

**ORDINANCE NO. 2108**

**AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY TEXAS AMENDING CHAPTER 5, BUSINESS REGULATIONS, SECTION 15, WRECKER SERVICE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:**

**ARTICLE I.**

That Chapter 5, Business Regulations, Section 15, Wrecker Service shall be amended as follows:

**SECTION 15: WRECKERS AND WRECKER SERVICE**

1. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. *Accident* shall mean any occurrence which renders a vehicle wrecked or disabled as defined in this section.
2. *Disabled* shall mean that status of any vehicle which has 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 wrecker.
3. *Hazardous material* shall mean:
  1. Any substance classified as a hazardous material under state or federal law or under a rule adopted pursuant to a state or federal law; or
  2. A chemical, petroleum product, gas or other substance that, if discharged or released, will or is likely to create an imminent danger to individuals, property or the environment.
4. *Motor vehicle* shall mean every vehicle which is self-propelled.
5. *Non-consent tow* shall mean any tow conducted without the permission of, or not at the direction of, the vehicle's legal or registered owner, or such owner's authorized representative, regardless of the vehicle's location or

condition.

6. *Police pull* shall mean the designation of the occasion when the police department has called a wrecker company to either remove a wrecked or disabled vehicle or to remove a vehicle in a safe driving condition, but the owner is not present, able or permitted to drive or to make authorizations.
7. *Referral tow* shall mean any tow conducted with the permission and at the request of an owner or operator of a motor vehicle, made to a police officer, in which the tow is accomplished by a wrecker company referred from the Terrell Police Department Public Service Referral Towing Rotation Listing as a public service.
8. *Street* shall mean any street, alley, avenue, lane, public place, square or highway within the corporate limits of the city.

9. *Tilt bed/roll back car carrier* shall mean a motor vehicle designed and equipped as to be capable of lifting another vehicle upon itself for the purpose of transporting a motor vehicle that cannot be safely transported by a wrecker.
10. *Vehicle* shall mean every device in, upon or by which any person or property is or may be transported or drawn upon a street, except devices moved by human power or used exclusively upon stationary rails or tracks.
11. *Wrecked* shall mean the status of any vehicle that has been damaged as the result of overturning or colliding with another vehicle or object so as to reasonably necessitate that such vehicle be removed by a wrecker.
12. *Wrecker* shall mean any motor vehicle designed and used primarily for removing wrecked or disabled vehicles upon any street.
13. *Wrecker business* shall mean the business of removing wrecked or disabled vehicles on the streets from the site of an accident, regardless of whether the purpose of the removal is to repair, wreck, store, trade or purchase such wrecked or disabled vehicles.
14. *Wrecker company* shall mean any person engaged in the wrecker business.

2. Accidents covered.

The prohibitions and requirements of this section shall also apply to all accidents occurring on a street regardless of whether or not the final resting place of a vehicle is upon a street immediately after the accident. This subsection shall be construed to include those accidents in which a vehicle, immediately before becoming wrecked or disabled, was:

1. Driven off a street intentionally or unintentionally, because of some real or perceived emergency;
2. Driven off a street maliciously, or with an intent to commit suicide; or
3. Driven, pushed or forced off a street while without a driver.

3. Emergency situations exempted.

The prohibitions and requirements of this section shall not apply to any person who necessarily must act immediately to prevent death or bodily injury to any person involved in an accident. The assertion of a defense of an emergency situation shall constitute an

affirmative defense to a violation cited under this section.

4. Pushing, towing by vehicles other than wreckers.

Vehicles may be pushed or towed by another vehicle only when they do not reasonably require removal by a wrecker and only when such may be done in a safe manner, and such removal is excluded from all coverage of this section except section J concerning solicitation.

5. Maximum fees chargeable for non-consent tows.

1. In order to provide for consistency and fairness of fees charged for towing services involving the towing of motor vehicles without the prior consent or authorization of the owner or operator of the motor vehicle towed, the following fee structure of maximum permissible charges is established.

2. No wrecker or towing company shall charge more than the rates indicated for the services rendered below, for all tows with points of origin within the corporate limits of the city:

1. *Towage.* A maximum charge of \$65.00 for towing such vehicle from one (1) point on a street, or on public or private property, to another location within the corporate limits of the extraterritorial jurisdiction of the city.

2. *Tandem axle wreckers.* A charge of \$125.00 per hour for the use of a tandem axle (heavy duty) wrecker. After the first hour, billing shall be in increments of fifteen (15) minutes, at a rate of \$31.25 per increment. No heavy duty (tandem axle) wrecker shall be used unless its use may be justified as necessary to safely accomplish the tow. Upon demand by the owner/operator of the vehicle towed, written justification shall be provided by the wrecker company towing said vehicle, stating the rationale and safety requirements which mandated the use of the tandem axle wrecker.

3. *Use of a tilt bed/roll back car carrier.* A charge up to a maximum of \$85.00 when the use of a car carrier is necessary for towing any such vehicle.

3. In the event an owner or operator of a vehicle which is about to be towed, pursuant to a non-consent police-initiated tow, but prior to actual removal of the vehicle from the site, returns to the tow location, he or she may demand immediate release of their vehicle by the wrecker company. The wrecker company shall comply with this demand at no cost to the owner or operator of the vehicle. In such a case, the responding wrecker company shall be returned to its original place on the top of the public service referral towing rotation listing.

6. Police pulls.

All police department-initiated, non-consent tows, shall be undertaken by contacting the wrecker company on the top of the public service referral towing rotation listing with the owner/operator of the vehicle towed being subject to the fee schedule listed in subsection E above.

7. Weekly reports.

Each wrecker company towing vehicles from within the city, will provide a weekly written

report to the police department of all vehicles towed as non-consent or referral tows from any public roadway or public or private lot, during the previous one-week period, which shall include the following information:

1. Make, model, and color of the vehicle towed.
  2. License number and/or V.I.N. of the vehicle.
  3. Location of the origin of the pull.
  4. Location of the destination of the pull.
  5. The date and time the pull was made.
  6. The name, address and phone number of the party requesting the service.
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8. Removal of debris from accident scene.

Each wrecker company called to the site of an accident that provides a towing service, shall completely remove all resulting wreckage from the city street or throughway before departing from the site. Removal of wreckage will not be considered completed by merely sweeping debris to the curblin. All such wreckage shall be removed from the accident site completely.

1. Wreckers prohibited at scene unless called.

No person shall drive a wrecker to or near the site of an accident within the city unless such person has been called to the site by the owner or operator of the vehicle, by his or her authorized representative, or by the police department. A wrecker operator, whose assistance has been requested by the owner of a disabled vehicle, shall notify the police communications center of his or her intention to be present on the scene, prior to proceeding to the site of the disabled vehicle.

10. Solicitation.

1. No person shall solicit in any manner directly or indirectly, on the streets of the city, at or near the site of an accident within the city, any business regarding wrecked or disabled vehicles regardless of whether the solicitation is for the purpose of removing, repairing, wrecking, storing, trading or purchasing such vehicle.
2. The presence of any person engaged in the wrecker business or other businesses for which solicitation is hereby prohibited, either as owner, operator, employee or agent on any street at or near the site of an accident within one (1) hour after the happening of such accident shall be prima facie evidence of a solicitation in violation of this subsection.

11. Towing vehicles containing hazardous materials, and notification.

1. No wrecker or towing company seeking to tow a vehicle which contains, or is reasonably believed to contain, hazardous materials may accomplish the tow unless, pursuant to 49 U.S.C. §§ 1801, 5107 - 5109, 5125; 49 C.F.R. 387; Tex. Trans. Code §§ 522.003(19), 522.041 - 522.043, and all other applicable federal and state law,
  1. The wrecker is registered to transport hazardous materials; and
  2. The wrecker has been issued pertinent permits to transport same; and
  3. The driver of the wrecker is licensed to transport hazardous materials.

2. In the event a wrecker or towing company seeks to tow a motor vehicle or trailer containing, or reasonably believed to contain, hazardous materials, and the materials have leaked or appear to be leaking, the wrecker or towing company shall immediately advise the Terrell Fire Department of the leakage. The motor vehicle or trailer will not be moved until inspected by the fire department. The fire department will be the sole authority in determining the appropriate precautions to be taken prior to authorizing the motor vehicle or trailer to be moved by the wrecker company.

12. Permit Required.

No person may engage in the wrecker business within the city without first obtaining a permit to do so from the City Secretary. Every person desiring to provide such wrecker service within the city may apply for a permit to operate as an authorized wrecker service company from the City Secretary for each wrecker proposed to be operated. For each wrecker for which a permit is sought, the applicant must submit the following:

1. Name, address and telephone number of the owner of the wrecker;
2. Name address and telephone number of the operator and/or wrecking company;
3. Trade name under which the wrecker service will operate;
4. Name and type of wrecker to be operated;
5. A statement that the wrecker service company will provide wrecker service on at twenty-four (24) hour basis, seven (7) days a week; and
6. The type of wrecker service to be provided, i.e. heavy-duty, tilt bed/roll back car carrier, etc.; and
7. A statement that all wreckers permitted under this subsection are properly equipped according to law.
8. The payment of an initial permit fee of \$150.00 per permit issued for an initial period of two (2) years and, at the expiration of the initial period, a renewal fee of \$75.00 for each additional two year renewal.

The City Secretary may also require any additional information of an applicant if deemed necessary.

13. Revocation or suspension of permit.

A permit may be suspended or revoked by the City Secretary or the Chief of Police for one or more of the following reasons:

1. Failure to maintain wrecker or equipment in safe working order;
2. Failure to comply with any provision of this section;

3. Refusal to answer any call for emergency wrecker service;
4. Conviction or indictment of any wrecker driver of a felony or class A or class B misdemeanor or when the wrecker driver has been convicted of four (4) or more moving traffic violations arising out of separate transactions or involved in more than two (2) automobile accidents in which it could be reasonably determined that he or she was at fault within any twelve (12) month period during the proceeding three (3) years.
5. Conviction of a wrecker driver of a provision of the motor vehicle or traffic laws of the State of Texas or the city while in the scope of his or her employment as a wrecker driver; and/or

6. The making of any false statement as to any material matter in an application for a permit or its renewal.
7. Failure to pay any fees required by this Section.

14. Appeals.

If the City Secretary refuses to issue a permit or renewal or, if the City Secretary or the Chief of Police suspends or revokes any permit, an appeal may be made to the City Council. Such appeal must be filed with the City Secretary within ten (10) days of such denial, suspension or revocation stating that an appeal is desired and the grounds for such appeal. Upon receiving the appeal, the City Council, as soon as is practicable thereafter and in no event longer than thirty (30) days after receipt, shall hold a hearing to consider the appeal. At least five (5) days notice of the date of such hearing shall be given to the applicant. Based on the hearing of the appeal and the facts relative thereto, the City Council will either sustain or reverse the decision of the City Secretary and/or the Chief of Police. The decision of the City Council shall be final.

15. The public service referral towing rotation listing.

1. In the interests of public safety, the chief of police is hereby empowered to develop and maintain a public service referral towing rotation listing of all wrecker or towing companies who desire to be on the list, and who have a current permit for towing services with the city. The purpose of the listing will be to provide, through a referral roster, access to wrecker service by members of the public, upon request, consistent with the criteria established by this subsection.
2. Such a service will be provided only when a citizen request for a tow is made, and it is directed to the police department for referral. The final designation and acceptance of the wrecker or towing company that provides the wrecker service will rest with the citizen requesting the tow. A citizen is not required to use a wrecker company from the public service referral towing rotation listing; citizens may request wrecker companies which do not appear on the referral listing. However, the citizen requesting the tow will be fully responsible for any fees incurred by, and associated with the tow. The city will neither warrant nor guaranty, nor assume any liability for the quality of service, or the costs of any public service referral tow.
3. Wrecker or towing companies seeking to be placed on the public service referral towing rotation listing must demonstrate compliance with all statutory licensing, safety, and financial responsibility requirements upon

demand by the chief of police or his designee.

4. In order to expedite the clearing of accident scenes or obstructions caused by disabled vehicles, and in the interests of assisting stranded motorists, wrecker or towing companies desiring to be on the listing must be capable of responding to the accident or disabled vehicle location within thirty (30) minutes of receipt of the call requesting their service by the police department.

5. The public service referral towing rotation listing shall consist of a roster of interested wrecker or towing companies, identified by name, and arranged in alphabetical order. A referral shall be made, upon the citizen's request, by the police department calling the wrecker company first to appear in alphabetical order. Successive referrals will be made by first exhausting the alphabetical roster in its entirety, and then returning to the alphabetical beginning of the roster to continue sequential, alphabetical referrals. The criteria used for any "pass-overs" or non-selection of wrecker companies appearing in alphabetical succession shall be based only on the following situations:
  1. A citizen's request not to use the wrecker company identified on the rotation listing;
  2. A request for a pass-over made by a wrecker company itself at the time it is called by the police department;
  3. A statement made to the police department by the wrecker company identified that it cannot dispatch a wrecker to the location requested within thirty (30) minutes;
  4. A statement made to the police department by the wrecker company identified that it cannot dispatch a wrecker to the location requested because it has no wreckers available with the equipment necessary to safely accomplish the tow;
  5. A determination made by the chief of police or his designee that a wrecker company, to which a referral has been made, has failed to respond with a wrecker within the allotted thirty (30) minutes; or
  6. A determination made by the chief of police or his designee that a wrecker company is not in full compliance with any requirement of this section.
6. All requests for placement on, or self-initiated removal from, the public service referral towing rotation listing shall be made in writing from the wrecking company concerned, and addressed to the chief of police.
7. In addition to the permit fees specified in subsection L, the city shall charge an annual administrative fee of \$175.00 to those wrecker or towing companies seeking to be on the public service referral towing rotation listing. This fee shall be payable to the City Secretary prior to any wrecker or

towing company being placed on the referral listing. It shall be used to defray the costs of administration, updating and maintenance of the public service referral towing rotation listing.

16. Motor vehicle impoundment and storage fees.

The city shall charge an impoundment and storage fee at the maximum amount allowable under state law for all vehicles towed to the City Storage Yard. Such fees shall be computed on storage per day, or part of a day for motor vehicle storage. The storage fee shall be charged for a full twenty-four hour day for any part of a day of storage. The storage fees shall not exceed those accruable for one (1) twenty-four hour day if the vehicle has remained at the storage location for less than twelve (12) hours. For purposes of this section, the time frame for a "day" shall begin and end at midnight. Fees shall be charged for abandoned motor vehicles taken into police custody at the rates herein authorized. These accrued fees shall be based on storage and impoundment:

1. Lasting for not more than ten (10) days, beginning on the day the abandoned motor vehicle is taken into custody and ending on the day the notice of impoundment is mailed;
  2. Beginning on the day after the day that the notice of impoundment is mailed and ending on the day that the accrued charges have been paid and the vehicle has been removed.
17. Removal and storage of motor vehicles towed from parking facilities.
1. Wrecker operators removing vehicles from parking facilities without a vehicle owner or operator's consent shall ensure that proper signage, notice, or authorization for removal has been accomplished prior to removing the vehicle, pursuant to Texas Transportation Code Chapter 684.
  2. Vehicles which are towed from a parking facility without the consent of the owner or operator, and which are taken to a private storage facility may only be assessed those fees and rates for storage, preservation or protection which are permitted under the Texas Vehicle Storage Facility Act, the Texas Transportation Code, and any other pertinent state law.

18. Right to a hearing.

If a motor vehicle has been removed and placed in a vehicle storage facility without the consent of the owner or operator, the owner or operator may request a hearing in Terrell Municipal Court, pursuant to Texas Transportation Code Chapter 685, to determine whether or not probable cause existed for the removal and storage of the vehicle.

19. Parking facility operators' responsibilities.

In the event a vehicle is towed from a parking facility by a wrecker company pursuant to Texas Transportation Code Chapter 684, without the consent of the owner or operator of the vehicle, the owner, operator, agent or representative of the parking facility, other than the wrecker company, must be present and available at the site from where the vehicle in question is to be towed to authorize the tow and to assure all requirements of this ordinance have been complied with prior to the tow being conducted.

20. Violation of ordinance and fines.

A violation of any provision of this ordinance shall be punishable by a fine not to exceed \$500.00.

**ARTICLE II.**

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

### **ARTICLE III.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the city council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

**ARTICLE IV.**

This ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

Passed and Approved this the 19<sup>th</sup> day of March, 2002.  
Passed and Adopted this the 2<sup>nd</sup> day of April, 2002.

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HENRY C. MADGWICK, SR., MAYOR

ATTEST:

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JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

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MARY GAYLE RAMSEY, CITY ATTORNEY