



ORDINANCE #394

AN ORDINANCE ADOPTING THE VILLAGE OF LOS LUNAS TOWING SERVICES ORDINANCE.

NOW, THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF LOS LUNAS:

Section 1. **Short Title.** This title shall be known and may be cited as the Village of Los Lunas Towing Services Ordinance.

Section 2. **Purpose.** The purpose of this section is to protect persons who operate motor vehicles within the village limits; insure that the streets, public way and public property of the Village of Los Lunas remain open and free of hazards to the public; and cause the efficient information of the Village traffic, parking, snow removal and other regulation ordinances.

Section 3. **Definitions.**

Chief of Police means the Chief of the Los Lunas Police Department, or the Chief's designee.

Village Administrator means the Village of Los Lunas Administrator appointed by the Village of Los Lunas Mayor and Council, or the Administrator's designee.

Business means the one location where the main business activities of the wrecker company, also known as "the wrecker" are located as evidenced by its office space, auto storage space, towing vehicle storage space, payment of related taxes and identification as such on official business filings with the New Mexico Taxation and revenue department and the Internal Revenue Service Dept.

Towing List means a list maintained by the Los Lunas Police Department containing the names of those wrecker companies registered by the village to respond to requests for the towing of vehicles made by the Los Lunas Police Department.

Wrecker or Wrecker Company means a business engaged in, or offering towing services, whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a towing vehicle specifically adapted to and for that purpose.

Section 4. **Requirements.** Each wrecker company registered with the village police department shall continuously comply with the following minimum requirements:

- A. The wrecker company shall be a legally organized business having its business and storage yard within a one (1) mile of the Village of Los Lunas municipal boundaries as they currently exist or as they exist in the future.

- B. The wrecker company shall own and operate its own towing vehicle and shall supply to the chief of police or designee satisfactory evidence of such ownership, including vehicle registration, title and insurance.
- C. The wrecker company shall maintain a storage facility in accordance with 18.3.12.23 NMAC as it currently exists or as amended. The wrecker company shall indicate whether the storage facility is an outside storage facility or an inside storage facility and the number of vehicles that it can accommodate in each type of storage facility it maintains.
- D. The wrecker company shall maintain public liability insurance, on-the-hook and garage keepers' liability insurance and any other insurance required by the New Mexico Public Regulation Commission. A copy of the certificate of insurance shall be submitted to the Village of Los Lunas; and each policy shall have the Village of Los Lunas listed as an additional insured. The intent of this section is that the minimum amount of insurance required shall at a minimum equal the limitation of damages as required by the New Mexico Public Regulation Commission.
- E. The wrecker company shall hold the Village of Los Lunas and the Los Lunas Police Department harmless from all claims for damages to property and injuries to persons resulting from a wrecker company's negligence in the towing of or storage of vehicles.
- F. The wrecker company shall agree to use the tariff schedule provided by the New Mexico Public Regulation Commission when called out by the Police Department to tow privately owned vehicles not impounded by the Village of Los Lunas, and contracted fees for vehicles impounded to any of the Los Lunas Police Department impound lots.
- G. The wrecker company shall maintain such records as required by the chief of police or his designee and shall permit inspection of such records during normal business hours. Among such records will be receipts for towing and storage of vehicles towed at the request of the Los Lunas Police Department. All receipts shall indicate the place of vehicle storage and any damages sustained during or after the towing operation.
- H. The wrecker company shall permit the chief of police to conduct inspections of each towing vehicle and of each storage area during normal business hours.
- I. The wrecker company shall arrive on the scene within twenty (20) minutes of receipt of a request for services from the Los Lunas Police Department.
- J. The wrecker company shall tow or carry vehicles, not drive, to storage sites.
- K. A vehicle shall not be towed outside the aforementioned radius of one (1) mile of municipal limits unless requested by the vehicle owner or the Los Lunas Police Department.
- L. The driver of the towing vehicle shall remain at the scene until the roadway has been swept and all major debris is removed by the wrecker so that the road is drivable to the satisfaction of the police officer directing traffic at the scene. Failure to clean the accident scene shall result in an administrative penalty being assessed to the wrecker company by the Chief of Police of \$75.00 for a first offense and \$150.00 for a second offense.
- M. The wrecker company shall be available twenty-four (24) hours a day to respond to police requests. Three (3) refusals to respond to a police department request to remove a vehicle shall constitute elimination from the towing list for one (1) year from the date of the third refusal.
- N. Each towing vehicle shall have equipment on board which would enable the removal of a vehicle regardless of the amount of damage sustained during or after towing operation.
- O. Each towing vehicle shall be equipped as required by the Public Regulation Commission.

Section 5. Wrecker Company Selection Procedure.

- A. A wrecker company that desires to be on the towing list shall complete a registration form at the Los Lunas Police Department and shall submit required documents to the satisfaction of the chief of police.
- B. When a request for towing services is made by the Los Lunas Police Department, the dispatcher or supervisor shall select the name of the wrecker company from the towing list. Names shall be selected on a rotating basis; that is, the name shall be selected which next succeeds the last wrecker company called for towing services. The selection process shall proceed in that manner until the end of the towing list is reached, at which point a wrecker company shall be selected from the top of the towing list, consecutively.
- C. In the event that the selected wrecker company either does not have the class of equipment necessary to conduct the requested tow or does not have available qualified storage space as defined section 4(C) herein, necessary to store the vehicle being towed, then the wrecker company shall so inform the dispatcher or supervisor making the tow request, and the dispatcher or supervisor shall select the next successive wrecker company on the towing list until a wrecker company is contacted that can complete the requested tow and provide the necessary storage. Failure of the wrecker company to have the necessary equipment or storage space to complete the requested tow, provided that this information is provided to the dispatcher or supervisor at the time of the request, shall not be considered a violation of Section 5(D) herein.
- D. In the event that a wrecker company does not respond to a phone call from the Los Lunas Police Department or if it does not respond to the scene in a twenty (20) minute time span, the next name on the towing list shall be called and the non-responding wrecker company will not be reused until its name next appears in the rotation.
- E. Those wrecker companies maintaining more than one towing vehicle shall be selected only once during rotation of the towing list.
- F. Preference call shall have no impact on the towing list. A separate list will be kept by the dispatcher when a preference call is indicated.
- G. When a request for a specific towing company is received by Los Lunas Police Department, the dispatcher, or a supervisor shall contact the specific towing office and request such services.

Section 6. Other Wrecker Selection

- A. A wrecker company shall not respond to the scene of an accident or other emergency unless specifically called there by the police or the person involved in the accident or emergency. A wrecker company owner, his agency, or employer shall not solicit towing contracts at the scene. However, nothing in this section shall be construed as prohibiting towing company's services from privately contracting with any person.
- B. The chief of police may select a wrecker company that does not appear on the towing list sequence when warranted by the required for special equipment and procedures or when due to the location or unusual circumstances surrounding vehicle removal.

Section 7. Non-Discrimination.

Nothing in this section shall be construed as creating vested exclusion rights of a towing list wrecker company to be called, or selected for towing services requested by an employee or official of the Village of Los Lunas. The provisions contained herein are not designed or intended to neither restrain the course of free trade nor restrict the number of qualified registrants on the towing list.

Section 8. **Removal.**

- A. The chief of police or his designee may, in addition to other grounds for removal stated herein, remove or suspend any registrant from the towing list when the chief finds that:
 - 1. The towing list registration was secured by fraud or by concealment of a material fact by the wrecker company and such fact, if known, would have caused disqualifying;
 - 2. The wrecker company owner has violated any of the requirements or regulations established herein;
 - 3. The wrecker employed a police band radio to obtain information as to the location of the scene of an accident for a disabled vehicle;
 - 4. The wrecker paid in the form of a gratuity to any third person not involved in an accident for information as to the location of that accident;
 - 5. The wrecker has violated a tariff by overcharge;
 - 6. The wrecker has received three or more consumer of LLPD complaints which the wrecker has received written notification of and to which they have not responded in writing, and/or the wrecker has been the subject of two or more enforcement actions by the PRC where the wrecker has been found liable; or
 - 7. The failure of the wrecker company called to the scene of an accident to sweep the roadway and remove all major debris from the roadway so that the road is drivable to the police officer directing traffic at the scene for a third time in a fiscal year beginning on July 1 and ending on June 30.
- B. Grant of Hearing.
 - 1. A wrecker company shall be granted a hearing by the Village Administrator after written notice by registered mail or by personal service before suspension or removal from the rotation list may be undertaken. The hearing shall be held within fourteen (14) working days of the notice which must contain a statement of the facts upon which the chief of police has acted. At the hearing the wrecker company and any other interested person shall have the right to present evidence.
 - 2. If, after such hearing, the Village Administrator finds that this article has been violated, he may suspend or remove the wrecker company from the rotation list. The Village Administrator shall make written findings of facts upon which the decision was made.
- C. A wrecker company removed from rotation pursuant to this section shall not be permitted to submit an application to be included on a rotation list for one (1) year from the date of its removal. If a wrecker decides to so reapply, it shall follow all procedures for application as set out herein as though the wrecker had never appeared on the list.
- D. If any party, including the Village, feels the Village Administrator acted improperly, or that such action that the Village Administrator took is arbitrary,

capricious, or unlawful, said party shall have the right to appeal to the Thirteenth Judicial District Court. The Village Administrator shall maintain a record of all appeals heard before him, and all appeals to the District Court shall be from the record. Said record shall consist of a transcript or magnetic recording of all testimony taken during the hearing, all exhibits offered, all plans and specifications as may have been required and a copy of the Village Administrator's decision. The filing of an appeal in the District Court does not itself stay enforcement of the decision of the Village Administrator, but the Village Administrator may grant, or the District Court may order such stay upon appropriate terms.

- E. Reasonable notice of the time, place, and nature of the hearing shall be afforded to all parties. In conducting a hearing, the Village Administrator shall afford all parties an opportunity for a full and fair hearing, including right to counsel and the right to call and examine witnesses, introduce exhibits and cross-examine witnesses who testify. The hearing shall not be bound by the technical rules of evidence. Notwithstanding the above, the hearing shall be conducted in an orderly manner, and the Village Administrator shall exclude all irrelevant, immaterial, and unduly repetitious evidence.

Section 9. **Effective Date.** This ordinance shall be effective October 9, 2014.

PASSED, APPROVED, SIGNED, AND ADOPTED THIS 9TH DAY OF OCTOBER, 2014.



Charles Griego, Mayor

ATTEST:



Gregory D. Martin, Village Administrator