

Towing Board of Review

Minutes

September 18, 2013

1. **Call to Order:** The meeting was called to order at 1:48 PM by Chairwoman, Kathleen Butler.

Roll Call:

Present: Eric Benson, Kathleen Butler, Rebecca Child, Jesse Copeland, Jenny Farres, Michael Huggins, Edward Ferrero, Marian Gaylord, Debra Haugen

Absent: Jason Wallis

Michael Huggins from the Port of Portland is joining the Board today, replacing Jason Wallis.

Dick Griffin has resigned his seat on the Board due to schedule conflicts.

Recognition of Towers/Others in Audience

<u>Name</u>	<u>Company</u>
Byron Gross	Buck's Towing
Shirley Morehouse	Buck's Towing
Charles White	Retriever Towing
Michael Coe	Retriever Towing
Lori Robertson	Retriever Towing
Dave Reichert	Speed's Towing

2. **Approval of the Agenda:** Haugen moved and Ferrero seconded approval of the agenda. Motion passed unanimously.
3. **Approval of Previous Month's Minutes:** Ferrero moved and Haugen seconded approval of the July 17, 2013 minutes as submitted. Motion passed unanimously.
4. **Report from Towing Coordinator and Staff:**
 - A. **Status of Service Fee Payments:** Farres reported all service fee payments were received on time.
 - B. **Status of Monthly Report Submissions:** Farres reported all monthly reports for September and October were received on time.
 - C. **Bonding and Insurance Status:** Farres reported that bond certificates are with Gaylord and are up to date. There is one insurance certificate that is not current and the Towing Coordinator will contact the company and instruct them to contact their agent. The other insurance policies are all in the office and up-to-date.
 - D. **Tow summary from September and October:** Gaylord: The September summary showed Buck's Towing with a pass ratio of over 10%. The October tow summary showed no towers exceeding the allowable pass ratio, except the Class C towers who received only 10 tows each.
Ferrero Moved and Haugen seconded to accept the report. Motion passed unanimously.

5. **Old Business**

- A. 60 Day Review of the Fuel Surcharge:** Gaylord recommended that the fuel surcharge be continued until the start of the new contract on October 1st, 2013. It will remain a separate fee until the end of this month. The new rates effective October 1st include this amount in the basic fee and the "surcharge" will be discontinued.

Ferrero moved and Haugen seconded that the fuel surcharge remain the same through the end of September 2013. The motion passed unanimously.

- B. Report on City Council Approval of 2013-2018 Contract and Towers:** Gaylord reported that City Council approved the terms and award of the new contract. Work continues to ensure that all bonds are current. The insurance companies and the bonding agents have been very receptive to the idea of using actual contract numbers. Contract numbers were assigned first so that the insurance companies could put the numbers on the bonds. Most bonds are one-year renewable bonds, but the contract is for a term of five years, so having the contract number on the bond will ensure proper identification.

Butler thanked staff and the Board for the work on the tow contract. The detailed preparation allowed us to get it approved at Council easily.

6. New Business

- A. Pull-Out fee proposal -Speeds Towing:** Dave Reichert, Co-Owner Speeds Towing, proposed a pull-out fee for removal of vehicles that are not drivable. When an insurance company auctions off a vehicle, they schedule a salvage pull. Reichert asked the Board to allow towing companies to charge the salvage towers a pull-out fee when they pick up cars from a contract lot. The Tow Contractor would then move the vehicle to the street where they can load it onto their carrier. This would relieve the Contractor of any liability should the tower cause an accident or injury.

Gaylord informed the Board that the contract has addressed this issue for a long time, directing towers to release a vehicle within 30 minutes of a request. This requires the tower to either move the vehicle to a spot where it can be picked up, or they must allow the tower onto their lot to pick up the vehicle. Gaylord did not support an additional fee.

Discussion followed regarding the amount of the proposed fee and whether other companies were having difficulties. Industry Representative Copeland commented that the trouble is consistent. Other towers offered their experience with these circumstances.

Gaylord commented on the practice of hooking up and moving vehicles to make room in storage. Since the salvage towers are calling to make an appointment to pick up the vehicle, the tow contractor can suit their own schedule for moving the vehicle.

Ms. Butler asked if Reichert had any information about the cost of performing this service. He did not.

Ferrero moved and Haugen seconded that towers should track their costs over the next month and get back to us with the actual cost of performing these salvage pull-outs. Motion passed unanimously

B. Appeal of Penalty Assessment – Speeds Towing Tow #9736

Mr. Reichert has written his reasons for the appeal. The Board members have each reviewed his appeal.

Dave Reichert stated that this police officer did not provide an NOT form to indicate that a release would be required, although they dealt with him twice. Mr. Reichert further opined that PPB has had the same amount of time to learn this procedure. He asked why the police are not penalized for this?

Butler: After discussing this penalty with Gaylord, I understand that your company has been notified many times before that the NOT form is not necessary for you to be required to obtain a release.

LaFong: The policy was changed with the intent that the tower would always get a NOT, but that did not always happen. This policy has been changed again and everyone was told that there may or may not be an NOT. The assumption is that it will need a release if it's a police ordered tow. You can call us every time to confirm it, if you like. For now, if it's a police ordered tow, assume it needs a release.

Gaylord reported that this issue has come up before with Speeds Towing and several times it was explained to them that they need to assume all police ordered tows requires a release. Every tower is having this problem. Tows are also ordered by other police jurisdictions and all are handled differently which makes it confusing.

Current contract language was discussed and it was confirmed that Tow Desk informs the tower whenever a tow is for PPB.

LaFong: The police can't leave until the tower arrives, so the tower knows this is a police tow, but the tower may not be clear as to why the vehicle is being towed. Some towers think if a vehicle is called a hazard, it does not require a release. But here is an example of how that can be confusing: Police can't tow for a DUII in the City of Portland. The only way an officer can tow in the City of Portland is if the car is blocking or impeding the flow of traffic. If the DUII driver pulls over, but his car is blocking traffic, police can order a tow by calling it a hazard. Because it's a police ordered tow, the tower would have to call records to find out if there is a release required; in this case the vehicle would need a release because the driver was a DUII driver even though it was towed as a hazard. The information is very confusing to everyone involved, which is why we ask that towers call to confirm if a release is needed or not

Butler: I want it to be clear to the Board that the point Gaylord is trying to make is that it is the towers responsibility to check with the police department and that did not happen in this case. With regards to tow #9736, did Speeds Towing contact the police to find out if there was a release required on this tow?

Reichert: Apparently not. But, at the time of the tow, our driver may have been told this vehicle did not require a release since it was the driver of the car that was hit by the drunk driver.

Butler: It does not matter at what point the police determined that the vehicle required a release. The penalty was issued because your company failed to contact the police to find out if a release was required before releasing the vehicle. You have to check every time you release a police ordered tow.

Gaylord: The purpose of the penalty is to make the point and cause a change in the tower's procedures. Waiving the penalty was not making the point. In order to waive the penalty there would need to be a motion by the board. If there is no motion, the penalty stands.

Butler – do any Board members want to make a motion? None was made.

C. Careless Driving Citation Following Injury Accident – Speeds Driver

Gaylord: At the end of August a Speeds Towing driver with a 21-foot flat bed was involved in a hit and run accident. The driver made a right turn, intersecting a bicycle lane. As the driver was turning, a young cyclist hit the truck and was injured.

Dave Reichert: The only evidence of impact on the vehicle is a spot about one foot around on the quarter panel where the dust was cleaned off. The overall length is about 36 feet long with the cab.

Gaylord: It appeared that 17 to 18 feet of the truck was already through the intersection at the time of impact. The City has reviewed the accident report. I received a call from the CEO of Speeds reporting this incident to us. They immediately had the driver submit to urinalysis and nothing was found to show that he was impaired. The officer determined the driver did not knowingly leave the scene and he was not cited at the time. Since that time, the driver has been cited for careless driving (DMV Code: The offense contributed to serious physical injury or death of a vulnerable user of a public way) Speeds insurance is involved and they are working with the family of the bicyclist.

Ferrero: Is the driver on the contract? Has he been suspended?

Reichert: We were advised by counsel that it would be an admission of guilt if we suspended him, therefore we have not. He is still driving. Additionally, we have discussed this situation with all the drivers and we perform safety meetings with employees once a month.

Butler: Gaylord, please explain to the Board the issues that came up when you looked at the driver's record and the way we look at the DMV records when evaluating new drivers as well as existing drivers.

Gaylord: When this driver started driving for Speeds Towing in 2007 we had a different standard. At that time, they could not have more than five convictions within the previous five

years. With the start of this contract, the allowed number of convictions has been reduced to three within five years. We have never done regular re-checks of the towers, except when starting a new tow contract. Everything we found on this driver's record occurred since 2009. The Board discussed the driver's convictions.

Butler: When we reviewed this driver's record, we felt there should be a practice in place of checking the drivers' records more frequently. The Board may want to consider how often the City should be checking the driving records. In other programs, we do check driver records more frequently and the drivers have to meet the same standard of safe driving as when they first applied.

The issues for consideration are:

1. Whether the driver should be suspended because he wouldn't be approved under current standards.
2. The standard the Board wants to apply for ongoing drivers and reviewing their records.

Ferrero: We need to look at the current contract to see what it says to determine whether we can suspend him. If there is no contractual requirement for that driver to maintain a certain driving record, I don't know if we have a basis for suspending him.

Gaylord: The contract does not address that.

Ferrero: I thought towing companies had an ongoing obligation to report driving convictions. I know we have addressed criminal and driving convictions. Does the contract require that the driver is insurable?

Gaylord: The tow companies have a monthly obligation to notify us of accidents and arrests. Reporting citations is not required. The contract does require that the driver is insurable.

Dave Reichert: Our insurance company checks every year at the renewal and let us know if they see any red flags on a driver's record.

Ferrero: If there was a criminal conviction or an accident, you would report that to the Board?

Gaylord: Not convictions or citations; just arrests have to be reported.

Ferrero: If there is a driver the tow company can no longer insure, that should be reported to the City. As of today, the driver in question has not been determined to be uninsurable. Were the accidents in 2009 and 2011 on his record reported to the City?

Reichert: The accident in 2009 was not reported. He was backing into the shop with his lights on when another vehicle ran a stop sign and ran into the back of the truck.

Butler: Under the contract, all accidents need to be reported to the City.

Ferrero: Has the DMV license for this driver been suspended?

Reichert: No

Ferrero: Since the driver's DMV license has not been suspended, it seems to me that the only thing the Board can consider is this accident.

Butler: We need to seek more information from the City attorney about what steps we can take. The Board can decide that the contract needs to have additional language. I feel any time the Board thinks the public safety is at risk, they can suspend a driver.

Gaylord: The contract does not address punishment of a specific driver.

Ferrero: I think we should wait for the feedback from the City attorney. There have been issues about suspensions with tow companies in the past, but we have never taken corrective measures with the drivers. If we decide to check the driver records, will this amend the contract starting in October?

Gaylord: Yes.

Ferrero: If the City attorney agrees, we could consider a mandate asking tow companies to take a driver off the contract or face suspension themselves.

Butler: If the Board has the authority to deny this person at the outset, why would that not be a standard that can be applied at any time?

LaFong: If we were to suspend him today based on his past driving record, we would have to do the same to all of the drivers at all of the companies.

Ferrero – If it is not an ongoing requirement, and we aren't looking at all driver records, I have concerns about it. Today, it seems we do have the wiggle room in the contract to say if there is an immediate harm/concern/issue with a tow company and their use of a driver, we can address it. The only thing we can do today is make a motion to take him off contract tows because we feel his driving record is concerning.

Gaylord: It is not my recommendation to remove this driver from the tow contract at this time. We are checking the driving records of the towers on the new contract starting in October.

Butler – I wanted to highlight for the Board that this accident occurred, that the driver has been cited, and that when we looked at his driving record we noted that he would not meet our standard if he was applying today. The Board has the discretion if there is an immediate concern to address it.

Ferrero moved and Child seconded that the Board directs the towing contractor to come to the November Board Meeting with a proposal for ongoing review of driver qualifications. Motion passed unanimously.

D. Appeals Of Intent To Deny

Farres: We received a new-hire form for Lori Robertson. Retriever has hired her for a dispatch position. The routine background check came back with a very old felony conviction.

Chuck White: I have worked with Lori over the last 10 years. She is qualified for the position of dispatcher and is currently handling our cash and credit card payments. I asked her about the conviction and she responded that it occurred 31 years ago when she was 17 or 18. She has been with Retriever Towing for four months and I have never had an issue with her. I have received no complaints from the public and she is always on time.

Gaylord: I would like to remind the Board that with the start of the current contract, the standard changed. We used to look for Felony convictions that occurred within the last 10 years. The new wording requires us to look at any Felony convictions, regardless of when they occurred.

Lori Robertson: The conviction was for theft in the first degree.

Michael Coe, Owner of Retriever Towing: Lori has been employed by one of my companies for the last 10 years. She has been given increased responsibility and trust. She has worked as an office manager and managed our daily tills. I understand your policy, but I hope you will consider she has been an exceptional employee in the time she has worked for me.

LaFong: I don't think the intent of the change in wording was to deny somebody a dispatch position.

Ferrero moved and Haugen seconded that the appeal be accepted and the denial be removed for Lori Robertson. Motion passed unanimously.

6. Adjourn

Motion by Ferrero and seconded by Haugen to adjourn the meeting at 3:35 p.m.