

TOWN OF HILTON HEAD ISLAND
PUBLIC SAFETY COMMITTEE REGULAR MEETING

Date: January 9, 2012

Time: 10:04 a.m.

Members Present: Bill Harkins, *Chairman*; Lee Edwards; Kim Likins

Members Absent: None

Town Staff Present: Brian Hulbert, *Staff Attorney*; Greg Deloach, *Assistant Town Manager – Administration*; Susan Simmons, *Director of Finance*; and Lynn Buchman, *Administrative Assistant*

Others Present: Ken Heitzke, *Council Member/Mayor Pro-Tem*; George Williams, *Council Member*; Bill Ferguson, *Council Member*; Captain Toby McSwain, *BCSO*; George Breed, *Chief of Security for Sea Pines Plantation*; Sally Warren, *General Manager of Shipyard Plantation Property Owners Association*; Joe Croley; and various towing and wrecker service companies' owners

Media Present: Tom Barton, *Island Packet*

1. Call to Order

2. Freedom of Information Act Compliance

Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

3. Approval of Minutes

a. Regular Public Safety Committee Meeting of December 5, 2011

Motion to approve the minutes of the December 5, 2011 Regular Public Safety Committee meeting was made by Kim Likins and seconded by Lee Edwards. The Motion was approved by a vote of 3-0.

4. Unfinished Business

None

5. New Business

a. Workshop Style Discussion of Towing and Wrecker Services Ordinance

Chairman Harkins noted the suggestion to consider the creation of a Town ordinance was prompted by the unfortunate situation that took place in December of 2010 when a wrecker was

involved in an altercation in Bluffton, resulting in a death. The question came up as to what policy and/or ordinance was in effect in the Town of Hilton Head Island, and several people, including the Chairman, thought it was conspicuous by its absence that there was no ordinance in this area. The idea began of what could be put in place that would hopefully create a sense of calm, reason, and respect for all parties involved. That led Staff to investigate what other communities are doing and to be guided by preliminary lead work on the part of Beaufort County that resulted in a newly established County Ordinance, and a review of that Ordinance and those in other communities in South Carolina. Chairman Harkins indicated he had met with Staff, and was impressed with the work that had been done and had also developed an appreciation of the complexity of the issues. He noted that today's meeting would be deliberative in the sense that Staff, led by Brian Hulbert, will review what other communities have done and share his thoughts and suggestions. It will also afford an opportunity in this first of future sessions to gather comments from the Committee, the POA's, and the general public, and of course, from the individuals who are involved in the towing industry itself. Hopefully, the end product would be a sharpened thought process leading to a proposal that the Committee may agree upon and ultimately advance to Town Council.

Brian Hulbert, Staff Attorney, reminded the Committee that it was important to keep in mind that this is a workshop for the Committee to decide if a recommendation is to be made to Town Council that towing be regulated within Hilton Head Island. He noted that to date, towing has not been regulated to the extent reflected in Beaufort County's recently enacted Ordinance, which is part of the Agenda Packet. Chairman Harkins and Mr. Hulbert agreed that the meeting should begin with a detailed review of the Beaufort County Ordinance, and proceed with a draft Ordinance to be considered for discussion purposes only. Chairman Harkins suggested that the meeting proceed in a conversational and interactive manner.

Mr. Hulbert reviewed in detail each section of the existing Beaufort County Ordinance, which was modeled after the Charleston/Berkeley County Ordinance, and is a part of the agenda packet. Although he noted many of the Ordinances were very similar in nature, some of the Ordinances outside of Beaufort County had other aspects that he felt the Committee should consider. His comments included reviews of other local government Ordinances throughout the State, including Horry County, Lexington County, Greenville County, and Charleston/Berkeley County.

Discussions among the Committee members and Mr. Hulbert ensued over the following items in the Beaufort County Ordinance:

- The definition of after normal business hours. Mr. Hulbert noted this becomes important when determining fees and when the vehicle can be released. State law does not require the release of vehicles after normal business hours, but Chairman Harkins noted that a normal business day cutoff of 5:00 p.m. may be unrealistic for tourists who may be affected by this more than anyone else, but may create a burden on the towing companies. Mr. Hulbert also indicated that there may also be two sets of working hours – one for normal business and one for the wrecker rotation program where vehicles are taken into custody because law enforcement has determined they are illegally parked or in violation of the law. He further noted that some communities have also used extended hours, so Council could choose 8:00 a.m. to 9:00 p.m. or 10:00 p.m.

- The definition of operating zone. Mr. Hulbert indicated the Beaufort County Ordinance defines the operating zone as all of Beaufort County, but the smaller area of Hilton Head Island could result in a determination of lower fees because of the smaller response area. He noted that the requirement for a storage lot in close proximity to the principal place of business is easier to require in the unincorporated areas of the County, but would be more difficult for the Town. Consideration should be made of how close you want that storage lot to be to the primary place of business and more importantly, how close to Hilton Head Island for our residents and visitors to obtain release of their vehicle. He noted that also for consideration is whether there should be a requirement for storage lots located on-island, off-island, or within a certain area of the zone.
- Portions of the special requirements section were discussed, including the requirement for identification on the vehicles, which Chairman Harkins noted would create a sense of comfort for the public insuring them that this is an authorized vehicle and readily recognizable.
- Booting of a vehicle is prohibited in the unincorporated areas of Beaufort County under the County Ordinance. However, Mr. Hulbert pointed out that within the Town some security personnel in PUDs boot vehicles for deterrent purposes. He noted that consideration should be given to whether to follow the County Ordinance and prohibit booting, or allow it within the Town at the direction of law enforcement, which would allow private security to continue that practice.
- The Beaufort County Ordinance contains a provision that the Ordinance supersedes any restrictive covenant of a PUD, which provision Mr. Hulbert pointed out is only found in the Beaufort County Ordinance. However, after discussions with Mr. Edwards and Chairman Harkins, he indicated there was no need for this section in a proposed Town Ordinance, as the Ordinance if adopted would automatically apply to all PUDs throughout the entire Town and supersede any covenants.
- Mr. Hulbert agreed that the section requiring posting of signs and the phone number for release of the vehicle pre-supposes that there is an agreement with one towing company to provide services for that area. He noted this was added by Beaufort County and is not in State law, so consideration should be made of whether to permit such agreements and allow them carte blanche to tow and protect those areas. Problematic scenarios of towing of broken down vehicles, unrecognized employee vehicles, and overindulging patrons who get a ride home or take a taxi and leave their vehicle overnight were identified for further discussion.
- A section found only in the Beaufort County Ordinance provides where there is private security, such as plantation security officers, that such security is to accompany the tow truck to the scene and remain on-site until the vehicle is removed. Having law enforcement personnel there would prevent tempers from escalating and keep the peace. However, Mr. Hulbert noted other areas, such as the Mall, that has private security, so consideration should be made of whether they should also be required to be present. Also, as discussed by Ms. Likins and Mr. Hulbert, there are areas such as Forest Beach, where there is no private security, and requiring the Beaufort County Sheriff's Office to be present could be problematic given the manpower issues.

- Although the vehicle owner is responsible for payment of all towing and storage fees, the Beaufort County Ordinance provides for a misdemeanor charge if the vehicle is towed illegally.
- While private property owners may enter into a written agreement with a wrecker service, a written authorization is required from the property owner or his agent before any vehicle can be towed, and a statement for each tow must be kept in the towing company's records for a period of 3 years. The length of time for keeping the records was discussed.
- An operator attendant must be on call during normal business hours for release of the towed vehicle within 45 minutes. After normal business hours, there is no such requirement under State law, but normal business hours are not defined, and as discussed early, makes that definition so important.
- The County has provided fees for no-tows and release of a vehicle in the process of being towed when the car owner arrives before the actual tow has been started or completed. Ms. Likins and Mr. Hulbert discussed whether credit cards could be accepted for payment, as well as cash. Chairman Harkins also posed a situation where the owner moves his car before the tow begins, and Mr. Hulbert advised that such hypotheticals and problems should be considered.
- Maximum fees for non-consensual towing as set by the County were discussed as set forth in Appendix A, with the Beaufort County Government Committee to review and recommend to County Council any changes. Mr. Hulbert and Chairman Harkins discussed the fact that this authority could be delegated to the Town Manager for review and determination, with the ability of Town Council to amend the Ordinance at any time.
- The contradiction in when storage fees begin was pointed out by Mr. Hulbert. Although the Beaufort County Ordinance states storage fees will not begin until 12 hours after the vehicle has entered the storage lot, the chart of fees states fees beginning after the first 24 hours. Mr. Hulbert noted that if storage fees are to be charged, then it should be consistent.
- While the Beaufort County Ordinance requires that all entities engaged in the towing business adopt a fair business model, Mr. Hulbert encouraged the Committee not to use such language, as there was no indication of who would determine if it is a fair business model or not and how disputes would be resolved.
- For posting of fees, Mr. Hulbert recommended a consideration of those at both the business location and on each tow truck.
- Penalties for the misdemeanor set out by the County Ordinance differs from State law, as pointed out by Mr. Hulbert. He recommended either following the State law or giving the Municipal Court the discretion to determine the penalties, both of which are more flexible.
- Appendix A schedule of fees was discussed, and Mr. Hulbert pointed out an option to include hourly fees could be considered.

Chairman Harkins noted that at some point the Committee would like to hear from the Sheriff's Department or representatives of Beaufort County as to how the Beaufort County Ordinance has

been working out in the 6 months it has been in place. Mr. Hulbert indicated that Captain McSwain would invite the Sheriff to comment at the next meeting.

Mr. Hulbert then presented a draft Ordinance for discussion purposes only for the Committee to consider if they want to continue to pursue the issue of regulating towing. He pointed out in detail the sections he had incorporated from Ordinances adopted in Horry County, Berkeley County, Richland County, Greenville County, and around the State so the Committee could see what is being regulated and decide if they want to pursue regulation of those issues. Issues to be discussed by the Committee include:

- Definition of “after normal hours”;
- Whether or not to regulate the wrecker rotation list with the Sheriff, and if the Town should have the authority to implement a wrecker rotation list in the future;
- Whether storage lot should be required within the Town limits or within a certain distance from the Town and whether the appearance of the lot should be regulated;
- Should private security be required to accompany each tow and remain until the tow is accomplished;
- Whether minimum insurance liability limits should be set, and if so, at what amount;
- Whether standard equipment should be identified and required;
- Should inspections be required and regulated, and if so, whether they should be mechanical or cosmetic in nature, and by whom;
- Whether before every tow you must have a written statement from the property owner or will pre-existing agreements be permitted;
- Regulation of fees for no-tows before and after hook-ups and whether credit cards should be required to be accepted in addition to cash;
- Whether booting should be prohibited except at direction of law enforcement;
- To allow law enforcement the authority to tow vehicles when appropriate;
- Prohibiting solicitation of business, or ambulance chasing;
- Provisions to implement to wrecker service rotation program;
- Review of Maximum towing charges by Town manager on regular basis;
- When storage fees may begin to accrue;
- Whether penalties should be imposed, and if so, should they mirror the State penalties, the Town, or Beaufort County;
- Schedule of fees. Two schedules were presented by Mr. Hulbert – one mirrored after Horry County, and a second set as adopted by Beaufort County for comparison purposes. Chairman Harkins and Mr. Hulbert discussed difference in towing fees for consensual and non-consensual tows and what roadside assistance insurance might provide for such fees.

Mr. Hulbert concluded that those were the issues he had identified for the Committee to discuss

and provide some guidance to Staff to finalize a proposed ordinance. Such proposed ordinance would then be presented to law enforcement or the PUDs and the tow truck companies for comment at subsequent meetings.

The Committee members agreed to open the meeting to comments from the public to get comments and insights from the tow truck operations in attendance.

Josh Sigler, owner of Palmetto Towing, indicated his support of a realistic regulation, but noted that every tow and every car was different. He noted the high cost of insurance and the liability assumed when taking possession of a vehicle, but in answer questions from Chairman Harkins and Mr. Edwardes, he indicated he was already required to have such insurance in place. He also noted requirements of inspection by the SC Highway Patrol, Beaufort County Sheriff's office, and SC Department of Transportation, and thought any Town required inspection would be a waste of time. He further noted that regulations being discussed are already in place by others.

Jeffrey Robinowich, owner of Morris' Garage in Bluffton, commented on the incident in Edgefield that started all the discussions about towing regulations, which was a booting of a vehicle. He noted he was not in favor of booting, as it was 100% for profit, but does not help in a situation of a blocked fire hydrant or preventing an emergency vehicle to pass.

George Breed, Directory of Security for Sea Pines, clarified that Sea Pines never has and do not have any boot fines or fees associated with any booting done by security officers in the Plantation, but rather either a written warning or State citation is issued. He noted that booting was not a profit center – as they derived no remuneration whatsoever from a citation, but does act as a visual deterrent.

Councilman George Williams commented on concerns he had for required signage, smaller private communities' authority and liability in towing situations, and regulating the location of storage lots. He also noted the LMO may cover the appearance of the storage lots. Mr. Williams confirmed Chairman Harkins' translation of his remarks as being he would like to keep any proposed ordinance as simple as possible. He explained that his original reaction was that this was a solution looking for a problem.

Ms. Likins questioned the tow truck operators present about whether their businesses have been negatively affected since the Beaufort County Ordinance went into effect. The responses were that it has been a good thing, as it has eliminated the truck patrolling and costs of fuel and manpower. Responding only when private security calls and the reasonable fee set by the ordinance is allowing more money to be made

Mr. Edwards noted that the intention of the proposed ordinance is not to put the tow truck operators out of business or limit the money they make, but before adopting anything he wanted a candid conversation with the operators to come up with a schedule of fees that works for them as well as for the Town.

Greg DeLoach, Assistant Town Manager, proposed that since the purpose of today's meeting to simply start the discussion had been accomplished and issues identified, he and Mr. Hulbert would proceed to meet with the tow truck operators, the PUDs and the Sheriff's Office to gather more specific information to present to the Committee. At that point, the Committee could decide if they want Staff to draft a proposed Ordinance for further review.

The Committee members indicated their consensus that they would like to reflect on what had been presented today, and would like to have more input from those in the business and the PUDs to review.

Councilman Heitzke indicated he would also like to hear any kind of history of problems we have on the Island to determine if this is really a problem to be addressed. Mr. Edwards agreed that maybe an Ordinance is not even needed.

Final remarks were solicited, and Jermaine Owens with Buff's Towing indicated agreement among everyone with the posting of the signs on the properties. He felt the press from the Pro Tow incident has brought this up, but as a native who has lived on Hilton Head Island all his life and being in the towing business for 20 years, he has never had a problem..

6. Adjournment

At 11:50 a.m. Ms. Likins moved to adjourn the meeting and Mr. Edwards seconded. The motion was approved by a vote of 3-0.

Respectfully submitted:

Lynn W. Buchman
Administrative Assistant

Approved: 2/6/2012

Bill Harkins, Chairman