

CITY OF SANTA BARBARA  
FIRE & POLICE COMMISSION MINUTES

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Thursday, **February 27, 2014 @ 4:00**  
(Hosted by Police Department  
David Gebhard Public Meeting Room  
630 Garden St.

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**REGULAR MEETING**

**1. CALL TO ORDER/ROLL CALL:**

Present: Commissioners: Christensen, Torres-Santos, Torell, Laponis, and Melekian

Staff Present: Fire Chief Pat McElroy, Battalion Chief Robert Mercado, Police Captain David Whitham, Officer Jaycee Hunter, City Attorney John Doimas and Police Technician Holly Perea.

Commissioner Christensen asked that the order of the Agenda be changed, reversing items 7 and 8, Making the Annual Tow Meeting item 7 and the Ameriquest Security Application Item 8.

**2. APPROVAL OF MINUTES:**

**MOTION:** Torell to approve minutes of **January 23, 2014**. Laponis seconded.

**VOTE:** Unanimous voice vote.

**3. PUBLIC COMMENT:**

Any member of the public may address the Fire & Police Commission for up to one minute on any subject within the jurisdiction of the Commission that is not scheduled for a public hearing before the Commission. The total time for this item is 10 minutes. If you wish to address the Commission under this item, please complete and deliver to the Commission Secretary before the meeting is convened, a "Request to Speak" form, including a description of the subject you wish to address.

None.

**4. SUBCOMMITTEE REPORTS**

Christensen explained the workings of the Fire & Police subcommittees to the new Commissioners and asked that the appointing of the subcommittees be agendized for the next meeting.

**5. OLD BUSINESS:**

None.

**6. NEW BUSINESS:**

Commissioner Laponis commended the staff for providing all of the information needed before today's meeting.

Commissioner Christensen wanted to reiterate her request to dispense response times, doing a budget workshop and a report on fire vehicles.

Chief McElroy said that Chief Bryden had a vehicle report regarding the fire vehicles at the station and said that he would email the report to the Commissioners.

Commissioner Laponis would like to know what the authority of the Commissioners is even after he had read the Commissioners guidelines.

Commissioner Christensen said the Charter lays out their duties but the City Clerk's Office may maintain some archived documents regarding the duties and responsibilities of the Commissioners.

Commissioner Torell asked that this information be provided via email to them.

## **7. ANNUAL MEETING FOR TOW OPERATORS TO DISCUSS ISSUES CONCERNING THE TOW ROTATION.**

Present: All operators on the City's Tow Rotation List.

Captain Whitham stated that the Commissioners received an investigative report from Officer Hunter via email.

- Capt. Whitham stated that Nieves Towing has made corrections that they needed but 805Roadside does not fall into compliance. He stated it was the department's recommendation to suspend 805 Roadside until they come into compliance with the Rules & Regulations. Captain Whitham was asked to summarize what the violations were are. He stated that a memorandum was sent to Commissioners:
  - Failure to comply with minimum storage space requirements (805 attempts to utilize driveway area as part of their storage space)
  - 805 fails to possess a business license for a minimum of 3 years. 805 had assumed they would be "grandfathered" into the rotation. Captain Whitham said the Commissioners did not approve the "grandfathering" provision.
  - Issues identified by Officer Hunter: Building Code permitting for 823 E. Mason St. site states that this location is not within current Code compliance.
  - Tax liens against Aaron Boucher. These are not specifically a reason for denial, however, the Rules & Regs state that operators shall comply with Federal, State and local laws and that the Commissioners shall approved towing permits if they find the applicant is of good character.

Captain Whitham stated that this is a summary of Officer Hunter's investigation into all of the tow operators, specifically that of Nieves and 805 Roadside, and that Officer Hunter is available to expand on any of these findings.

Commissioner Torell stated that his understanding is that everyone stays on the list with the exception of 805 and that this is the Police Department's recommendation?

Captain Whitham stated, "Yes."

Commissioner Torell stated that their discussion should center on the 4 reasons given and see whether they can or have been overcome.

Captain Whitham stated he and Officer Hunter would be available to answer any questions regarding these 4 issues.

Commissioner Melekian asked if there are 6 companies on the rotation and that a 7<sup>th</sup> is being considered.

Captain Whitham answered that there are currently 7 companies on the rotation and the department's recommendation is that 805 be removed due to compliance to the Rules and Regulations issues and they would be put back on the list when they come into compliance.

Commissioner Melekian asked if there was a limit as to how many companies can be on the tow rotation list.

Captain Whitham stated that the limit of companies is 7. Commissioner Christensen said the number of companies was raised to 7 in order to allow for maximum public safety response.

Melekian referred to a sentence in the letter sent to Aaron Boucher making reference to the Municipal Code and saying the Fire & Police Commissioner "shall" approve. He asked if the "shall" is part of the Municipal Code or is that just verbiage in the letter. Officer Hunter recited from the Code that "Upon the filing of an application, the board shall cause an investigation to be made and shall approve a towing permit if it finds that the conduct or operation of a towing operation would not be detrimental or injurious to the public welfare and that the applicant is of good character and of good business repute." Officer Hunter stated that this was from the Municipal Code regarding all tow companies.

Captain Whitham stated that this is not a reflection of the service that the 7 companies have provided to the department and that all 7 companies provide good service. This action is simply because of the new Rules and Regulations and the department has no issue whatsoever with the service provided by any of the companies on the list.

Torell asked to address each of the 4 items that form the basis of why the department wants to eliminate 805.

Commissioner Torell stated he is struggling with the idea that the only reason 805 doesn't meet the requirements is because the Commissioners changed the rules. He remembered that the Commissioners didn't want to change the rules to eliminate people. He said their reason to change the rules was primarily because of Public Safety and good service concerns and they didn't want to automatically eliminate people because of the rules. Torell said he didn't think the 3 year license requirement was in effect when 805 was placed on the list and he doesn't understand how it was OK to put them on the list in the first place and now because the Commissioners changed the rules, all of a sudden, because of a technicality, 805 doesn't meet the requirements and he is struggling with this.

Captain Whitham stated that these are the Commissioners rules that they decided on and implemented. He stated that Officer Hunter met with all of the tow companies and there were no objections at the time they were implemented.

Christensen stated that she was part of the committee to change and update these rules. Meetings were held with staff and tow operators. She stated that she and Torell did have a different opinion on the "grandfathering" issue but at the end of the day Public Safety was the most important issue and that it was important that the companies be in basic compliance with state and federal law. Christensen stated there was a meeting with the tow operators and it was made very clear that these rules would apply and go into effect in January, giving time to all operators to come into compliance. Christensen stated that her intent was "no grandfathering" and that she stated this.

Torell stated that he agrees with everything Christensen said regarding changing the rules and regulations to insure public safety, however, he feels that the 3 years is an arbitrary rule and has nothing to do with public safety.

**Public Comment:**

Aaron Boucher of 805 Roadside Towing stated that the 3 year requirement was a new change to the document and he didn't address it because of the "tone" that existed in earlier meetings where he assumed that the 3 year business license would be addressed separately.

Christensen asked Boucher about the meeting with Officer Hunter and the other tow operators and if he didn't understand that all of these rules and regulations that they concurred on were going to apply to 805. Boucher stated he didn't recall bringing that issue up but he did remember agreeing to move forward with the rules and regulations and that it was a "lousy" assumption on his part, that because of the prior meetings and how it was discussed, he thought that this part of the new rules and regulations (3 year rule) would not apply.

Boucher stated that he submitted several responses to the Commissioners and he wanted to confirm that they were received by the Commissioners and hopefully reviewed.

Christensen said they did receive his responses and she thought that 32 pages was a lot of material to read the day before the meeting but she did read it.

Boucher said he put the document together after he received his report from Officer Hunter so he only had a small window of time to put together what information he had. He said he just wanted to confirm that the Commissioners received his reply before they made their decision.

Laponis asked if the Commission were to deny 805, could 805 come back as soon as they met all the requirements as opposed to waiting until the next Annual meeting.

Captain Whitham said there is nothing prohibiting that. Christensen said that yes, they can make these decisions anytime throughout the year.

Commissioner Melekian asked Boucher how long he has had his license. Boucher stated that he is 9 months shy of the 3 year requirement.

Christensen asked if Boucher wanted to address any of the other findings in the report.

Boucher said that he has added additional space to his auxiliary storage yard. It totals just under 12,000 sq. feet. Boucher said that at the time, Officer Hunter didn't seem to see using the driveway as a problem. Boucher stated that they don't actually store very many vehicles in that yard and that maybe only 6 or 7 vehicles are stored in that 12,000 sq. ft. space. Boucher stated he would like the driveway to be considered storage space as it would put him up over 20,000 sq. feet, especially because of the limited use of this space. He stated that they would not be pulling cars out into the street and affecting the travel of other cars. He stated that yard is on a private street and is a dead end. He stated there is hardly any public traffic on that street and they would not cause any interruption of traffic by utilizing that driveway space. He stated they are up and over 20,000 sq. ft. at their primary storage yard. Boucher stated that it wasn't until he received the follow up investigation report and saw that Officer Hunter stated that he would not be able to use the driveway space that he realized he couldn't use the driveway.

Boucher stated they tried to come up and over 20,000 sq. ft. by reconfiguring their storage space.

Boucher stated that the measurements were different both times their primary storage yard was measured.

Torell asked about the zoning issue.

Boucher stated there is no zoning issue and that there is an issue with the building code. He said that Officer Hunter asked him about this. He said that he spoke to several different people about it. Boucher stated that in 2012, before he was on the list, they got 3 permit clearances signed by the Building Department, Fire Department and Public Works. They all signed up on the use permits. He assumed these were the permits that were needed for the property. He said Officer Hunter did not mention these in his report. He said before he went full speed ahead with the business he wanted to be sure he could use the property for the business he intended. He said he did what he thought was necessary and that if additional permits are necessary he expects it to be an expensive and lengthy process. He did state in his report that they do not seem to be the only company lacking such permits. He said he went to the City to see if the other tow companies had something he did not.

Christensen asked Officer Hunter if he wanted to rebut some of the comments.

Officer Hunter stated that he had a 3 hour meeting with tow operators a year and a half ago. He said they all went over each section and after each section was reviewed he asked if any of the operators and any issues or concerns. Officer Hunter said he didn't care about how much storage space the companies had at that time. Officer Hunter said that now that he's seen how the yards are set up, when you need to get several big trucks in the yard and move vehicles around, you need a lot of space and 20,000 sq. feet is not an unusually large amount of space to accomplish that. He said a failure to have that amount of storage space would have an effect on the public. Love's has the 20,000 sq. ft. at their Haley location, but because Haley St. has a lot of traffic, he decided to rent an additional space in Goleta and stores vehicles there so he doesn't disrupt traffic on Haley St. He said if they decide to cut and paste and just use driveways, then that defeats the whole concept of insuring that each operator has a sufficient amount of space so they are not a burden on the community. He said none of the companies have 20,000 sq. ft. of cars on their property and most likely never will but that is not the sole need for that space. He has learned of the value of 20,000 sq. ft. of space. He said all of the operators had sufficient time to chime in on that issue.

Officer Hunter said that other issues came up during the meeting. Officer Hunter said the department was very responsive to the process and everyone had a chance to bring up the 20,000 sq. ft. issue and it was agreed upon.

Officer Hunter reviewed the letter that Boucher sent out. He said he did make a trip to the help desk at Zoning and Building and spoke to Curtis Harrison and Nicole Casper. He said they spoke to Mr. Boucher on Monday and he questioned them about what would be needed on his property. They said that Boucher didn't initially disclose exactly the intended use of the property was, making the structure a commercial space. When Boucher did, Officer Hunter said that Mr. Harrison said there needed to be permitting and there needs to be a process. Officer Hunter said he showed Harrison the document that was in the letter and asked if this document authorized the use of the property. He said that Harrison said, "Absolutely not." He said that was a document that is filled out in the process of getting a Business License. The address and

intended use is reviewed and they make a judgment “Could you have a tow company at that address.” Officer Hunter said in this particular case you can, you’re allowed to have a tow-company at that location but you need to get the proper permitting and that this document does not authorize the use of the structure on that property. Officer Hunter said the conversation he had with Casper and Harrison is not captured in the letter. He said that Mr. Harrison very clearly told 805 that this process needed to begin but that Aaron Boucher had walked out.

Officer Hunter said re IRS lien, he contacted an investigator to discuss this. The investigator told him that attention should have been given to these liens. The investigator said they were turning the case over to a “Revenue Officer.”

Officer Hunter said the time period was discussed in the meeting they had and grandfathering was discussed. He said he made it very clear that there would not be any grandfathering.

Commissioner Torell said he didn’t understand why a tow operator would not object about the 3 years, which is an arbitrary number. Torell said it was the Commissioners intention, which he expressed several times, that he didn’t want these rules to throw people off this list.

Officer Hunter said everyone has been telling Boucher to fill out the documents but he has failed to do so but he can’t explain why Aaron didn’t bring up the 3 year issue.

Melekian wanted to know if all of the 4 issues raised were reflective of new rules or just the time and space.

Captain Whitham said the last 2 are not disqualifiers and they are just issues brought to the Commissioners attention.

Captain Whitham stated the 3 year business license is the only new rule (to answer Melekian’s question). Captain Whitham stated that the 3 year rule was not that big a deal to the department.

Commissioner Torell said the only reason to deny this would be the storage space or the 3 year time issue. Torell stated that the other 2 issues do not affect Aaron Boucher being on the list.

Torell stated that he thought the 3 year rule was only going to be for new people. Christensen said her understanding is very different from his.

Torell said if he was on the tow list, he wouldn’t have objected to the 3 year rule because he understood that the 3 years only to be applicable to new people who applied to be on the list.

Christensen said if she was a tow operator dealing with this issue she would “scream bloody murder” about the 3 year issue and have it eliminated or ask for 2 years.

Torell said that if 805 is going to be suspended it would be because he has 9 months to go on his 3 years or if they would use the driveway as part of the 20,000 sq. ft.

Christensen asked if any of the tow operators had any comments.

Joel Butera of Smitty’s asked if Transportation would have to go and deem what is driveway and what is not driveway during the permitting process of Mason St.

Torell is assuming that this was done and that's why they were recommended to be added to the list.

Matt of Thomas Towing said he was confused and that everything was agreed on and voted on and there should be no discussion. He said people spent a lot of time and money to come to this conclusion today.

Christensen stated that there is always going to be an annual meeting for things to be discussed but you have to be in compliance and stay in compliance in order to stay on the list.

Aaron Boucher asked if he might not be the only one with an unpermitted building who is on the list.

Christensen said she couldn't take what Boucher wrote about everyone else and now consider that when making a decision. She said that that matter should be forwarded over to the department and incorporated into their review process. Christensen said in terms of Officer Hunter doing the inspections, she appreciates this. At the annual meetings they can review and see if everyone is in compliance and then have a formal report written up.

Aaron Boucher asked if the decision could be delayed until Officer Hunter investigates his claims re the other companies.

Christensen said he could ask but she didn't think this was appropriate. She said the information Boucher submitted could be reviewed and acted on accordingly by the department.

Chuck Love, of Love's Towing, said in the beginning the Commissioners said there would be no grandfathering in and the 3 years comes from the Rules and Regulations being fashioned after the States requirements. He stated that his office is a house, but every room is used as a business.

Torell asked if 805 has the required 20,000 sq. ft.

Christensen said according to the staff reports they do not. The driveway is access and not storage.

Boucher stated that the report left this open to interpretation by the Commissioners.

Torell stated that they thought it was OK when they put him on the list in the first place, they thought the 20,000 sq. ft. was alright.

Christensen said that Officer Hunter has gone out and identified the actual square footage and it is not in compliance.

Commissioner Laponis moved to adopt the staff's recommendation.

**MOTION:** Laponis to approve Holzer's, Love's, Santa Barbara Towing, Smitty's Towing, Thomas Towing and Nieves to continue on the rotation list and for 805 Roadside to be suspended from the Tow Rotation List, Commissioner Melekian seconded.

Commissioner Torell interjected that if we "throw this guy off the list" we are doing it on a technicality and maybe the measurements would be different if

someone else took them or perhaps the Police Department “has it in for this guy.” He also stated that regarding the 3 year license, his understanding always was that the Commissioners would not make a new rule that would toss somebody off the list and this rule would be in effect as people dropped out, and new people were considered to replace them, they would have to have the 3 years.

Captain Whitham asked if Torell said that the Police Department “has it in for this guy.”

Torell said that Boucher wrote a 32 page letter that upset him but he doesn't want his judgment to be based on his decision.

Captain Whitham stated that the Police Department does not “have it in” for 805 and that all of the 7 tow operators were giving good service to the department and this is solely by Officer Hunter's investigation.

Commissioner Laponis said he only knows what is in front of him now since he was not here for the process of the new Rules and Regulations and from that perspective he made the motion that he made.

Commissioner Melekian asked what the distinction is between suspending from the list and removing from the list. Suspension suggests that there is some action he can take to put him back on the list.

Commissioner Torres-Santos wanted to know if 805 is suspended, how long would this last.

Captain Whitham stated that 805 would be suspended until such time he comes into compliance with the Rules and Regulations.

**VOTE:** 3 Aye's (Laponis, Christensen and Melekian) and 2 Nay's (Torres-Santos and Torell): Motion passed.

Joel Butera stated that the tow rates were to be discussed at the January meeting and that have not been addressed since 2008. Commissioner Christensen thanked him for “keeping them on task.”

(I will be contacting the Commissioners to see if and when this annual meeting will be rescheduled)

## **8. AMERIQUEST SECURITY SERVICES PRIVATE PATROL APPLICATION**

**MOTION:** Torell to approve Ameriquest Application; Melekian Second

**VOTE:** Unanimous Voice Vote; Motion passed

## **9. FIRE CHIEF'S REPORT**

From Chief McElroy

- Chief McElroy introduced Battalion Chief Robert Mercado to the Commissioners
- Chief Mercado has been successful in obtaining a \$400,000 grant to outfit all of the Engines and obtain personal portable radios for every member of the department.

- Chief Mercado displayed one of the new portable radios (98 purchased) that were purchased by the department; these are an upgrade from the old portables, better communications; radio has high visibility; go into hazardous environments without the potential of creating an explosion; it has 2 faces on it to see what frequency you are on and also an audible file to tell you what channel you are on; cell phones activate the radios through an App on the cell phone.
- Chief McElroy passed out the monthly report addressing January and February response times; goal under 4 minutes; actual average 3 min. 18 seconds; total incidents for January 669; Station 1 busiest station in the City; 100 less calls in February
- One of the Commissioners asked what a “good intention” call refers to. Chief McElroy said they have had several calls of “smell of smoke in the area.” This is probably a fireplace in the area; this is a call where they respond but no action is taken by the engine.
- Typically calls increase in the middle of the day during business hours.
- Primary calls are rescue and emergency medical.

Laponis asked why the Fire Department is called the Fire Department when only 3.3% of the calls are fire related and wanted to know if there has ever been any consideration of changing the name over time.

Chief McElroy said this is a valid question and other than tradition and the fact that we are the largest response if there is danger to the public. Chief McElroy would have no objection to a name change but his job would be the same. The largest investment of equipment goes to protect the community.

- 3 wrong way drivers in this County; In January 11 people died in 2 accidents in Florida and LA County; Drivers were DUI
- Concluding a Captain’s exam; tremendous amount of retirement and turnover in the last few years; 3 quality people being considered.
- Commissioners will be receiving an invitation to the opening of 2014 fire season event at Fleishman Auditorium; Public Access TV will be taping.

## **10. POLICE CHIEF’S REPORT:**

From Captain Whitham:

- Chief Sanchez is attending the CLEC Conference this week
- Captain Whitham asked if the Commissioners received Compstat monthly, the Commissioners responded that they do receive it.
- Response times; Priority 1 through 4 calls are doing very well falling below average; Priority 1 is often a response to a traffic injury; since other agencies are responding (Fire) the PD does not do Code 3, (lights and sirens) to those calls due to safety concerns
- Department is fully staffed, including 1 over hire; City allows us to over hire; 15 officers are on IOD
- Part 1 crimes: Casa Esperanza has changed to a sober only facility and this has caused a lot of issues. Some of these clients have moved on to IV and Carpinteria. The Milpas corridor has improved greatly.
- SWAT operation took place on Bath St. This ended up in an 8 hour operation. This one particular event accounted for 4 aggravated assaults.
- Aggravated assaults also take place in the downtown bar area and in the Funk Zone.
- Part 2 Crimes holding steady.

- 911 Communication Center move is proceeding forward. It will be moved to Granada Garage by July or early August; Construction process will begin in March

**11. ADJORN: 5:48 PM**