

To: Bryan City Secretary  
From: Councilmembers Southerland and Saenz  
Subject: Agenda Item Titled:



## Changes to City Towing Ordinance

This agenda item placement is in accordance with the Bryan City Charter (j) (1) a. 2. (a) “Council agenda. 1.The City Council shall identify items to place on the City Council meeting agenda and shall establish the order of the agenda. 2.Any two City Council members desiring a particular item to be placed on the City Council agenda shall notify the City Secretary in writing. The item shall be placed on the agenda as requested. 3.This section of the charter supersedes any city Code of Ordinances with which it conflicts.”

Also the Texas Attorney General Opinion Number DM-228 (1993) states no policy can preclude a councilmember from placing an item on the agenda for public discussion.

*Therefore, any changes to this agenda item must be approved in writing by both under signs prior to posting to the agenda.*

Place the following item on the Bryan City Council Regular agenda of the first regularly scheduled meeting of Aug 2016:

Discussion, consideration, and possible action to:

Direct the City Staff to review the attached recommended changes to the Bryan City Towing Ordinance, ARTICLE IV. - TOW TRUCK AND VEHICLE STORAGE BUSINESS REGULATIONS, and any associated ordinances or contract wording to the Bryan City Council by the last meeting in Sep 2016.

Presentations: Councilmembers Saenz and Southerland

Al Saenz Date: 08/09/2016  
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First of all, here are some key definitions (From Texas Occupations Code, Title 14, Chapter 2308 and consistent with Bryan City Code, Chapter 126, Article IV: Tow Truck and Vehicle Storage Business Regulations Section 126-154 Definitions):

1. Chapter 2308.002(5-a): "Incident management tow" means any tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene.
2. Chapter 2308.002(6): "Non-consent tow" means any tow of a motor vehicle that is not a consent tow, including: (A) an incident management tow; and (B) a private property tow.

*Therefore, when a police officer calls a tow truck to the scene of an accident or an arrest, it is, by definition, a non-consent tow.*

Next, here is how the relevant part of the contract reads (on page 14 of 22 pages of RFB #13-042 which is incorporated into the contract signed on 6-14-13 and renewed on 5-12-14 and 4-20-15:

"It is the intent of this request for bid to establish an annual contract between the City of Bryan and a local contractor to furnish towing and shall not:

- a. affect any other existing contract for similar services,
- b. nor does it permit or authorize the bidders to operate a wrecker within the city limits of the City of Bryan, Texas,
- c. nor does it entitle the bidders to enter the wrecker rotation list provided for the City's Wrecker Ordinance,
- d. nor does this affect non-consent tows and will not replace the wrecker rotation list."

If you just read the high-lighted sections you can begin to make sense of this but I have paraphrased it as follows:

The intent is to establish an annual contract between the City of Bryan and a local

contractor to furnish consent towing for the city (junk cars and city fleet vehicles) and shall

not:

- a. affect any other contract for towing, and
- b. shall not replace Bryan's permitting system for towing in the city, and
- c. shall not entitle the contractor to be on the wrecker rotation list, and
- d. ***shall not apply to non-consent tows.***

Now, according to City Code, Chapter 126, Article IV: Tow Truck and Vehicle Storage Business Regulations, the City must have a company contracted to do non-consent impound tows:

Sec. 126-165. – Impound tows.

Any police officer investigating an accident or offense within the city may order the impoundment of any vehicle involved therein when criminal prosecution may be involved as a result of such event and it is necessary to seize a vehicle, or process a vehicle for evidence, or secure a vehicle to preserve evidence. Charges resulting from impounding vehicles are the responsibility of the City of Bryan and therefore the designated City contracted wrecker company shall be utilized.

Since there is not now nor has there ever been a wrecker company contracted by the city to perform non-consent tows, the city must by ordinance either contract with a company for this purpose or ***amend the ordinance to read:-***

...Charges resulting from impounding vehicles are the responsibility of the City of Bryan and the charges will be subject to the same price caps as for any other rotation tow. Impound tows shall be performed by the tow company next in line on the tow rotation list and towed vehicles shall be taken to the city's impound yard.

If, in spite of this, the chief wants to insist that the city's current consent tow contract covers non-consent police impound tows, then there are two problems:

1. The Contractor's Responsibility section (near the bottom of page 14 of RFB #13-042) states that "The Contractor must be capable of providing **guaranteed response time not to exceed one (1) hour for all tows.**" This means that the response time allowed for these most important of all tows is **double** the time allowed for a regular rotation call as seen in Sec. 126-165.2 Standards of conduct for towing companies and tow truck drivers performing nonconsent tows. "A towing company or tow truck driver under this article shall adhere to the following standards of conduct: (3) Respond to accidents within 30 minutes, if the call is accepted." Allowing an hour to respond to the scene of a serious accident (such as a fatality) makes no sense at all!
2. Secondly, overcharges that A-1 has submitted to (and been paid by) the city puts A-1 in violation of the contract and the following applies (3rd paragraph on page 8 of RFB #13-042):

"If, through any cause, the vendor fails to fulfill its obligations under this Contract, or if the Vendor violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Vendor five (5) calendar days written notice. The Vendor will be compensated for the services satisfactorily performed before the termination date. Termination of the Contract for cause shall be deemed as sufficient evidence and cause to remove the Vendor's name from the bidder's list for receiving future bids."

Therefore, this situation can go in one of only two ways: either

1. there is **no** contract for non-consent tows in which case
  - a. the city can create such a contract and bid it out; and
  - b. the chief of police owes the wrecker companies a very public apology for perpetrating this fraud on

them - an article in The Eagle and some coverage by local TV and radio stations would be nice; or

2. there *is* a contract for non-consent towing in which case
  - a. the contract wording needs to be clarified to reflect that it is for incident management towing with a 30 minute response time that is consistent with other incident management tows; and
  - b. A-1 needs to have its contract cancelled, be banned from future bids on the contract and be required to refund the city the proven \$2810 of overpayments (which is only a fraction of the actual overpayments that were made prior to August of 2012 but for which records are no longer available).