

ORDINANCE NO. 22-DD

AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, AMENDING CHAPTER 26, WRECKERS, OF THE CODE OF ORDINANCES OF THE CITY OF ALVIN, TEXAS, FOR THE PURPOSE OF AMENDING ARTICLE I. IN GENERAL, ARTICLE II. PERMITS, ARTICLE III. POLICE-AUTHORIZED TOWS, AND ARTICLE IV. NON-CONSENT HEAVY DUTY TOWS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.

WHEREAS, the City Council of the City of Alvin is continually reviewing the provisions of the City Code of Ordinances to ensure that it meets the current needs of the City and reflects current practice;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS:

Section 1. That Chapter 26, Wreckers, of the Code of Ordinances, City of Alvin, Texas, is hereby amended with the language as follows:

ARTICLE I. – IN GENERAL

Sec. 26-1. Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

Accident means a situation where one or more motor vehicles has collided with any other motor vehicle, pedestrian, animal, road debris, or other stationary object.

Auto wrecker means any automobile, truck or other vehicle used for the purpose of towing, carrying, pushing or otherwise transporting any motor vehicle, from one place to another for any purpose of wrecking, storing, or repairing the vehicle. The term "auto wrecker" shall not be constructed to include a service car or other vehicle not equipped with mechanical devices for transporting disabled vehicles and not used for such purposes, such as service cars equipped with compressed air containers and tools for performing minor repairs not involving towing or transportation of disabled vehicles. This exception shall not authorize evasion of this chapter, and if any vehicle, although not equipped with devices primarily used for towing vehicles through means of ropes, chains or otherwise, the same shall be considered in violation of this chapter. An auto wrecker can pick up vehicles for mechanical repair and body shop work and haul vehicles for any dealer as long as it does not appear at an accident scene, or police incident

site. An auto wrecker towing a vehicle within the city limits of Alvin, Texas, shall comply with all state and federal regulations governing said auto wrecker(s).

Consent tow means any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a law enforcement incident that involves the vehicle.

Custodial arrest means a situation where a peace officer employed by the city takes the operator/owner of a motor vehicle into custody and determines that it is necessary to cause the person's vehicle to be removed from the scene for storage or for use in a criminal investigation.

Director means the Chief of Police who shall administer the rules and regulations set forth by this chapter. The Director shall report to the City Manager.

Emergency auto wrecker means an auto wrecker having a gross vehicle weight of twenty-six thousand (26,000) pounds or less, which holds a valid emergency auto wrecker permit from the city, and which lawfully appears at the scene of an accident or other police incident for the purpose or in expectation of towing, removing, or hauling away a vehicle from the scene of an accident or police incident site.

Heavy-duty wrecker means an auto wrecker having a gross vehicle weight of twenty-six thousand one (26,001) pounds or more. A heavy-duty wrecker shall not operate as an emergency wrecker, but may operate as a private wrecker, contracted by the owner(s)/operator(s) or the city to tow a heavy disabled, wrecked, or illegally parked vehicle. Heavy-duty wreckers shall be required to have all safety devices, warning equipment, etc., as outlined in section 26-7 of this chapter.

Motor vehicle means a vehicle subject to the registration requirements of the Texas Transportation Code Chapter 501, or any other device designed to be self-propelled or transported on a public highway

Non-Consent tow means any tow of a motor vehicle that is not a consent tow, including the tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene, or Any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

Owner means where used in connection with the person(s) issued a permit under this chapter, shall be construed to mean any person, or his/her agent, engaged in the business of storing, wrecking, or repairing motor vehicles for hire and who owns or is entitled to operate any auto wrecker or emergency auto wrecker, and who uses the same in the conduct of his/her business or any part thereof, and the term "owner" shall extend and be applied to associations, corporations, firms, and partnerships, as well as individuals.

Permit means a permit to be issued annually by the City, which authorizes the permit holder thereof to answer calls from the Police Department or police-authorized tows pursuant to a police-authorized tow agreement and non-consent tows.

Permit holder means any person, business, corporation, limited liability company, limited liability partnership, partnership, or other entity created by the state of Texas or any other state,

which has been issued a valid wrecker service permit from the City authorizing performance of non-consent tows within the corporate limits of the City in accordance with this article.

Police authorized tow means a non-consent tow and the towing of a motor vehicle upon authorization of a city police officer, rather than upon authorization of the owner or person in possession of the motor vehicle, under circumstances of stolen vehicle recovery, abandoned vehicle removal, impoundment removal authorized by law, accident or custodial arrest at which the owner or person in possession of the vehicle is incapable of making arrangements for removal of the vehicle, or any other circumstance in which a police officer authorizes the towing of a motor vehicle in connection with official duties and the owner or person in possession of the vehicle is not present or is not capable of making a determination with respect to the removal of the vehicle.

Police Chief means the City's Chief of Police or his/her designee.

Police incident means any activity requiring police involvement exercising responsibility or authority.

Private storage lot means an automobile storage facility situated within the city that conforms to the requirements of section 26-34 of this chapter.

Vehicle owner means the actual owner of the vehicle towed or transported or any driver of the vehicle who reasonably appears to have authority to operate the vehicle.

Wrecker driver means any individual who drives an auto wrecker.

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Sec. 26-3. Parking of auto wrecker at scene of accident or near wrecked or disabled vehicle.

Whenever an auto wrecker arrives at the place where a motor vehicle has been disabled by an accident, the wrecker driver shall park his/her vehicle as close to the street curb as possible and in such a manner as not to interfere with traffic. He/she shall not park his/her vehicle within one hundred (100) feet from a wrecked or disabled vehicle.

Sec. 26-4. Penalty.

Any person who violates a provision of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as prescribed by section 1-5.

Sec. 26-5. Affirmative defenses to prosecution.

- (a) It shall be an affirmative defense to prosecution under any provision of this chapter that:
- (1) The auto wrecker is owned by the vehicle owner of the vehicle being towed, carried or otherwise transported; or
 - (2) The vehicle being towed, carried or otherwise transported by the wrecker was originally picked up or loaded onto the wrecker at a specific location outside the city; or
 - (3) The motor vehicle was being towed by an auto wrecker pursuant to a request by the lienholder of the motor vehicle; that the towing was incidental to a lawful repossession of the vehicle; and that the wrecker driver has complied with all requirements of this chapter

which would be applicable if the lienholder were the vehicle owner of the vehicle being towed.

- (b) It shall also be an affirmative defense to any requirement under this chapter that an auto wrecker have a permit that:
 - (1) The auto wrecker is operated under a valid state registration issued under Chapter 643 of the Texas Transportation Code; and
 - (2) The auto wrecker owner does not have a place of business within the city; and
 - (3) The auto wrecker is not used to perform any tows within the city that are not consented to by the person having ownership or possession of the motor vehicle.

Sec. 26-6. Auto wrecker equipment.

No person shall drive or operate any auto wrecker unless it complies with the following minimum requirements:

- (a) Each wrecker shall be not less than three-quarter ton in size.
- (b) Each wrecker shall be equipped with a power winch line and boom with a factory-rated lifting capacity of not less than five thousand (5,000) pounds, single line capacity. However, a wrecker may be exempted from the requirement to have a boom in the event that there is an adequate factory-designed substitute therefor.
- (c) Each wrecker shall carry as standard equipment: Fire extinguisher, such fire extinguisher being defined as that piece of equipment commonly carried to extinguish fires caused as a result of an auto accident or collision. Such fire extinguisher shall be standard ABC type of five-pound capacity or greater and shall be mounted within easy access to the vehicle operator. This requirement, as to type and size of the extinguisher, may be changed from time to time as determined by the fire marshal
- (d) Each wrecker shall carry parking flares; such parking flares being defined as that piece of equipment commonly used in motor transportation as a signal flare or light to warn of an obstruction on the highway.
- (e) All emergency auto wreckers shall be equipped with an approved towing device which is part of the emergency auto wrecker and shall have such device(s) in place at all times when towing a vehicle, to hold it rigid and prevent swaying of the towed vehicle.
- (f) A broom for the purpose of clearing the street of debris, parts or glass.
- (g) An emergency warning light device, amber in color, alternately flashing or rotating, mounted as high as possible and as far to both the left side and right side as possible, so as to be visible to the front and rear of the vehicle at all times when in operation. This warning device should be in operation from the time the emergency auto wrecker arrives at the scene until the time of departure. The warning device (amber) may be used, if necessary, from departure at the scene during travel to the storage facility, using the most expedient route. At no time shall an emergency auto wrecker display a red light to the front of the vehicle.
- (h) An extendable lighting device, capable of reaching the length of the vehicle being towed, being no less than four (4) inches in diameter per light, meeting the Department of Transportation specifications for stop and taillights. This device shall be affixed to the most

rearward point of the towed vehicle and operated accordingly when the towed vehicle's lighting system is inoperable or said vehicle is towed backwards.

- (i) A container of masonry-type sand or absorbent, of no less than five (5) gallons in capacity, for the purpose of spreading over small liquid spills.
- (j) A square pointed shovel and empty container to be used as necessary for the removal of debris, spreading of sand, etc.
- (k) A set of towing dollies or tilt-type wrecker bed that will allow vehicles to be transported atop same, for the purpose of transporting vehicles that cannot otherwise be towed due to tire, axle, or wheel damage.
- (l) A two-way communications device that will enable the wrecker operator to be in constant contact with the city police dispatcher.
- (m) Heavy duty wreckers must be equipped with such device(s) necessary to provide air to air brake systems of towed vehicles, when said towed vehicle's air brakes are inoperable.
- (n) Any other equipment that may be required by any other applicable state, federal, or local laws.

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Secs. 26-8—26-10. Reserved.

ARTICLE II. PERMITS

Sec. 26-11. Permit required; presumption in prosecution for violation of permit required.

- (a) It shall be unlawful for any person to drive or operate or cause to be driven any auto wrecker upon any public street in the city for the purpose of towing or hauling wrecked or disabled vehicles, either for hire or as an incident to obtaining the business of storing, wrecking or repairing such wrecked or disabled vehicles, away from a police incident site or the scene of an accident where the wrecked or disabled vehicles have collided with any other vehicle or other object or which have been wrecked or disabled in any manner, without having first obtained an emergency auto wrecker permit from the city, duly issued under this chapter to such person to operate an emergency auto wrecker on the streets of the city.
- (b) In any prosecution for a violation of subsection (a) above, proof that an owner's auto wrecker, for which an emergency auto wrecker's permit has not been issued, was present at the scene of a collision or accident in which a vehicle was wrecked or disabled shall constitute prima facie evidence that such owner was operating or causing to be operated his/her auto wrecker as an unpermitted emergency auto wrecker.
- (c) It shall be an exception to the application of subsection (a) above, for an auto wrecker to tow or haul a vehicle from an accident scene or police incident site without a valid emergency auto wrecker permit if said auto wrecker was summoned by the Police Department pursuant to this chapter.

Sec. 26-12. Permit application.

- (a) Any owner desiring to operate an emergency auto wrecker in the city shall make application to the director for an emergency auto wrecker permit. Such application shall be submitted

upon forms to be obtained from the City Secretary, and the applicant shall furnish the following proof and information with his/her application, which shall be sworn to before a notary public:

- (1) That the owner making application is a citizen of the United States, has attained the age of eighteen (18) years, and is able to read and write the English language
 - (2) The name and address of the applicant; if the applicant is an individual, the application shall so state. If the applicant is a partnership, the name and address of each partner shall be set out. If the applicant is a corporation, the application shall set forth:
 - a. The name and address of the corporation;
 - b. The names and addresses of the three (3) principal officers;
 - c. The name and address of each person owning twenty (20) percent or more of the interest in the corporation. If to twenty (20) percent or more of the interest in the corporation is held by an entity or entities, the applicant shall list each individual who owns twenty (20) percent or more of the interest in any such entity or entities.
 - (3) The application shall state the number of emergency auto wreckers the owner desires to operate and shall list the make, model, vehicle identification number, correct license number, and the Texas Department of Licensing and Regulation permit number of the auto wrecker or wreckers for which the applicant is seeking permits;
 - (4) The true ownership of the auto wrecker or wreckers. If not owned outright by the applicant, the name and address of the true owner shall be given. If the auto wrecker is operated under the terms of a contract with a company other than the owner, a copy of the contract also shall be attached;
 - (5) The name and address of each employer of any person listed under item (1) above and any businesses that any person listed under such item (1) has owned, operated or been employed by in the past five (5) years immediately preceding the date of the application; and
 - (6) The date of birth, sex, and race, for each person listed under item (1) above.
- (b) An application under this section shall be signed by the applicant. If a partnership, it shall be signed by each partner. If a corporation, it shall be signed by the president and attested by the secretary. In all cases the person signing shall execute an affidavit, on the application form, that the statements contained in such application are true and correct.
- (c) The applicant also shall provide the Police Department with evidence that he/she will be able to comply with section 26-14 if he/she is issued a permit. Such evidence shall be in the form of an insurance certificate or other such documentation as the Director finds adequate to assure that the applicant will comply with the requirements of this chapter.

Sec. 26-13. Issuance of a permit.

The Director shall give his approval for the issuance of an auto wrecker permit for each wrecker listed on the application upon submission of an application in accordance with section 26-12 of this chapter and evidence that the applicant has complied with section 26-14 of this chapter, and so long as they are in compliance with all of the provisions hereof and all applicable federal,

state, county, city laws and ordinances unless the Director finds that the permit should be denied under section 26-15 of this chapter.

Sec. 26-14. Insurance.

No permit shall be issued under this chapter unless the applicant procure and keep in full force and effect a policy or policies of public liability and property damage insurance issued by a casualty insurance company authorized to do business in the state and in the standard form approved by the State Board of Insurance commissioners, with the insured provisions thereof including the city as an insured, and the coverage provision insuring the public from any loss or damage that may arise to any person or property by reason of the operation of a wrecker by or for the applicant and providing that the amount of recovery on each wrecker shall be in limits of not less than the following sums:

- (a) *Wreckers having a gross vehicle weight of twenty-six thousand (26,000) pounds or less.* Before any permit shall be issued under this chapter, the applicant or permit holder, as the case may be, shall file with the City Secretary, a Certificate of Proof setting forth that said applicant or permit holder has in full force and effect, a policy of combined single limit coverage insurance, with limits of not less than three hundred thousand dollars (\$300,000.00) per occurrence, and a cargo, on-hook or similar type insurance with limits of not less than ten thousand dollars (\$10,000.00) per occurrence. Such policies of insurance shall be issued by an insurance company approved by the director and authorized to do business in the State of Texas.
- (b) *Wreckers having a gross vehicle weight of twenty-six thousand one (26,001) pounds or more.* Though permits issued by the City of Alvin are not required for heavy-duty wreckers, said wreckers shall have in full force and effect a policy of combined single limit coverage insurance, with limits of not less than five hundred thousand dollars (\$500,000.00) per occurrence, and a cargo on-hook or similar type insurance with limits of not less than twenty-five thousand dollars (\$25,000.00) per occurrence.

Sec. 26-15. Denial of permit.

An application for a wrecker permit shall be denied and no permit issued if:

- (1) Any information set out in the application is false or incomplete; or
- (2) The applicant has not met the requirements set out in section 26-14 of this chapter.

If the Director denies approval of the issuance of a wrecker permit, he/she shall give written notice to the applicant by certified mail, return receipt requested, at the applicant's address as set out in the application. In such notice the Director shall set out the reason or reasons the approval was denied.

Sec. 26-16. Permit fee.

The applicant for an auto wrecker permit shall submit a nonrefundable permit fee as set forth in chapter 28 of this Code for each permit requested at the time the applicant submits the application to the Director. A "year" shall mean a calendar year commencing October 1. Fees for permits issued for less than a full calendar year shall not be prorated.

Sec. 26-17. Payment of taxes and permit fee prior to issuance.

The applicant for a wrecker permit shall submit adequate evidence to the Director of Administrative Services to show that all ad valorem and other taxes arising from the operation of the auto wrecker have been paid.

Sec. 26-18. Content of permit; display requirements.

- (a) Each wrecker permit shall be dated and numbered and shall show on its face the make, model, motor number and license number of each wrecker and such permit shall be attached at all times to the vehicle in a manner so as to permit ready inspection. Each wrecker permit shall state that the wrecker has been inspected and approved by the Director.
- (b) The wrecker permit number shall be permanently affixed to the door panels or on both sides of the vehicle for which issued and shall be in three-inch reflective letters.
- (c) No person shall operate or permit the operation of an auto wrecker unless the permit number is affixed thereto as provided herein.

Sec. 29-19. Expiration and renewal of permits.

- (a) All wrecker permits shall expire at midnight on the thirtieth (30th) day of September each year. To renew such permits, the applicant shall file an application for renewal on a form designated by the Director, setting out the information required by section 26-12, and shall pay the renewal fee. The renewal fee for all wrecker permits shall be as set forth in chapter 28 of this Code.
- (b) The permittee shall submit his/her vehicle(s) for a safety inspection at a time and place designated by the Director. No permit may be issued or renewed unless the Director has found the wrecker to meet the requirements of this chapter and applicable laws.

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Sec. 26-22. Hearing procedures for denial, revocation or nonrenewal of permit.

- (a) Upon denial of a wrecker permit, prior to revocation of a wrecker permit and at any time the city refuses to renew a wrecker permit after a proper application therefor has been filed and the renewal fee has been paid, the city shall give written notice to the applicant/permittee setting forth:
 - (1) The ground(s) upon which the city will seek revocation of the permit or the grounds upon which the city has refused to renew the permit.
 - (2) The specific violations of this chapter and/or any federal or state law or laws upon which the city will rely in seeking revocation of the permit or nonrenewal of the permit.
 - (3) That a hearing will be held on the denial of the request for the permit or renewal thereof or on the city's request to revoke the permit.
 - (4) The date, time and place of such hearing.
 - (5) That the applicant/permittee may appear in person and/or be represented by counsel, may present testimony, and may cross-examine all witnesses.
- (b) The city may seek to have a permit suspended for a period of not more than one year rather than refusing to renew the permit or seeking to have such permit revoked if the Director is of the opinion that the public interest will be adequately protected by a suspension rather than a revocation.

- (c) The notice required by this subsection shall be served by personal delivery or by certified mail, return receipt requested, addressed to the applicant/permittee at the address shown on the application or the most recent supplement thereto.
- (d) The hearing shall be conducted before the city council according to the following rules:
 - (1) All parties shall have the right to representation by a licensed attorney although an attorney is not required;
 - (2) Each party may present witnesses on his own behalf;
 - (3) Each party has the right to cross-examine all witnesses;
 - (4) Only evidence presented before the city council at the hearing may be considered in rendering the decision.
- (e) If an applicant/permittee fails to appear at a hearing on an application for or a refusal to renew a wrecker permit, the application or renewal shall be denied. If a permittee fails to appear at a hearing on a request by the city to revoke a permit, the city shall present sufficient evidence to establish a prima facie case showing grounds for revocation.
- (f) If after a hearing on an application for a wrecker permit the council finds that grounds exist for denial of a permit, nonrenewal of a permit or revocation of a permit, the city attorney shall give written notice by certified mail, return receipt requested, to the applicant of the decision made by the council. If the council finds that grounds do not exist for the denial of a permit, it shall be issued. If the council finds that grounds do not exist for revocation of a permit, the permit shall remain in effect.
- (g) If the director finds from his/her hearing and investigation that public convenience and necessity does not exist for the operation of the vehicle or vehicles as applied for, the director shall notify the applicant in writing within fifteen (15) days from the last day of the hearing. An applicant who has been denied a permit by the director or by the City Council on appeal shall not be permitted to make another application for a permit within a period of one (1) year from the date of their prior application.

Secs. 26-23—26-30. Reserved.

ARTICLE III. POLICE-AUTHORIZED TOWS

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Sec. 26-32. Wrecker selection form.

The Director shall cause a wrecker selection/acceptance form to be prepared which shall contain the following minimum information:

- (a) A statement by the driver of the vehicle designating in blank spaces therein the wrecker company which the driver desires to remove the vehicle.
- (b) A statement authorizing any police officer to call the designated wrecker company to remove the vehicle.
- (c) A statement in the alternative that the driver has no preference as to a wrecker company and authorizing any police officer to call the wrecker company next in line on the wrecker rotation list maintained at police dispatch, and a statement that the driver desires the vehicle to be removed to the place designated by the driver in a blank space on the form.

- (d) A space for signature of the driver of the vehicle.
- (e) A complete description of the vehicle to be removed.
- (f) A physical inventory of the vehicle and contents prior to impoundment.
- (g) If the director finds from his/her hearing and investigation that public convenience and necessity does not exist for the operation of the vehicle or vehicles as applied for, the director shall notify the applicant in writing within fifteen (15) days from the last day of the hearing. An applicant who has been denied a permit by the director or by the City Council on appeal shall not be permitted to make another application for a permit within a period of one (1) year from the date of their prior application.

Sec. 26-33. Procedures for selection form.

- (a) When during a police incident, an officer determines a vehicle requires a police-authorized tow, a wrecker selection/inventory form will be completed by the officer. Provided the driver is not incapacitated due to injury, intoxication, or other factor, the officer shall request the driver to designate a permitted wrecker service to tow the vehicle, If provided, the officer will request the designated service through dispatch. If the driver provides no preference, the officer shall request the next permitted wrecker service on the rotation list.
- (b) Upon completion of the form, it shall be signed by the driver (unless incapacitated or in custody). The form shall also be signed by the wrecker driver. One copy of the completed form shall be provided to the driver, one copy shall be provided to the wrecker driver, one copy shall be provided to dispatch for reference as directed by Police Department policy.
- (c) In the event a requested wrecker has not arrived at the scene with a wrecker within thirty (30) minutes of the call, the officer shall request the next wrecker service on the rotation list through police dispatch.

Sec. 26-34. Storage lot requirements for police authorized tows.

Police authorized heavy-duty tow must be delivered to a storage facility as described in Sec 26-48.

All other police-authorized tows must be delivered to a storage lot within the city that conforms to the following:

- (1) The area must be either continuously attended or securely locked if unattended;
- (2) The area must contain a secure inside storage facility capable of housing at least two (2) impounded vehicles under lock;
- (3) The area must be located with frontage on either a state highway or a street which has a pavement width of at least thirty-six (36) feet for three hundred (300) feet on either side of each storage lot entrance;
- (4) The area (including any area in which vehicles are stored) must be completely enclosed by a fence of a minimum height of six (6) feet and made of one of the following materials: decorative wood or masonry as set out in section 24½-79 of this Code; or painted twenty-six (26) gauge steel panels (new) with a minimum of eighty thousand (80,000) p.s.i. (yield strength). A chain link entrance gate maybe installed at the storage lot. Prior to constructing a painted twenty-six (26) gauge steel paneled fence, the wrecker company shall submit its

plans and drawings to the city's inspection division for review and approval. The construction plans for the twenty-six (26) gauge steel paneled fence shall include the specifications for the fence materials. The construction plan for the twenty-six (26) gauge steel paneled fence shall include the specifications for the fence material. The design of the construction of the twenty-six (26) gauge steel paneled fence must achieve a 100-mph wind load.

A permittee shall be allowed to deliver police-authorized tows to a storage lot leased by the permittee so long as the storage lot conforms to the requirements of this section, is located within the city and the lease agreement extends for a period commensurate with the wrecker permit(s). A copy of the lease agreement must be provided to the Police Department. If at any time the permittee's lease is terminated during the permit period, then the permittee's name shall be removed from the rotation list until such time that satisfactory evidence is provided to the Director that the permittee owns or has acquired the right to use a storage lot in conformity with the requirements of this section.

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Sec. 26-36. Duty of wrecker driver, to clear street of debris, glass, etc.

It shall be the duty of the driver of each auto wrecker that picks up a wrecked or disabled vehicle for the purpose of towing the same to clear the street of any and all debris, parts or glass and to remove such from the scene. In the event two (2) or more auto wreckers pick up vehicles for towing, it shall be the duty of each driver to clear the street of debris, parts or glass. The driver(s) of the emergency auto wreckers indicated in this section shall not leave the scene of the accident until full compliance with the provisions of this section has been made.

Secs. 26-37—26-45. Reserved.

ARTICLE IV. NON-CONSENT HEAVY DUTY TOWS

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Sec. 26-47. Fees.

- (a) *Established.* The director shall establish a fee schedule that encompasses all fees for police tows, and wrecker companies may not add additional fees. The rates charged for wrecker services and storage of towed vehicles shall be set by the director (with approval from the city manager), in accordance with rates set by the State of Texas and in addition to comparable rates of the region and shall be subject to change from time to time as warranted. Wrecker companies must notify the owner(s) or nearest adult relative of the towed vehicle, by telephone within twenty-four (24) hours and in written form by certified mail within ten (10) days of the time of pick up, advising said persons(s) of the storage address of said vehicle and the storage rate, as well as the wrecker company's telephone number.
- (b) Notice of charge to customer. Emergency auto wrecker operators must provide a written copy of authorized rates and charges to the owner or operator of a vehicle that is being towed, unless said vehicle owner or operator is incapacitated for any reason.

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Sec. 26-49. Inspection of wreckers and storage facilities

- (a) An inspection official designated by the director shall set appointments with the emergency auto wrecker company, in or about the month of September of each year, for the purpose of inspecting the storage facilities and emergency auto wreckers used by each wrecker company to ensure that all requirements are met before a new permit is issued. All appointments for inspection are to be set by the reasonable discretion of the inspector. All requirements shall be met and approved by the inspector.
- (b) Periodic inspections of the permitted wreckers and their storage facilities may be made at any time during the year that the emergency auto wrecker permit is in effect. This is done to ensure compliance with all sections of this chapter. The inspection of storage facilities may occur at any reasonable hour. Wreckers may be inspected at any time during normal business hours or during any time of operation.
- (c) Wreckers found in violation of the requirements of this chapter may be subject to immediate forfeiture of said permit and the owner and/or operator may be subject to citation by either the Police Department or the inspection official.

Sec. 26-50. Wrecker driver qualifications.

No person shall operate or drive any auto wrecker or emergency auto wrecker, whether on his/her own account or in the employ of another, except in compliance with the following standards and conditions, to wit:

- (1) All wrecker drivers must be eighteen (18) years of age or older and must not have been convicted of any felony, theft, or crime of moral turpitude.
- (2) All wrecker drivers must possess a current, valid, and appropriate driver's license which has been duly issued to him/her by the Texas Department of Public Safety.
- (3) All permit holders must provide evidence that their drivers are covered by the certificate of insurance required in section 26-14.

Sec. 26-51. - Solicitation of business on streets of city prohibited; presumption of violation.

- (a) No person shall solicit in any manner, directly or indirectly, on the streets of the city, the business of towing any vehicle "wrecked, disabled or picked up from a police incident site," on a public street, regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading or purchasing said vehicle.
- (b) Proof of the presence of any person engaged in the wrecker business or the presence of any wrecker or motor vehicle owned or operated by any person engaged in the wrecker business either as owner, operator, employee, or agent, on any public street in the city, at or within two hundred (200) feet of the scene of a wreck, accident or collision, shall be prima facie evidence of a solicitation in violation of this section.

Sec. 26.52. – Choice of wrecker service.

- (a) *Police shall not solicit, recommend or influence choice; authorized to direct tow to police station.* No police officer, investigating or present at the scene of any wreck, accident, collision, or police incident shall directly or indirectly either by word, gesture, sign or otherwise, recommend to any person, the name of any particular owner engaged in the

wrecker services or repair business, nor shall any such police officer influence or attempt to influence in any manner the decision of any person choosing or selecting a wrecker or repair service.

- (b) *Dispositions of vehicles.* The Police Department may move a vehicle from the scene of an accident or remove a vehicle whose driver is under arrest.
- (c) *Right of owner to request.* The owner or driver of a wrecked auto or the arrested owner or driver at a police incident site has the right to request, through the investigating officer, a particular wrecker service, provided that: the wrecker service requested has a valid auto wrecker permit issued by the State of Texas; that said wrecker service can respond to the incident in a reasonable amount of time; and the vehicle is not subject to police impound for evidence carrying purposes.

Sec. 26-53. - Immediate storage of towed vehicles required; exceptions.

All vehicles picked up by an emergency auto wrecker shall immediately be taken to the permit holder's approved storage area, unless authorization to take the vehicle to another location is received from the Police Department, or in the absence of a police impound or hold, by written authorization of the owner or operator of the vehicle.

Sec. 26-54. - Hours storage facility open for receiving, releasing vehicles.

The holder of an emergency auto wrecker permit shall be responsible for maintaining and operating the storage facility so that vehicles may be received and released twenty-four (24) hours per day.

Sec. 26-55. – Officers authorized to remove illegally parked, abandoned or disabled vehicles.

- (a) Officers of the City Police Department or investigating law enforcement agencies are hereby authorized to remove a vehicle to the nearest garage or other place of safety, or to a garage designated or maintained by the governmental agency, of which the officer is a member, under the circumstances hereinafter enumerated:
 - (1) When any vehicle is illegally parked so as to block the entrance to any private driveway, and it is impractical to move such vehicle from in front of the driveway to another point on the highway or street;
 - (2) When any vehicle is found upon a highway or street and a report has previously been made that such vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that such vehicle has been embezzled;
 - (3) When any such officer has reasonable grounds to believe that any vehicle has been abandoned;
 - (4) When a vehicle upon a highway or street is so disabled that its normal operation is impossible or impractical and the person or persons in charge of the vehicle are incapacitated by reason of physical injury or other reason to such an extent as to be unable to provide for its removal or custody, or are not in the immediate vicinity of the disabled vehicle; or
 - (5) When an officer arrests any person driving or in control of the vehicle for an alleged offense and such officer is by this Code or other law required to take the person arrested immediately before a magistrate.

- (b) Any officer is hereby authorized to remove any vehicle parked or standing in or on any portion of a roadway when in the opinion of the said officer the vehicle constitutes a hazard; or interferes with a normal function of a governmental agency; or by reason of any catastrophe, emergency or unusual circumstances the safety of said vehicle or others is imperiled.
- (c) Any member of the city fire marshal's office is hereby authorized to have a vehicle removed that is parked in such a manner as to violate the city's fire ordinance or interferes with the response to any incident.

Sec. 26-56. - Violation; penalties.

- (a) Any person who violates any provision in this article, for which a specific penalty is not provided, shall be guilty of a misdemeanor and upon conviction may be punished by a fine as prescribed by section 1-5.
- (b) Any person who violates subsections 26-46(a) or (b) may be punished by a fine of not less than two hundred dollars (\$200.00) or more than one thousand dollars (\$1,000.00) per violation in accordance with Chapter 643 of the Texas Transportation Code,. Each act of violation and each day in which a violation is permitted to continue shall constitute a separate offense.

Section 2. That except as amended herein all other provisions of Chapter 26 of the Code of Ordinances, City of Alvin, Texas, shall remain in full force and effect. To the extent of any conflict or inconsistency between the provisions of this Ordinance and any other ordinance, the provisions of this Ordinance shall control.

Section 3. Penalties. Any person, firm, entity or corporation violating any provision of this Ordinance, as it exists or may be amended, shall be guilty of a misdemeanor, and on conviction, shall be fined in an amount not to exceed \$500. Each continuing day's violation shall constitute a separate offence. The City of Alvin retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 4. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 5. Incorporation into Code of Ordinances. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances, City of Alvin, Texas, as an addition, amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Section 6. Effective Date. This Ordinance shall take effect immediately from and after its passage in accordance with the provisions of Chapter 52 of the Texas Local Government Code and the City of Alvin Charter.

Section 7. Open Meetings Act. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and the public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*. Notice was also provided as required by Chapter 52 of the *Texas Local Government Code* and the *City of Alvin Charter*.

PASSED and APPROVED on the 7th day of April 2022.

THE CITY OF ALVIN, TEXAS

ATTEST

By: _____
Paul A. Horn, Mayor

By: _____
Dixie Roberts, City Secretary