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Memorandum

TO: Mayor & Commissioners
FROM: Shawn D. Smith, City Attorney
RE: City's rotating call list
DATE: 26 March 2012

Mayor and Commissioners

Attached are proposed revisions to the City's rotating tow list ordinance sponsored by the City Manager. This ordinance applies, for example, when a police officer needs a wrecker to clear an accident scene. This section only applies to police initiated tows and does not address the non-consent tows from private property that you recently reviewed.

A dispute over the interpretation of your present tow rotation ordinance has developed. The issue concerns the type of equipment and class of wrecker required for placement on the rotating tow list. Your current code can be interpreted in one of two ways. 1) A company is required to have all classifications of wreckers as described in the ordinance; or 2) a company is required to only have the type of equipment described for the type of tow for which it is called (e.g. Class B for removal of medium duty trucks or vehicles weighing 20,000 pounds gross vehicle weight or less). This issue is also the subject of a lawsuit brought by one tow operator who believes companies should possess all classifications. The FHP has interpreted an administrative code section, which is substantially similar to our ordinance, to permit an operator who possess only a class "A" wrecker to remain on their list. Our current ordinance was amended in 2008 and 2011 and no operator objected to the language or the prior interpretation that only a class "A" wrecker was required for placement on the list.

Please keep in mind that the majority of the attached ordinance is already in place. Additions are noted by underlined language. Deletions are noted by a ~~strike-through~~. The result of passage of the ordinance would mean that an operator is only required to have a type "A" wrecker and associated equipment in order to be placed on the tow rotation.

I encourage you to contact me with any questions or comments.

A handwritten signature in black ink, appearing to be "Shawn D. Smith", is written over a horizontal line.

Shawn D. Smith