

**Towing Board of Review
Minutes
March 19, 2014**

1. **Call to Order:** The meeting was called to order at 1:35 PM by Chairwoman, Kathleen Butler.

Roll Call:

Present:, Kathleen Butler, Jesse Copeland, Jenny Farres, Edward Ferrero, Marian Gaylord, Debra Haugen, Donald Hunter, Rebecca Child, Glenn Fullilove, Michael Huggins, Helen La Fong
Absent: Eric Benson

Recognition of Towers/Others in Audience

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

2. **Approval of the Agenda**

The agenda should be changed to reflect that the previous month's minutes are from January 15, 2014.

Haugen moved and Hunter seconded approval of the agenda. Motion passed unanimously.

3. **Approval of Previous Month's Minutes**

Haugen moved and Huggins seconded approval of the January 15, 2014 minutes as submitted. Motion passed unanimously.

4. **Report From Towing Coordinator and Staff:**

A. Status of Service Fee Payments

Farres: Service fee payments were all received on time except for Gerlock Towing. Their February payment has not been received. They are aware and are looking into it.

B. Status of Monthly Report Submissions

Farres: The monthly reports were received on time.

C. Bonding and Insurance Status

Farres: The monthly bonding and insurance certificates are current.

D. Monthly Tow Summary

Gaylord distributed the Monthly Tow Summary for January and February to the Board. There were no companies over the allowable pass percentage, except for Gerlock Towing in January. They only received two calls and they passed one. In February, nobody was over the pass percentage.

E. Information about tow volume requested by the Board at the January meeting

Gaylord distributed charts to the Board showing the tow volume, which outlines a steady decline in the number of tows from over 45 thousand in 2005 to just over 17 thousand last year.

Discussion of the charts followed.

Motion by Haugen and seconded by La Fong to accept the reports prepared by the Tow Contractor. The motion passed unanimously.

A break was taken from 1:45 to 2:12 while the Board waited for additional members to arrive

Butler asked the Board to discuss item 6 C next.

6. C. Request by Speeds D8 for change of release office

Dave Reichert with Speed's Towing spoke to the Board. His company sold the property where the D8 office is now located. He would like to put a moveable office on the lot currently used for the towing contract. The contract requires that the lot have 10,000 sq. ft. of usable space, but because the tow volume has gone down, he is not using all of that space. There is an average of four to five vehicles on the lot at any given time. During the last snow storm, that number went up to eight vehicles at one time. The office will be 10x10 ft. and it will be located inside the storage space because it is secure. The office will be built on an asphalt pad and it can be moved out if the tow numbers go back up. He will have access to the lot where the office is now located a few blocks away for the next five months. In that time, he will be constructing the new office. When they move into the new office, the phone numbers will remain the same.

Ferrero asked if the contract states he needs to provide 10,000 sq. ft. for police impounds.

Gaylord stated the contract specifies that they provide 10,000 sq. ft., not counting the police hold and office space. Speed's police hold is located on the lot, but it is not often used.

Haugen wondered if this be an exception to the contract or a contract change?

Gaylord replied that this will be an exception to the contract which requires the Board's approval.

Ferrero move and Haugen seconded that the Board allow Speed's Towing D8 to place a temporary release office in their 10,000 sq. ft. lot as an exception to the contract requirement that an exception is allowed until such time that the Board determines that the full 10,000 sq. ft. of lot space is needed. In addition, pending the construction of the temporary release office, Speed's will be allowed to use their former release office across the street. Motion passed unanimously.

4. F. ITD Appeals - Board decision on records protocol for ITD appeals

Butler reported this item on the agenda has to do with the Board protocol for making decisions when we have appeals from drivers who receive an Intent to Deny Letter.

La Fong reported to the Board that the DMV and CCH records can only be shared with people who have been fingerprinted through CGIS or who work in law enforcement. If the driver orders their own records check, they can come to the Board and present that information to the Board and the Board can discuss it.

Minutes of the Towing Board of Review

March 19, 2014

Page 3 of 8

Butler thinks we should make a standard procedure that with any denial letter, the driver is told that they need to provide the Board with information and that they should take the responsibility to obtain copies of those records for the Board if the driver wishes to make an appeal.

Ferrero asked what information the City can make available to the Board.

Gaylord replied the Intent to Deny Letter states what was found in their record, but does not go into details.

Ferrero wondered if it is a problem that this letter is shared with the employer and with the Board.

Butler replied that it is acceptable for the City to send a letter stating that the driver is denied and based on what, but that it does create a public record which can be shared with the Board.

Fullilove asked the Board if they would like to consider mitigating factors and if so, in which cases because the rules must be clear or the Board could open themselves up to challenges of treating people differently. Fullilove asked the Board to consider making clear standards about when they want to hear appeals, if they decide they do want to hear them. Perhaps, if someone can demonstrate that their record can be expunged or if the conviction was overturned, that might be a clear basis for appeal.

Gaylord asked the Board if they would like to treat a recent felony differently than one that occurred 25 years ago.

Copeland argued that any felony should be considered, regardless of age.

Fullilove reminded the Board that mistakes on records do happen and the Board should consider allowing appeals in these cases. He also stated that a 25 year old record may be expugnable. Perhaps the driver can be told to get the record expunged and come back to the Board?

Haugen asked if the Board should consider the time frame since the charge and the charge itself.

Ferrero wondered if the Board could allow the driver temporary approval on an expugnable offense and ask them to show progress to the tow coordinator that they are working towards expunging it. We could also set up different categories of felonies that can be handled in different ways; some requiring outright denial and others offering appeal rights.

La Fong said the Portland Police don't want any drivers with a felony to handle police holds or police vehicles. If the parameters from the employer are that they should not apply if they have had a felony and they apply anyways, when we find a felony we should not hear an appeal.

La Fong asked the tow companies to come up with a standard for felonies. If the driver then says they don't have any felonies within that time frame and we find one, it should be a denial without appeal.

Gaylord asked the Board if they wish to hear appeals from drivers with more than three moving violations on their DMV record for the previous five years.

Minutes of the Towing Board of Review

March 19, 2014

Page 4 of 8

Copeland feels that since some drivers will get three different tickets on one traffic stop, this should not be a hard and fast rule.

La Fong and Ferrero think the Board should have a hard and fast rule to base decisions on.

Butler feels the Board will put themselves in a worse position if they make a standard because the Board will have to justify why they went outside the standard and issued a permit. If you don't have standards about how you make exceptions, it can become a real problem.

Ferrero stated if the Board is going to allow appeals without standards, the Board can get into trouble if it appears they are not applying them equally.

Fullilove helped the Board to understand the risks and said he thinks the Board should allow people to appeal if they can prove that the record is a mistake and they can prove it.

Gaylord asked if the City should stop sending an Intent to Deny Letter. Instead, they could send a letter saying "You are denied" based on certain parameters with no denial opportunity.

Butler read from the contract to remind the Board of the criteria already in place. The contract states the City will send an Intent to Deny Notice and if the person wishes to access an opportunity to provide additional information, they may do so. It does not say that the Board has to hear the appeal, but it does say that if the Board approves it, they may be granted provisional approval for a year during which time re-checks will be done to make sure that nothing bad is happening in their record. What does the Board want the towing contractor to bring to the Board?

Gaylord: The intent to deny letter lays out the things that could be mitigating factors; they are supposed to bring in evidence that fits with the mitigating factors. In the past, if the felony was over 10 years old, the driver was approved. The Board changed that and now we have to look at any felony, no matter how old.

Ferrero stated that perhaps with a felony conviction, the Board can say "If the felony is one that can be expunged, the Board will consider an appeal." We could allow them a temporary acceptance so that they could work while working on getting the conviction expunged. Since a felony that can be expunged would be one that is remote in time, would could set a standard such as, "Any felony that is remote in time, as long as it is not serious." We could define things that we would not consider.

La Fong thinks we should say they can apply again once the record is expunged. I am concerned that if we offer a temporary permit to work, they may not ever follow through with getting the conviction expunged.

Ferrero agree with La Fong as long as with a felony conviction, the Board does not have to offer the driver an appeal.

Fullilove would encourage the Board to consider people who state the conviction is a mistake on their record.

Gaylord read the code regarding criminal records checks.

Ferrero moved that for disqualifying criminal convictions, a Notice of Intent Letter should be sent limiting any appeals solely to issues of mistaken records or misidentification.

Copeland stated his company hires drivers before their information is sent to the City for a records check; that driver may be servicing the contract for a period of time before the denial letter is sent. In other areas, he is not able to hire a driver until they pass the background check.

Butler suggested that the Board recommend administratively that the companies provide the driver's information prior to hiring them.

Ferrero said we should require before a tow company puts a driver on the contract, they need to get pre-approval from the tow coordinator.

Butler replied that the contract says nobody with a felony conviction can work on the contract. It makes sense to tell the companies they cannot put a driver on the contract if they don't have approval from the tow contractor first.

Ferrero moved and La Fong seconded that the tow companies be required to send the driver's information to the City for background check and approval prior to putting the driver on the contract be put into effect as of today. The motion passed unanimously.

Butler stated the City will tell drivers if they have an Intent to Deny and make it clear that only if they feel there is an error should they bring evidence forward. We can make it clear to them that expungement is the path they need to take to clean up their background.

Ferrero feels we have set good standards for felony convictions, but the Board should consider more standards for the driving records.

Haugen explained the terminology for records: adult records are sealed junior records are expunged.

Gaylord will prepare drafts of the new Intent to Deny Letter adding language such as "if this is an expugnable or sealable conviction or a mistaken record, you can request an appeal" and for the driving records and criminal convictions standards. The background check information will now be submitted to the tow contractor by the companies before the driver works on the contract even if the driver already has a permit number.

Butler said her office can prepare drafts which address the issue of a new driver coming on with driving issues and also for existing drivers who are found to have more than three traffic convictions.

5. **Old Business**

A. Proposed Contract language regarding monthly report of traffic citations as well as accidents and arrests.

Ms. Gaylord read proposed language to be added to chapter 1.23.7 to address the changes to the reporting of arrests and accidents to add traffic citations. The city also proposed language that provides for re-checking of DMV and criminal records at any time that the Board wishes to do so and establishing consequences if the driver fails to pass the check.

Ferrero clarified in chapter 7.3.3 the language should be "if the driver fails to pass the DMV or criminal records check..."

Butler would like the Board to consider allowing appeals from drivers who are already permitted who fail to pass the re-check.

Ferrero feels with regards to the criminal background, the appeal rights/denials should be treated the same as with a new applicant.

Gaylord read more of the proposed language "If the tow contractor fails to remove the suspended driver, than the tow contractor is in breach of contract."

Ferrero moved and Haugen seconded the proposed contract language for the midterm DMV and criminal records review as proposed with the amendments as discussed in the course of the meeting be approved.

Butler asked if the requirement that the companies should report any traffic citations monthly should be added to the motion.

Ferrero said he would like to have the heading fixed to include monthly employee accidents, traffic citations, criminal activity and equipment update.

Gaylord said she could change the heading.

Ferrero discussed what could trigger a mid-contract review. He suggested that language be added to say "If you get this report, it can trigger a mid-contract review."

Gaylord said she would like to change the language in chapters 341.9 to include criminal history. And, the language about traffic violations should change to "traffic violation or conviction." The tow contractor must report what they know about within 24 hours. The code says the City does not take action until there is a conviction.

Ferrero moved and Haugen seconded the proposed draft language requiring tow contractors to report accidents, citations and criminal activity as proposed by the tow contractor and as amended during this meeting including the proposed reporting form be approved. The motion passed unanimously.

B. PBOT request for addition of the Parking Enforcement service fee to Abandoned Auto tows. (Tabled to May)

6. New Business:

A. Dispatch RFP and SOQ with City Attorney Changes - For approval

B. Dispatch Contract with City Attorney changes - for approval

Gaylord discussed the changes made to the RFP and SOQ to comply with the standard forms used by City Procurement and standard public contracting contracts. The Board needs to approve the changes before the City can issue the RFP for the dispatch contract. Attorney Fullilove suggested that the contract include a requirement that the dispatch company obtain and maintain a cyber-liability insurance policy up to one million to protect against security breaches, malicious code or anything that could disrupt the City network or disclose private information to the public.

Haugen asked about the financial burden to the contractor.

Fullilove believes this will be affordable coverage.

Gaylord said chapter 24.3 addresses this new requirement.

La Fong: The Police Bureau has suggested looking into a new dispatching system that could potentially eliminate some of the work the police are doing. They would like a chance to pursue other available technologies and are requesting that the Board change the contract term from five years to three years.

Haugen is concerned that a new contract is a lot of work and working on a new contract every three years doesn't make sense.

Butler stated there is nothing to prevent the Board from extending the contract for another one or two years at the end of this three year contract.

Ferrero asked how long the Portland Police are contracted to use the City Tow Dispatcher.

Gaylord replied that the agreements are open-ended, but the Police can drop off the contract at any time if they wanted to.

Haugen is nervous about changing the contract term.

Butler replied that the request is based on the police chief's office wanting to explore new options that may become available in the next 3 years.

Ferrero likes the idea of flexibility and reminds the Board that they don't have to accept a change even if the PPB recommends it. He wonders if this change will create an adverse impact if people are no longer willing to invest when the term is only three years.

Gaylord feels a five year contract is not too long and should not be reduced.

Butler wants the Board to know that the chief's office wanted a one year contract initially and settled on a three year contract. They are trying to create a new way of doing business that will save money and provide better service to the public.

Ferrero moved and La Fong seconded that the Board approve a change in term in for the next tow contract to 3 years instead of five. Haugen opposed. The motion passed.

Ferro moved and Haugen seconded that the Board approves the proposed contract changes to the tow desk contract as well as the proposed language for the RFP as recommended by the tow contractor. The motion carried unanimously.

Ferrero moved and Child seconded that the Board direct the tow coordinator to perform regular checks with Portland Police regarding the status of the proposed changes and addressing the new technology for the tow desk and to make regular reports to the Board. Haugen is opposed. The motion carries.

7. Adjournment - Ferrero moved and Haugen seconded that the Tow Board Meeting be adjourned.

The meeting adjourned at 4:07 p.m.

Minutes of the Towing Board of Review
March 19, 2014
Page 8 of 8

The next meeting will be held Wednesday, May 21, 2014.

Minutes submitted by Christy Keller, Regulatory Program Specialist.