for the day. Chair Bresciano stated the intent is not for someone to sit in the City and ask people to call him if they want to go out of town.

Commissioner Barker asked if the Police decide this ordinance has been violated, what would the next step be. Lieutenant Newport stated they explain the rules to the violator and if the individual is a consistent violator, they issue a City ordinance violation. City Attorney Sullivan stated Lieutenant Newport interprets the ordinance the same as he does in that if someone who parks downtown without a medallion and picks up passengers immediately on the spot, would be a taxi and would require a medallion. He said if they don't have a medallion, both the owner of the vehicle and the operator are in violation of this ordinance.

VI. MISCELLANEOUS/UNFINISHED BUSINESS

1. Police Representative Report

Lieutenant Newport reported the following calls:

6-25 Car parked in a taxi stand - moved
6-27 Van parked in a taxi stand - moved

Three call on Great Bay operating as a taxi (6-29, 6-30, 7-8)

7-11 Car parked in a taxi stand
7-13 Limousine parked in taxi stand – moved on
7-16 Complaint on Annie's Taxi
7-26 Car parked in taxi stand – given summons

Commissioner Lawson stated an item was brought up about the application process where an individual has to outfit a vehicle prior to getting a medallion.

Commissioner Barker moved to review the medallion application form and bring it into compliance with the ordinance. Seconded by Lieutenant Newport and voted.

Stephen Gerrato, Rockingham Taxi said there were numerous complaints concerning Great Bay Taxi and what is the penalty for him operating as a taxi for the last 60 days or more. He

stated he also had another issue he would like to discuss in private with the Commission. City Attorney Sullivan stated the City does not convict anyone of a crime based on a newspaper story nor grant a civil action based on a newspaper story. He said prior to today there were some grey areas in the ordinance provision. He said based upon the actions of the Commission today the grey areas have been clarified. He said therefore, all action of this nature will be viewed from this day onward rather than retrospectively. City Attorney Sullivan stated on Mr. Gerrato's second point, the number of circumstances in which the Taxi Commission can operate confidentially is extremely limited by the State's Right to Know Law. He stated all meetings except for some exceptions in the statute are public meeting and it is not possible to meet with him in private without knowing what the issue is, to see if it is, in fact, one of the things that the law allows them to do in private. He suggested Mr. Gerrato discuss the issue with him and he will advise the Commission, and if the concern is appropriate to be discussed in private under the State's Right to Know law he would make the arrangements with the Commission.

Ed Heath, Anchor Taxi stated Section 7.223 says

"Taxicabs which are duly licensed in other municipalities may deliver passengers from outside the City to destinations within the City or pick up passengers by prior arrangement in the City for delivery to destinations outside the City."

He stated that is not what was going on with Great Bay. He said Great Bay is not licensed in another municipality.

Ed Heath, Anchor Taxi stated the Taxi Commission does not ask the owners their opinion on anything prior to taking a vote.

Commissioner Lawson said the owners have had since January to appoint their liaison to the Commission, which is their voice.

VII. ADJOURNMENT

The meeting was adjourned at 11:30 a.m.

Respectfully submitted by:

Dianne M. Kirby

Dianne M. Kirby, Deputy City Clerk