



City of Onalaska

P.O. Box 880 • Onalaska, Texas 77360

ORDINANCE 449

TOW TRUCKS

Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of Police means the Chief of Police for the city, or the person designated by the Chief of Police to act for the Chief of Police for the purposes of this article.

City Administrator means the City Administrator of the City of Onalaska, Texas.

Interest means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or other financial arrangements, as the case may be, of the permit holder. A rebuttable presumption of the existence of interest shall arise from the benefit gained, directly or indirectly, by any person.

Non-consent tows means any tow conducted without permission of, or not at the direction of, the vehicle's legal or registered owner, or such owner's authorized representatives, within the boundaries of the city.

Owner means any person who holds the legal title to a vehicle, or has the legal right of possession of a vehicle, or legal right of control of a vehicle, or any driver who reasonably appears to have authority to operate the vehicle. This does not include any person who has gained possession of a motor vehicle only as a result of tow truck services performed.

Permit means the authorization granted by the Chief of Police for a person to use one or more permitted tow trucks in accordance with the provisions of this article.

Permit holder means any person issued a permit pursuant to this article.

Person means any individual or any association, firm, partnership, joint venture, limited liability company, joint stock company or association, corporation or other legally recognized entity, whether for profit or not for profit, but shall not include the city.

Rotation list means lists, prepared in accordance with the provisions of this article, of tow trucks qualified to appear thereon, to be used to remove any vehicle, including wrecked or disabled vehicles, from a public street or private property by the police department.

Removal of vehicles by police department.

Notwithstanding any other provisions of this article, in any circumstance in which a vehicle or other subject is so located on a public street as to constitute a hazard or obstacle, or to interfere with traffic, or in the event a stolen vehicle is found, or in any other circumstances in which a police officer in the cause of his duty directs the removal of a vehicle from or to any location, any police officer may require

its removal at the owner's expense by any practicable means to include, but not limited to, use of a tow truck selected by the use of the rotation list.

Permits; applications and fees.

- (a) A city tow truck permit shall entitle the permit holder to use the permitted tow truck to:
 - (1) Perform police directed non-consent tows within the city consistent with state law;
 - (2) Perform consent tows from the scene of an accident or a custodial arrest; and
 - (3) Perform tows at the direction of the city from the rotation list.
- (b) Each permit holder shall pay an annual fee as established by ordinance.
- (c) An applicant for a permit shall submit, on a form provided by the city, a verified application containing or accompanied by the following:
 - (1) The true name, address and telephone number of the person that owns the tow truck proposed to be used by the permit holder. A tow truck cannot be used by more than one permit holder;
 - (2) A certificate from the city tax assessor-collector that all city taxes on all properties, real and personal, to be used by the permit holder pursuant to this article are current;
 - (3) A certificate of public liability and property damage issued by a casualty company authorized to do business in the state, in the standard form approved by the state board of insurance, containing a provision that at least ten days prior notice of cancellation of said insurance shall be given to the Permits Manager of the city, by the insurance company, and providing that the amount of coverage shall comply with the limits established by state regulation;
 - (4) A list of drivers employed by the permit holder along with the drivers' current driving records (Contracted 1099 drivers are excluded from eligibility to be placed on the list).
- (d) No permit holder shall use a tow truck for making tows in accordance with this article unless:
 - (1) The permit holder possesses a licensed vehicle storage facility and office in the name of the permit holder located wholly or partially within the incorporated limits of the city, or its extraterritorial jurisdiction; and
 - (2) Each vehicle storage yard shall have an all-weather surface that makes delivery and release of automobiles feasible in all weather conditions, such as concrete, asphalt, blacktop, stone, limestone, gravel, or shell; and
 - (3) A permit fee has been paid for the tow truck in accordance with subsection (b) of this section.
- (e) No person shall have interest in more than one permit holder, and shall file a sworn affidavit on a form supplied by the city to that fact.

Tow truck requirements.

- (a) All city-permitted tow trucks shall, in addition to the state's tow truck standards, meet the following minimum requirements:
 - (1) Be a minimum of one ton (minimum gross vehicle weight) in capacity as reflected on the manufacturer's certificate. If the vehicle does not have a manufacturer's certificate, then the

gross vehicle weight shall be determined by a testing procedure approved by the Permit Manager. All such vehicles shall be equipped with booster brakes or air brakes;

- (2) Be equipped with a wheel lift or roll-back;
 - (3) Be equipped with a functional lightbar;
 - (4) Be in such condition that it can safely and reliably be used as a tow truck;
 - (5) Be free from damaged bodies, defective paint, and other conditions which may make them unsightly;
 - (6) Each permit holder shall own and have access to one dolly; provided, however, that any permit holder with more than one tow truck shall have one dolly for every two tow trucks permitted by the city.
- (b) The applicant's principal office must be located within Polk County.
- (c) In addition to any fee required for permit or certificate hereunder, a tow truck company desiring to be placed on the tow rotation list shall pay an annual administrative fee of \$500.00, to defray cost of administering, updating and maintaining the tow rotation list. This fee shall not be prorated or refundable and will be assessed to each tow company placed on the tow rotation list.

Issuance and expiration of permits.

- (a) The Permits Manager shall issue a permit for all tow trucks so complying with the provisions of this article upon proper application being made therefor unless legal grounds exist for denying such a permit.
- (b) Each permit shall expire at 12:00 midnight on the first January 31 after issuance and will be renewable only upon compliance with the provisions of this article and any other applicable laws, ordinances or regulations that shall be in effect at the time of the renewal application.

Inspection of tow truck equipment and storage facilities used in the tow truck business.

Any permit holder, or applicant, by virtue of making application agrees to permit during normal business hours the inspection of tow trucks, tow truck equipment and storage facilities.

Police rotation lists.

- (a) The Chief of Police shall establish and maintain the rotation lists. There shall be one rotation list for regular tow trucks.
- (b) The rotation lists shall contain the names of all permit holders qualified and requesting to be on such lists. Each permit holder will be afforded one slot on the rotation lists.
- (c) A permit holder is qualified to be on such lists if the permit holder maintains:
 - (1) At least one tow truck in compliance; and
 - (2) A 24-hour tow truck service and does not have more than two telephone numbers.
- (d) When the police officer investigating a collision determines that a vehicle involved in a collision is unable to safely proceed under its own power, or when the police officer determines that the owner involved in a collision is physically unable to safely move the vehicle to a location where it will not create a traffic hazard, such officer shall request the owner to designate the tow truck service that the owner desires to move the vehicle.

- (1) Such designation by the owner will be indicated in writing on a form provided by the city and signed by the owner.
 - (2) When the designation has been properly made, the police officer shall communicate the name of the designated tow truck service to the police communications center.
 - (3) The police communications center shall cause the designated tow truck service to be called and directed to send to the scene of the collision a permitted tow truck.
 - (4) If the designated tow truck service is not a permit holder, and does not have available a permitted tow truck on the rotation list, or the tow truck service does not answer the phone, the owner will be requested to make other designation.
- (e) If the owner of a vehicle involved in a collision is physically unable to designate the tow truck service desired to remove the vehicle, or the owner fails or refuses to designate one, or has no preference, then the police officer shall communicate that fact immediately to the police communications center.
- (1) Such designation by the owner will be indicated in writing on a form provided by the city and signed by the owner if the owner is physically able. If not, the police officer shall indicate by notation on the form.
 - (2) The police communications center shall call the tow truck next in line after the last permitted tow truck so called and request the permit holder to tow the vehicle from the scene of the collision. If the permit holder does not answer the phone or cannot provide a tow truck permitted to him, the next permit holder on the list shall be called. The permit holder may use any tow truck permitted under the permit holder's name to make the call.
 - (3) No person shall tow, carry or transport a motor vehicle under the direction or authority of a police officer unless a tow slip has been issued to the driver of the tow truck by the police officer. Such tow truck slip shall be filled out by the police officer on a form designated by the city. The tow truck slip shall contain the following information:
 - a. A complete description of the vehicle to be towed, including the license plate number and the vehicle identification number;
 - b. Any visible damage to the inside or outside of the vehicle;
 - c. Any personal property contained within the vehicle which is visible from outside that vehicle;
 - d. Any visible missing parts or paraphernalia;
 - e. The location from which the vehicle is being towed;
 - f. The date and time the vehicle is picked up by the tow truck;
 - g. The reason the vehicle is being towed;
 - h. The location to which the vehicle is to be towed;
 - i. The signature and employee number of the police officer authorizing the tow;
 - j. The signature and tow truck license number of the tow truck driver.
- (f) If the permit holder after the arrival at the scene determines, in conjunction with the police officer in charge, that assistance is needed, then the permit holder shall arrange for such assistance within a reasonable time.
- (g) Any permit holder selected shall deliver a tow truck to the scene within 15 minutes of notification.

- (h) The maximum fees that may be charged by regular rotation permit holders under this section for the use of the tow truck designated shall be as approved by Texas State Law.
- (i) The fee when a vehicle is lawfully hooked up but not towed from the scene is one-half the regular towing fee.
- (j) No fee shall be charged for towing any vehicle under directions or authority of a city police officer unless the tow truck driver has obtained a completed tow slip from the police officer.
- (k) Any person collecting or charging any fee greater than the maximum fee schedule established herein for towing a vehicle pursuant to the direction of a city police officer from the rotation list shall violate this article and be subject to the administrative disposition of violations contained in section.

City Employees including Police officers not to influence selection of tow truck service.

- (a) It shall be unlawful for a police officer investigating or present at the scene of any wreck or collision to directly or indirectly recommend to any person the name of any tow truck service; nor shall any such police officer influence or attempt to influence in any manner the decision of any person in choosing or selecting a tow truck.
- (b) No employee of the city shall own any interest, either directly or indirectly, in a tow truck company, nor recommend to any person, in any manner, the name of any repair, tow truck or towing business, nor shall any city employee influence in any manner the decision of any person in choosing or selecting a repair, tow truck service or towing business.

Soliciting tow truck business on city streets prohibited.

- (a) A person commits an offense if he intentionally or knowingly solicits a tow in any manner, directly or indirectly, on the streets of the city, involving any vehicle that is wrecked on a public street. This prohibition applies regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading, selling or purchasing such vehicle.
- (b) In any prosecution for a violation of this section, proof that the tow truck was present and stopped at the scene of an accident shall constitute prima facie evidence that such permit holder or the tow truck driver was operating or causing to be operated the tow truck to solicit business, but the person charged shall have the right to introduce evidence to prove that the vehicle owner requested a tow truck to come to the scene or that a police officer requested the tow truck for the vehicle owner.
- (c) It shall be an affirmative defense that the vehicle was not disabled as a result of a collision.
- (d) It shall be an affirmative defense to prosecution under this section that the collision was investigated by a state department of public safety law enforcement officer.

Pound hauls and impounded vehicles.

- (a) If an owner refuses to designate a permitted tow truck, the city shall utilize the rotation list for pound calls or hauls resulting from vehicles being towed by the police division.
- (b) Any police officer may, for lawful purpose, direct that any vehicles shall be taken to automobile impoundment facilities used by the city.

- (c) Whenever it becomes necessary under this section for the permit holder to disassemble parts to a vehicle in order to tow such vehicle, the permit holder shall reassemble such parts upon reaching the automobile impoundment facility.
- (d) No permit holder under this section shall have the owner of an impounded vehicle sign a release from liability or damage until the owner has inspected the vehicle. Any such release shall contain a notation for which the permit holder is alleged to be liable by the owner of the vehicle. If there is any such enumeration of alleged damages, then the release shall be a full release except as to the specifically enumerated damages. The release shall be signed by the owner of the vehicle, and a representative of the permit holder.
- (e) No permit holder shall assert a lien on personal effects within a vehicle. Personal effects shall include such items as clothing, toilet articles, animals and purses, but shall not include tools.
- (f) Each permit holder and tow truck business shall clearly post and make available procedures to release autos between 8:00 a.m. and 9:00 a.m. each day of the week, in addition to the permit holder's regular business hours.
- (g) The operator of the vehicle storage yard shall release an impounded vehicle to the owner or operator of the vehicle in accordance with Sec. 2303.160, Texas Occupations Code.
- (h) In the event the vehicle was impounded due to the owner or operator failing to provide proof of financial responsibility as required by Sec. 601.053, Texas Transportation Code, the operator of the vehicle storage yard shall require that the person requesting release of the vehicle provide proof of financial responsibility as required by Section 601.501, Texas Transportation Code.

Duties of permit holders on rotation list.

The duty to provide safe and prompt tow truck service upon call includes, but is not limited to, the following specific duties:

- (1) Upon arrival at the scene of a collision within the incorporated limits of the city, permit holder personnel shall take directions from the police officer investigating that collision.
- (2) The permit holder summoned to a scene, whether it be an accident or otherwise, must perform the tow unless unusual circumstances exist. If unusual circumstances exist, the permit holder may summon additional aid to perform the tow. If no unusual circumstance exists, and the permit holder is unable to perform tow, said permit holder will immediately pass and the next permit holder on rotation will be summoned. Performing the tow will be defined as physically towing the vehicle in question. Under no circumstance will a permit holder be allowed to drive a vehicle which is the subject of rotation call from a scene.
- (3) Permit holder personnel who haul any vehicle from the scene of a collision within the incorporated limits of the city shall remove the debris of the collision from the public streets. This duty specifically includes removal of broken glass and metal fragments from the street, and the removal of any load of any vehicle from the traveled portion of the street, so as to eliminate any hazard to vehicular traffic. This does not include the responsibility to unload cargo from a wrecked vehicle in order to permit hauling. Such debris should be disposed of in a manner which will keep it out of gutters, storm sewers and streams, public rights-of-way, and property not belonging to the tow truck business, without consent of the property owner.

- (4) No permit holder shall store any vehicle or tow trucks on the public streets or rights-of-way. Permit holders will use reasonable care in the storage of property not belonging to said permit holders so as to minimize the risk of theft or damage. If any damaged or inoperable vehicle is found upon the public right-of-way within a reasonable distance of an automobile repair shop and police records show that such vehicle was taken to that place within 30 days as a result of a collision, this shall be prima facie proof that the vehicle is illegally stored.

Removal of vehicles from private property; abandoned vehicles.

- (a) A person commits an offense if the person removes a vehicle from private property without express written or verbal consent of the owner of the property and does not notify the city police division within one hour of such removal. The information to be provided in such notification shall include:
 - (1) The date, time and location of the removal;
 - (2) The physical description and license or registration number of the vehicle;
 - (3) The name of the wrecker company which performs the removal; and
 - (4) The storage location of the vehicle.
- (b) Nothing in this article shall be construed to authorize a non-consent tow except where permitted by state law.

Uses of tow truck without city permit prohibited.

- (a) A person commits an offense if the person owns or operates a tow truck that performs a police directed non-consent tow within the city without a city permit.
- (b) A person commits an offense if the person owns or operates a tow truck that performs a tow at the scene of an accident or a custodial arrest on a public street or right-of-way without a city permit.
- (c) It shall be an affirmative defense to prosecution under any provision of this article that the tow truck is owned by the vehicle owner of the vehicle being towed, carried or otherwise transported by the tow truck.
- (d) It shall also be an affirmative defense to prosecution under any provision of this article that regulates tow trucks that the vehicle being towed, carried or otherwise transported by the tow truck was originally picked up or loaded onto the tow truck at a specific location outside the city.
- (e) Additionally, it shall be an affirmative defense to prosecution under this article that the motor vehicle was being towed by the tow truck pursuant to a request by the lienholder of the motor vehicle; and that the tow truck was incidental to a lawful repossession of the vehicle; and that the tow truck driver has complied with all requirements of this article that would be applicable if the lienholder were the vehicle owner of the vehicle being towed.

Administrative disposition of violations.

The Chief of Police shall have, as to the holder or applicant of any permit, the duty and authority to enforce the provisions of this article by administrative action in accordance with the principles and procedures set forth herein:

- (1) The properly and safe functioning of the tow truck business has critical impact on the health, safety and welfare of the public, involving use of the public streets of the city, often in

circumstances necessitating prompt removal of dangerous obstructions to traffic on said streets; therefore, the privilege of any person to engage in the tow truck business in the city shall be subject to strict regulations in order to protect the public.

- (2) For purposes of invoking any administrative remedy against a permit holder, the act or omission of any agent or employee of said permit holder shall be considered to be the acts or omission of said permit holder.
- (3) Administrative remedies that the Chief of Police may employ to enforce the provisions of this article include, but are not limited to:
 - a. Suspension or revocation of any or all permits; this power includes the authority to remove or cause to be removed any sticker or other evidence of a permit from tow truck or tow trucks;
 - b. Removal of a permit holder from the rotation list.
- (4) Grounds for suspension of any or all permits include driving a tow truck to the scene of a collision in response to a call by any person for a tow truck, or towing a vehicle with a tow truck when the tow truck, the tow truck driver, or the permit holder does not meet all the following conditions, as applicable:
 - a. Is in a condition that it cannot safely tow a vehicle;
 - b. Is not then covered by insurance as required in this article;
 - c. Does not then meet all requirements for a permit;
 - d. Failure to meet at all times the requirements for a permit;
 - e. Failure to maintain at all times at least one tow truck in such condition that it meets the requirements for a permit and for eligibility to be on the rotation list;
 - f. Driving or causing to be driven to the scene of a collision in response to a call from the police department any tow truck which does not then meet the requirements of the rotation list;
 - g. Driving any tow truck to or from the scene of a collision in a manner which endangers any person;
 - h. Failure to arrive in response to a police call within reasonable time (15 minutes);
 - i. Violation of motor vehicle or traffic laws while in scope of employment;
 - j. Failure to report seized or abandoned vehicles;
 - k. False statements of material fact;
 - l. Relocation of vehicle depository or storage facility to a location that is further outside the city's extraterritorial jurisdiction;
 - m. Repeated suspensions;
 - n. Collecting or charging any fee in excess of those set out in this article;
 - o. Violation of laws regarding removal or impounding of vehicles;
 - p. Violation of ordinances regulating tow trucks; or
 - q. Three or more violations within one year of ordinances or rules by the permittee or agents or employees.

Procedures for suspension or revocation of certificates and permits; appeals.

- (a) The Chief of Police may suspend or revoke any or all permits after proper notice and hearing. Notice of hearing, the administrative action which may be taken, and the grounds therefor shall be given to the permit holder at least ten days prior to the date of the hearing. Mailing of such notice

to the last known business address of said permit holder shall constitute sufficient notice. Evidence and testimony shall be taken at the hearing and the hearing will be recorded. The decision of the chief of police, including any order of suspension or revocation shall be issued within 15 days of the hearing and written notice of that decision shall be sent to the permit holder.

- (b) An appeal from the decision of the Chief of Police may be made in writing to the City Administrator within ten days of the Chief of Police's decision. The City Administrator shall make a decision on the appeal based on the record of the hearing before the Chief of Police and any written argument submitted by the permit holder or a representative of the Chief of Police. Any such written submission shall be made within ten days of the notice of appeal to the City Administrator. A written ruling of the City Administrator shall be given to the permit holder within 20 days of receipt of any written submission to the City Administrator.
- (c) An appeal from the written decision of the City Administrator may be made to the City Council by filing a written request for the appeal with the City Secretary/City Administrator within ten days of the issuance of the City Administrator's written decision. Such appeal shall be determined by the City Council based upon the written record and submission made before the Chief of Police and City Administrator. The council shall schedule the vote on the appeal within 30 days of the filing of the written request for appeal with the City Secretary/City Administrator, and the permit holder or his representative and the Chief of Police or his representative may make an oral presentation not to exceed ten minutes in length to the council prior to the vote on the appeal.
- (d) If, after any permit has been suspended, the condition for which it was suspended has been corrected, and proof of such correction is made to the Chief of Police, then a new permit may be issued upon proper application, fee payment, and proof of meeting all requirements thereof.

Tow of certain illegally parked vehicles; procedure for vehicle owners to contest tow; hearings.

- (a) If the police department has a vehicle towed without prior notice to, or consent of, the owner, the police department shall notify the owner within 24 hours by telephone call, or by postcard or form letter mailed by first class mail to the last known registered owner of the motor vehicle, that this vehicle has been towed and how he can reclaim it.
- (b) If the owner contests the legality of the tow and desires possession of his vehicle without posting of any security, a hearing shall be set before the municipal court on its next full working day following the written request for hearing.
- (c) If the owner contests the legality of the tow, the owner shall be entitled to immediate possession of his vehicle upon written request for hearing and the deposit with the municipal court of a sum sufficient to secure payment of towing and storage fees. A hearing shall then be set before the municipal court within 14 days to determine the legality of the tow.
- (d) Notice of this procedure shall be provided to any person contesting the legality of a city tow. All written requests for hearing shall be on a form provided by the municipal court.

Records required of rotation tow truck permittees.

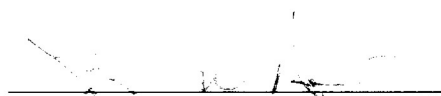
- (a) Each city permittee of a tow truck shall keep tow slips issued by the city for one year from the date of the latest transaction.
- (b) It shall be unlawful for any holder of a city tow truck permit to fail to keep the records as herein provided, or to fail to produce any of these records for inspection and copying upon request of the City Administrator or authorized agent or representative. The failure to keep the records as herein

provided or failure to produce such required records after request shall be punishable by a fine of not less than \$50.00 nor more than \$500.00. Each day for which proper records have not been kept shall be a separate offense.

If any section, sub-section, sentence, clause, phrase or word of this Ordinance is for any reason held to be unconstitutional or invalid such decision shall not affect the remaining portions of this Ordinance.

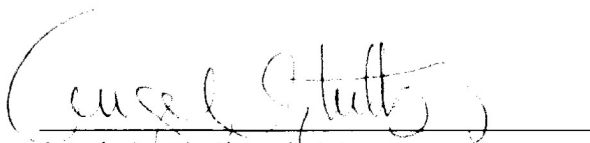
This ordinance shall become **effective April 1, 2024**.

PASSED and APPROVED this 13th day of **February, 2024**.



James W. Arnett, Mayor
City of Onalaska, Texas

ATTEST:



Angela Stutts, City Administrator
City of Onalaska, Texas