

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

Minutes of

August 28, 2007

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 Helen Rogers, and Commissioners Jennifer Brundige, Duane McGray, Tom Turner, and James Utley (5). Also attending were Metro Legal advisor Jon Michael; Commission staff members Milton Bowling, Walter Lawhorn and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

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

The minutes of the July 24, 2007 meeting were unanimously approved.

PUBLIC HEARING: AMENDMENT TO TAXICAB RULES

Director McQuiston stated that a bill to raise tax revenues to support the development of a new convention center had been passed into law on August 9. Included in the law was the establishment of a privilege tax of two dollars on every taxicab departure from the airport. He stated that this tax was to go into effect on September 1. The director proposed amendments to Taxicab Rules 23 and 40 to increase the flat fare from \$22.00 to \$25.00; and to increase the meter activation rate for departures from the airport to non-flat fare destinations from \$4.50 to \$7.00. Following discussion, **Vice Chair Helen Rogers** called the public hearing to order and asked if anyone wanted to speak concerning the proposal.

Inspector Lawhorn explained that the process for resetting meters and replacing rate card decals in all taxicabs would take some time. Arrangements had already been made at the meter shops to begin as soon as possible, pending approval. **Vice Chair Rogers** asked how long it had been since the last general rate increase. Director McQuiston responded that the rates were established in the ordinance, and those had not been changed for many years. He stated that Nashville's taxi rates had been among the highest in the country; as a result, no increases had been recommended earlier, with the exception of 2005 increases to the flat fare related to the advent of the airport tax. He noted that the proposed increases would make Nashville's rate for a five-mile trip from the airport higher than any other city's rate.

Johnny White, co-owner of American Music City Taxi, asked for clarification on the law. Director McQuiston responded that the law established the tax, but that drivers would not be able to collect the money from their passengers without the proposed Rules changes. Mr. White noted that hotels and other businesses affected by the law could pass the tax on to their customers without additional government permission.

There were no other public comments.

Following additional discussion, **Commissioner Duane McGray** moved to amend Taxicabs Rule 23, to increase the flat fare rate from \$22 to \$25. **Commissioner James Utley** seconded, and the motion was passed (4-0).

Commissioner Duane McGray moved to amend Taxicabs Rule 40, to increase the meter activation rate for departures from the airport from \$4.50 to \$7.00. **Commissioner James Utley** seconded, and the motion was passed (4-0).

PUBLIC HEARING: TAXICAB DISPATCHING REQUIREMENTS

Director McQuiston noted that at its July 24 meeting the Commission had reviewed current requirements related to dispatching, and had heard from the taxi industry about their existing procedures and technologies related to dispatching. He stated that there had been a number of recent changes within the industry, and that the show cause hearing for United Cab in May had raised concerns about the abilities of companies to exercise control over their permitted vehicles and drivers. The director stated that he had held a follow-up meeting with certificate holders on August 9 to determine if any specific changes to current requirements were necessary. He stated that the only recommendation from that meeting was that the Commission should enforce the existing requirements. He noted that Diamond Taxi did not attend either of these meetings, but was already scheduled to appear before the Commission for a Show Cause Hearing because they were out of compliance. He added that Taxi USA of Tennessee operated its dispatch service from a call center in Salt Lake City, and that the company would present a proposal to the Commission. **Vice Chair Helen Rogers** asked if Diamond Taxi was to appear. Director McQuiston responded that he had been notified that Mr. Gillespie had been in the hospital, and had requested a deferral until the September meeting. **Vice Chair Rogers** invited Taxi USA of Tennessee to appear.

Gif Thornton, attorney representing Taxi USA, appeared before the Commission with members of the company's management team. He presented a written proposal to amend Section 6.72.220 (B) of the Metropolitan Code:

Holders of certificates of public convenience and necessity shall maintain a fixed, central place of business within the metropolitan government area and keep the same open twenty-four hours a day for the purpose of receiving calls and dispatching cabs.

The proposed revision would amend the Section to read:

Holders of certificates of public convenience and necessity shall maintain a fixed, central place of business within the metropolitan government area. They shall also provide service twenty-four hours a day for the purpose of receiving calls and dispatching cabs.

General manager Jim Church outlined steps taken by the company to improve service to customers and provide more business to drivers; he noted that a key to those improvements was the conversion to a computerized dispatch operation in January 2007. Mr. Thornton assured the Commission that the company would comply with the requirements, but requested consideration of the proposed new section. **Vice Chair Rogers** noted that the Commission could not amend the ordinance. **Commissioner James Utley** added that this could only be amended by the Metropolitan Council. Mr. Thornton asked that the Commission recommend such an amendment. **Commissioner Duane McGray** noted that his concerns raised at the July hearing about the ability of public safety personnel to obtain information in a timely manner had been adequately addressed.

There was no public comment. **Commissioner McGray** noted that it was not the intention of this proposal to require that other taxi companies convert to a computerized dispatching system.

Commissioner Tom Turner moved to approve the proposed changes. **Commissioner McGray** seconded, and the motion passed (3-0, **Commissioner Jennifer Brundige** abstaining).

WRECKER DRIVER APPLICATION: MICHAEL WILSON

Michael Wilson appeared before the Commission. **Vice Chair Helen Rogers** noted that Mr. Wilson had filed an application for a wrecker driver permit. She noted that it was incomplete, in that it appeared that he had not disclosed arrests and convictions. Mr. Wilson stated that he had been in trouble years ago as a teenager. **Vice Chair Rogers** referred to his background check and cited a number of recent arrests. Mr. Wilson stated that there were a number of arrests on his record that were incorrect. **Vice Chair Rogers** noted that he had a number of arrests for driving on a revoked license. Mr. Wilson stated that these were only misdemeanors, and that he had to drive to work. He stated that he had not been able to pay the fines for a long time. **Commissioner Duane McGray** read the disclosure statement from Mr. Wilson's application, and asked him why he had signed a statement that he had no arrests or convictions. Mr. Wilson responded that he hadn't understood, and that he had had no felonies for over ten years. **Vice Chair Rogers** asked Mr. Wilson what type of drivers license he now held; he answered that he had a Class D license. Director McQuiston noted that an F endorsement was required for a permit. Mr. Wilson stated that he was waiting for the Commission's decision before he went to get the endorsement. **Commissioner McGray** moved to disapprove Mr. Wilson's application. **Commissioner Tom Turner** seconded, and the motion passed (4-0).

TAXICAB DRIVER DISCIPLINARY HEARING: LARRY TIDWELL

Larry Tidwell did not appear. Director McQuiston stated that on July 24, he had learned that a taxicab involved in a hit and run was at the Metro Impound Lot. The vehicle was identified as American Music City Taxi #43, owned by Mr. Tidwell. Staff contacted American Music City, and requested a copy of the accident report. On July 26, American Music City faxed a copy of the accident report, which indicated that Mr. Tidwell may have been charged with the hit and run. A check on his arrest history revealed a November 3, 2005 conviction for Aggravated Assault - Deadly Weapon – Intentional (FELONY). Director McQuiston stated that he had notified companies that Mr. Tidwell's taxi driver permit was suspended, pending a final decision at this disciplinary hearing. **Commissioner Tom Turner** moved to revoke Mr. Tidwell's taxi driver permit. **Commissioner James Utley** seconded, and the motion passed (4-0).

WRECKER COMPANY DISCIPLINARY HEARING: WEST NASHVILLE WRECKER SERVICE

Inspector Bowling informed Commissioners that a complaint had been received on July 30, 2007 from Donald Green, whose vehicle had been towed by West Nashville Wrecker Service

from the Baker Town apartment complex. Mr. Green had submitted a complaint that he was charged \$75 for the tow, ten dollars over the amount authorized under Section 6.80.550(H) of the wrecker ordinance:

Any towing and storage firm engaged in the business of non-consent towing shall not charge the owner of any towed vehicle or person [sic] property in excess of sixty-five dollars for the removal of a vehicle or personal property or in excess of fifteen dollars per day for storage fees. The fee of sixty-five dollars shall be all-inclusive; no additional fees may be charged for using dollies, trailers, lifts, slim jims or any other equipment or service, or for mileage.

Inspector Bowling stated that Mr. Green had also charged that the tow was illegal.

Mr. Green appeared before the Commission and explained the circumstances of the tow. He had loaned the vehicle to a friend who lived at the apartment complex. The next day the friend noted that the vehicle was gone, and called Mr. Green. Mr. Green stated that he had called West Nashville Wrecker Service to ask if they had towed the vehicle. He stated that he was initially told that they did not have the vehicle; about an hour later they said that they did have it. Mr. Green stated that he had gone to pick up the vehicle, and that initially the bill included storage; he argued that he had called the company less than an hour before and they had told him they did not have the vehicle, so they should not charge for storage if they had not held the vehicle over two hours. He stated that he had also questioned the towing charge of seventy-five dollars, and that the employee had told him "Well, that's a gray area, and our attorney assured us that we can get away with it." He stated that he had paid the seventy-five dollars. He stated that he had talked to the management at the Baker Town apartment complex, and that he had been told that the complex had a company that sweeps the parking lot, and any cars without stickers are towed.

Inspector Bowling stated that, in order to conduct his investigation, on July 30 he had sent the manager of West Nashville Wrecker Service a letter requesting copies of records related to this tow and other nonconsent tows from other apartment complexes. He stated that on August 3 the Commission received a letter from attorney Michael McGovern, representing west Nashville Wrecker Service, denying the request for documents. A copy of this letter was provided to the Commissioners. He added that copies of records were not provided to the Commission until sixteen days later, and these were still under review. Director McQuestion stated that the ordinance was specific; that companies were required to keep records, and to provide them for inspection by the commission at any time. He noted that the records were not provided until after West Nashville Wrecker Service had been advised that they must appear for this disciplinary hearing.

Larry Boggs, general manager of West Nashville Wrecker Service appeared, with Mr. McGovern as counsel. Mr. McGovern asked if the Commissioners had received a letter he had mailed; **Vice Chair Helen Rogers** stated that they had all received it. Mr. McGovern stated that Mr. Green's vehicle had been towed at the direct request of the apartment complex property manager, and that a copy of the tow slip provided to the commission staff on August 3 showed that it had been signed by the property manager. He stated that Mr. Green had been rude and angry when he came to West Nashville Wrecker Service, and that the company had been unable to locate his vehicle when he first called because he had provided the wrong VIN information. Mr. McGovern stated that Inspector Bowling's request for information had been very broad, beyond the scope of Mr. Green's complaint. He stated that the additional information required did not relate to Mr. Green's complaint, and would have required a lot of staff time. He also pointed out that information on all contracts was proprietary information, and that no company would want to have its list of customers

available for anyone to access. He added that, before receiving the notice for the disciplinary hearing, the company had received a second letter from Inspector Bowling indicating that the investigation had expanded beyond Mr. Green's complaint, and that the decision had been made to provide the documents before the notice for the disciplinary hearing was received.

Mr. McGovern argued that there were conflicting provisions in the ordinance as to the rate which may be charged. He pointed out that he had addressed this issue in his letter to Commissioners. He noted that this appeared to be a matter of statutory interpretation, and that he had requested an opinion from the Metro Department of Law months before, but had been turned down. He requested that the Commission clarify this, restating his belief that the company had not overcharged. Referring to the letter he had provided, he stated that Section 6.80.550(A) of the wrecker ordinance, authorizing a rate of seventy-five dollars for vehicles towed to the company lot, should apply. He noted that Section 6.80.550(H), which states that the rate should be sixty-five dollars for any nonconsent tow appeared to be an anomaly; adding that he had researched the legislative history of that section, and it did not appear to have any clear explanation. The two provisions, he argued, were not reconcilable. A conflict in the ordinance, then, should give the towing company the benefit of the doubt. He stated that the Commission had authority to interpret the Code, and asked that guidance be provided. He added that West Nashville Wrecker Service would abide by that decision.

Vice Chair Rogers stated that the Commission expected cooperation and compliance whenever it requested records.

Director McQuiston commented on the request for additional information that was not part of Mr. Green's complaint. He stated that the Commission would not limit its investigations to only those cases involving a consumer complaint. He also explained that a major change to the Police General Order on Impoundment in 2005 had significantly affected tows by the emergency zone wrecker services, including West Nashville Wrecker Service. Prior to that, almost all vehicles impounded by the police were towed to the Metro Impound Lot, and rates were differentiated under Section 6.80.550(A). Thus, this Section had been understood to refer to police-directed towing, while Section H related to private property tows. With the implementation of the new General Order, in part designed to ensure the financial viability of the Police Impound Lot, only those vehicles involved in serious crimes were to be taken to the Impound Lot; all others were to be towed to the company lots. He concluded that, if there was confusion about the sections of the ordinance that applied to towing rates, then this was a function of the change in Police impoundment policy.

John Graham, owner of Chapman's Wrecker Service, asked to speak as a witness. **Vice Chair Rogers** invited him to make a statement. Mr. Graham stated that he had accompanied Mr. Green, at the complainant's request, to West Nashville Wrecker Service. Mr. Graham stated that the employee at West Nashville Wrecker Service had humiliated Mr. Green when he appeared to pick up his vehicle, and that Mr. Green had not been rude. He added that West Nashville Wrecker Service had signs posted in the office which indicated that video cameras were taping; and he noted that if Mr. Green had been rude and offensive, then West Nashville would have brought tapes to prove that. **Commissioner Tom Turner** asked if the employee had been the same one who had charged for the storage; Mr. Graham responded that it was not the same person; that the employee who was offensive had told the other employee not to charge for storage.

Mark Wayman, owner of Able Towing, appeared. He stated that he had no part in this complaint, but he noted that Director McQuiston had provided information on his insurance company to a customer who had complained about damage to his car. He also alleged that Inspector Bowling had slandered his company, resulting in loss of business. He argued in support of Mr. McGovern, that no company should have to provide information on their

contracts to the Commission. He also alleged that West Nashville Wrecker Service was cruising lots downtown.

Commissioner Duane McGray noted that, perceptions aside, the ordinance was specific. He read from Section 6.80.185(A), noting that “the licensee shall make the vehicle tow service records available for inspection by the commission or any designated representative at any time.” Mr. McGovern agreed, and stated that this would not happen again.

Vice Chair Rogers stated that there appeared to be two questions before the Commission. First was to determine if there had been a violation. Second was to determine whether the Commission wanted to look at the statute and provide a formal interpretation. She noted that the latter would require some advice and assistance from the legal department, and with the agreement of the Commissioners, she directed that this question be tabled until the next meeting.

Director McQuiston asked that the Commission consider the two charges separately; one dealing with overcharging for the tow, and the other dealing with failure to provide records.

Commissioner McGray stated that, until the Commission came to a conclusion on the ordinance interpretation issue, it would not be appropriate to rule on overcharging. He noted that the company had not provided records on request. Mr. McGovern responded that the company had provided the records; that there had been no deadline given in the original request. **Commissioner Turner** asked Mr. McGovern if he had not initially responded with a denial of the request; Mr. McGovern replied that he had, adding that he had provided the records after receiving the second request. **Commissioner McGray** noted that, absent the second request, the initial denial would have held, and would have been the only response from the company. **Commissioner Turner** moved that West Nashville Wrecker Service be placed on probation for ninety days for failure to provide records on request, with the understanding that any subsequent violation would result in a much harsher penalty. **Commissioner McGray** seconded, and the motion passed (4-0).

ELECTION OF OFFICERS

Vice Chair Helen Rogers noted that Chair Holly Sharp had departed the Commission, and that new elections should be held. She asked for nominations. **Commissioner Tom Turner** nominated Helen Rogers for Chair and Duane McGray for Vice Chair. **Commissioner James Utley** seconded, and the new officers were unanimously approved. **Chair Helen Rogers** turned the meeting over to **Vice Chair Duane McGray**.

PUBLIC HEARING: NEW WRECKER RULE

Vice Chair Duane McGray read Tennessee Code Annotated (TCA) Section 55-16-112, as amended on June 21, 2007:

In order for a garagekeeper or a towing firm to tow or to store a vehicle the garagekeeper or towing firm shall obtain an express written authorization for towing and storage of each vehicle from a law enforcement officer with appropriate jurisdiction, or from the owner of the vehicle, or from the owner, or the authorized agent of the owner, of the private property from which the vehicle is to be towed.

Vice Chair McGray noted that interpretation of this statute had been a concern for the Commission in the past, and that the amendment would now allow the Commission to address that concern. He asked Director McQuiston about the interpretation of “each vehicle.” The director responded that both the state attorney general and the Metro legal

department had addressed this question in the past and had determined that “blanket” authorizations, such as contracts, were insufficient authorization to tow; each vehicle to be towed must be approved in writing and that authorization must be signed by the property owner. He noted the difficulties experienced in enforcement, especially in downtown areas, where owners of private property may not be present. He noted that past efforts to apply a practical approach, to allow an on-site manager or security personnel to authorize towing on behalf of the property owner, had been problematic. He cited the recent example of a complaint involving Able Towing, heard by the Commission in April and May 2007; in that case, the Commission had not been able to rule on the complaint because the issue was whether the person signing the tow slip on behalf of the private property owner could have a connection with the towing company. Because the statute itself had been so restrictive, the Commission was unable to provide official guidance on who may be designated an agent of the private property owner. The director stated that the amendment of the statute now made it possible for the Commission to establish that official guidance, and that this was the purpose of this hearing. He presented a proposal for a new Wrecker Rule:

Rule 24. DESIGNATION OF AGENTS TO AUTHORIZE NONCONSENT TOWING ON BEHALF OF A PRIVATE PROPERTY OWNER

When an individual is designated by a private property owner as an authorized agent to direct towing from the property, such designation must be in writing. There should be some relationship between the private property owner and the designated individual, and there may be no relationship between the designated individual and the towing company. When there is an arrangement between a towing company and a private property owner or designated agent for nonconsent towing, the towing company must provide the Transportation Licensing Commission with a copy of the document by which the property owner has authorized the agent to sign tow slips. If this document does not include a copy of the agent’s signature, then this must also be provided. These items must be provided prior to towing.

The director added that a copy of the proposed rule had been sent to all companies licensed to perform nonconsent towing in Davidson County. **Vice Chair McGray** asked for public comment on the proposal.

Raymond Crocker, owner of American Locators and Recovery, asked if repo companies were considered in this rule. Director McQuiston responded that, because repossessions were authorized by lien holders, they were consensual tows, and were not included in the nonconsent towing category.

Michael McGovern stated that the amendment to the TCA had been prompted by a wrecker company in Memphis. He stated that he had not seen the proposed rule, but noted that the TCA had not specified whether written authorization had to be obtained prior to towing. He also noted that the state statute had not specified that the authorized agent could not be the towing company. Director McQuiston stated that the proposed rule clarified that the authorized agent could not be connected to the towing company, but acknowledged that the rule should also specify that the tow slip must be signed prior to towing.

Mark Wayman, owner of Able Towing, objected to providing information on his business contracts to the Commission, where they might be used against him.

Mr. McGovern also objected to the Commission having proprietary information on all business contracts, because they would become public records. He stated that keeping customer lists confidential was critical. Legal advisor Jon Michael stated that he would look at this issue. **Vice Chair McGray** suggested that the confidentiality issue could be resolved if

the rule required only that towing companies must retain the information and make it available to the Commission as needed.

Earl Garvin, owner of Easy Towing, asked if a fax or email from the private property owner or agent would suffice as written authorization to tow. Director McQuiston responded that a fax with the signature could satisfy the requirement, but that the Legal Department would have to consider whether an email might be sufficient. Mr. Garvin asked if the driver had to have the signature when he picked up the vehicle. Director McQuiston stressed the importance of the driver being able to display proof of authorization to tow a vehicle without the consent of the vehicle's owner; otherwise the driver could be charged with auto theft.

Randy Bailey, of Bailey's Wrecker Service, asked about proof of authorization for consensual tows. Director McQuiston stated that the driver should have documentation to authorize the towing of any vehicle.

Vice Chair McGray stated that the issue would be tabled until the September meeting, so that appropriate modifications could be made to the proposed rule.

OTHER BUSINESS

Director McQuiston informed the Commission of the passing of Scott Heinrich of A.B. Collier Wrecker Service. He stated that the legal department had reviewed the ownership status of the company to determine if a transfer of ownership had occurred; if so, then a transfer of the zone license would be required. He stated that a determination had been made that a transfer of ownership had not taken place, because the zone license had been issued to A.B. Collier, LLC, and the LLC remained in control of the company.

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

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair