# Towing Board of Review
# Minutes
# March 21, 2012

1. **Call to Order:** The meeting was called to order at 1:40 PM by Chairwoman, Kathleen Butler.

2. **Roll Call:**

| | | | | | |
|---|---|---|---|---|---|
| Butler | P | Fullilove | P | La Fong | P |
| Child | P | Gaylord | P | Tenney | P |
| Copeland | P | Griffin | P | Wallis | A |
| Farres | P | Haugen | P | | |
| Ferrero | P | Hunter | P | | |

3. **Recognition of Towers/Others in Audience**

| **Name** | **Company** |
|---|---|
| Don Beatty | Gerlock Towing |
| Eric Benson | A & B Towing |
| Craig Davis | ReAct |
| Mike Porter | ReAct |
| Jerry Rehbein | Gresham Towing |
| Dave Reichert | Speed's Towing |
| Dan Smith | City Fleet |
| Tom Steigleder | ODOT |
| Rick Swift | Gresham Towing |
| Natalie Tanase | ReAct |
| Devin Thompson | A & B Towing |
| Bob Wilson | Newhouse & Hutching Towing |

4. **Approval of the Agenda –** Debbie Haugen moved and Dick Griffin seconded approval of the agenda. **Motion passed, unanimously.** The order of items 6A and 6B was switched. Dick Griffin moved and Don Hunter seconded the amendment. **Motion passed, unanimously.**

5. **Approval of Previous Month's Minutes –** Debbie Haugen moved and Rebecca Child seconded approval of the January 2012 minutes, as submitted. **Motion passed, unanimously.**

6. **Report from the Towing Coordinator and staff**
   A. **Status of Service Fee Payments**: All contract service fee payments for January and February were received timely.

   B. **Status of Monthly Report Submissions**: All monthly reports for January and February were received timely.

   C. **Bonding and Insurance Status**: A & B Towing and 21st Century Towing need to provide current workers comp insurance.

   D. **Tow log for previous month**: There were no excessive passes for the months of January and February.

   The Towing Coordinator and staff reports were accepted without objection.

7. **Old Business**

A. **60 day review of fuel surcharge –** Information was distributed to the Board regarding gasoline and diesel prices. Ms. Gaylord reported that the average price of diesel on the west coast, without California, is $4.37, up from $3.94 and gasoline is $3.99, up from $3.44. She recommended a continuation of the fuel surcharge for another 60 days and added that the Board may wish to re-evaluate the amount at the May meeting if prices continue to go up.

Debbie Haugen moved to approve the recommendation and Rebecca Child seconded. **Motion passed, unanimously.**

B. **6-month review of Category 2 towers – set over to May meeting –** A more detailed report will be presented at the May meeting. In the meantime, Ms. Gaylord gave an update on how the evaluation was proceeding. She reported that several companies were elevated as a result of recalculation of the September scores, and that there was great improvement in all but two areas: late responses and failure to certify (Tow Contract workshop) employees. She said she will be contacting companies that have a high percentage (more than 10 per cent) of late responses per month. She will also be sending notices to companies that have employees (office staff and drivers) who still need to attend the workshop.

The question was raised in regard to how employees can be encouraged to attend the workshop. These classes take place on the last Thursday of every month at 1:30 PM at the Revenue Bureau Rivers conference room. It was suggested that there might be more incentive if the company and or the employee were fined, or if the driver were to be suspended from the contract.

The industry representatives expressed strong opposition to penalizing the employee. They said the employee isn’t always free to leave work to attend the workshop. Also, the employee isn’t always aware of the requirement. It was suggested that a graduated fine to the company may be more appropriate. Ms. Gaylord brought to the Board’s attention that there isn’t a provision in the contract for penalizing the employee.

Other suggestions included listing the uncertified employees in the monthly bulletin and shortening the time frame from 6 months to 3 months, making it less easy to forget. Currently, an employee must be certified after 6 months of employment. It was also suggested that the City track how long it takes a company to have their employees certified.

Ed Ferrero moved to change the time frame from 6 months to 3 months. Dick Griffin seconded. **Motion passed, unanimously.**

The change will affect employees hired after this date. According to Ms. Butler, the other suggestions will be implemented; however, a company penalty will be discussed in more detail at the next meeting.

8. **New Business**

A. **Devin Thompson – appeal of Intent to Deny, DMV record –** Copies of the letter, Mr. Thompson's response, and his driving record were distributed to the Board. Mr. Thompson received an Intent to Deny letter because his driving record contained more than the allowable number of traffic violations within the last 5 years. He has no criminal record.

Mr. Thompson was asked to explain some of his traffic violations and a suspension. He said he made a left turn believing the intersection was clear because traffic was at a stop; however, a driver in an oncoming lane went around another vehicle and through the intersection, and crashed into the side of his vehicle. Mr. Thompson said the accident happened while he was driving his personal vehicle. He said there were no serious injuries reported. Mr. Thompson was also asked to explain a speeding ticket. He said he simply wasn't paying attention while driving on I-84. In addition, his driver's license was suspended because he failed to pay the full amount for the speeding ticket.

Eric Benson, owner of A & B Towing, spoke on Mr. Thompson's behalf, saying that he was approved by the insurance company.

Ed Ferrero moved to approve Mr. Thompson provided he remains on probation for one year, and that he undergoes periodic checks of his driving record. Mr. Thompson must also attend a Level 1 traffic safety class. The Towing Coordinator is given the discretion to suspend Mr. Thompson immediately should any new traffic violations arise. Debbie Haugen seconded. **Motion passed, unanimously.**

B. **Northwestern Towing – improper use of driver numbers – Towing Coordinator –** Although Northwestern was given notice of the meeting and topics of discussion, as required by Contract Section 20, no representatives from Northwestern Towing attended the meeting. Ms. Gaylord reported that a former employee at the company, James Monte Baker, contacted her and alleged that the company had continued to use his City number even after he had resigned to take another job. Ms. Gaylord reported that circumstantial evidence was found in Tow Desk records that appear to support Mr. Baker's allegation. She also audited random invoices and found two that were not in Mr. Baker's handwriting. Records also showed that the two drivers identified by Northwestern as

the actual drivers who towed the vehicles identified erroneously as "2170" have their own City numbers, which they used for part of their shift, switching to 2170 in mid-shift. Ms. Gaylord added that Mr. Baker had also conjectured that unapproved drivers may have used his City number. Ms. Gaylord stated that this was not confirmed.

According to Ms. Gaylord, the company manager, Brandy Raquinio, has acknowledged that two drivers, who had their own City numbers, had used Mr. Baker's number in error. Ms. Raquinio had further explained that drivers call in to ask for their City number and she had given the wrong number by mistake.

A letter from attorney Roscoe C. Nelson, jr. representing Northwestern Towing was read by Ms. Butler. The letter confirmed Ms. Raquinio's error and further stated that Mr. Baker, who was terminated, had made threats of getting back at the company.

In rebuttal, Ms. Gaylord read a letter signed by Ms. Raquinio, explaining why she had not reported timely that Mr. Baker was no longer an employee. Ms. Raquinio stated in the letter that Mr. Baker was hired in January 2011 and continued to work for the company through the end of May when he started his new job. At that time, Ms. Raquinio stated she offered Mr. Baker part-time work during the weekends, which he accepted. As a result, she continued to keep him on the contract. She further stated that it wasn't until she spoke with him in November that she found out he no longer wanted to continue working for Northwestern Towing. Ms. Gaylord reminded the Board of the requirement for notice of employee hiring and termination.

Ms. Gaylord advised that the Board has the following options to proceed: 1)Notify Northwestern Towing that the Board was exercising the 60-day termination which could be appealed at the meeting in May, or issue an immediate termination or suspension, for cause.

Ms. Butler called for an executive session at 2:53 PM in order to consult with counsel. The Board reconvened from executive session at 3:10 PM.

Ed Ferrero moved to immediately suspend Northwestern Towing for a period of 30 days under the provision allowing for summary suspension, and within the 30-day period a contested hearing be convened. The date of the hearing will be determined by the Towing Coordinator and notice of the hearing will be sent to representatives of Northwestern Towing. Ms. Gaylord, in consultation with the City Attorney, will give appropriate notice of the hearing.

At the hearing, the Board will consider the facts of the case and the full range of remedies open to the Board under the contract including, but not limited to, immediate termination as well as 60-day termination for convenience. Helen La Fong seconded. **Motion passed, unanimously.**

**C. Other New Business -** Prior to a motion to adjourn, Jesse Copeland, industry representative, brought to the Board's attention that there is a new company, called React, that assists towers at accident scenes by providing clean up services. He said the concern is that React provides services that are under the contract, but they are not on the contract. He said React bills the insurance company directly. He further stated that representatives of React respond to district calls and are sub-contracted by a tower; however, there has been no authorization to do so from the Board. Mr. Copeland added that the company seemed to be doing a good job.

Ms. Gaylord said React is only assisting one tow company and the service is currently being used on a trial basis.

Mike Porter, a representative of React, spoke before the Board and explained that they specialize in cleaning up hazardous spills. He reassured the Board that they do not touch the vehicle or any evidence, and they wait to be instructed by a police officer or ODOT to proceed with the clean up. Mr. Porter said the driver's insurance company is billed for the service, and added that citizens, under an Oregon revised statute, are liable for such clean ups.

Members of the Board expressed concern with unauthorized personnel responding to contract tows, as well as the practice of billing the citizen's insurance company for a service requested by the tower and not the citizen. It was pointed out that this seems to constitute a direct referral, which is prohibited by the contract.

Because of concerns with public safety and possible violations of the contract, Ms. Butler entertained a motion to formally add the item to the agenda. Ed Ferrero moved and Helen La Fong seconded the motion. **Motion passed, unanimously.**

Ms. Butler entertained a motion for towers to discontinue sub-contracting to React until further discussion at the May meeting. Dick Griffin moved and Ed Ferrero seconded the motion. **Motion passed, unanimously.**

9. **Adjourn**

Ms. Butler asked for a motion to adjourn. Debbie Haugen moved that the meeting be adjourned, and Helen La Fong seconded. The **motion passed, unanimously.** Meeting adjourned at 3:37 PM.

**Minutes submitted by Jenny Farres: Regulatory Program Specialist**