



# CITY COUNCIL AGENDA REPORT

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MEETING DATE: August 5, 2008

ITEM NUMBER:

**SUBJECT:** CITY TOWING SERVICES ORDINANCE AMENDMENTS

**DATE:** JULY 28, 2008

**FROM:** CITY MANAGER'S OFFICE AND CITY ATTORNEY'S OFFICE

**PRESENTATION BY:** TOM HATCH, ASSISTANT CITY MANAGER AND KIMBERLY HALL BARLOW, CITY ATTORNEY

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## **RECOMMENDATION:**

That the City Council introduce and give first reading to Ordinance 08-\_\_ to repeal the existing Towing Services Ordinance and adopt substantive amendments as set forth in the Ordinance.

## **BACKGROUND:**

The current City Ordinance on towing services was created in 1979 and has been updated three times (1985, 1992 and 1994). However, since 1999, because of a federal court ruling in the *Tocher* case, the ordinance has not been enforced. Recently, laws allow the City to resume enforcement. California Vehicle Code § 22658 authorizes regulations and CVC § 21100 gives the City permit authority. Furthermore, federal law, in 49 U.S.C. §14501(c), gives authorization to local governments to regulate certain aspects of motor carriers of property, including tow trucks. The current Ordinance (Attachment 1) contains outdated information, such as requiring a Certificate of Public Convenience and Necessity; it contains few requirements and guidelines; and omits other specifications.

The current Police Towing Services contracts were extended for six months, to expire in August, 2008, but to continue from month to month thereafter pending completion of the RPF process for police-initiated tows. While preparing the new Request for Proposal and associated Guidelines, staff determined that the current City Towing Ordinance was in need of updating and did not address police concerns. City staff from various departments reviewed towing documents related to specifications and requirements from ten other cities and from the California Highway Patrol. Based on the information contained in those documents, and since existing contracts are to expire, staff determined that it was now appropriate to: (1) have better guidelines and requirements in place; (2) reduce the potential for misinterpretation; and (3) achieve better results, expectations and levels of service.

## **ANALYSIS:**

On July 8, 2008, the City Council conducted a study session to consider drafts of a potential new towing ordinance, including both a regulatory ordinance or one that is non-regulatory. As a result of the study session, and on the Police Department's recommendation, the Council requested the City Attorney bring forward for consideration a regulatory ordinance because of the great potential for abuse by unregulated tow operators, and because unregulated towing practices have in the past resulted in predatory towing practices, and can potentially endanger vehicle owners and tow operators.

The proposed Regulatory Towing Service Ordinance (Attachment 1) reflects changes made to:

- simplify and update language in the current code;
- improve regulations for nonconsensual towing of vehicles, rotational tow operations and tow operation services;
- regulate (by licensing, inspection, employment requirements and/or rate regulation) tow companies who conduct business in the City other than those specifically contracted by the City for police tows; and
- direct the reader to the proposed Costa Mesa Police Department (PD) Tow Policy Guidelines and Requirements for specifics.<sup>1</sup>

In the Study Session, a question arose regarding whether the City may deny tow operator permits to applicants, as well as their agents and employees) who have certain criminal records. Pursuant to 49 U.S.C. § 14501(c)(2)(A), the State (and local governments pursuant to the State's delegating authority) may regulate tow operators to ensure the safety of the public. Denial of a permit based on a tow operator's criminal record is clearly related to the safety regulatory power of the City. The Fifth Circuit Court of Appeals has so ruled. Cole v. City of Dallas, 314 F.3d 730 (5th Cir. 2002). The proposed Ordinance requires that a permit applicant disclose all criminal convictions on the application; and that a permit may be denied or revoked for certain types of criminal convictions within the 5 years preceding the application, and for all Penal Code 290 registrable sex offense convictions. A permit holder or permit applicant is defined to include the permit holder's or permit applicant's agents and employees.

Another Study Session question concerned whether or not the City can restrict tow operators to towing to a yard or facility located within five miles of the City's Department. This, and similar restrictions (such as location of tow facilities and towing distance) are properly regulating by cities as related to consumer protection and public safety.

Finally, the procedures to request a rate schedule adjustment (proposed Ordinance Section 9-293(c) and (d)) have been adjusted to match the draft Tow Policy Guidelines.

The proposed Ordinance is before the Council for introduction and first reading. After final amendments are proposed and Tow Policy Guidelines approved for city contracted tows, a Request for Proposals for Police Towing Services will be subsequently issued using these documents.

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<sup>1</sup> The Tow Policy Guidelines will be brought forward to Council for approval at the second meeting in August.

**ALTERNATIVES CONSIDERED:**

1. Do not move forward with consideration of a proposed Ordinance.

**FISCAL REVIEW**

There is no fiscal impact associated with this item. Existing fees will remain unchanged except as may be changed by later Council action.

**LEGAL REVIEW:**

The City Attorney's Office has prepared the proposed Towing Services Ordinance for City Council's consideration and approved it as to form.

**CONCLUSION:**

The City will be initiating the Request for Proposals process for City towing services very soon as the current contracts will expire in August and continue thereafter from month to month. Therefore, the City Council is respectfully requested to introduce and give first reading to the Towing Services Ordinances attached as Attachment 2 to this Report.

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DISTRIBUTION: Purchasing Supervisor  
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Administrative Services Director  
Telecommunications Manager  
Legislative and Public Affairs Manager

ATTACHMENTS: 1 [Current Towing Services Ordinance – Article 18 of Title 9, CMMC](#)  
2 [Proposed Regulatory Towing Services Ordinance](#)  
3 [Redline Version of Proposed Ordinance](#)