

ORDINANCE NO. 20060608-019

#19 Rev.
6-8-06

AN ORDINANCE AMENDING CHAPTER 13-6 OF THE CITY CODE RELATING TO TOWING OF VEHICLES; AMENDING ORDINANCE NO. 010308-59 RELATING TO NONCONSENT TOWING FEES; AND AMENDING ORDINANCE NO. 20050912-004 RELATING TO WRECKER PERMIT FEES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 13-6 of the City Code is amended to read:

CHAPTER 13-6. VEHICLE TOWING SERVICES.

ARTICLE 1. GENERAL PROVISIONS.

§ 13-6-1 ADMINISTRATION.

(A) The police chief shall administer and enforce this chapter.

(B) The police chief shall adopt rules for the administration and enforcement of this chapter. The rules must be reasonably designed to promote public health and safety and ensure that:

- (1) towing companies and tow truck drivers are able to perform their responsibilities under this chapter and carry adequate liability insurance;
- (2) the police chief is able to determine the correct identity and qualifications of individuals licensed under this chapter;
- (3) towing companies responding to the scene of an accident respond reasonably promptly;
- (4) tow trucks responding to an accident scene have the appropriate capabilities to deal with damaged vehicles at the scene; and
- (5) tow trucks are operated in a safe and efficient manner.

§ 13-6-2 COMPLIANCE REQUIRED.

(A) A person commits an offense if the person:

- (1) performs an act prohibited by this chapter;[or]

(2) fails to perform an act required by this chapter; or

(3) violates a rule adopted under this chapter.

(B) A violation of this chapter is a Class C misdemeanor.

(C)~~(B)~~ Proof of a mental state is not required for the prosecution of a violation of this chapter.

(D)~~(C)~~ An exception to an offense under this chapter may be used as an affirmative defense.

§ 13-6-3 GOVERNMENTAL ENTITIES EXCLUDED.

This chapter does not apply to towing that is performed by a governmental entity.

§ 13-6-4 DEFINITIONS.

In this chapter:

(1) **CONSENT TOW** means a tow of a motor vehicle initiated 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 a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

(2) **DEPARTMENT** means the Police Department.

(3) **MANUFACTURER'S CERTIFICATE** means a plate permanently affixed to either a truck or towing equipment by the manufacturer which states the truck or equipment's gross poundage capacity.

(4) **NON-CONSENT TOW** means a tow that is not a consent tow

~~[(5) **RUSH HOUR** means between the hours of 6:00 a.m. and 9:00 a.m. and 4:00 p.m. and 7:00 p.m., Monday through Friday, excluding a legal holiday.]~~

(5) ~~[(6)]~~ **TOW TRUCK** means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle.

(6) [(7)] TOWING COMPANY means a person operating a tow truck registered under Chapter 643 (*Motor Carrier Registration*) of the Texas Transportation Code and includes the owner, operator, employee, or agent of a towing company, but does not include a political subdivision of the state.

(7) [(8)] VEHICLE STORAGE FACILITY means a garage, parking lot, or other facility that is owned by a person other than a governmental entity, and is used to store or park at least 10 vehicles each year. ~~[has the meaning prescribed by Section 2303.002 (*Definitions*) of the Texas Occupations Code.]~~

§ 13-6-5 FEES.

The council shall establish a fee required or authorized under this chapter by separate ordinance.

§ 13-6-6 PROHIBITED CHARGES FOR NON-CONSENT TOWS.

A person may not charge or attempt to charge a fee related to non-consent towing under this chapter:

- (1) in excess of the fee established by ordinance;
- (2) for a service not performed or equipment not used; or
- (3) that is not authorized by ordinance.

§ 13-6-7 COMPLIANCE WITH STATE LAW.

- (A) A towing company shall comply with all applicable state laws related to towing.
- (B) A towing company that violates a state law related to towing commits an offense under this chapter.

§ 13-6-8 RULES.

The police chief shall prescribe rules necessary to administer this chapter, under the procedure prescribed in Chapter 1-2.

ARTICLE 2. OPERATOR'S LICENSE FOR NON-CONSENT TOWS.

§ 13-6-21 LICENSE REQUIRED FOR NON-CONSENT TOWS.

- (A) Except as provided by Section 13-6-22 (*Operation While First Application Pending*), a person may not perform non-consent tows in the city without a tow truck operator's license issued under this article.
- (B) A tow truck operator licensed under this article must wear the operator's license while performing a non-consent ~~[operating a]~~ tow ~~[truck]~~.
- ~~[(C) A peace officer may stop a tow truck to determine whether the operator has an operator's license. The operator of the tow truck shall display the license to the officer on request.]~~

§ 13-6-22 OPERATION WHILE FIRST APPLICATION PENDING.

- (A) An applicant whose first application for a tow truck operator's license under this article is pending may:
 - (1) perform non-consent tows in the city if the applicant has a valid tow truck operator's license issued by another city; or
 - (2) accompany and assist a tow truck operator licensed under this chapter.
- (B) A person whose application is denied may not continue to perform nonconsent tows or provide assistance under this section.

§ 13-6-23 APPLICATION FOR LICENSE.

- (A) An applicant for a tow truck operator's license must file an application with the police chief on a form prescribed by the chief and signed by the applicant and the sponsoring towing company.
- (B) An application must include all information required by rule adopted under this chapter.~~[:~~
 - ~~(1) the applicant's name, address, and date of birth;~~

~~(2) the applicant's Texas driver's license number and a copy of the applicant's driver's license;~~

~~(3) the name, address, and telephone number of the applicant's employer, if applicable;~~

~~(4) information about the applicant's criminal history; and~~

~~(5) other information required by the police chief.]~~

(C) An applicant must submit the prescribed fee with the application. The fee is non-refundable.

§ 13-6-24 LICENSE TERM AND RENEWAL.

(A) Unless revoked or suspended, a tow truck operator's license expires two years after the date of issuance.

(B) To obtain a renewal license, a license holder must complete a new application and pay the prescribed non-refundable fee.

§ 13-6-25 DUPLICATE LICENSE.

(A) A license holder may obtain a duplicate tow truck operator's license to replace a lost or destroyed license.

(B) The license holder must pay the required fee.

§ 13-6-26 CHANGE IN APPLICATION INFORMATION; EMPLOYMENT STATUS.

A license holder shall notify the police chief not later than the 30th ~~[10th]~~ day after:

(1) a material change in the license holder's application information; or

(2) ~~[a change in]~~ the license holder's employment ~~[status]~~ by a particular towing company ends.

§ 13-6-27 APPLICATION AFTER REVOCATION OR DENIAL.

A person whose tow truck operator's license is revoked, or whose application for a license is denied, may not reapply for a license before six months after the date of revocation.

ARTICLE 3. TOW TRUCK REGULATIONS.

Division 1. General Requirements.

§ 13-6-41 EQUIPMENT REQUIRED.

- (A) A person may not operate a tow truck in the city unless the tow truck is equipped as required by state law and this chapter and meets the requirements of a Category A, ~~or~~ Category B, or Category C tow truck.
- (B) A towing company shall maintain a tow truck and its required equipment in a safe operating condition at all times that the tow truck is operating on a public roadway.

§ 13-6-42 CATEGORY A, B, AND C TOW TRUCK REQUIREMENTS.

- ~~[(A) Except as provided by Subsection (E), a]~~ A tow truck must meet the requirements as provided in rules prescribed for tow trucks [of this section] to be classified as a Category A, Category B, or Category C tow truck.
- ~~[(B) A tow truck must be not less than one ton gross vehicle weight in size and be equipped with booster brakes with a 9,000 pounds gross vehicle weight rating as reflected on the manufacturer's certificate.~~
- ~~[(C) A tow truck must be equipped with a winch that has a winch line and boom with a lifting capacity of not less than 8,000 pounds single line capacity and a wheel lift, under reach unit with a lifting capacity of not less than 3,000 pounds lifting capacity as rated on the manufacturer's certificate.~~
- ~~[(D) Except as provided in Subsection (E), a tow truck must carry as standard equipment:~~
 - (1) ~~a tow bar/sling;~~
 - (2) ~~self loading or pop up tow dollies;~~
 - (3) ~~hookup/J hook chains 5/16 inch Hi tensile steel;~~

- ~~(4) one 10 pound or two 5 pound B.C. grade fire extinguishers;~~
- ~~(5) a wrecking bar at least 36 inches long;~~
- ~~(6) a push broom;~~
- ~~(7) a flat shovel;~~
- ~~(8) three flares, three red emergency reflectors, or three orange traffic cones;~~
- ~~(9) overhead rotating or flashing warning lights, in the color prescribed by state law, that are attached to the tow truck at all times;~~
- ~~(10) two safety chains at least 5/16 inch Hi tensile steel; and~~
- ~~(11) tow lights.~~

~~(E) A slide truck or car carrier is not required to have a boom sling, tow bar, wheel lift, tow lights, an under reach unit, or dollies.~~

~~§ 13-6-43 CATEGORY B TOW TRUCK.~~

- ~~(A) A tow truck must meet the requirements of this section to be classified as a Category B tow truck.~~
- ~~(B) The tow truck must meet the requirements for a Category A tow truck except that the safety chains must be at least 3/8 Hi tensile steel, and self loading or pop up tow dollies are not required.~~
- ~~(C) The tow truck must have not less than 20,000 pounds gross vehicle weight rating and be equipped with tandem axles, air brakes, and a wheel lift underreach unit with a minimum lifting capacity of 12,000 pounds as reflected on the manufacturer's certificate.~~
- ~~(D) The tow truck must be equipped with a power operated winch, winch line and boom with a factory rated lifting capacity of not less than 35,000 pounds, single or double line capacity.]~~

§ 13-6-44 REQUIRED MARKINGS.

~~[(A)]~~ A certificate holder shall display on the tow truck the markings required by law, and by rules adopted under this chapter. ~~[tow company's name, address or the name of the city where located, and the telephone number of the business operating the tow truck.]~~

~~(B) The markings required by this section must be:~~

- ~~(1) permanently inscribed on each side of the truck;~~
- ~~(2) in letters no less than two inches high; and~~
- ~~(3) in colors that contrast with the color of the truck.]~~

§ 13-6-45 TOW TRUCK INSPECTION.

A peace officer may stop and inspect a tow truck to determine whether the tow truck is equipped as required by this article and whether the equipment is in working order.

Division 2. Registration. ~~[Certification.]~~

§ 13-6-51 REGISTRATION ~~[CERTIFICATION]~~ REQUIRED.

- (A) Except as provided by Subsection (B), a person may not operate or permit another person to operate a tow truck on a public roadway in the city unless the person obtains a registration certificate for the vehicle under this article.
- (B) A towing company that is registered with the State of Texas and whose primary place of business is located outside the city may use a ~~[an-uncertified]~~ tow truck that is not registered with the city to make a consent tow in the city.

§ 13-6-52 APPLICATION FOR REGISTRATION CERTIFICATE ~~[CERTIFICATION]~~.

- (A) An applicant for a tow truck registration certificate must:
 - (1) file an application with the police chief on a form prescribed by the chief; and
 - (2) submit the required, non-refundable, fee.

~~[(B) An application must include for each tow truck proposed to be certified:~~

- ~~(1) a copy of the registration or lease to show that the tow truck is owned or leased by the towing company, and is used solely by the towing company;~~
- ~~(2) the manufacturer's certificate for the tow truck or a statement from a dealership providing information on the same make of vehicle to allow the rating of the vehicle;~~
- ~~(3) documentation that the vehicle is insured in compliance with state law;~~
- ~~(4) a certification from the appropriate taxing authority that all City taxes on all properties, real and personal, to be used in conjunction with the applicant's towing business are current; and~~
- ~~(5) the required fee.]~~

~~(B) [(C)] To receive a registration certificate [be certified] a vehicle must pass an inspection by the department.~~

§ 13-6-53 REGISTRATION CERTIFICATE TERM AND REAPPLICATION
[RENEWAL].

- (A) A tow [Unless it is revoked, a] truck registration certificate [certification] remains in effect for one year from the date of issuance unless it is revoked [expires on March 31 each year]. The police chief shall establish a staggered schedule for inspections.
- (B) If a registration certificate is revoked, [To apply for a re-certification,] an applicant requesting re-registration must file a new [renewal] application and pay the required non-refundable fee. The vehicle must pass a new inspection by the department.

§ 13-6-54 CERTIFICATE DISPLAY REQUIRED.

~~A certificate holder shall affix the certificate to the lower left side of the tow truck's windshield.~~

~~§ 13-6-55 DUPLICATE CERTIFICATE.~~

~~(A) A certificate holder may obtain a duplicate certificate to replace a certificate that is lost or destroyed.~~

~~(B) To obtain a duplicate certificate, the certificate holder must pay the required fee, and the truck must be re-inspected by the department.~~

~~§ 13-6-56 RECERTIFICATION.~~

~~A person may apply for re-certification of a tow truck for which the certification is revoked once the tow truck meets the requirements of state law and this chapter.]~~

ARTICLE 4. TOWING SERVICE REGULATIONS.

§ 13-6-71 PEACE OFFICER NOT TO INFLUENCE SELECTION OF TOWING BUSINESS.

A peace officer may not recommend a particular towing company to a person or influence, or attempt to influence, a person's selection of a towing business, auto repair shop, or automobile dealer.

§ 13-6-72 MINIMUM EQUIPMENT REQUIREMENTS.

(A) Except as provided by Subsection (B), a towing company must have at least one registered [eertified] Category A, [or] one registered [eertified] Category B, or one registered Category C tow truck to tow a vehicle.

(B) A towing company must own or have a contract for the use of a vehicle storage facility and have at least one registered [eertified] Category A tow truck to tow a vehicle that is parked illegally in a private parking facility.

§ 13-6-73 SOLICITING TOWING BUSINESS ON CITY STREETS RESTRICTED.

(A) Except as provided by Subsection (B), a towing company may not solicit business from a City street to provide towing service to a vehicle disabled in an accident on a City street. This prohibition applies to a solicitation to tow, remove, repair, wreck, store, trade, sell, or purchase the vehicle.

(B) A towing company participating in [on] the traffic incident management program [rush-hour rotation list] that is operating within an assigned [rush-hour] zone may solicit towing business from the owner or operator of a

disabled vehicle that is removed during the time authorized for that zone [~~rush-hour~~], unless the owner or operator has made a designation under Section 13-6-101 (*Driver Designated Towing Company*).

§ 13-6-74 NOTIFICATION OF VEHICLE REMOVAL.

(A) A towing company that removes a vehicle in accordance with Chapter 684 (*Removal of Unauthorized Vehicles from Parking Facility or Public Roadway*) of the Texas Transportation Code or in executing a repossession shall notify the department not later than one hour after the removal.

(B) The notification must include:

- (1) the name of the towing company;
- (2) the date, time, and location of the removal;
- (3) the physical description, license number and vehicle identification number of the vehicle removed;
- (4) the name of the tow truck operator who performed the removal; and
- (5) the storage location of the vehicle.

§ 13-6-75 TOWING RESTRICTED.

(A) Except as provided in subsection (B), a [A] towing company that intends to remove a vehicle from a parking facility in accordance with Chapter 684 (*Removal of Unauthorized Vehicles from Parking Facility or Public Roadway*) of the Texas Transportation Code may not tow a vehicle [under this chapter] when the vehicle owner objects to the tow, [or] tenders payment of a fee authorized in Section 13-6-76 (*Towing Fee Schedule*) and removes the vehicle within 30 minutes.

(B) If a towing company is authorized to remove a vehicle from a parking facility, it may remove the vehicle earlier than 30 minutes after the vehicle owner objects to the tow if the vehicle:

- (1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;
- (2) prevents a vehicle from exiting a parking space in the facility; or

(3) is in or obstructs a properly marked fire lane.

§ 13-6-76 TOWING FEE SCHEDULE.

(A) In this section, [÷]

~~[(1)] FULLY PREPARED FOR TRANSPORT describes a vehicle that is attached to a tow truck, is lifted, with tow lights and safety chains attached and, if required, is placed on a dolly in a raised position.~~

~~[(2) ON SITE describes a tow truck that is backed up to a vehicle to be removed that is not yet fully prepared for transport.]~~

(B) This section applies to a towing company that intends to remove a vehicle from a parking facility in accordance with Chapter 684 (*Removal of Unauthorized Vehicles from Parking Facility or Public Roadway*) of the Texas Transportation Code. This section does not apply to a repossession. ~~[A towing company may charge a towing fee only as provided in this section.]~~ A towing company may not charge more than one fee under this section for towing a single vehicle.

(C) ~~[A towing company may charge an on-site fee when:~~

~~(1) the owner objects to the tow, [or] tenders payment, and removes the vehicle from the location; and~~

~~(2) the vehicle has not been fully prepared for transport.]~~

~~[(D)]~~ A towing company may charge a fully prepared for transport fee when a vehicle has been fully prepared for transport but has not been removed from the property.

(D) [(E)] A towing company may charge the standard non-consent fee when it removes a vehicle from the property ~~[, but may not also charge an on-site fee or a fully prepared for transport fee].~~

§ 13-6-77 VEHICLE STORAGE FACILITY REQUIRED.

A towing company shall own or have a contract to use a designated vehicle storage facility to store vehicles removed in a non-consent tow that is:

(1) licensed by the State of Texas; and

- (2) located within 5,000 feet of the full or limited purpose annexation areas of the City.

§ 13-6-78 REMOVAL TO DESIGNATED FACILITY [~~LOCATION~~].

- (A) [~~A towing company that removes a vehicle from a property shall tow the vehicle to a location designated by the owner.~~

- (B) [~~When an owner does not designate a removal location, the]~~ Except as provided in Subsection (B), a towing company that performs a non-consent tow of a vehicle from private property:

- (1) shall immediately [may] tow the vehicle to the towing company's designated vehicle storage facility; and

- (2) may not unload the towed vehicle at a place other than the company's designated vehicle storage facility.

- (B) A towing company that performs a non-consent tow of a vehicle from private property may unload a vehicle at a place other than its vehicle storage facility only:

- (1) if safety reasons or mechanical breakdown require the transfer of the vehicle to another tow truck; or

- (2) to transfer the vehicle to another tow truck, within 100 feet of the private property, if the original tow truck is the company's only available truck that is capable of entering the property and removing a vehicle, and the original truck is needed immediately for additional towing from the private property.

§ 13-6-79 RELEASE OF VEHICLE FROM STORAGE, IMPOUNDMENT.

- (A) A vehicle storage facility [~~towing company~~] may not refuse to release a vehicle in its possession to the vehicle owner, or the owner's agent, after the person pays the applicable [~~towing~~] fees, unless a law enforcement agency directed that the vehicle not be released [~~the storage was directed by a law enforcement agency~~] or release of the vehicle is prohibited by a court order.

- (B) A person may not remove or attempt to remove a vehicle that is lawfully stored by a vehicle storage facility [~~towing company~~] unless the applicable charges are paid and accepted, or the person removing the vehicle has obtained permission from the vehicle storage facility [~~towing company~~].

- (C) A towing company must release a vehicle when a peace officer directs the towing company to release the vehicle.

§ 13-6-80 ~~[CASH]~~ PAYMENT.

- (A) A person who pays a towing fee in cash or who tenders payment in cash meets the payment requirements under this chapter in all circumstances.
- (B) A towing company shall provide a vehicle owner the option of paying the towing fee by cash or a major credit card.

ARTICLE 5. ACCIDENT SCENE TOWING.

Division 1. General Provisions.

§ 13-6-91 ACCIDENT SCENE ACCESS RESTRICTED.

Except as provided under this chapter, a towing company may not enter an accident scene or other site under a peace officer's control without the officer's permission. In this article, the term "accident scene" includes a scene of a disabled vehicle.

§ 13-6-92 ~~[DRIVING TOW TRUCK TO SCENE OF AN]~~ ACCIDENT SCENE REQUIREMENTS.

- (A) Except as provided in rules prescribed for the traffic incident management program ~~[rush-hour rotation]~~, a person may not drive, or cause another person to drive, a tow truck to an accident scene on a City street unless:
- (1) the person is summoned to the scene by a peace officer or by a person involved in the accident; or
 - (2) it is necessary to prevent death or bodily injury, and emergency medical personnel are not present.
- (B) A towing company that is summoned to an accident scene by a person involved in an accident shall:
- (1) immediately notify the department that the towing company is responding to the accident scene; and

- (2) obtain the person's signature and information on a form provided by the police chief, if the person is present and willing to sign.
- (C) A towing company stopping to protect an accident scene may not tow a vehicle from the accident scene unless it is a non-consent tow rotation or a traffic incident management program ~~[rush-hour rotation]~~ call.
- (D) A towing company that is summoned to an accident scene by a peace officer or a person involved in the accident shall comply with the rules adopted by the police chief.[:
- ~~(1) arrive at the accident scene no later than 45 minutes after it receives notice from the department, or by the deadline established by a rule adopted by the police chief;~~
 - ~~(2) if required by a peace officer, transport a disabled vehicle to a specific location;~~
 - ~~(3) before leaving the site, remove all wreckage and debris except vehicle cargo and hazardous waste; and~~
 - ~~(4) comply with other procedures prescribed by the police chief.]~~
- (E) A towing company that does not deliver a tow truck, of the category specified by a peace officer, to an accident scene by the deadline prescribed by this section or by a rule adopted under this chapter may, in the discretion of a peace officer at the accident scene, forfeit[s] the call for towing service. Regardless of whether the call was forfeited, the towing company may be subject to administrative action related to its continued listing on the non-consent tow rotation list or its continued participation in the traffic incident management program.

§ 13-6-93 ADDITIONAL TRUCK REQUIRED.

- (A) If a tow truck operator responding to an accident scene determines that an additional tow truck is needed, the tow truck operator shall tell the peace officer in charge which second tow truck or towing company to contact.
- (B) The peace officer shall contact the department to summon the tow truck or towing company to the scene.

§ 13-6-94 AUTHORIZATION FOR VEHICLE REMOVAL.

- (A) A tow truck operator summoned to an accident scene may not begin preparations to remove a disabled vehicle from the scene until a [the] peace officer [in-charge] authorizes the removal, except under the traffic incident management program.
- (B) A peace officer may direct that a vehicle be towed to a vehicle storage facility owned or used by the City.

§ 13-6-95 INVENTORY REQUIRED.

~~[(A)]~~ Before a tow truck operator tows a vehicle from an accident scene, the peace officer in charge of the accident scene ~~[tow-truck operator]~~ shall prepare an inventory of property located in the vehicle, on a form provided by the police chief.

~~[(B) The inventory must be verified by the peace officer in charge of the accident scene.]~~

§ 13-6-96 REMOVAL LOCATION.

- (A) The driver of a disabled vehicle may designate the location to which the vehicle is to be towed from the accident scene. A driver may not designate that the vehicle is to be towed to, or left on, a public roadway.
- (B) If the driver fails to designate a location, the towing company shall take the vehicle to its vehicle storage facility for storage.
- (C) If the driver designates that the vehicle be towed to a location other than a vehicle storage location, the driver and the towing company must agree on the payment method for the vehicle removal.
- (D) If the driver does not tender payment in a satisfactory manner, the towing company shall tow the vehicle to its designated vehicle storage facility.

§ 13-6-97 IMPOUNDMENT.

A peace officer may require the removal of a vehicle that is evidence in a criminal offense from an accident scene to a vehicle storage facility.

§ 13-6-98 DRIVEABLE VEHICLE.

This article does not prevent the driver of a vehicle involved in an accident from

designating a responsible licensed driver present at an accident scene to immediately take custody of a driveable vehicle.

Division 2. Driver-Designated [Consent] Towing.

§ 13-6-101 DRIVER-DESIGNATED TOWING COMPANY.

(A) A peace officer at an accident scene who determines that a vehicle needs to be towed from the scene shall:

- (1) request that the driver designate a towing company, automotive repair shop, automobile club, or automobile dealer to remove the vehicle;
- (2) inform the driver that consent towing fees are not regulated; [provide the driver a list of the prescribed towing fees that may be charged; and]
- (3) assist the driver in contacting the designated towing company or other business [person] designated under Subparagraph (1); and
- (4) obtain the driver's signature on a form prescribed by the police chief indicating whether the driver designated a towing service to remove the vehicle.

(B) The peace officer at an accident scene shall inform the driver of a disabled vehicle that the department will contact the next available towing company on the non-consent towing rotation list to remove the vehicle if the driver fails to designate a towing service and that the non-consent towing fee shall be charged.

~~[(C) The peace officer shall obtain the driver's signature on a form prescribed by the police chief indicating whether the driver designated a towing service to remove the vehicle.]~~

§ 13-6-102 DEPARTMENT TO CONTACT DESIGNATED COMPANY.

(A) The peace officer shall communicate the driver's choice of towing service to the department and advise the department of the category of tow truck required at the scene, as prescribed in rules adopted by the police chief.

(B) The department shall contact the designated towing service to remove the vehicle from the scene.

- (C) If the driver's designated towing service does not have a registered ~~[certified]~~ tow truck of the required category available, the peace officer shall request the driver to select another towing service.

§ 13-6-103 DRIVER DESIGNATED TOWING COMPANY TO REMAIN ON ROTATION LIST.

The department may not change the order in which a towing company's name appears on the non-consent towing rotation list based on the company's designation by a driver as a towing service under this division.

Division 3. Non-Consent Tow Rotation Programs ~~[List]~~.

§ 13-6-111 NON-CONSENT TOW ROTATION LISTS ~~[LIST]~~.

- (A) This section does not apply to non-consent tows of disabled vehicles from private property.
- (B) The police chief may establish towing zones in the City, and may assign a towing company to a zone to perform non-consent tows.
- (C) The department shall maintain a rotation list of towing companies that are available to perform non-consent tows from an accident scene, or from the scene of a disabled vehicle. The department shall maintain a separate rotation list for each zone established by the police chief. The department shall use the lists ~~[list]~~ to assign towing companies to perform non-consent tows from an accident scene or the scene of a disabled vehicle.

§ 13-6-112 LIST CATEGORIES.

- ~~[(A)] The department shall assign each tow truck ~~[towing company]~~ on the rotation list to Category A, ~~[or]~~ Category B, or Category C as provided in rules adopted by the police chief.~~
- ~~[(B) To be listed under Category A, a towing company must operate at least two Category A-certified tow trucks, except that a towing company included in Category A before January 1, 2000 may remain under Category A if it operates at least one Category A tow truck.~~
- ~~[(C) To be listed under Category B, a towing company must operate at least one Category B-certified tow truck.]~~

§ 13-6-113 SERVICE REQUIREMENTS.

To be included on the non-consent tow rotation list a towing company must:

- (1) maintain a 24-hour towing service seven days a week;
- (2) be able to immediately advise the police chief of the availability of the company's tow truck; ~~[and]~~
- (3) have two-way voice communications between the company's tow trucks and the company's base station; and
- (4) participate in and comply with the requirements of the traffic incident management program.

§ 13-6-114 USE OF LISTS.

- (A) When a peace officer at an accident scene contacts the department to send a tow truck to the accident scene, the department shall call the towing company whose name appears at the beginning of the non-consent tow rotation list for the category of tow truck required at the scene.
- (B) If the first towing company contacted is unable to send a tow truck, the department shall continue to call towing companies in the order in which they appear on the list until a towing company on the list responds.
- (C) Except as provided by Section 13-6-103 (*Driver Designated Towing Company to Remain on Rotation List*), after the department calls a company whose name appears on the non-consent tow rotation list, the company's name shall be moved to the bottom of the list.

ARTICLE 6. TRAFFIC INCIDENT MANAGEMENT [RUSH-HOUR ROTATION] PROGRAM.

§ 13-6-121 TRAFFIC INCIDENT MANAGEMENT PROGRAM [RUSH-HOUR ZONES].

The police chief may establish a traffic incident management towing program on any major street. The program shall be established by rules adopted as prescribed in Chapter 1-2. The chief may:

- (1) designate one or more zones on a street;

- (2) maintain a list of interested towing companies authorized to remove a disabled vehicle from the right-of-way of a designated street;
- (3) establish operating times and days of the week of the program;
- (4) prescribe qualifications, response times, and procedures for a participating towing company;
- (5) prohibit a towing company from charging for removal of a vehicle from the right-of-way, and authorize a towing company to charge a fee for towing to another authorized location;
- (6) remove a towing company from the list if the company fails to comply with state law, this chapter, or rules adopted under this chapter; and
- (7) impose other requirements the chief determines are necessary for the operation of the program.

~~[The police chief shall designate rush hour zones along IH 35, Loop 1 (MoPac Expressway), U.S. Highway 183, and other arterial streets that the chief determines are streets that carry a high volume of traffic during rush hour.~~

~~§ 13-6-122 RUSH HOUR ROTATION LIST.~~

- ~~(A) The police chief shall maintain a list of towing companies to remove disabled vehicles during rush hour from the right-of-way of a rush hour zone.~~
- ~~(B) Except as provided by this article, a towing company on the rush hour rotation list shall comply with this chapter.]~~

~~§ 13-6-123 VEHICLE REMOVAL.~~

- ~~(A) During rush hour, the department shall call towing companies that appear on the rush hour rotation list to remove vehicles from the right-of-way of a rush hour zone.~~
- ~~(B) A towing company responding to a call under Subsection (A) shall:~~
 - ~~(1) arrive at the scene of the disabled vehicle within the response time prescribed by a rule under this chapter; and~~
 - ~~(2) promptly remove the vehicle to the closest safe and appropriate location near the right-of-way in accordance with the rules.~~

~~§ 13-6-124 RUSH-HOUR TOWING CHARGES.~~

~~(A) A towing company may not impose a charge for removing a vehicle from the right-of-way in a rush-hour zone during rush-hour, if the towing company moves the vehicle to the closest safe and appropriate location near the right-of-way.~~

~~(B) A towing company that tows a vehicle under this article shall charge the nonconsent tow fee if the company tows the vehicle to a vehicle storage facility or other location designated by the driver, the owner of the vehicle, or a peace officer.~~

~~§ 13-6-125 DELETION FROM RUSH-HOUR ROTATION LIST.~~

~~The police chief may delete from the rush-hour rotation list a towing company that fails to comply with state law, this chapter, or rules adopted under this article.]~~

ARTICLE 7. ENFORCEMENT.

§ 13-6-131 DENIAL, SUSPENSION, AND REVOCATION OF LICENSE.

The police chief may deny a person's application for a tow truck operator's license and suspend or revoke a tow truck operator's license issued [granted] under this chapter, as prescribed in rules adopted by the chief. [if the person:

- ~~(1) has a Texas driver's license that is suspended or revoked;~~
- ~~(2) performs a consent or non-consent tow after the person's operator's license is suspended;~~
- ~~(3) is indicted for or convicted of an offense included in guidelines issued by the police chief under Chapter 53 (*Consequences of Criminal Conviction*) of the Texas Occupations Code;~~
- ~~(4) causes or permits the operation of a certified tow truck on the public roadways by an unlicensed driver;~~
- ~~(5) operates an uncertified tow truck on the public roadways;~~
- ~~(6) fails to maintain insurance required by state law for the operation of a towing company or its equipment;~~

~~(7) operates a tow truck in a grossly negligent manner that endangers the life or safety of any person; or~~

~~(8) submits false information on a license application.~~

~~§ 13-6-132 RESTRICTION ON LICENSE SUSPENSION.~~

~~The police chief may suspend a tow truck operator's license for a maximum of:~~

~~(1) 30 days for a first violation of this chapter; and~~

~~(2) 60 days for a second or subsequent violation of this chapter.]~~

§ 13-6-132 [§ 13-6-133] REVOCATION OF TOW TRUCK REGISTRATION CERTIFICATE.

The police chief shall revoke the registration certificate [certification] for a tow truck that fails to meet the requirements of state law, [and] this chapter, or rules adopted under this chapter.

§ 13-6-133 REMOVAL FROM NON-CONSENT TOW ROTATION LIST.

(A) The police chief may remove a tow truck operator from participation in a non-consent rotation list, including a list of the traffic incident management program, if the tow truck operator fails to comply with state law, this chapter, or rules adopted under this chapter.

(B) Except as provided in subsection (C), the police chief may remove a towing company from a non-consent rotation list, including a list of the traffic incident management program, if the company fails to comply with state law, this chapter, or rules adopted under this chapter.

(C) A towing company may be removed from a rotation list based upon a tow truck operator's failure to comply with state law, this chapter, or rules adopted under this chapter only if:

(1) the company directed, encouraged, or solicited a tow truck operator's conduct; or

(2) the company knew or should have known that the operator or other operators have repeatedly engaged in such conduct and has failed to take corrective action within a reasonable time.

§ 13-6-134 NOTICE REQUIRED.

- (A) Before taking adverse action under this article, the police chief shall notify the applicant or holder of the intended action, except that advance notice is not required in actions related to:
- (1) safety hazards;
 - (2) absence of state motor carrier registration; or
 - (3) absence of ownership or contract with licensed vehicle storage facility.
- (B) The police chief shall send the notice by certified mail, return receipt requested to the mailing address listed on the person's application, certificate, or license, as applicable.
- (C) The notice is presumed to have been received on the 10th working day after mailing, unless an earlier date is indicated on the return receipt.
- (D) Except for actions that are authorized to take effect without advance notice, a [A] denial, suspension, [or] revocation, or removal is effective on the 20th day after the notice is mailed.
- (E) If the police chief takes action without advance notice, the police chief shall send a notice to the person or company affected by the action that includes the factual basis for the action.

§ 13-6-135 HEARING.

- (A) The person to whom the notice is sent may request a hearing.
- (B) The request must be in writing and received by the police chief not later than the 15th day after the notice was sent. If the person fails to submit to the police chief a request for hearing not later than the 15th day after the notice is sent, the suspension, revocation or denial of the license or certificate, or the removal from the list or program, becomes final on expiration of the time specified in the notice.
- (C) The police chief shall hold an informal [a] hearing not later than the 15th day after the request for a hearing is received. At the hearing the formal rules of evidence do not apply. The police chief shall decide the appeal on the basis of the preponderance of the evidence presented.

(D) The police chief shall make a determination on the appeal not later than the 10th day after the hearing. The police chief may affirm, reverse, or modify the previous determination.

§ 13-6-136 APPEAL.

- (A) A person may appeal the police chief's decision in writing to the city manager not later than the 10th day after the effective date of the decision. The person must include a statement of the grounds for the appeal.
- (B) The notice of appeal does not stay the police chief's decision.
- (C) The city manager shall schedule a public hearing not later than the 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 police chief and the appellant not less than five days before the hearing.

§ 13-6-137 APPEAL PROCEDURE.

- (A) At an appeal hearing under Section 13-6-136 (*Appeal*), the police chief and the appellant may present evidence, testimony, and argument.
- (B) The city manager's decision is final.

ARTICLE 8. TOWING FEE STUDY.

§ 13-6-141 TOWING FEE STUDY.

- (A) In this section, a "towing fee study" is a study to determine the fair market value of a non-consent tow originating in the City, considering financial information provided to the City by the towing company requesting the study.
- (B) A towing company may request that the City conduct a towing fee study by filing a written request with the city manager by certified mail, return receipt requested, or by hand delivery.
- (C) Within 90 days after the filing of an initial request, additional towing companies may join the request by filing written requests in accordance with Subsection (B).
- (D) The City shall conduct a towing fee study if the initial requestor and the additional requestors, if any:

- (1) accounted for not less than 50 percent of the non-consent tows performed in the City during the preceding twelve month period, as determined by the city manager; and
- (2) deposit with the city manager a fee of \$1,000.
- (E) If the towing fee study is not conducted the City shall refund the fee, less an administrative fee of \$250.
- (F) Each towing company requesting the towing fee study shall cooperate with the City to conduct the study. Each such towing company shall provide to the City information determined by the city manager to be reasonably necessary to determine the fair market value of towing services regulated under this Chapter.
- (G) The City shall complete a towing fee study not later than the 120th day after receiving all information required under Subsection (F).
- (H) The city manager shall present to the city council the results of the towing fee study. The city manager shall give to each towing company that owns or leases tow trucks registered with the city written notice of the time, date, and location of the city council meeting at which the study is to be considered. The notice must be sent by United States regular mail to the towing company's address listed in the latest registration application on file with the police chief.
- (I) Based on the results of the towing fee study, the city council may change the non-consent towing fees. The maximum fees must represent the fair market value of the services of a towing company performing non-consent tows originating in the City.
- (J) The City is not required to conduct more than one towing fee study within a two-year time period, measured from the date the city council most recently considered a towing fee study.

PART 2. Not later than the second anniversary of the effective date of this ordinance and at succeeding two year intervals, regardless of whether a towing company has requested a fee study, the City Manager shall present to the City Council recommendations for adjustments to the fees established by ordinance for non-consent tows.

PART 3. Part 19 of Ordinance number 010308-59 is amended to read:

That there is established the following maximum fee schedule for non-consent [noneconsent] tows by a towing business:

(A) Maximum towing fees:

- (1) Vehicles 10,000 pounds or less: \$ 150.00 [~~\$95.00~~]
- (2) Vehicles in excess of 10,000 pounds, but less than 26,000 pounds: \$ 400.00 [~~\$393.00~~]
- (3) Vehicles in excess of 26,000 pounds: \$ 800.00
- (4) [~~"On Site"~~] fee: _____ \$ 15.00]
- [~~(5)~~] "Fully Prepared for Transport" fee: \$ 50.00 [~~\$ 25.00~~]

(B) The following additional fees may be charged if verified by the peace officer in charge of the accident scene:

- (1) [~~Use of dollies: \$35.00. A dolly fee may not be charged for flatbeds and rollbacks.~~]
- [~~(2)~~] Exceptional labor such as clearing debris: \$35.00 per hour. Exceptional labor does not include normal hook-up procedure or routine cleanup not to exceed 30 minutes, and does not include the disposal of classified hazardous waste or vehicle cargo.
- (2) [~~(3)~~] Winching, one-hour minimum, only if normal hook-up is not possible because of conditions or location of vehicle: \$35.00 per hour.
- (3) [~~(4)~~] Wait time: \$15.00 per hour, if it exceeds 30 minutes from time of arrival at accident scene.
- [~~(5)~~] Use of flatbed: _____ \$ 35.00.]

(C) A towing company may make additional charges under the following schedule for Category C [~~Class B~~] tow trucks:

- (1) Work time (Winching, preparing the vehicle to be towed, and wait time): \$25.00 per 15 minutes.
- (2) Exceptional labor (manpower): \$ 15.00 per hour per man. ~~\$ 80.00~~
- (3) Additional Category C [~~Class B~~] tow truck: [~~\$100.00 per hour.~~]
- (4) Additional specialized equipment: \$300.00 per hour.
- Air bags \$ 75.00 per hour.

Fork lift \$ 75.00 per hour.

Haul trailers \$ 75.00 per hour.

Trailer dollies

(Used to move semi-trailers) \$ 75.00 per hour.

Large slide trucks/rollbacks (3 ton minimum size for hauling vehicles or equipment with gross weight 15,000 pounds or more)

\$200.00 maximum.

Wait time (Category A [~~Class A~~] tow trucks): \$ 20.00 per hour.

- (D) If there is a dispute regarding the appropriate fees, the Chief of Police shall make a determination of the correct charges for the services provided.

PART 4. Ordinance Number 20050912-004, containing the 2005-2006 Fee Schedule for Police Department fees relating to Wrecker Permits, is amended to read:

	Approved	Approved
	<u>2004-05</u>	<u>2005-06</u>
<u>Wrecker Permits</u>		
Wrecker License	\$15.00	\$15.00
{Rotation Listing Fee	\$110.00	\$110.00}
Inspection Fee	\$39.00	<u>\$100.00</u> [\$39.00]
Name/Phone Change	\$22.00	\$22.00
Duplicate Documents	\$11.00	\$11.00
{Late Filing Fee	\$110.00	\$110.00}

PART 5. This ordinance takes effect on June 19, 2006.

PASSED AND APPROVED

<u>June 8</u> , 2006	§ § §	_____
		Will Wynn Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk