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MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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Conway, Arkansas  
Tuesday 6:30 pm  
November 25, 2014

On this date the City Council of the City of Conway, Arkansas met in regular session. The following members being a quorum were present and acting: Alderman Hawkins, Alderman Grimes, Alderwoman Mehl, Alderman Pruitt, Alderwoman Smith, Alderman Jones, and Alderwoman Whitmore. Also, present and acting: Mayor Tab Townsell, City Attorney Chuck Clawson, and Karen Francis. Alderman Ledbetter was not in attendance.

**Call to Order: Mayor Tab Townsell**

**Roll Call: Karen Francis**

**Minutes Approval: November 11, 2014**

Alderwoman Smith motioned to approve the minutes as submitted. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

**Employee Service Awards:**

**5 Years:**

Junior Upchurch – Parks & Recreation

**20 Years:**

Sgt. Gene Hodges – Police Dept.

**1. Report of Standing Committees:**

**A. Public Safety Committee (Planning, Zoning, Permits, Community Development, Historic District, Streets, and Conway Housing Authority)**

**1. Ordinance accepting and appropriating donation funds for the Conway Tree Board.**

**O-14-101**

Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 7-0. Alderman Hawkins motioned to adopt the ordinance. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderman Pruitt, Alderwoman Mehl, Alderwoman Smith, and Alderman Jones, and Alderwoman Whitmore. The motion passed 7-0.

**2. Ordinance amending Ordinance No. O-02-82 to change the hours of one-way traffic on South Blvd.**

**O-14-102**

Finley Vinson, City Engineer, explained this is at the request of the school, as their hours are different as a pre-school than they were as an elementary school; the one-way hours now are 7:30 – 9:00 and 2:30 – 4:00. Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 7-0. Alderwoman Smith motioned to adopt the ordinance and the emergency clause. Alderwoman Whitmore seconded the motion. There was no discussion. The clerk called the roll with the following voting “Aye”: Alderman Hawkins, Alderman Grimes, Alderman Pruitt, Alderwoman Mehl, Alderwoman Smith, and Alderman Jones, and Alderwoman Whitmore. The motion passed 7-0.

**3. Ordinance to rezone property located at 1655 South Donaghey Avenue from A-1 to R-1.**

**O-14-103**

Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 7-0. Alderwoman Whitmore motioned to adopt the ordinance. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting “Aye”: Alderman Hawkins, Alderman Grimes, Alderman Pruitt, Alderwoman Mehl, Alderwoman Smith, and Alderman Jones, and Alderwoman Whitmore. The motion passed 7-0.

**4. Consideration to approve a conditional use permit to allow restricted retail at property that is located in O-3 at 2002 Dave Ward Drive.**

Alderman Hawkins motioned to approve the conditional use permit. Alderwoman Smith seconded the motion. Alderwoman Whitmore asked what the oppositions of the Planning Commission members were. Bryan Patrick, Planning & Development Director, explained he believes Jeff Allender, Chair of the Planning Commission, opposed it because also opposed the Kum & Go on the corner and he felt it was too much. Mayor Townsell stated during the Kum & Go discussions we knew that the world has changed for this southern strip of neighborhood that abuts Dave Ward Drive; it is a very busy highway and should be allowed to change because these homes are no longer valued as a residential house. Mayor Townsell went on to say as with the Kum & Go, we required protections for the neighborhood and asked if those types of protections are built into this conditional use request. Mr. Patrick stated from his planning prospective/staff recommendation, the applicant is using the home that is already there and to him it is “office plus” request; the house has an office area and a small display area and as needed this business takes their displays to potential clients homes. Mr. Patrick stated they will store the windows in the garage area, in the office, and display area. Mr. Patrick stated the parcel is zoned office, but in his opinion it is just above office and is such a restricted retail operation, it is not incongruent with the office zoning that currently exists. Mayor Townsell stated he has concerns about condition 2, as it states it is limited to the applicant, but is that an applicant as a retailer or a lessor, and what does warehousing mean, and it says nothing about limiting it to that structure that is already there. Mayor Townsell stated one could tear this structure down and rebuild another structure, and warehousing takes a whole new dimension, stating he is not opposed to this change and it should be allowed. Mayor Townsell stated he is cautious to not allow it to change to just anything, he would want to be more restrictive in what we allow. Mr. Patrick stated council can add a condition that states it must be the existing structure and believes the applicant would be okay with this

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as that is what he heard at the Planning Commission meeting; their intent is to use that structure as is for now, they did not request any additional parking or driveways. Alderman Jones asked how much storage are they expected to have. Mr. Patrick stated without the applicant being present he is merely translating, but the applicant stated the garage area was all they needed for now. Alderman Jones asked if the business does well are they expected to expand. Mr. Patrick stated the Planning Commission discussed out buildings/accessory buildings but they did not add that condition, adding another condition limiting all storage must be within could be added. Alderman Jones motioned to add a condition to be limited to the current structure. Mr. Patrick recommended changing a part of condition #2 to "window storage for the applicant only". Alderman Jones motioned to add this wording. Alderwoman Whitmore seconded the motion. Mr. Patrick also recommended only internal window storage within the existing structure. Alderman Grimes stated if SC Investments, Inc. sells the company to me, it is still SC Investments, Inc., the applicant has not really changed, only the owner of the applicant has changed and asked if the permit will go with the business, or the person. Mayor Townsell stated it obviously goes with the business. Mr. Patrick stated that is no different in that operation that is continuing on as that same entity of business then they are still limited by the same conditions. Mayor Townsell stated we have 2 motions to change/add conditions; condition #2 to read is to state "Conditional Use Permit is limited to the applicant, SC Investments, Inc., for a window sales office with display and internal storage of window stock." and adding a condition that limits this permit to the existing structure. There was no further discussion on the amendment. The motion passed 7-0. There was no further discussion on the main motion. The motion passed 7-0. The conditions are listed below:

- Hours of operation will be limited to 8:00 am to 5:30 pm Monday through Friday.
- Conditional Use Permit is limited to the applicant, SC Investments, Inc., for a window sales office with display, and internal storage of window stock.
- Ingress/Egress to the property must be from South Mitchell Street.
- Conditional Use Permit is limited to the existing structure.

**5. Consideration to approve a conditional use permit to allow a tattoo studio at property that is located in C-1 at 1022 Main St.**

Alderman Hawkins motioned to approve the conditional use permit request. Alderman Grimes seconded the motion. Alderman Hawkins asked if Mr. Kelley's clientele is more daytime or nighttime as he is wondering about the parking. Bryan Patrick, Planning & Development Director, explained the conditions the Planning Commission approved are the ones the applicant, Tim Kelley, requested and they will stop accepting clientele at 8:00 pm. Mr. Patrick stated we do not require off street parking in the downtown area. There was no further discussion. The motion passed 7-0. The conditions are listed below:

- Hours of operation be limited to 10:30 am to 9:00 pm Monday through Saturday.
- Conditional use permit is limited to the applicant, Tim Kelley.

**6. Consideration to approve clinic treatment services at property that is located in T4 Transitional - Northeast Old Conway Area Plan at 1222-1224, 1223-1225, and 1227-1229 Jersey Street.**

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Alderman Hawkins motioned to approve the conditional use permit request. Alderman Grimes seconded the motion. Frank Shaw, Attorney at Law representing MFB Investments/Phoenix Recovery, stated as he has in the past, that Conway is the largest city in Arkansas that does not treat its own people and encourages council to approve this request. Mr. Shaw referenced condition #3, stating we would prefer not to have to come before council every year for a review and asked how council would review their work and feels a better requirement would be for us to retain licensure with DHS. Mr. Shaw referenced condition #4, stating their previous restrictions allowed no violent offenders and no sex offenders and explained as we discussed last year the differences in drug charges; they go from D to C to B to A to Y. Mr. Shaw stated we have not been restricted on the individuals allowed as it is worded here, and asked council to allow the same restrictions they have now. Mr. Shaw stated these are not limited to C felons, as there are some D felons who are not allowed because some have violent offenses; some D felonies are sexual offenses, so the category of C and lower is irrelevant of what they are requesting. Mr. Shaw stated they are requesting, and have been granted by council before is, "no violent offenders and no sex offenders, but drug offenders" which transcends categories. Mr. Shaw stated the plus for this would be that individuals who are not felons could seek treatment for drug and alcohol addiction, which would be a lessening of the rules than we have now. Alderman Jones stated he feels that council should stay with what the Planning Commission is recommending. Mr. Shaw stated he understands Alderman Jones' position, but as Mr. Bell will explain, this is not what was discussed at the Planning Commission meeting, this is a typographical error or a mischaracterization of what was discussed. Alderman Grimes asked Bryan Patrick, Planning Director, to address why conditions #3 and #4 were included at the Planning Commission meeting. Mr. Shaw stated we have no objection to violent offenders and sex offenders, we are only asking for the same conditions we currently have, which is not limited to C because some lower level offenders could get in. Alderwoman Whitmore asked Mr. Patrick to address the reasons for the 3 Planning Commissioners who voted in opposition of this request. Mr. Patrick stated condition #4 references treatment being offered to Class C and less felony offenders, and feels we should lean on our City Attorney for clarification. Mr. Patrick stated the Planning Commissioners did not want any sex offenders or violent offenders; the 3 Commissioners who voted in opposition did not want a lot of individuals outside the community coming into this facility. Alderwoman Whitmore asked is that the reason for asking them to come back for a review in 1 year. Mr. Patrick stated there was much discussion about limiting treatment to only those individuals who are in house residents, but after much discussion they were convinced to open it up to the community. City Attorney Chuck Clawson stated sex and drug offenses run a gamut; what you are looking at in a classification of felonies is punishment ranges i.e. Class C felony up to 3-10 years in the Department of Corrections. Mr. Clawson stated the classifications do not mean a lot as far as what they applicant is trying to address. Alderman Pruitt stated we have already approved them to allow no sex or violent offenders. Alderman Jones suggested limiting condition #4 to no sex or violent offenders. Mr. Clawson stated when you get into the higher classifications you are more or less talking about drug offenses, traffic offenses; lower classifications are usually possession etc.; Class A, B, Y, felonies deal with harder drugs and moving larger quantities. Mr. Clawson stated he knows that Phoenix Recovery has been working very closely with parolees/probation but feels if people wish to seek help, maybe they could have a screening mechanism in place. Mayor Townsell stated we need to reduce our wishes to writing. Mr. Shaw stated the applicant now has permission from council to treat

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individuals who transition from prison, with Class A, B, Y, felonies in the facility; if council were to now limit us from offering drug counseling, we could no longer offer this service to individuals who currently reside at the facility; the categorization was removed when we were approved 1 year ago so we could treat everyone. Mr. Shaw requested the removal of the wording "C Felony" and leave the rest. Alderwoman Whitmore stated the 2 biggest concerns from the neighborhood were the violent and sex offenders. Mr. Shaw stated we do not want those individuals at this facility, we are requesting the same restrictions. Alderman Pruitt stated he believes there were discussions with Phoenix Recovery regarding their client's criminal history as well. Matt Bell, Phoenix Recover, stated we have a thorough intake process which is closely coordinated with the local parole office; a full background which includes current and past offenses. Mr. Bell stated we certainly are not set up to treat anyone with violent or sexual offenses; we are restricted from doing that through the city and the local parole office. Mr. Bell stated we want to treat the same clientele we currently have, plus a more diverse population, which is the community at large that have a non-criminal history who wish to seek treatment. Mr. Bell stated we are not looking to expand any housing; we currently have the exact same beds, but we are looking to expand our staffing and clinical expertise and support for individuals we currently have plus individuals from the community. Mr. Bell stated we are lucky here in Conway to have Lisa Ray, Program Director for Bachelor Science Degree for Addiction's studies at UCA; this is the only degreed program in the state and she will be the treatment director at our facility and will develop our program and guidelines; when it comes to treatment we will have a superior program and feel we can help our current residents but community as a whole. Alderwoman Whitmore stated background checks are ran on current residents and asked if a screening mechanism would be in place and required for non-resident clientele. Lisa Ray, Clinical Instructor UCA, stated full criminal background checks are not practiced in an out-patient program for potential clients, that being said the sex offender data base is public information which can be easily cross-referenced with it. Ms. Ray stated during the course of an intake/counseling, criminal histories come out and the chances of an individual coming up and successfully concealing an entire horrific criminal past is virtually non-existent. Alderman Jones stated a background check is not done. Ms. Ray stated no, a criminal history will not be ran on them because that would be presuming they are criminals. Mr. Bell stated this is for the outpatient clientele, not the residential side; this would be for an hour session of counseling. Mayor Townsell stated the way the fourth condition is written now, it does not distinguish between inpatient and outpatient, it says "violent offender and sex offenders"; if there is any history this does not distinguish between them and we would have to change condition #4, or start following that condition the way it is written in this conditional use request. Ms. Ray stated we could have clients sign a release to complete a criminal history. Alderwoman Whitmore stated she wants to continue to offer the assurance to the neighborhood that no violent or sex offenders will be allowed. Ms. Ray stated sex offenders are easily found, and are easily cross referenced, reiterating we do not want sex offenders and if we detected one they would escorted off the property, and this is a whole other level of licensure that we be required to treat sex offenders. Alderwoman Whitmore stated by not doing this these individuals could potentially come into this community and then find out after the fact. Mr. Bell stated we could run and NCIC check. Ms. Ray stated yes, this could be done with their permission. Mayor Townsell stated if you remove the "Class C and less felony" language, this would be required for treatment. Alderwoman Whitmore stated if we do anything different, it would be contrary to what we offered the residents in that area. Mr.

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Bell stated he thinks we can agree to run a background check which is our intent as well. Mr. Bell stated he is fine with condition #3 however, feels it could be amended to "maintain our licensure with the Department of Human Services" as they are the reviewing body for the quality of care we are providing. Mr. Bell went onto say he is not sure if it will be clear to the council if there is a problem whether it is coming from the transitional housing side, or the counseling side, but it would be very clear from the Department of Humans Services (DHS), which has an annual review for licensure, and suggested the language read something like: "subject to maintaining licensure that they are approved"; stating if we lost that we should not be able to provide treatment services. Alderwoman Whitmore asked it that would be DBHS the Department of Behavioral Health Services (DBHS) or DHS. Mr. Bell stated DBHS. Alderwoman Whitmore stated he is correct, they (DBHS) does complete thorough checks, and she personally would be okay with that. Mayor Townsell there is a difference as we could not presume to professionally "look over your shoulders" and stated the only way we would benefit, or as a guarantee to the public, is there was a land use question. Alderwoman Mehl stated it has more to do the neighborhood impact. Mayor Townsell concurred and stated we would want you back in one year for an update and if all is good from a land use perspective, that condition could be removed, but does not feel the need to do this on an annual basis. Mayor Townsell stated if the license issue were to ever come up, we would know it. Mr. Bell stated it will take us some time to get the license as this is the first step, other than starting on the program manuals to be submitted. Alderwoman Smith asked how long of a process that is. Mr. Bell stated at best it is probably 90 days. Mr. Patrick suggested amending condition #4 to read "**Counseling treatment services may not be offered to violent offenders and sex offenders**". Mr. Patrick stated you may want to add a back ground check to this as well. Mayor Townsell stated he feels appropriate screening will be pursued to achieve this objective. Mr. Shaw stated that is agreeable. Mayor Townsell asked if everyone is agreeable to the change on condition #4; by unanimous consent condition #4 is changed to Mr. Patrick's suggestion listed above. Alderman Hawkins asked if condition #3 is subject to licensure. Mayor Townsell stated we they will return in one year. Alderwoman Whitmore stated if they do not retain their licensure, they will not be able to provide counseling services. Mayor Townsell stated condition #4 has been amended to not allow services to violent offenders or sex offenders with the appropriate screening to determine that. There was no further discussion. The motion passed 7-0.

- Hours of operation will not be limited.
- Conditional Use Permit is limited to MFB Investments, LLC (Phoenix Recovery).
- The Conditional Use Permit is valid for one (1) year. Applicant must appear before the Conway City Council in November 2015 for review.
- Counseling treatment services may not be offered to violent offenders and sex offenders.

**B. Public Services Committee (Sanitation, Parks & Recreation, and Physical Plant)**

**1. Consideration to approve the bid for a Hook Lift Roll-Off truck and Front Load Refuse truck for the Conway Sanitation Dept.**

Danny Alford, Sanitation Dept., explained we have only received 1 bid for the roll-off truck and recommended this bid from River City Hydraulics, In. in the amount of \$178,684.00

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after trade-in of a 2006 roll-off truck; this price includes tax and delivery costs. Alderwoman Smith motioned to approve the bid from River City Hydraulics, Inc. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

Mr. Alford, Sanitation Dept., explained the low bidder is from Missouri and he is unfamiliar with the body. Mr. Alford went onto say he told them, and others, if they can provide us with concrete evidence that their truck is better and have a service center located here, then we would give them a try. Mr. Alford recommended the bid from Tri State Truck Center in the amount of \$250,129.00 after trade-in. Alderwoman Smith motioned to accept the bid from Tri State Truck Center. Alderman Hawkins seconded the motion. There was no discussion. The motion passed 7-0.

**C. Public Safety Committee (Police, Fire, District Court, CEOC, Information Technology, City Attorney, and Animal Welfare)**

**1. Consideration to approve for a firing range target system for the Conway Police Dept.**

A.J. Gary, Chief of Police, explained at the last council meeting we accepted general improvement funds for the upgrade in the firing range, this is the first purchase for those upgrades. Chief Gary stated this is for a firing range target system and recommended the low bid from Advanced Training Systems in the amount of \$44,895.00. Alderwoman Smith motioned to accept the low bid. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

**2. Ordinance appropriating funds for Operation Shop Secure for the Conway Police Department.**

**O-14-104**

A.J. Gary, Chief of Police, explained this is our ninth year to provide extra security for the shopping season; this has been running approximately \$50,000.00 in overtime. Alderman Hawkins motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 7-0. Alderwoman Whitmore motioned to adopt the ordinance. Alderman Jones seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderman Pruitt, Alderwoman Mehl, Alderwoman Smith, and Alderman Jones, and Alderwoman Whitmore. The motion passed 7-0.

**D. Finance**

**1. Ordinance appropriating funds for the Employee Appreciation Bonus.**

**O-14-105**

Mayor Townsell stated this is a net amount of \$300.00 for full-time employees, and a net of \$150.00 for part-time employees which is the same amount as we have done for several years. Mayor Townsell stated each fund will bear the cost of the bonuses for those

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employees; part-time elected officials are excluded. Mayor Townsell stated the following are the amounts for each fund.

- General Fund - \$131,500.00
- Street Fund - \$12,325.00
- Sanitation Enterprise Fund - \$30,500.00
- Airport Fund - \$1,200.00

Alderman Smith motioned to waive the readings of the ordinance. Alderman Mehl seconded the motion. The motion passed 7-0. Alderman Smith motioned to adopt the ordinance and the emergency clause. Alderman Mehl seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderman Grimes, Alderman Pruitt, Alderman Mehl, Alderman Smith, and Alderman Jones, and Alderman Whitmore. The motion passed 7-0.

**2. Consideration to accept the FY2012 audit from BKD.**

Mayor Townsell stated this is to accept the audit that were presented earlier this evening during the committee meeting. Alderman Smith motioned to accept the 2012 audit. Alderman Hawkins seconded the motion. There was no discussion. The motion passed 7-0.

**3. Consideration to approve the monthly financial report ending October 31, 2014.**

Mayor Townsell stated this is to accept the October 2014 financial that were presented earlier this evening during the committee meeting. Alderman Smith motioned to accept the October 2014 financials. Alderman Whitmore seconded the motion. Alderman Mehl stated expenses are in real time, but the revenue is behind for sales tax. Tyler Winningham, CFO, stated what he shows monthly is cash; what is received and what we paid out. Alderman Mehl stated so even if we received in January; would this be November or October. Mr. Winningham stated January is November sales. Alderman Mehl asked if the January statements here. Mr. Winningham stated for those 2 months he estimates those 2 months of revenue and is listed as "taxes receivable" to give you a full picture of the revenues. There was no further discussion. The motion passed 7-0.

**E. New Business**

**1. Ordinance amending Section 4.56 of the Conway Municipal Code establishing wrecker franchise services for the City of Conway.**

Mayor Townsell stated this ordinance will repeal all old wrecker ordinances and resolutions and will blend them into one ordinance along with the proposed changes. Major Joe Taylor, Police Dept., explained it was very hard to keep track of all the ordinances and their amendments, so we decided to start with a new ordinance. Major Taylor stated he began looking for our justification for what we allow the franchisees to charge but was unable to find anything on this; he contacted the 4 (four) towing companies that tow for the city and requested pricing of a tow from Dave Ward Drive and Salem to Smith Ford with prices ranging from \$55.00 to \$65.25. Major Taylor stated currently we allowed them to charge is \$95.00 for towing, \$25.00 admin fee, and a \$25.00 storage fee when the car is

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stored in their lot; based on this information he recommends reducing the tow charge from \$95.00 to \$85.00. Major Taylor stated there were discussions regarding the clean-up of a crash site, explaining for several years the fire department would come and put down the oil dry, but with this cost increasing, the fire department no longer does this, so by circumstance this task fell to the towing companies; Major Taylor recommended this fee stay at \$20.00, but if oil dry was used they could charge \$10.00. Major Taylor stated the cost of labor seemed high so he looked at a study done by the American Trucking Research Institute and based upon this study he recommends the labor on-scene time be dropped by more than 50%, and recommends the winch charge be dropped to \$20.00. Major Taylor stated he has talked to all 4 towing companies involved and asked them to bring justification to charge a higher cost for labor; the Operational Cost of Trucking 2012 has costs which includes oil, truck and trailer lease or purchase payments, repair and maintenance, insurance, permits and license, tires, wages and benefits; 2008 was \$66.00, 2009 was \$58.00, 2010 was \$61.00, and 2011 was \$68.00 explaining this was his justification for reduced on-scene time. Mayor Townsell asked to go through suggested change on procedure for awarding the franchise. Major Taylor explained we would go from the companies bidding on the franchise to an on call rotation provided the companies meet the requirements of having 4 trucks, 2 light row backs and 1 heavy, meet insurance requirements, minimum of 1,000 square feet of storage, 6 ft. fencing, wire, and surveillance that can record for at least 30 days. Major Taylor stated once this ordinance is approved we would solicit to the companies to apply, and if they meet the requirements we would randomly draw names and this would start the rotation for December 2014 going through December 2015. Major Taylor stated if another company wishes to join the rotation by October 1, 2015 they could also submit and go through this process, and if approved they would go onto the back of the rotation; the \$20,000.00 franchise fee would no longer be paid to the city. Mayor Townsell explained we are at the end of 2 consecutive 5 year agreements with these 4 towing companies with each company paying \$5,000.00 each per year, which gave them exclusive rotation rights. Mayor Townsell stated this would be a new annual procedure where RFP's are submitted and if the company meets the cities criteria, they would be allowed to go into the rotation. Alderman Grimes asked if the rotation is still monthly. Major Taylor stated it will stay monthly. Major Taylor went onto say since he has dealt with this he has handled a few wrecker complaints with the vast majority of those dealt with citizens felt they were overcharged which is why he added a provision to the ordinance if a company overcharged, a company could be removed from the rotation for a period up to 5 years. Alderman Pruitt asked if we would cap the number of companies at 12. Mayor Townsell stated no, we could go to a call by call rotation, which is what other jurisdictions do; it can be done different ways, we do not want to be arbitrary by limiting it to 12. Alderman Hawkins asked if there is a burden of proof on the city to prove that overcharges were made, and if so is there an appeal process. Major Taylor stated the burden lies with the city explaining the last one was easy to prove as I compared what was allowed by ordinance, and what was actually listed on the bill; Chief A.J. Gary makes the final decision on the complaints. Alderwoman Whitmore asked if individuals do have the option to contact another towing company if they are involved in an accident. Major Taylor stated yes as long as they have the contact information of whom they wish to use; some individuals, who were from out of town and did not know who to call, expressed concerns that their bill was extremely high. Matt Ross, Pro Auto Towing & Recovery, explained the 4 towing companies, which represents a consensus of all 4 wrecker services that have participated over the last 10 years, have taken the ordinance and highlighted areas that we

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would like to recommend changes. Mr. Ross began with "Section 1 - A. 1. E." explaining when your trucks are licensed, with the State Recovery Board, an officer comes to inspect your truck to show it can tow and has all supplies necessary; they feel it is important for this language be inserted; they recommend this section would now read "Any and all licenses and copies currently Approved Tow Vehicle Safety Equipment Inspection Forms for each tow vehicle to be used in the rotation with the permit number referenced for non-consensual towing as required by the Arkansas Towing and Recovery Board." Alderman Hawkins asked why the word consensual was stricken. Mr. Ross stated because any tow done requested by the police department would be a non-consensual tow by definition. Alderman Grimes asked if Major Taylor had seen this copy of the ordinance with the changes. Major Taylor stated no. Alderman Grimes asked that Major Taylor be given a copy. Mr. Ross stated "Section 1 - A. 2. B." has a typographical error and should say "Twenty-Five" instead of "Twenty" and recommends "Section 1 - A.2.C." be changed to "2 - One and one half (1.5) ton or heavier rollback (flatbed) wreckers." as they often had experiences where we are called by the police department and are asked to bring 2 rollbacks, and we feel like for an issue of readiness this should be 2, and also add a second rollback to the equipment list. Mayor Townsell asked if this is an enhancement of the current agreement. Mr. Ross stated he believes so, as it would be adding a truck, unless you qualified as one of the two light duty trucks as a rollback; more cars today are all wheel drive and only able to be towed by a rollback vehicle. Mr. Ross stated "Section 2- H." recommended striking "in good standing" adding "properly licensed and permitted" as this once again it is more of definable phrase. Mr. Ross explained there are some issues with the rates that were proposed, explaining they are fine with \$85.00 to tow a light duty vehicle referenced in "Section 2 - M.1.B.", but would like to increase the winching fee from "\$20.00" per ½ (one-half) hour to "\$40.00" per ½ (one-half) hour which is where it was set when established in 2004. Mr. Ross stated they recommend increasing "Section 2 - M.1.C." on-scene time not to exceed from "\$40.00" per hour to "\$50.00" per hour which is what it was in 2009 and feels cutting these fees in half is not feasible since the cost of living has increased. Alderman Grimes asked, specific to the on-scene rates, if this is your fee structure if you are called out by the police department. Mr. Ross stated yes. Alderman Grimes asked if he has an accident and call you himself would the fee structure be different than this. Mr. Ross stated for an accident tow, no; it is somewhat different if you break down due to immediacy issues and response time issues. Mr. Ross recommended keeping the same winching and on-scene time charges for medium duty vehicles to what they originally were in 2000 and 2004; in "Section 2 - M.2.B." winch fee per ½ (one-half) hour not to exceed \$50.00 and "Section 2 - M.2.C." on-scene time not to exceed \$125.00 per hour. Mr. Ross explained in "Section 2 - M.2.E." we would like to change the oil dry charge of "\$10.00" be changed to "10.00 per bag", as medium and heavy duty vehicles can hold several gallons of oil and anti-freeze, and the average cost of a bag of oil dry is \$9.08. Mr. Ross stated regarding the administration fee in "Section 2 - 5" there have been quite specific Arkansas Code Laws on the administration fee done by the Arkansas Towing and Recovery Board and we would like to change this language to better reflect those and recommended changing the wording to "Administration Fee will not exceed \$25.00 prior to the completion of the 1<sup>st</sup> notification required by Arkansas Code Ann. 27-50-1208 or 27-50-1209. Administration Fee will not exceed \$50.00 after the 1<sup>st</sup> notification by Arkansas Code Ann. 27-50-1208 or 27-50-1209 has been completed in accordance with the Arkansas Towing and Recovery Board Rules and Regulations."; Arkansas State Law requires, if after 3 days of having a vehicle in our possession, we are required to try to locate the lien holders

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and or owners and issue notifications to them, which can be costly. There was some discussion regarding the per bag charge for the oil dry. Mr. Ross stated Major Taylor added a provision for the issuance of a detailed bill to the payer so if these are brought forward, they can be assessed by the Police Department, and being removed from the contract for 60 months is a high penalty which would create a lot of motivation to not overcharge etc. Mr. Ross explained they are in full support of the punish provisions, which helps us self-regulate a little better. Mayor Townsell explained to council this is a draft and they are anticipating approving something soon, but we can address any item if necessary. Major Taylor stated he has no problem with the request in "Section 1 - A.1.E.", and if they desire to have more vehicles required "Section - A.2.C.", that is a business decision on their part, but he feels that 4 vehicles has been fine so far. Major Taylor stated in regards to the charges, he is not the one that will have to answer calls from individuals who find themselves being charged 30% more at minimum for a vehicle being towed, which is why he reduced the tow cost on a light duty vehicle; this is the majority of the calls that we receive. Major Taylor stated in regards to the winch fees, he has had discussions with the tow operators that are present tonight and tried to determine why that is a \$40.00 fee; he felt the fee was excessive. Major Taylor stated the charges he initially listed were sufficient, and allows the companies to make a profit while cutting down on the unfortunates whose car may be towed on Friday; as a policeman if his car had been towed on Friday, by Monday he could not afford to pay to get the car out of their lot; one has to relate to others in town who may experience the same problem. Major Taylor reminded everyone that the 5 year agreement is set to expire on December 1, 2014. Alderman Grimes referenced the penalty section stating anyone in violation of this is subject to a small fine and it states "upon conviction" and asked what this meant. Major Taylor if a violation occurred with the 2 towing companies, located in the city limits, a warrant could be issued and they would appear in court. Major Taylor explained this would not apply to the 2 companies located in the county. Alderman Pruitt stated only 2 of the 4 can be convicted. Major Taylor, yes because only 2 of the towing companies are located in the city limits, the other 2 the ordinance would not apply to them for anything they did at their shops. Alderman Grimes asked if we get a complaint of overcharging by a company in the county, the first section regarding penalties, does not apply but they can be removed from the rotation. Alderman Grimes asked if they do overcharge and if the Chief finds it is a legitimate claim, he would bet they would hire an attorney and asked how this would come into play. Major Taylor stated again, the penalty for overcharging is up to 5 years, but for repeated offenses it could go up to 5 years. Alderman Grimes stated that arbitrarily using our discretion regarding the time a company can be removed from rotation is going to get us in trouble. Mayor Townsell stated we can eliminate the confusion by saying if you are found guilty of overcharging you are off of rotation for 1 year, and out for 5 years after the second offense; we can be very specific. City Attorney Chuck Clawson stated by doing it in this manner, it would take city council out of the picture, and the appeal would go through circuit court and you would be limiting yourself to what happens in the city. Mayor Townsell stated it would not be a violation of the ordinance, we would ask the towing company if they followed the ordinance; if the Chief of Police determined they have not followed the ordinance, then they do not get the privileges of using this rotation, and this would still be appealable to the circuit court. Alderwoman Mehl asked if we need Mr. Clawson and Major Taylor to discuss the ordinance in detail. Mayor Townsell stated yes for clarification sake. Mr. Ross stated he feels the industry would be in favor of a tightened schedule and clarified that all of the towing companies fall within the territorial jurisdiction of the city.

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Steve Gaffner, Steve's Auto & Wrecker Service, stated even though his business and Pro Auto are outside the city limits, we fall within the cities jurisdiction and fall under your guidance; if a complaint is filed the Police Dept. does notify us a violation has occurred. Alderwoman Whitmore asked if all the towing companies are in agreement with what has been provided by Pro Auto. Bill Helton, Helton's Wrecker, stated we have all met and agreed on the changed proposed by Mr. Ross and also agrees with the recommended equipment needed in order to have a quick response time to auto accidents. Sylvester Ingram, D&S Auto, stated he is in agreement with the contract, but disagrees with the requirement of the heavy duty 25 ton tow truck, and asked how many heavy duty tows are done in the city in a year and explained to council he does not have a 25 ton tow truck. Major Taylor stated there may be one every 2-3 years. Alderman Hawkins suggested extending the current contract for 30 days while we look at the requested changes proposed by both sides. Mayor Townsell stated to this gentlemen's point, asking Chief Gary that some people go through a rotation where it is every call changing the rotation. Mayor Townsell stated if you require a large tow this would preclude the smaller towing service, if you have a rotation that responds more nimbly then you change it every month, then if the towing service does not have the equipment you would simply go to the next company, that company missed their rotation but gets a chance to make it up, but they do not get that guaranteed month or 3 months of the revenue per year. Mayor Townsell stated he is not sure if that is a good way of doing this or not, but other individuals do it on a more frequent basis than a month. Major Taylor stated since he is also over CEOC he does not recommend going from call to call; over the years he has received several complaints that dealt with the on call towing company not being called when it was their call. Alderwoman Mehl suggested each towing company getting a week for the month of December. Alderman Grimes asked if a day by day rotation would be feasible. Major Taylor stated the more things change when the dispatcher's change mistakes will be made explaining we have been doing a month to month rotation for 10 years and feels this is best for them. Tracy Gaffner, Steve's Auto & Wrecker Service, addressed council and spoke in favor of the proposed changes to the ordinance including changing the word car throughout the ordinance to the word vehicle and discussed the winching fee in more detail. Alderman Pruitt asked if the \$40.00 winch fee is for 2 people. Ms. Gaffner stated currently in the contract it does. Alderman Pruitt asked if we can keep it at \$20.00 and if another person were on-site and needed, then another \$20.00 could be added. Mayor Townsell stated that is possible. Alderman Jones motioned to hold this item in committee for 2 weeks. Mayor Townsell stated he agrees, but the towing companies involved will need to agree to do that. Alderman Mehl suggested since the rate structure has changed she would like to see some sort of reflection of the towing companies not having to pay the \$5,000 franchise fee which is the other side of the change in the rates, perhaps cutting it by two-thirds is not the way to go, but there should be some change in the rates reflective in the fact the \$5,000.00 is no longer being paid to the city. Major Taylor stated the members present in the back have agreed to accept the proposal with the exception of going from 4 vehicles to 5 vehicles as this would allow us to have a contract until years end, it does not allow for the annual 5% increase each year since this has occurred since 2009, and he also feels we can keep any overcharging down which will make everyone happy. Major Taylor stated the ordinance does allow for an audit of 5 inspections per year on what they charge in addition to any towing complaints we have need to investigate. Alderman Hawkins asked Major Taylor if he is happy with the fee schedule they have submitted. Major Taylor stated the fee schedule they have proposed is an upgrade as it brings back to what it is today, with the

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exception of the \$10.00 on a light duty tow. Mayor Townsell stated our City Attorney would still like time to review the ordinance. Mr. Ross stated they are agreeable to allow more time and let Sam Mitchell keep his month for December, which will be his third month of the year, and he does not want to short him that. Alderman Jones asked if Mr. Ingram's issue will be addressed. Mayor Townsell stated there was nothing definitive decided about that issue, not 4 vehicles not 5 vehicles, nothing, but we can decide that with the RFP process, not everyone has to agree to it. Mayor Townsell stated if we go to a monthly rotation someone will have to deal with the issue of towing company that does not have those tows. Camille Kelley, D&S Auto, explained they are a small company and they are working towards getting a heavy duty tow truck, and suggested if we can have a month to month rotation, if they were to get called for a heavy duty tow, someone else could take it since there are just 3. Mayor Townsell stated that is possible and can be dealt with at the next meeting. Alderman Jones motioned to hold this item in committee until December 9, 2014, and continue the agreement as it currently stands. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

*Adjournment*

**PASSED this 25<sup>th</sup> day of November 2014**

**APPROVED:**

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**Mayor Tab Townsell**

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**City Clerk Michael O. Garrett**