

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

Minutes of

November 17, 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, Mary Griffin and Ed Whitmore (5). 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 September 22, 2009 and October 27, 2009 meetings were corrected, and approved as corrected.

**PUBLIC HEARING: PROPOSED AMENDMENT OF COMMISSION (WRECKERS)
RULE 24**

Director McQuiston stated that the Commission had held a public hearing at the October 27 meeting on a proposal by some wrecker companies to amend Commission Wrecker Rule 24, in order to allow them to again patrol parking lots. He stated that, following a public hearing at that meeting, the Commission had tabled the matter for further consideration; therefore, this was to be a second public hearing on the proposal. The director noted that Rule 24 had been modified by the Commission in April 2008 to prohibit wrecker companies from participating in the decision making process – to identify which vehicles should be towed – in any way, including tagging of vehicles on behalf of apartment complex managers. He noted that the companies had submitted a new proposal to allow that practice, but detailing safeguards and specific procedures on how it must be done: these included a mandatory ten-day waiting period and additional documentation requirements to support commission staff investigations of possible violations. The director stated that nonconsent towing involved the competing interests of private property owners, wrecker companies, and vehicle owners; and that approval of the proposal would likely do little to serve the interests of vehicle owners. He added that approval of the proposal would result in an increased workload for the staff, and concluded that nonconsent towing from private property remained the most difficult enforcement challenge for the Commission.

Vice Chair Duane McGray expressed concern that an issue raised at the October hearing was that the proposal was not limited to apartment complex towing; and that there had been no modifications made to the proposal since that hearing. Director McQuiston agreed, but stated that the decision of the Commission had been to simply

table it for further consideration. **Chair Helen Rogers** clarified with Legal Advisor Harkey that the Commission could consider information from the previous month's hearing in its deliberations.

Chair Rogers opened the hearing for public comment.

Metro Council Member Karen Bennett spoke in opposition to the proposal. She stated that the apartment complex managers were responsible for patrolling and managing their own parking areas, and that involving a third party in the decision process would not provide an appropriate level of accountability and service to their residents. She supported keeping the current Rule.

Debbie Johnson, apartment manager, spoke in favor of the proposal. She stated that her complex consisted of 40 acres, with a staff of three employees. She stated that prior to the implementation of the current Rule 24, Bailey's Wrecker Service had assisted her with identifying problem vehicles in her parking area; and that there had been no incidents or problems with the company or their service. Ms. Johnson stated that since the current Rule had become effective, she had been able to check the parking lots only once. **Vice Chair McGray** asked if she had considered pooling with other apartment complex managers to get a security service, instead of a wrecker service, to patrol her parking areas. Ms. Johnson responded that she would prefer working directly with the wrecker service. **Vice Chair McGray** explained that allowing wrecker companies to do so would result in an increased enforcement burden for the commission staff; as a result, taxpayers effectively would be paying for the apartment complex managers' convenience.

Metro Council Member Phil Claiborne spoke in opposition to the proposal. He stated that the current law was sufficient to support apartment complex managers, and he noted that it did not require a ten-day waiting period. He stated that apartment complex managers were responsible to manage their own parking areas. He stated that allowing wrecker companies to come onto the private properties in search of business was inappropriate. He stated that the Rule had been passed with great justification, and there was no need to roll it back.

Commissioner Mary Griffin asked that the proposed changes be read, for the benefit of those attending who may not have been at the October meeting. Director McQuiston read the Rule, with the proposed amendment, and noted that it also had been posted on the Commission's web site:

(Amendment to the Rules and Procedures (Wreckers) of the Metropolitan Transportation Licensing Commission - proposed deletions with additional wording shown in bold print)

Rule 24 – Nonconsent Towing from Private Property

"Prior to towing a vehicle (or personal property) from private property without the vehicle (or personal property) owner's consent, the towing company must have express written authorization for towing of that vehicle (or personal property) from the owner of the private property or designated agent. When an individual is designated by a private property owner to act as an agent to authorize towing from the property, such designation must be in writing and signed by the private property owner. There shall be some relationship between the private property owner and the designated agent, and there may be no relationship between the designated agent and the towing company. ~~No employee of a wrecker company or designee of a wrecker company may patrol or otherwise participate in the decision-making process about which vehicles are to be towed: this includes placing any sticker, signal or any other form of designation on any vehicle to be~~

towed. An employee of a wrecker company may patrol a parking lot of a business to ensure that vehicles are in accordance with the business property guidelines for allowable parking only if these procedures are followed:

- (a) The wrecker company employee must obtain written, signed and dated permission from the private property owner or designated agent to patrol the lot;
- (b) A form must be used to identify each vehicle that is not in compliance with the guidelines;
- (c) The form must include the make, model, color, and license plate number or VIN of the vehicle;
- (d) The form must be signed by the private property owner or designated agent prior to the departure of the wrecker company employee from the property;
- (e) A sticker must be placed on the vehicle to notify the vehicle owner that the vehicle is not in compliance with the business property guidelines;
- (f) The sticker must include the date of notification and a statement that the vehicle owner may contact the private property owner or designated agent for further details;
- (g) No sooner than ten days after the sticker is placed on the vehicle, the private property owner or designated agent may sign a tow slip authorizing the towing of the vehicle.

Contracts or written agreements between a towing company and private property owners for nonconsent towing must be retained by the towing company, and must include the property owner's signature and the signature(s) of any agent(s) designated by the private property owner. The towing company must make these documents available for inspection by the Commission or any designated representative at any time. Maximum allowable rates for nonconsent towing from private property will be as specified in Section 6.80.550(H) of the Metropolitan Code of Laws."

There was no further public comment. Director McQuiston noted that he had also received a letter from an apartment complex manager in support of the proposal. **Chair Rogers** noted that this had been in their packets, and had been reviewed. She closed the hearing for public comment.

Following discussion, **Vice Chair McGray** moved to disapprove the proposed amendment. **Commissioner Ed Whitmore** seconded, and the motion passed (2-0, with 2 abstentions).

PUBLIC HEARING: PROPOSED MINIMUM RATE FOR LIVERY SERVICES

Director McQuiston stated that at the August 25 public hearing the Commission had considered the proposed ordinance to regulate Other Passenger Vehicles For Hire, and had amended it to enable the Commission to set a minimum rate for livery services in the Commission Rules. He stated that this hearing was to consider setting a specific minimum rate for livery services, so that the issue could be resolved prior to implementation of the Other Passenger Vehicles For Hire ordinance, anticipated in the first quarter of 2010. **Chair Helen Rogers** stated that any discussion on this issue

would be inappropriate, because the proposed ordinance had not yet been passed. **Vice Chair Duane McGray** agreed. **Commissioner Ed Whitmore** stated that it was also possible that the Metro Council might decide to retain the right to set rates. Following discussion, **Chair Rogers** directed that the issue be tabled until the next monthly meeting following passage of the new ordinance.

WRECKER COMPANY SHOW-CAUSE HEARING: EXPRESS TOWING

Director McQuiston stated that this hearing was a follow-up to a July 2009 disciplinary hearing. He stated that one of the violations found was that the company had failed to provide records requested by the Commission on June 15 and on June 19 – separate requests for different records. He stated that during the hearing, the company's attorney had stated that they had the records, and would provide them. He noted that the Commission had suspended Express Towing from performing nonconsent tows until August 25, and placed the company on probation until December 1.

The director reported that, in spite of promises made by the company at the July hearing, and an additional opportunity presented by "pulling" their show-cause hearing from the October 27 agenda, the records requested on June 19 had not been provided. He added that all records which had been provided by Express Towing had been brought to this meeting.

Inspector Bowling stated that the missing records were related to an investigation he was conducting. He reported that on June 16, 2009 he had personally observed two tows by Express Towing from a property at 18th and Division; during that time he had observed an Express Towing operator enter one of the vehicles by use of a slim jim or other device to disable its alarm. He reported that, after discussions with Auto Theft, he had requested the towing records on June 19. **Chair Helen Rogers** asked if the company was still in business; the inspector responded that Express Towing's suspension had ended in August, but they were still ignoring the responsibility to provide the towing records.

Craig Allen Mann, owner of Express Towing, appeared. He stated that he had fired his lawyer for not providing the documents. He stated that he had sent everything requested, and did not understand what more was required. Inspector Bowling stated that the letter mailed to Mr. Mann had been very clear about what was missing. Director McQuiston clarified that the October 30 certified letter directing Mr. Mann to appear at this hearing was very specific in describing which records had not been provided. Inspector Bowling added that the months of delay in providing records had obstructed investigation.

Mr. Mann insisted that the records had been provided. **Chair Rogers** stated that she would allow him a short recess to find those records in the materials provided by his company to the staff; in the meantime, the Commission would proceed with the next item on its agenda.

TAXICAB DRIVER PERMIT APPLICATION: DESMOND CAMBRIDGE

Director McQuiston reported that Mr. Cambridge had held a taxicab permit for nine years. He noted that when Mr. Cambridge had applied for his initial permit in January 2000 he had failed to disclose all arrests, and his application had been disqualified; he

subsequently had reapplied and received a permit in February 2000. The director stated that Mr. Cambridge's last regular permit had expired on September 30, 2009; therefore, when he applied on October 7 he was required to get a fingerprint-based background check. The director reported that the background check revealed an open charge on a May 13, 2007 arrest for DUI. He stated that Mr. Cambridge had not disclosed this in his September 2007, September 2008 and October 2009 applications. The director pointed out that the open DUI charge would have prevented Mr. Cambridge from receiving a permit in 2007, 2008, and 2009 if it had been disclosed. He summarized that Mr. Cambridge had been permitted for at least two years only by giving false information in his applications. The director recommended that the Commission disapprove Mr. Cambridge's current application, and not consider any new application by him for a period of two years.

Mr. Cambridge appeared with Wylene Jones, co-owner of American Music City Taxi. **Chair Helen Rogers** asked Mr. Cambridge about the DUI charge. Mr. Cambridge stated that he had been convicted of reckless endangerment on October 9, 2009. **Chair Rogers** asked if he had spent time in jail. Mr. Cambridge stated that he had been arrested and spent a few hours in jail on pretrial diversion. He stated that he had made a mistake. **Chair Rogers** told him that a mistake was understandable, but lying to the Commission in his application was a different matter, with potential risks to public safety. Mr. Cambridge stated that he was not in a taxi when he was arrested. **Vice Chair Duane McGray** asked why he had not disclosed the arrest; Mr. Cambridge repeated that he had made a mistake. **Commissioner Mary Griffin** noted that Mr. Cambridge's official driver record from the Department of Safety also listed an Accident – Personal Injury event on May 13, 2007. She asked who had been injured in the DUI incident; Mr. Cambridge responded that nobody had been injured, including himself.

Ms. Jones stated that she did not condone nor excuse what Mr. Cambridge had done. She stated that he had been an owner-operator in their company and was on their insurance. She added that the insurance company regularly ran the driver's records, and since May 2007 had not notified them of any change in Mr. Cambridge's status. She stated that she assumed that the arrest had not affected his insurability because the case was not disposed in court until October 2009.

Vice Chair McGray noted that although the court had reduced the offense to reckless endangerment in disposing of the case, the sentence had also specified attendance at DUI School. He also noted that the legal limit at the time of Mr. Cambridge's arrest was 1.0, and this had since been reduced to 0.8. He stated that he was especially concerned about Mr. Cambridge's failure to disclose.

Chair Rogers stressed the importance of disclosure and telling the truth. **Vice Chair McGray** moved to disapprove the application and to exclude Mr. Cambridge from consideration for any permit to drive a taxicab, carriage or other passenger vehicle for hire for a period of two years. **Commissioner Griffin** seconded, and the motion passed (4-0).

WRECKER COMPANY SHOW-CAUSE HEARING: EXPRESS TOWING (continued)

Mr. Mann reappeared. **Chair Rogers** asked if he had found any tow records for June 16. Mr. Mann stated that they were not present, and apologized for not providing them. He stated that it would have been taken care of if Inspector Bowling had told him that

the records were not there. **Vice Chair McGray** told Mr. Mann that it was his responsibility to make sure that the records were provided.

Chair Rogers asked Mr. Mann how long it would take for him to get the missing records. Mr. Mann responded that he could get them before the meeting ended. **Chair Rogers** stated that she would allow him another short recess in order to produce the records.

ANNUAL TAXICAB PUBLIC HEARING

Director McQuiston reported that the Commission had received no applications for new certificates and no applications for additional taxicab permits. He stated that there were other issues affecting the taxicab industry to be discussed, including a public hearing to determine whether to extend or terminate the Commission's incentive program for ADA-accessible taxicabs.

New Ordinance to Regulate Other Passenger Vehicles For Hire: **Chair Helen Rogers** asked Director McQuiston to give an update on the new ordinance proposal. The director reported that the bill was being finalized by the legal department.

Taxicab Meter Rates: Director McQuiston stated that no increase in meter taxi rates had been authorized since December 2003, except increases of the meter activation rate to offset tax increases for airport departures. He stated that in 2006 Nashville had ranked 7th highest in a survey of 35 major U.S. cities for a 5-mile meter fare; in a similar survey conducted in mid-2009, Nashville tied for 19th among 40 major cities. The director stated that it may be appropriate to consider increasing the per-mile rate sometime in 2010, noting that approval of any meter rate changes would require an amendment of the taxicabs ordinance.

Chair Rogers invited taxi industry representatives to appear.

Taxicab USA of Tennessee representatives appeared, including: Jim Burrow, Jim Church and attorney Guilford Thornton. Mr. Thornton provided a report on the number of monthly trips provided by the company's ADA-accessible taxicabs during the last two years; the report indicated an average of 850 ADA-accessible taxicab trips per month over the previous quarter. He pointed out that, although contract business still accounted for the over 90% of the company's accessible taxicab trips, the number of non-contract trips had increased over the past year. Mr. Church stated that the Commission's incentive program had been a success, and requested that it be extended. He stated that the company had four additional ADA-accessible taxicabs on order. Director McQuiston stated that the two-year incentive program had been initiated in April 2007, to encourage taxicab companies to voluntarily introduce more wheelchair-accessible taxicabs into their fleets. He added that the program had since resulted in the fielding of 11 additional ADA-accessible vans. The director noted that at its May 2009 meeting the Commission had extended the program until this annual public hearing. He stated that there had been earlier concerns about whether the program had resulted in greater availability of accessible taxicabs for traditional on-demand service, but that these concerns had since abated with the provision of trip-related information. The director added that Checker Cab also had at least one more accessible van undergoing the conversion process. Mr. Thornton also requested that the Commission

consider capping the number of vehicle permits, or at least issue a statement that would signal its intent related to adding more taxicab permits. He explained that continued uncertainty limited every company's ability to make longer-term business investment decisions. Mr. Church added that consideration of a taxi meter increase would be primarily a driver concern. He noted that consideration might be given to allowing waiting time. **Vice Chair Duane McGray** asked if the company could comment on whether on-demand customers had to wait long periods for accessible cabs; Mr. Church responded that they did not have that information readily available.

Basel Awwad, vehicle owner, appeared. He stated that a mileage increase was not necessary, except when the taxi companies decided to increase the weekly lick charged to drivers. He stated that there was too much competition now.

Doug Trimble, president of Yellow Cab, recommended the redistribution of any "unused" ADA-accessible taxicab permits – from those companies which had not added vehicles under the incentive program to the companies which had used them. He stated that there were enough taxicab permits already; but he added that there was still a need for more ADA-accessible cabs. Director McQuiston noted that there were sixteen unused ADA-accessible permits under the incentive program. **Chair Rogers** noted that accessible vans could also be used for regular taxi service. Mr. Trimble stated that the cost of an ADA-accessible van was much higher than a regular taxicab. **Vice Chair McGray** asked if Yellow Cab had problems with customers having to wait for ADA-accessible taxicabs because the vehicles were tied up with contract runs; Mr. Trimble responded that they were not.

Taxi driver Sharif Abdullahi noted that, in addition to having to work with taxicab companies, drivers also had to work with middlemen taxi vehicle owners. He stated that when Diamond Cab was purchased by Taxi USA, most former Diamond drivers did not want to work for the new company; he stated that there was a need for more companies, to allow drivers more options. He added that dispatchers were giving preferential treatment on calls to certain drivers.

Godwin Poima, owner-operator, asked a number of questions about the operation of taxi companies. **Chair Rogers** stated that the Commission did not regulate the contracted business relationships between drivers, vehicle owners and companies. Mr. Poima had questions about taxicab stands. Director McQuiston stated that the industry should request specific locations; and that all stands had to be approved and assigned by the Traffic and Parking Commission. Mr. Poima complained about police enforcement. **Commissioner Mary Griffin** stated that drivers could request meetings with police department officials. Mr. Poima complained about valet parkers; **Chair Rogers** recommended that he read and support passage of the new ordinance to regulate Other Passenger Vehicles For Hire.

Omer A. Elmagboul, driver, recommended that the \$25 flat rate be extended to include hotels nearer to the airport, He stated that this would address the problem of waiting long periods at the airport for "short runs". He complained about tickets given by police downtown for stopping to pick up passengers. **Chair Rogers** stated that he should communicate his concerns to the police department. Mr. Elmagboul stated that there should be no more permits allowed.

Ernest Pillow, Jr., driver, complained that some taxicab drivers were paying valets to get business. He also complained that event planners were not allowing access for taxicabs in the vicinity of the stadium. **Vice Chair McGray** and **Commissioner Ed Whitmore** stated that traffic control was a police matter, and that Mr. Pillow should address that concern with the police.

Commissioner Griffin departed.

William Newman, owner-operator, expressed support for the new ordinance to regulate other vehicles for hire.

Mulugeta Abebe, co-owner of Checker Cab, stated that the company had three ADA-accessible taxicabs – already in operation or pending final inspection. He supported Mr. Trimble’s recommendation to redistribute unused ADA-accessible taxicab permits to Taxi USA, Yellow and Checker. He stated that certificate holders should work together on common issues to improve the industry.

There was no other public comment.

Commissioner Jenifer Brundige moved to extend the ADA-accessible taxicabs incentive program for another year, until the 2010 annual taxicabs public hearing. **Vice Chair McGray** seconded, and the motion passed (3-0).

Commissioner Whitmore moved to make no changes to taxicab rates. **Vice Chair McGray** seconded, and the motion passed (3-0).

Ten Percent Rule: Director McQuiston requested that the Commission discontinue granting extensions to certificate holders who fail to meet the requirements of Commission Rule 5 – the “ten percent rule”. He stated that since the addition of 35 permits at the 2007 annual public hearing there had been continuing problems with taxi companies not meeting the rule’s requirement to fill ninety percent of their approved permits. The director stated that under the specific provisions of the rule companies failing to do so were to automatically lose any excess permits; but he noted that each time a company had been required to surrender permits the owners had appealed the decision to the Commission and had been given extensions to fill their permits. The director added that companies given extensions typically had to lure owner-operators from other companies, which simply resulted in unfilled permits in another company. He stated that the process to verify company vehicle lists was extremely time-consuming, and that the staff could not devote the necessary hours to repeat the verification process every time a company was granted an extension. The director stated that, while the annual application and public hearing process allowed for permits to be added, enforcement of this rule was necessary to enable normal market forces to determine if and when the number of permits should be reduced. **Chair Rogers** invited public comment on this issue.

Doug Trimble, president of Yellow Cab, appeared. He stated that he agreed that the rule should be enforced. He asked again about the redistribution of ADA-accessible taxicab permits. **Chair Rogers** stated that this would be considered, but that she was asking for comments only about the ten percent rule.

Mulugeta Abebe, co-owner of Checker Cab, appeared. He stated that there were too many vehicle permits, and that companies unable to fill them had resorted to luring owner-operators from other companies with offers of a “free” year; as a result, they were only taking vehicles from other companies. He supported enforcement of the rule.

There was no other public comment. Director McQuiston stated that there was no need for a motion, because the rule was already clear. Inspector Lawhorn stated that the rule had been in effect for many years, and had worked to allow for reduction of permits. He added that it was very time-consuming to re-verify company vehicle lists because of the continuous migration of drivers and vehicles between companies, and that this had been complicated by false information provided by at least one company. **Chair Rogers** voiced concern that it would not be appropriate to deny a right to appeal. Discussion

followed. Director McQuiston noted that old taxi vehicles would be taken out of service as of January 1, and stated that the staff would expect all companies to meet the requirements of Rule 5 as of February 1.

Vice Chair McGray stated that Commissioners could not obligate future Commissions, but that he would not support any additional permits being approved for the foreseeable future. **Chair Rogers** noted that a proposal to redistribute unfilled ADA-accessible taxicab permits would require public notice. She suggested that this be put on the next month's agenda. She closed the annual public hearing.

WRECKER COMPANY SHOW-CAUSE HEARING: EXPRESS TOWING (continued)

Mr. Mann reappeared. Inspector Bowling stated that the company had provided a copy of a tow slip for the tow under investigation.

Commissioner Jennifer Brundige expressed concern that the provision of required documents should not be a difficult matter, and that Mr. Mann had not demonstrated an ability to manage his business. Mr. Mann responded that he would have responded if the Commission staff had called him. **Commissioner Brundige** stated that the letters sent to him had been clear and more than sufficient notice. **Vice Chair Duane McGray** told Mr. Mann that it was not the staff's responsibility to call him.

Vice Chair McGray noted that 121 additional days had lapsed since Express Towing had been required to provide the records. He moved that the probation, which had been due to expire on December 1, be extended another 121 days. **Commission Brundige** seconded, and the motion passed (3-0).

OTHER BUSINESS:

Director McQuiston informed Commissioners that the first Taxi Pro school class had graduated seven new drivers.

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

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair