

Minutes of the Fairfax County Consumer Protection Commission

October 18, 2022

7:30 PM
Government Center
12000 Government Center Parkway
Fairfax, VA 22035
Vice Chairperson Gulakowski, presiding

Attendance:

Commissioners: Belkowitz, Gulakowski,
Hargraves, Kharat, Kirk, Kratovil, Rosier, Svab

Absent:

Commissioners: Fee, Freedenthal, O'Savio,
Roark, Springer

Staff:

Rebecca L. Makely, Acting Director
Cable and Consumer Services
Susan C. Jones, Consumer Specialist III
Consumer Affairs Branch
Carl Newcomb, Consumer Specialist III
Regulation and Licensing Branch
John W. Burton, Assistant County Attorney
Office of the County Attorney

The meeting was called to order at 7:32 PM by Vice Chairperson Gulakowski.

Minutes

The minutes for the September 20, 2022, meeting were amended by Acting Director Makely to reflect the requirements in the Remote Participation Policy. Vice Chairperson Gulakowski made the motion to accept the changes. Commissioner Hargraves seconded the motion. The September 20, 2022, minutes were unanimously approved, 8-0-0.

Report of the Chairperson

Vice Chairperson Gulakowski had no matters to bring before the Commission.

Report of the Director

Acting Director Rebecca Makely stated in addition to County Executive's request to extend the Emergency Taxicab Fuel Surcharge, the taxicab industry has requested a review of Chapter 84.1-8-3(b) of the County Code that relates to age of the vehicle and the mileage. The current Code states:

It shall be unlawful to operate as a taxicab in the County any vehicle that has a model-year age greater than ten years or that has more than 500,000 miles, whichever occurs first. Vehicle age shall be calculated as if the vehicle was placed into service on December 31st of the vehicle year as shown on its Virginia motor vehicle registration.

The taxicab industry requested the age of the vehicle be extended to 12-15 years and waive the mileage requirement. Staff will present their findings to the Commission at the November meeting.

Commissioner Matters

Commissioner Belkowitz had no matters to bring before the Commission.

Commissioner Kharat had no matters to bring before the Commission.

Commissioner Kratovil had no matters to bring before the Commission, but noted he will share I.D. theft stats at the next meeting.

Commissioner Rosier mentioned October is Breast Cancer Awareness Month and the importance of getting mammograms.

Commissioner Hargraves said the portal for student loan debt relief is now open, which can lead to scammers taking advantage of the situation.

Commissioner Svab had no matters to bring before the Commission.

Chairperson Kirk had no matters to bring before the Commission.

Old Business

1. Remote Participation Policy. Acting Director Makely stated it was discussed at the last meeting and emailed to the Commission to review the updates made by the Office of the County Attorney that was drafted on behalf of Boards, Authorities, and Commissions (BACs). Acting Director Makely stated the updates would need a vote from the Commission. Acting Director Makely indicated Commissioner Belkowitz had a couple of questions on the policy.

Commissioner Belkowitz expressed his concern on the requirement to specify a personal reason to participate remotely and for information to be included in the minutes. Commissioner Belkowitz's biggest concern is that in his opinion Mandatory Requirements Section B does not comply with Americans with Disabilities Act. Commissioner Belkowitz stated the policy requires a person to communicate verbally. The Americans with Disabilities Act (ADA) has protections that require government agencies to ensure individuals can effectively communicate and there are people who do not communicate verbally.

Commissioner Belkowitz believes it ignores, under the ADA, the individual's preferred method of communication. Commissioner Belkowitz cannot support this policy and believes the wording needs to be changed.

A discussion ensued on who is affected by the policy, technical issues, reasonable accommodation, communicating verbally vs. being heard, context, and footnotes.

Acting Director Makely stated the remote participation policy has been updated for all 84 BACs, the County's Board of Supervisors (BOS), Planning Commission, and Board of Zoning Appeals. The CPC previously adopted their current Remote Participate Policy with that exact language in question. Acting Director Makely did send verbatim to the County Attorney, Commissioner

Belkowitz's concerns, and the County Attorney responded that its policy complies with applicable law and should an individual request a reasonable accommodation from the County, the County will respond to that request. The law on "preferred" accommodation under ADA Titles I, II, and III is well settled in the realm of Employment, Public Service, and Public Accommodation respectively: The ADA provides a right to reasonable accommodation not to preferred accommodation.

Acting Director Makely asked the County Attorney's Office to attend the meeting, but they were not available. Acting Director Makely further stated this template has been well vetted, and the County has been rolling it out for BACs to adopt. The Economic Advisory Commission which includes appointed members as well as the BOS adopted this exact policy today at 3:00 p.m. Acting Director Makely did state as a Commission you can move forward with changes to the policy which would be reviewed by the County Attorney's Office.

Assistant County Attorney John Burton stated this policy comes from the Virginia Freedom of Information Act and dedicated County Attorneys are assigned to this task. ADA is about the exception to the rule and federal law would supersede state law and local government policy.

Commissioner Hargraves made the motion to change the language in Section 3b to:

Arrangements have been made for the voice of the remotely participating member to be heard (*or if such member's preferred method of communication is non-verbal, such method shall apply in lieu of verbal*) by all persons at the primary or central meeting location. If at any point during the meeting the voice of the remotely participating member is no longer able to be heard by all persons at the meeting location, the remotely participating member shall no longer be permitted to participate remotely.

Commissioner Belkowitz seconded the motion. The motion passed 6-1-1 with Commissioner Kirk voting in the negative and requesting his dissenting opinion "because ...ceases to effectively communicate" be noted in the minutes.

Commissioner Hargraves made the motion to accept the red line version of the Remote Participation Policy with amendment. Commissioner Belkowitz seconded the motion. The motion passed 5-2-1.

2. Chapter 28.1. Acting Director Makely asked the Commission whether the information provided by the County Attorney was sufficient to move forward with discussion. Acting Director Makely indicated Commissioner Kratovil's draft document has been provided on several occasions since February 2022. The Commission requested the County Attorney put together a chart that had a comparison of all sections that the CPC has oversight as it relates to appeals and the power and duties of the Commission. This was to help the Commission move forward with making a proposal of the proposed amendments to Chapter 28.1. No action or vote is happening on the chart provided by the County Attorney. It is information item only. Acting Director Makely asked if the CPC is ready for staff to put together a redline version to include Commissioner Kratovil's requested changes and come back with a proposal for the CPC to consider.

A discussion ensued on changes to provisions in all the eight Chapters of the County Code, model language to use for appeals, Commission's authority, and appeal process specification.

Acting Director Makely stated staff will bring a redline draft of Chapter 28.1 for the CPC to review at the next meeting.

Commissioner Kratovil mentioned using a small working group to review the proposed changes to Chapter 28.1. Acting Director Makely noted the CPC Bylaws state:

Article VIII-Committees The Chairperson may appoint special committees and a Chairperson for each with the consent of a majority of the Commission members present and voting. All meetings of any such committees shall comply with the notice and other requirements of the VFOIA. To the extent practicable, any such committee shall be composed of at least four members. Committee meetings may be held at the call of the Chairperson or at the request of two members, with notice to all members.

Commissioner Kratovil conceded to wait until the November meeting to see the draft proposal.

New Business

1. Cryptocurrency Presentation. Acting Director Makely informed the Commission that the presenter had to leave. Acting Director Makely will provide the presentation slides and the *Consumer Connection* Facebook Live program on Cryptocurrency recorded that afternoon for the CPC to view.

2. Emergency Taxicab Fuel Surcharge. Acting Director Makely explained the current Emergency Taxicab Fuel Surcharge will end on December 29, 2022. The County Executive requested a no gap extension of the fuel surcharge. Acting Director Makely stated staff analysis shows gas prices are on the rise again. Acting Director Makely has come before the CPC to request authorization to advertise a public hearing at the November 15, 2022, meeting.

Chairperson Gulakowski made the motion that the Consumer Protection Commission authorize the advertisement of a public hearing to be held on Tuesday, November 15, 2022, 7:30 p.m., to consider a Temporary Uncodified Ordinance that will provide for up to One Dollar Per-Trip Emergency Taxicab Fuel Surcharge from December 30, 2022, through June 30, 2023. Commissioner Kirk seconded the motion. The motion passed unanimously, 8-0-0.

Commissioner Hargraves made the motion to adjourn the meeting. Commissioner Kirk seconded the motion. The motion passed unanimously, 8-0-0.

The meeting adjourned at 9:23 PM.