

ORDINANCE NO. 2024-09-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, REPLACING THE CITY'S EXISTING ROTATING PERMIT SYSTEM FOR POLICE-INITIATED WRECKER REQUESTS WITH A NEW CONTRACTUALLY AWARDED SOLE PROVIDER FOR SUCH WRECKER SERVICES BY REPEALING CHAPTER 114 OF THE CITY'S CODE OF ORDINANCES, ENTITLED "WRECKER SERVICES," IN ITS ENTIRETY AND REPLACING SAID CHAPTER WITH A NEW CHAPTER 114, ALSO ENTITLED "WRECKER SERVICES"; AMENDING "APPENDIX A – SCHEDULE OF FEES" BY REPEALING CHAPTER 114, CONTAINED THEREIN, IN ITS ENTIRETY; DECLARING THAT ALL EXISTING TOW TRUCK PERMITS SHALL EXPIRE AT MIDNIGHT ON SEPTEMBER 30, 2024; 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, as further amended by Ordinance No. 2023-04-020, adopted on April 4, 2023, 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 by replacing the existing rotating permit system for police-initiated wrecker requests with a new contractually awarded sole provider for such wrecker services and repealing the permit fees and towing services rate schedule contained in Appendix A; and

WHEREAS, pursuant to Section 114-15, the City Council does not seek to renew any of the existing tow truck permits, and it is the intent of the City Council for such permits to expire at midnight on September 30, 2024; 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 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, "Wrecker Services" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by repealing and replacing said chapter with a new Chapter 114, also entitled "Wrecker Services," to read as follows:

"CHAPTER 114 - WRECKER SERVICES

Sec. 114-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Contract wrecker means a wrecker operator who has successfully bid upon the wrecker specifications set out by the city and has been awarded a contract by the city for police-directed tows.

Motor vehicle means a vehicle subject to registration under the Certificate of Title Act (V.T.C.A., Transportation Code ch. 501, as amended) or any other device designed to be self-propelled or transported on a public highway and/or which may be attached to a trailer or other similar device.

Nonconsent tow means any tow conducted without the permission of, or not at the direction of, the vehicle's owner, or such owner's authorized representative, regardless of the vehicle's location or condition. Towing the vehicle of a person who has been taken into custody by a law enforcement agency is considered a nonconsent tow.

Operate means using a tow truck to tow, winch or otherwise move a motor vehicle.

Owner means any person who holds the legal title of a motor vehicle or who has the legal right of possession thereof, or the legal right to such vehicle.

Person means an individual, partnership, joint venture, association, corporation, or any other entity recognized by law.

Police department means the chief of police, supervisor, police officer and communications specialist of the city police department.

Tow truck or wrecker means a motor vehicle or mechanical device adapted or used to tow, winch or otherwise move motor vehicles. A tow truck may also be referred to herein as a wrecker.

Wrecker operator or tow truck operator means any person or his or her agent, who owns or operates a wrecker within the corporate limits of the city and who is engaged in the business of storing, wrecking or repairing motor vehicles for hire.

Sec. 114-2. Contract wrecker service.

- (a) No person shall provide wrecker service to the city without first executing a contract with the city. Provided, however, nothing in this section shall prohibit the city from utilizing the services of noncontract wreckers for towing services originating outside the corporate limits of the city.
- (b) The city shall have the power and authority to prepare specifications for bidding by wrecker operators. Upon award by the city council, the city manager or his designee shall execute a contract with the successful bidder. The contract wrecker shall respond upon request of the city to the scene or site of any wreck, motor vehicle accident or collision occurring within the corporate limits of the city, or to any other scene or site at which the services of a wrecker are required by the city.

Sec. 114-3. No wrecker to report at scene of accident unless called by police or owner.

It shall be unlawful for any wrecker operator or driver to proceed to the scene of a wreck, motor vehicle accident or collision, or follow any ambulance or police car which is traveling in response to a report of a wreck, motor vehicle accident or collision, unless such wrecker or driver has been called to the scene by the owner of the vehicle or their authorized representative or by the police department.

Sec. 114-4. Duties of police department.

- (a) *Dispatch of Wreckers.* The police department shall dispatch the wrecker or wreckers required to satisfy any call or request for wrecker service from police officers, except in cases where a vehicle is left abandoned on private property and no police action is involved.

In such cases, it will be the responsibility of the citizen to make the wrecker service call.

- (b) *Jurisdiction in Removing Vehicles.* In all cases requiring police involvement under this chapter, such as an accident or arrest involving a nonconsent tow, the police department shall have exclusive jurisdiction in removing vehicles from the scene of such involvement by permittee.
- (c) *Record of Calls.* The police department shall keep a log of every call received under this chapter. The log shall indicate the date, the time of the call, the disposition of the vehicle towed, and the date and time of such disposition.
- (d) *Contents of Vehicles.* A list of the contents of a vehicle towed by the wrecker operator will be made by the police department. A copy will be retained by the police department for future reference and two copies shall be given to the wrecker operator, one of which is to be given to the owner or operator of the towed vehicle when disposition of the vehicle is made, and the other of which is to be maintained by the wrecker operator.
- (e) *Inspection.* The police department shall have authority to inspect all wreckers belonging to contract operators to ensure the wrecker operator's continued compliance to the regulations contained herein.

Sec. 114-5. Rate schedule.

Maximum rates for wrecker services provided to the city shall be specified in the contract.

Sec. 114-6. Promulgation of additional requirements.

The chief of the police department shall have authority to promulgate other reasonable rules, regulations and requirements as may become necessary to ensure that the contract wrecker protects the vehicles and vehicle contents."

Section 3. 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 repealed in its entirety.

Section 4. All existing tow truck permits currently issued under Chapter 114 of the Code of Ordinances of the City of McKinney, Texas, shall hereby expire at midnight on September 30, 2024.

Section 5. 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 6. 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 7. 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 8. 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 9. 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 10. EFFECTIVE DATE

This Ordinance shall become effective October 1, 2024, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 17TH DAY OF SEPTEMBER, 2024.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
TENITRUS BETHEL
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney