

ORDINANCE NO. 0225

**AN ORDINANCE ESTABLISHING A ROTATION SYSTEM FOR THE PROVISION OF CERTAIN NON-CONSENT TOWING SERVICES THROUGH THE POLICE DEPARTMENT; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, REPEALER, AND SEVERABILITY.**

**WHEREAS,** the City Council of the Town of Horizon City ("City Council") is authorized by the Texas Government Code, Section 51.001, to adopt an ordinance that is for the good government, peace, or order of the City and is necessary or proper for implementing a power granted by law to the City; and

**WHEREAS,** the City Council has determined that a need exists to regulate certain non-consent tow services inside the City limits; and

**WHEREAS,** the City Council has determined that in order to avoid competing towing companies "chasing" accident scenes, it is necessary to set up a rotation system; and

**WHEREAS,** the City Council has determined that a need exists to protect its citizens from overcharges and ensure that tow trucks providing services for nonconsensual tows within the City limits meet the necessary insurance and state law requirements; and

**WHEREAS,** the City Council has determined that this ordinance is necessary to protect the health, safety, and welfare of the citizens of Horizon City by regulating certain tow services provided to its citizens and others in a reasonable manner.

**NOW, THEREFORE, BE IT ORDAINED, BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY, TEXAS, that:**

**ORDINANCE I. ADOPTION OF THE ORDINANCE**

Pursuant to Sections 51.001 and 51.012 of the Texas Local Government Code, the City Council of the Town of Horizon City hereby enacts and adopts this ordinance which regulates certain types of non-consent towing within the Town of Horizon City.

**SECTION 1. DEFINITIONS**

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

Consent tow: Any tow of a vehicle conducted with the permission of, or at the direction of, the owner or operator of the vehicle or by a person who has possession, custody or control of the

vehicle. The term does not include a tow of a vehicle initiated by a peace officer investigating a traffic crash or a traffic incident that involves the vehicle, or when a police officer arrests the driver of a vehicle and determines that the vehicle is to be impounded

Heavy duty 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 with a gross weight rating of 25,000 pounds or more.

Non-consent 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. Notwithstanding this definition, a police officer may control the scene of a crash in the manner he or she deems appropriate and can order a rotation tow as defined below and direct the impoundment of a vehicle when the officer arrests the driver or seizes a vehicle as evidence.

Rotation list or master tow truck rotation list: The Police Department rotation list of permit holders, prepared and used as provided in this Ordinance.

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 with a gross weight rating of 25,000 pounds or less.

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

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 Licensing and Regulations.

## **SECTION 2. ESTABLISHMENT OF ROTATION LIST**

Section 2.1. Establishment of list; administrative responsibilities; no property rights granted.

A. The Chief of Police is hereby authorized to issue tow rotation permits pursuant to this Ordinance and establish a rotation list of permit holders to provide vehicle towing and storage services upon request of police officers. The persons and entities which desire to obtain permits and be placed upon and remain on the rotation list shall comply with the requirements of all applicable state laws and administrative rules regulating tow trucks and vehicle storage facilities and this Ordinance.

B. The issuance of a rotation list permit and placement on the master tow truck rotation list is a privilege, not a right. Furthermore, placement on the list does not create any property rights and

does not guarantee continued placement thereon.

C. All rotation list permit holders are independent contractors while acting pursuant to this section, and shall not be deemed to be, considered as, or in any way represented to be employees or agents of the city.

#### Sec. 2.2. Application.

A. Application for a rotation list permit and placement on the rotation list shall be made to the Chief of Police on a form furnished for that purpose.

B. Applications must be signed by the person who owns, controls or operates the proposed vehicle tow service. Applicants shall submit proof of company ownership of the tow truck(s) or evidence of a lease under which the tow truck is to be operated. Applications will not be considered as complete and processed until all required documentation has been submitted and fees paid.

1. The application must be completed in its entirety and include the following:
  - a. The name, address and telephone number of the applicant, the trade name under which the applicant does business, the street address and telephone number of the vehicle tow service establishment.
  - b. The name, address and telephone number of the vehicle storage facility (VSF) where vehicles will be towed and stored at until claimed. Applicants must possess their own VSF within El Paso County or have an agreement with a VSF, in effect through the duration of the permit, which allows applicant to use such facility, and provide a copy of such agreement.
2. Copies of the following documents shall be submitted with the Application:
  - a. Assumed name certificate where applicable.
  - b. Partnership agreement disclosing the names of all general or limited partners, if a partnership; or the articles of incorporation and a certificate from the corporate secretary setting forth names of all officers, directors and persons owning ten percent or more of the outstanding stock of the corporation.
  - c. Proof of an insurance policy or policies which will be in full force and effect for the duration of the permit and will meet the policy requirements as outlined by the state for a tow truck and in the Vehicle Storage Facility Act, this Ordinance, and applicable state law; proof of coverage of each driver in the list of employees required herein.
  - d. The Tow Truck Permit for incident management towing issued by the Texas Department of Licensing and Regulation.
  - e. A list of the tow trucks operated by the business, which will be authorized to respond to rotation calls for service, including the year, make, model, vehicle identification number and state license plate number and identification as to whether the tow truck meets the Ordinance definition of tow truck or heavy-duty tow truck. A copy of the cab card issued for each tow truck issued a permit by the Texas Department of Licensing and Regulation shall be provided for each tow truck on the list.
  - f. A list of each employee who is licensed by the Texas Department of Licensing and

Regulation.

- g. Current sales tax certificate.
  - h. An indemnification and hold harmless agreement provided by the City.
  - i. Any other information deemed necessary by the Police Department consistent with and for the proper administration and enforcement of the provisions of this Ordinance.
3. Proof of the following shall be submitted with the Application, or will be investigated by the Chief of Police:
- a. That the tow service will provide twenty-four hours a day, seven-days a week, on call service, and the telephone number(s) for that service.
  - b. That the tow service or responding tow trucks are sited at a location(s) that is within 15 miles of the Town of Horizon City and that it is possible for the company to meet the requirement for a response within 30 minutes.

### Section 2.3 Term; permit fee.

The Police Department tow truck rotation list permit term and fees shall be as follows:

A. The rotation list term shall be from January 1 through December 31 of each year, provided however, the term of the initial list shall be from the effective date of this Ordinance through December 31, 2016.

B. A Permit Fee in the amount of \$75.00 shall be paid at the time the application is submitted for a permit or the renewal of a permit.

C. Applications may be submitted any time during the rotation list term for the remainder of the duration of the annual term. New applicants during the term will be inserted into the rotation list alphabetically in the same manner as provided in Section 2.4 A.

### Sec. 2.4. Placement on the rotation list; transferability.

A. Each permit holder will be separately entered on the master tow rotation list for rotation purposes, with the order of placement to be in alphabetical order based on the initial of the first word of the company name, as incorporated, or the initial of the surname of the person operating the business, if not incorporated.

B. Each permit holder shall as necessary, update and maintain as current, the list of the tow trucks operated by the business, which have cab cards/permits issued by the Texas Department of Licensing and Regulation and are authorized to respond to rotation calls for service. Only those tow trucks that are permitted and included on the permit holder's list are authorized to respond to a rotation call. A tow company may not substitute a tow truck from a different tow company to respond.

C. Once the Chief of Police grants a tow rotation list permit, the permit cannot be transferred or assigned.

Sec. 2.5. Permit renewal.

A. Each permit holder who has been issued a tow rotation permit and has been placed on the master rotation list by the Chief of Police may renew the permit each succeeding annual term so long as all the requirements of this Ordinance are met.

B. The application process and fee for a renewal of a permit is the same as the initial application process and fee.

**SECTION 3. REQUESTING AND PROVIDING SERVICES; DUTIES**

Sec. 3.1. Calling tow truck; responding to call.

A. When a vehicle which has been involved in a crash, or which is otherwise disabled, is unable to proceed safely, or when a driver of a vehicle is physically unable to drive such vehicle, the police officer investigating such incident shall request the driver of such vehicle to designate a tow truck operator to remove such vehicle.

B. When the driver has so designated the tow truck operator, the police officer shall communicate that fact immediately to a police dispatcher, and it shall be the duty of such dispatcher to call the designated tow truck operator to send a tow truck to the scene or site of the incident or arrest.

C. In the event such driver is physically unable to designate a tow truck operator, or refuses to designate one, or the police officer has arrested the driver of a vehicle or seized a vehicle as evidence, the police officer investigating such incident or making such arrest or seizure shall notify the dispatcher of such fact, and the dispatcher shall select the appropriate permit holder on the rotation list and call that permit holder to send a tow truck to the scene or site of such incident or arrest.

D. On receiving the first request for notification of a tow truck from the rotation list, the dispatcher shall call the permit holder next assigned to tow, proceeding in the order of rotation as established by the rotation list ("rotation call"). The dispatcher shall request all of the towing services identified by the officer as being needed from the first contacted permit holder. A proper notation of each rotation call shall be made by the dispatcher.

E. If the situation is such that a heavy-duty tow truck is needed, the dispatcher shall so advise the contacted permit holder. If that permit holder has not included a heavy-duty tow truck on list of tow trucks that are authorized to respond, the dispatcher shall proceed in the order of rotation to place calls until the dispatcher is able to contact a permit holder with such a heavy-duty tow truck. If the situation requires a response from multiple tow trucks and the permit holder receiving the first request is unable to provide all of the needed tow trucks, the next permit holder on the rotation list shall be notified and have the right to provide the additional services.

F. No deviations are allowed by a dispatcher when proceeding through the rotation order to call the permit holders in good standing. Should a permit holder not be able to supply a tow truck or a heavy duty tow truck when called, they will be skipped over and will receive their next call based on proceeding through the rotation order.

G. Each permit holder shall respond to a rotation call within thirty (30) minutes after being notified by the dispatcher. Failure to so respond shall constitute a violation of this Ordinance. If the permit holder does not respond within thirty (30) minutes, the next permit holder on the rotation list shall be notified and have the right to tow said vehicle. A permit holder shall not respond to the location of a crash reported to the Police Department without first being requested by the dispatcher or having been called directly by the driver/owner of an involved vehicle.

### Sec. 3.2. Duties of permit holders and tow truck operators.

A. Permit holders and tow truck operators shall be subject to the following conditions:

1. Permit holders shall keep and maintain towing equipment, which is required under this Ordinance and under the rules and regulations promulgated by the Texas Tow Truck Act and the Administration Rules promulgated by the Texas Department of Licensing and Regulations, in a good operating condition.
2. Upon arrival at the scene of a police dispatch call, tow truck operators shall take directions on when to engage or tow from a police officer at the scene.
3. Tow truck operators that engage and tow any vehicle from the scene of a crash shall remove all debris of the crash from the public right-of-way. This duty specifically includes the removal of vehicle parts, glass and other debris. Such debris shall be disposed of in a lawful manner which will keep it out of the gutters, storm sewers and drainage systems. Failure to so remove all debris shall constitute a violation under this Ordinance.
4. All vehicles towed from the scene of a crash will either be delivered to the location specified by the driver/owner or delivered immediately to the vehicle storage facility listed in the application. Tow truck operators shall, whenever possible, give a business card with pertinent information to the driver/owner of the vehicle being towed.
5. Permit holders shall comply with all rules and regulations governing towing services as set out in the Texas Tow Truck Act and the administrative rules as promulgated by the Texas Department of Licensing and Regulations, including but not limited to the maximum amount that can be charged for towing and services, and shall satisfy due process requirements as required by law in the impoundment of any vehicles, the assessment of charges for services rendered, and the attachment and execution of any lien.
6. Permit holders shall make full disclosure, to the person towed, of the fees for towing and other associated costs.

B. Permit holders shall provide and maintain current information. All information submitted with the application shall be kept current and amended when changed, revised or updated. Should a permit holder need to change any of the information submitted as part of the application, he shall submit that information in writing to the Chief of Police within 24 hours of making such change.

## **SECTION 4. PERMIT – ISSUANCE, DENIAL, SUSPENSION, REVOCATION**

### **Sec. 4.1. Issuance/Denial of permit.**

A. The Chief of Police shall issue a tow rotation list permit to an applicant if he determines that the applicant meets all of the criteria and requirements set forth in Section 2 of the ordinance and has at least one tow truck and at least one employee qualified to operate the tow truck who is available 24 hours a day, 7 days a week.

B. The Chief of Police shall deny the applicant a tow rotation list permit if:

1. The applicant misstated or omitted a material fact in the application.
2. The applicant failed to submit a fully completed application.
3. The applicant failed to furnish all documents required to be submitted with the application.

C. The Chief of Police shall provide notice to applicants as to whether the permit has been issued or whether the application has been denied.

### **Sec. 4.2. Grounds for Suspension or Revocation.**

A. The Chief of Police may suspend or revoke a rotation list permit if he determines that:

1. The permit holder gave false or misleading information in the material submitted to the City during the application process.
2. The permit holder allowed such holder's insurance, as required herein, to be canceled, withdrawn, expired, or terminated.
3. The permit holder's Tow Truck Permit for incident management towing issued by the Texas Department of Licensing and Regulation has been suspended or revoked.
4. The permit holder's certificate of registration for any tow truck has been suspended or revoked, in which case, notwithstanding the above, the Chief of Police shall suspend approved operations for that tow truck for the remainder of the suspension period levied by the Texas Department of Licensing and Regulations.
5. The permit holder's or permit holder's lessor's vehicle storage facility license issued by the Texas Department of Licensing and Regulations has been suspended or revoked.
6. The permit holder has missed more than three (3) rotation calls in a ninety (90) day period. The penalty for this violation shall be suspension from the rotation list for a period of thirty (30) calendar days, or the next rotation whichever is later, for the first violation and sixty (60) days, or the next two rotations whichever is later, for the second violation in a twelve (12) month period. The Chief of Police shall have the discretion upon the third such violation by a permit holder in a twelve (12) month period to set a higher suspension period, up to and including revocation of the permit.
7. The permit holder or one of its employees violated any of the required duties under Section 3 of this Ordinance, other than response to the scene, which is separately addressed above under subsection A 6.
8. The permit holder or one of its employees illegally solicited tow or repair services at a police investigation.

9. The permit holder or one of its employees charged or collected any fess in excess of those allowed by law or this Ordinance.

10. The permit holder has established a pattern of conduct causing legitimate consumer complaints, to include but not be limited to, complaints regarding damage to towed or stored vehicles, loss of items from towed or stored vehicles, problems relating to vehicle redemption.

B. If the Chief of Police determines that grounds exist for suspension or revocation of a permit holder, the Chief of Police shall immediately issue such orders of suspension or revocation and provide notice to the permit holder.

#### Section 4.3. Appeal of Denial, Suspension or Revocation.

A. The permit holder shall have ten (10) days from the date of receiving the Official's report regarding the revocation or denial in which to file notice of his appeal with the City Clerk by filing a written request for an appeal hearing before the Mayor or his designee. Failure to timely request a public hearing shall result in a waiver of the right to appeal.

B. If requested, a public hearing shall be held before the Mayor or his designee no later than thirty (30) calendar days after the City Clerk receives the request. At the end of the public hearing, the Mayor or his designee shall render his decision regarding the suspension or revocation. The decision of the Mayor or his designee shall be final.

C. A permit holder whose permit has been revoked as provided herein is prohibited from being returned to the rotation list for a period of one (1) year from the effective date of such revocation.

### **ORDINANCE II. FINDINGS OF FACT**

That this ordinance was duly enacted with all requisites and formalities incident thereto the enactment of ordinance, and such is evidenced by the signatures below; and further that the foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

### **ORDINANCE III. REPEALER**

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the effect of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

### **ORDINANCE IV. SEVERABILITY**

Should any of the clauses, sentences, paragraphs, sections or parts of this ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

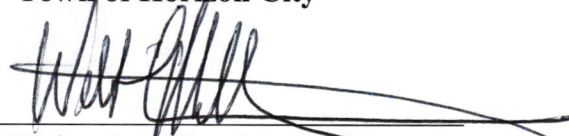
**ORDINANCE V. PROPER NOTICE AND MEETING**

It is officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52, Texas Local Government Code.

PASSED AND APPROVED this the 10<sup>th</sup> day of November 2015, by a vote of 7 (ayes) to 0 (nays) to 0 (abstentions) of the Town Council of Horizon City, Texas.

**Town of Horizon City**

By:

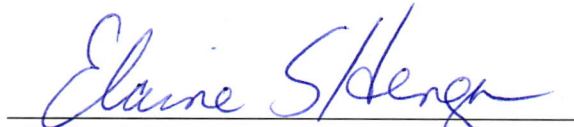
  
Walter L. Miller, Mayor

**ATTEST:**

By:

  
Elvia Schuller, City Clerk

**APPROVED AS TO FORM:**

  
Elaine S. Hengen, Assistant City Attorney

First Reading: 11/2/2015  
Second Reading: 11/10/2015