

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
AMENDING ARTICLE 17 OF CHAPTER 9 OF THE
FRESNO MUNICIPAL CODE RELATING TO TOW
TRUCKS.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 17 of Chapter 9 of the Fresno Municipal Code is amended to read:

ARTICLE 17 – ~~TOW CARS~~ [TOW TRUCKS]

Section	9-1701.	Title.
	9-1702.	Definitions.
	9-1703.	Intent.
	9-1704.	Dispatching of tow cars <u>[Tow Trucks]</u> .
	9-1705.	Exceptions.
	9-1706.	Application for Placement on Rotation List.
	9-1707.	Investigation.
	9-1708.	Non transferability <u>[and Change of Control]</u> .
	9-1709.	Regulations.
	9-1710.	Suspension.
	9-1711.	Removal from Rotation List.
	9-1712.	Appeal.
	9-1713.	Authority of Police Chief.

SECTION 9-1701. TITLE. This article shall be known as the ~~Tow Car~~
[Tow Truck] Ordinance of the City of Fresno.

SECTION 9-1702. DEFINITIONS. Unless the particular provision or the
context otherwise requires, the definitions and provisions contained in this
section shall govern the construction, meaning, and application of words and
phrases used in this article, and, except to the extent that a particular word or
phrase is otherwise specifically defined in this section, the definitions and
provisions contained in Article 2 of Chapter 1 of this Code shall also govern the

Date Adopted:
Date Approved
Effective Date:
City Attorney Approval:

construction, meaning, and application of words and phrases used in this article unless the particular provisions or the context otherwise requires. Whenever any words or phrases used herein are not defined, but are defined in the Vehicle Code of the State of California, and amendments thereto, such definitions shall apply. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

(a) "Non-Exclusive Franchise" means non-exclusive franchise granted by the Council in accordance with Article XIII of the Charter of the City of Fresno for purposes of participating with the Police Department's Rotation List.

(b) "Police Impound" means a written direction from the police officer on the scene to store the vehicle to be towed in a secured area until released by Police Department Personnel. It is the discretion of the police officer to store the vehicle in either an inside or outside storage facility.

(c) "Rotation list" means a list of persons engaged in the business of providing ~~tow-car~~ [Tow Truck] service, which list shall be maintained by the Police Chief or his or her designee for the purpose of rotating police dispatch of ~~tow-cars~~ [Tow Truck] in accordance with the provisions of this article, a Tow Agreement and other applicable law.

(d) "Tow Agreement" means a non-exclusive franchise agreement entered into between the City and an owner of ~~tow-cars~~ [Tow Truck] that defines the obligations, procedures and terms of the ~~tow-car~~

[Tow Truck Company] being placed on the Rotation List, and is approved by the City Attorney's Office.

(e) ~~"Tow-car"~~ ["Tow Truck"] means a motor vehicle which has been altered or designed and equipped for and ~~exclusively~~ [primarily] used in the business of towing vehicles by means of a crane, hoist, tow bar, tow line or dolly, or is otherwise ~~exclusively~~ [primarily] used to render assistance to other vehicles. [A "roll-back carrier" designed to carry up to two vehicles, and a trailer for hire that is being used to transport a vehicle shall also be considered a Tow Truck under this Article. An automobile dismantlers' tow vehicle or a reposessor's tow vehicle shall not be considered a Tow Truck for purposes of this Article.]

SECTION 9-1703. INTENT. It is the intent of this article to regulate the operation of ~~tow-car~~ [Tow Truck] services dispatched by the Police Department of the city pursuant to the authority conferred by the Vehicle Code.

SECTION 9-1704. DISPATCHING OF ~~TOW CARS~~ [TOW TRUCKS].

Except as otherwise provided in Section 9-1705, the Police Chief or his or her designee shall dispatch ~~tow-cars~~ [Tow Trucks] to perform ~~tow-car~~ [Tow Truck] services ~~only~~ on a rotation basis from a rotation list established and maintained in accordance with the provisions of this article, ~~the Non-Exclusive Franchise, and the Fresno Police Department Tow Agreement~~ [and the Non-Exclusive Franchise Tow Agreement for the Fresno Police Department].

SECTION 9-1705. EXCEPTIONS.

This article shall not apply to the following:

(a) ~~Tow-car~~ [Tow Truck] services performed by automobile clubs, automobile associations or garages specified by the owner or driver of the towed vehicle;

(b) ~~Tow-car~~ [Tow Truck] services performed for the abatement and removal of abandoned, wrecked, dismantled or inoperable vehicles or parts thereof pursuant to Section 22660, et seq., of the Vehicle Code; or

(c) ~~Tow-car~~ [Tow Truck] services performed on an emergency basis to eliminate a dangerous or hazardous condition as determined by the police ~~dispatcher~~ [department], when the dispatcher determines that another ~~tow-car~~ [Tow Truck] can provide the most expeditious response.

SECTION 9-1706. APPLICATION FOR PLACEMENT ON ROTATION LIST. Any person engaged in the business of providing ~~tow-car~~ [Tow Truck] service and desiring to be placed on the rotation list shall submit a signed ~~Tow Agreement~~ and an application for a Non-Exclusive Franchise to the Police Chief or his or her designee. The application shall be in a form approved by the Police Chief or his or her designee and shall include the following:

(a) The applicant's name, home address, business address, and telephone numbers, including the names of persons doing business under fictitious names, members of partnerships, and officers of corporations or associations;

(b) A list of vehicles which will be used as ~~tow-cars~~ [Tow Trucks] including a full description of each vehicle and its license number;

(c) The location of the applicant's place of business and storage facility; and

(d) Such other and further information as the Police Chief or his or her designee may require.

[(e) No Tow Truck company shall accrue any vested rights as a result of being a party to a Non-Exclusive Franchise Tow Agreement, nor will any Tow Truck company be guaranteed placement on subsequent Non-Exclusive Franchise Tow Agreements for the Fresno Police Department. All applicants for any subsequent Non-Exclusive Franchise Tow Agreement will be reviewed and considered for inclusion at the time of the issuance of the subsequent Non-Exclusive Franchise Tow Agreement. Tow Truck company owners may be subject to an interview process and an inspection prior to approval. Tow truck companies currently on the Police Department rotation list who are in good standing, will receive priority reinstatement status on subsequent Non-Exclusive Franchise Tow Agreements for the Fresno Police Department.]

The application shall be made under penalty of perjury and shall not be accepted unless it is clearly filled out in full with all required information and submitted with a Tow Agreement.

SECTION 9-1707. INVESTIGATION. The Police Chief or his or her designee shall cause an investigation to be made of the facts stated in the application, and shall within thirty days after completion of the investigation place the applicant on the rotation list unless any one of the following exists:

(a) The applicant has [previously] been removed from the rotation list ~~within the last twenty-four (24) months~~ [for violations of the Non-Exclusive Franchise Tow Agreement for the Fresno Police Department];

(b) A material statement made in the application is untrue;

(c) A fact exists of which the Police Chief or his or her designee has knowledge which would be cause for removal or suspension of the applicant from the rotation list;

(d) The applicant's business or storage facility is not located within ~~twenty (20) miles of the city's limits~~ [the geographical boundaries as set forth in the Non-Exclusive Franchise Tow Agreement for the Fresno Police Department].

(e) The applicant has a felony conviction; or

(f) The rotation list already consists of 30 or more tow companies; ~~or~~

~~(g) The applicant fails to sign a Tow Agreement.~~

SECTION 9-1708. NONTRANSFERABILITY [AND CHANGE OF CONTROL]. No person shall assign or subcontract their ~~Tow Agreement~~ [Non-Exclusive Franchise Tow Agreement for the Fresno Police Department] under this article to another person.

[Tow Operator agrees that if there is a change or transfer in ownership or control, other than transfers to "immediate family" as defined in Fresno Municipal Code Section 3-101(e), of the Tow Operator's business prior to completion of this

Agreement, such change or transfer will terminate the Non-Exclusive Franchise Agreement. This includes but is not limited to: changes in Corporate Board Members, Managers, Directors, Treasurer, Trustees, or ownership interests. All transfers of ownership or control to “immediate family” shall be approved prior to the execution of any transfer. “Immediate family” transfers will be subject to the final approval of the Chief of Police or his/her designee. “Immediate family” members will be required to pass background reviews, livescan fingerprint screening and will be required to possess the proper licensing certificates and insurance to perform tow operations for the City of Fresno Police Department. The “immediate family” transferee will also be required to execute a new Non-Exclusive Franchise Agreement with the Police Department.]

SECTION 9-1709. REGULATIONS.

All persons on the rotation list shall:

(a) ~~Comply with all laws of the state pertaining to tow cars [Tow Trucks] and tow-car [Tow Truck] service, including but not limited to satisfying minimum equipment standards, reporting to the California Highway Patrol all vehicles stored over thirty (30) days and keeping records of vehicles stored for longer than twelve (12) hours [and all provisions of the Non-Exclusive Franchise Tow Agreement for the Fresno Police Department, and all City of Fresno zoning requirements];~~

~~(b) Provide twenty-four (24) hour service, seven (7) days per week, including holidays, for towing, storage and release of vehicles;~~

~~(c) — Remain open during normal business hours and release vehicles after normal business hours. "Normal business hours" are Monday through Friday, from 8:00 a.m. to 5:00 p.m., except state or city holidays;~~

~~(d) — Have storage space a minimum of 5,000 square feet in area or the capability to store a minimum of twenty (20) vehicles;~~

~~(e) — Provide adequate security for vehicles and property. Security shall include a minimum six-foot high fence or wall enclosing any outside storage area which screens and/or blocks the stored vehicles and other property from public view;~~

~~(f) — Furnish the Police Department with a copy of any report made to the Department of Justice in Sacramento pursuant to Vehicle Code Section 10652, regarding vehicles stored for thirty (30) days, the copy may be forwarded by regular mail;~~

~~(g) — Store vehicles subject to a police impound within a secured storage facility. It is the discretion of the police officer to store the vehicle in either an inside or outside storage facility.~~

~~(h) — Retain and safeguard any vehicle subject to a police impound until authorized by the Police Department to release same and the contents therein;~~

~~(i) — Post a schedule of towing fees in a conspicuous place on the business premises;~~

(j) ~~[(b)]~~ Charge reasonable towing fees not in excess of those charges that would have been charged for that towing or storage under the Tow Agreement or if the private property is not located within the city, then the law enforcement agency that exercises primary jurisdiction in the county in which the private property is located;

~~(k) — Maintain motor vehicle liability insurance and general liability insurance by a policy or policies having single limit bodily injury and property damage limits of not less than one million dollars (\$1,000,000.00) and provide the City with a certificate of insurance evidencing the same;~~

~~(l) — Maintain receipts, with a copy placed in the towed or stored vehicle, whenever any item is removed from such vehicle;~~

~~(m) — Maintain records of tow services and other services furnished, including a description of the vehicle, the nature of services rendered, and the time and location of calls. These records may be inspected by authorized employees of the City during normal business hours;~~

~~(n) [(c)]~~ Comply with such other rules and regulations promulgated by the Police Chief or his or her designee.

SECTION 9-1710. SUSPENSION. Any ~~tow car service~~ [Tow Truck company] placed on the rotation list may be suspended by the Police Chief or his or her designee from such list if the ~~tow car service~~ [Tow Truck company] fails to comply with any of the conditions, regulations or requirements of this article. Upon learning of grounds for suspension, the Police Chief or his or her designee

shall immediately, by written notice, inform the owner of the ~~tow car service~~ [Tow Truck company] of his action of suspension. The Police Chief or his or her designee may reinstate the ~~tow car service~~ [Tow Truck company] to the rotation list upon satisfactory proof that the ~~tow car service~~ [Tow Truck company] is in compliance with the conditions, regulations, and requirements of this article [and has completed its suspension].

SECTION 9-1711. REMOVAL FROM ROTATION LIST. Any ~~tow car service~~ placed [Tow Truck company] on the rotation list may be removed from such list [in accordance with the provisions of the Non-Exclusive Franchise Tow Agreement for the Fresno Police Department .] for one or more of the following grounds:

(a) ~~The tow car service has been suspended from the rotation list at least once and repeatedly or intentionally fails to comply with any of the conditions, regulations or requirements of this article.~~

(b) ~~The owner of the tow car service knew or should have known that his driver or drivers have repeatedly violated the provisions of the Vehicle Code and has failed to take corrective action within a reasonable time.~~

(c) ~~The tow car service repeatedly fails to answer calls, fails to respond to calls within a reasonable time, fails to maintain clean and orderly storage facilities, or at any time fails to clean the roadway of glass and debris at an accident scene.~~

~~(d) — The owner of the tow car service sells fifty-one (51) percent or more of the business, provided the person, or persons purchasing the business may apply for placement on the rotation list in accordance with Section 9-1706 of this article.~~

~~(e) — The owner of a tow car service applies for placement on the rotation list under another name.~~

~~(f) — When a fact exists which would constitute a ground for denial of an application pursuant to Section 9-1707.~~

Upon learning of grounds for removal, the Police Chief or his or her designee shall immediately, by written notice, inform the owner of the ~~tow car service~~ [Tow Truck company] of his [or her] action of removal.

SECTION 9-1712. APPEAL. Any applicant ~~denied placement on the rotation list, or any person~~ [Tow Truck company] suspended [in excess of 30 days] or removed from the rotation list, shall have the right to appeal such order under Chapter 1, Article 4. If no appeal is filed within the time prescribed, the action of the Police Chief shall be final. Notwithstanding any other provision of this Code including Chapter 1, Article 4, in the event that any appeal is filed, the appellant shall not be allowed to participate in any tows or be placed on the Rotation List until such time as the Chief Administrative Officer finds that the appellant is entitled to be reinstated on the Rotation List. [Applicants for a position on the rotation list have no vested interest in the City of Fresno Non-Exclusive Franchise Tow Agreement for the Fresno Police Department and therefore have no right of appeal.]

SECTION 9-1713. AUTHORITY OF POLICE CHIEF. The Police Chief for the City of Fresno is authorized to promulgate administrative rules and procedures [in the form of the City of Fresno Non-Exclusive Franchise Tow Agreement for the Fresno Police Department, Administrative Order, or any other document] necessary for the successful and effective implementation of this Article including establishing, amending, updating, restating and entering into towing agreements subject to approval of the City Attorney. Said administrative rules and procedures shall be in writing.

SECTION 2. Severability. If any section or portion of this ordinance shall be determined invalid or unconstitutional, that section or portion shall be deemed severable and all remaining sections or portions shall remain in full force and effect.

SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, CMC, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2014.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2014
Mayor Approval/No Return: _____, 2014
Mayor Veto: _____, 2014
Council Override Vote: _____, 2014

YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Mary Anne B. Tooke, Deputy

MAT:MDF:nts:pn [60686ns/ORD] -09/03/14