

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON AMENDING CHAPTER 23 “POLICE” OF THE CITY OF DENTON CODE OF ORDINANCES BY ADDING ARTICLE V. “NON-CONSENT TOWING;” PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 FOR VIOLATIONS OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton finds it in the best interest of citizens to adopt provisions governing non-consent towing; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Chapter 23 “Police” of the Code of Ordinances of the City of Denton is hereby amended by adding Article V. “Non-Consent Towing,” to read as follows:

ARTICLE V. NON-CONSENT TOWING

DIVISION 1. GENERALLY

Sec. 23-110. Definitions.

Consent tow means any tow of a motor vehicle initiated by 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 the tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

Department means the City of Denton Police Department.

Driver’s license has the meaning assigned by Section 521.001 of the Texas Transportation Code.

Fully prepared for transport means a vehicle that is attached to a tow truck, is lifted, with tow lights and safety chains attached, and, if required, is placed on a dolly in a raised position.

Non-consent tow means any tow of a motor vehicle that is not a consent tow.

Parking facility means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:

- (a) a restricted space on a portion of an otherwise unrestricted parking facility; and
- (b) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, apartment complex, property governed by a property owners’ association, or government-owned property leased to a private person, including:

- (1) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and
- (2) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

Parking facility owner means:

- (a) an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;
- (b) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001 of the Texas Property Code, over assigned or unassigned parking areas; or
- (c) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001 of the Texas Property Code, to use a parking space.

Private property tow means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

Property owners' association has the meaning assigned by Section 202.001 of the Texas Property Code.

Public roadway means a public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

Restricted space means a parking space that is properly marked in a parking facility that is properly signed according to state law.

Tow truck means any motor vehicle designed and used primarily for removing wrecked or disabled vehicles upon any street.

Tow truck operator means an individual operating a tow truck.

Tow truck operator's license means a license issued under this article.

Towing company means individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state, but does not include a political subdivision of the state.

Vehicle means 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.

Vehicle storage facility means the site to which a permit holder tows and stores vehicles, which meets the requirements as required by the Texas Department of Transportation.

Vehicle owner means a person:

- (a) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501 of the Texas Transportation Code;
- (b) in whose name the vehicle is registered under Chapter 502 of the Texas Transportation Code, or a member of the person's immediate family;
- (c) who holds the vehicle through a lease agreement;
- (d) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or
- (e) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

Sec. 23-111. Administration.

- (a) The police chief shall administer and enforce this article.
- (b) The police chief shall adopt rules for the administration and enforcement of this article. The rules must be reasonably designed to promote health and safety and ensure that:
 - (1) Towing companies and tow truck drivers are able to perform their responsibilities under this article and carry adequate liability insurance;
 - (2) The police chief is able to determine the correct identity and qualifications of individuals licensed under this article; and
 - (3) Tow trucks are operated in a safe and efficient manner.

Sec. 23-112. Authority and duties of the department.

The department shall implement and enforce this article. In addition to the powers and duties elsewhere prescribed in this article, the department is authorized to:

- (a) Conduct random periodic investigations of towing companies and vehicle storage facilities licensed by the city concerning their compliance with this article and state law.
- (b) Inspect tow trucks for compliance with vehicle and equipment safety standards established by this article.

- (c) Conduct random inspections of tow truck records for compliance with state laws and public safety. Inspections should be performed in a reasonable manner so as to comply with the laws of the state.
- (d) Conduct random inspections of vehicle storage facility records for compliance with state law and public safety. Inspections should be performed in a reasonable manner so as to comply with the laws of the state.

Sec. 23-113. Compliance with state and local ordinances.

(a) All towing companies, tow truck drivers, vehicle storage facilities, and property owners under this article shall comply with all applicable state laws, City of Denton ordinances, and rules issued by the State Department of Licensing and Regulation applicable to a tow truck, towing company, tow truck operator, or vehicle storage facility.

- (b) A person commits an offense if the person:
 - (1) performs an act prohibited by this article;
 - (2) fails to perform an act required by this article; or
 - (3) violates a rule adopted under this article.

(c) A violation of this article is a Class C misdemeanor.

(d) Proof of a mental state is not required for the prosecution of a violation of this article.

(e) An exception to an offense under this article may be used as an affirmative defense.

Sec. 23-114. Governmental entities excluded.

This article does not apply to towing that is performed by a governmental entity.

Sec. 23-115. Exemptions.

Except as specifically noted, this article does not apply to:

- (a) a person towing a vehicle with the express consent of the vehicle owner;
- (b) a person towing a vehicle from public streets and ways or private property under the direction of the department; or
- (c) a person who engages in towing a vehicle in connection with a bona fide repossession of same when written authorization has been received from the lienholder.

Sec. 23-116. Fees.

The city council shall establish a fee required or authorized under this article by separate ordinance.

Sec. 23-117. Prohibited charges for non-consent tows.

A person may not charge or attempt to charge a fee related to a non-consent tow under this article:

- (a) in excess of the fee established by ordinance;
- (b) for a service not performed or equipment not used;
- (c) that is not authorized by ordinance; or
- (d) if individual parking spaces in the parking facility are not designated by visible markings.

Sec. 23-118. Photograph required.

A towing company that tows a vehicle is required to maintain a digital photo of the entire vehicle being towed before the vehicle is towed from the parking facility. The towing company must maintain photos of towed vehicles for a period of not less than 60 days from the date the vehicle is towed.

Secs. 23-119 – 23-129. Reserved.

DIVISION 2. OPERATOR’S LICENSE FOR NON-CONSENT TOWS

Sec. 23-130. License required for non-consent tows.

(a) Except as provided by section 23-131 “Operation while first application pending,” a person may not perform non-consent tows in the city without a tow truck operator’s license issued under this article.

(b) A tow truck operator licensed under this article must wear the tow truck operator’s license while performing a non-consent tow.

Sec. 23-131. Operation while first application pending.

(a) An applicant whose first application for a tow truck operator’s license under this article is pending may:

- (1) perform non-consent tows in the city if the applicant has a valid tow truck operator’s license issued by another city; or
- (2) accompany and assist a tow truck operator licensed under this article.

(b) A person whose application is denied may not continue to perform non-consent tows or provide assistance under this article.

Sec. 23-132. Application for license.

(a) An applicant for a tow truck operator's license must file an application with the department on a form prescribed by the police chief and signed by the applicant and sponsoring towing company.

(b) An application must include all information required by rule adopted under this article.

(c) An applicant must submit the prescribed fee with the application. The fee is non-refundable.

(d) An applicant must meet the qualifications of Sec. 23-88 for a police-initiated towing permit to qualify for a tow truck operator's license under this article.

Sec. 23-133. License term and renewal.

(a) Unless revoked or suspended, a tow truck operator's license expires two years after the date of issuance.

(b) To obtain a renewal license, a license holder must complete a new application and pay the prescribed non-refundable fee.

Sec. 23-134. Duplicate license.

A license holder may obtain a duplicate tow truck operator's license to replace a lost or destroyed license. The license holder must pay the required fee.

Sec. 23-135. Change in application information or employment status.

A license holder shall notify the department not later than the 30th day after a material change in the license holder's application information or a change in the license holder's employment by a particular towing company ends.

Sec. 23-136. Application after revocation or denial.

A person whose tow truck operator's license is revoked, or whose application for a license is denied, may not reapply for a license for at least six months after the date of revocation or denial.

Secs. 23-137 – 23-140. Reserved.

DIVISION 3. TOW TRUCK REGULATIONS

Sec. 23-141. Registration Required.

(a) Any tow truck that is used to perform any non-consent tow, or any part thereof, shall be registered as a tow truck under this article and applicable provisions of state law, including, without limitation, Chapter 2308 of the Texas Occupations Code.

(b) Except as provided by subsection (c) of this section, a person may not operate or permit another person to operate a tow truck on a public roadway in the city unless the person obtains a registration certificate for the tow truck under this article.

(c) Any tow truck that is used to perform any non-consent tow on private property in the city must be registered with the department, regardless of whether the owner of the tow truck has a place of business in the city.

Sec. 23-142. Application for registration certificate.

(a) An applicant for a tow truck registration must:

- (1) file an application with the department on a form prescribed by the police chief;
- (2) submit the required, non-refundable fee;
- (3) provide verification that the tow truck is equipped to tow light-duty or heavy-duty motor vehicles according to the manufacturer's guidelines; and
- (4) provide proof of insurance that meets the requirements of Sec. 86-400 of Title 16 of the Texas Administrative Code.

(b) Upon application, the department will inspect the tow truck to determine compliance with the requirements of this article. If the tow truck is found in compliance, the department shall issue proof of registration to the applicant. The proof of registration shall be attached to the tow truck for which it is issued, at the place on the tow truck designated by the police chief. It shall be unlawful for any person to drive or operate a tow truck without the proof of registration being attached.

(c) Requirements for registration:

- (1) Each tow truck operator must meet the signage, safety equipment, safety clothing, and identification requirements of §§86.701, 86.1000, and 86.1001 of Title 16 of the Texas Administrative Code.
- (2) Each tow truck shall meet the following minimum requirements:

- a. Except for heavy-duty tow trucks, the tow truck's chassis cab shall be rated at no less than one ton by the manufacturer and will be equipped by the manufacturer with dual wheels and tires at each end of the rear axle;
- b. At all times the tow truck must carry tow lights with appropriate cable (unless wireless) and cushions to protect a vehicle's finish; and
- c. At all times the tow truck must be equipped with safety (mud) flaps with the bottom edge of the safety flap no more than eight inches from the surface of a public roadway.

Sec. 23-143. Registration certificate term and reapplication.

(a) A tow truck registration certificate remains in effect for one year from the date of issuance, unless it is revoked.

(b) The registration for each tow truck that is used to perform non-consent tows subject to this article shall be renewed annually by payment of the fee stated for this provision on the City fee schedule to the department, which shall verify that the tow truck is still in compliance with this article.

(c) If a registration certificate is revoked, an applicant requesting re-registration must file a new application and pay the none-refundable fee. The tow truck must pass a new inspection by the department.

Sec. 23-144. State licensing of tow truck drivers.

Tow trucks shall be operated by persons who hold the type of state driver's license that is required for their tow truck, as applicable.

Sec. 23-145. Equipment and markings required.

(a) A towing company shall maintain a tow truck and its required equipment in a safe, operating condition at all times that the tow truck is operating on a public roadway.

(b) Tow trucks operating in the city shall display the markings required by law, and by the rules adopted under this article.

(c) A peace officer may stop and inspect a tow truck to determine whether the tow truck is equipped as required by this article, and whether the equipment is in working order.

Secs. 23-146 – 23-150. Reserved.

DIVISION 4. TOWING SERVICE REGULATIONS

Sec. 23-151. Notification of vehicle removal.

(a) A towing company that removes a vehicle in accordance with Chapter 2308 of the Texas Occupations Code or in executing a repossession shall notify the department not later than one hour after the removal from the property or the parking facility.

(b) The notification must include:

- (1) the name of the towing company;
- (2) the date, time, and location of the removal;
- (3) the physical description, license plate number, and vehicle identification number of the vehicle removed;
- (4) the name of the tow truck operator who performed the removal; and
- (5) the location of the vehicle storage facility where the vehicle is being stored.

Sec. 23-152. Towing restricted.

(a) Except as provided in subsection (b) of this section, a towing company that intends to remove a vehicle from a parking facility in accordance with Chapter 2308 of the Texas Occupations Code may not tow a vehicle when the vehicle owner objects to the tow, tenders the payment of a fee authorized in the towing fee schedule established by the city council and maintained on file in the office of the city secretary, and removes the vehicle within 10 minutes. However, if a vehicle is not removed within 10 minutes and is in the process of being prepared for transport but not fully prepared for transport, a drop fee will apply.

(b) If a towing company is authorized to remove a vehicle from a parking facility, it may remove the vehicle earlier than 10 minutes even if the owner objects to the tow if the vehicle:

- (1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;
- (2) prevents a vehicle from exiting a parking space in the parking facility; or
- (3) is in or obstructs a properly marked fire lane.

(c) It is a violation of this article for a towing company performing a non-consent tow to remove a vehicle from a parking space if the vehicle is not fully prepared for transport.

Sec. 23-153. Service rates.

The rates hereinafter described are to be utilized by towing companies for non-consent tows originating within the corporate limits of the city pursuant to this article. This section does not apply to a repossession. A towing company may not charge more than one fee under this article for towing a single vehicle.

Sec. 23-154. Towing fee schedule; payment.

(a) The towing fee schedule is established by city council and maintained on file in the office of the city secretary.

(b) No towing fees may be charged other than those fees listed in this article, including charges for dollies, special equipment, or mileage.

(c) Weight, for purposes of this article, shall be determined by the gross weight recorded on the vehicle registration.

(d) If the owner or operator of a vehicle which is parked in violation of this Code or state law arrives before the vehicle is hooked up, the tow truck operator shall release the vehicle for free.

(e) A towing company may charge a fully prepared for transport fee when a vehicle has been fully prepared for transport but has not been removed from the property.

(f) A towing company may charge the standard non-consent fee when it removes a vehicle from the property.

(g) For payment of any fee under this article, a towing company or vehicle storage facility shall accept payment by cash, electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle. However, payment by credit or debit card may be refused if the named cardholder is not present.

(h) Release of a vehicle may not be denied based on the inability of the towing company or vehicle storage facility to accept payment by electronic check, debit card, or credit card of any charge associated with delivery or storage of a vehicle, unless the inability to accept such payment is due to factors outside the control of the towing company or vehicle storage facility, such as a power outage or machine malfunction. In such case, payment due shall be frozen until a 12-hour period of time has elapsed.

(i) In no way is this section to be construed to mean that a towing company or vehicle storage facility may not charge less than the fees stated in the towing fee schedule. The fees in the towing fee schedule are the maximum that can be charged for any towing or drop fee of a vehicle in accordance with this article.

(j) A towing company or vehicle storage facility must provide a copy of the City of Denton Towing Customer Bill of Rights with each receipt for any non-consent tow performed within the city limits of Denton. This obligation may be satisfied by conspicuously posting a

copy of the City of Denton Towing Customer Bill of Rights at the towing company or vehicle storage facility pay window.

Sec. 23-155. Tow fee study.

(a) Three or more towing companies performing, either alone or together, fifty percent (50%) or more of the non-consent tows during the preceding calendar year may request a tow fee study. Said request must be made in writing to the police chief. The request must identify the specific fees requested to be reviewed and indicate the requestor's willingness to provide any necessary financial documentation that the city may deem necessary to conduct the review.

(b) A non-refundable fee of five thousand dollars (\$5,000.00) in the form of a cashier's check payable to the city must be forwarded to the police chief before the study will be undertaken. This fee is intended to defray the cost of the study.

(c) The tow fee study shall be performed at the direction of the police chief. The methodology used to conduct the study will be established by the finance department of the city. The finance department shall determine what financial information is necessary to conduct the study, to include, but not limited to financial information requested from non-consent towing companies in the city. Any and all towing companies joining in the request for a tow fee study must provide all requested financial information. Such information shall be kept confidential to the extent allowed by law.

(d) The tow fee study shall be completed within 120 days of the date the deposit is paid and all requested financial information is received, whichever is later.

(e) The findings of the tow fee study shall be presented to the city council. Based upon the results of the tow fee study, the city council may change the non-consent towing fees. The maximum fees must represent the fair market value of the services of a towing company performing non-consent tows in the city.

(f) The city is not required to conduct more than one tow fee study within a two-year time period, measured from the date the city council most recently considered a tow fee study.

(g) Nothing in this section shall preclude the city from undertaking a tow fee study at its own discretion at any time. A consumer price index analysis to adjust towing fees shall be conducted annually, with any adjustment in fees taking effect January 1 of the following year. A new fee ordinance will be adopted in the event of any adjustment in fees.

Sec. 23-156. Vehicle storage facility required.

A towing company shall own, lease, or have a contract to use a designated vehicle storage facility to store a vehicle removed in a non-consent tow that is:

- (a) licensed by the State of Texas; and
- (b) located within the city or the city's extraterritorial jurisdiction.

Sec. 23-157. Removal to a designated facility.

(a) Except as provided in subsection (b) of this section, a towing company that performs a non-consent tow of a vehicle from private property:

- (1) shall immediately tow the vehicle to the towing company's designated vehicle storage facility; and
- (2) may not unload the towed vehicle at a place other than the towing company's designated vehicle storage facility.

(b) A towing company that performs a non-consent tow of a vehicle from private property may unload a vehicle at a place other than its vehicle storage facility only:

- (1) if safety reasons or mechanical breakdown require the transfer of the vehicle to another tow truck; or
- (2) to transfer the vehicle to another tow truck, within 100 feet of the private property, if the original tow truck is the company's only available tow truck that is capable of entering the property and removing a vehicle, and the original tow truck is needed immediately for police-initiated towing.

Sec. 23-158. Release of vehicle from storage; impoundment.

(a) A vehicle storage facility may not refuse to release a vehicle in its possession to the vehicle owner, or the owner's agent, after the person pays the applicable fees, unless a law enforcement agency directed that vehicle not be released, or release of the vehicle is prohibited by a court order.

(b) A person may not remove or attempt to remove a vehicle that is lawfully stored by a vehicle storage facility unless the applicable charges are paid and accepted, or the person removing the vehicle has obtained permission from the vehicle storage facility.

Secs. 23-159 – 23-170. Reserved.

DIVISION 5. ENFORCEMENT

Sec. 23-171. Denial, suspension, and revocation of license.

The police chief may deny a person's application for a tow truck operator's license and suspend or revoke a tow truck operator's license issued under this article, as prescribed in the rules adopted by the police chief.

Sec. 23-172. Revocation of tow truck registration certificate.

The police chief may revoke the registration certificate for a tow truck that fails to meet the requirements of state law regarding non-consent tows or for violations of state law that affect the public safety, this article, or rules adopted under this article.

Sec. 23-173. Notice required.

(a) Before taking adverse action under this article, the police chief shall notify the applicant or holder of the intended action, except that advance notice is not required in actions related to:

- (1) safety hazards;
- (2) absence of state motor carrier registration; or
- (3) absence of ownership or contract with licensed vehicle storage facility.

(b) The police chief shall send the notice by certified mail, return receipt requested to the mailing address listed on the person's application, certificate, or license, as applicable.

(c) The notice is presumed to have been received on the 10th working day after mailing, unless an earlier date is indicated on the return receipt.

(d) Except for actions that are authorized to take effect without advance notice, a denial, suspension, revocation, or removal is effective on the 20th day after the notice is mailed.

(e) If the police chief takes action without advance notice, the police chief shall send a notice that includes the factual basis for the action to the person or towing company affected by the action.

Sec. 23-174. Hearing.

(a) The person to whom a notice of denial, suspension, revocation, or removal is sent may request a hearing.

(b) The request must be in writing and received by the police chief not later than the 15th day after the notice was sent. If the person fails to submit to the police chief a request for hearing not later than the 15th day after the notice is sent, the denial, suspension, revocation, or removal becomes final on the expiration of the time specified in the notice.

(c) The police chief shall hold an informal hearing not later than the 15th day after the request for a hearing is received. At the hearing, the formal rules of evidence do not apply. The police chief shall decide the appeal on the basis of the preponderance of the evidence presented.

(d) The police chief shall make a determination on the hearing not later than the 10th day after the hearing. The police chief may affirm, reverse, or modify the previous determination.

Sec. 23-175. Appeal.

(a) A person may appeal the police chief's decision in writing to the city manager not later than the 10th day after the effective date of the decision. This person must include a statement of the grounds for the appeal.

(b) The notice of appeal does not stay the police chief's decision.

(c) The city manager shall schedule a public hearing not later than the 15th day after receipt of the notice of appeal. The city manager shall give notice of the time and place set for the hearing to the police chief and the appellant not less than five days before the hearing.

Sec. 23-176. Appeal procedure.

(a) At an appeal hearing under section 23-175, the police chief and the appellant may present evidence, testimony, and argument.

(b) The city manager's decision is final.

SECTION 2. This ordinance shall repeal every prior ordinance in conflict herewith, but only insofar as the portion of such prior ordinance shall be in conflict; and as to all other sections of the ordinance not in direct conflict herewith, this ordinance shall be and is hereby made cumulative except as to such prior ordinances or portions thereof as are expressly repealed hereby.

SECTION 3. Any person violating any provision of this ordinance, shall upon conviction, be fined a sum not exceeding \$500.00. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 4. If any provision of this ordinance or application thereof to any person or circumstance is held invalid by any court, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas hereby declares that it would have enacted the remaining portions despite any such validity.

SECTION 5. Save and except as amended hereby, all the sections, subsections, and clauses of Chapter 23 "Police" of the Code of Ordinances of the City of Denton, Texas shall remain in full force and effect.

SECTION 6. This ordinance providing for a penalty shall become effective January 1, 2016, and the City Secretary is hereby directed to cause the caption of this Ordinance to be published twice in the *Denton Record-Chronicle*, the official newspaper of the City of Denton, Texas, within 10 days of the date of its passage.

PASSED AND APPROVED this the _____ day of _____, 2015.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____
APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____