

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

**Minutes of
June 28, 2011**

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 Acting Chair Brian Winfrey and Commissioners Jennifer Brundige, Sam Patel, and Ed Whitmore (4). Also attending were Metro Legal advisor Corey Harkey and Brian McQuiston, Director-Executive Secretary to the Commission.

Acting Chair Brian Winfrey called the meeting to order. He 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 May 24, 2011 meeting were approved.

WRECKER COMPANY DISCIPLINARY HEARING: TOW PRO

Director McQuiston reported that on March 2, 2011 Tow Pro responded with wreckers to an accident scene in another company's zone, without being summoned by Police. He stated that Tow Pro was an emergency wrecker service, owned by Doug Williams since 2000 and co-owned with his son David Williams since 2010, and that Tow Pro was one of four emergency wrecker services with Class C heavy-duty wreckers, capable of recovering tractor-trailers. He stated that for each of the 12 zones operated by companies that did not have their own Class C wreckers, one of these four was assigned as a "Class C Back-Up" to respond to tractor-trailer incidents. He provided the list of Class C Back-Ups, and explained that this list had been provided to the Emergency Communications Center, and that ECC dispatchers used the list – which was included in their computer map – to identify and summon the appropriate Class C company based on the location of any tractor-trailer accident. The director stated that on March 2, 2011 there was a crash involving a tractor-trailer in the zone assigned to Anchor Towing & Recovery, to which both Metro Police and TDOT HELP responded. He noted that Dad's Towing had Class C responsibility for the Anchor zone, and Dad's had received the summons from the Emergency Communications Center to respond; but, without being called, two Tow Pro wreckers arrived on the scene. He added that Tow Pro personnel were told that this was Dad's call, and they departed. The director stated that Metropolitan Code section 6.80.580 prohibited wreckers from responding to the scene of an accident without being summoned by the ECC dispatcher.

Inspector Bowling reported that on March 2 he had received a call from Doug Williams, who was on the scene of the accident, and that he knew that Dad's Towing was also on the scene. The inspector stated that he contacted the ECC to verify which company had been called, and that the ECC dispatcher told him that Dad's was the back-up company and had been called. Inspector Bowling stated that he then called Mr. Williams and the

Tow Pro wreckers departed the scene. Inspector Bowling stated that he went to the crash scene, where he observed Dad's recovery operation.

TDOT HELP supervisor Emerson Boguskie reported that on March 2 he had received a phone call from Mr. Williams, who asked him if he was aware of the tractor-trailer crash; he stated that Mr. Williams was concerned because he had not received a call from the ECC. Mr. Boguskie stated that he informed Mr. Williams that he was not on the scene, but that it might have been an owner's request. He stated that later, when he did arrive at the crash scene, he observed Dad's Towing recovering the vehicle and cleaning up the load, which had spilled. He verified that TDOT had not called Tow Pro to the scene. Doug Williams appeared. He stated that Tow Pro had responded to the scene. He explained that there had been confusion, because at one time Tow Pro had responsibility for servicing the NTR-Anchor zone. He provided copies of his cell phone logs, showing that he had called Inspector Bowling. He stated that when he learned that it was Dad's call, he had departed. **Acting Chair Brian Winfrey** stated that the ordinance prohibited wreckers from responding unless they were summoned to the scene. He asked Mr. Williams how he was summoned to the scene. Mr. Williams referred to his cell phone log and responded that another wrecker company had called one of his drivers and informed him about the crash. He stated that he had made numbers of calls to determine if the call was theirs. **Commissioner Jennifer Brundige** asked whether the companies had been notified when the Class C back-ups were assigned; Director McQuiston responded that the ECC had been notified, but that the companies had not. **Commissioner Brundige** asked Mr. Williams to clarify that Tow Pro had responded on the basis of a phone call that one of his drivers had received from another company; Mr. Williams stated that the driver had called him, and then he had called Mr. Boguskie and Inspector Bowling. **Commissioner Brundige** asked Mr. Williams if he had responded to any other calls in the Anchor zone within the past year; he stated that Tow Pro had very few Class C calls, and could not recall any other calls in the Anchor zone, except owner's requests. He stated that the Tow Pro wreckers were on the scene for less than a few minutes.

Acting Chair Winfrey asked Director McQuiston if the prohibition against responding without summons was to keep order; the director responded that it was. **Commissioner Sam Patel** asked if Tow Pro had appeared before the Commission for similar incidents in the past; the director responded that they had not during his seven years. **Commissioner Brundige** stated that there had been a technical violation, but that she did not consider that there had been an intention to jump the call, but simply to provide quick response. She moved to find a technical violation, but to take no disciplinary action. **Commissioner Patel** seconded, and the motion passed (3-0).

Acting Chair Brian Winfrey stated that there were several issues on the agenda related to Metro Livery, and that the Commission would hear all matters prior to making decisions.

APPLICATIONS FOR PASSENGER VEHICLE FOR HIRE DRIVER PERMITS

Calvin Smith: Director McQuiston stated that Mr. Smith had appeared at the May Commission meeting, and had told Commissioners that he had worked at Metro Livery for two years. The director noted that this statement was included in the Commission's

meeting minutes. He added that because Metro Livery was pending a disciplinary hearing Mr. Smith's application had been deferred to this meeting. Director McQuiston reported that Mr. Smith had applied for an initial permit on March 10, to drive for Metro Livery. He stated that a background check had revealed convictions in 1994 for drug paraphernalia, criminal impersonation, and reckless driving; a 2006 domestic assault; two theft convictions in 2009; and a 2010 arrest for attempted false report. He noted that at the May 24 meeting Mr. Smith had provided copies of the citations he received for the two 2009 theft convictions and had stated that these had been for shoplifting; and that Mr. Smith had also provided arrest records showing that Bobby William Garrett - who he claimed was his cousin - was arrested for Possession of Drug Paraphernalia and for Criminal Impersonation in March 1994. The director added that Mr. Smith had asserted that these convictions appearing on his record were actually the result of crimes committed by Mr. Garrett, and that Mr. Garrett had falsely identified himself as Mr. Smith. The director stated that the evidence provided by Mr. Smith concerning Mr. Garrett's arrest was not conclusive; but he noted that the 1994 drug-related charges against Mr. Smith had been retired.

Mr. Smith appeared and explained that he was trying to turn his life around. He stated that he had not driven for three months. **Commissioner Jennifer Brundige** asked Mr. Smith if he had been working when he was arrested in 2009; Mr. Smith responded that he was not. **Commissioner Brundige** asked when he started working as a driver; he responded that it was in early 2010. **Commissioner Brundige** asked if the company he had been driving with since then was Metro Livery; he responded affirmatively. **Commissioner Ed Whitmore** asked if he was still driving; Mr. Smith responded that Metro Livery had not allowed him to drive for over two months. **Acting Chair Brian Winfrey** asked how long he had been driving without a permit before then; Mr. Smith stated that he had been driving for two years, but in January had been told that he had to have a permit to drive. He explained that it had taken him some time before he had obtained an application form, which he submitted in March; but then the company would not let him drive anymore until he got a permit.

Commissioner Whitmore asked Director McQuiston if companies were responsible for ensuring that their drivers had permits before hiring them. The director responded that the companies were responsible for ensuring that their drivers had permits before letting them drive. **Acting Chair Winfrey** noted that there was another related hearing on the agenda. Legal Advisor Harkey asked Director McQuiston to provide background on the implementation of the applicable ordinance. The director responded that the ordinance had been passed into law in June 2010; but because the department had to hire additional staff, obtain an additional patrol vehicle, purchase permits, and other measures, implementation did not begin until early November 2010. He stated that he had informed all known operators, and that Metro Livery had become licensed in December.

Acting Chair Winfrey asked Mr. Smith if he had been driving between December and the May Commission meeting; Mr. Smith responded that he had stopped driving in April, when the company had informed him that he could not drive until he got a permit. Director McQuiston noted that Mr. Smith had applied in March; he asked Mr. Smith if he had driven after that date. Mr. Smith responded that he had, but stopped when the company told him he could no longer drive.

Acting Chair Winfrey asked if there was a management representative present from Metro Livery. Jeni Williams appeared with attorney Kerry Haymaker. **Acting Chair**

Winfrey explained that he was only asking about Mr. Smith and whether the company would be willing to accept responsibility for his employment. Ms. Williams stated that Mr. Smith had been employed by Metro Livery for almost two years, and that the company would accept responsibility for him. There were no further questions for Mr. Smith.

Reade Herskovitz: Mr. Herskovitz appeared. Director McQuiston reported that Mr. Herskovitz appeared at the May meeting to apply for a permit. The director stated that his application had been forwarded to the Commission because he had been cited for operating a livery vehicle without a permit. He added that because Metro Livery was pending a disciplinary hearing for allowing him and other drivers to operate vehicles without a permit, the Commission had deferred his application to this meeting. The director stated that Mr. Herskovitz had applied for his permit on April 14, and that his background check showed only minor charges.

Mr. Herskovitz stated that he had been hired a week before he applied for the permit, and that he had been told that he was allowed to drive. He stated that after he received a citation he had stopped driving. Inspector Deckard stated that Mr. Herskovitz had paid the fine. **Commissioner Jennifer Brundige** asked Mr. Herskovitz about the permission he had to drive. Mr. Herskovitz stated that the company had told him that he had to get the permit, but that as long as he had completed the drug test he could drive until the permit was approved. **Commissioner Brundige** asked him if he had applied on April 14 because he had been given the citation; Mr. Herskovitz responded that he had not applied before then because he did not have the money for the application. **Commissioner Brundige** asked him if he had read the ordinance; Mr. Herskovitz responded that he had last driven for Metro Livery in 2007, and did not know about the new requirements. He stated that he had not read the ordinance. **Commissioner Jennifer Brundige** asked him if he would read it, so that he would understand the requirements; Mr. Herskovitz responded that he would.

Acting Chair Winfrey asked Ms. Williams if Metro Livery would accept responsibility for Mr. Herskovitz; she responded that the company would, if he received a permit. There were no further questions for Mr. Herskovitz.

DISCIPLINARY HEARING: METRO LIVERY

Director McQuiston reported that Metro Livery was appearing for a disciplinary hearing because it allowed unpermitted drivers to operate its livery vehicles. He stated that Metro Livery had held a certificate of public convenience and necessity to operate a livery service since December 30, 2010. The director noted that Calvin Smith had already admitted to the Commission that he had driven for the company without a permit, and that the Commission had heard from Reade Herskovitz, who had been cited by Inspector Deckard for driving a Metro Livery vehicle without a permit. He added that at its May meeting the Commission had disapproved the application of Johnny Owens, who had been cited twice by Inspector Deckard for operating a Metro Livery vehicle without a permit. The director read section 6.74.100 of the Metro Code:

No person shall operate a passenger vehicle for hire upon the streets and roadways of Davidson County, and no person who owns or controls a passenger vehicle for hire shall permit it to be

so driven, and no passenger vehicle for hire licensed by the Metropolitan Government shall be so driven at any time for hire, unless the driver of such vehicle shall first obtain and shall have then in force a driver's permit issued by the MTLC.

The director stated that the company had violated the Code by allowing the drivers to operate on the streets and roads of Davidson County without the required driver's permits. He noted that the Commission had been provided with copies of the citations issued to the drivers.

Jeni Williams appeared for Metro Livery with attorney Kerry Haymaker. **Acting Chair Brian Winfrey** asked how the company would ensure that no one would operate its vehicles without a proper permit. Mr. Haymaker questioned Ms. Williams. She stated that she had taken steps to ensure that Metro Livery drivers would have the proper permits before driving. Ms. Williams stated that the company had already conducted an internal audit, including pulling all drivers' files to ensure that only permitted drivers were operating vehicles. She explained the process that would be followed, and provided a copy of a checklist that would be followed to ensure compliance. Ms. Williams stated that she had not known that the drivers had been cited until she was informed by Director McQuiston on April 20, and she had initiated steps to check all drivers at that time. She added that she had contacted the director because she had not been aware that the Commission had begun enforcement until then.

Commissioner Jennifer Brundige stated that she appreciated that the company had taken steps as soon as they learned about the citations, but noted that the company had applied for and received its certificate in December. She stated that the application process included a statement that the company understood its responsibilities to comply with the ordinance, including ensuring that its drivers had permits. Ms. Williams stated that she had met with Director McQuiston in early December. She added that the company had applied in December, but that it did not actually receive its certificate until after January, because licensing was actually a process, including getting the company's vehicles inspected. She stated that the permitting of drivers had also been a process; although the company did have one driver permitted before the end of December, that process had been ongoing for many of their applicants for some months. **Commissioner Brundige** asked how many drivers Ms. Williams had to "pull" after her audit; Ms. Williams stated that only the three drivers mentioned were not permitted on April 20. **Commissioner Brundige** clarified that drivers had been operating without permits between December and April; Ms. Williams responded that she had not been told that they could not drive. She stated that she knew that the ordinance had passed in June, but that the process of implementation had taken months for everyone, both for companies and for the Commission staff. Responding to **Acting Chair Winfrey**, Ms. Williams admitted that Mr. Owens and Mr. Herskovitz had driven for Metro Livery without permits.

Inspector Bowling stated that Mr. Owens had been stopped during the CMA Music Festival in June, driving a vehicle insured by Metro Livery. The inspector noted that this had been after Mr. Owens' application for a permit had been disapproved by the Commission. Ms. Williams stated that Mr. Owens drove for another company, but not for Metro Livery. Inspector Bowling stated that he had seen the insurance card for the vehicle, and it clearly showed Metro Livery. He asked Ms. Williams how he could be

driving a vehicle for Metro Livery in Davidson County without a permit. She responded that she did not believe Mr. Owens was violating the ordinance in any way, and stated that Mr. Owens was not employed by Metro Livery. Mr. Haymaker asked Inspector Bowling and Inspector Deckard how many livery drivers they had stopped for not being permitted. Inspector Bowling responded that he had stopped one; Inspector Deckard responded that he had stopped many. Mr. Haymaker asked Inspector Deckard if any of them were from companies other than Metro Livery; the inspector replied that they were. Director McQuiston clarified that Inspector Deckard had issued dozens of citations, primarily to unpermitted livery operators.

Commissioner Brundige asked if Metro Livery operated other companies from its home office; she responded that it did not. **Commissioner Brundige** asked if drivers who were fired had to return insurance cards. Ms. Williams stated that the drivers did not own the vehicles, so the insurance cards stayed with the vehicles. Ms. Williams denied that the vehicle operated by Mr. Owens was a Metro Livery vehicle. **Acting Chair Winfrey** stated that the vehicle was owned by the owner of Metro Livery; Ms. Williams responded that this was correct – the vehicle belonged to Syed Bokhari, but was for a company incorporated in Mt. Juliet. There were no further questions.

Acting Chair Winfrey stated that the Commission would first take up the issue of the company disciplinary hearing, before considering the driver permit applications.

Commissioner Jennifer Brundige moved to find Metro Livery in violation of Metro Code section 6.74.100, and to place the company on probation for one year. **Commissioner Ed Whitmore** seconded, and the motion passed (3-0).

In the matter of Calvin Smith's application, **Commissioner Jennifer Brundige** moved to approve the permit, with the following conditions: that his permit would be restricted to Metro Livery, and he would be placed on probation for one year. **Commissioner Sam Patel** seconded, and the motion passed (3-0).

In the matter of Reade Herskovitz' application, **Commissioner Sam Patel** moved to approve the permit, with the following conditions: that his permit would be restricted to Metro Livery, and he would be placed on probation for one year. **Commissioner Jennifer Brundige** seconded, and the motion passed (3-0).

PUBLIC HEARING: PROPOSED AMENDMENTS TO TAXICAB RULES AND ORDINANCE – TAXI RATES

Director McQuiston stated that the last time meter rates had been changed had been in 2003. He stated that a proposal by taxi driver organizations had been received, to increase taxicab meter rates. He stated that this was in response to rising fuel costs and to respond to Nashville's decline over the years, relative to other cities' taxi meter rates. He added that other cities were also reviewing their meter rates at this time. The director stated that timing was an important factor; because of the legislative calendar. A change in meter rates would require amendment of the taxicabs ordinance, and any bill that would increase rates should be presented to the Metro Council prior to the end of December. He reported that two taxi driver organizations had put forward the proposal, requesting amendment of the ordinance to increase the per-mile rate; from \$2.00/mile to \$2.40/mile, and to increase the waiting time rate; from \$0.30/minute to

\$0.40/minute. He stated that the proposal also requested a change to Commission Rule 28; to allow the \$1.00 charge for additional passengers already allowed for metered trips to be included for “flat fare” trips as well. He indicated that the proposal was included in the Commissioners’ packets.

Director McQuiston provided a comparison chart, indicating that Nashville’s meter rates ranked 21st among 39 cities surveyed by the International Association of Transportation Regulators. He stated that if the proposed increases were to be approved, Nashville would rank 9th, in a tie with Charlotte, NC.

Commissioner Sam Patel asked if the organizations’ request had also included action on the 5% fuel surcharge. Director McQuiston stated that this had not been included. He noted that the Metro Council had given the Commission authority to approve a 5% fuel surcharge for up to six months, in order to enable it to approve a temporary increase while legislation for a longer-term increase was prepared and forwarded for Council consideration. The director noted that there could be pros and cons associated with implementing a temporary rate. He stated that the public hearing might provide a sense of whether that should be considered.

Acting Chair Brian Winfrey opened the hearing for public comment.

Marvin Sutton, assistant company manager, supported the proposal, and asked that the temporary fuel surcharge also be approved.

Fanel Archille, driver, stated that driver costs had increased. He supported the proposal. Shimeles Tafesse, driver, supported the proposal.

Michael Kaiser, driver, supported the proposal, did not support implementing a temporary fuel surcharge. **Commissioner Jennifer Brundige** asked if he was concerned that the companies would increase their lick. Mr. Kaiser responded that it was inevitable that companies would do so anyway, but that drivers could earn more by providing good customer service.

Adugna Denbel, representing the Taxi Driver Alliance organization, supported the proposal, but did not support the temporary fuel surcharge in the interim. He noted that gas was \$1.42 when the last increase went into effect. He suggested increasing the additional passenger charge from \$1.00 to \$2.00.

Johnny White, company owner, supported the proposal. There was some discussion about how an increase would be implemented. **Commissioner Brundige** asked if his company would increase the lick; Mr. White responded that they had no plans to do so at the present time, but might look at that possibility later. Mr. White did not support implementing the 5% fuel surcharge.

Roger Baker, driver, supported the proposal, but suggested that it may be better if it were to be incrementally phased in. He stated that fuel costs had increased so much that it was important to implement the 5% fuel surcharge as soon as possible.

There were no other public comments.

Commissioner Brundige clarified that the proposal asked that the \$1.00 additional passenger charge would only affect the flat fare.

Director McQuiston noted that the waiting time rate was much lower than other cities and was not frequently used, because it could only be charged if the wait was at the request of the customer. He stated that other cities might have lower per-mile rates, but allowed wait time to be charged for traffic congestion.

Commissioner Brundige asked if the proposal had come from one of the taxi driver groups. Director McQuiston responded that he had asked the two taxi driver groups to submit a proposal at this time because the timing for getting any proposal before the

Metro Council made it essential to present it for a Commission public hearing no later than June. He stated that it was important to improve the quality of taxicab vehicles, and that a rate increase would make that a more economically feasible possibility.

Commissioner Brundige moved to approve the recommendation, increasing the per-mile rate from \$2.00/mile to \$2.40/mile, and to increase the wait time rate from \$0.30/minute to \$0.40/minute. **Commissioner Patel** seconded, and the motion passed (3-0).

Commissioner Brundige moved to amend Taxicabs Rule 28, to authorize a \$1.00 per additional passenger charge on flat fare trips. **Commissioner Patel** seconded, and the motion passed (3-0).

Commissioner Brundige moved to defer implementing a 5% fuel surcharge, because it might create confusion for the public. There was no second, and the motion failed. Discussion followed on the issue. **Commissioner Patel** moved to implement the 5% fuel surcharge, with expiration in six months. **Commissioner Ed Whitmore** seconded, and the motion passed (2-1).

TAXICAB DRIVER DISCIPLINARY HEARING: RAMADHAN MOHAMMAD

Director McQuiston reported that this hearing was based on a complaint from Jim Morrissey, manager of the Sheraton Music City Hotel. He provided a copy of the complaint to Commissioners.

Mr. Morrissey appeared. He stated that early in the morning on April 4, Mr. Mohammad had arrived at the hotel with passengers who were flight crew members. He stated that the driver was given a voucher for the fare by the hotel, but then began to yell at employees. He stated that the night manager had submitted a report of the incident, and he provided a copy to Commissioners. Mr. Morrissey stated that the staff night auditor tried to calm Mr. Mohammad, and asked him to come back to be paid in cash, but that Mr. Mohammad had then started to ask the passengers for his payment. He stated that the guests were taken to their rooms, and the night auditor attempted to resolve the matter by calling United Cab, and then paid Mr. Mohammad from petty cash. Mr. Morrissey stated that even after receiving payment Mr. Mohammad continued to verbally abuse hotel employees. **Commissioner Jennifer Brundige** asked Mr. Morrissey if the complaint was based on a report from the night staff person; Mr. Morrissey responded that it was. She asked if the voucher used for the initial payment attempt was an Allied Cab voucher; Mr. Morrissey stated that Mr. Mohammad was asked if he would accept a voucher, but that Mr. Mohammad immediately stated that he wanted to be paid in cash. **Commissioner Brundige** asked how much time had elapsed during the incident. Mr. Morrissey stated that it had taken 15-20 minutes, based on his conversation with the night auditor. He stated that Mr. Mohammad would have been paid much sooner if he had not caused the disruption. **Acting Chair Brian Winfrey** asked where the night auditor was; Mr. Morrissey responded that he was sleeping at home. **Commissioner Ed Whitmore** clarified that Mr. Morrissey had not personally witnessed the incident, and asked if the hotel usually paid with vouchers. Mr. Morrissey stated that the hotel preferred to use vouchers, but if the drivers insisted then they would pay with cash. **Acting Chair Winfrey** stated that there seemed to be something missing in the account of the night auditor, because if the driver had asked for cash there should not have been any reason for an incident. Mr. Morrissey stated that the report of the night auditor indicated that the problem was due to Mr.

Mohammad's behavior in front of guests. **Acting Chair Winfrey** read the night auditor's statement, which indicated that Mr. Mohammad had begun to yell after being offered a voucher, and had then stormed away.

Mr. Mohammad appeared with Rajbir Singh of United Cab and attorney Paul Walwyn. Mr. Walwyn questioned Mr. Mohammad. Mr. Mohammad stated that he had taken six passengers from the airport to the hotel, and upon arrival one of the passengers told him that he could get paid at the hotel desk. Mr. Mohammad stated that when he went to the desk he was offered a voucher. He stated that he told the hotel employee that his company would not accept the voucher, adding that two weeks earlier the hotel had paid him with a similar voucher and he had not been able to convert it to cash. Mr. Mohammad stated that when he told the hotel employee that the voucher was no good, the employee became angry. He stated that the hotel employee did not offer to pay cash at that time, but instead called the company dispatcher. He stated that the dispatcher was new, and did not understand that the voucher was for Allied Cab. Mr. Singh stated that the Allied voucher was based on a contract between Allied Cab and the hotel, and United could not honor it. Mr. Singh noted that United had provided a statement to the Commission staff. Mr. Walwyn asked Mr. Mohammad if he had waited in the hotel to get his payment. Mr. Mohammad stated that he decided to leave without payment, but then was asked by the hotel employee to come back in, and eventually he was paid in cash. Mr. Walwyn asked if he had asked the passengers for payment; Mr. Mohammad stated that one of the pilots had been outside and had overheard his conversation with the hotel employee, but he denied asking her for payment. **Acting Chair Winfrey** asked Mr. Mohammad if the hotel employee yelled at him; Mr. Mohammad answered that he did. **Acting Chair Winfrey** asked Mr. Mohammad if he yelled back at the employee in response; Mr. Mohammad admitted that he did.

Mr. Singh stated that Mr. Mohammad had an excellent record with United Cab. **Commissioner Brundige** asked how long he had been driving with the company; Mr. Singh responded that it had been more than a year. Mr. Mohammad stated that he had been driving a cab for twelve years.

Mr. Morrissey stated that the message to United Cab should be that they needed to ensure that their drivers would behave professionally in dealing with the hotel and guests; and if they did not, he had recourse as a business owner to bar the company from the property. **Acting Chair Winfrey** agreed, but noted it was important that both drivers and hotel employees demonstrate restraint. He stated that because the hotel employee was not present, he could not be questioned; so the facts presented were based on hearsay. Mr. Morrissey stated that he made the decision not to make his employee, who worked nights, appear at the hearing.

Discussion followed. **Commissioner Sam Patel** noted that he was also in the hotel business, but he expressed concern that the hotel eyewitness was not present. **Acting Chair Winfrey** stated that Mr. Mohammad had admitted to yelling in the presence of at least one of the guests, which was a violation of the ordinance. **Commissioner Brundige** stated that it was not clear that the language used was abusive. She added that the absence of the eyewitness accuser opened up concerns about due process. **Commissioner Ed Whitmore** asked if the customer was present when the altercation took place. Mr. Mohammad stated that one of the customers was outside the doors of the lobby, and the others had gone to their rooms. **Commissioner Whitmore** stated that the incident should not have happened; when Mr. Mohammad refused to take the voucher he should have been paid in cash. He noted that eventually he was paid in

cash, but only after waiting. **Commissioner Whitmore** moved to dismiss the charges. **Commissioner Patel** seconded, and the motion passed (3-0).

APPLICATIONS FOR TAXICAB DRIVER PERMIT: LESTER PARRIS

Mr. Parris appeared. Director McQuiston reported that Mr. Parris had applied for an initial permit on April 4. A background check revealed a 2002 guilty plea of reckless driving, which was a lesser charge following an arrest for DUI, and a 2006 DUI conviction. The director stated that Mr. Parris had appeared at the May Commission hearing, but no company management representative had appeared to support his application, so the hearing had been deferred to enable him to find another company.

Mr. Parris appeared. He stated that he did not drink anymore. He stated that United Cab had agreed to support his application. Mr. Singh had departed. **Commissioner Jennifer Brundige** moved to approve the permit, under the following conditions:

- that United Cab provide an affiliation form accepting Mr. Parris as a driver;
- that the permit would be restricted to United Cab;
- that Mr. Parris would be on probation for six months; and
- that Mr. Parris would be required to submit for random alcohol testing, as directed by Director McQuiston.

Commissioner Sam Patel seconded, and the motion passed (3-0).

REQUEST FOR OWNERSHIP CHANGE: VIP TRANSPORT

Director McQuiston stated that Gary Daniel and Roy Huddleston were partners in VIP Transport LLC, a licensed livery service. He stated that Mr. Huddleston wanted to buy out Mr. Daniel's shares, and was requesting approval for the change in company ownership. He provided Commissioners with a copy of the applicable Metro Code Section 6.74.080. He noted that the section authorized collection of a nonrefundable fee in an amount to be established by the Commission, but that the Commission had not yet established the amount of the fee. He suggested that the Commission waive the fee in this case, because the transfer between these owners would not necessitate additional expenses for conducting a background check.

Mr. Daniel appeared. He stated that the Commissioners had already been provided with copies of the notarized agreement between the partners for the transfer.

Commissioner Sam Patel moved to approve the transfer and to waive the fee.

Commissioner Ed Whitmore seconded, and the motion passed (3-0).

CONSIDERATION OF ALCAR MOTION

Director McQuiston stated that a proposal had been submitted by attorney Michael McGovern on behalf of his client ALCAR. Copies were provided to the Commissioners. He provided background information, noting that at their December 2010 meeting the Commission had suspended ALCAR's wrecker license for ninety days for allowing unpermitted drivers to operate the company's wreckers. The director stated that ALCAR had filed an appeal, and was currently operating under a Stay granted by the court, pending a decision on the appeal. He also noted that at a citation hearing in Environmental Court, Mr. McGovern had represented ALCAR driver Jason Swafford,

who had been cited for operating a wrecker without a permit. He stated that at that hearing the referee had dismissed the citation based on Mr. McGovern's argument that Mr. Swafford had not been towing a vehicle at the time he was cited. He stated that his understanding of the motion was that Mr. McGovern was now proposing, based on the dismissal of Mr. Swafford's citation, that the Commission should reduce its discipline of ALCAR, from a ninety days suspension to a ninety days probation. The director stated that the Commission's decision was not based on whether Mr. Swafford had been cited for operating a wrecker without a permit; but was based on several months of testimony that the company had allowed unpermitted individuals to operate wreckers, including ALCAR owner Mr. Carnahan's own admission at the November 2010 meeting that he had allowed unpermitted drivers to operate wreckers at the company. He recommended that the Commission allow the appeal process to work to determine if the Commission's suspension should stand.

Michael McGovern, representing ALCAR owner Alfred Carnahan, appeared. He stated that ALCAR was in the repossession business, and was not for hire. He stated that the company had been in business for nineteen years, and had been properly licensed. He noted that for some years following a number of federal cases, there had been confusion concerning whether the city and the Commission had the authority to license wreckers. He noted that eventually the Supreme Court took up the case and in 2000 had ruled that local governments could license and regulate wreckers, and at that time the Commission resumed enforcement. Mr. McGovern noted that ALCAR had been licensed during that period of confusion, and that because his company was not "for hire", Mr. Carnahan had thought that his drivers were not required to be permitted. Mr. McGovern stated that in 2010 the requirement had come to light when some of Mr. Carnahan's former employees had admitted that they had worked without a permit at ALCAR. He stated that in November 2010 Mr. Carnahan had appeared with one of his drivers, and had tried to explain why he had not required his drivers to be permitted; and at that time was directed to appear for a hearing in December. He stated that in early December one of the ALCAR drivers had been cited by a Commission Inspector for operating a wrecker without a permit, and Mr. Carnahan had also been cited. Mr. McGovern argued that the Commission's reason for imposing the suspension at the December 2010 hearing was based on those citations, which had subsequently been dismissed in Environmental Court. He stated that the decision had been appealed, and that the company was operating under a Stay, with the appeal decision expected in October. Mr. McGovern stated that in light of there having been no violations between November and December, the punishment was unduly harsh, and would cause irrevocable harm to ALCAR. He stated that he was therefore requesting that the Commission rescind its suspension decision, and instead place the company on probation for ninety days. He also noted that acceptance of the proposed Agreed Order would settle all matters under litigation.

Commissioner Jennifer Brundige asked if it was acceptable as a procedural matter to reconsider a motion after the meeting in which the decision was made had been adjourned. Legal Advisor Corey Harkey responded that the matter had been reviewed by the legal department, and it was determined that the Commission could act on the motion if it determined that action was warranted. **Acting Chair Brian Winfrey** stated that the December hearing had been set in response to matters that had nothing to do with citations issued in early December; and he asked Mr. McGovern why he believed that the Commission's would not have come to the same decision. Mr. McGovern

responded that he had not been at the meeting, but that his reading of the transcript caused him to believe that the company would have received probation if it were not for the citations. He added that Mr. Carnahan had never appeared before the Commission before then, and was in full compliance at this point. Inspector Bowling noted that ALCAR driver Jonathan Fuqua's permit had been revoked by the Commission at the May 24, 2011 hearing. Director McQuiston stated that both the Commissioner who made the motion at the December hearing and the Commissioner who seconded that motion were present, and that they would know what they were thinking when they did so. Mr. McGovern asked who they were; Director McQuiston noted that Commissioner Jennifer Brundige had made the motion and Commissioner Brian Winfrey had seconded the motion to suspend. There were no other questions or discussion. **Commissioner Brundige** moved to decline the offer for the Agreed Order. **Commissioner Sam Patel** seconded, and the motion passed (3-0).

HORSE-DRAWN CARRIAGE COMPANY DISCIPLINARY HEARING: SUGAR CREEK CARRIAGE

Director McQuiston reported that this was a hearing concerning a September 18, 2010 incident involving the operation of a carriage downtown without proper approvals. He stated that the number of carriage stands downtown was very limited, which resulted in problems between carriage companies competing for space. He noted that in 2004 the Commission had placed a moratorium on the issuance of more certificates or carriage permits; as a result, the numbers of carriage permits allowed to companies for operating tours from the downtown carriage stands remained at the 2004 levels. He added that in the case of Sugar Creek Carriage that maximum number of carriages was four. The director stated that companies had been allowed to receive additional carriage permits to operate elsewhere, but these additional carriages could only be used for special events downtown that did not involve the use of the carriage stands, such as weddings and parades at other downtown locations.

The director stated that on September 16, 2010 Sugar Creek owner Johnny Smith had contacted him about operating a fifth carriage for two weddings downtown on Saturday, September 18, beginning at 5:00pm and ending at 11:00 pm. He stated that later reports from witnesses indicated that Mr. Smith had not limited his carriage to the weddings, but had also picked up other tours. He stated that he had checked with Diane Marshal at the Traffic & Parking Commission to determine if additional permissions had been given to Mr. Smith, but she reported that she had not given approval.

Inspector Milton Bowling reported that he had received a copy of Mr. Smith's email to Director McQuiston requesting to use the fifth carriage for two weddings, and had been suspicious that it was requesting a carriage for six hours to support two weddings. He stated that he had requested that Mr. Smith provide copies of his contracts for the fifth carriage's operations on September 18; and when these were produced they showed that Sugar Creek had not limited the use of the fifth carriage to the authorized two weddings, but had also used it for a birthday celebration and an anniversary, both of which were picked up on Fourth Avenue. The documents provided by Sugar Creek showed that the wedding support contracts did not start until 10:15 p.m.

Mr. Smith appeared with attorney Russ Willis. Mr. Smith acknowledged that he had used the carriage for the other events, but stated that he had told the director that he wanted to do so. Director McQuiston denied that he had given permission, adding that

he had explained to Mr. Smith that he also needed to get approval from the Traffic and Parking Commission to operate anywhere downtown, except for the approved carriage tours route and stands. He informed Commissioners that he would be presenting a proposal for a new carriage rule to specifically require that carriage operators present documentation signed by the appropriate government authority to prove that they had permission to operate outside of the normal tour route and hours.

Following discussion, **Commissioner Jennifer Brundige** moved to find that Sugar Creek Carriage had violated Section 12.54.050 of the Metro Code, and to place the company on probation for one year. **Commissioner Ed Whitmore** seconded, and the motion passed (3-0).

Acting Chair Brian Winfrey noted that an additional incident, related to a charge that Sugar Creek Carriage had parked a limousine in a carriage stand, would not be heard. Mr. Willis asked if this charge was being withdrawn or dismissed. Director McQuiston responded that it appeared that there might not be a specific Code section violation; but that if further investigation indicated that a violation had occurred, then it might be pursued as a disciplinary matter.

OTHER BUSINESS:

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

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair