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- Employee's Retirement System Annuity & Pension Board



NIK KOVAC

ALDERMAN, 3RD DISTRICT

December 10, 2018

To the Honorable, the Common Council

Honorable Members:

Common Council File Number 181015 contains the following recommendations:

Revocation, based upon the revocation complaint, complainant, licensee, and driver testimony of the Recycling, Salvaging, and Towing Premises license for Anthony Lopez for the premises located at 960 W Armour Ave ("Abyss Towing") in the 13th aldermanic district.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nik Kovac'.

Nik Kovac, Chair
Licenses Committee

cc: All Council Members
File 181015



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NIK KOVAC

ALDERMAN, 3RD DISTRICT

Date: December 7, 2018

To: All Members of the Milwaukee Common Council

From: The Licenses Committee

Re: Report of the Licenses Committee on the complaint seeking revocation of the Recycling, Salvage, and Towing license held by Anthony Lopez, agent for Abyss Towing, for the premises located at 960 West Armour Avenue in the City and County of Milwaukee, Wisconsin ("Abyss Towing").

FINDINGS OF FACT

1. Anthony Lopez (hereinafter the "License") is the holder of a Recycling, Salvage, and Towing ("RST") license for the premises located at 960 West Armour in the City and County of Milwaukee, Wisconsin ("Abyss Towing").
2. A Complaint for Revocation of this license was filed with the City Clerk by Mr. Matthew Clark, a private citizen. The complaint alleged that the license holder failed to offer a drop fee, a violation of Chapter 93-47-3 of the Milwaukee Code of Ordinances.
3. Said summons commanded the appearance of Anthony Lopez to answer the complaint for revocation of the RST license on December 4, 2018 at 1:45 p.m. in Room 301-B of City Hall. At that date time and place, the licensee, Anthony Lopez appeared with counsel, Attorney Dan Sanders.
4. **Based upon the sworn testimony heard and the evidence received at the November 14, 2018 hearing, the Committee found the following:**
 - A. Matthew Clark summarized his complaint and recounted the events of the night his vehicle was towed. He stated a drop fee was never offered by the driver. He stated that when he picked up his vehicle they would only let him pay in cash because it was outside of business hours. He stated \$355 is a lot of money so he started investigating the law and believed that money was wrongfully taken from him. He corrected a previous statement saying that the driver did call the tow in prior to towing his vehicle. He played audio from his phone call with the licensee regarding the towing of his vehicle and the drop fee. He stated his driver's license and insurance card was in his wallet on his person. He stated he shows his ID all the time and has no issues with that.



- B. The committee recessed at 2:39 p.m. and reconvened at 2:47 p.m. to allow for audio of a phone call between the Complainant and the Licensee to be set up.
- C. During the recorded phone call between the complainant and the licensee, the licensee can be heard telling Mr. Clark that it was Mr. Clark's responsibility to ask for the drop fee, contrary to the ordinance mandate that the driver affirmatively offer the drop fee if the vehicle owner arrives before the tow is completed.
- D. Attorney Dan Sanders stated he is concerned about his client getting a fair shake before the Committee, and feels that his client is being prejudged. He gave an explanation of how the towing of vehicles occurs at the Pinehaven Apartments. He stated the licensee was unable to locate the video from the tow in question. He stated that there was one more tire to hook up when Mr. Clark arrived. He stated Mr. Clark was offered the drop fee but he refused to show the proper documentation. He stated Ms. Lampone came in on Sunday when they were closed to let Mr. Clark get his car. He stated the hook up of Mr. Clark's vehicle took approximately five minutes.
- E. Alderwoman Lewis moved to enter in to the record as exhibit #1 the compilation of documents provided by Attorney Sanders. (Prevailed 5-0.) Included in the documents was an example of a blank drop fee receipt.
- F. Michael Strehlow stated he was the tow truck driver on the night in question. He stated the vehicle was fully hooked up and he always offers a drop fee, and 100% of the time people accept the fee. He testified that in the past, he has waited for people to go to an ATM or borrow money from neighbors in order to pay the fee. He stated he worked for Abyss for a year and half, but no longer works there. He stated he did approximately 6-10 tows per day when he worked for Abyss. Mr. Strehlow testified that that he only saw vehicle owners 5 or 6 times while he worked at Abyss because they often towed in the middle of the night. Further, he explained when he did interact with a customer and the person was not actively hostile, he offered a drop fee. He stated Mr. Clark refused to provide any paperwork when offered the drop fee. He stated he had Square on his phone to accept a drop fee via credit card. He stated he calls the Tow Desk when he drops a vehicle to notify them that he is no longer in possession of the vehicle because he does not want to be responsible if something happens later in the night. He testified that he is paid whether the vehicle is towed or dropped, so he has no incentive to disallow drops, so he has no incentive to tow or not tow a car. He stated that the drop fee waiver was not provided or signed because Mr. Clark refused to provide him with his ID and insurance card. He stated that he has had one or two people sign the drop fee waiver.
- G. Anthony Lopez, the licensee, stated the City does not indicate whether a drop fee

was paid or not. He stated he has called the City when he drops a vehicle but the City did not have a reliable record of the same. He stated he has done 5 or 6 drop fees, but he does not encounter many people that are pleasant. He stated that people have pulled a gun on him and he has bullet holes in a tow truck.

- H. In response to questions from Ald. Coggs, Mr. Lopez testified that stated that he has been in the industry for 12-15 years. He stated he calls in the drop as a courtesy and was unaware of the \$15.00 credit of the tow fee. He stated that he does around 3,000 tows annually. Ald. Coggs stated that she found it difficult to believe that a business owner would forgo the \$15.00 credit for drops. Ald. Lewis stated that also explained that she found it difficult to believe that the complainant was offered the drop fee on the night of the incident in question, given that in the recorded phone call the licensee told the complainant that it was not his responsibility to offer the drop fee.
- I. Stephanie Lampone stated she handles the bills every month and did not know there is a \$15.00 credit for every drop fee. She stated they don't do a lot of drop fees because they tow at night. She stated if she knew about the \$15.00 credit she would have called the Tow Desk previously. She stated that they were closed on Sunday so that is why she required Mr. Clark to pay in cash because she did not have her iPad with her to accept a credit or debit card. She stated she offered for Mr. Clark to retrieve his car on Monday when they were open, without an additional day of storage, which is commiserate with the City ordinances. She stated the drop fee receipt is provided by the driver with the tow card. She stated she has released vehicles on Sunday previously as a courtesy. She stated that she told Mr. Clark that she could not just give him a car because he had the keys.
- J. In response to a question from Ald. Kovac, the City Attorney's Office opined that the licensee had not violated the ordinance by asking the complainant to bring cash on a date the business was actually closed. The Ordinances provide that the licensee's only responsibility was to accept all forms of payment at such a time as the business was open, so long as the storage fee was waived.
- K. Peter Knox, Tow Lot Supervisor, explained how the City bills tow companies for tow, including the fact that tow companies receive a \$15.00 credit for every drop performed. He testified that based on his review of the record; there were no instances of reported drops from the licensee. He stated there is an end of the month reconciliation each month to indicate the disposition of vehicles including those that were dropped and recycled. He stated there are records of the licensee recycling vehicles.
- L. Tom Woznick, Parking Services Manager, stated intent of the legislation was to allow an individual to pay the drop fee and take the car, but not the same way a car is recovered from the Tow Lot. He stated calls that come in are recorded in the tow file and if a private tow company calls back it is noted in the record, but it



is not recorded in the billing, because it is a different system. In response to a question from the Committee regarding the number of drops performed across the City, Mr. Woznick explained that the tow lot does keep those specific statistics for private, non-City tows. However, he stated the City, through private contractors, does 20,000-30,000 tows per year. He added that 3% of those tows are dropped, and is a regular function of towing in the city of Milwaukee.

- M. Keira Schmeling, a tow truck driver from another company, stated that when someone declines a drop fee they are required to sign a waiver.
- N. Alderwoman Coggs stated it is obvious that the practices, policies, and recording keeping of the company are insufficient. She stated that she cannot tell from the company's record whether they have done drops or not, because there are no records to support that fact. She stated Mr. Lopez was unprofessional on the phone with Mr. Clark. She stated Mr. Lopez is responsible for knowing the laws as a business owner, and so records can be kept. She stated the decision is going to be made based on facts, not on attitudes.
- O. Alderman Kovac asked if the licensee brought any filled out drop fee receipts. The licensee did not provide the Committee with any receipts, and indicated he did not think completed receipts from other companies would be relevant. Ald. Kovac stated the key issue is whether or not Mr. Strehlow offered a drop fee. He stated that he's trying to figure out who is telling the truth.
- P. Alderman Kovac stated there is a lot at stake here on both sides and credibility is most important, and when a licensee owns up to the mistake and tries to improve it and do better he is inclined to recommend lesser discipline, however, not when a licensee does not own up to their mistake and falsifies the facts. He stated the complainant is credible and provided a very detailed account of what occurred. He stated a tow truck driver may not have as good a memory because they do lots of tows. He stated there was a lot of corroborating evidence for the complainant's testimony, and he corrected his testimony when he was wrong. He stated he does not believe Mr. Clark refused to give his ID when offered a drop fee, because he provided it the next day to get his car back. He stated the licensee provided blank drop slips, but not filled out slips. He stated he does not believe the licensee is following the drop fee law.
- Q. Alderman Witkowski moved for revocation based on the revocation complaint and complainant, driver, and licensee testimony. (Prevailed 4-1, with Alders Dodd, Kovac, Lewis, and Witkowski voting "Aye" and Alderwoman Coggs voting "No.")
- 5. **At the November 27 Common Council Meeting, Alderman Nik Kovac made a motion to remand this matter to the Licenses Committee for the limited purpose of taking additional testimony regarding the receipts provided by**

the Licensee the report prepared by the Department of Public Works. Based upon the sworn testimony heard and the evidence received at the December 4, 2018 hearing, the Committee found the following:

- A. Attorney Dan Sanders stated that this is the livelihood of the licensee and he is still in the learning process. He stated that when the licensee was responding to Mr. Clark on the phone that he was trying to tell him that while they have to provide the drop fee, Mr. Clark has to provide the proper documentation. He stated that in 2018 several drops were offered. He provided the records from 2018 billing. He stated that the licensee does approximately 1,000 tows per year. He stated in January there were 6 salvage cars and in March there were 68. He stated the incidents of people coming up during a tow and asking for their car back is rare. He stated of the 50 incidents the ones that indicate "no fee" or "return for free" were often free returns due to the error of the management. He stated that Mr. Strehlow did a lot of drops via credit card and there were a couple in 2018 and 6 in late 2017. He explained the process of the receipts, tow cards, and fees. He stated that more encounters are when a manager asked for the vehicle to be dropped. He stated there were 9 times this year where a drop fee was given. He provided 2017 records and receipts, indicating 15 drop fees.
- B. Alderwoman Dodd moved to enter in to the record as exhibit #1 the 2017 records and receipts provided by Abyss. (Prevailed 4-0)
- C. Attorney Dan Sanders stated that the face to face encounters with people while being towed are the exception, not the norm. He added that the majority of the face to face encounters are tense and violent. He stated that Mr. Clark did get into his car and start it on the night in question. He stated that the ordinance states there needs to be a signed waiver, but there is no City approved waiver form, and most people do not want to sign anything. He added that they have a draft waiver form that they can send to Chief Morales. He stated that their customers are depending on them, but towing is not an easy job to do. He stated the drivers are confronted with drunk, angry people all the time. He stated a revocation for one incident in three years is unduly harsh, and a warning letter or suspension would be more appropriate. He stated that no one was deceitful to the committee. He stated the records for 2017 and 2018 are consistent, and Mr. Strehlow gives cars back for free. He added the Licensee had previous unrecorded phone calls with Mr. Clark.
- D. Stephanie Lampone, 2214 S 60th Street, testified that sometimes the management asks for cars to be towed in error. She stated that sometimes the manager hasn't given the tenant the parking permit. She stated that a tow card is attached to the receipt with a tow number. She stated that Mr. Clark came to the tow lot and filmed her and called multiple times, and didn't want to provide his ID or title when he picked up his car. She stated the business is a family business with only 6 trucks, and they are picky about the drivers they hire.



- E. Peter Knox of the Department of Public Works stated the licensee has done over 1,000 tows per year for the last few years. He stated of the 46 records provided by the licensee, for City authorized tows, 9 receipts had "drop", 28 had "drop, give back for free", and the remaining nine had different things. He stated DPW looked at follow up calls regarding drop fees. He stated that there were three calls back to Parking Enforcement regarding cars not being towed with the following notes: 1 released to owner, 1 owner moved vehicle, and Abyss did not have the vehicle. He added that DPW is looking at a standardized form when a vehicle is given a drop fee.
- F. Alderwoman Lewis asked how to match a receipt to a towed vehicle because some of the receipts are not filled out completely. She stated she found it curious that with all the records were submitted, Mr. Clark was not offered the drop fee or have his car dropped for free, even though they do it all the time according to the records that were provided in exhibit #1. She added that the statements that Mr. Clark should know the law were a flagrant disregard for a customer. She added that this is indicative of poor business practice and goes against the legal obligation of the licensee. She acknowledged that the nature of the business does lend itself to confrontations with customers.
- G. Alderman Kovac stated what he was looking for was the very specific records in compliance with the city ordinance regarding the drop fee. He added that the law was trying to be as thorough as possible. He stated that he still believes that the licensee's response to the revocation complaint was not truthful. He stated the committee generally looks at the whole circumstances surrounding incidents and integrity is a big part of the judgement call the committee has to make. He stated he was most concerned about the call with Mr. Clark where the drop fee was discussed, and it made him disbelieve Mr. Strehlow's testimony, because Mr. Lopez never said a drop fee was offered to Mr. Clark on the phone call. He added that this is a citywide issue and the legislative intent was to deal with the behavior of tow companies and to hold them accountable because of the complaints from residents. He stated the law was to encourage good behavior by tow companies. He stated that he does not see a consistent pattern of following the law or the believable fact pattern of the night in question, corroborating Mr. Clark's testimony. He indicated that he was unconvinced by the additional documentation added between the hearings that the licensee's version of events was truthful.
- H. Alderwoman Dodd moved to enter the 2018 records provided by the licensee as exhibit #2. (Prevailed 4-0) Alderman Dodd Ald. Dodd moved to enter in to the record the DPW response as exhibit #3. (Prevailed 4-0)
- I. Alderman Kovac moved for revocation based on the revocation complaint and licensee and DPW testimony. (Prevailed 3-1)

CONCLUSIONS OF LAW

1. The Committee has jurisdiction to hold hearings and provided Findings of Fact and Conclusions of Law and a Recommendation to the full Common Council pursuant to Chapters 85 and 93 of the Milwaukee Code of Ordinances.
2. Based upon the above facts found, the Committee concludes that the Licensee, J. Anthony Lopez, has not met the criteria of Chapters 85 and 93 of the Milwaukee Code of Ordinances to allow the continued operation of the premises.
3. In order to protect the health, safety and welfare of the citizens of the City of Milwaukee, it is the recommendation of the Licenses Committee that the full Common Council of the City of Milwaukee should exercise its judgment to deem this location unfit for these types of licenses and revoke the Recycling, Salvage, and Towing license held by Anthony Lopez for the premises located at 960 West Armour in the City and County of Milwaukee, Wisconsin ("Abyss Towing") based upon the evidence and testimony provided by the complainant, the licensee, and other witnesses who testified in the matter.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated above, the Committee, by a vote of **three (3) ayes, one (1) noes and one (1) excused**, recommends that the Recycling, Salvage, and Towing license held by Anthony Lopez for the premises located at 960 West Armour in the City and County of Milwaukee, Wisconsin ("Abyss Towing") be revoked.

Said revocation is effective December 18, 2018.

Dated and signed at Milwaukee, Wisconsin this 7th day of December, 2018.



NIK KOVAC
Licenses Committee

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