

**PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE**

**FINAL DRAFT MEETING SUMMARY**

**January 27, 2020 • 1:00 PM – 3:00 PM**

Oregon Convention Center, Room F150, 777 NE MLK Jr. Blvd, Portland, OR 97232

<b>Advisory Committee Members</b>	<b>Organization</b>	<b>Present</b>
Mark Williams	PFHT Program Manager, PBOT (non-voting member)	Yes
Mike Greenfield	Chair (non-voting member)	Yes
Josie Ratnayake for Marlo Maroon	Travel Portland	Yes
Nickole Cheron	Portland Commission on Disabilities	Yes
Idris Khoshnaw	Shuttle Driver	Yes
Steve Hext, Vice Chair	Broadway Cab	Yes
Caleb Weaver	Uber	No
Nathan Hambley	Uber	No
Ilene Brown	TNC driver	No
Vacant	LPT Driver	N/A
Vacant	LPT Company	N/A
Vacant	Limousine or Party Bus Company	N/A
Jeff Pietka	Evergreen Escapes	Yes
Vacant	Shuttle Company	N/A
Andrea Lins	Brewcycle	No
Kirk Foster	Wapato Shores	Yes
Debbie Brooks	Port of Portland	Yes
Michael Huggins	Port of Portland	No
Sirous Tanzadeh	Radio Cab, Driver Rep.	No
Margo Moore	TriMet-Accessible Transportation	Yes
Dave Benson	PBOT	No
Erika Nebel	City Policy Advisor	No
Matt Grumm	Commissioner's Office	No
Ken McGair	City Attorney's Office	No

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Mary Everson	PBOT PFHT Regulatory Program	No
Kimberely Patterson	Sr. Administrative Specialist	No
Matthew Erickson	PFHT Program Manager	No
Tracy M. Smith, Facilitator	Inhance LLC	Yes
Jamie Lynne K. Souza, Recorder	Inhance LLC	Yes

**Other Attendees:** Rick Sovereign, Sovereign Medical Transportation; Amy Sovereign, Sovereign Medical Transportation; Jonn Thompson, Self; Vyacheslav Karkhu, Green Cab Co.; Brad Boyer, M. Executive Car; Ed Kelly, ecoShuttle; Lisa Holcomb Krahl, ecoShuttle; Gene Schaefer, Paradigm Medical Transport; Dan Lenzen, Venture Hospitality; Efren Zamudio, Lyft; Pam M., WAV Transport; Steve Entler, Radio Cab Co.; Darin Campbell, Radio Cab; Teal Abel, New Rose City Cab.

**INTRODUCTIONS AND REVIEW OF MEETING AGENDA: MIKE GREENFIELD, CHAIR**

- Mike called the meeting to order at 1:15 PM.

**ANNOUNCEMENTS FROM COMMITTEE MEMBERS: COMMITTEE MEMBERS**

- Kirk Foster: The current NEMT broker has gone under receivership. Gridworks and Health Share financial backer agreed to pay all NEMT providers for trips in October 2019 and November 2019 by December 18<sup>th</sup>, 2019. On that date, drivers did not receive payment, but a letter from Gridworks attorneys stated they were not going to pay NEMT providers for October 2019 and November 2019. They ‘generously’ offered to pay for December 2019 and to line up in front of the bankruptcy judge for payments from October 2019 and November 2019. This was addressed with the Portland NEMT Owners Association, which represents most of the smaller companies and a few of the larger ones. We sought to consult help from the NAACP who stepped in with a lot of media contacts and with a lot of outreach and negotiations throughout the holiday week. The NAACP suggested they inform their national media contacts about Health Share not paying drivers for those rides. Health Share then changed their minds, but only after that suggestion was made and payments were made after Christmas. Health Share is now bringing in a new brokerage group and I wanted PBOT to be aware of this information. Our industry teetered on the edge of bankruptcy and it was the political support from the NAACP that got all of us paid. Ride Connection will be taking over the contracting and this will be effective between the last week and three months from now.

**APPROVAL of 11/21/19 MEETING SUMMARIES: MARK WILLIAMS, PBOT**

- No revisions or objections made to November 21, 2019, Meeting Summary.

**VOTE:** Unanimous approval.

**ACTION:** No action taken.

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**TOPIC SUBMISSION: CREDENTIALLING REVIEW & ENFORCEMENT & NEMT COMPANIES USING 1099 FOR WHAT ARE ACTUALLY EMPLOYEES: KIRK FOSTER, COMMITTEE MEMBER**

- There are a significant number of providers in the NEMT industry that are operating with 1099 drivers, essentially calling them subcontractors. The regulations are clear that a NEMT driver is not exempt from Workers' Compensation unless they are working for a company that's contracted with a mass transit agency. As of January 1, 2015, no NEMT company in the Portland market is contracted with mass transit or transit authority, so the exemption doesn't exist for drivers. The Oregon Commercial Liability Insurance never covers the driver because it's assumed that either that driver is a legitimate independent contractor or that they're an employee with an obligatory Workers' Compensation policy. Many companies have been pushed into bankruptcy for being fined from those audits that they've been using 1099 drivers. That being said, the NEMT companies using 1099 drivers or independent contractors do not meet the independent contractor test and is essentially a violation of ORS Workers' Compensation, a violation of Administrative Rules, and auditing practices. What they don't realize is that if they're in a collision, unless they have the other car's liability policy for their medical bills, they have nothing, no Workers' Compensation and no coverage from their employer. These drivers are being put at a huge risk of being bankrupt from medical bills and are not being covered. There also seems to be a risk to PBOT, who potentially faces liability to those drivers if someone gets hurt and the issue is that drivers don't know this information. PBOT has an obligation to make sure everyone understands the risks that are involved. The NEMT companies doing this are destabilizing the market and have a significant unfair competitive advantage when they don't pay the required fees. This does not apply to taxis because 1099 drivers with a licensed taxi company have their exemptions from these regulations. This only applies to NEMT companies that are licensed in the State. I only learned about this when we were starting the business and didn't think about it again until realizing there were a lot of companies blatantly violating this right now. The Bureau of Labor and Industries (BOLI), Oregon Department of Revenue and IRS all have some co-agreement in which they do joint enforcement. They're going after the employer for whether or not they withheld the unemployment insurance, the Workers' Compensation, social security, and whether the employer is doing all the withholdings required by law.
  - Steve Hext: Kirk, you used the term BOLI, is that considered the Workers' Compensation department?
  - Kirk Foster: BOLI is the Bureau of Labor and Industries.
  - Mike Greenfield: Workers' Compensation is part of the Department of Consumer and Business Services.
  - Kirk Foster: My understanding is that a NEMT is required to provide Workers' Compensation coverage for their drivers unless they meet the 10% ownership requirements. So, any NEMT company that is not providing Workers' Compensation is in violation of the ORS. I'm unsure how BOLI and the departments interact, but I know they show up together when they conduct audits. Their position is very clear that you cannot do it, but it's being done all over the industry and that's our concern.
  - Steve Hext: Are we dealing with three entities? Workers' Compensation, BOLI, and the Employment department.
  - Mike Greenfield: BOLI and Workers' Compensation are the two departments you're dealing with.

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- Kirk Foster: I'm not sure if BOLI is a regulatory agency and the Employment Department is the enforcement agency. I don't understand how they work together.
- Mike Greenfield: Between now and when we consider this formal you can figure it out.
- Rick Sovereign: I'm the co-owner, along with my wife, of Sovereign Medical Transport and I submitted this Topic Submission. I'd like to add to the various liability concerns and our concern for the riders. Where does it leave the rider if there's no coverage for an accident? Everything we do is for the benefit of these riders, and to me, that is the primary and common-sense level focus. If an accident occurs, what happens to the people who are already needing our help and are now injured? A lot of our passengers have Oregon Health Plan (OHP) and now OHP will be burdened by the injuries that took place when they should've been covered by insurance. There are many reasons why this is a critical issue. We got to recognize that people are getting around the system and we need to stop that.
- Rick Sovereign: The signage issue is also directly tied to this topic. When you begin new enforcement on February 1, 2020, and begin to see the vehicles without signage, you are also going to see the people on the wrong side of this credentialing requirement. I don't want to get people in trouble, but I do want people to follow the rules.
- Idris Khoshnaw: I'd like to ask PBOT to look at shuttles and Town Cars as well. Most drivers are 1099 drivers and having a City of Portland business license they consider themselves employees, but the State views it's not. If anybody got in an accident, they'd have the same problem. If PBOT can look at those as well.
  - Mark Williams: We need to have our attorney help us navigate through this issue. Personal injury protection topic has come several times, but not necessarily Workers' Compensation. The question I have is, "Who is responsible for enforcing it?" We permit all drivers, use disqualifying factors and confirm companies have general liability, commercial liability, and automobile liability. PBOT assumes the insurance for the driver is optional. The first step is to have our attorneys look into it and we will come back to the Committee with their response.
- Jeff Pietka: Is this likely to be applied beyond NEMT? It strikes me as a Limited Passenger Transportation (LPT) operator that this probably applies to our sector of discussion as well, in terms of more than 1099 vs. W2 and has the same implications.
- Mark Williams: PBOT will research and see what the state law says. I haven't heard from any other industries and this seems specific to NEMT, so PBOT will start our research with NEMT and end it there. There are no other requirements for anyone else.
- Mike Greenfield: We have a Topic Submission for further research and consideration at a future meeting to advise PBOT.
  - Motion to consider at a future meeting.
  - No objections. No discussion. **APPROVED.**

#### PFHT PROGRAM STAFF REPORT: MARK WILLIAMS, PBOT

- FastTrack Driver Module Launch

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- This morning PBOT launched the portal FastTrack for drivers, where they can apply for a new permit. If you are a driver and have received a lot of emails don't worry, we are fixing that. Typically, things like that happen during a data migration and we'll get those worked out. FastTrack is a nice tool and resource for all drivers.
- WAV Vehicle Age Exemption
  - It's now published and official. Therefore, if you have a wheelchair accessible vehicle you can now permit it for up to 15 years.
- Digital Records (Cameras)
  - This has been signed by the Director and will be posted tomorrow. This is regarding the three suggested cameras to be used in taxis based on the recommendations from PBOT. PBOT will begin to strictly enforce on June 30, 2020. Companies will have from now until June 30, 2020, to get the appropriate cameras in the vehicles or they can bring other camera suggestions to the Committee to add to the list.
- Executive Town Car
  - We're hoping to go to the Director this week where this will eliminate the Town Car list. PBOT will change some of the languages to reflect this administrative rule in code. The term "Town Car" may not be the appropriate name to use when we go to Council. Once signed, it will be PBOT's discretion to approve certain vehicles to operate as Town Cars, as long as they have four doors, in good condition, and meets all other requirements.

#### **PUBLIC COMMENT-NON-AGENDA: MIKE GREENFIELD, CHAIR**

- Lorra Colette: Driver with the Lyft platform and this weekend I didn't know what to do near streets downtown that are sectioned off and closed. As a Lyft driver, I have to follow all the rules and watch for pedestrians. However, there's a section where the Trimet bus turns right and continues with a separate bus lane. I was with rideshare and picking someone else up at a restaurant in that bus lane and I knew not to be in that right-hand lane. Can I go into that lane with the buses when picking someone up? The police have told me before I could only wait for 30 seconds, but our clock is for five minutes. I ended up going into that lane, picked up the Lyft rider and then a Trimet bus ended up going around me. We do not know the policy of these new bus lanes.
  - Mark Williams: This issue came up at the TNC Driver Advisory Committee meeting and we've heard from Trimet and the hassle the bus drivers are dealing with drivers stopping in front of them. It was decided that PBOT would work with Uber and Lyft to work on geofencing technology to designate the pickups and drop-offs to safe areas. We already do this at the Moda Center and Providence Park, where after the games there are specific locations riders have to go to for drop-offs and pick-ups.
  - Margo Moore: I work for Trimet, so anytime you see green, green stripping or red stripping a vehicle is allowed to travel in that lane, but not allowed to park. If it's green you're allowed to pull in for a short amount of time. If it's an actual bus lane you should either find another stop because the bus does take precedence and cars need to get out of their way. There are new ride lanes that are red

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lanes for buses only and no vehicles are allowed to pass through, red striping can pass through only and green can pass through and sit there for a short period.

- Tracy M. Smith: You're welcome to attend the TNC Drivers Advisory Committee here at the Convention Center on February 10<sup>th</sup>, 3:30 pm - 5:00 pm.
- Steven Entler: I had an opportunity to attend the TNC Drivers Advisory meeting and I was surprised that one of their board members had no clue what the green papers were that showed up in his mail and what to do with them. The TNC driver permits are printed on green paper with a number and the driver's first name. These were supposed to be posted in their vehicle since July 2018. Very few drivers have them and most don't know anything about them. Another thing is we're checking with Uber drivers and asking them what they're showing in their vehicles for commercial insurance. James River canceled them at the end of the year, and nobody knew a thing. You're supposed to be carrying a digital copy of your new insurance and when brought up to Mark Williams he looked it up and said it's another insurance. But once again, nothing in their vehicles because no one knows.
  - Mike Greenfield: It seems you are looking for more enforcement.
- Lisa Holcomb-Krahl: I'm the General Manager and Director for ecoShuttle charters and tours in Sherwood, Oregon. I recently had some interaction with PBOT and City of Portland in some dealings arising from an issue over the summer. I've been in the transportation business for over 30 years, 18 years spent within the cab company. I'm now in a different scenario that I would like to ask the Committee to consider exempting commercial carriers. I have to answer to the Federal Motor Carrier Safety Administration, United States Department of Transportation, the National Highway Traffic Safety Administration, and the North America Commercial Motor Vehicles Standards Alliance. When hiring a single driver, I have a 21-step protocol I have to follow. I have routine audits by the United States Department of Transportation, our insurance carriers and the Federal Motor Carrier Safety Administration. I'm also required to follow federal guidelines under the purview of US Code 14501 to run background checks as prescribed under a pre-employment screening protocol, medical card qualification, driver qualification files, entry-level training certificates, consortium participation, Federal Clearing House and other regulatory standards which I have to meet as a commercial operator. I've also spent several hundreds of dollars on background checks for our drivers from a reputable company approved by the Federal Motor Carrier Safety Administration that we've used for over 11 years. To then find out the agency was not certified by the City of Portland and we were forced to have the City of Portland rerun all our background checks only to have the same result; it was a great cost to our company. We ask that the PFHTAC and the City of Portland look to exempt those companies. The very few in the State, that is regulated under US Code 14501 and exempt us as federal law prescribes.
  - Mike Greenfield: You want to submit a topic for us to consider, which is no enforcement of that law, but to exempt vehicles and drivers that fall under that?
  - Lisa Holcomb-Krahl: I would like the Committee to consider the exemption. There are only four companies in this City that fall into this purview. The exemption under US Code 49 is the same code that exempts us from some of the regulations through the Port of Portland. So yes, if the Committee would consider exempting those that have only commercially regulated drivers. The City of Portland should allow us to certify our drivers, vehicles and have our vehicles inspected by those federally mandated to do so. Exempting us from having to go through some of those things are open to audit

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inspection but to force us to be part of the same regulatory standards and is outside of the City's authority to do so.

- Mark Williams: This does come up a couple of times a year. I'm not an expert, but we have done a lot of research in this area. PBOT determined there are a lot of industry and commercial services that are required to be permitted and in different jurisdictions. NEMT is a prime example, whereas the City of Portland has a requirement but if you work in Gresham there might be some additional requirements and another process you'd have to go through. Our position has always been that if we're not preempted to regulate an industry then we would regulate that industry. NEMT is regulated by the State in a sense, but we do regulate that industry as far as drivers, vehicles and company permits. Our position is the State or Federal doesn't preempt PBOT from regulating, PBOT is always regulated. PBOT is not out to break the law and PBOT has had attorneys look into this quite a bit. I believe we determined it doesn't preempt us from regulating that service. We're just now getting around to identifying all the companies that haven't been regulated. If you've been contacted by our office, one of your vehicles was likely seen in an audit, audited by a PBOT enforcement person, or another company complained and reported to you.
- Lisa Holcomb-Krahl: It had something to do with somebody else contracting us because they did not have a City Business License and didn't get the appropriate permitting. In that scope, asking our drivers to pay for a license to operate within Fareless Square is a lot. When I could put them in a commercial motor vehicle and have them pick up and drop-off in New York City.
- Mike Greenfield: We're an Advisory Committee and you are welcome to submit a Topic Submission in writing and ask the committee to examine the issue and decide whether or not they want to proceed.
- Kirk Foster: If the City Attorney responds to this, can that be made public and available as a starting point from a legal perspective. This Committee has already advised years ago that any NEMT companies that are licensed in the customer's point of origin don't have to be permitted under PBOT regulations to come into the City. For example, a NEMT company in Medford doesn't need a permit to enter the City and go to OHSU. There is precedent for us to advise and an exemption in a specific case. I'm curious about the Oregon State Authority overriding PBOT with secure transport; I don't recall response from PBOT.
- Mark Williams: We concluded that they are considered Non-Emergency Medical Transportation. I can send it to you because it's in the Oregon Administrative Rule.
- Kirk Foster: Giving the City's legal opinion would be a starting point, but we do have precedent with NEMT or out of the area to try to smooth everything over and in everyone's best interest to not do things we don't need to do.
- Ed Kelly: I'm the Operations Manager with ecoShuttle Charters and Tours. I wanted to add a few things to what Lisa Holcomb-Krahl said. I'm a Class A driver and am responsible for all the regulatory licensing and fees that the company has to pay. PBOT is imposing additional fees when we already pay weight, mileage, quarterly fees, and the fee for our driver's commercial licenses. Also, carrying a medical card at all times as well as running a review of our driver's driving record every year. Standards as which they have to abide by just to be employed by ecoShuttle and then to add the City stuff on is a little unreasonable to the driver. We operate in running transportation services that are reserved for the

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private use of groups and businesses and do not operate on a for sale by seat or ticket basis. We don't do curbside pickups and we're not an on-demand company. I think ecoShuttle should be exempt from having to permit to operate in the downtown area and the question simply does not fall under the criteria that PBOT is inferring. However, ecoShuttle does meet the driver and equipment qualifications.

- Mike Greenfield: You are also welcomed to submit a Topic Submission online to bring to the Committee to consider.

**AGENDA ITEMS:**

**INFORMATION ONLY: TRANSPORTATION PERMIT FEE STUDY SUBCOMMITTEE REPORT: MARK WILLIAMS, PBOT**

- We need another meeting due to an absent Committee member and feel it's important to hear their feedback. We'll schedule another Subcommittee meeting and come back with that information.

**INFORMATION ONLY: SAFE RIDE HOME SUBCOMMITTEE REPORT: DAN LENZEN, SUBCOMMITTEE CHAIR**

- One of my venues, Dixie Tavern, is in Old Town on 3<sup>rd</sup> and Couch and in an ordinance street closure known as the Entertainment District. A pedestrian count on a Saturday night from 9:00 pm-2:30 am shows on average 17,000 pedestrians and 12,000 on a Friday night. The Safe Ride Home program is a great opportunity to get people home safely.
- The Subcommittee addressed "How to get coupons into people's hands?" We identified that it's great to address the owners and managers, but it's really the workers and bartenders that can get this into people's hands and "How do we better market this program since it's there?" It's a great opportunity to get people out of their cars on special event nights. We've identified all the drinking events and hope people are drinking less but have this opportunity to get them home safely. We want to find those target areas and get those coupons in the hands of the people. One of the issues was that the digital format was good for some, but not for others. We also need to rethink printing pieces of paper, which did work for some. I think with the Subcommittee and my contact with bar owners we can increase ridership in this program.
  - Debbie Brooks: In reading the Subcommittee notes, the Subcommittee came up with some great ideas of incentivizing for the bartenders with a reward for "x" number of coupons handed out. The coaster idea is also great! You all came up with some creative and likely effective ideas.
  - Dan Lenzen: I agree and think the coaster idea is a great idea for advertising. Coasters can be used to place over their drink, under their glass and there's a lot of opportunities there. One thing I've learned that is constant is the delivery of the message and with the coaster idea, it is in front of you. We have a great opportunity to make Portland an even better visitor location.

**ENFORCEMENT UPDATE: NEMT VEHICLE SIGNAGE: MARK WILLIAMS, PBOT**

- About three weeks ago, PBOT notified NEMT companies regarding the signage requirements. We enclosed a copy of that particular section of the Portland City Code that talks about signage with the labels need to contain and its height. We've already started our education campaign, which means

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we're going out and reminding drivers who don't have signage or don't meet requirements to get it done. We will then give them a warning and issue civil penalties. It's not an expensive problem to resolve, but I do understand the safety concerns and we're addressing it.

**COMMITTEE CONSIDERATION: NEW INDUSTRY BUSINESS MODEL: MARK WILLIAMS, PBOT**

- Now and then PBOT is faced with a new type of transportation model that doesn't fit into any "bucket" for Portland city code.
- John Thompson: Over the last two years, I was a limo driver and learned while driving there is an untapped market in this transportation service. I'm looking at wine tours as an example because that's the first market I want to tap into. Wine country is south about 45 minutes away and there are only a couple of ways to get there. On the high end, you can take a limo, but it's expensive and makes you think it needs to be a big thing. The wineries don't always like when 15 drunk people stumble in to taste wine but never buy. Then on the low end, you can get a shuttle bus, but that doesn't always look appealing and you're on a route of 15 wineries and have to catch it on the stops. My idea is in-between. I want to hire professional drivers that people can hire to drive their vehicle to the wine country and back home. I also want to look at football games and tailgating. I want to hire professional drivers that drive Lyfts, Uber, Grub hub, Amazon Prime so this gives them an opportunity to do what they love and another opportunity for people to not drink and drive. The issues here as Mark pointed out is there's no "bucket" for this and we don't have code, permits, or know what insurance is. There are a lot of questions, but it's clear there's a market. If we can figure out how to create a "bucket" that's where this Committee comes in.
  - Mark Williams:
    - 1) The insurance model—not sure if there's a policy that covers a driver driving a person's car commercially.
    - 2) Who's responsible for the safety condition of the vehicle? What happens when you show up and it's a piece of junk. This doesn't have a physical impact on the program, we just need to figure out if it's feasible and getting the right insurance for it.
    - 3) Also, how do we answer questions about risk and liability when driving someone else's car?
  - Josie Ratnayake: Have you researched other destinations that use this model because it does sound familiar?
  - John Thompson: Yes, I've discovered two companies, Driven and Main Street Drivers.
  - Steve Hext: Have you spoken to an insurer yet? I'd like to move that John Thompson talk to an insurer first and if you take the Town Car Code and produce someone that will ensure your operation to those insurance limits. You need general liability and auto liability. Personally, if you can meet Town Car Limousine limits, then I'll support everything that you're doing. It's a great idea and taxi people will testify that we've done that for years. People would call for two cabs to help drop off someone's car and go back.
  - Tracy M. Smith: Before you come to the Committee and ask to do more work, you have to be able to have the insurance that's necessary because that's the basis of this business model. The Committee

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wants some type of documentation that you can get insurance and then we can be in contact to get you on the agenda at a future meeting.

- Mike Greenfield: Consider discussing the topic at a future meeting after he has documentation from insurance and the approval to move forward from Mark Williams.
  - Motion to consider at a future meeting.
  - 8 in favor and 0 opposed. No objections. **APPROVED.**

**CHAIR ADJOURNED THE BUSINESS MEETING AT 2:41 PM.**

**NEXT MEETING:** Tuesday, February 25, 2020, Oregon Convention Center, Room 150.

Submitted by, Jamie Lynne K. Souza, Recorder