



FAYETTEVILLE CITY COUNCIL
AGENDA
APRIL 2, 2012
5:00 P.M.
Lafayette Room, City Hall

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 APPROVAL OF AGENDA

4.0 OTHER ITEMS OF BUSINESS

4.1 Arts Council's strategic planning priorities.

Presented By: Deborah Martin-Mintz, Executive Director

4.2 Community Development - Update on the Downtown Fayetteville Renaissance Plan.

Presented By: Jami McLaughlin, Downtown Development Director

4.3 Community Development - Presentation of draft Community Development 2012-2013 Annual Action Plan

Presented By: Victor Sharpe, Community Development Director

4.4 Revisions to Article VII, Wrecker & Tow Service

Presented By: Sergeant David McLaurin, Police

4.5 Revenue Potential From Commercial Advertising on Transit Buses

Presented By: Randy Hume, Transit Director Renner Eberlein, Assistant City Attorney

4.6 Manager's Report

Presented By: Kristoff Bauer, Assistant City Manager

5.0 ADJOURNMENT

CLOSING REMARKS

POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

POLICY REGARDING PUBLIC HEARING AGENDA ITEMS

Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7:00 p.m.

POLICY REGARDING CITY COUNCIL MEETING PROCEDURES SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM

Individuals who have not made a written request to speak on a non-public hearing item may submit written materials to the City Council on the subject matter by providing twenty (20) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

Notice Under the Americans with Disabilities Act (ADA): *The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Ron McElrath, ADA Coordinator, at rmcelrath@ci.fay.nc.us, 910-433-1696, or the Office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.*

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Kristoff Bauer, Assistant City Manager
DATE: April 2, 2012
RE: **Arts Council's strategic planning priorities.**

THE QUESTION:

What five items would each City Council member like to select and prioritize as part of the Arts Council's strategic plan?

RELATIONSHIP TO STRATEGIC PLAN:

Principle C - Leisure Opportunities For All

BACKGROUND:

Ms. Deborah Martin-Mintz will report on the activities of the Arts Council in the current year and offer a list of 25 strategic initiatives and will then ask for individual City Council members to prioritize five of them for the Arts Council's strategic planning process.

ISSUES:

None at this time.

BUDGET IMPACT:

Not known at this time.

OPTIONS:

RECOMMENDED ACTION:

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Victor Sharpe, Community Development Director
DATE: April 2, 2012
RE: **Community Development - Update on the Downtown Fayetteville Renaissance Plan.**

THE QUESTION:

Will an update of the Fayetteville Downtown Renaissance Plan create an updated vision and revitalization strategy for the downtown?

RELATIONSHIP TO STRATEGIC PLAN:

Revitalized Downtown - A Community Focal Point; More Attractive City - Clean and Beautiful

BACKGROUND:

- The Downtown Renaissance Plan was adopted in 2002 and has by most accounts been a success.
- In the almost ten years since its inception, over \$76 million has been invested with 341 building projects.
- Most of the goals and objectives of the Plan have been met and a majority of the projects outlined have been completed including Festival Park, the Transportation Museum, streetscape improvements to Person Street, Green Street and Franklin Street, the Franklin Street Parking Deck and the Hope VI project.
- Downtown has new life, which is evident from its top attractions and festivals that bring thousands of visitors to Fayetteville each year, a good mix of businesses and services and new options for residents to live downtown.

ISSUES:

- Major projects such as NC Veterans Park and the 300 Block of Hay Street housing were not realized at the time of this adoption and have certainly changed our landscape as well as the recovering economy that stilted some projects right before they could fully lift off the ground.
- There is a need to prepare for the next phase of downtown's rebirth by incorporating the economic strategic actions and providing specific guidance to ensure continued vibrancy, quality design and improved public spaces.
- To better reflect the times, we should move forward to hire a consultant to further review the accomplishments that have been made over the last decade and update the plan based on a new landscape with new challenges.

BUDGET IMPACT:

There is \$60,000 budgeted for this project. Actual cost will be determined by the consultant selected from the Requests for Proposals.

OPTIONS:

Presented for informational purposes.

RECOMMENDED ACTION:

Receive item as information.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Victor Sharpe, Community Development Director
DATE: April 2, 2012
RE: **Community Development - Presentation of draft Community Development 2012-2013 Annual Action Plan**

THE QUESTION:

Is the 2012-2013 Annual Action Plan consistent with the priorities, goals and objectives of the 2010-2015 Consolidated Plan?

RELATIONSHIP TO STRATEGIC PLAN:

More Attractive City - Clean and Beautiful; Revitalized Downtown - A Community Focal Point; Growing City, Livable Neighborhoods - A Great Place to Live and Greater Tax Base Diversity - Strong Local Economy

BACKGROUND:

- The City of Fayetteville updated its Consolidated Plan in 2010. This plan is a comprehensive plan addressing the City's housing, homeless, community development, and economic development needs for the five-year period of 2010-2015.
- The plan contains goals, objectives, and implementing strategies for each of the plan's elements. The Annual Action Plan describes the activities to be funded or implemented.
- The 2012-2013 Annual Action plan is in the third year of the 2010-2015 Consolidated Plan.
- In an effort to provide citizens an opportunity to participate in the process of developing the Annual Action Plan, the Community Development Staff held five citizen participation meetings. These meetings were held in various locations throughout the City.
- A staff public hearing was held on March 1, 2012 and the Fayetteville Redevelopment Commission will hold the official public hearing on April 12, 2012.
- A draft copy of the plan will be made available in various locations for review and comments for 30 days from March 30, 2012 through April 28, 2012. A presentation of the proposed activities will be made at the meeting.

ISSUES:

- The funding amount for the Community Development Block Grant (CDBG) and HOME Investment Partnership programs were again reduced this year.
- The CDBG allocation this year is **\$1,341,047** compared to \$1,398,046 received last year for a reduction of \$56,999 (4%). The HOME allocation this year is **\$645,471** compared to \$815,994 received last year for a reduction of \$170,523 (26%).

BUDGET IMPACT:

- A cost allocation from CDBG funds paid to the general fund is a source of revenue for the City. This amount is projected at **\$120,150**.
- Because the City received a Presidential federal disaster declaration due the tornado that hit Fayetteville last year we applied for and received a 100 % reduction of the required HOME match. As a result, the City will not have to match the HOME grant this year because of the excess match provided in previous years. This is a savings of **\$129,094** to the general fund.

OPTIONS:

Presented for informational purposes. This item will be placed on the City Council's consent agenda for April 23, 2012.

RECOMMENDED ACTION:

Receive item as information.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Patricia Bradley, Police Attorney
DATE: April 2, 2012
RE: Revisions to Article VII, Wrecker & Tow Service

THE QUESTION:

Whether to approve the proposed revisions to Article VII, Wrecker & Tow Service of the Fayetteville City Code.

RELATIONSHIP TO STRATEGIC PLAN:

This action is requested on Principle I of the Council's Strategic Plan; specifically, working together with citizens to solve problems. Additionally, this is also an initiative under the guiding principle of Operational Efficiency within the Police Department's Community Wellness Plan.

BACKGROUND:

At the November 9, 2009 City Council meeting, Sergeant Matthew Eric Dow, Police Department, presented information regarding a new management system that would aid citizens in the recovery of towed vehicles and the management of the City's wrecker rotation list. Proposed ordinance revisions necessary for the successful implementation of the new management system were presented to City Council and approved on March 8, 2010. The City Wrecker Inspection Team along with the Wrecker Review Board, has identified changes that are necessary for the practical application of the ordinance. Proposed revisions are attached.

ISSUES:

Ensuring the ordinance is consistent with the City Council's interest.

BUDGET IMPACT:

None.

OPTIONS:

- 1) Approve the revisions to Article VII
- 2) Consider the revisions and place on next agenda for approval
- 2) Provide direction to staff
- 3) Deny the revisions to Article VII

RECOMMENDED ACTION:

Approve the ordinance amendments and authorize Staff to revise the policies consistent with the approved ordinance amendments.

ATTACHMENTS:

Wrecker Ordinance Revisions April 2012

Proposed changes to Article VII. Wrecker and Tow Service

Item 1, page 2, In **24-221 Definitions,**

- Define "wrecker business" in some way, or reference a city code that defines the physical business location and building so we can more clearly decide if wrecker companies are "sharing office space" as mentioned in 24-223 (j)(4).

"Wrecker Business means a permanent structure, located on an approved storage lot, within the City limits of Fayetteville, with a separate physical address, as defined by the United States Postal Service, for each inspected business, and each business must comply with the applicable city code for this type of business."

Items 2, page 3, In **24-223 Duties and requirements of licensees under this article,**

- (h) Change "Drivers with felony offenses..." to "Drivers with any felony convictions..."

Item 3, page 4, In **24-223 Duties and requirements of licensees under this article,**

- (j) (3) Add "wrecker business and"

Item 4, page 4, In **24-223 Duties and requirements of licensees under this article,**

- (j) (3) Add "and shall be located at the same address."

Item 5, page 4, In **24-223 Duties and requirements of licensees under this article,**

- (j) (4) Add "Licensees shall maintain a separate physical address, as defined by the United States Postal Service, for each business and each business must comply with the applicable city code for this type of business."

Item 6, page 4, In **24-224 Additional equipment authorized,**

- (a) Make a clerical change from "large" to "primary".

Item 7, page 5, In **24-225 Application for license,**

- (2) Add "business and".

Item 8, page 5, In **24-225 Application for license,**

- (2) Add "at the same address".

Item 9, page 6, In **24-227 Mandatory refusal of application,**

- Strike "within the last five years". In 24-223 (h) it says that "drivers with felony offenses or misdemeanors..... will not be authorized to respond to city rotation calls." There is no mention of the five year limitation here. Also, in 24-240 Suspension or

revocation of license, it says in (a) (2) the following shall be grounds for suspension or revocation..."The licensee, or any employee, representative or agent of the licensee, is charged with any felony...", it does not have the five year limitation here either. We should make each of these consistent throughout the ordinance.

Item 10, page 7, In **24-232 Duties generally,**

- (2) Add "and the wrecker business".

Item 11, page 9, In **24-235 Storage of vehicles,**

- (a) Clerical change from "16-223 (j)" to "24-223 (j)".

Item 12, page 9, In **24-235 Storage of vehicles,**

- (b) Clerical change from "with" to "for".

Item 13, page 11, In **24-240 Suspension or revocation of license,**

- (a) (2) Change "charged with" to "convicted of".

Item 14, page 11, In **24-240 Suspension or revocation of license,**

- (a) (4) Create a new number 4 "The intentional, willful or wanton failure to comply with any of the provisions of this chapter, ordinance, or state law relating to the inspection of a wrecker company."

Item 15, page 11, In **24-240 Suspension or revocation of license,**

- (a) (5) Create a new number 5 "The Wrecker Inspector may immediately suspend a licensee from the rotation list if the Wrecker Inspector deems the wrecker company to be unsafe or unfit to provide safe and adequate towing services. The wrecker company may appeal this decision to the Wrecker Review Board but will not remain on the rotation list pending the appeal hearing if there are safety violations.

Item 16, pages 11 & 12, In **24-240 Suspension or revocation of license,**

- Adjust the numbers to match the additions.

Item 17, page 12, In **24-240 Suspension or revocation of license,**

- Adjust the numbers in (b) to match (a).

Item 18, page 13, In **24-244 Action pending appeal; lapse of time; waiver,**

- Add an exception to meet the addition in 24-240 (a) (5). "except as noted in Sec 24-240 (a) (5)". This would be for immediate safety issues that pose a hazard to the safety and well being of the public.

Item 19, page 15, In **24-250 Enforcement,**

- Clerical change, "24-238" should be "24-239" in (a) and (b).

Item 20, page 15, In **24-250 Enforcement**,

- Change "by a licensee" to "any towing operator" in both (a) and (b). This seems to conflict with 24-239 Solicitation of business, where it says in (a), "It shall be unlawful for any towing operator...." We have already had an issue where a recently suspended towing operator was cruising wreck locations, possibly to solicit business, and another non-licensee towing operator was doing the same.

ARTICLE VII. WRECKER AND TOW SERVICE

Sec. 24-221. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a person, firm, or corporation engaged in the business of, or offering the services of, a vehicle wrecker or towing service whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle manufactured and designed for the primary purpose of removing and towing disabled motor vehicles that desires to participate in the rotation list by making application to the same.

Chief of police means the executive head of the police department of the city or anyone designated by him.

Consensual tow means a tow where the vehicle owner, operator or his agent or designee is present at the scene and the individual owner, operator or his agent or designee expressly requests that a specific towing or wrecker company to remove his vehicle and enters into a private contract with the towing or wrecker company for towing services.

Driver means any person driving a wrecker upon the streets, roads and public thoroughfares of the City of Fayetteville.

Licensee means a person, firm or corporation, or employee, agent or contract agent of any person, firm or corporation issued a license under the terms of this article.

Non-consent tow means a tow occurs without prior consent or authorization of the owner or operator of the motor vehicle that is to be towed. For purposes of this provision, a "non-consent tow" includes:

- i. a repossession;
- ii. a city (county) initiated tow from public or private property;
- iii. a law enforcement initiated tow from public property; or
- iv. a tow of a vehicle initiated by a private party.

Rollback means a truck chassis having a minimum gross vehicle weight rating of 14,000 pounds, a minimum deck length of 16 feet, and being constructed of steel or aluminum. The deck must have a minimum load capacity of 7,000 pounds, a deck winch with a minimum capacity of 6,000 pounds, and a winch cable with a minimum diameter of three-eighths of an inch and a minimum length of 25 feet.

Rotation calls means calls for towing services made by the City using licensees from the City's rotation list.

Rotation list means a list maintained by the police department containing the names of those wreckers licensed by the city to respond to requests made by the police department for the towing of vehicles.

Rotation wrecker services means the towing, lifting, righting, winching, removal or storage of a city-owned vehicle, illegally parked vehicle, wrecked vehicle, damaged vehicle,

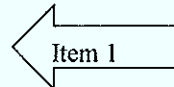
inoperable vehicle, seized vehicle, abandoned vehicle, disabled vehicle or other designated vehicle in accordance with the city rotation list.

Tow or towing means the act of moving damaged or disabled vehicles, illegally parked vehicles, and vehicles that must be moved for safekeeping and evidentiary purposes, and abandoned, wrecked, dismantled or inoperative vehicles constituting a nuisance.

Towing Operator means any person, firm corporation or other entity, whether licensed or not, who owns or operates a business which engages, in whole or in part, in the business of towing, removal or storage of motor vehicles in the City of Fayetteville.

Wrecker means a truck chassis having a minimum gross vehicle weight rating of 14,000 pounds a boom assembly having a minimum lifting power of 16,000, a wheel lift having a minimum lifting power of 3,000 pounds retracted, as rated by the manufacturer. A wrecker must also have any additional safety equipment as specified by the chief of police and incorporated herein by reference as set forth in this article.

"Wrecker Business means a permanent structure, located on an approved storage lot, within the City limits of Fayetteville, with a separate physical address, as defined by the United States Postal Service, for each inspected business, and each business must comply with the applicable city code for this type of business."



Wrecker inspector means the person designated within the City's police department to fulfill his duties as outlined in this article.

(Code 1961, § 20-164; Ord. No. S2001-004, §§ 1, 2, 2-5-2001)

Cross references: Definitions generally, § 1-2.

Sec. 24-222. Policy.

In order to protect persons who operate motor vehicles inside the city, it is desirable and necessary to adopt this article to ensure licensing, storage, availability, and other controls over persons and firms providing towing and vehicle storage services.

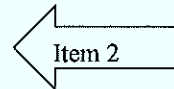
(Code 1961, § 20-165)

Sec. 24-223. Duties and requirements of licensees under this article.

- a) The licensee shall provide a wrecker vehicle of sufficient size and weight as defined in section 24-221. The operator of such wrecker shall follow the manufacturer's operation manual in the operation of such wrecker. The wrecker operator shall not attempt to tow any vehicle that would reduce the weight of the front axles of the wrecker by 50 percent or more.
- b) All wreckers shall be equipped with warning lights required under state law. Wreckers and rollbacks shall operate all warning devices while stopped in or near a street, highway, public vehicular area, or any other area where vehicles may travel. Wreckers and rollbacks are not required to operate warning lights while in tow unless the vehicle is oversized or a condition exists that requires towing the vehicle substantially below the speed limit. A wrecker or rollback with a vehicle in tow must have auxiliary tow lights attached to the towed vehicle in a manner that allows following traffic to observe whether the towing unit is turning or braking. If a rollback is transporting a vehicle on the bed and the turn and

brake lights are visible to the rear, no auxiliary tow lights are necessary. Wreckers and rollbacks shall be marked in accordance with N.C. Gen. Stat. § 20-101, as it may be modified from time to time.

- c) The licensee shall provide continuous 24-hour-a-day service each day of the year, and there shall be an attendant on duty at the storage lot, during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday except for emergencies and State and Federal holidays. This attendant shall be clothed with the authority to release any vehicle upon the legal conditions of release being fulfilled. The attendant should also be authorized to provide assistance to the driver and any relevant information regarding the towing of their vehicle, including, but not limited to, billing inquiries and property damage. The licensee shall also post instructions in an area that is visible to the public regarding how to retrieve the driver's vehicle when attendants aren't present.
- d) The licensee shall not release any vehicle directly impounded by the city without authorization by the police department.
- e) Licensees shall perform towing service for the city on a rotation basis.
- f) No licensee or agent of the licensee shall intercept police calls by any means for the purpose of soliciting business.
- g) No licensee or agent of the licensee shall engage in unfair and deceptive trade practices in the course and operation of its business in violation of N.C. Gen. Stat. § 75-1, et. seq.
- h) Only drivers holding valid North Carolina driver's licenses may respond to City rotation calls. The licensee shall provide North Carolina licensed wrecker drivers for the purpose of responding to city rotation calls. Except as excluded by G.S. 20-8(3). Drivers must adhere to the North Carolina Driver's License Act, N.C. Gen. Stat. § 20-5, et seq., Drivers with any felony convictions offenses or misdemeanors related to North Carolina's Controlled Substances and Vapors Act, as it may be modified from time to time, or the offense of driving under the influence of an intoxicating liquor or drug, or who are habitual offenders of traffic laws, will not be authorized to respond to city rotation calls.
- i) Drivers employed by licensees are required to attend and successfully complete eight hours of hands-on training and pass a written test pertaining to the towing and recovery of vehicles. This training shall be conducted by a recognized training facility or by a trained and certified licensee.
- j) The licensee shall provide:
 - (1) An outdoor space measuring 8,600 square feet for properly accommodating and protecting motor vehicles to be towed or otherwise removed from the place where they are disabled. Such storage space for vehicles shall be enclosed by a minimum six-foot chain link fence or a fence of similar strength and shall have all entrances and exits secure from public access and be compliant with all applicable articles of the Fayetteville City Code;
 - (2) A storage vault or storage room on the storage lot or premises which is adequate to secure and protect personal property which may be left in vehicles towed to a private wrecker. An office space with proper signage identifying the business and telephone number



- (3) The wrecker business and storage lot shall be located within the corporate limits of the City Fayetteville, and shall be located at the same address.
- (4) Licensees are prohibited from sharing any office space, employees or equipment that is subject to inspection with other licensees. Licensees shall maintain a separate physical address, as defined by the United States Postal Service, for each business and each business must comply with the applicable City Code for this type of business. However, licensees may request assistance from another licensee to assist in a particular tow or vehicle recovery, provided that the assisting licensee supervises and operates its own equipment at the scene of that tow or vehicle recovery.
- k) Licensees shall be held responsible for the actions of their employees. Failure to correct or prevent conduct that is in violation of this article that the Licensee had knowledge of, or should have had knowledge of by the exercise of due diligence, will result in action being taken against the Licensee, up to, and including, removal from the city rotation list.
- l) Upon request or demand, and proof of ownership or right of possession, a licensee shall return personal property stored in a vehicle, provided that all authorized charges for towing of the vehicle have been paid. A licensee may not require payment of any storage fees as a prerequisite to release personal property. Any items attached to the vehicle such that a tool of any type is required for removal is not considered personal property under this provision.
- m) Licensees must release vehicles from storage after regular business hours upon request of the Fayetteville Police Department or the owner of the vehicle. Licensees may charge a release fee in accordance with the fee schedule approved by City Council referred to in Section 24-237 for such service as it may be modified from time to time. The Licensee may also require payment of the release fee at the time of the release.
- n) Licensees must tow vehicles to their designated storage facility or to another location designated by the vehicle owner or the Fayetteville Police Department. Charges for tows to a police facility, where the vehicle is not relocated to the licensee's storage facility within fourteen 14 days, shall be paid by the City.

(Code 1961, § 20-166)

Sec. 24-224. Additional equipment authorized.

- a) After having met the requirement of subsection 24-223(a), a Licensee may have an additional wrecker meeting the requirements of subsection 24-223(a). All auxiliary equipment must be duplicated on this additional wrecker as required by the wrecker inspector for primary large wreckers.
- b) After having met the requirement of subsection 24-223(a), a Licensee may have a rollback for the purpose of initial response to rotation calls. This rollback must have a minimum gross vehicle weight of 14,000 pounds, a minimum deck length of 16 feet and be constructed of steel or aluminum. The deck winch must have a minimum capacity of 6,000 pounds and a winch cable with a minimum diameter of three-eighths of an inch and a minimum length of 25 feet. All auxiliary

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equipment must be duplicated on the rollback as required by the wrecker inspector for the primary rotation wrecker, except dollies.

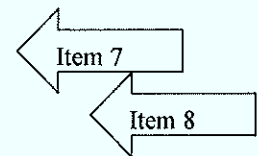
- c) It is not the intent of this section to allow the wrecker defined in subsection (a) of this section to be used as a substitute for that required in subsection 24-223(a), in order to be eligible to be on the rotation list.

(Code 1961, § 20-167; Ord. No. S2001-004, § 3, 2-5-2001)

Sec. 24-225. Application for license.

All applicants shall submit an "application for wrecker service license" in duplicate to the wrecker inspector. Applications shall be obtained from the office of the wrecker inspector. This application shall include:

- 1) The name, home and business address and telephone number of the applicant/owner, and name of the business if different from name of owner;
- 2) That the business and storage lot on which towed vehicles will be stored is located within the city limits, at the same address, and additional information concerning the size and security features of the lot;
- 3) The towing equipment available, its size and capacity;
- 4) A complete listing of the insurance policies, complying with section 24-229 and the carriers and agents the wrecker applicant would place into effect upon license approval;
- 5) A copy of a current city privilege license;
- 6) Copies of all valid North Carolina drivers' licenses for its drivers. Copies of drivers' licenses for drivers excluded by G.S. 20-8(3).
- 7) Such other information as the wrecker inspector may find reasonably necessary to determine whether or not the requirements of this article will be complied with and that it is in the best interest of the public health, safety and welfare to issue a license to the applicant;



(Code 1961, § 20-168)

Sec. 24-226. Licensing.

- a) Within a reasonable period, but no later than ninety (90) days after receiving an "application for wrecker service license," the wrecker inspector shall conduct an investigation to determine if the applicant has complied with the necessary standards and criteria of this article, and that it is in the best interest of the public health, safety and welfare that a license shall be issued to the applicant after having complied with the provisions of section 24-223. If approved, the applicant's name shall be placed at the end of rotation list; provided, that if an applicant is refused a license by the wrecker inspector, the applicant shall have the right to appeal the denial to the wrecker review board for a determination concerning the issuance of license to such applicant. The appeal shall be in accordance with section 24-243.

- b) After the initial approval of the licensing, the wrecker inspector shall conduct an annual inspection to ensure that the licensee maintains the necessary equipment and is otherwise in compliance with the requirements of this article.

(Code 1961, § 20-169)

Sec. 24-227. Mandatory refusal of application.

If an applicant has been convicted, entered a plea of nolo contendere, or received a prayer continued for judgment ~~within the last five years~~ for any felony offenses or misdemeanors related to North Carolina's Controlled Substances and Vapors Act as it may be modified from time to time or the offense of driving under the influence of an intoxicating liquor or drug, or is an habitual offender of traffic laws, it is the finding of the city council that it is not in the best interest of the public health, safety or welfare to issue a license under this article to such applicant and therefore any such application shall be denied.

(Code 1961, § 20-170)

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Sec. 24-228. Conditions precedent to issuance of license.

When an application is approved, a license will be issued when:

- 1) Insurance policies required by this article have been procured and a copy of each policy has been given to the wrecker inspector. Each policy shall be written by a company licensed to do business in North Carolina, and issued in the name of the licensee.
- 2) Each licensee must have its own insurance policy to insure its business, including, but not limited to, equipment, employees, real property and other personal property. Licensees are prohibited from including multiple licensees on one policy, or having licensees as additional insureds on their respective policies.
- (3) The requirements of this article and all other governing laws and ordinances have been met, including that each licensee maintains a business with a business telephone listing within the city limits. This business will be at the same location as the storage lot.

(Code 1961, § 20-171)

Sec. 24-229. Insurance.

The following are the minimum insurance requirements to be kept and maintained by any licensee under this article at all times such license is in effect:

- (1) Garage/auto liability policy. A garage liability policy covering the operation of the licensee's business equipment, or other vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of \$1,000,000.00..
- (2) Garage keeper's/On-Hook Coverage policy. A garage keeper's liability policy for each storage premises covering fire, theft, windstorm, vandalism and explosion in the amount of \$100,000.00 (\$20,000.00 per claim per vehicle). This shall not be a requirement for open storage areas. Similarly, each licensee must have its own "on hook" insurance policy in the minimum amount of \$100,000.00.

- (3) Notice of change. Each policy required under this section must contain an endorsement by carriers providing ten days' notice to both the city and the insured in the event of any change in coverage under the policy.
- (4) Each licensee must have a separate liability insurance policy issued in the name of the licensee. Licensees are prohibited from including multiple licensees on one policy, or having licensees as additional insured on their respective policies.

(Code 1961, § 20-172)

Sec. 24-230. Hold harmless provision.

Any licensee shall indemnify, save and hold harmless the city, its officers, agents, and employees, from any and all claims, actions, defenses, suits, and proceedings arising out of any negligent, grossly negligent or intentional, willful or wanton misconduct on the part of a licensee, employee, or part-time employee of the licensee, which such misconduct is the proximate cause of damage to any vehicle towed or stored in a lot authorized under the terms of this article, including, but not limited to, liability for damages sustained by vehicles while being towed or stored and for all personal injuries occurring to any of the firm's employees or other persons.

(Code 1961, § 20-173)

Sec. 24-231. Wrecker inspector; office created.

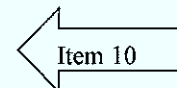
There is hereby created the office of wrecker inspector, who shall be appointed by the city manager.

(Code 1961, § 20-174)

Sec. 24-232. Duties generally.

The wrecker inspector shall be responsible for:

- (1) The practical administration of the wrecker ordinances and regulations and the safety and welfare of the public in connection with the operation and use of rotation wreckers;
- (2) The inspection of wreckers and the wrecker business ;
- (3) Advising the chief of police, the city manager, and the wrecker review board with respect to matters governed or incidentally involved in the operation or administration of the wreckers and the rotation wrecker ordinance, after having conferred with members of the wrecker industry.
- (4) Making recommendations for submission to the city manager, wrecker review board, and to the city council, after having conferred with members of the wrecker industry, with respect to the adequacy of wrecker service in the city to serve the public convenience and necessity;
- (5) Making such studies and recommendations as he may deem advisable looking towards more efficient operation of wreckers and rotation wreckers to the end that



the public safety and welfare will be served and proper as adequate wrecker service to the general public will be promoted;

- (6) May collect data and statistics related to non-consent tow and release of vehicles.
- (7) The wrecker inspector may prescribe procedures for the reporting of information relating to the impound and recovery of non-consent tows and, consistent with law, operate a centralized data system for the tracking of this information.
- (8) All other duties as required by this article.

(Code 1961, § 20-175)

Sec. 24-233. Cost and inspections.

- a) Except as provided in section 24-234, all costs incident to towing and storage shall be paid by the owner, or person in charge or possession of the towed and stored vehicle, to the towing operator, and a receipt for payment shall be issued to such person. With regard to rotation calls, the city shall assume no liability or responsibility for any vehicle removed from any place without the authority of the police department. Each licensee shall maintain approved records and claim check system to assure release of vehicles to the rightful owner or authorized person. Such records shall be open to the police department and/or the wrecker inspector for investigation of specific complaints, in writing, and for compiling surveys under this article. Any licensee shall permit any person appointed by the wrecker inspector to inspect his records, vault, security room, or storage area at such reasonable times as the wrecker inspector shall deem appropriate.
- b) Any administrative costs due to the city and imposed by this article, to include any service fee due for the operation and maintenance of a centralized electronic data reporting system, shall be collected by the towing operator at the same time the cost incident to towing and storage are collected in subsection (a) of this section, and immediately paid to the City's Finance Department or designee.

(Code 1961, § 20-176)

Sec. 24-234. Wreckers called by the police.

The police department shall ensure that wreckers are called to the scene of an accident or to impound vehicles on a rotation basis, distributing the calls from the rotation list. The chief of police shall not call or cause to be called any wrecker not on the rotation list unless all such wreckers are unavailable, or unless the owner of the vehicle to be towed requests that a specific wrecker be called; any wrecker called by the police department not on the rotation list shall comply with statutory insurance requirements. In accordance with North Carolina's Incident Management policy, as may be periodically modified, it is specifically permitted for the police department to call a wrecker out of sequence where, due to the public's health, safety and welfare, or in an emergency or life-threatening situation, proximity to the wreck and estimated response time make it more necessary to do so. Out of sequence calls shall count as rotation calls.

(Code 1961, § 20-177)

Sec. 24-235. Storage of vehicles.

- a. It shall be the responsibility of any licensee to secure in a safe manner any vehicle or personal property contained in such vehicle that is placed in the custody of the licensee as a result of being called by the city police department to perform a tow. The area within which such vehicle and/or personal property shall be stored shall meet the minimum requirements of subsection 24-223(i). If at the time the vehicle was towed the storage area provided by the licensee is full, then the licensee shall secure the vehicle and/or personal property elsewhere as permitted by the police department. In the event that the vehicle or personal property placed in his custody is the subject of a police investigation for evidentiary purposes, and the storage area is full, then the licensee shall immediately contact the wrecker inspector or the desk sergeant on duty and make arrangements to secure the vehicle and/or personal property in a safe manner.
- b. Whenever a vehicle is impounded and held for evidentiary purposes as the result of a criminal arrest, the owner of the vehicle shall be reimbursed by the city for any towing and storage fees incurred during the period of time that the car is held for evidentiary purposes only upon one of the following conditions being met:
- 1) The owner is not arrested forwith any crime arising out of the alleged criminal activity resulting in the impoundment; or
 - 2) The vehicle is returned pursuant to the provisions of G.S. 90-112.1; or
 - 3) If the owner is arrested, the charge is dismissed or there is a finding of no probable cause in district court.

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In the case where none of the above conditions have been satisfied, the city shall reimburse the towing operator for any towing and storage fees and/or assist the towing operator in obtaining restitution as allowed by law.

(Code 1961, § 20-178)

Sec. 24-236 _Electronic Reporting of Tow Information

- a. The City shall, consistent with state and local law, prescribe a form or other method for the electronic reporting of all towing services provided within the City of Fayetteville in order to facilitate and expedite the recovery of a vehicle from a vehicle storage facility, as defined in this ordinance.
- b. The towing operators, as defined by this ordinance, shall report by electronic means to the police department all necessary information required to assist the City in notifying the registered owner regarding the towing and/or release of their vehicle. The reporting shall be completed within sixty (60) minutes from the time the vehicle is delivered to the storage lot, provided that the tow occurred during normal business hours, or by 9:00 a.m. the following business day if the vehicle was towed during non-business hours. The necessary information related to the towing of the vehicle includes, but is not limited to, the following:
- 1) the name and address of the registered owner of the vehicle.
 - 2) the location of the stored vehicle;
 - 3) a description of the stored vehicle, including the color, make, and model;
 - 4) vehicle license plate number and state; and
 - 5) vehicle identification number (VIN).
 - 6) (the date and time that the vehicle was towed; and
 - 7) the location from where the vehicle was towed.

If applicable, the wrecker operator shall also provide the following information within sixty (60) minutes of releasing the vehicle:

- 1) the owner's driver's license/identification number;
- 2) the date and time the vehicle was released from custody; and
- 3) the identity of the individual to whom the vehicle was released, to include the name, address and driver's license/identification number if different from that of the registered owner.

Sec. 24-237. Fees.

The city council, from time to time, upon the recommendation of the wrecker inspector, after having consulted with the licensees, shall establish a table of maximum fees and costs that may be charged by licensees under the provisions of this article, and establish any administrative fees to be charged per tow for the costs incurred in administering the provisions of this article, including the assessment of an administrative fee for all non-consent tows initiated under this ordinance.

(Code 1961, § 20-179)

Sec. 24-238. Other regulations.

The wrecker inspector, subject to approval by the city manager, shall establish and cause the enforcement of reasonable rules and regulations for licensees as from time to time he deems appropriate for the safety, well-being, and protection of citizens within his jurisdiction and their property. These rules and regulations, as approved by the city manager from time to time, shall be incorporated in this section by reference. A copy of these rules and regulations shall be available for inspection in the office of the wrecker inspector at all times.

(Code 1961, § 20-180; Ord. No. S2001-004, § 4, 2-5-2001)

Sec. 24-239. Solicitation of business.

- a. It shall be unlawful for any towing operator or person acting on behalf of any towing operator, to stop or approach within 1,500 feet of a scene of an accident or disabled vehicle either for the purpose of soliciting an engagement for towing service, either directly or indirectly, or to contact the owner/operator or legal possessor of a disabled or wrecked vehicle, either directly or indirectly, or to solicit by phone, for the purpose of soliciting business or to furnish any towing service, unless the towing operator has been summoned to such scene by the owner/operator or legal possessor of a disabled or wrecked vehicle or has been requested to perform such service at the request of a law enforcement officer or agency pursuant to that agency's procedures. For purposes of this section, unlawful solicitation shall include, but is not limited to, the distributing of business cards, tokens or items of any kind bearing the name of a towing operator within

1,500 feet of a scene of an accident or disabled vehicle by a licensee not summoned to such scene as provided in this section.

- b. It shall be unlawful for a city, county or state employee to solicit for any towing operator. For purposes of this section, unlawful solicitation shall include the distributing of business cards, tokens or items of any kind bearing the name of a towing operator at anytime.

(Code 1961, § 20-181; Ord. No. S2001-004, § 5, 2-5-2001)

Sec. 24-240. Suspension or revocation of license.

- a. The following shall be grounds for suspension or revocation of a license issued under this article:

- 1) The license was secured by fraud or by the concealment of a material fact by the licensee and such fact, if known, would have caused a refusal to issue a license;
- 2) The licensee, or any employee, representative or agent of the licensee, is convicted of charged with any felony or any violations of North Carolina's Controlled Substances and Vapors Act, as it may be modified from time to time, or the offense of driving under the influence of an intoxicating liquor or drug.
- 3) The licensee failed to procure insurance as provided in Sections 24-228 and 24-229.
- 4) The intentional, willful or wanton failure to comply with any of the provisions of this chapter, ordinance or state laws relating to the inspection of a wrecker company.
- 5) The Wrecker Inspector may immediately suspend a licensee from the rotation list if the Wrecker Inspector deems the wrecker company to be unsafe or unfit to provide safe and adequate towing services. The wrecker company may appeal this decision to the wrecker review board but will not remain on the rotation list pending appeal if there are safety violations.
- 6) The licensee has violated any of the requirements of the regulations established by the wrecker inspector under this article;
- 7) Past services rendered by any licensee are shown to be detrimental to the public health, safety, and welfare, including overcharging of wrecker fees or false charging of items done by the wrecker business;
- 8) The licensee paid in the form of a gratuity any third person for information as to the location of the accident;
- 9) The licensee has violated the fee schedule by overcharge or false charges;
- 10) Failure to operate the wreckers specified in such a manner as to serve the public adequately and efficiently;
- 11) Failure to maintain recovery equipment, to include all vehicles used in towing, in good condition;

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- 12) Failure to pay the city privilege license fee imposed upon licensees;
- 13) Failure to report accidents while towing city rotation call vehicles or to furnish such other records and reports as may be required by this chapter and/or the wrecker inspector;
- 14) Failure to pay civil penalties issued pursuant to this ordinance;
- 15) The intentional, willful or wanton failure to comply with any of the provisions of this chapter, ordinance or state laws relating to the operation of wreckers; and
- 16) The intentional, willful or wanton failure to comply with the reporting requirements of this ordinance, as may be periodically modified.

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- b. If the wrecker inspector determines that any of the above violations have occurred, he shall have the authority to revoke or suspend a license as follows:

- 1) For violation of subsection (a)(1) through (5) of this section, revocation;
- 2) For a first time violation of subsections (a)(6) through (16) of this section, suspension up to 30 days;
- 3) For a second violation of subsections (a)(6) through (16) of this section, within a period of two years from the date of the first suspension, suspension up to 60 days; and
- 4) For a third violation of subsections (a)(6) through (16) of this section, within a period of two years from the date of the first violation, revocation.

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- c. Any licensee who has his license revoked shall be eligible to apply for a new license one year from the date of the revocation. For purposes of this section, the date of suspension or date of revocation shall be the date of the notification by the wrecker inspector pursuant to section 24-240, or if an appeal is made, the date of the final action by the wrecker review board.

(Code 1961, § 20-182)

Sec. 24-241. Notification of suspension or revocation by wrecker inspector.

Such revocation or suspension shall be in writing and notify the licensee of the following:

- 1) The nature of the violation;
- 2) The wrecker inspector's recommendation as to whether the licensee should remain on the rotation wrecker list, should be suspended, or its license revoked;
- 3) That the licensee has a right to appeal such action to the wrecker review board.

(Code 1961, § 20-183)

Sec. 24-242. Wrecker review board.

There is hereby established a wrecker review board whose function is to hear appeals from any decision of the wrecker inspector pursuant to this article. The board shall be composed of a chairman, two individuals selected by the licensees, and two individuals appointed by the chief of police. The chairman shall be selected by the city council, and shall be a disinterested person who is not a licensee, wrecker owner or operator, or a city employee. Two members of the wrecker review board shall be selected by the licensees by means of a vote of the licensees. The chief of police shall appoint two members of the police department who hold the rank of sergeant or higher to the wrecker review board. All members shall serve for a term of two years, and no member shall serve more than two consecutive terms. The wrecker inspector shall serve as a nonvoting advisor and to bring complaints to the wrecker review board.

The wrecker review board will meet on a quarterly basis irrespective of whether they receive any notices of appeals. All meetings, to include appeal hearings, will be governed by North Carolina's open meeting laws.

(Code 1961, § 20-184)

Cross references: Administration, ch. 2.

Sec. 24-243. Appeal to the wrecker review board.

Whenever any provision of this article shall provide for an appeal of a decision of the wrecker inspector to the wrecker review board, the following procedure shall be followed:

1. The appellant shall give written notice of appeal to the city clerk within ten days of receiving the notice of the action he is appealing;
2. The wrecker review board shall hold a hearing on the appeal within 30 days of receipt of the written notice of appeal;
3. The written notice of appeal shall state whether or not the appellant wants an open or closed hearing before the wrecker review board. In the event of the failure to make such a request, such hearing shall be open.

(Code 1961, § 20-185)

Sec. 24-244. Action pending appeal; lapse of time; waiver.

- a. Whenever a provision of this article states a specific time within which an appeal must be taken, and regardless of the level of authority from which the appeal may be taken, if the appeal is not taken within the time prescribed, then the action of the wrecker inspector from which the appeal may have been taken is deemed to be final.
- b. The action of the wrecker inspector suspending or revoking the rights granted under the authority of this article shall be effective upon receipt of notice by the licensee; provided, that if the licensee files a timely appeal, then any right under this article heretofore existing shall continue in effect during the pendency of any appeal or 30 days, whichever is sooner, except as noted in Sec 24-240 (a) (5).
- c. Any hearing may be continued upon 48 hours' written notice prior to the date of the hearing; provided, that if the new date for the hearing is more than 30 days from the date

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of the original notice of appeal, then the rights of the appellant pursuant to subsection (b) of this section may only be extended upon a showing of good cause.

(Code 1961, § 20-186)

Sec. 24-245. Hearing; action of wrecker review board.

- a. The purpose of the hearing before the wrecker review board shall be to determine whether or not the action of the wrecker inspector in suspending or revoking the rights and privileges of the appellant was in the best interests of the public health, safety, and welfare of the city. The appellant shall be permitted to present any evidence relevant to the subject matter of the appeal. The hearing shall be administrative in nature, and the action of the wrecker review board shall be final.
- b. If the action of the wrecker review board is to affirm the action of the wrecker inspector, then the effective date of the action shall be the date of the hearing. Any period of actual suspension as the result of a continuance prior to the hearing shall be counted toward any period of suspension approved by the wrecker review board.

(Code 1961, § 20-187)

Sec. 24-246. Hearing procedures.

Any hearing before the wrecker review board shall use the following procedures:

1. The hearing shall be open, unless specifically requested by the appellant prior to the hearing;
2. The appellant shall be entitled to make any statements either by an attorney or someone of his own choosing;
3. The appellant shall be entitled to make any statements or present any witnesses on his behalf that he desires;
4. The hearing shall be administrative in nature, there shall be a right of cross examination;
5. The appellant shall be entitled to transcribe the proceedings at his own cost.

(Code 1961, § 20-188)

Sec. 24-247. Applicability to previous licensees; noncompliance.

Whenever this article is amended from time to time by the city council and such amendments shall render any current approved licensee in noncompliance with this article as amended, such noncompliant licensee shall have a period of one year from the effective date of the amendment of the article within which to comply.

(Code 1961, § 20-189)

Sec. 24-248. Persons prohibited from holding a license.

No employee directly involved with the administration of this article shall be permitted to hold a license under the terms of this article.

(Code 1961, § 20-190)

Sec. 24-249. Improper towing

- a) It is a misdemeanor offense to tow a motor vehicle from a lot that is subject to the provisions of N.C.G.S. 20-219.2, as it may be modified from time to time, unless the lot and individual parking spaces are properly designated as mandated by that statute.
- b) Any towing operator shall not charge the owner or operator of the towed vehicle in excess of one hundred dollars (\$100.00) for the non-consensual tow of the motor vehicle or in excess of twenty-five dollars (\$25.00) per day for storage fees; however, no storage fees shall be charged for the first twenty-four (24) hour time period from the time the vehicle is towed from the property. The fee of one hundred dollars (\$100.00) shall be all inclusive. The fees referred to in this section shall be payable by cash, debit card or major national credit card at no extra cost. Failure to accept credit or debit cards for payment or to charge an additional fee for payment with a credit or debit card is a violation of this section and is punishable as a misdemeanor. No additional fees may be charged for using dollies, trailers, lifts, Slim jims or any other equipment or service. However, the maximum fees in this section shall not apply to the non-consensual towing of vehicles weighing in excess of two (2) tons. Non-consensual towing fees and storage rates shall be established by the City Council in accordance with their fee schedule, as it may be modified from time to time.
- c) Any towing operator removing a private vehicle at the request of any person, other than a police officer on duty, shall report to the Fayetteville Police Department the fact that the vehicle was towed and its present storage space in accordance with Sec. 24-236 of this article.
- d) Any towing operator summoned to tow any vehicle in a non-consensual towing shall not tow the vehicle and shall release the vehicle for a charge not to exceed fifty (50) percent of the non-consensual towing rate set out in paragraph (b) herein if the operator of the vehicle returns prior to the tow truck having left the location to which he was summoned and moves the vehicle immediately and prior to the tow truck having left the location to which it was summoned. The towing operator shall permit the owner of a vehicle towed non-consensually to remove personal property from a vehicle in the custody of the towing operator without any charge or fees. If the towing operator has removed personal property from the vehicle, it shall be returned to the owner of the property at no charge upon request made to the towing operator.

Sec. 24-250. Enforcement.

- a) A violation of section 24-~~239~~, solicitation of business, by any towing operator, shall submit the violator to a civil penalty in the nature of a debt in the sum of \$3,000.00 for each large rotation size tow and \$500.00 for each automobile rotation size tow. The civil penalty shall be imposed by a citation served personally or by registered mail to the violator by the wrecker inspector.
- b) Any violation of this article, other than sections 24-~~238~~~~239~~ or 24-249, by a ~~licensee~~any towing operator, shall submit the violator to a civil penalty in an amount in accordance with the fee schedule as adopted by the city council, as may be periodically modified. In

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addition, if a licensee is in violation under this article more than three times in one year, the licensee shall also be subject to removal from the rotation list for a period of one year. For purposes of removal and/or revocation, the violations can arise from the same incident, occur simultaneously and during the same incident.

- c) If a civil penalty issued under this section is not paid as set forth in the citation within thirty (30) days of receipt thereof, failure to pay shall result in the City instituting collection procedures to collect the debt. The licensee will be suspended from all City rotation lists until the civil penalty is satisfied.

(Code 1961, § 20-191; Ord. No. S2001-004, § 6, 2-5-2001)

Secs. 24-249--24-270. Reserve

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council Members
FROM: Randy Hume, Transit Director
DATE: April 2, 2012
RE: **Revenue Potential From Commercial Advertising on Transit Buses**

THE QUESTION:

Should transit vehicles be used for advertising commercial products and services in order to generate additional operating revenue?

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient City Government-Cost Effective Service Delivery

BACKGROUND:

ISSUES:

Advertising Policy
Potential Revenue

BUDGET IMPACT:

OPTIONS:

RECOMMENDED ACTION:

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Kristoff Bauer, Assistant City Manager
DATE: April 2, 2012
RE: **Manager's Report**

THE QUESTION:

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

ISSUES:

BUDGET IMPACT:

OPTIONS:

RECOMMENDED ACTION: