

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

**Minutes of
December 14, 2010**

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Justice A. A. Birch Building. The Commissioners present were Vice Chair Mary Griffin and Commissioners Jennifer Brundige, Ed Whitmore, Sam Patel and Brian Winfrey (5). Also attending were Metro Legal advisor Corey Harkey and Brian McQuiston, Director-Executive Secretary to the Commission.

Vice Chair Mary Griffin 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 16, 2010 meeting were approved.

APPLICATIONS FOR GENERAL WRECKER LICENSE AND WRECKER DRIVER PERMIT: TRINITY TOWING & RECOVERY / CHRISTOPHER MORRIS

Director McQuiston reported that Christopher and Alanna Morris were applying for a new general wrecker service license, to operate Trinity Towing & Recovery; and that Mr. Morris was applying for a wrecker driver permit. He stated that Mr. Morris' applications were of concern because of his past connections with Able Towing and City Towing/Champion Towing. He stated that Mr. Morris was permitted from 2006 until 2007 as a driver for City Towing, and from 2007 until 2009 as a driver for Able Towing; and that the Commission had revoked the licenses of both companies. He stated that in early 2007, City Towing owner Mike Myers had applied to operate Champion Towing – essentially relocating his company to LaVergne – and that the Commission had disapproved the application. The director noted that Mr. Morris had been cited while driving for Champion Towing, but had no other criminal conviction record.

Inspector Bowling reported that he had cited Mr. Morris because he was driving for an unlicensed company, but had no other problems with him as a driver. He stated that his only concern with approving a new company license was that it not be connected with Mr. Myers in any way; and he recommended that any license granted should include a probationary period and limit the company to one tow truck.

Mr. Morris stated that he had no connection with Mr. Myers, and that he had been forced to get a permit with Able Towing. He stated that he would eventually like to have two tow trucks, but would abide by the Commission's decision. **Commissioner Ed Whitmore** asked him to clarify how he had been forced to drive for Able Towing. Mr. Morris responded that he was the only permitted operator driving for Champion Towing, but Mr. Myers had the lettering on the tow truck changed to "Able Towing". Inspector Bowling asked Mr. Morris if Champion Towing continued to perform nonconsent towing from Davidson County; Mr. Morris responded that it did.

Following discussion, **Commissioner Ed Whitmore** moved to approve both applications, with a probation period of one year, and limiting the company to one

wrecker vehicle. **Commissioner Jennifer Brundige** seconded, and the motion passed (4-0).

WRECKER COMPANY SHOW CAUSE HEARING: ALCAR NATIONAL RECOVERY

Director McQuiston stated that this hearing had been directed at the November meeting, when it was learned that ALCAR management had allowed unpermitted drivers to operate wreckers. He reported that the company had been licensed for a number of years. He noted that at a Commission hearing in March 2010 on an application for Fuqua's Towing, Allison Fuqua had disclosed that she had been driving a wrecker at ALCAR without a permit after her husband Jonathan Fuqua lost his driver's license; and that at a hearing in May 2010, Jerry "Ricky" Anderson had disclosed that he also had been driving at ALCAR without a permit. The director stated that two days after the Commission revoked the license of Fuqua's Towing in September, Inspector Milton Bowling had observed Jonathan Fuqua – who did not have a permit – towing a vehicle with a Fuqua's Towing wrecker into the ALCAR lot. He added that records requested from ALCAR demonstrated that Mr. Fuqua had been repossessing cars on behalf of ALCAR for many months. He noted that although these tows may have been made with a Fuqua's wrecker, the documents also indicated a continuing relationship between ALCAR and its former employee Jonathan Fuqua.

Director McQuiston stated that when the Commission considered the applications for ALCAR drivers Jerry "Ricky" Anderson and Ronald Proctor at the November 16, 2010 meeting, it had been revealed that both had continued to drive wreckers at ALCAR without permits. He added that Alfred "Buddy" Carnahan, the ALCAR owner, had also appeared on behalf of the applicants; and that, when asked why he had allowed drivers to operate without permits, Mr. Carnahan had stated that they needed to make a living and that he had not thought that the permits were required because his company performed repossessions. The director noted that letters had been sent to ALCAR and all other known companies in 2005 and 2006 which specifically informed company owners that all wrecker companies, including repossession companies, were required to comply with the ordinance. He stated that the disapproval of Mr. Anderson's permit application in May 2010 should also have been sufficient warning to Mr. Carnahan that all of his drivers were supposed to have permits. Director McQuiston noted that at the November 16, 2010 meeting **Chair Helen Rogers** had directed that Mr. Carnahan appear for this show-cause hearing, and had warned him that Commission inspectors would be closely monitoring the company during the interim. The director stated that on December 3, 2010 Inspector David Deckard had observed Jason Swafford operating an ALCAR wrecker in Davidson County without a wrecker driver permit.

Commissioner Ed Whitmore asked if ALCAR could be cited for allowing its drivers to operate without permits. The director noted that sections 6.80.310 and 6.80.320 clearly placed responsibility on the company to ensure compliance with this requirement, and noted that both sections of the Code were included in Commissioners' packets. The director added that applications for wrecker driver permits had been received from several ALCAR drivers, and that these were also on the agenda.

Mr. Carnahan appeared. **Vice Chair Mary Griffin** asked what had been done following the November 16 meeting. He responded that he had made all of his employees aware of the requirements, and had instructed them to perform repossessions for their accounts within Davidson County without the use of wreckers. He stated that for cases

in which that could not be done he had hired permitted driver Allison Fuqua to perform the necessary tows. He stated that he had hired Al Kozlowski to take over management of the drivers to ensure that the company came into compliance with the ordinance. Mr. Carnahan admitted that the company had been wrong to allow drivers to operate without permits, and asked the Commission to allow them to operate under probation. **Vice Chair Griffin** asked why Mr. Swafford had been operating a wrecker without a permit after the company was warned. Mr. Carnahan responded that Mr. Swafford had been performing repossessions outside of Davidson County. He stated that there were discrepancies in the report, and that he had scheduled Mr. Swafford for a polygraph test. **Vice Chair Griffin** asked Inspector Deckard about the location where he had observed Mr. Swafford. The inspector referred to a map included in the Commissioners' packets and reported that the Bakers Market gas station where he had observed Mr. Swafford was within Davidson County by approximately two miles. He noted that there was also an unpermitted passenger in the wrecker with Mr. Swafford. **Commissioner Jennifer Brundige** moved to suspend the license of ALCAR for ninety days. **Commissioner Brian Winfrey** seconded, and the motion passed (4-0).

APPLICATIONS FOR WRECKER DRIVER PERMITS:

Ronald Proctor, Alfred Carnahan, Jonathan Fuqua, Joshua Graves, Daniel Jones, Michael Norris, and Jason Swafford: Director McQuiston stated that all of these applications were to drive for ALCAR. Following discussion, **Commissioner Jennifer Brundige** moved to defer these applications until the March 22, 2011 meeting. **Commissioner Brian Winfrey** seconded, and the motion passed (4-0).

Joshua Turner: Mr. Turner did not appear. Director McQuiston reported that Mr. Turner had applied to renew his permit. He stated that Mr. Turner had held a permit restricted to South Side Towing; and added that when that company had applied for approval to perform nonconsent towing in July 2009 the Commission had given approval, but had placed the company on probation until December 2010. The director noted that there had been no complaints or other problems with South Side Towing during the probation period, and that Mr. Turner's background check had revealed no new arrests since receiving his restricted permit. He stated that Mr. Turner's application submitted on November 30 indicated that he would drive for South Side Towing, but that the company had since severed its relationship with him. Christie Haley, co-owner of South Side Towing appeared. She stated that Mr. Turner had called her to report that he was having car problems while trying to drive to the hearing. **Commissioner Jennifer Brundige** moved to disapprove the application. **Commissioner Brian Winfrey** seconded, and the motion passed (4-0).

TAXICAB DRIVER DISCIPLINARY HEARING: FIKRU WORDOFA

Director McQuiston reported that he had received a report from the Airport Authority in June that Mr. Wordofa had been barred permanently from operating at the airport because he had threatened an airport starter. He provided copies of the report on the investigation and findings by the Airport police, and noted that the taxicabs ordinance made it clear that such conduct was also a violation of the Metro Code. The director

also noted that Mr. Wordofa had been placed on six-month probation by the Commission in October 2009 following a disciplinary hearing related to a customer complaint. Mr. Wordofa appeared. He stated that he had been at the cab holding area, and because the men's restroom was occupied he had used the women's restroom. He denied threatening the starter. Director McQuiston noted that the Airport had addressed the issue of overcrowding the restrooms in the holding area, and that they had already applied sanctions against Mr. Wordofa. **Vice Chair Mary Griffin** stated that it appeared that Mr. Wordofa had already been punished by being permanently barred from operating his taxicab at the airport. **Commissioner Jennifer Brundige** moved to place Mr. Wordofa on probation for six months. **Commissioner Ed Whitmore** seconded, and the motion passed (4-0).

PUBLIC HEARING: REVISION TO HORSE-DRAWN CARRIAGE RULES

Director McQuiston reported that this was a public hearing to consider one amendment to current Rule 4 of the Horse-Drawn Carriage Rules and four new Rules to be added to the *Rules and Procedures of the Transportation Licensing Commission*. He stated that the new rules had been drafted to respond to several incidents of runaway horses and to reduce the risk of occurrences resulting from untrained or inattentive drivers; and also to ensure adequate liability insurance for carriages.

Rule 4 – Cessation of Operations for Adverse Temperature Conditions:

Director McQuiston stated that he had received a proposal to amend Rule 4 by lowering the minimum allowable temperature for carriage operations to 25 degrees Fahrenheit, as long as there was no ice on the roadway. He noted that the safety concern in establishing the existing 32 degrees minimum had been related to the potential hazard to horses and carriages when ice could be present; and he supported the new proposal for additional wording to exclude operations when there was ice on the road while still enabling carriages to expand their operating season into the colder months. He noted that cities in the north had approved even lower temperatures and recommended the following proposal for Rule 4:

Rule 4 – Cessation of Operations for Adverse Temperature Conditions:

Carriage operations may not be conducted when temperatures are below 25 degrees Fahrenheit or there is ice on the road. Operations may not be conducted when temperatures are above 95 degrees Fahrenheit. Official temperatures will be as reported by TDOT 511. Exceptions to this rule may be granted by the Director, on a case-by-case basis, for special events only.

Vice Chair Mary Griffin invited public comment on the proposed amendment.

Johnny Smith, company owner, supported the proposal. There was no other public comment.

Commissioner Brian Winfrey moved to amend the rule as proposed. **Commissioner Sam Patel** seconded, and the motion passed (3-1).

Director McQuiston stated that following a runaway incident in April 2010 an After Action Review had been conducted to determine what could be done to prevent recurrences. He stated that based on the findings additional input had been solicited from carriage owners. He noted that the recommendations received focused on the

need for improved driver training, ensuring positive control of horses at all times, and ensuring adequate liability insurance coverage for large carriage vehicles. He added that inspectors had also highlighted the need for improved visibility of carriages operating downtown, especially at night. He proposed the following new Rules:

Rule 6 – New Driver Training:

All newly-permitted carriage drivers must complete a training program under the supervision of a qualified instructor or trainer prior to operating a horse-drawn carriage alone on city streets. Company owners shall develop training programs and submit instructor/trainer qualifications information to the Commission director for approval. At a minimum, driver training must include the following sequence:

a. Demonstrating proficiency under the direct supervision of the instructor/trainer on at least 20 rides without passengers;

b. Demonstrating ability to successfully negotiate an approved obstacle course;

c. Demonstrating ability to control the carriage horse by voice commands only, including “Whoa” and “Back”; and

d. Demonstrating proficiency under the direct supervision of the instructor/trainer on at least 10 rides with passengers.

Company owners will be responsible to ensure all previously-permitted drivers can meet requirements b. and c. above.

Rule 7 – Positive Control of Horses:

Horses shall be under positive control by a permitted driver at all times. No other person may serve as a horse handler unless that person also holds a current carriage driver permit.

No customer or passenger shall be seated on the driver's bench.

Drivers shall remain seated during operation of the carriage with feet on the floor and with one rein in each hand. In addition, drivers shall keep one foot on the brake when the carriage is at a stand. No driver shall leave the driver's seat while passengers are entering, exiting, or seated in the carriage.

Drivers shall maintain a minimum distance of three feet between the nose of the horse and any carriage to its front at a carriage stand.

A permitted driver shall be at the head of the horse at any time the primary driver is exiting or boarding the carriage at a carriage stand, No horse shall be tied to a post or parking meter, or be otherwise left unattended.

All horses shall respond to specific voice commands as primary control; reins shall be considered as secondary control. Standard commands to which a horse must respond shall include, as a minimum, “Whoa”, “Back”, and “Walk on”.

Any runaway horse shall be banned immediately from operation on public streets, and may not be returned to service without approval from the Commission director.

Rule 8 – Carriage Equipment and Visibility:

Carriages shall be equipped with rear-view mirrors, tail lights, brake lights, rear-facing turn signals, and side-facing lights. Lights must be clearly visible at night for a distance of at least 80 feet.

Rule 9 – Insurance:

Proof of insurance shall be required for a minimum of six passengers. If the carriage is a limousine carriage or other carriage capable of transporting more than six passengers, then the proof of insurance shall be required for nine passengers.

Vice Chair Griffin invited public comment.

Johnny Smith, owner of Sugar Creek Carriage, supported the proposed new rules. He also expressed concerns about impaired drivers and communicating with the police about enforcement of traffic requirements

Sam Roberts, owner of Hat Creek Carriage, opposed proposed Rule 6, expressing concern that he did not know who could qualify trainers/instructors for drivers. He agreed with the Rule 7 proposal that there should be no passengers seated on the bench with the driver; but stated that there should also be a prohibition against dogs being on the bench with the driver. He also proposed a prohibition against using teams of two or more horses abreast in the downtown area, because the lanes on Broadway were narrow. He recommended that the use of a proper bit for maintaining positive control should be a consideration. He agreed with some of the requirements in proposed Rule 7, but opposed the requirement for brake lights and rear-facing turn signals; and recommended the use of a deep-red strobe light on the rear of the carriage. **Commissioner Ed Whitmore** asked for clarification about the strobe light.

Vice Chair Griffin expressed concern that there could be legal restrictions against the use of such lights, and legal advisor Harkey stated that she could research the issue, if appropriate. **Commissioner Whitmore** stated that positive control of a horse also depended on training of the driver.

Matthew Clark, driver for Hat Creek, opposed the proposed Rule 6. He stated that he did not know who would be qualified to be a trainer. He opposed the requirement in both Rule 6 and Rule 7 for horses to respond to voice commands if the horse could respond to reins. He opposed the requirement in Rule 6 for horse handlers to be permitted drivers, stating that horses in the carriage stands would not want to leave. **Vice Chair Griffin** clarified that the proposal for Rule 6 did not specify a required license or certification for a driver trainer, but simply placed a burden on the company to establish, obtain approval, and implement a training program. Mr. Clark stated that there should be no dogs allowed on the driver's seat.

Paul Morrison, owner of Southern Comfort Carriage, opposed the requirement in Rule 7 for voice commands to be primary control. He also opposed prohibiting passengers from sitting in the front seat; but added that if there were to be such a prohibition, then it should also apply to animals. He also opposed the restriction in proposed Rule 7 against tying his horse to a post, and stated that he had been doing this for years when he had to go to the restroom. He stated that the use of unpermitted horse handlers in the past had resulted in a number of problems, including rules and disciplinary hearings related to solicitation. Director McQuiston noted that leaving a horse tied but unattended was a violation of the ordinance. **Commissioner Whitmore** noted that parking meters were not hitching posts.

Clinton LeMoine, owner of Southern Elegance Carriage, opposed the requirement for 20 rides without passengers in the proposed Rule 6, paragraph a, because it would necessitate unpaid time for the trainer; instead, he recommended increasing the

number of required rides with passengers on board in paragraph d to 30. He also opposed the proposed Rule 7 requirement for voice commands to be primary control. He expressed a number of other specific arguments related to proposed Rule 7. He commented on proposed Rule 8, noting that reflective material on horses would also be helpful. He presented a number of new recommendations for rules.

Commissioner Jennifer Brundige departed.

Stacy Farmer, driver for Sugar Creek Carriage, supported the requirement in proposed Rule 6 to demonstrate ability to control the horse with voice commands. She recommended that if Rule 7 were to be amended to allow children on the driver's seat, then it should prohibit allowing them to hold the reins. She supported allowing dogs to sit with the driver. She agreed that training should be required.

The hearing was closed for public comment.

Following discussion, **Commissioner Brian Winfrey** moved to approve the proposed Rule 6, amending paragraph c to read "Demonstrating ability to control the carriage horse by voice commands and rein control, including "Whoa" and "Back". **Commissioner Ed Whitmore** seconded, and the motion passed (3-0).

Following discussion about the potential for subdividing the many issues presented related to positive control of horses, **Commissioner Brian Winfrey** moved to disapprove proposed Rule 7, as written. **Commissioner Ed Whitmore** seconded, and the motion passed (3-0).

Commissioner Brian Winfrey moved to approve the proposed Rule 8, as written. **Commissioner Sam Patel** seconded, and the motion passed (3-0).

Commissioner Brian Winfrey moved to approve proposed Rule 9, as written. **Commissioner Sam Patel** seconded, and the motion passed (3-0).

OTHER BUSINESS:

Vice Chair Mary Griffin welcomed new **Commissioner Sam Patel**.

Director McQuiston asked Commissioners to review the proposed meeting schedule for 2011.

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

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair