

TRANSPORTATION SERVICES COMMISSION
Corrected Minutes of the November 18, 2015 meeting

I. CALL TO ORDER

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

II. ATTENDANCE

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

Absent: Commissioner Lawrence Cataldo,

III. ACCEPTANCE OF MINUTES FROM OCTOBER 21, 2015

Commissioner Dunfey moved to approve and accept the minutes of the October 21, 2015 Transportation Services Commission meeting. Seconded by Commissioner Law. Motion passed.

IV. NEW BUSINESS

1. Appeal of Denied Drivers License by Andrew Babish – Annie’s Taxi

Lieutenant Cummings moved to table this action to December 16, 2015 due to Mr. Babish not being in attendance. Seconded by Commissioner Law. Motion passed.

2. 2016 Transportation Services Commission Meeting Schedule

Chair Bresciano asked if there were any discussion on the 2016 Schedule of Meetings.

Assistant Mayor Splaine asked when the term ends for the members of the board. Chair Bresciano stated he thought it was with the term of the new Council. Deputy City Clerk Kirby stated that letters would be going out to the members of the Commission requesting if they would like to be nominated again by the Mayor or not. Commissioner Law stated he thought the Commission was going to be disbanded. Assistant Mayor Splaine stated this will be revisited in six (6) months.

Commissioner Law moved to accept the 2016 Schedule of Meetings as scheduled. Seconded by Commissioner Dunfey. Motion passed.

3. Misdemeanors (Lieutenant Cummings)

Lieutenant Cummings said UBER has requested that misdemeanors be stricken from the ordinance as part of the background check criteria. He stated the Police Department does not think this is a good idea. He stated there are many misdemeanor crimes that pose harm to the

citizens and visitors to the City that he would not want able to operate a vehicle for hire. He said some of the crimes associated with misdemeanors are:

1. Possession of an unlicensed concealed weapon
2. Domestic abuse
3. Assault
4. Criminal threatening
5. Sexual assault
6. Stalking
7. Joy riding
8. Criminal mischief
9. Theft – receiving stolen property
10. Disorderly conduct
11. Conduct after an accident
12. Resisting arrest
13. Indecent exposure/lewdness
14. Child endangerment

Lieutenant Cummings said he feels these are serious enough to include in our background checks for the protection of our visitors and residents. He said it would be a disservice to our public and not doing what we said we were going to do by protecting our people. He said the transportation for hire within the City needs to have proper background checks.

Lieutenant Cummings stated one of his officers stopped a driver picking up passengers and the driver admitted he was driving for UBER. He said in 2014 that UBER driver had a sexual assault arrest, forceable fondling, simple assault charges and stalking arrests. Chair Bresciano asked how Lieutenant Cummings obtained that information on that individual. Lieutenant Cummings said by his record with the police department, because it was the Portsmouth Police Department that arrested him. Chair Bresciano asked when he was stopped what basis was he given to look at his record. Lieutenant Cummings said it is their policy that the officer gives the driver a warning and tells him/her that he/she can not work in Portsmouth until he/she is approved by the City Clerk's office to do so. He said the officer then writes up the report and files it – if they are stopped a 2nd time they are issued a summons. Lieutenant Cummings stated in this case, it was the next day when another officer saw the report, recognized the driver's name and brought it to his attention that that individual was charged with a misdemeanor and convicted in June. He stated under UBER's guidelines this individual would be allowed to operate.

Lieutenant Cummings said the Police Department's stance has been to keep our residents and visitors safe – getting rid of checking misdemeanors would not be a good move. Chair Bresciano asked what UBER's background report shows. Lieutenant Cummings stated if you look at the small print, the report says:

1. "The depth of information available varies."
2. "Hirease Inc. cannot act as guarantor of information accuracy or completeness"
3. "The information contained herein may not be 100% accurate or complete."

4. "This database is not all encompassing and it is recommended that users of this database use the results in addition to or as ancillary search to a county level criminal search."

Lieutenant Cummings stated if UBER would pay for their drivers to get their State criminal and driver records, all would be fine. He said he can trust that the information stated in the State criminal and driver records is complete.

Chair Bresciano asked Lieutenant Cummings if he bounced this information against State information on this individual. Lieutenant Cummings stated he does not. He stated he has to have a reason to go into someone's records. He stated the person in this UBER background check may be clean as can be, but this report and their small print comments leaves him with an unsafe feeling. Chair Bresciano asked if Lieutenant Cummings has any idea of what the parameters of this company are when they go out looking for information on these individuals. Lieutenant Cummings stated he does not.

Lieutenant Cummings said that is why the State criminal and drivers records would be ideal as he can trust the information contained in them. Chair Bresciano said he hopes the City Council understands that when UBER says they do background checks the Police Department can not verify that this company has done a thorough check. Commissioner Law asked if we can put in the ordinance that all drivers must get their State records. Chair Bresciano said we should leave it as it is. Lieutenant Cummings said UBER's background checks are incomplete.

Assistant Mayor Splaine stated since City Attorney Sullivan is here. He suggested we suspend the rules and take up the changes requested by UBER. City Attorney Sullivan stated he is on his way to another meeting, but if the Commission has any questions for him he has a few minutes.

V. OLD BUSINESS

1. Provider/Driver Fine Proposal (Commissioner Cataldo)

Lieutenant Cummings moved to suspend the rules and take up Old Business item 2 the changes requested by UBER. Seconded by Commissioner Law. Motion passed.

2. Changes requested by UBER (Assistant Mayor Splaine)

City Attorney Sullivan stated he has no position. He said these are policy decisions for the Council and Transportation Services Commission to make. He said the three amendments are straight forward. He said none of them are fatal to what the Council and Transportation Services Commission are trying to accomplish, but they are policy decisions that the policy makers have to decide.

Chair Bresciano asked what the ramifications with item 1 are and should we vote to adopt:

ITEM 1

Addition to Section 7.201 – creating a definition for “transportation Services”, as follows:

“Transportation Services” means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the vehicle.”

City Attorney Sullivan said his conclusion is that the moment a Transportation Services driver receives the call – from that moment until sometime later Transportation Service is being provided. He said he feels that service is being provided while the driver is on the way to the passenger. He said that amendment would narrow it so that the Transportation Service under our ordinance would only be provided while the passenger is in the vehicle. He stated his analysis is that this is an insurance matter and not directly related to our ordinance. He said the Portsmouth ordinance seeks to protect passengers when they are passengers and doesn't seek to regulate the conduct of an UBER driver before he picks up the passenger. He said his thought is that the proposed amendment # 1 is something that is important to UBER, but is not particularly for accomplishing the goals of the Transportation ordinance. Chair Bresciano asked if the City Council passes this, would the present paragraph be removed. City Attorney Sullivan said this new paragraph would be added to the present language.

Chair Bresciano said item 2 concerns background checks:

ITEM 2

Edits to Section 7.204 – Background Check – see redlines below:

Section 7.204 Background Check

- A. *The individual does not have more than three (3) **or more** convictions for moving violations, in this or any other state, in the three (3) full years prior to the date of the certification.*
- B. *The privilege of the individual to operate a motor vehicle has **not** been revoked and/or suspended at any time, in this or any other state, in the three (3) full years prior to the date of the certification, for any reason related to the operation of a motor vehicle.*
- C. *The individual has not been convicted of a felony **or misdemeanor**, in this or any other state, in the seven (7) full years prior to the date of the certification.*
- D. *The individual has not been convicted of a felony involving a controlled substance or violence, in this or any other state, in the fifteen (15) full years prior to the date of the certification.*

Chair Bresciano stated in Section A the ordinance does not say more than 3 (or more) it says 3 or more. Lieutenant Cummings said UBER wants it to say 3 or more. Chair Bresciano said we have lived with 3 years for many years without any problems. City Attorney Sullivan stated this is purely a policy determination and up to the judgment of the Commission and the Council.

City Attorney Sullivan stated Section B is the same as the ordinance.

Chair Bresciano stated with Section C UBER wants to take out the word misdemeanor. He further stated Section D, UBER want to remove the complete paragraph concerning controlled substance or violence. He said his feeling on this is that UBER feels felony convictions are covered in Section C and that we don't need Section D. He said his contention is that Section D talks about substance abuse and violence felonies and we are going back 7 years. Lieutenant Cummings said as apppoint of order a felony carries a 3 1/2 – 7 year sentence so theoretically someone can be in jail for 7 years and get out and apply for a license. City Attorney Sullivan said policy decisions are for the Transportation Services Commission and the Council to decide. Lieutenant Cummings said he feels it should be left in.

Chair Bresciano stated item 3 concerns signage:

ITEM 3

Edits to Section 7.211 – Signage – see redlines below:

Section 7.211 Signage

All vehicles engaged in the provision of Transportation Services shall at all times display prominently:

- A. A Placard approved in size, form and content by the City Clerk identifying the Transportation Service Provider shall be plainly visible from the exterior of the vehicle.*
- B. A notice providing passengers with the fare information required by **full text of Section 7.209 of this ordinance.***

City Attorney Sullivan stated in order for our appeal process to work the passenger has to know it exists. He stated signage inside the cab, he feels, is needed and should stay there.

Chair Bresciano said now that we are on this subject he would like to entertain a motion to take each one of these individually and vote on it as our recommendation to the City Council. Assistant Mayor Splaine said his job on the City Council is to listen to members of the public and many people in this community want UBER to be here. He said if we don't solve this one way or another we are really going to have some problems going into the holidays and the spring. He said the Council requested City Attorney Sullivan prepare the ordinance amendment s requested by UBER one by one and that the Council get the input of the Police Department, Transportation Services Commission, City Manager Bohenko and himself (City

Attorney Sullivan). He said at the December 7th meeting they would vote on 1st Reading and receive the input from the Transportation Services Commission. He said if the Council agrees we will go to a 2nd Reading and a Public Hearing would be held on December 21. He said at that time the Council would have a chance to hear everybody's opinion. He said he doesn't think anyone wants to see more arrests or citations issued and we don't want to have to go to court on this. He stated his fear is if we don't solve this by coming up with amendments that UBER and Ride Sharing, under their model, can live with, we are going to lose a very important service. He said people do use UBER.

Assistant Mayor Splaine said the State Legislature is considering this issue. He said he can see the State Legislature getting involved in this and passing a law that is going to allow Ride Sharing to operate everywhere in New Hampshire without City or Town regulations. He said if that happens and we have no laws in place we will have no local regulations. He said that he is not sure that the new Council would want to deregulate, he has no way of knowing that.. He said Councilor Thorsen stated we don't regulate cooks, hotels etc – he said we don't regulate anyone in Portsmouth except City Employees and Taxi Cabs. He said the question is how much of that we should do. He said he thinks something reasonable that allows us to get much of the background checks accomplished is good.

Chair Bresciano said UBER does not want to be an employer. He said they have independent drivers. He said taxi companies have independent drivers. He said the taxi independent drivers go to Concord and get their criminal and driver records, but UBER is saying no they are a technology platform – they only rent the app. He said he can do the same thing and rent out the app. He said he's not going to provide insurance or background checks – they are independent drivers and they should do those themselves. He said UBER says they do background checks - well - here is a sample of their background check. He said as a layman he can't understand any of it. He said it doesn't tell him anything. He further said it doesn't give Lieutenant Cummings any information to go by either. He stated their insurance is the same. He said the Ride Sharers don't want commercial insurance because they have UBER's one million dollars insurance. He said you say the Hot Dog stand doesn't have insurance or background checks, but the Hot Dog stand doesn't have a passenger in the back with a vehicle that the doors lock when they reach 15 miles an hour. He said the Hot Dog stand etc. doesn't have the same type of business a passenger does with public transportation like this.

Lieutenant Cummings said the bottom line is what are we looking for: safety and regulation or free market. He said if we are looking for a free market approach we have to do away with pretty much everything to get to that place – if we want safety and regulation we need to continue on with the background checks and we need to set the proper standard. He said if a company wants to operate in the City then they have to meet those standards.

Lieutenant Cummings stated the City has never said UBER, Ride-Sharing or Lift is banned from operating in the City. He said they can operate as long as they comply with our standards. He said we have to get on the same page and figure out what we want to focus on, safety and regulation or a free market approach.

Chair Bresciano said we have already given up one important item – inspection. He stated this has been done before and the condition of the vehicles got so bad that we went back to

inspections. He said the last time we had an inspection very few vehicles passed and that was a noticed inspection. He said he doesn't know how much more he is willing to give up.

Commissioner Law stated the City may not regulate cooks, but the City does take a very close look at restaurants with the Health inspections and fire codes. He said they inspect restaurants continuously. He said as a Transportation Service Commission we want to create a level playing field. He said our taxi companies are giving us their background checks. He said until we deregulate, he feels UBER should have to do the same.

Chair Bresciano said he would recommend the Commission take a roll call vote on each section separately.

Item 1

Addition to Section 7.201 – creating a definition for “transportation Services”, as follows:

“Transportation Services” means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the vehicle.”

Commissioner Law moved to amend the Transportation Ordinance to reflect item 1. Seconded by Commissioner Dunfey.

Lieutenant Cummings asked if this will also include the current taxis. Chair Bresciano said no this will be in addition to the present ordinance. Lieutenant Cummings asked if taxis don't have a fare and they are just sitting on the side of the road, do they fall under this same paragraph. Chair Bresciano said he doesn't think so. Lieutenant Cummings asked why not. Chair Bresciano said City Attorney Sullivan will have to make that distinction. Lieutenant Cummings said that's something we have to think about. He said if we are trying to put all these folks into the same basket and UBER has to meet the same requirements with regards to commercial insurance and backgrounds and everything else then if they are not an actual Transportation Provider unless they have a passenger in the car, one would think the taxis would be the same. He said if we want to make it even across the board – if a taxi company doesn't have a passenger in the vehicle then they aren't technically a taxi. Chair Bresciano said he doesn't have all the answers. He said his opinion on item 1 is that everything is already covered within the current ordinance. Lieutenant Cummings said he agrees with City Attorney Sullivan. He said he is fine with whatever is done, but any change should encompass all Transportation Services Providers not just UBER.

Vote failed on a 2-2 roll call vote to amend the Transportation Ordinance to include item one, Chair Bresciano and Lieutenant Cummings voted opposed with Assistant Mayor Splaine abstaining.

Lieutenant Cummings moved to recommend to City Attorney Sullivan that the definition for Transportation Service Providers be used by all Transportation Service Providers

and not just UBER drivers. **Seconded by Commissioner Law.**

Voted on a unanimous roll call vote to recommend to City Attorney Sullivan that the definition for Transportation Service Providers be used by all Transportation Service Providers and not just UBER drivers. Assistant Mayor Splaine abstained.

Item 2

Edits to Section 7.204 – Background Check – see redlines below:

Section 7.204 Background Check

A. *The individual does not have more than three (3) **or more** convictions for moving violations, in this or any other state, in the three (3) full years prior to the date of the certification.*

Commissioner Law moved to leave the wording of item A as it presently is within the ordinance. Seconded by Lieutenant Cummings.

Voted on a unanimous roll call vote to disapprove the change and leave the current wording of item A as presently stated within the ordinance, Assistant Mayor Splaine abstained. .

Item 2

Edits to Section 7.204 – Background Check – see redlines below:

Section 7.204 Background Check

B. *The privilege of the individual to operate a motor vehicle has **not** been revoked and/or suspended at any time, in this or any other state, in the three (3) full years prior to the date of the certification, for any reason related to the operation of a motor vehicle.*

Chair Bresciano said Item B already reflexes the wording of the ordinance.

Item 2

Edits to Section 7.204 – Background Check – see redlines below:

Section 7.204 Background Check

C. *The individual has not been convicted of a felony **or misdemeanor**, in this or any other state, in the seven (7) full years prior to the date of the certification.*

Commissioner Law moved to disapprove the change and leave the wording or misdemeanor in the ordinance. Seconded by Lieutenant Cummings.

Voted on a unanimous roll call vote to disapprove the change and leave the wording or misdemeanor in the ordinance. Assistant Mayor Splaine abstained.

Item 2

Edits to Section 7.204 – Background Check – see redlines below:

Section 7.204 Background Check

D. The individual has not been convicted of a felony involving a controlled substance or violence, in this or any other state, in the fifteen (15) full years prior to the date of the certification.

Lieutenant Cummings said this is a tuff one. He said if you have a felony for violence that is a pretty good crime. Chair Bresciano said he feels that is the only reason that paragraph is in there because it's dealing with substance abuse and violence with the longer look back period. Lieutenant Cummings said with controlled substances – most possession of your hard core drugs are felonies. He said we may want to rework that as far as controlled substances and crimes involving distribution, sales, and transportation of drugs as those are substantial crimes. He said he is not saying possession of heron (which is a huge issue right now in the City), but if we arrest somebody and they have heron in their pocketbook they get arrested for possession of heron which is a felony charge. He asked if that necessarily falls under the same level as a homicide, 2nd degree homicide or vehicular manslaughter in his mind. He said the answer is no. He said these people are battling an addiction and they have the drug on them. He said that person could have been clean for 14 years and one incident leg to them picking it up. He said we do have the ability to appeal on a case by case basis. He said as it's written right now it's pretty all encompassing, but if it stays, there is always our appeal process. Chair Bresciano asked how Lieutenant Cummings would he reword it. Lieutenant Cummings stated it would indeed be very difficult. Commissioner Law said he would keep it in and use the appeal process for simple cases. Lieutenant Cummings said you could take the controlled substance out and put it in Section C since it also falls under the 7 year window and leave felonies involving violence as is stated. Commissioner Law stated violence is part of someone's history where substance abuse is usually a college thing and 15 years seems long to him. Lieutenant Cummings said violence should stay at 15 years.

Commissioner Law moved to recommend to the City Council to approve the removal of the words controlled substances and leave the remainder of the paragraph intact.

Lieutenant Cummings amended the motion to recommend the City Attorney move the words controlled substances from item D and place them into item C and to a leave the remainder of Section D intact.

Voted on a unanimous roll call vote to recommend the City Attorney move the words controlled substances from item D and place them into item C and to a leave the remainder of Section D intact. Assistant Mayor Splaine abstained.

Item 3

3. Edits to Section 7.211 – Signage – see red lines below:

Section 7.211. SIGNAGE

All vehicles engaged in the provision of Transportation Services shall at all times display prominently:

A. A placard approved in size, form and content by the City Clerk identifying the Transportation Service Provider shall be plainly visible from the exterior of the vehicle.

*B. A notice providing passengers with the fare information required by **full text of Section 7.209** of this ordinance.*

Lieutenant Cummings moved to approve the change as amended. Seconded by Commissioner Law.

Voted on a unanimous roll call vote to approve the change as amended. Assistant Mayor Splaine abstained.

VI. MISCELLANEOUS/UNFINISHED BUSINESS

1. Police Representative Report

Lieutenant Cummings stated he would like to clarify some of the misinformation going around on Mrs. Franz. He stated on October 10th Mrs. Franz was issued a warning and told to register with the City Clerk's office. He stated on October 17th she was issued a summons for violating the City ordinance. On November 7th another warning was issued to her for sitting downtown. At this time she did not have a passenger in the vehicle. On November 14th she was summoned again for operating a vehicle for hire without being registered with the City. He stated she is not the only one out there operating illegally; Mr. Franz is the only one the officers have caught more than once.

He stated it has become a policy within the Police Department to warn drivers the first time they are stopped the rules and told to get registered with the City Clerk's office. He stated if they are pulled over a second time and they still have not complied they will be issue a summons. He stated so far they have only issued one summons. He stated the Police Department is taking an active role in dealing with UBER complaints and unregistered drivers. Assistant Mayor Splaine asked if we know how many vehicles there are out there. Commissioner Law said he has turned on the app and he has seen about five (5) at any given time. Lieutenant Cummings said he has come across about 3 or 4, but once they get a fare the UBER driver goes off the screen and they lose them.

2. Public Comment

Merle White – Anchor Taxi said he gave Mayor Lister an article about an UBER driver in Boston who had committed rape. He said there are now six (6) cases of rape by UBER drivers in Boston right now with a seventh (7th) just added where an UBER driver dragged two (2) police officers down the street. He further stated when they checked the criminal records of the seventh (7th) driver they found he had 20 serious offenses that UBER overlooked.

He stated Assistant Mayor Splaine keeps saying there are 2,100 hotel rooms in Portsmouth. He said approximately 1,500 of those rooms are within walking distance of the downtown area and the hotel shuttles are working later hours. He further stated that UBER has never paid on a claim yet. He stated as soon as their personal insurance finds out they are an UBER driver, they cancel their policy and UBER won't pay because they don't have personal insurance.

John Palreiro – Great Bay Taxi stated in December he came before the Commission to say there are illegal transportation companies operating in Portsmouth. He asked the Council to get a temporary injunction against them until they complied with the ordinance. He asked why UBER is paying for insurance if UBER drivers are sub-contractors. He said these sub-contractors should be supplying their own commercial insurance. He said UBER and Ride-Sharing need to comply with the ordinance or get out. He said it is time for the City to stop them and save the current businesses. He said UBER has stolen money from the legal companies who are trying to serve the City and earn a living.

David Palreiro – Binx Taxi thanked the Commission for turning Great Bay Taxi into a non-viable company by doing away with the medallions. He said Great Bay Taxi is now a bunch of used cars. He further said he believes he is the first non-medallion cab company in the City and he thanks the Commission for the opportunity to start his company without a medallion. He said he did it legally. He said he pays commercial insurance and he is vetted.

VII. ADJOURNMENT

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

Respectfully submitted by:

Dianne M. Kirby

Dianne M. Kirby, Deputy City Clerk