

ORDINANCE NO. 2023-04-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 114 OF THE CITY'S CODE OF ORDINANCES, "WRECKING SERVICES", BY AMENDING SECTION 114-11, "PERMITS"; AMENDING SECTION 114-21, "AUTO POUND SPECIFICATIONS - GENERALLY" BY PERMITTING AUTO POUND PERMITTEES TO BE LOCATED WITHIN THE CITY'S EXTRA-TERRITORIAL JURISDICTION; DELETING SECTION 114-22, "SAME - INDOOR AREA", IN ITS ENTIRETY; AMENDING SECTION 114-29, "SUSPENSION AND REMOVAL FROM ROTATION LIST"; AMENDING "APPENDIX A – SCHEDULE OF FEES" BY AMENDING THE TOWING RATE SCHEDULE; PROVIDING A PENALTY; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Texas Occupations Code Chapter 2308 permits a local authority to regulate private operators engaged in the practice of vehicle towing and booting within the areas in which the local authority regulates traffic and parking; and

WHEREAS, the City of McKinney (the "City") previously adopted its rules and regulations relative to towing, impoundment and disposition of abandoned vehicles pursuant to Ordinance No. 2000-09-061 on September 5, 2000, as amended by Ordinance No. 2018-11-076, adopted on November 6, 2018, and currently codified as Chapter 114 of the City's Code of Ordinances; and

WHEREAS, the City Council seeks to further amend the City's towing regulations contained in the City's Code of Ordinances to address necessary changes in how vehicles are to be towed and booted within the City's corporate limits and ETJ; and

WHEREAS, the City Council believes it is in the best interest of the residents of the City of McKinney to revise the City's towing and booting regulations as provided for herein.

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

Section 1. Findings.

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of McKinney and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 114, "Towing Activities" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by amending Section 114-11, "Permits," to read as follows:

"Sec. 114-11. - Permits.

- (a) The maximum number of permittees on the rotation list shall be three. Only one permit will be issued per tow truck owner irrespective of the number of wrecker services owned by that tow truck owner. The maximum number of permittees may only be changed by city council action after notice and hearing at a public meeting but shall in no way affect the right to suspend or remove any permittee from the rotation list.
- (b) A waiting list of wrecker services shall be established for those tow truck owners who do not make the rotation list. The list will be used in case of termination or removal, with the first wrecker service on the list to replace a service terminated or removed.
- (c) Each permittee shall be approved by the chief of police or his designee and shall be of good moral character and qualified to perform the services required. To be eligible for a permit, permittee must at all times be current in their obligations to the city, including payment of ad valorem and other taxes.
- (d) Each permittee shall comply with all applicable state laws including, but not limited to, the Texas Department of License and Regulation and the Texas Vehicle Storage Facility Act (Vernon's Ann. Civ. St. art. 6687-9a) and must display a current valid license for a vehicle storage facility issued by the state department of transportation."

Section 3. From and after the effective date of this Ordinance, Chapter 114, "Towing Activities" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by amending Section 114-21, "Auto Pound Specifications - Generally," to read as follows:

"Sec. 114-21. – Auto Pound Specifications - Generally.

Every permittee under this chapter shall provide a suitable place for storage of vehicles towed at the request of the police department and such place shall:

- (1) Be located within the corporate limits of the city or its Extraterritorial Jurisdiction (ETJ);
- (2) Be properly zoned if located within the corporate limits of the city;

- (3) Hold a minimum of 15 automobiles;
- (4) Shall have improved the required fencing consistent with the zoning ordinance, including, but not limited to, section 150-206.C, which provides for fencing, walls and screening requirements and shall be screened from view from the public right-of-way and from adjacent residential property;
- (5) Have a gate which is kept locked when not attended;
- (6) Maintain all screening, fences and gates in good condition;
- (7) Be adequately lighted for security purposes;
- (8) Provide a minimum of three parking spaces for customers of the wrecker service; and
- (9) Comply with all applicable state laws relative to the operation of a wrecker service and auto pound."

Section 4. From and after the effective date of this Ordinance, Chapter 114, "Towing Activities" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by deleting section 114-22, "Same - indoor area", in its entirety.

Section 5. From and after the effective date of this Ordinance, Chapter 114, "Towing Activities" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by amending Section 114-29, "Suspension and Removal from Rotation List", to read as follows:

"Sec. 114-29. Suspension and Removal from Rotation List.

- (a) Any applicant who makes application under this chapter and is placed on the rotation list and is called by the police department under the terms of this chapter shall be required to respond to any authorized call. The chief of police may remove the permittee from the rotation list for any of the following reasons:
 - (1) Failure to respond to three consecutive calls;
 - (2) Failure to respond to 25 calls within a 12-month period;
 - (3) Causing undue damage to vehicles picked up or any other act of incompetency of operation;
 - (4) Intoxication or incompetency of a wrecker operator;
 - (5) Failure to maintain insurance as required in section 114-19;
 - (6) Failure to allow the chief of police or his designee to periodically make safety inspections of the wrecker or

- wreckers, the wrecker service, and/or auto pound, as required herein;
- (7) Failure to comply with the requirements of section 114-18, pertaining to required equipment;
 - (8) Failure to reasonably comply with any other provision of this chapter; or
 - (9) The making of any false statement as to a material matter in an application for a permit, or permit renewal, or in a hearing concerning the permit.
- (b) Any permittee that is removed from the rotation list shall not be eligible to have its name replaced on the rotation list for a period of up to 12 months from the date of removal.
 - (c) Any permittee that receives a total of three suspensions in a 12-month time period shall have its permit terminated immediately. That permittee shall not be eligible to reapply for a permit for a 12-month period commencing on the date of termination.”

Section 6. From and after the effective date of this Ordinance, Chapter 114, Appendix A, “Schedule of Fees” of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by amending Section 114-28, “Rate Schedule,” to read as follows:

“Sec. 114-28. *Rate schedule.*

Passenger automobiles, ambulances, limousines, and all other vehicles having a rated capacity of 10,000 GVW or less, including motorcycle:

Basic wrecker fee130.00

Off-road recovery/rollover (extra), per hour billed 15-minute increments100.00

Heavy duty rotator fee (extra) 800.00

Storage—In accordance with state rates

Single axle bobtail or straight trucks, tandem axle bobtail or straight truck, tractors, or trailers (empty):

Removal rate, per hour190.00

Heavy duty rotator fee (extra) 800.00

Storage—In accordance with state rates

Tractor trailer combinations (loaded):

Removal rate, per hour 325.00

Heavy duty rotator fee (extra) 800.00

Storage—In accordance with state rates”

Section 7. PROVIDING A PENALTY

Any person, firm or corporation violating or failing to comply with any of the provisions of this Ordinance shall be subject to the penalty provisions set forth in Section 1-18 of the City’s Code of Ordinances; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

Section 8. REPEALER CLAUSE

All ordinances, orders, or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders, or resolutions, or parts thereof, conflict with this Ordinance.

Section 9. SAVINGS CLAUSE

All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 10. SEVERABILITY CLAUSE

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 11. PUBLICATION OF CAPTION

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 12. EFFECTIVE DATE

This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 4TH DAY OF APRIL, 2023.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney