

**Towing Board of Review  
Minutes  
January 15, 2014**

1. **Call to Order:** The meeting was called to order at 1:38 PM by Chairwoman, Kathleen Butler.

**Roll Call:**

Present:, Kathleen Butler, Jesse Copeland, Jenny Farres, Edward Ferrero, Marian Gaylord, Debra Haugen, Donald Hunter, Rebecca Child

Absent: Eric Benson, Michael Huggins, Helen La Fong, Glenn Fullilove

**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 Ferrero seconded** approval of the agenda. Motion passed unanimously.

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

**Ferrero moved and Haugen seconded** approval of the November 20, 2013 minutes as submitted. Motion passed unanimously.

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

**A. Status of Service Fee Payments**

**B. Status of Monthly Report Submissions**

**C. Bonding and Insurance Status**

Farres: The monthly service fee payments and reports were received on time. The insurance certificates and bonds are all current.

**D. Monthly Tow Summary and 2013 Summary**

Gaylord: I distributed to the Board members a December 2013 summary and a second summary covering the entire year of 2013. Once again, there is a significant drop in volume. It appears that Gerlock and A&B class C were the only two that had excessive pass ratios for the entire year. We didn't start counting the class C tows separately until the end of the year, so it is not an accurate representation.

Speeds districts 5 and 8 were both over their allowable pass percentage. This is the first occurrence for both in this 12 month period. As prescribed by the Contract, a warning letter has been generated and will be mailed shortly. If it happens again, the company will receive a two week suspension. Discussion followed regarding the decrease in volume since 2008 and possible reasons for it.

**Motion by Haugen and seconded by Ferrero** to accept the monthly reports. The motion passed unanimously.

Ms. Gaylord offered to bring more detailed statistics for 2008-2013 to the next Board meeting.

5. **Old Business**

**A. Report on background checks:**

Ms. Gaylord reported that the background information that we have been waiting for has been received. Three drivers are here to appeal our "intent to deny" letters. All three had previously been approved and have been working for

some time, but when we did a re-check of their driving history and criminal history for the new contract, issues came up.

Ms. Butler stated that the appeals the Board will be hearing today have come from the companies. Because the contract is with the company, request for appeal must come from the Tow Contractor, not directly from the driver.

**B. Proposed Contract Language Regarding Monthly Report of Traffic Citations as Well as Accidents and Arrests**

At the November, 2013 meeting, the Board asked for draft language to address mid-term background checks. Language was requested establishing definitions and consequences of serious violations.

Ms. Gaylord distributed a four page document with both the current and proposed language. A draft form has been developed for reporting citations as well as accidents and arrests.

The current contract defines a qualified driver as a person who is "registered with the City as a tow truck driver, employed by a tow contractor and possesses at least the following: Active DMV record for the five year period immediately preceding the date of application, with not more than three traffic infractions as defined in 801.557 or three serious traffic violations as defined in 801.477 or three motor vehicle accidents of the level that would be required to be reported or greater than three of any combination of infractions, suspensions, traffic violations and accidents."

DMV records are reviewed by the Towing Coordinator or designee on behalf of the Tow Board. If a person's DMV record does not meet the minimum contract standard an "intent to deny" notice is sent describing the reason for denial and providing an opportunity for the applicant to provide additional information.

If a driver has at least three but less than five years of driving record within the five years immediately previous, the Towing Coordinator may grant probationary approval for a period sufficient to make up the missing time. During that probationary interval, periodic DMV rechecks will be performed by City staff. Any additional violations found will be reported to the Board and the driver may be removed from eligibility.

The proposed language is as follows:

"Two years after commencement of this contract term, the Towing Coordinator or designee will repeat the review of current tow driver's DMV and criminal records to verify continued compliance with the contract criteria for qualified drivers. Failure to meet this standard will result in notice to the Tow Contractor and the subject driver of disqualifying items found in the review. Remedies provided by section 7.3 will be applied."

Also addressed is the issue of appeals. Section 7.3 states, "If a driver fails to pass any review of DMV records, subsequent to the initial check, the Board may direct the Tow Contractor to temporarily or permanently suspend the driver from work under the Tow Contract, as is the practice with background checks performed on potential new employees. A tow contractor may request an appeal of the disqualification before the Tow Board."

"If after notice a tow contractor fails to remove the suspended driver from Tow Contract work, the tow contractor is in breach of this contract and subject to remedies provided in this section."

This clarifies that the agencies' relationship is with the company, rather than an individual driver. Such request would need to come in writing from the company. The driver would still need to provide additional information necessary to explain the circumstances.

Haugen: The way it is worded, it sounds as if, because of driving violations, the tow contractor could not use that employee in even an administrative position during the suspension period.

Gaylord: That is something for the Board to decide. We have had situations in the past where someone's criminal history was such that they should not be allowed access to stored vehicles.

Haugen: I agree with that, but I'm wondering if we should prohibit them from working in the office if the company wants to provide that type of position to them.

Gaylord: I'm not sure that a driving violation sets off alarms the same way as a criminal conviction.

Butler: What happens is something gets reported to the Board and you may choose to suspend. It does not mean that they are automatically suspended. If there was a situation where that person was going to be working behind a desk, the Board would be aware of that before making a decision. I don't think this language is forcing you to take action. It is only providing an opportunity for us to review the information and bring it to the Board.

Gaylord: If a company says that they really like the driver and want to continue to employ them while this is being worked out, they could report that to the Board and the Board can consider that.

Ferrero: In reviewing the paragraph 7.3.3, two things come to mind.

1. We might want to add some language such as "the remedies we have with respect to the driver include the same remedies we have for a driver at the beginning of the contract." To me, this implies that on appeal, we can tailor our remedies according to what we feel. That might give us a little bit of wiggle room.
2. In paragraph 1.23.7 it says the Towing Coordinator will give notice to the contractor and the driver about the disqualifying items found and that remedies provided by section 7.3 will be applied. When you got to 7.3.3, it says "If a driver fails to pass any subsequent review of DMV records..." How does subsequent review relate to the review you already did? What this suggests to me is that you have these remedies but nothing happens unless the driver in a subsequent review fails to pass. You might want to say in Section 7.3.3, "In the event of an intermediate review failure, the Board may direct..."

Gaylord: There may be other reasons that we may be checking the driver's record. For instance, if a citation is reported, that could trigger a re-check.

Ferrero: The term subsequent review is not defined.

Gaylord: We could say that if a driver fails to pass any review subsequent to the initial employment verification. Would that work?

Ferrero: I think that would be fine. I think that 7.3.3 needs to be a paragraph that stands on its own. It could say something like "If the Board has undertaken a review at any time during the term of the contract and the driver fails, then we have this remedy."

Gaylord: We could say "If a driver fails to pass any review..."

Ferrero: I think that would be fine.

Butler: Since we have several changes to the wording, let's make those changes and bring them back to the next meeting for review.

Gaylord: Can we get one of them approved today?

Ferrero: We could move to approve them today, but give the Tow Coordinator the discretion to clean up that particular item. Or, she could make the changes and bring them back at the next meeting.

Butler: I think it would be best to bring it back to the next meeting.

**C. Begin Taking Identification Photos of All Tow, Dispatch and Abandoned Vehicle Contract Staff. Discuss Format and Display of Information.**

Gaylord: We have had the capability to add photos of the employees to our database for some time. It is now part of the current contract and will also be in the dispatch contract. Does the Board want to require the employees to carry an identification card? I would like to start having the companies send their employees in to the office to have a photo taken. We can then make the ID cards at a later time if the Board directs us to do so.

Ferrero: Is this in the current contract? Who will manufacture the ID cards?

Gaylord: Yes, this is in the current contract. The City has been making ID cards with photos for the private for hire drivers for some time. If the City takes the photo of the employee, it will eliminate the need for the company to send in a photo of their drivers' license.

Ferrero: Does the Board need to take action to make this change?

Gaylord: No. The Board will have to take action later to decide if and what the driver would be required to display. In some places, drivers are required to keep a card in their wallet. I was hoping to have something that is displayed in the vehicle rather than kept in their wallet. I have put together a rough draft of a potential ID card. At this point, we would like to start scheduling the drivers to come into the office to have a photo taken. The confirmation of type and style of permit will be decided upon at a different time.

**D. PBOT request for addition of Parking Enforcement Service Fee to Abandoned Vehicle Tows.**

Gaylord: The Bureau of Transportation has requested to add a service fee to abandoned auto tows. We have discussed this and have determined that the Board is authorized to approve or disapprove this request. This will add \$13 to the cost of the tows. There is some question about who owns an abandoned vehicle and how much of a burden it would be on them to pay this fee. I would like to work with PBOT and have this approved by City Council. If the Board chooses to approve this, I would like authorization to work with PBOT to put together something to take to Council.

Ferrero: Are you asking the Board to consider this today?

Butler: We looked carefully at the language and it appears to be a new fee; it has not been assessed up until now. Because the abandoned vehicle contract says that "all charges shall be consistent with the regular Tow Contract," it also limits that to the charges that are included in the Abandoned Vehicle Contract. There is a fee that is assessed related to the scrap metal value, which has gone up about \$20 since the beginning of the contract.

Gaylord: That is not something that is paid by the citizen. It is paid by the Abandoned Vehicle Contractor to the transportation office.

Ferrero: This \$13 fee we are considering is a fee that is paid by the owner of the vehicle. This is not something that the City has to pay to the contractor?

Butler: Correct. The people that are experiencing the abandoned vehicle tow can at times be people who have very limited resources and may even be living in the vehicle. This additional fee could be very difficult for them. If the Board decided this is something that they want to recommend, we thought it would good to have that forum with Council.

Gaylord: The Board does not have the ability to approve or disapprove budget issues for any of the agencies. At the same time, they do have responsibility for the fees that are charged under these contract.

Butler: There were approximately 1200 tows last year and about 260 of them would fall into the category where the additional fee would be charged.

Ferrero: This would only apply to any cited abandoned vehicle that was retrieved by the owner, correct?

Gaylord: Yes. It is not a fee to the tower. It is only charged to the owner if they collect their vehicle.

Butler: The scrap metal charge is charged to all of the vehicles whether they are picked up or not?

Ferrero: If we approved this and City Council also approves it; would this ever come before us as an appeal?

Gaylord: That would go to the City Code Hearings Officer. The Board deals with the behavior and performance of the towers.

**Ferrero moved and Hunter seconded that we approve the PBOT request for the addition of a \$13 parking enforcement service fee for the abandoned vehicle tows subject to the Tow Coordinator working with Parking Enforcement to refine the language that we might add to the contract and subject to the approval of this request by City Council.**

**Haugen and Child voted against.  
The motion passed.**

Butler: What is the purpose of this fee?

Hunter: Parking Enforcement has a service fee that is already included in all regular tows. We were thinking that this fee should be charged to all tows from our office. In looking at all of the information in regards to our service fees, it was a question as to why abandoned autos were kept separate.

Gaylord: I'm not sure if there was ever a justification presented.

Hunter: Most of our service fees are complaint generated. The gas and time spent going to investigate the service request.

Gaylord: Would this not be covered in the fee that the tower pays?

Hunter: I'm not sure.

Butler: Because some Board members are absent today and there seems to be some unanswered questions, I would suggest that we table this issue.

Hunter: I agree that we should table this. I can come back to the Board with some answers to the questions that have come up today at the next meeting.

Haugen: I would like to hear more information before voting on this.

Butler: In terms of fees that could be charged to vulnerable citizens, we need to be prepared to bring info to City Council.

**Further discussion will be taken up at the next meeting.**

## **6. New Business:**

### **A. Timeline for the Next Dispatch Contract**

Gaylord: The Board was provided a timeline for letting the Dispatch Contract for the 2014-2019 term to review and approve. I am presenting the changes that I know about and that are necessary. If we have questions today, those will be addressed and the final materials will be approved at the March meeting. This includes the text of the contract and also the request for proposals and statements of qualifications. There is a large section having to do with all of the hardware and software requirements. I have gotten no input yet on how that needs to be updated. I do know that Tow Desk no longer prints the CAD submissions, so the section stating that they need to keep those printouts needs to be updated.

After this meeting today, I will send letters to all of the dispatch centers and anyone who has expressed an interest in it to find out if they have any interest. February will be for finalizing the drafts. I plan to get those out to the Board with another summary of changes. In March, we will approve the application materials and the contract. Following that approval, I will submit the notices to the local media. The completed applications and materials will be due by April 17<sup>th</sup>. In late April and through May, I will schedule and perform inspections for any applicants. I will schedule two inspections for each company so that if I find deficiencies, they will have another opportunity to correct them. I would finish the review of all the applications, compile the inspection results and present this to the Board at the May 21<sup>st</sup> meeting for approval and award of the Contract. In June we will go to City Council for approval and the contract will commence on July 1<sup>st</sup>.

Ferrero: Is this report informational or do you need approval from us?

Gaylord: The Board should approve the layout of schedule.

**Ferrero moves and Haugen seconded that the Board approves the proposed timeline for solicitation and approval of a dispatch contract.**

Haugen: I will not be here in May.

Butler: Has a Board member's vote ever been solicited even if they are not present at the meeting?

Gaylord: Not to my knowledge. One time we set up a special meeting with a conference call. But, that was a special meeting.

Ferrero: I believe a public meeting is required.

Butler: By virtue of this schedule, we can't miss any of these dates because the contract expires on June 30<sup>th</sup>.

Ferrero: Perhaps we should not approve the schedule?

Gaylord: That would allow for us to reschedule the May meeting to ensure that we have a quorum.

Butler: We could potentially schedule the March meeting later if we don't have everything ready in time.

Ferrero: Maybe we can adjust the May meeting prior to some Board member's vacations schedules. Or, could we have the may vote in March by adjusting the schedule?

Gaylord: This requires a formal RFP and it is required that this be posted correctly and that it's seen.

Butler: We could possibly push the schedule earlier and change the meeting schedule if it works.

Ferrero: **It doesn't sound like we need to approve this timeline.** It would not prevent Gaylord from getting things ready. Possibly at our next meeting, we could be a step ahead.

Butler: We may need to have a meeting in late February or earlier in March than we had originally planned.

Butler: Are there any other questions about the material the Gaylord has distributed thus far?

Ferrero: In terms of the "computer work stations" and "software," it looks as though the language is not updated. In my office, we have moved to the Cloud and are not using a network. Perhaps the towers are as well.

Gaylord: I'm sure they have been upgraded in the course of the current contract. That is some of the language that I need to get updated. If we could all look at the application materials. The proposed changes are the dates, the web address. I proposed that we raise the application fee from \$100 to \$125. The submission requirements - It is no longer necessary that everyone provide multiple copies. I'm asking for an original and an electronic copy instead. I have added language under Affirmative Action Program to align the language with the tow contract. I did lower the number of qualifying tows to use in their calculation for what their bid should be.

In the last contract, we said they should assume 3448 calls a month. I have dropped that to 2500 including PPI calls. In the statement of qualifications the only thing that was changed are dates and some language about what used to be known as the City Business License, now called the Business Income Tax. Some of the structure about how that is figured has changed. There were no substantive changes made.

Ferrero: Are all of the proposed changes included in the paperwork you submitted to us?

Gaylord: Yes.

Butler: We did find some language that the City Attorney's Office will have to amend having to do with making it very clear that what we are asking for is what we are going to get.

**Ferrero moved and Haugen seconded that the Board approve the RFP as proposed and also approve the Statement of Qualifications subject to it being amended to include the most current technology requirements and also to comply with the recommendations of the City Attorney to include certain required provisions for any contract and that we would empower the Towing Coordinator to make those changes.  
The motion carries unanimously.**

**B. Introduction of Dispatch Contract Changes**

Gaylord: [Copies of the proposed contract with the tracked changes were handed out to the Board members] the language concerning intellectual property and indemnification is being prepared by the City Attorney and is not available for review today. In the current Tow Contract we separated out the procedure for Portland Streetcar and I would like to do that for this contract as well.

Butler: Since the Board is not going to approve the contract until the next meeting, it might save time if we send these copies with the Board Members today and they can review it before the next meeting. If questions come up before the next meeting, please contact Gaylord directly.

**C. Request by Industry for Debit/Credit Checkout Fee**

Gaylord: I was approached by a few contractors asking if they can charge a fee to the citizens when they use a debit or credit card. My feeling is that the Board just approved a new contract with an \$11 increase in October. There will be an opportunity in November to request another cost of living increase. I think it would be more appropriate to request an increase at that time.

Ferrero: Do you know what the fee would be?

Gaylord: I don't know. That is information we need to solicit.

Dave Reichert from Speed's towing: The banks all have different fees and the higher the tow bill goes, the higher the fee is that I pay. I currently pay around \$2400 a month in credit card fees to the bank. This is a charge of 3 to 6 percent.

Chuck White from Retriever Towing: The state of Oregon passed a bill allowing banks to charge up to 4% of the gross. We are only looking to be able to charge the excessive bank fees that we are being charged. We aren't looking to make money on this. Since we are in a regulated industry, we don't have an

option to charge these fees to the customer. My company is spending more than \$30,000 a year in fees.

Ferrero: I want to hear more about the fees. Will we need to make change to the contract? If we change the contract, how is that communicated to the public. Will there be a problem with the bureaus we work if we are charging that? Does it impact tow desk at all? What is the expense to the towers? I would like to hear that information at our next meeting.

Chuck White with Retriever Towing: This would not be a profit, just a way to collect the money we are losing.

Ferrero: We need a specific proposal that lays out the percentage of charges by each type of payment.

Haugen: We would like to see that information in detail before making a decision on it.

Butler: The law is an enabling law. It does not automatically grant the authority to charge a fee. It just makes it no longer illegal to charge a fee for the use of a credit card. One of the concerns here is that we just started the new contract with a significant increase in the base fee as well as several other fees. City Council does not look kindly on being asked for another increase so soon after asking for the increase on the current contract. The cost of doing business was presumably included in the contract that was just signed. Our opinion is that the next time any fee increase should be considered is when the cost of living increase is considered, which is in November 2014. It isn't good practice to institute a contract at a certain cost and then start adding more fees to it. And, it has always been a principal to not break all of the fees out unnecessarily. Council is looking for the citizen to know what the basic charge is rather than being given a list of additional charges.

Gaylord: The fee increase was in response to the fuel surcharge and was justified, but it was an additional fee added on. People don't respond well to that.

Male from audience: For the record, I brought this up last September or October with the Tow Contractor and I was told it would be on the agenda for November before the next contract. However, it did not surface on the agenda. I just wanted the Board to be aware that I have been waiting for some time to discuss this issue.

Butler: If you want to move this forward, what we need is documentation of your costs so that we can present that to the Board. It would be nice to have a wider variety of tow contractors. This will give the Board a sense of the range of fees and is needed before the Board makes any moves in this matter.

#### **D. Driver Appeals**

Butler: The agenda says there are 2 appeals. To clarify, there are 2 companies that have appeals, a total of 3 drivers with appeals.

#### **Beaver towing:**

Gaylord: We do not have a well-defined procedure and have not required the companies to appear in the past. Because there was short notice given and the company is small, the owner sent a request for the appeal, but could not be here in person to support his driver.

The owner said he would like to "support the driver as he has been a trustworthy and loyal employee for the last 14 months." This driver was noticed during the re-checks. We found that all of the information is old and there is nothing new since we approved him at the start of the old contract.

Ferrero: His status changed because our standards changed?

Gaylord: No. The Board said that they wanted to revisit these convictions with the start of a new contract.

Ferrero: Since he was approved on the old contract and there have been no new incidences since then, have our standards changed to have sent him an intent to deny letter?

Farres: When I run a background check on an employee and it shows that there are felony convictions, I look at previous Board meetings to see if the employee has been approved. I did not see Mr. Patterson's name and that is why he is here today.

Ferrero: So it's possible that we didn't catch his issues in the past?

Farres: Yes, in this case it may have been overlooked. Or, it could have been that we sent an intent to deny letter when he started working for the company, but the company never responded to the letter and their non-response was overlooked.

Gaylord: Because we don't have record of him coming before the Board previously, we made the decision to have him come today. He has worked without incident for the last 15 months.

**Patterson - Driver for Beaver Towing:** I have worked for Beaver for the previous 15 months. Before that I worked with another company in Lake Oswego, Clackamas, Oregon State Police and Oregon City Police. I've had a charge of possession of a controlled substance in 2001. The drugs were in my house, but it was found that I was not using drugs. However, I took responsibility for them. In 1980 I was convicted of Theft. I did time, and I did three years of drug treatment programs, I took parenting classes and anger management classes. I am not on probation. It has been 12 years since any convictions. I ask the Board to give me a chance.

The Board discussed whether or not they could share the criminal history reports that were obtained by the City of Portland.

Butler: Our Portland Police Bureau representative is not here today. We should come up with some mechanism for the Board to be able to review the records prior to the meetings.

**Ferrero moved and Haugen seconded that the Board table the consideration of the appeals until the next meeting, and allow the three drivers to operate as drivers and employees on the contract in the interim. The motion passed unanimously.**

March 19<sup>th</sup> is the next meeting, but it may be moved earlier.

Gaylord: I would like to ask the Board to commit to finding an establish procedure so that the employees know what to expect and we know what to use as background information.

Copeland: Couldn't the driver who wants the appeal be charged with obtaining their own background which could be shared with the Board members at their discretion?

Haugen: I think we should have a conversation with the director at LEDS. Arrest and conviction information is public information, but we need to know what we can and cannot obtain and release.

**Ferrero proposed a tentative standard, subject to review by the City Attorney and the Tow Coordinator, that we will request from the parties seeking the modification of our intent to deny that they provide us with documentation of their record of convictions and that this documentation be subject to review by the City Attorney and the Tow Coordinator who will determine the exact documents to request and the procedure for requesting them.**

Haugen: We need a clear cut process to give to the tow company and the driver as to how to obtain these documents because this can be a lengthy process.

Gaylord: At this point, the Board has approved your being able to work and we will revisit this at the next Board meeting.

Butler: We have 3 drivers who have requested appeal. We need guidance before the next meeting. I think we should tell the drivers who are here today what we expect so that they can get started today.

Child: They can request their criminal history from Oregon State Police. I think there is a small fee, around \$15. There is a form to request this on the OSP website.

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

The meeting adjourned at 2:51 p.m.

The next meeting will be held March 19, 2014.