

**LEGAL AND LEGISLATIVE COMMITTEE**  
**September 23, 2008**  
**3:15 P.M.**

Chairman Benson called the meeting of the Legal and Legislative Committee to order with Councilpersons Bennett, Rico, Gaines, Shockley, Page and Robinson present. City Attorney Randall Nelson and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Richard Beeland, Daisy Madison, Larry Zehnder, Gary Hilbert, Lee Norris, Jim Templeton, Dan Johnson, Jerry Stewart and Dennis Malone. Missy Crutchfield joined the meeting later.

**WRECKER ORDINANCE/TRAFFIC INCIDENT MANAGEMENT SERVICES**

Chairman Benson apologized for the slowness in getting this issue resolved, stating that we had been pushing this and trying to reach a resolution and consensus so that the City Attorney would be able to come back with an Ordinance—that we hoped to have this Ordinance in two weeks.

Attorney Nelson had provided a draft, and Chairman Benson proceeded to go over this, stating that this had been a slow effort but a thorough one. He also noted that the Wrecker Industry had been helpful and that he had yet to receive any calls that were not kind and considerate; that Attorneys Randall Nelson and Phil Noblett had come up with the draft and that he would go through it.

The first paragraph recommended to amend the Ordinance to require eligible companies to have two out of three different types of vehicles to be placed on the rotation list for towing large trucks, road tractors and trailers on controlled access highways and ramps. **All eligible companies for the Recovery Class designation must have either one 50-Ton Recovery Truck or one 40-Ton Rotator and one 30-Ton Heavy Duty Wrecker.** Recovery Class wreckers would be called when needed for public safety and to clear controlled access highways within certain time limits. Chairman Benson noted that the one who would make the call would be the First Responder—this would require training and knowledge. Chairman Benson stated that the First Responder would make the decision on the scene as to whether a rotator or 30-Ton Class C was needed.

Chairman Benson went on to say that there were four issues for the Council to come to a consensus—The Class of the Wrecker, Time involved, Penalties, and Billing.

The first issue was should we only allow clearance of controlled access collisions by requiring Rotator or heavy duty recovery class wreckers as minimum equipment? He asked that the Council scan the pros and cons (copy is made part of this minute material) to make up their mind. Our Ordinance needs to be involved with safety and clearance.

The second issue was whether we should regulate specific performance times for the recovery class operators to require clearance of traffic lanes within 90 minutes. Chairman Benson noted that there could be brief interruptions such as “time outs”. The “pros” of this would be quicker clearance of interstate wrecks, less changes of secondary wrecks, and accountability of wrecker companies. This, however, could result in safety risks to operators, no incentive pay from states, no set time for every wreck clearance, and less people on list.

The third issue was penalties—revoking or suspending recovery class wreckers from the rotation list if they cannot clear traffic lanes within 90 minutes. Chairman Benson stated that it could be put in the Ordinance when we could fine, as well as suspension, for negligent actions. Attorney Nelson added that most negligent actions could be handled by suspension; that as expensive as the equipment is, they could get hit in the pocket book.

The fourth issue was billing by pound, by the hour, or regulate billing charges for recovery class wreckers at all when they are clearing controlled access highway collisions. The pros of this would be that the market dictates costs, the costs of the equipment effects billing and faster clearance time is worth the expense. The cons—expensive equipment results in higher costs, should the City Set costs for clearing interstates, hourly costs may promote more waiting, and no cost limitations may result in consumer loss.

Chairman Benson asked if Attorney Nelson wanted to add anything to this. He noted that Chairman Benson had covered this well.

Councilwoman Robinson questioned the penalty if the wreck was not cleared in 90 minutes, stating that there could be a huge pile-up, and it might not be physically possible.

Someone from the Wrecker Industry asked what the Council was considering—was this clearance of two lanes or all four lanes; that they would like to be given one lane to work, if possible—that with zero lane tolerance, there would be no way.

Attorney Nelson stated that this was something the Wrecker Board could handle.

The man from the Wrecker Industry questioned liability—that at a certain point State Law says they are not responsible for any damage when dragging.

Attorney Nelson responded that this is beyond our power—that the State has power over this.

Councilman Page indicated that he had something to say but would let Councilwoman Robinson go ahead with her questioning. Councilwoman Robinson wanted to know if there were any photo records kept? Mr. Yates noted that this requirement was in the present Ordinance. She asked if it would be snapshots? Mr. Yates responded that it would be film or photo documentation.

Councilman Page stated that over the last few weeks we had ended up listening to the Wrecker Industry and the Beer and Wrecker Board; that we had heard from special consultants and everyone had their own ideas; that the safety question seemed to be paramount in his mind; that Volkswagen would be coming, and we would have trucking companies involved; that in the very little training he had about crises (FEMA and the Military), the number one person is the First Responder, and he or she is the instant commander to make decisions; that he or she should have the ability to know whether to call for a rotator; that people could be in danger or there could be chemical spills; that the First Responder should be able to call for the equipment they needed; that he knew Rotators were expensive but believed that they were good and could save lives. He was begging that there be discretion and that people on the scene be able to make decisions without us locking them in; that discretion should be available to the First Responder or Instant Commander.

Councilman Shockley referred to Page 4 of the draft, Paragraph D, *“All eligible companies for Recovery Class designation shall provide ongoing training to all their employees which satisfy TIME Task Force certifications and endorsements. In addition, each Recovery Class wrecker company shall have towing and recovery professionals employed who have attended at least 8 hours of training or continuing education every 12 months. This training may include traffic incident management work shops, MUTCD traffic control flagger training, or advanced towing and recovery practices which are approved by the Wrecker Board”*. He questioned whether “flagger training” was equal to traffic incident management work shops or advance towing and recovery practices—he wanted to know how this stacked up with the other two.

Chairman Benson stated that it could be as important as the other two, with Attorney Nelson stating that flaggers have to direct traffic. Councilman Shockley still questioned if it was just as important? Attorney Nelson added that they have to wave people down. Councilman Shockley stated that he understood we needed flaggers, with Chairman Benson adding—one with good judgment. Councilman Shockley stated that he still felt the other two carried more weight in the training process. He noted that the wording was “may” include and stated that he felt one might just choose “flagger training”.

Chairman Benson explained that all three were requirements, with Attorney Nelson noting that a “flagger” might not be required, but it could account towards the total hours. Councilman Shockley indicated that flagger training would be less expensive. Chairman Benson stated that he saw where Councilman Shockley was coming from—that he did not want this to be the quick and easy way out.

Councilman Rico stated that the question was do we have to have rotators; that he thought training was just as important as having rotators; that it was more important to clear the freeway in 90 minutes, and the First Responder should know if we need rotators.

Attorney Nelson noted that we are saying clear the road in 90 minutes; that using proper equipment, they might be able to clear it in 35 minutes, where taking Class "C" it would take the full 90 minutes and open up the road to more danger.

Chairman Benson asked if Class "C" was less than 30 tons? One from the Wrecker Industry stated that it is currently at 25 tons. Chairman Benson stated that someone had said we had no 30-tons in Chattanooga; that it could be 30 or above.

Mr. Yates stated that he knew of 45-ton, 60-ton and 70-ton and questioned if there were any 40-ton?

Jack Hawkins stated that there were no 40-tons to his knowledge.

Attorney Nelson explained that we would be setting a minimum, with Chairman Benson stating that 30 or above would be Class "C".

Councilwoman Bennett stated that she had had a conversation with Officer Collins, and very few of our people feel comfortable in making a decision because they don't know the wrecker business; these are our emergency coordinators, and they need to be trained. Because of this, she said she was hesitant to lower the requirements of our equipment; that we need to be more focused on performance and how we will collect data, and we need tracking.

Chairman Benson agreed that we have the responsibility of training our First Responders and number two is data—that we can start making certain with new people that collecting data is their responsibility.

Councilman Rico asked how many wrecks we have each year? Chairman Benson stated that he had heard anywhere from 6 per year to 20 per year. Mr. Yates stated that all together it might have been 20 last year—that rotators make it easier and safer.

Chairman Benson stated that we had four issues to consider and that the Council needed to give Attorney Nelson some direction. The first issue was do we want rotators or 30-tons up.

Councilwoman Bennett stated that this brought us back to the Emergency Coordinator being able to make a decision.

Chairman Benson noted that the First Responder is law enforcement and that is Officer Collins; that we need to put such individuals into training.

Councilman Page stated that he did not know where to go on this and questioned what we need to change right now.

Attorney Nelson responded that right now our Ordinance requires rotators.

Mr. Yates added that if the situation requires “winching” then we would want the Recovery Class—that this is a simple way to determine what is needed, but some people objected to it.

Councilman Page stated that he did not see any reason to change what we have now; that nothing to indicate we need change had been put in front of him.

Attorney Nelson stated that the Ordinance would have to be changed to require training.

Councilman Rico added that they needed to be certified to be on the list.

Attorney Nelson stated that supervisors and others should receive the training also.

Councilman Page suggested letting the Wrecker Board deal with this issue about training; however Councilman Rico noted that the Wrecker Board can only do what the Council tells them to do—that the Council is the legislative body. Chairman Benson noted that the people on the Wrecker Board do not know any more than the Council does about this, prompting Councilman Page to say “then it is the blind, leading the blind”.

Chairman Benson pointed out that the reason this came to us was because some thought it was not fair.

Councilwoman Robinson noted that it is fully operational with the way it is now—that the moratorium has just been lifted. Chairman Benson agreed that the moratorium was off, and we now require rotators.

Councilwoman Gaines stated that she thought dealing with training was the bottom line.

Mr. Yates suggested working with the Wrecker Inspectors; that they need to go to training classes and see what is new and available.

Chairman Benson stated that there was a good demonstration last Thursday; that he was there, and the City Attorney also.

Mr. Yates suggested that one person should learn this, and it should not be viewed as a “whipping post”—that this very often is the last place they put an individual—that there had been some good inspectors in the past, mentioning Ron Parsons and Ed Townson.

Councilwoman Bennett questioned how many trained individuals we needed in the City? Chairman Benson stated that right now we have two inspectors for the Beer Board and one for the Wreckers. Mr. Yates agreed that we probably needed three. Attorney Nelson noted that he would be surprised if you could get three individuals between 12 midnight and 8:00 a.m. in the morning, with Mr. Yates stating that it was worse during this timeframe.

Mr. Yates felt that a Wrecker Inspector should be on call; that an inspector had come out one or two times. He noted a problem they were having now was that you can't call the Dispatcher and see who is up next, stating that this was very important to them.

Chairman Benson wanted to know the rationale for this? Mr. Yates reiterated that it was a "must" to them to know who is up next—that they need to be prepared and need help on this.

Councilwoman Gaines wanted to know how many companies have rotators? Chairman Benson responded "two". Councilwoman Gaines stated that this would have a great impact on smaller businesses.

Mr. Yates indicated that he thought there were only five wrecking companies, with Attorney Nelson stating that he thought there would be more than that. Mr. Yates explained that Class "C" and up, there were only two of the five qualified.

Chairman Benson stated that the equipment was costly, but it saves lives. He reiterated that Attorney Nelson needs to know what to do.

Attorney Nelson stated that what he was hearing, is leave it like it is for the Recovery Class.

Councilwoman Gaines mentioned Officer Collins, stating that we had talked about someone controlling the accidents; that this would keep everyone without rotators out, and we need someone to call the shots on what type equipment is needed.

Councilman Page stated that it seemed to him that Officer Collins had been doing this, and he could be asked to develop some training for the Industry that the Council could look at; that it needs to come through Administration first to talk about the First Responder and training. He stated that he was uncomfortable with passing something now because we have nothing to recommend as a solution; that we need to look to Administration for a training package for people who monitor wrecks.

Councilman Shockley asked about the term "winching", asking if rotators had an advantage. Mr. Yates explained that if "winching" was indicated, it would help the First Responder know when to call the Recovery Class.

Chairman Benson stated that we had wrestled with “exclusivity”—then we were stimulated to open this up and be fair; that we had a choice to keep the Ordinance on the books as it is and fine tune it for training or we could moderate the Ordinance a little and say Recovery Class was not only rotators but Class “C” 30-tons and up; or we could say anything goes, and he did not think anyone wanted this option; that if we leave it as it is, on big wrecks there will be only rotators or this could be brought back on two weeks to moderate the Ordinance to allow Class “C”, which is 30-tons and up and leave it up to the First Responder to make the decision. He stated that the Council needed to give Attorney Nelson something to bring back.

Councilwoman Gaines stated that another piece is training, and this might need to be “tweaked”.

Chairman Benson responded that he thought everyone wanted training for the First Responder—that this was not controversial.

Councilman Rico added that the First Responder should know when we need a rotator.

Councilwoman Bennett stated that she was not sure the First Responder knew this.

Chairman Benson stated that if it is a big wreck, they should call for a rotator.

Councilman Page stated that this was a charge to the First Responder, and we don’t have training for them yet; that we need to get the education done, and then they will be able to say what is needed.

Councilwoman Bennett agreed that after education it could be left to his discretion but that would come later.

Councilman Shockley questioned if we leave it as strictly a rotator, how would the First Responder ever see the other side? John Hawkins mentioned a two-day class at the Towing Museum geared around the rotator—that it will be held at the end of October for heavy duty equipment and rotators. He noted that schools do this on a regular basis—that Georgia and Florida require certification; that the City can do both and work in conjunction. He stated such opportunities were out there on a monthly basis, and we could send someone to the training.

Attorney Nelson questioned if someone could come in and do the training? Mr. Hawkins responded that Chattanooga is to the wrecking industry as Detroit is to the automobile industry; that this could be done; that some might say his company would be partial because they are the only one who builds rotators.

Attorney Nelson stated that we could have other operators come in and do demonstrations.

Mr. Hawkins noted that at the event last week at the Towing Museum, we had people from Boston, North Carolina, and all over the world.

Councilman Page stated that it seemed to him that Officer Collins could put together an Educational Program to determine the outcome—that he is our “guy”, and we need to educate ourselves and also educate the wrecker business; that after this training, we could deal with the Wrecker Ordinance; that he was against moving forward with changes to the Ordinance without education and knowledge.

Chairman Benson asked if there were any contrary opinions to what Councilman Page had expressed; that we needed to look to training for the First Responder?

Councilman Page reiterated that we needed to get Officer Collins, or someone like him, to come up with an educational program.

Councilwoman Bennett suggested that we could go back to our Personnel Department for training.

Attorney Nelson suggested that we also needed to set up a training school for the wrecker operation, but we need to educate our people first.

Chairman Benson stated that this was a complex issue and he appreciated everyone’s input—that we were neophytes.

The meeting adjourned at 4:00 P.M.