

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY
November 23, 2020 • 1:00 PM – 2:30 PM
 GoToMeeting

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	No
Teresa Leatham	LPT Company	Executive Towncar	No
Ahmed Alzubaidy	LPT Driver	A1 Diamond Limo	No
Kirk Foster, Vice-Chair	Non-Emergency Medical Transportation Company	Wapato Shores	Yes
Jemal Abdi	NEMT Driver	JB Medical Transport, LLC	No
Debbie Brooks	Port of Portland	Port of Portland	Yes
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
Billie Moser	Tourism Industry	Travel Portland	Yes
Margo Moore	TriMet	TriMet-Accessible Transportation	No
Vacant	Pedicab Company		
Vacant	TNC Driver		
Vacant	Tour Bus Company		
Dave Benson	PBOT	Parking Group Manager	Yes
Gabby Sanchez	PBOT	PBOT Regulatory Division	Yes
Matthew Erickson	PBOT	PFHT Program Manager	No
Tracy M. Smith	Facilitator	Inhance LLC	Yes
Jamie Lynne K. Souza	Recorder	Inhance LLC	Yes

Other Attendees: Gregg Webber, Lucky Limousine, and Towncar Service; Julie Wilcke, Ride Connection; Darin Campbell, Radio Cab.

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY

November 23, 2020 • 1:00 PM – 2:30 PM

GoToMeeting

ANNOUNCEMENTS FROM COMMITTEE MEMBERS: COMMITTEE MEMBERS

- No announcements.

APPROVAL of 10/26/2020 MEETING SUMMARIES: KIRK FOSTER, VICE-CHAIR

- No revisions or objections made for October 26, 2020, Meeting Summary.

VOTE: Unanimous approval.

ACTION: No action is taken.

PFHT PROGRAM STAFF REPORT: MARK WILLIAMS, PBOT

- Atlas Insurance Audit
 - Last meeting, Atlas Insurance, the only company under the Administrative Rule as an alternative form of insurance three years ago, was reported as bankrupt. Consequently, PBOT confirmed, audited all PFHT companies, and confirmed there are no PFHT companies insured by Atlas.
- Co-Subcommittee (TNC & PFHT) Update
 - In January 2020, the PFHT Committee had a topic consideration on minimum fare requirements. Several topics were dealing with fees and fares between the TNC Driver’s Advisory Committee and the PFHT Advisory Committee. Therefore, Mark Williams went to the Office of Community and Civic Life, who manage all Advisory Boards and Commissions for the City, to determine if there were any rules against having a joint discussion that potentially could affect the entire industry. There were no rules against the two committees coming together to form a subcommittee—the idea was encouraged. Before COVID-19, the Transportation and Permit Fee Subcommittee will be reactivated to add minimum fares to the already discussed fees for the PFHT industry. The same will be done with the TNC’s Benefits and Compensation Subcommittee. A new joint subcommittee will be created to discuss fees and fares for the PFHT industry. Mark Williams requests the PFHT Committee be represented by Darin Campbell as the Chair, Billie Moser as the Vice-Chair, and Jemal Abdi representing the NEMT industry. In the future, approximately January 2021, both committees will meet and report back to their respective committees.
 - Kirk Foster: Was this the subcommittee Marlo Maroon headed that came to a halt in February 2020?
 - Mark Williams: Yes, Marlo Maroon from Travel Portland specifically focused on the tourism industry, but after further discussion, we need to look across the entire PFHT industry.
 - Kirk Foster: As Vice-Chair, I approve to form the co-subcommittee. APPROVED.
 - Kirk Foster: As for the NEMT industry, the rates are structured per contract. It was brought up years ago as to whether NEMT rates should be posted. I believe fares charged to the general public are posted, but the contract rates wouldn’t be addressed. Would like to clarify that’s not changing.
 - Mark Williams: Unless there are concerns or someone in the subcommittee wants to address NEMT prices, then it would not affect current rates. The NEMT representative would help look at the PFHT permit fees that the industry is paying. Reminder, this was a pre-COVID

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY

November 23, 2020 • 1:00 PM – 2:30 PM

GoToMeeting

conversation and the Regulatory Division's financial position is different today. Consequently, it may be some time before a rate change is considered, but there can still be a discussion.

- Gregg Webber: Do these fares affect the PFHT Towncar service or are these only TNC and Taxis?
 - o Mark Williams: The fare portion does not, however, the permit fee discussion would. Before COVID, the Transportation and Permit Fee Subcommittee discussed application fees, company permit fees, driver permit fees, and vehicle permit fees. At that time, the Committee approved a formal recommendation to make those adjustments. However, it only impacted the tourism industry. Now the conversation needs to include the rest of the industry.
- Billie Moser: Will there be specifics addressed that Darin Campbell and I will be responsible for?
 - o Mark Williams: Yes, it'll reflect in the meeting summary and I will reach out to Billie Moser and Darin Campbell once the TNC representatives have been selected after next week's TNC Driver's Advisory Committee meeting. The Joint Subcommittee may get together sometime in January 2021.
- Kirk Foster: Can the past Transportation and Permit Fee Subcommittee meeting summaries be found and shared?
 - o Tracy M. Smith: Yes, I'll find the past summaries and email it out to the new Subcommittee after the TNC members are selected next week.
- Gregg Webber: Can anyone attend the TNC Driver's meeting?
 - o Mark Williams: Yes, it's a public meeting and every meeting has a time called Public Comment to share any concerns. Also, every item up for consideration, whether an ordinance change, administrative rule, or policy change, public comment will always be taken at the second reading. Every action item on the agenda will also welcome public comment.

PUBLIC COMMENT-NON-AGENDA: KIRK FOSTER, VICE-CHAIR

- No public comment.

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

- Darin Campbell, Kirk Foster, Noah Ernst, and Mark Williams have been in discussion. Mark Williams can think of only one scenario this language would take place. This Committee has already approved a Topic Submission called Administrative Suspensions, which allows the Regulatory Division, during the permitting process, to not consider a suspension that's considered administrative. For example, a driver fails to provide a change of address within 30 days and the DMV suspends their driver's license. Therefore, if the driver resolves the administrative suspension within 60 days at the DMV, it will not be held against them if the recommendation is approved by the City Council. Today, if there's a break in a driver's driving history due to not submitting an address change that driver would be ineligible to drive for one year. Therefore, this language affects an expired driver's license such as an immigrant driver out of the country for a couple of months, and while away their license expires. With this language, the driver would be able to return and reinstate their driver's license if done within 60 days. It would not affect their ability to drive for PFHT. This is an Action Item and public comment is welcomed.

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY

November 23, 2020 • 1:00 PM – 2:30 PM

GoToMeeting

- No public comment.
- Kirk Foster: Motion to send to Bureau Director.
 - Sirous Tanzadeh motions, Ed Kelly seconds.
 - No further comments. All in favor. APPROVED

ACTION ITEM: UPDATE ADMINISTRATIVE RULE TRN-14.35- DIGITAL RECORDS REQUIREMENTS (INCLUDE JANUS v3 CAMERA)- EXHIBIT B: MARK WILLIAMS, PBOT

- A year ago, this Committee approved an Administrative Rule for Digital Records Requirements specific to Taxi companies on how they maintain and store their digital records. The Regulatory Division researched different types of cameras and presented a list to the Committee that met all the digital record storage and security requirements, which the Committee approved. A Taxi company presented the Janus v3 camera and PBOT has confirmed it meets the requirements.
- Sirous Tanzadeh: Was this Radio Cab?
 - Mark Williams: No, it was either Flat Cab Transportation or PDX Yellow Cab. Other Taxi companies have a Janus v2 camera. However, they may have found a decent price on the Janus v3 camera and it meets all the requirements. When this administrative rule was created, the language was added to allow this Committee to approve additional cameras.
- Kirk Foster: Motion to send to the Bureau Director.
 - Ed Kelly motions, Sirous Tanzadeh seconds.
 - No further comments. All in favor. APPROVED

CONSIDERATION ITEM: REVISE TAXI METER SECTION TO CLEARLY INCLUDE DIGITAL TAXI METERS: MARK WILLIAMS, PBOT

- This is for the Committee's consideration which is about inputting standards and requirements for app-based taxi meters. When first introduced to the industry, there weren't a lot of organizations that could test app-based meters. However, it's starting to change and currently evolving like this language will in the next several years. This will establish a floor level of minimum standards for application-based taxi meters. Mechanical meters, which have clear parameters and requirements, will slowly phase out while app-based meters become the standard. This is the start of an evolving ordinance that will continue to change as we learn more about how these apps are created, how to test them and confirm they're operating correctly.
- Kirk Foster: Motion to move forward to discuss at a future meeting.
 - Ed Kelly motions. Debbie Brooks seconds. All in favor. Approved.

REVISED CONSIDERATION: ALLOW ADMINISTRATOR TO WAIVE CERTAIN DISQUALIFIERS AND ISSUE A PERMIT TO APPLICANT (DRIVER APPEAL COMMITTEE): MARK WILLIAMS, PBOT

- The original language allows an Administrator, on a case-by-case basis, to look at a driver's criminal history and dismiss any convictions on their record if they felt the driver paid their dues with no new

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY

November 23, 2020 • 1:00 PM – 2:30 PM

GoToMeeting

convictions and would issue a permit. Mark Williams mentioned this recommendation may not be accepted as it was a past practice and changed in 2014 to go strictly by code. Mark Williams and Noah Ernst came up with additional language. The biggest change is around felony convictions of physical harm and Dave Benson will help educate the Committee on the differences between Class A, B, and C felonies from his experience in law enforcement. The current rule states a driver with any type of physical harm conviction is to be banned for life. Therefore, this new rule would allow certain convictions of physical harm, such as domestic violence or assault, if more than 10 years ago to continue to drive, but not if related to murder or attempted murder. A lot has changed from the original language, so it is up for consideration.

- Dave Benson: I appreciate the Committee's work and acknowledgment that people make mistakes and can be rehabilitated to move on with their lives and make a living. In Oregon, a felony is punishable by a year or more in the State Penitentiary, differing from a misdemeanor which is punishable up to a year in the County jail. In Oregon, a Class C felony is punishable up to five years in prison, a Class B felony is punishable up to 10 years in prison, and a Class A felony is up to 20 years in prison. Today, we are dealing with drivers from various states applying for permits and while every state has misdemeanors and felonies, they may not classify felonies the same. Therefore, a common language needs to be developed. Also, the language mentions physical harm or attempted physical harm to a person, but I believe it meant to say assault or attempted assault. In the Oregon Revised Statutes (ORS) Chapter 163, it talks about offenses against persons. Case in point, a robbery could assume to involve physical harm or attempted physical harm to a person even if not assaulted, whereas the victim could have suffered both psychological and physical harm.
 - Ed Kelly: Mark Williams is looking at a person-to-person crime, which can include child molestation, sexual assault, or physical assault.
 - Dave Benson: Sexual assault is regulated in a different part of the code because it is an entirely different animal. It depends on how the Committee wants to define physical harm or attempted physical harm to a person and how broad or narrow they want it to be defined. Therefore, an assault or attempted assault would narrowly interpret this. Dave Benson was the Commander of the Tactical Operations Division at the Portland Police Bureau and completed risk assessments on individuals for various reasons. His job was to look for assaults that took place 15 years ago and determine if there were any other convictions. If they didn't have subsequent convictions, they realized a mistake may have been made 15 years ago, and it could be a good way to look at this agenda item. Dave Benson's recommendation is to work on the language and have an attorney(s) get involved to help the Committee with this language. Also, there will need to be an understanding that the language will need to be broadly interpreted for those moving to Oregon. For example, from Michigan or Kansas. Therefore, when mentioning a felony, knowing how to distinguish between the most serious to the least serious.
- Gregg Webber: Background checks are part of the permit process. Does that not cover this?
 - Mark Williams: Here's an example, 10 years ago a driver gets into a fight with their brother-in-law and is convicted of a felony assault, which the class wouldn't matter because it included physical harm. Under the current code, they would be excluded permanently from driving for PFHT services. The intent here is if someone has a conviction 10 years ago with no other convictions, then they would be eligible to drive again.

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY

November 23, 2020 • 1:00 PM – 2:30 PM

GoToMeeting

- Gregg Webber: I'm concerned with and assume the pedophiles or sexual abuse would exempt a driver right away, right?
 - Mark Williams: Correct, under the current code, but that is not part of this recommendation. Any person listed on the sex offenders' list is ineligible for life.
- Dave Benson: A domestic violence incident is an assault, which is considered a misdemeanor. However, if children are present it becomes a felony. Also, if someone knowingly causes serious physical injury to another person it is typically a Class B felony. If the injured person is a pregnant woman it becomes a Class A felony. This is Oregon Law, and it can get fairly complex. Therefore, this language needs to be framed around a general definition of a felony and crimes against persons.
 - Mark Williams: Dave Benson also mentioned a person could be charged with a Class A felony and plea bargain it down to a Class C felony and that's important to know.
 - Dave Benson: Yes, very often someone can be charged with a felony and plea down to a misdemeanor. If convicted of a Class A or Class B felony assault it's generally serious. However, we can work on language that will be helpful and instructive, but in-depth to the extent that people can be rehabilitated.
- Mark Williams: Reminder, there is no meeting in December 2020. Mark Williams, Dave Benson, and colleagues will work on revising the language and bring it back to the next meeting in either January 2021 or February 2021.
- Tracy M. Smith: Will this return as a revised consideration or an action item?
 - Mark Williams: As a revised consideration, since the language will change quite a bit.
- Dave Benson: Dave Benson will reach out and see if other experts on this subject such as attorneys and may be members from the District Attorney's Office can attend the next meeting to help guide us.
 - Kirk Foster: Yes, that'd be extremely helpful.
- Kirk Foster: The current language says if the applicant has any type of felony conviction within the past 10 years, they can't have a permit, or a felony conviction involving physical harm or attempted physical harm to a person at any time, then they are banned for life. So, this is clearing it up, especially giving people a second chance if it's warranted. However, I agree with Dave Benson to get as much advice as we can because this is a sensitive topic. The last thing we'd want is to word it in a way and allow someone to drive that shouldn't be in contact with the general public, especially in a vehicle.
 - Gregg Webber: I like that idea, but what if they have three or four offenses more than 10 years ago, which still shows a pattern? Also, the City now completes background checks and when our company used to conduct them, we'd get a copy of the background check and confirm it was qualified for the City as well as qualified for my criteria. I have zero tolerance for certain crimes and circumstances but do agree people deserve second chances when it's a mistake made 10 years ago. Since the companies no longer get those copies, are we leaving it to the City to make those calls?
 - Kirk Foster: That is something separate, but you're welcome to submit a Topic Submission for it. I don't believe the City can legally share background checks.

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY

November 23, 2020 • 1:00 PM – 2:30 PM

GoToMeeting

- Mark Williams: Gregg, ask your driver to request a copy of their background check from the City. We can legally release a copy to the driver by request and they can give it to you.
- Kirk Foster: Motion to move forward to discuss at a future meeting.
 - Ed Kelly motions. Billie Moser seconds. All in favor. APPROVED

UPDATE ITEM: NEMT DRIVERS STATUS SUBCOMMITTEE: KIRK FOSTER, VICE-CHAIR & MARK WILLIAMS, PBOT

- Mark Williams: We want to update the Committee to know we still have work to do and have a couple of City Attorneys looking at it. We may look to the State for some help and are trying to arrange a meeting to understand how the State reached their conclusion with Wapato Shores and if any other companies, if audited today, would be required to pay Workers' Compensation to their contracted drivers. This is a big project, but first, we need to determine how they got to their conclusion. So, then we can put into writing for everyone to understand that if you meet a, b, c, and, d, then you're likely required to pay Workers' Compensation. Then, the next question is how do we enforce that and what does that enforcement look like?
 - Kirk Foster: I agree. Kirk Foster shared a tax hearing, from 2009-2011, with his company, Wapato Shores, and was audited by the Employment Department. Two things needed to be done. The first was to confirm the driver had an Independently Established Business, in which their business had to comply with three of five tests. Also, the company had to show the driver was free from the direction or control of the company. In Kirk Foster's case, they had a couple of drivers that met the Independently Established Business. However, the Administrative Law Judge (ALJ) decided that due to the criteria of the Blanket Purchase Agreement (BPA) they had with the broker, which required their companies to comply with OSHA's regulations created a situation in which Wapato Shores had the direction of control and eliminated them as an independent contractor. However, there were two drivers the Employment Department stipulated would not be considered before the hearing and were then used for evidentiary purposes. In those two cases, it was determined they did not meet the direction of control requirements, which would make them W2 employees, but they were stipulated to be excluded and the ALJ decided that the two companies were existing and operating before their contract with Wapato Shores. For that reason, the auditors agreed those two not be included, and it came down to the direction of control, which seemed to be the deciding factor.
- Mark Williams: It is extremely complicated, which is why we're reaching out to the State to get guidance on how to better understand this. Kirk Foster mentions the five tests and maybe they can help us with a process for PFHT companies to go through some sort of self-test. The Subcommittee will continue to meet and work on this and keep providing updates.
- Gregg Webber: Our drivers are employees, however, several companies are getting away with independent contractors and it's unclear how some are, and others aren't. This is something we're always trying to figure out.
 - Kirk Foster: It's enforcement-based. Every company I know that's been audited on this topic has lost and had to settle, pay fines, or liquidate their company. The Employment Department has its criteria and auditing. I don't know of any company that's been audited on this topic that was not found to be out of compliance for using 1099 drivers for NEMT. If someone has managed to get

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY

November 23, 2020 • 1:00 PM – 2:30 PM

GoToMeeting

through successfully, I'd appreciate it if you'd share any documents showing the results or hearing decisions. Everyone that gets audited loses and the people that are doing it just haven't been audited yet.

- Mark Williams: From the reading, it looked like a company could have independent contractors, but would be required to pay Workers' Compensation. They keep referring to it as Workers' Compensation Tax, so are there other taxes you have to pay, or is it just around Workers' Compensation?
 - Kirk Foster: The two are separate taxes where a Workers' Compensation carrier, such as SAFE, will only issue a Workers' Compensation policy on a W2 employee and will not provide if the driver's 1099. The current definition of a NEMT driver is to be under contract with a mass transit authority, like Trimet. However, that isn't the case now with Ride Connection, even when operating similarly to Trimet. If there is no mass transit they're excluded. There's also an exemption for a third-party contract in the Taxi Statute, but NEMT doesn't meet that definition either. Going back decades, the normal practice for companies using 1099 drivers in Portland was requiring their drivers to take out a Workers' Compensation policy on themselves. So, when SAFE audits, their concern is not whether you claim a W2 employee or not, their concern is that the company is financially covering the driver in some way. So, if they require their contract driver to get their own Workers' Compensation policy, then SAFE passes that through on an audit. However, if you don't require them to be covered by a policy, then SAFE declares the driver your employee and will demand back payments.
 - Now the Employment Department refers to both Federal and State unemployment taxes but also establishes the responsibility of the employer to be withholding income taxes. For a driver that is a W2, the company is responsible for withholding their income taxes. Now that's the large risk a company takes when using a 1099 driver because if it's determined they're a W2 employee, then it's the employer's responsibility for all the taxes that were not withheld and that can get expensive very quickly. This was Kirk Foster's understanding as a non-attorney, in the two categories about Federal and State unemployment taxes and Workers' Comp.
 - Steve Hext: I agree with everything Kirk Foster said. However, to Mark William's point, there are two different authorities at play. The Workers' Comp makes their determination about employee status. The Employment Department makes its determination and it can vary, historically. It's common for one authority to determine a person one way and another authority can determine the other way. What Kirk Foster is saying is the audits performed by the Employment Department have to do with the withholding and do have a handful of tests. About 25 to 30 years ago, Broadway Cab was audited and passed. We did appeal to the Supreme Court where they supported Broadway and our employees were considered independent contractors. Then five or six years ago, the rules changed when the Employment Department rewrote their test and retested Broadway who failed on two minor points that were also appealed to the Supreme Court. And at stake was a year and a half of a past unpaid premium. Broadway paid the fine, modified its operating procedures based on those two minor points, and have not operated with employees since. So again, two things at play are Workers' Comp and the Employment Department. Kirk Foster correct me if I'm wrong, but I believe that's your issue.

PRIVATE-FOR-HIRE TRANSPORTATION ADVISORY COMMITTEE

FINAL DRAFT MEETING SUMMARY
November 23, 2020 • 1:00 PM – 2:30 PM
GoToMeeting

- Kirk Foster: Yes, the primary concern is the Workers' Comp, which is why I mentioned lots of companies accommodating that requirement by requiring their drivers to get their own Workers' Comp policy, sole proprietor, or self-employed policy, which satisfies SAFE audits in my experience.
- Steve Hext: Both entities can see if differently on a given individual or company.
- Kirk Foster: Yes, they follow separate sections of the ORS and it comes down to different decisions that may sometimes coincide and sometimes they don't coincide. I agree they're often different.

CHAIR ADJOURNED THE BUSINESS MEETING AT 2:25 PM.

NEXT MEETING: Monday, January 25, 2021, via GoToMeeting.

#	Deadline	Action Item	Responsible	Status
1	12/01/2020	Email past Transportation and Permit Fee Subcommittee summaries to newly established joint Subcommittee members	Tracy M. Smith	
	TBD	Reach out to Darin Campbell and Billie Moser re joint subcommittee after selecting TNC Representatives	Mark Williams	
2	Next Meeting	Work on revised language with Dave Benson and colleagues re Exhibit D	Mark Williams	

Submitted by, Jamie Lynne K. Souza, Recorder