

TAXI COMMISSION MEETING
Minutes of the December 17, 2014 meeting

I. CALL TO ORDER

Chair Bresciano called the meeting to order at 9:02 a.m.

II. ATTENDANCE

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

III. ACCEPTANCE OF MINUTES FROM NOVEMBER 19, 2014

Commissioner Cataldo moved to approve and accept the minutes of the November 19, 2014 Taxi Commission meeting. Seconded by Commissioner Dunfey. Motion passed.

IV. PRESENTATION

Commissioner Cataldo presented a PowerPoint presentation on Are New Ride Sharing Services a Threat to Portsmouth's Taxi Companies?

Assistant Mayor Splaine stated a driver/company can join UBER for free and still maintain their Portsmouth medallion operation as well. He asked Commissioner Cataldo if he saw any down side to this. Commissioner Cataldo stated he saw no down side to this at all. He said if they have a medallion they would be able to operate under the ordinance and pick up passengers without prior appointments as well as be available to accept or decline any UBER call when they are not busy. He said he feels even with the 20% fees with a UBER driver would be able to keep their cab fully occupied. He said he feels it would be a win-win for the companies to rethink their business model. Chair Bresciano said if this is the case, why be a taxi company at all? Assistant Mayor Splaine said as a medallion vehicle they would look like a taxi and be able to pick up the business off the streets which you can't do as an UBER driver. Chair Bresciano said he doesn't know how much business that would be for the cab companies. He said he feels the majority of their business would be by phone call. He said if a company isn't all that interested in the daytime off the street customer, why should he go through all the trouble and expense of being a licensed cab company with a medallion when he can just be an UBER driver and pick up anybody he wants from a phone call. He stated they don't have to worry about if their vehicle has a bad spring because that won't be detected with a normal inspection. He asked how the Commission would know if UBER does a background investigation on driving and criminal records.

Commissioner Cataldo said Chair Bresciano asked what the advantage of staying a medallion business is – he said that is a great question and he would like to hear from others before he answers that. He said if you put medallion taxicabs and UBER side by side there are not a lot of differences. He said the rates for our cab companies are prescribed by our ordinance and UBER's by a very sophisticated computer program that deals with the rates and the location of the riders and drivers and the UBER driver pays 20% of that rate to UBER. He said Chair Bresciano's next question concerned driver records. He said by reading the various articles in

the papers you get the impression that it's not all perfect and they have approved drivers that they shouldn't.

Chair Bresciano asked City Attorney Sullivan to comment on the City's liability if a licensed cab driver (with all the required liability insurance) that hits someone after dropping off a fare on City property vs. a UBER driver under the same conditions who may or may not have the required liability insurance. He asked what is stopping that injured person from really going after the City as being liable for allowing a commercial business that is not properly covered for liability. City Attorney Sullivan complemented Commissioner Cataldo for his presentation. He said it was very enlightening. He said the purpose of the insurance requirement in the taxi ordinance is not to protect the City. He said the purpose of the insurance requirement in the taxi ordinance is to protect the passengers in the cabs and any individuals involved in an accident with a cab. He said it is to make sure that passenger or other individuals have a resource to look at to recover any damages – not to protect the City. Lieutenant Cummings stated in the State of New Hampshire you do not have to have motor vehicle insurance. Chair Bresciano stated you have to have it in Portsmouth as a cab driver. Lieutenant Cummings said this applies to cab drivers but not the average person.

Chair Bresciano stated the Taxi Commission is here to look out for the residents of our community. He said one way of looking out for our residents is to make sure that when they are in some type of public transportation they are protected from injury. He said with UBER, we as a Commission and a City don't know if these drivers can protect that passenger either with a safe vehicle or the individual that is operating that vehicle is safe.

Assistant Mayor Splaine stated he has learned through his research that UBER has a \$1 million liability insurance policy in place that protects the passengers. He stated the suggestion for a Public Forum is good and should be held in January or early February. He asked if UBER were to operate within the City could the Commission regulate their drivers, insurance and inspections. Lieutenant Cummings said he feels the Commission should follow the Austin, Texas incident from Commissioner Cataldo's presentation and require the UBER driver to comply in that same manner, it would be wonderful. He further stated the Police Department is the enforcement arm for the Taxi Commission and City Council. He said until the Taxi Commission and/or the City Council decides they are going to change the ordinance to include UBER, he has no authority to cite them.

City Attorney Sullivan stated these are real issues. He said the UBER drivers do call into question the Cities current regulatory scheme and whether it needs to be changed or exist at all. He stated there are several reasons why the City of Portsmouth regulates taxi cabs.

1. to provide safe vehicles – he said we actually physically inspect these vehicle to make sure they are safe
2. to make sure there are safe drivers – he stated this is very important
3. to make sure there is insurance to protect the passengers and individuals involved
4. to set maximum fees to insure the passengers are charged a fare rate
5. to limit the number of taxi cabs based upon the belief that if anybody could use their vehicle for a taxi cab allowing any number of cabs then there wouldn't be enough

business for any of the cab to stay in business and therefore, if the number of cabs weren't limited there would be no cabs

He said all these areas have to be discussed in the UBER and ride sharing contest. He further said Commissioner Cataldo's recommendation to convene a hearing is a good one. He said today the job of the Police Department, Legal and the Taxi Commission is to enforce whatever ordinance has been put in place by the City Council and until the City Council changes it – it is our job to enforce that ordinance. He stated what that ordinance reads now is a taxi in the City is any motor vehicle used for the transportation of passengers for hire – the destination and route of which are under the direction and control of the passenger. He said based upon that definition and the presentation by Commissioner Cataldo it appears that the driver of an UBER vehicle in the City of Portsmouth would be in violation of the City's current taxi ordinance. He said the City Council can make their decision on how to deal with that. He stated there will be strong support in the City for UBER type ride sharing possibilities. Chair Bresciano said he feels the millennial generation is going to do what has been done everywhere else and put the pressure on to let UBER in. He said the Taxi Commission can't sit back and do nothing.

Assistant Mayor Splaine moved to set up a public forum for discussion and debate on UBER/ride sharing services on the 2nd Wednesday of January 2015. Seconded by Commissioner Dunfey. Motion passed.

Chair Bresciano asked Commissioner Cataldo to Chair this event. Commissioner Cataldo accepted.

Assistant Mayor Splaine moved to appoint Commissioner Cataldo to head the public forum on the 2nd Wednesday of January 2015. Seconded by Commissioner Dunfey. Motion passed.

V. NEW BUSINESS

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

Chair stated a letter was received from Stephen Gerrato, Rockingham Livery concerning an Ordinance correction Section 7.219 A. Rates for Taxi Fares. He stated the ordinance states that:

No taxicab shall be operated unless it is equipped with a meter in good condition calibrated by an individual authorized by the State of New Hampshire to record the amount to be charged on each trip, which amount shall be shown in figures visible to the passenger.

He stated he thinks what needs to be done is to insert the word "and sealed" after in good condition calibrated which would make it read:

In good condition calibrated and sealed by an individual

He stated there was also a question on:

All meters must be approved in advance of use by the Taxi Inspector and sealed at all times to prevent tampering or adjustment except in the presence of the Taxi Inspector.

He said he thinks what that sentence is talking about is if there is going to be any tampering or opening of that seal it has to be in the presence of the Taxi Inspector.

Lieutenant Cummings said it would have to be the State Weights & Measures that would need to be present. Chair Bresciano stated we have individuals appointed to calibrate and seal the meters in Portsmouth. Lieutenant Cummings said this is correct. Chair Bresciano said the second part of this is all meters must be approved in advance of use by the taxi inspector. He asked Lieutenant Cummings if he approves these meters. Lieutenant Cummings stated he does not. Chair Bresciano asked who does. Stephen Gerrato said the person who owns the taxi has their choice of what meter they use. Chair Bresciano requested if as the calibrator, he has to approve that. Stephen Gerrato stated he does. He further stated Chair Bresciano was missing the whole point of his request. He stated the ordinance is saying that the Taxi Calibrator is an actual inspector. He said the way it is worded makes it sound like Lieutenant Cummings is the one responsible for this. He stated it says the meter inspector is the taxi inspector which is wrong. Chair Bresciano asked City Attorney Sullivan for his opinion of this issue. City Attorney Sullivan stated he is unfamiliar with this and is also missing the point. He stated he would need time to review this.

Commissioner Cataldo moved to send this item to the City Attorney for review with a report back in January. Seconded by Assistant Mayor Splaine. Motion passed.

2. Complaint against UBER X driver – Great Bay Taxi

Chair Bresciano stated Great Bay Taxi has submitted a letter of complaint against an UBER driver.

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

3. 2015 Taxi Meeting Schedule

Chair Bresciano requested if there were any problems with the proposed 2015 Taxi Commission meeting schedule.

Commissioner Dunfey moved to accept the 2015 Taxi Commission meeting schedule as presented. Seconded by Commissioner Cataldo. Motion passed.

VI. OLD BUSINESS

1. Moped Parking in Front of Taxi Stands

Commissioner Cataldo stated he is disappointed with Parking and Traffic Safety's decision. He stated he feels we should send a letter back saying this is a legitimate question for the Traffic Department and they should enforce it. Lieutenant Cummings stated he spoke with Captain Warchol, who is the representative to the Parking Traffic Safety Committee. He stated Captain Warchol said the Committee did not speak of any taxi issues with the moped parking. Lieutenant Cummings suggested another letter be sent to the Parking and Traffic Safety Committee voicing our concerns with the moped parking in front of taxi stands specifically. Deputy City Clerk Kirby stated she would send another request to the Parking and Traffic Safety Committee concerning our concerns with regards to mopeds parked in front of taxi stands.

Commissioner Cataldo moved to place this item on the agenda for the January 21, 2015 Taxi Commission meeting. Seconded by Commissioner Dunfey. Motion passed.

2. More Taxi Stands

Chair Bresciano stated the Parking and Traffic Safety Committee has granted our request for more taxi stands by adding an additional taxi stand at 69 Pleasant Street.

Assistant Mayor Splaine moved to place the Parking and Traffic Safety minutes on file. Seconded by Commissioner Dunfey. Motion passed.

3. Status of Pending Complaint

Lieutenant Cummings stated they have been in contact with the DMV and there have been some issues that are being worked out. Chair Bresciano said to continue to add this item to the agenda.

VI. MISCELLANEOUS/UNFINISHED BUSINESS

1. Police Representative Report

Lieutenant Cummings stated there were no items to report.

2. Public Comment

Stephen Gerrato – Rockingham Livery stated UBER has been outlawed in Spain and our Police Department needs to take these guys off the road. John Palreiro – Great Bay Taxi stated these UBER drivers are operating as taxies outside the City Ordinance and they need to be shut down.

Ryan Fallon – UBER driver stated he runs strictly through the phone apps. He said he can not pick up a fare off the street without a UBER app booking and he can not take cash. He said their vehicles are inspected through the normal State Inspection system yearly. He said UBER has a one million dollar commercial liability insurance plan. He said the plan kicks in when he picks up a passenger and ends when that passenger leaves the vehicle. He stated he personally has \$300,000.00's of insurance for himself. He stated he has taken drivers

education, defensive driving and other driving courses and he doesn't know what more the City of Portsmouth would want.

Merle White – Anchor Taxi stated he doesn't know what Mr. Fallon is talking about with this one million dollar insurance they have, but it is not NH State Insurance. He stated they have tried on many occasions to purchase temporary insurance for extra weekend taxis and the NH State Insurance Board has stated you can not insure a vehicle for part of a week like that and that a vehicle must be insured on a yearly basis.

Rick Szilagyi, Chief Executive Officer for the New England Livery Association. He stated since 2001 he has been the Executive Director of the NELA. He said it is a disruption theory when an organization goes into a regulated industry ignoring the regulations and achieves public support. He said the public doesn't even know what or why these regulations have been put in place. He said when people say \$1 million of insurance you need to dig into it. He said it is a James River policy, it has 3 different segments and it's hard to find what coverage really exists. He said he has listened to talk about state inspections vs. taxi inspections. He said there is a big difference with the inspection conducted through the Police Department and a 17 point inspection that anyone can get at Jiffy Lube. He said the insurance is done within someone signs up to be on the platform and never requested again. He said in Portsmouth it is probably done at least once a year. He said with the background checks, they are using a 3rd party and the City is using the Police Department. He stated his associates and others are not against TNC (Transportation Networking Companies), but there should be a level playing field. He said we are talking about putting people on the road with a 30-40% less operating cost. He said it is difficult to expect taxis to operate with that type of disadvantage. He stated UBER uses credit cards only – what happens to the elderly people who only can pay by cash and have to get to the doctor. He said that will basically be all that is left for taxi cabs if UBER is allowed to go on. He stated the taxi cabs will go out of business and there will be no one left to service that sector of the market.

Doug Cormier – Market Square Taxi asked what would stop legal from sending UBER a cease and desist letter until this is approved or disapproved by the City Council. City Attorney Sullivan stated UBER is doing nothing wrong. They do not own the cabs or employ the drivers. He said they are only the software provider. He said the Commission would have to notify the drivers individually.

VII. ADJOURNMENT

The meeting was adjourned at 10:20 a.m.

Respectfully submitted by:

Dianne M. Kirby

Dianne M. Kirby, Deputy City Clerk