

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SECTIONS 9-1702, 9-1704, 9-1706, 9-1707, 9-
1708, 9-1709, 9-1711, 9-1712, AND 9-1713 OF THE
FRESNO MUNICIPAL CODE, RELATING TO POLICE
DEPARTMENT TOW ROTATION AGREEMENTS.

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

SECTION 1. Sections 9-1702, 9-1704, 9-1706, 9-1707, 9-1708, 9-1709, 9-1711, 9-1712, and 9-1713 of the Fresno Municipal Code are amended to read as follows:

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 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.

1 of 9

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: VC

Ordinance No.

~~(a)~~ "Non-Exclusive Franchise" means ~~non-exclusive franchise granted [Non-Professional agreement approved] 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)~~ (a) "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)~~ (b) "Rotation list" means a list of persons engaged in the business of providing 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 Trucks in accordance with the provisions of this article, a Tow Agreement and other applicable law.

~~(d)~~ (c) "Tow Agreement" means a ~~non-exclusive franchise~~ [Non-Professional] agreement entered into between the City and an owner of (a) Tow Truck that defines the obligations, procedures and terms of the Tow Truck Company being placed on the Rotation List, and is approved by the City Attorney's Office.

~~(e)~~ (d) "Tow Truck" means a motor vehicle which has been altered or designed and equipped for and primarily used in the business of towing vehicles by means of a crane, hoist, tow bar, tow line or dolly, or is

otherwise 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 dismantler's tow vehicle or a ~~repossessor's~~ [repossession's] tow vehicle shall not be considered a Tow Truck for purposes of this Article.

SECTION 9-1704. DISPATCHING OF TOW TRUCKS.

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

SECTION 9-1706. APPLICATION FOR PLACEMENT ON ROTATION LIST.

Any person engaged in the business of providing Tow Truck service and desiring to be placed on the rotation list shall submit a signed application for a ~~Non-Exclusive Franchise~~ [Non-Professional Tow List placement] 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 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~~ [Non-Professional] Tow Agreement, nor will any Tow Truck company be guaranteed placement on subsequent ~~Non-Exclusive Franchise~~ [Non-Professional] Tow Agreements for the Fresno Police Department. All applicants for any subsequent ~~Non-Exclusive Franchise~~ [Non-Professional] Tow Agreement will be reviewed and considered for inclusion at the time of the issuance of the subsequent ~~Non-Exclusive Franchise~~ [Non-Professional] 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~~ [Non-Professional] Tow Agreements for the Fresno Police Department.

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 for violations of the ~~Non-Exclusive Franchise~~ [Non-Professional] 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 the geographical boundaries as set forth in the ~~Non-Exclusive Franchise~~ [Non-Professional] Tow Agreement for the Fresno Police Department.

(e) The applicant has a felony conviction; or

(f) The rotation list already consists of 20 or more tow companies. [This does not preclude the Chief of Police or Designee at any time the ability to add a Tow Operator(s), if it is determined there is a need to better serve the community.]

SECTION 9-1708. NONTRANSFERABILITY AND CHANGE OF CONTROL.

No person shall assign or subcontract their Non-Exclusive 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~~ [Non-Professional Tow] 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~~ [Non-Professional Tow] 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 Trucks and Tow Truck service and all provisions of the ~~Non-Exclusive Franchise~~ [Non-Professional] Tow Agreement for the Fresno Police Department, and all City of Fresno zoning requirements;

(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;

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

SECTION 9-1711. REMOVAL FROM ROTATION LIST.

Any Tow Truck company placed on the rotation list may be removed from such list in accordance with the provisions of the ~~Non-Exclusive Franchise~~ [Non-Professional] Tow Agreement for the Fresno Police Department.

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 Truck company of his or her action of removal.

SECTION 9-1712. APPEAL.

Any Tow Truck company suspended in excess of 30 days or removed from the rotation list [for violation of the Tow Service Agreement, or fails to comply with any of the conditions, regulations or requirements of this article], 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~~ [Non-Professional] Tow Agreement for the Fresno Police Department and therefore have no right of appeal.

[A Tow Truck Owner or Company does not have the right to appeal the City's decision to terminate The Non-Professional Tow Service Agreement when given a written 30-day notice.]

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~~ [Non-Professional] 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. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

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

I, TODD STERMER, 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 _____ 2023.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2023
Mayor Approval/No Return: _____, 2023
Mayor Veto: _____, 2023
Council Override Vote: _____, 2023

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Kristi M. Costa Date
Senior Deputy City Attorney