

cc: City  
Atty.

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Christopher R. Bandt  
\*\*Jeremy T. Gill  
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November 7, 2014

**Ms. Dawn Collins  
City Clerk  
City of Appleton  
100 N. Appleton Street  
Appleton, WI 54911**

**RE: Safety and Licensing Committee Hearing Request – Removal from Police Call List**

Dear Ms. Collins:

We represent John's Repair and Towing LLC. Enclosed is a letter by Lt. Daniel Weiske of the Appleton Police Department removing John's Repair and Towing LLC from the police call list for towing services. Also enclosed is an email exchange with the City Attorney's Office discussing its interpretation of Sec. 9-746 of the Appleton Municipal Code.

Pursuant to Appleton Municipal Code Sections 9-751 and 9-29(b), John's Repair and Towing LLC hereby requests a formal hearing following its removal from the police call list for towing services. Please place this matter for review at the next available hearing date before the Safety and Licensing Committee.

Very truly yours,

NASH, SPINDLER, GRIMSTAD & McCRACKEN, LLP

By: Andrew Stevens

Enclosures

▲  
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*"...meeting community needs...enhancing quality of life."*

**POLICE DEPARTMENT**

222 South Walnut Street • Appleton, WI 54911-5899  
(920) 832-5500 • Fax: (920) 832-5553  
<http://www.appleton.org/police>

October 19, 2014

Mr. Carl Rowe  
John's Repair & Towing  
910 Plummer Court  
Neenah, WI 54956

Dear Mr. Rowe:

On Monday, August 18<sup>th</sup>, 2014, the Appleton Police Department received an anonymous complaint about "John's Towing on Oneida Street." The anonymous caller stated John's location on Oneida Street was purchased by the "Escape Bar" located next to the former John's Towing location. Information was also provided stating the bar was expanding and would be clearing the lot where John's Towing was currently located.

The Police Department completed various spot checks at the business and found the building was no longer being used as a towing operation, but instead as a storage facility for a nearby bar/restaurant. The back (fenced) lot did have several vehicles inside that appeared to be towed due to accidents. A John's Towing vehicle was also observed (on one occasion) dropping off a vehicle in the lot.

On 09/04/14 at approximately 9:55 am, I was able to speak with you regarding the above concern. You stated you were operating out of the Oneida location and had partnered with Mr. Jacobs from the Escape Bar. You went on to state customers could reach John's by going into the bar and requesting assistance with the neighboring tow service. As stated in our conversation, no signage was posted providing that direction.

Since our conversation in September, you have now posted a sign at the location directing those having towed vehicles respond to the neighboring bar to conduct towing business.

After presenting the above information to our City Attorney's Office it was determined that John's Towing does not comply with the mandatory requirements to be included on the rotating call list as listed in Appleton City Ordinance 9-746 and must be removed from that list.

Appleton City Ordinance 9-746 (Services on police call list), states:

*No person shall engage in or conduct or carry on the business of providing towing service for the City Police Department rotating call list without complying with the following requirements:*

*(a) The towing service place of business must be within the city limits.*

It is apparent the location at 1222 South Oneida Street in the City of Appleton is being used as a storage location and not for conducting day to day business. In reviewing your insurance information, it also lists the insured as:

John's Repair & Towing LLC  
910 Plummer Court  
Neenah, WI 54956

Per our conversation, John's Towing has been removed from the rotating call list effective immediately for lack of compliance with 9-746 (a).

Thank you,



Lieutenant Daniel Weiske  
Operations Coordinator  
Appleton Police Department  
222 S. Walnut Street  
Appleton, WI 54911  
(920) 832-5928

cc City Of Appleton Attorney's Office

## Andrew Stevens

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**From:** Ryan Graff  
**Sent:** Tuesday, November 11, 2014 7:48 AM  
**To:** Andrew Stevens  
**Subject:** FW: John's Towing

**From:** Chris Behrens [mailto:Chris.Behrens@Appleton.org]  
**Sent:** Monday, October 27, 2014 1:46 PM  
**To:** Ryan Graff  
**Cc:** James M. Lewis; Dawn A. Collins; Jim Walsh; Daniel Weiske  
**Subject:** John's Towing

Attorney Graff,

Jim Walsh asked that I respond to your recent email regarding John's Towing being removed from the City's rotating call list for not complying with 9-746(a) requiring that a towing service's place of business be located within the city limits. At the conclusion of your email you indicate you intend to request the Common Council reverse Lt. Weiske's decision. I will summarize the City's position and should you wish to request a review, you may make a written request to City Clerk Dawn Collins and request the matter be placed on the agenda of the City's Safety and Licensing Committee.

Section 9-746(a) requires that the towing service's place of business be located in the city limits. I suspect that your interpretation of this section is narrower than that of the Council. Specifically, this section requires more than a secure storage area, but also a clear place of business where, during regular business hours, the customer may pay for and promptly retrieve a previously towed vehicle. As an alternative to staffing the Oneida street location during regular business hours you explain below, "When a customer wants to pick up their vehicle or retrieve their personal property from the Oneida Street location, they walk a few feet to Houdini's Escape and are assisted." Because Houdini's Escape is a licensed establishment, such arrangements are not permitted by 125.32(3m) and could jeopardize the liquor license. Based on the foregoing as well as our discussions with Lt. Weiske, we concur with the police department's decision and look forward to discussing the matter with the Safety and Licensing Committee should you decide to pursue that review.

Christopher R. Behrens  
Deputy City Attorney  
City of Appleton  
100 N. Appleton Street  
Appleton WI 54911

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[chris.behrens@appleton.org](mailto:chris.behrens@appleton.org)

-----Original Message-----

**From:** Ryan Graff [mailto:RGraff@nashlaw.com]  
**Sent:** Friday, October 24, 2014 4:14 PM  
**To:** Jim Walsh  
**Subject:** John's Repair and Towing

Attorney Walsh,

I represent Carl Rowe and John's Repair and Towing. My client received the attached letter removing it from the Appleton rotating call list. Apparently this was done after consulting you. As best as I can tell, the basis for removing John's Repair and Towing from the rotating call list is that it does not have an employee staffing its Oneida Street Location. There is no question that John's Repair and Towing uses the Oneida Street location for towing and storing vehicles meeting the definition of "place of business" in the ordinance. Indeed, Lieutenant Weiske noted in his letter that there were towed vehicles at the location and "a John's Towing vehicle was also observed dropping off a vehicle in the lot."

Appleton City Ordinance 9-746 does not require a towing service to have a staffed office within the City limits. Instead, the ordinance requires "the towing service place of business must be within the city limits." John's Repair and Towing's Oneida Street location is clearly a place of business as documented in Lieutenant Weiske's letter. John's Repair and Towing has locations in Appleton, Neenah and Green Bay. The dispatch center is in Neenah. When a call comes in for the Appleton rotating call list, the dispatcher calls one of John's trucks in Appleton and the vehicle is towed to the Oneida Street Location. When a customer wants to pick up their vehicle or retrieve their personal property from the Oneida Street location, they walk a few feet to Houdini's Escape and are assisted.

John's Repair and Towing's Oneida Street location meets both the text and spirit of the Appleton Ordinance. The Ordinance is meant to make sure that vehicles towed from the Appleton call list remain in the City of Appleton so they are accessible to the customers. The vehicles from the Appleton rotating call list are towed to the Oneida Street location where they are accessible within the city limits with staff at Houdini's willing to assist them.

Lieutenant Weiske read additional language in the ordinance which does not exist. Had the City of Appleton Common Council wanted to require a towing service to staff a location in the city limits, it would have said so. It did not opt for the broader phrase "place of business." A business can have many places of business. Some staffed and some unstaffed. This is especially true in the towing industry where it does not make sense to have a dispatcher at every location and the drivers spend most of their time in their trucks. Mr. Rowe is aware of at least one other Appleton towing company that does not staff its Appleton office, instead relying on a third party to handle customer inquiries. This is exactly what John's Repair and Towing is doing but it is being treated differently. I request that John's Repair and Towing be put back on the Appleton rotating call list. If it is not, I will ask the City of Appleton Common Counsel to reverse Lieutenant Weiske's decision.

I can be reached at the number below. Please respond to my request by the close of business on Monday.