

**METROPOLITAN NASHVILLE-DAVIDSON COUNTY
TRANSPORTATION LICENSING COMMISSION**

Minutes of

December 15, 2009

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Metropolitan Courthouse. The Commissioners present were Chair Helen Rogers, Vice Chair Duane McGray and Commissioners Jennifer Brundige and Ed Whitmore (4). Also attending were Metro Legal advisor Corey Harkey; Commission staff members Milton Bowling, Walter Lawhorn and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

Chair Helen Rogers called the meeting to order. She led the Pledge of Allegiance and read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

The minutes of the November 17, 2009 meeting were approved.

EMERGENCY WRECKER COMPANY SHOW CAUSE HEARING: ANCHOR TOWING AND RECOVERY

Director McQuiston reported the following:

- Sometime in 2007 Darrell Greer, owner of Nashville Towing & Recovery (NTR – then an emergency wrecker zone company) sold or otherwise abrogated responsibility for light vehicle towing to "Anchor NTR", a new and unlicensed company owned by John Stancil. Following hearings in September and October 2008, the Commission allowed former "Anchor NTR", renamed Anchor Towing & Recovery, to apply for a nonconsent wrecker company license, provided that they had Codes approval for their storage lot. Anchor's case in applying for that approval included the requirement to get Metro Council approval for re-zoning, so that it could then apply for a Use & Occupancy permit. At the end of October 2008 Codes notified the Commission staff that they had approved Anchor's request to use their storage lot, provided that the company continue to make progress on obtaining the U&O permit. Based on that report, Anchor Towing & Recovery was issued a nonconsent license. Subsequently, at the May 2009 meeting the Commission approved the company for an emergency wrecker zone license (to take over part of the former NTR zone).
- The October 2008 meeting was the foundation of the new requirement for a Codes U&O permit in order to obtain a license for nonconsent or emergency wrecker services. The results were significant. Many former "nonconsent" general wrecker companies who did not have a U&O permit were no longer allowed to perform nonconsent towing. Many others had to spend thousands of dollars to relocate and/or make substantial improvements to their storage lots in

order to receive a final U&O permit; and were unable to obtain a nonconsent license until the work was completed and their permits were obtained.

- In recent weeks, it had become apparent that the work Mr. Stancil had told the Commission that he would undertake to qualify for the final U&O permit had not been done, even after many months. An inquiry made to the Codes department verified that Anchor still did not have the final U&O permit. As a result of not meeting the Codes requirement, Mr. Stancil had been notified that he was to appear for this show cause hearing.

The director recommended that the Commission consider the same decision as had been applied to Nashville Towing & Recovery when it did not have its final U&O permit in 2008: to issue a general wrecker company-only permit until the Commission staff received a Final Use & Occupancy permit and the storage lot came into full compliance with all requirements.

Councilman Walter Hunt appeared. He stated that he had been assisting Mr. Stancil in the re-zoning and Codes permit process for a little over one year. Councilman Hunt stated that there had been a number of storm water issues to be resolved. He noted that the problems were so extensive that they required the expertise of an engineer to develop a plan to handle them. He added that Mr. Stancil had made an effort to do this, but that the solution presented by the resulting plan was totally inadequate. The councilman stated that as a result he had held a meeting with Mr. Stancil and all of the agencies involved, in order to help Mr. Stancil understand what needed to be done. Councilman Hunt stated that he believed none of the problems had been Mr. Stancil's fault; he had been trying to accomplish some things without really understanding what he was doing. The councilman provided documents from Codes related to the issues.

Chair Helen Rogers asked where Mr. Stancil was, and if he was going to appear. Councilman Hunt responded that Mr. Stancil was not here, and that he was appearing on Mr. Stancil's behalf because he was more familiar with the process to get the U&O permit issues resolved. **Chair Rogers** expressed concern that the Commission had issued the license to Anchor Towing & Recovery based on a promise made in October 2008. She asked if the Commission should allow a towing company to operate if the owner did not know what he was supposed to be doing. Councilman Hunt clarified that the difficulties encountered by the owner in obtaining the Codes permit were not unusual, and were unrelated to his operation of a wrecker company. The councilman stated that the Metro agencies involved in the Codes permitting process had decided to work with the owner; as a result, there were only two requirements remaining: putting up a fence and planting trees.

Vice Chair Duane McGray noted that Mr. Stancil was responsible for his lack of due diligence in purchasing the business. Councilman Hunt stated that these issues with zoning and codes permits happened all the time.

Director McQuiston stated that other wrecker companies had been faced with similar situations, and had made other decisions and investments that enabled them to get their final U&O permits so that they could operate. He added that many of them had not been allowed to perform nonconsent towing for months until they obtained those permits. **Chair Rogers** stated that Mr. Stancil had been given a break. Director McQuiston stated that the owner of Dad's Towing had spent over one million dollars and had relocated his business in order to qualify for the U&O permit and obtain his wrecker license; and that Express Towing had been delayed for months in obtaining their license because the storage lot they had used for years did not have the final U&O

permit. He summarized that Anchor had not been required to do anything more than was done by other companies in similar situations, and contended that the same standard should be applied to everyone.

Janie Wandell appeared. She stated that she had been with Anchor Towing & Recovery for about six months, and had been the general manager for about one month. She stated that if the company's license was taken away, the employees would be out of work. She requested another 45 days to complete the work to get the permit.

Chair Rogers asked if it would be necessary to reassign the zone for emergency towing. Director McQuiston responded that the Commission could decide to temporarily assign responsibility for emergency wrecker support to one or more of the adjacent zone operators, as had been done in the similar case of Nashville Towing & Recovery at the end of 2008. He stated that Anchor could continue to operate as a general wrecker company, but not do nonconsent towing or otherwise operate a wrecker storage lot.

Commissioner Ed Whitmore asked for clarification on the length of time that would be required for completion of all the work remaining to get the final U&O permit. Councilman Hunt stated that almost all of the work had been done, and that only two items were left. He added that the fencing materials had already been ordered.

Commissioner Jennifer Brundige noted that Anchor had been operating out of compliance for a year. Director McQuiston clarified that the 2008 license had been issued based on a letter from Codes. He added that, because the license was to be renewed in December 2009, he had followed up to determine if the final U&O permit had been provided, and had learned that it had not been issued. **Commissioner Brundige** stated that the Commission had denied licenses to other companies, even while they were working through similar processes to obtain Codes permits for their storage lots; but that Anchor had been allowed to operate based on the representation given to the Commission in October 2008.

Chair Rogers stated that the company already had been given more favorable conditions than other companies, and that she did not think there was any compelling reason to consider another extension. She added that the company had not approached the Commission about the need for an extension; but that their lack of the U&O permit had been discovered by the staff.

Vice Chair McGray noted that the documents provided were all dated in December 2009, and that it appeared that nothing was done until Mr. Stancil was notified to appear at this hearing. Councilman Hunt stated that he had not been involved in it for some time until he was informed that there was to be a hearing; at that point he called for the meeting with the various agencies to see what was needed. He added that he had then contacted an engineer who knew how to address the remaining issues, and had been able to get the other agencies to agree on how to proceed. **Commissioner Brundige** clarified that Councilman Hunt had become involved only after Mr. Stancil had received the letter to appear for this show-cause hearing.

Vice Chair McGray asked how many employees there were in the company; Ms. Wandell responded that there were twelve. **Chair Rogers** stated that it appeared that the Commissioners were being asked to care more about the employees than their employer did. She noted that he was in Florida, had multiple businesses, and had not shown for the hearing. Ms. Wandell assured Commissioners that she could run the business. **Vice Chair McGray** expressed concern about Anchor's Class C emergency response capabilities. He stated that it was not appropriate to operate a zone with wrecker equipment that had to be brought in from another company or from Chattanooga.

He asked if Anchor had the equipment to get the job done without having to rely on another company. Ms. Wandell stated that the company had the equipment. She stated that Darrell Greer was an employee of the company.

Vice Chair McGray moved to extend the existing situation until the January meeting date, with the understanding that if the company was not in full compliance by that time they would not be granted another extension. **Commissioner Whitmore** seconded, and the motion was approved (2-1).

WRECKER DRIVER PERMIT APPLICATIONS:

Calvin Richardson: Director McQuiston stated that Mr. Richardson had applied for an initial wrecker driver permit on November 17. He stated that the applicant had disclosed one arrest in 1998, for which the charges had been dismissed; but had not disclosed an arrest in 1996 for assault or arrests in 1989 and 1992 for possession.

Mr. Richardson appeared. He stated that he did not know about the assault, and did not remember why he had been arrested. **Vice Chair Duane McGray** moved to disapprove the application. **Commissioner Jennifer Brundige** seconded, and the motion was approved (3-0)

Juston Cathey: Director McQuiston reported that Mr. Cathey had applied to renew his permit on November 30, to drive for Degenhardt Roadside Assistance, d/b/a Nashville Tow-N-Go. The director stated that the background check showed a 2008 conviction for DUI, which Mr. Cathey had disclosed in his application. The director added that Mr. Cathey's had a prior record, and that his previous permit had been granted by the Commission as a restricted permit.

Mr. Cathey appeared with Kenneth Degenhardt, owner of the company. He stated that he was no longer drinking. Mr. Degenhardt stated that Mr. Cathey had been an excellent worker during the six weeks that he had been employed at the company. **Vice Chair Duane McGray** asked about his prior arrests and convictions; Mr. Cathey explained the circumstances and the court decisions. He stated that one of those had involved a company car with stolen tags, while he was working for Mr. Littlefield at Beacon Towing.; another had involved a drug/robbery incident; and another had been a domestic assault charge. **Vice Chair McGray** noted that in eleven years Mr. Cathey had been arrested ten times; he noted that except for the 2008 DUI, there had been none since 2004. Mr. Cathey explained that he had made some changes in his life, because he now had custody of his children. He added that he was going to night school.

Vice Chair McGray asked Mr. Degenhardt if he was willing to perform random drug testing; Mr. Degenhardt responded that the company did require that for its employees.

Vice Chair McGray moved to approve a permit for one year, restricted to Degenhardt Roadside Assistance/Nashville Tow-N-Go, on the condition that he pass monthly random drug tests. **Commissioner Jennifer Brundige** seconded, and the motion was approved (3-0)

UPDATE ON LEGISLATION:

Director McQuiston provided an update on legislation:

Booting Ordinance: The director reported that a new ordinance Chapter 6.81 – Booting had been passed, and that the Transportation Licensing Commission had been given regulatory responsibility for booting. He noted that no applications had been received, but that some companies had requested them. He added that the ordinance required that all company applications be presented in to the Commission for decision.

Bill to Regulate Other Passenger Vehicles For Hire: The director reported that filing of the ordinance bill was expected to be done in early January. He stated that if the bill were to be passed in three readings implementation would be possible in March. He added that any Commission Rules that might be considered necessary before implementation would also require a public hearing, so it could become necessary to consider a special Commission meeting in early March for that purpose.

Amendments to Wrecker Ordinance: The director reported that legal advisor Harkey had prepared a legislative bill to propose the amendments approved by the Commission at the October meeting, and that this bill could also be filed in January.

House Bill 2424: The director reported that a bill had been introduced in the State legislature that would cap the rates for nonconsent tows from private property at \$65, state-wide. He stated that it would be beneficial to a number of communities, where there was currently no regulation; but it would negatively impact companies in Davidson County, where the authorized rate was higher.

2010 SCHEDULE:

The Commission approved the following meeting schedule for 2010:

January 26
February 23
March 23
April 27
May 25
June 22 (Annual Public Hearing – Emergency Wrecker Zones)
July 27
August 24
September 28
October 26
November 16 (Annual Public Hearing – Taxicab Certificates & Permits)*
December 14*

* Meetings to be held one week early because of holidays

OTHER BUSINESS:

Vice Chair Duane McGray noted that a recent newspaper article had cited allegations of charges against taxi drivers, and asked Director McQuiston if there had been any further information on these charges. The director stated that the police department had not contacted him for information specifically related to the allegations.

There were no further business, and the meeting was adjourned.

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair