

ORDINANCE NO. 11-04

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 70 OF THE CODE OF ORDINANCES ENTITLED "WRECKERS AND TOWING SERVICE"; BY AMENDING SECTION 70-650, 70-652, 70-653, 70-657, 70-658, 70-661 TO PROVIDE CONSISTENCY FOR THE CITY TOW ROTATION LIST; INCREASED FEES; INDEMNIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, it is the intent of the City Commission for the City of Key West to provide for a more streamlined process in administering the city tow rotation list; and

WHEREAS, it is the intent of the City Commission for the City of Key West to bring the fees associated in administering the city tow rotation list in line with actual time expended of city staff; and

WHEREAS, it is the intent of the City Commission for the City of Key West to provide for the general health, safety and welfare of its citizens and visitors by providing for further consumer and industry protections regarding tow companies that operate on the city's tow rotation list; and

WHEREAS, the City Commission desires to transition in an orderly fashion from the current tow rotation list to

the selection of a vendor or vendors through a competitive solicitation process.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 70-650 of the Code of Ordinances is hereby amended as follows\*:

Sec. 70-650. - Application for placement; license requirements; revocation.

(1) Selection.

(a) Towing or wrecker companies providing city-initiated towing services shall be selected by a ~~duly advertised request for proposals or requests for qualifications, as determined by the city commission by resolution.~~ after review of the applications by the City Manager. ~~As part of the request for proposal or qualifications, each applicant must submit a completed application.~~

(b) Every application for a towing license shall be in writing with a notarized signature of the applicant.

(c) Every application shall be filed with the licensing ~~section~~ division together with an investigative, processing fee established in Sec. 7050-652.

(d) The statements contained in the application shall become part of the towing license and may be modified only in accordance with the provisions of this article.

(e) Every application for a towing license shall be on a form prescribed by the licensing ~~section~~ division and shall contain all the information required by that form, including, but not limited to:

I. Sufficient information to identify the applicant; including, but not limited to, full legal name, date of birth or date of formation or incorporation of legal entity, business telephone numbers, and all business and residence addresses. If the applicant is a corporation, the foregoing information shall also be provided for each corporate officer, director, resident agent and shareholder. If the applicant is a partnership, the foregoing information shall

also be provided for each general and each limited partner. Post office box addresses will not be accepted.

II. Documentation demonstrating that all corporate or partnership applicants are qualified to do business under state law.

III. Photocopy of all city and county ~~occupational licenses~~ business tax receipts of the applicant.

IV. A list of all persons with any ownership interest in the applicant who have previously been denied a license.

V. Any trade name under which the applicant operates, intends to operate, or has previously operated, and a description of proposed, existing and previous towing vehicles' colors and markings.

VI. A description of the applicant's management plan, which shall include, but is not limited to: Location and description of all places of business; a description of all towing vehicles and equipment; a description of the plan and facilities for maintaining

towing vehicles and equipment; a system for handling complaints and accidents, insurance coverage and a description of any communication system.

VII.A description of services proposed to be provided, including, but not limited to, days and hours of operation and types of towing and storage services to be provided.

VIII. Sufficient information to identify the applicant and each employee, including, but not limited to, full legal name, date of birth and social security number. For each employee, the wrecker company shall obtain documentation from the relevant local, state and federal agencies regarding the employee's criminal and arrest history and submit such information to the city. Wrecker companies shall submit current employee information every ~~six months~~ year.

IX. Individual applicants shall obtain and submit their fingerprints and photographs from an appropriate law enforcement agency ~~the police department~~ and provide them with the application and, where civil rights have

been revoked, provide such information with the application. If the applicant is a corporation or partnership, all such information shall be provided by all corporate officers and directors, or partners, as the case may be, and by all stockholders who own, hold or control five percent or more of issued and outstanding stock in the corporation or beneficial interest therein, and by all officers and directors of any corporate general partners of a partnership and by stockholders who own, hold or control five percent or more of issued and outstanding stock in a corporate general partner, or beneficial interest therein.

X. Proof of insurance as required in this article.

XI. The signature of each individual applicant, the signature of the president or vice-president of a corporate applicant, and the signature of all the general partners of a partnership applicant.

XII. An affidavit signed by the applicant that the applicant shall abide by this article, city, county and state law.

XIII. It shall be a violation of this section to fail to report to the licensing ~~department~~ division any material change pertaining to the information supplied by the applicant or licensee for his license, including, but not limited to, changing the location of the applicant's place of business prior to issuing the license and during the time period for which the license has been issued.

XIV. Each applicant for a license shall provide a schedule of all proposed rates and charges on a form prepared by the licensing ~~section~~ division.

XV. Any additional information about the application as the licensing ~~department~~ division may deem appropriate.

(f) In order to be considered for duty tow rotation, the tow company/wrecker service must also tow abandoned vehicles when directed to do

so. The abandoned vehicle rotation list will be determined by the chief of police or his/her designee. For abandoned vehicles, the duty abandoned tow/wrecker service will respond within 24 hours of being notified. Unless exigent circumstances exist, the abandoned duty rotation will be Monday through Friday during normal business hours.

(g) The city manager or his designee is authorized to issue licenses to applicants who have met the standards and requirements for a towing license, and to promulgate rules, regulations and procedures for the application, issuance and revocation of such licenses.

(h) The city manager or his designee shall review and investigate each application for a towing license and shall reject any application that is not properly filed or is incomplete or untrue in whole or in part, or which fails in any way to meet the requirements of subsection (e) of this section.

(i) No towing license shall be issued to an applicant or renewed unless the applicant has completed the following:

I. Filed with the licensing administrator a true, correct and complete application on the form prescribed by the licensing section, including all proofs of required insurance.

II. Paid the initial, renewal or late application fee, as applicable.

III. Submitted to a background investigation resulting in a determination by the licensing administrator that:

A. Neither the applicant, nor any officer, director or partner of the applicant, nor any stockholder owning, holding, controlling or having a beneficial interest in five percent or more of the issued and outstanding stock of a corporate general partner of a partnership applicant, has a currently suspended license, has had its license revoked by action of the licensing director within two years of the date of application, or has outstanding and unsatisfied civil

penalties imposed on account of violations of this article.

B. Neither the applicant, nor any officer, director or partner of the applicant, nor any stockholder owning, holding, controlling or having a beneficial interest in five percent or more of the issued and outstanding stock of a corporate general partner of a partnership applicant, has been convicted of one or more felonies within the preceding five years; or that three misdemeanors have been committed within the 36-month period preceding the date of the application, unless the civil rights of such individual or applicant have been restored or that such person has successfully completed all sentences of incarceration, probationary periods, required rehabilitation activities and payment of all fines and penalties imposed. For applicants requesting renewal, the licensing administrator

may only consider crimes committed after the date the applicant obtained his license, unless such crimes were not previously disclosed in the original application.

C. Each corporate or partnership application is qualified under the state law to do business under the trade name or names under which it has applied for a license.

D. No fraud or willful or knowing misrepresentation or false statement was made in the application.

E. No judgment against the applicant arising out of the activity of recovery, towing or removing a vehicle or providing storage in connection therewith remains unsatisfied, unless a stay or reversal of the judgment is procured through the courts.

F. No outstanding warrants of arrest against the applicant nor any officer, director or partner of the applicant,

nor any stockholder owning, holding, controlling or having a beneficial interest in five percent or more of the issued and outstanding stock of a corporate general partner of a partnership applicant.

(j) Each towing license shall be on a form prescribed by the licensing section and shall be signed by the licensing administrator. Each towing license shall contain, at a minimum, the name and address of the applicant, the dates the license remains in effect unless suspended or revoked, and a statement of such additional terms and conditions, restrictions and limitations as were authorized in the application and approval process.

(k) Prior to the expiration of the initial towing license or expiration of the annual license, where applicable, an applicant may apply for an annual towing license. As a part of the renewal process, the original application shall be updated and verified by the applicant on forms prescribed by the licensing ~~section~~ division. Renewal applications shall also include such

financial information, as licensing department shall deem necessary to consider the continued appropriateness of maximum fees established by resolution. Each updated renewal application shall be submitted at least 60 days prior to expiration of the current initial or annual license and shall be accompanied by a renewal fee in an amount established by resolution. The amount of the renewal fee shall be reasonably related to the cost of the administrative services and regulation provided, and shall be in addition to any other fees or charges required by this article. All annual towing licenses that are not renewed shall automatically expire on ~~September~~ June 30 following the issuance date and all recovery; towing, removing and storage services permitted thereunder shall cease immediately. The licensing administrator shall deny each renewal application that is not timely, not properly filed, incomplete, untrue in whole or in part, unaccompanied by the required fee, or results in a determination by the licensing administrator that the applicant has failed to

satisfy the requirements of subsection (i) (III) of this section.

(l) A license issued or renewed pursuant to the provisions of this article shall not be transferable, nor shall the ownership structure of the license be so modified as to continue a change in control or ownership of the license, without city commission approval.

(m) Each year the City of Key West will utilize the Consumer Price Index (CPI) as set forth by the United States Department of Labor as a guideline for possible rate increase/decrease of the respective duty rotation wrecker/tow companies.

Sec. 70-652. - Filing of application, fees.

Application to be placed on the rotation call list shall be made to the chief of police in duplicate ~~. and shall be accompanied by an~~ An initial application fee of ~~\$50.00~~ \$200.00 shall contemporaneously be submitted to the Licensing Division. Annual renewal fee shall be \$150.00. One of the applications shall be marked by the chief of police and delivered to the city manager disclosing that the applicant owns and possesses a business tax

receipt to operate a tow truck and that the fee has been paid.

Sec. 70-653. - Investigation, approval, Indemnification.

The police department shall conduct an investigation of the applicant(s) for the rotation call list and including any employees and shall approve the application if the applicant meets the requirements set out in this division. The chief of police, upon receipt of the approved application, shall issue for the applicant to be placed on the call list as provided in this division. Companies that are on the city tow rotation list shall enter into an indemnification and hold harmless agreement benefitting the City of Key West for any subsequent negligence occurring after the city inspection has taken place.

Sec. 70-657. - Removal from rotating call list; revocation or suspension of license.

On written complaint of any person or by its own initiation, the ~~chief of police~~ city manager or

his/her designee may investigate the activities or action of a business licensed under this article to determine if there are grounds for revocation or suspension of a license. The ~~chief of police~~ city manager or designee upon notice to the licensee and upon ~~public~~ noticed hearing, shall determine if the license should be revoked or suspended based on evidence and testimony presented at the hearing.

Sec. 70-658. - Rates.

(1) For the removal and storage of wrecked or disabled motor vehicles or for the removal and storage of abandoned motor vehicles at the request of a law enforcement officer, the maximum rate that may be charged by a wrecker operator is:

(a) Class "A" wrecker service - \$135.00.

I. For motorcycles, cars and vehicles weighing 10,000 pounds or less.

II. Inside storage per day (after the first six hours) - \$40.00 plus \$2.00 per foot for vehicles over 20 feet in length.

III. Outside storage per day (after the first six hours) - \$40.00 plus \$1.00 per foot for vehicles over 20 feet in length.

IV. Hourly charge in pro-rated quarter hour increments beginning 60 minutes after arrival - \$135.00.

V. Administrative fee per notification - \$25.00.

~~VI. After hours gate fee - \$75.00.~~

(b) Class "B" wrecker service - \$200.00.

I. For vehicles weighing 20,000 pounds or less.

II. Inside storage per day (after the first six hours) - \$40.00 plus \$2.00 per foot for vehicles over 20 feet in length.

III. Outside storage per day (after the first six hours) - \$40.00 plus \$1.00 per foot for vehicles over 20 feet in length.

IV. Hourly charge in pro-rated quarter hour increments beginning 60 minutes after arrival - \$180.00.

V. Administrative fee per notification - \$25.00.

~~VI. After hours gate fee - \$75.00.~~

(c) Class "C & D" wrecker service - \$485.00.

I. For vehicles weighing between 20,000 pounds to 52,000 pounds.

II. Inside storage per day (after the first six hours) - \$40.00 plus \$2.00 per foot for vehicles over 20 feet in length.

III. Outside storage per day (after the first six hours) - \$40.00 plus \$1.00 per foot for vehicles over 20 feet in length.

IV. Hourly charge in pro-rated quarter hour increments beginning 60 minutes after arrival - \$300.00.

V. Administrative fee per notification - \$25.00.

~~VI. After hours gate fee - \$75.00.~~

(2) The daily storage rate must be prorated in six-hour increments when the vehicle is retrieved by the owner or his agent. The administrative fee may only be charged when notice is sent by the operator to the motor vehicle owner and any lien holder(s).

(3) Ordinary towing and road service shall include the use of a sling or wheel lift when required to be used to render the service, and no additional charges are to be made for use of the sling or wheel lift.

(4) Additional rates. Charges for towing and road service in addition to those set forth in subsection (a) of this section are permitted, when necessary and applicable, as follows:

(a) For extraordinary tows, an hourly rate may be charged by the tow company. Whether the tow is extraordinary and eligible for the additional hourly charge shall be authorized or ratified by the police chief or his designee. The hourly rate shall be cumulative for all employees of the tow company involved in the extraordinary tow. The hourly rate shall be \$100.00 per hour.

(b) For use of a GoJac or other type of dolly, a device to lift individual wheels manually, the rate shall be \$30.00.

(c) If the tow company is required to remove either a front or rear axle in order to perform the tow, the rate shall be \$40.00.

(d) If the tow company is required to remove a drive shaft in order to perform the tow, the rate shall be \$50.00.

(e) Use of a Lo-Boy trailer for carrying vehicles the rate shall be \$300.00. However, a Lo-Boy

shall not be used and therefore not charged simultaneously with a class C wrecker.

(f) The tow company shall not charge for mileage for tows of vehicles or vessels on land picked up in the city and brought to the tow company's storage area. For any other tow, at the direction of the police department, the tow company may charge a mileage fee of \$3.00 per mile.

(g) Sales tax shall be added to all charges under this section.

(5) In the event a law enforcement officer needs a tow truck for a towable violation, and once the towing service has been requested by the officer at the violation site and the operator has advised the officer that he is en route to the request, should the owner or driver of the motor vehicle in violation return to the vehicle site before the operator has arrived at the motor vehicle there shall be no charge to the operator for the tow. ~~or~~ If the operator returns to a vehicle before the operator has departed with the vehicle, and upon the officer's authorization to release the vehicle to the owner or driver, then the owner or driver of the vehicle shall pay a charge of not more than one-half of the base rate for the

class of towing service called for, only if the vehicle has been completely secured to the tow truck prior to the operator's actual arrival at the tow site consistent with Florida Statute 715.07 and city ordinances regarding private property tows.

(6) Towing companies may charge an additional \$20.00 per vehicle as compensation for all certified letters and all other time and expenses incurred through compliance with F.S. § 713.78, provided that the charge shall not be due and owing until the towing service has complied with the notice requirements of the statute.

(7) This section applies only to rates charged by towing services called at the request of a law enforcement officer, rather than by direction of the owner of the vehicle or vessel on land. In all other situations this section does not apply, and the parties may negotiate prices and rates as in other ordinary service contracts.

(8) In addition to accepting cash, all tow companies shall accept traveler's checks and credit cards from vehicle and vessel owners. Tow companies operating on the city tow rotation list shall afford owners a reasonable time to secure an acceptable method of

payment and must have a written policy in place regarding accepting credit or debit cards on site at all times.

(9) A wrecker operator may dispatch a heavier class of wrecker to the site but may charge no more than the rates applicable to the type of service required.

Should a recreational vehicle, boat, or other type of trailer be attached to a motor vehicle which requires towing, and only one tow truck is required to remove the vehicle and its trailer, only one tow charge may be levied for the combined length of the vehicle and its trailer.

Sec. 70-661. - Storage facilities.

(1) Wrecker operators shall provide storage facilities which shall be maintained at the operator's place of business. These facilities must be fenced and locked for the protection of vehicles and property.

(2) The wrecker operator shall provide storage for all impounded/towed vehicles in an outside storage area unless specific written instructions are given for inside storage by the impounding law enforcement officer. If required for investigative purposes, the wrecker operator shall move the vehicle(s) to a

designated area for processing prior to storage. In such instance, the law enforcement agency will not authorize release of the vehicle until all outstanding charges by the operator, as authorized by this section have been satisfied.

(3) The wrecker operator shall not change the type of storage facility (inside or outside) afforded a vehicle without written permission from the officer in charge. The wrecker operator shall not change the storage facility location without first obtaining written permission from the officer in charge.

(4) The storage facility must be owned or leased solely by the wrecker operator and vehicles stored by the operator must be separately fenced and locked.

(5) The registered owner of a vehicle or the owner's representatives or owner's insurance adjusters, upon proper identification, shall be permitted to inspect or photograph stored vehicles during the hours of 8:00 a.m. to 6:00 p.m., on days they are engaged in towing. The wrecker operator shall not require the owner, adjuster or representative to pay any fee in order to inspect or photograph the stored vehicle.

(6) All fencing shall be chain-link or solid-wall type and at least six feet in height where permissible under land use regulations of the county to discourage theft of any vehicle or any property being stored inside. All storage facilities shall be illuminated with lighting of sufficient intensity to reveal persons and vehicles at a distance of at least 150 feet during nighttime.

(7) Permanent inside storage facilities must be available for 24-hour storage when weather or other conditions require inside storage for the protection of the vehicle or personal property. A lean-to, tent or shed does not meet the requirements of this section. Inside storage must be within a weather-tight building. A container shall not be a considered a weather-tight building.

(8) A minimum of 25 storage spaces with three inside storage spaces must be available. Service bays or repair bays do not qualify as inside storage, nor does any area that is utilized for any activity other than serving as a permanent inside storage area, when vehicles are actually stored inside at the request of a law enforcement agency or the owner of a vehicle.

(9) Wrecker operators shall comply with hold orders placed by the law enforcement agency, including any instructions for inside or outside storage. Vehicles involved in a fatality and sealed by the traffic homicide investigator shall remain intact until the seals are removed by the investigator. No property of any kind shall be released to anyone without authority of the homicide investigator. If no fatality occurred, then the vehicle and the property may be released by the wrecker operator upon valid proof of ownership once the hold is released.

(10) A copy of an inventory prepared by the law enforcement agency, of all personal property found in a wrecked, disabled or abandoned vehicle shall be provided to the wrecker operator. The wrecker operator shall permit the removal of such property by the vehicle owner or his agent from a stored vehicle during normal business hours without charge. The agent's authority shall be evidenced by a writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths. A signed receipt for each article removed by the owner or his agent shall be obtained. Personal property shall be defined as any item not affixed to the

vehicle which was in the vehicle at the time of the tow. In the case of vehicles stored where no "hold order" has been placed, the wrecker operator will directly release any vehicle upon presentation of proper proof of identification and ownership. If these conditions cannot be met due to unusual or extraordinary circumstances, the vehicle will be released only upon authorization obtained from the law enforcement agency.

(11) Wrecker operators handling the initial tow shall exercise reasonable care and control of parts and contents located in vehicles while under their protection or while in storage.

(12) During the hours from 8:00 a.m. to 6:00 p.m., Monday through Friday; or on any day they are actively engaged in towing, wrecker operators will provide adequate staffing at the storage facility so that personal property may be removed from the vehicle or the vehicle itself may be released without undue delay. If the property or vehicle is to be released after hours the wrecker operator will respond within 60 minutes to release the property or vehicle.

(13) Should it become necessary that personal property be removed from a vehicle or a vehicle be released

when the storage facility is not staffed, the wrecker operator will be required to do so and allowed to charge a reasonable fee to cover actual expenses limited to \$30.00.

Sec. 70-663 Sunset; Competitive Solicitation

The Division shall sunset and be of no further effect upon the City Commission's issuance of a competitive solicitation for police initiated tows, subsequent acceptance of a vendor or vendors and final implementation of a contract to provide such services.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 7<sup>th</sup> day of December, 2010.

Read and passed on final reading at a regular meeting held this 15<sup>th</sup> day of February, 2011.

Authenticated by the presiding officer and Clerk of the Commission on 16 day of May, 2011.

Filed with the Clerk May 16, 2011.

  
CRAIG CATES, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK