

TAXI COMMISSION MEETING
Minutes of the January 21, 2015 meeting

I. CALL TO ORDER (8:35AM)

Chair Bresciano called the meeting to order at 8:35 a.m.

II. ATTENDANCE

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

Absent: Commissioner Tristin Law

III. ANTICIPATED “NON-MEETING: WITH COUNSEL RE: UBER - RIDE SHARING

Commissioner Cataldo moved to enter into a “Non-Meeting” with Counsel regarding UBER – Ride Sharing. Seconded by Commissioner Dunfey.

On roll call 5-1, voted to enter into “Non-Meeting” with Counsel regarding UBER – Ride Sharing. Chair Bresciano, Assistant Mayor Splaine, Commissioners Cataldo and Dunfey and Lieutenant Cummings voted in favor. Commissioner Law was not present for the vote.

Chair Bresciano closed the non-meeting of the meeting.

Chair Bresciano opened the meeting.

IV. ACCEPTANCE OF MINUTES FROM DECEMBER 17, 2014

Commissioner Dunfey moved to approve and accept the minutes of the December 17, 2014 Taxi Commission meeting. Seconded by Commissioner Cataldo. Motion passed.

V. PRESENTATION

Commissioner Cataldo presented a PowerPoint presentation on Questions and Options the Commission Should Consider.

Commissioner Cataldo stated his presentation centers on the questions and options the Commission should consider concerning UBER and Ride Sharing. He stated he would start with some questions the Commission has to answer before reaching a decision.

Question 1. Should we abolish the medallion system? a) Can the public be served better with open competition? b) Is the current medallion system operating properly without abuses?

Commissioner Cataldo stated he feels the current medallion system should be abolished. He stated the current market is not being served and would be better served with ride sharing. He stated the current medallion system is not operating properly as evidenced by the number of medallions that are not being used and the complaints that owners are holding onto medallions. He stated he feels the present medallion system is not a perfect system.

Assistant Mayor Splaine said if we eliminate medallions, anyone can have as many vehicles as they want as long as they live up to any City standards set forth. Commissioner Cataldo stated they will have to replace the medallions with a registration system. He said this would level the playing field and promote public safety.

Question 2. Should we recognize ride sharing? a) Is this model more efficient? b) Would the public be better served?

Commissioner Cataldo said the UBER and ride sharing model seems to have some success and there is a demand for this service. He said if the Commission invites ride-sharing in, it will fill the void that is now present in the City between the hours of 11 p.m. – 3 a.m. Assistant Mayor Splaine said it lets the free market serve the public. Chair Bresciano asked if the younger generation are looking to apps rather than calling a taxi service. Commissioner Cataldo stated he has talked to several bartenders and they stated there are quite a few people who move from bar to bar and once their speech starts to slur they are cut off, but if they move from bar to bar and have another beer a half hour later the bartender may recommend to them they should take a cab home. He said the way he sees the technology working it's pretty efficient that the driver will say he is impaired and needs to get off the road. He said with ride-sharing all they have to do is press the app, have another drink and they are alerted when the car is outside waiting. He said that's the model – it's easy. He said he has talked to UBER drivers who state 70% of their business is from impaired drivers. He said that market is being served, but not served 100% by our taxi companies. Assistant Mayor Splaine said there is enough business to go around on most nights. City Attorney Sullivan said he understands the free market part, the inevitability, and how we can require all drivers – UBER and traditional drivers - to meet the same standards. He said he has a little more trouble with how we are going to make sure all the vehicles are safe, but there is a third big element which is fares. He said the City regulates taxi fares – what about UBER. Commissioner Cataldo said the principle of Government monopolies is that if they create one they want to make sure that the monopolist doesn't overcharge because there is such a limited number of a supply. He said for the privilege of being one of the few you will provide rate regulations so no one abuses it. He said if we uncouple the medallion system there is no reason to regulate the rate component.

Question 3. Should we require ride sharing operators to register?

Commissioner Cataldo stated this is a public safety issue and he feels UBER and ride sharing operators should be registered. He said we need to know who is out there operating should there be an accident or incident. He said we need to be able to identify who these operators are. Assistant Mayor Splaine said this would be part of the leveling of the playing field. He said everyone would be required to do the same. Commissioner Cataldo said yes. He said we would definitely want a registration system of some kind.

Question 4. Should ride sharing vehicles be inspected by the City? a) Is the NH vehicle inspection system sufficient to protect the public?

Commissioner Cataldo said he feels all vehicles should be inspected by the City. He said presently the UBER ride sharing companies are inspected by the NH vehicle inspection system, but are not inspected to the degree our taxi drivers are. He said this was evidenced by our most recent inspection. Lieutenant Cummings said there are pros and cons to it. He said he knows that some people that have taxis at the time also had garages that they had their inspections done at, so the possibility exists that they will pass their own vehicles because they don't want to fix them. He said the question comes up that the City doesn't inspect the Coast buses that come through town. He said there are pros and cons for each side.

Assistant Mayor Splaine said if we want to create a level playing field we would have to eliminate inspections for everyone and assume that the State inspection are doing the job and the insurance company provides the elements of safety.

Lieutenant Cummings asked if there would be any liability on the City to make sure that we maintain some level of safety requirements for these taxi inspections. City Attorney Sullivan stated what the current taxi regulations try to do is ensure that passengers have a safe driver, a safe vehicle, and that the vehicle and driver have adequate insurance to protect that passenger from hurt. He said the purpose of that insurance is not to protect the City it is to protect the passenger, but the City makes it happen. He said the City also regulates fares. He said the plan being proposed by Commissioner Cataldo would actually simplify the arrangement. He said the City would have a less involved ordinance. He said he is not overly concerned for the City's liability because liability is going to arise from some type of negligent act by the driver of the vehicle, the driver of the other vehicle, or the vehicles maintenance crew. He said the actions of the City Council and the actions of the Taxi Commission in making the regulatory decisions would not be considered negligent acts for liability purposes. He said there is actually an immunity that goes with performing governmental functions which calls for a high degree of discretion which this does. He said he is more concerned about passenger safety. He said the City would never be considered liable, but he does have a lot of concern about passenger safety. Chair Bresciano stated years ago when we only had 13 medallions it was relatively easy to set these ordinances into effect and it was easy to pull these vehicles over to the side of the road and inspect them. He said if we abolish the medallions and anyone can become a taxi, inspections will become unmanageable, that is what the State is for. Lieutenant Cummings said it will then become a buyer beware situation. Assistant Mayor Splaine asked how much safety we want to provide. Commissioner Cataldo said the principle of competition puts the choice on the consumer.

Question 5. Is Portsmouth's driver screening more thorough than UBER's background check?
a) Does the PPD do FBI checks? b) Does the screening go back 7 years? c) What about driver records from surrounding states?

Lieutenant Cummings stated that Portsmouth's driver screening is more thorough than UBER's background checks. He further stated Portsmouth performs yearly checks and UBER's check is done once at the beginning of hire. He stated if a driver gets a DUI he would be made aware of this before UBER would. Assistant Mayor Splaine asked if we could have everyone register so we know who is out there and have all background checks go through the Police Department with yearly checks. Lieutenant Cummings stated it would, but for how long. He

said if UBER had to jump through all the hoops our taxi drivers have to he feels that would suffice.

Commissioner Cataldo asked Lieutenant Cummings when he did the comparison of the background checks were there any aspect of these checks that the Police Department covers that the ride-sharing companies may or may not cover. Lieutenant Cummings said their checks are the same except we do follow up checks and he doesn't know if UBER does. Commissioner Cataldo stated he feels from a requirement point of view he thinks it makes very good public sense to have a background check. He asked if we want the backgrounds checks done every year. He said he would say yes. He asked if the yearly checks require a full through background or is there a way to just get updates on felonies and other major offenses that would harm the public. He said a speeding ticket is small compare to a major crime. Lieutenant Cummings said that would depend on how many speeding tickets this person gets over a period of time, what speed we are talking or if someone gets a summons for an unregistered or uninspected vehicle. He said it is very important to check everyone's motor vehicle record every year. He said unsafe drivers are a problem to public safety. He said it was loud and clear at the last meeting that the taxi drivers feel the UBER – ride-sharing drivers should jump through the same hoops they have to and he is 100% in agreement with the taxi companies. Commissioner Cataldo asked if an UBER - Ride-Sharing driver produces an annual background check would that be sufficient diligence on our part. City Attorney Sullivan stated that would be a decision the City Council would have to make. He stated he personally doesn't have the level of confidence that some company in San Francisco or in cyber space would produce a background check that would be of the level of our Portsmouth Police Department, who are here, who we know what they do and who has personal responsibility for their actions. He stated he strongly favors background checks by the Portsmouth Police Department. He said in order for the passenger to know that this is a safe driver he feels that once the background check is completed the City should produce some type of photo ID to be placed in the vehicle so the passenger knows this driver has been checked out and is safe.

Question 6. Is UBER's \$1 million liability insurance valid? a) Does the NH Insurance Commission recognize UBER's insurance carrier(s)? Do they have to? b) Do drivers for hire require commercial auto insurance in NH?

Commissioner Cataldo stated it is his understanding New Hampshire has no regulations concerning automobile liability. He said they don't validate any insurance carrier whether it's James River or some other company. He said James River Company, which UBER uses as their insurance carrier, has registered in the State of New Hampshire and that gives them the ability to sell insurance in New Hampshire, but the New Hampshire Insurance Division does not have any oversight or anything except they are a registered insurance company and they can sell insurance in New Hampshire. He further stated UBER does not require vehicle owners to have commercial insurance coverage. He stated, as they heard last meeting local insurance companies have clauses that state if the insured is operating a car for hire they can void the policy and not pay the claim. He stated this was very troubling to him. He said he has received correspondence from UBER's public relations which has a clause that said they will provide this liability if the fault of the accident goes to the other party. He said that is not adequate insurance. He said that would mean no one is covered if it is the fault of the driver. Lieutenant Cummings asked if it says the fault has to be 100% the drivers fault. Commissioner

Cataldo stated he didn't know. City Attorney Sullivan said what we do know is the accident is not the fault of the passenger. He said it doesn't matter who is at fault that passenger should be protected. Commissioner Cataldo said he is very concerned with the whole business of this insurance. He stated he did find one insurance company in Portsmouth that does supply commercial liability insurance to ride sharing drivers. He stated we should maintain and require commercial insurance. Assistant Mayor Splaine stated in order to level the playing field we have to be level on insurance, inspections and background checks. He asked if there is any thing else we have to be level on. City Attorney Sullivan stated the fares.

Question 7. Should Portsmouth place a cap on price surging? a) if UBER picks up an impaired driver at 3x the current rate, is this in the best interest of the public and public safety?

Commissioner Cataldo said a lot of people have said they feel it is quite offensive that they have to pay 3 or 4 times the normal fare on special occasions for a ride. He said some Cities have tried to block it without success. He stated his understanding of the program that generates the fares is they are based on the demand and the supply at the time and when the demand exceeds the supply significantly then a program kicks in which will increase the fare to attract more drivers. He said if there is a significant number of drivers in an operating area during that period of time there wouldn't be a surge.

He said the gap between what the Portsmouth taxi companies are filling and what the UBER companies have already filled in the last four – eight weeks it would appear that a lot of impaired drivers are using the app and therefore the ride-sharing service. He said they must be willing to pay 3 times the normal fare. He said if UBER picks up an impaired driver at the 3 times normal rate is this in the best interest of the public and the public safety. He said he feels that regardless of the rates, any impaired driver who will get into a vehicle and have someone else drive them home is a blessing to the City. Assistant Mayor Splaine said should we eliminate the rate structure. He stated in the UBER app when a passenger requests a ride and gives their destination an automatic quote is displayed. He said if we state in the new ordinance that it is a requirement that drivers have to let passenger know ahead of time what the approximate cost will be. He said that would be fair to the taxi drivers and UBER. He asked what else we have to do to be fair to passenger, drivers and safety. Lieutenant Cummings stated the fares are printed on the side of the cab so the passenger knows as soon as they walk up to the cab what that fare will be. He said we are looking at this free market type of thing and it is the customer's responsibility to find out what the approximate charge is going to be before getting in the cab. Chair Bresciano asked if this means we are talking about eliminating meters. Commissioner Cataldo stated yes.

City Attorney Sullivan stated in order for this free market thing to work the passenger needs to know how much they are going to pay prior to entering the cab so they can make the comparison. He stated the rewrite to the fare section of the ordinance needs to say – at a bare minimum - the driver will inform the passenger prior to the commencement of service what the fare will be or how it will be calculated.

Question 8. Are the assumptions that formed today's taxi ordinances still valid in light of ride sharing technology?

City Attorney Sullivan stated the taxi ordinances were written to ensure that if the supply of taxis were not limited then the amount of business would become so disbursed among all the taxies that there wouldn't be enough money in the business for anybody to be in a taxi business. He said if the supply wasn't limited (by limiting the number of medallions) the net effect, over time, would be that there would be no taxies. He said in order to ensure that there is a taxi service the medallions were limited.

Question 9. Is there a valid role for the Portsmouth Police Department to be involved especially in local taxi/ride sharing businesses?

Lieutenant Cummings stated the Police Department is the enforcement branch. He said they do what the City says. He said if new standards are adopted, they will enforce them. He stated the Police Department takes no stand.

Question 10. Should the Taxi Commission be abolished? a) Can the City Clerk's office and the Portsmouth Police Department continue to do the same job effectively and efficiently without the Commission? b) If major changes are made to taxi ordinances, should the Commission maintain a monitoring role, and if so, for how long?

Commissioner Cataldo stated he thinks the Taxi Commission should be abolished and he feels 6 months would be enough time to set up the programs. Assistant Mayor Splaine stated he feels the City Council would be reluctant to abolish the Taxi Commission at least for a period of time. He said we don't know what ordinance changes there may be and if there will still be an important role for the Commission. He further said they do not want to overburden the Police Department and the City Clerk's office. Lieutenant Cummings said another question – is UBER today – what is it tomorrow. He said it is nice to have a group of people to go to in an open forum to make decisions. Commissioner Cataldo said everything will evolve. He said there is a solid need for the City taxi service to stay in business and continue to be in business assuming that they can provide first class service. He said as far as the ancillary business such as part time drivers, UBER, Ride-Sharing and Lyft that will evolve also. He said he thinks the City cabs will step up to the plate and will hold their own. He stated if the Clerk's office registers the driver ensuring adequate insurance coverage, and other items that have been discussed and the City Council selects a Councilor to deal with any issues that may require fixing, having a Commission to handle complaints and review things the Police Department reviews is not a good value of time. Assistant Mayor Splaine stated he feels this should be revisited in 6 months after they see how things are going.

Commissioner Cataldo stated the next step would be implementation. He said he has outlined three options to be explored.

OPTION 1 – Abolish Most Existing Ordinances

- Recognize Ride Sharing
- Replace the existing Medallion system with a registration process and remove the rate regulation
- Allow City taxi companies (current medallion holders) to use taxi stands for a small fee
- Let the State of NH continue to enforce vehicle inspection and insurance requirements
- Let the City Clerk's office register any and all drivers who pick up and drop off passengers in Portsmouth (valid driver's license)
Excludes pickups or drop offs from/to other towns
Address and/or refer any citizen complaints
- Abolish the Taxi Commission

OPTION 3 – Maintain current Taxi Commission Role

- Strictly enforce existing regulations – this would include a cease and desist order.
- Ask Portsmouth Police Department to issue summonses to all unauthorized taxi Drivers
- Add a section in the taxi ordinances on prohibition of any ride-sharing drivers who pick up and/or drop off within the City limits.

Commissioner Cataldo stated this option is out of touch and he does not recommend it.

OPTION 2 – Allow a Modified Form of Regulation

- Recognize Ride Sharing
- Replace the existing Medallion system with a registration process
- Allow City taxi companies (current medallion holders) to use taxi stands for a small fee
- Have the City Clerk's office do the following:
 - √ Register all drivers for hire within City limits

- √ Require proof of insurance as per Section 7.218
- √ Require proof of background checks
 - Charge for any City-performed background checks
- √ Require drivers to sign/acknowledge the taxi code of conduct
- Continue with existing fare structure for all taxi companies or no fare structure at All
- Require all vehicles-for-hire to be subject to random inspection by the Portsmouth Police Department as necessary
- Let the Taxi Commission monitor all public safety issues for 6 months
 - Recommend to the City Council to dissolve the Commission if no problems are experienced

Assistant Mayor Splaine stated abolishing the Commission is something we can revisit and don't need to include as part of the ordinance. Commissioner Cataldo has done an excellent job on this presentation. He requested the meeting be opened to the public for questions and comments.

Chair Bresciano opened the meeting to public comment stating anyone wishing to speak will have three minutes.

John Palreiro – Great Bay Taxi stated the Commission keeps calling this ride sharing – they are a taxi and should have to operate under the same regulations taxi companies do. He stated he doesn't mind the competition as long as it's a level playing field. He stated UBER has an app – this is a great way to dispatch drivers. He said he would like to know why UBER didn't go to taxi companies and offer this app for lease to qualified drivers with commercial insurance and vehicles to take over this app. He said UBER doesn't want taxi companies to have this app – they want to abolish taxis. He asked who is going to take care of the elderly or customers who do not have access to this app. He said they are part time drivers with no regulations. He said they are illegally picking up in Portsmouth and the Police Department has their hands tied. He said they are not marked so the Police Department doesn't know who they are.

Lawrence Palreiro said if we allow people to just register – how many UBER drivers are just going to come into town without registering. Lieutenant Cummings said that is going to happen, it's happening now. He said we are trying to find middle ground because we agree with the taxi companies that this could become a major problem. Lawrence Palreiro asked if the Commission has any evidence that UBER has paid out any claims with their insurance. He stated this should be checked out.

Stephen Gerrato – Rockingham Livery asked Commissioner Cataldo what local company was willing to insure UBER drivers. Commissioner Cataldo stated he was not going to answer that question as he was going to turn that over to be checked out by the legal office prior to releasing any names. He said there is one company that said they will insure vehicles for hire. He said that company said they will have a number of clients in City taxi companies and Ride-

Sharing companies with commercial insurance. He said if we have a requirement for proof of insurance he knows that there will be some UBER drivers who will step forward and register.

Merle White – Anchor Taxi stated he don't like UBER or their system. He said we have ordinances in place and the Commission is not enforcing the ordinances as they are written. He said UBER should be banned until there is a decision made. He said it may take a law suit from an attorney to make the Commission do their job.

John Palreiro – Great Bay Taxi stated UBER does not comply with the City ordinance and they should be served with a cease and desist until the laws are changed. He stated there should not be a grace period. He stated he demanded the Police Department do their job and up holds the ordinance.

Assistant Mayor Splaine moved to adopt Option 2. Seconded by Commissioner Cataldo

Assistant Mayor Splaine stated he would support Option 2 with the exception of items 5, and 7. He stated this could be a win-win situation. He said a lot of people have been involved and we have to move forward, but on a level playing field and our taxi companies will benefit. He suggested Commissioner Cataldo get with legal and City Attorney Sullivan to draft out any ordinance changes within the next 2-3 weeks. He said he would like to get it on the City Council agenda in February with a public hearing in March. He stated UBER and Ride Sharing fill a need in Portsmouth. He said we need to adapt or we don't. He said we need to find a way to make this work and protect public safety or we don't.

City Attorney Sullivan stated the procedure to get it to the Council would be to do a memo to the Council explaining what the Commission wants with bullet points. He said that could go on the next Council meeting. He stated he would work with Commissioner Cataldo to get this completed.

Motion passed unanimously.

VI. NEW BUSINESS

1. Election of Officers

Assistant Mayor Splaine stated he would like to nominate an individual who has given a lot to the Taxi Commission. He nominated Commissioner Bresciano. Commissioner Bresciano accepted the nomination.

Assistant Mayor Splaine nominated Commissioner Peter Bresciano as Chair for the Taxi Commission. Seconded by Commissioner Dunfey. Motion passed unanimously.

OLD BUSINESS

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

Chair Bresciano requested this item be placed on hold till the next meeting when City Attorney Sullivan will be available.

2. Moped Parking in Front of Taxi Stands

Chair Bresciano asked if there has been any word from Traffic and Safety on the moped parking in front of Taxi stands. Deputy City Clerk stated she sent a memo to the Parking Manager on December 19, 2014 as requested, but has not heard anything back from them.

3. Status of Pending Complaint

Lieutenant Cummings stated this item has not been adjudicated.

VI. MISCELLANEOUS/UNFINISHED BUSINESS

1. Police Representative Report

Lieutenant Cummings stated there were no items to report.

2. Public Comment

John Palreiro – Great Bay Taxi stated what is happening in the City by the City Council and the Taxi Commission is risking the lives of the people of the City who ride in unmarked taxis. He said the law needs to be enforced and UBER needs to be stopped.

Assistant Mayor Splaine stated that Commissioner Cataldo has done an awesome job researching UBER. He said he is a volunteer and has looked at this objectively and as something that could benefit the City of Portsmouth if we can find a level playing field and he deserves to be congratulated and thanked.

VII. ADJOURNMENT

The meeting was adjourned at 10:45 a.m.

Respectfully submitted by:

Dianne M. Kirby

Dianne M. Kirby, Deputy City Clerk