

AN ORDINANCE

2013 - 01 - 31 - 0075

AMENDING CHAPTER 19, ARTICLE XI (WRECKER SERVICES) OF THE CITY CODE OF SAN ANTONIO TO ADJUST THE MAXIMUM ALLOWABLE FEE FOR NON-CONSENT TOWS; REVISING REQUIREMENTS PERTAINING TO ITEMS INCLUDING SIGNAGE, REPORTING, RELEASE OF PRIVATE PROPERTY, TOW FEE STUDIES AND OTHER AMENDMENTS; ESTABLISHING PENALTIES; AND PROVIDING FOR PUBLICATION.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 19, Article XI of the City Code of San Antonio, Texas is hereby repealed in its entirety and amended in accordance with **Attachment I** to this Ordinance which is incorporated herein by reference.

SECTION 2. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance or any appendix thereof, for any reason, be held illegal, inoperative, or invalid or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion to be unconstitutional or invalid or ineffective.

SECTION 3. No other provision of the City Code is amended hereby. All other provisions shall remain in effect.

SECTION 4. The City Clerk for the City of San Antonio is hereby directed to publish notice of this ordinance in a newspaper published in the City of San Antonio, Texas, as required by Article 2, Section 17 of the City Charter of San Antonio, Texas

SECTION 5. The publishers of the City Code of Antonio are authorized to amend said Code to reflect the changes adopted herein, to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 6. This Ordinance shall take effect five days after publication.

PASSED AND APPROVED this 31st day of January, 2013.



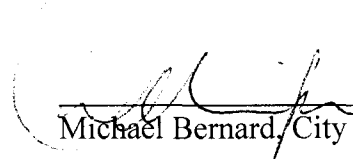
M A Y O R
Julián Castro

ATTEST:

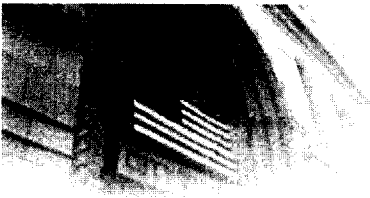


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

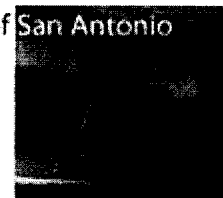


Michael Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 17

Name:	6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19A, 19B, 19C, 19D, 19E						
Date:	01/31/2013						
Time:	10:29:14 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance amending Chapter 19, Article XI (Wrecker Services) of the City Code to comply with State law, adjust the maximum allowable fee for non-consent tows, and revise requirements pertaining to items including signage, reporting, release of private property, tow fee studies, and other amendments. [Erik J. Walsh, Deputy City Manager; William McManus, Police Chief]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				x
Ray Lopez	District 6		x			x	
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

DIVISION I. GENERAL PROVISIONS

Sec. 19-386 – Compliance with State and Local Ordinances

All towing companies, tow truck drivers, vehicle storage facilities and property owners under this article shall comply with all applicable state laws, local ordinances and rules issued by the Texas Department of Licensing and Regulation applicable to a tow truck, towing company, tow operator, or storage facilities.

Sec. 19-387 - Definitions

In this chapter:

City means the City of San Antonio.

City Parking Manager the director of the department overseeing City parking facilities, or their designee.

Combination Vehicle means a combination of two or more vehicles being propelled by one power unit, regardless if the power unit is capable of carrying cargo.

Consent tow has the same meaning as defined by Texas Occupations Code Sec. 2308.002.

Department means the San Antonio Police Department.

Director shall mean the Chief of Police or his designee.

Driver means an individual who drives or operates a tow truck.

Hooked up means the vehicle is fully prepared for transport by attachment to a tow truck, lifted in a tow position, with tow lights and safety chains attached and, if required, placed on a dolly in a raised position and the **ONLY** thing remaining is for the tow operator to drive away.

Nonconsent tow has the same meaning as defined by Texas Occupations Code Sec. 2308.002.

Operate means to drive or to be in control of a tow truck or the vehicle storage facility.

Operator means the driver or owner of a tow truck or the operator of a vehicle storage facility.

Parking facility has the same meaning as defined by Texas Occupations Code Sec. 2308.002.

Person means an individual, assumed name entity, partnership, joint-venture, association, corporation, or other legal entity.

Property entrance means any point of access by a vehicle to private property including adjoining properties and alley ways.

Property owner means the owner or authorized agent of private, real property.

Tow Truck has the same meaning as defined by Texas Occupations Code Sec. 2308.002.

Towing company has the same meaning as defined by state law and includes any company that holds a contract to enforce parking violations/restriction through the use of a nonconsent tow or collects money related to a nonconsent tow.

Unauthorized vehicle has the same meaning as defined by Texas Occupations Code Sec. 2308.002.

Vehicle has the same meaning as defined by Texas Occupations Code Sec. 2308.002.

Vehicle owner or operator has the same meaning as defined by Texas Occupations Code Sec. 2308.002.

Vehicle storage facility has the same meaning as defined by Texas Occupations Code Sec. 2308.002.

Sec. 19-388 – Authority and duties of the Department

The department shall implement and enforce this article. In addition to the powers and duties elsewhere prescribed in this article, the department is authorized to:

- (1) Conduct random periodic investigations of towing, and vehicle storage facilities throughout the city concerning their compliance with this article and state law.
- (2) Inspect tow trucks vehicles for compliance with, vehicle and equipment safety standards established by this chapter.
- (3) Conduct random inspections of tow trucks records and facilities for compliance with state law and public safety. Inspections should be performed in a reasonable manner so as to comply with the laws of the state.
- (4) Conduct random inspections of vehicle storage facility records, facilities, and storage lots for compliance with state law and public safety. Inspections should be performed in a reasonable manner so as to comply with the laws of the state.

Section 19-389 – Exemptions

Except as specifically noted, this article does not apply to:

- (1) A person towing a vehicle with the express consent of the owner or operator of the vehicle;

- (2) A person towing a vehicle from public streets and ways or private property under the direction of the department;
- (3) A person who engages in towing a vehicle in connection with a bona fide repossession of same when written authorization has been received from the lienholder.

DIVISION II. OPERATIONS

Sec. 19-390. - Prohibition against unattended vehicles in certain areas.

The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

- (1) Is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;
- (2) Prevents a vehicle from exiting a parking space in the facility;
- (3) Is in or obstructs a fire lane marked in accordance with this Code; or
- (4) Obstructs immediate access to a trash dumpster; the trash dumpster or area of immediate access to the dumpster must be conspicuously and legibly marked on all sides of access with the warning "NO PARKING-TOW AWAY ZONE." (signage shall be in white letters, or other contrasting color, at least three (3) inches tall); or
- (5) Obstructs a curb painted red and conspicuously and legibly marked with the warning "NO PARKING-TOW AWAY ZONE." (Curb markings or signs shall be at intervals not to exceed fifty (50) feet and in compliance with state law.); or
- (6) Is improperly parked on private property in a restricted or reserved parking area which has been properly marked pursuant to state law; or
- (7) A fee for parking has not been paid to the parking facility if the facility has been properly marked pursuant to state law.

Sec. 19-391. - Requirements for posting signs.

- (1) A minimum of one sign shall be placed on the right or left side of each driveway or curb cut through which a vehicle can enter the property, including an entry from an alley or other property abutting the property.
- (2) At intervals along the entrance so that no entrance is farther than 25 feet from a sign if:
 - (a) curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto a parking facility from a public roadway other than an alley; and

- (b) the width of an entrance exceeds 35 feet.
- (3) Each sign must conform to the minimum requirements as required by state law.
- (4) Each sign must be posted in a manner and location so that the signs are facing and conspicuous to the driver of a vehicle entering the property.
- (5) Upon review by the chief of police or his designee, a parking facility causing tows under this chapter may be required to install additional signage in order to correct problems associated with conformity of signage due to parking facility layout.

Sec. 19-392 – Information and data to be kept and maintained two years; records to be made available for inspection

Each tow truck company shall maintain at the business office information and data on his towing company business and operations. The following specific requirements are hereby prescribed:

- (1) Accurate records, reports, receipts and other operating information and data as may be required by the director shall be kept and maintained in a business office located in Bexar County for at least two years after date, and all such documents shall be made available at a place readily accessible for examination and copying at all reasonable times by the department or a peace officer upon request.

Sec. 19-393. - Vehicle storage facility's and towing company's duty to report before towing or accepting a lawfully repossessed or towed vehicle or receiving a drop fee for an unauthorized vehicle.

- (1) Whenever any vehicle is removed from private property without the consent of the vehicle owner or a lienholder, a control number must be requested from the department within 45 minutes of the vehicle leaving the property by reporting the following information to the department:
 - (a) A general description, including the year, make, model, and color;
 - (b) The state and number of the vehicle's license plate, if any;
 - (c) The vehicle identification number;
 - (d) The date and time of the drop as well as the location from which the vehicle would have been towed;
 - (e) The name of the company attempting to tow the vehicle;

(f) The name of the person or entity authorizing the tow and a valid contact phone number; and

(g) The name of the vehicle storage facility to which the vehicle has been or will be taken.

(2) Whenever any person tows, carries, transports or otherwise takes a motor vehicle pursuant to a request by a lienholder incident to a lawful repossession, the person so taking the vehicle shall, within forty five minutes of taking possession, report to the department:

(a) A general description of the vehicle, including the year, make, model, and color;

(b) The state and number of the vehicle's license plate, if any;

(c) The vehicle identification number of the vehicle;

(d) The date and time of tow as well as the location from which the vehicle was towed;

(e) The name of the company towing the vehicle, the name and Texas Department of Licensing and Regulation number issued to the driver of the tow truck driver doing the tow, and the name and location where the vehicle is being stored; and

(f) The name, title and phone number of the lienholder causing the vehicle to be repossessed.

(3) The required report must be made by telephone, by facsimile, other electronic device, or delivered personally to the department.

Sec. 19-394. - Claimed vehicles.

(1) When a storage facility acquires possession of a private property non-consent towed motor vehicle. the storage facility is entitled to:

(a) Towing charges, if applicable;

(b) Impound fees when authorized by state law;

(c) Storage fees as allowed by state law; and

(d) Notification charges.

(2) A vehicle storage facility must notify owners or operators of vehicles:

(a) What methods of payments are accepted;

(b) The location from which the vehicle may be retrieved;

- (c) The total amount of charges if the vehicle is picked up the same day as the call;
- (d) Procedures for civil recourse as provided in Texas Occupations Code 2308.452 and 2308.455; and
- (e) Procedures for filing complaints with the Texas Department of Licensing and Regulation.

(3) A towing company that removes or is in the process of removing a vehicle from a parking facility, upon request of the vehicle owner or operator, shall provide the owner or operator an explanation of the reason for removing the vehicle from the parking facility.

Sec. 19-395. - Disposition of unclaimed vehicles.

Unclaimed vehicles may be sold at a public auction by an auctioneer licensed by the Texas Department of Licensing and Regulation.

Sec. 19-396. - Removing wrecked or abandoned vehicles on public streets, ways or other public property.

(1) In the interest of public safety, it shall be unlawful for any person or towing company, on the public street and ways of the city to knowingly respond for the purpose of moving, towing, hauling, debris or hazardous material cleanup, or otherwise transport in, on or over the public streets and ways of the city any vehicle which has been involved in a collision on a public street, way or other public property, whether or not removed to private property following the collision, or any vehicle that requires towing and is on a public street, way or other public property, unless directed to do so by the chief of police or his designee.

(2) In city parking lots or facilities, the city parking manager or his designee, the chief of police or his designee may impound or relocate to another location on the lot or facility, any vehicle that is blocking an entrance, exit, fire lane or otherwise obstructing access. Any charge for relocation shall be assessed against the vehicle owner. Any vehicle not authorized to be parked at a city facility shall be removed at the direction of the city parking manager or his designee.

(3) Other motor vehicles on public streets, ways or public property may be removed only with the express consent of the owner or operator, in compliance with Section 2308.351 of the Texas Occupations Code or at the direction of the director or his designee.

(4) Any owner of a vehicle whose vehicle has been towed from a public way, street or property at the direction of the chief of police or his designee, where it was necessary for the department to incur expense for the cleanup of hazardous waste and/or material, the owner of said vehicle shall be responsible for payment of the cost associated with the clean up.

(5) The department shall have the right to retain any vehicle, to include but not limited to tractors and trailers, in its possession which belongs to said vehicle owner until the payment for all charges associated with the towing of the vehicle, to include but not limited to recovery and clean up fees, have been paid.

Sec. 19-398. - Authority to inspect.

The department may inspect a vehicle storage facility, tow truck or towing company to determine whether they are in compliance with this article and other applicable law.

Sec. 19-399 – Amount of Insurance

The public liability and property damage insurance required by this chapter shall be the minimum amount required by the State of Texas.

Sec. 19-400 – Disposition of Property Left in Towed Vehicles

Upon request be the owner of a vehicle, a vehicle storage facility shall return to the vehicle owner without delay, any personal property left in a towed vehicle. All such personal property must be surrendered to the property owner regardless of whether or not any or all fees associated with the towing or storage of the vehicle have been paid. “Personal property” for purposes of this section refers to property in the vehicle which is not permanently affixed to the vehicle.

DIVISION III. FEES

Sec. 19-401. - Service rates.

The rates hereinafter described are to be utilized by towing companies for non-consent tows originating within the corporate limits of the city pursuant to this article.

Sec. 19-402. - Fee schedule.

- (1) No towing fees may be charged other than those fees listed in this subsection, including charges for dollies, special equipment, or mileage.
- (2) The maximum fee that may be charge for towing under this article shall be:
 - (a) \$177 for vehicles 10,000 pounds or less.
 - (b) \$196 for vehicles between 10,001 and 24,999 lbs.
 - (c) \$602 for any vehicle or combination vehicle 25,000 or more.
- (3) Weight, for purposes of this section, shall be determined by the gross weight recorded on the vehicle registration.

(4) If the owner or operator of a vehicle which is parked in violation of this Code or state law arrives before the vehicle is hooked up, the wrecker operator shall release the vehicle for free. If the owner or operator of a vehicle which is parked in violation of this Code or state law arrives after the vehicle is hooked up but before it is removed from the property, the wrecker operator shall advise them the vehicle will be release upon payment of the drop fee. The wrecker operator will allow the vehicle owner or operator at least fifteen minutes to get the funds for the drop fee. There is nothing requiring the wrecker operator to release a legally towed vehicle that is properly hooked up and has left the private property.

(5) The maximum fee that may be charged for a drop fee under this chapter shall be one half of the full rate as set forth in subsection (2) above.

(6) For payment of any fee under this section, a towing company or vehicle storage facility shall accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle. For payment of any fee under this section, a vehicle storage facility shall accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle. Release of a vehicle may not be denied based on the inability of the facility to accept payment by electronic check, debit card, or credit card of any charge associated with delivery or storage of the a vehicle unless the inability to accept such payment is due to factors outside the control of the vehicle storage facility, such as a power outage or machine malfunction. However, payment by credit or debit card may be refused if the named cardholder is not present.

(7) In no way is subsection (2) above to be construed to mean that a towing company may not charge less than the fees stated in this section. These fees are the maximum that can be charged for any towing, or drop fee of a vehicle in accordance with this article.

Sec. 19-403 - Tow Fee Study

(1) Three or more towing companies performing, either alone or together, 50 percent or more of the nonconsent tows during the preceding calendar year may request a tow fee study. Said request must be made in writing to the director. The request must identify the specific fees requested to be reviewed and indicate the requestor's willingness to provide any necessary financial documentation that the City may deem necessary to conduct the review.

(2) A non-refundable fee of \$5000.00 in the form of a cashier's check payable to the City must be forwarded to the director before the study will be undertaken. This fee is intended to defray the cost of the study.

(3) The tow fee study shall be performed at the direction of the department director. The methodology used to conduct study will be established by the Finance Department of San Antonio. The Finance Department shall determine what financial information is necessary to conduct the study, to include but not limited to financial information requested from non-consent

towing companies in the City. Any and all towing companies joining in the request for a tow fee study must provide must provide all requested financial information. Such information shall be kept confidential to the maximum extent allowed by law.

(4) The tow fee study shall be completed within 120 day of the date that the deposit is paid and all requested financial information is received, whichever is later.

(5) The findings of the tow fee study shall be presented to City Council. The City council shall adopt an ordinance that increases or decreases the maximum fees for nonconsent tows or that makes a finding that an adjustment is not justified. If the study indicates that a rate increase is justified, then the department director shall submit his recommendation to city council.

(6) The provisions of this item shall not be required if a rate study has been performed within the preceding period of 48 months. In the intervening 48 months, the Finance Department will perform an analysis of fuel costs as follows:

- (a) A fuel adjustment calculation will be performed if
 - (i) the average annual price of diesel fuel as reported by OPIS for the San Antonio area is below \$3.83; or,
 - (ii) the average annual price of diesel fuel as reported by OPIS for the San Antonio area is above \$3.95.
 - (iii) If the average annual price as reported by OPIS for the San Antonio area is between \$3.83 and \$3.95, there will be no fuel adjustment calculation.
- (b) Any adjustment in the rate due to fuel cost fluctuation shall become effective January 1, starting the first year after the enactment of this code provision.

(7) Nothing in this section shall preclude the City from undertaking a tow fee study at its own discretion at any time.

DIVISION IV. ENFORCEMENT

Sec. 19-404. - Enforcement by police officers.

Any peace officer observing a violation of this article, state law or Texas Department of Licensing and Regulation Rule may take necessary action to ensure the safety of the public and its interests.

Sec. 19-405. - Offenses.

- (1) A person commits an offense if by act or omission he violates a provision of this article. A culpable mental state is not required for commission of an offense under this article unless the provision defining the conduct expressly requires a culpable mental state.
- (2) A person commits an offense if he intentionally or knowingly tampers with, removes, or destroys a tow warning sign required by this article without the consent of the property owner.
- (3) A person commits an offense if he performs a nonconsent tow originating in this city and tows the vehicle to a location outside Bexar County or he fails to take the vehicle directly to a VSF at the time of the tow.
- (4) A person commits an offense if he or she charges a fee for towing in excess of the maximum fee set forth by the City of San Antonio. For purposes of this subsection, person includes, but is not limited to, any owner or officer of an entity that charges such an excess fee.

Sec. 19-406. - Penalties.

- (1) Each violation of this chapter constitutes a separate offense, with the exception of Section 19-391. With regard to section 19-391, a separate offense is committed each day in which an offense occurs.
- (2) A violation of Section 19-390 shall not be deemed an offense punishable under this chapter. However, such violation may be subject to penalty pursuant to state law or other City ordinance.
- (3) An offense committed under this article, other than section 19-390 is punishable by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00). The minimum fine established in this subsection shall be doubled for the second conviction of the same offense within any two-year period. A third conviction within any two-year period will result in a fine of five hundred dollars (\$500.00). At no time shall the minimum fine exceed the maximum fine established in this subsection. Nothing in this section shall prohibit application of any fines authorized by state law to be assessed.
- (4) Prosecution for an offense under this section does not prevent the use of other enforcement remedies or procedures applicable to the person charged with the conduct or involved in the offense.