

**FAYETTEVILLE CITY COUNCIL  
AGENDA  
WORK SESSION MEETING  
OCTOBER 5, 2009  
5:00 P.M.**

**VISION STATEMENT**

**The City of Fayetteville  
is a GREAT PLACE TO LIVE with  
a choice of DESIRABLE NEIGHBORHOODS,  
LEISURE OPPORTUNITIES FOR ALL,  
and BEAUTY BY DESIGN.**

**Our City has a VIBRANT DOWNTOWN,  
the CAPE FEAR RIVER to ENJOY, and  
a STRONG LOCAL ECONOMY.**

**Our City is a PARTNERSHIP of CITIZENS  
with a DIVERSE CULTURE and RICH HERITAGE,  
creating a SUSTAINABLE COMMUNITY.**

**FAYETTEVILLE CITY COUNCIL  
WORK SESSION AGENDA  
OCTOBER 5, 2009  
5:00 P.M.  
CITY HALL COUNCIL CHAMBER**

**CALL TO ORDER**

**INVOCATION AND PLEDGE OF ALLEGIANCE**

- ITEM 1. APPROVAL OF AGENDA**
- ITEM 2. CONSIDER ADOPTION OF AN ORDINANCE PROHIBITING THE TETHERING OF DOGS**  
**PRESENTED BY:** Harvey W. Raynor, III, Interim County Attorney  
**PAGE: 1**
- ITEM 3. CONSIDER PROPOSED ORDINANCE REVISIONS TO ARTICLE VII, WRECKER & TOW SERVICE**  
**PRESENTED BY:** Matthew Dow, Sergeant – Police Department  
**PAGE: 4**
- ITEM 4. APPLICATION FOR PROPERTY TAX GRANTBACK PROGRAM -215 WILLIAMS STREET COMMERCIAL PROPERTY RENOVATION**  
**Presented By:** Rob Anderson, Chief Development Officer  
**PAGE: 20**
- ITEM 5. CORN TRAIN UPDATE**  
**PRESENTED BY:** Rusty Thompson, City Traffic Engineer  
**PAGE: 22**
- ITEM 6. UPDATE ON STATE REGULATIONS REGARDING DISPOSAL BANS IN LANDFILLS**  
**PRESENTED BY:** Jerry Dietzen, Environmental Services Director  
**PAGE: 24**
- ITEM 7. NC VETERAN'S PARK BID UPDATE**  
**PRESENTED BY:** Craig Hampton, Special Projects Director  
**PAGE: 25**

**COUNCIL MEETING WILL BE AIRED  
OCTOBER 5, 2009 - 5:00 PM  
COMMUNITY CHANNEL 7**

**COUNCIL MEETING WILL BE RE-AIRED  
OCTOBER 7, 2009 - 10:00 PM  
COMMUNITY CHANNEL 7**

***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. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact the office of Ron McElrath, Acting ADA Coordinator, at [mcelrath@ci.fay.nc.us](mailto:mcelrath@ci.fay.nc.us), 910-433-1605 or 910-433-1696, or the City Clerk at [cityclerk@ci.fay.nc.us](mailto:cityclerk@ci.fay.nc.us), or 910-433-1989, as soon as possible but no later than 48 hours before the scheduled event.*

**CITY COUNCIL ACTION MEMO**

**TO:** Mayor and Members of City Council  
**FROM:** Karen M. McDonald, City Attorney  
**DATE:** October 5, 2009  
**RE:** **CONSIDER ADOPTION OF AN ORDINANCE PROHIBITING THE TETHERING OF DOGS**

---

**THE QUESTION:**

Whether to adopt an ordinance prohibiting the tethering of dogs.

**RELATIONSHIP TO STRATEGIC PLAN:**

More Efficient City Government

**BACKGROUND:**

The Cumberland County Board of Commissioners at their February 2, 2009, meeting adopted the attached ordinance prohibiting the tethering of dogs with an effective date of August 1, 2009, for the unincorporated areas of the County. The Deputy County Attorney, Harvey Raynor, will present this item and answer any questions regarding the ordinance.

**ISSUES:**

Whether the Council has an interest in adopting a similar ordinance for the municipal limits of Fayetteville.

**OPTIONS:**

1. Accept the ordinance and direct staff to place on a future agenda for approval.
2. Reject the ordinance.
3. Provide staff with additional direction regarding the ordinance.

**RECOMMENDED ACTION:**

Consider the ordinance and provide direction to staff.

**ATTACHMENTS:**

Cumberland County Ordinance

AN ORDINANCE OF THE CUMBERLAND COUNTY BOARD OF  
COMMISSIONERS PROHIBITING TETHERING OF DOGS

WHEREAS, outdoor tethering of dogs can be cruel to the dogs, especially during inclement or severe weather conditions, and

WHEREAS, outdoor tethering of dogs threaten the welfare of those dogs through inadvertent choking, strangulation, or ensnaring of the dogs, and

WHEREAS, outdoor tethering of dogs can cause them to become aggressive or otherwise maladjusted and anti-social, increasing the risk of attacks on people or other animals, and thereby threatening the public health, safety and welfare, and

WHEREAS, outdoor tethering of dogs can make them easy targets for attacks by other animals, harassment from humans, and biting and stinging from insects, and

WHEREAS, outdoor tethering of dogs can cause unsanitary living conditions in a confined area from feces, urine and food waste,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF CUMBERLAND COUNTY, N.C.:

Section 1. Section 3.5 of the Cumberland County Code, Definitions, is amended by inserting in appropriate alphabetical order, the following, and re-numbering the existing subsections:

“Tethered” or “tethering” means attaching an animal to a stationary object by means of a chain, cable, rope or similar device.

Section 2. Section 3-21 of the Cumberland County Code, “Keeping of animals; mistreatment, abandonment prohibited; care; restraining of dogs; exercise area for dogs” is amended by deleting subsection (H) and inserting in lieu thereof the following:

“(H) 1. No pet shall be tethered outdoors unless the keeper or owner of the pet is holding the tether.

2. It shall be an affirmative defense to a violation of subsection 1 above that the tethering is required to protect the safety or welfare of a person or the dog, if the keeper or owner of the dog remains with the dog throughout the period of tethering.

3. The provisions of subsection 1 above shall not apply to a temporary tether (a) during a lawful animal event, veterinary treatment, grooming, training, or law enforcement activity, or (b) to a keeper or owner walking a dog with a hand-held leash, or (c) during lawful hunting activities if reasonably necessary for the safety of the dog, or (d) while a dog is actively engaged in shepherding or herding livestock, or (e) when meeting the requirements of a camping or recreation facility, or (f) when the animal’s

caretaker is outside and within eyesight of the animal, or (g) after taking possession of a dog that appears to be a stray dog and after having advised the Animal Control Department of the stray.

4. The provisions of subsection 2 and 3 above shall apply only if (a) the tether is not placed directly around the dog's neck and is attached to a properly fitting collar or harness of nylon or leather worn by the dog, and (b) the weight of the tether does not exceed more than one-tenth of the dog's body weight, and (c) the tether is unlikely to become tangled or twisted, and (d) the tether is arranged to be free of any obstacles which may limit the moveable length of the tether, and (e) the dog is tethered in a manner that permits access to necessary shelter and water."

Section 3. This ordinance shall become effective August 1, 2009.

Adopted by the Cumberland County Board of Commissioners this 2nd day of February, 2009.

---

JEANNETTE M. COUNCIL  
Chairman

---

MARSHA FOGLE  
Clerk to the Board

**CITY COUNCIL ACTION MEMO**

**TO:** Mayor and Members of City Council  
**FROM:** Tom Bergamine, Chief of Police  
**DATE:** October 5, 2009  
**RE:** **CONSIDER PROPOSED ORDINANCE REVISIONS TO ARTICLE VII, WRECKER ORDINANCE**

---

**THE QUESTION:**

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

**RELATIONSHIP TO STRATEGIC PLAN:**

This action is requested based on Principle H of the Council's Strategic Plan, Partnership and Citizens, 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 (Target for Action: Crime Reduction Strategy and Report).

**BACKGROUND:**

At the City Council Work Session on August 3, 2009, the Police Department, by and through Sergeant Dow and Chief Bergamine, presented information regarding a new management system that will aid citizens in the recovery of towed vehicles and the management of the City's wrecker rotation list. During the presentation, the Council was also provided the proposed ordinance revisions that are necessary for the successful implementation of the new management system.

**ISSUES:**

Update on status of new Wrecker Ordinance.

**OPTIONS:**

Approve all ordinance revisions; or approve some ordinance revisions; or decline to approve ordinance revisions.

**RECOMMENDED ACTION:**

Staff recommends approval of all proposed ordinance revisions.

**ATTACHMENTS:**

Revised Wrecker/Towing Ordinance

## 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.

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

*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.

*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 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.

*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 pounds, 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 by reference as set forth in this article. Any licensee that is currently on the rotation list as of September 1, 2000, may meet the requirements set forth in section 24-223 by using the size requirement set forth in section 24-224 until such equipment is replaced.

**"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.



(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 licensed to provide wrecker service.

(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 shall operate all warning devices while on scene and while vehicle is in tow. Pursuant to North Carolina state law, all wreckers shall also have the name of the owner printed on both the sides of the vehicle in letters not less than three inches in height.

(c) The licensee shall provide continuous 24-hour-a-day service each day of the year, and there shall be an employee of the licensee, 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 wrecker service calls. The daytime calls at the daytime rate will be for calls received from 8:00 a.m. until 5:00 p.m. Monday through Friday. The nighttime call rate will be for calls received from 5:01 p.m. until 7:59 a.m. Monday through Friday. The night rate will be charged for all calls received on weekends and holidays.

(d) The licensee shall assume all liability and shall indemnify and save the city harmless from such 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 and shall maintain the required insurance policies.

(e) The licensee shall not release any vehicle directly impounded by the city without authorization by the police department.

(f) The licensee shall charge for services such rates as may be fixed by the city council.

(g) Wrecker services shall perform towing service for the city on a rotation basis.

(h) No licensee or agent of the licensee shall intercept police calls by any means for the purpose of soliciting business.

- (i) No licensee or agent of the licensee shall engage in unfair and deceptive trade practices in the course and operation of its business.
- (j) Only wrecker drivers licensed by the State of North Carolina may respond to city rotation calls. Drivers licensed by states other than North Carolina are prohibited from responding to city rotation calls. Drivers with offenses involving moral turpitude 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.
- (k) The licensee shall provide:
  - (1) Available space for properly accommodating and protecting a minimum of 15 disabled 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;
  - (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 storage lot shall be located within the corporate limits of the City of Fayetteville. For the purpose of licensing, Licensees are prohibited from operating more than one business out of the same structure, including, but not limited to, buildings, warehouses, or garages. Similarly, licensees are prohibited from sharing any equipment that is subject to inspection with other licensees.
- (l) 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.

(Code 1961, § 20-166)

**Sec. 24-224. Additional equipment authorized.**

- (a) After having met the requirement of subsection 24-223(a), an operator may have an additional wrecker of not less than 10,000 pounds GVW (one ton) with dual rear wheels. This wrecker must have at least a single cable with no smaller than a 5/16 inch in diameter, 100 feet in length and 6,000-pound winch and boom structure and a minimum of 3,000-pound wheel lift as rated by the manufacturer. All auxiliary equipment must be duplicated on this additional wrecker as required by the wrecker inspector for large wreckers.
- (b) After having met the requirement of subsection 24-223(a), an operator 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 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.**

Any person desiring to be added to the city wrecker rotation list as a licensee for the city 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 storage lot on which towed vehicles will be stored is located within the city limits 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 driver's licenses for its wrecker drivers.
  
- (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.
- (c) The rotation list shall be limited to thirty wrecker companies. Prospective applications will be placed on a waiting list and considered for selection to the City wrecker rotation list in the order that the applications were received.

(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 criminal offense as defined by Chapters 14 or 90 of the North Carolina General Statutes 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)

#### **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 insured 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 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 of \$100,000.00 for any one person injured or killed and a minimum of \$300,000.00 for more than one person killed or injured in any accident and an additional \$50,000.00 for property damage.

(2) *Garage keeper's policy.* A garage keeper's legal 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 requirements for open storage areas.

(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.

(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.

(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;
- (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.
- (4) Making recommendations for submission to the city manager, wrecker review board, and to the city council 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 licensee, and a receipt for payment shall be issued to such person. 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, to include any service fee due for the operation and maintenance of a centralized electronic data reporting system, and imposed by this article shall be collected by the licensee 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 by the licensee.

(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 General Statute 20-161(f), 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 16-223(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 the following conditions:

- (1) If the owner is not arrested with any crime arising out of the alleged criminal activity resulting in the impoundment; or
- (2) If the vehicle is returned pursuant to the provisions of G.S. 90-112.1;
- (3) If the owner is arrested, only if the charge is dismissal or there is a finding of no probable cause in district court.

(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 non-consent tows in order to facilitate and expedite the recovery of a vehicle from a vehicle storage facility, as defined in this ordinance.

(b) The licensee shall provide to the City, within a reasonable time period, but no later than sixty (60) minutes, all necessary information required to assist the City in notifying the registered owner regarding the towing and release of their vehicle. This information 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; and
- (4) motor vehicle registration information.

If applicable, the licensee shall also provide the following:

- (1) the owner's driver's license/identification number;
- (2) the date 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 the operator of any wrecker or person acting on behalf of any wrecker or towing service, whether that vehicle or towing service is licensed under the provisions of this article or not, 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 wrecker 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 the distributing of business cards, tokens or items of any kind bearing the name of a wrecker or towing firm 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 or wrecker service. 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 wrecker or towing firm 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 charged with any criminal offense as defined by Chapters 14 or 90 of the North Carolina General Statutes, 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 licensee has violated any of the requirements of the regulations established by the wrecker inspector under this article;

- (5) 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;
- (6) The licensee paid in the form of a gratuity any third person for information as to the location of the accident;
- (7) The licensee has violated the fee schedule by overcharge or false charges;
- (8) Failure to operate the wreckers specified in such a manner as to serve the public adequately and efficiently;
- (9) Failure to maintain recovery equipment, to include all vehicles used in towing, in good condition;
- (10) Failure to pay the city privilege license fee imposed upon licensees;
- (11) 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;
- (12) Failure to pay civil penalties issued pursuant to this ordinance;
- (13) Failure to comply with any of the provisions of this chapter, ordinance or state laws relating to the operation of wreckers; and
- (14) Failure to comply with the reporting requirements of this ordinance, as may be periodically modified.

(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 (a)(3) of this section, revocation;
- (2) For a first time violation of subsections (a)(4) through (a)(14) of this section, suspension up to 30 days;
- (3) For a second violation of subsections (a)(4) through (a)(14) 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)(4) through (a)(14) of this section, within a period of two years from the date of the first violation, revocation.

(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.

(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 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 noncomplying 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 city council member, or 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. Enforcement.**

(a) A violation of section 24-238, solicitation of business, by a licensee, 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 section 24-238 by a licensee, 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 addition, if a wrecker or towing service is in violation more than three times in one year for a violation of this article, the wrecker or towing service 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 Members of City Council  
**FROM:** Rob Anderson, Chief Development Officer  
**DATE:** undefined undefined, undefined  
**RE:** **APPLICATION FOR PROPERTY TAX GRANTBACK PROGRAM - 215 WILLIAMS STREET COMMERCIAL PROPERTY RENOVATION**

---

**THE QUESTION:**

Staff is seeking direction with regard to an application for the Economic Incentive Property Tax Grantback Program. Specifically, should staff schedule a public hearing for the applicant even though in conflict with the program guidelines require application prior to pulling building permits or final plat.

**RELATIONSHIP TO STRATEGIC PLAN:**

Strong Local Economy

**BACKGROUND:**

The applicant reports that he was not aware of the Property Tax Grantback program until he was well underway with the substantial renovation of the property near City Hall.

According to the program guidelines, applications must be submitted to the City prior to pulling permits for the work for which Economic Incentives are requested. Permits for the renovation of 215 Williams Street were issued on May 19, 2009 and the application for the Property Tax Grantback program was received on August 28, 2009. The applicant first inquired about the program in early August, but was told by Mr. Anderson it didn't meet the program guidelines since the project was already underway. Other than the timing of application, the project meets all other criteria for the Property Tax Grantback program.

Because it was a new program there had been no full scale promotion of the opportunity. Nonetheless, there were public Council deliberations and actions pertaining to the program in both 2008 and 2009. Furthermore, information promoting the program had been posted on the City's website in 2008.

**ISSUES:**

Staff failed to advise the applicant of the requirement to submit an application prior to starting the project. The applicant was told staff has no authority to waive the subject provision. Subsequently, as a means of appealing that determination to Council, staff assisted the applicant in preparing a package for submittal to the City.

While the project would otherwise meet the criteria for the program, approval of this application could be perceived as setting a precedent for other investors failing to comply with the guidelines yet seeking benefits under the program.

**OPTIONS:**

Option 1 - Direct staff to report to the applicant the basic requirements of the program must be followed and no further action will be taken by the City on this project.

Option 2 - Direct staff to schedule a public hearing for consideration of Property Tax Grantback program approval for the building renovation at 215 Williams Street.

**RECOMMENDED ACTION:**

Staff recommends Option 2 scheduling a public hearing for consideration of Property Tax Grantback approval for 215 Williams Street because the applicant was not advised of the Economic Incentive Program prior to, or at the point building permits were applied for.

This page is left intentionally blank.



**CITY COUNCIL ACTION MEMO**

**TO:** Mayor and Members of City Council  
**FROM:** Rusty Thompson, City Traffic Engineer  
**DATE:** undefined undefined, undefined  
**RE:** **CORN TRAIN UPDATE**

---

**THE QUESTION:**

Council has requested an update on the corn train and its impacts to the City.

**RELATIONSHIP TO STRATEGIC PLAN:**

Revitalized Downtown a Community Focal Point

**BACKGROUND:**

The City has been working with all the railroad companies in an effort to reduce blockages by trains downtown.

**ISSUES:**

Not a downtown issue

**OPTIONS:**

N/A

**RECOMMENDED ACTION:**

Change to reflect the realization of impact on Raeford Road, Cliffdale Road and Reilly Road crossings

**ATTACHMENTS:**

memo of corn train update

**Memorandum**

**TO: Dale Iman, City Manager**  
**FROM: Rusty Thompson, City Traffic Engineer**  
**DATE: September 23, 2009**  
**SUBJECT: Corn train update**

This is in regards to your request for an update on the corn train and its impacts to the city.

- We have been told that Cleanburn has signed a multi-year agreement for delivery of the corn.
- Corn delivery should begin around December 2009 with production starting around January 2010.
- Initially (probably for a year or more) the corn will not be delivered in “unit trains”, so instead of one long train every 5 days, they will be bringing an average of 20 car loads of corn every day, five days a week, along with anything else they might be carrying.
- These trains will be coming through downtown mid-day, Monday – Friday. Since these will not be excessively long trains, no streets should be blocked while these cars sit waiting for A & R.
- A & R plans to connect to the corn cars late afternoon each day to take the corn to Cleanburn. They will be getting to the Raeford Road/McPherson Church Road crossing around 7:00 pm each night, and of course the other crossings after that as they proceed west. The return trip will be in the middle of the night.
- Our Traffic Services staff is working with the A & R and NCDOT staff to minimize the time that the Raeford Road and other crossings will be blocked for the passing of these trains.
- We have worked with CSX to increase speeds at two crossing locations downtown. This will reduce the amount of time they block Hay Street.

If we can be of further assistance, please advise.

Cc: Jeffrey Brown, Interim Director of Engineering and Infrastructure  
Rusty Thompson, City Traffic Engineer  
Mark Bergeron, Parking Manager Fayetteville Parking  
File

**CITY COUNCIL ACTION MEMO**

**TO:** Mayor and Members of City Council  
**FROM:** Jerry Dietzen, Environmental Services Director  
**DATE:** October 5, 2009  
**RE: ENVIRONMENTAL SERVICES-UPDATE ON STATE REGULATIONS REGARDING DISPOSAL BANS IN LANDFILLS**

---

**THE QUESTION:**

What are the new items the state has banned from the landfill and does this effect the services the City provides to its citizens?

**RELATIONSHIP TO STRATEGIC PLAN:**

More Attractive City - Clean and Beautiful; Objective 2 - Preserve trees, urban forests, waterways, and natural resources

**BACKGROUND:**

Over a period of several years, the state of North Carolina has banned specific items from landfills. On January 1, 2009 the state banned beverage containers generated by ABC permit holders. The most recent ban is for used motor vehicle oil filters, plastic bottles, and wooden pallets. This took effect on October 1, 2009. The 2009 - 2010 Strategic Plan identifies a recycling program for multifamily and commercial as a "top priority".

**ISSUES:**

Multifamily developments of 7 units or more are considered commercial for garbage collection. This is consistent in the County as well as the City. Most multifamily developments do not have plastic bottle recycling programs ready for the state ban that began on October 1, 2009. Most, if not all, commercial and multifamily waste is tipped at the Winslow Street transfer station, operated by Waste Industries, and is hauled to the Sampson County landfill.

**OPTIONS:**

Allow multifamily and commercial developments to arrange contractual agreements with their current commercial haulers to comply with the state ban on plastic bottles. Accelerate development of the multifamily and commercial recycling plan in order to accommodate the recent landfill bans. Reinforce the information, advertised by the state, to commercial and multifamily developments about the recent ban on pallets, oil filters and plastic bottles. Keep the City drop-off recycling locations open for multifamily residents' convenience.

**RECOMMENDED ACTION:**

Allow multifamily residential complexes and commercial developments to contract with their current haulers to accommodate the state ban on plastic bottles, oil filters and pallets and accelerate the development of the multifamily and commercial recycling plan. In the interim, keep the drop-off sites open and well serviced for use by multifamily residents.

## CITY COUNCIL ACTION MEMO

**TO:** Mayor and Members of City Council  
**FROM:** Craig Hampton, Special Projects Director  
**DATE:** October 5, 2009  
**RE:** **VETERANS PARK DESIGN STATUS AND UPDATE**

---

**THE QUESTION:**

What is the design and bid status of this major project?

**RELATIONSHIP TO STRATEGIC PLAN:**

Meets all concepts of the Vision 2023 statement. Meets objectives of  
*Goal 1 - Greater Tax Base Diversity - Strong Local Economy;*  
*Goal 2 - More Attractive City - Clean & Beautiful;*  
*Goal 3 - Growing City, Livable Neighborhoods - A Great Place to live;*  
*Goal 4 - Greater Community Unity - Pride in Fayetteville;*  
*Goal 5 - Revitalized Downtown - A community Focal Point.*

**BACKGROUND:**

In February 2009 a design contract was executed to begin work on the NC State Veterans Park. Since that time several senior city staff, the design team of URG and all subcontractors, and two separate committees (Design Review committee & Council-Appointed Content Committee) have been meeting on at least a monthly basis to work through the design process. At this current time city staff is prepared to issue request for bids for phase 1 of Freedom Trail and will be ready to bid phase 1 of the park in early 2010. This update will provide status of the respective bid schedules and provide visual details of the elements of the Trail and the park.

**ISSUES:**

Update provided for information purposes

**OPTIONS:**

NA

**RECOMMENDED ACTION:**

Receive update report, submit questions, provide any guidance necessary or wanted.