

**Towing Board of Review
Minutes
November 20, 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, Edward Ferrero, Glenn Fullilove, Marian Gaylord, Debra Haugen, Donald Hunter, Rebecca Child, Michael Huggins, Helen La Fong

Absent: Dick Griffin has resigned and has yet to be replaced. Jason Wallis has also resigned due to new job responsibilities. Michael Huggins is now the Port rep.

Recognition of Towers/Others in Audience

<u>Name</u>	<u>Company</u>
Don Beatty	Gerlock Towing
Kim Karnes	Gerlock Towing
Dave Reichert	Speed's Towing
Rob Riscoe	ODOT Incident Response
Chuck White	Retriever Towing

2. **Approval of the Agenda**
Haugen moved and La Fong seconded approval of the agenda. Motion passed unanimously.
3. **Approval of Previous Month's Minutes -**
Haugen moved and Hunter seconded approval of the September 18, 2013 minutes as submitted. Motion passed unanimously.
4. **Report From Towing Coordinator and Staff:**

A. Status of Service Fee Payments

Farres: The service fee payments were received on time.

B. Status of Monthly Report Submissions

Farres: The monthly reports for Gerlock Towing, Security Towing and Sergeant's Towing were not received for September. All other reports were received on time. Notices and penalty assessments will be sent.

C. Bonding and Insurance Status

Farres: Insurance certificates are all current. Bonds are current.

D. Tow Summaries from September and October

Gaylord: There is a new rotational designator "DC" which stands for District C, since there is now only one city-wide rotation for Class C tows. We have changed the way the class C tows are dispatched: This breaks out the class C requests and passes so we can identify the companies with a true pass ratio.

For the months of September and October, everyone was within their allowable pass percentages.

Haugen moved and La Fong seconded acceptance of the reports. Motion passed unanimously.

5. Old Business

A. Report on Delayed FBI Records Checks Due to Federal Shut-Down

Gaylord: Intent To Deny Notices were sent to less than 10 drivers, following the re-check for the new contract. It normally takes 8-10 weeks to receive national criminal records. However, due to the government shutdown, we have not received any of the records as of today. We will keep the Board informed of the status.

B. Further Discussion to Establish a Standard For Routinely Re-Checking DMV or Criminal Histories of Current Employees

Gaylord: In the City Private-for-Hire Transportation Program the driver's history is checked yearly. Because tow drivers are not transporting citizens, we feel an annual report is not necessary. The tow companies are currently reporting every month if there have been any arrests or accidents. We have submitted a draft of the proposed code change language with added language making reporting of traffic citations mandatory. We propose the Board consider changing the language to state we will check the driver's background if we receive notice of traffic citations, accidents or arrests. We are proposing that this information be added to the monthly report and the reported information will trigger a recheck of the driver's DMV record.

Butler: Do the companies subscribe to a service where they get reports on their driver's traffic citations? Or do the insurance companies monitor this information?

Reichert, Speeds Towing: Our insurance company asks once a year at the renewal period for this information.

Benson: The same is true for my company.

Copeland: The same is true for my company.

Hickey, Speeds Towing: Starting in January 2014, I plan to require my drivers to obtain their Motor Vehicle Record every year. The insurance company only notifies us if they see a red flag.

Gaylord: We don't know what threshold the insurance companies are using to determine a red flag.

Haugen: Is there a penalty if a driver does not report?

Gaylord: Currently, the contract requires drivers to report an arrest within 24 hours. The companies report the arrest to us 24 hours from when they are notified of the occurrence. Receiving a citation does not indicate that they will be found guilty. However, the City does need to know that something has occurred.

Butler: Currently we are only asking drivers to report arrests. Do we need to amend the contract to ask the drivers to report traffic citations as well?

Fullilove: If you want to penalize the drivers for the citations, then you will have to amend the contract.

Gaylord: I have provided for the Board citations taken from the contract on this issue. I have drafted new language that could be added to the contract for the Board to review.

Beatty from Gerlock Towing: Do you want a report of any citation the drivers get? What about parking tickets and seatbelt tickets?

Butler: We are referring to moving violations only.

Beatty from Gerlock Towing: A driver might receive a citation, but that does not always indicate a conviction. The ticket could be a "fix-it-ticket," mandating correction of a flaw with the truck or equipment, or it could be thrown out in court.

Gaylord: A weight violation would not qualify as something a driver would need to report because it is not actively causing a safety issue.

Ferrero: Doesn't the report of a citation only trigger an inquiry by the City? It does not necessarily result in a penalty, correct?

Gaylord: Yes.

Ferrero: How many reports per month are you receiving from your drivers?

Beatty from Gerlock Towing: 12 a month or less.

Kim Karnes, Gerlock Towing: A fix-it-ticket is something that has to be signed by a company representative, so we are always aware of a driver receiving this type of citation.

Butler: The discussion should be:

1. What is the best way to determine when to review the driver's record?
2. Which tickets are considered to be a disqualifying factor for a driver?

Farres: They are called "serious."

Gaylord: This could include careless driving, reckless driving etc...

Ferrero: We could require the companies to report serious traffic infractions and crimes. The Board can define what is "serious." The tow coordinator could run a report mid-contract to monitor.

Butler: We could check every two years instead of at the start of every new contract, which occurs every five years.

Gaylord: Just to clarify, what we are concerned about are driving infractions, not weight infractions or fix-it-tickets. Are the weigh master tickets against the driver's personal record, or are they written against the company?

Kim Karnes, Gerlock Towing: A weigh master ticket is issued to the driver. The company can write a letter and send it with the payment stating that the infraction was the fault of the company. At times, the infraction will be removed from the driver's DMV record.

Ferrero: We will need to do four things:

1. Define what a "serious" violation is

2. Define when the tow coordinator is going to check the driver's driving record
3. Define the consequences
4. Decide if the Board is going to amend the contract that is already in place.

Gaylord: The Board can amend the contract because there is no financial impact on the agencies.

Ferrero: I'm thinking the amendment should read as "Citations for serious traffic crimes" or "violations must be reported." We could also state, "Serious traffic violations include DUII, DWS, Hit and Run, etc..."

Gaylord: DMV Motor Vehicle Code has a definition of a "serious crime."

Ferrero: Should we change the wording to "traffic crimes" and "serious infractions?"

Butler: The new contract says we review the driver's record and if they have a certain number of certain types of infractions, we issue Intent to Deny Notice.

Farres: It includes accidents and serious traffic violations; the driver cannot have more than three within the last five years.

Gaylord: The contract lists arrests, including but not limited to theft, robbery, burglary, assault, drugs, prostitution, weapons, fraud, trafficking in stolen goods or any traffic crime, including but not limited to, driving under the influence of intoxicants, reckless driving, attempt to elude a police officer, leaving the scene of an injury accident, or hit and run, and offenses related to the protection of the public interests.

Butler: The criminal citations are very well defined. What we need to clarify is what currently disqualifies a driver in terms of traffic citations. Oregon statues have a definition for "serious traffic crimes."

Ferrero: I don't think traffic crimes and traffic infractions are the same and I think the contract should make those very clear. If we decide to reference "traffic crimes" and "serious traffic infractions" in the contract, we should list everything that is considered a "serious traffic infraction."

We should also clarify what disqualifies a driver. From what I understand, the driver has to report crimes and accidents, but not traffic tickets during the course of the contract. If we come across an impermissible traffic issue, what do we do about it? Should we hold a hearing and consider suspending the driver?

Haugen: We would only do that if they exceeded the three in five years threshold.

Copies of the new contract were passed out to the Board members.

Ferrero: It would be possible to say, "To remain a driver in good standing, the driver must maintain these minimums. And, if there is a report that takes the driver outside of the allowed minimums, the City can take disciplinary actions leading up to suspension." We could use the same process we use when people don't qualify for the contract - we hold a hearing to determine their eligibility.

Butler: So if the record shows that somebody who met the standard when the contract was initiated no longer meets the standard, that would trigger the same kind of review that you have when a driver is new and does not meet the standard.

Ferrero: We need to define what needs to be reported as a traffic crime and a serious infraction.

Butler: What you are saying is we should have a standard in place that says if a driver who was approved at the outset of the contract no longer meets the standard, we will evaluate them. It might be good to ask what we are going to consider when the driver is evaluated. The first step is to say that we are going to evaluate the driver.

La Fong: Can you go over the motor vehicle code that is already written into the contract?

Gaylord read chapters 801.477 and 801.557 in the Oregon Motor Vehicle Code book.

- Traffic Crimes include any traffic offense that is punishable by a jail sentence.
- Traffic Violations include a traffic offense that is punishable by a fine, but not punishable by a term of imprisonment.

Gaylord: Chapter 811.140 under Reckless Driving And Penalty it states, "A person commits the offense of reckless driving if the person recklessly drives a vehicle upon a highway or other premises described in this section in a manner that endangers the safety of persons or property... The offense of Reckless Driving is a class A misdemeanor and is applicable on any premises open to the public." From what I'm hearing, there is a separate list for drivers with a CDL.

Ferrero: Do we want to limit this issue to just the driving record? While the driver has to report their criminal history, is there a basis for us to suspend based on that as well? Do we have to list all inadmissible behavior? Have we covered that in the contract?

Butler: 3.41.8 states, "The Tow Board may consider arrests, charges, convictions and sentencing in determining appropriate sanctions or remedies." An appropriate remedy if somebody was convicted of a crime might be to say that they could not drive under the contract anymore. What we did not define previously is the idea that the driving record needs to meet the same standards that it does when the contract was initiated. Does the Board feel there needs to be more clarity in the language as to how the process might work and what might trigger an investigation?

Ferrero: When it comes to crimes, we should have a list of specific crimes that, if committed, we can suspend the driver. If all we want is to make the drivers adhere to the same criteria that was established at the onset of the contract, we can do that. There are probably some types of non-moving infractions that might disqualify them from the outset.

Gaylord: Reading the contract, it states "Criminal offenses including but not limited to theft, robbery, burglary, assault, drugs, prostitution, weapons, fraud, trafficking of stolen goods or any traffic crime including but not limited to driving under the influence of intoxicants, reckless driving, attempt to elude, leaving the scene of an injury accident, hit and run, or any other offense related to the protection of the public interests."

Ferrero: If that is a traffic crime, should we broaden the language to include the infractions that will otherwise fall underneath that?

Gaylord: Section 3.41.7 states the driver is required to report any motor vehicle accident. We could include language such as "Tow contractor shall inform the Tow Board by the 10th day of the

month following a serious traffic citation or infraction or vehicle accident involving a towing vehicle operated by the tow contractor or the tow contractor's employees or agents, which is required by state law to be reported to the state." We could include language listing all of the traffic infractions we wanted to be notified of.

Ferrero: We could say, "The Tow Board may consider the accidents, infractions, extenuating circumstances etc.. in reviewing future applications for a tow contract or in determining appropriate sanctions or remedies under the tow contract and may reject future applications based on driving history." Would this give us the ability to suspend a driver?

Gaylord: The remedies that are discussed in the contract have to do with companies and not specifically with the drivers.

Ferrero: What is the other section that needs to be clarified to state we can bring action against the driver as well as the company?

Gaylord: The other section is 7.3 under Remedies.

Ferrero moved and Haugen seconded the City should bring proposed language for amending section 3.41.8 to include certain traffic infractions to the January 2014 meeting. The motion passed unanimously.

Ferrero: We still have the issue of some kind of review by the Tow Coordinator with regards to accident reporting and the driving records.

Gaylord: I think a 2-1/2 year standard would be good for reviewing the driver's records.

Butler: 1.23.4 spells out the limit of what they can have within the past 5 years.

Ferrero: Should we add a section 1.23.7 that talks about the mid-contract review? And, something to determine whether or not current drivers are in compliance with the standard. If not, it would authorize the Board to review and possibly suspend.

Ferrero moved and Haugen seconded the tow coordinator bring proposed language for amending the contract under section 7.3 to include a subsection which authorizes the Board to review and possibly suspend drivers who are not in compliance with the

performance requirements of the contract. The motion passed unanimously.

6. New Business

A. Buck's Towing 60-Day notice of unilateral withdrawal, pursuant to Tow Contract Section 7.2.2

B. Proposal to re-draw districts D1, 2 and 8 boundaries if no tower in D1

Gaylord: A copy of the withdrawal letter was sent to the Board. If a viable offer is made, I would ask Buck's to extend their time on the contract until we could process and approve the assignment of the contract to the new owner. If Buck's does not receive an offer they will cease to be on the contract as of Midnight on December 13th and we will have no contractor in D1. Don Beatty from the tow desk suggested we split up D1 between D2 and D8, which are the closest accessing districts. If the location is more than 8 miles from their office, additional time is allowed. This combining of districts should not increase the pass rate and I don't anticipate this boundary change will cause any problems with response times.

Ferrero: If the Board approves the new boundaries for districts 2 and 8, this would be contingent on Buck's formally completing their withdrawal? Is everyone on the Board ok with the boundary re-write.

Benson: There are some areas that may be difficult to get to within the response times in district 8 such as I-5 Northbound during rush hour traffic.

Gaylord: We can work with district 8 towers to come up with a reasonable adjustment to the time allowed to reach the vehicle needing to be towed.

Ferrero moved and Haugen seconded the tow coordinator's proposal to re-draw districts one, two and eight. The approval is contingent on Buck's Towing completing their withdrawal from the contact and contingent on the tow coordinator working with the tow companies affected to mitigate any response time issues. The motion passed unanimously

C. Rate increase for Contract for Abandoned Vehicle Towing and Storage.

Gaylord: There is a clause which states the abandoned vehicle contract rates will be equivalent to those of the regular tow contract. This will go into effect on December 1st 2013. This refers to the amount the citizen pays to pick up their abandoned vehicle. The market rate is what the tower pays to transportation and has nothing to do with whether the citizen picks up the vehicle.

Ferrero: So the contract already allows for you to make this adjustment?

Gaylord: It says, "Fee changes approved by the Tow Board for tows performed under the Tow Contract will also be applicable to the Abandoned Vehicle Tow Contract."

Butler: To clarify, the Abandoned Vehicle Contract is a separate contract which started on July 1, 2010 and has been approved by City Council. Why would they have to approve the fee increase if that contract is in place?

Gaylord: The criterion for Council approval has always been whether it was going to affect the agency budgets.

Butler: I question the authority for changing a fee that is in a contract that was approved by Council. When this contract is established, it will be established at the same rate.

Gaylord: It does say "Fee changes approved by the Tow Board for tows performed under the Tow Contract will also be applicable." In the past there has been no additional ordinance necessary to accomplish this.

Ferrero: We have changed different fees that the public pays a number of times.

Butler: This coordinating of the abandoned vehicle fee with the other Tow Contract has happened mid contract before?

Gaylord: Yes.

Ferrero: What is different this year is that the change would take place in December instead of October when the new Tow Contract started.

Gaylord: There have been 34 tows since October 1st for a total of \$374.

Ferrero moved and Haugen seconded that the tow coordinator's proposal to increase the rate for the abandoned vehicle towing and storage be approved to match the main Tow Contract effective December 1st 2013. The motion passed unanimously.

Gaylord: Donald Hunter has mentioned to me that the \$13 parking enforcement service fee has not previously applied to abandoned vehicle tows. The Bureau of Transportation would like to make this fee applicable to Abandoned Vehicle tows.

Hunter: It has been applied to other tows, but not the abandoned vehicle tows.

Gaylord: We are talking about an additional \$13 fee that the citizen would pay when they pick up their vehicle.

Ferrero: So this would be amending the Abandoned Vehicle Contract?

Butler: Would it be ok if we address this in January? Section 5.1.7 does express the intention that all of the fees would be equivalent.

Hunter: Yes.

D. Proposal for Tow Desk Rate Equity on Dry Run Calls

Gaylord: When I proposed the dry run fee that began with the current contract I only allowed for a half tow desk fee on a dry run. Dry runs should incur a full dispatch fee of \$16.

Ferrero: Please explain a dry run fee.

Gaylord: If an agency cancels a call more than 10 minutes after a tow is dispatched, the agency pays a dry run fee. Currently, the fee is \$25 plus half of the dispatch fee which is \$8. This fee is listed in section 5.4.11.

Butler: If a tow is ordered and is cancelled within 10 minutes, there is no fee. 5.4.11.2 states "if cancelation occurs more than 10 minutes after dispatch, the agency will pay \$25 to the tower and one half of the dispatch fee to the tow desk". The dispatch fee is \$16. Currently they are being charged \$33. The tow desk has made a proposal that the fee be increased to \$25 plus \$16, bringing the total cost to \$41.

Ferrero: Do we want to specify a number, or just say "pay the full dispatch fee"?

Gaylord: I was my intention to say the "Pay the full dispatch fee".

Huggins: Is the dispatch fee adjusted annually?

Gaylord: The fee can be adjusted subject to cost of living increase.

Butler: What you are voting on today is whether or not the Tow Board wants to recommend to City Council that this fee be increased.

Ferrero moved and Child seconded that the tow desk dispatch fee on a dry run be increased to the full approved dispatch fee and that this recommendation be taken to City Council for approval. The motion passed unanimously.

Haugen moved and Ferrero seconded that the Tow Board Meeting be adjourned. The motion passed unanimously.

The meeting adjourned at 2:51pm

The next meeting will be on January 15, 2014.

Minutes submitted by Christy Keller, Regulatory Program Specialist.