

ORDINANCE NO. 4439

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 8 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, AS AMENDED BY DELETING ARTICLE IX IN ITS ENTIRETY AND ADDING A NEW ARTICLE IX THEREBY UPDATING THE REGULATION OF WRECKER BUSINESSES; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED ONE THOUSAND (\$1,000.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council finds that its tow truck ordinance should be changed to create a permitting process for Police Department initiated tows; and

WHEREAS, the City Council finds that the regulations in this ordinance are directly related to ensuring the safety of the community; and

WHEREAS, the City Council finds that requiring towing companies to use vehicle storage facilities in the city limits of Mesquite prevents tows into another jurisdiction, which would create an unsafe situation for the stranded vehicle owner who would be forced to travel long distances to recover the vehicle; and

WHEREAS, the City Council finds that prohibiting issuance of rotation list permits to towing companies that are owned, controlled or influenced by persons who have not completed sentences for felonies or crimes of moral turpitude at least five years furthers the City's interest of (1) protecting police evidence in the possession of towing companies from being tampered with by affiliates of said companies with criminal tendencies, (2) protecting persons retrieving their vehicles from towing companies from theft, dishonesty or other crimes committed by affiliates of said companies with criminal tendencies, and (3) furthering governmental integrity by limiting contracts with towing companies owned, controlled or influenced by persons with criminal tendencies; and

WHEREAS, the City Council finds that prohibiting rotation list permits with towing companies that owe delinquent fees or taxes to the City is reasonably related to the City's objectives of (1) collecting delinquent fees and taxes, (2) protecting reliability of service in emergencies by solvent, reliable businesses, and (3) protecting the public from towing companies who may be tempted by their debts to unlawfully remove property from towed vehicles, charge excessive amounts for return of vehicles or otherwise behave dishonestly towards owners of vehicles entrusted to said companies.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That Chapter 8 of the Code of the City of Mesquite, Texas, as amended, is hereby amended by deleting Article IX in its entirety and adding a new Article IX to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

ARTICLE IX - WRECKER BUSINESSES

Sec. 8-776. Generally.

- (a) *Applicability.* The prohibitions and requirements of this article apply to all tow trucks operated within the City of Mesquite engaged in police tows.
- (b) *Driving tow trucks to scene of collision.* No person shall drive or cause to be driven a tow truck to or near the scene of an accident on a public roadway unless such person has been called to the scene by the police communications center or its authorized agent for a police tow or by a party involved in the accident.
- (c) *Excluded.* The prohibitions and requirements of this article shall not apply to any person who necessarily must act immediately to prevent death or bodily injury to any person involved in an accident. A vehicle may be pushed or towed by vehicle other than a permitted tow truck only when it does not reasonably require removal by a tow truck, but only when it may be done in a safe and legal manner.
- (d) *Permit required for police tows; expiration.* A towing company that desires to perform police tows shall apply for and obtain a permit from the City to be added to a rotation list. Every city permit shall expire at 11:59 p.m. on September 30 of each year.

Sec. 8-777. Definitions.

In this article:

Accident means any occurrence which renders a vehicle wrecked or disabled, as defined in this section.

Chief of Police means the Chief of Police for the City of Mesquite or the Chief's designee.

City Manager means the City Manager for the City of Mesquite or the Manager's designee.

Consent tow means any tow of a 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.

Disabled means the status of any vehicle which had been rendered unsafe to be driven upon the streets as the result of some occurrence other than a wreck, including but not limited to mechanical failures or breakdowns, fire, the elements or vandalism, so as to reasonably necessitate that such vehicle be removed by a tow truck.

Heavy duty pick up means that service requiring wrecker equipment capable of towing any vehicle requiring more than a standard duty pick up.

Incident management tow means any tow of a vehicle in which the tow truck is summoned by a peace officer because of a traffic accident or to an incident as defined by state law.

Non-consent tow means any tow of a vehicle that is not a consent tow, including an incident management tow and a private property tow.

Permit means a permit issued by the City of Mesquite to a towing company to perform police tows.

Permit holder means a towing company permitted by the City of Mesquite to perform police tows.

Police Department means the City of Mesquite Police Department and its officers, authorized employees and agents.

Police tow means an incident management tow or tow of a vehicle such as an abandoned, stolen or illegally parked vehicle, or a vehicle required to be towed in connection with a custodial arrest. A police tow is one initiated when the Police Department calls a permit holder from a rotation list.

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. Private property towing permit refers to a state-issued permit required for a tow truck used to perform a non-consent tow authorized by a parking facility owner. A tow truck permitted for this type of tow may also be used for consent towing, but not for incident management towing, in accordance with Texas Occupations Code, § 2308.104.

Public roadway means a public street, alley, road, right-of-way or other public way, including paved and unpaved portions of the right-of-way.

Rotation list means a list prepared by the City of Mesquite Police Department in accordance with the provisions of this article for rotating the use of permit holders called for police tows.

Standard pick up means that service requiring wrecker equipment of less capacity than a heavy duty pick up and capable of towing a vehicle not exceeding 10,000 pounds.

State means the State of Texas and its offices, departments and agencies.

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 highway in Texas but does not include a political subdivision of the State.

Tow truck means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch or otherwise move another vehicle.

Vehicle means a device in, on or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

Vehicle owner means a person:

- (1) Named as the purchaser or transferor in the certificate of title issued for the vehicle under Chapter 501 of the Texas Transportation Code;

- (2) In whose name the vehicle is registered under Chapter 502 of the Texas Transportation Code, or a member of the person's immediate family;
- (3) Who holds the vehicle through a lease agreement;
- (4) Who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or
- (5) 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 of Chapter 2303 of the Texas Occupations Code that is operated by a person who holds license issued under Chapter 2303 to operate the facility.

Wrecked means the status of any vehicle damaged in any manner of collision which renders the vehicle inoperable mechanically or unsafe to operate.

Sec. 8-778. General requirements and duties of towing companies performing police tows.

- (a) All police tows shall be undertaken pursuant to the terms and conditions of this article. Only towing company personnel that have been approved by the Police Department shall conduct police tows.
- (b) All police tows shall terminate within the territorial limits of the City to the permit holder's vehicle storage facility, except when otherwise directed by a law enforcement agency.
- (c) All tow trucks and permit holders shall be in full compliance with all applicable State and federal rules, including but not limited to those pertaining to vehicle registration, insurance and safety equipment.
- (d) It shall be the obligation of all city permit holders to operate towing companies so as to provide safe and prompt removal of wrecked, disabled or police tow vehicles when called upon to do so in accordance with this article and to deliver the vehicle to the vehicle storage facility owned or leased by the permit holder.
- (e) The duty to provide safe and prompt towing service upon call includes but is not limited to the following specific duties:
 - (1) Upon arrival at the scene of an accident, towing company personnel shall take directions from the police officer in charge of that scene.
 - (2) Any person who tows any vehicle from the scene of an accident shall remove debris of the accident from the public roadway. This duty specifically includes removal of all broken glass and metal fragments from the public roadway and the removal of any load of any vehicle from the traveled portion of the public roadway so as to eliminate any hazard to vehicular traffic. This does not include responsibility to unload cargo from a vehicle in order to permit hauling of the cargo separately. Debris shall be disposed of in a manner which will keep it out of gutters, storm sewers, streams, public rights-of-way and property not belonging to the towing

company. The officer on the scene of an accident may provide assistance in locating a place for disposal of such debris.

- (3) No city permit holder shall store any vehicles or tow trucks on the public roadways or rights-of-way. City permit holders shall use reasonable care in the storage of property not belonging to the permit holder to minimize the risk of theft or damage.
 - (4) A permit holder shall immediately notify the Police Department of unclaimed property removed from a vehicle at the time of its release from the storage facility. The permit holder shall immediately notify the Police Department if he believes or has reason to believe that a vehicle contains property that is stolen.
- (f) An applicant for a city permit or permit renewal under this article shall own or lease equipment and a vehicle storage facility in compliance with the following:
- (1) *Tow trucks.*
 - a. The permit holder must own or lease the types of tow trucks and equipment required to safely conduct tows in accordance with the provisions of Chapter 2308 of the Texas Occupations Code.
 - b. At a minimum, each permit holder shall have at least two trucks available at all times to transport vehicles in a manner that will not damage the vehicles.
 - c. Each tow truck shall have the name, city and state of the city permit holder, as shown on its permit, on each side of the tow truck. The name, city, state and telephone number of the towing company shall appear in letters at least two inches high, which are permanently affixed, legible and on a contrasting background. Magnetic or other forms of removable signs shall not comply with this requirement.
 - (2) *Tow truck equipment.* All tow trucks shall be equipped with the following equipment, which at all times shall be maintained in working order:
 - a. Wrecking bar;
 - b. Towing lights;
 - c. Emergency overhead warning lights;
 - d. Safety chain;
 - e. Fire extinguisher (A.B.C. Type), 5-lb. minimum required;
 - f. Broom;
 - g. Shovel;
 - h. Reflectors or traffic cones;

- i. Trash container;
- j. Backing warning signal; and
- k. Wheel chocks (exception: roll-backs and wheel-lift tow trucks).

(3) *Storage facility.*

- a. The applicant must own or have use of a storage facility licensed under and in compliance with the Texas Occupations Code that is located within the territorial limits of the City of Mesquite.
- b. The facility must be completely enclosed with adequate solid fencing, locks and other security devices as necessary to maintain security of stored vehicles.
- c. Each permit holder shall provide an attendant who shall be available on the storage facility premises for the release of vehicles from 8:00 a.m. until 5:00 p.m., Mondays through Fridays, as well as an attendant available to respond to the storage facility for vehicle releases within 30 minutes of notification at all other times. A single telephone number must be designated for attendant response between 5:00 p.m. and 8:00 a.m.
- d. Storage fees shall not be assessed by a permit holder in excess of those amounts authorized by State law or this article, whichever is less.
- e. *Standard wrecker service.* A standard wrecker service operator shall meet the following minimum requirements:
 - i. *Minimum outside storage.* A minimum outside storage area of not less than 16,500 square feet designed to accommodate a minimum of 85 automobiles and/or light trucks must be provided. Area surface shall be of all-weather construction for impounded vehicle storage only.
 - ii. *Fencing.* An eight-foot-high solid perimeter fence must be provided.
 - iii. *Customer parking.* A minimum of five vehicular parking spaces shall be provided for use by customers of the operator.
 - iv. *Security storage.* Space for a minimum of two vehicles shall be provided inside a building with suitable security for police storage.
 - v. *Location of office/storage area.* The storage area and office shall be contiguous and shall be open during regular business hours.
 - vi. *Security.* Each storage area shall be lighted by sufficient lighting to fully illuminate the storage area and shall be either guarded by a watchman or a trained security guard dog at all times and/or the storage area used for public safety calls shall be under continual and

recorded video surveillance by a sufficient number of cameras to fully cover the storage area. Security guard dogs or other animals maintained at the storage lot shall be confined in such a manner that they do not have access to vehicle owners or city representatives conducting business at the storage lot.

vii. *Display of vehicles for public auction.* Towed vehicles scheduled for public auction shall be designated by conspicuous marking. The vehicles shall also be made accessible to potential bidders at least one hour before the sale.

f. *Heavy-duty wrecker service.* A heavy-duty wrecker service operator shall meet the following minimum requirements:

i. *Minimum outside storage.* A minimum outside storage area designed to accommodate not less than three tractor-trailer units shall be provided. Area surface shall be of all-weather construction for impounded vehicle storage only.

ii. *Fencing.* An eight-foot-high solid perimeter fence must be provided.

iii. *Customer parking.* A minimum of three vehicular parking spaces shall be provided for use by customers of the operator.

iv. *Security.* Storage areas shall be sufficiently lighted to fully illuminate the storage area and shall be either guarded by a watchman or a trained security guard dog at all times and/or the storage area used for public safety calls shall be under continual and recorded video surveillance by a sufficient number of cameras to fully cover the storage area. Security guard dogs or other animals maintained at the storage lot shall be confined in such a manner that they do not have access to vehicle owners or city representatives conducting business at the storage lot.

v. *Equipment.* Each heavy-duty wrecker service operator shall provide at least one heavy-duty wrecker unit.

(g) Each city permit holder shall furnish the following reports as required by the Police Department:

(1) *Daily Release Report.*

a. The Daily Release Report shall be submitted to the Technical Services office of the Police Department by noon of the business day following the 24-hour period covered by the Report.

b. The Report shall include all vehicles impounded and all vehicles released by the permit holder in the previous 24-hour period and will contain each

vehicle's make, model, license plate number, the date the vehicle was impounded and the date the vehicle was released.

(2) *Five-Day Report.*

- a. The Five-Day Report shall be submitted to the Technical Services office of the Police Department by noon of the business day following completion of the notifications to the vehicle owners to remove their vehicles, pursuant to Texas Transportation Code, along with the \$10.00 notification fee as required under State law.
- b. The Report shall include for each vehicle the specific wrecker service, the impound date, the year, make and model of the vehicle, the license plate number of the vehicle, the state registration number, the Vehicle Identification Number (VIN), the name of the registered owner (and lienholder) of the vehicle, the address of the registered owner (and lienholder), the manner in which the owner was notified, the date of notification, the mail receipt number, the date the receipt was signed, the date the receipt was received by the permit holder and the date the Police Department was notified.

(3) *Month-Ending Inventory Report.*

- a. The Month-Ending Inventory Report shall be submitted to the Technical Services office of the Police Department by noon of the second business day of the week following the end of the calendar month covered by the Report.
- b. After receiving a list from the City of Mesquite of all vehicles to be sold at auction, the permit holder shall prepare all associated paperwork for the auction, including the Application for Title and the Auction Sales Receipts, for all vehicles not claimed after 60 days from the date of impound.

Sec. 8-779. Operation of rotation list; standard and priority response.

- (a) The Chief of Police is authorized to establish and maintain a rotation list for police tows comprised of tow truck companies holding a current permit under this article. The Police Department shall alternate among the towing companies on the list as much as practicable while ensuring each towing company receives all of its allotted rotation list calls.
- (b) If the owner of a disabled vehicle is physically unable to designate to a police officer on the scene a city permit holder to remove the vehicle or the owner fails or refuses to designate one or has no preference, the police officer shall not recommend any towing company, but rather shall communicate the need for a police tow immediately to the police communications center. The police communications center shall then call the city permit holder next in line on the rotation list to tow the vehicle from the scene. If the police officer contacts the communications center requesting a tow, the dispatch of the call constitutes a police tow.

- (c) After the last city permit holder on the rotation list has been called, the next call shall go to the first city permit holder on the rotation list.
- (d) The police communications center shall notify the permit holder of a service call at a single telephone number to be designated by the permit holder or over the police wrecker radio frequency.
- (e) When a permit holder is unable to respond to a wrecker call, the communications operator will rollover to the next available permit holder on the rotation list.
- (f) If, after arrival at the scene, the police officer in charge determines that assistance is needed, the permit holder on-site shall immediately dispatch another tow truck.
- (g) All calls for a police tow will be designated as either standard or priority. The communications operator will notify the permit holder of the designation of each wrecker call at the time the permit holder is contacted to respond.
- (h) A priority wrecker call requires the permit holder to respond to the scene within 20 minutes of notification.
- (i) A standard wrecker call requires the permit holder to respond to the scene within 30 minutes of notification.
- (j) The responding permit holder shall deliver the vehicle to the permit holder's storage facility and the vehicle owner shall be responsible for paying the towing fees as set forth in this article.

Sec. 8-780. Permit application.

- (a) *Initial permit application.* An applicant for a new city permit shall submit, on a form provided by the City, a complete, verified application containing or accompanied by the following:
 - (1) The true name, the trade name, location and mailing address, and telephone number of the towing company.
 - (2) The name, date of birth and home address of the applicant if a sole proprietorship.
 - (3) The name, date of birth and home address of each partner if the applicant is a partnership.
 - (4) The name, date of birth and home address of each corporate officer, if the applicant is a corporation.
 - (5) The name, address and driver's license number of every tow truck driver employed by the applicant who will be conducting police tows.
 - (6) The location of the applicant's vehicle storage facility and a photocopy of the State license for the facility.

- (7) A certificate from the city/county tax assessor-collector that all city taxes on all properties, real and personal, to be used in connection with the applicant's business are current.
- (8) A certificate of liability insurance issued by a company authorized to do business in the State which identifies coverage in the amounts required under this article.
- (9) For each tow truck the applicant intends to use:
 - a. The make, model, size and model year;
 - b. The vehicle identification number;
 - c. The state license plate number;
 - d. The State tow truck license plate number; and
 - e. A photocopy of the certificate of registration issued by the State.
- (10) Copies of all permits as issued by the State for specific incident management.
- (11) Copies of all appropriate licenses for each tow truck driver and towing company.
- (12) An agreement, approved by the City Attorney as to form, that the applicant will participate in the wrecker rotation list. The agreement shall, at a minimum:
 - a. Require the insurance mandated by Chapter 2308 of the Texas Occupations Code, as amended;
 - b. Include the indemnification requirements of the City;
 - c. Provide that the applicant will waive fees for up to 25 standard duty tows and storage fees, and five heavy duty tows and storage fees at the request of the Police Department. Examples of waivers include, but are not limited to, evidentiary tows, tows of police vehicles and tows determined by the Police Department to have been initiated by mistake; and
 - d. Provide that each permit holder shall be an independent permit holder and shall not, with respect to their acts or omissions, be deemed an agent or employee of the City of Mesquite.
- (13) Consent form authorizing to the inspection of tow trucks, tow truck equipment and storage facilities by the Chief of Police between the hours of 8:00 a.m. and 5:00 p.m. on weekdays. This authority shall be cumulative of any other authority held by the Chief of Police, other law enforcement officials or other legally-authorized public officials.
- (14) Consent form authorizing background investigation as more fully described in Section 8-781 of this article.

- (b) *Renewal.* An applicant for renewal of a city permit shall submit, on a form provided by the City, a verified application containing or accompanied by the following:
 - (1) Updated information on any changes to the permit application subject to renewal.
 - (2) Documented evidence of continued compliance with any part of the application requiring a periodic renewal or compliance, including but not limited to a tax certificate, vehicle registration, and licenses.
- (c) *Fee.* Every application for a new city permit or renewal shall be accompanied by payment of a regulatory fee of One Hundred Dollars (\$100.00).
- (d) *Not transferable or assignable.* No city permit shall be transferred or assigned from any person or company to another. When any change of ownership or change of controlling interest occurs, any existing city permit shall immediately terminate.

Sec. 8-781. Permit review.

- (a) The City shall issue a city permit to every towing company complying with this article unless legal grounds exist for denying such a permit.
- (b) A background investigation of all applicants and their employees shall be conducted by the City of Mesquite Police Department. In connection with the background investigation, the applicant shall provide the applicant's and its employees' full names, dates of birth, social security numbers and current addresses. Each applicant and its employees may be fingerprinted by the City of Mesquite Police Department in conducting the background investigation. Any applicant or individual employee who declines to submit to the background procedure or has not been approved by the Police Department shall not be used as a wrecker driver on police tows and shall not be assigned to duties involving police impounds or used to release impounded vehicles.
- (c) The City may not issue a permit to a towing company if:
 - (1) The application is incomplete.
 - (2) One or more of the following entities has been convicted of a felony or crime of moral turpitude and five years has not elapsed since the conviction and completion of any sentences, parole or probation that resulted from the conviction:
 - a. The towing company;
 - b. Any of the towing company's owners or officers;
 - c. Any of the towing company's partners if the towing company is a partnership;
 - d. Any of the towing company's managers or members who have authority to make decisions on behalf of the entire company if the towing company is a limited liability company;

- e. Any of the towing company's directors if the towing company is a corporation or other entity with directors;
- f. Any of the towing company's trustees if the towing company is a trust; or
- g. Any owner of all or part of a vehicle storage facility or any tow truck used by the towing company.

For purposes of this subsection (c)(2), a person shall be considered convicted if they entered into a deferred adjudication or otherwise entered a plea of guilty or no contest.

(3) One or more of the following entities owes delinquent fees or taxes to the City of Mesquite:

- a. The towing company;
- b. Any of the towing company's owners or officers;
- c. Any of the towing company's partners if the towing company is a partnership;
- d. Any of the towing company's managers or members who have authority to make decisions on behalf of the entire company if the towing company is a limited liability company;
- e. Any of the towing company's directors if the towing company is a corporation or other entity with directors;
- f. Any of the towing company's trustees if the towing company is a trust; or
- g. Any owner of all or part of a vehicle storage facility or any tow truck used by the towing company.

This paragraph shall not apply to the extent the City is prohibited by State or federal law from considering the debt in authorizing a permit or other governmental benefit.

Sec. 8-782. Towing fees.

- (a) A city permit holder performing tows other than police tows may collect fees that are deemed reasonable in accordance with the provisions set forth in Texas Occupations Code, Ch. 2308.
- (b) City permit holders performing police tows shall not charge fees that exceed the maximum amounts described in the following subsections. All monetary transactions for all fees under this article are the responsibility of the permit holder. The City of Mesquite shall not be involved in nor responsible for the exchange of funds between the permit holder and third parties.
- (c) Rotation list towing fees are established as follows:

(1) *Standard pickup:*

- a. A fee of \$100.00 shall be paid to a towing company for towing a vehicle from one point to another location within the City as directed by the Police Department.
- b. *Second tow truck.* In the event the police officer at the scene determines that a second tow truck is required, an additional fee of \$100.00 shall be paid to the towing company for any work performed at the scene after the arrival of the second tow truck.
- c. *Use of a dolly.* No additional fees shall be charged for the use of a dolly.

(2) *Priority pickup:*

- a. A fee of \$115.00 shall be paid to the towing company for towing a vehicle from one point to another location within the City as directed by the Police Department.
- b. *Second tow truck.* In the event the police officer at the scene determines that a second tow truck is required, an additional fee of \$115.00 shall be paid to the towing company for any work performed at the scene after the arrival of the second tow truck.
- c. *Use of a dolly.* No additional fees shall be charged for the use of a dolly.

(3) *Heavy duty pickup:*

- a. A fee of \$150.00 shall be paid to the towing company for towing a vehicle from one point to another location within the City as directed by the Police Department.
- b. *Second tow truck.* In the event the police officer at the scene determines that a second tow truck is required, an additional fee of \$150.00 shall be paid to the towing company for any work performed at the scene after the arrival of the second tow truck.
- c. *Use of a dolly.* No additional fees shall be charged for the use of a dolly.

(4) *Other labor:*

- a. Other labor performed by the towing company for standard and priority pickup tows shall be charged at \$60.00 per hour prorated in 15-minute increments. Other labor performed by the towing company for heavy duty pickup tows shall be charged at \$150.00 per hour prorated in 15-minute increments.
- b. For purposes of this paragraph, other labor means labor required beyond the normal process of loading, securing, transporting and unloading a vehicle.

- (d) When establishing or amending the allowable fees for incident management tows, the amounts shall represent the fair value of the services of a towing company and shall be reasonably related to financial or accounting information provided to the City by the company. If a towing company requests that a tow fee study be performed in accordance with Texas Occupations Code, § 2308.203, the City establishes the following procedures:
- (1) The Chief of Police shall request financial records from the requesting towing company as they relate to vehicle insurance, registrations and operating costs.
 - (2) The Chief of Police shall obtain current fuel prices.
 - (3) The Chief of Police shall review towing fees from other cities of similar population.
 - (4) The Chief of Police shall submit a recommendation to the City Manager for action.
 - (5) Recommended increases over 25 percent shall be submitted to the City Council for consideration.

Sec. 8-783. Storage fees and charges.

Under this article, a city permit holder may charge the owner of the vehicle a storage fee and other charges as permitted by Texas Occupations Code, Ch. 2303.

Sec. 8-784. Filing of and investigating complaints concerning wrecker companies.

Any complaint regarding a towing company shall be submitted in writing to the City of Mesquite Chief of Police. The complaint shall be specific as to the allegations and shall be signed by the individual submitting the complaint. Complaints will be fully investigated, findings will be made and appropriate action will be taken.

Sec. 8-785. Administrative disposition of violations; grounds for suspension.

- (a) In lieu of or in addition to any criminal prosecution or civil remedy for the violation of any section of this article, the Chief of Police shall have, as to the holder of any city permit or as to any applicant therefore, the duty and authority to enforce this article by administrative action.
- (b) The proper and safe functioning of towing companies has critical impact on the health, safety and welfare of the public and involves use of the public roadways, often in circumstances necessitating prompt removal of dangerous obstructions to traffic on public roadways; therefore, the privilege of any person to be a city permit holder operating a towing company in the City shall be subjected to strict regulation in order to protect the public.
- (c) For purposes of invoking any administrative remedy against a city permit holder, the acts or omissions of any agent or employee of the city permit holder shall be considered to be the acts or omissions of the city permit holder.
- (d) A city permit holder may have their permit suspended for any of the following offenses:
 - (1) Failure to properly clean up debris at an accident scene;

- (2) Failure to maintain a licensed storage facility as required by this article;
- (3) Driving any tow truck to or from the scene of an accident in a manner which endangers the life or safety of any person;
- (4) Failure to maintain in effect any insurance required by this article;
- (5) Charging a fee in excess of the amounts authorized by this article;
- (6) Permitting a tow truck to be operated by anyone while under the influence of prescription drugs which could interfere with a driver's ability to operate the tow truck;
- (7) Permitting a tow truck to be operated by anyone while under the influence of alcohol or illegal drugs which could interfere with a driver's ability to operate the tow truck;
- (8) Permitting a tow truck to be operated by anyone whose operator's or driver's license is suspended;
- (9) Any sustained complaint of theft by employees of towing company while acting in their capacity as employees of towing company, whether occurring during a police tow or otherwise;
- (10) Any sustained complaint of threats made by employees of the towing company while acting in their capacity as employees of towing company made against third parties during a police tow;
- (11) Failing to comply with all directions of the Police Department while performing related activities on a public roadway;
- (12) Failure to comply with any State or federal law or city ordinance related to the operation of a permit holder;
- (13) Using an employee that has not been approved by the Police Department to conduct police tows and/or to access the police impound database for any purpose; or
- (14) Having five or more unjustified rollovers within a calendar month, starting on the first day of any month.

Sec. 8-786. Procedures for administrative disposition of violation.

- (a) The Chief of Police may suspend, either permanently or for a designated period of time, a permit issued under this Article if the operation of the towing company is in violation of any provision of Section 8-785 of this article or acts of the permit holder or its agents or employees constitute an imminent hazard to public health or safety. Suspension is effective upon service of the notice as provided in Subsection (c). When a permit is suspended, towing operations shall immediately cease.
- (b) When a permit is suspended, the holder of the permit shall be notified in writing that the permit is, upon service of the notice, immediately suspended. Opportunity for a hearing

will be provided if the permit holder files a written request with the City Manager within five business days of the date notice is served. The permit holder shall be afforded a hearing within 10 days of receipt by the City Manager of a timely request. If no written request for a hearing is filed within five business days of the date notice is served, the suspension is sustained and becomes final.

- (c) Notice is served when it is personally delivered to the holder of the permit or when deposited in the U.S Mail, by registered or certified mail, return receipt requested, to the address of the permit holder provided in his application, whichever occurs earlier. A copy of the notice shall be filed in the records of the City.
- (d) The City Manager shall conduct the hearing provided for in this article at a time and place designated by the Manager. Based upon the recorded evidence at the hearing, the City Manager shall make final findings and shall sustain, modify or rescind the suspension. A written hearing decision letter shall be furnished to the permit holder by the City Manager.
- (e) If, after a hearing, the City Manager sustains the suspension, the suspension becomes final.
- (f) If, after a hearing, the City Manager determines that the cause for suspension is invalid, the permit shall be reinstated. In this event, the permit holder's sole remedy shall be reinstatement.

Sec. 8-787. Private property tows.

All private property tows shall terminate within the territorial limits of the City.

Sec. 8-788. Criminal penalty.

- (a) A person commits an offense if he violates a provision of this article applicable to him.
- (b) A person commits an offense if he permits the use of a tow truck for police tows that is owned by that person or by another person or legal entity for which the person is an agent without a permit issued by the City as required by this article.
- (c) A separate offense is committed each day in which an offense occurs. An offense committed under this article is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 as provided by Section 2308.505 of the Texas Occupations Code.
- (d) It shall be a defense to prosecution of any violation of this article that a person violated this article while acting to prevent imminent death or bodily injury to any person involved in an accident or at the direction of a peace officer.

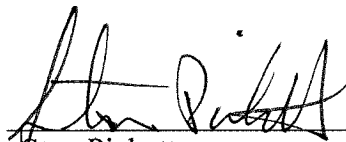
Secs. 8-789—8-826. Reserved.

SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

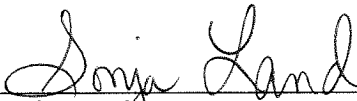
SECTION 4. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed One Thousand (\$1,000.00) Dollars for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of September, 2016.



Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney