

ORDINANCE NO. 2021-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, AMENDING CHAPTER 86, TRAFFIC AND VEHICLES, ARTICLE VII, TOWING SERVICES, SECTION 86-236, DEFINITIONS, AND SECTION 86-237, TOWING SERVICE ROTATION LIST GUIDELINES, TO UPDATE THE CITY'S ROTATION LIST GUIDELINES FOR NON-CONSENT TOWS AND THE DEFINITIONS RELATED TO SAME; PROVIDING A SEVERANCE CLAUSE AND TEXAS OPEN MEETINGS ACT CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the nonconsensual towing, removal and storage of a motor vehicle presents an inherently coercive situation for the vehicle owner or operator as to the rights of persons whose vehicles may be towed, and regarding the release of the vehicle from storage; and,

WHEREAS, there is evidence that some wrecker services and/or storage companies have apparently taken advantage of this situation by charging an unreasonable fee for the towing and/or storage of a motor vehicle; and,

WHEREAS, there is a need to assure vehicle wrecker services and storage companies receive fair compensation for their services on non-consent tows; and,

WHEREAS, the City Council of the City of Montgomery has previously established regulations related to non-consent tows and now wishes to update the guidelines for non-consent tows as well as certain definitions related to same;

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

SECTION 1. AMENDMENT OF CITY CODE.

Chapter 86, Traffic and Vehicles, Article VII, Towing Services, Section 86-236, Definitions; and Section 86-237, Towing service rotation list guidelines, of the Montgomery City Code, are hereby amended and restated to read as follows:

Section 86-236. Definitions.

The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future tense. Words used

in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in the Ordinance. The word "person" means any human being or legal entity and includes a corporation, a partnership, and an incorporated or unincorporated association.

Abandoned Motor Vehicle shall have the same meaning as assigned that term by Texas Transportation Code § 683.002.

City means the City of Montgomery, Texas.

Consent Tow shall be 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 a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

Junked Vehicle shall have the same meaning as assigned to that term by Texas Transportation Code § 683.071.

Special Circumstances Tow a rotation tow such as a police chase out of the City of Montgomery resulting in extensive miles for the tow, or the tow requires extensive recovery. If a City of Montgomery Rotation Tow requires special circumstances in and/or for towing the vehicle, the driver will provide whatever services are required and the wrecker service owner will call the Chief of Police designee the next day and explain the special circumstances to request additional charges which may be approved solely at the discretion of the designee of the Chief of Police.

Tow Truck shall mean a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move motor vehicles. In accordance with Title 16, Chapter 86 of the Texas Administrative Code:

- (a) Each tow truck shall: (1) have a legible manufacturer's data plate indicating the capacity of the boom, the winch or the carry mechanism; or (2) have a document in the truck from the manufacturer stating the capacity of the boom, the winch or the carry mechanism;
- (b) Every hydraulic line on each tow truck must be free of leaks and be in good working condition free of defects;
- (c) The winch must not exceed the capacity of the boom or leak oil;
- (d) The cables must be as specified by the manufacturer and be in good condition, within manufacturer guidelines;
- (e) Each tow truck must have a copy of the annual state inspection; and
- (f) Tow trucks placed in service after May 1, 2008, must contain the original manufacturer's warning labels on the truck, truck bed, winches, and all other accessories.

Non-Consent Tow shall be any tow of a motor vehicle that is not a consent tow.

Wrecker Service shall mean an 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.

Section 86-237. Wrecker service rotation list guidelines.

The City Council, in conjunction with the Police Chief for the City, hereby adopts and establishes guidelines to be effective for Wrecker Services that have voluntarily requested and agreed to be placed on the City of Montgomery's Voluntary Wrecker Service Rotation List. The guidelines are effective for the Voluntary Wrecker Service Rotation List only, and are attached to this Ordinance as Exhibit "A", and incorporated herein by reference for all purposes. A current copy of the guidelines shall be maintained on file in the office of the City Secretary. Any person who wishes to participate in the Voluntary Wrecker Service Rotation List shall file an application with the Montgomery Police Department requesting to be placed on the Voluntary Rotation List, and shall covenant and agree to all of the terms and conditions set out in the guidelines.

SECTION 2. SEVERABILITY CLAUSE

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect any of the remaining provisions of this Ordinance.

SECTION 3. REPEALING CLAUSE

All other Ordinances and parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Ordinance shall be cumulative of other Ordinances regulating and governing the subject matter covered by this Ordinance on all Ordinances or sections of the City Code not specifically amended or repealed shall remain in full force and effect.

SECTION 4. TEXAS OPEN MEETINGS ACT

It is hereby officially found and determined that the meeting at which this Ordinance was considered 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, Chapter 551, of the Texas Government Code.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its passage and adoption.

PASSED AND APPROVED this 11th day of May, 2021.

/s/Mayor Sara Countryman

ATTEST:

/s/Susan Hensley, City Secretary

APPROVED AS TO FORM:

/s/Alan P. Petrov, City Attorney

EXHIBIT A

CITY OF MONTGOMERY POLICE DEPARTMENT VOLUNTARY WRECKER SERVICE ROTATION LIST GUIDELINES

The following guidelines will be in effect for wrecker services that have voluntarily requested and agreed to be placed on the City of Montgomery Police Department Voluntary Wrecker Service Rotation List "Rotation List". These guidelines are effective for the Rotation List only. By filing an application with the Montgomery Police Department and requesting to be placed on the Rotation List all wrecker service providers agree to the following terms and conditions pertaining to their participation and to be in compliance with Title 16, Chapters 85 and 86 of the Texas Administrative Code. Any wrecker service provider that voluntarily participates on this Rotation List must follow the guidelines set forth herein and those as set forth in the Texas Administrative Code and Chapter 2308 of the Texas Occupations Code.

I. Definitions

Definitions or terms not set out below are defined in Title 16 of the Texas Administrative Code §§ 85.10 and 86.10. As used in this document, the terms below shall have the following meanings:

"Abandoned Motor Vehicle" shall have the same meaning as assigned that term by Texas Transportation Code §683.002.

"Consent Tow" shall be 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 a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

"Junked Vehicle" shall have the same meaning as assigned to that term by Texas Transportation Code §683.071.

"Special Circumstances Tow" a rotation tow such as a police chase out of the City of Montgomery resulting in extensive miles for the tow or the tow requires extensive recovery. If a tow requires special circumstances in and/or for towing the vehicle, the driver will provide whatever services are required and the wrecker service owner will call the Chief of Police designee the next day and explain the special circumstances to request additional charges which may be approved solely at the discretion of the designee of the Chief of Police.

"Tow Truck" shall mean a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move motor vehicles. In accordance with Title 16, Chapter 86 of the Texas Administrative Code:

- (a) Each tow truck shall: (1) have a legible manufacturer's data plate indicating the capacity of the boom, the winch, or the carry mechanism; or (2) have a document in the truck from the manufacturer stating the capacity of the boom, the winch or the carry mechanism;

- (b) Every hydraulic line on each tow truck must be free of leaks and be in good working condition free of defects;
- (c) The winch must not exceed the capacity of the boom or leak oil;
- (d) The cables must be as specified by the manufacturer and be in good condition, within manufacturer guidelines;
- (e) Each tow truck must have a copy of the annual state inspection; and
- (f) Tow trucks placed in service after May 1, 2008, must contain the original manufacturer's warning labels on the truck, truck bed, winches, and all other accessories.

"Non-Consent Tow" shall be any tow of a motor vehicle that is not a consent tow.

"Wrecker Service" shall mean an 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.

II. Application for Participation on the Montgomery Police Department Voluntary Wrecker Service Rotation List:

A person or other legal entity desiring to participate on the Rotation List within the city shall make written application to the Chief of Police on the form attached hereto. Such application shall be made upon a form provided by the Chief of Police and must be signed by the applicant or the wrecker service's legal representative. Said application shall be accompanied by all required documentation as specified herein. The application for participation is attached hereto and for all purposes is a part of these mandatory guidelines for voluntary participation on the Rotation List.

- A. By completing and signing the application and submitting the required documentation, the applicant and wrecker service agree to participate on the voluntary wrecker service rotation list established by these guidelines and acknowledge that the wrecker service will adhere to and uphold the terms and conditions set forth herein.
- B. These guidelines may be amended, at any time, for any reason at the sole discretion of the Chief of Police upon fifteen (15) days notice (sent via regular mail to the address listed in the application above) to all current participants on the wrecker service rotation list.
- C. Every year a new Rotation List will be opened for ALL participants to apply and submit documents and information for enrollment, unless a sooner period is deemed necessary by the Chief of Police, at his sole discretion. The new Rotation List will replace any and all existing or previous rotation lists. This enrollment period will be from January 2nd to February 2nd of the enrollment year. The initial enrollment year will be January 2012. All current participants and those requesting to participate on any future Rotation List will have to submit a new application,

documents, and information as determined by the Chief of Police. All documents are due by the submittal deadline for possible participation on the Rotation List for the year term. Applications, documents, and information not received in the Records Office of the Montgomery Police Department within enrollment period will be void. The maximum wrecker services on the Rotation List shall consist of five (5) wrecker services.

- D. All voluntary wrecker services requesting to be placed on the Rotation List must follow all federal, state, and local laws.

III. Guidelines for Qualification for City of Montgomery Voluntary Wrecker Service Rotation List:

- A. The wrecker service must have its primary office and vehicle storage facility located within the city limits of the City of Montgomery or its extra territorial jurisdiction.
- B. The current Rotation List will consist of a maximum of five (5) wrecker services.
- C. A participant's position and placement on the Rotation List is not transferrable.
- D. Any wrecker service requesting to be added to the Rotation List must have an established Wrecker Service with its primary business office and vehicle storage facility located within the City Limits of the City of Montgomery or its extraterritorial jurisdiction.
- E. Two or more wrecker services sharing common ownership may not appear more than once on the Rotation List. For this purpose, two or more wrecker services are considered to be under common ownership if: 1) one wrecker service is a wholly owned subsidiary of the other; or 2) the wrecker services share a common place of business within the city and/or have one or more common owners.
- F. All wrecker services must own and/or operate a licensed vehicle storage facility ("VSF") to be placed on the Rotation List and may not "share" a storage lot with other wrecker services resulting in more than one wrecker service storing vehicles in a common location. Any vehicle being towed as a result of the Rotation List will be towed to a City approved VSF and may not be moved from that VSF unless being transferred only to a repair facility in accordance with Title 16, Chapters 85 and 86 of the Texas Administrative Code with the consent of the owner of the vehicle as defined in §86.10 (22).
- G. Wrecker service must provide 24-hour service, 7 days a week.
- H. Wrecker service must have a phone number that will be answered 24 hours a day, 7 days a week.
- I. Wrecker service must present proof of either Worker's Compensation or Occupational Insurance for its wrecker drivers.

IV. Towing Fees

- A. Whenever a light duty motor vehicle is towed and the wrecker service is summoned from the Rotation List (not including those tows that require the use of a heavy-duty wrecker), the wrecker service may not charge a tow fee in excess of \$250.00 for an accident related incident or \$200.00 for an arrest related incident. Such maximum charge shall be applicable regardless of whether or not the vehicle is towed from public or private property and shall be complete compensation for all services rendered in connection with the performance of the tow, cleanup, and removal of wreckage or debris resulting from an accident involving the towed vehicle. No additional fees, charges, costs, etc. may be attached to the towing of the vehicle.
- B. The provisions of these guidelines apply to "private property tows" as they are regulated in the Texas Occupations Code, which shall be limited to \$217.50.
- C. Fuel surcharge will not be charged by the wrecker service unless the cost of fuel exceeds \$4.00 per gallon (in the City of Montgomery, Texas) for a period of thirty (30) days at which time the Chief of Police or his designee MAY issue written authority to the wrecker services on the Rotation List for a fuel surcharge.
- D. Owner's request for a wrecker service will be honored at the discretion of the police officer on scene if that service can timely respond on scene within twenty-five (25) minutes of receiving the call from Montgomery Police Department Dispatch. The fee for this tow will be as set forth in Section IV., Paragraph A, above.

V. Wrecker Driver Qualifications

- A. Prior to a driver operating a wrecker for tows in connection with the Rotation List, each driver must obtain a City of Montgomery Wrecker Drivers Permit. The Application for the permit will be available from the City of Montgomery Police Department. The requirements for obtaining a City of Montgomery Wrecker Driver Permit are as follows:
 - 1. Complete all information contained on the Application;
 - 2. Provide Fingerprints;
 - 3. Provide Photos - front & profile;
 - 4. Criminal Background;
 - 5. Copy of Texas Driver's License;
 - 6. In accordance with Title 16, §86.1001 of the Texas Administrative Code all wrecker drivers must, at all times, wear "uniforms clearly marked with the tow company's name as it appears on department records"; and must "wear

reflective vest or jacket at all times while working outside the tow truck; the reflective vest or jacket" must meet Class 3 safety requirements; and

7. Driver must agree to comply, at all times, with the guidelines of the Rotation List and Title 16 of the Texas Administrative Code.

- B. City of Montgomery Wrecker Driver permits will be issued at the discretion of the Chief of Police or his designee after a review of the application and supporting documents, and the criminal background of the applicant. City of Montgomery Wrecker Driver permits may be revoked by the Chief of Police or his designee for any violation of the law, the Montgomery Wrecker Voluntary Rotation Guidelines, driver misconduct, or any other action or inaction deemed inappropriate by the Chief of Police or his designee.

VI. Duties and Responsibilities:

- A. Each wrecker service included on the Rotation List will have a duty to respond when summoned from the list and to perform the rotation tow. A wrecker service so summoned that fails to respond to the scene within twenty-five (25) minutes from the first call placed to the wrecker service by City of Montgomery Police Department Dispatch or at the discretion of the requesting Montgomery Police Officer will be passed over and the next rotation wrecker service on the list will be summoned. It is a violation of these guidelines, if another wrecker service attempts to substitute and to perform the duties of the originally summoned wrecker service. In addition, if a pattern of not responding when summoned develops, or the wrecker service not responding to the scene within twenty-five (25) minutes from the FIRST CALL PLACED to the wrecker service by dispatch, the violating wrecker service may be stricken from the Rotation List for a term to be determined by the Chief of Police or his designee.
- B. If Montgomery Police Department Dispatch calls the designated phone number for the rotation wrecker service and there is no answer and upon leaving a message, the wrecker service has five (5) minutes to return the call to Dispatch. If the wrecker service fails to return the call to City of Montgomery Police Department Dispatch, the wrecker service will be passed over, and the next rotation wrecker will be called; If the FIRST CALL from dispatch is not answered and a message is left, from that FIRST CALL the wrecker service will continue to have twenty-five (25) minutes to respond to the scene from that FIRST UNANSWERED CALL.
- C. All vehicles towed as a result of a rotation call will be towed to the City of Montgomery approved VSF for that wrecker service on file with Montgomery Police Department, unless the owner designates a location to the wrecker service. Upon the vehicle owner's request of a particular tow location, the wrecker driver will agree to take the vehicle to that location designated by the vehicle owner, (with the exception of those vehicles which are part of an ongoing law enforcement investigation). The address where the vehicle is taken must match the address on the Montgomery Police Department Tow Slip. If the location where the vehicle

owner requests the vehicle towed is closed, the vehicle will be taken to the City approved VSF. This will be the responsibility of the wrecker service to ensure the officer is provided with any updated change in tow location. If the owner requests the vehicle be towed to a location other than the City approved VSF, the tow fee will remain \$250.00 for an accident related incident or \$200.00 for an arrest related incident and the wrecker service may charge per mile not to exceed \$5.00 per mile for all towed miles outside the Montgomery City Limits.

- D. Before any towed vehicle is transferred/transported from one location to another, the wrecker service must give the owner or owner's representative notice of the fee to be charged for such transfer. Any removal/transfer of a vehicle from a vehicle storage facility must be done in compliance with Title 16, §85.710 of the Texas Administrative Code.
- E. A wrecker service summoned from the Rotation List to remove a junked vehicle, as set forth by municipal court order will submit the fee to the city of Montgomery. The fee will be in accordance with the fees set forth hereinabove. The junked vehicle will be delivered to a salvage yard or other location for destruction as provided by the municipal court order and state law and the wrecker driver is required to notify Montgomery Police Department of what location the vehicle was taken. If the wrecker service chooses to take the junked vehicle to a salvage yard with no charge billed for the service to the City, the wrecker service waives said tow fee, the wrecker service will remain next on the voluntary wrecker rotation list. In order to do so, the wrecker service will notify the requesting Montgomery Police Officer of this election.
- F. All vehicle storage facilities will comply with the guidelines and laws set forth by the Texas Department of Licensing and Regulation, Title 16, Chapter 85 of the Texas Administrative Code, by voluntarily participating on the Rotation List, all participants hereby authorize a duly authorized representative of the Chief of Police to inspect their VSF. Any impound fee may not exceed \$20.00 and must be in compliance with Title 16, §85.719 of the Texas Administrative Code requiring a written inventory of any unsecured personal property, safekeeping of personal property, and obtain motor vehicle registration from the Texas Department of Transportation. All VSF facilities are required to have all signs posted in accordance with §85.706 of the Texas Administrative Code.
- G. For safety and efficiency reasons, all wrecker services participating on the Rotation List are required to have the following safety devices and tools on each truck: 5 lb fire extinguisher, size appropriate shovel, broom, size appropriate bucket, and appropriate amount of sand. By participating on the Rotation List all participants hereby authorize any member of the Montgomery Police Department to inspect the tow trucks used for the required safety devices and tools.
- H. Any wrecker service, by voluntarily requesting to participate on Rotation List hereby authorizes the Chief of Police or his designee to review all tow slips and receipts pertaining to the tows initiated by the use of the Rotation List. Upon notice,

the wrecker service will provide the tow slips and receipts for inspection to the Montgomery Police Department within ten (10) days.

- I. Each wrecker service will notify dispatch if they will not be responding to a scene or will be out of service for any extended length of time.

VII. The Voluntary Wrecker Rotation List:

The Chief of Police, or his designee will maintain the Rotation List consisting of eligible wrecker services having requested in writing and by application, inclusion on the list and as approved by the Chief of Police. The Rotation List will be maintained in alphabetical order. When a tow truck is needed, a tow truck will be summoned from the first wrecker service on the Rotation List. Thereafter, a tow truck from the next wrecker service on the alphabetical list will be summoned in like fashion, advancing through the Rotation List.

VIII. Compliance

If it is found that a wrecker service has violated any term of this agreement, the wrecker service may be penalized from participation on the Rotation List. Such penalization may include written warning, suspension, or removal from such Rotation List. The Montgomery Police Department will provide the violating wrecker service notice of such penalties, and the violating wrecker service will have 10 days to file a written request for a hearing before the City Council. After the passage of the 10-day period, if a hearing is not requested, the penalty will immediately go into effect. After the hearing, the City Council will make its decision.