

AN ORDINANCE OF THE CITY OF LEANDER, TEXAS

ORDINANCE NUMBER 23-016-00

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 4.10 AND SECTION A4.008 OF THE APPENDIX A FEE SCHEDULE OF THE CITY OF LEANDER CODE OF ORDINANCES REGULATING WRECKER SERVICES; ADDING DEFINITIONS; UPDATING FEES RELATED TO NON-CONSENT TOWS; ESTABLISHING WRECKER VEHICLE REQUIREMENTS, OPERATIONAL RESPONSE REGULATIONS AND DUTIES OF WRECKER OPERATOR PERMIT HOLDERS; UPDATING ROTATION LIST PROCEDURES; PROVIDING FOR ENFORCEMENT AND PENALTY CLAUSES; PROVIDING FOR OPEN MEETINGS; SEVERABILITY, AND EFFECTIVE DATE CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Leander, Texas (herein the "City"), desires to review and update wrecker services, operations, fees and regulations within the City; and

WHEREAS, the City recognizes that without regulation, people needing tow services would be vulnerable to price spikes when they need tow services;

WHEREAS, the City recognizes that without proper ordinances, the City cannot effectively regulate towing services within the City; and

WHEREAS, the City finds it reasonable and lawful to regulate tow truck operations within the City in order to preserve safe operations, preserve uniform fairness in the use of tow services within the City's jurisdiction and to protect the public's interest.

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

Section 1. Findings of Fact. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amending Article 4.10, Wrecker Service, of the Leander Code of Ordinances. Article 4.10, Wrecker Service, of the Leander Code of Ordinances, is hereby amended in its entirety to read as follows:

ARTICLE 4.10 WRECKER SERVICE

Sec. 4.10.001 Definitions

For the purpose of this Article, the following terms shall have the meanings respectively ascribed to them in this section:

Abandoned vehicle. A motor vehicle that has been left on private property without the consent of the property owner for a period in excess of five (5) calendar days or on public property for the time periods and in the manners defined by Section 683.002 of the Texas Transportation Code, as amended.

Alternate Wrecker. A permit holder shall designate one (1) alternate wrecker company to assist as needed with calls from the department. See Section 4.10.006 for additional requirements.

Authorized Traffic Violation Tows. Officers are authorized to tow and to call for a rotation wrecker for the following traffic violations:

- 1) Any vehicle that is involved in a collision and the vehicle's owner or operator fails to show evidence of financial responsibility as required under V.T.C.A., Transportation Code Chapter 601, as amended; or
- 2) Any vehicle that is stopped for an alleged violation of a city or state traffic law or other law applicable to the operation of a vehicle on the roadway and the vehicle's owner or operator fails to show evidence of financial responsibility as required under V.T.C.A., Transportation Code Chapter 601, as amended; or
- 3) No Driver license and a licensed operator is not immediately available or able to respond in a reasonable amount of time to take custody of the vehicle; or
- 4) Improper classification of driver license for type of vehicle driven; or
- 5) Unauthorized vehicles operated on a public roadway or vehicles found to be displaying registration belonging to another vehicle or improperly registered (also includes wrong, altered or fictitious registration violations); or
- 6) Any violations that reduce the safe operation of such on a vehicle that cannot be remedied immediately; or the driver is found to be unable to safely operate the vehicle due to some other condition other than drug or alcohol induced impairment; or
- 7) Any other scenario already established by local, state or federal law allowing the impoundment of a vehicle.

Consent tow. Any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle, as defined by 16 Texas Administrative Code, Section 86.10(5), as amended. The term does not include an incident management tow or a private property tow. If the owner or operator chooses to have their vehicle towed from an incident management or non-consent tow location to another location (not the VSF) then the owner or operator can enter into a consent tow agreement with the responding incident management tow company from the rotation list.

Contract Wrecker. A Wrecker company or companies designated as the preferred towing service provider for the police department's fleet and all vehicles considered evidence, needing further

examination, reported stolen or requiring a hold of any kind. The awarded contractor shall also be the recommended wrecker service for private parties (consent tows) requesting a service tow or tow assistance through an officer of the police department (motorist assistance, stranded motorist, service assistance). The contracted wrecker company or companies will be established by a process determined by the Chief of Police or their designee.

Drop Fee (or charge). means the maximum fee that may be charged for the release of the vehicle before its removal from the property or parked location. As defined in Texas Administrative Code 86.455, or as amended

Heavy duty tow. Any tow of a motor vehicle with a gross weight rating that exceeds 25,000 pounds, as detailed in Section 2308.0575 of the Texas Occupations Code, as amended. (Includes gross weight rating of 25,000 pounds even).

Illegally parked vehicle. Any motor vehicle alleged to be in violation of any ordinance in the City regulating stopping, standing or parking, or in violation of applicable parking regulations of the Texas Transportation Code or other State Law, as amended.

Incident management tow. Any tow of a vehicle in which the tow truck is summoned by the Leander Police Department to the scene of a traffic collision or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an collision or incident scene, as defined by 16 Texas Administrative Code, Section 10 (11), as amended. The term shall also include tows incident to arrest, traffic hazards, illegally stopped, standing or parked vehicles, vehicles found to have committed certain traffic violations listed in this ordinance, vehicles reported stolen, vehicles considered evidence in a criminal investigation and tows of abandoned vehicles initiated by the Leander Police Department.

Light duty tow. Any standard tow of a motor vehicle with a gross weight rating of 10,000 pounds or less, as detailed in Section 2308.0575 of the Texas Occupations Code, as amended.

Medium duty tow. Any tows of a motor vehicle with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds, as detailed in Section 2308.0575 of the Texas Occupations Code, as amended.

Non- consent tow. Any tow of a motor vehicle that is not a consent tow, including an incident management tow and a private property tow, as defined by 16 Texas Administrative Code, Section 86.10(13), as amended.

On Scene time. The time arrived on the actual scene until the time departed from the actual scene. Does not include drive time, time at the impound yard, towing to an alternate location, etc., unless otherwise stated.

Permit holder. Any wrecker company possessing a current, valid permit to engage in towing from the wrecker rotation lists in the City. A permit holder's primary business office shall be located and maintained within the corporate limits of the city, its extraterritorial jurisdiction, or within fifteen (15) miles of those areas. The term also refers to a permit issued by the State of Texas.

Private property tow. Any tow of a vehicle authorized by a parking facility owner without

the consent of the owner or operator of the vehicle, as defined by 16 Texas Administrative Code, Section 86.10(18), as amended.

Vehicle storage facility (VSF). A vehicle storage facility, as defined by Texas Occupations Code, Section 2303.002, as amended, that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

Wrecker company. A person or legal entity operating a tow truck over public roadways in the State of Texas as defined by 16 Texas Administrative Code, Section 86.10(22), as amended. The term includes the owner, operator, employee, or agent of a towing company, but does not include a political subdivision of the State. Each wrecker company shall maintain a single unique Texas Department of Licensing and Regulation (TDLR) number.

Wrecker rotation List. A list of permit holders prepared in accordance with the provisions of this Article, as amended.

Sec. 4.10.002 Applicability

This Article applies to all wrecker movements within the city, except for those performed by governmental entities or directed by law enforcement. All wrecker operation inside of the City must comply with this Article.

- a) Unless exempted by State law, it shall be unlawful for any person to operate a wrecker company, or to perform wrecker movements for incident management tows or private property tows in the city without a permit issued in accordance with this Article.
- b) A wrecker company that has a proper certificate of registration or permit from the State of Texas is not required to obtain a permit from the city under this Article in order to perform consent or non-consent tows within, from, or through the limits of the city; provided, however, that non-consent tows originating within the corporate limits of the city or roadways subject to its jurisdiction shall be subject to Appendix A, Section A4.008.
- c) Any wrecker company performing any type of non-consent tow or tow service within the corporate limits of the city or roadways subject to its jurisdiction shall be subject to inspection or audit by the Chief of Police or his designee.
- d) All permit holders under this Article shall comply with all applicable State laws. Failure to comply with State laws will be a violation of this Article and subject to either fines or an administrative penalty or both.

Sec. 4.10.003 General Regulations

- (a) No person shall drive or cause to be driven a wrecker to or near the scene of a collision on a public roadway in the city or any roadway subject to the city's jurisdiction unless such person has been called by the police department. In situations where a wrecker driver is a certified emergency medical technician, such driver may stop and render aid as required by law but such wrecker driver will not be able to tow at such collision except pursuant to the rotation list.
- (b) No wrecker company or its employees shall solicit in any manner, directly or

indirectly, on the streets of the city, wrecker business involving any vehicle which is wrecked on a public street. This prohibition applies regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading, selling or purchasing such vehicle. Proof of the presence of any person engaged in the wrecker business, whether or not certified or identified under the provisions of this article, except a wrecker called pursuant to the provisions of this article, at or near the scene or site of a wreck or collision on any public street in the city after the occurrence of a wreck and prior to removal of all disabled or damaged vehicles shall be prima facie evidence of a solicitation in violation of this article.

- (c) All wrecker drivers arriving at the place where any collision has occurred shall obey all lawful orders given them by any police officer investigating such collision and shall not in any manner interfere with such officer in the performance of his duty.
- (d) Whenever a wrecker arrives at the place where a vehicle has been disabled, the wrecker driver shall park the wrecker as close to the roadway curb as possible and otherwise dispose of it in a manner that does not interfere with traffic. The wrecker driver shall not park their vehicle within a distance of twenty-five (25) feet from a wrecked or disabled vehicle.
- (e) It shall be the duty of the driver of each wrecker that removes a wrecked, damaged or disabled vehicle from the place where a collision has occurred to clear and remove any and all debris, parts, glass or vehicle fluids as the result of a collision or collisions from the roadway to the satisfaction of the officer investigating the collision. In the event two (2) or more wreckers pick up vehicles for towing, it shall be the duty of each driver to clear and remove debris, parts or glass from the roadway.
- (f) Should no wrecker be required due to both vehicles being able to drive away on their own power from the collision scene then the driver(s) involved are responsible for debris removal with the assistance of traffic control by officers.
- (g) There shall be no arguing between wrecker company staff on a scene. Each should work together calmly with the goal of clearing the roadway and opening it for the use by the public.

Sec. 4.10.004 Wrecker Requirements

(a) General

- (1) All permit holders shall maintain at least one wrecker, and shall maintain all wreckers in accordance with the requirements of this Article and Title 16, Chapter 86 of the Texas Administrative Code, as amended.
- (2) All permit holders must notify the Leander Police Department of any change to the information supplied on the completed application within ten (10) calendar days of such change.
- (3) All wreckers shall maintain a valid Incident Management Towing Permit pursuant to Title 16, Chapter 86 of the Texas Administrative Code, as amended and be in such condition that they can safely and readily be used as a wrecker for incident management tows.

(b) Wrecker lifting capacity. Each wrecker shall be equipped with a power operated winch with a lifting capacity of not less than eight thousand (8,000) pounds single line capacity, as reflected by a manufacturer's certificate.

(c) Standard equipment

(1) Each wrecker shall carry as standard equipment: at least two (2) safety chains appropriate for load securement, at least one (1) 2.5 pound A.B.C. fire extinguisher, wrecker bar, absorbent in the amount sufficient for a two vehicle crash, broom and dust pan.

(2) Each wrecker with a rated capacity of three (3) tons or greater shall be equipped with booster brakes.

(3) Each wrecker must be equipped with dual rear tires (Tow trucks must be equipped with at least three (3) axles (two (2) in tandem) to be qualify for Heavy Duty towing rates.)

(d) Upon request of a police officer or vehicle owner, the permit holder must make available a wrecker with a specially designed wheel lift attachment. This need not be a requirement for every wrecker unit, but each permit holder must own at least one (1) so equipped.

(e) Carrying capacity. Each wrecker's carrying capacity shall not be less than one (1) ton as reflected on the manufacturer's certificate for the vehicle.

(f) Name. In addition to the requirements of Title 16 of Texas Administrative Code, Section 86.701, as amended.

(g) All vehicle storage facilities used to store vehicles towed from incident management tows or, private property tows pursuant to this Article shall be located within the corporate limits of the city, its extraterritorial jurisdiction, or within fifteen (15) miles of those areas. All vehicle storage facilities must be licensed by the State of Texas and must also comply with all applicable requirements of Title 16, Chapter 85 of the Texas Administrative Code, as amended.

(h) Service hours. A permit holder operating a wrecker, must maintain a twenty-four (24) hour wrecker service, seven (7) day s a week, and have two (2) telephone numbers, one of which is answered twenty-four (24) hours a day, seven (7) days a week. The permit holder must be able to immediately advise the Chief of Police, or designee, of the availability of a tow truck. The wrecker company must have two-way voice communication between the wreckers and the wrecker company's office.

Sec. 4.10.005 Duties of Permit Holders

(a) Compliance. All permit holders shall comply with all applicable requirements of Title 16, Chapter 86 of the Texas Administrative Code, as amended. No operator shall perform an incident management tow under this Article without valid Incident Management Towing Operator License pursuant to Title 16 of the Texas Administrative Code, Section 86.209, as amended.

(b) All permit holders shall respond to a call anywhere in the corporate limits of the city or roadway subject to the city's jurisdiction by arriving at the scene of the collision or

incident within thirty (30) minutes (sixty (60) minutes for Heavy Duty) of the requesting officer's call for service. If the responding wrecker fails to meet this time requirement without justification acceptable to the officer on scene, whether en route or not, the call shall immediately be canceled and the next rotation wrecker called and police communications center notifies the requesting officer. Additional response time may be added, at the discretion of the requesting officer, when the permit holder is responding with non-standard equipment to handle a request or there is extenuating circumstances that justify such an extension of time.

(1) Any permit holder unable or failing to respond, for whatever reason, for five (5) times or three (3) consecutive times during any one (1) permit year, shall be subject to fine/penalty, suspension and/or revocation pursuant to this Article, as amended. Each time a permit holder fails to respond for whatever reason thereafter will be an independent violation(s) and subject to suspension and/or revocation or other penalty pursuant to this Article, as amended.

(2) Any permit holder who anticipates an inability to respond to calls from the department for whatever reason (vacation, planned maintenance of equipment, etc.) shall email wreckers@leandertx.gov or contact Leander Police Department Communications Division at least two (2) calendar days in advance of the inability to respond and advise of the duration of the out of service. This will allow the permit holder to be "skipped" on the rotation list with no penalty.

- (c) Maintenance of records. Each permit holder or wrecker company operating in the city shall make their records available for immediate physical inspection by the Chief of Police or their designee during regular business hours at the primary business office. Permit holders and wrecker companies conducting any towing from the City will be required to have their primary business office located and maintained within the corporate limits of the city, its extraterritorial jurisdiction, or within fifteen (15) miles of those areas. Permit holders are required to have the ability to produce physical copies and printed copies and electronic copies of the records upon request.
- (d) Rates or fees charged must be itemized on any invoice and any special circumstances should show a justification for the specific charge(s) that can be understood and are reasonable. The Chief of Police or his designee may ask for justification for such charges.
- (e) All permit holders shall store all vehicles towed under the provisions of this Article at their respective vehicle storage facility unless the owner of the vehicle wants the vehicle taken to another location then that request will be honored, if reasonable. Fees listed in ordinance will be complied with up to the point where the vehicle is towed to an alternate location. The tow to another location will be an agreement between the wrecker company and the owner or operator of the vehicle but the initial response will be a rotation request.
- (f) Parking in residential areas. Except in the following situations, no person shall park or stand a wrecker in the public right-of-way in a residential area within the corporate limits of the city:

(1) Where a tow has been requested and in that instance, only for as long as is necessary to safely and properly conduct the tow;

(2) Where a wrecker has become inoperable and is waiting for transportation to a repair facility; or

(3) Where the police department has directed such.

(g) Each and every wrecker service shall notify the operator or owner of any disabled or wrecked vehicle of the location of the facility to be used by the wrecker service in the timeframe provided in Section 4.10.009.

Sec. 4.10.006 Wrecker rotation list operation

(a) The Chief of Police shall establish and cause to be maintained a wrecker rotation list of all validly permitted wrecker companies, which shall be used for all incident management tows and all other tows authorized and initiated by this department to include authorized traffic violation tows. Officers are authorized to utilize a rotation wrecker from the rotation list or a contract wrecker for violations and conditions stated in this ordinance. This rotation list does not apply to and should not be utilized for the contracted tows performed by the City of Leander, except when necessary, as determined by the police department. The rotation list does not apply to and should not be utilized for routine business of the City, such as moving City owned vehicles or towing them to a facility for repair or other towing services and this should be handled by a contracted wrecker company. The police department also reserves the right to go outside of the rotation list or the contracted wrecker(s) to get an appropriate response by a wrecker company if none of the wreckers on the list are equipped or are able to handle the incident and the allowable fees that are to be charged and the regulations in this ordinance still apply inside of the corporate limits of the City.

(b) The wrecker rotation list shall be made available for inspection upon request during regular business hours. The list shall contain a designation of each permit holder qualified to be on the list in order of rotation list number. The wrecker rotation list shall be limited to a maximum of five (5) wrecker companies total. Such number of wrecker companies shall be reviewed every two (2) years, or at the discretion of the Chief of Police, which such number beyond five (5) wrecker companies may be adjusted by resolution of the City Council. As each new permit holder becomes qualified, it shall be placed at the end of the rotation list.

(c) Each wrecker company on the rotation list will be called in order to handle any incident. Wrecker companies who are authorized to be on the rotation list will, at a minimum, be capable of handling light duty tows (See Alternate Wreckers below). Wrecker companies who are not equipped to handle medium duty and heavy duty tows are required to enter into an agreement with one (1) alternate wrecker company so they can handle any potential

tow service they are called to handle. Permit holders who are called to handle an incident management scene and are not equipped to handle such a scene will be charged with a refusal to respond.

(d) Should an officer encounter a vehicle or an operator in need of assistance (motorist assist or vehicle service) or in need of a consent tow due to being disabled or otherwise stranded, but is not an incident management tow or an immediate traffic hazard and the operator of the vehicle does not designate their own tow service, officers are authorized to recommend the towing company that is contracted with the department. It is the owner's or operator's choice of which wrecker to use in these situations. If the department's contracted wrecker service is unavailable or the operator does not wish to use this wrecker company, officers are authorized to provide the names and contact information for the wrecker companies from the rotation list to aid them in receiving necessary assistance. Other than the contracted wrecker of the department, officers shall not suggest any one wrecker company over another and must provide the names of each wrecker company on the rotation list or aid the owner or operator in conducting an internet search in these situations so the owner or operator can make a choice and receive assistance. The owner's choice of who to use in these situations shall be honored unless it is a non-consent tow or an incident management tow.

(e) Wrecker rotation list operation. In the event a police officer requires the impoundment or removal of a vehicle and the vehicle operator does not designate the permit holder of his choice, due to the operator's arrest, inability or incapacitation, or the vehicle cannot be moved to a safe location out of the right of way of the roadway or, the vehicle is an immediate hazard creating an actual or potential traffic pattern disruption, the officer shall request the permit holder next on the wrecker rotation list to be called. If a vehicle involved in an incident where it comes to final rest on private property then a permit holder next on rotation shall be called to remove the vehicle and the vehicle will not be left on private property.

(f) Vehicle operator to designate a wrecker company. When a police officer investigating an incident management scene where the operator can safely move the vehicle to a location out of the right of way where it will no longer create a traffic disruption and there is no debris to be cleaned from the right of way, such officer should first attempt to communicate with the driver on scene to designate the permit holder he desires to remove the vehicle, and the police officer shall cause the driver's designee to be contacted. No wrecker company outside of the department's authorized rotation list shall be allowed to respond to any incident management scene inside of the city unless 1) the vehicle is able to safely, under its own power, move completely from the right of way and all debris involved is removed from the right of way or 2) no wrecker service on the rotation list is able to conduct the tow at that time.

(g) The Leander Police Department will only attempt to contact a wrecker company twice before calling the next wrecker company listed on the rotation list. A failure to answer a call from the department for a rotation request will be considered a failure to respond and

will result in a violation.

(h) Authorized Fees.

- 1) The fee charged by a permit holder or wrecker company for tows, tow-related services, response, equipment, and storage of vehicles towed pursuant to this Article shall not exceed the lower of the maximum allowable fee set forth in the Fee Schedule presented in the Appendix of this Code, as amended, or if not already regulated or prohibited by this ordinance the maximum allowable fee provided by State law, as amended. Any wrecker service that charges fees not allowed by this section shall be subject to fine/penalty, suspension and/or revocation pursuant to this Article, as amended. Each time a wrecker service charges fees not allowed by this section will be an independent violation and subject to suspension and/or revocation or other penalty pursuant to this Article, as amended.
- 2) Rental or additional equipment. There may be times where a wrecker company called to a scene by the city needs to rent or bring additional equipment to effectively handle an incident they would otherwise be unable to handle with standard equipment. Wrecker companies are hereby authorized to recover the fees associated with the necessary rental equipment to effectively handle a scene. See Fee Schedule in Appendix for allowable rates.

(i) Pursuant to Texas Occupations Code, Section 2308.203, as amended, a towing company subject to this Article may request a towing fee study be performed by submitting a written request to the Chief of Police and paying the applicable fee set forth in the Fee Schedule presented in the Appendix of this Code, as amended. No towing company shall be authorized to request a towing fee study within twenty-four (24) months of the completion of a prior towing fee study performed pursuant to this Section.

(j) Alternate Wrecker. A permit holder shall enter into an agreement with another wrecker company to fulfill the towing obligations of any category of service (light duty, medium duty, heavy duty) they alone are not capable of handling. A rotation permit holder may designate another towing company as an alternate wrecker for the use of permitted and inspected wreckers to provide services pursuant to this Article; however, no permit holder shall designate more than one (1) other wrecker company for such use of alternate wreckers, and all alternate wreckers, shall be permitted pursuant to this Article.

- (1) If a permit holder plans to send their designated alternate wrecker to a scene then they need to notify communications at the time the permit holder is called for the service by the police department and that information needs to be conveyed by communication to the officers on scene. Both the permit holder and the alternate wrecker service will be held responsible for any violations of this ordinance by the alternate wrecker company. All alternate wrecker agreements must be signed

by the permit holder and the alternate wrecker service and approved by the Chief of Police or their designee. Any company who is not already a permit holder on the City of Leander Wrecker Rotation List who has been penalized, suspended and/or revoked by any law enforcement agency in the previous two years may not be eligible to be designated as an alternate wrecker unless written approval is obtained from the Chief of Police or their designee.

- (2) A permit holder can terminate the agreement between them and the alternate wrecker at any time however, the permit holder must provide the Chief of Police or his designee with a written document listing the alternate wrecker company and the effective date of the agreement so it is clear.
 - (3) If an alternate wrecker responds in place of the permit holder then the permit holder using the alternate wrecker (the one named on the rotation list) shall obtain and retain a copy of the invoice from the contracted wrecker company in the event it is needed for an audit or inspection.
 - (4) The alternate wrecker is required to display a permit issued by the Leander Police Department or they will not be allowed at the scene. The Leander Police Department will contact the permit holder for any rotation request and they will not contact the alternate wrecker or alternate wrecker company directly. Any alternate wrecker designated by a permit holder will either use the permit holder's VSF or have a valid VSF located within the corporate limits of the city, its extraterritorial jurisdiction, or within fifteen (15) miles of those areas.
 - (5) Alternate wrecker companies utilized in place of a permit holder shall meet the response times stated above or a representative from the permit holder on the rotation list shall arrive within the time limit and be able to hold the scene to avoid a violation.
- (k) If a wrecker service responds to a call initiated by this department, it shall be placed at the bottom of the rotation wrecker list by the Communications Division unless the wrecker service, through no fault of its own, is not used and receives no compensation for the call. In that event, it shall be placed back at the top of the rotation wrecker list.
- (l) If a wrecker company responds to an initial request from law enforcement for an incident management or non-consent tow and the owner or operator of the vehicle requests to have the vehicle towed to a location of their choice (not the VSF) then the towing fees established by this ordinance shall apply for the initial response and work provided on scene. If the owner or operator requests to have the vehicle towed to another location outside of the City Limits of Leander, other than the VSF, that will be considered a separate tow and considered a consent tow (See Chapter 2308 of the Texas Occupations Code and Transportation Code Sec. 643.201, as amended). The wrecker company and the owner or operator of the vehicle can enter into a consensual agreement as to the fees charged to have the vehicle delivered to this different location and the invoice needs to reflect the separate charges so it is clear when reviewed. The

wrecker company will be moved to the bottom of the rotation list since it was called from the rotation list.

(m) New permit holders will be placed on a six (6) month probationary period. Any violation of this ordinance, or violation of any TDLR rule or violation of any State Law pertaining to towing operations may result in the company being removed from the rotation list without a hearing or appeal and may result in a fine.

(n) Cancellation. A police officer on scene may cancel the rotation request (for scene management) at any time. The wrecker company being cancelled prior to arrival will be put back at the top of the rotation list. Every effort should be made to not cancel the rotation request after 20 minutes, unless necessary.

Sec. 4.10.007 Issuance and expiration of permits; renewal, addition and fee

(a) The Chief of Police shall issue a permit to engage in towing from the wrecker lists to approved applicants complying with the provisions of this Article. A permit may be evidenced by a windshield decal affixed to the vehicle on either the front or the back window of the truck. Any wrecker failing to display this permit will be asked to leave and the next on the rotation list to be called.

(b) No permit may be issued for:

(1) Any person who had a financial interest in a wrecker business whose permit has been suspended, revoked or cancelled in excess of twenty (20) calendar days within the preceding twelve (12) months. This shall include any stockholders, officers, directors, managers or partners.

(2) Any person or company whose name appears on the current delinquent tax rolls of the city or the county where the VSF is located.

(c) Each company desiring to be included on the wrecker lists shall submit an application on a form provided by the Chief of Police or designee once an opening is published on the City of Leander website.

(d) Each permit holder must present the wreckers for inspection annually by January 1st at the police department, unless otherwise notified by the Chief of Police or designee.

(e) Each company desiring to be on the wrecker lists shall pay the city an inspection fee as provided for in the Fee Schedule presented in Appendix A of this Code, as amended.

(f) A wrecker company or wrecker failing to pass inspection shall pay a re-inspection fee as provided for in the Fee Schedule presented in Appendix A of this Code, as amended, for each additional inspection.

(g) Any company already permitted under this section, who wishes to add an additional wrecker to their fleet within a calendar year will still be required to pay the inspection fee

and it will be in effect for the remainder of that permit year as stated in this Article.

Sec. 4.10.008 Violation Procedures; Enforcement; Appeal; Penalties

(a) The Chief of Police, or designee(s), shall enforce the terms and provisions of this Article. All references to "Chief of Police" or "police chief" in this Article shall include the Chief of Police and their designee(s), if any.

(b) The Chief of Police may promulgate procedures to carry out and enforce the provisions of this Article.

(c) Any person aggrieved by a permit holder, towing company, or operator subject to this Article may file a written complaint with the police department. Those complaints as well as any violations of this ordinance found during audits or inspections will be investigated by the police department's unit in charge of overseeing wreckers, as designated by the Chief of Police.

1. Once facts are gathered through the investigation then the findings and recommendation(s) will be forwarded to a command supervisor for a review.
2. The command supervisor, within a reasonable amount of time, can affirm, modify or reverse the recommendation(s).
3. Within fifteen (15) calendar days of the decision by the command supervisor, he or his designee shall forward written notice of their findings and determination to the permit holder or operator and the Assistant Chief of Police.
4. If no appeal is taken from the command supervisor's action within ten (10) calendar days of notification, as set out herein, then the command supervisor's decision shall be final.
5. Any criminal charges filed will not be subject to appeal and will be handled through the court with jurisdiction over the case.

(d) Appeal of suspension or revocation to the Assistant Chief of Police. The wrecker company may, within ten (10) calendar days from the date of the wrecker company's receipt of a notice of suspension and/or revocation under this ordinance, submit a written request for a hearing before the Assistant Chief of Police. The Assistant Chief of Police will hold an informal hearing on the decision.

1. An appeal shall be in writing, setting forth the reasons for the appeal, and shall be sworn to.
2. An appeal does not stay a revocation or a suspension.
3. Within a reasonable time the Assistant Chief of Police or their designee

shall conduct an informal hearing regarding the decision. At the hearing the formal rules of evidence do not apply. The Assistant Chief of Police or their designee shall decide the appeal on the basis of the preponderance of evidence presented.

4. The Assistant Chief of Police will schedule a hearing within and shall give notice of the time and place set for the hearing to the appellant not less than 7 calendar days before the hearing.
5. The Assistant Chief of Police shall make a determination on the appeal not later than the 10th calendar day after the hearing. The Assistant Chief of Police can affirm, modify or reverse the suspension or revocation.
6. In matters of a suspension less than twenty (20) calendar days, the assistant chief's decision is final.
7. Within fifteen (15) calendar days of the decision by the Assistant Chief of Police, the Assistant Chief or their designee shall forward written notice of their findings and determination to the permit holder or operator and the Chief of Police.
8. If no appeal is taken from the assistant police chief's action within ten (10) calendar days of notification, as set out herein, then the Assistant Police Chief's decision shall be final.

(e) Appeal of suspension or revocation to the Chief of Police. If the suspension or revocation is sustained by the Assistant Chief of Police, a further appeal by the wrecker company may be submitted in writing to the Chief of Police, who will either hold an informal hearing or make a decision based on the written record. In order to perfect an appeal to the Chief of Police, the wrecker company must submit its written notice of appeal to the Chief of Police within ten (10) calendar days from the date of the Assistant Chief of Police's decision.

1. An appeal shall be in writing, setting forth the reasons for the appeal, and shall be sworn to.
2. An appeal does not stay a revocation or a suspension.
3. If determined to be necessary to hear further evidence or testimony and within a reasonable time the Chief of Police shall conduct an informal hearing regarding the decision. At the hearing the formal rules of evidence do not apply. The Chief of Police shall decide the appeal on the basis of the preponderance of evidence presented.
4. Should a hearing be necessary, then the Chief of Police will schedule a hearing and shall give notice of the time and place set for the hearing to

the appellant not less than 7 calendar days before the hearing.

5. The Chief of Police shall make a determination on the appeal not later than the 10th day after the hearing. The Chief of Police can affirm, modify or reverse the suspension or revocation.
6. In matters of a suspension only, the Chief's decision is final.
7. Within fifteen (15) calendar days of the decision by the Chief of Police, the Police Chief or their designee shall forward written notice of their findings and determination to the permit holder or operator.
8. If no appeal is taken from the Police Chief's action within ten (10) calendar days of notification, as set out herein, then the Police Chief's decision shall be final.

(f) Final Appeal to City Manager or his designee. In the event the Chief of Police sustains the revocation a final appeal may be had by the wrecker company before the City Manager or their designee. The City Manager may either hold a hearing or make a decision based on the written record. In order to perfect the final appeal before the City Manager, the wrecker company must submit a written request for a final appeal hearing, within ten (10) calendar days from the date of the chief's decision, to the city secretary.

1. An appeal shall be in writing, setting forth the reasons for the appeal, and shall be sworn to.
2. An appeal does not stay a revocation or a suspension.
3. Once the Chief of Police is notified of the final appeal to the City Manager then he or his designee shall immediately forward all documents pertaining to the revocation to the City Manager.
4. The City Manager can affirm, modify, or reverse the revocation.
5. If necessary to hear further evidence or testimony, within a reasonable time the City Manager or their designee can and hold a hearing. At the hearing the formal rules of evidence do not apply. The City Manager or their designee shall decide the appeal on the basis of the preponderance of evidence presented.
6. Should a hearing be necessary, then the City Manager will schedule a public hearing within a reasonable amount of time after receipt of notice of appeal. The City Manager or his designee shall give notice of the time and place set for the hearing to the Chief of Police and the appellant not less than 7 calendar days before the hearing.

7. The City Manager's, or their designee's, decision is final.

8. Within fifteen (15) calendar days of the decision by the City Manager, the City Manager or their designee shall forward written notice of their findings and determination to the permit holder or operator.

(g) All notices are presumed to be delivered to the non-consent wrecker service licensee or holder of a driver's permit within three (3) calendar days of being mailed certified mail, return receipt requested, to the licensee's or permittee's address listed in the most recent license or permit application.

(h) The period of administrative action per permit year shall be as follows:

- 1) For the first violation, not more than thirty (30) calendar days;
- 2) For the second violation, not more than ninety (90) calendar days; and
- 3) For the third and/or subsequent violation(s), such period of suspension, or revocation as the Chief of Police may determine, including permanent revocation.

(i) Penalties for Major Violations shall be as follows:

"Major Violation" under these Rules shall mean and include, but not be limited to, the following:

1. A conviction of the owner or operator (i.e. shareholder, member, partner, etc. of the wrecker company), driver or other employee of the tow company of the offense of Driving While Intoxicated;
2. A conviction of the owner or operator (i.e. shareholder, member, partner, etc. of the wrecker company), driver or other employee of the tow company of the offense of Aggravated Assault with a Motor Vehicle;
3. Violation of any TDLR Rule or Regulation or any other state, local or federal law or regulation relating to the towing of vehicles; and/or
4. Any other type of violation the Chief of Police or his designee deems as endangering the citizens of Leander; or
5. Any act that is contrary to the integrity, trustworthiness and honesty required of owners and operators in the Texas Administrative Code (i.e., charging vehicle owners for work that was not performed or charging for services not actually provided); or
6. Failure to refund or repay charges as directed by this or any other department.

(j) Except as expressly stated otherwise herein, the Chief of Police may, in its sole discretion, immediately revoke any wrecker company from the rotation list if the wrecker company is found to have committed a major violation of this ordinance; provided, however, the Chief of Police or his designee may elect to assess a lesser penalty, such as suspension from the rotation list for a specified period of time, if the Chief of Police determines, in his sole discretion, that a lesser penalty should be assessed for such violation. Termination of the employment of the employee

who committed the violation will be looked at favorably in these instances. In the event the wrecker company is suspended or revoked by the Chief of Police from the rotation list for a major violation, the Chief of Police's, decision to remove the wrecker company from the rotation list for a Major Violation shall be final and shall not be subject to any type of appeal.

(k) The determination of whether the violation is major shall be within the sole discretion of the Chief of Police.

(l) Any person who violates any provision of this ordinance, or fail to comply therewith or with any requirements thereof and shall be charged with a class C misdemeanor; and upon conviction shall be fined as provided a maximum of \$500.00 for each violation or occurrence that a violation exists, provided that the penalty for a person's second offense under this article shall not be less than \$200.00, and a penalty for a person's third or more offense under this article shall not be less than \$400.00. Any person convicted of violating any term or provision of this article can also be charged in accordance with applicable State Law.

(m) In addition to any other penalty herein, the department may also require a license or permit holder to refund to a vehicle owner or operator the:

1. Amount charged to the owner or operator in excess of the amounts established by this ordinance.

2. Total amount of the charges for service not listed in the amount established by this ordinance.

(n) The administrative penalty set forth in this section shall be independent of and may be in addition to any other penalties assessed pursuant to any violation of this Article, Code or State law or each.

Sec. 4.10.009 Notice of Vehicle Removal

- (a) Prior to towing any private property impound (PPI) or repossession (repo) not later than one (1) hour after the tow begins, a wrecker operator removing a vehicle pursuant to Chapter 2308 of the Texas Occupations Code, as amended including relocation of the applicable provisions, shall give oral or written notice of the removal to the person directing the removal and to the Leander Police Department Communications Division.
- (b) A wrecker operator removing a vehicle pursuant to a repossession shall give oral or written notice of the removal to the Leander Police Department Communications Division, no later than one (1) hour after the removal.
- (c) A wrecker operator that removes an unauthorized vehicle from a parking facility outside of the City, and intends to store the vehicle in a vehicle storage facility within the City, shall give oral or written notice of such tow and place of storage to the Leander Police Department Communications Division before the towed vehicle is brought within the City, no later than

one (1) hour from the time of such removal or prior to the vehicle entering the Leander city limits, whichever is earlier.

Under this Section, notice to the Leander Police Department Communications Division shall consist of:

1. The license plate number, registration year, state of registration, vehicle identification number if known, color, make, model and style of the vehicle being removed;
2. The reason for the removal of the vehicle (ie non-consent tow, Repossession, private property impound);
3. The name, title and phone number of the person authorizing the removal of the vehicle;
4. The location of the vehicle prior to its removal;
5. The address and phone number of the vehicle storage facility where the vehicle will be stored; and
6. The name, telephone number and address of the wrecker service removing the vehicle.
7. The name of the first and last name of the driver removing the vehicle or the Texas Department of Licensing and Regulation (TDLR) license number of the driver removing the vehicle.

Under this Section, notice to the person directing the tow shall consist of:

1. The license plate number, registration year, state of registration, vehicle identification number if known, color, make, model and style of the vehicle being removed;
2. The reason for the removal of the vehicle;
3. The location of the vehicle prior to its removal; and
4. The address and phone number of the vehicle storage facility where the vehicle will be stored.

If a wrecker service receives notice of a reported stolen vehicle that is towed, the wrecker operator or driver shall immediately notify the police department of the City where the vehicle was reported stolen. The wrecker service shall take all necessary actions to isolate the reported stolen vehicle from routine access at the storage location and facilitate police access to the vehicle. If the vehicle is determined to be stolen prior to leaving the facility then the vehicle cannot be moved and the law enforcement agency with jurisdiction is to be contacted immediately.

Section 3. Amending Appendix A Fee Schedule, Section A4.008 of the Leander Code of Ordinances. Article A4.000, Section A4.008 Wrecker Service, of the Leander Code of Ordinances, is hereby amended in its entirety as provided in the attached Exhibit A.

Section 4. Enforcement. The Leander Police Department, Fire Department, or authorized designee are authorized to enforce the provisions of these Articles.

Section 5. Savings Clause. All rights and remedies of the City of Leander are expressly saved as to any and all violations of the provisions of any ordinances affecting wrecker services within the City 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 6. Conflicting Ordinances. All prior Ordinances of the City dealing with or applicable to wrecker services are hereby amended only to the extent of any conflict with the amendments set forth herein , and all ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance as adopted and amended herein are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this Ordinance shall govern.

Section 7. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal , or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 8. Effective Date. This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

Section 9. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time , place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED on this 2nd day of _March, 2023.

CITY OF LEANDER, TEXAS:

ATTEST:

Mayor

City Secretary

Exhibit A

Sec. A4.008 Wrecker towing fees

The following maximum allowable fees may be charged for wrecker operations originating within the city's corporate limits or any roadway subject to the city's jurisdiction. No other charges will be allowed:

(1) Incident management tows (hourly rate to be charged at 30 minute increments, i.e., \$100.00 an hour rate will be \$50.00 per 30 minutes, unless stated otherwise):

(A) Light duty tows: \$250.00, plus \$100.00 an hour on scene.

(B) Medium duty tows: \$550.00, plus \$200.00 an hour on scene.

(C) Heavy duty tows: \$1,100.00, plus \$350.00 an hour on scene.

(D) Heavy duty tows (rotator equipped): \$1,100.00, plus \$450 an hour on scene.

(2) Fees set by the State Law or Federal Law are allowed as follows:

(A) Storage: Fee set and regulated by State Law and therefore not regulated further by Ordinance. Refer to State Law for applicable fees as amended.

(B) Notification and impound fee(s): Fee set and regulated by State Law and therefore not regulated further by Ordinance. Refer to State Law for applicable fees as amended.

(C) Applicable City, State and Federal Taxes: Regulated by applicable law and therefore not regulated further by Ordinance. Refer to City, State and Federal Law for applicable fees as amended.

(d) Any applicable credit card surcharges. The surcharge may not exceed the percentage set by a credit card issuer to use the card.

(3) Additional fees allowed:

(A) Winching: Allowed as an additional charge to the above incident management rates only when a vehicle is completely rolled onto its side or on to the roof and must be rolled back onto its wheels before towing can be accomplished. Or, is an otherwise complicated and difficult recovery, which needs to be justified and approved by a T.E.A.M. (traffic unit) officer or if they are unavailable then the senior ranking officer on the scene and the name of the officer must be included on the invoice. (Hourly rate to be charged in 30 minute increments).

(1) Light Duty: An additional \$25.00 per hour on scene.

(2) Medium Duty: An additional \$50.00 per hour on scene.

(3) Heavy Duty: An additional \$100.00 per hour on scene.

(B) Recovery Air bags of any kind, includes catch-bags (rolled over tractor/trailer recovery): \$1,000.00 per bag (capped at \$4,000.00 total).

(C) Rental equipment or Contracted Services: Cost of the rented equipment or the cost of the contracted service: Cost, plus an additional 35%.

(D) Oftentimes in recoveries there are large amounts of spilled and damaged cargo that must be recovered and then disposed of properly. Tow companies are authorized to recover the cost of the disposal only of said cargo at a proper facility, plus 35%. This shall not include the debris or cargo from a light duty vehicle.

(E) Extra staff needed at the scene: \$75.00 per hour, per person necessary and used on scene.

(1) Equipment operator: \$150.00 (per piece of equipment, per hour)

2) Heavy Duty (only) Recovery Supervisor: \$100.00 per hour on scene.

(F) Haul truck and Trailer (heavy duty - Landoll type): \$1,000.00 flat fee (cannot be the tow truck).

(1) If just a haul truck (no trailer brought to the scene, but truck is used to haul a damaged trailer from the scene): \$500 flat fee (cannot be the tow truck).

(G) Light duty truck and trailer: \$300.00 flat fee (not a tow truck) required for hauling away of spilled cargo or debris.

(1) If just a light duty truck (pickup type): \$150.00 flat fee (not a tow truck).

(H) Additional Tow Truck(s) required at the scene and also used at a scene, but does not tow any vehicles from the scene (can also charge other applicable fees (such as winching) for this additional tow truck at the scene, if used:

(1) Light duty tows: \$200.00, plus \$100.00 an hour on scene.

(2) Medium duty tows: \$440.00, plus \$200.00 an hour on scene.

(3) Heavy duty tows: \$880.00, plus \$350.00 an hour on scene (includes rotators).

(I) HAZMAT: Any incident management scene where a confirmed HAZMAT (Hazardous Material) response is initiated and confirmed by law enforcement or the fire department because of a chemical spill where a vehicle or employee is exposed to any waste material, substance, or other item listed as a “hazardous material,” “specific chemical waste” or “chemical” in 49 C.F.R Section 172.101 and in excess of vehicle’s operating system: \$750.00 one-time flat fee (in addition to other applicable charges). This is not meant to regulate the clean-up cost of said HAZMAT, this fee is for the wrecker company handling the contaminated vehicle due to special procedures they must follow once arriving at their facility in handling an exposed vehicle. Charges for the actual clean-up of the hazardous material is covered by other sections of this ordinance.

(J) Tows performed by any wrecker for the purpose of evidentiary or examination for the Leander Police Department will comply with the Code of Criminal Procedure, Article 18.23, as amended. In such cases, the police department will be responsible for the fee(s) associated with the towing of the vehicle(s) from the scene to the designated location and any storage fees related to that vehicle. The wrecker company is authorized to recover the fees in compliance with this ordinance for the response, recovery and any clean-up that is necessary at the scene prior to the towing and storage taking place. Should the police department pay this fee to the wrecker company then the department is authorized to recover these fees minus any fee for the towing from the scene or storage of said vehicle(s) prior to the release of the vehicle in compliance with this law.

(K) Should fuel prices rise to an unsustainable level wrecker companies can submit written documentation and justification for a temporary increase of up to 10% of the allowable fee(s). This is at the sole discretion of the Chief of Police or their designee. The additional amount allowed to be charged and the duration it will be allowed will be at the sole discretion of the Chief of Police or their designee.

(L) No additional charges will be authorized. If there is a dispute regarding the appropriate fee(s) allowed or a special circumstance(s) warranting special consideration for recovering operating costs then the Chief of Police or their designee shall make the final determination of the correct charges for the services provided prior to invoicing. Justification may be required.

(4) Private property tows:

(A) Private Property Tows:

The maximum amount that may be charged for private property tows is as follows:

- 1) Light Duty Tows: \$140.00
- 2) Medium Duty Tows: \$310.00

3) Heavy Duty Tows: \$410.00 per unit or a maximum of \$820.00.

(B) Drop fees:

If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without the authorization of the property owner attempts to retrieve the motor vehicle before its removal from the property or parked location, the maximum amount that may be charged for a drop charge/drop fee (if the motor vehicle is hooked up) is:

(1) Light duty drops: \$75.00

(2) Medium duty drops: \$150.00

(3) Heavy duty drops: \$200.00

(C) If an owner, authorized operator, or authorized agent of the owner of a motor vehicle is present before the removal from the property or parked location the towing operator shall advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle that he or she may offer payment of the towing drop charge.

(D) Fees set by the State Law or Federal Law are allowed as follows:

(a) Storage: Fee set and regulated by State Law and therefore not regulated further by Ordinance. Refer to State Law for applicable fees, as amended.

(b) Notification and impound fee(s): Fee set and regulated by State Law and therefore not regulated further by Ordinance. Refer to State Law for applicable fees, as amended.

(c) Applicable City, State and Federal Taxes: Regulated by applicable law and therefore not regulated further by Ordinance. Refer to City, State and Federal Law for applicable fees, as amended.

(d) Any applicable credit card surcharges. The surcharge may not exceed the percentage set by a credit card issuer to use the card and the rate must be stated on the invoice.

(E) No additional charges will be authorized.

(F) For purposes of this section, a tow company must accept cash, credit cards and debit cards as payment for the drop charge.

(5) Inspection fees: An inspection fee of \$50.00 per light duty truck, \$75.00 per

medium duty truck and \$100.00 per heavy duty truck shall be paid at time of inspection. Should any truck fail its annual inspection, a reinspection fee of \$25.00 for light duty, \$37.50 medium duty and \$50.00 for heavy duty shall be charged for each reinspection. Additional trucks added to the permit holder's fleet during the year will pay an inspection fee as stated and the inspection expires as stated in [article 4.10]. These fees also apply to any wrecker contracted by a permit holder.

(6) \$2,000.00 per tow fee study requested by a towing company pursuant to section 2308.203 of the Texas Occupations Code. This fee is intended to defray the cost of the study.