

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

Minutes of

October 27, 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 Vice Chair Duane McGray and Commissioners Jennifer Brundige, Mary Griffin, Tom Turner, Quenton White and Ed Whitmore (6). Also attending were Metro Legal advisors Christy Feldman and Corey Harkey; Commission staff members Milton Bowling and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

Vice Chair Duane McGray called the meeting to order. He asked those present to observe a moment of silence in memory of wrecker driver Eddy McCreery, who was struck and killed by a motorist while recovering a vehicle on October 22, 2009. He then led the Pledge of Allegiance and read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

PUBLIC HEARING: PROPOSED AMENDMENT OF WRECKER ORDINANCE SECTION 6.80.020

Director McQuiston presented a staff recommendation for an amendment to the Metropolitan Code, Section 6.80.020. He stated that this section of the Wrecker and Towing Services ordinance required that towing companies must be licensed to operate in Davidson County, but that it provided exception for companies that were located outside of Davidson County if they only picked up or delivered towed vehicles in the county five times or less in a 30-day period. He stated that the intent of the proposed amendment would be to further restrict unlicensed companies or drivers from operating in the county; specifically, to prohibit persons whose licenses or permits had been revoked by the Commission from circumventing that revocation by simply relocating their businesses outside of Davidson County, but continuing to operate within the county. He stated that the proposed wording of the amendment had been posted on the Commission web site, as follows (proposed additional wording shown in bold print):

Section 6.80.020 Purpose and intent of provisions

"It is declared to be the purpose and intent of this chapter that all wreckers, towing services and wrecker services doing business within the area of the metropolitan government be licensed and required to have adequate insurance coverage in force as set out in this chapter for the protection and welfare of the public. The provisions of this chapter shall not apply to a wrecker service located outside the area of the metropolitan government and which occasionally passes through or delivers vehicles within the area of the metropolitan government, unless such wrecker service picks up or delivers such vehicles within the area of the metropolitan government more than five times within any thirty-day period; **or unless the license or permit of such wrecker service, wrecker vehicle or wrecker driver has been revoked by the metropolitan transportation licensing commission.**"

Vice Chair Duane McGray invited public comment. There was none, and the public hearing was closed. Director McQuiston noted that the words "wrecker vehicle" should be removed from the staff recommendation. Following discussion, **Commissioner Tom Turner** moved to approve the proposed amendment, excluding the words "wrecker vehicle". **Commissioner Mary Griffin** seconded, and the motion passed (5-0).

PUBLIC HEARING: PROPOSED AMENDMENT OF WRECKER ORDINANCE SECTION 6.80.170

Director McQuiston presented a staff recommendation for an amendment to the Metropolitan Code, Section 6.80.170. He stated that this section of the Wrecker and Towing Services ordinance required that towing companies must notify the Commission before beginning to perform nonconsent towing. He stated that the intent of this

amendment was to ensure that anyone desiring to perform nonconsent towing, including those who may already have “general” wrecker licenses, must be approved by the Commission in advance. He explained that the change was necessary to enable the Commission to ensure that all requirements for nonconsent towing – including insurance, storage lots, awareness of laws and rates restrictions, and appropriate background/experience of the company – could be verified and considered by the Commission before approval. He added that all of these issues were legitimate concerns to ensure protection of the public. He stated that the proposed wording of the amendment had been posted on the Commission web site, as follows (proposed deletions, with additional wording shown in bold print):

Section 6.80.170 Nonconsent tows

~~“No one authorized to operate a wrecker service shall make nonconsent tows until written notification of intent to make nonconsent tows or engage in nonconsent towing has been on file with the commission for at least seventy-two hours.~~
without prior approval from the metropolitan transportation licensing commission.”

Vice Chair Duane McGray invited public comment. There was none, and the public hearing was closed. Following discussion, **Commissioner Tom Turner** moved to approve the proposed amendment, as presented. **Commissioner Quenton White** seconded, and the motion passed (5-0).

PUBLIC HEARING: PROPOSED AMENDMENT OF COMMISSION (WRECKERS)
RULE 3

Director McQuiston presented a staff recommendation for an amendment to Rule 3 of the *Rules and Procedures (Wreckers) of the Metropolitan Transportation Licensing Commission*. He stated that individuals whose applications for wrecker driver permits had been disapproved by the Commission were able to re-apply immediately following that disapproval, and that this was in contrast to the procedures required for applicants for taxi driver permits. He recommended that the Rule be changed to establish consistency in the way the Commission would handle re-applications for driver permits, and to reduce unnecessary duplication of hearings before the Commission. . He stated that the proposed wording of the amendment had been posted on the Commission web site, as follows (proposed additional wording shown in bold print):

Rule 3 – Application for Wrecker Driver Permits

“Each application for a wrecker driver permit shall be signed by the applicant and shall be duly attested by a notary public. The applicant must appear in person with a valid Tennessee driver’s license to apply for a license. All appropriate fees must be paid in advance. Applicants must complete a criminal background check. Applicants with a record of convictions may be required to appear for a Commission hearing to determine if a permit will be approved. A management representative of the employing wrecker company must also appear at the hearing. **Upon denial of an application for a wrecker driver permit, no new application may be submitted for consideration for a period of three months.**”

Vice Chair Duane McGray invited public comment. There was none, and the public hearing was closed. Following discussion, **Commissioner Jennifer Brundige** moved to approve the proposed amendment, as presented. **Commissioner Mary Griffin** seconded, and the motion passed (5-0).

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

Director McQuiston stated that this amendment to the Commission Rule on nonconsent towing from private property had been proposed by some of the wrecker companies, and was not a staff recommendation. He stated that this change had been requested, in order to allow them to again patrol parking lots, and that they would be presenting their case at this hearing. The director stated that Rule 24 had been modified by the Commission in April 2008 to prohibit this activity. He noted that the companies had submitted a new proposal to allow the practice, but detailing specific procedures on how it must be done.

He read the proposed amendment, and noted that it 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."

Vice Chair Duane McGray invited individuals who desired to be heard to appear before the Commission.

Randy Bailey, representing Bailey's Wrecker Service, supported the proposal. He stated that his company had been following the guidelines as presented in the proposal even before the Rule had been changed in April 2008, except that the company had not required a written permission as defined in the proposed section (a). He stated that he had no problems with the proposal; but he questioned whether the ten days waiting period was appropriate in all circumstances – especially when it could involve safety. He stated that the property manager would have to make the call. He stated that this service was needed by apartment complexes. Commissioners asked questions for clarification. Director McQuiston stated that apartment complex managers had authority to have vehicles towed immediately; but he noted that if this rule was changed and they chose instead to rely on wrecker companies to patrol and tag the vehicles, then the ten days waiting period before towing would apply. He stated that they should not give authority to the wrecker company to make the decision about towing. Mr. Bailey stated that if there was a safety-related concern about a specific vehicle, then it may be more appropriate for the vehicle to be

reported to the property manager, but not tagged. The director pointed out that this could present an increased potential for problems involving solicitation to tow by wrecker companies. Mr. Bailey explained that apartment complex managers did not have resources to identify abandoned vehicles. Director McQuiston stated that there had been a few concerns about this raised to the staff by apartment complex managers. He added that the proposal did not limit the process to apartment complexes.

Larry Boggs, representing West Nashville Wrecker Service, voiced support for the proposal. He stated that his company also placed signs on the properties. He stated that his understanding had been that tagged vehicles could be towed at any time, if directed by the apartment complex manager.

Cynthia Black, employee at West Nashville Wrecker Service, supported the amendment. She questioned section (d), stating that in some cases the apartment complex manager was not on the property. She stated that she had received numerous calls from apartment complex managers, requesting help to patrol their properties; but that she had to inform them that Rule 24 did not allow it.

Amy Eidem, representing Crye-Leike management, supported the proposal. She stated that she managed rental properties. She stated that she would not be present at the properties, and sections (d) and (f) would be concerns to her. Director McQuiston explained that the Tennessee Code and the Metro Code sections related to towing clearly protected the rights of vehicle owners. He noted that there would always be some tension between the interests of towing companies or private property owners and the interests of vehicle owners; but that it was necessary to keep consistency between the law and the Commission Rules.

Ray Novak stated that he was on the board of Bristol on Broadway. He stated that he opposed any proposal that would contribute to predatory towing. He stated that the private property owners at the parking lots already had authority to have vehicles towed, and that solicitation or manipulation of property managers by tow truck drivers and towing employees seeking contracts was already a problem, and would increase with approval of this amendment.

There was no other public comment, and the public hearing was closed.

Vice Chair McGray asked Director McQuiston if the staff had any comments or recommendations concerning the proposal. The director stated that nonconsent towing from private property continued to represent the most difficult enforcement problem for the staff. He addressed the question about a ten day waiting period, noting that property owners already had the option to direct immediate towing of abandoned or illegally parked vehicles from their properties; the ten day waiting period would preclude delegation of that decision to towing companies and was critical to preventing abuse. He added that if the Commission did approve the proposal, and there were to be any problems resulting from the loosening of the restrictions, then he would recommend a return to the current Rule.

Commissioner Mary Griffin asked him if the staff had the resources it would need to enforce the amended Rule as proposed. The director responded that the staff did not have sufficient enforcement resources already. He stated that the current prohibition made enforcement easier, because it was a prohibition; but that the ten day waiting period and documentation requirements required in the proposed amendment would allow the staff to investigate and build a case if there were to be a complaint or reported violation. He pointed out that this was a recommendation from the industry, and stated that the staff could not support anything more generous than the proposal. **Vice Chair McGray** stated that section (d) could be a problem for many property managers, but that anything less restrictive would create a much larger problem for vehicle owners. Discussion followed about whether the proposal should be limited to apartment complex properties, and whether it was necessary or appropriate for apartment complexes and property managers to look to wrecker companies to provide security services.

Commissioner Quenton White moved to table the proposal. **Commissioner Tom Turner** seconded, and the motion passed (3-0, with 2 abstentions).

TAXICAB DRIVER DISCIPLINARY HEARINGS:

Fikru Wordofa: Director McQuiston stated that a complaint had been received from Mr. Novak on February 9, 2009, alleging overcharging and coercion by a taxi driver, later identified as Mr. Wordofa. The director stated that, as part of the investigation, Mr. Wordofa was to have submitted a statement to Inspector Lawhorn by February 15; however, no response was submitted. The director stated that as a result, when Mr. Wordofa applied to renew his permit in September, he was not issued a permit, but was

notified to appear for this disciplinary hearing.

Mr. Novak appeared. He stated that he and his date had been picked up by Mr. Wordofa. He stated that during the trip he had asked the driver to stop at a convenience store, where he got out to make a purchase; when he returned his date was crying because the driver had told her that he would charge them \$3 for the waiting time. He stated that Mr. Wordofa had told him that he charged Vanderbilt students \$5 to stop; an argument ensued, and he had told the driver to take him to the police. He stated that eventually Mr. Wordofa had stopped the taxi on a bridge and told them to get out. He stated that he refused, and when they got to their destination, he had complained to the taxicab company and to the Commission. Director McQuiston noted that a copy of Mr. Novak's written complaint had been provided to Commissioners.

Mr. Wordofa appeared with Johnny White, co-owner of American Music City Taxi. Mr. Wordofa had no questions for Mr. Novak, and the complainant was dismissed. Mr. Wordofa stated that Mr. Novak had been drunk when he got into his cab outside a night club, and had told him to stop at a store. He stated that he had set the meter on waiting time when Mr. Novak went into the store to buy beer, but that when Mr. Novak returned to the cab he had refused to pay the meter. He stated that Mr. Novak had told him that he was a police officer, and had cussed at him. He stated that when he dropped him off at his destination, Mr. Novak had not paid him.

Jim Burrow, manager of Taxi USA of TN, stated that when they got the complaint from Mr. Novak, he had dismissed the driver. Director McQuiston asked if the company had been able to determine if the waiting time charge had been appropriate. Mr. Burrow stated that the company could determine if the meter charge for the distance traveled was appropriate, but that it was not possible to check the waiting time charge. Director McQuiston explained to Commissioners that a digital dispatch system such as that used by Checker Cab could track such charges. He noted that a driver was permitted to charge for waiting time if the wait was due to a passenger's request, and that such charges were determined by the driver setting the meter to waiting time. **Commissioner Quenton White** asked Mr. Burrow if the company had conducted an investigation when they received the complaint. Mr. Burrow responded that he had talked with Mr. Wordofa, and was not satisfied with the driver's story; so he had terminated him. He stated that this decision had not been based on a question of the fare charges, but because Mr. Wordofa had tried to put passengers out on the bridge.

Vice Chair Duane McGray asked Mr. Novak if his companion had provided a statement or was able to testify. Mr. Novak responded that they no longer saw each other. He stated that he had stopped at the convenience store to buy beer, but that he did not believe it could have taken him ten minutes. He denied being drunk or belligerent. He denied impersonating a police officer. **Commissioner Ed Whitmore** asked Mr. Novak why his date had been crying over the possibility that he might have to pay a \$3 waiting time charge; Mr. Novak stated that he was not sure. **Commissioner White** asked Mr. Novak about how much he had to drink before getting in the cab, and about his beer purchase. Mr. Novak stated that he had reported the driver to Mr. Burrow and to the staff at Vanderbilt because of Mr. Wordofa's comment about charging students.

Commissioner Whitmore asked Mr. Wordofa if he had tried to put Mr. Novak out on the bridge. Mr. Wordofa stated that he had tried to pull over when he saw a police car, but that Mr. Novak had then told him that he would pay; later he did not pay anything.

Mr. White stated that he had not experienced any problems with Mr. Wordofa, other than occasional direction-finding difficulties, since he came to the company in February.

Mr. Novak stated that he did not want Mr. Wordofa to lose his permit.

Commissioner White expressed concern that the testimony did not support a guilty finding, but stated that it was appropriate to review Mr. Wordofa's performance again in six months. He moved to approve a probationary permit for a period of six months.

Commissioner Mary Griffin seconded, and the motion passed (5-0). **Commissioner Griffin** admonished Mr. Wordofa for not providing the written response to the Commission, as directed.

Commissioner Quenton White departed.

James Lee: Inspector Bowling stated that on September 30, 2008 he had stopped Mr. Lee's cab as a compliance check, to determine if the Diamond Cab radio dispatch system was operational. He explained that both inspectors had been asked by the director to check to verify if Mr. Gillespie had complied with the requirement to have an operational radio dispatch service. He stated that he was also responding to a telephone call received by a visitor from California; the person had reported that he had lost his wallet while in Nashville, and had been trying unsuccessfully to call Diamond Cab to learn if it had been

found. The inspector stated that he had also asked Mr. Lee if he had a daily manifest; Mr. Lee told him he didn't have one, so he was issued a citation. Inspector Bowling stated that when Mr. Lee appeared in Environmental Court he was found guilty; he appealed, and on January 29, 2009 he told the judge that he was in compliance, and had 12 months of daily manifests. The inspector stated that after consulting with the prosecutor, he had sent a certified letter to Mr. Lee, requesting that Mr. Lee furnish the daily manifests for the previous twelve months, as required under Section 6.72.230 of the Metro Code. He stated that the letter was refused by Mr. Lee, so on April 14, 2009 Inspector Lawhorn had hand-delivered the letter to Mr. Lee. Inspector Bowling stated that as of this date, Mr. Lee had not yet provided those manifests. He also noted that, in his application to renew his permit in September 2009, Mr. Lee had stated that he had no convictions, and so had failed to disclose his citation and the guilty verdict.

Mr. Lee appeared with Johnny White, co-owner of American Music City Taxi. Mr. Lee stated that he was fined in court, and the case was dismissed. **Vice Chair Duane McGray** stated that a guilty finding and a fine did not mean dismissal. **Commissioner Mary Griffin** asked Mr. Lee why he had not responded and provided the manifests. Mr. Lee stated that he did not, because he did not go to court for that. He stated that Inspector Bowling should not be able to pick and choose what he wanted. **Commissioner Griffin** told Mr. Lee that he did not have the freedom to decide not to provide documents required by the Commission. **Vice Chair McGray** noted that in his application Mr. Lee had stated that he had no convictions; Mr. Lee responded that he stated that he had no traffic violations. **Vice Chair McGray** stated that the application did not ask about traffic violations; but that it specifically required that all arrests, for any violations of any laws, be disclosed. Mr. Lee apologized, and stated that he had misunderstood. **Vice Chair McGray** noted that Section 6.72.230 required daily manifests, which he had not provided. Mr. Lee stated that he had daily manifests, even though previously Diamond Cab had not provided him copies of the manifest forms. Director McQuiston clarified that the ordinance stated that it was the responsibility of Mr. Lee, as the vehicle's owner, to provide copies of manifest forms. Mr. Lee stated that because Diamond Cab did not really have a dispatch, each vehicle owner had his own manifests. **Commissioner Jennifer Brundige** clarified that the Commission had asked for the daily manifests for the year 2008 in April of 2009. She asked when Mr. Lee had begun to work for American Music City Taxi. Director McQuiston stated that he had transferred his permit to the company on January 15, 2009. **Commissioner Griffin** expressed concern that Mr. Lee had refused to provide records as directed by the Commission over six months ago, and moved to suspend his taxi driver permit for a period of 180 days. **Commissioner Brundige** seconded, and the motion passed (4-0). **Commissioner Griffin** admonished Mr. White, stating that it was not the Commission's responsibility to provide him with information about whether drivers who came to work for him from other companies had been the subject of complaints or investigations by the Commission; his drivers should be keeping him informed about this. Mr. White stated that he agreed.

OTHER BUSINESS:

Update on legislation:

Director McQuiston reported that Chapter 6.81 – Booting, had been signed into law, giving the Commission responsibility to regulate a new industry. He stated that the Commission had not been involved in the preparation of this legislation, and the staff was not prepared to implement it.

The director stated that the bill to regulate Other Passenger Vehicles For Hire, approved by the Commission on August 25, was still in the Legal Department.

Safety and Incident Management Conference: Director McQuiston reported that the TN Department of Safety and TDOT were be hosting the annual Tennessee Highway Safety and Incident Management Conference during this week, and that Commission staff members and many of the emergency wrecker companies would be participating.

November Commission Meeting: The director reminded Commissioners that the November meeting would be held on November 17, and would include the annual taxicabs public hearing. He stated that the meeting would also include a public hearing to establish a Commission Rule on a minimum livery rate.

Vice Chair Duane McGray stated that there was growing concern in the emergency and incident response communities about potential dangers associated with the use of flashing lights at accident scenes at night, because they tend to draw motorists toward them.

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

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair