

ORDINANCE NO. 2002 12

AN ORDINANCE AMENDING ARTICLE IV, TOW TRUCK PERMITS; TOW TRUCK ROTATION LIST PRIVILEGE CONTRACTS, OF CHAPTER 23 OF THE VICTORIA CITY CODE TO INCORPORATE THE REGULATIONS OF THE TEXAS DEPARTMENT OF TRANSPORTATION CONCERNING STORAGE CHARGES INTO THE CITY'S STORAGE RATE LIMITS AND MAKE OTHER MISCELLANEOUS CHANGES THEREIN, PROVIDING A PENALTY NOT TO EXCEED \$500.00 UPON CONVICTION; PROVIDING FOR ENFORCEMENT; REPEALING CONFLICTING PARTS OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND DECLARING AN EFFECTIVE DATE.

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

1.

Article IV, "Tow Trucks; Tow Truck Companies," of Chapter 23 of the City Code is amended to read as follows:

ARTICLE IV. TOW TRUCK PERMITS; TOW TRUCK ROTATION LIST PRIVILEGE CONTRACTS*

DIVISION 1. GENERALLY

Sec. 23-50. Definitions.

For the purpose of this article, the following terms shall have the respective meanings ascribed to them:

Auto trailer: A vehicle without motive power used in combination with a commercial motor vehicle, and which is adapted or used to tow, winch or otherwise move another motor vehicle.

Certificate of registration: The document issued by the Texas Department of Transportation authorizing the operation of a specific tow truck.

Consent tow: Any tow conducted with the permission of, or at the direction of, the towed vehicle's legal or registered owner, or such owner's authorized representative. Except as set forth in the definition of "nonconsent tow" or "rotation tow" below, a tow will be considered a consent tow where the owner is able to give consent.

Large tow truck: A commercial motor vehicle equipped with, or used in combination with a mechanical device, mini-wrecker, or auto trailer, and which is adapted or used to tow, winch or otherwise move a motor vehicle, which together with the towed vehicle has a gross vehicular weight, registered weight, or actual weight exceeding twenty-six thousand (26,000) pounds.

Mechanical device: A mechanical, electrical, or hydraulic winch, wheel lift, tow bar, or other towing device permanently attached to or used in combination with a commercial motor vehicle.

Mini-wrecker: A vehicle without motive power used in combination with a commercial motor vehicle, and which is adapted or used to tow, winch or otherwise move another motor vehicle.

Motor vehicle: A vehicle subject to registration under Certificate of Title Act (Texas Transportation Code § 501.001, et. seq) or other self-propelled device permitted to travel on a public highway.

Nonconsent tow: Any tow conducted without the permission of, or not at the direction of, the towed vehicle's legal or registered owner, or such owner's authorized representative. Regardless of this definition, certified law enforcement officials may control the scene of an accident in the manner they deem appropriate and order a rotation tow as defined below.

Owner: Means:

- (1) A person in whose name the vehicle is registered under the Certificate of Title Act (Texas Transportation Code § 501.001, et seq.);
- (2) A person or member of the person's immediate family in whose name the vehicle is registered under Texas Transportation Code § 502.002;
- (3) A person who holds the vehicle through a valid lease agreement; or
- (4) An unrecorded lienholder whose right to possess the vehicle exists through a chattel mortgage.

Permit holder: A tow truck operator duly issued a tow truck permit by the city secretary of the City of Victoria.

Preservation: An action taken by or at the direction of the owner or operator of a vehicle storage facility that is necessary to preserve, protect, or service a vehicle stored or parked at the facility, such as securing broken or inoperative doors, windows, hatchbacks and convertible tops with plastic or canvas tarpaulins. Reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, or convertible tops, are included in the fee for storage of a vehicle and do not constitute "preservation."

Privilege: A particular and peculiar power, franchise or benefit enjoyed by a person, company, or class not generally possessed by others and which once granted, does not create property rights.

Privilege holder: A permit holder duly placed on the police department tow truck rotation list by the city secretary of the City of Victoria.

Rotation list or master tow truck rotation list: The police department rotation list of privilege holder's permitted tow trucks and large tow trucks, as compiled pursuant to this article.

Rotation tow: Any tow conducted pursuant to section 23-65 of this article.

Street: Any street, alley, public place, square or highway, within the corporate limits or the police jurisdiction of the city.

Tow truck: A commercial motor vehicle equipped with, or used in combination with a mechanical device, mini-wrecker, or auto trailer, and which is adapted or used to tow, winch or otherwise move a motor vehicle, which together with the towed vehicle has a gross vehicular weight, registered weight, or actual weight of twenty-six thousand (26,000) pounds or less. For purposes of convenience the term "tow truck" as used throughout this article shall be deemed to include both the defined terms "large tow truck" and "tow truck" unless a specific reference to the term "large tow truck" is made.

Tow truck operator: A person, partnership, or corporation engaged in the towing business having at least one (1) tow truck or large tow truck that is fully equipped and that has a current valid certificate of registration issued by the Texas Department of Transportation.

Towing business: A commercial enterprise organized for the purpose of moving motor vehicles.

Vehicle: Every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

Vehicle storage facility: A garage, parking lot, or any facility owned or operated by a person other than a governmental entity for storing or parking ten (10) or more vehicles that has a current valid license issued by the Texas Department of Transportation.

DIVISION 2. TOW TRUCK PERMITS

Sec. 23-51. Permit required; exception.

- (a) No tow truck operator shall operate a tow truck or a large tow truck on any street within the city for the purpose of performing nonconsent tows without first obtaining from the city secretary a tow truck permit for each such truck as provided in this division.

Sec. 23-52. Application; fees.

- (a) *Application contents.* Applications for tow truck permits shall be made on a form provided by the city secretary and shall contain the following information:

- (1) The complete legal name under which the permit applicant operates a towing business;
- (2) The name of the owner of the business, if sole proprietorship; the names of all partners, if partnership; or the name of the authorized officer and his or her title, if corporation;
- (3) Business address and telephone number of the permit applicant;
- (4) A description by street address and vehicle storage capacity of the space the permit applicant proposes to use for storing motor vehicles;
- (5) A list of felony and misdemeanor conviction, including date and location for each, for which the maximum punishment is confinement in jail or a fine exceeding five hundred dollars (\$500.00), that were obtained against the permit applicant, a partner, a principal or the general manager or an officer of the permit applicant, during the three (3) years immediately preceding the date of the application;
- (6) A description of each tow truck requested to be permitted by the permit applicant, including a description of the year, make, model, license number and vehicle identification number;
- (7) A statement that the permit applicant authorizes the city to examine or inspect any and all tow trucks, vehicle storage facility, business records, documents, books, accounts, equipment, or facilities of the towing business, when necessary to insure permit eligibility, to enforce the requirements of this article, or to investigate violation complaints;
- (8) A statement that the permit applicant agrees, if issued a permit, to notify the city secretary if such permit holder's tow truck certificate of registration for any permitted tow truck or vehicle storage facility license issued by the Texas Department of Transportation is suspended or revoked within three (3) working days of receipt of notice of suspension or revocation; and
- (9) A sworn and notarized statement that the permit applicant understands and agrees to abide by all the relevant provisions of this division, that all representations made on the application form and in the required documents are true and correct, and that incomplete or inaccurate statements made on the application or in the required documents will result in denial of a tow truck permit.

- (b) *Documents to be submitted with application.* Applications shall be accompanied by copies of the following documents:

- (1) Current state motor vehicle license receipt for each tow truck;

- (2) Current state tow truck registration certificate for each tow truck;
 - (3) Current state vehicle storage facility license for the storage facility to be used by the permit applicant;
 - (4) Current certificate of insurance meeting applicable state and city requirements covering each tow truck to be permitted by the permit applicant and including thirty (30) days prior written notice of cancellation to be provided the city secretary;
 - (5) Current certificate of insurance meeting applicable state and city requirements covering the vehicle storage facility to be used by the permit applicant and including thirty (30) days prior written notice of cancellation to be provided the city secretary;
 - (6) An executed copy of any lease, memorandum or agreement whereby the permit applicant has assumed supervision, direction or control of a tow truck which the applicant requests to have permitted;
 - (7) A certificated copy from the Victoria County Clerk's office of the assumed name certificate under which the permit applicant operates a towing business, if operated under an assumed name; and
 - (8) A copy of the Certificate of Incorporation issued by the Texas Secretary of State for the corporation which operates a towing business, if permit applicant's business is organized as a corporation.
- (c) *Term; Permit fee.* The permit term and permit fee shall be as follows:
- (1) The annual permit term shall be July first through June thirtieth. Applications for an annual permit shall be submitted no later than June first of each year.
 - (2) An annual fee of \$15.00 shall be charged for a permit to operate each tow truck requested to be permitted in the city. Said fee shall be paid at the time the application is filed with the city secretary.
 - (3) Applications may be submitted any time during the permit year for tow truck permits for the duration of the permit year. The full permit fee shall be charged for all applications submitted prior to December thirty-first and one-half ($\frac{1}{2}$) of the permit fee shall be charged for all applications submitted thereafter for the remainder of the permit year. One-half ($\frac{1}{2}$) the fee will be refunded for each tow truck which does not meet the qualifications for a permit.

Sec. 23-53. Compliance with state equipment requirements; equipment inspections.

- (a) Every tow truck for which a permit is requested and issued shall at all times be equipped and supplied so as to comply with the equipment and supplies required by the Texas Department of Transportation in 16 Texas Administration Code § 5.501, et. seq., and as said rules may hereafter be amended or renumbered, and each tow truck shall carry and use a proper material for absorbing vehicle fluids as supplied by the city.
- (b) The director of vehicle equipment services shall keep a current list of all such requirements available and on file in his office at all times. Upon request, copies of such list shall be provided tow truck operators at no charge.
- (c) In addition, prior to submitting a tow truck permit application to the city secretary, the permit applicant shall schedule an inspection with the director of vehicle equipment services or his authorized representative, who shall perform an equipment compliance inspection of each tow truck at the applicant's business findings concerning each tow truck on the equipment inspection report form provided by the city secretary, sign and date the inspection report form, and return it to the city secretary.

Sec. 23-54. Additional permit eligibility requirements.

- (a) Each permitted tow truck shall at all times be operated in compliance with the administrative rules for tow trucks as set out by the Texas Department of Transportation in 16 Texas Administration Code Section 5.501 et seq., as said act or rules may hereafter be amended or renumbered. Failure to so operate a permitted tow truck shall constitute a violation under this article.
- (b) Any vehicle storage facility used by a permit holder for the storage of towed vehicles shall at all times be in compliance with the Texas Vehicle Storage Facility Act, Vernon's Ann. Civ. St. art. 6687-9a, and the administrative rules for such facilities as set out by the Texas Department of Transportation. Failure of the vehicle storage facility to so comply shall constitute a violation under this article.
- (c) The city may conduct an inspection of a permit applicant's or a permit holder's tow trucks and vehicle storage facility, as necessary to insure permit eligibility and to enforce the requirements of this article. Additionally, the city may inspect or examine any and all of the permit applicant's or permit holder's business records, documents, books, accounts, equipment or facilities of the towing business during normal business hours, when necessary to insure permit eligibility, to enforce the requirements of this article, or to investigate violation complaints. The refusal of a permit applicant or permit holder to consent to such examination or inspection shall constitute a violation under this article.

- (d) Each tow truck permit applicant must comply with each of the following insurance requirements:
- (1) Maintain and keep on file with the city secretary current evidence of bodily injury and property damage automobile liability insurance. Such insurance shall be in the following minimum amounts:
 - a. For a tow truck, together with the towed vehicle, having a gross vehicular weight, registered weight, or actual weight of twenty-six thousand (26,000) pounds or under, \$300,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others; and
 - b. For a tow truck, together with the towed vehicle, having a gross vehicular weight, registered weight, or actual weight exceeding twenty-six thousand (26,000) pounds, five hundred thousand dollars (\$500,000.00) combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one (1) accident to the property of others.
 - (2) Except as follows, every tow truck permit applicant shall maintain and have on file with the city secretary evidence of cargo or on-hook insurance coverage. The intent of this subsection is to require insurance covering damage to a towed vehicle during which time the operator is the bailee of the vehicle being towed. The term "damage" shall include but is not limited to damage to the towed vehicle that is a direct or indirect result of an improper hookup or improper towing. The minimum insurance coverage required under this subsection shall be:
 - a. Thirty thousand dollars (\$30,000.00) for the loss of or damage to the vehicle towed by any one (1) tow truck which, together with the towed vehicle, has a gross vehicular weight, registered weight, or actual weight of twenty-six thousand (26,000) pounds or less; and
 - b. Fifty thousand dollars (\$50,000.00) for the loss of or damage to the vehicle towed by any one (1) tow truck which, together with the towed vehicle, has a gross vehicular weight, registered weight, or actual weight exceeding twenty-six thousand (26,000) pounds.
 - (3) In lieu of cargo or on-hook insurance, a tow truck permit applicant may secure and maintain garagekeepers legal liability insurance with direct primary coverage in an amount not less than that prescribed in subsection (d)(2) of this section.
 - (4) Evidence of insurance required by subsections (d)(1), (d)(2) or (d)(3) above shall be completed and executed by an authorized representative of an insurance company holding a certificate of authority to transact business in the State of Texas, or by a surplus lines insurer that meets the requirements of the V.A.T.S., Insurance Code, art. 1.14-2, and rules adopted by the Texas Department of Insurance under that article.
 - (5) Every tow truck permit applicant shall file and maintain a certificate of insurance evidencing currently effective garagekeeper's legal liability insurance in the limits required by the Texas Department of Transportation for a vehicle storage facility license.
 - (6) All required insurance certificates must provide for thirty (30) days prior written notice of cancellation or expiration to be provided to the city secretary. Failure to provide for such notice on such certificates shall constitute a violation under this article.
- (e) All permit holders are subject to existing state statutes and city ordinances relating to motor vehicles and traffic regulations, and it is hereby declared and determined that tow trucks are not emergency vehicles within the provisions of the traffic laws of the State of Texas or traffic ordinances of the city. Failure by a permit holder to abide by such traffic laws or ordinances shall constitute a violation under this article.
- (f) No person intercepting any message emanating through the medium of any City of Victoria radio channel shall use the same or any information therein contained for purposes of responding to a tow truck call not in accordance with this article. The unauthorized use of such information shall constitute a violation under this article.
- (g) No person shall drive a tow truck to or near the scene or location of an accident or collision on the streets of the city and park the same unless such tow truck has been called to the scene by a police communications officer of the city or unless called by the owner, driver, or authorized representative of the owner of the vehicle. No person shall in any manner directly or indirectly solicit the business of towing any vehicle which is wrecked or disabled on a public street regardless of whether the solicitation is with respect to the business of towing, removing, repairing, wrecking, storing, trading, or purchasing such vehicle. The presence of any tow truck (other than one called to the scene by the police department) parked on any public street in the city nearer than three hundred (300) feet to the scene or location of a wreck, accident or collision, and within one (1) hour thereafter, shall be prima facie evidence of a solicitation in violation of this subsection. Failure to comply with this subsection shall constitute a violation of this article.

Sec. 23-55. Permit and sticker issued; transferability.

- (a) The city secretary shall issue a permit to each applicant and a permit sticker for each tow truck upon determination of compliance with the requirements of this division. The permit sticker shall indicate the year and number of the permit and shall be placed on the windshield of the tow truck.
- (b) The permit shall not be transferable.

Secs. 23-56–23-59. Reserved.

DIVISION 3. TOW TRUCK ROTATION LIST CONTRACTS

Sec. 23-60. Rotation list—Number of privilege contracts granted; administrative responsibilities.

- (a) The city council finds that the privilege of receiving referrals from the city's rotation list is a contractual right to receive a service provided by the city to contracting parties. This service shall only be provided pursuant to a contract with the city. The city council further finds that this contract is not a permit or license. The city council further finds that the provisions in this contract are not regulatory in nature, but are instead intended to govern the contractual relationship between the city and the entity with whom the city is contracting. The city council also determines that future contracts executed pursuant to this article should be express, written contracts in a form to be approved by the city attorney, with such provisions as shall comply with this article and such additional provisions as may be required by the city attorney to protect and defend the city and the public.
- (b) The city secretary is responsible for administering the provisions of this article, except where responsibilities are delegated to other city employees.
- (c) The city has the right to refuse to contract with any person on the rotation list who (1) at any time, fails or has failed to comply with any provisions of this article or a rotation list contract, (2) in the opinion of the city council, is not a responsible entity, (3) fails to pay any fee due the city under this article or as established by separate ordinance, or (4) fails to execute a contract with the city in a form approved by the city attorney for placement on the rotation list. The opportunity to receive a contract for placement on the tow truck rotation list is not a property right and may be denied for any other reason.
- (d) All tow truck rotation list privilege holders are independent contractors while acting pursuant to this division, and shall not be deemed to be, considered as, or in any way represented to be employees or agents of the city.
- (e) The city shall issue no more than one position on the rotation list for each tow truck permitted under this article and owned entirely by each applicant. The city manager may establish further criteria to ensure this criteria is enforced.
- (f) If no person applies for any rotation list contracts prior to June 1st of any year, then the City Manager may reduce the fee for the first applicant to \$50.00 and waive any other provision of this division for that applicant. Such reduction and waiver shall be stated in the contract and shall be effective for a period of one year after the execution of the contract.

Sec. 23-61. Applications for rotation list privilege contract.

- (a) *Application contents.* An applications for a contract for placement on the tow truck rotation list shall be made on a form provided by the city secretary and shall contain the following information:
 - (1) The complete legal name under which the rotation list applicant operates a towing business;
 - (2) The name of the owner of the business, if sole proprietorship; the names of all partners, if partnership; or the name of the authorized officer and his or her title, if corporation;
 - (3) Business address and telephone number of the rotation list applicant;
 - (4) A description by street address and vehicle storage capacity of the space the applicant proposes to use for storing motor vehicles;
 - (5) A list of the names of all tow truck drivers whose services will be used by the rotation list applicant for rotation list calls including a list of felony and misdemeanor convictions, along with the date and location for each, for which the maximum punishment is confinement in jail or a fine exceeding five hundred dollars (\$500.00), that were obtained against each such driver during the three (3) years immediately preceding the date of the application;
 - (6) Identification of each tow truck requested to be placed on the rotation list by the applicant, including the tow truck permit number and the vehicle identification number;
 - (7) A statement that the rotation list applicant authorizes the city to examine or inspect any and all tow trucks, vehicle storage facility, business records, documents, books, accounts, equipment, or facilities of the towing business, when necessary to insure rotation list privilege eligibility, to enforce the requirements of this article, or to investigate violation complaints;
 - (8) A statement that the rotation list applicant agrees, if granted a rotation list privilege, to notify the city secretary if such applicant's tow truck certificate of registration for any permitted tow truck or

- vehicle storage facility license issued by the Texas Department of Transportation is suspended or revoked within three (3) working days of receipt of notice of suspension or revocation; and
- (9) A sworn and notarized statement that the rotation list applicant understands and agrees to abide by all the relevant provisions of this division, that all representations made on the application form and in the required documents are true and correct, that incomplete or inaccurate statements made on the application or in the required documents will result in denial of a rotation list privilege, that the applicant acknowledges that placement of a tow truck on the rotation list constitutes the granting of a privilege by contract rather than the creation of a property right, and that the applicant acknowledges that he will be acting as an independent contractor rather than as an agent or employee of the city when performing rotation list tows if granted a privilege.
- (b) *Documents to be submitted with application.* Applications shall be accompanied by copies of the following documents:
- (1) Current certificate of insurance meeting applicable state and city requirements covering each tow truck requested to be placed on the rotation list;
 - (2) Current certificate of insurance meeting applicable state and city requirements covering the vehicle storage facility to be used by the rotation list applicant;
 - (3) An executed rotation list privilege contract in a form approved by the city attorney;
- (c) *Term; privilege fee.* The police department tow truck rotation list privilege term and fees shall be as follows:
- (1) The annual rotation list term shall be July 1 through June 30 or as otherwise specified in the rotation list contract. Applications for an annual rotation list privilege shall be submitted no later than June first of each year.
 - (2) An annual tow truck rotation list privilege fee of four hundred fifty dollars (\$450.00) for the first tow truck requested to be placed on the rotation list by an applicant, seven hundred fifty dollars (\$750.00) for the second and third tow trucks requested to be placed on the rotation list, and one thousand three hundred dollars (\$1300.00) for each subsequent tow truck requested to be placed on the rotation list shall be charged and paid at the time the application is filed with the city secretary.
 - (3) Applications may be submitted any time during the rotation list term for the duration of the annual term. The annual fees shall be prorated on a monthly basis for all applications submitted after June first of each year. The fee less a twenty-five dollars (\$25.00) processing charge will be refunded for each tow truck which does not meet the qualifications for being placed on the rotation list.

Sec. 23-62. Same--Eligibility requirements.

In addition to the other requirements set out above, each tow truck applicant/permit holder to be and remain eligible for a master tow truck rotation list privilege must:

- (1) Have access to a vehicle storage facility for the storage of wrecked or disabled vehicles and other vehicles ordered towed by police officers within the city limits or within its extraterritorial jurisdiction limits; and
- (2) Operate a twenty-four (24) hour tow truck business.

(Ord. No. 97-13, § 1, 1-21-97)

Sec. 23-63. Same--Placement thereon; transferability.

- (a) The city manager is authorized to execute contracts, in a form approved by the city attorney, for placement of qualified tow truck operators to place permitted tow trucks on the tow truck rotation list.
- (b) Large tow trucks shall be categorized separately on the rotation list for large tow truck rotation purposes; however, a position on the large tow truck rotation list shall give the large tow truck operator an additional position on the regular rotation list.
- (c) The city secretary shall provide the police department a master tow truck rotation list including the separate category for large tow trucks and including the name of the privilege holder and the twenty-four-hour business phone number for each tow truck placed on the list.
- (d) No tow truck will remain on the rotation list if any of the requirements of this article are found to have been violated in accordance with the procedures set out in sections 23-71 through 23-73 of this article.
- (e) Once a contract is signed by the city placing a tow truck on the rotation list, the privilege holder shall not transfer its privilege to be on such list to any other tow truck operator.

Sec. 23-65. Same--Calling tow truck; responding to call.

- (a) When a vehicle which has been involved in a collision or accident, or which is otherwise disabled, is unable to proceed safely, or when a driver of a vehicle is physically unable to drive such vehicle, or when a police officer arrests the driver of a vehicle and determines that the vehicle is to be impounded, the police

officer investigating such incident or making such arrest shall request the driver of such vehicle to designate a tow truck operator which the driver desires to remove such vehicle. When the driver has so designated the tow truck operator, the police officer shall communicate that fact immediately to the police communications officer on duty, and it shall be the duty of such communications officer to call the designated tow truck operator to send a tow truck to the scene or site of the incident or arrest. In the event such driver is physically unable to designate a tow truck operator, or refuses to designate one, the police officer investigating such incident or making such arrest shall notify the police communications office of such fact, and the communications officer shall select a privilege holder and call that privilege holder to send a tow truck to the scene or site of such incident or arrest. In any event, if the police officer determines that a vehicle is to be seized as evidence or for possible forfeiture proceedings, then the police officer making such determination shall notify the communications officer to select a privilege holder from the rotation list to respond to the location of the call. The communications officer shall make all such selections on a rotation basis from the approved master tow truck rotation list.

- (b) On receiving the first communication requesting selection of a tow truck from the rotation list, the police communications officer shall call for the first tow truck on said list to tow the disabled or impounded vehicle and to remove the same from the public streets or public areas of the city. In each succeeding request for a tow truck, the next tow truck on the rotation list shall be selected. A proper notation of each rotation list call shall be made by the police communications officer. In the event a rotation list privilege holder is called to the scene of an accident and upon arrival at the scene is advised by the police officer that the call has been canceled, then the rotation list privilege holder shall retain its position as next in line on the rotation list.
- (c) Each rotation list privilege holder shall respond to a master tow truck rotation list call in a tow truck permitted by the privilege holder and on the rotation list immediately after being dispatched by the police communications officer and shall not respond later than thirty (30) minutes after being dispatched, except that a large tow truck shall respond no later than forty-five (45) minutes after being dispatched. Failure to so respond shall constitute a violation under this article.
- (d) A rotation list privilege holder responding to the scene of an accident shall remove from the highway debris resulting from an accident which may impede the orderly flow of traffic. This includes broken glass or other lightweight debris that can easily be removed by one person, unless the rotation list privilege holder is requested to perform other cleanup services in connection with an accident by a certified law enforcement official or other authorized government official, and which cleanup does not involve the removal of the cargo carried by a vehicle associated with the wreckage. Failure to so remove such debris shall constitute a violation under this article.

Sec. 23-66. Use of large tow truck.

In the event that the police officer in charge of investigating a traffic accident or handling an incident determines that a large tow truck is required, the police officer shall advise the police communications officer to call for the larger tow truck next up on the rotation list. This call shall be counted as the next turn for the tow truck so called from the master tow truck rotation list.

Sec. 23-67. Emergency calls.

Notwithstanding any other provision of this division, whenever any police officer of the city arrives at the scene of any accident and in the exercise of such officer's discretion as a police officer believes that an emergency exists requiring the immediate service of a tow truck in order to protect the life, health or property of the owners or occupants of the vehicles involved in the accident or the owners or occupants of other vehicles being operated upon the streets at or near the scene of the accident, then the police officer shall immediately notify the police communications officer of such emergency and the location of the accident and the most readily available tow truck shall be dispatched to the scene of the accident by the police communications officer receiving such call. This call shall be counted as the next turn of the tow truck so called from the master tow truck rotation list.

Sec. 23-68. Inventory of certain towed vehicles.

In the event that the driver of a vehicle has been arrested and is no longer at the scene or is otherwise unable to communicate with a tow truck privilege holder or employee or is unconscious or otherwise disabled and unable to communicate with a tow truck privilege holder or employee, the police officer requesting a tow truck in accordance with this article shall perform an inventory of the contents of the vehicle in accordance with department policy, complete an inventory form and provide a copy of such form to the tow truck privilege holder or employee prior to said privilege holder or employee leaving the scene or location.

Sec. 23-69. Reserved.

DIVISION 4. DENIAL, SUSPENSION, SUMMARY REMOVAL, AND REVOCATION

Sec. 23-70. Denial of permit; denial of rotation list privilege; hearing.

- (a) The city secretary shall deny the applicant a permit if:
- (1) The applicant has been finally convicted of a felony or misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding five hundred dollars (\$500.00), if the crime directly relates to the duties and responsibilities involved in the operation of a tow truck or operation of a vehicle storage facility;
 - (2) The applicant misstated or omitted a material fact in the permit application;
 - (3) The applicant failed to submit a fully completed application, sworn to under oath by the applicant;
 - (4) The applicant failed to furnish all documents required to be submitted with the application;
 - (5) The applicant refuses to consent to city inspection or examination of the tow trucks, vehicle storage facility, business records, documents, books, accounts, equipment or facilities of the applicant's towing business, during normal business hours, as necessary to ensure permit eligibility and enforce this article;
 - (6) The applicant otherwise failed to comply with the requirements of this article; or
 - (7) The applicant has had a permit revoked as provided herein within one year prior to the date the application is received by the city secretary.
- (b) Without limiting his authority to refuse to execute a rotation list privilege contract as otherwise provided, the city manager may refuse to execute a rotation list privilege contract if:
- (1) Any tow truck driver whose services will be used by the rotation list applicant for rotation list tows has been convicted of a felony or misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding five hundred dollars (\$500.00), if the crime directly relates to the duties and responsibilities involved in the operation of a tow truck or operation of a vehicle storage facility;
 - (2) The applicant misstated or omitted a material fact in the rotation list application;
 - (3) The applicant failed to submit a fully completed application, sworn to under oath by the applicant and failed to properly execute a rotation list privilege contract in a form approved by the city attorney;
 - (4) The applicant failed to furnish all documents required to be submitted with the application;
 - (5) The applicant refused to consent to the city inspecting or examining the tow trucks, vehicle storage facility, business records, documents, books, accounts, equipment or facilities of the applicant's towing business, during normal business hours as necessary to ensure rotation list privilege eligibility and to enforce the requirements of this article;
 - (6) The applicant otherwise failed to comply with the requirements of this article; or
 - (7) The applicant had a rotation list privilege revoked or the city declared a breach of his contract within the past year.
- (c) The city secretary shall approve or deny the application for a permit within thirty (30) calendar days of receiving such application. The city secretary shall send written notification to the applicant of the approval or denial within five working days of the decision. Notice of denials shall be sent by certified mail, return receipt requested, to the business address shown on the application. The denial notice shall include a "request for appeal" form. The denial notice may provide that the decision is temporary, pending compliance with this article. If the applicant complies with the requirements of this article pursuant to a temporary denial notice before the tenth calendar day after the applicant receives such notice, the city secretary shall approve the application. If the applicant fails to comply with the requirements of this article within ten (10) calendar days of receipt of a temporary denial notice, a new application must be submitted.
- (d) Upon receipt of a denial notice, the applicant shall have ten (10) days to request an appeal hearing before the city council regarding the denial. The request shall be submitted on the "request for appeal" form furnished by the city secretary and shall be filed with the city secretary. Failure to timely request a hearing shall result in the applicant waiving the right to such appeal hearing.
- (e) If requested, a hearing shall be held before the city council no later than thirty (30) calendar days after the city secretary receives the "request for appeal." The hearing shall be limited to the issue of whether the application was improperly denied. The applicant shall not be allowed to tender documents at the hearing which would put the application in compliance with this article. Any such corrected and/or additional documentation must be submitted with a new application to the city secretary for review.
- (f) At the end of the hearing, the city council shall render its decision regarding the denial of the application. If the city council determines the application was improperly denied, the city secretary shall, within two working days issue a permit.

Sec. 23-71. Suspension of permit; suspension of privilege.

- (a) In addition to punishment for conviction of violations of this article as provided in section 1-8 of the City

Code, the chief of police may suspend for a period not longer than thirty (30) calendar days any permit or privilege issued under this article, after notice and hearing as provided herein, based upon any of the following grounds:

- (1) The permit holder has been convicted in municipal court of a violation of this article;
 - (2) The permit holder has been convicted of a felony or misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding five hundred dollars (\$500.00), if the crime directly relates to the duties and responsibilities involved in the operation of a tow truck or operation of a vehicle storage facility;
 - (3) The permit holder allowed such holder's insurance, as required herein, to be canceled, withdrawn, or terminated;
 - (4) The permit holder intentionally misstated or omitted a material fact in an application for the permit or rotation list privilege contract;
 - (5) The permit holder has violated or refused to comply with any of the provisions of the Vehicle Storage Facility Act (Vernon's Ann. Civ. St. art. 6687-9a), as said act may hereafter be amended or the rules of the Texas Department of Transportation promulgated in relation to said act;
 - (6) The permit holder's certificate of registration for any permitted tow truck or vehicle storage facility license issued by the Texas Department of Transportation has been suspended in which case, notwithstanding the above, the chief of police must suspend the permit for the remainder of the suspension period levied by the Texas Department of Transportation.
- (b) In addition to punishment for conviction of violations of this article as provided in section 1-8 of the City Code, the Chief of Police may suspend for a period not longer than 30 calendar days any rotation list privilege granted under this article, after notice and hearing as provided herein, based upon any of the following grounds:
- (1) The rotation list privilege holder or employee failed to respond to a rotation list call to a specified location within the time specified in section 23-65(c) after being dispatched to such location by the police communications officer;
 - (2) The rotation list privilege holder or employee has been convicted in municipal court of a violation (other than permit, equipment, insurance and response time violations) of this article;
 - (3) The rotation list privilege holder or employee has been convicted of a felony or misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding five hundred dollars (\$500.00), if the crime directly relates to the duties and responsibilities involved in the operation of a tow truck or operation of a vehicle storage facility;
 - (4) The rotation list privilege holder intentionally misstated or omitted a material fact in the application for the current rotation list privilege.
 - (5) The rotation list privilege holder failed to comply with any provision of his rotation list privilege contract.

Sec. 23-72. Summary removal from rotation list.

In addition to punishment for conviction of violations of this article as provided in section 1-8 of the City Code, the chief of police may summarily remove a tow truck from the rotation list any time that the chief of police determines that the privilege holder is operating said tow truck on the public streets of the city without the required permit, and such tow truck shall not be returned to the rotation list until the permit is reinstated or a new permit is obtained and all other applicable requirements are met for being returned to the rotation list.

Sec. 23-73. Revocation of permit; revocation of rotation list privilege.

- (a) In addition to punishment for conviction of violations of this article as provided in section 1-8 of the City Code, the chief of police may revoke any permit issued under this article, after notice and hearing as provided herein, based upon any of the following grounds:
- (1) The permit holder has been convicted in municipal court of a violation of this article;
 - (2) The permit holder has been convicted of a felony or misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding five hundred dollars (\$500.00), if the crime directly relates to the duties and responsibilities involved in the operation of a tow truck or operation of a vehicle storage facility;
 - (3) The permit holder has had such permit suspended during the permit term by the chief of police, as provided herein, for allowing such holder's insurance, as required herein, to be canceled, withdrawn, or terminated and the permit holder failed to provide evidence that the requisite insurance has been obtained on or before the thirtieth day from the date of the suspension order;
 - (4) The permit holder has, for the third time during the current permit term, allowed such holder's insurance, as required herein, to be canceled, withdrawn, or terminated;
 - (5) The permit holder intentionally misstated or omitted a material fact in an application for this

- permit;
- (6) The permit holder has violated or refused to comply with any of the provisions of the Texas Tow Truck Act (Vernon's Ann. Civ. St. art. 6687-9b), or the Texas Vehicle Storage Facility Act (Vernon's Ann. Civ. St. art. 6687-9a), as said Acts may hereafter be amended or the Administrative Rules promulgated by the Texas Department of Transportation under the acts; or
 - (7) The permit holder's certificate of registration for any permitted tow truck or vehicle storage facility license issued by the Texas Department of Transportation has been revoked.
- (b) In addition to punishment for conviction of violations of this article as provided in section 1-8 of the City Code, the chief of police may revoke any rotation list privilege granted under this article, after notice and hearing as provided herein, based upon any of the following grounds:
- (1) The rotation list privilege holder failed on three (3) occasions during any twelve-month period to respond to a rotation list call to a specified location within the time specified in section 23-65(c) after being dispatched to such location by the police communications officer;
 - (2) The rotation list privilege holder or employee has been convicted in municipal court of a violation (other than permit, equipment, insurance and response time violations) of this article;
 - (3) The rotation list privilege holder or employee has been convicted of a felony or misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding five hundred dollars (\$500.00), if the crime directly relates to the duties and responsibilities involved in the operation of a tow truck or operation of a vehicle storage facility; or
 - (4) The rotation list privilege holder intentionally misstated or omitted a material fact in the application for the current rotation list privilege.
 - (5) The rotation list privilege holder failed to comply with any provision of his rotation list privilege contract.

Sec. 23-74. Suspension-revocation hearings.

- (a) Whenever the chief of police has reason to believe grounds exist for the suspension or revocation of a permit or rotation list privilege or both, as appropriate, issued under this article, he shall cause an investigation to be made. The investigator shall make a report to the chief of police, stating the facts on which the conclusion that a violation has occurred is based. The chief of police shall, prior to any such suspension or revocation, schedule a public hearing to determine whether such permit or privilege or both, as appropriate, shall be suspended or revoked. Written notice setting forth the charges and the date, time and location of such hearing shall be given to the permit or rotation list privilege holder not less than ten (10) calendar days prior to such hearing. Notice shall be deemed sufficient upon its deposit with the United States Postal Service, as certified mail, return receipt requested, addressed to the last known address of the permit or rotation list privilege holder as shown in the permit or rotation list privilege holder's most recent permit or rotation list application; or upon its delivery to such last known address by an employee or representative of the chief of police.
- (b) The chief of police shall base his decision to suspend or revoke a permit or rotation list privilege upon the following factors:
- (1) The seriousness of the violation;
 - (2) The history of previous violations;
 - (3) The amount of action necessary to deter future violations;
 - (4) The amount of monetary gain realized by the permit or privilege holder charged;
 - (5) Efforts made to correct the violation;
 - (6) If the violation involves a felony or misdemeanor conviction or probation, parole, or mandatory supervision revocation:
 - a. The nature and seriousness of the crime;
 - b. The relationship of the crime to the safe operation and insuring of a tow truck;
 - c. The extent to which a permit or privilege might offer an opportunity to engage in further criminal activity of the same type as that in which the permit or privilege holder or employee was involved;
 - d. The relationship of the crime to the ability, capacity, or fitness to perform the responsibilities of operating a tow truck;
 - e. The extent and nature of the permit or privilege holder's or employee's criminal activity;
 - f. The amount of time elapsed between the permit or privilege holder's or employee's last criminal activity;
 - g. The conduct and work activity of the permit or privilege holder or employee prior to and following the criminal activity;
 - h. Whether or not the permit or privilege holder or employee was a minor at the time of the conviction of the crime;

- i. Evidence of the permit or privilege holder's or employee's rehabilitation or rehabilitative effort while incarcerated or following release;
 - j. Other evidence of the permit or privilege holder's or employee's present fitness as deemed appropriate; and
 - k. Any other matters that justice may require.
- (c) At the conclusion of the public hearing, the city secretary shall immediately issue such orders of suspension or revocation as are authorized by the chief of police. Any such order issued hereunder shall become effective ten (10) calendar days from its date of issuance unless a written request for an appeal hearing before the city council is filed with the city secretary within ten (10) calendar days of the issuance of such order. Failure to timely request a hearing shall result in a waiver of the right to appeal.
- (d) If requested, a hearing shall be held before the city council no later than thirty (30) calendar days after the city secretary receives the request. At the end of the hearing, the city council shall render its decision regarding the suspension or revocation. The order of the city council shall be final.
- (e) A permit or privilege holder whose permit or rotation list privilege or both has been revoked as provided herein is prohibited from receiving a new permit or being returned to the rotation list for a period of one year from the effective date of such revocation.

DIVISION 5. RATES

Sec. 23-75. Rates.

- (a) All tow truck permit holders operating permitted tow trucks on the public streets shall charge no more than the storage rates prescribed by the Texas Department of Transportation for performing nonconsent tows. A charge for any storage service exceeding the rates prescribed or in addition to the storage related services prescribed shall constitute a violation of this article.
- (b) The city manager may establish further rate limits in the city's contracts with rotation list privilege holders. These rate limits shall not be considered rate regulations, but shall instead be considered contractual obligations pursuant to the city's provision of referrals to contractees. Failure to comply with any such contractual rate limits shall not be punishable as a violation of this ordinance, but shall instead merely give the city the right to declare a breach of contract and potentially terminate said contract.

Secs. 23-76--23-79. Reserved

3.

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed \$500.00 as provided in Section 1-8 of the City Code.

4.

In addition to any other remedy provided by law, the City and its officers shall have the right to enjoin any violation of this ordinance by injunction issued by a court of competent jurisdiction.

5.

All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

6.

If any provision of this Ordinance, or the application thereof to any person or circumstances, shall be held invalid or unconstitutional by a Court of competent jurisdiction, such invalidity shall not affect the other provisions, or application thereof, of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

7.

The Code of the City of Victoria, Texas, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

8.

It is the intention of the City Council that this ordinance shall become a part of the Code of the City of Victoria, Texas, and it may be renumbered and codified therein accordingly.

9.

The City Secretary shall publish the caption or a descriptive title of this ordinance one time within 10 days after final passage of the Ordinance in a newspaper of general circulation in the City of Victoria in accordance with

Article II, § 10 of the City Charter.

10.

This ordinance shall become effective 10 days after final passage and approval by the City Council of the City of Victoria, Texas.

PASSED FIRST READING, this the 18th day of June, 2002.

AYES: 5

NAYS: 0

ABSTENTIONS: 0

PASSED SECOND READING, this the 2 day of JULY, 2002.

AYES: 7

NAYS: 0

ABSTENTIONS: 0

PASSED THIRD READING, this the 2 day of JULY, 2002.

AYES: 7

NAYS: 0

ABSTENTIONS: 0

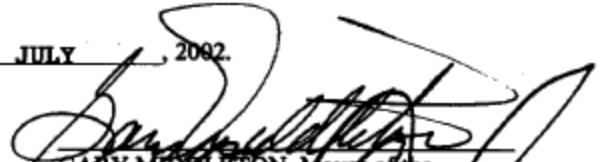
APPROVED AND ADOPTED, this the 2 day of JULY, 2002.



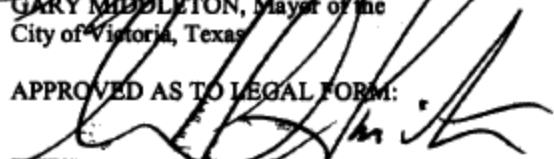
ATTEST:


SCARLET SWOBODA, City Secretary

Distribution: Legal Department
Police Department
Finance Department
City Manager


GARY MIDDLETON, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:


DAVID ATMAR SMITH, City Attorney
Copies Sent: JULY 3, 2002