

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY

September 28, 2020 • 1:00 PM – 2:30 PM

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Advisory Committee Members	Position	Affiliation	Present
Mark Williams	PBOT (non-voting member)	Regulatory Division Manager	Yes
Nickole Cheron	At-Large Community Member with a Disability	Portland Commission of Disabilities	Yes
Teresa Leatham	LPT Company	Executive Towncar	No
Ahmed Alzubaidy	LPT Driver	A1 Diamond Limo	Yes
Jemal Abdi	NEMT Driver	JB Medical Transport, LLC	Yes
Kirk Foster	Non-Emergency Medical Transportation Company	Wapato Shores	Yes
Debbie Brooks	Port of Portland	Port of Portland	No
Ed Kelly	Shuttle Company	ecoShuttle	Yes
Idris Khoshnaw	Shuttle Driver	Hillsboro Airporter & Car Service	No
Steve Hext, Chair	Taxi Company	Broadway Cab	Yes
Sirous Tanzadeh	Taxi Driver	Radio Cab	Yes
Caleb Weaver	TNC Company	Uber	No
Vacant	TNC Driver		
Jeff Pietka	Tour Bus Company	Evergreen Escapes	No
Billie Moser	Tourism Industry	Travel Portland	Yes
Margo Moore	TriMet	TriMet-Accessible Transportation	Yes
Vacant	Pedicab Company		
Dave Benson	PBOT	Parking Group Manager	Yes
Erika Nebel	PBOT	City Policy Advisor	No
Gabby Sanchez	PBOT	Regulatory Division	Yes
Matt Grumm	PBOT	Commissioner's Office	No
Ken McGair	PBOT	City Attorney's Office	No
Mary Everson	PBOT	PFHT Regulatory Program	No

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Advisory Committee Members	Position	Affiliation	Present
Kimberely Patterson	PBOT	Sr. Administrative Specialist	No
Matthew Erickson	PBOT	PFHT Program Manager	No
Tracy M. Smith	Facilitator	Inhance LLC	Yes
Jamie Lynne K. Souza	Recorder	Inhance LLC	Yes

Other Attendees: Sam Cho, Lyft; Karen Christensen, Port of Portland; Alencia Munio; Steve Entler, Radio Cab; Darin Campbell, Radio Cab; April Murchinson, Port of Portland; Michelle Plambeck, Strategies 360.

ANNOUNCEMENT OF NEW COMMITTEE MEMBERS

- The newest members of the PFHT Advisory Committee were introduced.
 - Billie Moser, Travel Portland, representing the Tourism Industry
 - Ed Kelly, ecoShuttle, representing the Shuttle Company Representatives
 - Teresa Leatham, Executive Towncar, representing the Towncar Company Representatives
 - Jemal Abdi, JB Medical Transport LLC, representing the NEMT Drivers
 - Ahmed Alzubaidy, A1 Diamond Limo, representing the LPT Drivers

ANNOUNCEMENTS FROM COMMITTEE MEMBERS: COMMITTEE MEMBERS

- Steve Hext: Last year he brought up an insurance-related concern where other industries and cabs were seeing uninsured motorists colliding with their vehicles. Many were hit and runs, but a good amount stayed while police were called and even with no insurance, their cars were not impounded. Two weeks ago, we were hit by a motorist who didn't have a license, registration, or insurance and the officer impounded their car. I don't know what changed but I'm happy to report that something did.
 - Mark Williams: I did reach out to the Portland Police Bureau, but I'm unsure if that made a difference. I'm happy to follow up with the Portland Police Bureau (PPB) to see if there were any policy changes, but I'm glad it worked out this time.
 - Kirk Foster: Can this issue be mentioned again to PPB because it seems to have gotten less responsive--unsure if due to overtime issues. Ironically, four hours ago one of our drivers was hit by an uninsured motorist and when we called the PPB, the non-emergency number, we were told no officers were available. It might be worth it to bring it up again.
 - Tracy M. Smith: It may not be a shortage, but rather that the police are only responding to a certain level of calls and crimes. That situation is one of those categories that won't get a police response but rather told to file a report.

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- Ahmed Alzubaidy: We've been informed to call the Oregon Department of Transportation (ODOT) before the police. They do a better job of responding than the police.
- Mark Williams: Are they sending someone to the scene of the accident?
- Ahmed Alzubaidy: They send out an incident car for a disabled vehicle, cars that need to be moved, or simple things. They'll come out, give us a report, and head out. If it's an incident that needs to involve the police, they will call and get them out there for you.
- Kirk Foster: Thank you, that's extremely valuable information and will use next time.
- Mark Williams: After reviewing the Bylaws and City Code, there is no explicit way to nominate the Chair or Vice-Chair of the PFHT Advisory Committee. I'd like to ask the Chair to open nominations for the Vice-Chair position to the Committee members, who are allowed to nominate themselves or other Committee members. Nominations will be followed up with the next steps such as submitting a biography to submit to the Bureau Director.
- Steve Hext: If anyone is interested in serving or knows of a Committee Member they'd like to recommend, you can speak now or send an email to Mark Williams and Tracy M. Smith.
 - Ahmed Alzubaidy nominates self.
- Mark Williams: Email nominations due by Friday, 10/2/2020, by 5 pm.

APPROVAL of 02/25/2020 AND 06/29/2020 MEETING SUMMARIES: STEVE HEXT, CHAIR

- Kirk Foster: Asked to include ORS 656.027, the entire section, be included in the minutes.
- The inclusion of ORS 656.027 to the definitions has been added. No objections were made to the February 25, 2020, Meeting Summary.

VOTE: Unanimous approval.

ACTION: No action taken.

- No revisions or objections made to the June 29, 2020, Meeting Summary.

VOTE: Unanimous approval.

ACTION: No action taken.

PFHT PROGRAM STAFF REPORT: MARK WILLIAMS, PBOT

- Pandemic Mobility Support Program
 - For three or so months, PBOT has been running a program working with community-based organizations offering free rides to individuals with essential needs such as getting to medical appointments, grocery stores, and things of that nature. PBOT hopes to continue that program through the end of December 2020, but this hasn't been confirmed. As soon as it is confirmed, we'll get that message to everyone.

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- Truepic Virtual Inspection Software
 - This is a software platform for our field audits that will keep citizens safe yet maintain social distancing to continue the work we do. Radio Cab tested it and random drivers will be selected for these virtual field audits. If you'd like to know more details reach out to Mark Williams.
 - Kirk Foster: Is the driver taking photos of the vehicle in real-time?
 - Mark Williams: Yes, inspections will be by appointment and the driver will log into the app and go through a virtual inspection. The app will ask to take a picture of the driver's license, insurance, permit, and even the decal on the back of the car. For NEMTs, it may ask for a picture of the side of the vehicle to see the proper labeling. Information will be captured in real-time based on that appointment time and the location where photos are being taken. The software has special security built-in, so if someone tried to take a photo of invalid insurance on the computer the system would flag it for us to further look into it. Yes, it can require a driver to take pictures not only of paperwork but inside and outside the vehicle as well.
 - Kirk Foster: I appreciate this during COVID, but I'm concerned about the validity of the audit and knowing ahead of time gives a driver time to correct any deficiencies. There's a huge problem with violations in the NEMT industry and a ton of illegal operators. People intentionally avoiding the rules know the rules better than anyone and could easily rectify anything or even switch into another vehicle that does comply and then return to their vehicle. A decision was made to do fleet inspections all at once at a certain time because so many people were moving their safety equipment from vehicle to vehicle. So I understand the need for it, but I hope there's a plan to keep these surprise inspections because anything with planning can be subverted quickly.
 - Mark Williams: That's a valid point and I believe the team will issue these inspections 24 hours in advance, but I'll have the PBOT Program Manager reach out and set up a test to get your feedback, especially for what works in the NEMT market. We can make adjustments as to how we use the software and what pictures are needed.
 - Kirk Foster: To maintain social distancing, the inspector could spot a vehicle in the parking lot and use the app in the parking lot to guarantee changes aren't being made from the contact or photos.
 - Jemal Abdi: I share the same concern and experience with people not respecting the laws and following regulations. Some drive for NEMT in the daytime with their magnet sticker and then remove it at night to drive for Uber/Lyft and are not complying with the laws and regulations. It's difficult dealing with this and there's a threat to our business when they cheat the system.
 - Mark Williams: We are conducting observation audits and took a brief pause when there was a lot of smoke from the fires, but we have resumed. We send inspectors to various locations such as hospitals, clinics, the airport, and any open hotels. We look for obvious violations and physical violations such as the labeling of vehicles and having the right decals in the right place. When we see a violation, we follow up with either a warning or a sanction with photos via mail.
- Driver Permit Photos
 - We hope to implement this software application within the next month. Since the customer service office is closed, we haven't been able to get driver's photos for their driver permit. If there isn't one

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on file or they're not renewing, we don't have a photo on file. The Driver Permit Photo application software will allow drivers to take their photo and send directly to PBOT to produce the driver's permit and send via mail.

PUBLIC COMMENT-NON-AGENDA: STEVE HEXT, CHAIR

- Sam Cho: I'm the new Public Policy Manager for Lyft and manage the Pacific Northwest region of Oregon, Washington, Idaho, and Alaska. I thought it was appropriate to introduce myself and if anyone felt the need to reach out please do. I want to be as open and engaging as possible and appreciate the work that you do. I look forward to engaging in this group going forward.
 - Steve Hext: Thank you. We look forward to meeting you in person and feel free to attend any meetings in the future.
- No further comments from the public.

DISCUSSION ITEM: RECAP OF MOST RECENT APPROVED ADMINISTRATIVE RULES: MARK WILLIAMS, PBOT

- A recap of the Committee's approved recommendations taken to the Director and Administrative Rules that have been published. Go to www.transportationpermit.com to find resources, the Code, information on this Committee, and a link to the published Administrative Rules.
 - TRN 14.32: The Executive Towncar Company list of approved towncars was approved by this Committee to eliminate and have no minimum fleet requirement. The value this rule offers the industry is allowing those that want to be independent towncar drivers to do so without owning a luxury sedan, that was previously on the approved list.
 - TRN 14.36: Approved by the Committee and the Director and is published. This discusses the amount of time a driver has to present their documents in a field audit. In the past, Regulatory struggled with drivers not finding their required documents during a field audit. PBOT initially handed out envelopes to make it convenient, however, it did not work for everyone. Therefore, drivers have 10 minutes to provide the required documents or it will be considered a violation.
 - TRN 14.35: The digital record requirements apply mostly to taxi vehicles. This Committee offered a list of approved cameras with the required features including secure digital storage. After the Rule was published, companies were given until 6/30/2020 to comply. Enforcement teams will be checking for compliant cameras during their virtual and observation audits.
 - Steve Hext: Has the period to be compliant been extended?
 - Mark Williams: COVID got in the way, but it was not extended, and all taxis should have a compliant camera as of 6/30/2020.

DISCUSSION ITEM: LEGAL STATUS OF NEMT DRIVERS - W2 OR 1099: KIRK FOSTER, WAPATO SHORES, AND MARK WILLIAMS, PBOT

- Kirk Foster: Oregon's state laws are clear that you cannot use a 1099 driver for NEMT unless you meet one of the exemptions. There is an ongoing problem that dates back to at least 2005 of "pirate

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companies” doing NEMT and being out of compliance with the state law. Two sections of the Code reference it, but the easier to read is ORS 656.027, which is the Workers’ Compensation (Workers’ Comp) statute. It essentially makes an exemption that only applies to a NEMT driver operating under a NEMT contract with a mass transit authority. Trimet is the only mass transit authority in the area and they are not involved in NEMT. This means the exemption for Workers’ Comp does not apply unless one of the other exemption categories is selected which covers licensed taxi companies or a taxi company run by a board of directors comprised of owner-operators, there is no exemption. The NEMT exemption is very specific that if you’re not on a contract with a mass transit in Portland, you are a subject worker for Workers’ Comp.

There’s a huge issue going on that most drivers aren’t aware that commercial transportation insurance in Oregon does not cover the driver. My understanding of why the Oregon law exclude the drivers from the auto liability policy is that insurance rates were going up and companies were leaving the Oregon market due to driver injuries. The state pushed the drivers’ injuries into Workers’ Comp and prevented automobile liability companies from leaving the state because of the claims. Currently, no NEMT driver is covered if injured and if they can’t make a claim against the other motorist, they are uninsured unless covered under Workers’ Comp. Many companies have 1099 drivers and aren’t telling them they have no insurance. Some operate their personal cars and may think personal insurance covers them, but if they were to disclose that they are on the job, their personal insurance will say it’s a Workers’ Comp claim. It’s a risk for drivers that don’t know any better.

Recently with COVID, there are not enough rides for NEMT to go around with telemedicine and our clients, who are the most vulnerable population, don’t leave their homes unless for life-sustaining medical care. We’re at a point where legally operating businesses will go out of business because we can’t compete with the illegal business’ price. It comes down to the regulators who will decide whether they want legally or illegally operating companies. I hope PBOT can work with the City Attorney to issue a legal opinion, at least, to these companies to let them know it’s illegal and hopefully companies will switch. Meanwhile, we’ll have to rely on state-level enforcement for everyone else.

- Mark Williams: We started looking into this and reached out to the City Attorney who reached out to the attorney that’s in charge of labor and they did offer there was a series of questions that determine whether a driver is an actual W2 or 1099. I’d like to ask the Chair to establish a Subcommittee and have a document to review with that Subcommittee. Kirk, I’d like to get in touch with the people you talked to years ago because that may help us. Portland City Code does not require us to determine who’s a W2 or 1099, but it does require companies to comply with state and federal laws. We will come back with information from the attorney if they agree that NEMT companies that answer yes to these specific questions are required to have Workers’ Comp. Then we’ll discuss what level of enforcement we want to apply to that. I recommend Kirk Foster, Jemal Abdi, and Mark Williams for the Subcommittee.
 - Steve Hext: Other volunteers for the Subcommittee?
 - Ed Kelly: I’d like to volunteer to be a part of the Subcommittee.
 - Tracy M. Smith: Darin Campbell would like to volunteer for the Subcommittee.
- Jemal Abdi: If a company is a 1099 or subcontractor, they should have a license with the City of Portland because they’re operating as a personal business. There are people with no license, operating in the City, and collecting income. They should also have a license by PBOT for any 1099 or self-contracting

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companies working under NEMT and there are hundreds of people operating right now. NEMT companies that have vehicle registrations registered to each driver are the companies that have 1099 drivers or self-contracting.

- Mark Williams: A company providing NEMT service outside of Portland is legal because we don't regulate in Gresham or Hillsboro. Pick-ups outside the City to drop-off at a hospital in the City is allowed. And if the driver waits for the patient to drop off outside the City it is legal and does not require a City permit. Anytime you see illegal activity or illegal drivers please inform us as we follow up with everything we're notified with.
 - Nickole Cheron: From a community, ADA perspective I will put eyes on whatever you come up with.
- Jemal Abdi: Are 1099 or self-contract companies supposed to have a license from the City of Portland if operating in Multnomah county?
 - Mark Williams: Yes, to pick up in the City of Portland they have to have a license and a contract with one of three organizations.
 - Kirk Foster: Three government agencies are involved in paying for NEMT in Portland. There's CareOregon in contract with Ride Connection, Trillium CCO in contract with MTM, and First Transit in a contract directly with the Oregon Health Authorities. I'd like to add this to the next agenda, that there is a requirement that a NEMT company or a NEMT license is to have one of those contracts or a letter of intent in hand before they can get the permit and I want to make sure that is still being addressed.
 - Mark Williams: I talked with the Compliance Program Manager and we're going to confirm and make sure we're getting those letters of intent. We're also planning an audit to verify those contracts are in place.
- Motion to form the NEMT Drivers Status Subcommittee with Kirk Foster, Mark Williams, Jemal Abdi, Ed Kelly, and Darin Campbell. No objections. APPROVED.

CONSIDERATION ITEM: CODE CHANGE TO DRIVER HISTORY SECTION OF CODE: MARK WILLIAMS, PBOT

- You'll find this in every section in every industry that talks about uninterrupted driving history. Currently, the Code requires every driver to have at least one year of uninterrupted driving history. Let's say a driver with a perfect record has been driving for four years and has a family emergency, leaves the country, and while away their license expires. The driver returns and goes to the DMV to get their license renewed, but due to the two weeks where they technically had no active license, would not be eligible to drive, under the Code, until their license was reinstated and had one full year of uninterrupted driving. This Topic Submission is requesting to remove the word "uninterrupted" to just require a minimum of driving for one year. If the Committee would like to discuss that Code language at a future meeting, we will bring the exact language as to how it will read in Code with revisions and then take public comment.
 - Ahmed Alzubaidy: Currently with COVID this has to be changed. My license is currently expired with no way of renewing and I won't be able to work because of it. I motion for it to move forward.

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- Darin Campbell: It's become more difficult to keep good, active drivers on the road. We need to take away any roadblocks to getting good drivers behind the wheel and keep Portland moving. All three Topic Submissions are simply clearing the way to keep good drivers driving.
- Kirk Foster: There's a 30-day Administrative window in the Code for Administrative Suspensions and believe there should be exemptions through COVID since the DMV prevented people from getting their licenses for months. The governor extended a break to 10/1/2020 for COVID issues and the DMVs opened on 8/1/2020. We had drivers in the same boat, but they renewed by 10/1/2020 because the Governor made that extension. I also heard the Governor is issuing an extension to 12/31/2020 for any DMV related issues, but unsure if that's for licenses or just registrations. I would follow the guidance of the state and the Governor's Office regarding extensions because it'd cover all COVID related issues. I don't see a need in making a change when we've already got a 30-day exemption or maybe we can expand that.
 - Mark Williams: We are not disqualifying drivers for expired permits or suspending drivers with licenses that have expired while currently permitted. The 30-day language is not yet in Code; however, the Committee did approve a recommendation to the Director for a Code Change when we go back to Council. That Administrative language pertains to a driver that gets suspended for not paying their child support as long as they reinstate their license within 60 days. However, this language takes care of the others for example something where a suspension wasn't involved, expiring driver license, or some reason a driver's license is revoked but not due to any traffic violation.
- Motion to move forward. No discussion. No objections. APPROVED.

CONSIDERATION ITEM: MAKE CHANGES TO CODE TO ALLOW DRIVER TO WORK WITH TWO INFRACTIONS BEFORE DISQUALIFICATION: MARK WILLIAMS, PBOT

- Steve Hext: Currently it's one infraction and the second one disqualifies you. However, this Code will allow two infractions and the third infraction disqualifies you.
- Ahmed Alzubaidy: There is an underlying race issue on both of these issues where people of color are more likely to get tickets than people who are white. Most of our drivers are people of color and disqualifying them over one or two infractions is unfair.
- Steve Hext: For years it was two infractions and it changed five or six years ago down to one infraction. So, this recommendation is going back to the original level of two infractions.
 - Ed Kelly: Why did it change?
 - Mark Williams: When the TNCs were incorporated there was a complete overhaul of regulations and I believe there was not any specific reason why it changed.
- Kirk Foster: This was in conjunction with the TNCs moving into the City and I argued aggressively against this back in 2016. I believe the current PBOT Commissioner at the time (Steve Novick) felt strongly about cracking down on safe driving and said we're doing this, so get on board.
 - Mark Williams: I don't remember the specifics, but I do know that's when the change was made.

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- April Murchinson: Would there be a caveat considering the type of infraction, as some are more serious than others?
 - Mark Williams: Moving violations are the only infractions held against you, which is any type of penalty that's punishable by a fine. This change and the Administrative Suspension, approved by this Committee, kind of work together. Some suspensions are moving violations punishable by a fine, but others are administratively so those would not be held against you. But any other ticket you receive is more likely to be a moving violation such as a cracked headlight would fall under this category.
- Sirous Tanzadeh: Everyone is in favor of these two issues, so why wait another month to vote if we all agree? Can we make a motion to discuss and votes on the issues today?
 - Steve Hext: We will vote to hear it again and discuss, but there is wisdom in following our given procedure. I've let this go longer and more in-depth than it should've gone, and we need to allow people to prepare their best arguments for these topics.
 - Mark Williams: This Committee makes recommendations that affect public policy and we have to follow the process to allow the public to comment. We do this by presenting the information at the initial meeting, then taking action, and public comment at the second meeting.
- Motion to move forward. No discussion. No objections. APPROVED.

CONSIDERATION ITEM: ALLOW ADMINISTRATOR TO WAIVE CERTAIN DISQUALIFIERS AND ISSUE A PERMIT TO APPLICANT: MARK WILLIAMS, PBOT

- This was not allowed by the Portland City Code but was more of an adopted unwritten policy that my predecessors used to do. When the Regulatory Division was moved over to PBOT, the City Attorney's Office was adamant that requests of these types would not continue. If we needed to make any adjustments, we need to make it clear and well defined in Code, but the Administrator is not encouraged to waive policies based on a driver's history or their driving record.
 - Steve Hext: On a couple of occasions, I've gone to the City Hearings Officer on matters that PBOT had found unfavorably against our drivers or company. My understanding is that other bureaus in the City have an Administrative Appeal, which is the ability to appeal to an Administrator at PBOT before taking it to the City Hearings Officer. PBOT does not have that so when someone wants to appeal something it has to automatically go to the Hearings Officer which is a bigger deal with more involved. I see this as that intermediate step that PBOT somehow has avoided and would like to see the Committee consider this.
 - Ed Kelly: In this conversation, the only place that this could be adjudicated would be the Hearings Officer?
 - Mark Williams: That is the current process for PBOT. If you have a driver that's been driving for five years and they get three tickets in 18 months, they would not be eligible to drive until at least two of those tickets were cleared and only one remained in a one-year period. I believe the topic submission is asking for similar cases with a driver that could go before an Administrator and have the authority to waive the disqualification.

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- Darin Campbell: I have a different scenario with my old partner that has been driving for Radio Cab for 17 years or longer. About 13 years ago, he disagreed with his 13-year-old son that got physical and got a charge that disqualified him from getting a permit. He’s a great guy and gets along great with his son, however, it’s something that should’ve never happened, but it should not prevent him from driving a cab. He currently drives for us in the suburbs and cannot pick up in the City, which is how highly we think of him. In this case, we would go to the Director of PBOT and say that this is ridiculous, he’s got years of experience of driving without incident, and this one thing is holding him up.
 - Nickole Cheron: I agree we should discuss this, but when you put it on one person you set the potential of that Administrator being looked at being unethical by their decision on who gets a pass and who doesn’t. I suggest considering a committee with criteria versus an Administrator who gets to decide.
 - April Murchinson: I agree with Nickole.
 - Jemal Abdi: We had a driver who was unaware they had a ticket until we found out the driver’s license was suspended. They didn’t know where to go to pay or reinstate their driver’s license. As well as not knowing where to appeal and there’s no information on PBOT’s website.
 - Steve Hext: For further discussion next time, even having a company advocate for a driver that needs to appeal something. Thank you everyone for participating today and bring your best work next meeting because it sounds like there’s a diverse opinion for these topics.
- Motion to move forward. No discussion. No objections. APPROVED.

CHAIR ADJOURNED THE BUSINESS MEETING AT 2:29 PM.

#	Deadline	Date	Action Item	Responsible
1			Follow up with Portland Police Bureau on any policy changes re uninsured motorists.	Mark Williams
2			Status on the Pandemic Mobility Support Program to continue through December?	Mark Williams
3			Contact PBOT program manager to test Truepic Virtual Inspection Software with Kirk Foster	Mark Williams
			Add to next agenda: Review NEMT company contract requirement pg. 7	Kirk Foster

Submitted by, Jamie Lynne K. Souza, Recorder