

ARTICLE 18. TOWING SERVICES

Sec. 9-271. Definitions.

(a) *Tow operations* means any business that provides towing services, which include the removal of motor vehicles unlawfully parked on private property.

(b) *Tow unit* means any vehicle which is used to tow a motor vehicle as part of a tow operations business.

(c) *Tow unit operator* means the driver of a tow unit.

(d) *Official police tow* means a tow operator under contract to the City of Costa Mesa to respond to police-initiated requests for tow service.

(e) *Legally posted private property* means the premises have been posted as required by Section 22658 of the California Vehicle Code. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-272. Certificate of public convenience and necessity required.

No person shall operate, or cause to be operated, nor shall any person employ, permit or allow another to operate or cause to be operated a tow unit on the streets of the city used for removing vehicles unlawfully parked on legally posted private property without first having obtained a certificate of public convenience and necessity for that tow unit in accordance with the requirements of this article. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-273. Application for certificate.

An application for a certificate of public convenience and necessity to operate a tow unit shall be filed with the director of finance upon forms provided by the city, which shall be verified and shall contain the following information:

- (a) The name, business address and business telephone number of the applicant;

- (b) If the applicant proposes to conduct business under a fictitious name, the applicant shall state the name, address and telephone number of each person owning a financial interest in the business;
- (c) The name, address and telephone number of the person or persons who will have general management responsibility for the applicant's business;
- (d) A financial statement in a form and with content satisfactory to the city prepared by a certified public accountant showing the financial status of the applicant during the past two (2) years preceding the application;
- (e) The year of manufacture, make, model, motor number, state license number and capacity of each tow unit which the applicant proposes to use in the operation of its business;
- (f) The addresses and a description of the facilities at each fixed location which the applicant proposes to use in connection with its operation;
- (g) Any facts which the applicant believes tend to prove that the public convenience and necessity require the granting of a permit to the applicant;
- (h) A description of the color scheme, monogram, advertising, or other distinguishing characteristics to be used to designate the applicant's tow units;
- (i) Such other information as the director of finance may reasonably require. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-274. Towing service certificate application filing fee.

An application as required by section 9-273 shall be accompanied by a filing fee set by resolution of city council for each tow unit which applicant proposes to operate within the city to cover the administrative cost to the city for processing the application. (Ord. No. 79-22, § 2, 9-17-79; Ord. No. 94-4, § 9, 3-7-94)

Sec. 9-275. Public hearing for towing service certificate application; notice of hearing.

(a) Upon the filing of a completed application for a certificate of public convenience and necessity to conduct a tow operation, the director of finance shall refer the application to the chief of police and other appropriate city departments for an investigation and report. The director of finance shall also refer the applica-

tion to the city clerk who shall set a time and date for a public hearing, at which time the city council will consider the application. The city clerk shall schedule said hearing on the agenda for the first available regular council meeting occurring not less than thirty (30) days following the date on which the application is submitted.

(b) Notice of the hearing shall be published in a newspaper of general circulation within the city at least once not less than ten (10) days prior to the date scheduled for the hearing. In addition, written notice shall be given to each person holding a certificate for conducting a tow operation, at least ten (10) days prior to the date of the hearing. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-276. Issuance or denial of towing service certificate.

After consideration of all evidence which it deems relevant at the public hearing, the city council shall determine whether the applicant has proven that public convenience and necessity require additional service, and may then issue or deny the requested certificate of public convenience and necessity. In reaching a decision, the city council shall consider the following factors:

- (a) Whether the applicant is qualified on the basis of experience in the tow operation business and financial responsibility;
- (b) Whether the number of tow operations already operating within the city is adequate to meet the public need;
- (c) The probable effect that approval of the application would have on the level and quality of service available to the public;
- (d) Whether the facilities, personnel and equipment which the applicant proposes to use are adequate, and the business location properly zoned for this use.
- (e) Whether the applicant's prior towing activities show he conducts his business in a safe, lawful, and responsible manner. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-277. Content of towing service certificate.

If the city council determines that the public convenience and necessity requires the proposed tow operation for removing vehicles from private property, a certificate authorizing such service shall be issued to the applicant. In granting a certificate, the city council shall specify the number of tow units that may be operated pursuant to said certificate, and the certificate shall contain a description of each tow unit

which the certificate holder will be permitted to operate within the city. The city council may attach any conditions to the granting of any certificate it deems necessary and reasonable to carry out the intent of sections 9-271 through 9-284. A certificate shall not be issued to any person who shall not have fully complied with all of the requirements of said section. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-278. Duration of certificate for towing service.

A certificate of public convenience and necessity for tow operations issued pursuant to section 9-277 shall be valid for an indefinite period of time, unless such certificate is suspended or revoked. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-279. Grounds for revocation of towing service certificate.

Any certificate or permit granted pursuant to the provisions of this chapter may be revoked by the city council, either in whole or in part, after five (5) days prior written notice to the certificate holder, directing him to appear at a certain time and place to show cause why the certificate should not be revoked, on any of the following grounds:

- (a) That the certificate holder has not filed adequate evidence of liability insurance coverage with the city clerk or has allowed its insurance coverage to lapse or be cancelled;
- (b) For the violation of any rule, regulation, or condition set forth in or authorized by section 9-271 through 9-284, or made a condition of the certificate of public convenience and necessity;
- (c) For the violation of any laws of the state or city including zoning laws, with respect to the operation of the business by any certificate holder;
- (d) For failure to maintain satisfactory service to the public, e.g., decreasing number of tow units used in business, or for deviation from the schedule of rates approved by the city council. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-280. Transfer of towing service certificate.

No certificate issued pursuant to the provisions of section 9-277 shall be transferable, either by assignment, sale, hypothecation, operation of law or otherwise, without the permission of the city council having been first obtained. Application for transfer of any certificate shall be subject to the same terms, condi-

tions and requirements as in an application for an original certificate. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-281. Application, permission to change towing service application.

In the event any certificate holder desires to change any facts included upon his original application required by section 9-273, he shall apply for permission to do so from the director of finance who shall grant such permission if the change does not significantly alter the grounds upon which the certificate was originally issued. The decision of the director of finance can be appealed or reviewed as provided in Title 2, Chapter IX of the Costa Mesa Municipal Code. (Ord. No. 79-22, § 2, 9-17-79)

Sec. 9-282. Public liability insurance for towing services.

No holder of a certificate to conduct a tow operation shall drive or operate a tow unit, or cause the same to be driven or operated in the city, unless there is on file with the city clerk, and in full force and effect at all times while such tow unit is being operated, a policy of insurance, or satisfactory evidence of such insurance, approved by the city attorney or risk manager, evidencing that the certificate holder is insured under a policy of liability insurance for personal injury, including death and property damage providing minimum coverage of one million dollars (\$1,000,000.00) combined single limit per occurrence. Such insurance shall also include coverage for garage keeper's legal liability, or the equivalent, in amounts satisfactory to the city's insurance committee. Said policies shall further provide that the city shall be given thirty (30) days' prior written notice of any cancellation, termination or change in the amount of such insurance coverage. Said policy of insurance shall be executed by a company duly licensed under the laws of the State of California to be an insurance business. (Ord. No. 79-22, § 2, 9-17-79; Ord. No. 92-23, § 2, 11-16-92)

Sec. 9-283. Rules and regulations for towing service operation.

The following rules and regulations shall be observed by all tow operations conducting business within the city:

- (a) Every tow operation shall display at the business location their business name, address and telephone number. Such information shall be clearly visible and legible from the street at all times including the hours of darkness.
- (b) Every tow operation shall maintain all towed and impounded vehicles within the confines of its storage facility and not upon the public right-of-way.

- (c) Every tow unit operator who removes a vehicle from legally posted private property shall cause a written inventory to be made describing the condition of the vehicle, including the current mileage, and showing the date and time of the removal. In the event the vehicle has been opened by the tow unit operator or any other employee or agent of the tow operation, the inventory shall also include a complete listing of all property contained therein. A copy of this inventory shall be made available to the vehicle owner without charge.
- (d) A tow unit operator may enter a locked vehicle in order to remove it from legally posted private property; however, he shall be liable (under provisions of section 22658(b) of the California Vehicle Code) for any damage to the vehicle resulting from any intentional or negligent act of any person causing the removal of, or removing, the vehicle.
- (e) Every tow unit operator who removes a vehicle from legally posted private property shall cause said vehicle to be available for release under the following requirements:
- (1) The vehicle shall be available for release at any time to the owner during a minimum period of two (2) hours immediately after the removal of said vehicle from the private property.
 - (2) The vehicle shall be at the tow operation's place of business located within the city.
 - (3) If there is included in the tow operator's approved rate schedule a mileage charge, the maximum allowable charge shall be limited to ten (10) miles.
- (f) Every tow operation, employee or agent thereof impounding a vehicle from legally posted private property shall cause the auto theft investigator, Costa Mesa Police Department, to be notified as soon as possible and in no event longer than sixty (60) minutes after taking control of the vehicle. In addition, the tow operation shall cause the owner of the vehicle to be notified of the location where the vehicle is being stored in accordance with the provisions of Section 22852 and 22853 of the California Vehicle Code.
- (g) Every tow operation, employee or agent thereof responsible for impounding a vehicle from legally posted private property shall furnish to the owner of the vehicle upon request, the name and legal address of the person, company or corporation authorizing the impound in order that the vehicle owner may effectively fulfill his legal recourse under Section 22658(b) of the California Vehicle Code.
- (h) Every tow operation, employee or agent thereof in the process of impounding a vehicle from legally posted private property shall, upon the request of the vehicle owner, or person in charge of the vehicle, release the vehicle at the scene. If the vehicle is "in tow" (hooked up to the tow unit), the regular scheduled tow fee may be charged. When the vehicle is not yet "in tow" at the time of the request, no charge for the release may be made.
- (i) When the owner of a vehicle arrives at the scene prior to his vehicle being removed and disputes the tow operator's authority to remove said vehicle, it shall be the duty of the tow operator to remain at the location for the arrival of the police as provided in this paragraph. There shall be no additional charges for the time required for the arrival of the police or any additional time required by the police to resolve the matter. After the tow operator has been notified by the person in charge of the vehicle that he is summoning the police, the tow operator shall remain at the location for a period of not less than thirty (30) minutes. If the police do not arrive within the thirty-minute period, the tow operator may continue with the impoundment of the vehicle.
- (j) Each tow operation shall at all times keep a copy of these rules and regulations posted in a conspicuous place on the premises. In addition, each tow operator must have a copy of these rules and regulations in his possession when operating a tow unit to enable him to inform the vehicle owner of the tow operator's legal authority and responsibilities. These rules shall be presented to the vehicle owner in the event of a dispute regarding the removal of the vehicle.
- (k) Tow operations, operators and employees shall conduct their business in an orderly, ethical, businesslike manner, and use every means to obtain and keep the confidence of the motoring public.
- (l) No tow operation shall display, either on the premises or on a tow unit any words, insignia, or other indication that the tow unit is an official police tow.

- (m) Any tow operation doing business within the City of Costa Mesa is subject to being requisitioned by a police officer in the event of an emergency or disaster at no charge to the city.
- (n) A certificate holder shall be responsible for the acts of, and shall require, his agents and employees to comply with each and every provision of sections 9-271 through 9-284; or, he shall personally undertake such compliance.
- (o) When a vehicle is removed from legally posted private property in accordance with the provisions of sections 9-271 through 9-284, the provisions in the city's abandoned vehicle ordinance, Title 11, Chapter IV of the Costa Mesa Municipal Code, do not apply. (Ord. No. 79-22, § 2, 9-17-79)
- erty or to the person owning such vehicle. (Ord. No. 79-22, § 2, 9-17-79; Ord. No. 85-9, § 2, 5-6-85; Ord. No. 92-23, § 3, 11-16-92)

Sec. 9-284. Maximum rate for towing services.

(a) The city council may from time to time adopt by resolution a maximum rate schedule applicable to the towing services covered by this article. The rate schedule will be at a level to ensure competition, provide a fair return on investment, and provide a high quality tow service to the public.

(b) The rate schedule will automatically be adjusted on its anniversary date based on the percentage change in the cost of doing business as measured by the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, for All Urban Consumers for the Los Angeles—Long Beach Area, All Items, (1967=100) for the preceding twelve (12) months.

(c) Any certificate holder may request an adjustment to the rate schedule by filing a written request with the director of finance, accompanied by certified financial statements and other information to support the request. The council need not act on more than one (1) request in any twelve-month period.

(d) When establishing or considering changes to the rate schedule, the council shall consider any written evidence submitted by any interested party. Notice that the council will consider a change to the rate schedule shall be published in a newspaper of general circulation in the city at least once, not less than ten (10) days before the hearing, and written notice shall be sent to all certificate holders.

(e) The city council may, by resolution, establish a fee to defray the cost of logging and creating computer entries for vehicles stored from private property. The fee shall be paid by the towing operation holding a certificate under this article, and may be added as a proper charge to the person causing the vehicle removal from private prop-

