

TAXI COMMISSION MEETING
Minutes of the September 16, 2015 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 and Tristan Law,
Police Chief Stephen DuBois, City Attorney Robert Sullivan and Deputy
City Clerk Dianne Kirby

III. ACCEPTANCE OF MINUTES FROM AUGUST 19, 2015

Commissioner Cataldo moved to approve and accept the minutes of the August 19, 2015 Taxi Commission meetings. Seconded by Commissioner Law. Police Chief DuBois abstained from the vote due to his non attendance at the meeting. Motion passed.

IV. NEW BUSINESS

1. Transportation Services Process

Assistant Mayor Splaine stated the Taxi Commission spent hours trying to allow UBER/Ride-Sharing to operate and designed an ordinance that was fair to UBER/Ride-Sharing and our cabs and he feels we accomplished that and after many meetings and hearing the Council passed a very good ordinance, but apparently one Ride-Sharer doesn't want to operate under the ordinance. He said he would like to understand from the Police Chief, City Attorney and Clerk's Office if any of UBER/Ride-Sharing has even contracted us or filled out an application. He wants to know what seems to be the problem with UBER. He said in the next week we are going to start seeing enforcement, which we are obligated to do. He said he is hearing that we are not allowing UBER/Ride-Sharing to operate when in reality we are. He said we have set up a process to do that. He said we have really done our job. He stated we want to make sure this works, but what seems to be the problem with UBER. He said he heard that another letter has been written to the Mayor. He said he has not seen it and he wants to know what the problem is. City Attorney Sullivan asked Deputy City Clerk Kirby if UBER has filled out any applications. Deputy City Clerk Kirby said they have not. Assistant Mayor Splaine said so they haven't called us – they haven't come in and that's a requirement. Police Chief DuBois started that Lieutenant Cummings has been trying to get their requirements on the background checks and they have not responded.

Assistant Mayor Splaine asked about the insurance requirements from UBER. City Attorney Sullivan stated UBER has provided him hundreds of pages of accentually meaningless documents. He said they have not provided any indication that any vehicle to be used by an UBER driver has any insurance to cover anything.

Assistant Mayor Splaine stated he thinks it's clear from all of this that we did not write this ordinance for UBER. He said it was written in such a way that Ride-Sharers could participate. He asked if a company wants to do business in Portsmouth what do they do. City Attorney Sullivan stated the system is in place for the providers to go to the Clerk's office to pick up and fill out the application. He stated the Ordinance calls for them to demonstrate to the Chief of Police or his designee that they have a system in place to conduct background checks, which will ensure that their drivers meet the criteria contained in our ordinance. He said the Company then has to present to the Cities Legal Department evidence of insurance coverage as described in the ordinance. He said what we are looking for is to make sure that a passenger in an UBER vehicles are injured in an accident will have recourse to insurance. Assistant Mayor Splaine stated that simple. Chair Bresciano asked if City Attorney has had any providers come to his office yet. City Attorney Sullivan stated he has. He said he looked at three certificates of insurance yesterday – they were close but not quite with the ordinance requires and he anticipates that they will probably amended to ordinance standards today.

Assistant Mayor Splaine stated really the background checks and insurance requirements are the same that have been in effect for 10 years or so. He said that was not changed as part of the new ordinance. City Attorney Sullivan stated that is correct.

Chair Bresciano said the City Clerk's office has the application process completed and with a little tweaking is ready. He said the Legal Department also has standards in place for reviewing the insurance policies. He asked Police Chief DuBois what the Police Department will require. Police Chief DuBois stated that under this ordinance it will be different from in the past. He stated the provider will just be required to show that there is a process being accomplished that encompasses the parameters within the ordinance. He said the only way to do this is to have some type of affirmation that their background check program has done that and they can prove that those operators are not in violation with the ordinance. He said at this point we don't have that from any Ride-Sharing provider. Chair Bresciano said if I was a provider with 10 drivers I would provide the Police Department 10 criminal/driver history reports and you will sign off on one application. Police Chief DuBois stated it may be in a different format than a criminal/driver history reports due to the UBER/Ride-Sharers using a private company to do the research for them vs. the driver going to Concord to get copies of their drivers and criminal records. Chair Bresciano said you're talking Ride-Sharing vs. taxi companies. He said Ride-Sharing has not come to you and said here is the way we do it and you have not gone out and said either that is acceptable or not acceptable. Police Chief DuBois stated that to be correct. He said the only thing he would note would be a little bit of a gap in the way that would work is the ability to do the in house checks because obviously a company doing these background checks does not have access to this internal records. Chair Bresciano said in your mind and in the Police Department have you set up your own criteria for what needs to be used in a background check. Police Chief DuBois said we have not because we don't know what they are going to provide. He said we will need to see the documents in order to see if it is acceptable or not.

Assistant Mayor Splaine said UBER is making threats that the City is not allowing them to operate in the City, but they are the ones not even applying. Commissioner Cataldo said he concurs. UBER needs to step up to the plate and file an application. He said the ordinance does not say the Transportation Provider has to tell us who the drivers are – they just have to

come in and let us know the method or agency they use. He said this holds true for our taxi companies also. Police Chief DuBois said yes, but he would also like to know the company will be held responsible if a driver is not in compliance and that the driver and the company are held responsible. Chair Bresciano said that is the basis of this ordinance. He said the Police Chief makes the decision on what is required and he put his signature on that application and when the provider puts their name on the application they are saying that they are following the rules. He said when something happens then this ordinance says this Committee is going to take action and we should come down hard on the Company itself because the company knows they need to submit complete, valid and truthful information. Police Chief DuBois said this is correct. He said it is a piece of unease to him and his officers to not know if these background checks are being completed correctly, but they also know the importance of these drivers all operating with an equal playing field.

Commissioner Cataldo said in the application there is an agreement that is signed by the provider, he asked if the Police Chief would prepare or need to prepare another affidavit with stronger language on a procedural basis and have it as part of the application. Police Chief DuBois stated in order to take a hard stand in court; he would differ to the legal office to ensure any agreement signed will hold up in court. Commissioner Cataldo asked if drivers should have some type of documents on them or in the vehicle proving they have had the background checks and insurance in accordance with the ordinance. Police Chief DuBois said he thought they had to have some type of paperwork in their vehicle. Chair Bresciano said no they just have to have the placard. Assistant Mayor Splaine said they need some type of ID that they are working for that Company. Police Chief DuBois said if they are affiliated with a company and that company has been approved he does not see a reason for them to carry a copy of their background check.

Commissioner Cataldo suggested we review the agreement to ensure it will stand up in court. Chair Bresciano asked City Attorney Sullivan if he could look at the application to see if it will hold up in Court. City Attorney Sullivan stated the application as it is written right now the system could work the way the City Council and Taxi Commission intended it to.

Assistant Mayor Splaine request Deputy City Clerk Kirby send a copy of the letter from UBER to the members of the Transportation Services Commission after the Council Packets are completed.

He said we have a good and simple ordinance. He said UBER and Ride-Sharing companies must meet those standards. Commissioner Cataldo suggested the Police Chief provide a single page to UBER to provide a comment as to their procedure. He said if they use a third party they need to give you the name of the company and contact information to make it easier for the Police Department.

Chair Bresciano said as far as the Police Department is concerned, those names are not public domain and those names are not released. Police Chief DuBois said he thinks that is correct, but would defer to City Attorney Sullivan. City Attorney Sullivan said that all documents are considered public records. He said it is only non public if some provision in the Right to Know Law is found that allows it to be kept from being released on request. He said it may be that a list of drivers would be a public record. He said it is a legitimate matter for

members of the public to know who it is that the City is authorizing to pick them up. Assistant Mayor Splaine stated the Police Department has to be satisfied that the community is safe no matter what documentation is provided. Police Chief DuBois stated the name of the individuals is public information, but the personal information on the individual is not. City Attorney Sullivan stated that is correct. He said what everyone needs to know is that as of tomorrow if they wish to retain a vehicle for transportation purposes – the only way they are going to know that a background check has been conducted and the vehicle has some type of insurance to protect them in the event of an accident is if the vehicle displays a placard in a form issued by the City Clerk. He said other than that they will not know if there has been a background check on the driver or insurance on the vehicle and that vehicle will be operating in violation of local ordinances and enforcement actions could be taken against the driver.

Assistant Mayor Splaine said the bottom line challenge to UBER or anyone is to contact the City Clerk's office, fill out the application, and contact the Police Department and legal office to verify their documents. He said it is that simple.

Chair Bresciano stated under the signage in the new regulations the City Clerk's office will not issue a placard. He said the application package has a sample of the approved placard and this needs to be in the vehicle. He said the Company themselves have to put their name on the placard. He said they can design the placard however they want.

Commissioner Cataldo stated he would like to make it more official looking with the City seal and issuing a number to each one. He said this could be filed as a PDF and emailed by the City Clerk to each company. Chair Bresciano asked if this should be on the next agenda so the City Clerk has chance to see if there will be additional fees. Commissioner Cataldo stated it would entail the City Clerk updating the company name and placard number and emailing it to the individual. It shouldn't take more than 10-15 minutes. Chair Bresciano asked if this would have to be a change to the ordinance or procedural. City Attorney Sullivan said it could be worked out administratively. Commissioner Cataldo said it could be arranged within the next week. Chair Bresciano asked Commissioner Cataldo to work with Deputy City Clerk Kirby to design this.

Commissioner Cataldo suggested we put in a place for the company email on the application.

Assistant Mayor Splaine stated he will look at the letter UBER sent to the Mayor. He said he is very optimistic that this can all work out if UBER would just pick up the phone and do what they need to do with our professionals. He said they need to step up and do their job.

OLD BUSINESS

1. Report Back from Legal on Complaint against UBER Driver (John Palreiro – Great Bay Taxi)

Chair Bresciano stated this is a moot situation now with the new ordinance.

Commissioner Cataldo moved to accept and place on file. Seconded by Commissioner Law. Motion passed.

2. Complaint against Portsmouth Taxi reference Taxi Vehicles off the Road over 30 days

Chair Bresciano stated this is also a moot situation with the new ordinance.

Commissioner Cataldo moved to accept and place on file. Seconded by Commissioner Law. Motion Passed.

VI. MISCELLANEOUS/UNFINISHED BUSINESS

1. Police Representative Report

Police Chief DuBois stated Lieutenant Cummings informed him he had nothing to report for this meeting. Commissioner Cataldo stated he heard there was an accident between two taxi cabs. Police Chief DuBois stated he had heard that, but he did not know if there is any action being taken at this time. Commissioner Cataldo said he would like a report for the next meeting. Police Chief DuBois stated that could be made available.

2. Public Comment

John Palreiro – Great Bay Taxi said people have worked hard to get to where they are today. He said UBER is not going to comply with the ordinance. He said the part time driver's can not afford commercial insurance. He said he does not know how the Police Department and the City are going to enforce this ordinance. He said he and other taxi driver's have plate numbers on numerous UBER cabs and will continue to take down plate numbers. He said UBER needs to conform to the rules. He stated what he feels is needed is a dedicated Police Officer to work only on monitoring this ordinance or else people will be getting into vehicles for hire with no insurance and with drivers that haven't been vetted. He said to work at the Navy Yard you have to be fingerprinted. He said he would love to force every driver for hire to have to be finger printed. He said this should be added to our ordinance.

Merle White – Anchor Taxi said he was one of the ones involved in the accident Commissioner Cataldo was talking about and he has the police report if anyone wishes to look at it. He said it has been found all over the country that UBER's background checks are unreliable. He said it's time to crack down. He said as far as insurance, each driver should have to bring in a commercial policy with a list of the driver, the license plate number and the company he works for. He said this has gotten out of hand and UBER needs to do it our way or get out of our City. He said we comply with the law – we expect UBER to comply with the law.

Scott Gerrato – Rockingham Livery said in your recommendation you requested that we provide you, through an insurance statement, a list of the names of all the drivers covered under that policy. He said in today's meeting you mentioned that you are not requesting the names. He said the names are provided for every code of conduct paper that needs to be signed so they should be on the insurance certificate as well.

John Palreiro, Great Bay Taxi asked if only one placard was needed. He was told this is correct. He asked Assistant Mayor Splaine if he still has the sample decal he designed as he would like to see something like that as the placard.

Chair Bresciano stated Police Chief DuBois is not requiring background checks be done using the DMV or the State Police, he will be making the determination on whatever background check mode you use is acceptable to the City or not. Police Chief DuBois said through their system they are only allowed to have the taxi and companies request a record check from the State of New Hampshire. He said this background check process done through a private vendor might actually capture information from other States that he wouldn't normally be able to capture.

VII. ADJOURNMENT

The meeting was adjourned at 9:56 a.m.

Respectfully submitted by:

Dianne M. Kirby

Dianne M. Kirby, Deputy City Clerk