

ORDINANCE NO. 2023-9-19-A

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEVELAND, TEXAS, AMENDING THE CODE OF ORDINANCES BY DELETING CHAPTER 122 VEHICLES FOR HIRE, ARTICLE II WRECKERS AND SUBSTITUTING THEREFOR A NEW CHAPTER 122 VEHICLES FOR HIRE, ARTICLE II WRECKERS; SETTING FORTH REGULATIONS FOR TOWING OF VEHICLES INCLUDING INCIDENT MANAGEMENT TOWS WITHIN THE CITY; PROVIDING A PENALTY AND PROVIDING FOR SEVERABILITY.

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WHEREAS, City Council of the City of Cleveland, Texas (“City”) regulates certain aspects of towing that occurs within its jurisdiction; and

WHEREAS, the City now desires to make certain changes to the way in which it regulates both consent and nonconsent tows, how it maintains and manages tow rotation lists, and to generally update and optimize the way same is regulated to better ensure the health, safety and welfare of the general public; now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEVELAND, TEXAS:

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. That Chapter 122. Vehicles for Hire, Article II. Wreckers is hereby deleted and a new Chapter 122. Vehicles for Hire, Article II. Wreckers is substituted to read in its entirety as set forth below:

CHAPTER 122 VEHICLES FOR HIRE

. . . .

ARTICLE II. TOW TRUCKS

Section 122-116. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

“City” means the City of Cleveland, Texas.

“City Chief of Police,” or “Police Chief” means the Chief of the Police Department for the City.

“Consent tow” means any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include an incident management tow or a private property tow.

“Incident management tow” means any tow of a vehicle in which the tow truck is summoned to the scene of a traffic collision or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from a collision or incident scene.

“Nonconsent tow” means any tow of a motor vehicle that is not a consent tow, including:

- (A) an incident management tow; and
- (B) a private property tow

“Private property tow” means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

“TDLR” means the Texas Department of Licensing and Regulation, or such successor agency as may be applicable.

“Towing company” means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this State but does not include a political subdivision of the State.

“Towing operator” means the person to whom is to be issued a towing operator license under State law and/or this Article as applicable.

“Tow truck” means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

- (A) a motor vehicle owned and operated by a governmental entity, including a public school district;
- (B) a motor vehicle towing:
 - (i) a race car;
 - (ii) a motor vehicle for exhibition; or
 - (iii) an antique motor vehicle;
- (C) a recreational vehicle towing another vehicle;
- (D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;
- (E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle;
- (F) a motor vehicle that:

- (i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and
 - (ii) only tows vehicles rented by the entity;
- (G) a truck-trailer combination that is owned or operated by a dealer licensed under Chapter 2301 Texas Occupations Code and used to transport new vehicles during the normal course of a documented transaction in which the dealer is a party and ownership or the right of possession of the transported vehicle is conveyed or transferred; or
- (H) a car hauler that is used solely to transport, other than in a consent or nonconsent tow, motor vehicles as cargo:
- (i) in the course of:
 - (a) a prearranged shipping transaction; or
 - (b) a commercial transaction for transport of a damaged vehicle arranged or authorized by an insurance company and delivered to a salvage pool operator as defined by Section 2302.001; or
 - (ii) for use in mining, drilling, or construction operations.

“Vehicle owner” means a person:

- (A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;
- (B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person’s immediate family;
- (C) who holds the vehicle through a lease agreement;
- (D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or
- (E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

“Vehicle storage facility” means a vehicle storage facility, as defined by Section 2303.002 Texas Occupations Code, that is operated by a person who holds a license issued under Chapter 2303 to operate the facility.

Section 112-117. Permits and Licenses.

(A) *Permits for Tow Trucks.*

1. City permit for tow trucks used for nonconsent tows. Each tow truck used for nonconsent tows including both incident management tows

and private property tows occurring within the City must have a valid City permit associated with it issued in the name of the towing company operating the tow truck at the time of the tow. Such permit shall be good for one calendar year and renewable annually.

2. City permit for tow trucks used for consent tows. Tow trucks used only for consent tows occurring within the City and which have a place a business located within the City must have a valid City permit associated with it in the name of the towing company operating the tow truck. Tow trucks which are permitted for nonconsent tows in the City do not also need a permit for consent tows in the City. Such permit required hereunder shall be good for one calendar year and renewable annually.

(B) City license for a person operating a tow truck. A person operating a tow truck for nonconsent tows in the City must have a valid City license.

(C) Nontransferable. All permits and licenses required herein are nontransferable.

(D) Modification. If there is a change of information on an issued permit or license herein, applicant has the obligation to advise City of same and to update the permit or license by making application therefor, or by cancelling such permit or license as the case may be.

(E) Application requirements.

1. Application for Permits for Tow Trucks for All Nonconsent and Certain Consent Tows.

The towing company for a tow truck used for all nonconsent tows and for certain consent tows as set forth above must make application for a City permit for the tow truck in the towing company's name. The application must contain the following information:

- (a) The name, address, contact number, email and website (if applicable) of the towing company.
- (b) The make, model, VIN number and correct state license number of each tow truck for which applicant is applying for a permit.
- (c) The legal owner of each tow truck if not owned by the applicant, including the name, address, contact number, email and website (if

applicable) of the legal owner. If the tow truck is operated under the terms of a contract with some other towing company, a copy of the contract shall also be attached.

- (d) A statement that the applicant will obey the provisions of this Article, and, that upon failure to do so, that applicant understands its permit(s) may be revoked by the Chief of Police following investigation, notice and hearing.
- (e) The location of the vehicle storage facility used by applicant for towing services subject to the provisions of this Article. A copy of the TDLR State issued Tow License that the vehicle storage facility is enclosed, lighted or guarded in such manner as to provide a secure premise for the storage of the towed vehicle, damaged, inoperative or abandoned vehicle, and provide proof of coverage insurance for such vehicle storage facility that meets all applicable legal requirements.
- (f) Proof of insurance coverage that meets or exceeds State requirements for tow trucks and operation of same including insurance requirements promulgated by TDLR.
- (g) The application shall state the names, driver's license numbers, addresses and telephone numbers of those persons who will operate the applicant's tow trucks as well as providing the same information with respect to those who will have access and/or operate the vehicle storage facility used by the applicant.
- (h) A statement of applicant's fees for towing and storage, and applicant's agreement to stay in compliance with the maximum fee set forth in its application, this Article and in accordance with applicable State law, rules and regulations.

2. Application for License for Person Operating a Tow Truck for Nonconsent Tows. A person required to have a license for operating a tow truck for nonconsent tows must make application for a license with the City. This application must include the following:

- (a) Applicant's full name, address, cell phone number and email address;
- (b) Applicant's driver's or commercial driver's license;
- (c) Applicant's TDLR Tow License;
- (d) Which towing company applicant is with; and
- (e) Any other information reasonably determined to be relevant by the City.

- (F) Inspection of tow truck. The Chief of the Police or their duly authorized designee may inspect each tow truck to be operated within the corporate limits of the City subject to these permit requirements and determine whether the tow truck complies with applicable law, including the provisions of this Article and Chapter 2308 Texas Occupations Code and related rules and regulations before being issued a City Permit.
- (G) Permits to be Displayed. In addition to meeting all State licensing and permitting requirements, a valid City permit issued to a tow truck must be displayed on the tow truck when in operation whenever a valid City permit is required under this Article.
- (H) Fees for City Permits and Licenses. A fee must be paid for each tow truck permitted and for each license issued to a tow truck driver and any renewals for either pursuant to the terms of this Section before becoming valid.

The fees charged shall be pursuant to a Resolution or Ordinance duly adopted by the City Council. If a permit or license is granted under the provisions of this Article subsequent to January 1 in any year, the fee shall be paid pro rata for the balance of the year, and any portion of a month shall be considered as an entire month in calculating the fee to be charged. In the event there is a lapse or revocation of a permit or license issued hereunder the fee charged shall be the same as for the initial permit or license.

Section 112-118. Maximum Fees Charged by Tow Company for Nonconsent Tows.

- (A) Incident Management Tows. The maximum fee for incident management tows shall be the same as that of Liberty County as same may from time to time be amended. In the event Liberty County does not have a fee established for the service provided, the maximum fee allowed shall be that as established by the TDLR for private property tows.
Such fee shall be considered all-inclusive and there shall be no other fees allowed unless authorized in writing by a certified police officer with the City when due to the nature of the tow, additional extraordinary costs may be incurred by the towing company. This may include charges related to hazardous cleanup or other situations where additional time and/or equipment is needed. When the City police officer determines such additional fee is warranted, the amount of such additional fee citing the reasons therefor shall be approved in writing by such officer, and there shall be no additional charge.
- (B) Private Property Tows. The fees for private property tows shall be in accordance with applicable State law and regulations.

Section 112-119. General Tow Truck Requirements.

- (A) TDLR Requirements. The operation of all tow trucks shall meet all TDLR requirements, and the provisions of this Article.
- (B) Tow to Vehicle Storage Facility. All consent and nonconsent tows if not towed to a location designated by the vehicle owner shall be taken to a vehicle storage facility and in accordance with applicable State law.
- (C) Response to Incident Management Tow. No tow truck company shall drive, or cause to be driven, a tow truck to or near the scene of an incident management tow on a public street or right of way or otherwise impede with an incident management tow within the City unless such towing company has been called to the scene by the City.
- (D) Solicitation. No towing company shall solicit in any manner, directly or indirectly, a person owning/operating any vehicle which is involved in an incident on a public street. This prohibition applies regardless of whether the solicitation is for the purpose of soliciting the business of towing, repairing, selling, or purchasing such vehicle.
- (E) Location. Only those towing companies located in the City shall be considered to be placed on the City rotation list. Further, location of the vehicle storage facility to which incident management tows are towed must be within the City or reasonably close in the judgment of the City.
- (F) Contract. Those selected to be on the tow rotation list must enter into an agreement with the City setting forth additional terms and conditions. The procurement of tow truck services shall be in accordance with applicable law and policy for the City as a Texas home rule City. The number of companies selected to be on the rotation list shall be determined by the City and shall be based upon the recommendation of the Chief of Police taking into consideration the level of service needed to ensure the safety of the general public.

Section 112-120. Tow Rotation List

- (A) Qualifications. The City shall establish and maintain a tow rotation list. Each towing company is required to complete any and all applications and provide required information necessary to apply for the tow rotation list. To be eligible for the rotation list, each towing company is required to comply with all of the following requirements: To qualify, a towing company must maintain a 24-hour tow service; have one telephone number which is answered 24 hours a day, seven days a week; and use a licensed vehicle storage facility that meets or exceeds the Texas Accessibility Standards ("TAS") accessibility criteria, approved by the United States Department of Justice. To be eligible to be placed on the tow rotation list, a towing company shall certify in writing that the vehicle storage facility to which it will tow vehicles unless requested otherwise by the owner of the vehicle as allowed under applicable law is located within the City. Only those tow trucks permitted in

the name of the towing company are permitted to respond to incident management rotation calls. Each towing company will maintain its own office within the City limits. A towing company may not substitute a tow truck from a different towing company or utilize drivers employed by another towing company that is on the City rotation list to respond to an incident management call. Each towing company is required to maintain a minimum of two light-duty tow trucks with only one of the two tow trucks being a rollback/car carrier design. All conventional tow trucks must be equipped with hydraulic recovery boom and wheel lifts.

Once determined to be qualified and if selected to perform incident management tows for the City, the tow company must enter into a contract with the City and agree to perform such services in accordance with applicable law and with the terms of such contract.

- (B) *Drivers.* Each towing company must submit and maintain a list of operator/drivers, a minimum of two operator/drivers must be maintained to be eligible to be on rotation, which will be operating the tow trucks included on the tow company's license along with their address, phone number, Texas driver's license number, TDLR tow license and a criminal background check for each driver. Drug related offenses, theft or crimes of morale turpitude can be grounds for denial. Each driver must possess a TDLR incident management license and submit to the City a copy of the license.
- (C) *Permit.* Each tow company requesting placement on the tow rotation list must possess a tow truck license issued by the State of Texas that lists each tow truck operated by that towing company. If selected, the tow company must procure and maintain a City permit(s) as required by this Article.
- (D) *Forfeiture of calls.* Failure of any tow truck to check in route, by radio or phone, to the designated location within ten minutes of dispatch making contact with the listed phone number of the towing company or arriving at the designated location dispatched by the City within 20 minutes of being called will result in the forfeiture of that call and shall be considered a violation of this Article. Three such forfeitures within 12 months will result in removal from the rotation list.
- (E) *Temporary removal from list.* Should a towing company wish to be removed from the tow rotation list for a specific period of time not to exceed ninety (90) days, the towing company shall notify the Chief of Police or their designee in writing or e-mail if the time off requested is 24 hours or longer, and must receive confirmation of receipt by the Chief of Police or their designee of same. It shall be the tow company's responsibility to make a request in writing or e-mail when the tow company wishes to return to the tow rotation list unless it is not eligible to be

returned to the tow rotation list pursuant to applicable law and/or the terms of the contract.

- (F) Unneeded calls. If a towing company is called to respond to a scene by a City police officer and subsequently is not needed, that towing company will be placed as "next in line" on the tow rotation list. If a tow truck responds and performs minor service that enables the vehicle to be driven, and for which no fee is charged, that towing company will be placed as "next in line" on the tow rotation list.
- (G) Method of receiving payment. Each qualified towing company must be able to accept cash and actual or virtual credit/debit card payments for services rendered.

Section 112-121. Other Impoundment by City.

In addition to incident management tows, any police officer investigating an accident or offense within the City may order the towing and impoundment of any vehicle involved therein when, in the judgment of such officer, criminal prosecution may be involved as a result of such event, or when it is necessary to impound such vehicle to secure evidence, or when the owner or occupant of the vehicle is unable or fails to have such vehicle removed, or when the vehicle is stopped for a traffic violation, to effect an arrest, or is involved in an accident regardless of location of the vehicle. The fees to be charged for such tows will not exceed the maximum rates allowed under this Article or State law for nonconsent tows.

Section 112-122. Sanctions including Revocation of Permit or License.

In addition to the criminal penalties imposed for violations of State law or this Article, any tow company on the tow rotation list that violates this Article or State law or otherwise unreasonably jeopardizes the health, safety and welfare of the general public or City staff in the performance of same may be subject to sanctions by the Chief of Police or designee, depending upon the nature of the act, omission, negligence, infraction, number of occurrences, and other relevant matters. The sanctions shall range from written notification of violation with warning to, and including, removal from the tow rotation list.

Sec. 112-123. Appeal of Sanctions.

1. How to Appeal. An individual who has been issued a sanction may appeal the Chief of Police's or designee's written decision by submitting a written request to the City Manager no later than the tenth (10th) day after the effective date of the decision. The individual must include a statement of the grounds for the appeal. The City Manager shall schedule a hearing no later than the fifteenth (15th) day after receipt of the notice of appeal. The City Manager shall give notice of the time and place set for the hearing to the Chief of Police and the appellant not less than five (5) days before the hearing.

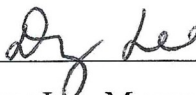
2. Hearing Process. At the appeal hearing the Chief of Police and the appellant may present evidence, testimony, and argument. The City Manager's written decision is final.”

Section 3. Repeal. Any ordinance or any part of an ordinance in conflict herewith shall be and is hereby repealed but only to the extent of such conflict.

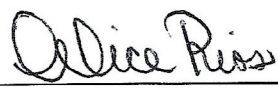
Section 4. Penalty. Except where expressly provided for otherwise, any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding Two Thousand Dollars (\$2,000.00) if the violation relates to fire safety, zoning, or public health and sanitation other than dumping of refuse; an amount not exceeding Four Thousand Dollars (\$4,000) for the dumping of refuse; otherwise, the fine shall be in an amount not exceeding Five Hundred Dollars (\$500.00). Each calendar day any violation of this Ordinance continues shall constitute a separate offense. The City of Cleveland retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 5. Severability. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Cleveland, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

PASSED, APPROVED and ADOPTED on this 19th day of September, 2023.



Danny Lee, Mayor



Alice Rios, City Secretary